

**CONSTITUTION OF KENYA REVIEW COMMISSION**

**(CKRC)**

**Verbatim Report Of**

**DISSEMINATION OF REPORT AND DRAFT BILL OF  
CHEPALUNGU CONSTITUENCY, HELD AT SIGOR HIGH SCHOOL**

ON

9<sup>TH</sup> OCTOBER 2002

final copy

CONSTITUTION OF KENYA REVIEW COMMISSION

DISSEMINATION OF REPORT AND DRAFT BILL OF CHEPALUNGU CONSTITUENCY, HELD AT  
SIGOR HIGH SCHOOL ON 9<sup>TH</sup> OCTOBER 2002

Present

1. Com. Mosonik Arap Korir

Secretariat in Attendance

1. Mary Kanyiha - Programme Officer
2. Zipporah Wambua - Verbatim Recorder

3Cs Members

1. Paul Bill
2. Michael Cheruiyot
3. Andrew Kimeto
4. Caroline Ruto
5. Ruth Siele
6. Jonah Tanui

The meeting started at 11.30 a.m with Com. Mosonik Arap Korir in the chair.

**David Cheruiyot:** Commissioner Mosonik Arap Korir, Programme Officer, teachers, Constituency Committee Members, parents, students, ladies and gentlemen let me take this opportunity to welcome everyone to this very important function that is the launching of the Commission of the report and the draft bill. But before we officially start, let me begin by requesting Mrs. Ruth Siele to open with a word of prayer.

**Ruth Sielel:** Okay, lets pray. Our dear heavenly Father, we thank you this wonderful morning. We thank you Father for being with us, thank for bringing all of us upto here. Thank you Father for giving us journey mercies, those who are coming from far and those who are coming from within my Father. As we start this section, we bring ourselves unto thy hands that you may stay with us, be with us until the end of the meeting. We pray all this believing and trusting in Jesus name. Amen.

**David Cheruiyot:** Okay, our programme goes this way. First, is a supposed the participants to register themselves which I think most of us have done that. The second one deals with opening prayers which has been done. The third one is introduction in purpose of the dissemination forum, objectives of the review process and structure of the process. Part five, the process entails reaching to the republic .... And six overview of the draft bill chapter by chapter. And part seven is forum discussion, debate, question and answers and lastly ending prayers.

The other things is, allow me to introduce the committee members who are with us. I would like them just to stand and tell us their names quickly. I would like to request all the committee members who are here. That the Constituency Constitutional Committee members to stand and tell us their names before we start. And later I would request the Commissioner when I hand over the programme to him to introduce his colleagues. Constituency committee members please can you stand. Let me allow the Chairman to introduce them.

**Paul Bii:** Thank you. Commissioner Mosonik, coordinator, the committee members and the other offices. I am Paul Bill Chairman Chepalungu Constituency. Commissioner you are welcome this day of launching the draft Constitution. I want to say that at this juncture, we shall have time on the later part of the programme, we may have to study the proposals of bill. We are here as the members of the 3Cs and I would like to introduce the members. Mr. Andrew Kimeto is a 3C member is a teacher at ... high school. Michael Cheruiyot CCC member representing this region. Caroline Ruto a student at Moi university also a delegate. Thank you.

**David Cheruiyot:** Thank you for that introduction. I am David Cheruiyot district coordinator. I was incharge of the introduction part of this section. The most important purpose of the dissemination of the draft bill and the Commissions report is to encourage members. Let me recognize the presence of the Head Teacher of Sigor High School and may I give him this opportunity to him introduce himself as a participant.

**Head Teacher:** Good afternoon

**David Cheruiyot:** Okay, I think Councilor Meka, I was saying that the most important purpose for the dissemination of the Commissions report and draft bill, is to encourage the members of the public or all Kenyans in general to discuss or debate upon all the Articles in the draft bill. Then come up with their recommendations on whether to adapt the whole draft bill the

way it is, or to have some parts be amended. They shall pass their recommendations to the Commission or they should pass their recommendations before the National Constitutional Conference, which is expected to take place as from 28<sup>th</sup> of this month. So we have to preside the members of the debate among themselves upon all the issues in the draft bill and the dissemination report.

I know for sure most of you had presented their views as and submissions. The Commission has collected their views from the same, same hall we are seated today. And we want the procedures that the members of the public had presented their proposals to the Constitution of Kenya Review Commission to be considered in the draft bill. You will now then check whether the views which you had presented before the Commission had been incorporated in this draft bill or not. But as I told earlier the whole purpose is for you to discuss, debate upon it and make a recommendation so that it be used before the writing of the final Constitution. As concerned, the objectives of the review process I am sure, I have proved that civic education which we have done in all the Constituencies we have been told that most of the other reasons of why reviewed the Constitution is because, when the current Constitution had been considered to have a lot of shortcomings or a lot of weaknesses. So, in short our common objectives for all the Kenyans is that this current Constitution be reviewed so that we have at least a new Constitution that is going to bring democracy to our country. So I will not take long, I will hand over the programme to the Commissioner to take over from this time

**Com. Mosonik:** Students from Sigor High School, the Head teacher, my colleagues, the 3C's members, ladies and gentlemen, how are you? Before I begin, I would like to introduce my colleagues from Constitution of Kenya Review Commission. From my extreme right, is Miss Zipporah Wambua, she is the verbatim recorder of our team. You will see her tampering with the small recorder there from time to time. She is also taking notes. Seating next to me, is Mrs. Mary Kanyiha who is the Programme Assistant and she is assisting me or we are ... together working on this assignment of dissemination of the report.

And myself, I am Commissioner Mosonik Arap Korir. May be for the benefit of the purpose I am very much home boy when I am here. Kwetu ni Nyumbani ni hapa. So I am happy and privileged to be here today.

This is the team that has come from the Commission here today the Commission, or Commissioners otherwise has been split into small groups like this one and they are in different parts of the country today. You know that the Commission comprises of twenty nine Commissioners and as you start as I have said they are in different places today. Today is on 9<sup>th</sup> and let me give you some idea where our people are today. In central province there is a team in Othaya, another one in Gatundu and then Kabete, and in Kipipiri. In Coast we have our colleagues today in Likoni, Wundanyi and Bahari. Eastern Province Gachoka, Igembe, Kangundo, Kaiti, Saku and Laisamis. In North Eastern Province Fafi, Wajir West, Wajir East. In Nyanza, Rarieda, Ndhiwa, North Mugirango - Burabu, Nyaribari Chache, Bonchari. Rift Valley Province Kwanza that is somewhere around Mt. Elgon Samburu East, today we are Chepalungu, Sigor High School, Keiyo South, Kajiado, Molo and Tinderet in Nandi. Western Province Khwisero, Bumula, Sabatia, Butula and in the Nairobi Province Langata and Starehe.

So, what we are doing today here is being done all over the country simultaneously. We started yesterday in a meeting at

Bomet county hall and that was the venue in the Bomet Constituency. We are here at Chepalungu today and that means all the Commissioners in the Commission are going to one venue per Constituency and this is a privileged for you that venue for the launching of the dissemination of the report, is placed in your school. Now, we are aware of the problems that there are in the school system at present. We are looking at it in the draft bill and we wish candidates success in their examination.

**Audience:** *(Clapping)*

**Com. Mosonik:** I would like to say that I am a teacher, I teach at various Universities and I know that there is no short cut to success. I am sure that you students have learnt enough already and forget your teachers because they are doing their work and please concentrate on passing and passing extremely well, okay? Take courage after all every man and woman must carry their cross at the end of the day. Are we set? Finally, the time has come to take you through the process and steps briefly leading to draft report and the draft bill. We are disseminating and you have already been informed two major documents.

One is the draft bill, it is called a bill because it only becomes law when it has been approved by the government. The reason we are saying bill it means that it is still not yet law. So, we have the draft bill to alter the Constitution of the public of Kenya and this is the document that we have here. There is a newspaper pullout and eventually will come out in form of a book something like that. We do have people who have not seen the current Constitution, this is a copy of the current Constitution. So, at some point when the bill is approved it will be something like this. Many of you may not have seen the first Constitution that we had, the independent Constitution. This is how it looks. So hopefully one of this fine days when it is approved by the Kenyan people and through Parliament, this draft bill will become a publication and the publication printed . . . through the government. . . Therefore, we are disseminating the draft bill and also the National Report.

The National Report is a big document in several volumes and one volume is . . . what is in this report to go alongside the draft bill. Actually, the draft bill is an appendix with an icon which is attached at the end to the report. The report contains all the details about who give that view to the Constitution, how it was done and then many other things. I am saying, when it is published it will be in several volumes. But there is a shorter version of the same which was prepared and it looked like this now. It is available in Kiswahili and English and it is not clear. Whether we have those copies or not. But it was also published in the newspapers, slightly before I think about two weeks ago. It is called the short version of the report. Therefore, we are preparing those documents but there very many other documents of the Commission which are available in the District Documentation Centre which are reserved copies for the district coordinator. And among the documents which the Constituency's report.

