

CONSTITUTION OF KENYA REVIEW COMMISSION

(CKRC)

Verbatim Report of

DISSEMINATION OF REPORT & DRAFT BILL

BONDO CONSTITUENCY,

BONDO TEACHERS TRAINING COLLEGE

ON

October 8, 2002

DISSEMINATION OF REPORT & DRAFT BILL ,BONDO CONSTITUENCY, HELD AT BONDO
TEACHERS TRAINING COLLEGE ON OCTOBER 8, 2002

Secretariat Staff in Attendance

1. Mr. Wycliffe Owade - Programme Officer
2. Ms. Jacklyn Obiero - Asst. Programme Officer
3. Ms. Abigael Nyakundi - Verbatim Recording
4. Mr. Walter Korege - District Co-ordinator

The meeting started at 11.03 with Mr. Wycliffe Owade on the chair.

Bishop Johannes O. Angela: Lord Jesus Christ, we come before your presence this morning to thank you for the night which is past, to thank you for your blessings upon us, to thank you for the gift of life and for extending our day. We thank you for the responsibilities you have set before us. We pray Lord that you will give us the wisdom to do them and to be committed to them, that we may be responsible in all our dealings. We thank you for bringing us here together, that we come as the people to discuss this document before us which will guide us in our daily life in this country. God give us the wisdom and the eye to see very quickly what may not work that we may leave it out and that which will work, we may be committed to it. We pray for those meeting similarly in other places in this country, that Lord, your wisdom may overrule them. Be present with us now and further us with your blessings that all things we begin to do now, we may continue and let them in thy holiness through Jesus Christ our Lord. Amen.

Walter Korege: Thank you the Right Reverend Bishop, Chairman of the Bondo County Council, our visitors from the Commission Headquarters – Nairobi and all the other constituents. (*Amosou ni misawa uru? Misawa uru kendo?*)

Audience: *Osware.*

Walter Korefe: *Ero uru kamano..*

Now I take this opportunity to welcome you all to this particular session for today where once again we have staff from the Constitution of Kenya Review Commission visiting Bondo Constituency once again, to come and talk to the Bondo Constituents and not only talking, they have been talking to you, they came here for induction courses – for an induction, they came here for civic education, they came here for public hearings and you gave your views on your proposals for the new Constitution, they must have been working on that and now they have come here with the document ready, and today, we are here or they are here with you to disseminate the report. That is the main purpose of their being here.

Now from the start when you started on this review process, we did mention that in the review process, you agree to talk in any language. Whether it is Dholuo, Kiingereza or Kiswahili or any other language, you talk in a language of your choice. What you understand best. We also have our colleagues or our friends from Nyang’oma and they have come with a facilitator who

will be able to, that is sign language interpreter will be doing the needful.

So I wish to inform you that for today, the Commissioner who has been coming to you here on the previous three occasions is the one who is supposed to be with you., unfortunately, that is Prof. Okoth-Ogendo. For those of you who read newspapers, yesterday in the Daily Nation, you did read that he is somewhere in Mombasa. Now we were expecting him all along that he will be with us here today, unfortunately, we somehow got information that they are still stuck in Mombasa and he is unable to be here with us for this particular session. And you remember, for Bondo District, we have two Constituencies – Bondo and Rarieda. Now, the Commission is supposed to disseminate the report today or discuss the report with the Bondo Constituency today – 8th of October, 2002 and tomorrow which is 9th, they will be with the constituents of Rarieda, Rarieda Constituency. Hopefully, since he is not likely to get us here, I believe he might be arriving in the evening and he should be there tomorrow with the constituents of Rarieda. But for today, we have a representative, we have an officer who is representing the Professor, he is from our Commission Headquarters in Nairobi together with two ladies who are assisting him or who will be assisting the Professor or assisting the entire team. So, of course with the two ladies, some of them were here the other time, some of them were in other places and maybe some are coming to Bondo for the first time.

So the officer who is representing Prof. Okoth-Ogendo this morning is Wycliffe Owade. Wycliffe Owade is an employee of the Commission but comes from this area. He should be one of the constituents, I don't know where he registered. Did you register in Nairobi or here at (don't worry). Now Mr. Owade will be with us here, he will help us to disseminate the report. We have the entire team of course, the entire team that will be introduced by the Bishop being our Chairman of the Bondo CCC – Bondo Constituency Constitutional Committee. Then along with Mr. Owade, we have one of our officers Jacklyn Obiero. Jacklyn.

Jacklyn Obiero: (inaudible)

Walter Korege: That is one of the ladies who has come from Nairobi to come and assist us here and disseminate the report with us. And we also have Abigael Nyakundi. Abigael say hallow.

Abigael Nyakundi: (inaudible)

Walter Korege: So that is Abigael and myself, of course, District Co-ordinator – Walter Alua Korege. For now, I wish to take this opportunity to call upon the Chairman of the Bondo Constituency Constitutional Committee who is our host for this function, that is none other than the right Reverend Bishop. Bwana Bishop karibu.

Bishop Johannes O. Angela: Now, we are going to be here most of the day to go through this, and I want us to take this chance now to introduce Committee Members who have been working on this report on this document. With me is:-

John Dalmas O. Onyango: Owuor Onyango John, Chairman of the County Council.

Bishop Johannes O. Angela: Thank you. And next over there is..., let us start from here because you are aligned.

Wilfred M. Ongoro: I am Wilfred M. Ongoro (inaudible)

Bishop Johannes O. Angela: Thank you.

Alogo Raila: Alogo Raila.

Bishop Johannes O. Angela: Thank you.

Rose A. Angule: Rose A. Angule.

Bishop Johannes O. Angela: Thank you.

Louisa A. Owiti: Louisa A. Owiti.

Bishop Johannes O. Angela: Thank you. Now, as our Co-ordinator has explained, you know we have held meetings here with the Commissioner before, we have also gone round, talked to you in mobilization, we had also some people coming to train us as civic educators and then lastly, we came to this Hall in order to talk to the Commission and air our views on what we think should be included in the Constitution and what should not be included in the Constitution. All those were compiled as a report and we have our own Interim Report for this Constituency here. Now, all those views, were then put together. Everywhere, people were talking in the whole of Kenya, these were all put together and then are now compiled and we have now a new Constitution which they term as the 'People's Choice' and those of you who have read it, it came out in the newspaper last week and I think some of you have had time to read it all and must have made their own observation and comment.

And today, the Commission has come, what we will call features, things coming out from that Constitution which they feel we should know and we will discuss them together. But if there is anything also coming which they have not heard but you feel should not go unnoticed, we will give you time later during the day to say it so that notes are probably taken and at the end of the day, we have our Constitution, something which we have participated in, something which is our own so that will best suit this name called, 'the People's Choice'. This is what we need to do today. And therefore, because it is a long day, we are going to take a long day, I just want to straight away ask our friend, our visitors to begin the programme straight away.

Wycliffe Owade: Good morning to all of you?

Response: Good morning.

Wycliffe Owade: Hamjambo?

Response: Hatujambo.

Wycliffe Owade: Yes, I want to take this opportunity to welcome to this forum of public hearing so that we can discuss together, we can debate together, we can listen together and come up with the resolution arising out of the report which has brought us here to table today. Just as Mr. Korege had said, I am representing Prof. Ogendo who is somewhere else but he has send his greetings. Do you receive his greetings?

Response: Yes.

Wycliffe Owade: Thank you so much. I don't want you to be dull, I want you to be happy, to be active, to be focused and to be optimistic because the Bishop will tell you, is that where there is hope or where there is hope, there is faith? So let us be happy, let us be attentive and let us be good listeners. That is the main purpose why you are here so that we really understand that our views are completely reflected in the Constitution.

I would like to start very briefly by highlighting the developments which have led us upto this stage and I will be speaking in both Luo and English, in case of anything arising. As you are aware, we have been having public hearings all over the country, including this Constituency. The main aim was to collect the views of Kenyans, Bondo Constituency among them and views came through public hearings, verbatim reports, memoranda, oral submissions and written submissions, there are also seminars on sensitization and submissions here and there all over the country. Second stage was to collation of these views by having a data-base on the views of the people and even forces. We even did comparative analysis or comparative experiences in other countries all over the world because we cannot live in isolation.

So after the collation of the views, we went to the third stage which is the interpretation of the views of Kenyans. The interpretation now is where the Commission divided themselves into various, what we call technical taskforces. They were handling various issues, various areas affecting the lives of each and every Kenyan. So the taskforces were as follows:- we had the Constitution process issue dealing with issues of constitutionalism; we had the State and Political System dealing with issues like ideologies, political parties, electoral systems; we had the Organs and Levels of Government where we have the Executive, the Legislature, the Judiciary, looking into the separation of powers and checks and balances between them; we also

had the issue of Fundamental Rights and Duties, that you as a Kenyan citizen, what are your fundamental rights, how should it be respected, are you aware of your rights; we also had the National Resources, this includes finances, natural environment, technology and so on; and finally the sixth taskforce we had was the Management of Constitutionality in terms of establishment of Commissions, offices and their management. So, one, we had formed ourselves into those taskforces, this now led into the interpretation of the views of Kenyans. So the interpretation is what turned into a report, what we call the 'Short Version' of the Report.

Now, the Short Version of the Report is basically information from data-base and other sources. So the production of report has simply come out of the Thematic discussions which arose from the views of Kenyans. Are we together to that extent? I did not come here really to lecture, I am just giving you an overview so that now we go into the main thing. So the interpretation of the Report has led to what we call the Draft Bill and this is why we are here. So we have about 299 clauses in the Draft Bill and I want us to go over them. Now, what is the main reason why we are here? The main reason why we are here is that the Review Act by Parliament gave us the mandate to go round the country, walk all over the Constituencies, listen to the views of Kenyans, collect them, collate them, put them in a report and then develop a Draft Bill. So far that is what we have done.

The Review Act says, after all these, there shall be a debate on all the issues emerging for 30 days. After the debate, then we shall converge at the National Constitutional Conference to iron out issues, identify issues and then present them to Parliament, present a Bill to Parliament so that it can be debated. So the reason why we are here is simply to sell to you the proposals, to make you know that these proposals belong to you as the people of Kenya, that it reflects your views. And having highlighted various taskforces, we want now to go through the Draft so that if there are any controversies, any issues, any difficulties which you are seeing or which you cannot understand, you are to highlight them.

As this debate goes all over the country, already the Commission is working on the 4th Volume which will give a detailed view of Kenyans more than the shorter version and this is where we want now these views which you are going to give here now, our duty is really to facilitate the discussion, make notes and then present them so that when you come at the National Conference, you will agree with us, yes, you took our views, you came back to us, we raised these issues and so can we now as a conference have a platform or a forum to discuss and agree on various issues. So that is the reason why we are here. Are we together so far? I hope I am communicating.

Yes, so now I am requesting just for one thing, that you allow me to sit down as we go over this draft pole pole. Am I allowed?

Response: Yes.

Wycliffe Owade: Thank you so much. So can we have a look at the newspapers. Those who don't have you can share. We look at this draft. As you can see in the draft, if you look at the Table of Contents there, are we together page 2. Are we together?

Response: Yes.

Wycliffe Owade: Yes. We want to discuss this thing in a very simple language which is understandable so that we make sure that we get the right message and that we really understand what the clauses are all about. So I want us really to become, be very keen to listen to what is going on so that as you participate in the process, we become part of it. Now, I would like to go this way, rather than go chapter by chapter. My approach will be, I want to discuss briefly the Preamble, after the Preamble; I will go to Organs and Levels of Management which includes Devolution; after that, I will go to the Bill of Rights. So after highlighting those major issues now, now I will go to the others remaining. The main reason is that, these are the much more detailed areas and I want us really to understand what is going on. Is it okay?

Response: Yes.

Wycliffe Owade: Yes. So let us look at the Preamble. The Constitution says or the Draft Constitution says, and please I want you to know that this is just a draft, these are your views and we have made proposals, and it is you, who will approve or disapprove. So when you look at the Preamble, this is the way the Constitution we are proposing to look like.

We start by saying, "We the people of Kenya", you know it is just like saying in the Constitution, if you refer it we are just like saying, *kar chakruok wach ne nitie, ok kamano. To wachno en chik, chik en ji to ji bende en chik, ok wayier kanyo maber? Nikech chik ka onge to ji bende onge, to ji ka onge to chik bende onge, koro kar chakruok wach ne nitie.* This is the foundation of the Constitution. So unlike the old Constitution which we have now, *waduoro mondo waket this preamble as a focus of what it is leading us to,* as a focus of what it is leading us to. Right? *So kar chakruok wach nitie.*

So we start by saying "We the people of Kenya. Just like somebody had said, let me just translate it this way that, "sisi ndio wenye Katiba". Is it okay? We are the owners of the Constitution, just like some people say, they are the owners of KANU. So we the people of Kenya are the owners of the Constitution. Right. So you will see those words in capital, "aware of our ethnic, cultural and Religious diversities" that captures it. "Committed to nurturing and protecting the well-being of the individual, the family and the community within our Nation". So it is not just a Constitution where somebody as an individual can play around with, it is something involving not only the individual but it is involving the family and the community as whole.

Therefore, all of us are part of it. "Recognizing", in the past we never recognized women and men separately. Right now we are saying, "Recognizing the aspirations of our women and men for a government based on the essential values" and these values are very important. Freedom, democracy, social justice and the rule of law. "Exercising", exercising our sovereign and

inalienable right to determine the form of governing of our country. This is level of increased participation, that we have a stake in governing our Constitution because we are the key-holders of this Constitution and therefore the Constitution must extend out clearly the increased level of participation of the people of Kenya. So to adopt, enact and give to ourselves and to our future generations this Constitution, “God bless Kenya”. So this is the Preamble. The Preamble gives us the focus of what we are to go through.

Having said that, can we now go to Organs and Levels of Management. Let us just say, can we go to Chapter Seven. I want to go straight, this is page 14. I am not using the Article, the Clause and all that, let us be very simple in our approach so that all of us understand what we are talking about. So page 14, are you seeing there, the establishment of Parliament? Now, at the beginning of it, it says, “there shall be a Parliament of Kenya which shall consist of the National Council and the National Assembly”. In the past, we had a uni-cameral system, but now we are calling for a bi-cameral Parliament. What used to be there in the Independence Constitution, like those who can remember, we had the senator and what? We had the two houses, isn't it? So in this Constitution, and taking into account the views of Kenyans on how they would like the Parliament to be framed, we came up with a proposal that Parliament should be made of two houses. One is the Upper House which is the National Council. The other one is the National Assembly. So those are two houses. The National Council and the National Assembly. Both of them are Parliament. So we have the Upper House which is the National Council and the Lower House which is the National Assembly. Are we together?

Response: Yes.

Wycliffe Owade: Now, I want to go straight to the formation of the National Council which will also be part of the Devolution we are going to go into later. In the National Council what are we suggesting? Kenyans were saying, some of these people or the Parliamentarians, when they are there, it is as if they have forgotten our citizens in the society. It is as if it is not representative enough, can we have another level of Parliament which can act as a check and a balance. Right? Can we have another level of Government whereby, if they approve some Bills and make them into law, the other House can counter-check and see that they are doing the right thing. So that is why we have the National Council. What we are proposing as the National Council which is part of what we call the devolution of power is that, we have various structures in that line. One, at the very lowest level, we have what we call the Village Council. *Now Village Council ka oting'o joka dayo, right, joka dayo ma opogore opogore all over Sakwa kata mana Imbo, gibedo gi a very powerful organ. Koro Villege Council ka Village Council ka dayo ka, gin gi some kind of a small secretariat. E small secretariat ni gin gi power mar loso chike ma moko manyalo konyogi e kind ogendini mantie within the Local Village. Wawinjore kanyo maber? Gin gi teko kendo chik biro miyogi teko mondo joka dayo te obedi gi representative. Ber ma en ang'o?*

Mokuongo wawacho ni, you bring a Government closer to the people. Ji giwegi manie village, joka Dayo ok waduar winjo gimoro ni gimoro a e Central Government, ni gimoro a malo Nairobi. Wawegi nyaka walos chike e piny ka. Gik

machandowa wan ema wang'eyo, ok kamano. Priorities mawa, needs magwa mawaduaru kata obedi mana weche mag osiptal kata weche mag yoo, wan ema waloso. Omiu teko gi chik ni nitie yore moko matindo tinondo machandou e deye makoro unyalo loso. To ulosogi in an organized way. Koro joka dayogi ema dhi form-o gima iluongo ni Village Council, to Village Council ka, you will directly elect your leader. Right? Direct election of your leader, the Village Council. To obero bedo gi a small Council or executive committee. Exercutive Committee gi gin representatives moa e dayo ka dayo. Are we together? Koro gibio decide local issues,. So, the main aim ni Village Council ni nigi the executive power mondo gi-implement chikd ma omigi ka oa malo to nitie chike moko machalo kata kaka traditional court system. Nitie yore moko machalo kaka weche mag land, kata yore moko machalo kaka mag kend, ka gin districts moko mathiso thiso to omigi power ni ginyalo sort out.

Now from the Village Councils, you go to what we call Locational Councils, *aduaru ni wawinj ka maber nikech ka ema thuon wach nitie..* Locational Council is composed of all the Village Councils within the same Location. Are we together? *Tiende ni representatives ma a e Village, Daye ema dhi constitute Locational Council. To gin ema ang' gini bedie body moro magiyier jatelo madhi telo e locational Council ma kanyo bende itimo* what we call direct elections. Are you getting the point? But all that we are saying is that there are other finer details like the system of elections which you people are supposed to come up with, how it should be done. What we have just done is to give some kind of a skeleton view of what ... we are just giving you a framework of how the National Council should look like. So *Locational Council ka, nitie the head of the Locational Council,* is elected, or he or she directly by Village Councils. So, they also have got power at local issues affecting the local area. *Mark you ni e Village ka, samoro ng'ato penjore ni to Village Head ni waluonge ni ng'a? Locational head waluongo ni ng'a. Deliberately, nyocha bura manyocha ogik ne watomore ni mondo nyinge gi kik wachiw, waduaru ni un uwegi ema mondo utim ang'o? Uchiw gi,* all the Constituencies within the country.

Okay, from Locational Council, we go to a yet another critical stage, *ma waluongo ni,* District Council. Now District Council, it is all the locations, all the Locational Councils constitute the District Council and all the Locational Councils directly elect the Head of the District. You may want to call him a District Administrator. Some people saying, no, no, administrator will remind of the bout, some people may say no, we need a District Governor because Governor will need a powerful symbol of authority because we are entrenching power to the district level, so why can't we call him a District Governor.

So we had a lot of people debating it. We have not come and it is from you that you want us to give as a title. *Koro Locational Councils duto te biro converge* then they will directly elect the Head of the District Council. Now the Head of the District Council is a very powerful position but because of the mandates of the people, he is not powerful on his own. We were suggesting that we give them what we call a four-year term of office. *Mano Locational Council, Village Council, District Council.* We give them four-year term of office renewable subject to the wishes of the people and they must be directly elected.

Now, District Council also has got the so called the Executive Committee of which members of the Locational Council are members. Are we together? Now, from the District Council, we have what we call the Provincial Council. The Provincial Council, is more or less a co-ordinating body of all the districts within that respective Province. Right? So both the Provincial and the District Council, *nigi* what we call the Executive and Legislative power. *Gin gi teko mar ki-sirikal, gin gi teko mar chike ma ginyalo loso ma govern that particular region.* Right? The Provincial Governor is also elected, I am sorry to use that word, Provincial Head who is representing the Province is also elected directly by all the District Councils within that Province. It has to be direct elections by all the District Councils, so that he adequately represents the people in that region, but now his role will be more of a co-ordinating role. *Nikech ok wanyalo ni districts are just there, there must be some body ma is governing and coordinating their activities.* You remember that we have got some assets to be shared in the province. For example we have a provincial hospital, we have a whatever, all these resources, we can't just say we are leaving it to some particular district. Are we together? So what we are saying is that Provincial Council *ka bende nitie head, to e committee mar the* Executive Committee, they are members of the District Councils spread all over.

Now, the last and the most critical area is the National Council. Who are members of the National Council? Members of the National Council are district representatives all over Kenya, with the exception, let me not... I will come there later. Members of the National Council are district representatives all over the country. The correct name of the district representatives I said, you will come with. Now, in the old Constitution we used to call them senators. Other countries also have got other names, but again we are saying, you the people of Kenya, it is you to give us how we should refer to them. Remember they are Parliamentarians, when you check there properly, we are using MP in small letters. They are Members of Parliament but we are saying, they belong to the Upper House and they belong to what we call the National Council. So these are the representatives at the National Council, at that Upper House, that other Parliament. So how many districts do we have in Kenya?

