

**CONSTITUTION OF KENYA REVIEW COMMISSION**

**(CKRC)**

**Verbatim Report Of**

**DISSEMINATION OF REPORT & DRAFT BILL,**

**JUJA CONSTITUENCY HELD AT THIKA TOWN HALL**

**ON**

**MONDAY, 7<sup>TH</sup> OCTOBER**

**DISSEMINATION OF REPORT & DRAFT BILL ,JUJA CONSTITUENCY, HELD  
AT THIKA TOWN HALL ON 07.10.02**

**Present:**

Com. Wanjiku Kabira

**Secretarial in Attendance**

1. George Wachira - Asst. Program Officer
2. Josephine Ndungu - Verbatim Recorder
3. Mr. Wanyoike - District Coordinator

**Others:**

The Mayor for Thika Municipality

The meeting started at 10.25 a.m. with Com. Prof. Kabira as the Chair.

**Thika mayor:** we shall now start, and before we do that, lets start this meeting with a word of prayer just to ask for Gods blessings and I am asking somebody to actually lead us with a word of prayer. That lady will do that very quickly.

**Mrs. Kiama:** Lord our heavenly father we want to thank you this morning for you are a great God, you have brought us together this morning as people who are interested in this country, God our heavenly Father, we want to thank you for the people who have come all the way from Nairobi, to come and listen to what we have and what we have to suggest, God our heavenly Father we want you to be in our midst lead us, guide us, we know we are earthly people unless we ask for your leadership we are only very weak people who are your creation. God, let all what we are going to discuss here be of great used for this town and the rest of Kenya.

God our Heavenly Father, let whatever we are going to discuss come from you. Give us a lead our Heavenly Father. All this we pray in Jesus name. Amen.

**Wanyoike:** First of all on behalf of Constitutional Kenya Review Commission, I wish to welcome you to this meeting. My name is JS wanyoike. I am the coordinator in Thika district. Before I introduce our guests here today, I just want to remind you that the commissioners have come in here on a short notice because of what has been happening in the country to do with the

new Constitution and we wish this thing to be on course that is why we want them to come in.

I do remember when we met in this place again, they promised that once the draft Constitution is through, they will come again to tell you that they have finished the work or at least that they have something on the ground and that is why the commissioners are back here.

We are here on behalf of the commission and we are very grateful to Thika municipality for allowing us to meet in this chamber and before I introduce the commissioner wish to welcome our worship the mayor to say a few words, after all this is her own territory and this is normal. Before she does that, I want to introduce people from Nairobi starting with commissioner Professor Kabira who was here last time, she went all the way up to Ruiru and she heard our views. Then there is George Wachira who is the assistant programme officer who is accompanying her and Josephine Ndungu who will be in charge of reporting and putting the verbatim reports that you will be making.

This is the commissioner's function, I don't want to say a lot, but before she starts us off, I will ask our worship the mayor to say a few words. Our worship the mayor.

**Thika mayor:** Commissioner professor Wanjiku Kabira, Nairobi team, District secretariat, Wanainchi wa Thika, I take this opportunity to welcome you here in our chamber again. I remember you were here sometime back, you sat here you heard the people speak. So take this opportunity to welcome you back again because that day you promised that when the work is over you will come back so thank you for remembering to come back.

Take this opportunity to talk to the people, I know you are here to launch the draft Constitution. We are, as people of Thika know and we are wishing we know what you have gone through. It has not been an easy journey. You have heard it all. I am surprised that somebody can say that you have not reported what you have been told because I know I was here when I heard people talk about what is in your document and the Kenyans have talked and they are happy that you said it as you heard it.

We want to encourage you that though the final draft is out and you are working under a very hostile environment. Keep on saying "Aluta continua" and you will finish because the job was given to you by the Kenyans. The Kenyans have spoken and I think it will only be very sad if the Kenyans are not with you but the Kenyans, Wanjiku, Kamau, Oluoch, Koech are all with you so whenever you work in that dark valley remember that our hands are holding you. And when you fall, we shall hold you to support you and walk until the journey is completed. Because I am in local authorities, I want to say that the part of the draft especially that relates to local authorities, you have captured it so well. Having been the technical committee chairman of the group that worked through out the country to come up with the local authorities that Kenyans would want themselves and having been the technical chairman of the new Cap 265 that you keep on mentioning in your draft.

I am excited because the ministry of local government was very reluctant to put our bill to parliament. Everybody knows that local authorities are the ministry's milking cow and so they would not want any change. They would want the status quo to remain but with the help of Kenyans. They talked and you put it in the draft Constitution. The local authorities that will come after this, will be better than what we have today. I am one of those people who are insisting that the new Constitution should be taken up and we do the next general elections with the new Constitution but we are hearing different things under the old Constitution under whatever.

All I want to encourage Kenyans is with or without the new Constitution, Kenya is yearning for change and we are ready to have that change and the change is not about having a new person, not about having different personalities. The change we want, is change that will come up with built up institutions of this country. We think about the common person, we rise at people of integrity so that this country can be what we think as Kenyans ought to be.

Thank you for coming, I am sure the people of Thika are willing to hear you, we all want to encourage you that feel at home hear in Thika give us time may be you had set yourself by one o'clock you will finish. Listen to them, correct the missed information that has been passed to the residents, not only here in Thika but outside there, somebody stands up and says that Constitution can only work in utopia. We have heard about such statements. We are all spotting yellow ribbons because you know you will be taken to court about a particular section of the new draft and the question I am asking myself as a Kenyan is I am also affected in the Constitution, the doctor is affected, the Kenyan is affected if we all took that date that affects us as individuals and took to court, what would we be doing here and the commission has spent four billion Kenya shillings to come up with what you have come up with, a job well done. Do we throw it to the dogs, as Kenyans, we can't, we have to wait until the job is complete and if it means getting a bit more to complete the job we are ready to tighten our belts as Kenyans to see this document come to fruition it is our document, it is not the commissioners document.

We will ask those people who have got personal interest in it, be it the judges, be it the politicians to put there personal interests aside and make this document come to fruition as a Kenyan document. With those may words I welcome you to Thika, give us enough time, talk to us and give us light and if we are not through within the time that you have set for yourself and you will ask us to come and you will come another day, we shall be available. Thank you very much, I have taken a bit of your time but we know that it is an important document not for Thika alone but for everybody, the woman in the rural areas without shoes, the child who is not getting school fees. Everybody is involved in this one and we cannot take it very lightly. Thank you very much.

*Clapping from the crowd.*

**Com. Kabira:** Thank you very much, I don't know whether to call her your worship the mayor because she was my student at the university and I was just telling her now, when she said when she finishes she can come here and I come there so I told her no you are still the mayor, I would only come there as your teacher because I was her teacher before at the university of

Nairobi.

We are very happy to be here today. May be I want to correct one thing, we are not really launching the Constitution because this was launched officially on 26<sup>th</sup> of last month but what we are here to do is to actually account to the people because we promised when we came that we were going to come back and share with the Kenyans (constituents) on what we considered to be the findings that we got. From this constituency and from the 210 constituencies. The other thing is that this Constitution is a draft and because it is a draft, consultation continues. It is open for people to look at the draft and say this one we accept, this one we need to improve, this one we can reconsider and so on. So we thought the consultation should take place before the National Constitutional conference. We said from the beginning that it is a participatory process, that it is the Kenyan people's product and we can not take it to the Constitutional conference without giving it back to the Kenyans and saying, confirm that this is what you said or confirm that this is not what you said.

Where Juja might say that they didn't say this then I will be able to explain that they were many other constituencies that said what we have put here although it may not have been raised at Juja. So, it is really a further process of consultation and an opportunity to give the people to respond to the draft before it goes to the national conference. Although the draft we have is the one going to the national conference, what we are going to do is again prepare the recommendations of the people as an appendage to the draft so that the people at the national conference are able to see what have the Kenyans been saying about this. Were they happy with the various sections, are there additions that they have given so that the final Constitution is what will be created at the national conference. So basically, that is why we are here, to consult again, to share the findings and even to let you know what happened in other constituencies and so.

For those of you who have been able to go through the newspaper pull out, you are going to get the draft. It is being bound, printed the draft constitution, those documents are not ready but the peoples choice, the report itself has been bound and if you are not able to get copies today you will get them through the district coordinator. But the draft constitution is with the printers and that is why we are using the print out s for debate all over the country and both the nation and the standard were very kind to reproduce the whole draft and therefore we can use it for today.

It will not be a days meeting, probably we will be through by one o'clock, but if there are other questions we will continue. Basically what I want to do is brief you on the general over view of the reports and then of the draft bill and then we will talk alittle about the constituency's report itself and then after that we will open the discussion and wherever we can we will respond if we don't know we will say we don't know. If that is okay with you for the programme and then we say it is quarter to eleven we will say may be by 1.15pm, 2 hours it should be over if you want us to continue alittle more its okay with us.

I must say I am very happy to see so many people that I saw during the other meeting at Ruiru park so we can easily dialogue much more because I am sure some of them like Njoroge, and that gentleman there, we have met many times. This has been a

long road and we hope this road will help us reach a final destination, which is the new Constitution. I will just be very brief some of the information you don't have but we will make sure we will photocopy before the end of the day.

This is just a summary of how people responded to the various items, which you have in the red book. A lot of you are familiar with this little red book and I will just give it to you just briefly to show you where the interests of the Kenyans lay for instance in the **preamble** we have 467 pages of written material on the preamble which means there were very many people who were interested in making sure that the preamble itself is part of our Constitution and therefore a lot of the information we have under the preamble comes from very many people from all over the country.

**Principles of state policy** – we had about 341 people who responded to that but I think we had fewer people than those who talked about the preamble so there were quite a number of people who wanted us to say what are the principles that are guiding the new Constitution and you will see in the pull out that there is a lot of information under principles of state policy, because we tried to put together what many of the Kenyans wanted to be put together and I think I will go to some which were the main highlights.

**The parliament-** we had about 3703 pages of our parliament. I think basically hear people were very clear about what they wanted parliament to do. We had a lot of people asking for recall of MPs, that they don't want people to go there for five years if they are not going to do what they are supposed to do for their own constituency. We had a lot of information on the powers of parliament on how parliamentarians should behave on the fact that they should not decide what their salaries should be, on the fact that they should be fulltime and that they should be upright, many of them said that they should have a degree others of course said that they should be form four. 3703 pages means that Kenyans were really interested in what parliament is doing and what parliament should do.

**The president-** We had about 2874 pages. Again the president was of main concern to Kenyans. A lot of Kenyans wanted the powers of the president to be reduced. Many of them did not want the president to be the chancellor of all the public universities, to be able to give title deeds and so on. So the comments we have on the draft bill are based on 287 pages of what Kenyans said about the presidency. Most of it on reducing those powers. So what you find in the new Constitution is actually what Kenyans wanted the president to do and wanted a lot of these powers to be removed.

**Basic Rights-** This is the people's concerns with hospitals, food, shelter generally talking about poverty that the government has not been able to make sure that Kenyans have access to basic Education, access to health facilities. A lot of people are saying that we should even close the hospitals because they are just building, there are no drugs and there are no nurses and so on. So basic needs we have a lot of information under that which was about 3200 pages which I think again was a clear indication of what Kenyans wanted the new Constitution to do. They wanted a Constitution that guarantees that no Kenyan goes to bed hungry, no Kenyan is unable to get access to education, no Kenyan is incapable of getting basic health just because they have

no money and so on.

**Local Government-** It covered 2046 pages where we had people feeling that the local government had been emasculated, it has no powers. It is being ruled from the center and so on. You will find that in the new constitution, local government which we are now calling District councils have a lot of power. They will have an executive who will run the district councils which will have the power to even hire the police for the district, pay for primary school education and secondary school education. They will have the power to look after the hospitals themselves, they will also have the power to raise revenue so that they can use the revenue for their basic needs. The district councils themselves are going to actually have both policy and legislative powers. So we have what we call a divorced government, that is why we have taken a lot of powers from the central government and taken to the district councils.

**Land and property rights.** We had 2165 pages of submission. And again in this particular area a lot of people were concerned with a few people owning a lot of land so they recommended for instance that healing which I know is not reflected in the new Constitution but they wanted the land to be controlled by the people. Some people did not want the 999 years lease and so on. Again there many Kenyans who wanted to be able to own property all over the country, I think it is reflected in the new Constitution and so fourth.

**Judiciary-** In this area, we have almost 2000 pages. In this particular area most of the information is against the judiciary. They are corrupt, incompetent, they delay cases; some people were saying that you wait for a land case until you die and your children follow it up before the case is decided upon and others felt that cases were being postponed indefinitely for nothing until they pay the bribes and so on. We had lots of people 1700 specifically on judiciary and other pages in other related areas.

**National policies.** We also had a lot of information on issues related to Agriculture, to ministry of Education, to Ministry of Health and so on. In a nut shell we are talking about a Constitution which is basically based on exactly what the people said and not only depending on the number but depending on the prevalence across the country on the various concerns of the Kenyans.

**Management and use of national resources.** In some cases there were people who felt that national resources are protected; like forests and so on and National parks are protected at the expense of human beings. This was the case in places like Mara and other parks towards the coast province where people felt like in Taita Taveta that the animals have more rights than the people themselves and they were saying that we need a balance between making sure that Kenyans have their own basic needs met and that animals are protected for tourism and also that they should benefit from whatever resources are coming from the parks and so on.

Of course there was a lot of complaints about the cutting down of the forest which is destroying the climate and that for the sake of the future of this generation and the next generation we needed to protect the environment.

We had a lot of information on structures and systems of government where we had about 1614 pages of submission and basically Kenyans were saying that there is too much power in the central government, we had lots of information on Majimbo, making each region a separate region and giving its own powers. They were saying that the central government is too far from them, they were saying that they wanted to control their own resources, they wanted some power at the local level and so on. So between the Majimbo of the provincial Majimbo which some other people said it is going to promote ethnicity, we settled for strengthening the district themselves to avoid issues related to ethnic conflicts, zoning of various areas and so on.

Again under the structures of government, it was felt that we really have been having a lot of power with the president and that we needed to strengthen the parliamentary system of government, where parliament has more power without by the way making the president irrelevant. We thought that the information we have from other countries, that if you have a ceremonial president and the one we have by the way is not a ceremonial president. There is only one line which says that the president has some ceremonial powers like official openings and so on but there are other activities that the president is assigned. So we tried to have a balance between the president, the prime minister and parliament itself so that you are able to retain a president with certain powers like some of the appointments we left to the president but with the consultation with the parliament or approval of parliament in order to make sure that we have a president because Kenyans don't know not just Kenyan, Africans don't know how you can be a president without some powers. We are not used to, like the British parliament for instance has the queen who has ceremonial powers but that has a long tradition and a long History and we know for instance when we had a ceremonial president in Rwanda, it didn't take very long for that to collapse. I think now he is outside the country and the prime minister took over power. So we are trying to balance between ensuring that we have a president with some power, a prime minister who can also be sacked by parliament itself without making any of the offices irrelevant. But again it was also a way of making sure that we have checks and balances which we have been missing within the current framework.

**Political Parties-** Again political parties have been as a vehicles for promoting democracy and because they are vehicles for promoting democracy, a lot of people felt that they either should be reduced and I tell for sure that at present we at the commission, they have been sending us the information for the National Constitutional Conference. And although we have 42 political parties we have not been able to get 19 for the last one month. Either the names that appear in the registrar of society's document either have no communication or either they changed the address or the officials were changed or may be the parties were sold we don't know what happened to them but we have been unable to trace 19 of the political parties so we can not even invite them to them to National conference because we don't know. Today we are putting a gazette notice for those 19 parties. So after 7 days they will be declared redundant. We cant trace them, they have no telephone numbers, no box numbers and the box number that is at the register of society they are sending back the letter - return to the sender. So we don't know whether they still exist. So we have put a process which is going to make it possible for the political parties to make themselves redundant.

Part of it is that they have to be active as political parties the other thing is that they have to be able to account to the Electoral

Commission. We have moved them from being registered under the register of society to being registered by the electoral commission. So if we are going to have institutions of governance or vehicles of democracy like the political parties, then they have to be properly managed, they have to be democratic themselves and if they are able to bring women to parliament they will get a little more money and they will get funding from the public. I think we have said 0.3%, which is about 600 million of the national budget to actually to political parties to help them to manage themselves and to be able to do their daily activities and to sell their own policies to Kenyans so that we retain political parties that are vehicles of democracy and that they can promote awareness – political education to Kenyans. But we have also said that if you have more women in your political party, because there are few women in the political field, you will get a little more money than other Political Parties so that we encourage them to involve women in their political work.

**Citizenship.** Citizenship has been important because there very many Kenyans, like amongst the Somalis who actually don't get themselves registered. We women for instance who are married from Uganda to Kenyan and no one knows what their status are. This is the kind of information we were around the lake; Lake Victoria, Busia and those areas. Where we have women who are being told even though you have been married for 20 years even to get an ID, you have to demonstrate that you are a Kenyan citizen, you have to go back to your parents even the husbands word that actually this is my wife, is not accepted. So we have many of them who cant vote because they don't have IDs, they are not yet recognized as citizens.

It was also a major issue because we have a lot of minority groups like Goans and some Asians whose parents have been here for 100 years but are actually not recognize citizens and so on. We also had people asking for dual citizenship because either they are married to a Ugandan who allowed to dual citizenship and so on, you will have to denounce your Kenyan citizenship. I think this is now allowed in the new Constitution.

If that is an area which was very much covered, I don't want to go to the details of the other areas, but I want to probably say that they were areas which we have also covered I don't have the statistics on these. For instance the **police**. Almost everywhere in central province, in Eastern province in particular, in Western province, we had a lot of complaints against the police. Either that they are harassing people in the name of the local brew. Like in Busia Kenyans wanted us to legalize local brew, so that the police can stop harassing them because it is used as an excuse for harassing the people. So we had a lot of complaints against the police corruption and arrest without notice, police who are not accountable to the people that they are supposed to be protecting and you will probably find that in this document what we are saying is that first of all we should move away from the concept of police force to police service because they are supposed to be serving people they are not supposed to be exercising force against Kenyans.

We have also proposed that the commissioner of police does not become an appointee of the president, that it becomes a constitutional office so that you are there for 10 years and nobody can remove you without amendments to the constitution so that the police commissioner is not accountable to the president but to his people and he knows he can not be removed by anybody. I think we have also suggested because of the complain that we should institute community policing so that the police are

able to work with the people at the community level, at the village level.

You will find that when you are moving from one area to another they are very interrelated that we are talking about village councils and the village councils are the lowest level of governance and we are saying that the village councils should be institutionalized and they should be able to work with the police so that even recruitment of the police is not in the district councils and to locational councils so that you are hiring people that are accountable to the people. So if a police man or police woman is harassing the people you can also go to the family because you know who it is and that they can be sacked by the local people if they are found guilty of these offences. So that is an area where we've got a lot of information and I think we have recommendations which are clearly stipulated and adhered to whatever you do, that is generally what the Kenyans were saying and I think, I will give you this copy just to give you a rough idea of where people focus their attention.

I have another short summary here, we will give you a copy and this one just tells you who participated, what was the level of participation by province and we had most submissions from Rift valley. One could argue that it is because Rift valley is a very big province, I think Rift valley has about 29 districts, is that correct, and I think central province is less than half in terms of the districts. How many districts do we have in Central province 7, yes 7 districts. I think they must be about 29 in the Rift valley. So that could also be the reason that Rift valley had the highest number of submission which was 8,267. Those were submissions that came from the Rift valley. The next highest was Eastern province which had 4,714 submissions. Western Province is 3<sup>rd</sup> with 4,616 and then we come to Nyanza which had 4,530 submissions and then we come to central with 4,275 submissions and after that we come to Eastern province, sorry the earlier one with 4,714 was actually North eastern province which is also surprising in the sense that North eastern has a much much smaller population than the other provinces. Eastern province had 3,419 and then we come to Nairobi which is the last one with 1,428 submissions. The total of course comes 34,157 submissions.

But also these submissions although we are saying 34,000 probably we need to remember that some of the submissions represented locations like in a lot of areas like in central province and also Nyanza province as well as North eastern we had lots of submissions which represented groups either women groups or locational groups based on locations or other organized groups within the province of Kenya National Union of Teacher and so on.

Although submissions the once we have in terms of individuals and memorandum are 34,157, the Kenyans that participated are much more than that because there were some representing 200 people, others 300 people, others 100 people and so on. So basically I think that is kind of the broad outline.

Since I was talking about the report, and I said this report you will get copies. This report is just a summary of what Kenyans said and may be some of the proposals. Just a few of the proposals but all the proposals are translated into the pull out that you have. We have another report which is about 800 pages and is being edited which now talks about the details of the report of both the constituency reports and so on.

We also have the various constituency reports, I believe all of them are not ready but there will be a copy at the documentation center which you can look at and other copies are following with the district. Coordinator, You have enough copies. Okay. So this is just a sample, since there are lots of figures that are here not all the details are here for the.. this should be Juja constituency report and you can go through it and see how many people talked about the presidency and so on. So if anybody feels that this are not Kenyans views, I think there is enough data to actually show that anyone interested in confirming what Kenyans said there is a lot of information that they can use.

I want just to quickly go through the pull out but in a different way and just to say a few things about the main areas and then I will leave the discussion open. May be in terms of the vision of this draft. We are talking about a country which is going to promote peoples participation. I want to say some of the things that are informing the new Constitution. What is the vision that is seen through this Constitution and we are saying that people's active participation in government and public life in various ways is what informs the vision of this Constitution and you will see how we have talked about the devolved government. Moving from parliament itself which is being checked also, we have proposed two houses as people recommended you know that the National council is actually appointing people to the upper chamber and we are saying that both houses are going to check on each other. But we are talking about people participating at all levels including the village government. By the way with the village government one of the things which was very interesting is that in the whole country everybody talked about the village elders that they are the ones who are doing the work of the chiefs, the work of the administration and so on.

In recognition of the peoples participation we talked about constituting a village government which will have between 8 and 10 people and they are going to be responsible for all the activities, if you like translating the policies into practice at the village level. We are also proposing that from the village level we have two people recommended to the what you call the locational councils. And the locational councils are actually going to be implementers of the legislative and policy related activities that are going to be at the cut down. That we have people feeding their own ideas and issues and policies to the government. We are talking about a parliament that is more representative of the people and also more accountable to the people. So the right of recall which all you ask for is actually introduced here but we are saying that you need to at least get 20 % of the voters to be able to get a parliamentarian to be recalled. And we have given the electoral commission the power to facilitate the right of recall for the people. So we are talking about a parliament that is more representative, that is more accountable to the people and that is also able to make decisions that influence what the government is going to do.

We are also talking about the spreading power across various institutions so that we do not have an institution, for instance now as we seat here, the president can dissolve parliament. Isn't it. He can dissolve parliament, he can decide that he will go to the elections under the old Constitution or under the new Constitution. We are saying that is not right. That you should have so much power that can paralyze the whole country and this again, its not us saying it is eh. So we are talking about the power being spread more widely to prevent accumulation of power that can actually destroy the country. We are also talking about a vision that looks at the organs of government as being accountable to the people and to the law so that no organ of government

should be able to law in his own hands. That they must be checked the various organs of government must check each other.