Now, we went round and that is where I am going to begin to address you. We did civic education and then we came to collect views. The views that were presented in a Constituency are contained in the Constituency Constitutional Forum Report.

This is an interim version it is not a final draft saying Constituency number 114 Chepalungu Constituency, Rift Valley province. This report is one of 210 reports because there are 210 Constituencies in Kenya. What we have said is that you will have access to the Constituencies report check if the ..... to see whether actually it says what you said when you presented your views, is what is reflected in a summary version. But we have other information also that the ...ideally the provision for this and then read the draft bill. That you may find that the views you presented that we were told by the district coordinators are not all presented in the draft. Why could that be the case? You will then need to read the national report and this the short version because this is accurate summary of the national report.

What we did is that, your views may not be the ones incorporated because the views expressed by Kenyans themselves they may have differed from yours and they ended up incorporated. So ideally read your whole report, read the national report which is a summary of all the reports in the country including yours and then compare with draft bill. You should also debate to say may be you have new ideas that you have developed since you presented the views.

At the end of it you instruct the delegates, your representatives, the representatives of the district who would come to the National Constitutional Conference. Instruct them, you go and do the following for us, you are likely to have, how many here? One, can you come here Caroline. That is Miss Caroline Ruto, you have been informed is a university student of the faculty of law at Moi University and she was elected as one of the three representatives to the National Constitutional Conference. They are three from each district. One must be a woman or a lady and she is the one. Another may be a Councilor and in that connection is called Councilor Alexander Chepkwony and the other one what was the name? Mr. Joel Sang. These are the ones that will attend the Kasarani of the Katiba not the KANU one. So that they can come and we expect them to accurately present your views.

Now, we collected views, the whole process was known, we collected views, we were in Chepalungu in two venues, Sigor High School and the DOs office..... since we went into places here... we come here and the Rift Valley was province number seven which the Commission visited. We visited the provinces of Kenya alphabetically, we started like, hivi pata potea who goes first. We ended up saying anyway, the letters from the alphabet are as elaborate or accurate anyway. So we said A, there is no province with letter A, B as well C – Central province so we went to Central first then we went to Coast then were on Eastern, then we come to Nairobi, then we went to Nyanza province, then we come to the Rift Valley and then the last was Western province. All that, we did between early March when we did a pilot survey. We went one of few Constituencies in Nairobi and its environments. But the major collection of views took place between the 17<sup>th</sup> of April and the 8<sup>th</sup> of August. That was the collection of views.

After we collected the views, ended the collected the views, those views were being collated, meaning put together and analysed. The views and related materials, background materials. What was required of us was to put the views that you presented in an analytical framework including a comparative process to man the process that ... education be free. Then

you want to say not always, is that the view of some Kenyans? But has including something like happened anywhere else in the world? So in other words we did not want to called a comparative study of the Constitution.. That task, went parallel to the collection of the views and was intensified at the end of the collection of the views that I have told you was on 8<sup>th</sup> August. It was on the 25<sup>th</sup> August that we as a Commission, went away from Nairobi to Mombasa to finalize that work. And the work of collecting, analyzing and drafting the draft bill was completed on 18<sup>th</sup> of September. It was a fairly intent kind of intellectual and academic debate , I don't need to go into it.

The product of that therefore was the documents that I have shown you, the report of the Commission in the full version and short version. And then secondly, the draft bill which is now published and which is what we want to discuss. I have done the analysis and I now would like to present my colleague Mrs. Mary Kanyiha to go through the draft bill with you, to give us what we call an overview. Thank you.

**Mary Kanyiha:** Thank you Commissioner for the background information. I am happy to notice that you have copies of the draft bill. What I would like you to do is to go through it briefly. I will try to be very brief because you have copies, you will read at home. So, that at least we understand each other and we would go through the whole process of the draft bill. I would like to draw your attention to the centre portion of your first page, where we have a preamble.

A preamble is a very strong statement that states what Kenyans asked for. The Constitution under which we are operating on doesn't have a preamble but Kenyans as we collected views demanded that the current Constitution should have a preamble. So the preamble is there, please take time to read it, it has very strong and very nationalistic statements. Please go through it because again you will find that, that is the exactly what the people of Kenya asked for. That is the preamble.

If you look at chapter one, it details the issues of sovereignty of the people and the supremacy of the Constitution. I am sure even the students have said severally that the Constitution should be supreme, it should be the supreme law. That chapter outlines the supremacy of the Constitution, the sovereignty of the people and the enforcement of the Constitution. And of course below that, we have the laws of Kenya which are under the Constitution.

Chapter two covers The Republic, it is declares the republic of Kenya, it defines the territories, it defines the capital of the republic, the languages to be used, the state and religion, the national symbols and the national oaths and affirmations and the national days. By the way, all the details are in the later pages this is just like an introduction or what we call the index. The details are in the later pages if you can read later.

Chapter three covers the National Goals, Values and Principles. As a republic, Kenya has national goals which are necessary, it has executive values and principles and it also a has advice on specific duties of a citizen. A citizen has a duty to his or her country and all that is contained here

We have chapter four which deals with citizenship. It defines the general principles concerning citizenships. Who is supposed to be a citizen, how do you acquire citizenship. Can you pass citizenship to your child or to your spouse. Can you lose citizenship if you already have it. Is dual citizenship allowed as you aware most of our people go to overseas may be for studies and also to work, are they allowed to be citizens of those countries and also retain Kenyan citizenship? All those are detailed in chapter four under ...and Parliament Act as far this issue is concerned, the residence and the Citizenship Registration Board. You will find all the details pertaining to citizenship under chapter four.

Chapter five outlines the Bill of Rights. You might have noticed at a glance that this is the biggest chapter 'the Bill of Rights.' This one is quite sufficient because, this is where your rights as a citizen and mine as a citizen is outlined. However, I would like to draw special attention especially for the students, on Article number 58 which covers education. When you read the details you will see that the new Constitution will qualify that every child should have access to free and compulsory primary education.

I am sure that will interest the children and parents as well because education as far as the Constitution is concerned, the new one, is a fundamental right for every child. And the proposal is that every child has access to free and compulsory primary education. No child should be running around because the parents either cannot afford school fees or may there is nobody to make sure that the child is in school. Under the new Constitution, all children need be in school at least for primary education. You have to notice that the right of labour relations, sanitation, housing, food and all those rights that the citizens are supposed to enjoy. Please read this particular chapter is very carefully because it affects you in a very individualistic manner.

Chapter six talks about the Representation of the people, through the electoral process. You that the citizens are represented by the representatives that they elect. That is covered by this chapter. The general principles, the elections specifically, the right to vote as a citizen, you are entitled to vote. The qualification for registration as a voter and the voting itself and what happens in a situation like in a Constituency like this one, if the candidate that they have been put forward is unopposed. What is supposed to happen on the ground. You will find all the details under that chapter, that is part I of chapter six.

Under part II we have the Electoral Commission, this is the body that handle on elections. When you read the details you find the requirement of an Electoral Commission, the functions, who should be a Commissioner under that Commission and delimitation of Constituencies. How should Constituencies be created or joined or whatever it is, you will find those details under part II of chapter six.

Under part III of the same chapter you will find political parties. It defines the political parties, the roles of political parties, how political parties will be formed, should be registered, should voters be controlled by what body. All those details are covered under part III, please read it so that you are also informed. Do we need to have political parties elections supervised. All those details are outlined under part III of chapter six.

Chapter seven covers Legislature what is commonly referred to as Parliament, the establishment of Parliament, the role of



Parliament, the approval of appointment by Parliament, what power does Parliament have. And the approval of expenditure by Parliament should Parliament have any say as far as the national budget is concerned. You find the details under part I of chapter seven.

And part II talks about composition of Parliament and qualification of members of Parliament. It details the structure of Parliament, how the Parliament should be structured. The Members of the National Council, the qualifications of the Members of Parliament and disqualification. Representation of women, as a matter of interest this draft bill will put it that, a third of the Member of Parliament should be women. Whether that will pass, we hope it will pass but that remains to be determined the Conference. But it is proposed in this draft Constitution. It also talks about the election of members and the tenure of officer of Members of Parliament. If you elect an MP is he going to stay in Parliament until he dies of old age or you know what are the conditions. All that is detailed in that structure, you will find the details here.

And part III talks about Presiding Officers and other Functionaries. You know apart from the MPs in Parliament, we have other personalities like the Speaker and Deputy Speaker, Clerk of the National Assembly and it details exactly what their roles are in Parliament.