Response: (inaudible)

Wycliffe Owade: We have 69 districts, right? And then, in addition to 69 districts, we have Nairobi which is a Capital City but we are saying in Nairobi, also it is classified now as a district. Right? We have 68 districts, in fact, sorry, and we are saying Nairobi will be represented by 2 representatives so that comes to 70. Are we okay? Now, the other 30 will be women, spread across the country. Let me come again. I am trying to say in simple that the National Council which is the Upper House or which is the other Parliament will have 100 members. Are we together? They will have 100 members. Now, in this 100 members, 68 represent the districts all over the country and these representatives of the districts, remember I told you earlier, they are directly elected by locations, right? The locations are directly elected by villages. Are we together? So the District Representatives become members of the National Council. They are 68 but 2 are representing Nairobi as a Capital City. So in total they are 70. But we are saying also, that one-third of them must be women because Kenyans views were saying so. So they have 100 National Council, 70 representing the districts. Now, women, how are you going to distribute 30 women among

various provinces in the country? We are suggesting that each province will elect 4 women. So 4 women times 7, comes to what?

Response: 28.

Wycliffe Owade: Comes to 28. The other 2 will represent Nairobi. So that is the position as far as women representation is concerned. So basically, I have given you an overview which I was supposed to do of what we call the National Council. The main reason here really, we want 3 major things. One, to bring government closer to the people; to bring development closer to the people. Two, we are talking of equity of resources; *iyudo ni nite kamoro, region moro ma gini imiyogi mohingo jomoko, koso mano ok usewinjo? Ni koro jomoko onge kata mana, in iwinjo mana ni gigo osebedo decided somewhere mana nikech ng'ato o-belong to party moro kata o-belong ne kabila moro to ka koro waketo gima Kisungu luongo ni level playing ground. Pok awacho role mar National Council.* But now we want uniformity, we want equity in the distribution of resources.

Apart from equity in the distribution of resources, *waduaru gima iluongo ni* increase level of participation of the people of Kenya. *Sirikandni en maru, ok mamano? Parliament ne maru, ka onge un Parliament ok nyal betie, ok kamano? Koro un ema umiyo Parliament teko, un ema nyaka uyier jogi kore ka umiyogi teko. Ka gitimo marach un gi righty mar ketho magi. Koro wa propose ni National Council just like Parliament.* Okay, let me come to the National Assembly so that I don't confuse you. National Assembly *ma wan go as per the current*, it is reflecting the constituencies which are how many, 210? Yes. So these constituencies *gibiro remain as they are*, they are what we call the Lower House or the National Assembly. Are we together? So these constituencies should remain the way they are, except we are saying, we don't need Nominated MPs any more.

No chance for Nominated MPs anymore. We shall just have 210 representing all the constituencies. Let them remain the way they are, but both the two House *biro bedo gi checks and balances between them, both the two Houses biro bedo gi right mar loso chike.* For example, National Council will be more focused on priorities and needs of these people, right? Then they are collated and debated together. The other Parliament also will be more focused on the constituencies but now we are seeing the National Council like more of a national outlook. Right? So, really, apart from representation from various units, you will find they have got more or less similar roles but *nitie* various demarcation. So what we are saying is, *ka Parliament okadho bill moro amora, kata obedi mana misach gi, kata obedi mana wach ma affect the citizens of this country.* The other Parliament must approve, just like you have now in the current there is a two-third majority, isn't it? So this one must also be passed by the other one so that it is clear.

Now, there will be some kind of an inter-linkage committee *ma o-comprise members mag National Council gi members mag National Assembly* so that if there are disputes *ma-arise within the*, this organ will be able to resolve. I know you may

have a lot of issues there but as I told you, ours is just to give you an overview of the framework we have in mind. More details we leave to you, the people of Kenya to decide.

Now, having said that, are we clear so far? I know some issues will arise, but are you getting the framework, even shallowly, are you getting it? Yaah, so National Council is the Upper House, I am just giving a summary, it is the Upper House and representatives of the National Council are 100, they represent all the districts in Kenya, each district has a representative, so in total that will be 70 including the 2 from Nairobi but the other 30, we are proposing, we are just proposing, let a third of that House be consisted of women who are evenly distributed across the country.

Now, I am going to another composition of Parliamentarians. This one we call 90-member, and some people have heard the rumour, ooh, how can political parties, I mean they just want to nominate 90 people, where did people say this? We are going to respond this way. Having listened to the views of Kenyans, some Kenyans felt that their interests are not adequately covered in Parliament and so therefore, there is a need for their voices to be heard, there is a need for them also to be in that Parliament.

They may not be politicians but they may also represent some sectors of the society. When you go through the data-run, areas and regions in this country, so we have got various sectors. We have got persons with disability. They are saying, we also need to come up, to voice our feelings and we need also to be recognized among others. So what we have decided to do as a Commission, having listened to the views of Kenyans on those various sectors, because they feel they are the minority, they feel they are being marginalized, they feel things are not good the way they should be.

And having also done comparative studies of other countries, because this country of ours is not in isolation, normally when you write a Constitution, after listening to the views of Kenyans, you also make comparative experiences and see where they emerge. What emerged was that, like in the current system, we have what we call the majoritarian electoral system or what we can the “winner takes all”. Right? Where the KANU government like in 1997 or 1992 for example, there is that majoritarian electoral system whereby, you may win by the simple majority but it is not that the majority of the population are with you. Are you getting the point? So like, you may win with 1 million the number of seats and whatever, you emerge being the winner, but 4 million which represent the Opposition are against you. Then, there is also what we call the proportional representation. This is where now we say, *ni party ka party* just like in Parliament, nomination of MPs now. We give them the numbers of seats depending on their strength in Parliament.

So we as a Commission said, we listened to the views of Kenyans, some Kenyans were just saying no, let us restrict ourselves to the current majoritarian electoral system *ka en party kata obed mana KANU, kata obed mana Ford Kenya to o-sweep the seats*, that is all, winner takes it all, nothing else. But some were saying no, let us look at these things proportionally. So we as a Commission decided, can we provide a middle ground. So the middle ground now is where we are talking of the 90 people. Now, how is the procedure of the 90? What we are saying in the 90 is this, each registered Political Party in this country, 1 year before the general elections, will have to submit the names of 90 people to the Electoral Commission of Kenya.

Are we together? Each of the registered Political Party in this country will have to submit the names of 90 people to the Electoral Commission of Kenya. Of these 90, again we are saying, one-third of them must be women.

Of these 90, again we are saying, there must be reflective of the diversity of the Kenyan population. What that means is, they represent various sectors. The youths have to be represented in Parliament, persons with disability must be represented in the Parliament. What we are trying to say is here, you know some Parties may be there but then they can't even a seat. Haven't you come across those? So like they are completely out of place, but we are saying, can Parliament be more into the likes of the people. Can't the laws they make be more binding to the population. Why are we saying if you don't win your candidate in your Party, therefore you have to wait for the next elections. Can we be more representative.

So we as a Commission came with a formula, what we call the middle ground between the proportional representation and the majoritarian electoral system. So we came out with a formula that, persons with disability, the youth, the marginalized in all sectors, they should also be members of the House. And what we are suggesting is that, their composition should be reflective so that it is not tribal because this has been a big problem. So that it doesn't serve the interest of a few. There are various criterias which the Electoral Commission will look at. For example, is it nationally balanced? That kind of a list. For example, does it represent people from various diverse backgrounds, people with some wealth of experience or some knowledge or just some sectors of the society. So can Parties be democratic. So this is where there is that confusion of nominated 90, why do you have to nominate 90. It is not.

So can I come of its implementation. What I am saying in simple is, on the election day, the Kenyan voters, we are proposing that you vote twice. One, you will vote for the candidate of your preferred choice. Are we together? One you are also voting for the Party. Are you getting it? Meanwhile you know you have already submitted the 90 to the Electoral Commission, is it okay? So what will happen, depending on the number of votes you get, that is the overall percentage of the national vote, that percentage against the 90 is what you will get. For example, if you get 10% of the 90 seats, how many seats should you be given? What is 10% of 90?

Response: Nine.

Wycliffe Owade: So we are going to give you 9 seats in Parliament. So it depends on the strength of the Party. So this will be calculated to tally you, with the overall percentage of the national vote. I know a lot of other issues may still arise, people may not really get it clearly, but what we are suggesting in simple is that, political parties are the vehicles of democracy in this country. They are the vehicles of good governance. We want each and every section of our society to participate actively and fully by representing us in that House. So again that is for you, as members of Bondo and other constituencies in Kenya to debate and see how can we make some measures, do we approve it or not and things like that.

So I think in a nutshell I have given you an overview of devolution. I started with the National Council which is composed of the Provincial Council, the District Council, Locational Council and the Village Council. This forms the Upper House which is the National Council and they will also have two deputies – the Speaker and the Deputy Speaker. Then we have the Parliament which is the Lower House, which will also, the normal current one we have now. Then we have Kenyans voting on Party lines and based on the Party strength, we are going to give 90 representatives. But mark you, if a Party gets over 100% of 90, that Party will get all the 90 seats. But the same criteria to be used, it has to be reflective, it has to be national, the focus of the composition must be maintained, taking into account all sections of the society. So in a nutshell that sums up devolution.

I now want at this juncture, you will ask questions later, at this juncture now, I want us to go to the Executive. If you can look at the Executive. The Executive, where we have the President, the Prime Ministers, let me just check which page. Just a minute, just a minute, you know I am also going with you through this, I don't want to check the other one, so that we follow together. Page 19, yes. Page 19.

So page 19, if you look there Chapter Eight, Principles and Structures of the National Executive. I want to point out here that we kept on listening to the views of Kenyans, on how they want the structure of the Executive to look like and that as you digest these issues, you will have to always keep in mind that the three organs of the Government, that is the Executive, the Judiciary and the Legislature, they are always one. But that what you need as the cardinal principle, are the separation of powers and checks and balances between them. This is very important for you to keep in your mind.

Now, in the Executive, we listened to the views of Kenyans. Kenyans expressed a lot of use including you in the Bondo Constituency. What we have come up with is again what I may call a middle ground because some people are just talking of, okay, let us have the President with no powers at all and the powers be taken by the Prime Ministers. Others were saying no, let the powers be shared because there will be some kind of a crisis or confusion for that matter. But more people were for the position of the Prime Minister because they felt it is high time Kenya got one. So the Commission has recommended that we have the President as the Head of State with various powers. The Commission has also recommended that we establish the office of the Prime Minister. The Prime Minister will be the Head of Government. Now, the Prime Minister will also chair the Cabinet. What is the composition of the Cabinet? The Prime Minister shall have two Deputy Prime Ministers and below them are Ministers.

You will realize that in the old Constitution or the current Constitution rather, we have no provision for the Prime Minister, but now we are saying, surely, these are the views of Kenyans, that the President has been having a lot of power, absolute power. *En gi teko makata ka owacho ni piny kethore to piny kethore aketha, ok manao? Koro waduaro ni wa-neutralize teko ni ok ni ka President owacho to ni gima owachono e chik, ooyo. To bende ok waketh ne President, en e wuon piny, en e okumba mar piny, ok kamono? En e wi liech ema omiyo en bende nyaka wamiye kare e yoo maber to wawach no ooyo, too much power is dangerous. So we made recommendations based on the views of Kenyans. Can there be another*

approach to trim some of these powers. So the Commission decided that apart from the President, let us have a Prime Minister to help him in running the country of Kenya.

So what is happening, I will just read without really talking quite a lot. I will read you through on page 19, let us start with Principles of the Executive Authority. “The powers of the Executive are the exercise for the well-being and benefit of the people and the public of Kenya” *Mandate ma President nigo kata Prime Minister, en go nikech jopiny, ok kamano? Un ema umiyetekoni.*. “Executive authority assigned to an office-bearer by/or in terms of this Constitution. One, vest in that office-bearer the power to serve the people rather than the power to rule. So you note those words, “serve and rule”. *Kamoro kanyo ka ang’ wadhi e police ubiro neno ka koro waketo Police Service. Ka wadhi e prison koro waketo Correctional Services.* Is it okay? So that it is not a police force, no, they are there to serve the people because they have they the mandate of the people to serve them, not to rule them. Are we okay?

Now, so Structure of the Executive. Let us start with the President. So based on the views of Kenyans, this is what we have come up with. The President, what will be his duties?

- a. He is the Head of State; Commander-in-Chief of the Defence Forces; the Chairperson of the National Security Council; and the Chairperson of the Defence Council.
- b. He is the symbol of the unity of the Nation which must be reflective and must respect the diversity of the Kenyan people.
- c. He should uphold, safeguard and respect the Constitution and the rule of law as it is in the current Constitution. The power of the President shall be exercised in accordance with the Constitution and the law.

So what are the functions of the President? Article 151 (1)

- a. The President shall address the opening of each newly elected Parliament in accordance with Article 141. I am reading this because people have been confusing like now the President will not do anything and all the rest, so it is better we understand clearly. So he shall address the opening of each newly elected Parliament.
- b. He shall address a special sitting of Parliament, once each year.
- c. He may address Parliament at any other time.
- d. He may dissolve Parliament only the circumstances contemplated in Article 142.

- e. The President shall appoint and may in accordance with this Constitution dismiss (and let us be very courteous here). So this is the composition of the Cabinet, and we are saying the President shall appoint. It is the President who appoints the Prime Minister. Let that one be very clear. It is the President who appoints the Prime Minister, but (there is a but), he has also got no choice, he has to do it according to the law of the land and the law of the land says, he has to appoint from the majority leader, the majority party leader in where? In Parliament.

In other words, when we are talking about the National Assembly which we had talked about, normally we have a Party with the majority, isn't it? So we are saying, the majority Party, the Head of that Party, is the one who automatically becomes the Prime Minister, but they have put also, there could be no majority but there could be a coalition of Parties which we are also now providing in the Constitution. So even in the coalition of Parties, which if the coalition of Parties has got strength more than other parties in Parliament in terms of representative, then, the Head of that Coalition Party will become the Prime Minister. Then we shall have two Deputy Prime Ministers to help them in running the Government. Okay, just before I elaborated to so, we have the Prime Minister, if you can continue....

- 2a. The composition of the Cabinet of which the President has got the right to appoint. The Cabinet consisting of:-
- i. A Prime Minister who shall be the Leader of the Political Party, that enjoys the majority support in Parliament. Are we together? But subject to the approval of Parliament. Parliament must approve.
 - ii. Two Deputy Prime Ministers nominated by the Prime Minister as provided for in Article 175. So it is the Prime Minister to nominate the 2 Deputy Prime Ministers but subject to the approval of Parliament.
 - iii. This is now the number of Ministers. There has been concern of Kenyans that sometimes we have too many Ministers. Is it time when we can just have a reasonable number who can manage the Executive. So what we are recommending is that, we should have not more than 15 Ministers nominated by the Prime Ministers. So even these 15 Ministers who are nominated can only be in that office subject to approval by Parliament. Are you okay? Right. Then we shall have not more than 15 Deputy Ministers to correspond with the then 15 Ministers. They shall also be nominated by the Prime Minister.

Judicial Officers. Also, the President will appoint them but subject to approval by Parliament and any other public officer who the Constitution requires the President to appoint like the Permanent Secretaries, the Ambassadors, the High Commissions and all the rest subject also to the approval of Parliament.

Now, with the prior consent of the Cabinet, the President may appoint Commissions of Inquiry into various issues, sign instruments of consent by Kenya to be bound by international agreements; after consultation with the Cabinet and the National Defence Council, the President may declare a state of emergency, declare war.

The President may appoint:-

- a. Persons to represent the Republic and High Commissions, Ambassadors as I had said or diplomatic or consular representatives with the approval of the National Assembly and may dismiss them.
- b. Receive foreign diplomatic and consular representative.
- c. Seek an advisory opinion from the Supreme Court of Kenya on any matter concerning the interpretation and protection of the Constitution.
- d. Pardon or reprove offenders and remit fines, penalties.
- e. In consultation, the Prime Minister confer honours to enable the people and the Republic of Kenya.
- vi. The President shall ensure:-
 - a. That the international obligations of the Republic are fulfilled and submit a progress report to Parliament annually.
 - b. The courts and Constitutional Commissions offices are able to secure their independence, impartiality, dignity and accessibility and effectiveness as contemplated in the Constitution.

Now, I don't want to go really so much about this but we are trying to say, in summary is that, the President has that office because of the mandate he/she has from the people of Kenya. The President shall appoint the Prime Minister and other Constitutional offices or other public offices, senior public offices subject to approval of Parliament. So what we are saying here is, in the current Constitution, the President has got power to appoint all the senior people with the exception of the Prime Minister whom we have just introduced, like the Permanent Secretaries, the Ambassadors and all these. *To koro sani wawacho ni Parliament nigi teko nikech Parliament e dwond raia, ka poni ni nitie jatelo ma iyiero motelo kata obedo Ambassador, kata obedo Permanent Secretary, kata obedo e position moro ma senior e piny ni, onge ni ng'ato bukore abuka to yiero. Uwinjo mano maler? Ka oyiero to nyaka oyier gi teko mar Parliament, Parliament nyaka miye tekono mondo oyier. To bende wawacho ni wan gi ng'ama koro iluongo ni Prime Minister. Prime Minister koro emachalo kaka wuon sirikal, ong'iyo Public Service, on'iyo Parliament gi gik ma opogore opogore. Gima wiya owil*

ok awacho en ni Prime Minister, this is also a new proposal which we have just developed. The Prime Minister will be the Minister for Finance, that is also a proposal we are just putting in. That the Prime Minister will be the Minister of Finance. Although there will be a Minister within the 15 who will also help him there, but he will be the Minister of Finance, completely running the Budget and everything and all the expenditures of the Government and accountable to Parliament.

So, here you can see two things. One, you are seeing the strength of Parliament coming. Is it okay? Two, you are seeing the creation of a new powerful position, this is the Prime Minister. What I am trying to say is, *position mar President gi Prime Minister koro obedo* distributed, they are balancing power between the two of them. Are you okay? Now, I have finished or I have given an overview of the authority of President and Prime Minister, partly, I know there could be other issues arising but *nitie areas moko ma very sensitive ma aduaro ni mondo bende walosie*. That is page 20, if you look at Term of Office of President. Page 20, just at the far corner, you look at Term of Office of President. It says, Article 160 (1), “The President shall hold office for a term not exceeding five years beginning from the date of assumption of office. A person shall not hold office as the President for more than 2 terms of 5 years”. That is what the current Constitution says and that is what we are still recommending that we stick to.

Now, there is this very important area:-

- i. Protection of President in respect of legal proceedings during office. 161 (1) says, “subject to clause 2 of this Article, no criminal proceeding may be instituted or continued in any court against the President or a person performing the functions of that office during their tenure of office.
- ii. No civil proceedings may be instituted in any court against the President or the person performing the functions of that office in respect of anything done or not done in the exercise of their powers under the Constitution during their tenure of office unless such proceedings are wholly of a private nature. Note that, “of a private nature”.

So what we are saying is that, the President will be protected from legal proceedings while he is in office but if there are crimes of a private nature, the public will have the right to institute legal proceedings against him.

- a. At least 30 days notice to the proceedings has been served....

Okay, we need not to go into those details. Let us talk on “Removal of President on grounds of incapacity”. That is very important, really need to understand the bi-cameral, their role in removing the President, that is the two Houses I had talked of.

162 (1) If it is resolved by one-half of all the members of the National Assembly, that the question of the physical or mental capacity of the President to discharge the functions of that office or to be investigated, and they so inform the Chief Justice, the

Chief Justice shall within 7 days of the resolution appoint a tribunal consisting of 5 persons qualified as medical practitioners under the Laws of Kenya to investigate the matter. The tribunal shall inquire to the matter and report to the Chief Justice, then if the Chief Justice shall not appoint a tribunal in the period, the National Assembly might make a resolution supported by two-thirds of its members authorize the Speaker of the National Assembly to appoint a tribunal.

If we go up there in No. 5, the National Assembly may on a motion supported by the votes of two-thirds of its members ratify the decision of the tribunal and thereupon the President shall cease to hold office or reject the decision of the tribunal and request for further inquiry into the matter and shall therefore decide on such equation by two-thirds majority votes. Where the National Assembly resolves that the question of physical or mental capacity, the President to discharge the functions, the office be investigated, the President shall until another person assumes office be the President or the tribunal appointed under clause 1 report that the President not incapable of discharging the functions of his office.