We are also talking about communities and groups and individuals participating much more. Infact, if you look at the section on parliament we are also saying that individuals like you and myself should be able to get the committee to introduce a bill in parliament. So we are saying that the people themselves should be able to participate much more.

We have a long section on the human rights, because again the human rights abuse in this country, we have a bad history for human rights abuse and there was a lot of information given to us by Kenyans on how to deal with human rights issues and the provision that should go into the Constitution but we have also expanded the bill of rights so that it introduces basic needs and also basic so that any government will have an obligation to ensure that people have basic needs like housing, clean water, health, and also basic education. We are also taking about a public lifer that is guided by ethical principles. In other words if you are in public then you are supposed to accountable. Your private life becomes also public life so are not going to separate your private life from your public life in the sense that you are you are supposed to be accountable because you are a leader to Kenya.

In the new Constitution we have what you are calling the code of ethics where if you are a leader you can be taken to court for sexual abuse, misappropriation of funds, any acts of corruption for refusing to declare your wealth. There is a long code of conduct and that is the code of conduct that we were saying that for some of the people who are already in public offices like the judges. They will need to be subjected under the new Constitution to actually go through the code of conduct for them to continue working because if you have 20 years to go and you have not gone through the code of conduct then you will not facilitate the implementation of the new Constitution. Those are some of the problems that is why we have some of the problems with the judges. But that code of conduct appears in the new constitution.

We are also saying that if you are going to be a public officer, even MPs they should go through a new Constitutional office called ethics and integrity commission. This commission is going to vet all the public officers before they take office and they are going to make sure that they declare their wealth and so on before they take office.

We are again taking about National resources and protection of the same resources and we are also saying that government is required to encourage participation of all Kenyans at all levels. So basically those are some of the issues that are tiding this new Constitution. Also when you talk to people they also loose you very quickly. I think I would rather stop there because I wanted Wachira to take two minutes to talk about this report.

**Wachira:** Good Morning. What I will do I go through alittle bit probably what the constituency gave in their views as per the two days that we held here. So we had the first day on 6<sup>th</sup> march which was at Thika and Ruiru on 24<sup>th</sup> April. So we had two days for receiving their views and we had about 27 people presenting their views. 79 were men, 14 were women.34 didn't state precisely the records that we have 34 people didn't state whether they were male or female. Then individuals we 95

individuals giving us their views , 23 were institutions the 9 didn't state precisely. So basically that is the outline of the number of people who gave their views.

Then, we had 57 people giving oral views then 48 had written views then oral and memorandum you give your views in terms of oral then you write a memorandum. We had one person. Then we had oral and still they give written submissions we had 16 people. Then 16 precisely steps the formal presentation that they did. Basically, the summary of the emerging issues that people from gave were from the preambles, Constitutional supremacy to citizenship, defense, National security and I will alittle bit highlight probably some of the small issues that you raised.

A number of people gave views that people in Kenya, anyone in Kenya should live in any part of the country. And you also said that the preamble should also reflect the history of Kenya and it should also recognize Kenya views and if you the newspaper pull out of the draft Constitution, we have highlighted a number of issues and the Constitution captures some of them.

Then, you recommended that 70% majority should be the people who can amend a Constitution instead of 65% and that there should be a referendum. The Constitution captures that you will look at them. You also recommended on citizenship that any a spouse of Kenya should acquire automatic citizenship among many others that a child born in Kenya should acquire automatic Citizenship and if you look at the draft Constitution you will not that part of what was captured.

On Defense and National security as professor said, a lot of people talked about duties of police officers and a code of conduct should be instituted. You will look at the same and it has been captured as well. Then you also recommended that there should be a security of ten years for the commissioner of police and heads of the armed forces and on Political parties people here recommended that states should fund political parties. We have captured the same. A number of people recommended that there should be a limitation of political parties. Some said 5 some said 3, 4 and 2.

On structures and systems of government people recommended that 2we should have a parliamentary system of government. You also recommended a 2 chambers parliament. It has been captured. Then a ceremonial president and prime minister and the attorney should be elected by parliament, the executive.

The constitution should legislate against Majimboism as this would encourage sectionism. That has been captured as well. The legislature, you recommended that members of parliament should only serve for a maximum of two terms. That they should also control their own calendar. The same has been captured and that the Constitution should provide that all vetting of presidential appointees by the legislature has been very well captured and impeachment of the president by the parliament has been captured as well. You also recommended that there should be a code of conduct for members of parliament and also a coalition government.

On the executive you recommended that the Constitution should limit the powers of the president has been captured and that he

should only run for only two terms. You had also indicated that he should be impeached, that he should also have a national elected vice president, he is supposed to have a running mate has been well captured.

The cabinet should not be members of parliament and they should be professional, well captured as well. Then on the judiciary people had recommended that the president should not appoint judges. If you look at the Constitution, the president will (*inaudible*)... from the judicial commission. Has been well captured as well.

On local government, you indicated that they should abolish either the office of the sub-chief or the councilor to avoid duplication of work. Then decentralization of powers to the local authorities and monitoring of the local government by the NGOs and holders of the offices should minimum of O-level education. The Constitution has captured the same.

On the Electoral system and process, people here recommended that there should be an independent electoral system. Those are some of the Constitutional offices indicated by the new Constitution and also recommended that the provincial administration should be non-partisan in the Electoral process. They should privacy of visually impaired persons during voting. and you recommended reduction of Constituencies from 210 to 150. Again demarcation of constituencies should be based on size and geography and not people.

You recommended a lot on basic rights, a lot of them has been captured. Rights of prisoners, right to clothing and shelter, the freedom of worship and protection of workers, free education, social security, access to water and health, provision of justice which has been well captured as well if you look at the draft Constitution. Then rights of vulnerable groups. The provision of women employees orphans, retirees and children as well has been well captured by the Constitution.

Land and property rights. You recommended that there should be security of public land and repossession. The Constitution should state that idle land should be repossessed and distributed to the landless. You also recommended on the maximum filling on land holding and a commission of land commission as well that of property rights including that of kiosks and repossession of land that is violently acquired has been captured as well.

Cultural ethnic and regional diversity and communal rights. You recommended that Constitution should provide that forces of national heroes should be printed on Kenyan currencies and also to outlaw FGM.

Then on management and use of natural resources. A number of people recommended that the state should use its revenue on vocational training and key economic sectors. Also the rights to hawkers as well. An equitable distribution of resources has been captured as well.

On environment and natural resources, you recommended utilization of resources by locals that is the residents and that the Constitution should provided for the protection of the environment and wildlife has been well captured by the Constitution as

well.

Participatory governance, you recommended that the Constitution should express that elections in trade unions should be democratic, transparent and unions are accountable to workers. You also said that trade unions should be independent of the government and the Constitution should again provide for collaboration between the state and NGOs has been captured as well.

Then on Constitutional commission and Institution offices, you recommended that, the Constitution should provide for review of the Constitution after every 40years. you recommended an office of the gender commission, an ombudsman office and the commission should make public their findings. We find that as well in the draft. So succession and transfer of powers you recommended that 48 hour notice should be given to the president elect after touring in and the speaker should exercise executive powers during transition.

That is probably a small highlight. We have a data highlight of 138 pages which we will leave with the district coordinators. It has almost every issue that has been highlighted. I could not go through every piece and detail of the same. We will leave copies to people who would want to peruse through the same.

**Thika mayor:** Mr Wachira is an advocate with the Ndungu and Kwach advocate. So I wanted to tell you who he is and he is assisting us for now. Okay so we have said our views now it is for you to raise any issue.

**Com. Kabira:** Thank you, I think the best way is to list three questions and you respond to those if it is okay with you and then you take another three instead of asking one, one. I think it would take a shorter time. We shall have one here. We start with the front row. One, two, three, we will first take those the we shall come one, two, three and then that way please.

**Thika Mayor:** And then we need you to say your names so that when we are doing the transcription we know where the information is coming from.

**Gitau wa Kahengeri:** My name is Gitau wa kahengeri. I have no question because am satisfied. What is said in the draft Constitution is what we say. Therefore, what I would like to say is that the commission has done a good job. 52 year ago, I was in this kind of situation. Where we wanted to liberate the people of this country from the colonial rules. Then in 1992, we came to a situation where we have a president who has all the powers even the powers of pieces of land that is owned by an individual of Kenya.

Having a president who can not be taken to a court of law, I think even if he spears you, he can not be taken to a Court of law that is why we recommended that this powers must be reduced so that that man can feel he is a Kenyan like Gitau wa

kahengeri.

Two, having come all the way, I commend the commission. And I feel, the commission will be happy for the work they have done that time because the nation, this nation, Kenyan nation will be happy out of your work. So that when you go back to Nairobi pass it to Professor Yash pal Ghai that his job is recognized in the whole of the country. Do not care about Sunkuli, people who don't even read this one, they just react emotionally.

One thing I want to point out, we have the Kenyan flag and I am happy to mention here, the draft Constitution that the people of Kenya can not possibly know what it means. This is not put in the Constitution. I have not seen it. We have the black color in our flag which signifies the Blackman. We have the white colour which signifies that we are peaceful. We have the green colour which signifies the fertile land of Kenya. We have the shield and spears that signifies that we can fight for our country. These things are not anywhere in the draft Constitution and it appears that the people of this Kenya ought to know why they have green, red, black flag. Why do we have it?

Having said that, I will go to the part you were dealing with land and I am happy you have said everything we said about land and you have the bill of rights. In the bill of rights you have not said that every Kenyan has right to land. This is not said and I feel the people of this country must know that they are not landless. This land was created purposely for them. If they don't have a piece of land, it is because other people in our country, the oppressors I must call them so because an oppressor must not be a white man. An oppressor must not be a red man. A black man like charcoal can make you poor. Those who have impoverished this nation today are presumed are black people. So, we would like to hear from the constitution that every person of Kenya has the right to land. That is the other point I think I wanted to reason.

The other thing that you have done very well is the devolution of powers. I heard some people say that was Sunkuli, he likes to talk things which are not good to the other people saying, "why do you take government to the village. Infact this government of Kenya belongs to the village." and there when you have said about the village council and the district councils and the provincial councils you are infact putting the government to its owner. When you go back to Nairobi tell Mr. minister, even when this country prospers they will remember the people who were giving views in to the proper manner that this country wanted to hear.

Lastly, I would like to say this, we have a president who has all the powers in the present Constitution. He can dissolve the parliament today infact he can dissolve it this afternoon or he may have dissolved it now. I don't know. But the power is with the people. You were not there, but I must remind you and tell you this we had a power such as this, 52 years ago but the people of Kenya decided we are not going to continue this way. They all came out and supported the struggle for independence whether they liked it or not we have our independence today. Whether a dictator, red, white green or purple, this country must come to real liberation.

I must stop there and add one thing. I don't know why people of this country who were given the duty to do things for this country are shy of mentioning the Mau Mau struggle. I cannot understand, because in the Constitution like this one, if we cannot say this country was dominated by colonial power and this country was liberated by the people of Kenya in an armed struggle then, what are we telling the present generation. Are we telling the present generation that they were born happy? They were born rich? And they will continue enjoying that. Therefore, this one should have mentioned either anywhere I am not a lawyer, I am a layman, but that thing would have been mentioned anywhere in the Constitution preferably in the preamble. Thank you very much. *Clapping from the crowd.*

**Thika Mayor:** Thank you very much you have all noted that Gitau kehengeri did not have a question, he had a comment. We are also encouraging comments. If you feel that you don't have a question but you have a comment, I have been advised that it is okay. I was patient with him. you all know him. Thank you. The next person is next to him. Say your name and please make it brief. Just one second.

**Gatibu Maina:** My name is Gatibu Maina. First of all, I would like to thank the commission for the job well done especially in putting the draft in a very very simple language which every person, every common man can understand.

I would like to make a few comments relating to the draft, first of all I would like to go to the preamble. It is very very encouraging to see that unlike in the memorandum that was made in the Lancaster house in 1922 that has continued to rule us and did not have a preamble, we now have a preamble which now states who are the sovereigns in this country, the people of Kenya.

However, I would like to make one small observation in the opening sentence in the preamble. "We the people of Kenya," I think that is a very general statement. I don't want to go very much into semantics, but I think the right introduction should have been " We the Citizens of Kenya" because when we talk about peoples of Kenya we have today in Kenya temporary residents and the only way to define them is that they also the people of Kenya.

Mr Kehengeri has mentioned about highlighting the heroism of our people in this country, so many parties even before Mau Mau had taken a very very effective and strong part in struggle two to ensure that our country is not penetrated by colonialism. So, the whole struggle comminuted in Mau Mau, I think there should be a special sentence in the preamble to highlight heroism of this people without of course forgetting Mau Mau because that was the climax.

I would also like to go to the bill of rights, but before I go to the bill of rights, let me go to National days. Stage 4 in the pullout Column 4 is very gladdening to see that you have eliminated some national days like Moi day, *laughter* and you have replaced it with a Constitutional day in brief but I would also like to add that we should amend it further and call that day not

Constitutional day but freedom fighters day. I hope you will consider that.

Let me go to the bill of rights. About prisoners. I can not the place now but I can recall it. I think it has been recommended that, even prisoners have conjugal rights whether they are in prison today or not. They should be able to procreate like anybody else and make good citizens for tomorrow so can you please consider that and add it conjugal rights for prisoners.

Commissioner and the people at the high table. If you look around here, you will see that people are a little bit gloomy, because we are in the process of ending Constitutional meetings but we are worried about on negatives possibility. If the parliament is dissolved today what happens. I hope, (I am not going to advise you what to do) you have inbuilt measures to ensure that the process may continue but I can assure you the spirit of the people in the country is such that we have to go into Elections with the new Constitution. You see this process of Constitution meeting was inspired by French Revolution and I can tell you when the powers that were there hindered the process of democratization, the people themselves made the Constitution and we are likely to see in this country a situation if the process is interfered with.

Let me go back. Please bear with me, I am an old man like Mr. Kehengeri. *Laughter from the crowd.* The question of land, I have participated in about 7 presentations in Central province. In every forum that I have attended the question of land has loomed very badly. And when we talk of land, we are talking about basically white highlands and the grass lands that is held by the government and local authorities. In white highlands we had about 8 million hectares of alienated African land. When we got independence, this land went to a few Individuals. Black people like me.

I know of a family which has got about 1.5 million hectares of land in white highlands. What a big shame. That is why I feel that your presentation on the question of land is not quite satisfactory. We should see limitations. I Remember I had suggested that for arable land people should not Be allowed to own more than 2,000 hectares. In marginal land not more than 5000 hectares. Those are economic units in such areas. So I am very happy with those few remarks but since we may not have a chance to come here again in this process Constitution making and I understand that we have already elected our representatives to the Constitutional conference. May be you can introduce them to us when the process over. Thank you very much. *Clapping from the crowd.*

**Samwel Karuga:** Let me also join my friends in congratulating the commission for the work well done. My name is Samwel Karuga Wadai.

I wanted to join my friends in congratulating the commission for the work well done. Because of the time I will be also very brief.

My observation about the Constitution, I have a quarrel with the president and the prime minister. Under the Constitution the prime minister will be appointed by the president in the same Constitution the party will nominate a presidential candidate. So

also the prime minister will come from a political party. Under the Constitution the prime minister will be elected or nominated from the strongest parliamentary party or the man who will command support in parliament.

The prime minister is likely to from a different party from that of the president. In other words the president may be belonging to a different party, the democratic party for instance and the prime minister may come from peoples coalition under the setting of the Constitution which will mean that each party have its own manifesto, each party have its own policy. Now the prime minister will have to enforce the policy of each party. The president of course would want the policy of his own party and post so here we have a major contradiction in the Constitution that the prime minister wants this and the president wants this which will create a Constitutional confusion in the country.

My proposals or my observations to the Constitution were;

That the president appoints a prime minister from his own party such that if he has a minority party in the parliament he may negotiate with other smaller parties to form a coalition and make a majority party. So that the government from the top-down to the parliament level is the government which will enforce same policies, same manifesto without contradiction and that is my major observation that unless that situation is not cleared in the Constitution in future we are likely to get a major contradiction and perhaps a nation crisis.

I have also made observation about the appointment of ministers. The Constitution envisages a situation where perhaps the government will be run without the policy makers. The parties are made with a manifesto which they hope when they go into parliament or when they go to power they enforce those policies. That is the whole purpose of the political party but here now we will have the president appoint a prime minister then prime minister appoints people from outside to run the government. In other words, you will have to pick people from outside this party who are members of parliament so that they can run the government. Perhaps the area they are trying to cover is that the prime minister will be able to get people who can be able to do work.

Perhaps who are knowledgeable in Agriculture, medicine or those other fields. But when you look at a ministry from the Permanent secretary downwards, this are technical people and they will not be able to enforce the policies of a party so I am suggesting that the cabinet ministers and their deputies be members of the national assembly, not the upper but the lower national assembly so that they will be able to enforce through the ministries the policies of their respective parties. Other than the outsider who comes and is put in the government as a minister and is not a party of that particular party. That is another suggestion that I would like to be taken seriously because if we recognize that the prime minister and deputy prime ministers are from parliament we are saying that we recognize parliamentary democracy and we can't say prime minister and the deputy prime ministers are in the house while the ministers and the deputy ministers are outside the house.

I would suggest they all come from parliament so that they will be able to protect to enforce the policies in the ministries and

protect the government ...(*Inaudible*) Why I am saying this is because the politician although they are accused of being not disciplined, they are still the policy makers. If you get a new man to head the ministry of Agriculture for instance and he is to come from outside to defend the ministry in the government in parliament, you can see the problem. He may not be a Very experienced speaker. He may not have gone through the political parties and manifestos at the time there having their meetings. He will have a big problem in answering and protecting the government from parliament but if it was a politician the man who is familiar with the parliamentarian, the man who is familiar with the standing orders. This Man will be able to defend the government. And this man will be only one, infact there are only two; the minister and the deputy minister in the ministry.

The rest of the lot are technical people. I don't see any damage done to that because we have borrowed this behavior from the British parliamentarian system and I think it is quite alright even here. That let the peoples representative enforce the policies of government in the ministries and defend the government in parliament. You also note that the constitution envisages that the president can resign. Perhaps he may be annoyed or we may give him a lot of headache and one he decides to resign like a gentleman. We have provided that if the prime minister has to resign he can hand over his resignation to the president but to whom does the president give a letter of resignation It is not provided for. So even if you want to resign tomorrow, I don't know how you will resign. We are still on the preconceived idea that the president is supreme, he is a den god that he can not resign.

So I am proposing that the draft accommodate the fact that if the president wishes to resign he can write his resignation letter to the speaker of the national assembly because on the same provision the speaker can act as a president so he also can receive the letter of resignation from the president.

You will also not that this two house that are created, the idea was, at least my idea was that the upper house will check the lower house. But the Constitution has now almost put them equal in a sense that views can originate from either house which means you can introduce your bill in the national council or you can introduce it in the national assembly. I was of the feeling that the national assembly is a house of representative. It is a big house because the senate is composed of only 100 people. I was feeling that views should originate from the lower house and then they are passed over to the upper house for thorough scrutiny to see whether any mistakes are made before they are passed over to the president for the accent. Because what we are trying to do is to stop the hurry because we believe the lower house will made of the younger people, perhaps (*inaudible*) whom you first build before they are scrutinized so I was suggesting that all views originate from the lower house be scrutinized in the upper house before they go to the president for accent.

You also note that under the proposed section 44 of the draft Constitution both houses are required to committee or what we studying committees on the various matters. You can see both of them are required to do so. Which means there will be parallel studying committees in both houses. And surely if parliament is made of two houses which the committee will not be agitated. If the committees are in the lower house, they are there. Let them do the same job as is done in the upper house

because if we do that we will duplicate.

So what I am saying is, as you can see this people looking at you now, you can see the light at the end of the tunnel. Infact, we are hoping that the president will not go into a ruin and dissolve parliament before this Constitution is approved. I have no doubt in my mind that what we have done as Kenyans will take us for a 1000 years. Thank you.

*Clapping.*

**Thika Mayor:** Can we just allow the commissioner to appreciate those comments because they are not really questions they are suggestions and comments so that we can go down this line and go down through the other one and we are going to be time conscious. Thank you.

**Com Kabira:** Thank you. I will just spend one minute because like the mayor is saying, I think this is a very good thing. We are responding. We said at the beginning this is a draft. We want to respond to it and we are also seeking the views on the same draft for further consideration at the national conference and as I said we are going to prepare a report on the same.

But may be one or two things. I will begin with Karuga. I note your concerns on the appointment of the ministers from outside the house and I think that is also going to be further debated, that is why we have the national conference but again there were recommendations from the Kenyans. The issue of the prime minister, I note your comment also for further discussions.

I am saying because, I think my idea is not to defend. We have not reached the stage of saying this is the draft we must defend completely. We are still seeking views and we are still saying this is what we have brought to you and we are going to put together your comments.

The issue of the upper house, I wanted to say something about this because one of the main reasons for the upper house is actually also to check the lower house. If you remember the independent Constitution, the question of devolution as it was recognized was destroyed you can put it that way in two years. so this upper house you will notice that the representatives are coming from the district councils and some from the province. It is first of all to protect devolution because the tendency to concentrate power is so much as we have seen the 39 changes that we have had in the new Constitution. Most of it was to concentrate power in the central government and also within the executive itself.

So one of the main areas is actually to protect devolved government. To protect the people's power as it is expressed in the various devolved government. So I think that is a main area but I also want to say that if you look at the.. I don't remember the schedule, but one of the schedules actually indicates what are the powers of the legislature, then what are the powers of the local councils and so on. And these are areas which will need a lot of legislation even to indicate what actually is it that the upper house can do to make sure that there are no duplications and that the committees are not duplicating the same effort.

But one of the major areas was actually to protect devolution but also to check on the bills that come from the lower house. There are other things like appointment of Constitutional offices and so on. But I think that is an area as you say that needs to be very clearly looked into and I think it is going to form one of the major debates during the national conference. So thank you for those additions.

Mr. Gatimu, I want to... you have spent a long time actually by the way trying to define the people in the preamble. But I am glad you have suggested that may "citizens" would have been better and I think that is taken on board for further discussion.

The other thing you raised, I think is the issue of highlighting the struggles of the people. I look at it also and I agree that we have not clearly reflected the people's struggle because the struggle has been going on even before independence itself. There were so many parties that actually were working towards the formation of the Mau Mau struggle. And after the Mau Mau struggle there has been a lot of struggle for second liberation as we have called and I think your proposal is taken on board.

The issue of land which I think is both an emotive issue but also difficult to deal with. We have got a lot of submissions on land with some people feeling that if you don't belong to a certain province for instance you should only work on the land or not be able to sell it. There were people claiming different parts, for instance people in the Rift valley with people in Transvaal claiming part of land in Uasindegishu and vice versa. So the land issue is a very difficult issue and it is something that can be debated for many many years. I think one of the reasons why we have under transitional arrangements for the land commission to do certain things is to take into consideration the many issues that were raised about the land and relationship between the Land and boundaries and various claims on land. There were people who claimed the tea zones in Kericho saying that land belonged to their relatives before the white man came and now it belongs to some companies so it should go back to their traditional owners. So the question of land is a very emotive issue and I think we have provided for a boundaries commission that is one and a land commission so that these issues can continue being negotiated even as the new Constitution is on boards.

