

**CONSTITUTION OF KENYA REVIEW COMMISSION**

**(CKRC)**

**Verbatim Report of**

**DISSEMINATION OF REPORT AND DRAFT BILL,**

**GATUNDU CONSTITUENCY, HELD AT GATUNDU EDUCATIONAL HALL**

**ON**

**8<sup>TH</sup> OCTOBER 2002**

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

1. Prof. Wanjiku Kabira - Commissioner

**Secretariat Staff in Attendance**

2. George Wachira - Assistant Programme Officer
3. Josephine Ndungu - Verbatim Recorder
4. Stephen Wanyoike - District Coordinator.

The meeting started at 10.35 am with a word of prayer from Esther Wambui..

**Stephen Wanyoike:** We want to start the meeting, can I suggest you come nearer so that at least those who come late can sit at the back. Unfortunately, we don't have power here so we haven't got the public address system.

Good morning? First of all I want to thank you for coming and I think it is right we start off and if other people are coming at least they will be able to catch up. Before we start lets do what is traditional in this area, we can start with a word of prayer so that we ask God to bless us. Can someone volunteer to just start us off with a word of prayer, a lady or a man, young or

whoever.

**Prayer:**

**Esther Wambui:** We want to thank you for gathering us here, we are grateful Lord for the country that you have given us that we may leave peacefully, we may enjoy all the gifts of nature that you have given us. Dear Lord, we bring this country into your hands that whatever you have prepared for us, we will be grateful to receive especially our new Constitution. We are waiting for it because we need to be liberated by you, we bring everything and we commit everything into your hands, so that we know you are going to give what we deserve. We pray this in Jesus' name. Amen.

**Stephen Wanyoike:** Before I start I want to first of all welcome you to this centre. We do apologise on behalf of the Constitution of Kenya Review Commission because we are aware the notice of this meeting was quite short but there was a purpose, because as you may have heard or you read in the newspapers. The new draft that has come up is going to be debated and discussed at the National Constitutional Conference and Madam Commissioner here will be talking about that later. Because there is a little time allocated to the Constitution Review it was necessary that they come back to launch and give you the views that were given by wananchi all over the country and specifically in this particular constituency. I do remember when Commissioner Bishop Kariuki, Commissioner Lethome and Com. Abida Ali Aroni, I think when they came there they promised that unlike many other Commissions that do work and they make reports and these reports are kept somewhere they will make a point of coming back and show you what they have already done, at least in a draft form before they can finalize on them. This is exactly what they are now doing, they have come here today. Yesterday they were in Juja Constituency in Thika District, tomorrow they will go to Gatundu North and the day after that, I think on Friday they will go to Gatanga in order to complete Thika District.

Equally, they are going all over the country in all the constituencies, out of the 210 constituencies they will go to every single constituency. They will want to see the wananchi before they take the document to Nairobi for final discussions before the other process takes place. She will be discussing more about that. So really today is actually fulfilling a promise that was given and we are very thankful that she has found time to come. You will be given or at least I think you have already been given a copy of the draft as you came in, there will be other reports, and there will be the Constituency Report of Juja Constituency which documents we shall be give, and they will be in our office in Thika at the documentation centre. There will be also other relevant reports, the short report that you have heard. They will also be available so that wananchi can have an opportunity to get involved in this process as much as possible. But for now the most important thing is for the Commissioner here to go through the draft, and raise issues that were brought up by your people and others and you have an opportunity to comment, discuss them and give a view. I may want to mention as early as this that if you do not have enough time to read the whole document and you have other things you want to raise, either supplementary, comments or you think that they should be added, there is still time. First of all before we close for the day we can pick up whatever views you want to give in writing. Alternatively, they can be brought to our offices at the documentation centre in Thika District, we are located in Murang'a

District Cooperative Union Building, Second Floor.

Within one month or within the next three weeks we can receive anything written and we will forward it to Nairobi. The other thing is that, if you do happen to be in Nairobi, the Commission's headquarters is at KENCOM House, 2<sup>nd</sup> Floor, and anytime I think even these days they are working almost 24 hours a day, you can actually bring anything and they will take them in. In short what we are saying is, this is not the final document, it is a draft, there is a lot of discussions that are going to take place, and there is still time for wananchi to comment and bring anything to be taken in.

It is now time for me to introduce you to those people who have come from Nairobi accompanying Madam Commissioner. On my left here is Josephine Ndung'u who will be assisting the Commissioner in the deliberations here today, and then far right there is George Wachira who is the Programme Officer with the Commission in Nairobi, and he will also be assisting the Commissioner. Now it is my pleasure to introduce you to Commissioner Professor Wanjiku Kabira who of course, up to now she has not been able to visit this particular centre but she has been in one of our constituencies, Thika District Constituency. I think she was in Ruiru if I remember, because you remember during that time they divided themselves into different groups. It is her first time to be here, Wanjiku Kabira is very well known within the education sphere, she is a Professor at the University of Nairobi, and I am sure she has taught many people within this constituency. She is also a Commissioner at the Constitution of Kenya Review Commission, and she has been very active in helping us come up with the new draft for the new Constitution. Therefore, it is our pleasure to have her today and raise any questions or any views you think you can bring up and she will be able to answer. We are also lucky that you can use any language particularly the Kikuyu language, English or Kiswahili, you are free to do it but for now probably we will communicate in whichever language you think is correct and right for you. Thank you very much and we welcome Professor Kabira to this sitting. My name is Jess Wanyoike, I am the Coordinator in Thika district and I am based in Thika District.

Madam Commissioner this is Gatundu South and as we wait for more people to come these are the people who presented their views last time in this particular centre and in another one in Kiganjo. They gave many views and those are the views that at least have formed part of what we are analyzing and part of what you will be telling us, what has come up and we welcome them to this sitting. Thank you very much.

**Com. Wanjiku Kabira:** Thank you.

**Stephen Wanyoike:** The members of the 3C's. I think two things, we have members of 3'C's, what we call the Constituency Constitutional Committees, the members we have been working with all along. I think I have two, I have seen Mrs. Njoroge, stand up so that they see you. We have Anthony Gathieka who is outside at the registry, then we have three more people I want to introduce to you, I wanted to introduce them later on but if you want I can do it right now. Professor Kabira will be talking about the National Constitutional Conference in Nairobi, and that will be one of the major organs of concluding this

review process and part of the participants will consist of three delegates that are drawn from each district. For that matter in Thika District we have three delegates who will go to the National Constitutional Conference to debate and discuss that particular document that will be presented there by the Commission and they will do their necessary debating and the necessary amendments before it goes to the other process through the Parliament.

What we did is that we neither selected nor nominated the three delegates. What the rules were is that the district was to elect three members, and we had an Electoral College that was formed and this was made up of the Thika County Council Councillors. I have seen two of them here and I am waiting for the third person and I will introduce her when she comes in. Out of the three members, one was to be a woman, as you may know these days we really want to give women an opportunity.

So we had one lady, her name is Mrs. Beatrice Kamamia, she is a Councillor based in Thika but she will be coming later, then the other two are men and I have seen them here. One is Retired Brigadier Wakinuthia Waitiki, please you better stand up, he is a retired Army Officer, he comes from Mtharugo Location, he was one of the people who were elected to represent the district. The other one is Honourable Gitu Kahengeri. Gitu Kahengeri is a well known elder in this country particularly in Thika District, he was one of the original Members of Parliament, a veteran freedom fighter, and one who has been very very active in this process. He was elected and he will be one of our representative for Thika District, I think we will talk more about them. Thank you very much for reminding me of that.

**Com. Wanjiku Kabira:** Okay. Thank you very much. He mundu utaraigua Gikuyu? Gutiri. Koguo notwarie na Gikuyu na Githungu? Is that okay? Negetha akorwo he handu hatari very clear togacokera na Gikuyu if need be So we can mix, whatever language. Kana tukwenda kwaria Githweri kana Githungu kana Gikuyu as long as nitu ku-understand. So I wanted to say that, what I want to do today, there are about three things that we want to do. One is to tell you what has happened throughout the country. Uria Kenyans makoretwo makiuga and then what we have recommended and, then the other thing I want Wachira, Wachira is a Lawyer with Ndun'gu and Kwach Advocates nake arore presentations iria mwaheanire as Gatundu South Constituency. Nigetha mwone kana uria mwaugite na uria Katiba yugite, they are related or whether your ideas were fit. Is there anybody here who made a presentation?

**Speaker:** I did.

**Com. Wanjiku Kabira:** Okay you did so you will be able to confirm. This is a process of legitimizing the draft, mwi na draft in this form isn't it? Just to confirm and this is what we want to do, you know making the Constitution as a people's Constitution is a negotiation process, it is a process of consultations. Tondu ni twokire tukianjia nainyui mugituhe your own ideas then we went and listened to many other Kenyans nao magitwira uria marena then we prepared the draft, and now with the draft we want you to see whether what you gave us is what is reflected in the draft, and whether there are some changes you want to make on this particular draft. So it is part of the making of the Constitution, this is only a draft and you can see it is written draft which means we wanted to look at the Constitution, we want to see what has been recommended and if there are

changes you want to make, you will make those particular changes. So we will spend may be two hours or so, and if there are questions we will talk for a short time. You have the draft, you can ask any questions you want through it and if we can respond to them we will respond.

At the same time we are saying that we want to have these consultations within the next two weeks, other Commissioners are all over the country doing the same thing we are doing today, and then we are going to compile a report ya uria riu inyui mwauga. We are going to compile that report and then we will take it to the National Constitutional Conference as soon as it is convened. Therefore, I want to briefly explain to you how the various provinces have participated in this process. Do you have copies of this one? This is for you to look at. It is okay, they can have a copy, there are some more, those who are here can have copies and the ones who come late can share so that at least we can begin with...

If you look at the draft, you can see the draft. I want to ask somebody who has given the biggest number of submissions. I can see very many young people here so I know it is very easy to read the draft.

**Speaker:** Rift Valley.

**Com. Wanjiku Kabira:** It is the Rift Valley. Rift Valley has given about 8,267 submissions followed by North Eastern Province and the Western Kenya and then Central and then...

**Speaker:** Nyanza.

**Com. Wanjiku Kabira:** Now does the Central come before Nyanza. Nyanza participation is more, isn't it? Then Eastern Province? So the last one in this area is Nairobi Province. So if you look at that it is telling you where we got most of the information, so a lot of information came from Rift Valley followed by North Eastern. North Eastern is a little surprising but it also means that people were very active. I am saying a little surprising because the Rift Valley is a very big province, I think Rift Valley has about 29 districts or so, there are very many districts. It took us one week to go through Central Province, it took us one month to go through the Rift Valley, North Rift and South Rift. They are actually like two provinces, so it is a very heavily populated province but it has also very many district and very many constituencies and that can explain that but from North Eastern Province. North Eastern I think has about 4 districts or so, there is Ijara, Garissa, Wajir and Mandera. So there are very few districts compared for instance to Central Province but it means that the people came out in big numbers in North Eastern to give their views.

The next one is Western Province, Western is like Central Province, it is a much smaller province but it also tells you that there was a lot of participation by the people in Western Province, although in Western Province we went to more venues than we did in central Kenya mainly because there were some cancellations when Dr. Ombaka died. So some of the Constituencies

had two venues. Well most of Central Province had one venue. Then I think we go to Nyanza again which was very well mobilized but again some of these areas because of the terrain, some of them had two venues and others had one venue and probably that might explain why we have more people from the Rift Valley that contributed to this than Western, Nyanza and Central Province.

So basically this is what happened, you can also see that we had what we are calling direct submissions, any of you who sent submissions to the Commission is also counted under this. If you see next to Western Province and then we had some other submissions by E-mail, a lot of Kenyans from out of the country sent their own submissions and they were about 182. Then prisons, we went to prisons to collect the views from prisoners and also from the staff as well as universities. We had some hearings at the university, so that is how we collected the information and we thought it is important for you to get to know where we collected the information.

Now I want you to look at another stage which you do not have but we can still read it. On this page , the one you are getting or the page you are getting. It tells you what Kenyans talked about most. In other words, what was very important for Kenyans. If you look at that list you will find that Kenyans talked most about Parliament. Can you see where Parliament, is number eight? They talked most about Parliament, in other words they were more concerned about what Parliament should be like, whether we should have the right of recall.

In other words, many Kenyans said somebody should not be elected and then stay for 5 years even when they have not been able to account back to the people. So you asked for the right of recall and that right of recall is in the new Constitution. You are allowed to recall the MP if the MP is not performing after a certain period of time. They also wanted Parliament to have more powers and therefore that is reflected in the Constitution, a lot of powers have been give to Parliament and taken away from the President. Kenyans also wanted parliamentarians to be full time workers so that they are not part time, they wanted them to visit their constituencies. Kenyans also wanted parliamentarians to be having degrees. In other words, education level should be considered. They also wanted them to have families, to be people of integrity and so on. So Kenyans talked a lot of Parliament and the parliamentarians, which means it was a very important topic for the Kenyans. So you can see that we got most of the submissions on parliamentarians.

Now look at number nine which is the Executive. The Executive basically is the President, Ministers and Provincial Administration who are part of the Executive. You can see that there were a lot of submissions by Kenyans on that issue. Mainly what Kenyans wanted was for us to take away a lot of the powers from the President and that is what is reflected in the new Constitution. They wanted the President not to be the Chancellor of the all the public universities, they wanted him not to give title deeds, not to be distributing land. They wanted him not to be the one making a lot of decisions. So what we have done in the new Constitution as the Kenyans told us is to reduce the powers of the President and put some of those powers to Parliament as you wanted a stronger Parliament and a less Executive President, but we have not made the President a

ceremonial President. The President has very many functions and you will see them in this draft that the functions have also been put in the Constitution so that the President doesn't decide on a daily basis what his job is going to be. What has happened is that we have suggested what his powers must be and they are in the Constitution, so he cannot be giving title deeds, he cannot decide he will be the Chancellor of the various universities and so on. We have put those powers in the Constitution and we have reduced them and given some of the powers to the Upper House and other powers to the Lower House.

I forgot to say that when we are talking about Parliament there were many suggestions on two houses and that is what we have done, although some people wanted a house of tribes both by the way presentations in Central Province, Eastern Province and other areas. Others wanted a house that would check on the current house because the current house has also let down Kenyans in many ways, and one of the things that they talked about most was the salaries. That Parliament decided to give itself the powers to decide on their salaries, so they agree on how much they want to give themselves, they table it before themselves, they approve it and then implement the same. That has been changed where we have actually come up with Salaries and Remunerations Commission which is going to make decisions on the salaries of Members of Parliament, President, Vice President, Cabinet Ministers and so on. Those two areas where people had a lot of information have been well covered.

In terms of Provincial Administration which was an extension of the Executive, the powers of the President, a lot of Kenyans wanted Provincial Administration abolished and that is what the new Constitution does. It suggests that in the interim the Provincial Administration would report to the Public Service Commission for deployment because it is no longer going to be in existence in the new Constitution, as the Kenyans themselves requested.

If you look at number 13, it is about basic rights. All over the country Kenyans wanted to have access to free basic education, they wanted access to health facilities, they wanted to ensure that no Kenyans go hungry just because they are poor. They wanted access to employment, housing and so on. Although these are not the traditional rights, we find that we have extended the bill of rights to include the basic needs. So that these basic needs are captured in the new Constitution and for that to be implemented we have a Commission called the Human Rights Commission where we have Commissioner on basic needs to make sure that these are implemented.

I want you to go to number 15 which is Land and Property Rights and you can see that there were very many Kenyans who gave submissions in this area. Again many Kenyans wanted a ceiling on land, others wanted land that was taken away by the Government to be given back. They wanted to be able to buy land anywhere in this country. Some of the Kenyans wanted the leases to be reviewed and so on. Many submissions have been given on this and we have some proposals which are in the draft Constitution as well as suggesting that the Ministry of Land should not really be responsible for the land related issues, and we have vested community land under the people. With the new structure of the District Councils, the District Councils should be responsible for the land within their own districts, and therefore nobody should be able to sell or give it from headquarters.

There were very many complaints by the way particularly very far areas from Nairobi. In Taita, Busia and areas where title deeds are literally impossible to get, getting to Nairobi even to transfer your land from a father who has died to the son has been very difficult. So that is an area where we had a lot of submissions.

I wanted to go to page 6, National sectoral policies. These were areas where people were talking about agriculture, education, what really the various ministries and the policies of the Government should do. For this particular area by the way, these policy related areas do not appear in the draft, they appear in our report, in the big report that is coming back to the documentation centre.

I wanted to move back to the Judiciary, number 10. We have about 1,700 pages of recommendations. By the way these are not individuals, these are pages, there are thousands of individuals who have talked about these areas. We are talking about the pages, how many pages do you have talking about the Judiciary? We think that the Judiciary for instance, almost every single thing that Kenyans said about Judiciary was negative. Kenyans were talking about the corruption within the Judiciary, they were talking about delays of the cases, they were talking about the arrogance of the Judiciary itself, they were talking about the judicial system which is very complicated and therefore they are not able to access it. They were talking about the general lack of access to justice as provided by the current Judiciary, and this is why the recommendations that we have indicate that many Judges are corrupt.

If you are going to have the new Constitution implemented, the Judiciary is a very very important arm of Government which is supposed to facilitate the implementation of this document. Therefore if the Judiciary is not cleaned up, it is not going to be possible to implement the new Constitution, and that is why the proposals are, for instance that the Judges should retire at the age of 65. They have an integrity board which if you are not retiring, you are supposed to be subject to the integrity board so that the Ethics and Integrity Commission would access your integrity and be able to suggest whether you should be retained or whether you should be removed. I think this is an area which has brought a lot of controversy but the controversy was created by the information that the Kenyans have given. They think they have no say in the current Judiciary, they are saying the cases take too long - sometimes you start a land case and twenty years down the line it has never been listened to. Land cases which are lying there have been there for some 20 years, 30 years and so on, so they are extremely unhappy with the Judiciary.

Local Government which is number 11, there was a lot of information again about Local Government. The Councillors are supposed to have higher levels of education, they want more power going to the Local Authorities. They want direct elections of the Mayor. That was actually suggested everywhere and what we have in a sense is that, we have talked about the District Councils which are like Local Authorities but District Councils which have much more power. and where the academic qualification is supposed to be higher. Where they will be able to collect revenue, where they are also going to be able to pay for the teacher, maintain health services and so on. I think there is quite a lot of information on that.

On the next one, number 12, the Electoral System there were a lot of submissions 2,793 pages of information of the Electoral System, where again people were very unhappy with the rigging of elections. They wanted votes counted at the stations, they wanted transparent boxes and not opaque boxes like what we have been having in the past. They wanted Electoral Commission to be restructured, some wanted Electoral Commission to be strengthened, and these are recommendations that we have here. They also talked about the lack of representation through the electoral process. So what we have done is combine the 210 constituencies with 90 other constituencies which appear on the party list, they are not nominations. So what we have done is created a Parliament of 300 people, 210 at the constituencies then 90 appear on the party list as a way of trying to bridge the gap of the electoral process. This particular 90 seats will be distributed according to the number of votes and that is how we are trying to bridge the gap where you have 250 people represented by one Member of Parliament and another one with 7,000 people represented by one Member of Parliament. The party list is trying to bridge that particular gap.

I think this document is important in terms of telling you where the interests of the Kenyans were, and it can be summarized in just one page on what Kenyans wanted in the various situations. I don't think there is any need to go to all of them because I want us to be able to discuss, and if we could even use this document may be we can spend sometime responding to some of the questions. But one thing I want to confirm is that, what appears in this draft Constitution is squarely based on what Kenyans said about the kind of Government they want, and it was very clear that they wanted a Government where peoples' participation is active in Government and public life.

In other words Kenyans were saying, we want to be able to make decisions at various levels, we want to be able to participate at all levels. There is a sense in which we have provided for that participation both in terms of expanding the electoral participation as well as in the way the power is devolved in various ways. They also wanted a Parliament that is more representative of the people and more accountable to the people. So in this way we are saying that they are not going to be able to decide under the new Constitution to give salaries to themselves, and we are also saying that there is a code of ethics which the Members of Parliament will have to go through, so that you cannot be a thief and be in Parliament. You cannot be somebody who is accused of sexual harassment and be in Parliament. You cannot be somebody who lacks integrity and be in Parliament. We are saying that the Ethics and Integrity Commission is going to actually vet all these people. They are supposed to declare their wealth. They are supposed to ensure that there is no corruption. They are supposed to also sign the code which appears by the way in this particular Constitution and you can look at it.

We are also saying that Kenyans wanted power spread more widely to prevent too much accumulation in a few hands, and that is why quite a lot of powers have been taken away from the President and taken to Parliament. But also even within the court we are creating a Supreme Court so that the Chief Justice cannot do what he is doing now, and also you cannot have a Chief Justice like the one we have who is appointed for specific interests and therefore who cannot protect the interest of Kenyans. Like what is happening now is something that would happen only in Africa I think, where the Judges themselves have a case before themselves. I think it is supposed to be, is it today or tomorrow, where you institute a case against somebody and then

you bring it to yourself to Judge like what is happening at present in Kenya? So we are saying that power has been distributed.

Even in terms of Government we have proposed District Councils because at present we have been saying that power is vested in the Central Government. The ministries and the Ministers can sit in Nairobi, make decisions about what will happen in each district and the way the planning process is done in this country, it is like the centre makes a decision about what will happen at the district level. What we are saying now is that the power should go to the district, so we devolved power to the district and this is something by the way, people wanted all over the country. Even those who wanted Majimbo were asking for Majimbo because they want to control the land around themselves. They want to control employment in their own areas, they don't want people from other parts of the country to be employed in their own districts and so on. After a long debate, we thought the provincial Majimbo can also set ethnic communities against each other. So we thought that the best thing is to devolve power to the district so that the district becomes autonomous, the district can collect revenue, the district can make laws about their own district. They can hire the teachers for the district and that a certain portion of the money from the centre will actually go directly to the district. We thought that within the district you have the Executive arm of the district like what we have in Parliament. We have the President and then we have Parliament. Then you have the Council which is really for making policies.

So you have the Council and the Executive, and whoever is going to be the head of the Executive call him District Administrator; will also be elected by the people, direct election by the people.

So we have devolved power to that level but we have also taken power to the location where you are going to have Locational Councils. These Locational Councils are also going to make decisions about their own location. Then we have the Village Councils because all over the country we were told that the Village Elders are really the ones who do most of the work and of course, since we have abolished Chiefs and Sub Chiefs at the community level, we need the Village Committee, which is going to be elected of about 10 people.

They will actually monitor the implementation of the projects in that area but then they are going to elect people to the Locational Councils; where power is also vested in the Locational Council to make sure that they look at their own projects, programmes, and be able to implement that. Then they are also going to elect people to the District Councils themselves. Then we have the Councils which are going to be very strong, will hire their own Police. The Police will work with the community policing within the district and so on. So power has been kind of distributed in the new Constitution. Again, power has been distributed between Parliament and the Executive.

We are also talking about all groups, communities and individuals. In promoting a Constitution or coming up with a Constitution where individuals and groups feel taken care of, and feel that they can participate. Therefore, we have some provisions for people with disabilities, we have participation of women encouraged in the new Constitution. We are talking about ethnic minorities being encouraged. Again in many of the cosmopolitan areas we are talking about regional representation, people

who come from various regions and religious communities that we need to encourage their own participation.

In terms of the basic needs again all over the country like I said, we are talking about basic needs of Kenyans where we are proposing in the bill of rights that issues of basic health, basic education, employment, housing, security and so on. Those are basic needs of the Kenyans and the Government has a duty and responsibility to implement the same. We are talking about public life which is guided by ethical principles and a sense of responsibility and as a result, I think you will be happy to read the code of ethics. If you look at page 44 in your draft there is something called fifth schedule.

