

CONSTITUTION OF KENYA REVIEW COMMISSION

(CKRC)

Verbatim Report Of

**DISSEMINATION OF REPORT AND DRAFT BILL, MUMIAS
CONSTITUENCY, HELD AT ST. ANNE'S PRIMARY SCHOOL**

ON

8TH OCTOBER 2002

**DISSEMINATION OF REPORT AND DRAFT BILL, MUMIAS CONSTITUENCY, HELD AT ST. ANNE'S
PRIMARY SCHOOL ON 8TH OCTOBER 2002**

Present.

1. Com. John Kangu

Secretariat Staff in Attendance

1. Leah Symeher - Asst. Programme Officer
2. Flora Wafula - Verbatim Recorder
3. Ann Nabiro - District Co-ordinator

Meeting was called to order 2.45 p.m.

Ann Nabiro: (*In Luhya Dialect*) Sasa tuko hapa sababu ya mambo mengi kuhusu katiba na tutapata kujua ni nini iko kwa Katiba leo. Lakini kabla ya hayo yote, nitaomba tuanze mkutano wetu kwa maombi. Mzee Abdallah ulikuwa umetuwekea nani wa kutuomba tafadhali? Nitamuomba Musa uje mbele na kila mtu akisema neno lolote atakuwa akitaja jina lake kwa sababu tunaweka kwa record tukitumia hii tape na hatuna hiyo PA system sasa hatuwezi sikia ukiwa mbali. Songa karibu nayo.

Musa Akello Makokha: (Prayers) Majina yangu ni Musa Akello Makokha kama mwenyeji wa hapa Mumias na nitaomba kwa Ki-islamu. Kwa jina la Mwenyezi Mungu, mwenye kurehema, rehema kubwa kubwa na rehema ndogo ndogo. Tumekusanyika hapa leo, ili tushuhudie maoni ambayo sisi na Wakenya wenzetu tumewahi kuwaambia constitution committee ya hii nchi na tunaomba Mwenyezi Mungu, kwamba baada ya kusoma na kusikiliza maneno ambayo tutaambiwa na wakurugenzi wa hii Katiba, tutaweza kushauriana na tukubaliane ili hii katiba iwe muongozo wa nchi yetu kuanzia sasa mpaka wakati wa vizazi vyetu vijavyo.

Mwenyezi Mungu, wewe ndiye kiongozi wa hii dunia. Wewe ndiyo unaweza kutaka unalotaka, na kukataa ambalo hutaki. Tunakuomba Mwenyezi Mungu, uwe na sisi katika kikao hiki mpaka mwisho yake. Hayo ni machache ambayo tunakuomba kwa jina lako tukufu. Amina.

Ann Nambiro: Thank you very much. Mr. Commissioner Sir, the District Officer, Chairman, Mumias Constituency Constitutional Committee, our Districts Delegate Rita Katamu, ladies and gentlemen. Good afternoon?

Audience: Good afternoon.

Ann Nambiro: Most of you know me. My names are Ann Nambiro I am the District Co-ordinator. Tutakua tukitumia lugha tatu wakati tutakua tumekaa hapa sisi sote. Usipopata neno kwa kingereza, utalipata kwa Kiluhya au kwa Kiswahili. Sasa uwe tu mtulivu na mkiona mwenzetu ambaye hawezi sikia, mjaribu mnieleze. Tuko na yeyote?

I take this opportunity to thank you for coming and coming for a very important event in the Kenyan history. It is out of today that we shall determine how tomorrow will be, not necessarily for ourselves, but for the future of Kenya as a country. 200 years to come even probably one year, not all of us will be here. Some lives were lost yesterday in Kakamega, some people may have died in the Hospital which is just adjacent to us but Katiba ambayo tunatengeneza, ni ya miaka mia mbili ijayo. Sasa ni kitu muhimu sana na vile Commissioner atakua akiongea, jaribu kuwa makiini. Wakati wa maswala ukifika, utapewa nafasi ya kuliza swala lako halafu utapata kujibiwa. With those few remarks, I take this opportunity Mr. Commissioner, to introduce to you, our District Officer and give him a chance to say jambo.