Part IV deals with Legislation and Procedure in Parliament. It details how the MPs are supposed to behave, how they are supposed to represent their burning issues in Parliament. What happens when the President refuses to assent to a bill which has been passed by Parliament. And all those other related to daily today operations of Parliament. You will find that the details under part four of that chapter.

Then part V deals with the Seat and Calendar of Parliament. It states when the Parliament will seat, whether it is at the capital city or elsewhere. It also determines the dissolution, who has the power to say Parliament should stop and also the No Confidence motion. You will find all those details in the last part that is, part VI of chapter seven.

Chapter eight deals with the Executive. That is the office which is commonly referred to as the President. It talks about the principles of the Executive authority in fact the role the President is expected to do under this Constitution. The structure of the National Executive.

Part II as you see it talks about the President and Vice President. And it details the procedure at the Presidential election, the protection of the President in respect of legal proceedings. All those details that ... to the President and Vice President are covered under part II of that chapter eight.

If you look at part III you will notice again introduction, which is the office of the Prime Minister. This is was as a result of Kenyan requesting over and over again that the office of Prime Minister should be introduced. It is there the functions are

defined, what exactly he is supposed to do, how he is supposed to be elected or whatever it is. Salaries and allowances of the Prime Minister. What happens for some reason that you find the country doesn't have a Prime Minister or the Vice President or the Deputy Prime Minister. All those situations are covered under that chapter, part III of chapter eight.

Chapter nine talks about Judicial and Legal System. You read that one for yourself and ... you will see what the Kenyans want as far as the Judicial System is concerned. You are aware of the battle between the Commission and the judges, so we are not very keen into going to details in discussing the Judiciary but you can read it since it is already here. It was availed to us, read what the Kenyans want about the Judiciary which appoints the judges. What court we should have in the Judicial system and what they should have, what they should do, how do you appoint judges. How they should retire who should serve in Salaries and retirement benefits. All those details are provided there.

Part II of that chapter talks about the Legal system. That covers the Attorney General, the Director of Public Prosecution, the Public Defender and the Prerogative of mercy. That is the authority to forgive somebody who has been sentenced to death. All those details are here.

And finally part III the Legal Profession, which covers the profession of law. This is the area that deals with the lawyers as their profession and their conduct.

Chapter ten deals with the devolution of powers, that is in simple words bringing the government as it were to the local people. This was an outcry from the countryside, people kept saying that the government is very far from us, we would like the government brought closer to the people. So, that chapter talks about the principles and objectives of devolution. What does the Constitution pose to achieve by creating the levels appealed to. The levels of government that is villager government, the locational government, the district government (end of side A).. at locational level people have got a say. They are in touch with the authority or what governs them. So that is the devolution of powers.

Part III of that, talks about the powers of the devolved government and intergovernmental relations. It details the powers of district government, the functions of provincial government, urban government, the staffing, financial arrangement of these various levels of the government. The co-operation between the district and other levels, Legislative provisions for devolution and interpretation. Under this draft bill, the district is the focus of the province. So everything will actually be focused at the district level and then the powers will be devolved in the lower levels so that the government and the powers are in touch with people.

Chapter eleven deals with land and property. We have land policy framework it is just a framework because as you are aware there are very many issues that touch on land. So the bill is giving a framework under which land policies can be handled, such as ownership, the classification of land, the tenure, the protection of property in land, the establishment of National Land

Commission. When you go through the chapter you will read, you will find all the issues that pertain to land and property.

Chapter twelve deals with the environment and natural resources. As you are aware, there is an outcry about the deterioration of our environment, this chapter deals with the issues on how the citizens can preserve the environment. There is creation of National Environment Management Commission and the enforcement of environmental rights and environmental Legislation. Please read that chapter on environment, so that you are informed and you are aware of what is happening and how the draft bill has addressed the issue of environment.

Chapter thirteen deals with Public Finance and Revenue Management. Public finance is all the money that the government from you and me and from all these people who come together in form of taxes or any other form of tax you can think of, that is what makes the public finance. And that chapter, deals with the manner in which the government use should and must utilize the public funds that are collected into their coffers.

We have the imposition of tax. What taxes should be imposed on people and very many other items which I don't intend to go through. Please read for yourselves. The power of government to borrow or lend. Should the government borrow arbitrarily at will, public debt, Central Bank of Kenya, the functions of Central Bank and Economic and Social Councils. Please read so that you are aware when issues are put may be on newspaper about public finance, at least you have background information from the draft bill.

Chapter fourteen talks about the Public Service as Public Administration. It covers values and principles in administration generally, the Public Service Commission that is the body that is in charge with the authority to hire public servants. The establishment of offices and appointment of public officers and the protection of public officers. All those details are here under chapter fourteen

Part II of that chapter is the Kenya Police Service, the principles and objectives. Establishment of the Kenya Police Service as it will be called under the new Constitution. The appointment of a Commissioner of the Kenya Police Service. It details what qualifications should the Commissioner of Police have. It all detailed here. In fact three of the same chapter talks about the correctional services. These are what we normally refer to as jails. The Commissioners, when they discussed the views of the people, realized that the jails may be not be serving any useful purpose because you put somebody there and because he stole a chicken and comes out a hardened criminal. That is why we are even calling them correctional centres, the concept is when somebody goes in there he should come out a better person having been reformed. That is the concept behind the new name of correctional services, the jails should offer correctional services.

Chapter fifteen talks about the Defense and National Security, those are the Armed forces. You need to go through that.

Chapter sixteen talks about Leadership and Integrity, this is a bright introduction which is trying to study or to detail how public officers should behave while in office. It is a very interesting chapter, please read it so that when you see a public officer you know exactly as a citizen how he is supposed to deliver service to you

Chapter seventeen talks about Constitutional Commission. These are the Commissions that are established to under the Constitution. What purposes they serve, objects and independence of Commissions, principles applicable to all Commission and composition. The funds, how should they be funded, are they supposed to make reports annually or whatever. The Special Constitutional Commission like the Commission on Human Rights, Ethics and Integrity Commission all I have mentioned before. The Salaries and Remuneration Commission, Teachers Service Commission should be a Commission under the Constitution and the Constitution Commission is proposed to be a Commission under the Constitution and other Constitutional offices. Please read that also, so that you are informed.

Chapter eighteen talks about the amendment of the Constitution. Commissioner went into details about how this things came about, where we started and where we are at this point. You must agree with me that it has been a quite a task going all over the country, collecting views, putting the views together, coming back to you people to tell you the tell you this report. So that what we have agreed. You are free debate. Now, this chapter deals with how often or how frequently do the Kenyans want this Constitution amended. That chapter deals with the Constitutional amendments, what portions of the Constitution should be amended by Parliament on its own, and the certificate of compliance. Having gone through the Constitution objectives, I think it is only always fair for you that you read how that Constitution should be amended.

Chapter nineteen covers the Interpretation, it gives details on how to read this draft bill. Some areas need a bit of explaining, until you find that under interpretation.

And chapter twenty, deals with Transitional and Consequential Provision what happens it covers that transition period, details what happens if we have to move from the current Constitution to a new Constitution. It is a very interesting chapter, please read it because it is only then, that we shall our rights and move on. Some of the things will take a bit of time to change, we understand but read for yourself you see how the new Constitution is proposed to integrate the situation. Please take time you will add the ...you take time... please read this one for yourself. If come across some areas which are not adequately covered that is why we have come here because this is just a draft. If you feel that your views are not adequately covered, you are free to give them to us later on when we get to the questions session or you can give them to your district representative Caroline is here with you. So, that when they go to the National Conference they will go with your views, because as I said and the Commissioner also said this is just a draft. It will be debated further and further on until the final draft is adopted. So you can feel free you have thirty days for people of get this draft, read it, discuss it, give their views where they disagreed, please let us know where you are you disagreed. Please let us know where you agreed or whether no so that we move together and finally I this will a people driven Constitution. Thank you.

**Com. Mosonik:** Thank you very much. There were people who were not here when I introduced myself I said I am Mosonik. There are two members from Koilonget Band Mr. Kipchamba Arap Tapotuk the band leader unaona huyu mzee huyu. And on the other side is a prominent member of the band Mr. Kipkwoburiot Arap Riro.

**Audience:** Clapping

**Com. Mosonik:** Now, those ones you know are musicians (*Kipsigis dialect*) in 1958. That was around the time some of us were being born including me. Kipkwoburiot Arap Riro started playing music in 1945. And the two of them, the reason I introduced them officially is that they have been very active participants in the Constitution Review Process. The first thing they did was civic education through music. They produced two cassettes volume one and volume two on the subject called Katiba ya Kenya mwaka wa elfu mbili na mbili. Volume one is in the vehicle there, this is volume two. You can see their pictures with the other members of the band.