What I wanted to say here which is very important is on the impeachment and removal of the President and the role of the National Council and the National Assembly. If two-thirds of the members of the National Assembly approve a motion for the impeachment of the President for violation of the Constitution or gross misconduct, the Speaker of the National Council shall convene a meeting of the National Council to hear charges against the President. We are talking about the impeachment of the President. The role of Parliament or the role of the National Assembly, sorry, will be to initiate that impeachment if the need arises and the role of the National Council as you can see there, is now to interpret the impeachment and both the two Houses will have to reach a consensus.

So if you read there, No. 2 – the Speaker of the National Council shall:

- a. If the National Council is then sitting or has been summoned to meet, bring the motion to the notice of the National Council for its consideration within 7 days or if the National Council is not then seating, summon it to meet within 21 days of the notice to consider the motion.

Now, what I am saying here, in summary in simple language, is that, both the two houses will have to be involved in the legal proceedings or impeachment or removal of the President. No House can do it without involving the other and normally it is the Lower House which will initiate it. Then now it will be taken to the National Council which is composed of representatives of the districts, actually they talked about. So, the Office of the President as said is a very important office. It is established by the Constitution of the Republic of Kenya, it must be protected because it has got the mandate of the people of Kenya. But again, it shall not be abused. If it is abused for any way, National Assembly of whom you have voted in, National Council of whom you have voted in will have the power to see whether there is any just cause to remove or impeach the President. Are we together? So, that is so far the legal proceedings, the impeachment and removal of the President.

- i. If there is a vacancy in the Office of the President by reasons of the President's death, resignation or refusing to hold office by virtues of Articles 162 and 163, the Vice-President shall assume the functions of the office, except that if the residual term of the President exceeds two-and-half years, it shall be deemed to be a full Presidential term for the purposes of Article 160". So it means the Vice President continues holding that office upto that particular period.
- ii. If there is a vacancy in the Office of the President and that of the Vice President, the Speaker of the National Assembly, and if there is no Speaker of the National Assembly, the Speaker of the National Council shall assume the functions of the Office of the President, and the Electoral Commission shall conduct an election for President and the Vice President within 30 days of the vacancy in the Office of the Vice President. We are just trying to fill those loopholes so that we make sure there is consistency in the Office of the President.

Office of the Vice President. Now, what maybe I didn't mention is that, as we vote in the President, the President shall have his running mate. In other words, he will make it clear to the people of Kenya, I am standing as a President but my Vice President is so and so. So that it is in the public domain, it is open, it is known. Are we together? So that it is not shrodded in some secrecy. From day one when he is being elected, he has to say, I am running as a President but my running mate is so and so. These were the views of Kenyans and this is also the proposal we have made. And one important point maybe I forgot. The President and the Vice President are not Members of Parliament, right? They are not Members of Parliament, they are directly appointed by the people of Kenya. These were some of the views which you gave us and we have decided to recommend it that way.

The Prime Minister will have to be a Member of Parliament. The Prime Minister will chair the Cabinet. The Cabinet is composed of the Ministers. Ministers also, again from the views of some Kenyans and which we have recommended and which we leave for you to decide, we felt for some reasons.

1. A Minister maybe too busy, some constituents are complaining, these people are having flags all over but accessing them is a problem. He has forgotten or he has neglected his constituency. What is the use of having a Minister, surely, and being a Member of Parliament. It is too much, so what we feel, let the Minister not be a Member of Parliament.
2. There is this belief that once you have the flag, therefore development will come to you. And this where we are now saying, there must be devolution so that these fears and securities could go away, that you know, such and such a region now has got a Minister, therefore the road will be tarmacked, water will come, electricity is there, you know, things are now cheap. No, we are saying, let us have a level playing ground for development in terms of resource distribution. There should be equality. There should be balance of development all the districts because District Council will be participating in the Budgetary provision, allocation of resources, they will determine them from the National Council. The National

Assembly also determines them at constituency level in terms of goals and priorities.

So these are some of the things we are trying to remove, that if somebody is appointed a Minister, you feel like a particular section of the society is favoured at the expense of other sections of society, is that not the feeling you have been getting in this country? There is that culture that a Minister is so special, once they have a Minister, ooh, this Kisumu Rural people they are so lucky, us in Bondo, things are bad, already they have a flag. So we are saying, let this attitude be completely curtailed.

3. The President has got the powers to appoint somebody out of some loyalty. You know it is just some kind of... from your pocket and you decide, so and so will be the Minister. But now we are saying, we need people of wealth of experience and knowledge, people representing various professional backgrounds. Can they go there as professionals, address health issues, address water issues, address natural environment issues, so that when they are taken to ... let's say NEPAD Initiative or some European Community or some national forum, talking even with the Non-Governmental Organisations or the International Community Bodies or even Parliament, they are able to address issues at a professional level. People with some ability, people with some level of education, these were the views of Kenyans. And therefore we were recommending, is it a safety net if we say, let the Ministers – one, they should not be more than 15; but again, let them not be Members of Parliament.

Ministers *obedi jomoko manigi mich mar experience, akia ni iluongo nang'o di Dholuo but gibedi gi mich mar, lony kendo gin jomoko man gi obuongo maber e yoro ma opogore opogore mag piny*. That is what we are proposing. But again, it depends with you. As we keep on saying, this is a draft, but we were saying, maybe that could be a safety net to balance so that this idea of attitudinal problem with somebody is a Minister and wherever, should not arise. So they should be professionals of some high, intellectual level and they should be representative of the diversity of the Kenyan population at all levels.

Now, Deputy Ministers or what we have now the current Assistant Ministers, they will be people who will be permanently in Parliament, answering questions on various constituencies and all the rest, but Ministers can only come to Parliament when major Bills or some very important proposals are being debated. So basically, we expect, what I am trying to say, *ni waduaru Ministers ma iluongo ni technocrats*. They are busy addressing the needs of Kenyans so that when you go to Gubei Dispensary, for example, you say, are there drugs here? The Minister for Health is able to answer and is able to say, we need the empowerment or equipment of medical reasons, not the rest, the Minister of Health is able to say. If we need to write a proposal to the donors, to the partners, that Minister is able to write a proposal, because time has now come that somebody in a relative position must take responsibility. I hope I am clear. So that is what we mean as far as Ministers, Prime Minister, President, Vice President is concerned in that order.

There are other details maybe, I may not highlight at the moment but at least that is what we have. So I don't think I really need to elaborate again on the Prime Minister but I would just like to remind you that all these public positions will be subject to

approval of Parliament. Parliament now has a more larger role to play because why are all these issues arising? The Prime Minister, Ministers, why are all these issues arising? Kenyans are saying there is a missing link, we need these people to be closer to us, we need these people to answer our needs, basic needs, socio-economic needs, rights in all issues. You know, there is some kind of a big gap, can we fill this gap? We can only fill them by filling these loop holes, because we want to make these leaders, it is us who have elected them, can they be answerable to us. Are you getting the point. We want the leaders to be more accountable to the needs of Kenyans. If it is lack of Panadol in a dispensary, they are able to answer. So just as we demand from MPs from constituencies, Ministers, we are also saying, those represented from the District Councils, are they able to.

I have just seen a councillor here and I have just remembered. Cllr. Onyango, I am happy to recognize you. Now, the role of councillors, I was forgetting that. We have not yet come up with a proper name. Again we leave it for you people to decide but what we are saying is that, those representing ... the locations will be like wards, right? And remember some of the locations have now been merged, is it so? So the locations will be like now the wards or the electoral units and here also at the location, we expect the people in that location to choose or to directly elect those whom we call two representatives, this is at the local government rank, to take the picture of the councilors, they are still there but we are now saying, if we are still looking for a name depending on Kenyans, whether they want to retain that name or there is another name, but at the moment, we loosely call it, two representatives at the ward level. The wards are the electoral units and the focus in the location. They will also be directly elected. And the other thing just to remind you in the National Council, Locational, Provincial, Village Council, the Ward, they will be on a term of 4 years each but National Assembly, 5 years. So those are again the proposals. We leave them to you as people of Kenya to decide.

Okay, having said that, let us talk on the resignation of the Prime Minister, that is page 22. Page 22 – the resignation of Prime Minister, that is 173 (1).

- i. Now, the Prime Minister may resign from office by delivering a written statement of resignation through the President.
- ii. The resignation of the Prime Minister takes effect:
 - a. On the date and at the time specified in the resignation if any, or
 - b. At noon on the day it is delivered in any other case.

Dismissal of Prime Minister, this is what I wanted to share with you.

1. If Parliament, by a vote supported of more 50% of its members passes a motion of no confidence on the Prime Minister,

the President shall dismiss the Prime Minister and the other members of the Cabinet.

2. The President may not dismiss the Prime Minister in any circumstances other than those contemplated in clause 1.

What we are trying to say here is, whereas it is the President who will appoint the Prime Minister subject to approval by the Parliament, the same Parliament shall pass a vote of no confidence to dismiss the Prime Minister if they feel the Prime Minister is not performing. They have a right to do so. So dismissal of the Prime Minister will be done by Parliament. This is very important to understand because the Prime Minister is appointed by the President subject to approval by Parliament. But the same Parliament can pass a vote of no confidence with the 50% rule.

Now having said all that, the others like salaries and allowances, Prime Minister, Deputy, I will leave you to read but I would like maybe just to say something about the Public Service, maybe if we can see there the Permanent Secretaries, 181 (1) which I have already said, just to highlight something on the Permanent Secretaries.

Public Service

Yaah, page 23 – Public Service. Sorry, page 32. I am sorry to be moving you up and down, what I wanted really, you know, Organs and Levels of Government is very wide and it is really the cracks of the matter and Devolution. You will agree with me after you have really read it, so I felt like we should really handle them first before we go to other areas. Now, just as I have highlighted on the Executive, Public Service is part of the Executive dealing with the policy formulation, implementation of policies, civil servants, rules and regulations governing them. I kept on by saying, even the devolution, National Council, the National Assembly, various units, the President, Prime Minister, the main point which Kenyans were saying and you will agree with me, we need these people, we need these offices to be answerable to the people of Kenya. Because if they are not accountable, we don't see the use of them. So we need to make them more accountable and this is why Kenyans were really yarning for a change. In one section of the views from some constituency, I read, somebody just said and we just quoted it just like that. I am yarning for a change in the civil service, when will this change come? That sums up.

The current Constitution spells out the Public Service Commission, with the Commissioners, powers of the President, powers of the Commission, hiring and disciplining civil servants, their discharge of duties and all that. But as we have always seen, most people see civil service either in terms of schools or hospitals because they are the people more closer to us or institutions more closer to us, isn't it? But we don't really see that civil service the way we want it to be. There are some problems. So some of the problems Kenyans highlighted, there is what we call lack of apathy in the civil service. They don't really that they belong, so they don't care anymore because nobody seems to be taking care of them, taking care of their needs. That is why civil service is not performance driven as it is expected to be.

We need a value driven civil service, we need a civil service which is answerable to the people of Kenya but also we cannot

blame the civil servants. Perhaps there is a cause which is leading to all this. Can we address these loopholes? So Kenyans were saying and you are included, let the terms and conditions of civil service be improved. If you expect them to answer the basic needs of Kenyans, like you go, let us say he is Assistant Secretary, he is in charge of some logistic, administration, in a district, and you go there, you want him to welcome you well, to feel at home, to feel that this is my government, this is my office, there is that high degree of hospitality, somebody is able to give you a listening, to attend to you immediately without any unnecessary bureaucracy or procedure. What we are trying to say, can it be a down to earth civil service which is responsible to the needs of the people, answerable to the needs of the people, and they know that even in these public offices, we are here because of the mandate of the people of Kenya. Because without wananchi, can civil service be there?

Response: No.

Wycliffe Owade: It cannot be there. So people are asking for:-

- i. Terms and conditions of service;
- ii. Independence of the Public Service Commission. Although it is there, but is it really entrenched in the Constitution to the extent that other Commissions, let us say like Teachers Service Commission. Some of the problems we are facing now, can Teachers Service Commission be completely entrenched in the Constitution so that they have got that tenure to address the needs of the teachers because when the teachers suffer, children suffer and therefore society suffers, isn't it?

Response: Yes.

Wycliffe Owade: So we are saying, can the Teachers Service be entrenched in the Constitution. When we talk about other Commissions like the Police Service Commission we are coming to, we are saying, can they have some autonomy. Even though they will be under the Public Service Commission, but they can just have some autonomy. Let us say like Commissioner of Police, some tenure of office so that even if we recommend like maybe 10 years in office, nobody can remove him. He is protected by the Constitution, so that they are saying, they are not leaving for the selfish interest of an individual or individuals but for the interest of the whole population of the country. So what Kenyans were saying, in summary is that, we need a more entrenched Public Service which is answerable to the people of Kenya. We need to engage, civil service need to engage the community in running the Government, because now, the trend is like, civil service is another world and wananchi is another world. Is it okay? But now we want to fill these loopholes and make them more responsive to the needs of the people.

So in summary I am saying, we need a value driven civil service, we need a performing civil service. *Gima atemo wacho ni joma tiyo e ofis sirikal, idwaro ni gibed machiegni gi raia nikech raia ema omiyo gin kanyo. Ka raia ok omiyogi teko*

to ok ginyal tiyo, idwaro civil servants maka raia oseteri to en ng'ato ma jambola, en ng'ama ja ng'uono kendo en ng'ama tiyo gariada. Ma onge gimoro ni file olala e ang'o,. ola e registry. Uwinjo ma maber? Cases mag file ma olal donge uneno kan'geny, kata udhi mana e court, Ministr of Labour iyudo ka ng'ato ne ose-retire, he is over 60 or something like that. In fact nyoacha ni newadhi chieng' moro somewhere in Mandera East Constituency ma people are just crying. Iyudo ka pension pok iyudo koreka irito pension ma nyaka itho, nyithindi bende owe kamano. Pension no moko nitie cases moko ma ok iyudo nyaka chieng'. Distance ma idwaro travel go ka idhi ka pendion, so even in this devolution of power, why can't we structure this pension ma pension kiny ka kiny ni iwuok idhi Nairobi. Can some of them be devolved now? You see what I mean. Koro magi e changes ma waduaro e Civil Services. Waduaro Civil Service ma is closer to the people, ma is value driven, ma is able to answer the needs of the people. Then yuak osebet ahinya e Civil Service, kane wang'iyoy the views of Kenyans. Ni nitie joma iyiero ayiera e position to ok otimo ang'o? Ok o-deserve. Ni ng'ato Permanent Secretary for example kata mar Helath to ok ong'eyo kata gima health en. Ng'ato omi obedo kata mana Assistant Secretary e sirikal to kata mana ndiko proposal moro kata mana barua moro maber ok onya;. Koso uk one magi? Waneno kata mana jomoko machalo, kata kaka joma pod onge tich, ma oa e college, ka odhi ng'iyoy gima be ng'ato ondiko ni barua to okoni to ma bende ng'ama odhi e skul adier? Ok wa-blame the civil service, gima watomo wacho en niyaa. Ni nitie loopeholes moko maricho, ng'ato ndiko ng'ato nikech en ja kabind gi kata oa e dalagi. Kata ni ng'ato omiye asoya to ok ong'i what we call the merit. So we are saying now, we need a change in the Public Service. Let there be some criteria, academic ong'I maber, record ong'I maber. Nitie in fact kamoro makoro wan gi leadership code of conduct ma wabiro ng'iyoy ni to morally and ethically ichal nadi. Nikech in e Public Officer, to public en mar jopiny. Wawinjore kanyo maber? That is the cry which Kenyans had on the Public Service and even us, in our recommendations we are saying,

- i. Let there be an independent Public Service Commission, and let other public Commissions like Teachers Service Commission, Police Service Commission be fully entrenched, with Public Service Commission becoming an overseer of all these institutions.
- ii. Then, let it there be merit on people being employed, check their CV, in fact, a cross section of Kenyans are saying, *ni ng'ato bedo a public officer, for example en a Permanent Secretary kata en whatever, but let the CV be cleared in public domain. Wang'e ni to en gi ang'o, ok iwacho ni gima tin ma in godo no emari. Eh, koro gima tin ma in godo nogo no ema jo Kenya duaro neno ni to CV ni no chal nade. Koro CV ni no ema biro miyo idhi e tijno. Then kata ka en positions moko, usewinjjo ni jomoko recruite for example kata jo Forces. Iwinjo ni dhano muodo amuada ng'ewech ka ni jo Army biro ndiko ji to in the end ok ndiku kata achiel. Koso ok timre Bondo ka? Mago views mag Jokenya nowacho mang'eny kabisa ma...giyuak kabisa, ema omiyo koro wa-call for a level playing ground in the new Constitution. Let there be a percentage Ma kata ka ikawo ji kata ka gin ji apar, regions te obedi adequately represented because this government is ours, it does not belong to an individual. Bas, koro mago are some of the things in the Public Service ma-afeel ni mondo a*

highlight so that it is very clear for all of us.

Now having said that, I want to go to the establishment of the Kenya Police Service because this is a very crucial area. The same page 32, Article 265 (1) – establishment of the Kenya Police Service. *Gima very important here en ni koro* you notice that in the new Constitution we are proposing, let it be Kenya Police Service. Service to the people, not ruling the people, is it okay? It is service to the people of Kenya. *Nikech kata mana polise gi oyiergi gi raia, oyiergi gi teko mar raia ema omiyo offices go nitie. A police officer matimo service to man-kind onego ong'e ni en kanyo mondo orit raia e yoo maber kendo e yoo maduarore. Kata ka oduaro timo gimore, mana ka iketho chik to bende ka iketho chik, o-addressi e yoo moro malong'o kendo e yoo mowinjore kadhano. Nitie cases moko mawaseyudo polise moko ma dhano chalo mana lee. Koso pok uwinjo mano. In e pinyu to ichalo mana wendo, kata ichalo mana lee moro amora. Ema omiyo koro waduaru ni police must be answerable to the people, they must be responsive to the needs of the people. So when we talk of community service ema omiyo bende wawacho ni, even in the local units, machalo kaka Locational Council, District council, gibiro gi authority mar Police, magi oversee. Police biro bedo deployed at those level, to District Council biro bedo gi authority to over see them, to manage them so that what they do, priority number one, the needs of the people. Priority number two, they are there because of the people and therefore they must respond to the needs of the people. Are we clear there? Koro mano en gima duong' mokadho, Polis onego obedi osiep raia, to raia ok onego one polis ka ja asigu. Diere moko kane wana e Airport ne waa e safari moro. Ka koro wa-cross piny moro ka wadhi kamoro to mana e Africa ka. Iyudo ka jo rachere kadho akadha to ja Africa wadgi ni mara moja kuja hapa, umetoka wapi, wapi nini yako, umetoka Kenya, wapi nini yako. Koro ichako noni, to Wasunge go to timo ang'o? Tiende ni in ineni ka ng' ato moro mana ma guilty sate, in mana jaricho sate kendo richo mana ni e wiyi. Koro magi are some of the things* but also, *ok onego wacha polis*, police play a very big role in this country of maintaining law and order, ensuring stability and unity of the Nation. Without the police, we remain with problems, I hope you are aware of that. *To en mana ni kendo onego wapenjre ni to ang'o ma omiyo polise timo gigi samoro. Kamoro en mana ich wang', samoro chudo gi ok ber, samoro jomoko otho ondiki andiki ni indiko ji.* They don't justifiably own those offices. What we are now saying, if we should have a Police Service Commission, where terms and conditions of Police Service are looked into, they are appointed or recruited on merit, they are value driven, *raia ok nyal bedo gi problem gi police kata matin. Ok kamano? koro* that is what we are recommending, let it be called a Kenya Police Service will full autonomy, no interference. So let us see what surrounds the office of the Commissioner of the Kenya Police Service, it is very important.