But I note the other issue on, (this also came from central province) on putting a ceiling on land. We also had submissions on how much can you divide the land. and that is related to land as a basic right. How much can you divide the land and we were saying some of the submissions, in fact even in Ruiru were saying that the land has been sub-divided so much like in central Kenya that it has become unproductive with every body trying to get a small piece of land. We had the same complaints like in western Kenya where the men not the women were complaining that they have educated sons and they have spent all what they had to educate them and although the family has two hectares of land they still want it to be divided so that they get their piece. So instead of even buying elsewhere or buying other piece of property they still want the piece of land. So I think it is an issue which is not very easy to deal with but probably what we should be talking about is the power of the land commission to see how that work can be reflected and there provisions for the land commission and I want to say the land commission is not the current land commission. It would be a Constitutional land commission whose independence will be covered by the Constitution

itself. So that some of the issues of land can be dealt with and that area.

The mzee Gitau Kahengeri, the issue of every Kenyan has right to Land as one of the basic needs like health, education, housing etc, may be that is an issue that should be considered but also take into consideration that we are also moving towards industrialization where the land as it becomes less productive and as people become more and more is that something that one would be able to do to make sure that every single Kenya has a piece of land. but I think it is a question that needs to be looked out.

I think the question on the Mau Mau struggle needs to be revisited and we will put it on for debate. Otherwise the other comments I will pass them on through the reports to Professor Ghai and the commission.

**Thika Mayor:** Thank you very much commissioner. Okay.

**Gitau Kihengeri:** You did not comment about the flag.

**Com. Kabira:** I think the flag, I am sure we never debated as to whether that should be in the constitution. That one I know we didn't but I think it is something that we should consider because may be 50years not even 50, 30years from now nobody, there will be who knows the meaning of those. I know it because we used to sing as young children the meaning of the colors. But it is true by the time I am dead, because I think I am one of those who were children when this was going on. Nobody will know what the colors meant and I think it is a good thing we should consider in the new constitution.

**Thika Mayor:** Thank you very much. I just want to make sure that people at the gallery can hear what people down here are saying. So that if you can't hear please ask them to raise their voices so that we Can communicate. Are you comfortable?

**Crowd:** We are comfortable.

**Thika Mayor:** You want to make a small comment.

**Man from crowd:** Just a small word. with regard to(*inaudible*) at national symbols. In this country, it is not only people themselves who oppress us. We are oppressed by people including their symbols like in our currency we have portraits of living presidents. I think we should never have that. A president should be honored in other monuments after he is dead.

**Thika Mayor:** We are still going this way. Take it fast so that we can make a quick run through the lines.

**Mrs. Jeanne Kiama:** My name is Jeanne Kiama. Iam only going to comment on what the speakers who are before me have

spoken about and especially on land. Land is very very valuable for us who are probably 40 and above but the present young person especially the once who are here in town don't value land. you find somebody inherits some piece of land and says what is it for, who is going to cultivate and so I support that every Kenyan should actually have land.

But what about that lazy born who is not really interested. Who is interested in getting that piece of land to sell it. Even from inheritance you find that some are waiting for the parents to die so that they can sell it. However it is every Kenyans Constitutional right to have basic rights. That is my support *Inaudible*.

**Ng'ang'a muchai:** *Inaudible*. Thank you very much today is a gender sensitive, with a pot very beautiful as you can see. 2/3rds of the pot is gender sensitive. Thank you very much. Now I would like to.. (can you hear me up there) I think I would like to join the others to congratulate the commission for work well done and in time. We are very happy infact we are very happy to see this document even in the papers even before you came and we are also very happy that you are here.

When you were here you said you were working under very critical conditions and surely you were and you will continue to do that but I never heard of anybody who was not heard or never brought in something except one man, President Daniel arap Moi. I don't know why you never listened to him. You may want to comment.

I would also like to say that the document brings out very clearly what this country requires. That is checks and balances because we have the people getting the powers and you have parliament checking the executive and the two houses checking one another. I would like to say that we are in the process of reading the document and what we want to know is the exact way to present our views if we have anymore to comment on so that you may be able to be heard again. We don't want even a single person including Daniel arap Moi not to be listened to. He should be heard.

Finally, because I want to be very sure. I want to say that we, majority of us want this Constitution to be used for the next election because it would save the next 5years where every Kenyan would say "yes it is what I said, it is representing me and that the powers that were supposed to go down to the people have gone down to the people". Thank you very much.

**Daniel Kyule:** My name is Daniel Kyule. I come from the workers sides bridge. I want to comment the commission for the work they have done and especially for making sure that every Kenyan gets a copy through the print media and so forth. Before the commissioners used to take those copies to the president they and they are taken to national achieves. You never get any report.

I want to remind us that history is very important and in this sense I want to support what honorable Gitau wa kehengeri and his friends have said about the Mau Mau and even ourselves we were in the process of Mau Mau in coming out with this document, therefore it is reflected that the freedom of fighters who were fighting for freedom to come out with this document. It is very important.

The other comment is about on Chapter 13, our currency is very important. It is through the web. Through our currency and other resources and it is not mentioned how it will look like. The current currency has got the portrait of – what about if the president dies today, we change the currency again tomorrow. We to propose, I propose that we have mount Kenya on one side and the first president of this nation on the other side and that will make it something permanent. Not a monument of something built in the path which will collapse someday. What will it reflect to the currency. It will show the currency has also collapsed

Otherwise I also support what Muchai has said that we need the time. We are not lawyers to have read this document it is a big one. We need also time and also need if it is to bring the recommendation to the office. I think with that few... thank you.

**Kimani Kang'ethe:** My name is Kimani Kang'ethe, I represent the business community. First I want to congratulate the commission for doing very good work and producing the result of what they have compiled.

Secondly, our young lawyer here – (I have forgotten the name), Mr, Wachira, has read to us the details of what he produced here, you know this is very important. I think of all things we are saying here, we are happy that what we said earlier has been recorded. We said this is most important and because what we said was recorded, we should support what said about. I was listening very carefully and I had looked at the draft that most of those things Thika people say are already in. we should first support that because it is already recorded.

I would like to say we are thankful, for the commission, for considering most of the points, because I was here and most of these things are already recorded. I think I am very happy.

I have read the Preamble and this is the principle of the whole document. If it does not indicate anything that promises the improvement of the economy. I would like in the Preamble that the commission creates a mechanism that will introduce improvement of the ever declining economy of our country because we are saying we are economically dead. We are not moving, there is no empowerment, we don't know where to go and the preamble itself does not mention, does not give a promise that this Constitution is going to bring a mechanism that will improve the economy, this is very important, it should be included even if it is world economy. The we have the promise, and it is important that this is reviewed.

The other point is that the district coordinator should provide Thika people with the documents that are already written. We can collect them from here. Because as he said people cannot read all of it but we will be able to read to others and educate them about this because what you have recorded is not perhaps all that you have recorded because I understand there is the draft and there is the report containing 600 presentations.

The other two points I have, Point number one that the qualifications of leaders in this country. I was in another forum and I was told that MPs should be from four graduates. I would personally insist that we need graduates, we have more graduates than we need in Kenya. We are producing thousands and thousands of people in different fields. MPs should be graduates because they are there, people who can read documents, people who can do research, people who can read about other people in the country. They should be graduates because people who have not been able to go to the university. They have failed in the secondary school. We should have people who are moving so this one I would recommend very strongly that we use education for people who have achieved it and then those will be elected in the provinces, in the districts, they should also be educated people because if you don't use education then we don't understand what we are doing. So the qualification is very important because that limitation makes the leadership because you can be a leader if you can read a newspaper. You know what is happening. But if you have to get somebody to read for he is your leader.

The last point is about the candidate. you understand now you will have independent candidates. This is very good if somebody does not want to go by *inaudible* To the parliament. He will go to parliament as a very important, and I will like to comment the commission for this. Let independent people. People who feel they can be leaders, they are able to *inaudible* making national leaders. As for ministers I go by the commission recommendation. We have people who are not related but they are very, very important citizens of this country and if the parliament has the ministers who are related from different views to be going to parliament to present the requirements of wanainchi, that would interpret what we are saying. This is a Constitution of the people because it is an addition of the 210 MPs by wanainchi. They have selected a doctor, a lawyer, an engineer who can be appointed like an America, secretary of state and secretary *Inaudible*. These are people who are appointed after the elections ends and they are the people who will represent the interest of the people because the politician you have already given him the power now you have also given the power to go and see only by constituency that you have rules first because if I don't give them the rules, they will not elect me for the secretary.

But if we have an independent person who is appointed to work for the nation if you look at road infrastructure in the country, education infrastructure in the country, so I support this idea of having ministers who are not MPs.

Finally this national conference, we should have the date. Let us know when the national conference is about to come before we leave this hall and I would like to warn those who are appointed to go to the national conference. You already have the prose and (*inaudible*) because politics weeks are running very fast. Maybe those who were already appointed by the time we get to the conference they will be against the Constitution that the people have already made and this is very important because people are moved by politics.

So the commission should be very careful for the good work that has already been done. It may be destroyed if the people you yourself have requested to go to the conference, changes at the conference. If you have 50% saying 'No' we go to the election, so you should now review what you have done before you have people saying we want the old Constitution. The wind is

very strong and we should ensure that people who go to the conference are people like Gitau Kehengeri because I know this one can not change.

Please work for this country but if you selected the wrong people, if you let them go there it will be a disaster. You have done very good work, you have produced something for us, we will all not be there and now a section of the people have either had *Chai* or something and now they are saying bad u they go with the old one. Thank you very much.

**Thika Mayor:** if you have finished let us start with Mr. Muhia, and I will ask our the commissioner to respond. Please make it brief because behind you Mr. Muhia there are very many people waiting to say and the commissioner is telling me we are pressed of time. I am sure she will have the patience .

**C. K Muhia:** Madam mayor, Professor and members assembled hear the preamble is always that job has been well done. That will continue to be set and nobody will miss that. My name is C. K Muhia. I thought it was mentioned. Thank you very much. Madam Professor has said the exercise you have brought to us, first of all is very good because we never owned the former Constitution. That was foreign to us, it depended on the British government and what they wanted to give us, but this we are making it home grown and we ended with a constitution that provided for two houses. Regional assembly and good things that were around us, down the line all that was watered down to what became the presidential chatter.

That is why we wondered with that Constitution, and amendments were made to remove the junior assembly to remove the senate and we learn the danger of doing the same thing. Can you give us the guarantees you have put in place to make sure you don't reverse this process so that you retain the power with the people.

The other point madam mayor as chairperson, is the language. It is flowing language. This is very good. The other one was even difficult to the lawyers and I must commend those people who used this language to communicate to us but tribalism is a big animal in our country. It can destroy us anytime and I know tribalism and language. Language is the first that destroys us. I suspect you because I don't understand what you are saying. I go to a government office and I find a cluster of people talking in a foreign language to me. Can it be made mandate, although you say Kiswahili is a national language that service at all public offices would be in Kiswahili. At least most people employed in offices should be able to speak Swahili as a matter of duty so that our people can see that they are being served fairly.

Madam mayor, we have a mess to clear in our judicial system. I don't mean the individuals there. That is why I am carrying labels. I mean the administration of justice. We have a big problem there and to begin with, I would propose that the licenses of law the procedures that hinder justice to our common person should be done away with. The court should address direct issues of the party and the court should give some special justice without regard to those technicalities of law that make justice be so far away from the consumer. The consumer in this country of the judicial system most of the time does not understand what

happens there. The justices there should be people who are vast with language, who are conscious of the needs of the people. By the time a person is arrested and jailed there he loses all his being and is already convicted. You ask him what do you have to say, he starts saying I'll wait you there. He is already convicted and instigated.

I think it is good to carry that paper and write in your draft to say that all this will be done, but you did not say that that should be one of the cardinal principles that a consumer must understand what is being done as Kenyans. We have a lot of rubbish on the British English law and whatever we have imported from India and Australia. Things like land law and things like that. They are all very strange things. We don't make sense of them when they say that you can not get justice because this law says this and the other one will say that. You end up administering the moves and justice is meant for the people. *Inaudible*.

I think having said that we should also comment you for creating so many commissions in this constitution and there is the devolution of power. This commission properly run to give us what we need but these commissions will continue particularly when parliament is the main amending organ of the Constitution. It may come to our reference on particular items. These commissions, ladies and gentlemen, I understand feudal councils was elected first and it took power and it complains to the people. If we have a strong president in this country and if it starts watering down these commissions, then the whole thing is gone. We need that there be maintenance. If economics can stay even more, they will be created.

The human rights - This states that people should be treated fairly and with dignity and as Kenyan citizens, there are many areas, I am you collected a lot of views on these but we still maintain in our law something called the civil debtors prosecution process. That is a dehumanizing, degrading system of law. And I think the 21<sup>st</sup> century, we don't belong to that class of people. Ladies and gentlemen the law says when you are so poor you can't pay your debts you are locked up. Just like in the Bible that guy who was forgiven when he took his brother in. it is a wrong system of law. Let our people be empowered so that they can pay their debts, let us apply other means other than locking people in for civil debts. Everybody can have a debt anytime.

Let the law to be administered particularly on mortgages in a way that is consumer friendly. A lot of us have land, property or a lot of things just because the national economy collapsed and who are to bear the burdens, the citizen and this is wrong. This should be uplifted particularly when they say they will start an Agricultural bank. I am very encouraged for that you have the focus on the farmer. He is the person to consume the services of that bank and maintain it. Not to finish it and bring in another one, finish it, and this has been going on without much consideration to the families that are affected. Madam mayor, I will stop there. Thank you.

**Thika Mayor:** Before the commissioner responds to those three, four comments and questions, I want to inform the participants that if you have a written memorandum, the CKRC secretariat is right here and you can hand over your submissions here.

Second, there is a registration for m going round and it is important that you register your name, the organization and the contact. So if you have not please raise up your hand and the paper will be passed to various people so that we do registration. I invite the commissioner professor to continue from there. Thank you.

**Com. Kabira:** Thank you very much madam mayor. By the way if they have written I have already received some. If they have written we are going to take them today and Wachira is going to collect them and record to make sure that I we acknowledge that we have received those. From today, they can also go to the written submissions can also go to the district coordinator who will announce probably again at the end of this meeting where you can give him the comments.

I also wanted to say may be at the end of this session he will tell U who the three delegates are. The delegates are not chosen by the commission, they are chosen by the various stakeholders. Like the district delegates was chosen at the district level. The one from civil society, we have the religious leader have already chosen 34 delegates. Women's organization have chosen 34. NGOs, that is among the civil society have nominated 23. political parties, there were 42 position but like I told you 19 of the parties we can't trace them. The others are empty and the others are ex-official commissioners. But they will be able to tell us at the end of this.

May I just to make some quick comment. I am very glad about what you have been saying about the system of law and the judiciary in this country. I have always being a known lawyer myself, I have always wondered for instance how we would use policies like ignorance is no defense and if you don't know you are guilty. That is totally wrong. I know it is the law of coup de tat who used to say that the law as they have is for the rich, it is actually not for the poor that is why we have the law that says that trespassers will be prosecuted. It must be that there are people moving somewhere going through rich peoples land and therefore they will be prosecuted. It is not a very good system.

But in the Constitution we have talked about the Kenyan common law and may be this is going to be one of the most revolutionary recommendations within our legal systems. Where we are saying that we can not permanently continue and we debated this for a long time talking about the English common law being the base for the judgments that we make in this country and we have talked about the Constitution will bind the courts and the legal system to actually come up with the Kenyan common law. A law that is based on our own experiences as communities and as also borrowed from our own traditional systems.

So I think as you say even by the way to have eh.. You know in law, what do you call them Wachira, the things you put at the side. No, Some notes. You call them?

**Wachira:** Marginal laws.

**Com. Kabira:** Marginal laws, you know to agree with the lawyers that no we don't want marginal laws, those small things that you put at the end here. We want headings so that people can read the Constitution and instead of looking for small marginal notes because that is the way law is written, we want a different way of communicating to Kenyans, because the Constitution is not for lawyers. The Constitution is for all the people who... so I think we are saying that the law itself needs to go through a complete overhaul so that it can be easily accessible to the people and so on.

I think we have talked somewhere about the interpreters as well. That nobody should be judged in a foreign language and if the case has to be determined in either Kiswahili or English and that this person can only speak kikuyu for instance or come from the okiek community, then the court will be on obligation to actually bring an interpreter for that particular individual because a lot of people as you say will go to court and the courts are very unfriendly and so on. So we are talking about social overhaul of our systems that are supposed to monitor justice. So I think that is an area that probably a lot of discussions will go into but may be this information, but all of it will find its way into Constitution.

The language I think we have talked about, but you there two things. One is talking official language English and Kiswahili. But also promoting our own indigenous languages because we say that development of a people is also dependent on the type of language that they use. And we are saying that there is strength in diversity. We don't have to feel kikuyu language. We want the communities to develop, because the communities also need a base you need an identity. You need to know who you are that is why black Americans for instance are always looking for their roots. You want to have a base upon which you can move to meet the rest of the public and I think we even discussed what kind of language should we use at the district councils and the argument was that you can't use the local language if there are people within the council who don't use the language therefore you should use the official languages either Kiswahili or English.

But what happens if you are in a council where every body is a Kikuyu. Why must you continue struggling with Kiswahili and English to make a point related to yourself? So this are important things that one wants to.... Because the language is to communicate, its to help you be able to communicate. It should not become a hindrance in communication and in making decisions. So you want some form of flexibility while at the same time protecting minorities within certain areas but also ensuring we are talking about discussions that are inclusive and so on.

So, I think when you talked of the offices for instance, you the village will also become now a formal institution so we can not insist to Kiandutu, although kiandutu is not a very good example because Thika is cosmopolitan. Lets say Karuga village and there is village government, should they be forced to talk in Kiswahili and English? No. Although it is a government institution we should be able to communicate in a language that they are most competent in so that they can develop and they can grow and also the language itself grows. So we don't want to kill the languages either and that is why we have a language policy by the way which also promotes the indigenous language. It is part of our culture, part of our heritage, it is part of our richness. So I think we are trying to balance what I think would be important but thank you very much for those comments.

Now, how can we protect the process and may be I was going to draw your attention to chapter 16 in page 3. There is just a listing there, 16, 17, and 18. Chapter 16 is talking about the leader code and integrity, where we are talking about why it is important to protect the values that we have put in the Constitution and that is why we have the leadership code and all that and what happens in the public offices so that we develop and we promote the growth of a culture that respects the human rights, a culture that promotes the values that we come up with in the Constitution. A culture that respects the Constitution and Constitutionality.

The next chapter which is chapter 17 is talking about the commissions themselves. You have general provisions but if you look at page 287, 288 talks about the commission on human rights and administrative justice. Again this is a way of managing Constitutionality. Under the bill of rights, we see that people are entitled to basic needs, the question is who is going to ensure that those basic needs are met and what will happen if those needs are not met.

Therefore under the human rights and administrative justice commission you have an office of a commissioner responsible for basic needs and basic rights. So that if you are thrown out of the school, this is the office you will go to to report because you have not paid school fees. If you have not been attended to at the health center because you did not have money. Even if you go to Nairobi hospital and it's an emergency and you are thrown out and we are saying that no Kenyan should be denied emergency treatment because of money, that is the office you will go to. Under the same human rights and administrative justice, we have what we call commissions office for people with disabilities. So what we have under the bill of rights we have somebody to monitor whether the bill of rights is being implemented. We have one for children's rights so when we are talking about street children, orphans and so on under the same. We have one for gender, we have one which is the people's protector which is the equivalent of the ombudsman.

So we are saying that if you have a problem with the way people are treating you in offices, if you have a problem with a judge, if you have a problem with the police, if you have a problem with the mayor, you will go to that office and say my rights as a Kenyan are not being implemented and these commissions have a right to investigate and to give their report to parliament and for whatever recommendation they gave to be taken on board. So this is part of how we protect as you said what we are doing. Again you have other commissions, salaries and remuneration commission. We are saying that no public office should be able to decide what salaries they should be paid. So we have a commission that will sit and say and this came from you also.

The MPs salaries is going to be this much for so many years. But the MPs can not do what they did this time. Just decide what is their salary and this is what is going to be paid. They decide and then table it before themselves and implement it. So we have put like you recommended that somebody should determine the salaries of the president, of the vice president the ministers, the MPs, the Constitutional office, top civil servants like permanent secretaries and so on. So that we also have some kind of sanity in the way we give salaries. We have some people getting a million shillings, other people are getting 6,000 or even 3,000 I understand for teachers. There is no logic in those kind of disparities. So that is why we put that.

Teachers service commission is now a Constitutional office which it was not and so on. The Constitutional commission is not really this commission we are talking about a commission probably of such people that will monitor the implementation. I think this institutions that are put in place to ensure the management of Constitutionality.

Now the next one, chapter 18, we have made it more difficult for parliament to make certain amendments for instance issues related to devolution, people have been saying that the power must move from the center back to the people so we have made it impossible for them to disband this city councils and say we will go back to the old local authorities. There are things which we have put in the Constitution which we are saying cannot be amended by the 65% rule that you will need a referendum but I think that list exist under the amendment of the Constitution. So you will see what can be amended and what can not be amended except through a referendum. We have never had a referendum in this country.

Every part of the Constitution has been changed by parliament with the 65%. But now they will not be able to do that. I think the bill of rights is also one of those they can not change you know without a referendum and that appears also in the Constitution. May be very quickly the date of the national conference at present, I was just discussing it this morning as we were coming here. At present 28<sup>th</sup> of October is the date of the national conference and it should take 4 weeks. They should be between 28<sup>th</sup> of this month and 28<sup>th</sup> of next month. Professor Ghai said that in the papers the other day and even if they are going to free conference activities, 28<sup>th</sup> and 29<sup>th</sup> so that the official opening is in the 30<sup>th</sup> that is still being debated. At least 28<sup>th</sup> is the date when the delegates will be meeting to deal with that, to Start the process.

I think qualifications of the leaders this was Kimani Kangethe, I think that one we will continue debating at the national Constitutional conference. But there some things that one was taking into consideration but apart from the degree some other people had so many experiences that make the good community leaders and knowledge is not only what we get from the classroom but sometimes you will have the knowledge of experience in certain areas that sometimes has made very good leaders even when they don't have the degree and people were divided about whether there should be the degree or whether people should be form four.

Of course in some part of the country a lot of people have been able to do very well but there something else we put into consideration, it is not actually correct to say that those who go to university are the only ones who qualify because we have been saying that B minus or B. In some cases is the lowest that public universities take, so you have some very good candidates with B or B- but are unable to go public universities because public universities can not hold them. So they end being drop outs in terms of university not because they are foolish, but because of the lack of facilities in this country and you cannot lock people out of active politics because of things we have been unable to manage as a nation.

If your parents can afford you can go to private university or you can go out of the country. But what about those poor ones

who have been unable to work very hard and Bs and have not been able to either go to the public university because of fees or go to private universities because they don't have the money but they enter into other activities within the nation and acquire experiences that communities may consider very important. for their MPs. So these are some of the discussions that went in to taking O- level rather than the degrees, because you cannot lock people out from not achieving what you want them to achieve and you have not created the environment that will allow them to get what they think they should have. So I think those are some of the considerations. It may be temporary and so on. Yes eh...