Secondly, they have been very active in the Constituencies forums in Litein and Chepalungu like now. I don't want to say there is a day one or two of your started objectives and .... but one of the things that has turned around is the question the history of Constitution making in Kenya. Number one here is called the Constitutional making in Kenya. .. and it goes back to 1960 Lancaster House. Saying that the Constitution was made in Lancaster and the Constitution that was made in Lancaster is the one that is the one that I have shown here. And that Constitution had procedures from amendment for alteration or change. It had what was called entrenched clauses and then other clauses. And the same clauses were supposed to be more difficult to change than the other clause. Then you know the Constitution at this provision is Kenya Constitution once you see a picture of education ceremony on 12<sup>th</sup> December 1958 when our first President was signing "Jomo Kenyatta" was given the instruments of power one of them was this Constitution.

But over the last thirty eight years or so that Constitution was amended about thirty eight years it was amended about thirty eight times an average of one amendment per year. So that a Constitution that was almost three hundred pages – two ninety-eight pages was changed so that only ninety eight pages were left through amendment. The amendments were made Parliament alone, by MPs. So, in this new Constitution my colleague has told you that chapter eighteen deals with the amendment of the Constitution. Part of the reason the review took place was people were saying the Independence Constitution was amendment without reference to us, as the people of Kenya. It was done only by the MPs but the new Constitution that must be a people driven process. The procedure therefore for amending what the people has got to be specified. So that people will not change it so easily. Like the American Constitution was made finally in 1787 now we are in the year 2002 this is almost 218 years ago it has gone through 13 amendments only during that time. Ours is thirty years, but has been changed thirty times, you can say ours was easily changed because the procedures for amending were not clear. Please examine and tell us whether you agree on those changes and listen to this Katiba the Kenyans put out for (inaudible). Now, my colleague has talked about chapter

twenty, Transitional and Consequential provision.

Let us open together at the bottom of page three, the last word on the page is schedules. And the schedules are contained at the back at the very end of the document - please open page thirty seven, first schedule. My colleague has told you that the Constitution in one of chapters, in chapter two talked about the republic, declaration of the republic, and territories of the republic. In this present Constitution, the one we have there is no mention of the boundaries of Kenya. It is not here. You will know that we intended to get a programme with Somali the one we signed for Eastern province or some parts of Kenya. There has been problems when Idi Amin was there he said upto Naivasha is Uganda they been intending to make a Constituency. More recently there has been some argument about the boundary with Uganda, we had heard some of our fishermen has been disturbed by Ugandan policemen at Lake Victoria, when they are fishing they are told they are on Ugandan territory. So, now we have defined the districts of the republic of Kenya talked about;

1. Kenya – Uganda, what are the boundaries?
2. We have talked about the boundary between and Kenya and Sudan
3. Kenya and Ethiopia
4. Kenya and Somalia

On page thirty nine then there is the inclusion of water of tenants and the exclusive economic zone boundaries. Which part of the Indian ocean belongs to Kenya exclusively. Which are the territorial waters and then the Kenyan – Tanzania waters, for boundaries. Those three are there because (inaudible) they are signed very precise so that we know where our boundaries are including incidentally the air space above water territories and if you want to know the geography of Kenya then look at that.

Page forty one the second schedule has got the provinces of Kenya and districts of Kenya. Eight provinces and then there are district under each province. The Rift Valley were we come from they are eighteen, right now the total number of district is seventy. The names and the boundaries of the district that was joining in the Constitution, when you look at this Constitution talks about what was then called Kericho district. And I think it started somewhere near Gilgil inaendelea namna hii, namna hii along the Mara river and so on. The boundaries of the districts are not defined in the new Constitution but the districts are registered. Those are the official ones. This list for the district comes from the Office of the President together incidentally with the information about the international boundaries for Kenyans.

Then on page forty two we have the National symbols. On that schedule we have the National Flag, the National Anthem, the Coat of Arms and the Public Seal of Kenya. When we were collecting views people did not talk much about those things. They seem to be happy with the national language, they are happy with National flag the way it is and the Coat of Arms, so you already know that they are determined by Act of Parliament as apposed to the draft bill Constitution.

Then schedule number four, the oaths or affirmations of office. When the President is sworn when your Vice President and

your Prime Minister have to take vows, Constitutional offices including Speaker, the Deputy Speaker on page 44.

On page 44 also, there is schedule number five which is about Leadership and Integrity. When leaders now become leaders, they will have to follow this code of conduct and I do not want to go to the details you will read as it is. It says for example we have not earned more than two salaries in the public service when you are a public official. Two says you must declare your assets and liabilities then you get involved in as an MP, or Prime Minister, or President. You must tell us how much money and where they got it. And then, they have to report every year and say that my money has now increased a bit and then they tell us where that extra money has come from. This is an attempt to abolish or to discourage or to not make it possible for corruption to take place. There are few other things that are said there in that leadership code of conduct which you need to read.

Now, on page 45 there are schedules to the extreme right talks about actions to be taken by Parliament in order to bring this Constitution into force and when that particular happens action taken. You will see a lot of them saying no time limit when it says no time limit it means it must be done within three years after which Constitution comes into force. Which leads to schedule number eight?

Lets look at schedule number eight, for the following. You have been following that the government will become close, there will be a village government at the sub-location and locational government, then there will be a district government and there will some provincial stands at independent there was some views for devolution of may be power, those that he produced and it was the time he gave Constitution. And that power was supposed to come to the regions which is the name that the provinces were given to them. Province was the name under the colonial rule at independent we were saying region and then we have reverted to using provinces. Power was devolved to the provinces but forceful to local government that was behind the Constitution.

Now, here as you have been informed power has been focused on the district and may be as you want it you can debate that in this schedule number seven there are lists, list number one are the duties and powers of the national government. Then, lists number two are the powers and duties of the district government and list number three which we called concurrent list, lists revenue and powers to be shared between the national government and the district government. Please study and see whether you are satisfied because you will be involved with the district so there will be chance for you if you are in Bomet district. Are you satisfied with those powers or not. Is there going out or there is *(inaudible)*? And some as we know somebody can give you the power to go out, you understand? I am saying independent as a student but the timing on its growth may ... so you can roam around the school because they have been given the powers. In other words I am saying when you go to the district will they really ... if we are in Bomet are we satisfied that when you have that powers that you actually have the power or not, that is what I mean.

Schedule number eight is the one I want to talk about very briefly, it is called Transitional and Consequential Provisions. How



do we put rules on the present Constitution, we have proposed the proposals saying; rights, duties and obligations of the republic and saying the rate at which the obligations of the republic of Kenya has been know now will continue that is basically international. We will not take the international law in implementing the new Constitution. It talks about existing law, the laws of Kenya. We have defined in one of the chapters the laws of Kenyans. What are the laws of Kenyans? The Acts of Parliament, subsidiary Legislation, there is what is called common law, there is what we call Hindu law, customary law and things like land law.

Now, I don't think we will continue unless there are inconsistent to new Constitution in which case, the laws will be amended to conform to the new Constitution, because the Constitution is the supreme law out which all the other are derived and from which they eminent.

Then it talks about elections and that is page 48. I find this one very interesting saying on the right hand corner of the report – a person, who before the entry into force of this Constitution has held office for two or more terms as President, whoever has been President before this Constitution for twice or more is not illegible to. He is not allowed to stand for election or serve as President, Vice President or Prime Minister, or be elected to serve as Deputy Prime Minister, Minister, Deputy Minister or even Member of Parliament. Do you understand there? So, I want you to highlight this before ...

The second one says subject to clause (4), any person who would have otherwise have been qualified to stand for election, but except for the provisions of this Constitution is eligible to stand as a candidate in the first election held under this new Constitution. In other words, there are qualifications to be a President now which are different from what has been there before.

One of them is that a President must be between 35 and 70 years.

Another one is that a President must be a university graduate, okay? And there are other things. But we are saying this particular time this rules shall not apply. If there is somebody whom would otherwise have been voted before this Constitution comes may proceed. If their masomo ni kidogo wanaweza kuendelea. And if there have never reached the university they can still stand but next time they will not.

The Deputy Executive is mentioned that the however becomes a leader in the an executive leader the President, Vice President, Prime Minister, Deputy Prime Ministers the cabinet in general, must adhere to the Leadership and Integrity Code to lead citizens of the coming into force this Constitution. Which means, they must declare their wealth, do all those things, including the wealth of their relatives, their wives, their sons and so on. So that we know whether they have acquired this wealth honestly or not.