266 (1) There shall be a Commissioner of Kenya Police Service. The Commissioner shall be appointed by the President with the approval of Parliament. *Sani ok waduar mana winjo ni ooh, e news ma saa abiriyo ni* President amefanya nini, has appointed Mr. Korege to be the Police Commissioner. No, what we are saying, let him be appointed by the President but let Parliament debate and give the approval so that he has the strength and the mandate of the people. Is that okay? Then we are also saying,

3. “No person may be appointed as a Commissioner unless that person has:-
 - a. A degree from a recognized university. We are proposing it, you may disagree with us but some Kenyans viewed it. Why that one is this, we are in a rapidly changing society. In some forum, a Police Commissioner will be expected, you know, really discuss critical issues, address them, analyse them, give an overview within a very short time. Without some level of education, it is difficult because you are like the manager of the whole country and you will be representing the whole country, mark you, the Police Service, is it not so? So we are suggesting that let the Police Commissioner have, at least a degree from a recognized university but that is subject to your approval.
 - b. He must have served in the Police Service for at least 10 years.
4. The Kenya Police Service shall be under the command of the Commissioner who shall be assisted by two Deputy Commissioners.
5. The Commissioner shall be subject to and act in accordance with the Constitution and laws of Kenya”.

So that is basically the Kenya Police Service serving the people of Kenya. Let us now go to the Prisons, what we new call Correctional Services. This is now the Prisons, the way you hear it but in the new Constitution, we are proposing, we call them, Correctional Services. It is not just a prison any more, it is a Constitutional office with a mandate, an ex-prisoner *koso un pok uwinjo ni joma otwe e jala, ibiro yudo ni samoro kata man ng'eny gi onge kata mana makosa. Bende usewinje mano? Iango ni aanga wach to itweyi atueya. To ni un ka koro uneno ka koro ng'ato wuotho ka, ni nyocha otueye. Ni eeh, ma jaricho nyowuoyo. Ng'ane ne onego ng'ane, ng'ane ne otimo kama. To adier jo makosa bende ginyalo bedo jo makosa to kata gin jo makosa kik wanegi ka jomoko ma ok chal human beings. Are we together? So this is the image the Constitution Review Commission is trying to create. Let it be correctional ka otergi kuro mondo gibedi condemned to otergi mondo gibed councilled, mondo gibed good, useful citizen of this country. Po nono nitie gima omiyo otimo kamano* and that will take us now to the Bill of Rights which we are going to discuss shortly, but let us respect even the prisoners. *Wamigi the rights* they deserve, there will be some limited rights but now we want really to extend this and to really expand and to see them as fellow human beings, brothers and sisters who are in other parts of the world but which is part of our world. They should not live in isolation. We should involve them in everything that we do. So that is why we are saying, let is now be called a Correctional Service, this is also subject to your approval.

Now without going into that, I think, I don't want to elaborate on this but very briefly, since I am just finishing the Executive, we have got the deformed forces and the national security, here now the security has been maintained as you can see, the overall national defence and security and all that, we shall have composition of the national council, security council which you can read there, we have a composition. We have the functions of the National Security Council which you can read, then we have the

deformed forces or the defence forces here, you can also read the composition, we have the commanding officers which are also outlined there.

I would like to stop there at least and now go to what we call the Judiciary. So we have been to Parliament, we have been to the Executive and now we are going to the Judiciary. Somebody has gotten the page. Yes, that is page 23 – the Judicial and Legal System, page 23. I would like to very quickly say that, this is within our mandate and therefore we want to discuss it, I may not go into details as such but I just want to highlight.

Now, the views of Kenyans on the Judicial System which is Part I. Kenya had a lot of complaints on the courts and the legal system. If I may summarize, I think some of the issues which were coming out:-

1. Delay. I don't know whether you have experienced it here in Bondo or wherever. You will find a case in court dragging for years and years or for a long time, is it not so?

Response: Yes.

Wycliffe Owade: So this was the view of Kenyans. It came out very clearly in almost all parts of the country.

2. The expenses. It is very expensive also. It involves a lot of money, and this is a poor man, *chuni ni nyaka ang' idhi ius giri moro mondo owachni e court odhi maber. Iyudo ka itero case e court to tieko ndalo mang'eny, iwuoth ma iol ni case obare. Rit dwe machalo kama, rit dwe machalo kama. Nego bende tek mar court*, so those were two things. Expenses, delay.
3. Accessibility in terms of people or persons with disability. There are some facilities of theirs which are not taken into account. Nobody cares, nobody wants to bother.
4. Lack of information. There is even no notice to say, this is the programme. At least in some courts, you will not get, some you may get. There needs to be some order, some programme of what is taking place in the courts so that the public are aware of the calendar in court. You find in some cases, there will be difficulties.
5. The other reason which came out is that, wananchi see the court as another world, island somewhere. Do we have a right to access the courts; do we have a right to become part and parcel of it.
6. Then there were also some problems which were arising from the courts. Problems *mag corruption, asoya. Ni mondo case na ni odhi maber to ja Kenya osebedo mana gi paro moro ni mondo odhi maber nyaka ane mana*

ng'ane ami gimoro matin eka case na ang' odhi maber. Koso thuru ka ok timre kamano? Koro ji wacho ni to koro ma wana timre nade? To samoro to in mana gi gwendi achiel kende to ni ma nyaka ang' ius diendi ni eka case ni odhi maber. So corruption is a major issue in the courts.

7. The other issue which arose is what we call impartiality, lack of impartiality. *Ok ang'eyo ni awacho nang'o gi Dholuo, ng'ama ong'eyo loko maber bende okonya. But watemo wacho ni onge, akia ni onge uhuru kamili kuom joma tiyo e court. Onge thuolo, eeh. Ok awinji, eeh onge adiera, ndiyo. Onge adiera e court, iyudo ka seche ma iloso to ng'at mane wanjo weche ma wachore kata obed mana prosecutor kata obed mana Judge, en ok inene mana ka ondiko andika to sama tino nono. Koro iyudo ka adiera onge, jo mriambo ema faulu, to jo adiera to kendo hinyore.)* So the courts must be seen to be impartial; the courts must be seen to be fair in exercising justice for the welfare of the people because the courts belong to the people. So we are calling for more openness o the courts, that they must discharge fairness and justice, and in a speedy manner and answerable to the manner.

Koro these are some of the issues of the Judiciary, I may not go into details but I want to go to the composition of the Judiciary.

At the moment now we are calling for the Supreme Court, if you check Article 187, page 23, just look at No. 187, we have now what we will call the Supreme Court, I am now in the hierarchy of courts. The Supreme Court consists of the Chief Justice. The Chief Justice will be the head of the Judiciary, that is the top-most court and it will be composed not more than 6 Judges. Now, there is a general jurisdiction of the Supreme Court which I may not go to, but after the Supreme Court, we have the Court of Appeal.

The Court of Appeal shall consist of the President of the Court and not less than 10 Judges. And the Court of Appeal is constituted by 3 Judges. After the Court of Appeal, you go to the High Court. The High Court consist of (that is 192):-

- a. The Principal Judge of the Court and such number of Judges not being less than 50 as maybe prescribed by an Act of Parliament.

If you go to 24 – Jurisdiction of the High Court, 193, we have the High Court has unlimited original jurisdiction in:-

- a. Criminal and civil cases;
- b. Any other jurisdiction, appellate or original, conferred on it by/or another Act of Parliament.

Now, I want to go to the qualifications for appointment of Judges. All that we are saying, and this were the views of Kenyans. That some, and not all the Judges, not all the Magistrates, some of them do not deserve those positions because they don't have the right qualifications. These were the views of Kenyans. That some of them do not deserve, you know like they just may have some kind of a qualification, but when you now come to the real papers, you know what I mean. They don't have it.

So we have come with the following recommendations.

Appointment of Judges – 195(1) The Chief Justice and Judges of the Supreme Court shall be appointed from persons who possess the following qualifications:-

- a. 15 years experience.
 - i. He must have been a Judge of the Court of Appeal or the High Court; or
 - ii. In practise as an advocate; or
 - iii. Full time law teacher in a recognized university. So those are the qualifications for somebody to be the Chief Justice and Judges of the Supreme Court.

And then on intellectualism,

- b. Intellectual ability as demonstrated by academic qualifications and legal practise. So, this time we are saying, if you a Chief Justice or if you are a Judge of the Supreme Court, we must see by demonstration your academic qualifications and legal practise.
- c. Somebody of high moral character and integrity.

Apparently those are now the clear-cuts for the Chief Justice and the Judges of the Courts of Appeal. We need people of high moral character, because, you know dispensing justice is not an easy job. We need people who are highly respected in society.

2. The Judges of the Court of Appeal:

- a. 10 years experience.
 - i. As a judge of the Court of Appeal or the High Court or in practise as an advocate or full time law teacher in a recognized university.
 - ii. And again intellectual ability demonstrated by academic qualifications and legal practise.
 - iii. And high moral character and integrity.

The same procedure applies to the Judges of the High Court but then they will have 10 years experience and they must have served either as a Magistrate or in practise as an advocate or a full-time law teacher in a recognized university and also intellectual ability which is demonstrated by academic qualifications, and of course, high moral character and integrity.

In addition to the qualifications, we are now saying, before I just go to that, I want to take you a little bit to the appointment of Kadhis. As we went across the country, the Muslim faithfuls had various proposals they made on the appointment of Kadhis. I may not go into details but issues which were emerging and we have now put as proposals, is that like when you look at the qualifications for the appointment of Kadhis, that is page 25, 202 (1), are we together? “A person is qualified to be appointed as a Chief Kadhi if that person”

- a. Is a Muslim of not less than 35 years of age;
 - b. Is an advocate of the High Court of Kenya. At least 10 years experience;
 - c. Has obtained a degree in Islamic Law from a recognized University.
2. The qualification for appointment as a Kadhi or a Senior Kadhi is the same as the qualification for the appointment of the Chief Kadhi except that the registered number of years and experience has to be 5 years.

What we are trying to say here is that, we want now to recognize the role of Kadhis from the level of the High Court, let there be a level ground. Then we come to various districts, provinces, let us have the Kadhis. These were the needs of the Muslim faithfuls and we have decided to be reflective of the views of the Muslims community, we have decided to put that, subject again to your approval. I don't want to highlight a bit more but as finish that part on the Judiciary, I want to talk on the Judicial Service Commission.

Judicial Service Commission which defines or look into the welfare of the Judicial Service is so narrow in composition as per the current Constitution. But we are now saying, in view that we want the courts and the legal systems be more responsive to the people, to be more reflective to the needs of the people, let the Judges, let our brothers and sisters in Judiciary not live in isolation. So we are saying, that let the Judicial Service Commission be expanded and I think it is very important that you listen to this. That now we are saying, we have a composition – the Judicial Service Commission which is highly expanded and is reflective so that they may be able to answer the needs of Kenyans as reflected. So can we look at, I am sorry I maybe too fast. Just forgive me for that.

So look at page 25, No.203, just go down there, the Judicial Service Commission. 204, sorry, thank you. I want to read it very first. “To ensure it has the independence and Judicial accountability of the Judiciary, we have been talking of the independence of the Judiciary and the efficient and effective administration of justice, there is hereby established the Judicial Service Commission”.

- a. So what is the composition of the Judicial Service Commission? Very important. Full-time chairperson who is qualified to be appointed a Judge of the Supreme Court. That is the chairperson. He is appointed by the President of the Republic of Kenya but must be approved by the National Council.

- b. Another member of the Judicial Service Commission. A Muslim women, so Muslim faithfuls recommended, a Muslim woman to represent the Muslim community nominated by the National Muslim organization.
- c. The Attorney General as the Principal Legal Advisor must be a member of the Judicial Service Commission.
- d. One Supreme Court Judge elected by Judges of the Supreme Court.
- e. One Court of Appeal Judge elected by the Judges of the Court of Appeal.
- f. One High Court elected by the Judges of the High Court.
- g. The Chief Kadhi.

Now, we have additional list now apart from the current Constitution.

- h. Two Magistrates, and notice here, one of whom shall be a woman elected by the magistrates.
- i. Two advocates of 15 years standing, one whom shall be a woman nominated by the Law Society of Kenya. So you can see now, we are now involving also the Law Society of Kenya.

We don't want these disputes and this distinction between the Judicial and the Law Society, at least they a far. We want them to harmonise, to be together in the governing system. So we are saying, let two representatives or two advocates from the Law Society.

- j. Two law teachers, one of whom shall be a woman elected by the Faculty of Law of public universities, to rank now even to involve teachers of law. Why should we keep them a far and yet they are the people who are guiding us on these matters.
- k. A member nominated by the Council of Legal Education.
- l. The Chairperson of the Public Service Commission or a nominee of the chairperson.
- m. Three lay members, one of whom is a woman to be nominated by the Non-Governmental Organisations, established under the NGO's Co-ordination Act.

So we are also saying, let the NGOs also be involved so that the Judicial Service Commission is seen to be reflective. Members of the Commission shall hold office for a term of five years and are eligible for re-appointment for a further and a final term of five years. Why am I saying all these? I am saying all these because it is important to understand that without the Judicial Service Commission, these appointments, their terms and conditions, looking at their welfare will be hopeless. It is important to have this entrenched and expanded in the Constitution.

Let us now go to the other controversial area – Removal of certain Judicial Officers. Without going into detail, the Constitution Review Commission of Kenya, having listened to the views of Kenyans, also elaborated on ways of which the Judicial officers maybe appointed or removed. If I could read that clearer,

206(1) The Judicial Service Commission is responsible for the appointment of Judicial officers and the Registrar of the Court, the Chief Court Administrator, the other officers and employees of the Judiciary.

3. A Judicial officer shall retire on attaining the age of 65 years but may retire on attaining the age of 60 years.

These were the views of Kenyans and we have recommended it. You know the current age for the Judges is 74 years. But it is again upon you as Kenyans to decide whether you agree with 65 years or not. So it is upon you to decide.

A Judicial officer may be removed from office for the Judicial Service Commission on the ground of inability to perform, incompetence, breach of the code of conduct or any other misconduct. The same will apply to the Magistrates and the Kadhis. Salaries and retirement, if you can read that by yourself.

But I would like to take you further, just to talk on the other part of the Judiciary, which is the Legal System, this is Part II of the Judiciary, on page 25. We have split the role of the Attorney General and the role of the Director of Public Prosecutions. We are now saying, and this is also upto the views of Kenyans. Let the office of the Director of Public Prosecutions be independent and let it be entrenched in the Constitution. As per its duties and functions, you can read there.

The Attorney General also, we have its offices and we want to regard it as a Constitutional office and he shall be appointed on the recommendation of the Judicial Service Commission and with the approval of the National Council. The qualification for appointment of the Attorney General are the same as those of appointment of the Judges of the High Court. You can read for the Director of Public Prosecutions, I need not to go into that, but the most important thing is that, it is now to be recognized as an independent office.

There is a new office which maybe of interest to you and which I want to take you to, that is page 26. Kenyans were saying, the court procedures are cumbersome, very expensive, tedious, all the rest and you look at the advocates, they are very far

from us, we cannot access them because it is too costly and therefore can we have some kind of a middle ground which is answerable to the people of Kenya. Out of the cries of you Kenyans, the Commission has recommended a mechanism, that is the new office of what we call the Public Defender. Now the Public Defender, what we are trying to say here is, the office will be able to offer free legal services to the citizens of Kenya. Are you getting me there very clearly? To address these issues of expenses, either from the advocates or the courts, we are saying, can we establish the office of the Public Defender who will be able to give free legal services to the citizens who I know is saying, the poorest of the poor. Now, we have not worked as per the details who qualifies and what is the criteria of who can be helped but this is just a framework. Let us establish the office of the Public Defender and let it be entrenched in the Constitution. Again we leave it to you as Kenyans to decide.

Now the profession of law, that is Part III – Legal Profession, the same page, 26, look at 212. Aside from the courts and the legal systems as a whole, there is also a lot of feelings from Kenyans, you ask them, what is your feelings about the court? They say, me, the only problem I have is the advocates. Some of the advocates have not been working the way they should work. They have not been efficient the way they should be and therefore some Kenyans felt something should be done.

And so we are saying, on 212 (1), “the privilege of practicing law is a public trust. It is a fundamental duty of every legal practitioner”.

- a. To uphold the Constitution.
- b. To observe, respect, protect and promote the rights of freedoms set out in the Bill of Rights.
- c. To conduct the practise of law with integrity and to be scrupulously honest in all dealings with clients. As a legal practitioner, the courts and any public office or officer.
- d. Advocate fearlessly before the court or any tribunal on behalf of/and at the interest of the clients.
- e. Assist the courts in the development of the law by presenting well-reasoned, innovative and challenging arguments.
- f. Subject the confidentiality of a client’s business and communication.

What we are trying to say here, advocates too, some of them are living about the up-proof. Is it true or false? It is time that advocates must also be seen to be value driven. That they are professional, they are highly ethical in the decency of justice, but when they get the clients, who are you the people of Kenya, they are able to give you the audience, they are able to perform the work as per the changes we are proposing to overhaul the whole Judiciary. So, it is not just Judges and Magistrates alone, it is inclusive also of the advocates. Their code of conduct, are they answerable, are they responsive to the people of Kenya. We need good governance in relation to the Judges at the exercise to the client who are you the people of Kenya. So that one

also was the feeling of Kenyans.

Now, in a nutshell or what I say, we were sent here to present to you this proposal and our duty really was to have an overview of this clauses. I have been talking about organs and levels of government, the three arms – the Executive, the Judiciary, the Legislature. We also have the Public Service, the Kenya Police Service, the Correctional Services and then the Defence Forces which I just highlighted. I have also talked about the Judiciary in a nutshell, I have also talked about devolution and I also at the beginning talked about the Preamble because I felt these are really the most challenging areas.

Having said all that, I want now to take you just in a more condense form, a very summarized form on other clauses of the Constitution and I will take you straight away to the Bill of Rights which is very important, the Bill of Rights, this is page 6. My approach will start after we have tackled all these, then issues you want us to identify, again we are not here just a point of information, to provide answers as such, we are just throwing it to you and we want you to identify issues and areas you want to be clarified so that as we prepare for the National Conference, we are taking notes and taking it to all that into account.

Now the Bill of Rights is on page 6, Chapter Five of the Draft Bill, that is page 6 – the Bill of Rights. Are we together? Page 6.

As you realize with the current Constitution, not much really is expanding on the Rights of people in various sectors. We are saying that for you to understand the organs and levels of government, for you to be part and parcel of the devolution we are talking of from the District, the Village upto the National Council, the most cardinal principle is to understand your Rights as a Kenyan citizen. The Rights to do anything and they are all stated there.

I may not read all of them but just as a highlight, I would like to say on 29 (1) as it reads – Fundamental Rights and Freedoms. “The Bill of Rights is the foundation stone of Kenya’s democratic state and it is the framework for the adoption of social, economic and cultural policies”. When you look at the current Constitution, it is not highlighting anything to do with social, economic and cultural-like but now we are suggesting that these factors must be taken into account because as we talk of rights, it is basically you are addressing the basic needs of Kenyans. Isn’t it? And we are saying, what are these Rights? Are we aware of them? Are we informed of them? Can we make use of them? So these Rights are very important that we as the people of (*end of tape*)

Pinye ema ne oyiere ok kamano, therefore we are saying it is high time we need an Ethics and Intergrity Commission which will create or which will have what we call ethical discipline among all the public officers. *Nikech ka onge discipline to onge gima nyalo timimore maber e public officers ok kamano*. Therefore we are saying, let us entrench the Ethics and Intergrity Commission, composition *mare kod* functions *magi* are explained.

Last but not least, we have the Constitution Commission and it is better I read this because this is very important. Page 36, 292, like now we have the Constitution of Kenya Review Commission, you have heard or you have experienced a lot of things

going one with our Constitution and people are saying, what were the needs of us making this Constitution only for them to be abused, isn't it. Somebody keep on doing this and that as if we have no Constitution at all and like there is nobody to guide us because even some institutions we are supposed to lie on like Parliament, it reaches a time when they are not offering what they are supposed to offer, isn't it? So like we are lost and therefore also listening to the views of Kenyans, Kenyans expressed the need that we should have a Commission or what we call the Constitution Commission. It is a body which will guide the people of Kenya when things are going wrong on the Constitution, it will act like a watchdog apart from Parliament and just tell you please this is the focus, please you are going this side. So it is a small secretariat but a very powerful body entrenched in the Constitution, so that this Constitution which we said in the preamble, it is not a joking matter, it is life of the people of Kenya. We are dealing with the life of Kenyans. Constitution is secret, it is not something to be joked about so, let us have a Commission which is called a Constitutional Commission, so the roles and functions are there.

