

**CONSTITUTION OF KENYA REVIEW COMMISSION**

**(CKRC)**

**Verbatim Report Of**

**DISSEMINATION OF REPORT & DRAFT BILL OF BUTERE  
CONSTITUENCY HELD AT LUNZA SECONDARY SCHOOL**

**ON**

**11<sup>th</sup> OCTOBER 2002**

**DISSEMINATION OF REPORT & DRAFT BILL OF BUTERE CONSTITUENCY HELD AT LUNZA  
SECONDARY SCHOOL ON 11.10.02**

**Present:**

Com. Mutakha Kangu

**Secretariat In Attendance**

Leah Symekher - Asst. Program Officer  
Flora Wafula - Verbatim Recorder  
Anne Nambiro - District Coordinator

**Others:**

Mr. Tsalwa – Chairman of 3 C's

The meeting started at 2.40 p.m. with Com. Kangu as the Chair.

**Mr. Tsalwa:** *Milembe Mwesi. Esie sangalile muno khulola abacheni befwe nibetsile hano okhukhwibalila akali mu Draft Constituion. Khandi sangalile enywe mwesi okhutukha khuhulisia. Nikhushili okhwanza omukutano kuno, ndakharebi Omwani Izack Otenyo akhwimilile mumasayo.*

**Izack Otenyo Amunaya:** Kwa majina naitwa Izack Otenyo Amunaya. Tuombe: Mwenyezi Mungu twaja mbele yako siku ya leo tukusema ni asante Baba kwa yale ambao umetutenda. Christu Yesu naiweka nchi hii ya Kenya katika mkononi mwako Bwana. Christu, hii Constitution Review Committee naiweka katika mkononi mwako Bwana. Wewe uwe nao pamoja kwa yale yote ambae tunaweza kuzungumuzia siku ya leo uweze kuiongoza na Bwana tunaweka nchi hii katika mkononi mwako. Wale wote ambao wamekuja siku ya leo Christu Yetu nawaweka katika mkononi mwako. Naomba hayo machache katika Jina lako mkombozi Yesu. AMEN.

**Anne Nambiro:** Thank you our Chairman Mr. Salwa, Chairman for the Constituency Constitutional Committee. (*Interjection: mtapata, mtapata, hayo yote mtapata*). Okey, Bonface, take a sit please. Thank you very much Mr. Atsalwa, our

Chairman, Butere Constituency Constitutional Committee. For those of you who do not know myself. My names are Anne Nambiro, *ndemere mu district ya Butere-Mumias mumakhuwa ka Katiba. Esie ndi nubusangali khwema hano khandi ukhubela ndali khuho* severally. One, *khwabele nende* public hearing *yefu* and this particular school was a venue for the public hearings in the month of August and I just take this opportunity to thank the management of the school for giving us an opportunity once again to come here to disseminate the report that is a result of the good views that came from the community of Butere and other Kenyans at large. I do compliment you for that.

Our Commissioner, Mr. Chairman, I also take this opportunity to introduce to the audience our delegates that is the District delegates to the National Constitutional Conference and I would also request those District Delegates to please come and sit forward after the introduction, I will put for you some two sits here, Bonface if you can do that, so that the community can get to know you very well and may be in a position to give you their written views at a later stage within this period when we are supposed to debate on the report and you may be able to carry those views to the National Constitutional Conference.

I will start with the lady, sometimes I hear, ladies first. Please come forward. She will tell us her names and at least say a word. She is a District delegate to the National Constitutional Conference.

**Rita Katamu:** Thank you. My names are Rita Katamu from Mumias Constituency. I have been the Secretary to the Mumias Constituency Committee, na sasa hivi nimekuja kama mwakilishi wa district hii. Tuko watatu na mimi ndiye mama. Mimi nimechaguliwa kama mama na ninawaomba ya kwamba tushirikiane katika haya maneno ili Katiba yetu ipate kufaulu na sisi tusherekee tukisha pata Katiba mpya.

**Anne Nambiro:** Thank you Madam Rita. Next is our own son from Butere Constituency. Butere did not miss, I think all Constituencies got somebody because Mumias and Matungu were merged to give Rita. He will please, tell his names and at least jambo plus, plus.

**Appolo Atsalwa:** Hamjambo nyote.

**Audience:** Hatujambo.

**Appolo Tsalwa:** Jina langu naitwa Appolo Atsalwa na mimi ndio delegate wa District hii kwa Constitutional Conference ambao itakuwako mwisho wa mwezi huu. Kama Coordinator alisema, ikiwa iko maneno ambao mutasikia ambayo mungalipenda ifikishwe huko, sisi tuko watatu, yuko Bw. Aswani kutoka Khwisero, Rita kutoka Mumias na mimi. So, feel very free kukuja na kutuambia. Tunaenda huko kwa sababu sisi tutaenda kwa sababu ya maonii yenu. Asante sana.

**Anne Nambiro:** As you are aware, not all of us could be there. *Bulano Ebutere maoni kefu nende akandi kosi*

*khwalanyala okhuruma Nairobi nohomba khuruma muofisi mwanje ta, Mr. Atsalwa will be in a position to carry them to Nairobi and deliberate them on your behalf. Shinga lwa Shikuku yatsiakhw nende abandi, amalanga yelaha yatsiakhwo Lancaster. Bulano yaba nabo abatsitsanga okhukhukhonya khu maoni kefu ka khwahanire Nairobi. Are we together?*

**Audience:** Yes.

**Anne Nambiro:** Thank you. So, Warren, will please move forward and sit ahead. I only wish to mention this. Butere has an able lady and an able gentlemen representing the District to the National Constitutional Conference. Please feel confident as a District. *Shumwayililekhwo abandu bakorelwe likhuwa tawe.* With these few remarks, I take this opportunity to return the program back to our Chairman. Thank you.

**Appolo Tsalwa:** *Mbara fwesi khuhulilanga tsa oluluyia khandi ndahulila Commissioner nakhu-addressanga mu mikutano chiabeleho chiosi, yayenyile okhwikhonyela oluluyia. Kho bulano embukule nafasi yino bulakhasie butswa ta okhwinjisia Commissioner yetse bulano afafanuekhwo khu makhuwa ka bahandiche khu Constitution imbiakha eyakhwenyanga bulano yikhukhonye mumihika chitsanga yecho. Commissioner Mutakha*

**Com. Mutakha Kangu:** *Abandu be Butere elunza milembe mwesi.*

**Audience :** *Milembe*

**Com. Mutakha Kangu:** *Emanyire mwakanilemwo abandi khurula tsisehemu tsiahale lakini muli mwesi abebule, shikali kario? Inyanga yu lwalelo nitsa embeli wenywe nikhwenyanga mbu shinga no mupango kwakasibwa mbu amakhuwa ka khukasiye khukulusiye khu bandu abene babe abanyala okhuhenga mana balole mbu kali shinga lwa benya nohomba lilimwo liabenyanaga bakalukhanyinye. Ne nikhwitsa inyanga yu lwa lelo bana bakhana yabo babili barulile mu ofisi headquarters okhukhonyana nende milimo chiliho. Wuyu alangungwa Lea Simekha yenya kakhubola tsi-comment tsia mwitsa khuhana abenahandikanga mana kho tsibe taken into account. Wuyu alangungwa mbu Flora Wafula naye niye uhakikishinja mbu amubola kosi kabe akatilwa mu tapu yiyo. Eshibune shichilanga nikhwenya khukatile shili mbu isheria yino lwayabola khukasie ikatiba kupitia kwa wananchi wenyewe ilikuwa na utaratibu inatakikana ifuatiliwe niba mbu, baada ya kusikiza wananchi, tulitengeneza report, na Draft Constitution na wananchi wapakatiwa siku sitini za kusoma na kujadiliana.*

Baada ya siku sitini, waweze na kutupatia maoni yenu kuhusu yale tulitengeneza. *Lakini esheria yiyo yamala okhuba amended. Shichila lwa ndali hano nimbolanga mbu, in my own assessment hatungeweza kufanya mambo ilivyokuwa imetengenezwa yote kumaliza kwa muda, unless the Act iwe amended siku fulani ibadilishwe. Badaye, bamala bakhola amendment this Act nibola*

badala ya nyinyi kupatiwa sixty days, mupatiwe thirty days ya kusome through. Amendment ikasema badala ya sisi kurudi kwenu kuchukuwa maoni baada ya kusoma through na ku debate, ikawa, tukimaliza tuende Conference kwa Sababu hiyo, tukasema tujaribu kufanya improvisation, *Lazima khunyolekhwo injira yo khunyola feedback okhurula khu bandu mbu nabo bapara barie*. This occasion, *yenyanga yino kenyekhangamba mbu* we try to explain to you *mbu ebindu biene bia khwahandika befwana birie ne ni kamuchamisia nohomba tawe ne balin nende tsi-comment nebanyala khuhanakhwo akalamuchamisie ta mbole* and they will be recording and be taken into account. Lakini, *emetanga mbu okhubela ebise cannot allow ne khandi mwakhahebwa butswa makaratasi yako bise bino, na mwenye khutsia khunyola obwiyangu bwo khukasoma obulayi*. *Balimwo balala banyala okhwenya baadaye mukasie comment tsienywe* You write them down, unaweza peana kwa District Coordinator atume na copies zingine upeane kwa hawa ndio wataenda kujadiliana haya maneno na kupitisha. Hii sheria sasa inasema tukienda National Constitutional Conference, sisi Commissioners, hata kama tuko Commissioners, tutaruhusiwa kujadiliana na wengine, lakini ikifika kiwango ya kupitisha maneno, sisi hatuta kuwa na kura. Wale watakuwa na kura ya kupitisha ni hawa. Butere-Mumias District, watu watatu and the two of them are here.

Lakini in addition, wale waBunge wa Butere-Mumias wote, they will also be members of the National Constitutional Conference. Kwa hivyo, mukiwa na jambo mnaona hapa halija ingia sawa sawa, you can give copies ya comments kwa huyu atume kwetu, but you must also give them, *mubabolele lino shilikhuchamisie ta lwanahule yo namutsie mwareisa khwenyanga lifwane liri, lifwane liri* because those are your representatives. *Makhuwa ni katsia mbaya nabo bamureba, bulano efwe mulakhurebe ta efwe khwakholele akefu abalachamisibwe ta muhulila bakhupa obuyoka nibabola woo* wameleta foreign ideas, lakini we are saying we have done what the people told us. Mukiona ni sawa sawa, well and good. Mukiona kuna lile mnataka kubadilisha, let them do that job halafu tuone itakuwa namna gani?

Now, sheria ikisema tusikize nyinyi, tunawasikiza. *Ne nikhumalilenje* tukienda Mombasa tukakaa huko mwezi mzima kuchunguza yale maneno mulituoambia hapa na kwingine kwote nchini Kenya. *Khwachenda eshibala shino shiosi khula mukari yeyo – mala lele embolela abandu ebise bindi lelo kho few khwamanyilekhwo* how the Kenyans feel. *Ebise bindi kata politicians nibabola*, they don't know, we know because we have had an opportunity kukaa na watu kutoka saa mbili na, saa ingine saa tatu *mana abandu babole, belwatse amakhuwa nimuhulilanga paka sa kumi na mbili*. Hayikuwa ile ya wana siasa, wanakuja tu to talk loud to you. Tulikuwa tunakaa kuwasikiza and we know how Kenyans feel, some people don't know.

Now, tulichunguza hayo mambo yote tukatengeneza report. Tuko na report yenye kurasa karibu a thousand pages, in five volumes. Hiyo report is still being edited. Ikiwa tayari, itakuwa published na watu wasoma, waweze kujua, how did we reason ndio tukapitia uamuzi tulipitia. Lakini, tume extract this summary. Hii ni summary ya hio report, tuli extract imeshika mambo yote kwa summary yale tumegusia kwa main report na hii ndio tuli publish tukiwa bado Mombasa last month. It is called the Report of the Constitution of Kenya Review Commission Short Version, 'the Peoples' choice'. Inasema ni chaguo ya watu kwa sababu inatajikana ibebe maoni ya watu. Tuliambia wengine mwanzo wakati tulikuwa tumesema 'the people's design'.

Lakini, tulipopeana kwa the translators wakasema ‘People design’ doesn’t come out in Kiswahili well. Ndio tukasema now ‘the people’s choice’ ndio kwa Kiswahili iwe ‘Chaguo la watu’. Tulitoa hii, it was in newspapers zote, wale waliweza kununua magazeti walisoma yote, ilikuwa reproduced kwa hio magazeti. But some copies ziko na District Coordinator kwa ofisi, wale wako na uwezo wanaweza enda huko kusoma ama kufanya photocopy.

Now, based on the report, this short version and the long version, tumetengeneza ile inaitwa the Draft Bill, the Draft Constitution. Hii ndio ile mumeapatiwa muko nazo. All that is there, is here. Hiyo ndio sasa tunapendekeza kwenu as the Constitution. *Nimulola mbu ni indayi* kama wananchi wa Kenya pamoja na wengine wote, through these delegates kwa sababu every District itatuma watu watatu, plus MP’s and others watafika about six hundred ndio watakaa kupitisha, kusema hivi ndio wa Kenya wanataka. *No lwendi embeli wenyu bise bino*, my colleagues are all over the Country. This process *khwanzile* last week, it is supposed to cover the whole Country, kila corner *buli bandu bamanye mbu* this is what we drafted *ban nibatukha ukhubia nende barulile mu tsishehemu tsindi bakane bulano babisinjia* Hivi ndio waKenya walitaka. So, this is the Draft and shuguli ya leo, nitajaribu kupitisha nyinyi through it muweze kuelewa, what does it say? Does it reflect our views? Is it something we like ama tungependa kubadilisha something in it? Now, ndio niweze kuwaelezea hii *nitsa khumwitsusia lwandali yinu ndabolakhu* umaana wa Katiba *nibabolelanga* ni ile sheria inahusu the management of the public power, the common power na we manage in a manner that it is used for the welfare of the people. Masilahi ya wananchi lazima itimizwe.

In this Constitution, tutajiuliza, what does a Constitution do? Ni mambo gani Katiba inafanya? I am going to make my discussions along those lines, that a Constitution can be used to constitute a people into a given society, into a given community, into a State. It can constitute a State ya kusema hii ni nchi fulani, hawa ndio watu wa hio nchi namna hiyo. It performs constitutive functions ya kuweka watu pamoja na kusema hawa ni watu wa aina fulani, hawa watakaa pamoja, wataendesha manene yao pamoja on these basis.

A Constitution declares the sovereignty of the people. Inaeleza where does power come from? Kama inatoka kwa watu, it declares the people as sovereign. A Constitution also lays down the values watu wanataka kuishi on the basis of. It states the goals, the national goals ya kusema, kama waKenya tunataka maisha yetu iende hivi, iende hivi, it shows the aspirations of the people. One can say, a Constitution should allow us to dream *khulorekho mbu ubulamu bwefu bwene yubu nikhuhengakhwa embeli yilia khwenyanga bufwane burie?* It sets values that are aspirational. It gives you an opportunity to have dreams and dream; I would like a tomorrow that looks like this. Then you start working towards that direct.

A Constitution also performs the function of being a power road-map. It is a map ya kuonyesha public power inatakikana igawanywe kwa njia fulani, itumiwe kwa njia fulani na kwa sababu fulani. So, by this Constitution, we are trying to draw a map, *yokhumanyinya* if you are the driver and passengers as the vehicle, *yokhumanyia* there is a pothole, there is a danger spot, there is this ‘panya’ route. Wananchi *nibekhale* as passengers *mumotoka*, they can be able to tell you bwana driver, we can

see now you are now following the road. You are using 'panya' route. *Kalukha khu barabara ya khwachora*. That is what a Constitution does.

Now, if we go into details and go back to the constitutive functions of the Constitution, *khunyola mbu*, when a Constitution constitutes a State, it does so in a number of ways:

One: It declares the state itself and you know every State must have a territory. It must have people, a Government and the set values that they want to hold. So, in this Draft, we have attempted as your Commissioners to constitute the Kenyan State. But looking at our History, we find that Kenya is not something we are creating anew. It has been there. *Khwali* constituted a long time ago by the colonialists. *Nibakhuteta nibabukula Abasebe yiyi, babukula Abaluyia yiyi nibabukula Abamasai yiyi nikhurebwa halali nikhubolelwa*, you are Kenyans and they drew boundaries *nibakhura* this is Kenya and you must now leave together as Kenyans. So, in our Draft, we are saying, we are not constituting Kenya afresh. We are simply recognizing what is existing, known as Kenya. In recognizing the already existing Kenyans, we must recognize it with an ideology. What kind of ideology? What kind of Kenya are we talking about? We are talking about Kenya as a Republic. So, we are talking in terms of a republican ideology. *So nimuhenga* Article 6 of Chapter II of the documents *tsiamuli natsio*: Article 6 sub-Article 1, *yibolanga mbu* Kenya is a sovereign Republic.

So we, are recognizing an entity already existing known as Kenya but we are saying in terms of ideology and that type of Kenya is going to be a republic, not a monarch, not an autocracy, but a republic and one will need to know, what do we mean by a republic? Sub Article II has tried to give some of the details. *Lakini lwanditsa okhukalukha inyuma* on the issue of values *nditsa khumuhesia* a little more details by what is meant by a republic. Why? Because a Constitution *ya khuli nayo* today, the current Constitution describes Kenya as a republic but it does nothing to show us what a republic means. We need to ask ourselves, when we say we are republic, *hio ina maana gani?* What are the values that are entailed in a republic? What are the values that are entailed in a republic? How is a republic supposed to run its own affairs? We will come to that and be able to understand. So, we have recognized Kenya as constituted by the colonialists as a republic. It will remain as it is *shikhutsitsa okhubola bulano abaluyia bano* they have decided they want to be independent, they are not part of Kenya or they are going to be part of Uganda, 'no' we are saying, we are going to remain together *shinga lwakhubetsanga* as Kenya as a republic.