District Officer: Hamujambo?

Ann Nambiro: Thank you Mr. Muli. Sir we also have a lady who is going to represent the District as a District Delegate, kwa ule Mkutano ambao utakuwa huko Nairobi Conference. Wilaya Butere/Mumias imetoa watu watatu na labda leo mtapata kuona wawili. Mwingine hakuweza kufika leo. Madam Rita Katamu.

Rita Katamu: *(In luhya dialect)*

Ann Nambiro: Thank you very much Madam Rita. Madam amekua na kofia nyingi na labda mtapata kusikia ni nini ingine huwa anafanya. Now sir, allow me to take this opportunity to introduce to you the Chairman, Mumias Constituency Constitutional Committee, whom I will request to introduce others and say a word. Mr. Fred Muchivi please.

Mr. Fred Muchivi: Thank you very much, the Commissioner. My names are Fredrick W. Muchivi. As the Co-ordinator said, I am the Chairman of the Constituency. I will take this opportunity now of introduce to you, the committee of the Mumias constituency. I will request you now to stand up and mention your names one by one.

I am Peter Sakwa from East Wanga

Zaitun Abdi from Mumias Central.

Roselyn Wamkoya from East Wanga

Janet Ayeta from South Wanga.

Abdalla Shikanda from Central.

Mr. Fred Muchivi: Thank you very much. Mr. Commissioner, you will excuse me for putting on my hat. Nilikuwa mgonjwa kidogo kwa hivyo bado najaribu kuficha, siwezi kupiga kelele sana na kabla sijamaliza, ninajua tuko hapa na Kiswahili na Kingereza. Sidhani ya kwamba hawa ndio members peke yake wa hii constituency. Tulikuwa wengi. Wengine walikuja hapa mapema wakakimbia. Wengine wanazuiliwa na mvua. Na hata wengine walikuwa wanadhani hamuwezi kufika lakini vile tunambiwa na Co-ordinator ya kwamba gari ilipata accident huko mbele na ikazuia nyinyi and that is why our Commissioner left with his team. Is that clear? Now next time, kama bado tunaendelea, leo ni launching na tunajua ya kwamba kitu ambacho tunafanya ni kitu muhimu sana katika historia ya Kenya.

Msisikize forojo ambazo zinaendelea kwa radio zinaendelea wapi hapana! This is the right time kwa sisi kutoa maoni yetu vile mlitoa na tutambiwa what Katiba is. Kwa ufupi mumesikia ya kwamba wakati tulikuwa tunapelekwa training ya hii vitu, mlisikia ya kwamba Uganda ishakuwa na Katiba mara ngapi? Mara nane. Sivyo? Tanzania imekuwa na Katiba karibu mara nne. Kenya hatujakuwa na Katiba tangu tupate uhuru. Katiba yetu ya miaka thelanini na nane, imepigwa viraka viraka. Sasa hii ni wakati, tafadhali, musiseme katiba ni mbaya. Tuko kwa process ya Katiba na process yenyewe ni hii.

Co-ordinator amesema tuko na District Delegates na moja wao ni huyu katika District nzima. Hawa ndio wataenda kuzungumuza, kwa Kenya nzima. Kila constituency iko na Delegates watatu watatu. Na kutoka hapo itapelekwa kwa politicians. Heads of Politics halafu ikitoka hapo ndiyo itapelekwa kwa Parliament. Sivyo? Kwa hivyo msiseme katiba ni mbaya. Hapana. Hii tuko tu kwa process ya kuunda katiba. Sitaki kuzungumza mengi, tunajua ya kwamba tuko na Commissioner, tuko na co-ordinator ambao wataelezea sisi kwa ile njia inatakikana.