**Gatimu Maina:** You can extend similar comments to across somewhere I don't know where it is with regard to the 8 limits of our leaders because I don't see the importance of regulating a leaders limit . you can have a leader for 20years and he can make a very good leader yet when you limit it to whatever you have here, I think is very wrong. The same applies to the president, there is no need you can have an old man of 90 who is very mentally stable and Can lead.

**Com kabira:** These are the discussions we will also forward at the national conference but I think the Constitution wants to be much more inclusive than exclusive. I think the question you have raised is also one of those things that are going to be debated. The reason why I talked about this qualification is because of the level playing field we have been talking about. In this particular case, at least we are all on the same level in terms of age. We are almost 65 or 70 so we have the same level playing field but we are not all going to go to university, one because the space is not there. Two, because we may not have the money and so on. But I think there was a feeling that in the national upper house that is why we have said 35, I thought the basic idea is that these are people representing the district and who are suppose to protect certain interests of the district and they will specifically be protecting the interest of devolution as a major function and that is why the participation of the upper house was reduced to 35 rather than 18 or 19. 21, I think for MPs. That was the argument but that is also going to be debatable.

Kang'ethe, your issue on preamble is taken, and then Daniel, I think your issues are taken as comments that will be put into consideration. I think Ng'ang'a, how to present the views, I think we have already talked about it. Either you submit it to us now because we are here or through the district coordinator later on. The case of Moi, we sought for appointment and it was in the papers, he said No but we have sent him a all our reports at least the reports as they come out we have also sent to him but he explains why he will not listen to us, now Jeanne yours were comments and thank you for the comments.

**Thika Mayor:** Thank you very much. We are supposed to enjoy merry go round but one of the participants has asked to be considered because in less than 20 minutes, he is needed somewhere else. Being in the chair I am allowed to do those things and I will ask advocate Jole to make a presentation and please be brief.

**Advocate Jole:** My name is Macharia Jole. I have very simple comment to make which may also look like an observation. In chapter 2, concerning the republic, I observe that we have been very shy in the sense that all through we have tried we have tried to come up with a welfare state. That is why we are trying to talk about the right of children, the right of this, the right of

the other. But we are shy in the sense that we have refused to see that this republic is going to be a welfare republic.

I would propose madam commissioner that we do have a 14 paragraph in the chapter 2 to say that Kenya will be a welfare state. Madam commissioner, we will be in place to say that in the state sheet, the duties of the state to promote rights and freedoms, that is about your article 30 that therefore in a welfare state, the state will have a duty to provide for the welfare. You will notice madam commissioner and all of us hear that article 30 verses section one, we said the state shall observe, respect, protect, promote and fulfill the rights and freedoms of everyone but we have omitted the cardinal rule to provide for those things.

Think of a child whom you said should get free education but he is on an empty stomach, how can he read. Talk of an old woman who is dying in Kiandutu and you are saying she has to observe basic rights but she can not afford rent. so when we remove the word provide from that section we have left the state ones again free from our own hook. That was my proposal. Thank you.

**Thika mayor:** Thank you Muchiri. Now we will start from where we stopped and so we go this way. If Mwaura you have something to say, you can just say it there and then make it brief so that we cover everybody. We will still have to move to the galleries.

**Ndirangu Mwaura:** Thank you, I should start by thanking the commission for a well job done. My Name is Mwaura Ndirangu, chairman spinal injury and disable jua kali project Kenya.

If there is one man who supports this draft fully it is me, because I attended almost all the sittings of the commission not only in Juja constituency, but also in Thika district. I have seen that the draft has catered for the disabled persons but I have one observation o make because I may not be able to make national Constitutional conference.

Kenya is not a developed country where people like Mwaura, with legs and hands are mobile cant get a job although they went to school properly and in the Constitution, you have said the people with disabilities are entitled to the rights of employment. In Kenya, you can not be employed, so one fundamental thing that is lacking here and in all our submissions we are declined all over that we would like the Constitution to clearly state that the disabled persons in Kenya are entitled to a social pension in form of a small salary so that they can be able to cater for their life and their food and they are assured of a plate on the table in the evening. Thank you.

**Stephen Tida:** Hamjambo, kwa majina ninaitwa Stephen Tida. Ninafanya kazi an idara ya magereza, na ninafurahi kuwa an nyinyi hapa siku ya leo, sijawahi kuwa an nyinyi wakati mwingine.

Hata hivyo ninapowakilisha maoni yangu ningependa mnifikirie kama mkenya siyo kama mtu wa magereza kwa sababu sikuvingia huku na 'warrant', nilichagua kuingia huku na ninaaweza kutoka wakati wowote. Kwa hivyo, ninashukuru mayor, ninaona uko very encouraging saa zile unasikiliza. Kwa hivyo nita weza kuongea.

I would like to take issue with human rights chapter, I think I have observed several things which I think, they are not going to be very compatible to our country and I am going to read a few things which I have noted, so human rights has been given such excessive power that it may be very heard for the legislature to work effectively. I believe in their performance of duty, the legislatures will be out there reading the public mood rather than using legitimacy.

In this chapter, I felt we are losing our identity as Kenyans to the international community e.g. Norway and other countries, they are all ranging around rights which are outside Christianity, that don't reflect the majority of Kenyans. Like if you see like a country in Norway they are allowing rights like euthanasia, abortion and marriages of the same sexes which is not really according to our country. Women should fight their way to positions rather than they be imposed on Kenyans by this lobby groups. It is undemocratic, it is unchristian, people who have fought like Ngilu and Wangari, have been respected by Kenyans.

The issue of nominating 90 MPs, I think this is also very undemocratic. 90 nominations are too many and expensive for the country. This should not be. I find unchristian and undemocratic for that matter.

Colonial mentality has been extended to us dealing with pollution prison in this country. It is normal to see someone declared guilty before they are found guilty by a court of law. I believe when they are being sentenced by court the magistrate act in fear not to incur the love of the institution.

Conjugal rights, there is a friend of mine there who talked about conjugal rights. As a prisoner officer I know how we work with prisoners where they want to go and those kind of things. So in Kenya, prisons first and foremost they are very congested. I know you are talking like in the future they are going to be expanded and such things will be able to be possible but as per my research, it is very hard to implement this in the countries of the world and it can only work if prisoners are allowed to go for weekend may be at home. Like I read according to a particular prisoner in Britain called Geoffrey Archer. We I am escorting a prisoner to go on those conjugal rights, it may really infringe on me as a person at that time and if I ever considered examination, I think that is the time I will consider teaching.

My last contribution is concerning public servants. I think this is outside the chapter of human rights. Public servant I think they have been treated unfairly when it comes to election. I believe there is this chapter which say if a public officer wants to go for elections he should resign. I think there are reasons as to why you say that they should resign. One is to protect the government property and also not to misuse their position but after they leave their election, I think it will be very okay for them to come back to us because they have the experience. This means that they are motivated people and they should not be punished for being

motivated as in like because they are ambitious, because like people who are in public service and they are family people, if I go an loose my election what will my family be feeding on yet if it is a business person, he goes Back to his business, he goes back to his farm if he is a farmer.

If I will have to take a public office, the first question I will be asked is , if you loose, how will you survive. Yet knowing that with such freedom Many public servants will come out because people say that when you are a public servants will come out because people say that when you are a public servant you should not do politics, but that is exactly the thing we do all the time. When we meet we discuss what is happening in the country and I hear that most of them they have very good ideas and if they were to venture in that area with the security secured like if they loose they can come back to work, I think it would bring very good leaders in the country also. So that is my contribution.

**Peter Mugo:** My names are Peter Mugo. In the current Constitution in this blocked Constitution there is freedom of worship, but it is not specified who to worship and this leaves a space for idle worship in this country and devil worship in this country. So I believe it should be specified who to worship and in this case I believe the Almighty God. Thank you.

**Kinuthia wa Mwangi:** My name is Kinuthia wa Mwangi. You're the mayor, honorable commissioner and participants, very quickly I just draw your attention but although we are trying to devolve power from the strong presidency, I have tried to read to this Constitution and it has not clicked me properly whether we are likely t o leave the president as a hostage of institutions. I don't want to say much about it because I am still studying it but very likely that you might hold the powers of the president a hostage and as a auditor of state some day he might find himself or herself in a difficult position to intervene on matter that the citizens might want him to intervene quickly. So that is one aspect and I cant comment a lot about it.

I will talk about the honors, this ones we get very year. I think they have become a mockery and I think there should have been a criteria because right now the way you know them is that they are for ministers and senior civil servants and you are given a big honor like golden hand if you are a minister. And if you are like Mzee Gitau wa kahengeri who fought for independence ( I don't know have you got a golden hand) so to me it is mzee like Gitau Wa kehengeri who should get a golden hand not because he is a minister but because of the service to the people. And why should these honors be only for the civil servant and the ministers and the bigger the honors the bigger these people are being taken to court. We see them being trouped to court. All those who are going to court for corruption and other things are the people who have got the longest and the largest bonus and this is unfair and something should be done about it.

Honors should only be given on the basis of loyalty to the government because even opposition people, people who don't have anything to with government should also be given those honors and criteria should specified. Opposition parties should be asked to nominate people in their parties who should get this honors and so forth and other groups.

Now, the second thing is about the ministers. I strongly believe madam commissioner that the ministers should be out side the path way of elections because this is the only way we are going to eliminate corruption in the electoral process because people quench the voters when they promote corruption so that they can go and become ministers and go and grab and create (*Inaudible*).

We are talking about a strong presidency, but non of us is talking about strong ministerial positions and I know in this country there are some ministers who are even stronger than the president himself so these are the people we are trying to get rid of and I believe you don't need to be in parliament or to be elected to be eloquent. If I was a prime minister I would appoint that gentleman to be a minister and I don't think the way he expresses himself, He needs any other eloquence or any learning to express himself. There many people who are learned and who can express themselves and who can give their duty and their service to this nation without necessarily going to parliament and particularly elections in Kenya is not favorable to intellectuals and these are people who we can also make use of. So the intellectuals who fear to go and engage in dirty politics they remain behind and yet they Have what it takes to be a minister. The commissioner here, she may not be a politician but she has done wonderful job in this Constitution. See this Constitution has been made not by politicians but by people who are not politician and they have done a wonderful and critical job.

Now, a few points madam commissioner in this Constitution. I may have missed it but I don't know what happened to the labour industrial court. It is not mentioned. We have about 5 million Kenyan workers and they have got their own courts called the industrial court. But unfortunately this court you can only get access if you are a trade unionist or if you are member of a trade union. In this case it only caters for a quarter of the workers of Kenya and this is the court where anybody who is in a relationship of master and servants as the law provides to be able to go to whether you are a chief executive of an organization so long as you Are earning a salary by employment you should be able to go to a particular court. Why should KNUT go to seek remedies against the government instead of going to the industrial court. It is a mockery of the whole court and yet because of the procedures that are provided for in the industrial court it makes it first of all, cheaper to administer and it is cheaper for a citizen to go and seek remedy there. It does not require the heavy forces that are required under the evidence law because it is a win win situation and I believe this court should be available to everybody even to university dons, to anybody who feels are grieved by an employer.

And what I am suggesting here is that since now what we have said under clause 185b, you have said that all other courts other than the high court are 3 sub- ordinate courts so before the industrial court was at the par with the high court but now under this clause here it means it has been demoted, it has become a subordinate court, so I am suggesting that to be put at par with khadhis court o that we have provincial court and we have industrial court which has the power of a high court and you can also appeal because as it comes now you can not appeal from the industrial court. It is an invaluable court which also becomes a mockery. So you should have the powers of a high court and with apparent jurisdiction with where you can appeal to the court of appeal and i think it should be one of the three courts that are provided for in this Constitution. I don't know why it was

omitted.

Finally madam commissioner, I am talking about the devolved situation where by, I would like to congratulate the commission because I think that is what most of the people in Kenya were fighting for. The power to come back to them and therefore we are very happy about this devolved situation. But in your interpretations you have avoided defining, because you have not defined the institutions that you are creating under the local government act because previously you will refer in this Constitution to devolved government, you refer to local authorities, you refer to local councils and you refer to local government authorities yet there is no where in the interpretation where you have attempted to Define all those. in future when we are reading the Constitution it will cause us difficulties because we shall not know whether a devolved government is the same as a local authority or whether a local authority is the same as local government authority. So I would ask that you make it clear, that all those mean either the same thing or they mean different things at different levels. So that is one.

I think also, half of Kenya's income will have to come to the devolved government. And therefore local government from now onwards is a big business, it is a major business because it is the heart of social and economic development yet although you have done saving each local authority will employ its own employees, that is good that is what the local authorities have been fighting for but they had agreed that they need a national body that set standards for all the employees of local government something that can sign uniform industrial schemes, create running organizations on job training, set performance measurements standards and instruments and also act as an advisory body to local authorities be a guarantor to local government staff that hiring and firing and disciplinary actions will be carried out judiciously and all that. And also carry out and training needs and have performance standards.

This body will work with all the local authorities. It will help them to employ the staff who have got normally a national standard so that when you talk of local government administration. if you are officer in law government administration, you are known that you have certain specific qualifications and you have certain standards and to be in a respectable employment. So I am suggesting that probably we insert another local government service commission to be at par with the TSC, parliamentary service commission and judicial service commission without being in courts with the wishes of the local authorities but working in standard with the local authorities themselves so that that body can help to improve because right now people have no confidence in the service itself and I think it is important that we create confidence in that service so that we can attract the people who refuse to go there because they fear victimization.

Finally, this document which I am using was down loaded from your data and because I consider it to be the main document which is not edited, it has many errors which are either grammatical or little errors. Infact one thing, which is not correct. So I am saying also construction. So what I am saying you should comb it with a tooth pick to make sure that the Constitution is written in good English, good Swahili so that any body coming from anywhere in the world can know that it is written by learned people and people who know what they are doing

**Thika mayor:** Thank you, we will continue from where he left, by the time we get to this corner then we will ask the commissioner to respond and then we can move on. Thank you.

**David Gachanja:** Thank you, my name is David Gachanja, I am going to do a small comment. First of all I would like to congratulate the commission for the wonderful job you have done in terms of time and emotions. The whole country is looking forward for a complete document probably by the time we go to the elections.

I am not going to talk anything to do with power and the devolvement. I am going to talk of empowerment. You have empowered women for the first time and the disabled people. In order to enhance that empowerment, because empowerment is not a one stop job, it is a process. This empowered people will need continuous information and I have noted in rule 47 of the bill of rights, you have said every person shall be accessible to information but we are not saying where that information shall be placed. It is my recommendation that the commission puts the combination of the national museum, the national archives and the national library service under one Constitutional institutions and it be devolved from Nairobi all the way to the villages.

Professor if you came to Thika and you started wondering where the library is, you would travel miles before you get somebody who will show you because reading has been devolved also by dictatorship. We are saying it should be brought up so that people are encouraged to read. Part of the information that should be there and the country has been shy about has been the history of freedom fighting. Everybody feels like I we are ashamed to say whose blood was shed. We are only able to say blood was shed? Was it of an animal was it of a goat? So many people lost their lives, so many people left orphans, widows and widowers and we lost brothers and sisters. Is it shameful to bring that history to the village, to the municipal councils, to the provincial headquarters. So that when my child wants to know who fought for uhuru where, we are not only told of Moi and Kenyatta. We will know who else lost his life.

Also among that documentation we also should know whether there was or there will be any amount of compensation as a human right. Whether there was, whether there is or whether there will ever be any compensation.

Then, the other piece of information that should be there as a matter of record should be the municipal report. We don't know where the estimates for this town are kept. We don't know whether this municipal council is audited and if it is audited where are the audit reports. We want to be accessible to that information as a right. We want to see government reports, we don't want to hear Kenya sent a Delegation of 100 people to a world summit in south Africa and if you want to see the report that Kenya presented to that summit you can not see it if you are not accessible on computer.

We also want to know the law reports. How many cases have been passed in this high court. Are they relevant to our lives. It is possible also a commission like this one, we don't want to be getting these things from newspapers, we want to have a documentation center, we can walk in, reduce these costs of the newspaper and we can all share that information together.

We also want to know the geography of our country. Some of us who went to school in the colonial system know there was a section on the Kenyan map which was not added, it now has been added we don't know who will tell us who added and what for. I want end my comments there.

**Richard Mwangi:** Hamjambo wote, kwa jina ninaitwa Richard Mwangi. Kwanza ninachukua nafasi hii kupongeza commissioner kwa hii kazi ambao wamefanyia nchi hii yetu.

Najua kweli hawa commissioner walikuwa ishirini an tisa nakulinganana an professor Ghai kumekuwa na mfurutano kwenye commission, watatu, watano wanakuwa vibaraka. Lakini tunapoelekea kwa wakati huu, kusoma kwa magazetti, Ghai yuko Mombasa an kamati teule ya mbunge ambao inahusika an hayo mambo ya sheria ya parliament select committee kuangalia ni vipi mbunge ambao kwa wakati huu inaweza vunjwa wakati wowote.

Kwa muda huu ambapo Rais Moi anatuongoza, kipindi c hake kinweza kuishiatarehe tatu January mwaka ujao. Hayo ni mambo ambayo mimi kama kijana na wengi hatulali. Tunahofu kwa kenya, wakati wowote mbunge linaweza kuvunjwa natuende kwa uchaguzi. Yale ambayo itatokea Baadaye Mungu anajua.yangu ni haya ninauliza, Ghai yuko Mombasa an Katibu Lumumba, kule kuna kundi ambalo linaunga Ghai na kuna kundi ambalo linavuta hayo mambo nyuma na wakitoka kule waweza kutoelewana ama waelewane.

Pili, National conference ambayo tumelezwa an commissioner kwamba itakuweco tarehe 28 mwezi huu. Kulingana na Ghai muda ambao wame weka Ghai commission waweza kuanzia hapo October 28 kwisha. Hii vita imepiganwa mpaka kwa mbunge. CKRC you are entrenching the Constitution kitu ambayo hatukufahamu. Swali langu ambalo limenifanya niwe katika hali hii, hebu national conference ni wajumbe watatu ambao wamechaguliwa, hawa wajumbe wakati huu kuna mambo mengi ya project, ya Rainbow na huenda nusu wakose kufika Kama vile kulifanyika muswada wa press. Hawa kufika, hata waletulichagua hapa. Ndiyo ikwa the end of press freedom in this country, ikapitishwa.

Wakikosa kufika, nataka kupata kutoka kwako commissioner, The national conference kwa hizi siku, wengine ambao watalazwa kwa manyumba ambazo hawajafika, itakuaje? This is the end of the long process, Wakenya tulipigania kWA hii kitu, itakuwaje? National conference ambapo si pahala kama hapa tunaongea sasa. ni wangapi watachaguliwa. Rift valley inawajumbe wengi, central inawajumbe wengi, North Eastern ina wajumbe wachache. Hebu Riftvalley ichukulie nusu ya yote, central ichukue nusu ya yote, North Eastern wabaki watatu ama walewatabaki, tutafaulu.

Kwa hayo ninashukuru commissioner an yangu naomba wakenya tushikane wakati huu. Huu ni wakati ambao ni miezi tisa kutoka izaliwe

Lakini ambacho kitatokea kule ndani hakijulikani.Tuombe lakini commission, the good men and the good women of this country

who have the good will watusaidie tuelekee mbele.

**Thika Mayor:** Tulikuwa tumesema tutafikisha pale kwa huyu mwanaichi kijana. Tukifikisha hapo, tutarudisha kwa commissioner ndio ajibu ile maswali ameulizwa.

**Patrick Mbugua:** I am Patrick Mbugua, your worship the mayor, commissioner, mweshimiwa Kehengeri, ladies and gentlemen, if you allow me I wont like to forget my, if I look around I can see the young Turks. I also acknowledge your presence.

My question is on voting on the rights of a person held in custody. A prisoner had the right to vote but you have stipulated parliament may enact laws restricting the rights to vote of a person sentenced to a term of imprisonment of two years or more. Does it mean that if I am in prison for 2 and a half years, I wont have a right to vote. That it means. But in real sense a presidents term is five years. for the rest of the remaining to and a half years that I will be a normal citizen don't I have the right to choose a president who Is going to be ruling me for the next 2 and a half years that I am out of prison. Article number 70, rights of a person held in custody. Page 10.

Also, I have been to very many seminars of the Constitution , voter education under the (*inaudible*). I have always been asking this question, why doesn't the armed forces vote? And I am still asking it right here.

**Robert Mwangi:** My name is Robert Mwangi. I first have to apologize because I have not gone through the draft Constitution. So whatever I pass across and is there, I apologize. I wanted to point out something about the jobs.

As young as I am looking forward for a job but there is this situation that there are several people who are directors five different firms, they are managers of five different companies, they are also chairmen. So they take the positions that you are supposed to be having. So I don't which proper word that will be put in this Constitution to bar people from holding more than two jobs. Because we are unemployed and I am not the only one. We are many and we have the education. So I don't know whether it is there or not or whether it is how it is supposed to be put.

Then the other thing is about voting. I am talking still as a young person. Somebody might tell me that there is a job in Mombassa and I will go to Mombassa and because of the current situation probably, the time for voting will find me there and I registered myself in Juja. That means that I have to travel from Mombasa to Juja to vote so is it .. if it is going to be put in this Constitution language that we can vote even there because that is one thing that make us not vote. If we get employment the money is not enough to pay the fare from Mombasa to Juja and back. So I forfeit whatever it is. I don't whether it is provided.

Then the national sponsors though the people have been selected there through women, but the youths I didn't pass through so

I don't know whether they are there and I would want to know who they are because we are heading there where you are and probably in a few years time some of us will be commissioners like you there. *Laughter.*

The last thing is, my fear, that is it possible that, this process will go on smoothly and then it disappears in parliament like other things. I am still in college and I don't want to throw stones but the thing is we might throw stones because of this thing. So, is it a possibility that the whole of this Constitution draft will disappear? I have heard it from the radio people talking against. Is there a possibility that it will disappear if it reaches that extent that people will see that it is not the people's choice.

Is there a possibility that the voting officers should also vote. The people who, yeh because they are not supposed to be voting, the presiding officers, those people who work directly during the elections. Is there a possibility That they could also vote because in 1997 I did not vote because I was in the team.

**Thika mayor:** Were you a presiding officer where you were?

**Robert Mwangi:** I was participating to make sure elections are sawa. I was here, in my constituency. But I was told nisi vote because I was not what they asked.

Then the last question, some of the people who have had the privilege of going out, I understand they are not supposed to vote when they are outside Kenya. Nobody who is outside Kenya and is it provided here that even then they should have that right to vote because they want to but they can't come here to vote. So thank you.

**Com. Kabira:** I will try to be very fast and I will start with you Mwangi. You are Mwangi? Okay and say that one, I think in terms of voting all those people are provided for under the new constitution, that even the people who are outside but now I don't remember but you were saying that you should be a registered voter to be able to vote. So you can't stay outside the country for ten years and you don't visit the country and then make the decision about leadership. So there are some there some curves on that voting.

In terms of standing, I think you should remember when Wangare Mathai wanted to stand around 1988, you know when you are out of the country for a period of one year or two years, then you are not qualified to be voted for but not to become an MP or a councilor. But those rules I think are still there. There are very few changes on that.