Now, a State must also have a territory. *Mundu musatsa paka ube nomukunda kwokwo kwobolanga mbu kwanje ngwoku, maloba kanje ngaka, nubola litala lia fulani maloba kalio ni ngaka, kanzilanga yaha katsia yiyo olukaka lulilaga yaha, lulila yaha*. You need to know so that *jirani wuwo nasutia olukaka nomanya asutile olukaka, tsingokho tsitsio nitsiruma tsiatsia okhulia makanda ko wundi*, you can be able to say there is trespass, isn't it? So even as Kenyans we need to know our territory *yanzilanga hena ne yulanga hena?* The current Constitution says nothing about that. We just say, we are Kenyans 'lakini' *noreba* many Kenyans where the boundaries are, they don't know. *Baliho butswa*. We really are not sure. But this time round we are saying the Constitution must define the Kenyan territory to be able to show the



beacons are here, *nonutsila ubira khu kona yaha utsia yaha* and so on. *Ne nuli Ebutere yino* you may not see the seriousness of that because *shimuli ahambi khulukaka ta, umanye nulamenyele ahambi khulukaka*, you can never know the problems *yokhuba nende jirani khulukaka*. But those *abamenyele khumpaka*, they know. If you go Busia *yiyi abandu ba Busia* they are the ones who know. They are the one who bear the brand of our failure to define our territory. *Bamenyele khutsia khu Lake Victoria yiyo*. The Kenyan boundary with Uganda is not clear because Kenya has not bothered to define its territory and as a result, *Abakenya ba Busia* are suffering. *Nibatsia okhuluba tsinyeni mu Nyanza mana babolelwa nende abebuganda*. You are fishing in our territory. You are crossing the borders. You are trespassing and they are being harassed and the Kenyan Government has sat on its Laurens doing nothing about it and we are saying we must define the Kenyan territory so that these people *Banyala okhumanya umpaka kulilanga hano, nutsia yilia Abandu ba Busia balia bakhubolela tsinyeni emichela chirula mu Kenya mana chitsukha* in the lake. *Hachitsushilanga mu Nyanza naho he tsinyeni tsibulanilanga, tsiakhebulana* they go into deeper waters to fatten. *Ne Banyala nohomba Basamia* they want to follow to go and fish. When they reach there they meet Ugandan security who tell them that they are fishing in Ugandan waters. *Mana bakhaba ni khube khurie* and some of them are harassed day and night because we do not seem to clarify where our boundary reaches when Uganda was making its Constitution in 1995, they decided to define their territory in their Constitution. *Nibabola irulanga hano yule yaho mana* and several islands, those like Port Victoria *notsia Port Victoria mana khutsia emwalo nutsia Polo yiyo* Osieko Island, all of them previously were Kenyan's land. They were defined in the Ugandan Constitution as part of Uganda and Kenya sat back and did nothing. *Mana abandu baliyo barebanga khulimanya* are we Kenyans or are we Ugandans? Because they are in between the (word not clear). So, we are saying we want to define it. The colonialists had put beacons *mana abandu ba Busia* they told us, they showed us *nibakhubolela khwolanga hano*, but Ugandans now moved and they are pushing us. *Bulano*, we have a very small portion of the waters. We must define the territory. So, in the proposal we are giving, Article 7 is seeking to define the territory of Kenya. It is defining that territory by referring to a schedule in the Act *numutsia inyuma we tsi-documents tsia muli natsio*, you will find what we call Schedule One, the first Schedule. It is giving the details of the boundaries of Kenya with Uganda and other neighbouring countries, the Sudan, Ethiopia, Somalia and the issues of the high seas. There is what they call the territorial sea and exclusive economic zone in the Indian Ocean. *Emwalo yilia*. We are trying to define these boundaries. We were given these definitions by Surveyors. It is technical language and you will need to read through, *nimumanyire bamuindapretile*. I have already talked to some people in Busia. They said that the definition you gave still leaves part of Kenya in Uganda and they are unhappy with that *lwakhwabele* Nairobi, the District Coordinators *nibetsele nimbolela* then go back when we come there, get the people who know those boundaries properly and evidence *bakhuhe* because we have to get these boundaries clearly. So, a State must have a territory in clearly defined territory, beacons *imanyishe mbu ni hano* So, our Constitution is proposing that this time round we define those territories.

In defining the territory, we must identify the capital city of our country, of our republic and Article 8 is identifying Nairobi as the capital City of our republic. But we are saying at Article 8 sub Article 3, that although we are identifying Nairobi as our capital city, it is going to be the policy of the State to decentralize the headquarters of National Government, departments and national



public institutions to all the provinces equitably. So that badala ye nywe khumenya nimurulanga hanu mutsia okhulonda ebindu Nairobi yilia nimuyoya amang'ondo nimutsia khutsukha yilia, nabo babe yilia barulekhwo yo nibitsa okhulonda ebindu yino. We want these things to be distributed so that Nairobi can be the capital but we can decide some of the Government institutions can be located in other districts. So, we are saying in this Constitution, we are proposing that it should be the policy of the State to decentralize the headquarters of the Government institutions and departments to all the provinces on an equitable basis so that one does not have many ne yindi nayo nihumakhwo ta. Ndamubolela the other time, that locationing of things in Nairobi has a serious economic impact. Shichila muchinganga amangondo yinu notsia okhulonda ebindu Nairobi, amang'ondo which you have earned in the dust here, you go and deposit in Nairobi because you are spending in the hotels tsia bandu bandi ebweneyo nolia mapwoni kabo muchelela eshikhaya nabo shihumakho shilibarerekho yino barerekho yino mang'ondo tawe and we are saying, we don't want that, we have to change that.

Now, a State must have people. When we declare Kenya as a Republic and define the territory and identify the capital, then a State cannot exist without a defined people who constitute that State. Paka ibe nende abandu. Litala butswa lihumamwo abandu libetsanga likwa lienelo sholanga ne litala ta. Liba liakhatong'a likunda ta? Kho nonyola walanga litala paka libe nende abandu. So, we must know Abandu bo mwitala mwene yabo ni bena nende wina nence wi? Who qualifies to be owomwitala lia fulani? Now, here we are seeking to define the people who constitute Kenya. Who qualifies to be a Kenyan? Chapter 4, which deals with citizenship. Its work is to try and define who is a Kenyan citizen. And we have done that running through, It starts at Article 16 and runs through to Article 28 here, who qualifies to be a Kenyan citizen? We are saying how Kenyan citizenship can be acquired.

We are also saying, you can abakhasi they complained that they are discriminated when we confer citizenship by marriage and now you can confer citizenship by marriage. Mundu musatsa natishia omukhasia omukhana khurua Ebuganda yiyo, mukhana woyo can become a Kenyan Citizen. A Kenyan woman nanyola omusatsa we Buganda yiyo omusatsa woyo can become a Kenyan Citizen. But we are saying, it is not automatic because kata isheria ya khuli nayo ibolanga notsia mukoti mbu wateshie omukhasi ne wenya divorce, isheria ibolanga they will not allow you until you have been married for three years. Ne the reason yili babolanga bana bano kho betsele butswa halali hahundi kata busolo bwa bali nabio buno, nobwokhumanyana, bashili khumanyana bulayi bahesiekho three years bamanyane nemulukhana butswa to divorce them, may be it was just adjustment problem. (Laughter). After three years, nikakhayire kabisa numubola that marriage was not meant to be. If they want to divorce, let them divorce. That is what the law says. Now, we are saying in that event, we are not going to allow you to wake this morning notola omukhana khunjira yokho ne tomorrow we are saying, she is a Kenyan Citizen or you ae omukhana otola musiani ibuganda yiyo ne tomorrow we are saying he is a Kenya citizen we are saying you must stay together married for three years nichakhahwa ne khubola hee kweli they mean to be married. Now that man can become a Kenyan or that woman can become a Kenyan. That is what we are saying.

We are also saying, you can have dual citizenship. Munjila, unyala okhuba Mukenya khandi waba omundu be Buganda.

You are a citizen in Kenya and you are also a citizen in Uganda. You can have two countries that you belong to. The current Constitution does not allow that. *Yibolanga*, if you are a Kenyan, you chose to become a German, you will relinquish the citizenship of Kenya. You now become a foreigner when you come into Kenya, you are treated like a foreigner, you must get a visa to enter Kenya and be in Kenya even though *webulwa hano*. Lakini *bulano khubolanga*, you can become a German and continue being a Kenyan. But that is if Germany also allows you to have citizenship of two countries. If it doesn't allow you, then you must lose the Kenyan citizenship. So, we are saying that, that is acceptable. But we are adding that because of the current situation, *baliho* Kenyans, who have lost their citizenship when they chose to become citizens of other countries and we are saying in this Constitution, if you are one such people, when this Constitution comes into force, you will be allowed to recover your lost Kenyan Citizenship if you want and apply for it..

We are also providing for citizenship by naturalization for citizenship of adopted children. If a Kenyan adopts *omwana wo khurula ibulafu yiyo* that child becomes a Kenyan.

We have also provided for citizenship for foundlings. *Abana bakorele batolelwe, nukhuba nukhuchenda mana khwituya omwana butswa okorele mu Kenya muno* He doesn't know where he comes from. *Akorelwe nyina ni wina sa mwana ni wina khubolanga*, we have to be hospitable *khubole omwenoyo* let him be a Kenyan *lwakhakorelwe kata nyina tsana nu Mukenya nohomba nu Mu-Uganda*. If we pick children *bali* lost below a certain age, they become Kenyans. Citizenship of foundlings – lost people.

We are providing for residence, non-Kenyans who want to stay in Kenya but they are not citizens, how do they stay? And then, we are providing for a citizenship registration board. If you look at Article 28, a Citizenship Registration Board, *eyitsa khu-dilanga nende amakhuwa ka citizenship mana khube shuwa mbu* the foreigners who are coming here and becoming citizens, they using the correct means. They are not like *Abahindi betsanga butswa ebise binu na mang'ondo ne bakula ebindu bino*. They are messing up our economy *nefwe nikhunyakhana butswa hano*. We want a clear process of allowing these people to become citizens. Article 27 *khubolanga*, Parliament will be required to make law and to give details to some of these things. We have defined here some of the things on which Parliament will act when making that law. So, Kenya is not Kenya without a people and Chapter Four defines who are the Kenyan people.

Now, while on that issue of people, on Chapter II. If you have a people, they must speak a language. There are countries that may have one tribe, Nation State where you find a country, which is constituted by only one tribe. There, you will find no big problem. The language of that tribe becomes even the national language and so on. But *efwe*, we are a Country constituted by so many tribes that we were before colonial days independent nations. *Abaluyia bali tsa nende enashion yabo nende Nabongo Mumia Ebuwanga yino*, They had their own Nation. They were like a country of their own. But now we have been put together with other people and if you have put people of different communities together, which language do we say is the National language and which one do we say is the official language? So, at Article 9 (2) we are saying the National

language of Kenya shall be Kiswahili. Kiswahili ndio itakuwa lugha ya nchi ya kuzumuzwa na kila mtu. But we are saying the official language ile naye yakutumika kwa official occasions, official documents and functions will be both Kiswahili and English, so that ukingia ofisi ya Serikali, they should be able to serve you either in English or Kiswahili. On this issue, I had a bitter argument with my colleagues *nembolanga* in a devolved arrangement where you have Government at the District level, why don't we allow the District Government to use the local language also as one of the official languages, a third language. But I lost the argument but I told them that language is very important. If you want to allow people to protect and promote their culture, then language should be the vehicle. If you don't have a language, then you are in a big problem. The Kenyans *abanji ebise bino* have a big, big problem. They cannot speak English properly, they cannot speak Kiswahili properly and they cannot speak their mother tongue properly. We are a confused people and that is why we are losing our culture and we are saying that we must promote our local languages *tsitsililile notsia* in other countries they are doing that. Uganda now, they are teaching local languages at the University. In Maseno University, they have started to allow a department of local languages. In South Africa, they teach local languages at the university and they have up to eleven official languages. Sisi (inaudible). All of them, you can lose it. In fact in South Africa, the most interesting thing *yili mbu unyala okhubukha* butswa nobola Olutswana nu washio wuno akhuchiba Muluzutu, ne wundi wuno achiba muluzulu, they understand each other properly. So, you can speak yours and I speak mine but we understand each other. So we need to find a way to develop the local languages which will help us to detribalize our society and I give an example; *nosoma eshitabu* by Prof. Ali Mazrui, *abolanga lwo Musungu*, the British *betsa yino* they wanted to colonize us. They wanted to exploit us. They wanted to get us to buy their goods and they found that the best way is to make these people feel embarrassed about their own way of life and start admiring your way of life so that they can start buying your goods. So, they taught us their language, they *etsinyanga tsienotso ebiboko khwanywekhungwa mu sikuli, Wafula yakhutandikanga ebiboko yaha nubolikhwo Oluluyia musikuli, utandikwa ebiboko kabisa*. Because our mother tongue was made to look like something bad. You must learn English. Now, the British did that and they imposed their language on the people and using that, they have destroyed the cultures of other people and imposed their own cultures in their own attitudes to our life. That is why most of our people are confused in between the Western world and the African world, totally confused. They don't know where they belong and people are trying to go back to their routes. But one thing, the British didn't know is that as they were fighting to get these blacks to start buying their goods, they didn't realize that in the process they would lose one important thing – and that is linguistic privacy. They lost the privacy of language. *Bulano shibanyala ukhumonya omundu ta*. In those colonial days, *bali bamenya bamonyanga* the Blacks, they would make a lot of drastic statements in newspapers and they would be all over and people would not know. But today, they can't do that. You write something in the newspaper today, it is on the Internet and, the whole world knows. The British are nothing. Look at what they saying about others. Now, they are embarrassed. They can't backbite anybody and I told my colleagues, if we can encourage the development of local languages, *bandu bechekhwo lugha lwabo namna hii nunyola mbu* people will become embarrassed to backbite others using their mother tongue because *niyekhale ukorongwa ingawache nu Musebe anyala khuba niyamanya Oluluyia noho?* Now, that will help us. *Chusi mwalutsi wamwenyanga okhwahula mbu President wuyo uchachile khubola Olusebe nga lwa sa mwana yabolanga Olusebe. Ndulutsi ulundi nabola mbu woo wengine wanasema mimi ni mtongoria wa 'Mungiki'. Kho omusatsa wuno* (Laughter)

There is one thing on which I have always given Moi credit, for twenty-four years he has ruled us, Moi has never gone to a public function and talk in Kalenjin language. He makes sure throughout he speaks Kiswahili. Lakini Kenyatta *yatsitsanga butswa yatsitsanga butswa mukutano mana yakhabola ni yole ebisa bindi nashiukhana abola mulusebe bulano kama wengine batu nataka, nyakua nu mwanawe ngwoyo uchachile khandi* (Laughter) *ndamulutsile nimbola biyayi omwana wuno*. That is why I am saying, *nimumanya, shibamumonya ta, wekhalanga wekholile ukorilwe, nabo khubapanga nohulila kosi*. So, we are saying at Article 9 (3) we must also protect the local languages. We are saying that the State shall respect and protect the diversity of language of the people of Kenya and shall promote the development of local languages and ... END OF TAPE 1 SIDE A

....*abandu babe* encouraged to develop their local languages and to learn other languages. *Chusi ndatsile mu sikule Nairobi yiyo nindenya okhuhilayo abana banje bechekhwo Oluluyia, ndakhabile ebitabu, bitabu behuma nikhwasomanga khunu ebitabu bili muno in Kiluyia*. There are no books. *Umanye omukhaye wanje nomukamba khulero ndabolele bulano abana bano lwabakhola hano bamanyile Oluswahili, bamanyile Olusungu, khandi bamanyekho Oluluia. Ndahililekhwo musikuli, babelekhwo for two months, shienya ni ngalusie, bali bola bamanya but ndanyolele*, there are no books. Nobody is writing books in Luhya. Yes, they have all disappeared. What is happening? There is a big problem. So, we need to develop local languages because language gives someone an identity. *Lwandatsile musikuli yene yiyo, I found there some parents nende mwana wabo khandi Musebe, nyina Omusebe sa mwana Omusebe. Mukhana wakhula bachinga bahila mu University South Africa yeyo, yarulayo nabolanga* I have learned languages, *mana nabolanga*, our parents tried to teach us the language *nefwe khwalobanga nikhwikhola Olusungu nolulayi. Yatukha yola South Africa anyolanga* the local people, the students barula mu class, they just go back to their mother tongues. *Banza okhubola naye bulano natsia* to link up with the other Kenyans, *natema okhubola anyolekhanga, kata nende abasebe bashie*, he/she doesn't know *Olusebe. Yarulayo naboleta abebusi*, Please, I must learn my mother tongue. I have never felt embarrassed when people are asking me, 'kwani na wewe hauna lugha ya nyumbani?' It gives identity and so on. *Abandu benya bamany, nashio shichira ninditsile yino ndenya sie lubolakhu sana, Lundi mwapara omusatsa wuno yakorwa...lakini shimanyile lwosi*. So, we are talking about language.

We are also saying, if you have people and they believe in some culture or in some religion. What do you do? Now, our society *khubolanga is diverse, yili nende abandu* from different backgrounds. So, certainly we must allow our people to be religious. But, because we are different, we belong to different religions, we cannot say, *yino nayo niyo yanibe idini ye State Hakuna*, State religion. We are saying, Kenya is a secular State but we respect the freedom of religion. *Kila mtu ako* free to believe in what he believes, so long as he operates within the Constitution and we don't want to single out one religion *tuseme, hii ndio* religion ya Serikali because others will be still be discriminated against.

So, Article 10 is talking about the State. We have also talked about the National Symbols. We have talked about the Oaths

and then at Article 13, we are identifying National Days. What are the National Days? We are saying that we need only three National Days that have three important things to remind Kenyans about themselves.

So, we are saying, the first day is 1<sup>st</sup> June, Madaraka Day as a National Day. We are saying, two, December 12<sup>th</sup>, Jamhuri Day, as a National Day and we are saying three: the day we shall pass this Constitution shall become a national day, and should be called 'Katiba Day. (Laughter). Now, those three, those are the National Days and nothing else. Labour is not a national day because not everybody is a worker. (Laughter) We are trying to look at things that will capture everybody as a national day. So, that is what we are doing about the State.