Now, Provincial Administration bottom of page 46, it says on the coming into force of this Constitution, the system of administration comprises Sub-chief, Chiefs, DOs, DCs and PCs, formally known as the Provincial Administration shall stand



dissolved and especially all public officers in the Provincial Administration shall report to the Public Service Commission for re-deployment. The teachers know very well about what re-deployment is “mtafute vibarua vingine” so we are saying from Assistant Chiefs mpaka DC hakuna kazi.

Under law: the important of the Judiciary which has been explained by my colleague. We can talk about the Judiciary now... this is why you are wearing the yellow ribbon in solidarity with us. But let look at middle of page 47 it says death penalty and other outlawed penalties. Every sentence of death passed by any court before the coming into force of this new Constitution and which is no longer the subject of an appeal shall be computed to life imprisonment for that matter anybody shall not be imposed death law but shall be sentenced to death and ... Automatically there are family members who died in prison, there are serving the death penalty. But there is the prerogative of mercy which was mentioned by my colleague, re-frees, remission and free .. so that even life sentence can be reduced following the normal procedures. And therefore every sentence of corporal punishment passed before the coming of this Constitution is remitted and shall not be carried out. So hiyo ya kusema mtu atachapwa viboko ishirini na mbili is out, and incidentally we have also said there shall be no canning under the bill of rights I think my colleague would have mentioned to in one of the rights related to children.

On page 7, on the left column if you read and go down to 65 it says “every child has a right to,” and then go down to (g) “to be free of corporal punishment or other forms of punishment or cruel and ... in schools and other institutions if is possible for the care of the children.” So if you have been using cane Head teacher please if this bill passes through the National Constitutional Conference, there can not be canning students anymore.

**Audience:** *Clapping.*

**Com. Mosonik:** Finally, page 47 again to the extreme right, it says past human rights abuses. It says the Commission on Human Rights and Administrative Justice shall, within six months of the coming into force of this Constitution, on the petition of any person or on its own motion. What is that Commission? It is one of the Constitutional Commissions to be created.

- (a) Investigate all forms of human rights abuses by any person or group before the coming into operation of this Constitution. In other words, if there is somebody who violated the human rights ...before this Constitution within six months of the coming into force of this Constitution one person can go to court a person or a group and say (1) lets us investigate all forms of human rights abuses.
- (b) Investigate the causes of civil strife, including massacres, massacres in kuua watu, ethnic or tribal clashes and identify those responsible.
- (c) Make appropriate recommendations regarding

1. the prosecution of those responsible
2. the award of compensation to victims
3. reconciliation and
4. reparation is another way of saying compensation.

So within six months of the coming into force of this Constitution, anybody who may have participated in human right abuses will have to think about.

And then the last thing about Land Ownership. Please read the chapter on land because it is an important issue for people in the Rift Valley, in Bomet and so on. The people in Mathare valley in Nairobi may not even care about land not because they have land. But those people who come from an area where there is land and you may want land?

I have finished except to do one other thing. To say how then does this new Constitution differ from the previous ones in summary? Because a lot of people have not read the old Constitution, many people have not even seen the old Constitution. It is this one, okay? The one of 1963 was this one, and the now the new one will be written so that it look like these two. So what is the difference then.

1. The question is highlight element of conceptual, graphical and the practical thing. The physical thing, the volume, the number of pages it has not been written but most likely the pages will not be the same. This one was 298 pages, it was reduced to 98 and we don't know how big this one will be. Just look at think in terms of physical appearance.
2. It is the arrangement this time, the arrangement the way it is arranged in chapter. So what the arrangement between the old one and the present one. One of the things is that the discussion regarding the arrangement in Parliament in chapters comes before the one Executive. In this one,... Chapter one, chapter two, taxation and then chapter three Parliament. This is other one is the other way round.
3. In this one we have a preamble an introduction which reads "we the people of Kenya ...". The other one starts by saying "Kenya is a sovereign republic" it does not state the... so this thing about the people because it is supposed to be the peoples Constitution. And you realize that first chapter, chapter one says the sovereign of the people, sovereignty of the people.
4. I will go through the other very briefly. Citizenship was mentioned to you as it was made for citizenship not to discriminate on ground of race. Like now, when a Kenyan man goes oversees or a student and you meet a foreigner, woman and they marry then automatically the child from the two becomes a Kenya. And the wife also becomes a Kenya after staying for three or two years. But when a Kenyan girl or a student they go abroad and they marry

somebody their child belongs there and the husband cannot claim Kenyan citizen. Now, it is an attempt to equalize, so that men, women, girls are the same in respect to citizenship.

5. Then there is a lot more on the of Bill rights those rights that were mentioned. Right to education, to housing to food, and so on and so forth, sanitation and also it says it is the duty of the government to provide those rights. Unless the government says we have no money then the people in the government will prove not to say that there is no money. And that is the duty of the government when they will get money so that our rights can be provided for.
6. Then Parliament will have two Houses, now there is only one House. At independence there were two houses there was both the Senate Upper House and the House of Representative Lower House. Now, they are two the Upper one is called the National Council and the Lower one the National Assembly.
7. Then, there is an election there is a new system proposed. Up to now we have the .... If we have five candidates the one with the highest number of votes, that is ... he can.... Now we are proising yet another system where you have support for a MP direct votes and we also have another one for a party or for need proportional to the election system. Read that one.
8. Then, there are the introduction of independent candidate, candidates who have no work, not candidate of the party of the Independent candidate. But also when they do that they get a certain percentage they will be entitled to money from the treasury, a certain amount of money for certain purposes.
9. The Parliament is stronger that it was, let me leave it that.
10. Also, even then on this, the MPs shall not decide on their own salaries anymore. There will be something called the Salaries and Remuneration Commission to decide on the salaries of the Kenyans.
11. Also an MP can be recalled, you know now when you elect an MP to the Parliament then ana-disappear halafu according to the Constitution he continues, but there is a provision on how can rudisha wao nyumbani.
12. Then, there is a different clause which we mentioned in .....
13. About the Presidential elections, there is a slight change in the system. Right now it has been said the 25% in five provinces or more and then the leading candidate. Now the proposal you have is 50% of the total votes passed. (*Inaudible*) it is difficult for anybody to get 25% in five provinces.... That is the President who is the highest if the others may not managed, we shall have a rub off between number one and two.

14. Now, the same President here has less powers than before, appointments he is going to make but approved by the Parliament and there are so many things like that you read for yourselves.
15. Then, there is Prime Minister, the person of general hospitality under the first Constitution, comes from the Parliamentary system come from the UK then was abolished when Jomo Kenyatta become the President...
16. The Ministers then, no MPs becomes an Minister. I don't know whether your are happy with that a because a lot of people have been campaigning to be MPs ndio alete bendera nyumbani, si ni kweli? Lakini here we have said the Ministers will be professionals from outside, just, like in America where the Members of state are not members of the congress, they not Senators they are professionals, congressmen and congresswomen are professional, I mean educational qualification. But others are professional from outside that is what we intend to have also.
17. The President can be impeached while in office and the one cannot
18. The Prime Minister can remove him from office through a vote of no confidence.
19. There will be devolved government, we said this the focus we are introducing and it is intended to going towards province. Can you debate on that proposal.
20. The Provincial Administration we have said it should be abolished.
21. There will be a new court, up to now it is the High Court that what we have, there will be something called the Supreme Court which is going to be the Constitutional court.
22. Then there will be a new process to the appointment of judges
23. And then Kadhi's court will be given more powers.
24. Now, the Administrative police, we are still collecting as we discuss this draft bill. We propose that they join the regular police. Hoping that the regular policemen will be balanced.
25. Commissioner of Police must be meet his qualification must be a university graduate, then we have the tenure of office, have the security of tenure and so on and forth
26. The armed forces; Constitution does not include all the Armed forces and so on, there is something about that in this new Constitution. Those are some of the differences which are in the new Constitution. Thank you.

**Mary Kanyiha:** Thank you Commissioner for highlighting those fundamental differences between the current and the proposed Constitution. Now, we shall go into another session of the programme and that is discussion, the purpose why we are here because we want the feedback from you. We shall go this session where you have the speaker, if you have any comment whether you agreed with the draft or whether you did not agree on a particular clause or chapter or whatever you have. Please feel free, let us know so that, that feedback is incorporated in the draft. As the Commissioner has stated this is just in the draft form. So, your feedback is very important that is what we actually for. So, we shall give you a chance, don't take too long so that we have a many people as possible, even the students you have gone through the draft please feel free to give us your feedback. Before we get to that point, I would like to give this opportunity to the Head teacher. Thank you very much for welcoming us into your school. Please take this opportunity to introduce may be your members of staff and say whatever else you want to say.