The question about whether you vote in Karachuonyo although you are in Mombasa which probably means you vote in absentia that one is also very difficult because people that you should count, the vote at the polling station and announce it on the same day and considering that they are not really computerized, it would be very difficult for your vote to reach Karachuonyo if you are in Mombasa and be counted on the same day but I don't think at present we have voting in absentias

except now those who are foreigners who are voting through the embassies and so on.

In terms of management there things you can and things you can not do. You know in some European countries you vote at the supermarket, you just go in the morning as you are buying your things you vote, because it is put in the computer, you don't even have a special polling station but given who we are, even the boxes will make a difference whether they are opaque or transparent and some people tie themselves around those boxes incase they are taken away and so on. So there are things we can manage to do and things we cannot manage to do until probably we are fully computerized.

So voting anywhere you, should be able to vote where you are registered but, it depends on whether you can be able to get that voting done within the specified time. I know giving our history of rigging if we say that people can vote from anywhere and that those votes will be counted on that day, by the time you verify those votes it will be a very difficult process, that is why I think at present we are concerned about the presence of the individuals who are voting except the people who are outside the country.

The constitution provides for one job. You can not be paid twice by public funds. If you are a minister we are saying that they should not be able to again be where they are being paid by, where they are drawing a second salary in order to avoid conflict of interest. If you are a Constitutional office holder, we are saying exactly the same thing, if you are a senior civil servant we are saying the same thing that you should not hold two jobs but you know some of this jobs we give examples like directors and chairmen, they are not salaried jobs. Sometimes people are made chairs of organizations or parastatals because of their own experience, but not because there is a salary attached to it but I think in terms of employment, we are provided for that in the Constitution.

The youth you are asking whether they have been taken care of. But you know you are not always a youth. A woman is always a woman whether she is 20 or 35. And sometimes the problems of marginalization continue through out their life. A youth, particularly if you are male youth status keeps changing. If you are disabled, you are disabled through out your life, I know we are talking about children but the protection for the children also end when you become 18. Isn't it because after 18, you are an adult so what was being provided for children ends when you stop becoming a child. I know we are talking about youth for employment but in terms of marginalization they can not be at the same level as women or people with disabilities because their status changes along the way but we are also saying we know 60% of the population is youth so issue related to basic needs like employment is one of them, housing, access to health facilities although those are for every single person.

The elderly, I think are taken care of in the Constitution. Again because when you grow older discrimination begins, now you are not working so those people working around you, you are supposed to be productive in their own view. you also become physically unable to do certain things and we are saying for instance in South Africa, they actually have pension scheme for anyone man or woman at the age of 60. So you are under pension and the government pays when you are 60 for the upkeep

for the rest of your life. But you have brought up very important issues that I hope the young people are also going to bring at the national conference.

Now Mbugua, with the right to vote. I thought the prisoners had the right to vote and I thought that article 70 which you looked at actually say that, “the rights of persons held in custody under the law whether sentenced or not retain all their fundamental rights under the Constitution except to the extent that a right is clearly incompatible with the fact of being in custody.” That actually they retain their fundamental rights, “ and parliament may enact laws restricting the right to vote of a person sentenced to a term of imprisonment for two years or more”. May be that needs a more clarification and I can promise we look at it again.

And to Mutheri, I know professor Ghai is through with Mombasa, and that meeting is with the parliamentary select committee. You know in parliament, when you have certain activities they are assigned to committee. The parliamentary select committee which is under Raila is the one which has been responsible for pushing the issues of the review through parliament and what is happening now for the next two days today and tomorrow Is that, they are doing actually what we are doing but in details. They are looking at all the provisions and so on. I am sure they will also discuss issues of politics because they are the ones who would recommend to parliament as to how we should move forward and I think the decision they will make tomorrow probably will be made to the public. I talked about this a little earlier that under the current Constitution and honorable Gitau talked about the same thing today. The president can actually dissolve parliament today, so that is not in our control. If he declared parliament redundant or dissolved today, it means that we can not have the national conference because we can not constitute it because 1/3 of the conference are the MPs. So it would cripple the process for now.

The only thing that can happen under the new government after the elections would pick on the Constitutional reform and we are not sure what exactly they would propose because, we are a poor country, it would be difficult to talk about having elections immediately after the elections and that is why most of you believe that the best thing that can happen is for us to go the elections under the new Constitution, because you don't have to extend parliament infact what is in the nation today is misleading because I think the discussion is not about extending parliament.

You can have the elections in February or in march under the new Constitution without any extension of parliament and by the way the president remains president even to the 3<sup>rd</sup> of march according to the old Constitution, until the new parliament and the new president are in place. So it is not about extending parliament, it is about using the old Constitution to facilitate the entrance of the new Constitution. So every body is praying that parliament is not dissolved because that is the main hindrance.

I think somebody else said – what about if the people refuse to go to the national conference and I thought that was an interesting issue because we have just completed the rules governing the national Constitutional conference. And we were talking about how do you Replace the delegates. And there is a time frame within which, I think within 7 days you can replace

those delegates. If they happen to be district delegates, within 7 days, we come back to the district coordinator and the local authorities and say can we have new delegates I think within a Period of 7 days. So the Act governing this process has a way of dealing with that kind of a situation.

But of course if all the MPs, are not MPs anymore because elections are going on it would be impossible to constitute the conference until the next government so let us hope that the people are not going to be bought and that they will attend the national conference when it convenes on 28<sup>th</sup>.

David, I think I agree with your (*inaudible*) information. that is not catered for and it is an issue that needs to be raised. That we need to talk about the national museums, national libraries and I think as you say the protection of the history of Kenyans including the history of the freedom fighters needs to be taken in to consideration.

Compensation, under the transitional provision, we have suggested that human rights and administrative commission within six months of his existence should look at all these tribes committed in the past and actually recommend compensation, rehabilitation and so on. And this one includes friends committed in the struggle for independence, since independence for instance there are many massacres that have been carried out in North Eastern, in ethnic clashes and so on and that this recommendations should be brought to parliament and the reason why we are saying that this issue should be brought to parliament is because we have many commissions so far whose work has been carried and ended upon where as you said in the dustbins.

Now Mr. Kinuthia, you raised a number of questions on whether it is possible for the president to be held hostage, but you said you haven't looked at it. May be it could be better to think about it a little bit more in detail to see how we could improve on it to make sure that it doesn't happen but also that the president cannot hold the whole country into hostage like we are at present. So I think if there are issues that will make you feel that the check and balances need to be better done I think we would be willing to look at them.

The issue of industrial courts, I think it Has not been touched and I think it would be a good idea to look at it. You talked about the 50% of the national revenue coming to local authorities, I know the reason why we have not talked about the percentage, it is because at present there is a task force within the commission which is looking at the question of the devolution and working with economies and other People to make sure that the decision that is arrived at the national conference on what percentage of the resources should go to local authorities and what needs to go to national government is actually properly worked out so that you don't make recommendation that will make you now again review the Constitution in the next few years so the details of what is happening at the devolution level are being worked out and I think we will be able to share information both with the public and at the national conference much better than what we already have in the draft.

I know we had a commission on devolution and the Mayor is telling me that what is recommended was local authority service commission. I think what is provided for was a body that would be the district countries which are now like the local authorities. I think that is also being debated on, the one thing I wanted to say, I think that is also being debated. The one thing I wanted to say is that, the provincial countries are just suppose to be coordinating bodies and that is also going to be those, when you look at the draft, it talks about the powers of the national central government and then the powers of the devolved government with particular reference to the district councils because power, is being devolved to the district not to the province. The province is only a coordinating body and another recommendation is that it should just have a secretariat that manages the provincial councils when they meet so that we are not talking about three heavy governments, you know the National provincial and the district. We are talking about the national and the district. And the province is only a coordinating body but there are also some other things that we want to think about for instance, lets say this is Central province, I don't know if mount Kenya within Central province, nobody can say this district owns mount Kenya so if we decide to cut trees you can cut the trees because the rain will not just be for that particular district.

So there are some natural resources within a province that the district will have to discuss how do we manage those resources or what do we do it a provincial school, because we cant say now the school like a provincial school lets say like Ghandu girls. We cant say that whatever district it is in now that that district owns that particular school. So there are some provincial resources that should be looked after by the district when they constitute that particular country, but they can not take away the power of the district council.

Like the mayor is telling you the provincial local authorities which is already , she is informing me that they have already started putting into practice how the councils would actually relate at the provincial level. But we want them just to be coordinating bodies as people who can discuss national provincial resources so that we don't have conflicts for somebody blocking a river because that river start s from this district and moves on to the next district and the other district so there are some natural resources that we probably would have to think about but we Have to agree with the gentleman that we need definitions. Some of these terms by the way they continue creating in the Constitution because they are the ones in existence. Somebody said more editing will need to be done. That was Kinuthia.

Peter Mugo, with freedom of worship. This was also a very difficult area, I know definitely in central province and in some areas of Eastern province they said the Constitution should forbid the freedom of worship of the devil, you know there are some rights you have to handle very Carefully because sometimes what is God for somebody is a devil for somebody else. When Christianity came to this country the first they said was that we Iworship mountains, rivers, people, therefore in essence we are not believers in God which was wrong. So sometimes the idea of specifically saying devil worship, without being able to explain which one is the devil, because very often in a lot of cases when we ask people do you know people who worship the devil. what actually do they worship? And by the way there was a research done, there was the kerima commission and by the way don't have the report. I think it was submitted to the president but was it circulated? We never got it. This is an issue that will

also go to the national conference but its not that we are outlawing it. We are just silent. A silence meaning that you don't want to do something which may be used to frustrate other people when somebody else defines who the devil is. Although they may define that the devil is the ghost they worship at night. so it is quite a difficult are but I thought we did not talk about it, we don't outlaw it because we don't want a constitutional provision to be used by other people to harass other people because of misrepresentation and misinterpretation of what other people are worshiping.

I think we have been among the sufferers particularly in the African continent where we have been....., I am sure mweshimiwa Gitau wa kehengeri would tell you, you know the resistance that the Kenyans showed and particularly people in Central province. The struggle they had to go through to actually prove to the whites that they are not worshipping mountains and so on and that the sayings that the god of Kirinyaga lives in Kirinyaga was only a symbol just like the cross for Christianity. It is a symbol for Jesus Christ. But there other groups that say that Catholics worship Mary for instance. So the interpretation is actually difficult, I think that is why the Constitution is silent on it. but again as I said this is a draft.

Stephen Tida, by the way the 90 seats is a misunderstanding, they are not nominations and they are also not nominations for women. What we have, you see there has been a lot complains about peoples representation in parliament. We see for instance that some constituencies Have 250 members, others have 7000 members and each of them have equal representation in parliament. One member, one member.

One of the ways of dealing with the representation was to introduce what is called mixed member proportional representation (MMP).which meant that we retained the 210 constituencies where you have one member each. But we are saying depending on the number of votes of the political parties you have a certain percentage of 90 seats. So the 90 seats are not nominations of individuals. The 90 seats are actually seats that go to political parties in order to try to bridge that balance of lack of proper representation in what we call the majoritarian election process which has been our own process so they are not actually nominations. What you do is that every political party will identify or will have a list of it owns candidate as and we are going to campaign on the basis of the quality of the least of the candidates that you have. If you have a very good least then people are likely to vote for your party so actually people are still voting for the party but they are using individuals to defend the parties so they are not actually nomination in the political sense that a political party now will be given two seats like what DP has at present, I think KANU has 5 seat, Ford Kenya has one and so on of the 12 seats.

Nomination is actually removed from the current Constitution so it is a different kind of political election process. It is an election process that promotes the parties to make sure that they sell their policies and so on and on the basis of there own policies they are to get more votes. So it is a misrepresentation of the conference. By the way this happening in South Africa and many other parts of this continent.

The question of affirmative action, I know this debate has been going on for a very long time. But affirmative action is not only for women, we actually Have affirmative action for person with disabilities, minorities in any area, and by the way the 90 seats

are also taking care of affirmative action for minorities, regional representation people with disabilities and the women as well. So we are saying that we want a more inclusive and representative parliament and that is why that is introduced there. So there is nothing foreign about affirmative action. Affirmative action is actually a Kenyan conflict and we have talked about this for a long time.

We talked about the quarter system in education which has been in existence for the last may be more than 25 years. This that for instance if you go to Alliance Girls High School the children coming from Nairobi or even Central province have 600 points. The children coming from North Eastern have 350 points. And it was in recognition that the school in North Eastern are less equipped, many good teachers don't want to go there so the children are not foolish but they don't have the same facilities as the children in Nairobi. That is affirmative action. We have affirmative action at the university. We had affirmative action when we started African businesses in town and honorable Muchoki has talked about this most often. So there is nothing foreign about affirmative action. It is just recognizing a gap and making a decision as good leaders on how to deal with that particular Gap.

We have by the way talked about conjugal rights and we are saying that those in prisons who should know whether husbands should be able to visit their wives or wives should be able to visit their husbands in prison and then we are calling the correctional services in other words we are saying let prisons not be places where you harden prisoners, let prisons be places for rehabilitation and for making that particular human being become a better human being. That is why we are calling them correctional services and in fact we have put it into the Constitution to make sure that the prisons officers are also properly looked after.

The Constitutional office have said about the police, we are talking about police service not police force. Because we are saying we need a new Constitution with new values where you prisons as places where people can be corrected and I know some of the things they do need to be promoted for instance training people on how to become carpenters and so on. So when you leave prison you become a better human being. We have even abolished death sentence and under transitional provisions we are saying that all those, I think Wachuka was the last one to be hanged in 1992, but there people languishing waiting for the consent to be hanged but we are saying that nobody has the right to take away the life of another including government so we are saying death sentence should be outlawed, let them be replaced by life imprisonment or whatever appropriate term is needed.

Public servants, Mr. Mutinda, what you actually said is what we have. We are saying that a teacher should be able to stand to be the mayor of this town and when defeated, go back to teach. What they do is take legal suspense and we are encouraging that because we notice a lot of professionals who would want to go to public offices can not go, because of that provision that you resign. We are saying that they should actually get legal suspense and if they win they resign and if they lose they should get back to their job. That is what is provided in this document.

Mwaura on social pension, I think that is something that needs to be looked at. Joseph whom I know has gone, you know America by the way provides welfare the way we are talking about it here. But it is not a welfare state. I think in Kenya we are saying, we try to talk about African socialism with its application in Kenya.

If you remember sessional paper number 10. we still want to encourage people to be independent but at the same time we are saying the government must also take responsibility of providing the basic needs. I talked about this a little bit early, it is not enough to say you have a right to food and I think this is where Joseph, you need also a statement probably that you need to recapture, that the state should provide. May be that is an issue you need to take into consideration but we suggested that one of the ways of managing basic needs, making sure that basic welfare of Kenyans is taken into consideration would be the commission that we have created where people will report and we are also saying that certain amount of money should be allocated to make sure that this happens.

**Mutinda:** May be I should ask, how do you come to the conclusion that majority of Kenyans have decided that the death sentence should be abolished and also I would like to talk about this voting. If the prisoners have to be allowed to vote, have made provisions such that the aspirants can come to prisons so that prisoners can make reformed choices.

**Com Kabira:** But Can I say this, what the Constitution is saying is to provide a Framework. A lot of the details are going to appear in laws so what we are saying is that as soon as the Constitution is adopted a lot of laws are going to change and new ones are going to be rewritten to ensure that what is proposed here is taken on board. And I think that is a good question they won't know who these candidates are, probably until they hear and that could be part of what will appear in the law and the electoral commission would take that into consideration.

The death sentence by the way, it is actually a campaign around the country. Kenyans recommended that the death penalty be abolished. I should be able to give you statistics on how many people say that the death sentence will be abolished. Will discuss it with you after this. I don't have it off hand. Most of this incidentally, any thing that was not provided by Kenyans as we put in the law just because we think it is a good thing, it will have a clear justification but for a lot of the issues I think Kenyans were very well informed. It was actually surprising how Kenyans country wide converged on the issue.

May be because the Constitutional making did not begin with that. But it has been going on since 1991, we have actually been making this constitution. Those people who think that we are in a hurry I think have not been in the process,. Those who have been in the process know that this has been going on for along long time so people are repeating what they have been saying and what they have been complaining about for more than 10 years this process has been going on.

**Thika Mayor:** I will hold you kidogo, we are constrained of time, and we want to cover this line and that last line and about

few people at the gallery. If you will allow me we will ask you to take 2 minutes each. I Have decided to use the round circle because that way I will not be accused of being biased. I am picking at random, but if you are going through that exercise that you are going into, it will be fair because your position at which you are seated is the one that will give you a chance. So I will insist that you hold on we had left there, so we shall take you and him, finish this line the last on take another two, and move to the gallery please and take only two minutes.

**J. K Maina:** My name is J K Maina, I am talking this place to be like a parliament. I fell I have something also to air. Before I proceed may I ask madam mayor that in future, whenever we have got an application in the town, I wish if you call your councilors in this place, and they dispute about the application when we are here as we are seated now, we would like to hear them talking because up to now they used to hold some meetings privately without our attention, but this place is a very good place for us to be coming here and hear what they say on some applications.

Iam being forced to mention something that my friend Mr. Kangethe here mentioned and left it in the air without any solutions and whatever he mentioned or remark that he made is about the president. The president of the republic of Kenya, if it were my opinion I would like to say that , and not only president, even MPs and councilors would like to come up with that issue that we hate president. Iam not hating those people who have gone that far with education, I am not hating those people who have gone up to form 4, standard 8, but as far as I am concerned with the Constitution itself whatever is being passed here because it also touches me and it touches my young ones those who are at home.

It is that the president of the republic of Kenya is somebody who is supposed to betaken care of. Somebody who is supposed to be considered. What type of president is this ones who has presented himself, who have come up with view of being president of the people of Kenya and I should call them people of God because the peopl2e of Kenya are people of Godly hearing if they have managed to be in the place that they are to talk about the Constitution that is supposed to guide them. Now, I am saying that the president of Kenya or MP because the parliament should I put it your attention that the parliament is not like Kenya canners factory, it Is not like bottle box factory, it is not even like Thika municipal council here. Apart from Mayor and your councilors. It is not like a factory where people have to make application to go and be employed there. There is coffee there that people are going to look, to take care of in the parliament. It is not a hospital where we are suppose to say only doctors who can be there.

The parliament is where one has to make an application to the public.

The public decide whether it is this tall one, short one or that black one or that brown one. And that they will decide that is what I have said in this town circulating now in this town circulating now and then. and I want you to decide on your self on that particular candidate after that candidate goes on the platform. Those people, decide upon that candidate according to his sense of thinking and sense of reasoning and according to what he I telling the people. He is prepared and automatically they find that really this person is prepared to help them. But not to just force people to try to force people to elect someone because you

have gone all that far. With actually education.

Earthly education is good, but one has to be consider theological freedom. that is God wisdom. And Gods 1wisdom is the weapon that will reverse one to be a very good leader and an humble leader and a humble leader. Without that if one is not equipped, with God's wisdom to say, it is only the earthly education, even God himself according to theology, he refuses and says my people cannot be lead by only those people who have inherited a lot of earthly education, because earthly education, sometimes its starts to be a poison, a murdering weapon and you have seen on your self, education, that high education, that the God is saying, those who call themselves highly educated people according to the leadership of his people he considers to be highly educated fools.

**Thika Mayor:** Mr Maina, what about the (*Inaudible*).

**J K Maina:** I don't know what I am going to do because what I have here it might take, because I want to start something that .....

*Interjection*

but I want these people to hear what I have to say.

**Thika Mayor:** You should say, " I don't agree with this one, I am recommending this". Because I know you are saying we should not have the degree.

**J K Maina:** but we must at least define those leaders who are equipped by what we know. That one is okay. The other point is the one which C.K as trying to explain was about the official language. The official language here was not explained the way it is supposed to be explained because the official language does not mean the Swahili language and the English language. We have got many sectors of language. We have whatever you Call official language and official language does not mean Kiswahili or English should I say and we have got some other language called business language. We have your home and my homestead language. So I am here for that matter. This language has made our Kenyans to continue fighting and I don't see why the Constitution today as we are making, it can not be first that would control those languages that have made our people to continue fighting and fighting up to today so it is my prayer language be introduce to these Constitution. That will make our people to live harmony and peacefully without fighting. because this language, official language is there the one which C K was trying to explain.

That if you go to an office as he was Saying you find that if it is like wa Kahengeri going to an office sometimes you find people there don't use official language. Instead of using the official language that is supposed to be used in that is supposed to be used in that office not only Swahili, they are using another language which is their homestead language and once they apply that language severally we will automatically be not happy and after all that it will be a quarrel in between and that is what I think Ck

was trying to explain. This language such language can create war between brothers and sisters. The Constitution should be prepared to eradicate or to abolish this language. The official when I was in school we were taught that if you go to any office you better use official language in that office. Accepting those people whom you are meeting there to be using the same language.

**Thika Mayor:** Tumeongea habari ya language, tumeelewa kama unaingine tafadhali, uko an seconds chache sana, maliza ndio tupatie mwengine nafasi. Tafadhali nimempa nafasi amalize. Iam now exercising constitutinal rights, kama hauja maliza an yuko mgeni, nitamuliza hiyo karatasi. Tutakupatia uongee an hawa Baada ya mkutano ndio tuchu kue nafasi tupatie wengine ndiyo tumalize.

**J K Maina:** may I Say something before I give you the right. I Had a lot to say but now I am unable to know what.

**Thika Mayor:** kwa sababu ya nafasi, hiyo karatasi mpatie mtu wa secretariat. Ukitaka kuongea kidogo an hawa wakinywa soda hapo inje mpatie yule next. Tafadhali ndio tuende haraka. (*inaudible*).

**Kivathi Thuo:** I want to commend you for the very good job. My name is Kivathi Thuo. Iam just an opinion leader not more than that. I just want to brief a few things which I feel that they have been omitted. In particular, if take number 37 concerning the children. You have covered the children very well, but your commission seems to have forgotten about the unborn children who should be protected just like the other children who are born. What I mean by protecting the unborn, I mean this involves the female mothers being sent to prison when they are pregnant.

I feel that unborn children should be protected but even if the mother has been convicted, she should be allowed to stay at home until she gives birth because the state has no right to put that child in prison and on the other hand it also touches the question of abortion which does not seem to have been touched through out the Constitution. That one knowing that you are highly 2educated and having done a commendable job, I think you should take that one up with your commission and see what you can do about those children who are unborn and who should be protected..

The other one is section 161, concerning the president. It says that we should have a God fearing president, but the contribution being a contract between the ruled and the rulers I am not in particular about needing too much protecting on the president. I think the president should not be above the law. He should be just like any other person that he can appear in court whether he has committed a traffic offense or a criminal offense. I think if we remove this question of the president being above the law the person who will end should rule this country with humility knowing that he can go to the court just like anybody else. I think that one should be looked after because so many people have talked this one and infact honorable Kehengeri mentioned this one, I don't know why you did not go back to answer what the commission thinks about the president being above the Law.