Leadership and integrity code of conduct, in this code of conduct we are saying that a public officer shall not be in a position where the personal interests of the public officer conflict with the duties and responsibilities of offices or compromise the honesty, impartiality and integrity of the office. That code of conduct is a very interesting code and we are saying that every public office must be subject through this particular code, and this code can be used by the Ethics and Integrity Committee to ensure that the leader leads according to our own expectations. They are expected to declare their wealth, they are expected not to have two jobs for instance, paid by the same public and many other things. They are even expected to..

**(Interjection)**

**Speaker:** ...(Inaudible)

**Com. Wanjiku Kabira:** Sorry page 44. It is the first schedule called Leadership and Integrity Code. This is also going to deal with corruption and so on, so that any acts of corruption will be punishable. We have Ethics and Integrity Commission which is going to monitor. One of its jobs is actually to implement this particular code, to make sure that people live according to this code. Again, these are suggestions from the Kenyans and we have put them together in the new Constitution.

We have suggested some ways of making sure that we live according to the Constitution and one of the ways which we have suggested that we live according to the Constitution is to come up with Constitutional Commissions that are going to monitor certain things called the Ombudsman. This word is from Sweden so we suggested that rather than call it Ombudsman and many people recommended this, we are calling that particular office, Peoples' Protector. I will tell you what page, it seems people are looking for it. It should be on page 35. The Commission on human rights and administrative justice and if you go to the third column (b) you will see a section written in relation to the jurisdiction of the peoples' protector. That peoples' protector is actually the Ombudsman to whom people can go and complain about public officers, they can go and complain if the Judges have done something wrong. If the MP is mistreating them they can go and complain to them, and they are going to carry out the investigation.

At the same time if you look below there C, towards the end of the same column. In relation to the jurisdiction of the gender Commission we have a number of provisions on what they should do in relation to gender, and then on the same page, you have

D, on the forth line. In relation to the jurisdiction of any other Commissioner to perform such functions as may be assigned to them by the Commission. In our main report we actually have suggested that there should be a Commissioner for people with disabilities, so they are going to appear under this to make sure that people with disabilities are looked after. There is also a Commission for basic needs, again basically to make sure that basic needs are addressed, and if anybody has a problem in terms of basic needs they are able to go to this Commission, and it will take up the issue and investigate. So that is one way of managing the Constitution itself. In fact what I have just said appears on the second column immediately after human rights.

If you look below that you have the Ethics and Integrity Commission, can you see that? Page 35. This particular Commission is responsible for monitoring the leadership code so that all people who are going to be appointed to Commissions, senior positions like the Permanent Secretary or Deputy Permanent Secretary, Members of Parliament, the President himself, Vice President or the Ministers. All of them will go through the Ethics and Integrity Commission to ensure that they follow the leadership code. On the next page of the same leadership code which is the first column, look at D. We are saying that...sorry C, first. They should ensure compliance with and where appropriate enforce the leadership code of law relating to the leadership code. We are also saying that they should receive complaints about non-compliance, if the leaders are not following the code. We are also saying in E, that they should investigate where the persons who have availed themselves for appointment as public officers or who avail themselves or are prepared to stand for public elections whether you are a Councillor or an MP of a public office, are free of corruption and therefore fix proper persons for those offices.

We are saying that they should be able to disqualify on investigation as in paragraph three, those who are found not suitable for public office. We are also saying that they will appoint, promote, dismiss, manage and exercise disciplinary control of the staff of its own Commission. But then you will also notice that on the next one you have the Salaries and Remuneration Commission and we are saying that they are going to...if you look at (ii) down the line. That the functions of the Salaries and Remuneration Commission are to set the salaries, allowances, pensions and other benefits of all constitutional office holders and members of all constitutional Commissions including the President, Vice President, Prime Minister, Deputy Prime Minister, Ministers and Deputy Ministers, Members of Parliament, Attorney General, other public officers including employees of parastatals. The Commission is the custodian of the Leadership and the Integrity Code of Conduct and of the register of the assets and liabilities of public officers. This actually came again from the Kenyans.

We have been saying that salaries for instance in the country, they are very unfair you have people like some of the teachers I understand get Kshs. 3,000/= or Kshs. 4,000/= while we have people getting Kshs. 900,000/= or call it a million. When you think about the discrepancies and Kenyans have been saying, we need some standardization. We need some rational for these salaries, and this Salaries and Remuneration Commission is supposed to do that.

There was another thing that was concerning the Kenyans and I am still talking about how to manage this Constitution. We are talking about amendments to the Constitution because Kenyans were saying that the current Constitution has been amended so

many times without any consultation to the Kenyans. So if you look at the fourth column on the same page, page 36, you will find that we have two categories of amendments. If you look at (iii), we are saying that an amendment that seize to make any changes in the territory of Kenya, the Principles and values of the republic as set out in this Constitution, the bill of rights. So you cannot say now that you can be detained without trial, you know the cases that have been going on. The structure, values and principles of devolution, you cannot decide now that after the new Constitution that there are not going to be District Councils because that is a major structure. We are saying that the citizenship, the provision of this article and so on. That all these cannot be amended without a referendum. Therefore, Kenyans must be consulted if the District Councils are going to be abolished. Kenyans must be consulted through a referendum if the bill of rights is going to be amended and so on but for other amendments, we have retained the 65% rule in Parliament.

Basically, that is what we have put together and the details you can look at in this document but now I want to give Wachira a few minutes to talk about what you presented as Gatundu South Constituency, and see how that is related to what we have in the Constitution.

**George Wachira:** Thank you Professor. Good morning?

**Audience:** Good morning.

**George Wachira:** This is a report of the presentation that Gatundu south members or persons presented. So we have documented it in 19 pages then we have done a data run which is 109 pages. The data run is more in detail of what everybody said in some sequential orders, the number of people who spoke. If you talked about the Preamble, if you talked about constitutional supremacy and anything else. We had 121 members presenting, 110 were male, 11 were female. Then 94 individuals are the people who presented, and 26 from institutions and one was not stated. We received seven memoranda, 78 were oral presentations then in terms of oral and memoranda as well we had seven of that kind. Then we had oral and written, which were four.

I will give you a summary of the emerging issues or the issues that people raised. In the Preamble, you can compare with the draft and what probably I will read, what people presented here, and again was included in the draft Constitution. In the Preamble, people here had recommended that the Preamble should express the supremacy of all Kenyans. If you look keenly, you will see that that has been included in the same. They also recommended that the Preamble should reflect the national vision of all Kenyans, and again that the Preamble should provide that all Kenyans should be committed to the rule of law. The Preamble has incorporated all that.

On directive principles of state policy, people here had recommended that the Constitution should provide for the doctrine of separation of powers, and the incumbent Government shall also respect the rule of law. You recommended that there should

be a code of conduct guiding holders of public office, and that there should be a right freedom of association and, that has been incorporated in the new draft. On Constitutional supremacy you recommended that the Constitution should emphasize on the Constitution as a supreme organ, and that the Constitutional amendments shall only be done or enacted through a referendum. That has been include in the new draft.

On citizenship, Kenyans here had recommended that the Constitution should provide for equal rights of all Kenyans, this is incorporated. That the Constitution should expressly state the rights and obligations of all citizens, that children born in Kenyan shall acquire automatic citizenship. You recommended that a spouse of any Kenya shall automatically become a Kenyan citizen, and that identification cards and birth certificates shall be used as proof of citizenship. That a Kenyan child who has been adopted by a Kenyan shall become a citizen of this republic. The citizenship shall also be conferred to any child of whom any parent is a Kenyan regardless of gender. The Constitution has captured very well all those provisions.

On defense and security: Kenyans here had recommended that there should be a code of conduct for all the military, and that there should be a de-linkage of the Police force from the Office of the President. You had also recommended that the Police Force should be disciplined, and that the President shall remain the Commander in Chief of the Armed Forces. This is well captured by the new draft.

On political parties, Kenyans here had recommended that the State shall fund all political parties, and that there should be provisions for the management or regulation of political parties. That has again has been well captured by the new draft.

On structures and systems of Government, Kenyans here had recommended that there should be an establishment of a parliamentary system of Government, and that Kenya should remain in a multi party system democracy. You had recommended devolution of power to local authorities, you had also recommended for positions of a President, a Prime Minister and two deputies. That has been well captured by the new draft of the Constitution.

On Legislature; you recommended that there should be a provision for impeachment of the President by Parliament. You had recommended that Parliament should vet all public appointments. You had also recommended that Parliament should determine its own calendar. You had recommended that there should be an establishment of a Parliamentary Committee on human rights. You had also recommended that Parliament should appoint an Ombudsman. You had recommended nominated MPs to represent special interests and not election losers. You had recommended that the electorate should be able to recall non-performing MPs. You had also recommended that there should be a bi-cameral Parliament and that Parliament, should not determine its own salary. This is well captured by the new draft of the Constitution.

On the Executive, Kenyans here had recommended that the President should not be above the law. You had also recommended that the President shall not be the head of State and the head of Government as well. You had recommended

that President should only serve for two, five-year terms and you also recommended that there should be elected Provincial Administration. You had recommended for limitation of powers of the President and that holders of public offices should not have a criminal record and should be upright citizens. Again, you recommended that Ministers should be appointed on merit and competence. This is well incorporated and captured by the new draft of the Constitution.

On Judiciary, you had recommended that it should be independent. You recommended for security of tenure for Judges and that the Judiciary should be very efficient which has again been well captured by the new Constitution.

On Local Government, you had recommended for proper management of environmental resources by the local authorities. You had recommended for outlawing of the ministerial control on County Councils and devolution of power again to the local authorities, and that the Mayors should be elected directly by the public. It has been well captured by the new draft of the Constitution.

On electoral process and systems, you had recommended that Kenyans abroad should be allowed to participate in the general elections. You had recommended for an independent Electoral Commission. You had also recommended for independent candidates to be allowed to contest elections, and you recommended for a continuous voter registration. You recommended for transparent ballot boxes, you recommend a creation of electoral boundaries based on population, and that the Vice President should be elected with the President by the people. That has been well captured by the Constitution.

On basic rights; you had recommend for abolition of the death penalty, you had recommend for free and compulsory education. You recommended for free health care, equal access to education, provisions for shelter for all, equal accessibility to employment opportunities, freedom of assembly and again that has been well captured by the new Constitution.

On the rights of the vulnerable groups: Kenyans here had recommended for outlawing of discrimination practices against disabled people and protection of vulnerable groups. You had recommended for protection of women's rights, you had recommend for affirmative action in favour of women and other marginalized groups. You had sourced for recognition of the rights of the children, and you had also recommended that the State should provide for transport and communication facilities that are user friendly for the disabled. You had recommended for the appointment of a disabled in all Government Ministries, that again has been well captured by the new draft of the Constitution.

On cultural, ethnic, regional diversity and communal rights; you had recommended that there should be a national language to enhance unity, and the Constitution has captured that as well.

On land and property rights; Kenyans here had recommended for equitable inheritance of property irrespective of gender. You had recommended that Kenyans should have a right to own land anywhere in this country and you had also recommended for

repossession of all land that has been acquired illegally. This is well captured again by the new Constitution.

On management and use of national resources, you had recommended that there should be proper management of national resources. You had recommended for equitable use of national resources, you had also recommended for laws to curb corruption and employment that should be done on merit. You had also recommended for the ...of the office of the Auditor General. This is well captured again by the new Constitution.

On environment and natural resources: Kenyans here had recommended for proper a forestation programmes, protection of forests and catchment areas and management of natural resources by local authorities and the locals. This is well captured again by the new Constitution.

On participation in governance process, you had recommended for simple laws and simple language that would enable citizens participation. You note that the new Constitution draft has been written in very simple language for everyone to understand.

On constitutional commissions and institutional offices, you had recommended for the office of an Ombudsman, the people is protector as Professor has said has been included in the new Constitution. You had also recommended for establishment of a Commission that will determine salaries and allowances of the President and MPs. The Constitution has again incorporated the same.

Lastly on succession and transfer of power, Kenyans here had recommended that the Constitution should provide that during the transition period, the Speaker of the National Assembly shall exercise the powers of the President, and that again has been captured by the new Constitution. In brief that is what Kenyans in Gatundu South recommended and you will note that most of it, in fact the majority of all you provisions have been captured in the new Constitution. You will have the opportunity and a forum to look at this report and the data run. The District Coordinator will have the same in his office, we will make many copies, the Professor will tell you how many more you will get from the Constitutional Review Commission. Thank you very much.

**Com. Wanjiku Kabira:** Okay ithui ni twarikia kwaria, riu nainyui mukwaria.

**Stephen Wanyoike:** I suggest what we can do is as Madam Commissioner has said, this is a draft and there is still more to be done and considered about it, so this could be your opportunity. We appreciate you may not have gone through every single clause, every single item but nonetheless you are now free to either bring up a question of even make just a general statement or a general observation, so that it can be captured for further incorporation into the final discussion. Now the floor is open to anybody who has any issue.

We suggest you just give us your names so that we also know who has asked, it doesn't have anything to do with further action but just for our own records.

**Com. Wanjiku Kabira:** Okay, we will begin with this gentleman.

**Alexander Gitau:** Yes I have gone through this draft.

**Com. Wanjiku Kabira:** Can you give us your name?

**Alexander:** Alexander.

**Com. Wanjiku Kabira:** You remember when you were giving the views we also asked for the names, like the report we have now you are able to know, like when we are speaking. When we want to write we don't know where this information is coming from, so it is for the purposes of our own records. By the way we have the list of all Kenyans who made any contributions for history alone. We have the list of all the Kenyans who made any submissions. Like we have John Njoroge, Gatundu South Constituency, Kiambu District, Central Province. Therefore, it is a way of documenting the participation of the people so that even 50 years down the line we are still able to say if anybody asks, whose views are these. I am sure you had heard some people say that this is a foreign document, isn't it? But all the information is documented both on tapes and on paper about what Kenyans have been saying about the document. So that is why sometimes again as researchers and people collecting information, that is why it is important for us to get the name. Thank you.

**Alexander Gitau:** My name is Alexander Muchucha Gitau and I am from this constituency. I have gone through this draft, and as the gentleman there read on the recommendations which were passed by our fellow constituents much of what he said I have seen in the draft, therefore I am pleased that you took our concerns and you have put them forward in our draft. There are some few things which I would like to highlight as regards our constituency. On the part of agriculture, the agricultural land here is very small and has been allocated to some individuals. Some people own very small pieces of land and again we would have liked to recommend irrigation water to be provided to us so that we may be able to grow food for domestic consumption. I did not see that in the draft but that is a major problem in our area. People are very willing to farm or to practice agriculture but they are not able to because we depend on dry farming we need irrigation water, and I think this could be a problem all over the country because I have read of some few irrigation projects in our country. Again, the rivers drain all their water in the Indian Ocean and this water could be used by the people.

We also have got another problem on allocation of land, as I have said some people are landless or almost landless and there are some people who own large tracts of land in our country. Why can't this land be subdivided and allocated to some of these

landless people as a matter of fairness? I don't know what you would call it, natural justice. I recommend that matter to be put forward, the Government to think about us the landless people. There is no point of a person owning thousands of acres of land such that even he surveys his land using a helicopter. Something needs to be done about it.

As I was walking around in our divisional headquarters here, I heard some complaints from teachers. Some teachers having not been promoted since they entered into the educational sector. For example, somebody was trained as a P1 teacher and he has worked 30 years without a single promotion, do you think that is fair? Teachers are complaining a lot and these are some of the misdeeds of the Teachers Service Commission, it does not treat people equally. Teaching is a very important profession and their cases are not dealt with in accordance with the importance of the job. I think you can note that recommendation, they are not only complaining of salaries but of such promotion status to be accorded to them. For the time being, I beg to stop there.

**Com. Wanjiku Kabira:** Thank you very much. Let me respond to that and then we continue. The Teacher Service Commission, what we have done is created a constitutional office for the Teachers Service Commission, so that the Teachers Service Commission can be independent, it can be able to operate on its own, it can get money from the consolidated fund and so on, so that the situation of the teachers can be improved. That one we have done, put it as a constitutional office so that it is not like the current Teachers Service Commission. So we hope the situation will improve if this office becomes independent, and even the head of the Teachers Ser



vice Commission is not appointed like the way it happens today.

On land, there are two things we have done. One we have talked about succession, there are some provisions related to land, we have talked about taxation of idle land but in terms of distribution of land this. Uhoro wa migunda by the way na uhoro waragiu bururi-ini wi wothe na kuri andu angi taria uguo in Rift Valley who felt migunda yao niyoetwo ni District ingi. Taria Uasingishu makauga TransNzoia ni moete migunda yao and vice versa kana Pokot makauga Uasingishu ni moete migunda yao and so on. If you go to Taita Taveta it is the same thing. Uhoro wa migunda ni uhoro muritu muno bururi-ini wiwothe. Koguo uria turonire wega ni kuga, the Commission on land, not the current Land Commission, a constitutional commission that we have created I-deal na uhoro wa migunda tondu ti uhoro ugithondekwo na muthenya umwe. So that they can be able to have consultation, they can look at the issues much more clearly and then make recommendation to Parliament but we have left the land issue, taken it away from the current land office to a constitutional Commission that is going to be created so that they can deal with land. Uria ungi twikite uhoro wa migunda ni kuga taria within the district. The land ikorwo i-under the District Council. So that gutiri mundu unghota kwendia migunda ya Gatundu for instance from the headquarters.

So we have kind of decentralized the powers and we are also saying that any land that belongs to the community has also actually to be left to that particular community but in the mean time, you know. Some of these issues are not very clearly clarified and therefore we have asked the land Commission to do certain things and what we are calling the transitional

provisions in the meantime because some of these decisions cannot be made overnight. I don't know tairu redistribution of land utunye mundu uria wina ngiri imwe igayanio, unless we are saying ni akurihwo akorwo ni kugura agurite. Ni uwi ndungimutunya ouguo? So there can be very many problems, so we are saying that this is something that needs to be negotiated, it is something that needs to be calculated. You need to know what are the implications before you make the recommendation but we believe the Land Commission which we have given many powers will be able to follow that.

About irrigation, you know there are many things that were given which appears in the report because they are policy decisions rather than constitutional matters but in terms of management of the land because we have very little land and so on. That is also catered for in the new Constitution but for the details for instance, irrigation in certain areas that is going to go into the policy document which we have also prepared and which will be at the documentation centers within a short while.

Can I suggest that, I do not know whether Mheshimiwa Mwihia wants to greet you and then we will continue?

**Hon. Mwihia:** Thank you Wanjiku. Ni ndamugeithia inyuothe mureega? Thengiu Council ni undu wa guka, kwaria na andu a Gatundu nii haha tiho njagiriirwo ni kwaria maundu mothe no niundu wa kunyitanira nu ndimwire, maundu maria mukwaririria umuthe ni maundu tunyitanaire ndi umwe wa muikari wa Gatundu, no ndina chance ingi nene nene ya hindi ya Constitutional Conference. Ni wega thikiriirie kuma hari inyue nigetha ngithie kwaria thiinii wa Constitutional Conference ngorwo ndiraria na mugambo wa Gatundu. Document ino ndikinyiire andu othe na korwo kwinao mathiite through although tureheirwo thiinii wa ngathiti, andu othe matiguraga ngathiti na document iyo ni kwenda ikorwo i handu central ta guku, andu mamithomage on a daily basis aria mekwenda nigetha ma-make recommendations. Uguo niguu mungihota gwika ni guiteithia tondu gwakinya kuria kwaririria ni agakorwo ina a lot of pulling and pushing.

If I could say a few words in English for the purpose of recording although you are also recording my vernacular. The Commission has not come out very candidly in some areas, we wanted you to be very candid, may be the time you have had has not enabled you. There are very many conflicting statements being brought by the Executive and political sides. This document which is a draft should not excite so many strange outbursts particularly from the law courts because the Judges are a creation of the Constitution. The Constitution is supreme, the Constitution can also abolish those posts and create parallel posts if Kenyans would desire. Therefore we want to say the Judges should keep out. They cannot be the complainant, prosecute their own complaints, and then make a ruling on the same complaints. I think they have overstepped their area of jurisdiction and must be resisted by all.

Unfortunately, also for us politicians, we make statements which also confuse Kenyans. I remember earlier on, we at Ufungamano House, we craved to have this document or the Commission enacted into the Constitution, so that even if we have elections on the old Constitution, the Constitution making can continue into the next election because in places like Norway and Canadian countries, a document which touches on the main overhaul of the Constitution is never enacted by only that

Parliament. Sometimes it goes through two Parliaments, because after we have agreed on these issues then we shall need to domesticate the laws because the laws which are governing the country today are based on that old Constitutions, and cannot be used directly to guide the process.

Therefore, when you try to push for enactment it will be resisted by the same politicians who are now crying foul. If we had done that you would not be fearing, may be we would be talking about a few areas where we can change, particularly the electoral system to get us through the elections. But coming back to some of the recommendations which I want to agree with you. I agree with you on the qualifications for candidates to stand for elections except when you say that the President must have a degree, I think it is not correct to make it constitutional. We may have some very able leaders with basic education of form four but they are articulate and they have that natural leadership. It is desirable that we have a President who is knowledgeable so that when he releases an economic document he understands, because this is the problem we have, that our current President does not understand. Therefore anything you mention which he feels like he is threatened he will not go for it. I think that one should may be in the rules or procedures in terms of the qualifications of the President but in terms of Members of Parliament yes, form four should be the minimum because you are going to read documents you should understand, and I believe a form four graduate can be able to understand the law.

The other area I agree with you completely is the recalling of Members of Parliament who do not perform. First, I had reservations but when I went through the document I found that you cannot just stand up and start disputing recalling of a candidate because he is your adversary and you have some people. You must get 30% of all the voters to sign the declaration or the establishment of calling back. That one I don't think any leader who is worth his salt should be imposed by a third of the voters, so I agree with that entirely.

In that area of land which my previous speaker touched on, it needs to be looked into completely. I am referring to clause 22, 34-sub subsection (ii) on page 160 of this draft which says that the following description of land is public land. Land which at the commencement of this Constitution was held as alienated Government land in terms of the Government land. That one is going to bring a very big problem.

**Com. Wanjiku Kabira:** Sorry, page 21.

**Hon. Mwiria:** Page 21 of the gazette but on the draft it is 160. This alienated land today as we sit here land is still being annexed. I was sitting in Public Investments Committee in Kenya Wildlife Service, and we were told by the Chief Conservator as it stands, they have tried to remove those who grow bhang in the mountains. It is going on almost officially and we know, we can see on TV, in newspapers, that the land is still being cultivated. This alienation of Government land should be referred back, if possible back to 1963, because although we say you cannot take land away from somebody who has it, those people who have grabbed that land, people grabbed tens or thousands of acres while our people are living in our villages.

Here in Gatundu we have a village called Athege Village, Mutomo and other villages next to where we are sitting, it is a big village, where landless people settled in 1963 after independence. They live on a quarter acre, they have families there and they have grown there. Just now before I came in, I was sitting with an old man who lives on a rented piece of land at Kimunyu, rented. A man who fought for independence. So I think the land matter although you have talked deeper into it without going into specifics, this is a chapter that must be addressed properly. We hope we can also sit with the constituents, so that when we go to the Constitutional Conference, this issue is fully addressed.

There is also a clause there where you say you are going to establish a land fund to enable Kenyans gain access to land. I don't know how this is going to be established, and where that land is going to be gotten from but we need to address land issues in a very deep way. Commissioner, I would like to give the people a chance to really talk on this Constitution, I am sure all those who have come here are people who are very concerned, that is why they have bought this piece of gazetti. Like this Teachers Commission you have just talked about, the law must be very specific when we enact this Constitution. If like the teachers were promised and agreed that they will be paid a salary, even though the Government has run the economy down, there is no way you can just sit and say I do not care about the children of this country, I do not care about you teachers, and I do not care about the future.

I do remember at one time in 1982 during the attempted coup, the President was on record saying he can close all the universities. How would a President close universities where the veterinarian who look after his cattle learn? We must not forget that we do not have monopoly of leadership because it is these people, it is the Kenyans, it is those who are not able to come here in fact who are more important. The ones who are not here are more important than those who are here, because they are the ones who do not have the knowledge, these ones at least can fight for themselves.