**Joel Lang'at:** Thank you very much the Commissioner and the people who have come here today so that contribute to this very important review process. I am Joel Lang'at, Head teacher, Sigor High School. We have our students here who are in form four now(inaudible) I want to introduce our teachers who have come. Over there his is Jackson Mutai the Deputy teacher

**Jackson Mutai:** Thank you very much Head Master the Commissioners you are most welcome at Sigor High School and I hope we will contribute so that we have students included in the draft. (inaudible)

**Joel Lang'at:** After you say your names then you go and sit down.

**John Kirui:** Thank you so much the Commissioner, I think you are most welcome in this institution, I think the other time when you came around, and you were actually welcomed in our school. I think at the moment you have no problem, (inaudible) so thank you so much.

**Mulanda:** I am very happy that the Commission is here today to listen to our views. I think it is a great day. Thank you.

**Philip Too:** I am Too Philip.

**Joel Lang'at:** This is our music teacher and this is one of the teachers who have stayed here for along time, he just stays around. Thank you.

**John Ng'etich:** The Commissioners, it is a privilege for using our school here and we are privileged to come to amend this very important document that we are dealing with of the draft bill. I don't know why some teachers are not present...

**Samuel Kirui:** Thank you very much and welcome to our school. I am Samuel Kirui.

*(inaudible)*

**David Mosonik:** Let me thank the Commissioner and his colleague. You are very welcome to our school. My name is David Mosonik.

**Paul Kirui:** Thank you so much. *(inaudible)* My names are Mr. Paul Kirui.

**Joel Lang'at:** Thank you very much Bwana Paul Kirui. May I also recognize the teachers from the neighbouring schools around here? If you are teacher and you are here. *(Inaudible)* the students are also here they have come from the school. Let me see that from them. Okay, feel free you are welcome to our school. I would like to welcome the parents also who have come from very far I can see a mzee an old friend of mine here from ... he has come from very far he has also a student here. I also want to say that we have done very well welcome you. I also want to welcome my friend here *(inaudible)*.

**Audience:** Clapping

**Joel Lang'at:** I have this which has few amendments here and there...students those who for a very long time they are *(inaudible)* on deciding on the fate of the union of the people of Kenya, but we are here for the purpose of discussing the draft bill. As the Commissioner has said that those who do not agree can come forward here and give interviews. We want a Constitution that will lead Kenyans and our students to prosperity. I don't want to take a lot of time the day is short. Those are my remarks. Thank you very much.

**Mary Kanyiha:** Thank you very much for that very warm welcome. We are now ready to be receive your views, your comments or anything else that you want to say relating to this draft. Please feel free, we request that you come in front so that we are able to tape in your comments on the tape. Thank you.

**Com. Mosonik:** May be there is something else we did not say, in your school we have launched the draft to alter the Constitution today, and this is a big day to have the Constitution to be officially launched for debate and officially published. This is the biggest day for dissemination to the public. It was initially intended to be a period of sixty days, it was reduced to thirty days. So you have around thirty days to look at this draft and the report to discuss, and then to reach some consensus. You have also to sent the delegates to the National Constitutional Conference which we are proposing to start on the 28<sup>th</sup> of this month. We estimate it will take about a month but that is totally speculation. The Ugandan National Conference took six months so it could be any time. But the sooner, the better because the people of Kenya want a new Constitution.

We are now in the official period of discussing, you do not want to discuss it now you feel there is time, please study it you can debate a few get a few points here and there which we can also take back to the Commission. Because when we go to the Conference as a Commission we would have a privilege to read the document and we could make alternative proposal. For those who cannot do it now, during the next one month we shall hear what you people are saying. And also as we taking about lobbying may be can to the Conference and say in that regard let us look at page 10 on this draft bill we have proposed to change our proposals and not through .... We will be listening at the comments if there is will be any. But the time discussion is between now and the day of the Conference. So that your delegates, your representative will take your views and agree.

Now, the National Constitutional Conference will consist of six hundred and twenty eight delegates. The National Constitutional Conference is that body that will approve this Constitution, then it goes to Parliament to be enacted. The National Constitutional Conference that will be started by 28<sup>th</sup> hopefully. Representatives of member, there will be all the MPs and the MPs are 223 minus one because the Attorney General is a member of the Commission. Secondly, there will be three representatives of each district. You have seen Caroline here and there are other two. We have 70 the number of district, so  $3 \times 70 = 210$  district representatives. That means there will be one representative in each political party. The political parties that were registered as of October 2000, because political parties as you know are formed today and disappear tomorrow, let us take an example that they we 42 in October 2000 now they are 41 because of the merger KANU and NDP. So each of the 41 political parties should have one delegate.

Then there will be representatives of what we call civic society, I think there will be one representative of religious organization. I think we had one place for a traditional leader, women organization, professional organization and non government organization and special groups and so on. Then the Commissioner will be there and they are 29 but they will be there as x-official, they will not have the right to vote. Because it is the draft that they have done that is been debated, they cannot go there and vote because they shall vote our draft part. Because we do not to say - because if we are the ones doing the launching we have..... therefore it was in 1999 (*inaudible*)

Now, they are supposed to approve by consensus. If there is no consensus then, there is voting on non Constitutional issues, it is a simple majority, that is no Constitution issue For example, we have out a chapter on fundamental rights either chapter one or chapter eight. Where does the women and the issue gender come. Read from number one going through number ten. And so on, that is not Constitution simple majority says 301 out of 600. But on Constitutional issues, lets say may we have district government, I propose provincial administration. So, on such issues we have two-thirds of 600 hundred, that is 400 out of 600. So, if for your local Constituency like a particular point very much but then you want the rest of the Kenyans in the next one month to agree with, okay? So that they agree by consensus. Then in consensus, make sure you can participate 400. Already you have three representatives but also we have Bomet..... so we make sure that all the three representatives from the district make one decision, the MPs, that is one position those are four votes but you have to 400 votes, okay. So you have to multiply your representative by a hundred. That is the purpose of having the discussion to agree and then you lobby, and then

you give the delegates. As a leader, you must make your presentation very good in lobbying because among the civil society and the others, the MPs will be there, you know how exposed they are. (Inaudible) then the people from the civil society like the professor, law – you know the civil society, lets go on. So, discussing, agreeing, lobbying and adopting the draft.

**Paul Bill:** My name is Paul Bill. I will talk on Provincial Administration. Kenyans have come together in the same spirit that is my general comment. That is to say that generally leaders go and forget. This is also a prayer that after going through the initial state of forming the Commission, the stage of civic education, we are now giving the second, may be view of the issues. We are happy that these have come out. We think that God will allow Kenyans to participate because they live in Kenya. This is the people living in Kenya. If you never traveled you never added to this what you collected from Sigok, Chepalungu Constituency including all the others in Kenya. And that is why we have said. The Councilors, it is a mark and I am also of the view that I think most Kenyans have also the same experience. It is an experience we are going through as Bomet, being a law student. Because if you know how to interchange status you will cast yourself as a politician before they come here. Even though they are already ahead, they may not have to comment on this. So we hope we will be there, you will go there and stand for those thirty days. Lobby don't go to the politician first, go to the people like you we are now three representatives, so that what we say throughout that conference.

We also hope that this audience here Commissioner, you have seen the importance of the teachers in this remark. Teachers are responsible to the student and to the public at large. So that in doing so they are even giving a free service to their fellow people. This people are very important. I hope you will also note seriously and the areas which deals to the issues in the education sector. So that in future we will not like teachers going on strike all the time, because it is a very big psychological problem to everyone in this republic. We would like the system to cooperate very nicely, in a very soft way. So in the same arena here I would like to thank teachers who have presented themselves. Not that you are in school, I know you on strike but you have come here because you are feeling it for the nation. And that is what all of us we are being here.

The students, you have seen what has been happening. This thing is historical, the old Constitution never talked about children, and this one is talking about children. I hope that is a a policy selling about women, at the end of it, it is talking about everybody, including the Commission. So, Com. Mosonik I will request the rest of the committee, they do not operate. the way we want. You know somewhere on the way during that time of free education, ...used to disappear mysterious because of ..... but the committee had to be worked, they worked despite the fact that there was no money. And we shall also work this time, to ensure that we effect properly to the public, so that they will understand about the new Constitution which actually should be protected very much. I think two (inaudible. the fact that, the old Constitution was not made popularly by the Kenyans.

Secondly, management of public affairs in our country was demanding that, we should be handled in a different way, not the authoritarian style. Because at the end of the day, we are citizens of this country, we are brothers and sisters and there is no way why we should alert one another. I think why the public was talking about the Provincial Administration was to follow the



other arrogance otherwise they are not bad generally. But it is their arrogance they are used and they have been doing, that is why that thing was erased. And you were here, ....we will end up being here. Most of those you are victim of that. And it is not only here most of the people who were suggesting one reason is arrogance. Wewe unakuta chief ama unakuta labda DC, badala ya kuleta mambo in an approachable ways bado anatomia yale maneno ya kifua, power all the time. You know it becomes also Kitua in behaviour. So that is why I think Kenyans were willing to change, so otherwise unless they revise the way they handle public matters, I don't think there is reason why they should stay.