Then coming to the values and the people as the source of power. We are saying that in establishing a Government *mana khupanje* things how we want to go. We must be able to identify the source of authority, the source of power. Power *yirulanga hena* in our system? Who gives it? And we are saying the source of authority are the people themselves and if you look at Chapter I, Article 1 and 2, we are saying, it is the people who are the source of power and we are saying one: that all sovereign authority belongs to the people of Kenya and may be exercised only in accordance with the Constitution. Two: that the people shall exercise their sovereign power either directly or through their democratically elected representative. So, authority comes from the people. The people are at the center of everything that we are talking about, of the Constitution that we are proposing and we that is the people themselves who are making this Constitution and not anybody else makes for them. The people themselves. *Shichila, yaani emubolelanga mwakhubolele amakhuwa khwakhakasia kari mukahulile mana mulole kamuhelele nohomba tawe shichila nenywe baamuanga enywe abene* as a people as the source of authority, you are making the Constitution yourself. So, we have put a preamble which starts by saying, "we the people of Kenya" and then concludes "do adopt, enact and give to ourselves and to our future generations this Constitution. So, we are the ones deciding on this Constitution and the people are saying, when we say, 'we the people' we recognize our diversities. We recognize our various homes as a people. So, in paragraph 1 of the preamble, *khubolanga mbu* aware of our ethnic, cultural and religious diversity and determined to live in peace and unity as one indivisible sovereign Nation. The people of Kenya *khumanyile*, we belong to different cultures. We believe to different religions. But *khubolanga*: we are determined having been constituted as a Kenyan people, we are determined to live together in unity and peace as one sovereign indivisible Nation. We don't want it divided. *Abandi nabanze khubola* we want to secede and go to Uganda. *Khwali Ebuteso yeyo babolanga Buluyia nimulakhulinda obulayi tawe khwakhatsie okhuchoina* our brothers there. *Makhuba ka balilanga abandu ba Busia babanyasinjia, Abakhayo*. They were very bitter. So, *Abaluyia wefu nibabolela mbu mutsie kalaha mumanyile mbu* they can go because they were saying, they have more Tesos in Uganda and they can bring an army from there and will over run *Abakhayo bosi* So, we are saying that we want – you know we are different but we want to live together as one people.

Now, we are saying in coming together and living as one people *ndamubolela ikasi ya Serikali*. The reason why people came together and formed the government and formed politics *yali mbu* they want to create institutions that can ensure the welfare of the people, (*masilahi ya watu*). They wanted to created institutions that are supposed to be used as vehicles to protect the



welfare of the people and make sure the resources are well managed *buli mundu anyala khunyola shialia*. So, we are saying at Paragraph 2 that whereas we are aware of all these differences and we are ready to live together, we are committed to nurturing and protecting the well being of the individual, the family and the community within our Nation. *Nukhuhenga welfare ya bandu khubolanga we must start nende mulala, mala khwitsie khu family khwitse khu community*. Because if you have a society and one of them is feeling the pinch, then we are not at peace. We want the welfare of each individual, each family, each community and everybody, *babe* comfortable. So, we are saying, we are committed to nurturing and protecting the well being of our people, as individuals, as families and as communities.

Then we recognize that we are aspiring to certain things, so we are saying in Paragraph 3, that recognizing the aspirations of our women and men for a government based on the essential values of freedom, democracy, social justice and the rule of law. We are stating as a people *Nikali khwitsanga halali we want the we want the welfare of the people to be provided for, khubolanga* the best mechanism for protecting that welfare is a democratic system. It is a system that believes in freedom and social justice and the rule of law as some of the values *tsiakhwenyanga tsibe* infused in to the Constitution. Then we go further and say, exercising our sovereign and inalienable right to determine the form of government of our country and having fully participated in the Constitution making process, we adopt this Constitution. *Khwo khubolanga* it is the people, *enywe bene* who are supposed to determine the form of Government you want to have. Not anybody *yetse yeme yiyo* he wants to determine for you. You must as a people determine we want to be a monarch, or we want to be a republic. *Shiuwalutsi bulano ohundi yitsanga ambolele mbu namwahulile wuno*. Mimi niliangalia nikaona huyu ndio anaweza. You are the ones to determine the person to lead you. Isn't it?

**Audience:** Yes.

**Com. Kangu:** That is what we are talking about. Hapana khwitsa okhubolelwa hanu ndamuhengele. There will be free and fair elections *yibola batsitsa* certain point *nibabola* but elect this one. That is not free and fair elections. You have to determine your future yourselves as a people because we are saying authority comes from the people.

**Audience:** People

**Com. Kangu:** Now having said that, I want to take you back to the republic we talked about, Chapter 2 *embolele mbu*. We normally say that we are a republic but we never emphasize and bring out what we mean by saying that we are a republic and we are saying this time round *Khwenyanga* Kenyans should adopt this Constitution when they understand what a republic means. We have tried at Article 62 to give some of the elements of a republic and I will emphasize them. We are saying the republic of Kenya is founded on republican principles of good governance through multi-party democracy, participatory governance, transparency and accountability, separation of powers, respect for human rights, fundamental freedoms and the rule of law. We are saying that those are some the elements of a republic. So *nikhubola* Kenya is a sovereign republic. We

must understand and on this score, I want to take you to the American Institute of making the Constitution.

When the Americans chose, they want to make the Constitution, I don't know in Seventeen what? *Bali bakasiye* What is called Articles of Confederation, American States *tsialinje* Independent single states. They were about thirteen at that time. *Nibabola*, they want to come together and work together through what they called Articles of Confederation. But after making the Articles of Confederations, after a short while, they realized the Articles of Confederation were not working well. They were not binding them together well. They were still problems, some States wanted to operate as if they were independent, there was a lot of confusion over currencies and wars. Some people decided that we have to go back to a conference or a convention and find out what is wrong with the Articles of Confederation. So, they decided to go to a place called Philadelphia.

They invited 42 delegates and thirty-nine turned up. The oldest delegate was 82. *Nibekhala*. They looked at the Articles of Confederation and they said these things cannot work. Why don't we just write a new Constitution? So, they prepared a document but *nibabola* since the American people did not mandate us to come here and write a Constitution, this draft we have prepared cannot become the American Constitution unless we go back to the American themselves and ask them to ratify.

So, they took the document to the Americans. So debate started. Some people started accusing them *nga lwamuhulila nikhuba* accused about proposing something that cannot work. Now, people accused them, accused them. So, some of the members, the delegates at Philadelphia decided, we must sell this document to the American people. So, we must persuade them. We must show them why it is good. So, they started writing certain papers to persuade the American people to adopt it particularly Alexander Hamilton and James Madison. They wrote what were then called the Federalism Papers – 85 papers. They would be published for people to read. Arguments showing why the proposed Constitution is good. In one of the papers, James Madison *yamala abole*, The Americans are like a patient, who is sick, who is dying and wants treatment. We have been asked as doctors to diagnose the disease. *Lumbe lwene nululehe mana* khu-prescribe the medicine. We have diagnosed the disease and we have prescribed the medicine. *Nenyenywe bakhubolelanga*. This is the wrong diagnosis, this a wrong a medicine. It is not enough for you to say it is wrong, it is wrong. You must yourself do your diagnosis and give your prescription because the patient is dying and wants treatment. So, you are not just going to tell him oh! *Eshia bakhuhesinjia yishio neshibi* leave it *niko kakhubolanga*, Those who are thinking that what we are proposing is bad, the Kenyans want change, the Kenyans want a Constitution. It is not enough for you to tell them, Oh! Those are foreign ideas. Can you propose what you think is appropriate for them because they want change now.

**Audience:** Not tomorrow.

**Com. Kangu:** Not tomorrow. They are not ready to wait any longer. *Mana ndabolele abandi, abandi babolanga lwa Mzee na-dissolve parliament namukhole murie, nembola abobuhohu butirire benya okhunyuwa matsi kata notubula banywa, shikali kario?* (Clapping)

**Audience:** Yee.



**Com. Kangu:** *Yaka katubushile umalanga uhinia eshiandakerchief mumufuko noraho butswa na maloba katong'a hasi nawe nunywa kalaha, obuluhu butsia ta?*

**Audience:** Yee.

**Com. Kangu :** Kenyans want this change; I have brought this thing to you *Embolelanga* It is not perfect because we are not perfect; we are human beings like you. But, we don't want to hear absolute condemnation. *Khwenyanga okhuhulila*, We are happy with this part, but we are not happy with this part. This is what we have proposed. So, James Madison says that on republican principles in Federalist Paper No. 39, *yamala naboola* He wants to try and define to the Americans what he means by a republic and what he republican government means. *Mana nabola:* A Republic is that system of government in which all its powers is derived from the people. All its powers derive from ---.

**Audience:** ---- the people.

**Com. Kangu:** Now, those powers having been derived from the people directly or indirectly are exercised by a few on behalf of the others but those few who exercise that power on behalf of the others, exercise that power for a limited period of time – not for ever, not for life, but for a limited period of ---

**Audience:** --- of time.

**Com. Kangu:** *Mana natsia nabola.* They exercise that power for a limited period of time during the pleasure of the people not the pleasure of an individual but the pleasure of -----

**Audience:** ----- of the people.

**Com. Kangu:** *mana natsia* further *nabola* and during their good behaviour. Those who hold power *abamuhesinja* to exercise on our behalf, they must exercise it during their good behaviour. If they misbehave, they must be removed from office. That is what the republicanism means. Those are the three principles that James Madison laid down. Now, those principles properly analyzed on a consensual basis and philosophical basis, they disclose so many other small elements of republicanism. One of them, *yili mbu* If people must hold, if power derives from the people, directly or indirectly, then it follows that there must be a mechanism through which the people can recruit the representatives who should act on their behalf and the world over, the most acceptable mechanism of recruiting representatives has been said to be a democratic system of recruitment. So, the question of periodic elections. *Lwamukhupa tsikura tsiakhahwa mihika chirano mutsia khu kura.* You are just reflecting the republican principles of holding office for a limited period of ti---

**Audience:** ---time.

**Com. Kangu:** *Khwakuhesia mihika chirano, lwa chawele kalukha khandi khupanje nakhukhukalusieyo nohomba nakhureyo uwundi?* and in doing that *khubolanga*, he recruitment process must be a democratic process in which the people themselves or at least the great body of the people can decide *wuno niye wakhwenyanga atsie akhole* our work. So, periodic elections is a principle of republicanism. *Nosoma* these Acts that required us to write a Constitution for you *babolanga hano* we must prepare a Constitution that can ensure that Kenyans can have democratic free and fair ele---

**Audience:** --- elections.

**Com. Kangu:** We are attempting to do that in this Draft because that is a republican principle. Now, when you say people hold office for a short period, you must know three organs of State, the Legislature, Executive and the Judiciary at least the Legislature and the Executive, they normally go to elections after a certain pe---

**Audience:** ----- period.

**Com. Kangu:** So, you can have an opportunity as a people to change. *Mubole wuno khwachonyile ni naye bulano khwenya okhuraho owundi.* But the Judiciary, there is no elections. These are people who are brought in office indirectly by the people and we are saying, if the republican principle is to hold office for a limited period of time, we must find some mechanism of ensuring that the members of the Judiciary do not stay in office for far too long *nashio shichila khubola* retiring at 74 is far too long. We are saying that we want to reduce to sixty-fi---

**Audience:** ---- five.

**Com. Kangu:** Now, you must also create mechanisms through which the people can be able to control, even if they are not able to appoint members of the Judiciary directly, they must have some mechanisms of controlling and even removing. We are saying people must hold office during the pleasure of the people. The current Constitution *ebisa bino ibolanga:* Any public officer who holds a public office does so during the pleasure of the President and we are saying that is not a republican principle. *Nashio shichila muhulila munyala khuba mwikhale butswa hano muri ne wuli khu Radio yiyo nahulila woo* Mzee amesema fulani, kazi imekwi-----

**Audience:** ----- imekwisha.

**Com. Kangu:** --- because they hold office during the pleasure of the President. Now that is not within the republican principles

and we are saying, that should never be again. We are saying this time round, there should be mechanisms that will enable us to make sure that people hold office during the pleasure of the people and not the pleasure of an individual so that the appointment processes are not left to one person. The removal processes are not left to one per-----

**Audience:** ----- one person.

**Com. Kangu:** It is the great body of the people. Now, we are saying, if you are going to hold office for a limited period and during the pleasure of the people and during your good behaviour, then we are saying in a republican system, there is need to have transparency and accountability.

**Audience:** Accountability.

**Com. Kangu:** Transparency and accountability are elements of a republican system. You must hold office during the pleasure of the people, which there must be mechanisms through which the people can bring you to account. A time has come when the people say; let us see your books accounts. We want to exercise our pleasure or displeasure in your performance. Things must be done in open so that people can be able to assess and say, here we are displeased. This person must go. Because you must hold office during the pleasure of the people, so the people must be able to see what you are doing to determine whether you deserve to continue or you should be removed.

Now, two, if you are holding office during your good behaviour, there must be openness, *kha abandu bamanye* - whether you are behaving properly or behaving ba-----

**Audience:** ----- badly.

**Com. Kangu:** So, transparency and accountability is an important mechanism of republican government. So, when we say, we are republic, we must be recognizing that we want transparency and good governance. Now, separation of powers is a mechanism of republican government. You divide powers. You say *numura* everything *mumakhono ko mundu mulala* the tendency is to abuse. *Babola* when concentrated in the hands of one person. It can be abu-----

**Audience:** ----- abused.

**Com. Kangu:** So, we need to separate. We must define public power in different compartments so that we ensure that, power is not exercised by the same person. This is judicial power and it is exercised by judicial officers who have certain qualifications, behaviour that is consistent with what the people want. This is the executive power; it must be exercised separately from judicial power. This legislative power, it must be exercised. So, republican government recognizes separation

of powers, recognizes the mechanisms of checks and balances. They are aspects of republican government. We don't want a monarch where the queen is the executive, is the judiciary, is everything. We want separation of powers.

Now, also in republican government we talk about participatory government. *Khubolanga* Authority comes from the people who directly or indirectly delegate it to others. So, the people must participate in the running of affairs that affect them. So, participatory governance is an aspect of republican government.

We have protection of human rights, as an aspect of republican government because we are saying the purpose of government and good government for that matter, is to serve the welfare of every individual. So, human rights; is something that is conceived to protect the rights of every individual. So, it is an aspect of republican government. So *mwirebe, nimuhenga Kenya yefu yino nga lwa yikhale*, can we go out proudly and say that we are a Republican?

**Audience:** No.

**Com. Kangu:** So, there is huge difference between a republic and a monarch and a dictatorship. For thirty-eight years we have gone under the name of a republic but the truth is that in practice, we have never been a Republic. Just a dictatorship people are not allowed to choose their leaders, you cannot participate *mubolelungwa tsia yaha tsia yaha* and it is very wrong. We want separation of powers, checks and balances. and limited powers. Not excessive power that you can restrain and it can go haywire and do anything. It is extremely important. *Ndali Busia yiyo nimbolelanga abandu ba Busia lwakali kanzile mushikulu yilia, nebareba ndi shindu shialinje ebuluyia yino nyababa, shilindinjia bandu bakhanza okhukhupa amadebe eshieno shitsie mu Nyanza. Nolakhupa amadebe shikwama ha wuwo shira owuwo mwana, nimbolela abandu ba Busia omwesi wo munane, lwa kali kachachile Mt. Elgon, nebareba nyababa ikhupungwa nenyi mwaholele nashikwame hawenyu hano nashire owenyu. Shihirwa hahundi bakananga babika shitsie munyanza hawefu hano ta, nenywe nimulinya. Shishiera owenyu? Nyababa yikhupwa ulaholela hawuwo tawe eshishieno shinyala khukwama hawuwo ne niwe ulinyakhana.* You have to come out. *Nembosia abandu shibenya okhuhulila tawe.* You have to know, we are talking about a republican government. We don't want *omundu wundi khwitsa khu-imbosa* people on us.

**Com. Kangu:** That is the truth of the matter, which must be spoken openly and clearly. People must know. *Nimbolela abandu, abandu bali patient na bandu ababi sana.* A patient person, *omundu wokhwifwila, umuranjenje nomanyile, inyanga ya lichonya ulikhupa khu shibi. Ma abaluyia bakhifwila, baluyia befwila nibalakwa nebifwila, na bachenda nibabola hii ni gorogoro moja tutanua hawa. Lelo batwanganekhu yiyi --- (Laughter, Clapping).* *Bandu bakhwifwilanga* and you take them for granted, it is wrong and Kenyans have reached a point where their patience is going to run out. *Nimbolela abandu bana basiani balihotsa bakwa aselela wuno, nekhuteshie khandi asitsa wuno, nekhuteshie, mala abolela abakhana barano. Nyanga Lundi nabakanile musimba, ye ukalanga mbu nibakhupane shichira mbu balwanila khwiwe, nabitilane tsa nibabola umusatsa wuno akhubalilanga ariena, wesi yakhulaka, siesi yandaka.* Why

don't we beat him up? *Ma shikali kario bulano nako kekholekhanga. Ababele March nibalwananga mbu balwanila khu musiani mulala, bulano batilane, shikali kario? Ne musiani yakala nomubayo. Ne nuwenjile hango nulerele musimba umanyile akhachesi khamala khachele yinachikoni ne khatsiakhwo omushiere tsikhuyi, atsia alerakhwo amatsi kidogo ne lwa iwe wakhatushe niwula mbu wenya ukhuteshia no mushiele abola tsa wuno sie niye uhelile hangu hanje, wundi wurera wuyo. Notsia oyinganekho no mushiele akhubolela omukhana worera wuno isie manyile mwitala lia rulangamwo ne litala lie liloko shiatekhakho hawanje hano ta. Ne nyina omusiani yamala ukhubola ario kata banyakhusenje nibabola tawe lekha omwana ateshie, nyina abetsanga akanile. Bulano nyina niyakhakana nawe nyakhusenje niwe wanuse? Shimwahulile bandu nibakanile Eldoret yiyi. Pora abanyina nibo bakanire. Nenywe ninywe abanasi? Niwe banababukule wa nyina akanile?* So, republican government is based on the people. The people are put at the center of republican government. One, because power derives from the people. Two, the government is formed to serve the welfare of the people. So, we have tried in this Draft to infuse these values of republicanism in this Constitution. If you look at Chapter 3, which deals with the national goals, values and principles, you will see that we are trying to infuse these republican values of governance in what we are talking about. Now, for example Article 14 sub-Article 4, the republic is based on principles of democracy and shall promote the participation of the people in public affairs and facilitate the sharing and devolution of power. *Abandu abene babe* allowed to participa-----

**Audience:** ----- participate.

**Com. Kangu:** Now, sub-Article 5, we are saying the Republic shall ensure open and transparent government and the accountability of State officials and public authority. We want transparent Government. Now, in Article 6, we are saying the Republic shall take exceptive measures to eradicate all forms of corruption. *Khubolanga* the Government role is to manage resources properly so that the welfare of the people are taken care of and corruption has interfered with that. So, the State must work towards eradicating corruption. We are saying at Article 7 that the Republic shall ensure access of the people to independent, impartial and competent institutions of Justice so that even the Judiciary must also work towards serving the people.