In general before I conclude the Constitutional offices, we have a number of them stated there when you look at 393 (i). The following constitutional offices are established elsewhere in the Constitution and already we have highlighted it but what I want to highlight here is that they shall be totally independent, autonomous and will only be answerable to the Constitution office. So we have the Attorney General, Auditor General, Controller of the Budget, Director of Central Bureau Statistics, Director of the

Kenya Correctional Service, Director of the Kenya Police Service, Director of Public Prosecution, Governor of Central Bank and Public Defender. So these are the constitutional offices which again we are proposing for you Kenyans to decide. You may modify, you may amend, you may adjust, you may approve.

Before I go to the last second part which is very crucial, I think we can do it now that I have just mentioned the Constitution. This is chapter 18, which has brought a lot of war, people have shed tears in this country, this is chapter 18, the same page 36, and amendment of the Constitution. I think history will bear us right in this country that since independence we have amended the Constitution several times, isn't it. So many times since independence and like during the one party rule, it was like the norm of the day, if you don't draw the party line, so you have to draw the party line and they get the majority two thirds isn't it? From the views of Kenyans which we got from the data including you people in Bondo in fact I even have a summary of your report.

There is a big concern, people are talking of Katiba all the times but we it shall go there but all the time is amended, what are we people going to do? So what we have decided to do, we have put here some very strict restrictions on amendment to the Constitution and I think I better read it word by word so that you understand. Chapter 18, amendment of the Constitution that is 294

(i) Subject to the provision of this Constitution Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision in this Constitution in accordance with the procedure laid down in this article.

(ii) An amendment of this Constitution may be initiated only by the introduction of a bill for the purposes in either house or Parliament and when the bill is passed in its second and third reading in each house by not less than two thirds majority, the total membership of that house, it shall be presented to the President who shall give his assent to the bill and thereon the Constitution shall stand amended in accordance with the terms of the bill.

(iii) An amendment that seeks to make any change in:

(a) the territory of Kenya set out in article 7

(b) (i) and described in the first schedule of the Constitution.

(c) The sovereignty of the people of Kenya

(d) The principles and values of the republic are set out in article 6 of the Constitution.

(e) The bill of rights.

(f) The structure, values and principles of devolution as set in chapter 10 of the Constitution

(g) Citizenship

(h) The provisions of this article shall also require ratification by the people in a referendum before bill-making provision for such amendment is presented to the President for assent. That is amendment of the Constitution, what we are trying to say in an outline is, if there are bills to amend the Constitution both the two Houses will have to pass them in all the readings up to the third reading, right? After passing them in all the readings, they must get not less than two-thirds majority. Are we together? They must get not less than two-thirds majority in both the two Houses but the two Houses are not allowed to amend the Constitution on these following areas and this is very important I would like you to listen.

The two Houses are not supposed to make amendment to the Constitution in any of these areas:

a. Something touching on the territory of Kenya, they are not supposed to amend, are we together, the boundary.

b. Something touching on the sovereignty of the people of Kenya.

c. The principles and values of the republic, we shall just read the public.

d. The bill or rights, I had take you over the bill of rights, isn't it? So we are saying even in the bill or rights, the two Houses have got no right at all to amend it.

e. The structure, values and principles of devolution, I have taken you through the various Councils up to National Council.

f. Citizenship

g. The provision of this article, which is here. So what I am trying to say is, in the whole of number 3, the Constitution can only be amended subject to a referendum from you Kenyans. Are we together? So it is you Kenyans after those two whether they have introduced that bill to change the sovereignty, the territory, the bill of rights, citizenship, it has to come to the people of Kenya and a referendum shall be carried all over the constituencies and you will have to approve. After you have approved is when now it can be amended. So as you can see, we have put very strict rules, it is so

rigorous, it is so intensive and in fact this referendum might take even about 3 months because Constitution is not a joke, it is a very serious matter. So those are some of the amendments we have.

Before I go to the last part which is transitional and consequential provisions dealing with the territory, the public, things like the boundary and all that which I would just highlight one minute, I am almost through. I just want to take you to the issues of the sovereignty of the people and supremacy of the Constitution just very briefly. That is one page 4, if you read just on page 4 chapter one sovereignty of the people and supremacy of the Constitution, already I have given you highlights on what the Constitution is all about and we are just saying that Constitution is supreme, we have talked of amendments and we are saying the Constitution is not a joking matter, it is supreme, we are talking of the sovereignty of the people and the Constitution is there because of the mandate of the people and these are the views you are giving out and therefore the legitimacy of the Constitution is derived from the sovereignty of the people who are you as Kenyans.

We are not saying, when you look at the republic I think there is something very interesting I want to talk about, when you talk of a republic, declaration of the republic, Kenya is a sovereign republic. What comes to mind immediately, Kenya does not belong to a person or individual, is it true or false? Kenya does not belong to a particular self-interest, a particular ethnic group, a particular political party, a particular religion. Kenya belongs to the people of Kenya and the people of Kenya are the owners of the Constitution. So what we are saying, even the leaders of the republic, it is the people of Kenya to decide who their leader should be. Are you getting me clearly? That is what the Constitution says. Kenya is a sovereign republic, you don't give the republic to a friend of yours, to any ethnic group, to any political party, to any religion or anybody. Kenya is a sovereign republic, it doesn't belong to an individual. I think it is important for you to understand that more so now in the transition period.

That Kenya shall be called a republic because it belongs to the people of Kenya and the cardinal principle here is, the republic of Kenya is founded on the principles of good governance through multi party democracy, participatory governance, transparency and accountability, separation of powers, respect for human rights, fundamental freedom and the rule of law. Once you understand all these principles then you know you belong to the republic of Kenya and you should live in Kenya as a free citizen who is fully aware of his or her rights as a citizen of this country.

We are talking of good governance in our systems, in our structures. We are talking of active participation of the Kenyan people. We are talking of human rights in whatever we do. We have already talked about our territory, the capital of Kenya is Nairobi. Parliament shall enact a legislation to provide for the status and the government of Nairobi. Languages you can read, the official languages in Kenya as the new Constitution comes into force will be Kiswahili and English and all official documents shall be made available in both languages. The national language of Kenya is Kiswahili.

State and religion, that is number 10. State and religion shall be separate, we shall not have what we call State religion, are we

okay? We shall not have what we call State religion, State and religion shall be separate. The State shall treat all religions equally.

National symbols, we have the national flag, the national anthem, the coat of arms, the public seal of Kenya. These are the national symbols of the republic of Kenya, they constitute the republic of Kenya.

National holidays, I think that is also very important. The following days shall be observed as national holidays. We are proposing and this is again from the views of Kenyans, 1st of June which is the Madaraka Day, we felt as a Commission it is a very important day to be observed. 12th of December, Jamhuri Day is a very important historical day for our country and if you agree the people of Kenya, the date of the enactment of the Constitution and what we have proposed as the Katiba Day. So those will be the three major national holidays of Kenya subject to your approval.

Having said all that, we are almost through. National goals and values you can read, duties of a citizen you can also read and know what your duties are as a citizen in this country.

Let us go to citizenship and see if there could be some issues which you may raise on citizenship. We have got general principles concerning citizenship. Number 16, reads except where the Constitution has made provision to the contrary. All citizens of Kenya are:

- (a) Equally entitled to the rights, privileges and benefits of citizenship. Let nobody tell you that if you do this and this we shall favour you. Everybody is equal before the law and all the rights, privileges and all the benefits as a citizen is your right.
- (b) Equally subjected to the duties and responsibilities of citizens.
- (c) Equally entitled to a Kenyan passport and any document of identification issued by the State to citizens, so we have got general principles concerning citizenship. Some of you have experienced the hardship of getting a passport. You might find a foreigner getting a passport even before you or somebody who is not a Kenyan. So these are some of the loopholes we want create that it is your right to get a passport.

Retention of existing citizenship 17:

- (i). Every person who immediately before the coming into force of the Constitution. Note that, every person who immediately before the coming into force of the Constitution was a citizen of Kenya is a citizen of Kenya.
- (ii). Every person who immediately before the coming into force of the Constitution was not a citizen of Kenya but would have been a citizen of Kenya if the Constitution had been in force is entitled on application to be registered as a citizen of Kenya, so

he has to register to be considered as a citizen of Kenya.

Acquisition of citizenship, citizenship may be acquired by, birth, registration and naturalization. Citizenship by birth, I want you just to note some of the issues you may have so that we take into account.

19 (i), every person born after the coming into force of the Constitution is a citizen of Kenya if at the date of the persons birth, either the mother or the father of the person is a citizen of Kenya. So just either of the parents.

(ii). A person who is a citizen of Kenya under this article cannot be deprived of that citizenship.

Citizenship and marriage, 21. A person who has been married to a citizen of Kenya for a period of not less than 3 years is entitled on application to be registered as a citizen of Kenya, that is if you have been married to a citizen of Kenya.

Citizenship is not lost through marriage or the dissolution of marriage. Citizenship by naturalization, 12 a person who has been lawfully resident in Kenya for a continuous period of not less than 7 years and who satisfies the condition prescribed by act of Parliament may apply to be naturalized as a citizen of Kenya.

Children found in Kenya and adopted children is 22, section:

(i) A child found in Kenya who appears to be less than 8 years of age and whose parents are not known is presumed to be a citizen of Kenya.

(ii) A child below the age of 18 years who is not a citizen of Kenya and who is adopted by a citizen of Kenya is entitled on application to become a citizen of Kenya.

Dual citizenship: Dual citizenship is permitted under the laws of Kenya, that is the current Constitution.

(ii) A person who as a result of acquiring the citizenship of another country lost the citizenship of Kenya at any time before the coming into operation of the Constitution, is entitled on application to be registered as a citizen of Kenya.

(iii) A person who loses citizenship of Kenya as a result of acquiring the citizenship of another country is entitled on renunciation of the citizenship of that other country to regain the same citizenship status which the person formerly joined, so he has to renounce.

Specification of citizenship: A person may be deprived of the citizenship of Kenya only if the person acquired citizenship by means of fraud, false representation, concealment of any material fact or by other lawful mean.

Citizenship of parent dying before birth of a person: Are we together? 25 (i). A reference in this chapter to the citizenship of the parent of a person at the time of the birth of that person refers in relation to a person born after the death of the parent to the citizenship of the parent and at the time of the parent's death.

(ii) For the purposes of clause (i) where the death of a parent occurred before the coming into force of the Constitution. The citizenship that the parent would have had if the parent had died after the coming into operation of the Constitution shall be deemed to be the parent's citizenship at the time of death.

Residence, 26 (i). The following persons may enter and reside in Kenya so long as they comply with the conditions prescribed by Parliament governing entry and residence.

- (a) A former citizen.
- (b) A foreign wife or widow or foreign husband or widower of a citizen.
- (c) A child of a citizen.

Parliament shall within one year of coming into force of the Constitution enact legislation governing the entry into and residence in Kenya of other categories of persons and providing for the status of permanent residence. So that is about citizenship, you may have other issues but our duty here is just to report and then compile.

Now, before I just finish I want to remind you just on the judiciary chapter 20 which is the last chapter then we finish but just before that, I want to take you to the judiciary again for just one other issue. Look at page 23, I am unable to find it may be if I find it in the course of discussion but what I was going to say is that death penalty in the current Constitution, we had talked about it in the bill of rights but there is also another part on the legal system but I think what is important to know is that death penalty has now been abolished. This is on page 6 on the bill of rights which we had discussed on page 6 article 32, right to life. Although there is another article under the judiciary I will still look for it but the point is, that death penalty has been abolished and what we are saying is that once the new Constitution come into force, those already sentenced to death, they shall have their sentences commuted to life imprisonment. That is point I wanted to make clear or those already serving their sentences shall be commuted to life imprisonment.

I think I have gotten it on page 47, It is under the 8th schedule which is transitional and consequential provisions. There is this number 13 on page 47, are we together. The death penalty and other outlawed penalties. Every sentence of death passed by any court before the entry into force of this Constitution and which is no longer the subject or on appeal shall on the coming into force of this Constitution be commuted into a sentence of life imprisonment. The commutation or sentence under clause 1 does not affect the exercise of any power of clemency or other deprive or remissions provided for by law. Every sentence of corporal punishment passed before the coming into force of this Constitution is remitted and shall not be carried out. I think that

is just one section I wanted to highlight.

At this juncture having highlighted all that, I would leave Mr. Korege to handle chapter 20 page 37 which is our last chapter. The brief comment I would like to make, I keep on reminding you that this is a proposal and that is why we call it a draft and we need your input that as we elaborate on them, you point out difficult issues you have seen. Our duty is to report them as you tell us, there is also a verbatim record there which is recording the proceedings and we are also taking notes. So the main thing really is just to identify those areas which you feel either we need to add something, add some value or anything. Our work is just to receive your views up to this state as you prepare towards the conference. So basically we are just giving you an overview of what the draft says and which really emanate from the views of you as Kenyans. At this particular point I would request Bwana Korege just to move you very briefly on chapter 20 on the transitional and consequential provisions.

Mr. Korege: Thank you very much Mr. Owade. You have been doing a lot of talking so you can now have some water and listen to the remaining part before we come to you with questions and issues. At this state, I would like to make some clarifications because very soon I know you will be raising various issues with our main Speaker Mr. Owade and before we come to that, let me take this opportunity for some clarification especially on documentation.

The Commissioners came or Mr. Owande let me turn to another language. *Kabiro chopo saa mar penjo, penjo biro wuok ni to gik mane wawacho ni kange? Mano ka adwaro clarify kor ka documents.* The Commissioners came to Bondo tarik apar gi ariyo gi tarika apar gi adek. *Tarik apar gi ariyo ne gin Usigu, e dwe mar auchiel, tarik apar gi adek ne gin Bondo ka e Hall ka. Bas negi kawo views mag jo Bondo Constituency, daher nyisou ni nitie report on your views ma iluongo ni Constituency report. Koro these constituencies mane gilimo duto moro ka moro nigi a separate report. Rarieda has a separate report, Bondo has a separate report. Those reports gionge ka to ngat madwaro somogi biro yudo gi kama iluongo ni documentation centre mano Bondo.*

Secondly ka nyocha wane seminar Nairobi, we were told ni kawabiro to wanyisu ni wangi documents ariyo ma achiel kuomgi ema ungono. That one iluongo ni the draft report on the draft Constitution to want gi gima iluongo ni "peoples choice". Ma en a short version of repode ma obedo condenced mane jo Kenya duto tetete owacho koda ka yourselves. Now, all recommendations ma uneno ka ondonje e Constitution manyien ni, kiwuok e repode mane ulose. Repode gi, the original report is in so many volume akia ni gine a four volumes gin ok ginyal biro, gin they are retained for reference purposes to out of those original reports mar Jokenya mani into those volumes go, koro gi come up with a short version and this is the short version margin ma iluongo ni "People's Choice" and right now, copies ma nitie tin ok onyal bedo distributed ka to nyocha wabedo promised by the secretariat ni gibiro oro gi, alongside these one ma un go gi. Omiyo saa asaya ma gibiro uburo nwang'o gi to ichek kodwa e documentation centre mano Bondo, ageno ka ungeyo kuma documentation centre nitie.

Penjo nyalo wuok to ni gik mane wawacho ka to ang'o omiyo umito wa mana, waneno ka gin man gik matin ma obedo recommended e Constitution. Chalo kama, this document ma un godo no, oting'o man gik manyalo ndonjo e ie kanyo gik mane uwacho duto ok nyalo donje to gibedo taken care of ka isomo all these articles ma itieko ibiro nwangokuonde magi donje in the the form of schedules. Some of the issues mane u-raise can only be taken care of by enacting various legislation and the Commissioners kane come up gi report, gindikio. Abiro nyisou ka wadhi e schedule kuonde magigo nitie. Parliament should come up with a legislation to set out this or sort out this problem, mago duto nitie to en mana ni gima iluongo ni Constitution to ok nyal ting'o gik mane wawacho te. That clarification ber ka wanyisou jothurwa ka pok ochop sach penjo.

Lastly, we are not here, ok wan ka mar convince u mondo wa-accept gini, we are here to explain to you gima nitie e draft Constitution. Koro ka wase-explain ni, to in kaka Kenyan citizen manigi the right kama uwinjo Mr. Owade osehacho cha, pod ni gi thuolo to comment on some of the issues here. You can comment directly ca wanie this forum to views ma in godo go biro bedo noted to ma obedo noted go, will be taken along with the ones mabiro wuok e gima iluongo ni National Constitution Conference. Mago ma uneno sani go gima in go sani inyalo ndike in a written form to ikele e documentation centre ne District Coordinator, to District Coordinator biro ore Nairobi ni magi views ma owuok kuom constituents ma Bondo, magi their comments regarding the new document. Pod in gi thuolo mar penjo sani, in gi thuolo mar dhi mondo isome nyumbani to ae kineno kamoro ma iparo ni ok odonjo ni member kata kama oketi ni a, jogi dwaro ni mondo wabedi, kaka ni cabinet bedo appointed from jok ma ok MPs. Ne ok uwinjo kanyo? Ne onyiso ni aa, cabinet posts will only be 15 to gibedo appointed from outside ok en MPS go ema bedo appointed to be Ministers. Mano ne owuok mana e pachu nikech un emane uwacho mano ewacho jo Kenya, ema newacho ni joma bedo appointed MPS ok onego obedi appointed Cabinet Ministers nikech tije ma constituents ne omiyo gi ok giduogi ni koro gidich mana kucha, ni en sama tin en loka to sama tin en Mombasa, sama tin en kure, koro ne jopiny neno ni cabinet post ni onego omiye ng'at moro who is not an MP. To ekaka recommendation owuok ni Cabinet posts ibiro mana miyo jok moko ma are not MPs. Koro mago pod gin proposals, in to inene e ang'o?

Inyalo bedo giparo to ka ibedo giparo, mano thuolo en mari mar ndiko mondo ka isendike to ikele kucha to an to aore. Ka koro representative ma nyocha useyiero adek ka nyocha jo Bondo district nyocha oseyiero joge adek and all other districts within the republic ne oseyiero jogi adek adek ma will make 210 mabiro dhi e bura ma National Constitutional Conference kaka representatives mag district. Koro gin sama gidhiyalo no, they will take into account comments ma owuok e various constituencies, omiyo thoulo no pod nitie. Mano ema daher landonu ni nyaka wakonu ni gini emaber, idwaro ni explain-nu to un ema u-decide ni gini ber to kata ka kama rach bende oyieni mondo I-comment ni orach to orach kama kama to daher mondo olose kama. Don't just no, I don't want that, en ang'o ma ok idwar, point out gima ok idwaro ni rachni to ae kendo I-come up with a suggestion kaka idware, omiyo thuolo podi nitie, ka pok ochop question time ema daher nyisou ni mano e kaka chalo.

Therefore that original 4 volumes document, “gi reduce to this one”, ae to this obedo reduced to kalatas ma un go ni, ma iluongo ni “newspaper pullout”, ageno ka Commission kanigi pesa biro print e ma obedo gimoro ma decent, en the Bill to ka ok gitimo kamano to bende pod gin ginuang’ thuolo ka podni MPs bende oseloso mondi “gi-come up with a final version of the report”. Ero kamano.

Penjo kanitie to-hold on wachiegni miyou thuolo, mar manitie sani to tin. Kama iwacho ni Bill of rights clarification moro ema adwaro medo kuom gima Mr. Owade owacho. “When you were contributing”, kane uloso gi Commissioners ka, ne an tie, ngeny u negolo taabu gi mangeny ni ya jowa somo mar nyithindo, osiptal thieth rath, ndereni richo, gik moko ne ubiro gi “complaints” mangeny. Somebody might want to know ni ere kama Constitution o take into account problems ila mane oketo go, koso onge. Nitie to nitie under bill of right, kar bill of rights mane Mr. Owade otero u through no ema oting’o problems u mane oketo duto ma koro jogo oketo e Constitution, rights mau mag education, rights mag housing, rights mag good, mago duto nitie eie kanyo. Nyiso ni bill of rights obedo expanded ma o-include problems ma nyocha unyiso Commissioners te te te, mondo kor State one kaka nyalo “take care of that”.