Therefore, we need to be specific in all areas when we agree but generally, I support what the Commission is doing. I would like you to go and state exactly again, we have given you extension up to January, the Commission should come out very strongly and say, yes we will not be able to finish by that January, give us by February. Lets have a specific date and the specific programme because we might be bulldozed into going into elections without you completing your work but that does not mean this document and the work you have done goes to waste. Three billion shillings is already spent and we may be spending another 3 billion to hold this exercise, it should not be thrown down the drain because of one individual in this country. So, do not feel intimidated, go out because these details we can agree and disagree but nevertheless they are we must have a new Constitution which gives the powers to the people. I think with those few words I would I thank you very much for coming, I only learnt it yesterday and I made sure that I went on radio to announce therefore you owe me a stipend I did do that on your behalf. Thank you very much.

**Com. Wanjiku Kabira:** Thank you but I want to say you did it for this country.

**Hon. Mwihia:** Yes I did.

**Com. Wanjiku Kabira:** And for all of us. Thank you very much. I think those are very important comments, and I was telling the Gatundu South people before you came that this is a draft, we are still going through the process of consultation. We are not just disseminating the document, we are re-consulting and reconfirming certain areas, and that we are preparing a report after we go round the country again. You know people have a problem with this proposal and they are okay with this one, and then we can prepare the report, that will accompany the draft for the National Conference. Therefore, it is like further consultation and further negotiations with the people. Like I said the land question, I think we need...

**(Interjection)**

**Hon. Mwihia:** Just before you say that on those consultations, you know because they really do not have the document are you going to take them through quickly on the areas they mention? Then you will be able to go quickly through the draft and explain what the draft has said on those areas. You may not have enough time.

**Com. Wanjiku Kabira:** We have done it by the way, we started earlier so I just went through the summary and then we also went through what they said. We have a report for the constituency, so we went through that and we were trying to relate what they said when they gave the views and what is in the draft.

**Hon. Mwihia:** All right.

**Com. Wanjiku Kabira:** So we have gone through that. I think everybody has this draft copy now, the pullout. We have said that we are going to circulate the actual Constitution probably by next week but it is with the printer. I think what we have done is kind of broadly gone through the institutions that have been created, talked about Parliament, the Executive, Commissions, the electoral process, and then we thought that they now want to engage in the discussion. I picked on a few hands but I was wondering whether, we introduced the two people who are district delegates, the lady is not here. Introduce them to people and probably after a while we may want to ask them to introduce themselves because they are going to represent the constituency at the National Conference when it comes. Probably we can do that, Stephen can you do that?

**Stephen Wanyoike:** Those who have come late we did introduce to you the three district delegates who will be attending the National Constitutional Conference. As Madam Commissioner said this will be the ultimate organ that will discuss this draft, in fact it is probably the pinnacle of the whole process. Now the process or the rule for getting the delegates was very elaborate, you heard that the total number of delegates will be just above 600, in fact they will be 622 I understand. Out of those, all elected and nominated Members of Parliament including Mheshimiwa Mwihia will be members and there will be about 222 Members of Parliament. Then out of that we shall be having other members drawn from the religions groups, the civil society,

the NGO's, the women groups and so forth and that will be a total of 126 members. Then out of that, there will be about 49 old members from the main political parties. These are the parties that were registered before October 4<sup>th</sup>, 2000 when the Commission was established. Those, which came later on, will not be considered but nonetheless we are aware that those that were registered before the 4<sup>th</sup> of October are the main ones.

What will happen is that all the political parties that were registered will be asked to nominate one person to represent the political party in their constituency, and the remainder will be 210 members who will be drawn from the district and each district will elect 3 members. So what happens is that now Thika district we elected 3 members who will present the whole district at the National Conference of whom one will be a woman. In fact it is a must that it will be a woman, in fact they can be three women but in this case in Thika district we had only one woman who happens also to be a Councillor and her name is Beatrice Wairimu Kamamia, unfortunately she has not arrived yet. She is from Juja Constituency. Then the other ones are two gentlemen, one is Retired Brigadier Kinuthia Waitiki and he is from Ndarugu Location, and he is the one who was elected under the open category. Then the third one and not the least is Gitu WaKahengeri, Gitu WaKahengeri is a veteran politician I think most of you know about him. He was also representing this particular part of our constituency in Juja and Thika in the early years, during the time of the Late President Kenyatta. He is a very active politician who has been involved in this process for a long time and he has been very active.

So what I am saying is, yes in Thika district we have three delegates, and incidentally these are the people who will be able to debate on our behalf as Thika district about the draft. So we may ask you that if you have any issues between now and when the National Conference will be called upon. I understand the date has already been fixed in fact Madam Commissioner has mentioned. It will be 28<sup>th</sup> of this month at the Bomas of Kenya but we still as wananchi of Gatundu South if there is any burning issue you think our delegates should present and debate on or any issue you think they must articulate during the debating, you still have an opportunity. We at the secretariat office or at the documentation centre office in Thika we have their contacts and addresses and if anything is brought up there we will be able to give it to them because it will not be really logistically possible to come round and discuss it with you wherever you are.

Those are the three members of the delegates who will go to Nairobi to discuss at this conference. In fact I may ask them to say one or two words at least for you to know them. In fact I may ask Gitu Kahengeri to say one or two words and greet the wananchi.

**Gitu Kahengeri:** Muriega inyuotho? Those who may have not seen me or may have not known me before, my name is Gitu wa Kahengeri. I was born in Gatundu, Kiamwangi Location, Kiamwangi Sub Location. I am one of those people in Gatundu who went to fight for the liberation of this country. I was imprisoned by the colonialists for 7 years, when I came back here I have worked in Gatundu as the Secretary for a political party for a long time. I have also acted as a member representing Gatundu in the Regional Assembly when we had the Regional Assembly. I moved then to Juja to represent the people of Juja

in Parliament. In 1991, I joined the other forces to restore democracy in this country that is when we formed FORD. We continued, we did not succeed at that time but still we had the aims of liberating this country not from the colonialists now, it is from the new colonialists like people who decided to oppress the other people.

Remember, you people here now, in pressure or in no pressure, be it your mother, grandmother black as charcoal, purple or of whatever colour at no pressure or at pressure. Therefore, we decided that we must have a new constitutional order and you all agreed to that. This constitutional order is now in a draft form, a draft form that we all cherish, we all say they have done a good job. What now remains, that is only a Commission, I heard the Honourable Member Mr. Mwihi say that we may be forced to go to the elections. If we may be forced to go to the elections that will mean those people are determined to throw, to the dogs the work you have done for constitutional reform, and then they end it there. Now the Commissioner has now power, that is what I presume if that is the case and who has the powers to refuse that?

**Audience:** It is us.

**Gitu Kahengeri:** Can you do that?

**Audience:** Yes.

**Gitu Kahengeri:** With all your heart. Now when the colonialist dominated this country, we as young people as you are now, I am old I cannot run but at that time I could move from one corner of Gatundu Division to the other in hours to liberate Kenya. Now you people, your mother, your grandmother, your father and your wife are in a very difficult position some of them cannot ... You were trying and you got into form two, your son is likely to go up to nursery school and he will finish there. If you find a person who wants to build a hut on your hedge, remove him, refuse him immediately before he does it. (*Applause*) because if he does it, he will get there and he will want you to take him anywhere he wants. So, what I am saying, I want to tell the honourable member, he is in an office before us here. We want them to go if anything happens we want to tell them to direct us in a way of opposing this kind of dissolution of Parliament, so that we can go to the election with the new Constitution, that document because this is the answer. It is the answer to your children's education, it is the answer to your children wealth. It is everything because it does not give one single person power to say take this seat go to Gatundu, there is a little plot down the hill, tell the person there to give you, I have said. This Constitution is not allowing that and it is only you who can make it work.

I do not want to go further because I may be wasting time but I want to say this. Thank you very much for the Councillors that elected me to go to the National Constitutional Conference, and I will thank you too the people of Gatundu because you put the Councillors in that position so that they were able to pick me. Therefore, it is your election but what I want to say is this before I sit down, for 52 years, I have been in politics but not one single day in my political life that I allowed anybody, I repeat

anybody, if I say anybody you know what exactly I mean. I have never let anybody to make a stooge out of me, therefore when I got to the Constitutional Conference I will be the Gitu wa Kahengeri, the one who had never let anybody to make a stooge out of him. Thank you. (*Applause*)

**Stephen Wanyoike:** You have few words. (*Laughter*)

**Gitu Kahengeri:** Fine.

**Com. Wanjiku Kabira:** There are two of them from Gatundu. I want to ask you Gitu, how old were you when you were in prison?

**Gitu Kahengeri:** I was only 20 years old.

**Com. Wanjiku Kabira:** Where were you imprisoned?

**Gitu Kahengeri:** I was imprisoned in Athi River concentration camp, I was also imprisoned in Lodwar Concentration Camp, I also was imprisoned in Lamu Takwar Island Concentration Camp. I was even put in Mwea Concentration Camp and finally Gatundu Hill Camp at Kiganjo.

**Com. Wanjiku Kabira:** You were in detention?

**Gitu Kahengeri:** Yes, I went in detention when I was 20 years.

**Speaker:** How old are you now?

**Gitu Kahengeri:** Now I am 70 years. Therefore, for 50 years I have been in struggle?

**Com. Wanjiku Kabira:** I asked him that because I think sometimes you feel humbled when we listen, and people think they have been in the struggle for a very long time. Until we meet others who have been in the struggle for 50 years, then we realize the two years you have been in it or three years is really nothing compared to the sacrifices many of the Kenyans have made for the improvement of this country? Okay, we will listen to Brigadier. Thank you.

**Stephen Wanyoike:** Thank you very much. Retired Brigadier please come here so that...

**Brigadier Waititi:** I think having come from the Armed Forces I have enough voice for you to hear, I don't have to come

nearer. Well, I don't have to repeat my name anymore it has been said but I have a feeling majority of the people from Lower Gatundu we may not have interacted. I was born in Kacharage about 60 years ago and most of you may have known my father, Joseph Kinuthia, he was a preacher *muhunja wa kanitha ya IDI* and those old people actually are the ones who were prisoners during Mau Mau time. In fact, he was in prison for the better part of my early education. However, that is not the issue now mine is to introduce myself this morning. After schooling I joined the Armed Forces where I worked for the Government and the public for 37 and half years, I just retired from that service last year and you may wonder what I am doing here. Let me tell you the role of the Armed Forces today since the Second World War is not to fight war but to prevent war, you may wonder why. By studying the law and make sure the politicians do not launch the soldiers to war because the war is fought, because of disagreements within the political leadership, nothing more. Only a fool would go to war, only a fool will want to die. So a soldier the least he wants is actually to die, he doesn't want to die.

Having said that, I find myself now being involved because I am now subjected to the Armed Forces Act so I can freely exercise my citizen right. I belong to no political party, ladies and gentlemen as at today for obvious reasons. The law that I was subject to prohibited and I see the draft has the same, whether it is good or not is not the issue Now may be you will discuss that later in a better forum but I am a voter, registered as a voter in Gatundu Constituency. *Niko na miti yangu ya kuwekea mtu yule ninafikira anatosha*, not necessarily through political association.

What I would like to assure you ladies and gentlemen, I give you my solemn promise that whatever you want me to do during the conference I will deliver. I have no fear because I am not likely to be influenced, that is why I am stating I belong to no political party and I will not be, but I will vote as an independent person just like the new draft allows. So if you have any issue that you probably would have me take note that is not covered today, I am sure we will work out where and how that can be facilitated. With that ladies and gentlemen, I thank you for extending that trust and I will not disappoint you.

May be before I sit down, Madam Commissioner may I make a suggestion on how perhaps we could save time this morning. May I suggest subject to people agreeing to it, if we could take this document chapter by chapter, you can allocate time to be discussed, the number of people to discuss, and we leave willing because we are likely to have repetition the way we are moving. Thank you.

**Com. Wanjiku Kabira:** Thank you very much. I think I am very happy we have the three delegates Mheshimiwa Mwihi is also a delegate to the National Conference because he is the MP for the area that is if we have the conference as scheduled beginning on 28<sup>th</sup>. The reason why we are happy that we are here is because the Commission is like a technical committee. When we have put the draft together and given to the National Conference, those are the people who are going to determine what the Constitution of Kenya is going to be. They are going to look at the draft, they are going to amend the draft, they are going to debate it, and what they will agree on and adopt will actually be the Constitution. It is a very important stage that we are getting into and this is why we are happy that they are able to join us as we discuss the issues with you.

I don't know whether we can go through each section because people haven't actually had the time to read, and it is not possible to read each of the sections with the people today. I think one of the things we wanted to do like we said today is give a general overview and also talk about the Constituency Report, and let them make whatever general comments they want to make, because if we go through the details, it would mean reading the various sections, and it will not really be possible when many people have not read. What do you think you want us to do? Kuri andu eri kana atatu mekwoete moko mbere. So we allow people to make their comments, if there are comments we don't have to respond, if they are questions we will try to respond. Nariu tondu ni njugire twi technical committee, I happen to know that Mheshimiwa Gitu has also participated in the full process, I met him at the Bomas, at Safari Park and at all these other meetings and his colleague is also here and Mheshimiwa Mwihi is here. Therefore, if they are questions they can respond too, it doesn't have to be me, this is now our document, it is not my document. I think I will allow them if they have an input including the coordinator, into the responses, so that we are dialoging I am not teaching. We have just presented the document and we all need to contribute to it. Give me a minute muthe, he ndagika imwe tu. He mundu ungi haha ukwoete guoko, it is yourself eh? Koguo we wi namba 1 na we namba 2 na we namba 3. Mundu ni aramenya namba yake, namba 4, namba 5, namba 6, namba 7, namba 9. So we will pick those ones first, so we begin with number one.

**Clement Kimata:** Thank you very much Commissioner Professor and your staff and new members of the Constitutional Conference. My name is Clement Mukui Kimata. I was born about 70 years ago in Gatundu, Ndarugu Location, and Mr. Gitu was my colleague in detention. I was detained when I was only 21 years old and I came back earlier than him because I came back after 4 years. What I want to say here, first of all I would like to thank the Commissioners for the work they did because I was here for the full day when they were here, and what we said most of it is covered. What I would like first of all before I got to what I want to comment on is when the gentlemen was reading, he was saying "that one was covered in the draft" then he read and said, "it is covered". I don't know whether that particular item was covered and the others are not covered? I think you can answer that question later.

Now I want to comment on one thing, the Judiciary, I think when we were going to have a constitutional review it was for all Kenyans of all walks of life, whether you are poor, rich, lame, whole, educated or your illiterate. Our Judiciary has said that they do not want their part to be reviewed and because we were reviewing the Kenyans' Constitution, the Judiciary have declared themselves foreigners. After they declared themselves foreigners and we were not reviewing the foreigners Constitution that means that the whole Judiciary in Kenya is a foreign organ, is that not true ladies and gentlemen? (*Applause*).

If it is so I would like to suggest that the whole Judiciary should retire at the commencement of this Constitution because we have got lawyers and everybody else, so that we can start with Kenyans but not foreigners. Again, I would like to say something about salaries, the Judiciary high salary, the Chief Justice is getting Kshs. 980,000/= plus some more package. We

have the man at the village who does not even porridge for breakfast that is a very great disparity for the Kenyan society. The system we have is ruining the Kenyan people, therefore not only the Judiciary's or the parliamentarians' salaries that should be reviewed, it is the whole spectrum of salaried people to bring them close to reality, especially to make sure that every family can have breakfast and at least dinner.

I would like to stress very much on that because the President and our Member of Parliament, my friend Mwiria I am not attacking you, have increased their salaries so much that they are no longer one of us. While we are not eating, they don't know what to do with money. (*Laughter*). Now I would like to say only a small thing, that the retirement benefits of those highflying paid people should also be considered to be lowered. I can remember that our university lecturers did a strike sometime and nobody listened to them, our doctors, nobody listened to them. From those two strikes we got an immigration of brains from Kenya to other countries. That system that can make our good brains run away from a country should also be addressed, that not a single person anymore in this country should decide the destiny of our future generation. The destiny of our future generation should be decided by us all.

Secondly, I want to talk about land. Land in Kenya although it is a burning issue the Constitutional review should have made a point or should have given direction but leaving it to a land Commission, we do not know whether it will be the Njonjo Land Commission in the year 2000 or the Carter Commission in 1930? Both of them are not beneficial to you ordinary people. They are only beneficial to the elites, the high class and those who grabbed land from you. I think they should have what we call the land ownership limit or the land ownership ceiling. The family should not have more than...whether they will be paid compensation or not they should surrender.

Another thing is the water, people now are commercializing water in Kenya. You can see wherever you go you get bottled water, I am not talking about that. I am talking about water and I spoke about it when we were here and I didn't hear it being mentioned here. 75% of all the water that goes to Lake Victoria comes from Kenya but Kenya does not benefit from that water because as soon as it reaches Lake Victoria it goes into the ownership of treaties. One of it being Egypt because Egypt depends on River Nile which comes from Lake Victoria. Something should be mentioned in the Constitution that Kenyan water is a resource of Kenyans, it is the wealth of Kenyans, and it should first of all be used by Kenyans before it goes to other people as God intended.

Another thing is the mineral resources, the big fishes of our country when they hear that prospecting is being done somewhere for oil they form a company that will own that oil. Titanium has been found somewhere in Kwale, they formed a company for that, some of them to get a commission and some of them to own that mineral. I mentioned that when we were here and I think those who were here can agree with that, that the mineral should never be owned by individuals, it should be owned by the State, it is a natural wealth which should benefit every Kenyan in the country.

Now about the land in the Constitution, I read that it is going to be administered by the local authority. If possible, may I suggest that we have seen cases in Nairobi and here where we are where the local authority has misused that power and allocated even graves, road reserves and everything to the people? Even those whom you would think they are good, as soon as they go into the system and the system is corrupt they all become corrupt. (*Applause*). Therefore, I suggest that there should be a National Land Policy which will guide those local authorities who own that land, that they should manage the forests on these terms, they should manage the land owned by it on these terms but not for their financial gain.

Now, before I sit down because I don't want to talk too much I would like to say this, and let me take out my glasses because I don't see well without glasses. I can see that there are very few people who fought for, this uhuru, the uhuru we fought for or the independence we fought for was fought on one thing and I think you the young people that is what you are lacking. It was said by my colleague on another term but I want to say it categorically on another term. That nobody can harm you unless you allow him to harm you, by that believe alone we fought the colonialists without guns and without anything. Why don't you have that belief to fight for economical freedom, economic freedom which you don't have, which has been taken away not by a white colonialist but by a black economic colonialist which is concentrating all the money to all Kamau's, Otieno, Mutua, Wanjiku, Nduta and Anyango instead of distributing it to other people. If you allow these people to harm you again and again, your children will be servants, you will have no families, because as soon as a man cannot provide for his family the wife tends to run away, the children tend to misbehave, therefore you have nothing to control. You young people and when I say young people even those who are 50 are young because I can see they are young, they have got responsibility to their families. If they allow that you will have enslaved your mind and your children will say, okay I will follow what my father is doing. He will also be enslaved by you, like I will tell you one thing before I sit down about an animal. Thwariga hindi imwei ni ciathiri ikirana mwana wayo atiriri, nitwameririe hia riu. Na tondu twina hia na miruthi yanaturia muno-ri, muruthi uria woka guturia nitugutheca turage. Igikihariria ciike urouguo na hia cia cio, kana kari mwena uyu. No riria gaikarire uguo-ri gakiona nyina ni ora, onako gakiura muruthi woka. Kwa munyaka itanyitirwo. Na tondu itanyitirwo-ri, ciathie ni koririe nyina atiriri, riu maitu-ri tondu twiranire tuthece muruthi urire niki? Amwirire ati riri, mwana wakwa eke ngwire, twariirwo ni miruthi guoya ugitonya mahindi, nii ndinora ni guoya unjikirie, wanjikia, wanjikia itakumenya ndathii (*laughter*). Riu angikorwo una inyue nimuritwo ni economical sabotage, nginya guoya ugatonya mahindi, muikare na guoya ucio, ni uhoru munene muno.

Thank you very much. (*Applause*)

**Stephen Wanyoike:** Thank you very much. Please appreciate, I think it is very good to hear from these people with a lot of experience because I know we have been talking about young Turks and we can appreciate these people have also their own experience and we can learn a lot from them. Now, can we agree on something? I have given them a lot of time because I think he was talking about many things we wanted to hear but let us agree because in this sitting many people want to talk? Can we agree we give everybody two minutes, be very specific with your questions or comments or statement so that we can cover as many people as possible, are we agreed?

**Com. Wanjiku Kabira:** May be we can also follow what the gentleman said. Let me respond a little on the land so that we move away from the land issue and we come to other issues.

**Stephen Wanyoike:** Okay, Madam Chairperson.

**Com. Wanjiku Kabira:** Nguiciragie turore Page 28, everybody has a copy, you didn't get them outside, are they finished? I think they are enough.

**Hon. Mwihia:** We can share.

**Com. Wanjiku Kabira:** So page 28, land and property, the policy framework. If you look at article 232, land being Kenya's primary resource and the basis of livelihood for the people shall be held, used, and managed in a manner which is equitable, efficient, productive and sustainable. Equitable I think this is where we are referring to, should some people have 3000 acres and others have half an acre or zero? So that is the principle that we are talking about and then 2 (a). We are saying that the state, sorry 2 first. The State shall define and keep constantly under review a national land policy directed at ensuring among others the following; equitable access to land and associated resources, again equitable here but may be what we can say because I know what mzee was saying that it should not be possible for somebody to have 500 acres or a thousand acres while others are still living in the villages. Kana mundu handu akoborete niho akite, like the mzee that Mheshimiwa was talking about.

When we go to the National Conference, I suppose may be these are things that are also going to be debated much more but we are beginning with the principle of equitability. Ati everybody should be able to have land and that nobody should have too many acres of land when others have nothing but we also have to relate that to productivity. Tundu notugayanie ningi tumigunda twothe naguo bururi uthine, tundu akorwo ringi wina ... and we got this from Central Province by the way where migunda ringi iragayanio muno tucere, tucere ngiya onaguo mugunda ucio ugatwika un productive. Kana tiguu? Koguo maundu maya nomuhaka moywo together. How can the land be productive and also be equitably distributed? I think we are talking about a policy, handu hakuga within the Constitution ati acre magana matano igayanio andu othe. But we are also saying gutiri mundu wagiriirwo niguthie toro emuhutu, gutire mundu utagiriirwo nigukorwo na medical services, gutire mundu utagiriirwo ni gukorwo na githomo. Koguo una ungikorwo nduri mugunda, na ciana ciaku niirathoma na niiraria, ni na niirona mawira, na wina security na ni uraheo basic health services, because nikio kiratuma wende mugunda isn't it? So we are saying that the constitutional framework should be able to show how, if you don't have the land how are you going to survive, how are your children going to go to school and so on.

Therefore, we want to put these things together and make sure that the land is safe, we want land because we have no other

way of living. Mundu atari mugunda ni muthini tondu nduri na hagwaka nyumba. No thirikari ingitwika nikuhe andu othe nyumba na ni mekwona gwa gwaka-ri, your desire for the land, that half an acre lessens, isn't it? So we must think of how the land and other resources are also related to the economy of the country and the development of that economy but as I said these are just proposals, they will be debated at the National Constitutional Conference.

Again if you look at the ownership of land, that is the next item where we are saying that all land in Kenya belongs to the people of Kenya collectively as communities and as individuals. The land again is the base and belongs to all of us and how can we manage it, how can we make sure that it is managed for the benefit of every single Kenyan? But once again this is going to be debated at the National Conference.