At Article 8, we are saying even political parties shall observe democratic principles in their internal organization and procedures, respect the rights of others to participate in the political process and avoid violence and bribery. *Mubisia Ikatiba yino* we shall be saying even political parties in their internal elections, they must be democratic. We will not allow parties that go for twenty years without holding any elections. There must be a fixed period and those elections must be conducted in a democratic manner because the people directly relinquish their power through a democratic process. So, even in a political party, we want to see democracy and our argument *yili* If a party is seeking to be in government and it cannot be internally democratic, then you can only expect a very undemocratic government when they take over and we don't want that nonsense to continue. So, we are saying political parties must be internally democratic. We are even proposing here when it comes to the representation of the people, and elections, we are saying, elections whether national or in the political parties must be by

secret ballot, they must be democratic and so on. So, those are the proposals we made.

If you look at Article 11 we are said, the Republic shall ensure the fullest participation of women, the disabled, the marginalized community and sectors of the society in the political, social and economic life of the Country.

At Article 14, we are saying, the Republic shall be committed to social justice and through appropriate policies and measure to providing for all Kenyans the basic needs of food, shelter, clean water, sanitation, education, health, a clean environment and security so that they live a life of dignity and comfort and can fulfill their potential. These are guiding values, the goals we are setting. *Embolele lwakhwanzile* the Constitution must enable us to dream and we are expecting a certain level of a dream. We are dreaming of a society of a certain kind and the State will be required to move towards achieving that kind of State. So these are values we are laying down. The reason I am saying 'dreaming' is because, *mula-expecta ebindu bino* they will be in place tomorrow *tawe kata khubisia Constitution yino* tomorrow, they cannot be in place the same day. Some of them are retrogressive. So we allow time but we must see the government working in that direction. Even though they are retrogressive, we don't want a government to get into office *nibatsitsanga* left instead of going right, *nibakhubolela*, no we are progresssive. We want to see the efforts you are making towards that e -----

**Audience:** ----- end.

**Com. Kangu:** That is what we are talking about.

Now we are saying for these values to be put in place, we are not putting the obligation on the State alone, but also on the citizens. *Enywe bene*, you must also perform certain duties. So, under Article 15, we are identifying some of the duties of the citizens.

The citizen shall be required to acquaint themselves with the provisions of the Constitution and propagate its ideals and objectives. *Bulano khwechesaninja ebisa bino*. But when we finish this Constitution, we shall require people to continue learning about it. *Mumanye*, that is when you can defend your rights when they are being threatened, we shall want the schools to start teaching Constitutions in the schools *abana bamanye, bakhulenje nibamanyile* The values that our society wants to live by. So that they just don't grow up in a wild way. We were even saying here it can be the duty of a citizen to exercise his democratic rights by voting. So, we are saying, voting is no longer going to be just a right but it will also be a duty. You must participate. *Baliho muno bulano babolanga ah, omundu bakhurere wuyo shikhwenyele ta nibakhayile efwe shinakhutsi khukhupa ikura tawe*. That doesn't help you. You must go and vote even if it is just voting to block him from taking over. You must go and vote. If you sit back home, you are not solving the problem. *Nutsia Nairobi yilia nonyola abandubaliranga mu Langata mulia mbu* They elect wrong leaders for us when the elections come *nabandu ba Kibera abatsitsanga okhukhupa tsikura*. Their bosses in Langata, they don't go to vote. Their bosses in Karen, they don't go to

vote. *Nutsia Westlands abanduhulilanga nibalilayo* -- oh! Gumo is a bad MP, but they don't vote. The people who elect Gumo are the people in Kangemi who are supposed to be the cooks and gardeners of these big people in Westlands. They should not be heard to complain. We are saying, 'come out'. You vote counts alot.

**Audience:** Alot.

**Com. Kangu:** In deciding the direction of this country. The people are supposed to determine the form of government and elections is one way of determining those who get into government to run it for you. So, if you don't you will lose.

We are saying payment of taxes is another duty. We want people to pay taxes and on that issue of during good behaviour, we are proposing here now, that there will be leadership code of conduct. If we are talking about your holding office during their good behaviour, we must have some standards of behaviour. *Tsiakhuhengakhu kho khubola wuno niyekholele ari kano nako kakhwenyanga lakini yakhafwana ari*, this is not what we want. So, we have set a leadership code of conduct, which will bind leaders. If you are not of that behaviour, you will not be allowed to hold certain offices. **(end tape 1)**

We are saying that who hold certain officers shall be required to go to the body that is concerned with the leadership code of conduct to declare their wealth and how they earned it.

**Audience:** Yeah.

**Com. Kangu:** If they are unable to explain, then we are able to say, if he can't explain what he has, how do we entrust him with public property.

**Audience:** Yeah.

**Com. Kangu:** So, we have set an elaborate code of conduct, which leaders must have, we are saying they must hold office during their good behaviour and we must therefore set out the standards of behaviour, from leaders that hold certain offices. Now, those are the proposals on the values that we have put and throughout these, we are trying to see whether we can come up with a Constitution that can carry out these republican principles that we are talking about. We are saying and I have urged this with my colleagues for a long time that we must prepare a Constitution that is founded on a republican ideologies, so that *omundu nakhureba* What is the Kenyan ideology? *Bindu bia khwabolelwanga hanyima halia mbu* Non-alignment, non-alignment. That is not an ideology. We are saying, we want to say the Kenya ideology is a republican ideology, which is based on the people and their welfare. That is the driving factor and if you go through this document, *witsa okhunyo mbu* we have emphasized. If you look at Chapter 5, we are emphasizing the Bill of Rights that the rights of the individual. If you go back to the Preamble, when we talked about nurturing and protecting the welfare, we said it is the welfare of the individual, the



family and the community. If we capture the individual, each and every individual, then the community is all captured. So, the Bill of Rights focuses on the individual as a person whose rights must be protected. So, we have given here an elaborate set of rights for the entire community, and every individual. We have identified rights for women, rights for the disabled, rights for the children, rights for the elderly and so on. They are all here and you can go through, i.e. starting at Chapter 5 Article 29 and it runs through up to Article 75. The Bill of Rights and how it should be interpreted. The people are put at the center of everything.

Now, if you look at the Article dealing with the representation of the people and running through to the Parliament, where Parliament starts at Article 101, we have put the people at the center of everything. At Article 102, we are saying, Parliament represents the cultural diversity of the people symbolizes the unity of the Nation and determines the policy of the Republic. Two, In order to ensure that the State functions according to the will of the people, Parliament has authority to exercise the sovereignty of the people. So, when constituting Parliament, we are emphasizing the sovereignty of the people. We are saying the people are the source of authority and therefore Parliament as an agent must exercise that authority on behalf of the people and for the benefit of the people.

Now, if you look at the Executive, which begins at Article 148, we are again emphasizing the people. We are putting the people at the center of everything and we are saying at Article 148, the powers of the Executive are to be exercised for the well-being and benefit of the people and the Republic of Kenya. They are not supposed to exercise that power for any other purpose. Right now, you know it is exercised for so many other purposes that have nothing to do with the welfare of the people.

Now, Two, Executive authority is assigned to an office bearer by or in terms of this Constitution vests in that office bearer has the power to serve the people rather than the power to rule and shall be exercised in a manner consistent with the purpose and objects of the Constitution. So, we are saying, the Executive is vested with power to serve them and not to rule them. *Benyekhanga bamurumishili nywe. Hapana to come and load over you. Ma bachenda babola Serikali yangu hii. Serikali ni ya watu.* It belongs to the raia and not to an individual. You are only a servant and you must serve the people.

**Audience:** People.

**Com. Kangu:** So, people must know this so that when you put government in place, you are able to call them to account and say, this is our government, you are only our servant and you must perform your duties as a servant and no more.

Now, if you look at the Judiciary, we have again put the people at the center of the allocation of that power. Article 184, we are again saying judicial power is derived from the people and shall be exercised by the Courts in the name of the people in conformity with the Constitution and the laws and in conformity with the values, norms and aspirations of the people. So, even

the Courts are expected to exercise judicial authority on behalf of the people, in the name of the people and to satisfy the aspirations of the people and we say the will of the people, the aspirations of the people is to have their welfare protected. I normally tell people, I define the will of the people at two levels. The first level of the will of the people, is the natural instinctive level of the will of the people, which is in everybody regardless of age, gender, of race, of tribe and religion. Everybody has a will to survive and the natural and instinctive will is the will to survive, the will to feel secure. If anything happens to you

**Translation:** *nunyola niwisundukha*

**Com. Kangu:** Something is threatening your welfare. The will to be secure is the first will of the people. Every individual.

**Translation:** *Kata omwana wushili okhumanya okhubola nomutsunakhwo nohulila nalila mana abashiele muno bamanya nubebusie abana mukari muno mumatala muno omwana nakwa butswa hasi yahuma ukhulira nibisundukha. Nebatsia batsunakhwo litere benya khuhuli alira nohomba tawe. Nalalira tawe nibamanya*

**Com. Kangu:** Something is terribly wrong. Lakini

**Translation:** *nibatsuna yalira nibamanya* this is a normal child

**Com. Kangu:** Because he is responding to the sense of pain. He is responding to the natural will of people to feel secure, to feel to survive (Laughter)

**Com. Kangu:** That one

**Translation:** *yili mu buli mundu abe omulema, abe walunjikha, abe murambi, abe mwimbichiti*

**Com. Kangu:** Everybody wants to survive

**Audience:** Survive.

**Com. Kangu:** I talked about certain preservation. It is in everybody. He wants to survive and that is the will of the people at the first level. That one cuts across.

**Translation:** *ili kata* inter-generational

**Com. Kangu:** That is why we are talking about ourselves and our future generations.

**Audience:** Generations.

**Com. Kangu:** Because we must eat what we have today

**Translation:** *khulesherekhwo abali imbeli nabo bosu bakhali*

**Com. Kangu:** Because we know their will, will also be to survive -----.

**Audience:** To Survive.

**Com. Kangu:** Lakini, when you come to the will of the people at the second level that is the one that is representative. The will of the people, there is the exercise and the power that seeks to manage the resources that are necessary for the survival of everybody and for the survival of the will of the people at the first level. Now, that level, is representative.

**Translation:** *Habwene yaho unyola*

**Com. Kangu:** Not everybody can perform. Just a few can be allowed to act and we are saying, those who are allowed to exercise the will of the people at the second level must do so as to enable the will of the people at the first level to survive. They are put in office to manage the resources that are necessary for the exercise of the will of the people at the first level – self-preservation. So, when these people are exercising judicial power, they must take into account the aspirations of the people-----

**Audience:** ----- people.

**Com. Kangu:** -----and when we talk about the aspirations of the people, we are talking about the will of the people to survive, to feel secure, to feel justice is being done to them. The will of the people. That is what we are saying about the Judiciary. *Notsia* even to the management of the public finances and the management of revenue, you will again find that the people are given center stage. Chapter 13 Article 243, we are saying at this Article, that the primary object of the public finance and revenue management system of the Republic of Kenya is

- a) To ensure efficient and effective generation of revenue for the purposes of promoting and safeguarding the well being of the people of Kenya.
- b) Enhance the participation of people, communities and civil society organizations in public finance management
- c) Ensure equitable sharing of national and local resources throughout the republic taking into account the special provision of marginalized areas

- d) Ensure the equitable of provision of revenue raised nationally among national, provincial district and local levels of government and
- e) Ensure that in a location and distribution of national revenue, adequate consultation is conducted and recommendations from various levels of government and sectors are considered.

Now, these are the values for the management of public finances and revenues. Those must be done for the purposes of ensuring the well being of the people. So, you can see the republican principle, which is centered on the people running through the document we are proposing to you. If you can approve it, then we are able to implement and therefore live a better life than we are living today. Now, that goes to the Constitution of the State on the values, the territory and so on.

Now, I want to go to the power map. What map have we drawn in as far as the exercise of power is going to be under this new Constitution? Now, when it comes to the power map, we are saying we must construct and reconstruct certain institutions that can be allocated certain functions to perform on behalf of the people and for the benefit of the people

Now the institutions we are proposing to construct and reconstruct are of two kinds. One kind, are those institutions that are allocated certain public powers to exercise on behalf of the people. Now, we are saying these are constituted by the orthodox three organs of state, the traditional three organs of state i.e. the Judiciary, the Legislature and the Executive. Those ones are allocated certain aspects of public power to exercise it on behalf of the people. The Executive is allocated the executive power of the State. The Legislature is allocated the legislative power of the State and the Judiciary is allocated the judicial power of the State. We are saying that when these powers are exercised properly, the welfare of the people should be able to be served.

But on the other hand, we are saying it is not always that those three organs will be able to exercise that power properly or those sectors of powers allocated to them properly. So, sometimes, you need other institutions that can supervise them to ensure that they exercise that power properly. So, the second set of institutions, we are proposing to construct and reconstruct are supervisory institutions. Institutions that are supposed to supervise these other three institutions to ensure that they exercise the power properly. So, we have proposed a number of commissions and offices that are supposed to supervise these other organizations. There is need to supervise because people hold office for a limited period of time during the pleasure of the people and during their good behaviour. So, there must be those institutions that can set the good behaviour that is expected to supervise and ensure on behalf of the people that people hold office during their good behaviour. So, these are supervisory institutions. So, I will start with the orthodox institutions, but before I go to that, we said these institutions are being dealt with in these proposed Constitution at two different levels.

The first level concerns the institution that already exists under the current Constitution but which we are saying have not been performing properly and we need to reconstruct them to see whether we can make them perform properly and be consistent with the republican principles then, there are those which do not exist under the current Constitution which we have sought to construct afresh and introduce afresh so that they can perform those functions that we think are necessary to enable the people

enjoy good governance.

So, starting with the orthodox institutions, all of which we have sought to reconstruct, I will look at the Legislature and we are saying, *mulisikia* the Judiciary crying, *itafanana* as if it is only the Judiciary we were reconstructing, but that is not the truth. We have sought to reconstruct almost all the three institutions and I said the surgeon's knife has been cutting all corners. There is no institution that will go on without feeling the pain of the surgeon's knife, but the Judiciary somehow are running around, the Legislature hasn't complained yet but we have reconstructed the legislature. In reconstructing the Legislature, we started from the principle that when power is concentrated in one place and in the hands of one institution, power is quite easily abused. So, we are saying, we must disperse power. For purposes of enhancing separation of power and enhancing checks and balances, we must not concentrate legislative power in the hands of one institution. So, we said, we must disperse that power. We must divide and create more institutions that will exercise legislative power. At this level rather than continuing with the Parliament, we should reconstruct it. We are proposing a reconstruction of Parliament so that we have two Houses – an Upper House and a Lower House.

At independence we had a situation of that kind. We had a Senate and a House of Representatives and these Houses, effort was to enhance checks and balances. The British have a House of Commons and a House of Lords. If you go to America, they have a House of Representatives and a Senate. When the two Houses sit together they become congress. In Canada they have a House of Representatives and a Senate, the same in Australia. Now, if you go to Germany, they have what they call a Bundestag and a Bundesrat and we are saying we must also divide legislative power in this Country to enhance checks and balances and to enhance the participation of the people in legislation. So, we are proposing a Parliament that will be constituted by one House, known as the National Assembly and another House known as the National Council. We have decided not to use the colonial term of Senate but use a term called the National Council.

Now, the National Assembly, we are saying should have three hundred Members of Parliament. These three hundred Members are constituted in two forms. One set is of the two hundred and ten MP's who represent defined single member Constituencies where people chose a person and say

**Translation:** *wuno niye Mbunge wefu*

**Com. Kangu:** Then we have another set of MP'S, ninety of them who will be elected on the basis of proportional representation. I will come to the details on that when talking about the representation of the people and the mechanisms of recruiting the representative of the people. Now, that is one House.

The other House, the National Council should have a hundred members. Now, these a hundred members, we are saying should be constituted in two ways. One set is a set of seventy members who represent the District. We are saying this country

has sixty-nine District plus Nairobi as a District to make seventy. So, we are saying every District shall elect one person to go to the National Council as a Member of Parliament representing the District - seventy members. Then we are saying the remaining thirty members will all be women and these women will be distributed on the basis of Provinces. We have seven Provinces plus Nairobi as a Province we get eight and we are saying the seven Provinces, each will elect four women to represent the Province and they will make a total of twenty-eight and then the remaining two shall be given to Nairobi and then we get thirty. So, a total of a hundred members of the National Council, represent the Districts and the Provinces and they will perform legislative functions jointly with the National Assembly. When they are performing the functions, we are saying, when an Act or Appeal is passed in the National Council, it shall again go to the National Assembly. If the National Assembly rejects it, that is the end of the road. It does not become law. When a Bill begins in the National Assembly and it is passed, it shall again be taken to the National Council and be passed. If it is not passed there, it does not become law and we are saying this should help us as a mechanism of checks and balances

**Translation:** *Ebise bino mwamanyile ababunge belukha butswa yilia nemuhulila babisiye ebindu, kuli omushara kwabo kuburi, wisundushilanga kuburi*

**Audience:** *kuburi*

**Com. Kangu:** Now, we are saying this time round, because of this, if one House passes something,

**Translation:** *ne mwakhisundushila shiakhabisibwa nimunyola*

**Com. Kangu:** The other House has not passed. Then you can have an opportunity to say, 'no', and you can tell the House, 'don't' pass even though the other one has passed it.

**Audience:** --- passed it.

**Com. Kangu:** You will have an opportunity to debate when some of these things are pending in the House and we have said under Parliament that when Parliament is constituted, it shall be divided into a number of committees. Parliamentary Committees and Sectoral Committees and we have introduced one important committee known as the Committee on Good Governance and Public Participation. That Committee shall be required, *wakati Bunge ina debate* 'being the one to publicize those things so that wananchi 'wajue' Bunge is trying to pass this kind of law. They can also debate and contribute to it and see whether it is a law they would like or not. Experts may in various areas, may be able to approach the Committee on Good Governance and Public Participation and tell them, we need legislation in this area or the legislation you are proposing here, our expert opinion source, it is not proper, change it this way. So, the public will be involved in this arrangement. We are even saying, there is a right under this proposed Constitution for the public to petition Parliament through the Committee on Good Governance and

Public Participation to have certain legislation passed.