To ka wasetieko mano to nite kamoro ma daher mondo anyisu e page 4. Nitie kamoro ma iluongo ni national goals, values and principles. Page 4 ka inyalo yudo to mloya kama adwaro comment on page 5, in as a citizen, Page 5 article 15 (i), duties of a citizen. Duties of a citizen bende oketi ni in as a citizen of Kenya in bende in gi duties ma magi, to duties ma magi gi obedo spelt out in the Constitution to gin ang’o? Gin article 15, in order to fulfill the national goals, values and principles all citizens have a duty to acquaint themselves with the provisions of the Constitution and propagate its ideals and objectives. Owinjo duty maru no yawa? Ok ni duty te udhiro ne State, the new Constitution bende o-capture some of your duties as a citizen, ni in bende as a citizen duty mari ma okwango is “to acquaint yourself with the provisions of the Constitution”. Nyaka in’ge Constitution kaka chalo “as a Kenyan and propagate its ideals and objectives”, ka iseng’eyo kaka ochalo to ibiro propagete nitiere gik ma odwaro eie kanyo, gik ma idwaro ni mondo otim. In bende as a citizen you need to do that, nyaka I-comply with this, in as much as you would wish the State to comply with the Constitution you as a citizen you are also called upon to comply with the same Constitution and that is one of your duties and you are also required to uphold and defend the Constitution. Mano ne usegawinjo kana machon akie ne nigi kode. You have to uphold and defend the Constitution, once ni usekadhe nyaka iikri ni ibiro defend.

It is also your duty to exercise your democratic rights by voting and by being involved in other forms of political participation. Nitie ga jomoko kabiro chopo ndalo yiero ma iluongo ni yawe dhi kode. Nikech Constitution koketo wa upon his duty mondo o-make sure ni o-vote same voting oromo, yawa dhi kode wang’ni bende oketi eie ka, ni yawa dhi kode ok dwaro, idwaro ni en upon you as an individual or as a citizen to exercise your democratic rights ok ni chieng’ kura ni oh, ng’ane to osedongo in to ibed mana piny, nyaka idhi chung’ e laini ma igo kura ma ng’ano donji. Uwinjo wachno

jothurwa, mano bende duty mari as a citizen and you are suppose to engage in work including homemaking, koso ng'ama idwaro ni ogerni dalani. Ng'ama idwaro mondo ogerni dalani to opur ni puoth omuogo e dhod rangayi.

Constitution keto that obligation on you as your duty, you have to engage in work. Ok niwacho ndalo mane ichiwo paro ni joma mine yuak ahinya kendo yuako ni ne owuok kama iluongo ni Asembo Bay, Rarieda. Ni joma chuo wuok okinyi, ka gisechiewo okinyi to gimadho nyuka ma nitie, ka osemadho nyuka manitie to owuok odhi e tipo moro ma igoyoe ajua, koro ok ongeyo ni nyithinde biro chamo ang'o, ok ong'eyo ni mama no ang' noyudi chiemo kure, to en odhi goyo agoya ajua to ka ang' chopo godhiambo to oduogo godhiambo ka piny oseyuso to oliyo to ka ochopo to ni gima idwaro ma okwango ni pi luok.

Koro pi luok ka okwayo min nyithindo to min nyithindo pod oriwore matin to en lweny. Koro nyithinde manyiri ne oseneno ni baba kwiny ga ka oa oko, ae to mama be ne odhi dwaro chiemo, koro nyithindo manyiri gi ema koro kik go mama temo matek sama mzee ni osedonjo ni nyaka losne pi luok ma teni ni baba pi osebedo tayari. Ae kosetieko kanyo to odwaro chiemo. Nyisoni en ok o-engage in any work at all, odhi mana goyo ajua to ka ochopo to ong'eyo cha koro ne odhi uso rabolo akala, pesa ma ouso go rabolo go onego obedi ni onyiewo go fulu kaachiel gi mogo gi chiemo. Koro joma mine ne oyua ahinya, omiyo Constitution ma wawacho ni, ma obedo proposed ni you have to engage in work including homemaking for support and welfare of yourself and your family and for the common good and contribute to national development. Ok dwar ngat ma lazy, nyaka ibedi piny ma itim gimoro.

En your duty as a citizen to develop your abilities to the greatest possible extent through a acquisition of knowledge, continuous learning and development of skill. Then you are supposed to contribute to the welfare and advancement of the community where they leave. You are supposed to strive to foster national unity and live in harmony with others, promote democracy and rule of law. Promote family life and act responsibly in the context of the family, you are also supposed to protect and safeguard public property from waste and misuse. Ok ni oh mano gir sirikal ni gir sirikal oketho aketha, idwaro ni in ema mondo itim ang'o, en your duty to protect it kata en mwandu sirikal, kata en mwandu jopiny. You have to protect and safeguard the public property from waste and misuse. Then you have to protect the environment and conserve natural resources.

In as much as nitie economic activity matinde wa-engage ourselves kaka goyo makaa, koro idwaro ni mondo I-protect the environment and conserve natural resources. In as much as wadwaro makaa, yien be wadwaro yote, koso yien ok udwar? Yien be udwaro, ae nitie kuond moko ma nitie soil erosion mayuoyo lowo ma wapidho go gine, mago bende nyaka itake-care of as a citizen.

You are supposed to corporate with law enforces agencies for the maintainance of law and order and you as an individual you are supposed to desist from acts of corruption. Mondo corruption orum, in bende nyaka itieke at your

level mano is your duty, kik iwach awach ni oh, serikal nyaka ne ni otieko corruption, serikal nyaka ne ni otieko corruption ndiyo to in bende ichak tieke from your end. Then you are supposed to understand and enhance Kenya's place in the international community.

Finally the duties set out in clause 1, apply equally wherever appropriate to non citizens. *Mago ema daher mondo a-bring up nikech gin areas machal ka, while you are talking about gima State onego otimni, in bende nyaka wan'ge gima you are expected to do for the society and for the government, for the country and for the State.*

Kachopo kama ne onego alosie matien, abiro duokou chien matin mana kar chapter 2, the Republic. Owacho ni Kenya is a sovereign republic, Ka Kenya is a sovereign republic, onyiso ni the Republic of Kenya is founded on the republic and principles of good governance through multi party democracy, participatory governance, transparency and accountability, separation of powers, respect for human rights, fundamental freedom and the rule of law. Ae koa kanyo to odonjo e territory mar Kenya.

Kar territory ka nyiso ni the territory of the republic of Kenya comprises the area described in the first schedule. Koro kanyo ema wadro donjie, e first schedule. Our representatives ma nyocha wayiero ka, nyocha kane wadhie Seminar Nairobi, last week, one of my counter parts from Busia ne obiro o-complain ni description mar the boundary mar Busia kawuok Imbo nyaka South Nyanza ni jo Busia ne o-dispute e, what about un to? Un bende kaka obedo described ka ni e kaka onego obedi koso nitie gimoro marach. To nikech awinjo ga quite often ni ang'o ni joma dhi lupowa ka owuok ma ochopo e area moro einam ka to jo Uganda mako gi, to mano luwore gi boundary mar jo Uganda gi Kenya. To ndalo moko ne Professor Okoth Ogendo onyisou ka ni jo Uganda ne okawo boundaries magi ni giketo e Constitution ni to Kenya ka, wan mana gi imagined boundaries to Constitution gi onge. Wang'ni this Constitution propose the boundaries of Kenya as a territory kendo gibedo described, ema iwinjo ni koro wadhi e first schedule.

E first schedule entie e ei ka, kar we turn to the first schedule, en page 37. Manyiso territory of the republic of Kenya kendo Kenya – Uganda international boundary, gichako by describing the international boundary between Kenya and Uganda. For the people of Bondo constituency ma border the lake region kata ma o-border nam including our three representatives mabiro dhi e bura ma NCC, en rather technical ma mondo e-understand e kata wan ka ok wa-understand e nikech ni joma ne olose to en e Constitution marwa ka. Nikech kaka isome, dwaro ni okwa wabiwinje sani to kata kamano ibiro winjo kik moko ma wawacho eie kanyo minyalo koni a, Mageta gino okawo koso Mageta gino owenewa. Gichako ni Kenya-Uganda international boundary commences in the waters of lake Victoria on the parallel one degree South latitude at a point due South of the Western most point of a pyramid island, pyramid island gin ga ie kanyo ok angeyo, un joma ni edho nam ema unyalo ngeyo.

Then the boundary follows a straight line due North to that point then to the most Westerly point of a Lever Island, level Island

ni ok angeyo ni kumanane. Then by a straight line still Northerly to the most Westerly point of Kiringiti Island then by a straight line, still Northerly to the most Westerly point of Mageta Island, osechako wacho kuma wang'eyo, then by a straight line North Westerly to the Southerly point of Suba Island. Then by the South Western and Western source of that island to its most Northerly point.

Mae en “very technical” to nitie jomoko mabende nosetimo survey e thurwa ka, mae ema mondo gikonywago mondo wawinji ni, description ma owuok ka mar boundary manie pi mar kind Uganda gi Tanzania gi Kenya ma samoro nitie e nam ka en correct koso, nitech jo Busia ma nyocha dhaw ka, nyocha gidhaw ni nitie islands moko iluongo ni lolwe eie kucha, nitie? Jo Busia ne dhawo ni chon ma iluongo ni lolwe be ne nitie koni to chal ka ne joko ong'adi newa rieko ni gin ema gichako loso magi ka to giloso alosa, gihigo ahiya ma ginyakuwa ma nyaka kacha ni koro mago gikawo magi. “Those ones” gin “issues” ma “you need to examine very carefully especially our people” ma obedo “affected by the boundaries”. Ema daher “draw your attention” to ka in gi “comment that one should come up”, ka ok inyal comment sani, biro come up later on kaka ne anyisou cha, ukelo gi ofis ka, toae to gibiro dhi Nairobi.

“Alternatively”, wangi our three representatives ma nyocha waseyiero ka, bendo kabiro chopo burano magi gik ma gibiro dhi go ni aa, boundary makorwa to ok u-describe maber en chal ka gima odhi marach. Mane e first schedule ma oting'o mangeny, nitie the territory of the Republic of Kenya nyiso ni Kenya – Uganda international boundary nikanyo. Then you come to Sudan international boundary, Kenya – Sudan, Kenya – Ethiopia, Kenya – Somalia. The territory of sea and exclusive economic zone boundaries. Koro mago nitie duto. We will that zero in on mawa makoni mana ema wanyalo comment on, moko mag Sudan to koro wawere go mago to ok o-concerned wa koni though our colleagues at those areas will help us as Kenyans to determine the correct boundary.

Katieko mano nitie e this draft, ka wasetieko gi first schedule manyiso boundaries to wan gi second schedule manyiso wa provinces and districts. Provinces and districts mawa, ma wan kama wantie ni provinces gin Nairobi kaka Constitution o-define, Nairobi, Central, Eastern, North Eastern, Western, Nyanza and Rift Valley. Hopefully wa-fall e Nyanza. Koro Nyanza ka bende onyisi districts manitie, schedule no nyiso ma obedo designed e Constitution before they were not there, current Constitution ok o-define gi, ne gi onge. Ka wadonjo kar Nyanza Province ma en page 42, districts mage manitie? Districts manitie gin Siaya, Rachuonyo, Kisumu, Homa Bay, Migori, Suba, Kuria, Kisii, Nyamira, Bondo, Nyando and Gucha. So in Nyanza Province as far as we are concerned from Bondo here, we have been saying that we are in Bondo district and according to the new Constitution draft, Bondo is recognised as a district in the second schedule.

Then we move to the third schedule, the third schedule deals with the national symbols, that is the National Flag, the National Anthem, the Court of Arms and the Public Seal of Kenya. Mano obedo included in the third schedule of the new Constitution.

Fourth schedule kaka uneno unyalo some, en o-include gima iluongo ni national oath and affirmations. Various orths

ma ji swear ma obedo proposed ni ji obedi gi swearing e Kenya ka e yore ma opogore opogere. Mago unyalo some, gin kanyo chakre page piero angwen gariyo ka gidhi up to piero ang'wen gi adek gin lilo nyaka wachopi kama iluongo ni fifth schedule.

Fifth schedule page 44, leadership and integrity code of conduct. Ubiro nwan'go ni ka udhi through this particular document to inwang'o ka nitie mention kanyo ni to qualify for a, b, c, d. Wachaki gi Village Councils ma ichakogo on the ground ka, nyaka gi conform with the code of conduct and their level of integrity must be beyond question. Ok dwar adwar ng'at moro ma kite rach e gweng' to ibiro yiere ni obiro qualify ka, gigi dhi disqualify eh ma kata odagi kata oyie, ibiro koni ah ah nitie specified leadership and integrity code of conduct ma is within the Constitution and ka ivie for any public office, you have to conform with that. Ema biro dwaro ni kata jok ma ubiro yiero e village council ka gin jok ma of high integrity, locational councils gin jok ma of high intergrity. Ma odhi adhiya kamano ma nyaka ochopi nyaka e district, ni nyaka uyier koda kata district administrator ma odhi mana mbele to kata man jok ma udwaro yiero madhi e Parliament kata madhi e National Council – Upper House cha nyaka gi conform gi magi.

Ok mago kende, kata mana civil servants ma ibiro yiero for various positions nyaka conform to the code of conduct ma obedo specified in the Constitution ma sani ni. Omiyo mago duto bende unyalo somo, fifth schedule mano page 44.

Wadhi e sixth schedule page 55, ka ema anyiso u ni oting'o problems mangeny manyocha ne uwacho ma ok nyal donjo e Constitution directly nikech ok nyal bedo detailed kamano ni ji usome mana duto, nyaka okaw mana highlight kaka odwaro mondo piny oringi. En a guide, Professor Ogendo lounge ni road map. Road Map manyisi ni kata ka iwuok ka sama ang' watieko ka ng'ama dwa dhi Kisumu, nyaka ang' inuang' ni direction ma Kisumu en kanye? En mana kocha donge? Ok ang' ni ngato ochiko yo Imbo ni odhi Kisumu, nyiso ni Constitution will guide the country ka nyiso the country kuma onego o-move towards.

To ok obi nyisi all details kaka ne uwacho ni ok ang' ne inuang' ni ka osenyisi direction mar Kisumu ni ka iduaro dhi Kisumo to nyaka ilu mana kocha. Tek ahinya mondo inuang'e kanyo ni onyisi ni ka ichopo Akala to nitie pothole, ni Akala kanyo ka ichopo to iringo mos tinde giketo bumps, kendo kikadho Kolenyo nitie kama, ae ka ichopo kucha dhi mos nikech ndara no ogomo nyalo goyi piny. Mano Constitution ok nyisi, nyiso ni ok onyisi finer details to nitie legislation mabiro nyisi finer details on how to go about those problems ma inyalo nwang'o ka koro idhi kuro.

Achile kuomgi, quite a number of them obedo listed e sixth schedule. Page 45. Action to be taken by Parliament, Mr. Owade ne onyisou ni this time, in the process of separation of powers and trying to introduce checks and balances, legislature, Parliament nigi a lot of roles to play e gima kata the Executive timo kata jo Judiciary be time. Omiyo nyaka this time this Constitution o-separate powers maber to o-introduce koda gima iluongo ni checks and balances.

Nyiso ni dino nyisi ni uwinjo ni President nigi powers mag appinting ng'ama nadi? Prime Minister donge? From Members of the Parliament to kendo nyaka obedi ni from the party ma nigi majority members. To kata kamano ng'ano ka ose-propose kata ka ose-propose nyinge to nyaka joka bende losie ma kadhie ni mano nikare. Uwinjo wachno? Mano ema introduce go gima dhi nyime mar checks and balances. Including jomoko nyalo appoint kata Ambassadors, PS kata ang'o giri go, nyaka ang'wang' another relevant committee within the house to discuss ng'at ma kamano ma puodhe kata gidagi ni hapana ng'ano ok nyal dhi.

Therefore sixth schedule outline actions to be taken by Parliament mondo o-rectify some of the issues ma nyocha u-bring up, just like right of access to information under article 47 (iv). Gidwaro ni that one should be implemented, time limit within which action should be taken 6 months from the time ma Parliament obedi enacted. *Ae inyalo nwang'o ni entry and residence into Kenya of persons other than those set out in article 26 (i) and status of permanent resident once year. Giketo kamano nyaka bringing the law of Kenya into conformity with the Constitution. This Constitution ka osekadhe ma upuodhe maber ma okadhe, ubiro nwang'o ni some of the laws are not in conformity with the Constitution and therefore it is the work of Parliament to make sure ni gi bring those laws of Kenya into conformity with the Constitution and that one a time limit is just two years.*

Wan ka gi rule of presentation for women in each house or Parliament. Gindiko kanyo ni joma mine. Lower House ma wawacho to gi National Council ma wawacho ni Upper House ni, ni of all the members a third should be women to ok ginyiso kaka women gi onego dongi or onego yier. Koro giweye ni the Parliament ema nyaka come up with procedures for electing those to ae omigi kanyo 3 years. One third rule of representation of women in each house of Parliament as per article 109 (ii) 3 years.

Defence of the Constitution, article 4 on how to defend the Constitution, Parliament *onego o-come up with the defence of the Constitution but there is no time limit. Nyiso ni moko be nyaka wawenegi, ginyalo kawgo within one month seche moko be ginyalo kawgo one week just like that. The Commission was not able to come up with a time limit for gik ma list kanyo go. Koro duto unenogi ka gigeny kano, gigeny and mostly gin ema gi-comprise sixth schedule. So whatever is not here is being taken care of and whatever you had suggested which has been taken up and which appears in the report will be taken care of through enactment of these laws by Parliament kaka obedo stated kanyo.*

Seventh schedule had been covered, I think I remember Mr. Owade. Powers of the National and District government. Do we need to go through that?

Mr. Korege: You are already aware ni levels of government *obedo proposed ma opogore opoogore in this Constitution here, koro nitie Natiional Government powers gi gika ma onego bedi ni gitimo. Wan gi level mar district. What are the limits of their powers and what they are supposed to be doing. National government ni, list mare kaka obedi ni*

o-deal gi national defence and security, international relations, international trade, telecommunication, national resources, national elections, formulation of national policy, development planning, currency, courts and prisons. Prisons ne uwinjo ka oloki nyingi, correction institutions, citizenship, immigration, national public service, control and management of disasters and epidemic, national survey and mapping, statistics, central bank, banking including corporations, regulation of banking, insurance and financial corporations.

Then we have added inventions, designs, trademarks and copyrights. Then we have the standard weights and measures, administration and management of research and institutions of national importance and lastly, ancient and historical monuments of national importance.

Then we have list two in that seventh schedule outlining functions *mag* district government. *Koro district government ma obedo proposed ni onego wabedi go ni gibiro timo ang'o? Ka oseketigi in place ka Constitution osedhi through to district government ema gin charged with the responsibility of implementation of development plan. Development plans biro bedo drawn elsewhere but the implementation to nyaka koro jo-district ema tim. Local services, educational service gi render, mago o-include Nursery, Primary and Secondary Education onego obedi ni itimo, mago duto gin duties mag District Government.*

(d) Medical and health service, health centers, dispensaries, clinics, promotion of primary health care, mago their functions. *Water services, pi ka koro orumo Bondo ka, ndolo no ok bidwar ni oh, ni jo Nairobi Minister otimore kodwa nade nikech jo Bondo gi ema onego obedi ni at this level will be able to render services or the Local Authorities, that District Government should be able to render water services, provisions and maintenance of water supply in liason with the ministry responsible. Of course ministries ka be podi biro kony the district government in trying to provide those services.*

Road service construction, rehabilitation and maintenance. *Kanyo ne nitie yuak kabisa ndalo mane gigolo views ni infrastructure racha kabisa ma onge priority kaka kuond ma giduaro golo go rech mondo rech ochop ka ok okethore. This time if this Constitution odhi through ni ukadhe nyiso ni road services biro bedo mana run from here. Market and trading centers and then provision of other services and activities as follows: District planning, district electriocal services, district project identification, agricultural services, land administration, land surveying, physical planning. Gin duto gin kanyo unyalo somogi to kendo onego ebedi ni gibiro regulate, gi control, gi manage kendo gi, administer kata gi promote and licence any of the services which the district is empowered to do.*

Establish maintain, control, manage is okay. Aid and support the establishment and maintainance of schools, clinics etc. *Nyiso ni function mar gero skundewacha odogi oduoke koni ne en ga koni chan ndalo mane podi watindo to ne odogi oduoke ne district government to see how best they could aid and support the establishment and maintenance of schools, clinics and provide assistance to the youth, women and persons with disabilities. Identification, administration and management of*

resources within the district, safety and security within that district, *mago onego obedi functions magi. Koro eka gibiro manage matters relating district police services kendo gi manage district civil servants appointments, recruitment and disciplinary measures. Nyiso ni gin bende gibiro bedo gi civil servants magi at that particular level, gin ema gi appoint gi, gin bende ema gi recruit gi to gin be ema gi-discipline gi.*

Provide and manage market and trading centers, recreational, manyiso ni public parks and boarding facilities, social welfare programme, public vehicle parking, lighting in the streets and other public places. *Ka stima wangni onge Bondo ka to ok ni Minister mar gine Nairobi kucha, no en mana the district government ema should tell us how we should be able to do that. Fire Brigade should be maintained and Ambulance services, cemeteries and mortuaries ma gikonyo go jopiny kuond ma iketo e jopiny kata ma iike joping ma koro ok nyal loso and refuse disposal.*

Gin gik mangeny ma aparo ni mondo wa-save time gin gik ma koro unyalo somo kendu including list 3. Concurrent list on revenue, taxes levied on Central government and district. Nyiso ni nitie some taxes ma Central Government biro collect pesa to pesa ma gi collect go, nitie mabedo aside to the District Government. Duties levied by Central Government but collected and appropriated by district government. Nitie some levies ma Central Government ema levy to joma collect e gin District Government to nyiso ni gibedo appropriated. Ka gise collect to gitio kod gi kacha ka nitie shortfall to jo Central government or National Government ema medo gi pesa moko. Maintenance of public security and order, mano gin ema koro gitimo. Provision and maintenance of public services and amenities. So is is all that up to trade and commerce.