I want you to look at property, article 236, protection of property and land. It is true like what you are saying the State has the power to take possession or acquire any right or interest, it is sub section two, or any right or interest in land where the following conditions are satisfied. In other words we are saying, the state noyoe icio magana matano angikorwo policy framework nironania ati andu acio me-area iyo matire migunda na nimagiriirwo nikuheo migunda na mena thiina, where you have certain requirements that will make it possible for that particular state to take the land. I think what we are doing within the Constitution is give a general framework but what we need to debate in details is how this constitutional framework is going to create a policy framework iria iku-ensure ati andu aria matari migunda and by the way it is not only in Central Province, in the Rift Valley you will be shocked where some people have 3,000 or 10,000 acres of land and we have many squatters actually in the Rift Valley, not just this side of the Rift Valley even Kitale, Eldoret, Keiyo, all those areas, we have very many squatters. Andu actually maturaga icagi. Although you will see many kilometers of land owned by individuals. We have the same in Taita Taveta District or even the Coast itself where people actually have no land. Maturaga makomboraga nyumba tondu migunda yao ni ya andu a Arabia by the way. So it is very major problem in the whole country.

I think we have given some framework but we are also saying these are proposals, people are going to share the information at the National Conference. Some of the things I am saying now there will be people the Miji Kenda community, there will be people from Taita Taveta, Keiyo, Marakwet etc. There are going to be people from everywhere sharing their own experiences, there are many communities who even said, as a community gutiri kundu mangita kwao. Like Kipsigis have been saying they want a District called Kipsigis District because they don't have a home, what they consider as their own home has been taken over by other people. So I think it is quite a major issue that is going to be debated at the conference and as we are saying you will have Mwihiya, Mweshimia Gitu, Brigadier, and Councillor Beatrice who will be bringing the sentiments of the people from this Constituency so that they are in the national debate. I will let Mwihiya say something and then we can continue.

**Hon Mwihiya:** Thank you. Nigetha tutigacoke uhoro wa land, uhoro ucio uragwetwo wa migunda ni very very important. Na nikyo ngugite nanii mbere ni ndirona niyagiriirwo gukorwo i-deeper. Na tondu nituku address issue iyo, angikorwo wina kaundu karia ungienda gu-suggest, kandike unengere Gitu kana nii, kana Brigadier, nigetha tugithie kuria tugakorwo twinako

twi-iguithaniirie niundu wa equitability kana kuiganania. Nigetha ithuothe tukorwo twina mugunda tiyo iyo acre. No equitability iyo turaiga, tukarora kuria kwina high potential. Tariu guko Central Province ni high potential area niko kurakura irio, gwikungi uguthii ugakiora ni medium, gwikundu kungi kuria very marginal kutakuraga irio. Koguo migunda kuo ndingiiganana angikorwo ni tukurora production. Nu kiria turauga gitari addressed tungienda ku-address, ni twambe twitikirio ati ni tukwenda kindu gitagwo social democracy, kana social justice, ati gutiri mundu wagiriirwo nigukorwo ena too much aria angi makirarira, na migunda iyo niyagiriirwo nigukorwo ikirutirwo wira. Na to thiinii wa migunda, ona resources ici ingi like he has just said, national resource ndiagiriirwo ni kunengerwo mundu. Angikorwo thirikari ni ikunengera mundo no ekire exploit on behalf ya thirikari.

Na disparity, niko gitumite andu mathiine? We uthinite niki? Todu he mundu ungi mutongu muno. Na nikiu turauga Kenya twambe twitikie ati tugie na social justice and social; democracy nigetha tuhote gwitikira nii ndina too much, ningu-release some of these. Mheshimiwa wa Taita Taveta Mwalulu ni atwiraga thiinii wa kuria gwake Taiata Taveta, location igiri, ikoretwo cii owned by one family. Magacoka makahingiriria mai njui igiri ati matigi flow kuri andu acio angi. Kwoguo ndunguiga hau hena social justice ona angikorwo urarima irio cigana atia, nu andu mehau kianda waku matiranyua mai macio, na mai macio ni natural.

These issues nicio turenda wakorwo na point ukami-raise on a national policy level nigetha ituike captured, tutikarikie document icoke ikarega gutwika document acceptable to us. Thank you very much.

**Com. Wanjiku Kabira:** I think those are very good additions to complete the section.

**Hon. Mwhia:** Na ngikirikia-ri nonginya nanii ngakigitagira tondu ndikiri na mucara, nu tariu Saturday ndina harambee tainya, micara icokio thii andu mathii makuhaniriirie, nacio harambee ciehererio andu nigetha andu matige guthii kuiya. Thank you very much. (*laughter and applause*)

**Com. Wanjiku Kabira:** Thank you. There were two other issues that he raised I wanted to respond to. One was the question of Lake Victoria, uguo ni uhoro wa maa ati 75% ya mai yumaga Kenya, nu I think over 60% of the lake is controlled by Uganda and close to 40% is controlled by Tanzania and Kenya actually has 6% of the lake. So what is happening is that tondu mai maikurukaga from Kenya to the lake, thamaki ciikagwo breeding along the lake on the side of Kenya igagicoka ika-move into the lake ikineneha koguo ikaingira into the Ugandan and Tanzanian areas and therefore the Kenyan fishermen are not getting fish unless they go to fish in Uganda magacoka makanyitwo and they are actually patrolling the Ugandan side. The Ugandan side is very well organized so they actually patrol the area and Kenyans are being arrested for going there to fish thamaki iria riu ciumite mwena wa Kenya. So it is a major issue that needs to be discussed but in our consultations it was actually suggested that this is an issue that needs to be debated by the East African Parliament because it involves the other two countries, that is why it doesn't appear in this report.

The other one is about irrigation using the water from the lake which is an agreement that was made I think in 1962 between Egypt and the British Government which agreed that we don't use the Lake water for irrigation. As a result andu aria by the way maikaraga along the lake, they are very poor and they are being attacked very many times. Like I said they cannot fish and they are not actually allowed to use the water for irrigation but what I understand again because we discussed this and wondered whether it should be part of our recommendations. That, that agreement is currently under review, and I saw it in the newspapers may be about 4 weeks ago or so, it is currently under review so it is going to be addressed.

With the mines we are saying that minerals and anything that is a natural resource does not actually belong to the individual who owns the piece of land. It is a natural resource that is going to be managed either by the national Government or by the district. I think those are the issues that he raised. Thank you very much.

**Stephen Wanyoike:** Who is number two?

**Mr. Muchana:** Andu ni mathondekete companies cia kugura migunda, na gugakurwo na migunda ta Makuyu na miingi miingi uguo. Na riu Directors ni marikirie migunda iyo yothe igithira, na riu members matingihota guthitanga andu acio magotini, tondu andu acio nimatuikire multi-millionaires na nimagu collude na Judiciary. Riu tondu indo icio ciothe ni ciorire-ri, ikirigia na those few individuals, tungehota atia gukorwo twi protected ni State andu maguranira kindu ta mugunda kana manyumba uguo na magakigaya kindu?

**Hon. Mwihia:** Infact nikio ngugite uhoro wa migunda iyo, nitu kwenda kurora uhoro ucio tondu Mugikuyu endete mugunda na ungimwirira handu he mugunda agiraga mbia ateguicia, ndeciragia undu ungi, no mbia. Tariu ndina a question in Parliament rucio, ya andu metagwo Thome Farmers. Ndina maritwa ma andu ta magana manana nengeretwo list ya andu a Gatundu na a Githunguri magurite migunda iyo, na gutiri. Twina migunda teria itagwo Ndafara yaguragwo, ene makaruta mbeba, matiri marihirwo. Na currently ni mararuta mbia cia kugura mugunda through Mau Mau. Kioria kiria twagiriirwo kwiyoria ni ati riri, andu acio through Mau Mau Union, he kindu gitagwo Mau Mau something? Rabai Company here.

**Speaker:**...(Inaudible)

**Hon. Mwihia:** Mugunda gucaria ni wega no ni wega unainyui mutanagura mugunda-ri, mukonio acreage uria aigana, mukerwo turagura acre 200 kana 400, kana 500. Nao andu aria mangiganira mugunda ucio-ri, ni tandu 100 kana 200 kama 300. Nigetha mbia iria uratura igakuhotithia kugia na mugunda. Nu tikuga ati waigua mugunda ni urendio ukaruta mbia ciaku, na ndui kana urendio acre 2000 kana 3000 kana magana. Infact its an area ndio uria ungitwika addressed constitutionally, iyo noikorirwo ni policy ya thirikari, i-address issues icio tondu, turi na aingi muno mahana uguo. Migunda ni marutite mbeba na matikamiona na andu acio matongoretio nimekiraga mbia muhuko na magathii nacio. So we have also to be careful as a

people mutanagura na mutigage kuruta mbeba ouguo. Maybe that is what I can comment on that.

**Com. Wanjiku Kabira:** I think this is an important issue, I happen to know also because there are many women groups that have bought land all over the country but the land has been taken away, they have never seen it and they have been staying sometimes for twenty years and still following that piece of land. Sometimes they got to court and the takes forever to deal with the issue but of course again given the current judicial system we are not getting very far with many of these things.

In a sense, I don't know whether that would be part of the land Commission because we are talking about the land commission.

The Land Commission by the way is not the Njonjo Commission. The Njonjo Commission is a presidential Commission. When we were preparing this part of the report, we actually asked the Njonjo Commission whether they could share the information they have and the recommendations with us but they came to the Commission but they could not share it. They could not share it also because the report is supposed to be taken to the President unlike ours which was a different Commission where the people got the dissemination of the report before the President. So the Njonjo Commission is a presidential Commission, which is reporting to the President, and until that is done we do not know what findings they have.

But the Commission that we have recommended here is actually a constitutional office, a constitutional commission, and an independent Commission, so that they are not accountable to the President. They are actually accountable to the people through Parliament. So that their investigations, for instance if they were to investigate what is happening with all these land buying companies which would be within their power then they would be able to table that information in Parliament. There are a number of bodies that can follow that issue. For instance, that is really also an issue of corruption, isn't it? We are saying that the Ethics and Integrity Commission has two responsibilities. One of them is the investigation of corruption. The other one is actually the enforcement of the leadership code. I think the new Constitution has a framework that would be able to follow up issues like the one you are talking about.

**Stephen Wanyoike:** Okay, number two and our recorder is asking whether one can come near the recorder so that you can be recorded but anyway go ahead. Two minutes please.

**Daniel Kiriti:** Okay, my names are Kiriti Daniel Mwangi. I come from this Constituency, Mundoro Sub Location. I am a student and not only a student a seminarian, somebody training for priesthood. When I am standing here, I know the feelings of so many people who would have liked to come here. Those people, nimaraiguire na nituramaniriire moke no unamangienda, toguo twerwo thiina niwekire atia? Ni oramatindika. There are so many things we would like to talk about, poverty eradication na ndio tondu ndina hota guthoma draft iyote whether there are pointers to the new Constitution which will enable the poor person aiguike. Maundu maria mekohota kunina poverty. Not only suggesting but giving directions of what the new Constitution will offer to these people. Sometimes we talk of poverty in the utopia, up there, the person who is talking about poverty is not in line with the poor, he is not living with the poor but there are those who feel about the poor and mostly the

Church. Where is the Constitution placing the Church as far as politics is concerned? Nutwende kumenya na nutwende kuigwa Kanitha ikiheo responsibility tioria turaiguire. Okay, the politicians were saying that so unainyui mutiagiriirwo gutonya politics, but we represent and we feel about the people since mundu ucio ageithio ndaguka kuri we politician gukwira, but you will come to the Church. Nikugie haro, tribal clashes, these people go to the Church they don't go to their politicians first, they go to the Church. We would like the new Constitution to put in place the right place for the Church as far as politics is concerned.

There was the other point of the Commission of Inquiry. That most of them use public funds but they are answerable to the President as you said but it is not the President who needs to know the results, it is the public. There is an outcry of so many Commissions iria ihitukite hau na ciothe results kana the findings are kept for the Government, it will not help the Government, we want to have these results. Iria hituku na iria ingi iguka.

The other point is on women, hau tungirora haha, wone ni atumia aigana mokite haha ni maa the Constitution is trying to put a phrase that makorwo mena handu, but according to our country it is a patriarchal country where even land ownership, business, and many other things are owned by men. The only place these women can be chosen to be leaders is when they have title deeds, bank accounts, and other things but the kind of system we have in our country, the patriarchal is so much oppressive to them that even if they want to come here may be their husbands will not allow them. May be constitution they don't have the right to be here. We would like the Constitution to reflect much on women not only saying that we encourage but the old system needs to be scrapped away so that we can accommodate women. They contribute a lot and I am saying this because even they are the majority in the Church and I know you agree with me on that.

The other one is on culture, there are people who want to promote their culture but their way of promoting their culture is threatening the existing cultures. One thing we can say as Kenyans we don't have a national culture that you can say this is the mode of dressing all over the country, this is the language of the country. We are mixed up but how is the Constitution checking as far as the culture is concerned? If you take for example the Mungiki, they are saying they are promoting our Kikuyu culture, so you believe that? No. Therefore, we would like a direction on how to promote culture.

The other one is on freedom of conscience and in this I refer to the religion. There was sometimes back the Commission of Bishop Kirima on devil worshipping, is this freedom of conscience entailing those kind of things? I appreciate so much when I hear our old men talking to us with a lot of pain knowing what they underwent during the struggle for independence, and all those things they did and here we are now, that you are calling on young turks to take over power. There are so many things which we need as young turks and one needs recognition of the role which was played by these men. There is nowhere in the Constitution we honour the freedom fighters. We would like this to be specified in this way; that there are those people who did a lot, they struggled for our independence but where do they live? In abject poverty. Why should this happen? We would like the Constitution to state clearly what should be done to those people who achieved a lot for the national interest.

My last point is on international relations. We find that sometimes we are forced to adopt policies which don't suit us as Kenyan citizens but we do this so that we can get the donors funds. Apart from that, one thing I recommend, there is an article which separates those who will be Cabinet Ministers from MPs to be people specializing in certain areas. You will find that some people accept those national policies, not because they know but because hena uria marendu ku-assist. When we are here, Rokari women will come to ask you about the polio vaccine, if you try to ask that question from the people who admitted that those things should come to us, they don't know even, they cannot explain to you. So we would like those international policies which will be adopted here in Kenya first of all to go through competent people, not just to be applied to Kenyans just like that. Thank you.

**Com. Wanjiku Kabira:** Thank you very much. There are many articles let me go through them quickly. Thank you very much, those are very many issues you raised.

We will also look at this freedom of worship and State and religion. I wanted to look at article 56 on page 9 of the draft, and this is how we are addressing issues of poverty. We are saying that 60% of Kenyans live below poverty line, in other words they have one meal a day whether it is in the morning or at noon or in the evening, according to Government statistics by the way. So what we thought is that basic needs should become basic rights as was recommended by Kenyans, so that at least they have what they need, and then we also said that the Government must be held accountable. So, under the bill of rights we have talked about social security, and we are saying that every single person has the right to social security including if they are unable to support themselves and their dependants, appropriate social security assistance by the state. We are talking about health, education, housing, food, water, sanitation and even the right to a better environment. In other words, we are saying that one of the ways of reducing poverty is to make a Constitutional right of all Kenyans to have the basic needs. Then how do we ensure that this is enforceable? If you go to the human rights and administrative justice which is one of the Commissions that we have established, and I talked about this a little earlier, we actually have a Commissioner for basic needs. In other words that people who will not have these basic needs. In other words we have they have a place where you can complain and investigations can be done, and the Government will be forced to address those particular issues.

We are also talking about an economic Commission of about 21 people who are going to advice the Government on how to improve the economy because you can promise these things but if the economy does not improve then you are not going to be able to do this. We also thought that devolving power to the people, for instance to the district level so that the District Council can collect revenue, it can make decisions related to all these basic needs of the people at that particular district, and be able to make sure that they are able to meet these needs. The current system where for instance the coffee farmers themselves cannot pay school fees is a criminal system, isn't it? That you are actually harvesting coffee, you are selling it but you are not getting even the money for the coffee that you have grown or the tea or pyrethrum or whatever. So we are saying is that when we remove the power from the Central Government to control the resources even the local resources, it is a way of releasing the energies of the power and making the people participate more in order to address issues at the community level. I think there

are ways in which this new Constitution is addressing issues related to poverty but I think we also welcome other recommendations.

Article 44 of the same Constitution is talking about freedom of religion, belief and opinion. We are saying that we need to separate religion and state. In other words, we are saying that we want to avoid at anytime ever coming to a situation where Kenya is a country where we can say it is an Islamic state for instance or even that it is a Christian State and therefore Muslims have to do whatever the state says. Therefore, we are saying that we should have a very clear distinction between State and religion but that doesn't mean that Christians whose religion is actually a revolutionary religion, it is a religion for the poor, the oppressed and so on, that it will stop fighting for those particular rights. The politicians themselves very openly misrepresent that particular statement when you say that there is a difference between religion and state. It does not mean that religion only talks about how to go to heaven; because part of how to go to heaven is actually making sure, that the poor are looked after, that the oppressed are liberated. Therefore although we talk about that particular separation we are not saying that the church leaders and so on should not be involved in promoting democracy, that is part of the religion. I don't think that is what we are saying but I think the Constitution is quite clear about this.

I know about the Bishop Kirima report on devil worship and many Kenyans particularly in Central Province and Eastern Province asked us to ban devil worship, to say you are free to worship except if you worship the devil. The reason why we did not put it into the Constitution, first of all we were never told about that report, we don't know what was in that report. Was it ever released? Because if you ask people who is worshipping the devil, in most cases nobody will tell you that this particular religion worship the devil, so that you are also removing power from anybody to harass other people either because they worship at night or because they worship in a certain manner. You do not want to give the state the power to actually determine who is worshipping the devil and who is worshipping God because religion is again a matter of faith.

I was saying yesterday that when Christianity came into this country, the first thing they did was to say that we ourselves are ... (Inaudible) that we worship trees, animals, mountains and so on which is obviously not true. In the same way the cross is a symbol of Jesus, the mountain was a symbol of the Gikuyu God. I don't think we will ever say that that mountain, that if you went there no ukore Ngai ehithite hau mutitu-ini. It was a symbol of a higher spirit that people worship. The reason why we did not want to outlaw worship of the devil is because first of all, it is very difficult to define what it means. It is also very easy to open up opportunities for harassment of other people. It is very easy for it to be used to curtail freedom of expression and freedom of worship of other people, that is why it is not in the new Constitution. It is not because we are promoting it, it is silent on worship of the devil and I am sure if you were to talk about the people whom you have heard worship the devil but whom you see in Church every Sunday particularly among the leaders, I am sure you will be able to name them, isn't it? However, how sure are we that those people are worshipping the devil at other times or how sure are we that it is not propaganda from some other people?

I remember I asked one of the political leaders whose name I will not give, is it true that you area freemason and freemasons according to us are worshippers of the devil, isn't it? Is it true? He told me that story was actually spread by another political opponent as away of getting the votes and alienate the people from him. Sometimes we do not want to put things in the Constitution that may make it possible for other people to curtail the freedom of others or to harass other people, so basically that is why it is silent on devil worship. Not because it is allowed but because we do not have any tangible evidence or definition of what this meant. There are many people who said for instance, Catholics worship Mary, isn't it? They worship status, you have seen, somebody broke the statue at the Holy Family Basilica. That is somebody who believed in another religion and who believed that, that particular Church is not worshipping the living God. So it is a very complex issue, we have not said devil worship is allowed neither have we said it is not allowed, we have left it silent because of the unrevealing nature of deciding who is worshipping the devil.

**Hon. Mwihiya:** I believe your question was answered, it is captured in the draft on article number 44 which talks of the freedom of religion, article 50 gives those people who have been given freedom of religion also political rights. Finally, the culture, the one you asked is also captured in article 63 (a). But then when you go to this culture you are told everyone has the right to use their language and to participate in the cultural life of their choice but no one in raising these rights may do so in a manner inconsistent with any provisions of these bill of rights. Ni kuga atiriri tariu ndaigua woria Mungiki, andu maigua asha. Kurerwo atiriri wakorwo wiwa Mungiki-ri tiga guthii kuruithia atumia matakwiriti umaruithie. That is the kind of thing, do not infringe on somebody else's rights and you have all these freedom.

**Stephen Wanyoike:** In fact that article Mheshimiwa Mwihiya, if you look at article 63 (a) sub article (iii) in brackets down there. In fact, it says no person may compel another person to perform, observe or undergo any cultural or religious practice or right. In fact that means even Mungiki cannot actually compel anybody to do anything under the pretext of culture. So, it is properly captured in this particular area and in fact it is illegal. Can we go to number three?

**Com. Wanjiku Kabira:** You are answered.

**Michael Njuguna:** My name is Michael Njuguna. I have a question for you to answer me. What have you done as Commissioners over rigging in places where the roads are not passable, that is what we fear very much for the coming elections?

**Com. Wanjiku Kabira:** Article 76 you have the general principles. May be look at article 76 onwards. By the way there are very many provisions under elections that we have talked about but some of them we have left them outside the Constitution, they appear in the law. For instance, one of the things that we have been talking about and it is already tabled to Parliament but I don't know whether it has been approved although it appears: Is that election sorry, the votes should be counted at the polling stations.

**Hon. Mwihia:** It is already through in Parliament.

**Com. Wanjiku Kabira:** Yes. I think we saw quite a number of the things that are related to making sure that elections are not rigged as those which have been tabled by the current Electoral Commission recently. I think if you look at some of the things that they have given under elections, for instance the current Electoral Commission. What we have done is make it a constitutional office but we have also tried to strengthen it, to make it more independent, actually make it work more closely with the political parties, register the parties, monitor the parties but also be able to have enough resources to be able to monitor the elections much better. We are also by the way reducing the number from 22 to about 8, that they can have efficient officers to be able to monitor the elections. I think most of the information related to ensuring that rigging is not done...

**(Interjection)**

**Hon. Mwihia:** It is article number 4 (i) D

**Com. Wanjiku Kabira:** Okay. Promotion of free and fair elections (iv) D.

**Hon. Mwihia:** It is 4 (i) D. I think Madam Commissioner on that issue, it is not possible to address that one in your document, we know it goes on but the process of election has been addressed. It is a question of us putting the Government in place or the Electoral Commission to be made independent, right now they are not independent. The way we would have like it Commissioner is the that Electoral Commission will be given police who are directly under the control of the Chairman of the Commission, six months before the elections and six months after the elections, so that the whole electoral process can be controlled. I don't think it is provided here but I think it should provided in the elections law so that if you put a police officer who has been paid or who is used to obeying orders from above, even if he sees rigging he will not act but if he is under the Chairman who can hire and fire him then may be there can be control but I think for us...

**Michael Njuguna:** ...(Inaudible)

**Hon. Mwihia:** It is not there, this is what I am recommending that we have police to be under, not all the police. Police officers who will be under the control of the Chairman, that will reduce the rigging but for now we must be on the look out.

**Michael Njuguna:** .. (Inaudible)

**Hon. Mwihia:** No we have observers.

**Michael Njuguna:** ...(Inaudible)

**Hon. Mwihia:** That will be difficult.

**Michael Njuguna:** ...(Inaudible)

**Hon. Mwihia:** Your fear is correct I think we need to strengthen the electoral process because some will just come for a picnic and then when they go to report they say the elections were not fair but Kenyans have expressed their wish and elections have already been rigged. So really, we should strengthen the electoral law so that we have more power given to the Electoral Commission.

**Com. Wanjiku Kabira:** By the way I think that is a very important issue and like Mheshimiwa has said I think for the time being we are talking about being vigilant but loop holes exist including the voter registration, manipulating the voter registration like what has been happening this year. I think it is an area that needs to be looked at probably much more and may be the electoral law itself will need to address a lot of those issues but thank you for raising it, and I think we need to debate a little bit more on the same.