**Translation:** *Munyola amakhuwa kamunyasinja hano*

**Com. Kangu:** But there is no law governing it. You can go and petition that Committee and say that there is this issue that needs a law. There is this law that needs amendment. There is this law that needs repeal. Why don't you move a motion or a bill in Parliament to do this? The public will be allowed access to the Committee on Good Governance and Public Participation to make their own proposals. We think this will do good.

**Translation:** *Lwa e mikhonye chia munyasilinjie hano*

**Com. Kangu:** You could have formed lobby groups here

**Translation:** *nemuproposa ebill, ne mutsia kho*

**Com. Kangu:** The Committee of Public Participation (*in Kiluhya*)

**Translation:** *nemubola*

**Com. Kangu:** ----- we want this passed. So, we want to enhance the participation of the people in governance. When it comes to the amendments to the Constitution, we are saying, amendments to this Constitution shall never be passed until after the second reading, the public are allowed ninety days before you go to the third reading

**Translation:** *kho ibisibwe*

**Com. Kangu:** So, after the second reading the Committee on Good Governance and Public Participation will be expected to publicize the proposed amendments and to facilitate the participation of the people in the debate of the amendments before they are taken to the third reading and become law. So, we are trying to enhance a mechanism of republican Government. People must participate in the matters that affect them. That is how we proposed to reconstruct the legislature. I will come back to it when we are talking about elections and see what can be done.

Now, the other institution we have sought to reconstruct is the Executive. Again the driving principle was, when power is concentrated, it is abused and we are saying in Kenya, so many of them

**Translation:** *Bandu balira eshialo shino shiosi*



**Com. Kangu:** The President has a lot of powers. Reduce the powers of the President and so on and we say, although the Kenyans in their simple language are telling us to reduce the powers, they are not telling us, give us an ineffective government. They want a Government that is effective but they are saying they want that Government in the hands of one person. So, we must distribute. We must create other centers of power and give some power to them. So, we proposed to reconstruct the Executive so that we have a President, a Vice-President, a Prime Minister, two Deputy Prime Ministers, a Cabinet of sixteen Ministers and then sixteen Deputy Ministers. That is what we are proposing.

Now, we are saying, we want to reduce the powers of the President although we have been accused of creating a ceremonial President, the truth of the matter is that the President we are proposing is not ceremonial. We are simply trying to reduce the powers of the President without creating a ceremonial President because we were aware, people are complaining not about just the President but about power being put in the hands of one person. It matters not, how you describe that person. So, we said, if we created a ceremonial President, that will mean, we are shifting the entire set of Presidential powers and probably giving them to another person called the Prime Minister and that will not be solving the problem. We said, what we were told is to – reduce the powers. So, if we take some, we put this way and others that way, so that they can act as checks and balances on each other. So, the President we are proposing is not ceremonial. We have very good powers. The Prime Minister is also not ceremonial. He is not like the Tanzanian Prime Minister who has no powers. He is also a very powerful Prime Minister. The two of them must act as checks and balance on each other and we are saying, you know, when you force people to negotiate, they may not be friends. But when you force them to negotiate, they somehow can take care of the people or the country well.

**Translation:** Shili nga olola abandu munzu yumu butswa omusatsa no mukhasi batsanga

**Com. Kangu:** My, darling, my darling,

**Translation:** *nyanga lundi nakole bulano*

**Com. Kangu:** The love disappears. Lakini

**Translation:** *banyola mbu lwa bali na bana befwilane butswa tu*

**Com. Kangu:** For sake of

**Translation:** *ya bana*

**Com. Kangu:** They have to tolerate each other for the sake of bringing up the children. Now, in the process, the children don't suffer. They are taken of. So, we are saying we want to create a President and Prime Minister who will look at each other suspiciously, they may not be friends, but they will be forced to negoti-----

**Audience:** Negotiate.

**Com. Kangu:** ----- so that the Country may run properly.

**Translation:** *Kamulola bulano kekhola mu Kanu yiyi buli mundu abola*

**Com. Kangu:** we don't need them, the other says, 'we don't need them'. But each time, they want to negotiate because they realize they need each other. None can do without the other. That is the reality on the ground. They need each other.

**Audience:** Each other.

**Com. Kangu:** That is a good mechanism of checks and balances. I was reading some article in the papers today

**Translation:** *Mundu wundi nabolanga*

**Com. Kangu:** There is one good thing that Uhuru has done for us. That his coming on the scene has done away with the idea of tribalism because as people quarrel in KANU, also Rainbow,

**Translation:** *babolanga*

**Com. Kangu:** They might put there, Saitoti, who is a Kikuyu, those in Nac

**Translation:** *bosi bareho Kibaki*

**Com. Kangu:** ---- who is a Kikuyu, so now the point is that the point is that Kenyans are looking for an individual who can perform, it is not tribe. (Laughter) So, somehow he has helped the Kenyans to start thinking on quality rather than the tribe. Secondly, he has also helped the Kenyans i.e. he gave the Kenyans an opportunity to start shaking

**Translation:** *mzee kabisa shinga naya, shichila yali yamenya butswa shianyala okhubolelwakhu likhuwa ta, lelo khubolelungwa ma nyola kakhayile*

**Com. Kangu:** For twenty-four years,

**Translation:** *omusakhulu wuno abetsa yachenda, kata omundu nashili khumuhekolakhwo tawe, mana esie mbele nimbolanga omukofu wuno bane nakhikhole arie?*

**Com. Kangu:** This is the time he should be going around

**Translation:** *nabolele abandu, abandu banje mulindwe*

**Com. Kangu:** You have enabled to rule you for twenty-four years.

**Translation:** *Bulano*

**Com. Kangu:** Instead he is going around with heckles. So, it is a very sad situation. But that is what is happening. But it is all because of Uhu-----

**Audience:** Uhuru.

**Com. Kangu:** One person. *Kho* we may blame him *lakini*

**Translation:** *wakhukhonyile khu bulano*

**Com. Kangu:** People can speak out, people can speak out, they can express their views and nothing is done because they have realized that they need you. They can't get Uhuru through without you. They need you. So, they must listen to you. I don't know whether Kasarani will go through

**Translation:** *ndakhahulila Rainbow babolele shinabatsieyo ta*

**Com. Kangu:** But I am worried even what happened here, they must cancel that Kasarani because there is going to be full-scale war in Nairobi. They would rather cancel it. I am worried. With 'Mungiki' and so on, we are headed to a big problem but we hope God will care for us.

Now, that is the President we are proposing. The President is the Commander-in-Chief, he is the protector of the Constitution and all the Constitutional offices, those institutions that I said are supervisory are appointed by him with the approval of Parliament. They report to him annually. So, if they report, the Prime Minister is not performing well as the Protector of the

Constitution is supposed to take action. So, he has a lot of powers.

The Prime Minister on the other hand also has powers, which have been allocated to him. Now, we are saying, the Vice-President, this time round will not be a Vice-President that is appointed and dropped by an individual anyhowly. We are saying, when we go to elections, a President candidate must nominate his running mate.

**Translation:** *Mana numukhupira ikura, umukhupiranga wakhamuhenga khandi wakhahenga his candidate. Omundu omulayi nabukule omwifi*

**Com. Kangu:** He may fail because

**Translation:** *abukule omwifi*

**Com. Kangu:** So, when you vote for him you are also voting for his running mate. If he wins, his running mate becomes the Vice-President and he cannot remove him without approval of Parliament and we are saying.

**Translation:** *niyakhahumaho, nakwa nohomba narisaina nohomba naba*

**Com. Kangu:** -- removed through impeachment, then the Vice-President takes over for the remainder of the term without having to go back to elections. We are saying, it is an important thing because

**Translation:** *nikhuhenga, nimulola akatsilililanga ebise bino bulano, iproject yene yamubolelwangwa hino. Eshichiranga benya batsie*

**Com. Kangu:**--- for elections with the Current Constitution is because some of such clauses.

**Translation:** *benyanga nabatsililile khumukatia Uhuru niyakhayomba owenyu niye wunube Vice President, khandi barula hano khandi batsia hahundi khandi bakatiayo, uwenyu neye wunube Vice President. Batukha bakhayomba nimunyolanga muleshelwe shikhaya. Nibahesia uwundi. Uhulilakhwa mpango kwene kuliho, kuli mbu omwana we, mbu niye wunube Vice President. Khwo khubolanga and they know nibatsia nende the current Constitution, mana babole Uhuru ngwoyu*

**Com. Kangu:** ----- and his running mate, Gideon Moi

**Translation:** *ngwoyu na bandu babola oh*

**Com. Kangu:** ----- oh! That is why this project is being pushed.

**Translation:** *nibaloba okhubakhupira etsikura*

**Com. Kangu:** They are aware of that. That is why they are saying they want the old Constitution.

**Translation:** *namukatibwe, ne lelo esie ndayekukha amarwi ndabolele abandi*

**Com. Kangu:** We have been cheated many times. We will be fools to be cheated this time again. How many times have we been told

**Translation:** *Khwanza nende Mwangal, Mwangale nakhubolelanga oh, mwikhole mube abalayi khwakhanyole, Mwangale nafubwa kando, khwakhetsa khukatibwa nende Mudavad, ngwoyo wakhafubwa kando, lelo khandi khubolelingwa Jirongo..*

**Com. Kangu:** It is a lie. Don't believe it. It is a total lie. It is clear.

**Translation:** *Mukatibungwa*

**Com. Kangu:** Now, the cabinet, there will be sixteen ministers. We don't want a situation where there are fifteen ministries but thirty ministers. We are saying sixteen ministers with sixteen ministries and sixteen deputy ministers, no more. We are saying those ministers must be appointed from outside Parliament. They should not be Members of Parliament. (Clapping) They should be appointed from outside Parliament, from amongst professions, and when they proposed for appointment, Parliament must approve and we are saying the reasons why we want this is

1. We are saying republican government wants separation of powers so we want the Legislature clearly separated from the Executive. We don't want a current situation where a half of Parliament are Ministers and Deputy Minister. So that when Parliament wants to vote or censor the Government, they can't secure the votes because the Government is part of Parliament, so they vote against motion. We want clear separation so that Parliament can look the Executive in the eye and censor them and tell them you are wrong on this. We want separation of powers.
2. (**Interjection** – we will come to questions later) Two: when MP's become Ministers; sometimes they neglect their Constituencies saying that they are busy with Ministerial matters. So, we want the constituents to have their MP., some use the ministerial position as an excuse

**Translation:** *nibalenyele kutsia kudila nende tsiproblem tsia bandu tawe, bekatinja mbu*

**Com. Kangu:** They are busy with ministerial matters when in fact they are not busy. We want to do away with that, this time round. We are also saying when people become ministers; they somehow convert the Ministry into a property of their Constituency. They forget that this is a national Ministry that is supposed to serve the entire Nation. They start treating it as if it is a property of their Constituency.

**Translation:** *Mana notsia mu tsiofisi tsia ministers nunyolanga nali Omukamba, bakamba nabo betsulemu nali Omuseba, abasebe nabo betsulemo. Khuhuka*

**Com. Kangu:** Is it a National Ministry or what?

**Translation:** *Mana kata omusakhulu mwene nakaba, namalanga abola mbu enywe abaluyia shindamuhesia shino nende shino? Akorungwa*

**Com. Kangu:** That is just a servant who is supposed to serve the whole Nation. We were not given as a property

**Translation:** *Yo khurumishila*

**Com. Kangu:** When others get nothing. It is a property of the entire Nation. So, we are saying we want to do away with this. We are also saying, when some people are made ministers, they start loading over the other MP's in the District and in the Provinces so that other MP's have to go to

**Audience:** ----- begging.

**Com. Kangu:** ----- to him when they are supposed to be MP'S on an equal ba-----

**Audience:** ----- basis.

**Com. Kangu:** We are saying we don't want that kind of situation. We are also saying sometimes you get a Parliament that does not have people that are well intellectually prepared to handle ministries affairs. So, we are saying, let the Government be formed from outside Parliament so that we can have an opportunity to look for people qualified to run the ministries without any problems. Those are the proposals made. The same for the Assistant Ministers. They must also come from outside Parliament and we are saying, when they are appointed Minister and Deputy Minister, they become ex-officio Members of Parliament.

They can attend Parliament to answer questions. They can attend Parliament to follow the debate to be able to understand the reasons behind the legislations that Parliament is passing so that when they are implementing them, they know what Parliament had in mind. But, when it comes to voting on laws in Parliament, they are not supposed to vote. They only attend but legislation is done by Members of Parliament excluding the Ministers. Now, that is the reconstructed Executive that we are proposing to the Kenyan people.

Now the Judiciary. We are proposing that it should also be reconstructed. *'Umesikia wakipiga kelele, wakisema'* oh! We are interfering, but we are saying we were asked to go for comprehensive review and this cannot leave any department untouched. So, we are reconstructing the Judiciary and we are saying we want to introduce another Court, known as the Supreme Court. It will be the highest Court in the land. It will have seven judges – one of them the Chief Justice. We are saying, the Supreme Court unlike the current Court of Appeal will have appellate and original jurisdictions. It will be able to hear appeals from lower Courts but there are other matters that will be taken to it without going through any other Courts. We are saying, when Parliament finishes legislation, it will be required to pass over to the President to give his assent before they become law. President as the protector of the Constitution and constitutionality may be able to disagree that the law does not seem to be consistent with the Constitution. If he is in doubt, he can before giving his assent pass it over to the Supreme Court and request the Supreme Court to give him an advisory opinion. The Supreme Court will look through and it can invite people to make submissions on it who may be interested and give an advisory judgment that says the Act is constitutional or is unconstitutional.

We also proposed that when elections are held and you want to challenge the election of a President, you do not have to go through all these other Court. You should be able to fight your case straight with the Supreme Court so that it is determined quickly and finally let the President to continue doing his work without being dragged through the Courts for an entire five years end before he rules the country or serves the people. So, those are the proposals about the Supreme Court.

We shall retain the Court of Appeal and the Supreme Court shall be headed by the Chief Justice who shall also be the head of the entire Judiciary. The current Chief Justice has a lot of powers and we must also reduce the powers. So, we are saying the Court of Appeal shall be headed by one of their own known as the President of the Court of Appeal so that some of the functions that are supposed to be performed by the Chief Justice are shared out to these other person called the President of the Court of Appeal i.e. administrative functions.

In the High Court, and we are said the High Court should also be headed by a Principal Judge who shall also share in the power that are otherwise currently exercised by the Chief Justice so that to reduce the powers of the Chief Justice.

We are also proposing the restructuring of the Kadhi's Courts so that we shall have a Kadhi's Court at the District level, Provincial Level and a Kadhi's Court of Appeal which shall be presided over by the Chief Kadhi and two senior Kadhi's.



Then appeals from the Court of Appeal shall go to the Supreme Court on matters of law or the Constitution. That is how we proposed to restructure the Judiciary and I'll come back to it in the transitional arrangements so that you can understand why they are complaining.

Now, those are the provisional institutions we are seeking to restructure and before I move to the other institutions, we go back to the representation of the people and how to recruit representatives to some of these offices.

Now, under the representation of the people, we must address the system of elections. We must address the process of elections and also institutions for the management and administrations of elections. Now, in addressing the system of elections, we are saying first, the general rule which we must work towards is that we should try to as much as possible make sure most of our elective bodies have at least one-third women.

Secondly, on the systems of elections, we are saying there are one up to three major systems of elections and we should consider the three of them and stick to one as the one we want to propose.

The first system which we have in Kenya today is what they call the first part, the post system of elections. That one is based on simple majority. You win, the person who has the highest votes wins and it is highest votes as compared to the next person, not to all the others even if you are leading with one vote as compared to the next person, **END OF TAPE 2 SIDE A**

----- we have minority Members of Parliament. We have MP's who represent minorities in their Constituencies in that for example, Butere

**Translation:** *Ebutere yino nemutsia mukura nende abandu barano mana*

**Com. Kangu:** --- the first person *anyole* five thousand votes, the next person *anyole* four thousand five hundred.

**Translation:** *Omundu wa khataru anyole 4,4000 owakhane anyole 4,300 wa kharano anyole 4,200*

**Com. Kangu:** The end result is that the winner who has five thousand in fact represents a minority because

**Translation:** *nometa tsikura tsia bakwili banne bano ni bamuyombele ihale kabisa*

**Com. Kangu:** So, in effect he is a person who was rejected by the majority of the Constituency but he is the MP. That is what simple majority means. Now, two: simple majority is based on what we call single member Constituency. You have a defined unit that is called a Constituency – a geographical unit

**Translation:** *Shinga Ebutere as a Constituency*

**Com. Kangu:** So, the Country is divided into various units called Constituencies and a member is elected to represent one unit as a Constituency. So, in Kenya today, we have two hundred and ten units Constituencies. So, we have two hundred and ten MP's. Now this one has again a problem. Some people have complained. That some places are sparsely populated and others are densely populated.

**Translation:** *babola*

**Com. Kangu:** People complained that some places are getting higher representation. Some votes are counted more than others. They are weightier than others and this came up in many places

**Translation:** *Khwatsitsanga Ebusebe yiyo nebabola no, khwenya equal population, mana ebareba munyi mwachendakhwo*

**Com. Kangu:** Because when we talk about population, then we also have to look at the circumstances in which people live. There are some people I want to tell you whose Constituency are larger than the whole of Butere-Mumias District one Constituency or even bigger.

**Translation:** *nemunyola omundu khurula*

**Com. Kangu:** He may be having a Constituency that has a population of ten thousand or seven thousand voters *lakini*

**Translation:** *onyolanga atsia mu*

**Com. Kangu:** One Manyatta where there are about a thousand people and for him to reach another Manyatta where there are another thousand people, he needs to travel for three hundred kilometers. It is a long distance.

**Translation:** *Notsia in Marsabit*

**Com. Kangu:** The Constituency of Hon. Godana, in North Horr, North Eliret,

**Translation:** *Notsia Eliret yikulu yilia khu lake Turkana khoruleyo witse wule khu mwisho mwalo yino*

**Com. Kangu:** You are talking about eight hundred to nine hundred kilometers. So, some argument may sound sweet when you hear them for the first time but when you go to other places, you realize they are so misguided, they don't know what they are talking about. So, we say this system has got problems and we need to address. People have complained. So, let's look at the other systems and when defining Constituencies, we must look at population and you must also look at the geography and the terrain in which people live and so on.