The other concerns section 243, finances and revenue which covers the Central Bank which controls our revenue. On this one, ladies and gentlemen, I just wanted to mention whether we should have the picture of the president on our currency or our coin. I think this should be done away with and let's have the picture of the president after they have died and that should be decided by the people who are ruled whether those former presidents have performed well enough to appear on our currency. It goes even further than that, meanings, do you call them demy gods, because ones you name a stadium after me, I become arrogant. All these things should be looked after. But they should only be made after heroes who have died but not those who are living.

The other section is concerning the freedom. I believe that freedom, whether freedom of worship, freedom of press, it should only be limited to certain degrees that, say the freedom of press, they should be limited. The minute they appear to interfere with personal freedom, my freedom or the other persons freedom, her or his freedom ends there, whether he is a student demonstrating in the street they should not have the freedom to block my car from moving freely. Every freedom should only tend to the extent it starts interfering with the freedom of the other person. You may have the freedom of worship and this people who are worshiping next to your house, they are beating the drums and so on. I think they should be limited to the extent when they start interfering with my freedom or the other persons freedom.

Ladies and Gentlemen I don't have any more to say because I haven't really gone through this draft Constitution properly. But I think those few points should be looked after. Thank you very much ladies and gentlemen.

**Thika Mayor:** We don't any body on (*inaudible*).

**Cllr. Wairimu Kamamia:** My name is Wairimu Kamamia. I would like to thank professor Wanjiku Kabira for coming back here with your team. I want to thank professor Wanjiku Kabira and her team, for coming back here. She was here when we presented our memorandum and I would like to say that especially the memorandums that were presented by women. I have seen that a lot of our views are appearing in the document. I have not read everything.

Another thing I am worried about, is about a small group of young men and women who are in the national youth service. I am not sure whether they are taken care of because in most cases, they don't vote. In 1997, I happened to have a friend in the national youth service and I asked that lady, why don't you vote? But the answer I got from her, was that the IDs are only collected and they vote for a certain party but I am not sure. I would like the professor to tell us whether they are treated like the armed forces or they have taken care of them in the Constitution. Thank you.

**Maina Mureithi:** Thank you very much, my one issue is on this draft Constitution is a very well drawn document because one it gives us a sense of direction as Kenyans. I am looking for example at the parliamentary situation where we have the labels of government from the village through to the national council. More often than not if I were to vie for the Juja constituency

seat, I would be promising my people so many things, I will do this, but when we go through the draft Constitution it is very clear the role you people as Juja will be giving me is to assist the entire body of Kenya to share the national cake to each and every person of Kenya such that it is not the minimal representation I will be looking at that I am representing Juja constituency, upon acting as Part of the body of the Kenyan republic. That is a very well done point by devolution of that. But I fail to get where the harmonization will be between the district councils and national councils. The harmonization should be very clear for each and every person to understand.

The other issue, I would want to take up is citizenship. Yes we have rights and the government has rights to us as citizens. We have dwelt, might be there is a comprehensive report on this but I would wish to look at when you will be a citizen there is the situation of acquiring the national ID at the age of 18, most people do assume that you become a citizen then, which to me is a wrong conception. The situation of getting the ID card I believe should as well depend on the modalities of getting a Kenyan passport should also be eased not the current cumbersome situations where you start applying for a passport and you don't get it where as you are presenting an ID card that you are actually a Kenyan citizen. Thank you.

**Thika Mayor:** if we have finished this row I will ask the commissioner.

**Com. Kabira:** I will be very fast. I will begin with Maina on the official language. Maina what we are saying is that English and Kiswahili can be both used during official duties like what we are doing here. We can either speak in Kiswahili or English that is what is meant by official language. We are also saying that Kiswahili is also the national language. I think our own community languages are the ones we said that we have devolved power to the lower level and people are free to use the languages because we are not excluding anybody but also, I think there is also another issue, the way you use, I don't know whether those are official languages or whether they are dialects, or whether they are different ways of using the language itself. What are you talking about.

**J K Maina:** What I was saying is that we have got three official languages because they are all more like official languages. We have got official language, business language and we have got our own homestead language. This is what I said. So official language is not a must that it has to be in Kiswahili or English. Official language is when that old man comes to my office, I address him officially as Mr. what do you want me to help you with and so on.

**Com. Kabira:** Mr. Maina, we have a problem of communication here. I teach English, so I know what you are saying that we have something called official language within the context of dialect. you even have legal language. But in this context, the meaning is different the meaning is different. This word is actually much more broad. It is official and national. Official meaning anytime we are transacting official business not because I want to a dress at the shop or because I want to sell it but any time I am dealing with official matters as a public servant I should use official language. And this language does not mean you should be polite. We are talking the language in its broadest form. That we are saying talk to people in English even if you are abusing the

you are also abusing them in English. And if you are rewarding them and praising them, do it in English but that is of course not say that they should not be deco rants that they should not respect those whom we are talking to. So officially it just means the language of communication with the other people in your own position.

The national language we are saying that if I go to France now because official language is ours now, I am able to say I am going to speak my national language which happens to be Kiswahili and let them look for interpreters if they want to understand what I am saying. When the Chinese come here they don't speak in English. They speak in Chinese through interpreters, Japanese many times do the same. Japanese many times do the same and when they don't, when they decide to speak directly, then they don't communicate as well. So we are talking about one thing which we are proud of we want to build Kiswahili, we want to make it our national language, we want it to bring up together, we want it to be the language that we want to invest in. and infact I think it is somewhere under the guiding principles. We actually have, we are talking about promoting it and even talking about institution that will promote Kiswahili. Because Kiswahili is actually what makes us different from the other language. We are going to develop a national culture, part of that national culture is Kiswahili language but English is for communication. It is our official language not our national language. I think that is what we have been talking about when we talk about national and official languages. But I am grateful that you are bringing also this to our attention that we need to probably explain a little more, what is meant by official language and what is meant by national language which is not done.

**J K Maina:** And even what I wanted to say, that official language should be Mixed up but Kiswahili is national language, English is national language. If we come to business sector that is why I am referring homestead language. If we come to business sector we have got the proper name that we are suppose to apply to customers. If you go to office that is why it is so called the official, you apply the official language "MR" or 'sir' or 'madam'. This is the official Language I am talking of, I am not even talking of national language. Those languages are what I want to explain here before I go to another item. I want them to see that because I want to hit something on the side of "shamba", land. But now we have understood one another that we have national and official language. Official language does not include our homestead language and business language. That is why I want the Constitution to be passed to contain the official, homestead and official language, because we want to eradicate the question of fighting. If you go to stage you find people fighting there because of just language, not meat , not chapatti but language, because we lack language and it is Said any nation or tribe that lacks proper language that they are supposed to be using on one another that is a dying tribal nation so are more or less like a dying nation that is why we are fighting anyhow.

**Com. Kabira:** Okay, I agree with you Maina, I think it is very clear, you have made your point and now it is clear. Thank you very much. We will also put it under the code of ethics to make sure that people use official language in offices. Thank you very much Mr. Maina.

**Thika Mayor:** May I ask the speaker to allow madam Commissioner to finish answering the questions, and I will insist like I insisted before that I will allow you to have a session with them after the session.

**Com kabira:** Thank you very much Mr. Maina. Now Kibathi, the unborn children, I think that is an area that we needed to have covered under correctional services or prisons. Although we have talked about becoming gender sensitive in terms of what happens in prisons between men and women, separating them because sometimes they are taken in prison and put together with men and so on and we have also asked them to care of biological needs particularly of women in prisons, I don't think that was part of it and it is something we should pick on what happens to pregnant women when they are in prison. That is an issue we need to pick.

We really did not have anything on abortion. Again because for issues that Kenyans did not present, we did not pick on them. But the issues on abortion are not dealt with. What is not dealt with remains as it is in the Kenyan law at present. Which means abortion is illegal so I think that is the current status. So we did not deal with. I know it is not dealt with in the Constitution.

The President should not be above the law. I thought article 160. you read article 161, sorry its not the one, there is article 161, where we are talking about the president is not actually above the law, but there are two distinctions we are trying to make, when is president acting as President and when is he acting as Mr. Moi, because one of the things you have to avoid, is taking the president to court for some things he did in the course of duty. You know as the president as sometimes to protect, like some people were saying you should not hold the president a prisoner and there are some things that he will do because he is president that may seem to infringe on somebody else's right, but he did it as president not as an individual. How do you separate that from what He does as a person. For instance, he has no right to come take my piece of land. That I provided for here. If he wants to take a piece of land from me for himself, even if he is president he cant do it. So that is provided for in article 61.

I think for civil suits and so the president Can actually be sued. The only that is done here, is to make it a little difficult to take the president to court every day, otherwise he will not do his job. He will be going to court every day because he is going to be doing so many things. So if you look at civil proceedings the Constitution provides for him to be sued. But when he makes major mistakes, we have the question on impeachment. So that he can actually be impeached by the parliament and he can be removed but there are certain things that he will do because he is president but other people may not be happy so he has to make sure That he is not taken to court everyday by every body on small things. but I think both areas are provided for in the Constitution. So he is not above the law.

**Mr. Maina:** What about where he is giving his legal instruction and nobody can take him to court. and that is why we have ended up having a second thought where you can not take a president just because he is above the law. We want a situation where, just like in America, where the president has been taken to the court because of his misbehavior. This is the kind of situation where the citizens of this country have never been concerned about, that may be he is not above the law, just like any minister he will rule us with respect of the law. He will be God fearing, law fearing but the minute we protect him too much he

will remain above everybody else and he will continue..

**Com.Kabira:** In article 161, you know where he can be taken for civil proceedings where he acts on his own capacity and on issues that he should not be dealing with and then the issue of impeachment but also remember we have actually put its functions in the Constitution. So he is not allowed by the Constitution, to go out and give title deeds or say this forests should become my zone. He is not allowed by the Constitution so he can also be taken by court for doing things which don't belong to him and I think those functions, have to be taken either to Constitution offices, or to parliament, or to the prime minister which limits what he can do. The Constitution limits what the president can do. And on the basis of that he can still be taken to court. Councilor Beatrice, national youth service, (*inaudible*). Can I say that we have a lot of limitation under the bill of rights and probably one can check whether those limitation are enough, whether they are protected.

Now national youth service, Councilor Beatrice, if that is what has been happening it is wrong. That the national youth service members are forced to vote for one party. But may be one of the things we have done with it is to really create a more independent electoral commission. More independent than the current commission and we believe that because one of their jobs is really elections, that is their main job that this would be taken into consideration and since this is also part of the bill of rights, you know the right to vote, is a fundamental right for each individual, then we should probably be able to monitor it through the human rights and administrative justice commission which will also monitor that this rights are protected by the electoral commission.

Mureithi, I want to agree that harmonization between city councils and national councils needs to be done and instead of repeating this because I said earlier that this is being debated and it is going to form a Major debate for the national conference to make that we harmonize, Because if we don't have people sometimes the district councils creating policies that are not in line with the national goal. So I think this is being worked on. In terms of citizenship I think we Have lots of provisions and citizenships and citizenship I think there many provisions may be Mureithi you May want to look at them.

Getting the idea, was suggested that people should get IDs as they get birth certificates, that those details should go to the registrar so that the IDs are prepared as soon as possible not to wait until there is.. but I wanted to add that some of this what you call qualities related recommendations are going to appear in the 600 or 800, page report that is coming back, because we have separated what we call the Constitutional issues are not related to the polices and also to the law, will appear in the other report, because we have been saying That the Constitution should also be short. It can not have too many details and also not details that are going To be reviewed after a few years so that is why some of this information is not here.

**Thika mayor:** Thank you commissioner, I will ask that we start from councilor Wainana if anyone of you wants to comment or put a question make it very brief, 2 minutes so that we shall also move towards the public galleries and take the shortest possible time to bring this session to an end. If we have somebody who raised up their hands on that row, okay we have one hand there.

**Peter kariuki:** I had a little reservations with whatever draft that we are having. I am Peter Kariuki Ndungu. Now one thing that I wanted to be discussed more in Constitution conference, pertain to the houses is the structure of parliament and by saying that the national council should be constituted by people of ages, 35 and above, it seems as if we are placing pleadings in mother of those offices. If that is correct, I would then advocate for upper and lower savings to be fixed so at the lower assembly so as the national assembly to be of those people from 21 to 35 and 35 to any age to be constituted on the upper house if there is anything to matter with age.

Then another thing that I wanted to hear is this one of the academic qualification. We stipulating something about O-level but we are not saying which grades, because an O-level who has an 'E' is not able to do as an O-level who has a 'B' even if are placed in the same clause that given the limitation on the resources of the country to educate people to get to the universities at least we should be a little bit specific.

Can anybody turn to page 39, now at page 39, we have a very simple prescription, the Kenya Ethiopia international boundary and we are given it is in the Ethiopian, Sudan tri-junction point five, siji 25 degrees north, south. Can anybody draft, turn to the draft, the face point of view. Can anybody trace that point in the document? At least we should be realistic that the document we are given is simple. Now it is only geographers who can know this point where it is. And we want to know the limits, the upper limits and boundaries of this country. So that should be kept in mind. Thank you.

**Shem Githinji:** My name is Shem Githinji, and I want to highlight something I think, may be it has been left out in chapter five

**Thika Mayor:** Please come down so that the person can access, I want to thank the commissioner who is here with us today at commission for the work that they have done. It is commendable. I feel that Constitution should say something touching on homosexuality and lesbianism. In the western world this debate is still going on and here in Africa in the Constitution of south Africa, this one went through but now that we are making ours and we are God fearing according to our preamble why don't we say in the Constitution that we don't want homosexuality and lesbianism and if you see, it has gone through in our institutions of higher learning. It is crippling in our country slowly by slowly. But now that we are making the Constitution we should say something to barry.

The other one is about the constitution is advocating so much about women and before God men and women are equal, but now if you come in the case of the girl child is being promoted so much in our country leaving the boy child outside and that is why we find so many street boys they are there because nobody is advocating for them. Why don't we take them equally, boy child, girl child and promote them so that our society is balanced. Thank you very much.

**Daniel Fudi:** Thank you very much, I want to really state your views, Daniel Fudi. I would ask the commission to be very

Careful and very wise when it comes to dealing with decisions in this nation. A country like Uganda which I think also visionary decided that they needed to form an international policy. Where they even have a permanent ministry representing youth and gender. Some countries like UK where local authorities represent people much more directly and the central government is there to regulate.

I have been very ready to create a very definitive department that is called education department within the councils that youth find a lot of entry points in their representation that is not the case in Kenya. Kenya, you have a department in the social services which has only a national official but when you come to the division the youth don't have a point of entry in fact they are lost. When you go to sub chief you don't even know who deals with the youth because sub chief is everything, the youth environmental and everything. So I am thinking that it would be very important to look at that as a stage, let us change right now and I agree with that but we can not go to university and ignore to imagine that primary school need a lot of investment. So let's look at it as a stage where a certain quality and abilities must take.

Like when we talk now of sports, when you are thinking you need a heavy investment and looking at a state where a country that needs social stability and productiveness whether economic and otherwise must really consider that state very important. So I am thinking that we need to kind of, it is that national policy Kenya attempted and it was I think under the office of the president somewhere in the department. It was dropped here. So I mean we must look at the broader way where the youth would find a point of entry in their representation, I mean UK now of course even if the companies are making extra profit, to recalculate it back in terms of development in terms of creating keys and otherwise so that they are looking in a national strategic planning, they are looking at that stage as very important to any area of the production of the nation. So I am thinking it is very important we actually look at that area from a broader perspective and not just stature, but as stage that needs a lot of investment. So, to me we need a stage where like Uganda they have a national policy within the cabinet representation. Youths are very well represented but Kenya has been losing a lot of things because of actually not considering that stage as very important in the national production.

Number two, I think UK now for example, an ID and a passport is the same thing. When I have a passport, it is my ID but Kenya you are now taken, and I think the muzungu idea of an ID was not very good for us so we should look at some of the things that can actually be brought closer when you have a passport you have your ID or something like that. Then where the cutting of different things to a Muzungu does not really represent what we need to look at. And that must be very important. That is my suggestion. Thank you for that.

**Peter Mwalili:** Thank you very much, my names are Peter Mwalili, and I would like to thank the commission for the good work that they have done, I have a few comments to make, one, I have seen that at least the new draft Constitution, has made some provisions, in terms of management of resources. But I would like to challenge the commission I don't know to what extent you have tried to inculcate the issue of resource management and the problem that has been in Kenya so much. We have

this problem of corruption, I call it eating culture or pocketing, people like putting a lot in pockets. I don't know to what extent that one has been taken care of, but I would like to say that it is very important that we consider to what extent we manage our resources because it is from the resources that we will be able to produce and have a good economy and at least sustain the people of Kenya.

Number two, there is a great fear that I have concerning the Constitution given that Kenyans, we are very good in planning but when it comes to implementation, we fail. So I don't know what provision the constitution has, at least professor, you are saying you have what you are calling Constitutional offices and all that. But I was with an idea that you add something in the preamble, or if you don't add it in preamble, maybe you have an epilogue to declare that the people of Kenya will be willing to implement what they have because it could be very well easier said, written and not done and I had an idea that maybe you could have a declaration at the end of Constitution as an epilogue saying that maybe in the light of the resource diversity that we have in Kenya we the citizens of Kenya promise to implement and to do all that appertains to the Constitution. Thank you.

**Com. Kabira:** Thank you very much Peter, in terms of corruption and management of resources, there are a number of provisions although they are in different areas. For instance, we have an economic council, we are talking about a council of about there are 71 people from diverse experiences in management from the business communities, economists and so on. People who will be able to monitor the way the economy is moving and be able to give advice to parliament and also to the government on how to proceed.

The ethics and integrity committee, one of its main activities is actually guarding and monitoring, to make sure that corruption is eradicated. That commission is going to deal with that. It is talking about declaration of wealth, it is talking about making sure that the people in public office are going to declare not only their own personal wealth even wealth of children who are not married. It has to be declared and even wealth of their own kind of if they have businesses and so on. All that must be declared. It is actually a very detailed code of ethics that integrity and ethics and integrity commission is going to monitor. We have also separated the office of auditor and controller general. Again to make sure that we are able to monitor that. So that we have auditor general again a Constitutional office but we have also decided that he independent needs to be reviewed to make sure that parliament approves and so on. and then we have the budget controller again to make sure that the resources are going to be properly used.

We are also talking about the budget committee in parliament having more power in making decisions about how money is going to be used, what priorities are going to be taken into consideration if the budget is being prepared but also being able to give an input in to the preparation of the budget itself. So, I think there are quite a number of issues in place to make sure that the economy is able to improve in that area and I think also under the principle which come immediately after the preamble there are some provisions in terms of promoting a healthy economy. I think there are quite a number of provisions.

In terms of making the government accountable and making sure that they implement. We have again talked about the role of civil society. And again I think we have what we are calling the transitional mechanisms and consequential amendments and we are also giving a time limit for some of the things to be put in place like the commissions and so on. And I think attention was drawn to one of the areas where we are saying there is no time limit but time limit has actually meant to be three years either within the first one year, within the second year. The longest time is actually supposed to be three years and it appears in one of the provisions may be 290 something. So the other thing I think we are saying is that we have place the qualifications and we have also put ethics and integrity committee in place to make sure that the people who are taking leadership positions are accountable to us, that the government is going to be accountable to us and may be this are some of the things that would assist but again we are open to any more recommendations on how to any more recommendations on how to improve in this area.

Now Fudi the representation of the youth. You are right by the way, in Uganda they have affirmative action for the youth, for people with disabilities for women and also for the army. Probably the reason why representation for the youth does not appear here I again because, I think we have tried to be as faithful as possible to the representation by the various groups. May be it is a indication of how well organized the youth were in terms of their presentation during the hearing. It may be a reflection of that and may be it is something that may be picked up during the national conference, I don't know how many youth will be there to be able to raise this issue but I got your point that it is important to think about the 60 who are youth but probably you need to remove the children who are taken care of by the Constitution so think about the youth between 18 and 35. and it is a very important age that is when the youth are getting married, that is when they need to get jobs, that is when they are settling in life, that is when they are developing their careers and so on. I think it is a very important stage and probably, more thought may need to be put into it. So I think I take that as a recommendation.

The national youth policy, I don't know why it has died but I want to agree with you that the youth department is not really very functional department but as you said there are areas which you can invest in much more in order to promote the participation of the youth. Like many other policies within the ministry of home affairs have died. I know the women have taking about a national gender policy for at least 20years. Up to date it has not yet found its way to parliament.

Now Githinji, homosexuality and lesbianism, you said this has found its way in South Africa where they have allowed the rights for sexual orientation. the reason why we didn't deal with it was because we got only one submission from what I understand from Kenyans. It was not Taken as a major issue, people didn't say whether they should forbid it or not forbid. like Abortion they were silent on this issue, that is why the new Constitution is also silent on it. I wasn't sure whether you wanted us to allow it or whether it cab find its way into the Constitution either by allowing or outlawing or being silent. The current Constitution is silent on it. By out lawing it.

There is too much emphasis on the girl child. I think statistics indicate for instance that even at the public university, the girls are still under represented. But your point is taken, the idea is to move towards gender entity, the idea is to move towards creating

a society where, as you said, God says men and women, are equal before him and I think that I why there has been some emphasis on the girl child and the women. I think we need to continue evaluating the process. Central province is one area where the girls are doing much better than the boys and therefore nobody wants the boys not to do well. So we need to keep evaluating and making sure that even the boys, do as their full potential is developed. But there is hardly any provision on the girl children, I think the children rights are actually applying to both male and female children. The protection for children with disabilities, children who are orphaned and so on. But in this particular case I think we are talking about both male children and female children.

Now Peter, I think I gave an explanation a little earlier about why the upper house is undefined. But I think quite a number of questions are being raised about it and I think it would go for further debate to the national assembly. the O- level, I think we say pass. And pass may be C+, C-, is D+ a pass or D. but you know once again, education is only part of you. Going to school is one thing, and I think the current parliament can, like people in the villages were telling us, many people who were saying we should not have a degree, were saying that many of those people who have betrayed this country are degree holders.

You need more than just academic as we said earlier. Education is important but for a leader, we are saying ethics and integrity commission will look at all this other areas, are you a person of moral integrity, if you are a thief and you are going to parliament you will not protect the interests of your own people. You will get the opportunity to steal from what there is in your own area and so on. But I think it is understood that we should reach form four with a pass but not necessarily a D. what is considered a pass.

**Thika mayor:** Thank you commissioner, I will allow anybody else who has not spoken a word and I am going to allow only three people. For anybody who is in the front row please, forget it, I will not allow you but I will pick two there, from the back, okay, I will take three from there because they moved from the gallery and I will take another three from here and we finish. Any body has spoken, I will not give a chance. Mzee I will not give you a chance, two people from behind, one in a Kofia, your neighbour and the last person on this side. The three of them please.

**Charles Waithaka:** my name is Charles Waithaka. Thank you madam mayor and madam commissioner. Just a few comments regarding the fact that you are here and we gave views and we have seen them implemented. For sure I must comment on chapter 18, that restricts the change of the bills especially in article 295 by the parliament. It was so good. We assure this time, we are not going to see them to do anything alter to the bill, to change their salaries without a referendum.

Another issue we were raising last time is the office. We can see that harassment where by one family was forced to raise a case among the police and they were harassed. Though this one is catered under chapter 17, in the commission and the administrative of justice. I don't see it good and I think one of the most important thing is to have an office that cater the

harassment of the police and if you go to the commission and have an inquiry it is also going to take more time and more damage will have been caused. I wish there will be an office where by it is going to enact as fast as possible to the complains we raised.