**Stephen Wanyoike:** Okay, lets go to number 4.

**Com. Wanjiku Kabira:** Before you go to that article 81, I don't know whether we looked at it where they are talking about the voting procedure it must be made simple, that the ballot box is transparent and the votes cast are counted, tabulated and the results announced by the Presiding Officer at the polling station. Those were may be just a few of the issues that were raised as a way of making sure that rigging is not done but I want to agree with you it is not enough, we need to do much more than this.

**Michael Njuguna:** ...(Inaudible)

**Com. Wanjiku Kabira:** But you know we had foreigners, you are the one who is saying we had foreigners but they didn't seem to be doing a good job.

**Michael Njuguna:** ...(Inaudible)

**Com. Wanjiku Kabira:** To become the Presiding Officer. Okay, I think that is a recommendation.

**Stephen Wanyoike:** If you look at 84, one (i), the Electoral Commission has that function of facilitating and of observations or monitoring and evaluation of elections. In fact that could be a function they can decide as a body on its own to actually incorporate that or do away with that, and by the way I can only add what Madam Commissioner has said. May be you are

viewing this Electoral Commission the way we know it currently and probably once this becomes a fully entrenched Constitution it will be a very different body altogether. Very different from what you know about it now if you read this process here.

**Com. Wanjiku Kabira:** By the way this Commission will also have to obey, you remember we talked about the leadership code. If you look at the leadership code, it is also a way of ensuring that a Commission like that one is going to be made up of not people who are just being rewarded for being members of political parties or for being friends of others. We are talking about people who have the capacity to ensure that there is no corruption during elections, that rigging does not take place. They will actually be subjected to the leadership and ethics code which we talked about this morning. For those who were not here that leadership code appears on the fifth schedule, it is on page 44. These Commissioners will have to be subjected to this code which will also mean that they have to declare their wealth, they have to be free of corruption and so on, so that you cannot bribe them and so forth. So that they are able to conduct the election in a much fairer manner but there are various ways in which some of these things are going to be controlled. However, as you say it is a major issue for us because that is when we make a decision as to what kind of a Government and what kind of representation you want, so it is very important.

**Stephen Wanyoike:** Okay, can we go to number 5 because we have got ten questions. Can we go to number 4?

**Michael Njuguga:** The Returning Officers be elected directly by the electorate of that constituency.

**Com. Wanjiku Kabira:** Okay that is a recommendation that the Presiding Officers be elected by the constituents. Okay, that is an interesting recommendation.

**Stephen Wanyoike:** All right lets go to number 4 please, we have about 10 questions we have not even gone half way.

**Councillor Ng'aru:** Maundu maingi maria ngendaga kwaria ni mahutangitio ni andu nu ndigitie ukaundu kamwe. Nii njitagwo Clr. Ng'aru kuma guku Nge'nda. Kaundu karia ingienda kumenya ni undu draft iyo ni irutiirwo wira muritu muno-ri na niturathoma ngathiti-ini tuckerwo tutigeke nayo ithurano-ri, tuckerwo tutigeke ithurano na Constitution ino. Na Constitution ino ni itu niithui twagiriirwo kuga tutikwenda gwika nayo ithurano, tugagikorwo na guoya atiriri na ngwiciria hihi ni Muheshimiwa ugugitwira, kungitwika uguo marandika ngathiti-ini tutigwika nayo-ri, nu nitugwika ithurano ino ithondekagwo-ri kungegatonya mundu na powers ici cia Executive-ri aigue ndagiriire kume sign, igatonya atia thiinii wa bururi uyo nigetha yambiririe kuhuthirwo?

**Com. Wanjiku Kabira:** You said you would answer that.

**Stephen Wanyoike:** Lets go upto the tenth person so that she can have a chance to answer one by one. Number 5.

**Gitau Muhia:** Ma ritwa makwa njitagwo George Gitau wa Muhia wa Catholic Justice and Peace Commission. Nii kioria giakwa ndirenda kuria uhoru wa impeachment thini wa draft ino. Niturona ni iratwarwo kundu kuraihu muno na tariu uguo angitwika mundu ni agwikirwo mithenya miingi ya guikwo impeachment arithiaga agikaga ati na akahota kugura andu. Niki kiratuma angikorwo ni a misuse watho atwarwo direct. Iyo ni imwe.

Iria ingi nayo nguria Mheshimiwa. Tariu uguo turaigwa hindi ciotheni turerwo andu aria marathondeka ikundi cia kuhura andu mathitwo, una magiriirwo kunyitwo. Mburithi itu ireka atia? Tariu ngathiti ya ira turaiguire he mundu uraheanite half a million, a minister. Nigetha andu aria magathii kuria (inaudible) mahurwo, aria matari a project. Project ino nayo tukuria atiriri, project i above law kana ni President witu. Noturie atiriri nao andu aria mara-fund group ici ingi cia Mungiki, Taliban, na icio ingi-ri mekitwo tondu nigukimenyekete, Mungiki niitangathite ni yao, Taliban niioikaine ni yao, neria ingi ya Jeshi la Mzee niokaine ni yao, mekitwo atia kuringana na watho uria wikuo? *(Applause)*

**Joseph Muhia:** Maritwa makwa njitagwo Joseph Muhia. I wanted to discuss about importation. I feel that the Commission should pass this bill that things manufactured locally should not be imported.

**Hon. Mwihia:** (inaudible).

**Joseph Muhia:** Yes, from outside.

**Hon. Mwihia:** We should not import items which we are able to manufacture.

**Joseph Muhia:** Yes. Secondly, I want to talk about electoral system. I suggest that those in prison and those in remand should not have a right to vote. This will ensure that there will be no rigging. The draft Constitution does not talk about banking.

Agriculture, we need piped water and we producers should be allowed to market our own produce.

Gender equality, the Constitution does not say what percentage a woman can inherit from her parents. I think that is all.

**Stephen Wanyoike:** Thank you very much Muhia. Number seven.

**Michael Njoroge:** My names are Michael Njoroge. I am wondering now that we have the leadership code of ethics, suppose we have three candidates.

**(Interjection)**

**Speaker:** ... (Inaudible)

**Michael Njoroge:** I am wondering, now that we have the new leadership code of ethics suppose we have three candidates, A, B and C who are not clean, and in that case we don't have an option whether the Constitution can provide so that we have a parliamentary committee to run the constituency at the mercy of the constituents.

Secondly, I would like to know whether we can have a standard way of dressing. For example, women although not all, are wearing mini skirts, some have slits that move up to the pant and such dressings are provocative to men, and if they are raped then the men are subjected to imprisonment. I am wondering whether we can have a degree or a standard way of dressing.

Third, I would like to know whether we can have the Kenyan law hand book distributed to the local bookshops instead of getting it from the Government printers, because it is not readily available. Thank you. (*Applause*)

**Stephen Wanyoike:** Number nine.

**Stephen Thuku:** My name is Stephen Ndwaru Thuku and I want to address this issue of foreign traders. If you look at the foreign trade in this country it is dominated by foreigners particularly Asians. Whereas they are exploiting us, none of the profits that they make is used in this country. It is repatriated back to their countries and some take to the European countries, what can be done to these people to make sure that the profits that are made in this country are used in this country? Thank you.

**John Mukui:** I am John Mukui Zack, a retired teacher. I retired very recently, last month. Ngwambiriria na atiriri, mutirima wa kirimu witrithagia na mugi. Nariu handu haha-ri Commissioner-ri ni ndari haha tukiruta mawoni, na ngiruta. Na nii document iyo unagutwika ndikimithomete yothe kuma riria yaumiri ni ndimithiaga okahora okahora ona umuthi. Ni ndirona ni murutite wira munene muno na mukageria kwiyeheria handu mugutiga mukyurio kyuria. Nuriri andu aitu othe ti ogi. Tariu ungirora Gatundu uria iigana-ri, tukiigana o? Nanga ari leaders tugwititwo, ithi ti Gatundu iyothe? Noriu uria turauga haha, ni uria andu amwe meguthii kwirwo, merwo ni tumundu tunini tuma kuu, utukiugaga tumaundu tunini. Niingiauga ati riri handu haha niingienda muthenya wa umuthi hathathaurwo.

Document ino unainjega uguo injenga-ri he mundu uramenya ni undu wa ignorance ya Kenyans angiuga amorie atiriri, haha hena ceremonial President na hena Prime Minister ati uria urikoraguo ena mawatho. Nii kuringana na uria thikagiriirie uhoro uyu ugutwika based ati President ndagukorwo ena hinya, Prime Minister egukorwo ena hinya muingi muno. Ngauga atiriri, ndathoma-ri powers ici cii haha-ri nii ndirona President icio enacio tinjuru, Prime Minister icio ahetho ti njuri. Handu ndirona hena mahitia is only when the President nominates the Prime Minister who should at times be consulted by the President, and may be could ignore the President. Ngoni atiriri, whereas the Vice President is a running mate to the President let the Prime Minister also be a running mate so that we may know the Prime Minister before we go to the elections nii uguo niguu ndirona tari wega.. Gitumi ni uru kuhithirwo kahi na nguo wiragwo Prime Minister ni uria ningi President akauga. Kana mutikwona

uguo Kenyans? If he is a running mate ni hangikorwo hehega., na hibi nohathathaurwo hanini.

Ucio ungi-ri tuge powers ciao nii nindaiganiire nacio na ndiri na uru no makorwo me running mates na tumumenye mbere.

Ucio ungi ni uhoro wigie economy thiinie wa bururi uyu ona igitukaga-ri ni tui wega twerutaga nahau kabere, twerutaga uhoro wa kinyungu kimwe gigakorwo uguwo. Ati muruti wa wira angirihwo mucara mundu uyo urimaga noguo mbeba ciake iriokaga ithi tigwo twarutagwo. Koguo Civil Service ingirihwo micara miega na irihwo maigananitio mategutigana muno, murimi ni akwona mbeba na muhuri wa mbiacara niekuona mbeba. Tondue that's the government's port haria mbeba irikiuuga. Ngona io nuigiuke na njira ihana uguo.

Ngacoka ngoria atiriri, haha we come to the judicial system. Ni mwikite wega ku-reduce miaka ya retirement to 65. Kweheria mundu, gukura wiraine na miaka 74, githi mutoi andu amwe ni magikuagira wira-ini? Miaka 74 ewira-ini ni mwikite wega. No riri civil service tariria twagweta uhoro wa land policy, turona bururi uyo witu ugukorwo utari na ithaka thuthaini na kuoguo ni uku-need guikara wiraini muno kuu wandikitwo tondue nduri kundu kungi uguthii kurima.

The Constitution should be reviewed such that it accommodates that civil servants retire at the age of 65 because in future, there will be scarcity of land and when you retire early, you will just be doomed to early death. Ngacoka ngona atiriri, Along with that, the Constitution clearly stipulates that the office of the President should be replaced within 90 days. Anakorwo no MP, no mundu civil servant we anginyitwo aheo retire umuthi. Angiheo retire araikara years later agakua atari aheo benefits ciake na rio notakuheo replacement tondue warikia kuheo retirement, mucii gwaku ni wehera-ri ni ukwenda Constitution unayo ithondeke civil servants marihwo mbeba ciao na hekirwo ati ni watho mundu nu athite thirikari within 90 days? You will also be able to run your home within that period, is that not good? Ni handu hega hau niwaigua hau nihari karuhi.

Riu ngirikiriria ningwenda kuga ndamwira ni mweri umwe na nuthu, kana ni mweri na thiku ikumi kuma ndakiheo retire. Urii ndathie retire thiku mirongo iri na inya-ri, arimu ni aya nimagoma. Ciana cii mucii, kuria riu unaithui-ri notugomete tondue riri wabici icio itiakihingwo? Ngoria ati-riri, he handu hibi watho ungiuga ati githoma gia ciana ni kia bata? Ona kuga mwana ni agiriire guthoma na any government ingikorwo nigutuma githomo kia mwana githuke tondue ta riu effects cia mugomo uyo ikamenyeka kindu ta 10 years later. Ati andu acio ni responsible na ma prosecute-wo ni thirikari iria igakorwo iho tondue ni mahitia muno. Nii ngwenda gukinyia hau. Thank you very much.

**Stephen Wanyoike:** Was that number 10?

**Com. Wanjiku Kabira:** Okay, may be...

**Stephen Wanyoike:** Up to number 10, so that we give the Commissioner a chance, number 10.

**Simon Kinyanjui:** I just wanted to comment about national days.

**Stephen Wanyoike:** Your name.

**Simon Kinyanjui:** I am Simon Kinyanjui and I wanted to comment about the national holidays. I have gone through the draft and I have noted that Kenyatta Day is not there, you have only indicated the Madaraka and Jamhuri, independence sorry. My suggestion was that, it is good to have the national day that will honour our freedom fighters like the wazee's we have today. In fact, they feel very much encouraged because they can see what they fought for is recognized nationally.

**Com. Wanjiku Kabira:** Okay. I will quickly go through some of the issue and then I will leave the others to Mheshimiwa Mwishia which were addressed directly to him.

Councillor Ng'aru, your questions, one, if the President refuses to sign the Constitution, you directed that to Mheshimiwa. Then Gitau on the issue of impeachment, and the other question you wanted to find out was about the Police whether the Police have the authority to go and beat people and shoot like what they did yesterday, and you directed that also to Mheshimiwa. You also talked about the various groups, Jeshi la Mzee, Talibans, Mongiki and so on.

Now Joseph Muhia, I think your issues of importation of goods, that is one of the policies that many Kenyans have a problem with. Although we have not said it in the document, we are saying that for instance, Mumias Sugar compared to foreign sugar that is coming into the country. If you have sugar that comes from foreign countries which is cheaper and other things like eggs. If you go to Nakumatt you can buy the South African egg for Kshs. 90/= or Kshs. 60/= but the Kenyan eggs are Kshs. 150/=, so if you need the goods, I think it is good to tell Kenyans to be patriotic and buy the eggs that are Kshs. 150/= instead of the ones that are Kshs. 90/= but because Kenya is generally a poor country you will find that Kenyans are going for what is cheap including mitumbas and so on, which we are saying has already destroyed the textile industry. But you see what happens also in other countries is that the farmers are subsidized and because they are subsidized they can grow their own sugarcane and so on at a lower expense.

If the Kenyan farmer cannot be subsidized then their products are also expensive and therefore it is like chicken and egg story, where if you are not subsidized your products are expensive and because they are expensive Kenyans will not buy them they will go for the cheaper goods. I think it is a good idea to talk about the policy that is going to protect both the local industries and also protect the farmer and at the same time subsidize the farmers. I think that has been going on, that kind of submission has been going on all over the country.

We thought may be one of the ways of dealing with this because the details cannot go into the Constitution was actually to

establish the economic Commission. This Commission which has about 21 people is supposed to be made up of experts. These are economic experts, business people and so on who can actually guide the policy makers on how to ensure protection of these industries, and also how to ensure that they can relate in a profitable manner with other countries, so that is the way it is dealt with in the Constitution. Again, the marketing of products the advice will come from this high powered economic Commission that will help us.

On the issue of Muhia, again. Was it Muhia who talked of inheritance by the daughter? This was a very interesting topic all over the country particularly in Nyanza, there was 90% opposition to girls inheriting anything from their parents. There was more moderate recommendation from Central, Eastern and Rift Valley but in Nyanza and also in Western there was a lot of opposition to daughters inheriting. Some of the stories we heard like in Nyanza with people telling us that if the Government want daughters to inherit from their fathers there is enough Government land like where the animals are and they can give part of the land to animals and other parts to the daughters. Even some women by the way opposed it in Nyanza but what we have provided for under inheritance of property under the bill of rights, we are saying that children boys and girls should have equal access to their parent's property and we have provided for this.

By the way, this is also, what was recommended in other parts of the country and sometimes we want to understand the reasoning behind some of the recommendations, again it is meager resources that we are talking about. Quite many young men by the way were opposed to it because the daughter is now a competitor, so they were arguing that how can she inherit from here and also inherit where she is married. Forgetting that if you inherit from your father and you are son that you wife will also inherit from her father if the law is there, so the equation is balanced but I think the discussion will still continue at the National Conference.

Except for the Muslims it is a rider because the Muslim women wanted to be considered under the Islamic law because the Islamic law actually gives details about how much the wife should get, how much the daughter should get, how much the mother should get. All those details are in the Islamic Law.

Njoroge, you are talking about 3 candidates who may be disqualified by the Ethics and integrity Commission because they are corrupt because they have refused to declare their wealth or because of other activities they have been involved in. If you have a constituency of 105, how many constituents are here?

**Hon. Mwihia:** The voters.

**Com. Wanjiku Kabira:** The voters, yes.

**Hon. Mwihia:** The voters are 52,000.

**Com. Wanjiku Kabira:** So if you have 52,000 voters in this constituency even if three are disqualified you still have another 52,000 to choose from.

**Michael Njoroge:** ...(Inaudible)

**Hon. Mwihia:** I think you are correct in what you are saying, in fact I had picked that up. In our constituency here, I am sure we have hundreds of individuals who can make good parliamentarians and Councillors, they are very many but what you saying is very correct. Good people normally shun politics because they don't want to be subject to this financial handouts which they do not have but I think if they are disqualified then it will be upon the constituents to go and pick someone else. Just vote for him without even having done a campaign because you can be able to identify somebody but it is very difficult for a committee of Parliament or Electoral Committee to come and run your affairs here. Your sentiments are very correct but I can assure you, it is because of the culture of many handouts that keep out good people.

Look at women here in Gatundu, I have met many women whom I think are articulate and I can see one in this hall. I have also met another one who is not in this hall and I am sure they can make good Councillors and good Parliamentarians but because they have been subjected to this handouts which they don't have they keep off. I think that is something which we have caught up with as democracy grows and we nurture democracy. In America, it is a group of people who collect money for the campaigns in fact right now you should be collecting money for me so that I am able to go everywhere. In that way we will be able to pick good candidates from among ourselves but I don't think we can recommend that the Constitution provides for that.

We have also a provision where those who will not perform we will get them out, there is a way of getting them away from this.

**Com. Wanjiku Kabira:** Okay, thank you Mheshimiwa. You had an issue about dressing for women, mini skirts. We got a few submissions on mini skirts, we also got a few submissions on trousers, that women should not wear trousers, and may be you want to think about one thing. I know you gave the example that if women are not properly dressed then the men rape them and then they are taken to jail and it is the women's fault. That argument defeats itself because we have come from a culture. Even up to today by the way we haven't come out of that particular culture.

If you go to North Eastern, you will find many women.... It is the same thing which we need to ask ourselves, why should the man rape even if a woman is wearing a mini skirt? But may be that is a debate for another day. We are saying that there is difference, the man must also be able to control his body with his mind not to be led after all it is the women who are supposed to be led by emotions and men by logic. According to the myth, women are emotional, they cry but men are able to make decisions and let their minds lead them rather than emotions, so may be one can think about that. We didn't provide for it because once again like we talked the freedom, she also has the freedom to dress and we are talking about decency and so on,

but you cannot provide that within the Constitution and say that no woman should wear a mini skirt. I think it will be actually going too far in terms of not just curtailing the peoples' freedom but making a decision on what should be done on a daily basis.

We keep saying that the Constitution is a road map, it doesn't give you all the possible and everything that you will find on the road, it gives you a general direction. As we move on that particular road, there are many things that we deal with through legislation, through other policies and through the kind of values and culture that we promote, and among those that we want to promote is also decent dressing but you cannot provide it within the Constitution. Otherwise, I heard other people saying let men not wear tight trousers then we have to decide on how tight is the tight trouser. That is why we did not provide for it.

**Hon. Mwihia:** On that one we are going to say let young men not wear the earrings they are wearing now. Is that not part of indecency according to the culture? Rape is a crime actually even most of the women who wear full dresses are raped.

**Com. Wanjiku Kabira:** Even old women and babies.

**Hon. Mwihia:** We had another rape case here the other day. I have been trying to hear whether the women themselves talked about it, nobody is talking about it. There was a rape case here recently, of a child. Why are you not talking about it, why don't you go to the Police Station. It is a question of the ...(Inaudible). Thank you.

**Com. Wanjiku Kabira:** So it has been taken to court. Okay. I am sure that child was not wearing a mini skirt, so may be that is why we have not provided for it. I want to agree with you that we need better distribution of information. Somebody talked about that in Juja also that it is not enough to say we have access to information. We need to distribute libraries like public libraries through out the country. We should kind of decentralize and also be able to access information through public libraries, through university libraries and other places, not just in the Government printers.

Thuku, on the issue of traders and creating a better economic environment, I have responded to in my earlier statement that Economic Commission is supposed to help the Government to actually create this social, economic, environment and also protect the local industry. In addition, the local industrialists and business people from foreign investments and foreigners that actually do not retain their benefits in the country and I think that is one of the areas that will be dealt with by that Commission.

For Mukui, I agree with you that actually the Constitution does not provide for a ceremonial President I have fully understood the powers but I want to say that the question of Prime Minister as a running mate is not provided for but it is something that could be discussed. There are a number of people feeling that may be the Prime Minister has powers that needs to be addressed because he is not elected, and I think this is part of the debate that will continue during the National Conference. We are also saying that a Prime Minister is supposed to be a manager of the Government and a Prime Minister is supposed to be accountable to Parliament itself. That is why, although we are saying that the Prime Minister should come from the majority

party you cannot have a Prime Minister who is not accepted by majority of the parliamentarians so that the Government can work.

We are even saying that if the President is unable to come up with a cabinet three times, he is unable to come up with a candidate for the position of a Prime Minister that is acceptable to Parliament, Parliament actually can be dissolved on that basis. We are saying that you cannot have somebody who is bulldozing Parliament when we have given so much power to Parliament to vet many issues including strengthening of the role of Parliament in the budget, allocation and prioritization of the budget and so on. I think it is a very important position and therefore like many people are saying we need to make sure that the powers do not conflict with the powers of the Executive that will create any conflict. I think the refinement of this relationship is going on as we are discussing the draft.

Civil servants retiring at the age of 65 because we don't have land, by the way that recommendation did not come through. The retirement of the Judges came through and that is why we recommended it. In fact if anything the civil servants, many Kenyans actually want civil servants to retire much younger but the argument given was not really very convincing. They believed that if you retire there will be more jobs created and therefore poverty will be eradicated but we are saying that at the age of 40 if you retire poverty enters into your house and then begins diminishing in somebody else's who has taken the job. Therefore, we have not really done anything to improve the Constitution of the people, so we retained the age of 55 the way it is in the current situation. We are also saying that retirement should not be a punishment and that is why we said that the Salaries and the Remuneration Commission should also look at pensions. There were many complaints from civil servants that they never get their pensions. Many of them were saying that within 90 days pension should be released and that pensions are never reviewed so if your pension was Kshs. 2,000/= thirty years ago it remains Kshs. 2,000/= thirty years later, so it become useless in terms of value for money and that those pensions should be reviewed as the salaries are reviewed. We think that the Salaries and Remuneration Commission should be able to deal with those issues.

Now Kenyatta day to be freedom day, I think this was also recommended elsewhere and I think it is an issue that can also be discussed but we have also left a provision allowing Parliament to debate on any other national day that they think needs to be put in place. However, I know we did not put the ones that exist at present in the Constitution with an exception of Madaraka Day and Jamhuri Day.

The reason why we put the Constitutional Day was basically to get people at least for the next 50 or 100 years if we work well to come up with a very good Constitution to remember the day they committed themselves to this kind of framework for this generation and the future generation. We thought it is an important reminder but although we have been calling the original Constitution a Lancaster Constitution, this is the first time that Kenyans themselves are actually participating directly in determining what kind of Government they want, what kind of values and visions they have for this country, and how they want to be governed, and what they think their own responsibilities are. So we thought may be it is an important day for us to keep

reminding ourselves that we have a Constitution that we have created and re-dedicate ourselves to the new Constitution on annual basis. Okay, now I will leave Mheshimiwa to answer the rest.