So, the second system.

**Translation:** *nayo ni elangungwa*

**Com. Kangu:** Proportional representation. That one, you don't vote for a person

**Translation:** *Ebutere*

**Com. Kangu:** ----- in a defined unit as a Constituency. You vote for a Party. The Parties prepare a list. If we have two hundred and ten Constituencies, or if we have two hundred and ten MP's, as a Party you present and publish a list of two hundred and ten prospective MP's. . Another one does the same and you go to elections. Now, when you go to elections, the people will be voting for the Party, which means that if as a Party you win a hundred per cent of the votes, and then it means you are entitled to the two hundred and ten MPS and therefore all your people on the list become MPS. But if you win fifty per cent of the votes, then that means you are entitled to fifty per cent of the seats (the two hundred and ten). So you get one hundred and five and then you go to your list

**Translation:** *nochachila ekulu, ha 105 tsiwela yabo bos*

**Com. Kangu:** ----- they become MP's. Now, that system has its own advantages and disadvantages. The other system we have defined has the problem of denying representation to marginalized groups

**Translation:** *Shinga na bakhasi you know ikurua yakhola hano emilwano chibetsaho*

**Com. Kangu :** Most of the women cannot manage to campaign

**Translation:** *abene*

**Com. Kangu:** Running up and down *mushilo* and so on *abana bemele ibulafu yiyi ne tsiloboshi* They can hardly win seats. But we are saying when you have a system like this one; it is possible to have women put on the list. They may not go out there

**Translation:** *banyala butswa khuba mutsinzu batekhanga*

**Com. Kangu:** --- lakini, the Party is campaigning for them and if the Party wins, they wi-----

**Audience:** ----- they win.

**Com. Kangu:** The disabled people can also be put on the list and they win in that manner. But the problem with this system is that, it disconnects the people from a specific representative because we said it has no defined unit as Constituency.

**Translation:** So *shimunyala okhuba nende omundu wamunyala okhubola, wuno niye mbunge wefu nenzie khumulolakhu nence maliliyo kanje yakhonye tawe.*

**Com. Kangu:** Because you have no specific person. These people came on a Party list. So, there is that disconnection between the people and the representatives.

Secondly, because the Party is the one that prepared the list, Political Parties may become very powerful and dictatorial because the officials of Parties are the ones who decide who should go onto the list. So, if you are not behaving nicely to them, you can be sure your name will not appear on the list. You may be a very good leader and the local people like you but they have no way of getting your name on to the list. So that problem is there. But this system

**Translation:** *nayo inyala khukhukhonya munjila mbu*

**Com. Kangu:** You see the current system whether we introduce

**Translation:** *Ebisa bindi mutsitsa mukura mana abandu bahenga babola omusakhulu wuno no mundu mulayi khwakhamukhupire lakini eshiama shialimo shikhwenyakhwo tawe.*

**Com. Kangu:** They say that. Now, how do we deal with this? Now, that has got advantages and disadvantages. Then we have the third one which is called mixed member proportional representation. This one borrows from the other two. It borrows from one and it borrows from two. It looks for the best part of these other two.

**Translation:** *Nibakasia bulano*

**Com. Kangu:** ----- mixed grill something highbreed. So, it seeks to maximize the advantages of the other two, so that on the

one hand this system this system we will say, we shall have defined units called Constituencies to which we will elect

**Translation:** *Omundu wamulanga omujumbe wenyu*

**Com. Kangu:** So, that, that disconnection is not there. You have someone you can go to and say, this is my MP, I have my problem. But at the same time, it borrows from the proportional representation system so that you have a number of MP's who represent Constituencies and then you have others who come on the basis of the Parties list, so that when you have problems of women and the disabled you can cater for them in that list. Now, we are saying that is the system we are proposing for the election of our National Assembly. We are proposing that we should retain two hundred Constituencies with MP's,

**Translation:** *mube banyala okhwahula* whoever you want

**Com. Kangu:** But at the same time you also vote for the Party you want for the set another number of seats. So, we are saying a House of three hundred, we shall have two hundred and ten for the Constituencies and ninety for the proportional representation. So, when we go to elections, you will vote twice. You cast a vote for the MP you want in your area and you also cast a vote for the Party you want. Now, before we go to elections, the Parties will have presented their list to the Electoral Commission and those lists will have been publicized so that you can read through the list,

**Translation:** *nolola mbu* this party *ni ya basebe bonyene shibarelekhukhwo omuluyia tawe*

**Com. Kangu:** You can choose not to vote for them. If they want you to vote for them, you can demand

**Translation:** *barekhokhwo abandu benyu* isn't it?

**Audience:** Yee

**Translation:** *Nabakhasi nibatsia mukura nibanyola* the list *nabasatsa bonyene*

**Com. Kangu:** They can go and gang up and say, let's vote that Party out. It doesn't care about women and the disabled can do the same. So, we are saying in bringing the list, we are proposing the Political Parties must put there 50% women. We have said the general rule is to get one-third women in a House of three hundred, one-third will be a hundred but we still have to get mechanisms of getting those one hundred. So, when we go to this proportional representation, and we have ninety then we can ask the Parties to bring lists of forty-five men and forty-five women so that at least we can guarantee forty-five seats. So, we are saying every Party will present a list of ninety people, forty-five men and forty-five women and they will not be allowed to put the women at the end of the list. We want an alternate system or the zip system, so that when you have number one a

man, number two is a woman, three is a man, four is a woman

**Translation:** *Khwanza ekulu mpaka hasi*

**Com. Kangu:** ----- and that will be for all Political Parties. Now that will mean

**Translation:** *nikhutsia mu election*

**Com. Kangu:** ----- and your Party has won all the ninety seats, we shall be sure they are forty-five men and forty-five women. If your Party has won twenty seats, we shall know, they are ten men and ten women. If another Party has won forty seats, we shall know on that list, we shall have twenty men and twenty women. So at the end of the day, we will be able to get at least forty-five women in the House in all cadres.

Now, we are also saying, to take care of the interest of the disabled, in this list of ninety, we must also include some disabled in this list of ninety.

**Translation:** *Baba abakhasi baba abasatsa*

**Com. Kangu:** It has to be mixed so, that they can also get an opportunity. That is the system we are proposing. It has been alleged that we are proposing ninety nominated MP's. That is not true. Those are not nominated. You are supposed to elect them through electing the Party that they belong to. So, you look at the list and you elect the Party and then you know

**Translation:** *Nohenga ilist, muhenga ilist mwanyola omundu wenyu we Butere alikho khu list yikulu ye shiama fulani, nimuyela khu shiama shienesho khu omundu wenyu natsie ta? Numunyola abenyu nibali khu list yino bataru, bane, barano nimukhung' anasia mwesi mubole fwesi khukhupile ishiama shilia abandubefu baliyo bataru, bane, barano khu list ikulu nakhunyole----*

**Com. Kangu:** That is what we are proposing. We have abolished nominated Members of Parliament. These are not nominated. These are elected people. You elect a Party and in the process you are electing the people-----

**Audience:** ----- the people.

**Com. Kangu:** Now, we are saying for the election of that National Assembly, the Assembly shall have a fixed term of five years unless otherwise dissolved because of the other grounds we have stated here. Now in five years, elections must be held forty-five days before the end of those five years. So, that we don't have a legislative vacuum.

**Translation:** *Ebisa bino the position yili President anyala okhubukha na dissolva ibunge*

**Com. Kangu:** Then we have no Parliament. We will have the Executive and the Judiciary. They perform the functions of the judiciary and the functions of the Executive. But we have nobody to perform the functions of the legislature and we are saying that is an anomalous situation which must be corrected.

**Translation:** *Nikhutsia mu election*

**Com. Kangu:** We must have a Parliament.

**Translation:** *Likhuwa niliakharulila mbu elili urgent*

**Com. Kangu:** Who will legislate? Now, we are saying, we don't want that. Zimbabwe

**Translation:** *yilia iconstitution yabo yabola*

**Com. Kangu:**---- when there is no Parliament, the President can legislate by way of decrees.

**Translation:** *Kho Mugabe amala yekhala tsa yenyene nabisia malako, bacherera nabisiye. Lwa yabelenje okhubisia amakhuwa ke mikunda kanyasinjila, akabasungu yako, yaranganga abaruma yengo*

**Com. Kangu:** When they are not there, he sits alone because he knows when they are there, they might refuse. So, he passes them alone. When they come back, he says, it is in our legislation. Our Constitution allows that I can legislate when you are not there and I have already done that. So, we should start implementing. (Laughter from the audience)

Now, we think that is not the approach we want to take. But we want to make sure there is no situation of a vacuum. So, we are saying elections must be held forty-five days before the end of the term, which means the MP's can go out to campaign even as they are sitting as MP's. Elections can come to an end even before the forty-five days and they will remain MP's so that if there is need to legislate, they will legislate.

**Translation:** *Yinyanga yabo lwayihwa inyanga yawetsanga*

**Com. Kangu:** The term, that is when the new MPS are sworn in and they will take over from there. So that is what we are proposing.



Now, qualifications for one to be elected to the National Assembly, must be twenty-years of age. You must also be of Form IV level and then other integrity things that are associated with the leadership code of conduct.

Now, for the National Council, there should be a term of four years. Now those a hundred people I mentioned will be elected in the District and in the Provinces. They will also go to elections forty-five days before the end of the term of office so that there is no legislative vacuum. The National Council, the qualifications are that, you must be thirty-five years, not just twenty-one, because you are going to represent a whole District, so we want at least a more mature people, thirty-five and above to go to the National Council with Form IV and so on.

The Presidential candidate must be above thirty-five and below seventy so that when we go to elections and present yourself as a candidate for the office of President, we will not allow you if you are above seventy. The argument is that we do not want to have anybody in office as President when he is over seventy-five. So, that by the time your term of office of five years is ending you will only getting to seventy-five and you retire and go. But if we allow you to contest when you are seventy-two, you will reach seventy-five before your term of office lapses and we don't want that kind of situation. Presidential candidates must have a University Degree and you must be of high moral standards and integrity and above.

Now, in the transitional arrangement, there are some exemptions. Like One, anybody who has been a Member of Parliament before and wants to become President, can be exempted from the University rule and from the age rule. Two, Anybody who has been a Member of Parliament and wants to become a Member of Parliament again shall be exempted from the Form IV rule. Three, Anybody who has been a Councillor and wants to become a Member in the District Council, which we have defined, shall be accepted. The reason, we are saying that is because these documents us supposed to go to the National Constitutional Conference where some of these people will participate. Members of Parliament will also be there and we don't want them to reject this document. So, we are saying for these coming elections, if they are held under the proposed Constitution, we shall exempt them. You all know Kibaki is now above seventy. You all know Nyachae does not have university degree and we are saying these are people can rally the members of the Conference to reject the Constitution. You know there are some Members of Parliament who are not of Form IV level. So, we are saying, as a sweetener, let us exempt them (*Laughter from the audience*) for the coming elections, so that we can be able to pass the document. But we are saying, it is only for the coming elections. Thereafter, we will not exempt you. So, we are saying, we are giving you five years notice to remedy your situation. (*Laughter from the audience*). So, that is what we are proposing. So, after that we will not and people are trying.

**Translation:** *notsia Ebuganda yilia omusiani wabo Museveni lwa babola mbu mpaka ube omundu wa Form VI khotsie mu bunge yashiya nabolanga mbu mwana wefu lwakhwakhali mbulimu nikhukhupananga lihe,*

**Com. Kangu:** That is why I didn't go to school. Can I be allowed?

**Translation:** *Museveni namubolela butswa ta mwana wefu ikatiba abandu babisia*

**Com. Kangu:** I cannot exempt you. If you want, just go back to school. Salim had to go back to school and do Form VI before he was qualified to be elected to go to Parliament and several other people have done that because I am saying you will have five years notice to remedy the situation but I am not saying, you go and manufacture certificates in River Road because in Uganda, there are those who tried to do that.

**Translation:** *Banyolekhanga bali mu bunge nekakhanyolekha nabooelwa khane iwe wekatia go back nibalondwa*

**Com. Kangu:** They go back to by-elections. So that is what we are proposing for those offices.

The Electoral process have been provided with continuous registration of voters. People complained about that. We also proposed free and fair election through the secret ballot in all elections, transparent ballot boxes and counting of votes at the polling stations. More details will be put in the legislations that will affect this. Now, that finishes with the three organs.

Then the other institutions, which I said, are the supervisory ones – the Commissions that supervise how power is exercised by these other organs and under that, there are those that have been existing which we have reconstructed and there are new ones, which we are creating. The first reconstructed one is the Electoral Commission. May be before I go to the Electoral Commission, I should talk about the Political Parties.

In the elections, you can be nominated by a Political Party or be an independent candidate. If you are an independent candidate, you need a thousand people to nominate you to contest, if you are contesting for the Office of President. Now, the reason we are saying that is because

**Translation:** *Abandu bakhubolela*

**Com. Kangu:** Limit the number of political parties but we said we don't want to say in the Constitution two Parties, three Parties but we said that we must create circumstances that can limit the number. So, one circumstance

**Translation:** *yili khumanyile*

**Com. Kangu:** Many people want to register Parties because they know without a Party to nominate you, you cannot contest. So, we are saying, you are free to contest as an independent candidate. You don't need a Party. After all they are too

expensive to run. We hope that will reduce the numbers.

Two: We are saying Political Parties will be registered by the Electoral Commission and must meet certain standards. There are certain conditions. Those which are tough enough to also reduce the number and one we are saying, if you go to elections twice, two consecutive elections with your Political Party and it does not win even a single seat, it will be deregistered. We are saying the Political Parties will be funded by the State i.e. 0.3 per cent of the National budget will go into the Political Parties funds which will be managed by the Electoral Commission but you do not qualify to share in that fund unless your Party has got at least five per cent of the votes in the entire Nation. When we go to elections, your Party must get five per cent

**Translation:** *Kho ube*

**Com. Kangu:** ----- entitled as a Party to share in that money. When you share, we are saying fifty per cent of that money will be shared to the qualifying Parties on an equal basis. The remaining fifty per cent will be shared on the basis of the percentage of the votes each Party got. We will also look at the Party, which have brought more women to Parliament, and then they get more money because many Parties don't want to encourage women to come to Parliament. But if they don't like women and they like money, we can wave money, it might encourage them to push women to come to Parliament.

If you don't behave in a certain manner for instance, you don't file your books of accounts and you preach certain standards the Electoral Commission can deregister you as a Party.

Now, for transitional arrangements, we are saying if we go to elections with this Constitution, the existing Parties shall be allowed to nominate candidates to participate in elections. But after elections, from the date of the coming into force of this Constitution, every Political Party shall have twelve months

**Translation:** *Omuhika mulala*

**Com Kangu:** To regularize their position, to register and to show that they comply with the conditions. If twelve months ends, *hawajaweza kufanya hivo munakuwa* deregistered. Those who have been elected to Parliament or any other body, on the basis of that Party, will be converted into independent candidates so that they continue. Thereafter, they can choose other Parties to go to. That is about Political Parties.

Now, other commissions, the Electoral Commission is being reconstructed. Currently we have a commission of twenty-two members and we want to reconstruct it to have only eleven members. We want to make it independent in terms of appointment and in terms of qualifications of the members. They will hold office for a term of five years renewable once but subject to retirement at age sixty-five. They are supposed to be given financial independence so that they can have a vote direct from the

consolidation funds, so that nobody can arm-twist them. They can also appoint their own staff and we are arguing that there should be independence with all other commissions, and we are using our Commission as an example.

**Translation:** *nukhubola*

**Com. Kangu:** If you look at the current Constitutional Review Commission, then you will see the values that lies in having independent commission and institutions. The way we were appointed was such that the President did not have much say in our appointments. We applied; and were interviewed by a Parliamentary Select Committee

**Translation:** *Abakhola obulayi nikhubukulwa*

**Com. Kangu:** The Parliamentary Select Committee prepared a list

**Translation:** *Ma bayilila the President*

**Com. Kangu:** The President's duty was to simply formal (word not clear). Commission under this law says, once appointed, you cannot be removed from office by the President or Parliament. Removal is by the Commission itself. A very difficult process. You must file charges, if you have breached the Act, then they are heard and then they vote on a two-thirds majority

**Translation:** *kho yinibwe. Ne mwitsulilanga*

**Com. Kangu:** When we were trying to remove Okoth Owiro as the Secretary, it was a difficult process.

**Translation:** *Kho nukhumuyinia. Now that law yibolanga*

**Com. Kangu:**--- filling of vacancies, when a vacancy occurs, it is not the President who just wakes up

**Translation:** *na picka omundu naraho*

**Com. Kangu:** It is the Commission itself to advertise, then they interview,

**Translation:** *nibahula*

**Com. Kangu:** three peoplem, they submit to the Parliamentary Select Committee and the Parliamentary Select Committee may look at them or even interview them

**Translation:** *Nibayiniamo babili balekha mulala, nibayila khu President amera kabili naye*

**Com. Kangu:** President is forced to pick one.

**Translation:** *Kata ni kali abandu babili*

**Com. Kangu:** Both of whom he does not like. He has no choice but to pick one of them.

**Audience:** ----- one of them

**Com. Kangu:** Now, that is how this Commission has been independent.

**Translation:** *Nashio shichila nimuhulila*

**Com. Kangu:** We are here talking to you even as 'omusakhulu' is grumbling over; we have done a Constitution he doesn't like.

**Translation:** *Mwahulila nalobele okhwitsa khukhulola*

**Com. Kangu:** When we went to Mombasa, he had booked to come and give us his views,

**Translation:** *Abandi batsia bamukata nashiukhana nabola*

**Com. Kangu:** He is not going to see us because we have operated for two years; we have never bothered to talk to him. We felt so happy. We felt so relieved.

**Translation:** *Nukhubola*

**Com. Kangu:** The Kenyans were thinking we have been pocketed by the President, now they know we have not been consulting with him.