People who are going for powers or authorities where they are elected. So that at the end of it, approach will be sought. They will not be enough because they know that. It will become rough on them they will insult you the following day. Unless, as we discuss mwalimu about that section, let us also see a relevant way. If we want to retain provincial administration, let us see a way of making a way it can be a bit improved to the expectations of the public. You see you have got – unajua ukionekana na chief wewe ni mwalimu anaenda low kidogo lakini akoina yule raia anatembea namna hiyo mkulima he becomes rough. So, that is where kuna shida. But we want to change for the better of all of us.

We were not partisans, we would like everybody to be free in this planet of Kenya. So that you enjoy the time God has given us without disturbing your fellow colleague and without being disturbed always. We shall also appoint people like ... we can help, but you see we have dealt with even those matters in a bit softer way. Like saying, there should be no death penalty, kama uliua mwingine tukisema tuue tena siku moja Mungu atatuuliza sisi wote, aliuu lakini hata nyinyi mliuua. Kwa hivyo we are refusing softly. I think you did a very good job Com. Mosonik. This is what has come from across the country, I hope also the state is also getting indications, because I can see as indicators to the governors that the temperature across the board of Kenya is ... that. So we resume to politics, you know this is politics because it is not a protection, is as pointed as those. Kwa sababu mtu anaoka kama amekuwa Mheshimiwa kazi yake ni kupitisha tu vitu, na anaangalia masilahi yake kwanza, chapa itaingia.

That is also another reason, Kenyan leaders have turned from original leadership. The way we knew leadership, zamani ilikuwa ni kulala ukifikiria wananchi wanakuwa namna gani? Je ukipate pande hii umejaa, tutakufanya namna gani? Tutaeleza wananchi nini? Wabadilisha. That is why you see the general public are frustrated, Pombe inaendelea kunyuewa, all the time na watu wanaanza kuwa rude so much. It is because politicians have changed, wanaenda huko kutafuta nini? Pesa. At the expense of the general populace na hiyo sio mzuri. So these things here, I think we were proposing some checks and balances to control them. Because at the end of the day we shall be electing them when they not professionals. They are not trained for politics. We only have a few political science people there. Those few, ndiyo we want, kwa sababu wanajua kuchanganya hayo maneno tu na ku-confuse wewe kabisa mpaka unapotea. So we want to change them to be answerable to the people. So that the country can run together as a whole unit. Thank you very much, we hope this documents will go through in those thirty days.

**Henry Kimtai:** My name is Henry Arap Chemutanyi. Thank you very much Commissioners for coming here to us once again to tell us about the new terms of the Constitution. Generally, the draft Constitution is better, but what I feel should be considered is the scrapping of the Provincial Administration. We know very well that in the reserves, in the villages, Chiefs and Assistant Chiefs are custodians of the law. And if the Provincial Administration is scrapped, many criminals will take advantage of that because they will fear nobody. So, I feel also that, that should be reconsidered again *(inaudible)* how they can handle the people in the villages. Because we cannot deal with thieves, without Chiefs and Assistant Chiefs. How can we live? It is very difficult. So ... .. because they fear. At the moment the fear is *hii maisha yetu*. So I think that is all what I have Commissioner. But again, I wish to request the Commissioner, if it is possible to translate this new Constitution to different language for all to understand well. So, if it can be written in so many languages I think that will be better. Thank you very much, Commissioners.

**Mary Kanyiha:** Thank you.

**Andrew Cheruiyot:** My names are Andrew Cheruiyot Kimento. I want to make some few comments. First, I would like to thank the Commission for the short time they used to write the draft bill. And from my observations, the report reflects the views of the people of Chepalungu and Kenya in general.

Secondly, I think when you were talking about giving us an overview of the report, I think there was no mention of people with disability. Maybe when you get time, you can give us a brief of what the Constitution has for the people with disabilities. Although I have read, in brief but I think it is important also that these issues are highlighted for the general public to know and also in order to sensitize the general public on the problem facing these people. And what the Constitution has for them.

In addition, I think the new Constitution reflects actually what people wanted. We wanted Ministers who are professionals. These are people who know what they are supposed to do. And we don't want a situation where we have an Army General heading a Ministry of Health and something like that. So, we want somebody who is a professional, who knows the problems in those people and so on.

Then, the issue of the child rights. I think it is highlighted in the new Constitution and we are very happy that for the first time, the rights of a child have also been included. And more important is the right to education. I think according to the new Constitution the child had a right to free and compulsory education at all levels. I think this was also the view of the people of Chepalungu and Kenya in general.

I think there is an issue of now when the Constitution should be used. There is a lot of debate some are saying no, we should wait until after the general elections. And as far as we know, the next Parliament can also change the Constitution that was made by the present Parliament. So, there is danger in this particular case because they can change and then may be even the

Commission will be dissolved and the thing is not applied. So how can you assure Kenyans that even if we go to election with the old Constitution, that the Constitution making process will continue. Because a lot of money has been used and this money comes from the taxpayers and we should be held accountable to this. Thank you.

**Christopher Ketel:** My names are Christopher Ketel. The efficiency you used is actually very, very good. You were just here a few days and we talked about a few things here and there. I am very happy that I contributed and the final product if I look at the draft much of, or some items which I had – what I had talked about here that time when you were here were also taken in consideration.

I am also happy that the powers of the President have been reduced. If this Commission was actually appointed by the Head of State, I am very sure all of you would be have been chased away and this Constitution would not be here today. I thank you because you came to teach us. (*inaudible*)

I propose that, for actually going this far, for everything that is in there I am very happy about it and I am going to talk about the Provincial Administration. I think something should be done about the Chiefs and the DOs. So, nothing for example in Chepalungu you find that having known that this is a KANU zone, any opposition party that comes up are actually students. So what if is me or you who was kicked out of the country that going back to 1999. ...such areas they don't know there rights. So it is true that we are coming the people and I am of the opinion that this Constitution is going to hold more. There is nothing so much on the on the review, it doesn't long those thirty days are enough because we have all those in the draft, the only addition is establishing is our position at home. Thank you very much.

**Mary Kanyiha:** Any other comment.

**Jackson Mutai:** Thank you so much Commissioner Dr. Mosonik and the rest who have come. I thought in a situation the draft is self contradictory I have a proposal to highlight. Those who have got political service. I my name is Jackson Mutai a teacher. Chapter six Article 87, it says that everybody has a right to form a political party, I think and part a political party is entitled to financial support from the state on the basis prescribed in the Act of Parliament. But my contribution is that this one I have a feeling that we might not achieve that in the new Constitution ..... parties although ..... and we also affected, the government and the teachers. I think those two articles the Constitution should say clearly that there should be a minimum to the number political parties. Because if you don't state the minimum you look as you are doing a test even in the political point .... I find if the government is able to finance all the political parties. So

(*inaudible*).

Secondly, and my last point is in chapter 17 Article 292 section 2 (A and B) those that are Constitutional Commissions. The TSC we are very aware of the services of TSC services to the teachers. I have a feeling that is a Teachers Service Commission

should be independent from interference from decisions. The TSC are never denied their visitors, to sent ... elected are kind Ministers of Education... I don't have them. So, I am saying concerning that chapter 18 of the Constitution, the TSC should be independent from interference from the Judiciary. Thank you so much.

**David Cheruiyot:** If there is no any other comment I would give the Commissioner Dr. Mosonik to answer some of those questions if the a question demands.

**Com. Mosonik:** I think we are not answering questions as such we were happy because of your contribution and we wrote notes. And also may be I could make one or two comments on behalf of my colleague. About the languages in which the Constitution we have brought, it is proposed first and foremost that it will be in two languages if you have been here, to ask which ones straight away Kiswahili and English. This one will we say English is the official language language and Kiswahili is the national language. It says now there are two official languages Kishahili and English. Yes, it will appear in those two, but hopefully it will be translated into the other languages. When we were going round doing civic education Mr..... was able to, who translated issues and questions, maswali kwa maswali into our language. I think we should encourage local talents also to participate in the translation so that everybody can understand.

The issue of Provincial Administration, if todate our interpretation of the use of the Chief on average and remember we said we went round the whole country, from your own views recommendations was to abolish the Provincial Administration. But if we hope the delegates will come and consult at the Conference, including they play a role in the new structure of government as proposed.