**Hon. Mwihia:** Thank you. I think I can add on what you have just said on our national days. I have no opinion yet and I think it is important for you to look at those national days and bring up suggestions. That one is an issue we should not raise because I would like to see a day where even if I am a Minister I will be sitting on the forth row behind. I would like to see Gitu Kahengeri and the old man here, my friend Mr. Kimata sitting next to the President on a certain day because that is where we have come from. I think the national days are subject to further discussions and further recommendations which you can give then we take the matter up.

On the question of Constitution and Executive powers, if we go by the old Constitution today and go for the election and elect a President when we have not entrenched the Commission and also we have not gone by the new Constitution, the next President will determine which way Kenya goes. He can determine it remains a dictatorship or one man's show or he can decide to take up from where we lost everything. This is why I am saying I would like to hear you talking in the language of Gitu Kahengeri. Why do you let somebody build a hut on your head? This is a matter that Kenyans must take up now. I must also say, sometimes we are taken off course by this Government, it is very shrewd. I am blaming also ourselves, as Members of Parliament by now we should be telling Kenyans if we don't have a new Constitution then this is the way we shall go, so that we prepare our minds and our bodies to take action. I would personally like to see us going to election with the new Constitution because it starts opening up democracy on very many levels.

This I cannot answer you here but I am concerned that we have not come out with an answer. Yesterday I got very shocked personally when Honourable Mwai Kibaki, our leader in the opposition said that we go by the old Constitution because it is him who took us through Parliament saying that we must have a new Constitution by December. We should also be bold enough to say, if we cannot have the Constitution adopted by early December so that we are able to go to the elections, Parliament actually comes to an end on the 3<sup>rd</sup> of February, although the life of the President according to the Constitution must end on the 5<sup>th</sup> of January. So we have a constitutional crisis because if the life of the President was also ending on the 3<sup>rd</sup> of February we can all go up to February and have this document accepted. It is not difficult but because the President does not want to have this new Constitution because he is not going to have control thereafter, then that is why he is pushing us left, right and centre. I think we should take our position as leaders and Kenyans in general so that we can talk at close range to agree on which way forward.

On the ...

**(Interjection)**

**Hon. Gitu Kahengeri:** I want to talk about what Honourable Member Mwhia said. We may be pushed to the corner. When you want to remove a dictator he will try his best to see that he is not removed but we the people struggling for freedom, struggling for our economic recovery, we must have a way. If you want to harvest honey from a beehive you do not fear a bee, if you do, do not expect to eat honey.

Therefore, Honourable Member we ask you, if you go back tell the politicians that we rely on, they have to harvest the honey, and they must take courage as their precious possession to be able to save us from this dictatorship regime. When we fought for this independence, you would be surprised people who were put into Concentration Camps like myself and my friend Clement Mukui, we were fed on an eight inches diet, eight inches flour. What did they want us to do? They wanted us to denounce that we want our freedom. We did not do so, we took courage, we said okay die or live the independence must come. If the present regime dissolves the Parliament now what I would ask you to do is to take courage and continue with the struggle. It will not take you a lifetime, it is going to end and end with victory. Thank you. (*Applause*)

**Hon. Mwhia:** Thank you I am getting rejuvenated as we go along. In fact, I want to have a meeting with Kibaki tomorrow because we must discuss this thing openly. Not only Kibaki, all the others who are reform minded, we must take and address you as your leaders so that the struggle goes on.

On Mr. Mukui's powers of Prime Minister and running mate with the President it may not happen. What is happening in this Constitution....

**(Interjection)**

**Com. Wanjiku Kabira:** Sorry, by the way can I just clarify one thing or building on what Mheshimiwa has just said. You know having elections in February or early March is not an extension of Parliament, I think some of these things need to be clear. If for instance we have the National Constitutional Conference between 28<sup>th</sup> of October or even lets say the whole of November the law provides that within 14 days, the Constitution agreed upon should be tabled in Parliament by the Attorney General. Which means by mid December if Parliament is not dissolved it would actually enact the new Constitution if the process was allowed to move on schedule, then Parliament could be dissolved after the enactment of Parliament with an exception probably of electoral laws because the electoral laws which will govern the new elections would also have to be enacted. So it is possible to enact the new Constitution, probably prepare for the electoral laws and then Parliament would be dissolved so that people are preparing for elections until the beginning of March or mid March.

Actually this Constitution says, within 45 days not 90 days. So I think it is possible but like Mheshimiwa says, I think the Parliamentarians, and like Gitu said we want them to eat the honey and they cannot fear the bee but at present of course the current Constitution gives the powers to the President to dissolve Parliament at any time. So if he doesn't then the process like you said, unless it is entrenched in the Constitution would actually come to a standstill.

**Hon. Mwihiya:** Incidentally in the question of enactment, once we have agreed at the National Constitutional Conference Parliament will not require to debate this Constitution. Parliament can pass this in one day, one afternoon session because we are not going to debate what has been agreed. There is a question also, you giving us your voice because when we said okay, December will not be the right, time you also rise saying that ... (Inaudible) is going to go to the ... (Inaudible). If we are candid and say okay, we want elections and they must be held within the provisions of the Constitution, that is 45 days which will take us up to sometime in March. We will have done the Constitution proud rather than waiting for another Executive Officer who will come and throw it away then we can have a good Parliament by March next year with the new Constitution. We also need your voice in supporting those positions.

**Clement Kimata:** It is not the Constitution it is the Parliament.

**Hon. Mwihiya:** If it is dissolved all this work we are doing will be thrown into the river and I am saying if that Executive comes he will not take course. We are trying to encourage them to fight so that it is enacted now, and we can use our force to have it enacted before the elections and we shall not have broken any rule.

**Clement Kimata:** We understand that there are five traitor Commissioners, we believe you are not one of them, are they chairing a review like this one?

**Com. Wanjiku Kabira:** They are also disseminating the report.

**Stephen Wanyoike:** Excuse me I have seen two hands touching on this issue let them just ask.

**Simon Kinyanjui:** I am commenting about the conference.

**Com. Wanjiku Kabira:** Your name.

**Simon Kinyanjui:** My name is Simon Kinyanjui. Mheshimiwa niturathii tukahana tatura twika confused. Tondu turerwo ati riri, wona mwathii-ri ningi muthii mu-debate the whole issue ino ihaha, mwone kana nira-fit uria kwagiriire. Na riu we Mheshimiwa uratwira atiriri, in one afternoon, ati uhoro uyo wothe nu mu-pass tondu already ni muthiite through. Nao aria marathukia-ri marauga ati ona Wanjiku na aria angi matihotete kumenya uria Constitution ino ikite atia? Ithiite. Koguo-ri tukuigwa Wanjiku kana tukumenya aria maramenya uria kurathii? That is the question.

**Mr. Ngunjiri:** Njitagwo Ngunjiri na mutongoria wa bururi uyu araugire ira Kakamega ati, after October 12<sup>th</sup> ni egutangatha githurano riu ndirenda wita Muihia, we wiwa guku na MP aria angi mutwire atiriri ni atangatha githurano ni twike atia?

Constitution iyo irite billion inya, icio ni mbeba citu. Arimu memucii mbeba nemerirwo na matiaheirwo. Handu andu aya mangiateithirie mbeba icio marihe arimu-ri nigute tugute. Riu ndirenda mutwire atiriri, as the leaders tell us what we are going to do if Moi now dissolves Parliament, as simple as that?

**Mr. Njau:** Mimi naitwa Njau.

**Com. Wanjiku Kabira:** ...(Inaudible)

**Mr. Njau:** Nguga undu ukonainie nuria muthuri uyo auga, ngiongagirira kaundu ingiendire kuga mbere. You will correct me if I am not very correct but in your document, I have not seen anything like referendum. I am a strong believer in participatory democracy where every person is given a chance to participate on a contentious issue. Here we mean undu uratuthumbura bururi mugima-ri, tuheu right ya ku-vote for or against. For example, our MPs can be bought sometimes but nobody can buy 30 Million Kenyans, so can you provide for a referendum where by all Kenyans will be requested to vote. For example, for the extension or against it, for a new Constitution or against it.

Secondly, you realize that very few people have come here today, I believe the reason is ignorance. Nirona karataithi-ini kehaha ati you received 35,000 submissions throughout the country, is that true? I believe that is not all representatives, people shied away because they do not know matters concerning governance, democracy and so on. Ona haha andu aria meho ni very few people tio representative ya andu a Gatundu Constituency. Again because even if they come here they do not know what to say because they do not know what we are doing. When I was here last time, I suggested this that in your Constitution you compel the Kenyan Government to teach matters of governance and civil matters in all levels of our education system.

I would give an example, in Tanzania during the time of Nyerere there was a subject called siasa, which was taught everywhere.

Nariu nii ndira-propose onakorwo mundu e collage kana secondary school, onakorwo mundu arathoma nuclear science kama medicine kana ni, hakorwo he compulsory course ikonie governance. Murahuthirire mbeba nyingi ku-provide civic education. Suppose this had been done in our colleges, Kenyans would be very enlightened. Today we have many people who run away at the sight of a Chief naguku icagini because they do not know that they are innocent, they see that uniform and they disappear but if we are taught that a Chief is our employee, that a Policeman is supposed to work with us, Kenyans would be free. I am proposing that in that draft Constitution we have a compulsory education curriculum at all levels that will produce enlightened Kenyans I believe knowledge is power and secondly a referendum. Thank you.

**Samuel Mbugua:** Njitagwo Joshua Samuel. Kihinda kiria twari haha ngwiciria thiinii wa economy ya bururi nitwa heanire comment ikonii maundu ma girigaca. Ndinaigua Constitution tayaria uhoro wa girigaca tondu ni twaritie thiinii wa indo iria turakuria, ciathii marketing iguragwo below production cost. Riu ni twaritie uhoro ucio ugerie gwikirwo Constitution-ini, gukorwo ati murimi ni ararorwo muno ni thirikari ati hatiri handu murimi arathie at a loss tondu economy ya bururi yakitwo ni

farmers, ikorwo igithii naiguru.

Ni twacokire tukiaria uhoro wa, if I am not wrong tukiaria uhoro wa legal tender, uhoro wa Kenya currency because umuthi Mr. Mwiha akorwo e President mbica yake nio turicoraga hau. Ni twaritie ikorwo i something general, ati andu aria mara-sign mbeca icio, it is not necessarily that President, tondu riria ina mbica iyo yake, everybody in Kenya eikitie ati niwe ki? Niwe wagiriirwo gukorwo ekuo, niwe popular. Kwoguo nitwa heanire request nyamu iyo icenjio. Tahindi ino ya campaign rally tukwanjia, ndikuga twina kieha tondu ni undu uraki-happen at present. Nonitwageretie kuria who will cater for the damages. Constitution ikire stength ati akorwo ni Mr. Mwiha oka ena rally yake, ma-taliban make, meka uria megwika gugakua andu he is supposed to be held responsible for that. Ngwiciria uhoro ucio ni twawaritie in the last meeting iria twari nayo haha. Kwoguo nii uria ingi-request ni undu ucio wikirwo maanani muno. Nongwiciria ucio ni undu wagiriirwo ni gukorwo wi safe-guard kihindaini giki turorete gia siasa, tondu ndiguiciria ni wega tugakoragwo tuki-lose. Lives cia andu ta ira and the other day, I am sorry to say that tondu tutingihota ku-lose lives cia andu ati tondu wa interest ya mundu umwe. Kwoguo undu ucio ni wagiriire rucio ngakorwo ndi MP njike ooguo. Koguo iyo niyagiriirwo gukirwo force, uhoro wa ngirigaca niwagiriirwo gwikirwo force, uhoro wa medical, mundu wothe at least akorwo ena free medical treatment. Ndinaigwa mwauhe a right muno thini wa Constitution. Tondu maundu maria mebata thini wa mundu nu ugima wa mwiri na githoma, na sector iria ikinyitiriire bururi uyu witu, cia ngirigaca ikirorwo. Thank you.

**Com. Wanjiku Kabira:** ... (Inaudible) Okay, lets respond to these and then we can.

**Hon. Mwiha:** Mwi excuse hanini aria mekwendaga kwaria, ninii ndehoya negetha hutie part iria cigonii, ningwendaga gutengera Parliament riu. He debate igukorwo iho na ni 3:30 and I should be there.

**John Muturi:** Njitagwo John Muturi, ndiraririkana hindi ira twari haha tukirehe views, nitworirie Mheshimiwa magerie mathii Parliament maigirie Constitution ino turathondeka thini wa current Constitution nigetha ndikanavunjwo, incase tariu uguo turamaka ni tondu kungikwo githurano na ino nguru uria ukuingira no amite-ri twamoritie mathii Parliament magerie kumiingiria thini weno nguru, such that ndingivunjwo ni mundu kana undu ucio ndungivunjwo ni mundu no ugathii na mbere. Niguo gwendaga kuria Mheshimiwa kaa undu ucio wi muritu atia hii kuingiria uhoro ucio hau kana ona kahinda gaka gatigaru tondu mwi Parliament, undu ucio ndungihotekana kuheo priority, nigetha una twathie githurano giathira undu ucio ugathii nambere wega tutaku-depend na mundu?

**Hon. Mwiha:** Kiuria kiu woria thuthaiini Mr. Muturi nikiaritio maita maingi muno na ni ngugwetete haha rucini ndauga nitwageretie gwikira Commission ino thini wa Katiba ati una nuithii nambere Parliament igithii na elections nambere. No hindi iyo niguo turari na ngucanio nene muno na andu aria manyitanite na dictators, na twathii Parliament ni twaikirie kura tondu nonginya ingiahurirwo kura. Na nitwa ikirie kura na niahotirwo kura iyo. Kwoguo gutire undu ungika ona riu, no andu metikirire tu-vote ringi, tokorwo twina 2/3 majority ya gwikira Commission into the Constitution. Koguo nitwageririe gwika

uguo na gukirema. Nanikio twerwo ni Hon. Kahengeri tonginya uheo irio na gathani. Kwoguo yarega guthii na njira iyo, tuthii na njira ingi.

Thii na ihenya njoketie kyuria kia mwarimu, uhoro wa powers. Constitution ino inyitanitie democracy ya French, where we have Prime Minister and Executive President mena powers, igacoka ikanyitwo ta America democracy where even the President himself does not have a constituency and Ministers ni maheyagwo votes from any where so it is a mixture of democracy. Kwoguo kungigia na President Gatiba ino riria ndimithomete, President na Prime Minister ni mahetwo wira wao, na President ndangihota gukorwo ena running mate Prime Minister. Tondue Prime Minister athuragwo ni kiana kiria kina MPs aingi. Kwoguo noukorwo wi President wa kiana giki, no kiana kiu kingi nikio kira run the government of the day tondue nikio kina MPs aingi. Na angikorwo ndiri na andu aingi, ciana nini cinyitane ikirie kiana giki kimwe kia majority, still Prime Minister ekuma hau. Tondue wira wa Prime Minister ni gutwika ta Managing Director, where he has also other Directors above him, nowe niwe ukuaga day to day policy ya kiana kiu giake.

Hena danger ofcourse angikorwo democracy ndiigirite wega na kwoguo matirarumirira mutaratara uria wagiriire, Prime Minister akienda gukararia President, kana President akienda gukararia Prime Minister. It has happened in France for many years. Ona ni hindi France maragiire riu na truce. No mechanisms cia gu-sort out those matters, cii entrenched na Constitution. Kwoguo ni Constitution ikwenda guthomwo muno nigetha gutikagie na conflict, na kungigia na conflict gukorwo kwina mechanism ya gu-sort out that matter. It is there in the Constitution I have seen, I have not gone in details.

**John Mukui:** Hau niho ngugaga atiriri Mheshimiwa, niguo ngugaga powers icio ciina mahitia. Ni haria wiiguire ndauga wa kirimu witimagia na mugi. Riu haha niho kaundu gothe kahithitwo, riu matangihigio andu aitu-ri imerwo riu toguo turerwo haha. Maraigua o Prime Minister e munene kwi President. Riu agagithondekwo ati ni, tiga uria aretwo ni symbol of unity, agetwo nita kindu symbolic. Koguo riu ni andu aitu meku-need Mheshimiwa. Guthomithio muno, githomo giki gitwike intensified. Yes.

**Hon. Mwhia:** Point iyo ni njega tondue niyo yagiriirwo ni gutwika followed up, nigetha mamenye ati, President ena power haha, na Prime Minister e haha na mangiguthana, hena mechanism, kana hena njira ya gutua cira ucio. Eke thii quickly, ngwete uhoro ucio wa Constitution.

Uhoro wa police gangs na this gangstars, ona Parliament ni tuhitukitie Parliament, tukahitukia ati mundu muna angikorwo niwe ura fund a certain terrorist group, tondue nutucitire terrorist groups, niagiriirwo nigukorwo e responsible. No nimuwi nia mena group ici, na nimuwi nu wi incharge, na nikio turageria kweheria mundu wa one man rule nigetha ikoragwo ni collective responsibility. Korwo Katiba ino nithiite through, mundu uria ura-fund Mungiki kuhura aria angi, kana aka-fund Taliban, kana aka-fund Jeshi la Mzee, ni hari mechanism ya ku-deal na uhoro ucio. But for now we are dealing with tyranny, toria twirirwo kwina nyuki thiinii wa asali. Koguo ndingihota gucokia hau njuge uria kuri tondue watho wiho, Attorney General eho,

Commissioner wa Mburithi eho, no he acts from above. Iyo niyo problem iria twinayo.

**Joseph Muhia:** Turenda kumenya atiriri, unawe wathii Parliament uturirie kyoria kiu atiriri nikuramenyeka ni andu ariko mara-fund those gangs, na tondu nimaramenyeka-ri na electoral rules ni ciugite ungikorwo wina andu ta acio wagiriirwo gutwika banned. Mundu ta ucio agiriirwo gutwika banned earlier before elections are ready.

**Hon. Mwachia:** Uhoro wa trade, he mundu uratwirire uhoro wa trade. Thiina wa trade guku imbalance ti tondu mutirutaga wira kana Kenya ndirutaga wira, main problem iria twinayo ni corruption, uhoro wa mbiacara ni corruption. Ati kindu kiria giothe tukuragia guku ithui, gikoragwo ki maita mana uria kiagiriirwo ni kuma tondu nii ndagwitira tender, kuri andu mathondekaga project. Ni Managing Director agathondeka project iria eguthii na mbere nayo, wira wake wiwa kuia mbeba. Agathondeka project, igoka ikaheo mbia ni Ministry. Uyu uraheana mbeba kwa Ministry ni etikira project iyo ni njega, nake ena gicunji giake hau. Kwoguo twambiririe na Managing Director, tugathii kwa parent ministry, na aria mekuruta wira ucio wotho. Kwoguo by the time mwa-produce coca cola ya Kenya, ugakora ni maita matatu ma coca cola iria turaria umuthi. So really the question of trade of this country niku-need to tackle corruption, na management nigetha tuhote kugia na goods cira compete.

Uroriu turari level imwe kana turare iguru wa East Asia, na riu East Asia today, the Tigers of Asia, nio membre ito tondu kwina checks and balances. Na angorwo produce ito ya kahua, nitwagiriirwo nigukorwo gutiri na middle men aingi between farmer na uria ukanyua kahua kau. Hau naho niho tuteagira mbeba nyingi cikiriio ni andu gatagati-ini. Ta example toguo ndauga uhoro wa mbeba kuria Kenya Port Authority Mombasa, Managing Director augire ni arenda guika renovation ya port ya Mombasa, magita contractors na architects, quantity surveyors magithondeka document wira wa 2.4 billion shillings. No tondu una parent ministry ndioi na gutiari mbeba ta 2.4 billion shillings, document teno igithondekwo, kwoguo muthondeki wa document iyo ni akurihwo percentage yake, engineer, quantity surveyor, othe magatarirwo ni Managing Director, wira ucio wacokire ukirihwo 550 million shillings, ikirihwo andu makigayana, magikira muhuko.

N.S.S.F the other day mbia cirarutirwo 256 million. Ni mundu umwe akabutwo na thimu, ukandika ungi na thimu wa kuruta ucio wa kuia, thutha wa mweri itatu mbia cia N.S.S.F ciendaga kuiyo 983 million, no iria cirakorirwo ciathii ni 256 million tondu Managing Director ni athire aki-sign, kuria Central Bank cigitikiriio kuma gutari na authority. Handu ha guthii bengi ya N.S.S.F ikinengerwo andu metagwo Shah Munge nao magitwara kabengi gitagwo Euro Bank. The following day ikigayanwo and one of the Directors wa Euro Bank, ni the head of Civil Service in this country. (inaudible).

Riu uhoro ucio niguo twauga corruption iyo itangiehera, ona tuture twikaga trade kana whatever we want to do, totingihota gu-succeed. So it is a question of government policy itwike implemented ni that other government. Koguo wina role nene ya guthondeka that government. Na subsidies tahau niho ciokagira, angikorwo Tanzania na Uganda, kinya indo ciao cii raithi, thirikari ya guku niyagukorwo ina supporting fund ya guteithia murimi kana trader, ikamuhe rebate akahota kwendia at par na

andu aria angi. And therefore hindi iria ariendia indo nyingi muno niakugia na margin nene, so the goods become cheaper. It is not a question of a Constitution, ucio ni uhoro wa policy but of course backed by elimination of corruption.

Ni twaria uhoro wa Constitutional Conference niguu ukwendaga kuria, thiinii wa program ya Commission na niyo Commissioner angiamwira, ni kwari na uhoro wa referendum. Constitutional Conference na kwina referendum. Thiinii wa Constitutional Conference, ni document ino turaria na inyui umuthi, korwo kwina time muthii mumithii through mutunengere mawoni, tuthii tumi-challenge, tumi- criticize, kuria thiinii wa mucemano andu acio delegates magathii. Nigugakinya handu tugie na issue imwe turemanwo. Twaremanwo hau niho twagiriirwo gwika referendum. No tondu ni turenda kugie na new Constitution, tukiurio ni committee ya Parliament iria iraruta uhoro wa Constitution, tweherie referendum maundu mothe tukaiguithaniria kuria. Well many of us like me we refused it, tukiuga referendum ni necessary. It is very necessary. Nayo ni necessary tariu uguo twina a contentious issue ya two Houses. The National Council na Parliament. Na ndathoma recommendations cihaha cina a lot of duplication uria National Council ireka, nogu National Assembly ireka in many areas. Koguo issue teyo ni issue tungithii turemanwo na ngauga angikorwo twina devolution of powers tutirionaga cibi any more, tutirionaga headman, turionaga mundu chairman muthurite akiruta wira guku in that devolved power. Na power cia Central Government ciuke kwi Local Authority. Hindi iyo hena Checks and Balances ndikwona bata nii wa tugie na a Council na tutiiritwo Council members acio nia. I don't know Commissioner noagitwire.

There is a contention there, do we wait or do we do it now? I think for the purposes ya ku-move notwitikire tu swallow our pride, go to the Constitutional Conference because Constitution making is also a continuous process. Ni nyamu ingitwika reviewed angikorwo nitwa mitua entrenched. Then thirikari iyo ingi noithii ikiroraga on those referendum issues to address. But what you are asking ni ati ndiracoka guku, itanathii kuria nikiu riu tureka this consultation nainyui. Thiinii wa Constitutional Conference, MPs othe magakorwo mehau na andu acio angi District representatives othe na NGOs ni magakorwo me hau na hindi iyo tukahana ota Parliament, uria tukoragwo na debate ya item igathii clause by clause. Cingitikanirio ciothe mbere hatikiri bata ningi twi members of Parliament, na turari party of the decision making haria, ningi tuthii tumitikire. Nututhire twone ti njega tumirege in total kama tume-accept in total kana tume-accept in total nikio ndirauga no ihitukio in one day tondu duku-need guthii through that clause by clause throughout the Constitutional process.