The other thing is that under section 162, where by the removal of the president in the draft of incapacity, we see that the chief justice should appoint the tribunal within the seven days and as for my opinion, that power should not be vested to the chief justice whom we know very well that there are not impartial as far as the judiciary is concerned and I think that should be vested in the parliamentarian.

**Elijah chweya:** My name is Elijah chweya, I want to ask a question, in your draft Constitution, you have said that you intend to scab the provincial administration. Don't you think that it is the present government that has made it unpopular this (*Inaudible*). I believe Kenya being an African country, we still need such a system where by the central government forces are enacted as state organs such as the provincial administration at the lowest level. The system of electing people at the grass root level may not be very effective andd participated. That is all.

**Richard Kiomi:** Thank you for giving me this chance to talk. My name is Richard kiomi. Without going to the draft or without referring to it , I will just comment on one or three Issues then I finish. I commend the commission for reducing the number of Kenya holidays. And then I ask them to create a transition mechanism through a Constitutional amendment of the current Constitution. I would like them to reduce the number of nominated members where by they should not create undue advantage in the name of gender rights concerning nomination of women because I assume that I am in college and I am with ladies and they are working hard so I am also working hard. When I am working hard I don't expect a lady who is also working hard like me to get an advantage of being chosen to somewhere else where by we can compete together so that we can get that chance.

Again, I commend them for, getting the voting for party other than individuals. That will minimize the coming up of many parochial organizations in the name of parties and then we would like to see in the Constitution, the general living conditions of prison guards will be spent in the constitution in order to promote the human rights for the prisoners and also the expansion of jails. And also in the part of NYS, I would like to offer my opinion for all the form fours those ones who have come out of form four to go to NYS for discipline that is whoever has come out of form to be recruited to the NYS unless or otherwise you have medical disabilities.

Again in order to attain transparency and accountability with collective responsibility, we should create a mechanism of accepting responsibility by our administrators and the government. That is Constitutionally, a minister or any other senior administrator should accept responsibility when failures arise in the field. He or she should resign honorably failure to which will lead discuss his conduct and inability and any action should be taken immediately after proof. When the investigation is on, the person should be on suspension for example the job come or the cruise ship or the gazetting of the forest for the forest

allocation. That is including Karura forest and the teachers strike.

Also concerning our flag, some parties should other parties should be barred from using our flag colors. They should not be partisan. It should be a National symbol. And also the currencies, I think somebody has touched on that. Thank you.

**Thika mayor:** can we allow one person there and we give time to the commission so that they can come.

**Njoroge Maina:** My name is Njoroge Maina, the next issue with the commission on the Constitutional offices are created and the executive prime minister and deputy prime ministers, I would like to see to be told the need of creating two positions offices of two deputy prime ministers and at the same time we have said that the draft Constitution states that the minister should not be MPs at the same time this deputy prime ministers are MPs. So that is the issue I would like you to clarify.

**Com Kabira:** the gentle man at the back the one who has just spoken, I am referring to the Maina who has just said, are you Maina, by the way those two people are deputizing a the prime minister who is a elected member. He is an MP. I think basically he is elected and so are his deputies. The two deputies are also elected. So They are within parliament they represent the cabinet inside parliament because a lot of the other ministers are coming from outside according to the recommendation so far unless revised. The idea was to try to depolitisise ministries and the work of the ministries. Because there is a sense in which one of the things they have been loosing is the lack of differentiation between, and this was somebody raised this today in the morning who wanted the party to be ruling all the way down. But the idea is that although you are the ruling party you are a government for everybody.

For those who lost and those who formed the government so in a sense getting the minister from outside government was a way of trying to professionalise government and to make sure that ministries are not used as carrots to buy peoples votes within parliament by any party. That was the logic behind it. This was a view given by very many Kenyans and I think very often it is because of the kind of ministers we have been getting where we have somebody who is a standard eight person becoming the minister for health. And you see the difference it makes when you have one minister who is a primary school teacher in the ministry for health then you move from that one you go to a professor who Is an expert in medical services and so on. So I think this was the idea of getting somebody who knows nothing about education to be the minister for education.

Although we are talking about policies, we are saying we have enough people in this country to be able to manage those particular ministries although they are policy makers and I think that was .... Why they are two

**Maina:** they are not just picked because they are from a certain area for balances, that is what I am saying.

**Com kabira:** we are talking about the purpose of the deputy prime minister, which is really that is an office where we are

saying he needs two assistants, so you can actually just consider them as assistants to the minister within parliament and therefore any time the prime minister is not there, the two deputy ministers one of who should be assigned certain duties like finance is able to respond to the questions on behalf of the prime minister after deputy minister. Basically it was not power balancing, it was just recognizing, like the president has a vice president and the vice president is carrying quite a heavy load if you look at the functions that have been given to the prime minister and therefore he needed assistance to be able to manage the government properly. That was the logic Behind that but you can make other recommendations.

Now Richard, reduce the number of nominated members. This again has been worked arithmetically. They are not nominated members. I want to say this again, you know it is the distribution of the votes, that I think they have talked about in terms of making sure parliament is better represented and the argument that went to getting 90 was actually calculated on the basis of the vote that we had for the various political parties in 1997 election to make sure that you don't have the vote position. We are very close to votes in Kanu 1997. but when you look at the representation in parliament, those seats don't reflect the total number of votes that is why we decided on having the mixed member proportional representation.

You are the one who was worried about two women, by the way the women are not nominated either, there are not nominated on this. We are talking about, I don't want to repeat this, but May be for clarity sake, the women will have to work hard to be put on the party list and the women will only go to parliament depending on how well that party does. Because the seats are going to the party and they are not going to the women so The parties themselves will have to put women on their list. depending on whether those women are able to create a better image so That the party can get more votes so it becomes a little complex but it makes it possible for, the challenges the political parties to think a little bit harder, it makes it possible for the women themselves to work with political parties in order to be able to be put on the list. You can't put any woman on the list, because if you put any woman on the list, your party will lose, so for your party to do well it has also to put women whom communities would have elected any way, so you see what I mean. So I know what you are saying you are saying one man, one woman in the nomination but again because you are saying that given the traditional, I think it is a long history of affirmative action, that I don't know whether I can repeat again here . yes please.

**Richard kiomi:** you see my questions culminate from affirmative action, you can , like now the president decided to nominate a woman "Zipporah Kittony" okay I am sorry to use that example, to represent the interests of women but she is more of a sycophant somebody who is loyal to the president rather than representing the women so that is what we want to balance.

**Com Kabira:** We have removed the 12 from nomination. You can not nominate, I think I want to repeat this once more, that the party is the one that is winning the votes. A party can only win votes if they have good candidates so when you are voting you will vote for lets say Mr. X. so you will vote for Mr. X for Juja, but you will have another vote for which party would you like to rule. So you will either tick under DP or Kanu , you will vote Narc, you will vote Ford coalition if it is a party, you will vote rainbow if

it is a party, you will put Kanu if it is a party so that the party that has the majority votes in parliament may actually have 50 MPs but they have no votes from the people as a party. So that party will get a certain percentage, will have the biggest percentage of the 90 votes. So what we are trying to find out is how can the party, make itself attractive to the people, it will either be through the list That they provide for you, their own policies and the campaign that they do. So you will actually be voting the party not the women. But because we know that if the law does not tell them to put the women on their list, they will not do it so we are making it obligatory for them to put women on that list. because if we don't do that we will have a list of 20 men their list from number 1 up to 20 and then sell that idea. But we are trying to promote democracy.

We are also saying on that list there should be minorities for instance if it is Thika, which is the minority ethnic community here, they should have somebody from minorities. Had they put somebody from people with disabilities so that we encourage, have we put the youth under that proportional representation. the youth persons with disabilities, ethnic minorities and so on. So their list must show that they are inclusive and that they are looking for the best in that particular constituency.

So I think it is a process that is going to make elections much more filing but much more challenging, much more inclusive and much more focused on peoples nominations and there are no direct nominations for men or women. By the way for the upper house, we looked at their district representative and we are saying one person per district. Most likely they will choose the chair of that district or one of the officials to be the MP although you have to elect directly, but given history of the mayors in this country in the various local authorities, or the chairs of the local authorities, we are unlikely to get more than 3 women out of the 70 districts. This is why we say the house should have 100 people we know that out of the 70, we will probably get 65 men and if we are very lucky 5 women. And we said that the other 30 women are actually going to be elected. It is actually going to be Harder for them to be elected because if we are going to have four from central province it means they have to campaign in every district, nobody is going to help them, they will have to look for resources and they will have to travel to all the districts looking for the votes and they will 4 in each province except two from Nairobi.

So they are not going to be nominated and it means for them to get the opportunity, and it is going to be difficult to get elected because of the vast constituency. You are making Central province a Constituency for those women to campaign in but it also means political Parties will Have to also campaign for the women who will be going also there on a Party ticket so there is Hardly any direct nominations for women.

Provincial administration, every body told us to abolish it. So that is what we did, we just responded, to your request that it was not just in central province, every part of this country said, they were very few people who said provincial administration should be retained. Almost 90% who submitted on provincial administration, wanted it abolished. Elijah, it was a recommendation by Kenyans, very often they said, they don't know what the DO's do, they can do without the PC, may be we can retain the DC and If we retain the DC he should be elected. If we retain the chief, he should be elected and be transferable they must not be there permanently and for ever. The sub-chief they said those jobs are being done by village elders so they don't see what they

are doing and therefore they said they don't need provincial administration. But there is no vacuum. The only time when there could be a vacuum is before the establishment of the devolved government and I think we have made provisions for that, we have said that, we are saying that government should take responsibility of administration until the devolved government is in place. So the DC remain in place until the district council but it will be the DC that we know. It will be somebody with totally new functions you know whoever who facilitated that activity so that there so that to make sure that there is no vacuum, like during election, the Central government will take responsibility for those activities. We don't want chaos because there is no provincial administration so the central government will put mechanisms in place within certain period of time until the devolved government are in place.

The office of Ombudsman, if you look page 35, you have a number of provisions, in relation to the jurisdiction often people protector. What we have here is what the ombudsman should do. We are talking about the office of the ombudsman, page 35 the commissions on human rights and administrative justice. You have article 288 second column, the first one is on the general then one is on human rights and b) is on relation to the jurisdiction of the peoples protector, ombudsman is a title by the way which means peoples protector and that is where the office was initially established more than 200 years ago and we really couldn't have put what people wanted the ombudsman person to do. We have put it under that provision. So you can see b) 1 up to 9 all those provisions are related to Ombudsman and we are talking about general administration all those kinds of problem all the people have been talking about, there is an office to go to.

The commission on human rights and administrative justice, will have many sections, it is actually one of the major commissions that we have established and although we have said gender human rights, peoples protector, I think there is a provision for people with disabilities and children. This is a very broad commission and we are saying that we need to talk about the resources that will go there. Basic needs also are under this commission and there is a commission meaning a Constitutional office, it doesn't mean one commissioner, it may be two or three commissioners in each of the areas. I think I am through.

**Thika Mayor:** Thank you we are not going to going to come back to that side we shall have 1,2,3 we did three on that side so we are going to do three on this side. We did four so 1,2,3,4. we are starting from there.

**Onesmus Kioko:** my name is Onesmus Kioko. I come from the prison. Well I understand we were the last group we had been forgotten first that is why we were called last. Well I would like to thank the commission for the work they have done and there is one issue which I would like the commission to consider. Prisoners had one issue and it will affect each and every Kenyan, you have been hearing the press, we have had of news people who have been in prison for more than five years and yet the court or the high court after their appeal proves that that person was not guilty during the conviction. Now the sentence has been washed and he goes off with nothing. We would like the commission to see whether this person can be compensated.

There is something else we Kenyans are suffering from. We have no civic education. We are seated here most of us are learned

yes but back to the village people are not learned enough so they are prone to anything that comes out of a dirty head. We would like the commission to provide for civic education. Here we propose they can use the churches because there are those in schools, primary or secondary or higher education we can not go back to school so they have to devise a way meeting each and everyone of us so that we are much enlightened about the laws of this land .

Well, there is an issue about gender that is most commonly used in prison and there are laws that are being used, that are quite colonial like for instance most of us go out at night men and women and when you meet the police there a woman will be arrested for loitering. And a man will not be arrested at the time of offense. Those are issues that will be looked. Thank you.

**Thangwa:** my name Thangwa from Nairobi and I am fighting for Dagoreti constituency. When I had that some of the commissioners were coming here, I felt that I should come and 2experience with you. I have a number of issues but I will write them down now that I know that there will be a memorandum of understanding to be passed over. One of the things that I wanted to say, the commissioner is that there are things to be alleviated on the women and girl child rights in this nation and it is destroying the family stability because when you over emphasis the women rights, the girl child rights. The result is that the man feels that he has been disarmed and the boy feels that I am not as important as I should be and therefore I watch my mother and my sisters rampaging all over the place. I would suggest very very strongly that you de-emphasize and emphasis the family unity. This is very important for a nation that fears God.

The other thing I wanted to say is on land ownership. We know of people who have thousands of hectares in this nation and many of them don't use the land. I would suggest that whether you are using the land or you are not using, the Land being a basic economic source of income should be cut in excess of may be ten hectares of subsistence. So that that person who has anything over ten hectares should be allowed to continue owning it whether he is using it or not but because it is a National resource he should be taxed for owning each of the extra hectares that he owns. That we would open up land for economic our economic purposes and we will open up land for purchase at a cheaper price.

The third thing I wanted to say is on the army Mandate, I don't know if somebody has talked about the army but now for 38 years we know there hasn't been any major problem in our nation so the army has just been eating and generally doing practice for something they have never done any way, so I would suggest that the army be mandated to construct public facilities like roads and bridges and public houses instead of giving this contracts to private companies and the army is seating there chewing public money waiting for a war that we pray that it will never come so we should change the mandate of the money to include them being used for public construction and things like those, I hope you understand what I mean and in times of war of course more of tem will be used in the war so that we ensure that we are paying people who are productive in the nation.

The fourth thing I would like to say is about the registrar of societies office. There has been a circular many times I have seen it where you apply for registration for a society and if it is perceived by the powers that it is going to affect their comfort, then

you are sent a circular that says something about because of insecurity and bla bla bla. I am thinking that there should be a regulation that says precisely why they wouldn't want to register your society and not just because they feel uncomfortable about the registration of the society.

The fifth thing I want to comment on is on the commission of inquiries. For about 24 may be 26 years now they have been heaps and heaps of commission of inquiries and non of the results have been made public. Very very few are made public like the one we have talked about Satanism. I don't know why we should spend all that money on public inquiries, the money that comes from the public and the public does not own the results of that public inquiry. I am recommending that we should have the public inquiry results given to the owners of the money that was used. The public and that they should know about it as quickly as possible. So in the Constitution, there should be a clause that the government should not be left to decide whether they will make the results public or not, that it is a public document and they should be allowed to own it and get to know the context of the document.

The last thing I wanted to mention is that nobody should be allowed, that was said for purposes of emphasizing what has been said, is that nobody should be allowed to use our national flag colors. I have often wanted to wear a shirt that has my national color, always wanted to do that, but when I imagine that some of the parties or one party or so has very similar colors, and that when I wear it I will be construed to mean that I am supporting that party when I really want to be proud that I am a nationalist then I have abstained. I want to be given my right to own my national color without sharing with other parties. Thank you very much. *Clapping.*

**Peter karanja:** Thank you very much madam commissioner. My name is Peterson Karanja. I will start with the scenario that we have today, that we are several crisis and one of the fears that we nurse as citizens of this country, is the dissolution of parliament in case the president decides to do so. By there is also another inner fear that he also holds the power to declare states of emergency and in this document, I have scanned it through I have not seen who has the power or what the process should be in case of such a scenario.

Two, in section 86 on the constituency boundaries, the criteria in the old Constitution, is almost retained in total because although it talks about population and the other infrastructure there within, it is not clearly explicit what we mean by population because this is the same criteria the electoral commission has used in the past and the justification for certain creations or alterations have not made sense but one constituency could be having 16,000 people, and another one like Juja 105. I think that disproportion is too much and the document needs to be explicit. What do we mean by population. Can we perhaps certain figures that would form the guidelines.

Mr. Kimani kang'ethe this morning talked about the economy and we know that in the last two decades, our people have been submerged into object poverty. One, because of conditionalities from the IMF and the world bank and the changes that we have

gone all through but as a government or as a citizen of this country, I do believe that we need certain protection that our field has been opened so much for the free market and this has resulted to what we see the increase in formal settlements, informal traders and so on, crime and the rest. Where as we are a sovereign state, I do believe that we have a right to gauge what would be good for the country and its people and what should not be accommodated although we so much require outside Aid and therefore I do believe that there should protection of the local production. If is the sugar sector, if it is the dairies sector, if it is the cereals where our people as an agric based economy make their living and we have been left helpless and I think this should be a priority.

The last one should be on public property. It is true that the document spells out that there is an office to advice the government of the day on the disposal or Acquisition of property but in the past we have seen such monuments of KICC being claimed by parties, and I do believe that they were built through public money, I think the document should come up with measures to redress this anomalies so that we can have a system that is not abused in the past or will live with grudges that this was not so and so's. it needs to go back to the rightful owners.

**Chege:** thank you madam mayor, my names are David Macharia Chege. I would like to go back to what Kibathi mentioned about abortion. And at this issue I bringing it forth because I still see we need to put some more weight. I don't know whether it is lenient as per the provision today. But we need to go back and revisit it to see how we are going to handle it because we can see it is being practiced day after day. Can we see where by we can deny those who are practicing it license for several years or more tougher measures to be taken, because if we continue like this we are experiencing some disintegration.

Second thing I want to mention is what Mr. Atwoli the chairman of KOTU said about the conditions to workers. We know one thing; Thika was one of the industrious city. But look at what has happened. We are feeling that, we the good governance the industrial sector is going to be vibrant again. But now being sure that it will carry the majority, what are the provisions what are we going to do to the sector so that we may encourage them, we need to handle that issue so that we may secure some opportunities for our people.

The other thing I want to mention is about national disasters. We have been having so many of them but what we have been seeing like let me mention about the poverty reduction strategy. We need something which is being stipulated, something which is arresting the different department of people, different localities that we may see how we are going to be effective enough. The government has been giving us such issues but the experience, let me say also about the issue of HIV, we have not been experiencing it as the government has been giving it to us. Through this poverty reduction strategy, I look at it as we, the youths being the majority how about if we come up with viable projects, how is the government ready. We need to draft to see how we can arrest the entire situation. Otherwise calling it a national disaster and yet again you are not addressing it to the grass root, you are not going to help us.

I want it to be made clear about urban government. That is 222 about the city and municipality. They didn't say that because it is now under the district provincials, is that our mayors will be coming from the grass root, are they going to be elected by the councilors? This is because they have been the manipulation of the councilors. Who ever buys the majority of the councilors, he or she becomes the mayor. We want a person who is coming from the people. I want it to be made clear if it is provided for. Thank you.

**Simion Kihiu:** Thank you madam mayor, and the commissioner and the Kenyans at large. I just want to air a few issues that need to be considered. I am Mr. Kihiu Simon. I am representing the churches and my personal Views. So what I wanted to say is that maybe most of the Kenyans are not here. I am one of those people who will try to campaign to make sure that many people come here. But I believe in Constitution. I want to appreciate that the commission has tried but there is still this clause concerning education. Education needs to be given a great priority in this nation especially if you are going to make our own people aware of their Constitutional right. Like now you can see the present stalemate of the teachers and the government, 50% of people living below the poverty line, this automatically puts people not in the know and because they are not in the know, they have the problem of also fighting for the Constitutional rights. That is why I feel this place should have been filled even no parking everywhere and maybe using microphones. So the issue of education should be made free and it should be documented in our Constitution.

The next I want to talk about very quickly concerns section 199 and section 200 of the same Constitution that we are discussing today, it concerns about Islamic law and the chief Kadhi court. One thing I want the commissioner maybe to answer me and the rest is concerning the Vicerian choice that was made for the Muslims that they need to be considered as a group that they are going to have their court, have their own Kadhis or their judges and their lawyers. I want to see this issue considered because I have seen that in cases where Islam is allowed to penetrate in a nation, they cause a lot of problems and chaos. Just as you have seen has happened in countries like Nigeria, the middle East and maybe to come closer home. We have cases of places where churches have been burnt in north eastern, Garissa and Mombassa or they have even affected a meeting somewhere maybe a different Christian gathering meeting that has been held. If they came and caused chaos in a meeting and me I am finding a Kadhi court is going to with that particular issue from a kadhi's court, what about if they came and ruined a meeting or interfered with a meeting which I had as a Christian where would I go myself. So I find that there is something a bit sectarian religiously concerning such kind of a scenario if it was to occur. So I would like the commissioner to explain about that or maybe you could be having a business deal with a Muslim and then maybe you went beyond then contract or he bridged the contract, where would I take that Muslim myself if it is worked on the Islamic faith or from the sharia. So let me not go further. *Clapping.*

**Thika mayor:** We had not agreed but we will take him as the last person and I hand over to professor Wanjiku Kabira to finish up the questions and we can come to the closing of this ceremony.

**Com. Kabira:** Thank you, let me begin with Simon kihiu. By the way, the Constitution provides for free basic education. That

provision I there. That is actually primary education which by the way according to the current law it says, I think there was a bill in parliament providing for the same under children's bill but I think you want to ask whether this is going to be implemented and so on. But I think this is currently provided for and the government will be unconstitutional if it is not providing if this Constitution comes into place.

The Kadhi's court. They were there by the way. It is not as if the new Constitution has introduced them. This was an agreement made even by Kenyatta's government, during the writing of the new Constitution with the sultan that the Kadhi's will be able to have their own courts, but it is not in everything. This is only the area of personal law and in areas related to property among themselves. And we even have in the bill of rights a limitation because the Muslim women unlike other Kenyan women say that they have greater benefits under Muslim law than other any other customary law so it is actually limited. It is just under personal law in the way they manage their own marriages for instance and in the way they manage the distribution of property among themselves. But otherwise they fall into the general, and I am told by Wachira that it is if both parties are Muslims. They can't take you to a Muslim court because you have disagreed over some piece of property, they can only go to the regular secular court. So what I think this Constitution did was to reaffirm that.. but there were problems also with the Kadhi's court for instance we have made it a Constitutional office, we have also raised the qualifications we have also suggested that there should be a distinction between the chief Kadhi or the Kadhi and the religious leader And they should also be experts in law and also Muslim law because there was a tendency to confuse the religious leadership with the legal leadership of the kadhi's court. But that is how it finds itself.

Now Macharia, I said that abortion is illegal even today, it is not legal and although abortion has been going on, there was a long article by professor Meme, not so long ago where he was talking about the many deaths that actually arise out of abortion, not because it is not legal but because it is, some of this abortion may be related to the way we are behaving towards women and girls in certain cases, for instance if you are going to be thrown out of school because you are pregnant and you don't know where to go the simplest thing to do is to go to the backyard where there is a woman who assists in abortion so the girl goes to the back yard,..