Kamoro nitie ma Mr. Owade ose lose, kar transitional and consequential provisions. Kama koro ji lokore ji wuokie manyien kadhi e machon, ang'o matimore. Kaka issues onego bedi handled koro wuokie kama iluongo ni the eight schedule, oriwo gimoro amora. Ok onyal weyo gimoro ka hang loose ni yawa jowa. To ka koro chik manyien odonjo to kaka nyocha itimo chon koro itimo nang'o? Eight schedule is the one outlightning how to handle the situation at that particular time. It take care of rights, duties and obligations of the republic, all rights and all duties or obligations however arising of the government of the Republic of Kenya and subsisting immediately before the commencement of this Constitution shall be right duties and obligations of the government of the Republic of Kenya under the Constitution. Nyiso ni rights mawa ka, gi duties mane anyisou ka, gi obligations mawa to the republic of Kenya. Ma nyocha wango machon ka, ka koro wadonjie manyien continuation mane nitie ok ni yawa jowa gini kamani en cut off one day ni ma kiny onge gibedo taken care of ni gin podi gi-continue.

Existing laws, chike ma wan go sani bende continue. All laws in force immediately the entry into force of this Constitution shall continue to be in force subject to such modification as necessary to bring them into conformity with this Constitution. *Chike ma wan go ka koro ni saa ma wawuok e machon to wadhi e manyien podi gi-continue to maricho manyocha koro ok conform gi this Constitution to iloke ema ne osemi ne Parliament anyisou ni it is two years within which to conform*

mondo chike maricho gigol mondo gilosi mondo odonji gi Constitution masani ni.

Elections: In the event that the first elections subsequent of the 1997 elections are held after the coming into force of this Constitution, such elections can be held within 60 days of the coming into force of this Constitution. *Yiero machielo kabiro makoro maluwo ma 1997, ka koro Constitution manyien ni osedonjo ma kata odonjo mana dwe mar apar gi achiel Constitution masani wacho ni yiero machielo nyaka bedi abeda within 60 days of the coming into force of this Constitution. Kanyo uwinjo maber? Nyiso ni yani yiero mane wayiero mogik ok en 1997, ena kamano? To sana ok ane ka koro jo Kenya wacho ni a waduaro dhi e yiero kata gi Constitution manyien, ok awinjo ka giwacho kamano, to mana ka gisekadho Constitution manyieno no. Koro korka yiero ka okadhi Constitution manyien, yiero machielo onego obedi kar ang'o. Yiero Constitution ni wacho ni the moment ma ukadh Constitution ni to yiero machiel onego obedi within 60 days. Donjo e un maber, within 60 days of its coming into force. Nyiso ni ndalo piero auchiel to ae ka okwawo Constitution to yiero machielo ndalo piero auchiel to unyumu mana eie ka osekadhi Constitution ni.*

Until the Electoral Commission contemplated by this Constitution is established, the first election under this Constitution shall be conducted by the Electoral Commission in existence immediately before the expiry into force of this Constitution. It is rather technical, kanyo duaro more explantion inyalo explain ane? That one sounds rather technical koro pod adhi ir consultant marwa.

Mr. Owade: Lets just read it and see. It reads, untile the Electoral Commission contemplated by this Constitution is established. Until it is established, the first election under this Constitution shall be conducted by the Electoral Commission in existence immediately before the entry into force of this Constitution. So it means, that this Electoral Commission, the current one is the own which will be in use, right? So until the Electoral Commission contemplated by this Constitution is established, which means the one which is still in force, the first elections under this Constitution, the current one shall be conducted by the Electoral Commission in existence immediately before the entry into force of this Constitution. We shall be using the present Electoral Commission.

Mr. Korege: *Uwinje maber, koro odonjo nu maber kanyo? Nyisoni document ma wasomo ni bende establish another Electoral Commission to kata kamano nyisoni sani to wan gi, we also have an Electoral Commission. Nyiso ni o-empower the current Electoral Commission ka pok moro cha obedo into force mondo o-conduct the elections. Mano odonjo maber? Podi wadhi nyime matin, except as provided in clause 1, the Electoral Commission in existence immediately before the entry into force of this Constitution, shall be dissolved on the 90th day following the conclusion of the first election under this Constitution. Koro Electoral Commission ma wan godo sani ni, ka en ema watimo election ma ena ema o-conduct election to ka bang election, bang' ndali piero angwen, piero ochiko koro o-dissolve koro oonge. Mano odonjo maber aparo kamana.*

A person who before the entry into force of this Constitution has held the office for 2 or more terms as President is not eligible to stand for election or serve as a President. Ni ngato ang'ata ma osetiyo kuom terms ariyo ka pok Constitution ok odonjo into force, ng'at ma osetiyo atiya for terms ariyo as President kata koro Constitution ni donji to ok oti kendo. Owinjo wach ni, ok oti kendo nyisoni Constitution bar him or her from standing again. He is not allowed to stand for election or serve as President, Vice President or Prime Minister or be elected to serve as a Deputy Prime Minister., Minister or Member of Parliament. Ng'ano ok oyiene mondo ochung' kendo to bende ok onyal bedo Vice President, Prime Minister, Deputy Prime Minister ma kendo odogi obedi Deputy Minister kata a Member of Parliament. Ma Constitution manyieni ni odino ne ok odonji.

Subject to clause 4, gima wawacho malono, any person who would otherwise have been qualified to stand for election but for the provisions of this Constitution is eligible to stand as a candidate in the first elections held under this Constitution.

Mr. Owade: *But did not to koro this Constitution ka osebedo into force is eligible to, that is what it means.*

Mr. Korege: *Six, the National Assembly and the National Council shall convene within 21 days of the conclusion of the first election under this Constitution. Mano ne wasewinjo, National Assembly nitie obedo introduced, National Council be nitie obedo introduced koro they will convene within 21 days of the conclusion of the first election. Ka election orumo within 21 days to gise-convene.*

Political parties again the transition period under the eighth schedule. A political party in existence immediately before the coming into force of this Constitution shall within 12 months of the date of the appointment of the members of the Electoral Commission under this Constitution comply with the requirements of the registration as a political party. Mano nitie requirement kaka ne oseketi kacha, which is spelt out under the Electoral Commission as constituted by the new Constitution. Where upon the expiry of that period of 12 months, a political party has not complied with the requirements of clause 1, the political party shall forthwith cease to exist and any person holding an elective position on the basis of the sponsorship of that party shall continue to hold such a position but shall be deemed to be an independent member.

Devolution of power, upon the entry into force of this Constitution all assets held by the national government by virtue of the Constituion then in force situated in the provinces, districts, divisions and locations shall become public property. Until such time District Councils and Provincial Councils are constituted:

(a) The functions of those Councils shall be performed by the national government.

(b) All assets held by the Local Authorities immediately before the entry into force of this Constitution shall become public

property and shall be held by the National Government on behalf of the appropriate councils pending their establishment.

Property and asset referred to in Clause one and two shall not be transferred or otherwise disposed of without the written authority of the National Government and any transfer without such authority shall be void and the property or asset in question shall revert to the relevant authority. *Ne nitie complaint, a remark or some view, an observation that e transition ka chal ka jomoko ma are already holding power under the old Constitution kaka moko mag uso kata lope sirikal ni koro odich ni mano e tich ma gitiyo mar uso lope go. Kata gi-transfer gi sani to nitie gima will take care of that, nyiso ni the devolved government ka osebiro into place ma gisenwang'o ni nitie moko mane obedo transferred unfairly there is a procedure which they can put in place to recover gik mane jomoko o use, property mag government mane jomoko ouso ausa ni koro there is a confusion during the transition. Mano came out clearly during our seminar.*

What about the executive? Within 60 days after the appointment of the Ethics and Integrity Commission the President, Vice President, Prime Minister, Deputy Prime Minister, Ministers, Deputy Ministers and Members of Parliament shall be required to comply with the provisions of the leadership and integrity code. *Gima ne wawacho cha, jogo nyaka comply gi leadership and integrity code.*

The Provincial Administration and then I will stop there moko unyalo somo. People are becoming impatient and they have some questions to may be put through. Provincial Administration: On the coming into force of this Constitution the system of administration comprising of Sub Chief, Chief, District Officers, District Commissioners and Provincial Commissioners commonly know as the Provincial Administration shall stand dissolved and all public officers serving under the Provincial Administration shall report to the Public Service Commission for redeployment. *Aparo an'g aweye gi kanyo e schedule ka, pod unyalo dhi nyime kode kaka un gi those documents mondo wa-take in some view and questions kata comments from the audience. Thank you very much and back to you Mr. Owade.*

Mr. Owade: Thank you.

Wycliffe Owade: -- so that we really feel, you know, we really part and parcel of whole this and as I said before, this were your views, they were collected, collated, and then developed into a report, out of the report, the Draft Bill came which we are intending now to table at the National Conference. But before we do that, there is that debate which is going on and this is why we are here and we are requesting that what you do is if there are some other issues arising which you would like to point out, this is the time you point them out. Our main reason really here is to facilitate this public hearing, getting your views, making reports and taking them to the Commission so that we again compile them so that when you come to the National Conference, it will be able to be focused much more clearly. So our aim here is really not engage in any debate, but just to tell you these are

the views you Kenyans gave us and these are the recommendations we have adopted.

So to move very fast, I think now I will open this forum, I will open the floor and I will start with the Bishop.

Bishop Johannes O. Angela: Now, I have a few observations to make. First on page 5 regarding citizenship ..

(Interjection) Wycliffe Owade: Sorry for the interruption, for the sake of recording, we would request that if you are raising an issue, first you start by introducing yourself.

Bishop Johannes O. Angela: I am Johannes Angela, I am the Bishop of Bondo and also Chairman of the Constituency Constitution of Kenya Review Commission. Now, first of all, regarding citizenship, there is a provision of dual citizenship which is permitted under the laws of Kenya. I think this is something which will bring a lot of confusion in this Kenya, before we have seen people who do things here, they commit crimes and they run elsewhere, it is a problem we have even now people coming from foreign countries, I think you are either a citizen or you are not. I don't think we should have dual citizenship.

Secondly, on page 7 where we talk of pirating, if the Constitution provides that the person will the right, nobody will search a whole of a person or his property be searched or their possession deceased and so on. Then it means, maybe there is a provision somewhere. It means that people can go with even unauthorized, like right now we are talking of "*dawa ya kulevya*" and people are being searched in order to discover those things. If you are not going to search my property even if I carried some luggage with me and I have "*dawa ya kulevya*" and the Constitution says that you cannot search, then we are saying, quite a number of things will be brought into this country which are illegal and will take out things out of this country which are illegal. And therefore I think there should be another provision defending or explaining that question of search.

On the same page there is Freedom of Religion. And it says, "every person has a right either individually or in community with others in public or private to manifest any Religion or belief through worship of certain practise or teaching. If we do not ascent what is a person is confessing or teaching, then we are opening doors to more evil worship which is already destroying this country. We must ascent these things, and therefore there should be a provision for assessing what kind of Religion one is professing.

Page 24 talks about the Kadhis courts. Now, it says, No. (c) that is 200(c), "the Kadhis will deal with the settlement of disputes over/or arising out of the administration of property". Now we should not, when it comes to dealing with properties in this country, we should not divide that the Muslims are treated separately from his property and there should be one law governing everybody when it comes to settlement of disputes over property. There should be one law governing all citizens of this country and not separate that others be treated separately.

And then lease of land, that is page 23. Now, we are told that somebody who is a citizen cannot own land but can lease a land for not more than 99 years. When a person has had land for 99 years, 99 years is quite a long time and it is as if that person has owned that land. Who can leave now, if we are told now that the lifespan now is about what ...

Response: 70 years.

Bishop Johannes O. Angela: No, it is not 70 years, it has been reduced to about 40 years and somebody is going to have your land for 99 years. It means several generations will not use that land because it is leased. My child will not, his child will not and so on, about three generations will not have access to that land because it is still leased and I think that is too much and the year should be reduced.

Now, regarding the age when the Judges should serve, at 65 years, that is when a person is in his prime of wisdom and then you retire that person. I think that is too low, the Judges should retire at the present retirement age of 74 years, that is when one is still wise and you want to use that wisdom in judgment and therefore reducing that age to 65, I think it is not wise at this stage. Thank you.

Wycliffe Owade: Thank you very much Bishop. We have taken into account all those comments. I give the opportunity....

Elisha Odonda Jaoko: Thank you Mr. Chairman. My question is concerning.... My name is Elisha Odonda Jaoko. My question is concerning the 15 Cabinet Ministers that are not elected. How will they be appointed? What qualifications will be required and/or experience? Because I would have wished to know the type of people that are going to be Cabinet Ministers because we are the brainchild of the Government. I would rather say they are think-tanks, they are supposed to discuss matters affecting almost every person but such a person if he is not elected, how will you get them.

(Interjection) Wycliffe Owade: What is suggestion? That is what has been suggested here, what is your reaction to that.

Elisha Odonda Jaoko: My suggestion is, I would have rather thought that the Cabinet Ministers would have been elected by the people.

Wycliffe Owade: By the people?

Elisha Odonda Jaoko: Yes. Thank you.

Dalmas Owuor Onyango: Would you like them to be elected by the people or you would like them to be Members of

Parliament?

Elisha Odonda Jaoko: Well, the people can't elect them on their own. They have to be elected Members of Parliament.

Wycliffe Owade: Okay, you would like them to be drawn from the MPs?

Elisha Odonda Jaoko: The people - with the mandate of the people.

Wycliffe Owade: Okay.

Elisha Odonda Jaoko: I think that is enough.

Wycliffe Owade: Yes, I think let me make it very clear. We are not engaging in any question or any whatever. If there is a clarification issue but you just give your point, my duty is just to note it down. That is the report. So I will give him....

Nelson Juma: My name is Nelson Juma. I am about to comment on appointment of Prime Minister. I personally feel that if the Prime Minister is being appointed by the President and it must come maybe a Leader of the Opposition or with somebody who has got majority seats in Parliament, that actually to me is going to discriminate quite a number of people because if I find that maybe, now in our Kenya system, we started wrongly on the tribal lines and some areas were given more Parliamentary seats than the rest, so if ratio is done, then you find another area has got more Members of Parliament, then they go there, then automatically becomes a Leader of the Government Business, obviously he is going to be appointed by the President and then the President maybe has come from that same tribe. So you may find that Kenya is being run by sort of family. So that area, actually, needs to be looked into very carefully – the appointment of Prime Minister who actually comes from the majority of the Opposition.

Walter Korege: So what are you suggesting? What are you suggesting, your point is very clear anomaly.

Nelson Juma: I was told to just comment but that area, I am suggesting that there should be a way of finding maybe if somebody is capable on his own line and is already in Parliament and if he is fit, he should be a Prime Minister, that can be given chance by some Members of Parliament to elect.

Walter Korege: In other words, you don't agree with the procedures suggested, procedure of electing a Prime Minister as suggested by the Constitution, by the Draft. You don't agree with that?

Nelson Juma: No that one I am not agreeing with it.

Walter Korege: Okay.

Anthony Raila: My name is Raila Anthony. I am representing private health offices in Bondo District and at the national level, I am representing Nyanza Province in Clinical Officers' Council whose Chairman is the Director of Medical Services and the main purpose of that Council is to advise Minister of Health on national health issues.

First of all, may I have to thank the Kenya Review Commission of their undertaking, and let me start by saying that power cannot be bought with money but with people's conscious. We hear from both print, media and electronic media that the Constitution Review of Kenya is in court and it is in two courts – the Judicial Court and the People's Court. As a member of the society, may I pass my personal view that Kenya Constitutional Review Commission is not guilty.

You talked about Public Defender. I suggest that, let it be focused on the village and we have Federation of Village lawyers, Divisional or District Chapter or if you like Provincial Chapter. I think this will actually help the country much better than FIDA because FIDA by now, it is actually gender-biased.

Again, I thank the Constitutional Review and my happiness to the Constitutional Review is as follows:- On 13th when you were here, I had an opinion and it was bound from such a big document and I presented in very few words, in fact less than one minute, and I said, please read it, word by word, sentence by sentence, and thank you very much, you have read it very well and I can see clearly in the Draft that my view on village focus came out very clearly. Even this one is actually village focused, but as a health person, I am talking about undisintegrated community-based approach to the health and development in the villages of Africa. So thank you very much for addressing issues at the village level.

Two, also you have given a recognition to the family unit. Our present DC is here, told us in the leaders' meeting that all problems that are at family, be it theft, be it alcoholism, it is at the family unit that those things should start falling down and we have talked very well about the welfare of children in the Constitution. Because I personally believe that the increase of street children in this country is resulting from cases that can be followed up and be found at Children's Department and actions or FIDA. Thank you. I have reason and I can comment if need be. Thank you very much.

Wycliffe Owade: I would like to remind you that after you have aired your views, you just go to the table, you also register your name. I will give you the opportunity.

Isaiah Okeyo Macoulo: Thank you very much. My names are Isaiah Okeyo Macoulo, I have very few observations. These are my views.

First I would like to talk about the nomination of 90 members. I am proposing that these 90 seats, as it has been proposed by the Commission that they are being given to special groups, and I would like that out of these 90, professional trade unions should be given a chance also to represent their members. Why am I saying this? We have seen from record that some of these professional unionists, once elected by the majority or the public, they don't take into account the interest of those people whom they were with in the past and therefore, I would like the Constitution to spell it vividly that the professional and non-professional union or trade union should be directly nominated.

I also would like that the Constitution spell out the checks and balances of each Party giving or submitting 90 names because it may give a loophole if it is just left like that.

I also propose that the Prime Minister should not be Finance Minister because if he has to be the overseer of the Government, then if he so happens to misuse some funds now, who will comment first?

Then I would like also to propose that the Local Governing Council should have academic qualification which spell the ability such that he can manage this Village Councils, Districts and so forth and I also propose that the age which should be elected at this level should be the working age, a person should not be elected when he or she will have gone beyond retirement age.

I am also proposing for the Bill of Rights that it should vividly spell out that every Kenyan child has a right of education system properly debated in Parliament so that the policies of this system of education are well-known to all Kenyans.

On Judiciary system, I am proposing that there should be Industrial Courts such that the industrial disputes between the employer and employee should be well taken care of.

And I am proposing that in all these Commissions, be it salary or remuneration, the Trade Union should also be given a chance to represent their members. Thank you very much.

Wycliffe Owade: Thank you so much. Yes

Richard S. Andang: My name is Richard Andang. I had six but four have been asked by the Bishop, so I have only two.

On the National Days, October 20th is a very key point. People say, in the history of the independence of Kenya. It must, the day when six heroes were put in and it is from there that the politics of Kenya went into the extreme. Therefore, I think and my question is, what I recommend you leaving it out and I think the only thing I would not like with it is to personalize it to a fact that it should be National Heroes Day so that our children know the beginning of the history of the independence of Kenya.

My question number two is, in this Constitution, you have expanded the arms of the government from the usual three to four – the Legislature, Executive, Judiciary and the Constitutional Commissions. Three of these are unitary – the Legislature, the Executive and the Constitutional Commissions have everybody as a unit. Judiciary is sub-divided, what is the rationale of getting the Muslims having their own Judiciary system? Why not include them into the main system. Why have we introduced them or prominence on their own? This one here is either towards what the Bishop talked about when he talked about Religion which Kenyans would profess. Thank you.