**Translation:** *Nukhutsia*

**Com. Kangu:** We did our jobs and you know he has complained, Ghai has been gone about saying what he says, what he

wants. The President has no way to remove him and I know

**Translation:** *Niyakhabele ne injili, shikhuba khushiliho ta.*

**Com. Kangu:** Now this Act also says financially, we are given our own vote by Parliament.

**Translation:** *Bakhola iparlliament they prepare votes. Ne babola so much for the Commission*

**Com. Kangu:** Our Secretary goes and follows and he puts in the Review funds so that we can operate.

**Translation:** *Nikhwakhabele*

**Com. Kangu:** We are dependent on a Ministry of Office of the President,

**Translation:** *Baba baswitcha off butswa nikhubola khuhuma amang'ondo.*

**Com. Kangu:** They can't do that. So, we are saying, we want commissions that are truly independent in that manner and the only way to make them independent is to make the process of appointments difficult so that appointments and dismissals are not done by one person. You also give them financial independence, so that they can be able to operate without being swayed around by individuals, so we are saying appointments of most commissions, by the President with the approval of the National Assembly or the National Council. In removal, certain tribunals have to be established to investigate and there must be ground proof before someone is removed. There should be an Electoral Commission of that nature. If we get an independent Electoral Commission, then we shall know the administration of elections will be done in a free and fair manner without any problem.

Now, we have also proposed to reconstruct the Judicial Service Commission. It will have a substantive Chair person who shall be qualified to be a judge of the Supreme Court of high integrity to hold office for a term of five years renewable once but retiring at sixty-five. So, if you reach sixty-five before your term ends, you retire. Now, there will be Chairman, one Muslim woman representing Muslims, the Attorney General, one judge appointed by the Supreme Court, one judge appointed by the Court of Appeal, one judge appointed by the High Court, two magistrates appointed by the magistrates, the Chief Kadhi, two law teachers appointed by the two faculties of law in Nairobi University and Moi University, two advocates appointed by the Law Society of Kenya, one representative of the council of legal education, the Chairman of the Public Service Commission and three lay persons, one of whom shall be a woman appointed by the Civil Society. This will be the Judicial Service Commission charged with the responsibility of supervising the exercise of judicial power and that supervision begins at the level of appointment of judicial officers. This is the Commission that will recommend persons of good behaviour to be appointed as a judicial officer and then recommend to the President, who shall take the name to the National Council to approve. They also

deal with discipline and removal from office. That is the reconstituted Judicial Service Commission to supervise and exercise judicial power.

We are also proposing the reconstitution of the Public Service Commission to supervise the exercise power by the other public officers in various fields, civil servants and so on. It is reconstituted with certain principles of public service which must be followed if we should have a good Public Service for the country.,

Then we have the Teachers' Service Commission, which we said we do not want to interfere with because the history shows that teachers went on strike on 1962 and in 1967 before they were allowed to have a Teachers' Service Commission initially they need to be under Public Service Commission. We wanted to do away with it and put it under the Public Service Commission but we don't want to cross the paths of the teachers at this particular moment. (Laughter) So, we left it for them to deal with matters of teachers as a Teachers' Service Commission. Then we proposed other commissions that do not exist – a number of them we created afresh and the first one is called The Commission of Human Rights and Administrative Justice abroad the commissions under which there are several sectors that will become independent commissions for example, under this we have a Human Rights Division, headed by a Human Rights Commissioner, then we have a People's Protection Department headed by a People's Protector, the equivalent of what you people call the ombudsman. We have decided not to call him ombudsman, but to call him the Peoples' Protector.

Then we have a Gender Division, which is headed by a Gender Commissioner to deal with matters of gender – matters of women.

Then we have a children's division, a basic needs division and a division for the disabled. That is the Commission on Human Rights and Administrative Justice. They are supposed to supervise matters of human rights, matters of gender, matters of basic needs, matters of children, matters of mal-administration in public offices and so on.

Then we have proposed another important commission which we call the Ethics and Integrity Commission. This one as I said earlier, is the one that will be the custodian of the leadership code of conduct. It is the one that will deal with matters of corruption. It is the one to which a leader of a certain category will be required to go and make declarations of their wealth and sources, their liabilities and so on. It will have power to investigate if they think any leader has not met truthful declarations and report to other relevant bodies and such a leader may be removed from office. We are saying President, Prime Minister, MP's, Permanent Secretaries, Commissioners to other Commissions, Judges will all be required to declare their wealth to the Ethics and Integrity Commission and if you are unable to explain then you will not be allowed to hold certain offices.

Then we have proposed a Salaries and Remunerations Commission. People have complained that MP's decide their own salaries. So, we have said there will be a Salaries and Remunerations Commission to address, review and harmonize the



salaries of all public servants starting from the President through the Prime Minister downwards to all other public servants. They will not decide their own salaries. There will be a commission to do so. This commission will be periodic. It will not be permanent so we can say we have and then after another five years, we again appoint one to review salaries on a periodic basis taking into account the change in costs of living and other inflation factors.

Then we are proposing another very important Commission called the Constitution Commission i.e. a Constitution Implementation Commission. We are saying at independence, the independence Constitution failed because there was nobody to follow up to see what the Constitution was proposed was being taken into account. So, we are saying this time round, we must have a Commission known as a Constitution Commission to deal with matters of implementation of this Constitution, to follow up and make sure most of the things provided for in this Constitution are put in place so that things can go and we see whether governance can improve. The Constitution Commission will be dealing with that and that will be reviewed after five years. If after five years we do not need it, then we can scrap it and move on. So, those are the commissions we have proposed.

We have also sought to reconstruct a number of Constitutional Offices for example the office of the Attorney General. We are reconstructing it to create from it another office called the Director of Public Prosecutions as a Constitutional office to be in-charge of public prosecutions completely independent from the office of the Attorney General.

We are also proposing to reconstruct the office of Controller and Auditor General to create two offices, One, office of Controller of budget and another one Auditor General. We are arguing that the current office of Controller and Auditor General only audits accounts and many times when the money has been stolen, the Public Accounts Committee of Parliament is normally three/four years late. They will present books today of what was done in 1997 and that would be too late. We want a proper Controller so that someone can control expenditure before it goes far. If money has been misappropriated for a certain function, there must be someone to follow up at short intervals to ensure that, that money is being used for the proper functions that it was allocated and if they notice some misuse they can stop before the whole money is misused. So, we are dividing the two offices to take care of that and also to create the mechanisms for assisting Parliament in the budgetary arrangements and so on. Those are the commissions.

Then we have a Chapter on devolution of power, which has sought to enhance the mechanisms of republican governance, which we talked about and under devolution of power we are saying that devolution involves power sharing, that one level of government shares power or responsibilities with another level of government. Now, if you look at Article 213 dealing with devolution of power. We are saying, power is shared at different levels. Responsibilities are shared and we are saying under the proposed devolution, Article 213 and Article 214 gives the principles that form the basis for the devolution. If you read through you will see, we are trying to enhance republican principles of governance and to involve people in the running of their own affairs and in doing so, we have five levels of Government. The Central or National level of Government, the Provincial

Level of Government, the District Level of Government and the Locational Level of Government and finally the Village Level of Government. In this devolution, we are equating the village to the current sub-location. It is the current sub-location, we are calling the village and it is going to be the village level of government.

Now, we are saying although there are five levels of Government, in terms of devolution, power is devolved to four levels of Government because the Central Level is the one that has power that is devolving down. So, those levels of devolved power are the Province, the District, the Location and the Village in devolving power, the Central Level of Government will have the three organs of State, the Judiciary, the Legislature and the Executive. The other lower levels of Government will have only two levels of Government, the Legislature and the Executive. So, they will exercise Executive and Legislative powers but not the Judiciary so that the Judiciary is run by one Government from up to down and that is in the interest of the people.

Now, it is in distributing those powers, we are insisting on separation of powers at all levels. END OF TAPE 2

--- *'inaenda'* to the Province. It flows from the center to the District and then from the District to the Location and then from the Location to the Village but the Province gets its power from down, from the District because in a Province there are supposed to coordinate the affairs at the Provincial Level. That is how the power of the Province comes about we are saying at all these levels, we want separation of powers. So at the District level, you shall have a legislative arm called the District Council elected by the people. A number of Councillors elected by the people. They are required to have Form IV qualifications and so on we shall have an executive arm of the District headed by a Chief Executive called the District Administrator with his own cabinet from the professionals in the Departments in the District. He will be the running the affairs of the District jointly with the Legislative Council of the District. All these people will be elected directly by the people themselves.

It will not be like the County Councils you have been having where you elect councilors and then councilors elect for the Chairman. You will elect the District Administrator. You must also know, we have proposed the scrapping of Provincial Administration. So, you will not have a DC duplicating the functions of your elected District Administrator. You will elect a District Administrator and he will run the affairs and there will be no DC, or DO or whatever. We are proposing the abolition of those ones.

Then at the lower level you will have those elected councils up to the village level running the affairs. Now, in the distribution of powers, we are saying power sharing, so, it is sharing of responsibilities. We propose that these share share power –and in doing that, the principle is what is called the doctrine of subsidiarity. It is said, responsibilities or functions should be performed by the lowest level that can appropriately perform them. So, we are saying, if the District can perform certain functions, there is no reason why we should leave those functions to the higher level of government. If you people can do certain things for yourselves, the Central Government has no business coming to nose around here and say they want to do it for you. You should be left to do that. So, in distributing the functions, we have to identify, what is it that the people at the District level can do themselves through their elected leaders? And what is it that they cannot do, that we should leave to the higher government

to do for them? Those are the principles we are looking at and if you look at Schedule 7, we have tried to show how those powers are divided. There are those that are purely for the center purely for the District and those that are concurrent where both the center and the district need. Once you are allocated responsibilities, the next thing is to allocate the means for performing those responsibilities. The means for discharging the responsibilities i.e. money. We are saying, in doing that, the ideal situation would to say; whoever has higher responsibilities needs more money to discharge those responsibilities. So, when you are distributing the power to raise revenue i.e. to raise money, you must look at the responsibilities the way you have allocated them. The power to raise revenue is normally the power to tax and the power to borrow. Ideally you go it that way but in many places, they say, it is better to have most of that power at the central level. So the central level will have a higher power to raise revenue, to borrow, to tax. But we are saying if that is the case, then when we are sharing out the money that has been collected by the center, we must go back to the needs principle and find out who has higher responsibilities. If the Districts have higher responsibilities, the center is under duty to give them more money and we are proposing in the budgetary arrangements this time, the budget will have to first divide money between the center and the district so that

**Translation:** *Abandu be Butere mumanye akefu khwahelwe kari niketse*

**Com. Kangu:** We will use it for these functions and then thereafter the center can again do another budget on what it has remained with, so as to distribute to its own ministries at the center. So, that has to be looked into – the need principle. When doing that, you must also address the question of equalization

**Translation:** *Abatong'a inyuma khukhola kurie khubakhwese betse imbeli*

**Com. Kangu:** Some Districts are beginning at a certain level of development; others are at another lower level of development. So, we are saying, there must be equalization funds

**Translation:** *Nukhukabananga amang'ondo kano*

**Com. Kangu:** The poorer districts should be given more to lift them so that they can compete on an equal level. That is how we proposed.

We are also saying there should be some arrangement of inter governmental relationships when disputes arise, how do you handle them between districts and the center and so on. and amongst themselves.

When we are recruiting staff, how do we go about it? The Districts will have their own functions so that they can recruit their own staff to perform those functions. The center has its own functions but its functions may need to be performed in the provinces and in the districts. So, the center will be forced to post some officers to the Provinces and to the Districts and when

the center has to do that because the services are supposed to be rendered to the people in the District, then the center in seeking to discharge its functions in the District through officers posted from the center must consult with the Districts so that

**Translation:** *shimurumilwa abefi tawe, shikali kario? Nibenya okhuposta abandu yino*

**Com. Kangu:** You must be consulted and you have power to consult with other districts through cooperation

**Translation:** *Okhureba omundu wuno yabelenje Kilifi yiyo, ne yenyanga khurerwa yino, yakholangayo obulayi nohomba yabelenjeyo omwifi? Nibamubolele nu mwifi*

**Com. Kangu:** You can refuse. That is what we are proposing and we are saying, that will also help in instilling discipline in public officers because

**Translation:** *ebisa bino abandu banala, mundu arumwa butswa hano, haspitali henyu hano, niyeba emisala tsiosi mwikhalanga hano nimutsia yiyi, emisala chihumaho. Ne notsia iwabo wayarula yilia nonyolanga omukhayeye wayekula ichemist akusinjia emisala chenyechea kenya mushilishilwi hanu.*

**Com. Kangu:** We want to say public servants

**Translation:** *bamanye*

**Com. Kangu:** That time is coming to an end. You will steal in one district; you will be transferred to another one and after a short while

**Translation:** *abandu betsa okhumanya ne bakhurichecta*

**Com. Kangu:** You will have no job. So, people will have to start serving people.

The last thing is transitional arrangements

**Translation:** *endolanga eshiro nishinjila bulano*

**Com. Kangu:** Transitional arrangements,

**Translation:** *Khubolanga*

**Com. Kangu:** We are moving from one stage to another stage. We are moving from an old Constitution to a new Constitution.

**Translation:** *Ebutere yino likhuwa lie likhaniafu, lwabolwayo. Abaluyia babolanga likhaniafu nilienya okhwibula, liatikhanga butswa twa nu rwana rukwa yiyo nalio nilikwa yiyo nilifwa*

**Com. Kangu:** So, we are asking, we have an old Constitution and we are supposed to move away from to a new Constitution. This process of giving birth

**Translation:** *Na ibe nga likhaniafu nohomba na ibe gradually?*

**Com. Kangu:** How do we go about it? Because we will want some things from the old Constitution to carry forward and then bring in new things and we are saying because of that, it will not be

**Translation:** *shinga likhaniafu*

**Com. Kangu:** It will be gradual. We must carry some things forward. One: The State has responsibilities and rights. Those ones cannot die because a new Constitution has come in. The State must continue with its liabilities and responsibilities and rights.

We are also saying existing laws shall continue but they must be modified to be consistent with the current Constitution so that they can be able to serve the people when the Parliament has reviewed them.

We are saying if the coming elections are held under the current Constitution, then those elections will be conducted by the current Electoral Commission and when it finishes, it will have ninety days within which to wind up and hand over to the new Commission.

Now, we are saying in those coming elections, any person who has held the office of President for two terms or more, shall not be allowed to contest for the office of President, for the office of Prime Minister, for the office of Vice-President, for the office of Deputy Prime Minister, for the office of Minister, for the office of Deputy Minister and not even for the office of Members of Parliament. We are being very clear to avoid doubt

**Translation:** *khubolanga ebisa bibie biahelele shinakhufuchilile khandi asinjile*

**Com. Kangu:** for any that office *tawe*. That is what we are saying clearly. Now, Political Parties, I had mentioned. They will need to do their registration. Existing offices, those people who have certain officers, they will continue until those officers are reconstituted and no appointments to the new offices can be done until the elections have been done and a new Government has been put in place. The reason is because

**Translation:** *khubolanga mbu*

**Com. Kangu:** We are coming from a certain part and we cannot create offices that we want to serve the people, and then allow the same old people in the past to appoint them for us.

**Translation:** *Khubolanga*

**Com. Kangu:** We don't want to use the current President and the current Parliament to fill the offices we are appointing. So we must finish elections before we can start filling those offices when we start filling those offices, the first office we shall fill is the office of the Ethic and Integrity Commission because we need them to start to get people and then follow up with other offices.

Now, we are also saying that for the Judiciary which you have a lot about it, we are proposing a Supreme Court with seven judges, one of them being the Chief Justice and the current judges of the Court of Appeal and the High Court will not qualify to become judges of that Court at its interim transitional level. That means that the Chief Justice shall not be Chunga. It will be someone else and that can explain why you hear him being very unhappy.

We are also saying that the Judicial Service Commission shall be established for a start on an interim basis to start performing functions. On interim basis in that it shall be established excluding the representative of the Supreme Court because the Supreme Court will not have been appointed yet. It shall be established excluding the representative of the Court of Appeal because the Court of Appeal must not appoint its representative until it has been reconstituted. It shall exclude the representative of the High Court because we first must reconstitute the High Court before the High Court can appoint representatives.

We are saying the judges of the High Court and the Court of Appeal will have their retirement age reduced from 74 to 65. When this Constitution comes into force, any of them who has already reached 65 and above will be required to immediately retire and take his retirement benefits.

We are saying that those who have not reached 65 but they are 55, will be given an option to choose early retirement and they will be given early retirement with benefits and in calculating their benefits we will add each five years to his years of service and

calculate the retirement That option must be exercised or accepted within thirty days of the coming into force of this Constitution. If the thirty days end, then it would be that you have rejected that offer.

Then we move to the next stage. Those who have not accepted that offer but they have complaints against them, filed with the Attorney General, Anti-Corruption Unit, the Law Society Disciplinary Committee, then the complaints will be taken to the interim Judicial Service Commission. If the Commission looks at them and is satisfied that they have some substance then the judge shall be sent on compulsory leave pending investigations. If those investigations prove that you are not worth holding the office of the Judge, you shall be fired.

Now, if you do not accept the option and you do not have any complaints filed against you, then you shall be asked to go to the Ethics and Integrity Commission to declare your wealth and the sources. The Ethics and Integrity Commission shall report back to the Judicial Service Commission about you. If they report that they are not satisfied with your declarations and their investigations show that you are not worth holding the office of Judge, you shall be removed from office. This mechanism should be able to create quite a number of vacancies in the High Court and in the Court of Appeal because quite a number of these people will find this test very difficult to go through. In fact, the majority will quickly go for early retirement so that (Laughter from the audience) they are not investigated and left. The people not know that they have been removed for this or that and if we do that, then we shall advertise the vacancies.

The Judicial Service Commission that we have established should be able to advertise. We don't want a situation where

**Translation:** *mubukha butswa numuhulila oh*

**Com. Kangu:** The President was swearing in judges when they were appointed, you don't know. We want these jobs to be advertised so that people can apply in openness

**Translation:** *bamanye*

**Com. Kangu:** ----- how people are being taken. We will re-advertise, fill the positions and then these people will be allowed to appoint their representatives to the Judicial Service Commission. We are insisting that this should be done because in my view

**Translation:** *Nukhukasia*

**Com. Kangu:** --- a new Constitution but we leave the Judiciary the way it is, you can be sure this Constitution will not help us. The Judiciary is very important. If the Judiciary is good and serious, it shall instill discipline in politics, it shall instill discipline in economics and it shall instill discipline in all other social aspects of our lives. Politicians will not play around with you if they



know, as a poor man or poor woman, you can go to the Courts to lodge complaints and the Court deals with the offender. They will not play around with you. They are playing around because the Judiciary has become their partner and it doesn't protect mwananchi. The reason we want a Supreme Court which does not have any judge from the existing judges, is that we want new people up there who shall start instilling discipline downwards and the rest will just start behaving.