Then the issue of the disabled Mr. Chemento said it was mentioned here, due to the coordination of the record under Bill of Rights Article number 39 on page 7 it details Persons with disability and it has 39 (1,2) and those inclusive is a,b,c,d, upto g and then 3 and it say Legislation and policy measures provided for the clause (2) which states the state shall rather appropriate make special provisions for Kenyans with disabilities and then it defines who are the disabled. So there is that one section which I encourage you to read. And I would also like to draw your attention to page 14 on Members of the National Assembly.

We said that there will be elections for the MPs directly and then it is possible to mix members by proportional representation. And it says under 5 each party list shall (a) rank the nominees in order to priority of nominations; (b) alternate between women and men in the priority of the nominees (c) take into account the need for representation of the disabled, youth and minorities and then (d) reflect the national character. Kwa hivyo I suppose you look at the –somebody said men they should be extracted proportions deserved for the disabled in Parliament, which they are saying in this clause. So honesty may be need to hold on that act.

Political parties, there something on page 13 regarding the political parties and I instructed out for these political parties. One of

the question is to reduce the number of political parties, and it is a right to form a party and then if limit then it will contradict the principle. The everybody should have the right to form a political party and a fundamental right in the Bill of Rights. Because it freedom of association. So what we have done is the introduce of those chapter with some values and it will be given to the political parties. We have said on page 13, 95 (3) fifty per cent of the moneys allocated by the government shall be distributed equally among the political parties each of which obtained not less than five per cent of the total votes cast at the previous Parliamentary elections, and the remaining fifty per cent shall be paid proportionately by reference to the number of votes secured by each of the political parties and the number of women candidates elected in each party. So we have said there are extra ... to form a party if those parties will not be funded through this time you are setting up...Legal (inaudible) five per cent of the votes cast at the previous elections (inaudible)

The issue of the TSC, you know that TSC is there already and there was a proposal that the teachers belong to the PSC already, they belong to the Public Service Commission and I was an advocate to say let us send them out. Then we said no it has existed already, it in existence and we ought not to abolish it.

Secondly, it represents a significant portion as a public service, so it is entrenched in the Constitution. That is why it is existing. Although it is a Constitutional Commission, its name is in the Constitution. And there is a general rule about what a Constitutional Commission is. Nobody can interfere anything passed the way it is in the Constitution, not even a Minister can interfere with it and actually that is what is important. It appears in the Constitution as a Constitutional Commission.

Finally, the issue of general elections versus the draft. It is like the question of the teachers and the TSC, shall we have the general elections before the Constitution is through or the other way round. Now, that is a political question and also one that is practical. The time is very short and there has been a proposal that the initial location and the time is only that our Chairman is taking about March. Hopefully we will have the Conference by the end of this month, finish with it at end at the end November. Then taken to Parliament in early December and Parliament consult to either to reject in total or to approve it. There is no saying remove this paragraph or add this no, it is either accept the whole thing or reject. And now those who are coming to the National Conference then they should really evaluate this to get additional more point. So, we say then they will have to wait because the .....draft bill within seven days, then (inaudible)

Now, we have said all that much. Is that adequate or not will the Conference take only a month. Personally, when I asked that question, I say it will take between six hours and six months. We are approximating it to about six weeks. But you know the Conference in Uganda took six months, their National Conference. So lets take an example of others, the American one, people like talking about is it took three months to start from beginning to end. Now, The KANU Conference in Kasarani, it took exactly six hours because everything was done by acclamation, by consensus. So remember ours ... will pass by consensus. So let us agree together. If it is anything that you have agreed on everything that it will be possible end of six hours. (inaudible) if we arrive in our estimation early December it should be ready.

But that be it, kwa sababu according to the present Constitution now we are taking about the Constitution and not the time. The present Constitution if you read under Article 59 (1) it says that the President may at all time prolong Parliament, 59 (2) the President may at any time dissolve Parliament. That is the law, that is the Constitution. You can make a lot of noise, you can lobby but I think prayers are more a important that anything else. Because that is what the Constitution is saying and you are supposed to respect it and there is something we call the culture of Constitutionalism. The debateful Kenya would come saying the Constitutional rights an example of people who will be coming to remind you must respect the Constitution. And also Constitution says the President can dissolve Parliament anytime. Now, if he dissolves because he can then there is no Conference, because all the 222 of the Members of the National Constitutional Conference are MPs. So, if it is dissolved there is no Conference. Also some of the district representatives are Councilors. So, it is a question of which we need to pray, and we also need to lobby and lobby in a better manner so that we can arrive at a consensus. Our position as a Commission we have been given to May. So that is the time very short.

You know by the way if we don't agree by consensus then it is two-thirds majority. And two-thirds cannot be found at the National Conference. Two-thirds may demand an issue for a referendum. That feels like a general elections, so it depends on whether you agree. So, we saying without the referendum, it will be ready by March. With a referendum may be it leads to (inaudible) Thank you.

**David Cheruiyot:** Before I give the session to the preacher close with a word or prayer. Let me recognize the presence of Councilor Tanui who is also a 3C's member. I invite Bwana Tanui, I don't know whether you know Bwana Tanui.

**Cllr. Tanui:** Asante sana Commissioners na wananchi hamjambo? Langu sitasema maneno mengi kwa sababu nilichelewa na nilifika mikianza kama saa nne nilikuwa na mkutano mwengine. So, ninasema ni asante sana kwa Commissioner najua mmeongea, na nyinyi mmesikiliza kila kitu. Kwa sababu ni ya muhimu, asante sana Commissioner. Asante.

**David Cheruiyot:** Also Caroline Ruto has been elected to join the National Constitution Conference. So I would like to give her one minute to say a word.

**Caroline Ruto:** Thank you very much. My name is Caroline Ruto and you have heard that I will represent Bomet at the National Constitutional Conference. Many people have the opinion that the Provincial Administration, they don't fully serve the interest of wananchi but rather serve the powers of the day, I mean the Government of the day. And finally, as you have heard cabinet Ministers those coming from elected MPs and also from that idea have been told, if we have our Minister for environment or an environment activist somebody like Professor Wangari Mathai an environment activist. And in the same government may be somebody who want the land to sound like his mother. Somehow Professor will really defending our environment against that person who want to name the forest after his mother.

We really want a society, we want a change and we want everything, every abuse.... to be protected by the Constitution. Right now we are in a system and we are closing our figures. because the President can dissolve Parliament at will. You know we are crossing our fingers, we have felt, we are nothing, no anything but we want a Constitution that says that Parliament cannot be dissolved unnecessary. *(inaudible)* So we assure you that when we go to the National Constitutional Conference we will defend you to our capability. We say that Kenyans, especially in Chepalungu we have suffered, our people we displaced from the African Highland and Broke Bond. All those people African Highland and Broke Bond should have been left to the natives But right now you find that the highlands are so as we are going there pray for us. *(Inaudible)* Thank you.

**Com. Mosonik:** On the issue of dissolution of Parliament. You need to know that it originated from the British Parliamentary system. The British Parliamentary system says the Prime Minister can dissolve Parliament anytime, it is called the secret weapon of the Prime Minister. And I would like say it was there, in the independent Constitution page 5 it say the Government General May at any time dissolve Parliament 65 (1). 65 (2) The Government General acting in according to the draft bill, the office of the Prime Minister may at any one time dissolve Parliament. That is how it continues, it belongs to one Parliamentary general. But that in the present draft the life of Parliament is strictly *(inaudible)* then the Parliament will called in a short and then Parliament will be dissolved anytime. So that is it, you understand that this is not a *(inaudible)*. Our Constitution says that. There are many Constitutions that come from the British out of which Kenyans have made their system of government.

**David Cheruiyot:** Let me now welcome Mr.Jackson Mutai who is a teacher to close with a word of prayer. Otherwise, thank you very much for your cooperation and your maximum participation.

**Jackson Mutai:** Thank you so much David, because of the district organizer this draft issue. I want to pass a vote of thanks and thereafter I pray. I want to thank the Commissioner Dr. Mosonik and his team. I also want to thank the Musicians who are here Kipchamba and his colleague. Thank you Councilor you have availed yourself in this place. I also want to thank the teachers, as you know there is strike. I would like to thank the secondary teachers and the primary teachers who have found time to come, also not to target to mention our Chairman in Chepalungu Constituency, thank you so much. Chairman you have made time out of your usual busy schedule to come and participate in the launching of the draft bill as a school we say thank you. I will not forget to thank my secretary and now may we close our eyes we pray.

Almight everlasting Father, we thank you for enabling us to go through this exercise. When we started this issue, we started with a word of prayer. And we know that you are a faithful God and you have favoured us, giving us the professional and heavenly agreement in everything. So that God, you are a faithful God to us. We pray that you protect all of us as we travel back home, protect the Commissioner and the officers God, for this is my humble prayer, in Jesus name. Amen.