Wycliffe Owade: Thank you very much. I am looking for the ladies, I am not even seeing one. Sorry....

Louisa Achieng Owiti: My name is Louisa Achieng Owiti. I would like to comment on a few issues which have been raised in the Draft Constitution. First of all, on the Human Rights, as far as Women's Rights are concerned, I would like to congratulate the Commissioners for having recognized women and having given them a place in our new Constitution and that Women's Rights will be equal to that of men, now this is very good. The only thing I would like to mention or to raise is that, how this will be implemented and there are so many things which have hindered the Rights of Women especially on the traditional practices which have been harmful especially to Women's Rights and also to women's dignity like the wife inheritance, FGM and many others, and these, I have not seen them raised anywhere in the Constitution and how these would be discouraged. So I would like just to emphasize that unless these harmful traditional practices are also addressed, how they will be dealt with those who are practicing them, then I see that Women's Rights will not succeed very much. It will be in the Constitution but it will take very long before it is realized.

Secondly, I feel happy that under the citizenship, women have been recognized, that now citizenship will be the same, women will be the same with men. But there are also other issues which will still be a problem, especially women are born under very difficult times when acquiring even identity cards, that they have to go to their parents to give them authority, even to change their name and so on. So I hope this condition will go with the present Constitution when the new Constitution comes to effect. So I would like that to be emphasized, otherwise the equality will not be there in reality.

My third observation is on the Devolution of Power. Well, in the Draft Constitution, the authority has been given to the people from village level, location, district and so on. And also, the Provincial Administration has been scrapped or will go when the new Constitution comes to force. What I am wondering, well it is good if the power is in the hands of people but then will these Village Councils and Locations, also be enumerated because if they are just going to be volunteers, then I can see chaos erupting because people will not spend their time in discussing issues very seriously. So I would suggest if this will be the channel of authority, from village levels, then these people also need to be taken seriously. They need to be rewarded somehow because they will be dealing with a lot of issues including even settling disputes at the village level or location level which the chiefs are doing right now, and this needs a lot of care and devotion and to leave it in the hands of those who are volunteers, I don't see it working. So that would be my recommendation that this be taken seriously.

I have also seen in the Draft that the villagers will decide whether their Village Council will be composed of elders or whether they will be elected. I think this should be uniform all over the country because if it Village Councils are to be elected, then it should be uniform all over the country, otherwise if it left for each 'dayo' to decide whether they will be composed of elders or whether they will be elected, then we will have chaos because there will be different ways of doing it and that will not provide continuity and uniformity as far as these local councils are concerned.

Then of course in the Location Council also it should be the same, that they should be recognized and also be given more power to work. In the local districts, I think this is what will take the place of local authorities, I don't know, I think so. So this also is a very big responsibility looking at when I saw the list of the responsibility which they will be undertaking. And the way the District Council will be elected, starting from village level, people move to the Location, then those elected from the Location will go to elect people in the District, it will not be an easy election. So it shows that those who will be elected at district level, will really go through a long process of election more than even a Member of Parliament who will be elected once at constituency level. But those who will be elected at district level, coming right from the village to location to district, it is very expensive and very tiring before they can reach that stage. So I think this need to be also looked into, how these elections will really take place. I think I end there and thank you very much.

Wycliffe Owade: Thank you very much. Maybe I feel compelled to react, just to clarify some issues very briefly. On the elections, to avoid bureaucracy or a lot of procedures, the recommendation is that, Village Councils, their heads are elected directly by the specific village. I am just waiting is she hearing. Okay, what I am saying, what I am trying to say is that, Location Councils I said, they will constitute the District Councils, so at the very lower level, the Village Councils, they will elect Locational Councils Executives. They may have some kind of an Electoral College where they do that. Then the Locational Councils also, will have some kind of Electoral College to elect people at the District Council, say like the District Head, so the District Head then becomes a representative at the National Council to avoid unnecessary delays. But finer details of that are still being worked out, ours was just to give a framework. Thank you for your ideas and also Parliament once they have adopted this, they will work into the finer details.

Concerning finances at the village and the local councils, our position is that the District Council which will be a very powerful body should have budgeted provisions on all expenses, all allowances, all finances governing this areas because this is a very heavy responsibility and we cannot do without finances. So again, finer details will be worked out, basically this is just a framework.

Last but not least, citizenship have taken, but last but not least on the socio-cultural issues like wife inheritance, FGM, I think we talked of some kind of economic and social council. We also talked on the Bill of Rights that we are now extending it to the social rights, you know, the basic needs in terms of all this, cultural rights that any Act which does not conform with the Constitution

be it cultural or whatever, you as a citizen have a right to go to the court and say that your right is being infringed and let the Judiciary interpret and see whether is justifiable or not. Okay, you there at the back. You, yes.

Samson F. Oyuda: Thank you. My name is Samson Oyuda. First I had two points ... two of my points have been taken care of by the Bishop when he spoke last. One was on this land lease of 99 years, to me I think this was a colonial mentality. The Commission have just decided again, I think we should refuse in our case to 50 years on lease.

The other thing was on this freedom of Religion. These two, if you have a son who is about 16/17 years old, decides to go a sect where they worship the devil and he tells you I have a right of worship, you have no right to stop him. So I think, as the Bishop put it, this Religion should be assessed or the parents should have a right to control the child, that is a person who is below the age of 18, the parents should have a right to caution or decide which Religion he should belong to.

The other thing is on women where it is said that the women have the right to inherit property. I was doing some civic education under the Kenya National Chamber of Commerce and we had this point at one place where it came out very clearly that this is a matter that should be left to every community to decide. It shouldn't be just a rule that women should have a right to inherit property. Take an example if I come from Nyimbo Location and my daughter gets married to somebody in Nyakach, this lady is still according to this, can still come back home and say, now Dad give me my land, give me a land because she will have a right to own land even back home in Nyimbo despite the fact that she is married in Nyakach. According to Luo tradition, this cannot happen. Well, to Bachuni in Lamu or to Kikuyus, that can happen but the Luo community, I think this is not possible. So it should be 50/50, it is a matter which should be left to the community concerned to decide, that women ownership as far as property particularly with regard to land.

The other thing which didn't come out clear is this question of Parliament and National Council approving appointments made by President. I think the President still has too much power as far appointments are concerned. What didn't come out clear to me is, if Parliament rejects the appointment made by the President or the National Assembly or the National Council rejects the appointment made by the President, what happens? Is it going back to him to make another appointment or they can then appoint somebody now on behalf of the President? This didn't come out clear to me. What I also feel, the Prime Minister should not be appointed by the President because this is the Head of the Government Business and he is seating in Parliament with his team which he is leading. Why can't Parliament make the appointment of their Prime Minister because this is somebody who is going to guide them in the House. I think the appointment of the Prime Minister and his Deputies should be left to the hands of the Parliament to do. Thank you Mr. Chairman. Those are my views.

Wycliffe Owade: Thank you. Yes.

Maurice Akech Ogutu: My names are Maurice Akech Ogutu. Sometimes refer to page 20, Article 161, maybe sections

(1) and (2) – Protection of the President in the respect of legal proceedings during his term in office. It is clearly stated there that no criminal proceedings may be instituted or continued in any court against the President or a person performing the functions of the office during their tenure in the office.

At the end of section of 2, it is stated that, unless such proceedings wholly of a provided nature. This is my opinion, the Head of State being a human being like others, with some personal interests and weakness of human beings, I believe that such protection has made them escape his many crimes both political and economic, it is like unexplained. This Constitution should make it clear here, should be it clear to any legal organization how they came to that proposal. My suggestion is, they should state it clearly because we don't know when he does something in his private capacity as Head of State, his official capacity as Head of State and when he does something in his private capacity as anybody like me, because members of the public have got no any legal capacity to know when he does something in his private or in his official capacity. I think this person should be answerable to any court of law, so long as he is alive and I say so.

Wycliffe Owade: Thank you so much.

Maurice Mustafa Mumbo: First of all, my names are Mustafa Maurice Mumbo. I thank the Commission on the Draft Constitution except that they are aware that there are the disabled persons but they don't address their issues as per the women. I see here on the National Council, women are represented while the disabled are not represented. My suggestion is that, this number of women should be divided to the disabled persons if possible or they can be given a number of which
(end of tape)

John Ogola Weda: -- now it should only be allowed to those Kenyans who are citizens by birth. Say for example someone is Kenyan by birth, perhaps obtained the citizenship of a foreign country, then this person would now wish to reclaim his former citizenship. I think on that note we should allow.

Before I finish, now on children, now the Constitution talks about protection and care of the child but it doesn't give us a means and ways of correcting this child if at all the child develops unbecoming behaviour. Now a child of about 10 years cannot subscribe to guidance and counseling. That child will not have known what he or she is being counselled about. So at least some measure of correction should be given to us as parents. Thank you very much.

Wycliffe Owade: Thank you so much for your comments.

Gilbert Agidho Awega: Thank you very much. My names are Gilbert Agidho Awega. First of all I would like to comment the work the Commission has done, right away from the initial stages of the undertakings upto this level that we are now

discussing the Draft Constitution and the most effective area I would like to comment is the furnishing of the members of the public with the copies through the daily newspapers. That is quite commendable and has now made the public more apprised with the information that you have recommended and I think it is now assisting or facilitating the deliberations very effectively. Besides that, I have just a few comments to put across.

One is about System of Governance. I am seeing that the Constitution has recommended in the Draft the management or the governance through the setting up of local council officials instead of the former administrative or the Provincial Administration officials. Initially, we have been having levels of governance right away from the sub-location to location, to division and upto provincial level. I am seeing the set up is not all that bad, but I am seeing a level of governance not being undertaken. That is the divisional level. I am seeing that from the Locational Council, we just go to the District Council and the Divisional Level is being left out and it is a level which has been well established with a lot of facilities that need a bit of management.

So I am of the opinion that we give a provision for the setting up of the Divisional Council to oversee all that the Divisional officials have been undertaking so that the Divisional institutions are not left vacant because there are a lot of facilities that have been set, that if there is no body to undertake the management, then they will be to it. So I am suggesting that we give a provision for the setting up of the Divisional Council to co-ordinate matters between the Locational and District, and then from the Divisional is when we have the District.

Secondly, upon that, the nomination or the election of members of the National Council. I am seeing that the District officials are the ones that are elected to the National Council but we are having the Provincial Council where we have the Provincial Council officials. I am not seeing the provision for this Provincial leaders being elected into the National Council. Somehow, the Draft is leaving them hanging and they are managing very important institutions for a level of governance. So I am suggesting that the Provincial leaders, the Provincial Council leaders should also be given that opportunity to be nominated or to be incorporated into the National Council to present the Provincial matters that they may be having for this year, the management of the Provincial level of administration.

Leaving alone that, I would like to be assisted on the linkage between ... we are having the District Council officials and we were having the Local Authority officials, that is the councillors. I am not seeing in the Draft the linkage in role of these people. How are the roles of the District Council officials and the Local Authority officials linked, or is the Draft doing away with the Local Authority. I am not seeing that one given provision – the Local Authority. So if at all the Local Authority is given provision, let us see how they are linked, the roles they are going to play alongside the District Local Council officials. That one I am not seeing the connection and if at all there is, I need to be informed.

Another one is the Prime Minister - appointment of the Prime Minister. The Constitution puts it that the President once have been elected should appoint a Prime Minister from the Party with the majority of the Parliamentarians, maybe something like

that. And I was thinking that suppose the President comes from the same Party with the majority Members of Parliament in the Legislative Council, won't it be somehow some kind of monopoly of authority because, here the President will be from the same Party, the Prime Minister from the same Party and therefore in case that one is approved, they will be like running, monopolizing the authority. That one is also giving loophole because the President will be aligned to appointing somebody, might be tempted to appoint somebody is aligned to his principles which may not be all that, it may not augur well.

So I was thinking that this one should be, apart from putting that the President appoints the Prime Minister, I was of the opinion that the Prime Minister should be independently elected by the Parliament, not to be appointed, so that he is autonomous and that is when he can have the authority to run the Government well. Otherwise he will run the Government in lieu of the President who maybe appointed him and he might not stand to put matters right.

Besides that, I am on Transition or let me say, Transition – that is the election and the coming into existence of the new Constitution. We are now having the new Constitution being undertaken and the elections is also due like now in Kenya. The Draft gave the provision only when the Constitution is ready ahead of elections, that is when the Transition is set to be undertaken within 60 days. How about in a case whereby an election is called before the Constitution is ready, and in that case the election is held under the current Constitution before this one is ready, and this one gets ready after the elections, how will the Transition be? That one needs to be undertaken, to be considered, because otherwise it may pose a bit of difficulty should it happen like that. Provision should be put to that effect.

Otherwise, I would like to make an appeal or support one of the speakers here that once the Constitution document is ready, it should be printed and made available to the local people at a reasonable cost, at a fairly cost so that members of the public can have a copy and maybe get informed or be at abreast with the information. It posed difficulty when the review was to be set. People were not aware of what was in the current Constitution because they did not have access to it. So I would appeal that once this one is ready, any time it will be ready, let provision be put in such a way that it is printed and made available. If not maybe in bookshops or nearer to the people so that people can get access to it and the cost should be reasonable so that people can afford. Otherwise, thank you very much.

Wycliffe Owade: Thank you so much for that. I would like just to say that the Prime Minister is appointed by the President but subject to approval by Parliament. But if you in your opinion feel that, no, the President should not even appoint, it is just Parliament to do it, that is your view and we have taken it but normally that appointment is subject to approval by Parliament.

Joseph Omondi Muchura: I would like to thank you very much for having yourselves for this occasion. I am Joseph Omondi Muchura.

I have a few things I would like to say as far as the Constitution is concerned. First, with regard to education sector and even

including health, health sectors. These are two important areas, but in my opinion, should not be left in the hands of one or two or three people to decide their course. It was my opinion that, for example in education, there is need to have a body that will be left with the responsibility of charting out what kind of education system is wanted; how many schools do we need in this country; how many post-primary, post-secondary should we need and their creation should not be a matter of just political, I mean should not just be mentioned at political grounds or set up at political grounds. Let there be a body, put members will have been well chosen and well represented from various areas and who know their work well, who we sit down and decide what will be course of the direction of education in the country. The Minister and other parties and the Permanent Secretary, all they will need to do is to seek advice from this group and the word from this group should be seen as to be final.

The Minister is just to be advised, the Permanent Secretary is just to link the group with the political establishment so that our education sector should not be run down in future. The same thing should go to health because these are areas that deeply touch on the life of human beings.

Then secondly, I think I would be of the opinion that as much as the Constitution says that the President may not be liable to prosecution during his term, I think this has led to a lot of misuse of power in the past and I would like to suggest that the Constitution should come out clearly to bring about a process whereby the President maybe impeached in case of a crime committed or something that is done so that they will be answerable to whatever they will have taken that is not reasonable in the eyes of the law.

Then on the Prime Minister, I would like also to suggest that let the Prime Minister not only be chosen from that Party that has the majority. There could be somebody from the minority Parties or the Parties whose number is less but somebody who is capable of doing some good job. Let the President have the leeway, also to pick from any person, even from the minority group. And as you said, all these will be subject to the approval of Parliament.

And finally, I think from what you have seen before, the MPs, we took them to Parliament and they should be made answerable to the people in a more wider way. And on top of that, I think deciding for themselves what salaries they will need to get, I think is a bit immoral. Let there be a body that will harmonise the salaries even of MPs so that we don't see situations whereby hefty salaries are awarded particularly on the side of themselves. With these few remarks, I would like to say thank you very much for offering me this opportunity.

Wycliffe Owade: Thank you very much for your constructive views. I think we are through, maybe two last and then we close.

Zedekiah O. Okoth: Thank you very much. I am Zedekiah Onyango Okoth, Institute of the Deaf and a trained sign-language interpreter. Now under persons with disability, 2(e), it is written here on page 7 – Persons with Disability, (2)(e). I feel that we should never talk about development of sign language without including interpreters because there is no

time including interpreters, because there is no time we can talk of sign language without these people because in every group, you will have the hearing people and the deaf. So I feel that what should be included is, the Government should ensure that enough sign language interpreters are trained and employed in all public places. Thank you.

Wycliffe Owade: Thank you so much for your comments. We have one last person.

Wilson O. Reli: Thank you very much. My name is Wilson Odhiambo Reli. Well mine is not much but simply to say something about education. Well when I went through the Draft Constitution, I got a place where it was stated that free primary education should be provided. Well I felt that as much as that one is also necessary, it could be also necessary to provide free education to the university because we have certain geniuses who qualify for university and end up being chased away simply because of their inability to pay university fees. If the payment were to be done at the university at all, then I felt that it should be done by these fellows who go through the Parallel University Programme. But the very bright ones that qualify to university direct from secondary school should be given free education because this is an area which should not be taken lightly because it keeps on to the back... of development of any country. Thank you very much.

Wycliffe Owade: Thank you very much.

John Dalmas Owuor Onyango: We are coming to the end of our today's deliberations. I know because it has taken a long time, we are now talking to an empty hall which otherwise was very full. Mine is Owuor Onyango, I am a member of the Constitution Committee and also Chairman of Bondo County Council. I wouldn't like to say anything much more than what we have said except, I would like to register on behalf of the people of Bondo that it is our wish that this Constitution should be completed and used for the next general elections. Our fear is, if it is not done and we are going to the general elections now, and then when this Constitution is done under the next Parliament, next Government, the chances of throwing it under the desk is very likely.

We would have liked this Constitution which people of Kenya have most welcomed, is used for forming the next government. Linkage on the changes on the location, members had said and it is true that it should that it should be explained. What we know and what we wanted was that the Assistant Chief will be replaced, not as a person but by a system. The Chief of the Location be replaced not in person, by a system and that system will then be answerable to the District elected leaders.

There is linkage and that should be shown clearly because there should be a person who is going to replace the Assistant Chief, who will be in the payroll of the Government of the day. Let somebody who is going to replace the Chief who would be officer of the day and so when it comes to the District level where I am now the Chairman, there is going to be Administrative Officer replacing the Clerk or whatever you call him, will continue placing with all this group. So that system may not appear to be dying. They all need that the duplication of having a Chief and a DC is what is trying to be replaced and I think that should

be explained very clearly.

The question of religion, I am also supporting those who say, now you know of late, Religion has become a business, a money-making organization where people come up with Religion, not so much to save the souls but to make the money. Unless the Government of the day, unless the Constitution makes it very sure that these people registering, their Religious organizations are vetted and not to be really God's people and not money-makers, then our children, our grand-children will go astray, joining Religious bodies which are not there to protect their souls but employing whatever little having theirs.

I would at this juncture say, thank you very much, our Chairman had to leave earlier – the Bishop, and he left me to stay with you to the end of the day and we appreciate the patience you have had. I must emphasize how hard-working our District Co-ordinator has been, he has kept us going, toiling hard, making sure that the work of the Commission in the District is upheld and all that we have seen here, people coming everyday has been much of his effort. He has done a good job, we hope that when you establish that organization, you will have hard-working people like him.

Lastly, we are very grateful for your coming today and know you are still in the District tomorrow, we may not be with you in Rarieda tomorrow because I will have other things this side of the District but we have our able Councillor - Cllr. James Omburo who is the Vice Chairman of the County Council who has been handling the Rarieda side, on the Constitution Review, you will be with him tomorrow and we look forward to getting feedback and as you heard our last speaker or before that has emphasized on information being available to the local people and it is important that the people know the final copy of the Constitution so that we can live up to it. Otherwise, members who have persevered up to the end of the day, I see my Central Sakwa Councillor still seating with us, we appreciate your patience and we thank you very much because otherwise our visitors should not be left alone to go as if we have deserted them. Thank you very much.

Wycliffe Owade: Thank you.

Walter Korege: Thank you Mr. Chairman. There is much remaining except there is one of us whom I have requested kindly to come and close our session with a word of prayer.

Zedekiah O. Okoth: Let us stand up for a word of prayer. In the name of the Father, and of the Son and of the Holy Spirit, amen. Heavenly Father, thank you very much for the day, Lord, you organized this day so that we can come up with something that will help us create peace in this country Lord. Heavenly Father, it is because of your love that we have ended so well Lord. Father, I ask you Lord, to bless each one of us and guide us to reach home safely Lord. Father, I ask all this through thy Name's sake, Amen. In the name of the Father

Session ended at 4.55 p.m.