For magistrates, we are saying the moment

**Translation:** *yanabalole butswa mbu* High Court and Court of Appeal Judges are being fired, *nabo abene*

**Com. Kangu:** They will just tremble and change and become streamlined. If the Judicial Service Commission is a good Service Commission, it will be hearing complaints from wananchi and taking action

**Translation:** *Ne nikanyoleshe mbu nawe wakhola* your court *bulano* is a kiosk

**Com. Kangu:** ----- for making money from people, you will be dealt with and people will see a change. That is what we are proposing.

On the death penalty, and we have abolished the death penalty because nobody should be sentenced to death. So, for transitional arrangements, anybody who has been sentenced to death, that sentence should be commuted to life imprisonment so that he is not hanged.

Now, on land, no non-Kenyan citizen should be allowed to own land in Kenya of more than Leasehold of ninety-nine years. Only Kenyans can own land in Kenya for more than a lease of ninety-nine years. So, for transitional arrangements, anybody who owns land more than a lease of ninety-nine years and is not a Kenyan, that ownership will be converted into a lease of ninety-nine years and no more and when the Lease expires, the land reverts back to the Government and the people of Kenya.

I have been asked to comment about the Yellow Ribbon, the Yellow Ribbon, is a project that was started by the Law Society to support the review process when the judges had started harassing us by filing cases to question what we are doing. So, it is a Ribbon of solidarity with the review and people have been wearing it and walking around

**Translation:** *nibo batinyile nibabola kholekhwo mubayo khumufikisi*

**Com. Kangu:** So, if you put it on, you are showing solidarity with the review and you are disagreeing and showing disapproval of the actions that are being taken by the Judiciary trying to stop us from doing our work. This Act

**Translation:** *ibolanga*

**Com. Kangu:** When the Commission or Commissioners are in the course of their work or if they have done anything in the course of their work, no proceedings can be brought against them, either criminal or civil for anything they have done in the course of their work in good faith. *Lakini* even though the law says that clearly, one of the High Court Judge and another one of the Court of Appeal have gone to Court to sue us for what we are supposed to have done in the course of our work. I told people, that action shows that the allegations we have made against them may be true, because we are said a number of them have been appointed for wrong reasons.

**Audience:** Yeah.

**Com. Kangu:** We are saying a number of them are corrupt, have no integrity and are incompetent. If they have sued us, and this Act says that, we must be right in our allegations. (*Laughter & clapping from the Audience*).

**Translation:** *Bulano shiakhola eshilo* but I think you have heard

**Com. Kangu:** We may not be able to take many comments or any at all but

**Translation:** *shinga ne lwembolele*

**Com. Kangu:** Go and study, write down what you have, hand over to these officers, the District Coordinator can pass over to the Commission, one of the delegates who is here can carry them when they go to debate these things at the National Constitutional Conference.

Otherwise, that is the Constitution, we are proposing to you

**Translation:** *Nimuhulila abandi nibabola ne embi mumanye*

**Com. Kangu:** Those are with vested interests. Those who are trying to protect their vested interests.

**Translation:** *Bakhamanya bulano, khusakusule eshikumba khwenya khubahinia mumunwa bulano balila*

**Appollo Atsalwa:** Yeah.

**Translation:** *Khulakhuhesiakho nafasi*

**Appollo Atsalwa:** But I think we should remember that time is not on our side and it is getting dark. So we may allow just about two or three questions i.e. one, two, three.

**Translation:** *Hulila, hulila mbelio. Omukhaye alikho muno owenya okhureba? Tawe. Iwe reba, mana urebe.*

**Charles Wandati:** My names are Charles Wandati. Before I ask my question, I want to say that this is very wonderful Constitution. Bw. Mutakha, I would like you to comment about Mr. Otwoli's comments on you ignoring labour laws, because when he talks he tends to worsen what you have done. Thank you.

**Mr. Kasedi Omutinyo:** I share the views of most people in the Country to support this Review Constitution but only one thing. I fail to understand why Otwoli, the Secretary-General of Central Organization of workers, he neglected to observe some of the laws that was adapted at Lancaster House, Colonial laws which has deprived the native of this country and we have suffered enough. The law, Chapter 53, Bankruptcy Act, sub-Section 1 (c) that a Company owned by a foreigner goes to the Bank and gets a loan for expansion of the factory. By getting that money, he goes to start business in another country. He fails to repay the loan and the Bank takes over the Company under receivership. In that case all the workers who have served in that Company for over twenty-five year or thirty are laid off and their benefits for years of service is lost. This has affected many Companies in the country. One of them, Kenya Rawling Mills, Ramisi Sugar, Kenatco just to mention a few. Most who suffer are our families and children who are at school are thrown out of school. Our families have suffered for years until now we have not been paid anything. This is a colonial rule, which needed COTU, the Central Organization of Trade Union to us as Kenyan workers. This has made us very poor. That is the much I have.

**James Wanangwe:** Majina ni James Wanangwe na ningependa may be uguzie mambo mawili tu. Jambo la elimu na mtindo wa elimu huku guzia na mambo ya health. Haya ni mambo muhimu zaidi ambao ningependa may be uguzie kidogo kabla ujaondoka. Asante.

**Cllr. Joseph Ayoyi:** My names are Cllr. Joseph Ayoyi, Councillor wa East Marama. My question is about *Chokoras* Kenya who have no specific place to stay and are not being cared for by the present Constitution. How are they going to survive under the new Constitution?

**Isaack Ashuma:** My names are Isaack Ashuma, of Eshtari HIV Crusaders and my question goes to the citizenship of this Country. You remember the Lancaster Constitution imposed the Bombay Railway Constructors to this Nation as its citizens and you will remember very well that the economy of this Country is revolving on these people and there is no way we can avoid remaining poor as a real Kenyan in this Country.

**Roselene Eshukumo:** My names are Roselene of the Catholic Women Association. I have a comment to make about the National Goals, Values and Principles. When we were giving our views, most people talked about this idea of one man, one job. I propose that we should have among the national goals something to do with salaries inequalities. I think that was the concern with most people. They were complaining about others holding so many offices and enjoying a lot of salaries. So, these National Goals should tackle the issue of salaries inequalities. I don't know if it is covered anywhere.

**James Wandera Onyimbo:** My names are James Wandera Onyimbo and I come from Eshtari HIV Crusaders and I have a question on the responsibilities of the Vice-President because we have had a Vice-President since independence but we wonder what actually are his responsibilities, if the Vice-President is not given a ministerial post, then he has no other responsibilities for instance in the Provincial Administration, when you have a problem you go to the Assistant Chief. If he doesn't satisfy you, then you can move to the Chief. There is no way Kenyans can go to the Vice-President and then when you fail go to the President. In that context, it means that the Vice-President has no responsibilities.

Another question I have is on taxes. These Kenyan taxes are not meant for specific functions. Of course, you find that we are being taxed even these days and on the very day the baby is born, there is tax because when you go to buy powder or soap you are pay tax, but this tax is not for a specific purpose. Can the law provide certain taxes for certain purposes? That is all.

**Com. Kangu:** The comments by Atwoli about the fact that we did not take into account the rights of workers, the Labour Rights, we have tried to, if you look at the Bill or Rights, we have put that and we have also provided the right to work and engaged in economic activities and the right to participate. But Mr. Atwoli may be right but as I said earlier, it is not the best thing to condemn the whole document. You would rather be able to tell us, as the leaders of workers, that these losses you have put on workers are not adequate. We would like to make them adequate by adding this or subtracting this. For your information, COTU as an organization has been given a number of chances or slots in the National Constitutional Conference, I think they are bringing up to about seven or so people to participate in the National Conference and we are expecting that they will be able to give us more arguments so that we see how to refine the aspects touching on the workers.

Now, the aspect on people borrowing money and make companies collapse, should be captured by the statements we made about revenue raising and the management of our affairs to the best interest of the Kenyan people. We don't allow people to make companies collapse and the rights of workers are not taken into account. But as we said a Constitution cannot put all the details in it. It lays the general principle that will form a foundation on which other laws can be developed to these effects to those general principles. That is why, if you look at our document, Schedule 6, is trying to identify some of the sections of these proposed Constitution that will require supporting legislation by Parliament to make them effective. So, if we decided to have all the details of what Kenyans gave us in this document, it will cease to be a Constitution. But a Constitution is supposed to have the general principles laying the foundation and then the others will come in Acts of Parliament to support. That is why we

are saying we have a report of about a thousand pages that touches on all these details and we are hoping that the Constitution Implementation Commission shall use that report to assist in proposing legislations that will give effect to some of the clauses. So, we are hoping that the labour laws taking into account those principles of governance will ensure that companies are run in the best interest of Kenyans.

Education: the education system and health, I mentioned in some of the principles, we said it should be policy of the State to give every citizen, basic needs, health, shelter and clean water, sanitation, education and all that. But then if you go into the Bill of Right, you will again find we have emphasized on some of those things. But if you remember what I said, when I was here last time, no clause in the Constitution that says, we shall have water or free food and that we, will put food on your table. What will enable you to put food on your table is the manner in which we have structured the entire Constitution to put in place a proper governance system that can avoid corruption, mismanagement and waste through incompetence, so that we can run our affairs properly and enable the economy to grow and make it possible for our people to earn a living.

If you look through this report we have said somewhere, wherever we went the Kenyans are crying but they are not crying for handouts. They are crying to be given an opportunity to be able to help themselves. They are not asking for handouts. They are saying, please give us an environment within which we can be able to work and earn a living. So, if we follow the Constitution we are proposing, we should be able to do away with corruption, abuse of office, thefts and misuse of public finances and resources and that will enable us to save enough and invest so that we create more opportunities. Right now,

**Translation:** *Khuhilanga abana mu sikuli nimwakhama ne milimo chihumaho tawe*

**Com. Kangu:** ----- and nobody is bothering about creating employment. So, what Kenyans are crying for is, why don't you run the economy in a manner that can create employment?

**Translation:** *ndakhamala okhusominya omwana nanyola butswa emilimo*

**Com. Kangu:** He gets off my hands. He can start caring for himself. He can be able to educate his children. He can be able to earn a living. He can be able to pay for health care and so on. Today, many people cannot afford. In many places we went, we found people who went to school they cannot afford to take their children to school. They were taken to school by their parents but the economy is such that they cannot take their own children to school So, we are proposing and aiming at putting in place a governance structure that can enable you to earn a living and be able to take your child to hospital when he/she is sick because you can afford the treatment. Many are now dying because they can't afford.

**Translation:** *Omwana alwala butswa, omushiele atsia na sipitali yiyo naboletwangwa lera shiling mia ndala tsie*

*shindufulani. Khandi wakhayinia khandi ubolelwangwa tsia ulera likaratasi elia khuhandikakhwo* prescription

**Com. Kangu:** That is the lowest a Nation can go.

**Translation:** *khwa abandu batsia baranga khukhaba*

**Com. Kangu:** ----- in the dustbin to pick papers

**Translation:** *Yokhuyila khu daktari ahandichekhwo*

**Com. Kangu:** That is a terrible Government. So, we are saying we want some improvement in that.

Now, Street Children, we have provided in the Bill of Rights, the rights of children including street children. Generally, you heard me talking about the people are at the center of everything from the individual to the family and then the community. Under citizenship, we have rights of foundlings to be given citizenship.

**Translation:** *Abana bakorele batolelwe muno bahebwe citizenship*

**Com. Kangu:** So, we are again insisting that children must have their rights protected including street children and so on.

Now, on citizenship and the foreigners who are here, I agree with you. Our economy is suffering because of foreigner who come in and their work is just to 'chota' and take elsewhere. We are losing a lot of our resources because of these 'Muhindis'. One will be here and another one in Canada.

**Translation:** *So hano bakholanga butswa nibachinga nibahila yilia*

**Com. Kangu:** We need to have serious protection from our economy so that it is not raped by foreigners to the detriment of our people.

Now, one man, one job. We have said here most of the Constitutional offices, people who hold certain offices, we have clearly said that they will not be allowed to hold any other office and they will not be upon retirement be allowed to take any other jobs and if any, not more than one you cannot be allowed to draw two salaries from the public and so on. So, we have stated that but they can be improved vice versa to ensure that some people are not left out.

Now, the responsibilities of the Vice-President is a very tricky issue and I understand. We were arguing when we were

discussing ourselves. We had proposed that the Vice-President should become the speaker of National Council and people argued that separation of powers would again be messed up if the Vice-President is part of the Executive. How do we make him the head of one of the legislative organs? But some of us were arguing that we must create some job for the Vice-President to do. So, I do agree with you that it is an office that we need to re-think very seriously on what to do. But on the other hand, the vice-president we are proposing is a vice-president that is supposed to understudy the President so that in the event that the President leaves office, he may be able to get someone who has some knowledge of how the office is run. So, that is not a very plausible argument because after all when you go to the elections, we can get a completely new person and even a new President and a new Vice-President who may have no experience. But, it is something to think about. Some of us are agreeing that actually we need to redefine his functions clearly before we can have the office.

Finally, definition of taxes and what they are supposed to do. We are trying to insist and we hope on the basis of the principles we have stated, legislation will be created, we are proposing that it would be better if the Government is required to disclose how much money has been raised from taxes and which types of taxes and how that money is going to be allocated. Because, currently Kenyans have never come to know how much money is raised and how it is used. So, you raise money, it is allocated and then thereafter you are asked to fund raise to do things that the Government is supposed to be doing. We are saying, we don't want that. We have even proposed that if leaders of a certain category under the leadership code of conduct will not be allowed to receive gifts. If you receive a gift, in the course of your work as an office holder, that gift belongs to the office, to the institution you represent

### *Laughter from the audience*

**Com. Kangu:** ----- and you must hand it over immediately because the concept of receiving gifts is normally turned into demands. Oh!

**Translation:** *Lwo mukhongo yetsele mukhabe imbusi yo mukhongo nahebwe, mana bulano kata muhuma mwanza khwihayayia butswa*

**Com. Kangu:** ----- as if you are under her duty. We are saying that must stop because it encourages corruption. Leaders should not be allowed to receive gifts and if you receive you must disclose and if you have received because of your official office, then it doesn't belong to you privately, it belongs to the institution and you must hand it over.

**Audience:** Yeah, yeah.

**Com. Kangu:** Thank you.



**Peter Litera:** Tafadhali, mimi naitwa Peter Litera na natoka Umam Sub-Location. Sasa wakati ulukuwa unasoma, ulikuwa upande wa uongozi wa kwenda Bunge ama kazi tafauti. Ulisoma, wanawake, namba yao na wanaume ikajulikana. Lakini, ulifika kwa walemavu, sijui kama nilielewa vibaya, lakini sikusikia ni namba kiasi gani walemavu wanafaa, kama hata ni Parliament, wanafaa kuingia kwa sababu ikiwa tu ati walemavu watachukuliwa bila kuelewa namba, hio tungali tutakuwa na shida kama ile tuko nayo. Kwa sababu tena tuko na walemavu akama viwete, kuna viziwi na vipofu. If, kama tunapatiwa nafasi kwa Parliament, hawa watu aina tatu, wanatakikana wanpewe nafasi sawa. Lakini tuwe na namba ili, kama Serikali aiwezi kupatiana hio namba, tuwashitaki kwa ile Court ulisema. Kwa hio sasa ndio inatumuza watu wengi sana.

Halafu pia ingawaje kwa sababu ya muda, na kwa sababu mambo yote haikuweza kuandikwa chini lakini kuna sehemu fulani zinastahili sheria zilandikwe kabisa hasa kwa upande wa watoto. Upande wa watoto, watoto wengi wako town ni 'chokora' kwa sababu watu wale wake na kazi ya juu wanawachukuwa huku reserve na wakifika town wanawatupa. So, at least tunataka mambo mengine yawe na namba zile tunastahili. Kwa sababu upande wa watoto tunataka ukichukuwa mtoto huku reserve, upate barua kutoka kwa Chief, na tena kutoka kwa yule headman. Ukienda naye town, tena unaenda unaandikisha kwa police station, ukimtupa, huyo mtoto na akipatikana you will be arrested. Otherwise hiyo ingali itakuwa na shida.

Jambo lingine, kwa upande wa President, ulisema inatakikana mtu at least awe na degree na kweli hiyo ni sawa. Lakini, sasa hiyo ukiangalia three quarters ya wana Kenya hasa wamama wamama, ukija huku Western, ni wachache sana wako na degree.

Je, tutazidi kubaki nyuma tena? Kwa hivyo, END OF TAPE THREE SIDE A

----- inafanya elimu hauna namna ya kusomesha mtoto. Kwa hivyo kufikiya kwa kiwango ya degree ni shida.

Haya, jambo lingine, kwa upande wa watu masikini, (*interjection from the audience*) ngoja kidogo, upande wa watu masikini. Nina hakika million ishirini na tano hapa Kenya ni watu masikini. Hiyo inatakikana mupeane namba zile zinatakikana sheria ndio kama hatuwezi kupata kitu, tunaenda tunashtaki direct kwa mfano farmers wawe wanapatiwa loans during financial year. Wakati wanahesabu pesa Bunge ndio pia wakulima wanapewa loan yawo. Na tunajua wakati huo ndio pesa ya wakulima inatoka halafu maindi inanunuliwa na inakuwa na fixed price kama majani halafu na kahawa na hii viti vingine. Kwa sababu tunaumya. Asante.

**Com. Kangu:** Asante. Mambo umesema tumesikia na ni mambo tutafikiria. Nilisema kuhusu walemavu kwa ile list ya watu ninety hatuja weka number lakini tunasema list itapeanwa kwa Election Commission na lazima Election Commission ichunguze na wa approve kwamba hii list ya kutoka kwa Political Parties imeshika mambo yote tutasema and that should be taken of. Lakini, si wewe pekee tena kwingine nilisikia hio and ni mambo tutasema inaweza kuwa picked up wakati tunaenda kwa the National Constitutional Conference na ionekane we need to put a number. Mambo ya poverty and so on, watoto hio nile imeshikwa with the general body of the Constitution but it can still be pursued in terms of details na wale watakuwa kwa Conference. Thank you.