Hena undu ucio ningi wa ku-domesticate mawatho, kana kuiguithia andu, civic education. Civic education ehahurirwo no system o ino. Na muikare mukiririkanaga hatiri hindi the President of the Republic of Kenya Daniel Arap Moi ari enda kana oiga niakwenda a new Constitution. Koguo tukoragwo tukiruwa mbara against the tide. Mundu ukoretwo e-entrenched for many years ena all the powers. Kwoguo onakorwo tutiigia na time, ni necessary, Gatiba ino ingithii itwike accepted the new government immediately agie na forum ya civic education, tondu mungithii muge niinyui mwetikirire watho uyo una kuurumirira ni raithi tondu niuwi. We niuwi right yaku na niuwi uria uguika. No ungikorwo ndui urionaga hingo ciothe ni muthigari wina kirauni urenda ku-use up your position. So there are still grey areas to be addressed after we accept the Constitution. Ndiguiciria ndina maundu mangi tiga uhoro ucio wa ku-desolve Parliament.

Moi can dissolve Parliament now as we sit here. Nonyume haha njage gukinya Bunge ngore nitwikire dissolved. Ena that power he has allotted to himself alone, him and him alone. My position as your Member of Parliament niguthii gu-take up the matter. Mweri wa September hindi iria kurathiororokagwo andu magithondeka uhora wa land, I was in Parliament PIC, work, Parliamentary Investment Committee. Na niyo irokire na recommendations iria ciothe mbia citu. We now need to go and table that document, dikanore. I Know from now on what I need to do, niguthii kunyitana na andu aria angi riu. I want to tackle every particular leaders, various groupings. Nigetha challenge iyo murahe haha ndimatwarire na nigetha tume to come back to the satement iria tukumenya ithuothe. Tungira Moi ona avunja ndari kundu eguthii ndari undu angika.

In 1997, we were almost there. Twatwikire punctured ni I.P.P.G, twari hau. 1992 nitwathiite muno tugitwika punctured na uhoro wa ethnicity, tribe ino ni inyui mugutongoria, haha ni inyui mugotongoria. No tunginyitanira this issue tondu ni ira-affect bururi uyu witu na njira nene muno, nimui tariu uguo turambiriire Parliament ino mwi na deficit ya billion 34, thirikari itari nacio, 34 billion ya gutwarithia maundu manyu.

Tucope ningi tweterere ningi World Bank iraugire ndigoka guku ringi, na World Bank na IMF, matikarehe shiringi yao guku tutacenjetie mawatho maya marena tucenje. Maramwira atiriri, get rid of this bad government let us start anew, nigetha by next year tukahota kugia na relationship na donors. Ndikoragwo na belief ya donor money, because we are rich enough. But for the time being nigetha tume kuria turi, nonginya twarie nao, tu-move, clear off their debts, we continue with a good sound economy.

With those few words, I want to thank all of you niundu wa guka.

**Stephen Muchana:** Riria tugire makorwo maki-buy time ati nomuhaka kugie na Commission o Commission iria irithondekaga impeachment ya President nigetha ihitukio Parliament, igathii uguo magigacoka ku-impeach the President?

**Interjection:** (inaudible)

**Com. Wanjiku Kabira:** I will address it later.

**Hon. Mwihia:** FIDA matingiuka guku we want the owner to come one FIDA niamenya uria auga. Owner akorwo ehakuhi na FIDA. Nii ningwendaga kuhoya rutha. (laughter)

**Stephen Muchana:** Ngwendaga gukuria atiriri tondu maundu ni mahitanu muno thiini wa bururi-ri, parastatals igithira ciothe-ri na muriuthiini wa House, muregaga ku-protect maundu maya muno niki na mukiuge mbu pio?

**Com. Wanjiku Kabira:** Okay lets have this one and then the next.

**Stephen Muchana:** Nii riria ndiracokire kuona Katiba-ri he handu hamwe hatanangenia, riria ndironire mandikitwo ati gwikwo nomination ya andu mirongo kenda-ri na bururi wa Kenya nduri mbeba ni muthiini-ri ndinona hagiriire. Ndironire o 210 constituencies maikare kuo, gwikwo nomination ya andu 12 na president akorwo ewa ku-nominate constituency athuritwo niandu na Vice President na Prime Minister no ti ceremonial. Powers ni njega no ningi makorwo mathuritwo constituency mathuritwo President, Vice President na Prime Minister.

Twauma hau tutige kuhatiriria andu angi a wira niundu wa economy tondu gutiri mbeba.

**Com. Wanjiku Kabira:** ...(Inaudible)

**Charles Mbutia:** Njitagwo Charles Mbutia Mbugua kuma Kiganjo. I think the problem that we are having in this country, one thing...

**(Interjection)- Com. Wanjiku Kabira:** ...(Inaudible)

**Charles Mbutia:** We have this problem Mheshimiwa because one thing those people who are in the opposition they feel un-represented. This is what we are made to be because we even now don't know the difference between the ruling party and the Government, because I think we are supposed to have a difference between the ruling party and the Government. These are supposed to be two different institutions because like today you can see how many people we are having here. If at all this had been called by one of the ruling party members if fact you could have seen how many people who could have been here. The could have used all the resources they have to make sure that we have a lot of people here, and even those who were to come here they could not come for a challenge. They could have come because they will be paid and this is what is happening even in those rallies where they are going all over the country.

Now, is the Constitution in any way going to guard our public coffers where by these people will not be able to withdraw money in order to manipulate the voters? We need the Constitution to guard our money, we as taxpayers. That is what I wanted Mheshimiwa to hear.

**Hon. Mwihiya:** Ni njega. Kuria nyambe ngucokeria kioria kiu giaku kia opposition na thirikari. In democracies kana wi opposition, kana wi rulling party, ukoragwo wi-presented angikorwo nayo Constitution iria mwinayo nirarumirirwo. Kana ni rulling party because you can have a party with the President but it is not the Government because the Government will be formed by the other party. This Constitution we are discussing now when you get time when you go through it, it is taking care of these issues so that in future we will not have people running to our coffers and taking all the money to go and pay individuals

to attend meetings. Incidentally even if we are thousands here it will be only for the purpose of people getting their belonging, those of you who are here represent very many other people who are down there and your views I am sure are the views of those who have not come here.

On the question of protection of parastatals, what we do we have Parliamentary Investment Committee, Parliamentary Accounts Committee, and we have other standing committees which do investigations and we have this document showing who has taken what in this country. However, once it has gone through Parliament and received by Parliament it is the duty of the Executive to implement, but who is the Executive? It is the same dictatorship. So we have a document, we know where our money is and once you give us a new Government we will get this money back because we do a lot of work.

In fact in the seventh Parliament all the committees had been removed but in the eighth Parliament we fought and brought the committees back and they have done their work it is beautiful work, and we only need to implement it through the new system. This document has all those committees in place, giving the powers of a High Court, they can summon you, if they think you are lying, you give evidence on those, we do that. That is what we did with the man who stole the NSSF money, Mr. Mutweta. He was giving evidence on oath and giving lies on oath because all the signatures had been verified and they are his. He was told by Gideon Moi and Sally Kosgey, we will protect you, don't give the information and the Permanent Secretary comes and sits next to him when he is giving evidence, so that he doesn't give all the evidence because he will be implicated. These are the things we want to remove so that we are able to run the Government efficiently. Thank you.

**Com. Wanjiku Kabira:** Are we going to get that money back?

**Hon. Mwihia:** Right now it is already divided, it is in pockets of individuals we shall put them to task. Thank you very much ladies and gentlemen I think I might now seek to leave.

**Brigadier Waitiki:** Before you leave, I would like to take this opportunity to tell the participants here that, this document we can work on it, we can make it as perfect as possible but the key fact is if the Chief Executive has no respect for law then what we are doing is wasted. So Mheshimiwa go back to the Parliament but we would like you to give us earliest pointers which way we are going. Thank you.

**Com. Wanjiku Kabira:** Can we clap for Mheshimiwa. (*Applause*)

I must admit that we are very happy today that you are able to sit with us since morning and it makes us feel that we are making this Constitution together, and when we go to the National Conference, I think the people from Juja will feel confident that their interests are taken in, sorry Gatundu South. I was at Juja yesterday that is why. I think we are very happy that you have been able to sit with us. We will continue just a little while but I also want to make sure.

There are some women in this hall since morning not a single woman has said anything about this document, and I am going to plead with the women who are here at least even to know that there provisions for the women and say what they think about them. Not only that, I think the whole Constitution belongs to all of us and we have young men, older men and all of us who have been contributing to this but not a single woman has actually said anything on this document. I don't think we want to leave Gatundu South. Mheshimiwa has already said he knows there is even a woman in this room who has very good leadership qualities and many others, so we want them at least to say something but we will let Mheshimiwa go because we need him in Parliament. If it is not dissolved, he will continue struggling to make sure that either this document is entrenched or we are able to go to the elections with the new Constitution. We know he has been in the struggle we have seen him in the streets and everywhere, actually promoting the democratic ideals of this country. Therefore, we want to let him go so that we can continue a little more.

**Hon. Mwihia:** Thank you very much. (*Applause*)

**Com. Wanjiku Kabira:** Okay, so what we are going to do, I know there are one or two questions I have not answered but I want us to give people the last chance, those who have anything to raise and then we will close in the next 5 minutes but the women cannot go until they have said something. Anybody who has any other questions?

**Speaker:** I have one.

**Com. Wanjiku Kabira:** Okay, you have one, there is one at the back.

**Stephen Wanyoike:** And that one.

**Com. Wanjiku Kabira:** Okay, three. So that is number one, two, three, four, the lady in nguo ya madoadoa and the one in red. So you are number five yourself and number six and then we will close.

**Brigadier Waitiki:** My name is Waitiki. I would like to draw your attention to the 2 chapters, chapter 14 and chapter 15. We are talking of public service and we are talking of defense forces and national security. In article 272, you have talked of the Director of National Security Intelligence Services as a member of Security Council. The document talks about it but the National Security Intelligence Services is not established by this document. I believe this was part of the Police Force, which by an Act of Parliament they were divorced from the Police and now this document seems to have actually ignored it. We need to bring it back and spell out their roles and duties and their organization if possible. Thank you.

**Com. Wanjiku Kabira:** Thank you very much.

**Stephen Wanyoike:** Number two.

**Erick Maina:** My name is Erick Maina. Njitagwo Erick Maina. Ngwendaga kuria tariu hati undu thirikari ingika tariu mundu uria utari wira, aheo limit ya birth rate ya ciana kuigihia? Yaani tariu mundu uteri na wira, tariu tani-ri itari na wira-ri ndigakinyie ciana ta ithano, ithathatu ndiracihe education. Onakorwo nituraheo primary tuhu-ri ciakinya secondary ndii hota gucirihira bado.

**Henry Gitau:** My name is Henry Gitau, I would like to address the issue President retirement package. Why is the President of this country being the Chief Budgeter of the economic growth, democracy and the rule of law being entitled for such a huge amount when he is the one who directs all the catalogues of financial scandals? Why should he be entitled to all that package when he is the impediment of economic growth? Thank you.

**Com. Wanjiku Kabira:** That bit, I wish you asked Mheshimiwa Mwuhia because that bill was passed in Parliament about two weeks ago it is not in our Constitution but it was passed by Parliament about two weeks ago. So he would have been the right person to answer that.

Now, those who are not employed to limit the number of children they should have? You want to say the poorer you are the fewer children you should have. By the way the right to form a family and to have children is a right also protected by the Constitution. You know sometimes you don't give freedom with one hand and take it away with another hand but I think basically what we should be thinking about is much more education on birth control and so on which has been going on. Incidentally, the number of births are going down and you will find that the poor have more children because they are poor. In a sense sometimes they don't have the facilities, they are not able to go to the hospitals, they don't have any leisure so they stay in the house and so on, so they end up having more children than the other people.

One of the ways by the way of reducing the number of children is eradication of poverty. You will find that the rich have fewer children than the poor, isn't it? I think there are different methods of reducing the family, although by the way in Uganda they say that they have free primary education but only for four children, if you have more than four children then you pay for them. That is also causing the family to make sure they don't have more than four children. Sorry we go to the women now.

**Ngunjiri:** My question has not been answered.

**Com. Wanjiku Kabira:** Are you the one who talked about basic needs?

**Ngunjiri:** No about the referendum.

**Com. Wanjiku Kabira:** The referendum is there by the way I am sorry, it is. If you look towards the end, where you have constitutional amendments. It is article 294 and we talked about this in the morning. There are a number of issues, a number of provisions within the Constitution that you cannot actually amend except through a referendum. If you look at number three an amendment that seeks to make any change in the territory of Kenya, the sovereignty of the people, the principles and values of the republic as set out in this document, the bill of rights. You know you cannot just say that you can be detained without trial a referendum. The structures, the values and principles of devolution, in other words once we have devolved power to the district you cannot change that without a referendum from Kenyans. You cannot abolish the Locational Councils or even the Village Councils that we have proposed in this document without a referendum. Citizenship cannot be changed and so on.

Therefore, we are saying that you will require a referendum to make any amendments in this area. So the referendum is there and it is making it more difficult for Parliament to amend any part of the Constitution. The original Constitution was amended in two years to remove regional Governments and so on, and the amendments which have been done by Parliament are the ones which have led us to where we are today. I think this Constitution as recommended by Kenyans has made it very difficult for Parliament to amend very important aspects of the Constitution, is that okay?

**Ngunjiri:** ...(Inaudible)

**Com. Wanjiku Kabira:** Alerting the Kenyans. Yes, I was going to say that we have a Human Rights and Administrative Justice Commission under which we have the Ombudsman, we have Gender Commission, we have a Commission for people with disabilities and so on, we have Salaries and Remuneration Commission. All those Commissions by the way one of their primary functions is civic education, and it is in the Constitution. So they actually will educate Kenyans on all those various aspects of the Constitution. Thank you.

I don't know whether the gentleman is there, I think you are the one who asked about the agriculture and so on, you at the back. I think may be you were absent when we dealt with those issues for your sake I am going to repeat a little that we had the provision under basic needs, the ones we talked about. We have a number of provisions and let me see whether I can get them now. Article 56, if you look at article 56 which is on page nine we have provided for social security, health, education, housing, food, water, sanitation and a clean environment. Many recommendations came under that and we have provided for that. We have also said that the Human Rights and Administrative Justice Commission is also going to have both an Ombudsman to monitor this but also a Basic Needs Commission that is going to ensure that these issues are addressed. We talked about that in the morning. The other thing that you raised that I thought need to be dealt with was the issue of medical services which fall under that.

The issue of transition, those who commit crime you are the one who talked about them. Those who commit using Talibans or Mungiki and so on, what we have provided here is that within six months of the new Constitution coming into place, the Human

Rights and Administrative Justice Commission is actually going to carry out investigations and it is going to determine the criminals within this area. Also decide on issues of compensation and we have said that should be done by the Human Rights and Administrative Justice Commission so that should be taken care of. I think those were the main issues.

The issues of agriculture we talked about in the morning and I think Mheshimiwa has also talked about them. Talking about corruption being one of the main reasons why the farmers are not protected, mismanagement of resources and we have provided within the Constitution for various ways of managing the economy, including like I said earlier the establishment of Economic Commissions which consists of a team of experts who are going to advice on the improvements of the economy.

**Speaker:** ...(Inaudible)

**Com. Wanjiku Kabira:** The currency I think it was discussed but I don't think there were enough people who presented on the currency for it to be taken into the Constitution, so I know that one is not appearing in the Constitution. Thank you.

**Stephen Wanyoike:** There was number four.

**Com. Wanjiku Kabira:** Now I am going to have this lady and that lady and the one who has disappeared. Okay, please.

**Esther Wambui:** I would like to comment on the ...

**(Interjection)**

**Speaker:** Your name.

**Esther Wambui:** My name is Esther. I would like to comment on the issue of the basic rights of an individual where the draft talks about water, health, education and I would like to comment on education. The draft is talking about equal rights in education and I did not understand clearly what it means simply by saying equal rights in education because in our present system of education, for example lets take the higher education. In universities, the intake is now B and some of the students who attained grade B had no place in the universities, these people with B's now are supposed to go to parallel programmes of the university education of go a middle level colleges. When we go to the middle level colleges the system used there cannot be met by ordinary Kenyans. Ordinary Kenyans cannot afford the fee charged, so some of the student who attains B stays at home while some students who attained C's and C- (minus) have degrees. This I don't think is a fair way, it is an unfair system of education.

I am giving an example of our medical colleges, our Government medical colleges have adopted a system whereby the students are paying about Kshs. 70,000/= in a year. Surely we ordinary people even if you have passed with an A or B your child cannot enter those institutions and at the same time in the parallel programme they are paying almost Kshs. 200,000/= shillings

in a year. Surely, those in the rural areas cannot afford Kshs. 200,000/= even if you come from the rural area and you have only one child, you cannot afford. So the fairness the draft is talking about in education I have not understood it.

The other issue I would like to comment on is on women groups. We feel that the Wanjiku at the village is not represented even if we have women caucus, they do not represent us and they represent their own interests. They are just like the other politicians because we have women organizations in our villages and we never go very far. We organize ourselves with the little we have, we cannot get access to loans, we cannot get access to any assistance and we have Merry go rounds only. When they are talking in Parliament, when they are talking as lawyers they say they are representatives of women in Kenya, they are not. Therefore, we need to be represented in the Constitution from the grassroots not from the top, because we do not belong to that community, we want ourselves represented. Thank you.

**Com. Wanjiku Kabira:** Thank you very much. You are Esther isn't it? Okay, there is another lady.

**Liz.** Thank you. My name is Liz, I am not even sure whether I should be talking in this forum or not because I want to draw your attention whatever you have on page 32, chapter 14 (d). It is talking about encouragement of people to participate in policy making. As I was seated here and as a friend of mine talked here and said that when you look around you note that there are very few people. I imagine if it was the DC or the PC who was coming here, just next to us we have the offices of all the other civil servants and like me they are not sure whether they should come here or not and if they come whether they should present their views or not as individuals. Therefore, I would wish to have a clarification on that. All the same, I want to say that we feel intimidated on that and therefore may be I would even choose in this kind of a forum to touch on a lesser very thorny issue.

I want to talk about the girl child and say that that we in the education system we sometimes find it very ..... If I may use an example of the AIDS scourge and say that what is happening is that, when the parents get sick of AIDS for example, the girl child has all the responsibilities of taking care of the ailing parents and of taking care of the children. I am wondering what the Constitution now ...(Inadible), we know that this should not happen. The girl child should not get abused but what next? We have the children who are being abused and a case in reference is the one that was being mentioned. A child of nine years or ten years is abused, they are taken to court, the parents agree, they settle the case out of court and the case is withdrawn. What happens next? Thank you.

**Com. Wanjiku Kabira:** I know we had two or three other people who want to speak. Let me respond to the women and may be beginning with Esther and say that basic education is what is supposed to be free. We were checking with the Koech Commission whether basic education means up to standard eight or up to form four. Although basic education is being taken as from pre primary to standard eight, many people feel that may be basic education should be up to form four, because really standard eight doesn't mean very much anymore in this country, and I think that is the concept we took for basic rights.

I also want to agree with you that in terms of equitable access to resources, resources not just meaning money but meaning opportunities is not apparent today. Like you said and probably I want to dispel may be one of the fears. It is true that people who get grade B at present are not going to public universities mainly because the Government is unable to support higher education. Therefore, they have a limited number of people that they accept in the public universities, which means that of course those who can afford will go to private universities or they will go to the parallel degree programme, which again is another support for the Government institutions which are the public universities. So I think in terms of higher education for the poor in this country that is not an area that has been dealt with. So I want to agree that is an area which is not properly looked after and that is also an area that needs to go into the education policy. How do you deal with the scholarships? I want to go back to what Mheshimiwa said earlier. I have looked at the Government budget there is money allocated for loans, those loans are supposed to be for the poor.

I can tell you for instance last year the allocation for loans, not the loans now that go to public universities, money that is supposed to go to the poor children was Kshs. 600 Million. There is also money that is allocated for scholarships, and I know the last budget had Kshs. 80 million. In my life and I have been within the education system, I have been teaching at the university for the last 23 years. I don't know of a single student who has gotten a scholarship from the Ministry of Education, and every year they have either Kshs. 60 million or Kshs. 80 million that is actually supposed to be for scholarships for students. There is no transparent way of giving those scholarships, there is no clear manner in which loans are given and I think I want to go back to what Mheshimiwa was saying. It is just as corruption so that the children of the Permanent Secretaries, the Deputy Secretaries, and Minister and so on are actually the ones getting money. Can I tell you this that when I was at the university 22 years ago doing my masters what was shocking was that none of the people in Central Province by the way were there on scholarship. They were there either because they have won a scholarship with some company or they are being supported by their parents but many other people belonging to ethnic communities in leadership at the time were the ones who were getting the scholarships. So I think it is not that there is no money, it is just that our Government is riddled with corruption and actually total unfairness but like I say, ask even the teachers themselves or the principles of the colleges, they don't know who gets the loans.

Long time ago my father was a Councillor in the early 60's after independence but like Kiambu District the Council would actually allocate money for children, I know I used to get some money for high school but the village knew. In our own village we used to know so and so was sponsored. As my father had four four wives so we were very many children but I was sponsored not because he could not afford, but because he had 18 children in school and there is that one who was sponsored because they are poor and others who were poor as well. Even the amount of money was known how much you got from the bursaries but now even the teachers themselves, the heads of schools do not know how much money has been allocated. I think it has more to do with corruption than anything else, those poor students who are going to private schools and by the way even the Loans Board is allowed to give loans to children who get a D and go to private universities. They are actually allowed

to give the scholarships but the truth is that the whole process is like we have said it, is corrupt. So we have to deal with corruption at its roots for us actually even to talk about equitability.

Sometimes we blame even the wrong people for what is going on, like we blame somebody who sends his or her child to USIU, and sometimes that parent has also sold his piece of land to send that child to go school. The truth is that, that piece of land should not have been sold for that child to school because the Government has already allocated a budget and the Ministry should pay. I know we campaigned a few years ago to try to get what we call a National Bursary Committee just to be able to scrutinize the people who get the bursaries but it has been very difficult. So I think we not only need a constitutional order but a transparent system that is going to handle this thing. This one is not even the Constitution it is just corruption within our own system.

Now, women organizations I happen to be one of the people in the women organization so I want to look at this draft, and I am going to give you some provisions, not just her for everybody. I wanted us to look at Parliament for instance, may be before we go to Parliament look at page 6, article 35 gives you the provisions that have been put in place for women and we are talking about equal treatment with men including the right to equal opportunities in political, economic and social activities. Women are entitled to be accorded the same dignity of persons as the men. Women and men have an equal right to inherit and we are saying to inherit from your parents or from husband or from anybody, have access to and control over property.

We are saying that any law, culture, custom or tradition that undermines the dignity and welfare of women should be prohibited.

We are also saying that the State shall protect women and their rights taking into account their unique status and natural maternal role in the society. We are saying, you know women are also denied jobs sometimes because they are pregnant. When I was applying to become a Senior Lecturer in my university and I was pregnant, the questions I was asked. What are you going to do because you are pregnant and we need somebody to teach? I was already teaching the course because I was still at the same university but I told them this. That situation is not permanent, you know the pregnancy only lasts for a certain period of time but also we are the ones producing the nation. So, we are saying that women should not be discriminated against on the basis of what they do as mothers and so on.

Therefore I also want you to look at Parliament but before you go to Parliament I would like you to look at political parties which is article 87. We have recommended that political parties be given some money and in the way they are going to use the money, the purposes of the fund. I want you to look at article 95 (iii) at the bottom. It says, 50% of the monies allocated by Parliament shall be distributed equally among political parties each of which obtains not less than 5% of the total votes casts at the previous parliamentary elections. The remaining 50% shall be paid proportionately by reference to the number votes secured by each of the political parties and the number of women candidates elected in each party. So we are saying, that one of the ways of making political parties involve women much more at every level is to make sure that you get money. The distribution of the 50% is actually based on the number of women candidates who have been elected.