**Macharia:** I was talking about protecting the unborn child, from being harassed by the state sending the mother to jail when the woman is pregnant. I was talking about protecting that child from the mother trying to abort that child. I was not talking about it from any other angle. I was talking about the protection of the child.

**Com. Kabira:** I think we dealt with the issue of women in prison or in jail. But I think now there are three questions which actually are asking why did we not deal with abortion and out law, basically why did we not out law it. And I am saying that first of all there were no submissions to actually make a substantive issue but I am also saying currently also it is illegal. You can be arrested and jailed for the same and there are instances where this has happened. But I am also saying that may be we are not also looking at, now I am not dealing with the Constitution, I am dealing with the fact that abortion has been an issue in this

country. May be we are not dealing with the route causes of this abortion that is why I gave an example of a school girl who is pregnant who can not even say it at home and whose father Has denounced this and is going to be sent out of school so sometimes they go to the back Yard and do the abortion and sometimes in the process they also die, isn't? So I am just saying it is an important issue, it is currently illegal. But I don't think as professor Meme was saying on the papers, we have dealt with the route causes of abortion. But if you think it should be, dealt with within the Constitution, I think we will take the recommendation and there will be further debate, but there were hardly any submissions on abortion may be that is why it did not appear. Yes please.

**Jeanne Kiama:** This one is a very serious issue, having been in education for over 30 years and young people and I know it is a very serious thing that is happening back there, a lot of abortion is being done and this are some of the issues that we sweep under the carpet because they are criminal, it is murder and every body is conscious about that, so I think it is an issue that many people are not really coming out with. So as people who are dealing with the future of this country, so many ladies are dieing, so much of this crime is being committed out there so if it can actually be taken no matter how small it will really help these people who are really hiding behind the whole thing. Thank you.

**Com. Kabira:** Thank you very much. My question is; it is illegal, why is it going on? It is currently illegal to abort and the abortions are still going. So is it because it is not in the Constitution?

**Jeanne Kiama:** No it is not because it not in the Constitution. It is because our children are sexually active and if you look at what happens in other countries for example, they sort of introduce contraceptives instead of sexual education is introduced in schools, children are taught how they can protect themselves although in this country we say if we teach that kind of education in our school, we are teaching our children to be prostitutes which h is hypocritical because this is where the conflict comes. We pretend that it is not happening . so abortion should not be allowed but alternative measures, yes proper education should be taught to our children in schools how they can actually help themselves from getting pregnant. Instead of going to become pregnant, we teach them how they can protect themselves from becoming pregnant.

**Com. Kabira:** We will need a whole day to debate on abortion so what I concede is that it is an important and there is need for further debate. Encouraging investors, I think this was Macharia also and I thought may be one of the things we have talked about and that also goes for Peter I think and may be not peter, someone may be is the economic council. We think that an economic council is an advisory body and that it should be a council of experts a council of about 21 people. These people who should be able to review our own issues to globalization you know issues related to the free market economy, how we fit into the COMESA market and be able to advise the government on how to deal with these issues. I think may that is the only way we have dealt with it. In terms of natural disasters and poverty reduction and so on, I think a lot of this information comes under policy, so when you find the big report you will find that information has been taken on board.

About urban and municipalities, I think they are areas, I don't know whether it is reflected in their document, but you know Kisumu for instance, Kisumu city will have the same status as Kisumu district council but they have there are certain things they are going to be able to do again because of their status which may be the district council again depending on the resources they may not be able to do. But I think we are separating them because it was not possible for instance to say that Kisumu or any other council or urban council that they should not really be subsumed by the district because sometimes because of the population they are dealing with because of the resource they are controlling and so on and I think the details are being worked out as I said. We Are going to produce paper on devolution that are going to be shared during the conference so that we will have the fine details worked out like how the various district councils also relate with the urban councils and with municipalities and cities like Nairobi and probably also cities like Mombassa. So I think those details are being worked out and they will be ready for debate by the time we have the national conference.

Peter Karanja, you are actually right the criteria for the boundaries for the constituency boundaries is actually the criteria that is in the old Constitution and I can tell you the reason why we picked on that is because after our deliberations and the views that we received when we compared it to the old Constitution, we found that actually the old Constitution was better in terms of how to demarcate the boundaries. It is not the Constitution that was wrong; it was the manner in which the boundaries were drawn. But the Constitution expected us to look at the population in terms of human beings, the geographies, the terrain and so on. So it was a much better provision for us to pick than the proposed one. The way we went about representation is warrant to provide for a boundaries committee and the other one is to provide for the mixed member proportional representation. we recognize that they are not properly represented but we try to bridge that gap by creating the 90 seats on the basis of proportional representation. So that is how we went about that.

Emergency, the declaration of emergency, is actually on article 151. It says, on the state functions of the president, and if you go to the middle, the third column, at the bottom you have 4. it says after consultation with the cabinet and the national defense council, the president may declare a state of emergency. But it has to be after consultation with cabinet and the national defense council. And in the defense council we have a number of , the composition of the defense council. It has a lot of people, I think it is about a 9 member. 272, so may be we can look at 272 just to see who will be there. Those who will compose the national security council will be the president, the vice president, prime minister, minister in charge of defense, the chief of general staff, army commander, navy commander, air force commander, the commissioner of police, the director of Kenya correction services (those are the prisons), director of national security, intelligence services, the chair person of the relevant parliamentary committee and the attorney general. So a lot of people are involved in making the decisions so that you don't have the president and the cabinet as well declaring a state of emergency on his own. So that is how we dealt with it.

I think you talked about protection of free market and I have talked about the council and the issues related to public property are dealt with the interim, what we call the transitional measures by the land commission. I want to go to Thangwa, and I was just checking, Mr. Thangwa under the bill of rights. If you look at the provisions for children and there extensive provision for

the children, we have talked about the children boys and girls, there is actually no mention of the girl child and they are extensive provisions under children so both the boys and the girls are actually equally presented before the law. I think for the women, emphasis on women may there are some things we cannot get away from. For instance, currently we have 220 MPs 9 of who are women. We are saying there is gap, which we need to deal with. May be that bridging of the gap is temporary, but it is the truth and we know that men and women have different experiences and they will bring those experiences to the leadership and the policy decision making positions. So may be it is important to think about it that way. We have also by the way Mr. Thangwa, a whole state of provisions for the family, because it is true we agree is the smallest unit that really shapes the nation the way it is. We have a lot of provisions under that.

The issue of taxation under land. There are some cases we Are not able to deal with, like how much tax should go where, and we are saying that this should be dealt with by the land commission. I agree money should be working instead of waiting for the war and hopefully there will not be any, but again we are saying that this one should go into the law rather than into the Constitution.

**Thangwa:** There are certain things you cannot leave to the sub bodies that are making by laws. Something like the protection of the family unit must be made very clear, for example you will notice that, and am not repeating myself, but for example you see in a situation where you are going to divorce your wife or your husband because of abcd you don't go back to the steps that you went through by way of constituting the marriage, the village elders, the council of elders, the church pastor. You just go to court and in a few months, you have the divorce case. That is not defending the family. The other thing I wanted to say is that you cannot leave the army duties to the council. Let them know that there are those duties that they must consider very important and the third thing I wanted to reemphasis is the land taxation. You cant leave the land taxation to the commission, because in the event that those commissioners have tracts of land, then they will protect themselves by refusing tax, in the event, then they don't redistribute the land to the people who need it. That is what I am saying.

**Com. Kabira:** I wanted you to check article 38 which is on page 7. I just wanted to draw your attention to the various provisions, related to the family, article 38. The state shall recognize the family as the natural fundamental unit of society and as the necessary basis of social order. The family is entitled to the respect and protection of the state. Every person who is at least 18 years of age has the right to marry based upon the free consent of the party, which means you should stop getting marrying girls who are under 18 and has a right to found a family. Party to a marriage are entitled to equal rights in a marriage, during the marriage and at the dissolution of their marriage, parliament shall enact legislation and marriages concluded under any tradition or system of religious personal or family law or in other words the parliament should be able to come up with laws that protect or the interest of the various people meaning the children, the husband and the wife within the family. But if there are other things we think we have left out, I think we can look at the recommendations Mr. Thangwa.

The public commissions should be able to report to the general public but again there are some things which we can't put in the

Constitution because some of these inquiries may not be of Constitutional nature in anyway. We have very many commissions that are usually appointed so we leave it to legislation. National flag, I think you talked about it earlier in the morning may be before you were here, we talked about it and said that it should find its way, the national flag including the meaning of the various colors into the Constitution.

Kioko, you brought a very important point which I am not sure whether it will be covered under human rights and administrative justice. The question of compensation and the person who comes to my mind now is the gentleman from Ukambani who was in prison, who was accused of shooting Tinto. And the one who was a young man and now he is an old man and with nothing. So I think that is a very important issue and I think we probably need to make sure that it is addressed, because I don't think it will appropriately find its place under the human rights or under transitional provision for human rights where we are supposed to investigate the part. But I think that is a very important issue and it is something that happens so often that you are in remand for 3 years, for 4 years and you come out and there was no case, and nothing happened to you. It is a major violation of the human rights and somebody should pay for it. I think that is a very important issue we need to take into consideration but we also agree that we need to review the laws that are colonial. And what we have said in the new Constitution under transitional provision is that all laws that are not in conformity with the values and the mission and the vision of this Constitution will have to be reviewed. I think that will come under that.

Before I hand over back to the mayor, I want to say that this has been a very challenging session. I did not know we would go on until twenty-five to five o'clock. We thought it would be a three-hour session. I must say, it has been very fruitful, it has also been very informative and it is also giving us an idea of what will happen at the national conference and what kinds of issues are going to be raised. I think just as we have been talking, I was just thinking I will need to report back to professor Ghai and say there are many issues that are challenging and we need to actually think about how to deal with them and how to prepare your new recommendations or responses to the report for the national conference because it has been a wonderful session for me. So I want to thank you very much for your participation and for following this route almost to the end. I would ask you to continue pursuing it until we have a new Constitution.

**Mr. Wanyoike:** Thank you very much. First of all let me comment and say this that when we were electing the district delegates, we followed some rules that come from the Commission. And I must assure you they were very vigorous rules and we followed them to the letter. This was not a nomination or a selection it was actually an election and we had specific electoral college made up of county council, civic leaders that is the councilors. We did set regulations and we ended up with three delegates that will represent Thika district of which one was to be a woman and we did get one woman. One could have been a councilor but not necessarily a councilor, luckily we had the woman also as councilor so we had one score there. And two were men and I have them today.

I will start with the lady, she is councilor Beatrice Wairimu Kamamia. This is the lady that will represent Thika district under the

women category. Then we have retired brigadier Kinuthia Waitiki. He is the one who was actually nominated to represent the gentlemen's category. And we had honorable Gitau kehengeri, (*clapping*) who was elected to represent the open category or the men category.

I must admit that, there was a very stiff competition. They actually had a very good presentation and they ended up being elected to represent us. Now let me comment something, these are representing the total district not just Juja constituency. Up to the time that we will be called in by the commissioners, if there is anything that any of us, wanainchi in district want to take up with them so that they can represent there, you are free to do that and that together with what madam commissioner has said if you have any memorandum or any comment to make on what has been going on since morning or what may come up later, you can present to us right now or bring those materials or come to our documentation center. We are at Muranga district cooperative house second floor. We have a documentation center that is open from 8 o'clock to 5 o'clock everyday from Monday to Friday. And if you have anything you want to be taken to these delegates, I have contact with them on a 24 hour and I will definitely directly relate to them so that they can actually take up your issues.

It is our hope that those three people, will actively and positively represent Thika district. We have already told them and they were told by those who elected them that we really don't want people to go there sit there back and clap when others are saying. We want positive contribution and we hope they will not let us down as a district and they have assured that is exactly what they will do.

The other thing is, now that madam commissioner is here, somebody had asked me this morning on telephone, to ask commissioner directly that once the Constitutional conference venue is known to ask whether there will be provision for the public to come and observe what is happening. I presume a kind of a gallery or her presence just to see what is happening. And the other one they asked is whether the proceedings will be covered live so that wanaichi can be told when and by who, so that they can either listen in the radio or TV and I presume you can answer that if you have any answer or probably we will tell later on. Okay I will do that.

The other one . I would really want to say it is our hope that if you want any materials, or any information related to the commission's activities, we have a lot of materials in our documentation center, you are invited, you can come sit down and read anything you want, our proceedings in Constituencies and so forth. If you want to make a comment delegates.

**Gitu Kahengeri:** The commissioner, I just wanted to say a little thing. If the parliament is dissolved before the completion of the Constitutional process, I would want to believe that Kenyans, the whole nation lest sycophants and freedom we will rise up and oppose the president of Kenya. *clapping*. I say this because he may want to humiliate the whole nation just because he has powers in the Constitution. This Constitution was made to direct the people of Kenya, into the right direction. We have given our thoughts how this country can be improved in almost every way. If he refuses that he waits other than an opposition of the whole

nation. I finish that

And I say this; this morning many people have been expressing fear. Saying we have three people, May this people are going to be bought and then they will not represent us adequately. I want to say this. I have worked for this nation, the country of Kenya for 52 years continuously up to this day and I have never let anybody to make a staunch out of me. It is therefore a guarantee that I am giving you here that when I go to the national Constitutional conference, I will say what I have heard from you and I will say what I believe is right for this nation. Thank you. *Clapping.*

**Brigadier Waitiki:** Thank you, your worship, madam commissioner, I don't want to repeat what my colleague has said but I find it inevitably correct to echo his words. This morning I sat here through out without saying anything because this has been a learning process for me. I have been in the armed forces and I worked for 37 and a half years and I have represented the country even in the foreign mission. I give you my solemn promise that what you send me to do is exactly what I will do. The apprehension that has been expressed this morning, perhaps is a little bit unfounded. I have been outside the public right in the barracks, I can understand what the gentleman is saying there and I am not defending the armed forces whatsoever. I know what it is and I have never been a member of any political party so with that I will not be swayed left or right because I didn't perhaps subscribe to certain behavior or certain manipulation.

I have been a victim of some of this, I know what it means and I think I am old enough to know what the public expects me. I am already 60 years, I am not a dot. Com. So I know what I am talking about. With that we meet and we shall deliver what we have said. Incidentally what you have spoken this morning, I had gone through this the first day became *Inaudible*. I have made my notes. I have not commented on certain areas for obvious reasons. I have the opportunity to air that in the conference. I do feel it is not adequately addressed for example the president can not be the chairman of defense council but defense council is body of national security council. It doesn't work that way in the military. It wont. It is the other way round. So you have my promise and I think I have your blessings that I will represent you. I come from Gatundu South. I hope I am going to meet you tomorrow at the same session again and that will be now. Today this has been primary school, tomorrow I will be in secondary school and finally I will come out with my certificate. *Clapping.*

**Wanyoike:** infact will ask the delegates if it will possible to ... *the third delegate*. Okay sorry.

**Beatrice Wairimu:** Thank you very much commissioner, professor wanjiku, madam mayor and ladies and gentlemen. I am sorry I am not going to defend myself because when one speaker spoke in the morning, he talked about two delegate not three delegates who will may be bought. I don't why somebody thought of people who will be bought with little money. I have been with the women movement going all over the country to mobilize women to attend Ghai commission hearings. I don't know why I can do all that job and lastly I take some bribes and that is failing my right, I am sorry, the person who spoke needs to apologize, but don't because you are a man. I promise the ladies here and gentlemen that I will represent the people of Thika

not only women but both women and man and the youth and the children of this district. Thank you . *Clapping.*

**Mr Wanyoike:** I think you have heard from their own mouths that they will not let us down and we look forward to a successful conference and we hope that what we have been deliberating since morning up to now will not be in vain. just before I seat down because I may not have another chance, I just wish to thank her worship the mayor very much and her staff infact for first of all giving us this opportunity to assemble in this particular chamber and you could also see that she was over reactive to see that we are comfortable and I must admit that all our deliberations since we started with the Constitutional Kenya review processes she has been extremely helpful infact I may have no words to explain of all issues in this district. We have been very happy and we hope that all that will not go in vain and that we will end up with a good Constitution at the end of the day.

You know I am holding the chair, so I don't know what is what, I have to pass it back to the chair. The other small thing before I sit down is the Madam commissioner and other staff will be moving in a kind of a circuit in the district. Tomorrow they will be in Gatundu town, the day after they will be in Gatundu north at Mangu catholic mission hall and on Friday after Moi day, they will be in Gatanga constituency at kirwara community hall. If anybody of you or your friends who may not have had a chance who want to follow up that circuit, they can come in. I have also agreed with the delegates that if they have a chance, they will also probably be able to accompany us so that we can introduce them to the other Constituencies because I think they are very keen to see them and hear them. So thank you very much, back to the chair.

**Com. Kabira:** Before the chair, just one thing, the venue is actually Bomas of Kenya. the National conference will be at the bomas of Kenya and I was one of those who visited a number of places to try to identify the venue. When we went to the bomas, we thought the official process, actually started at the bomas. Probably you remember before the safari park meeting and the people at the bomas were telling us that the reason why we did not agree at the safari park is because we left the God at the bomas of Kenya. So bomas of Kenya has its own history, it is a cultural sight for Kenya but they also have some environment conducive for negotiations.

I know we are talking about live coverage, but the way the conference will be organized, the delegates are also going to be in groups at different times. In groups of about between 60 and 100 to discuss like everyone of this sections. So may be the group activities may not be live but some of the plenary sessions will be covered live so that Kenyans can participate. The delegates are going to stay in Mbagathi KTTC and agricultural finance corporation house. They are institutions around bomas. Bomas itself has no residential places. So the other areas around mbagathi, AFC, may be catholic university those ones near the bomas will house the delegates. But all the meetings for the group technical committees and the plenary will take place at the bomas.

**Thika mayor:** Thank you very much, you will allow me if I allow one hand up if we have 10 and if we have 10, we 20. so allow me to close the session. I want to thank all of you for your patience, for your contribution and because of your love for the new draft, and to see the actual draft come to full session. That is why you are here. I have enjoyed every minute of this. Mr

wanyoike I would do it again and again to facilitate the residents of Thika to make this process a success.

We have dealt with the Constitution. I ask Kenyans to think about the actors. The Constitution we had in 1963, though it was not home grown like what we are doing today had actors of a different kind. They were committed to the success of that Constitution. They were committed to making Kenya what it was. What are we going to do about the actors of today. All Kenyans at large, whether young, dot com. ,Old and stale, women and men. We are all actors in this one and we have to take personal responsibility into making this process a success. We have the elected offices; I did not take offense with any body who says some of us are bought. It is an open secret. We send you, 3 of you to take our integrity to that commission, you are not representing any party, I believe you are not sycophants and I believe that you have our mandate to go and present our feelings to the national conference.

We have people holding public offices, what about them, they are actors because when the Constitution is put in place and we have no actors to respect that Constitution we shall end up with another frustrated process. If we have nominated people who don't respect that document it is as well as not wasting that time that we have taken to put this document in place, and we should think about them. We have the professional. Be it a teacher, a civic person an engineer, name it even doctors. We are Not going to take our personal responsibilities in thi Constitution as an actor we are doing a job that eventually will flow to the do or. For all those actors, the ones that I have mentioned and the ones that are there, you know them, we have to instill in ourselves national values, values that will make you respect the institutions of this country.

How do you feel as Kenyans if a minister with a Kenyan flag drives to high court with the official flag off, packs, goes into a doc of a criminal offence walks back and drives the same car with the official flag on it. That is why I am taking about the actor. How do you feel as a Kenyan if a minister can be called 'Baba Dennis' every where because of a rape case and we are still flying a ministers flag. How do you feel as a Kenyan if office bearers can abuse the powers that they have without any regard of any other Kenyan except themselves. I feel rotten as a Kenyan. It makes me feel rotten even more because I have to suffer more because I am a woman. So I urge you people that we Can have a good Constitution, but if you don't have good actors to respect the constitution and institutions of this country then God forbid, I don't know where we are heading to.

Therefore you commissioners, you are still in that dark Valley. If a shame and I am not going to say that I am sorry somebody can be bought. We had it when your chairman was presenting to the parliamentary group, the chairman described some of you as despicable. You are Kenyans and the mandate was given to you by Kenyans but it is still sad that that culture can get into the commissioners to sacrifice the wishes of the Kenyans. It is also sad that everybody in offices assume that the Kenyans are stupid. You have seen it here, they are not. We know where we are gong and we know what we want we want for ourselves, we know what we want for the generals to come. For those of you that are not interested in this country, you have stolen enough money, go settle abroad and leave us here to take care of this nation.

The last one I say is this, let the government of the day know that we have been patient with them, and we are all saying 24 years are enough, and let the Kenyans decide the kind of a president they want for themselves. We don't want any body to be hand picked, we are mature enough, we know what maturity is, we know what a track record is, we know that nobody is supposed to lead Kenyans by remote control anymore and what we are saying, I echo the sentiments of honorable Kahengeri, can we reset the responsibilities that has been bestowed to us by Kenyans. That the president can not dissolve the parliament to the Kenyans. We need this document in place before the general elections and we are not acting in anger, but we have been patient, the Kenyans want to hold hands again, they know they have left this country lying down. I pray for him that in five years I can hold his hands, to hold hers, to hold the other persons hands and we raise this country up. I hope to live to see that.

I am a beneficiary of when the systems were working. She says she taught me at the university. If I went to the university today, my father could not have afforded, I would be milking in 'geshagi'. But because the systems were working and I was given an opportunity that is why I want everybody else, any other child, any other person to get an opportunity when systems are working to make Kenya what it is supposed to be. We want institutions that are working, we want people of integrity that are running institutions of this country. We want that facilities are not just for people who can afford. It is the right of every Kenyan to get access to medical facilities, children to school, good roads and they would not want it. It is like fun to govern poor people. Don't allow it Kenyans. Don't allow it. I can speak and speak. I want to tell you that we are happy that you have done a good job and the battle is still on because you will have to defect if parliament goes and the member of parliament are no longer apart of your kin, what do you do, we shall get answer. That is what I believe, Kenyans have got an answer, we gave you the job and it is us to take the job from you. I hope and pray that Kenyans around this time are not going to develop an individual. We are going to make systems and people at different levels saw that this country becomes better. For women we are very few here. Don't get offended when people say that affirmative action is bad. Somebody said Wangari Mathai fought it, Ngilu has fought it, I have fought here. Those who come from this know that it has not been easy for me but let us not forget That there are other women likely who don't have the stamina to go what the other have gone through and even they themselves are good leaders given the environment they can make better choices in places where they are few.

Let us not be worried about the affirmative action and if you can get a good woman leader where you come from, propose her not because she is a party sycophant but because you can see she can do something good for this town. In the council that will come next year, nominations will not be by the parties, it is the council itself that will nominate a third of the women. I am sending you people of Thika to go and look for those women and let them bring their experience here, I will work out here personally out of my office a very proud person because with the help of the team that I have had, we have set standards that no other council in this country can even measure to where we are. It is not easy to be voted the best managed municipality in this country by the whites. But you must admit that we have people outside there who can't afford the map that has been put on him. Yes there are women to contribute to make this town a better town, even make this constituency a better constituency. Fish them out of their kitchen, out of the Market because they are there. You don't have to be a graduate. Fish them out of the churches and bring them to contribute to the buildings of this nation. I will always say I am not a woman activist, I want to encourage women