We are also saying that political parties are going to be forced by law to nominate one third of their candidates as women so if this document is put in place one third of the candidates will have to be nominated by political parties and we are making it constitutional in order to promote participation of women. If you look at representation of women which is article 109 on page 15. We are saying that at least one third of the members of each house shall be women. Today we have 33% I think so we are saying that 3% of the members of the Lower House and the Upper House shall be women. We are also saying that within three years of coming into force of this Constitution Parliament shall enact a law to implement the requirement of this clause. In other words, that will have to be put into practice otherwise the Parliament is going to be unconstitutional if it is constituted with less than one third of women except for the first election.

In terms of the seats which we have talked about, the 90 seats I think that is under the electoral laws. We are also saying that the 90 seats in Parliament, we are saying that 50%. I cannot find the provision now but 50% of the 90 seats are going to be women. So 45 out of the 90 seats are actually going to be women seats but we are saying that these are also going to be proposed by political parties.

**(Interjection)**

**Speaker:** ...(Inaudible)

**Com. Wanjiku Kabira:** But you know since morning I have not talked about women and we have been talking about all the provisions, so I have only spent 5 minutes talking about the women and since morning I have been talking about everything else.

So which means it is not pushing so much about women otherwise it would have appeared in all the other things I have been talking since morning.

**Speaker:** ...(Inaudible)

**Com. Wanjiku Kabira:** Because you know that it will be very good for this country that women participate. You know these two ladies I asked them this afternoon to contribute they did not put their hands up but you can see they have also brought a new dimension to our own discussion.

**Speaker:** ...(Inaudible) If a woman feels that she is capable she should be ...(Inaudible)

**Com. Wanjiku Kabira:** Okay, you know there are some things may be one needs to think about. We can deal with evolution, we know that things evolve as we move along but for the sake of the nation, we can also use the law for what we call social engineering. For instance, we said that the Constituency Committee should have three women and people said now where will the women come from, they will not participate in this? But when you make it a law you will find that the men will

also look for those women and they will find them. You will find that our own debate even in Parliament will change because women and men have different experiences. Let me give you an example, when you say you have a woman working and getting some money you will find that she will spend the money may be on food, many people think she will spend money in the saloon but she only spends if there is something left. There is hardly any woman unless there is a mad one who will go to the saloon if there is no milk and there is no unga in the house, there isn't, that woman doesn't exist. When she has unga and milk in the house then she may go to the saloon.

**Clement Kimata:** What about if 50% of the 90 seats of women are not elected or if they are nominated and what about the 30% if they are not elected because there is a tendency that women have got more votes than men but they don't vote for their fellow women.

**Com. Wanjiku Kabira:** The 90 seats by the way are not nominated and may be I wanted to clarify that because there is a misconception. We are talking about 210 seats, the current ones we have, and we have been saying that these seats do not reflect a clear representation, and because you will not be able to change the status quo in terms of the constituencies in order to try to bridge the gap. In terms of representation, we have introduced an electoral system which is called Mixed Member Proportional Representation. What we have at present is what we call the majoritarian kind of electoral process, so these 90 are not actually seats which are going to be said these belong to women.

These will belong to political parties, and so when you are voting you will vote for Gitu wa Kahengeri if he is standing in this constituency, now you will vote him under whatever party he is in and then you will have another vote for the party he is in. If it is DP or if it is NARC or Ford People Coalition or whether it is KANU, you will have a vote for the candidate and a vote for the party. So the party that gets most votes, you will determine the kind of party that you are going to vote for because of the list they gave you. On that list they will have yourself as a candidate, they will have me as a candidate, they will have Wanyoike as a candidate, they will Josephine as a candidate, so they will have a man and a woman, a man and a woman, a man and a woman, that is how you come to the 45. So you will not actually be electing that woman, you will be electing that party but we are forcing the parties to do that because when we send the parties to give us a list of 20, they will give us a list of 20 men. So, the Constitution tells them, you are going to give us a list of your best 90 candidates so that these particular candidates also sell your party. So you are not going to have a woman who is not going to give a name to the party or who is not going to make the party popular, so you will have to look for a woman whom you know that when people see this woman on our list they will know this is a great party. Therefore, it is not actually the woman herself that you are voting, you will actually be voting for the party and the women themselves have to lobby with the political parties and they will have to demonstrate that they are committed members of the party.

**(Interjection)**

**Speaker:** And the 30%.

**Com. Wanjiku Kabira:** No the 30% is on the 210 seats where we are asking the parties to nominate one third but I can tell you what will happen, and that is why we have it on the fund. We know that if we say you nominated one that, okay Uhuru Kenyatta is standing in this constituency then let me say SDP or any party will nominate me to this constituency. Of course they know I am not going to win, first of all they will know that the ground is not level or you get a Luo woman being given the seat for Kibaki in Othaya. So they will have fulfilled the law but the women will not be nominated, that is why we have a rider but what we are saying is that, that is going to cause political parties to look for women who can win to encourage them to participate and so on. We are also saying that you are going to get the funds depending on the number of women in your party that win elections, which will make the people not nominate me to where Raila stands, Langatta but probably nominate me to a place where I can win. Then you get money to manage your party within the course of the year, which is from the public.

I am also going to saying that the Village Councils we have said, the Village Councils are going to elect to the Locational Council a man and a woman. We are also saying that the District Councils should have one third women representation. I wanted to say to the two ladies that I think the Constitution this time round has tried to bring the representation of women at all levels. Although I belong for instance to the national women organization and I actually became a Commissioner from election by the women themselves I believe that there is a meeting point both for the women in rural areas and women in the national organizations but probably we need to strengthen the linkage.

**Esther Wambui:** Our women organizations in the rural areas we just end at the CDA's office there, even the district representative we just know her when there are elections like at this time, we shall know the district representative but at other times we are left on our own. We never go beyond the locational CDA, that is our ending point. What happens in the national level, we are cut off so we cannot grow.

**Com. Wanjiku Kabira:** That is why we to go to the District Councils, Locational Councils and the Village Council and that kind of relationship and then we have the Provincial Council and National Council. I think what you are saying is true, so that we don't have power concentrated at the centre at the expense of the women at the grass root level.

**Stephen Wanyoike:** I think what I understand Esther is trying to stress is that, just like the Constitution is trying to involve women in total within the political system or other areas. Probably it could also try to involve the rural women by putting a kind of a clause that says look, these must come from the grass root level rather than at the national level. I think that perhaps that is what I understand by what she says because I think they think they are marginalized at the grass root, rural level as opposed to the national level, isn't it?

**Ether Wambui:** When we come to the locational level we end there. The district elections we do not know where they are held, we do not know our representative there, we just end at the locational level. Therefore, we feel that we are represented

by the women in the national level because they do not even know our problems. You know the problems that higher group, the educated group, have are quite different from the problems that the grass root women have, and they need also to solve their problems the way those educated caucus are solving their problems. We at the grass root need also to solve our problems and we have nowhere to take them.

**Com. Wanjiku Kabira:** The CDA is not a women's organization, isn't it?

**Esther Wambui:** It is not an organization but that is the furthest we can go.

**Com. Wanjiku Kabira:** Yes, but that is a Government institution.

**Clement Kimata:** That is a Government office ....

**Com. Wanjiku Kabira:** From the Ministry of Home Affairs Culture and Social Services.

**Ether Wambui:** Even if it is not a women organization we end there.

**Clement Kimata:** What Esther is trying to emphasize, she is saying that there is a chain link from the sub location to the location, from there they can go to the CDA at the division but from there they don't go anywhere. The organs of the women organization at the top starts very far away not even at the provincial level, not even at ministerial level. They are very far away, there up. Some of them can start at the ministerial level then an organ above that. Now the linkage there between is missing, I think that is what Esther is saying, she is saying the linkage is missing.

Let me finish, I have not finished. What I think the Constitution is doing, the Constitution is forcing change instead of managing change. I think what the Constitution should have done on that particular point is to have a linkage so that they manage the change instead of forcing the change. If you force the change those at Esther's class will not understand what those at your class are doing, and that complaint we have heard that complaint for many years. I have been dealing with the public for a long time so I know what exactly what is missing.

**Com. Wanjiku Kabira:** There are 517 pages of information that we have collected from all over the country recommending what we have in this Constitution. 517 pages all of them talking about, women want to be represented at various levels, women want to inherit land, daughters want to inherit. I don't think there is any constituency where we have gone where women have not made these recommendations. So I don't even think the national women organizations should take credit for what actually appears in this Constitution. These 517 pages have come from the women at the constituency level, from all over the country. So the change is not being forced by anybody, the women are saying, this is what we are looking for. What I think the

Commission did was to take those views of the women from all over the country and say, how do we deal with the women's concerns when it comes to Parliament? How do we deal with the women's concerns when it comes to the constitutional offices where we are saying one third must be women?

I must also say this, that this Constitution and probably that is why it may have problems it is actually a Constitution made by the poor. I am saying this because majority of the people who have come to meet the Commissioners, even the women themselves are generally the poor and retired civil servants and so on. The rich have not bothered to come and present their views, the rich who have given their views under direct submissions, if you think about all the business people and so on in this country, is a very small percentage. So all these submissions received from Rift Valley, Central, Western, Nyanza, they are actually from ordinary Kenyans, and the women have been presenting at those meetings, so I don't even think the national organizations should take credit for what is in this Constitution. It is actually the women at the grass root level who have made these recommendations, and I think women groups at the various constituencies have been making their own submissions either through themselves or from locational committees and so on. This one I will defend because I know, I have gone to those constituencies that it is the women who have been saying, this is what we are looking for. I don't know, I hope I am not defending it too much but I think it is .....

Sorry on the girl child. What we have done actually is almost straight from the bill that was tabled in Parliament or from the children's bill and many provisions that appear in this Constitution but most of them are talking about children both boys and girls and a lot of provisions are there. We also have a Commissioner for children to ensure that what is provided for in the bill of rights which include education and so on is properly implemented. Sorry, can she record then I come to it.

**Liz:** I think the subject does not lie with the fact that it is the women who are considered to be in the upper cadre who are actually forcing these on us. I think the problem lies with us and like until you called us out we were not able to stand up and say what we are standing for, we were all quiet. If you count the number of the women who are represented here you note that we are very few as compared to the total population of the women folk in Gatundu. So I think the problem lies with us the women, are we ready to take up the challenges? Are we ready to come out and be counted as the politicians and things like that? Thank you.

**Com. Wanjiku Kabira:** Thank you very much. You wanted to say something?

**Speaker:** No, I am satisfied.

**Com. Wanjiku Kabira:** You are satisfied. Okay, this gentleman.

**Joseph Muhia:** What I wanted to say is that Esther wanted to say, you should create or have a provision for rural women

otherwise if you look at the structure of the women's representatives in Kenyan they are all from the urban areas, there is none from the rural area, so they need a provision for them to get a position there.

**Com. Wanjiku Kabira:** I think that is important, the only thing is that women organizations actually are not in the Constitution.

In terms of representation we are saying one third of the District Councils will be women, those representatives are going to come from the wards, is that rural enough? Then they are also going to have locational committees and locational committees are going to be in the rural areas. I am just wondering how, unless we are talking about the rural agriculture for instance. When it comes to representation the political parties are going to nominate women from the rural areas, they are not going to nominate me in Gatundu or any other woman at the national level. They are going to nominate the women within those Constituencies, is that what we are saying?

I am still wondering in terms of representation as we have it in the Constitution whether there is any way the urban women have an advantage except in the urban centre where they live, then they can also be represented in that urban centre. If you are in the district you will represent that district, if you are in the location you will represent that particular locational council. If you are in the village, you will represent that Village Council but we also have other provisions by the way. Now the gentleman who is saying we are oppressing the women has gone.

We are saying in the Upper House there are going to be 100 people, 30 of them must be women and those women are going to be elected at the district level, I think they are only going to be 4 in each province. So they will have to campaign and it is going to be a very difficult job to campaign at the provincial level unless you are saying that those who campaign from each province, we are saying of course they should come from the province but I suppose Esther has a point in think that if we talk about Central Province then I personally I decide to stand for the provincial seat, so where will the rural women be? That is what you are saying. So should we say that they should be rural women who campaign for the provincial seat?

**Esther Wambui:** We have a history that those professionals who would like to stand for those seats and the rural women. Before you came to campaign, women would be ready for you but if you are somewhere very far from those women in the grassroots and you came to campaign surely they will opt for men because they are not in touch with those women who can stand for them. So even those women who are in the national organizations should also look for the grassroots women to ensure the togetherness of women, so that when they come to campaign we will be ready to vote them in, we say we know this woman, she is able, she can make it so lets campaign for this woman.

**Com. Wanjiku Kabira:** What the urban women and what the rural women are saying and we may be saying the same things, but we are not speaking the same voice because there is no connection.

**Esther Wambui:** Like now ....(Inaudible)

**Stephen Wanyoike:** Can I suggest something, lets appreciate where there is a beginning there is an end. Can we agree to have only two more questions so that we can bring this meeting to an end, with the understanding that I know that even before this document is going to be debated, there will be many issues coming up when you read this draft at your own time? We can actually organize how we would receive some of your comments which perhaps at that level will be more detailed so that we can close. Now can we have two more questions starting with you? Who else wants to ask another question?

**Com. Wanjiku Kabira:** Just a minute. So we will have you.

**Stephen Wanyoike:** Yours is a comment it is not a question, fine you will have that one.

**Com. Wanjiku Kabira:** Can we agree so that ....

**Stephen Wanyoike:** You will be number one. You have talked a lot actually lets give other gentlemen. That is the second one. Those two will probably be the final ones if you agree, it is democracy. So, give your comment.

**Mr. Ngunjiri:** ....(Inaudible)

**Com. Wanjiku Kabira:** The one for women.

**Mr. Ngunjiri:** Yes, the one for women.

**Com. Wanjiku Kabira:** It is a ....(Inaudible)

**Mr. Ngunjiri:** Are there others who are not professionals in Kenya, in Kenya Women Political Caucus?

**Com. Wanjiku Kabira:** ... (Inaudible)

**Mr. Ngunjiri:** She is saying this. Do you have branches at the district level, provincial level and up to the division? She is saying you open up the same so that she can also occupy the base of the pyramid and you people can occupy the apex. So that she can represent the women in Kenya at the grass root and then you can be up there. Is that what you are saying Esther?

**Edward Kimani:** My name is Edward Kimugu Kimani. I would like to take my audience all the way back to the time Kenya attained uhuru, back in 1963. The Government of the day promised us and emphasized on fighting three enemies of mankind, these are ignorance, disease and poverty. The mother of them all is ignorance. From that I would like to comment on the

education system. Honestly, it hurts me as an individual, right from 1963 up to now the Kenyan child has been suffering a lot, and it is a weakness of the today's experience. Our children are languishing in the ..., the poor lot and those with high income the school is normal. From 1963 to today the Kenyan child is being used as a gimmick, the unstable educational system, take for example maths. From 1963 new maths, old maths, physics, SSP na kadhalika, 1984 8-4-4, upende usipende 8-4-4 is to stay. Year after year it is being reviewed and up to now even our children are being promised by January the year 2003 they will have a different syllabus, I am correct madam? New curriculum, correct.

Therefore, the question is, how far does our draft Constitution address on this because surely we need a stable curriculum, because the Kenyan parent has been suffering a lot? In January, buy these books, after a few months buy a new one, like that. In January a good number of the text books will be a waste. That is on the point of education as far as ignorance, the enemy number one to mankind, is concerned.

When we come to diseases, poor health, when you go the hospital no drugs yet we have hospitals, we have drugs and our people are suffering from even minor ailments. In fact, people are just using poor sources of drugs, going to quack doctors simply because they cannot afford services given by graduate doctors and those who are well to do are able to. Time and again, the past years we have been told by the year 2000 every home will have clean drinking tap water, as years approach the year 2000 no such water. By the year 2000 Kenyans will have free primary education, where is it now? We are past the year 2000, the year 2000, this and that. Right now, the education people are telling us by the year 2005 we shall have UPE, that is Universal Primary Education. That is the one we were told from time to time. By the year 2015, we shall have free compulsory primary education. For how long shall we live on empty promises? We are not a bunch of fools that once we are told tomorrow then it is forgotten yet we are toiling, so our draft Constitution should address this.

Secondly, social justice is lacking in our country and therefore our draft Constitution should address the office of the Ombudsman where we can air our social problems. I am offended for example by the authority, a Policeman comes to my home and starts beating me unjustly and I have nowhere to report, no one to take my case. When you approach a lawyer, it is too expensive so I choose do I take my child to secondary school or do I start hiring a lawyer. Surely, we have a problem, many problems, especially we people who came from the rural areas but we have nowhere to take our problems. Thank you very much. (*Applause*)

**Joseph Karanja:** My name is Karanja Joseph.

**(Interjection)**

**Com. Wanjiku Kabira:** I wanted to say that may be Mr. Kimani. May be we talked about this before you came and we said the issues of education, health, water and so on are provided for in the bill of rights here, they are provided for in the new Constitution. We also said that there is a Commission whose job will be to monitor that, free primary education, basic health

care facilities and clean water. They have been picked as basic needs which are the rights of every Kenyan citizen and we have mechanisms for implementing the same.

On the issue of Ombudsman actually we had said in the morning it is provided for in the new Constitution but we are not calling it Ombudsman which is a Swedish word, we are calling it People's Protector and it is here in the Constitution. It is provided for.

**Edward Kimani:** ...(Inaudible)

**Com. Wanjiku Kabira:** Okay, what we have proposed in this, particularly for the Human Rights and Administrative Justice under which Ombudsman is, we have said that it should be devolved, it should have branches. Every district is actually going to have commissioners on human rights, gender or peoples protector, people with disability and children as well as police complaints. So those branches are going to be in every district and also at the provincial level. Okay, thank you very much.

**Joseph Karanja:** Thank you. My name is Joseph Karanja and I would like to comment on the draft Constitution. Before I go to that, I want to comment about this yellow ribbon that I have. That now if it were in a court of law, if this would not be the best place for a court of law because we have heard about the yellow ribbon. Now that we are drafting a Constitution may be we would like to know, we had the old Constitution, we don't know whether we will go for the new one but then we are questioning how law will provide for the protection of the Constitution. Personally, I believe that may be the old and the new Constitution both may be of the same value if the Government that will manage the Constitution will be ready to do that. Now that we are about to go for an election how is this Commission prepared to safeguard the new Constitution in terms of law? Thank you.

**Com. Wanjiku Kabira:** I am not sure that I am able to answer your question but I will take the first part on how to protect the Constitution. When we talk about protection of the Constitution, I think one of the ways of protecting it is by making sure that it is not easy to amend and that is provided for under amendments of the Constitution which appears in article 294. Where we are saying that it will be unconstitutional to amend a number of things like the bill of rights we are saying cannot be amended, the structures, values and principles of devolution. So we are saying the Councils cannot be changed, you cannot say we are not going to have Councils, we are not going to have Locational Councils and we are not going to have the Village Councils. We are also saying that you cannot actually say that power is not going to be devolved to the district or take away power from the district. There are a number of things we have said here should not be amended.

For the other part of the Constitution, we are saying that we will retain the 65% rule but in terms of both managing and protecting the Constitution, we have put a number of institutions in place. Those institutions include for instance Human Rights and Administrative Justice as a Commission that will be able to protect the rights that are provided for like under the bill of

rights. When you have other Commissions like the Electoral Commission it is actually to also protect the right of the individuals to vote. So within the Constitution itself there are many institutions that are actually going to check on each other to ensure that we protect the Constitution, its values and the principles that have been put here.

In terms of the law, you know the Commission is not responsible for the Police at present or the Judiciary or anyone for that matter. We know what happened in Kakamega yesterday, if you looked at the Nation or KTN you could see that there was a lot of fighting, there was a lot of stone throwing, people were burning, the teargas and actually somebody was shot but KBC did not show. In fact, the KBC showed a very smooth meeting that took place yesterday. So, if you look at what happened yesterday and I think may be these are things that might be raised by both Parliamentarians and the Attorney General. We are saying that we are moving to an election period and the incumbent has the responsibility to ensure that peoples' lives are protected. I think for now we are still operating under the old Constitution, so to a certain extent we need the protection of the current Police.

What we have done for the future is actually to make the Police Commissioner a constitutional office and to give him a tenure of office for ten years and he goes through the leadership and integrity code like all other public officers. So that he does not owe any allegiance to anybody, and that he will be able to operate independently because he can't be sacked. Therefore, we are trying to strengthen the independence of the Police Commissioner and we have established under the new Constitution not a Police Force but a Police Service. We think that if we have an independent Police Service and independent constitutional office for the Police Commissioner then that may help us in the future to ensure that the Police operate independently of other people and that he cannot actually be removed from office because of doing his duty. Therefore, he does not owe allegiance to the people who appoint him.

So we can talk about the new constitutional dispensation but the current constitutional dispensation where you are appointed and therefore you owe allegiance to individuals is not helping us in protecting ourselves. I don't know whether I have responded although I thought that was the last one.

**Edward Kimani:** Does the draft Constitution ensure that there is free and fair election and not be done by fear or favour?

**Com. Wanjiku Kabira:** You know we have the provisions for that but you see it depends on whether the coming election is coming under the old Constitution or the new Constitution. If it is under the new Constitution then the institutions put in place should ensure that. We are talking about an independent Electoral Commission, again a constitutional office with better independence where they are also able to hire their own people and so on. We have many provisions in the new Constitution but it depends on whether we are going to elections under the old or the new Constitution.

**Stephen Wanyoike:** Ladies and gentlemen, I think let's agree one thing. We have been sitting here since past 10.00 am, it is

quite a long day and I am sure you also feel it. Now, first of all on behalf of the Constitution of Kenya Review Commission, we really want to thank you very much. I just want to make a comment on one thing. I think the question of a huge crowd should not worry you at all, those of you who love history, I have been reading about the Constitution making of America and you will be shocked that it is one of the documents that brought the American State to the direction it has come through. It is over 250 years old and the most interesting thing is that when it was started, it started with only nine people and they were meeting under candlelights in filthy places, people sacrifice to start something.

If you talk to people like Mheshimiwa Gitu Kaengere those people went to fight in the forest in this country, they were not very many initially in fact there were very few because they had a cause. So the same with this situation we should not be worried very much by huge crowds. The point is we should have the will and we people who have been here since morning we are the ones who will spread the word that yes we have a new draft Constitution, it is a good document and let's give it a lot of support.

We hope that next time and particularly when we come to the New Year, we will be talking of a new Constitution and a new future for this country.

Now, I would like to thank you very much for having taken your time to come, we know it was a very short notice, we know you are also very busy particularly with the rains around the corner. We also wish to thank Professor Kabira who is a Commissioner for having agreed to come along. I know she is very patient yesterday, we left almost about past 5.00 pm and started at 9.00 am but with due respect I think she has covered a lot and we are very happy about what she had done. We hope that if you have any issue to raise up on the draft Constitution after you have read it thoroughly you can bring it to us. We are at Thika, our offices are at Murang'a District Cooperative Union, second floor or if you happen to be in Nairobi the offices of the Constitution of Kenya Review Commission are at KENCOM House, 2<sup>nd</sup> Floor and they are open 24 hours. You can actually drop anything you want there and it will be considered particularly during the next three weeks.

I also want to thank George and Josephine and those of you who have come, and with that I would wish to ask that we close this meeting and I will ask a gentleman now to close with a few words of prayer to ask for God's guidance.

**Com. Wanjiku Kabira:** May be before they do that I want to thank you very much. I think it has been a wonderful meeting and there are many issues which you have raised which are also challenging. I want to promise you that those issues like the District Coordinator has said we will put them together in a report and a subsidiary report is going to go to the National Conference. So I want to agree with him that it is not the numbers, we represent very many people even the 33,000 we talked about, some of the memoranda were representing 200 people and sometimes 300 people. Like memoranda given by Justice and Peace Commission, memoranda submitted by the women's organizations, memoranda submitted by various trade unions were representing very many people. So although we are talking about 33,000 memoranda that we have or submissions, there are very many Kenyans who have contributed to the same, so I feel very happy that I have been here.