Lakini Kenya, lazima tuwe na katiba mpya. Unakaribishwa Bwana Commissioner. Asante sana.

Ann Nambiro: Thank you very much, Chairman, Mumias Constituency. Mr. Commissioner Sir, this particular group ni kikundi cha bidii sana. Walitoa maoni and this is one of the places which came up with polyandry. They had other Commissioners they had never heard about it in the entire country na the Civic Education Providers, some are here and some are not here but they played a very major role in helping this particular committee also come up with the good views that were given.

I take this opportunity also to extend my appreciation to the Civic Education Providers and the 3C's to you sir. At this point, allow me to welcome our Commissioner, who has been in this hall twice. He missed to come for public hearings but he was engaged elsewhere for the same with another community. He is going to introduce to us, wale ambao ametembea nao kutoka Nairobi na tusaidiane kujufunza mengi (*in Luhya dialect*). Thank you very much, welcome.

Com. John Kangu: *(In Luhya Dialect)* Sasa, mimi nimewahi kuwa hapa, nilizungumza na wale walikuwako kwa maneno ya kujifunza mambo ya katiba. Wakati tulikuja kuchukuwa maoni, sikuweza kua hapa, nilikuwa upande wa Busia, Teso, na nikarudi huko Bunyore. Lakini wenzangu walikuwa hapa, na niko na hakika mulipeana maoni ya manufaa kwa sababu wakati tulipokuwa tunachunguza maoni, ilionekana kweli mulipeana maoni kama watu walikuwa wamejifunza.

Kwa sasa tumekuja na niko na wale watasaidia kwa shuguli ya leo. Tuko na hao wasichana wawili. Pale kuna Leah Symekher. Yeye ni programme officer. Anaandika yale tunazungumza. Na kuna pale Flora Wafula naye ndiye anayefanya recording ya haya maneno.

Sababu ya ku-record ni kuwa nilipokuwa hapo mwanzo, niliwaeleza kulingana na sheria yenye imewekwa tufuatilie tukitengeneza katiba kwanza, kulikuwa kumesekana tukimaliza kusikiza maoni ya watu, na kutengeneza report pamoja na Draft Bill, tupeane hizo reports kwa raia, waweze kusoma wenyewe na waelewe tumependekeza maneno gani waweze kujadiliana kati yao wenyewe, na waone kama hayo mapendekezo ni yale wanafurahia ama wanataka kupeana comments tuofauti tuofauti.

Sheria ilikuwa imesema mtapatiwa kiwango ya siku sitini, that is 60 days, ndiyo muweze kusoma na kujadiliana, na halafu baada ya hiyo turudi kwa nyinyi kwa ili mpeane comments zenu. Lakini baadaye sheria ilibadilishwa, mnakumbuka niliwaambia kulingana na, sheria vile ilikuwa, hatungeweza kumaliza kazi kufikia mwezi wa December vile ilikuwa imesemekana. Na sheria ilibadilishwa baadaye, na wakabadilisha maneno kadha. Wakasema badala ya nyinyi kupatiwa siku sitini, mtapatiwa siku thelathini ya kujadiliana hayo maneno na tena wakasema, baada ya hizo siku thelathini hatutarudi kwenu kuwauliza nyinyi maoni yenu kulingana na yale tulikuwa tumeandikisha. Tutaenda kwa National Constitutional Conference kwenye mumesikia kuwa mama atakuwa mmoja wa wenyewe watakuwa wakijadiliana.

Ndio tumesema, huu mradi uwe mradi wa watu, hata kama muda umepunguzwa, hadi siku thelathini, ndio wakati tutakuja kuzungumzia nyinyi kuhusu ile report na draft bill tumetengeneza, hata na nyinyi muwe na nafasi ya kupeana comments kidogo, ndio tuelewe nanyi munafikiria namna gani. Kwa hivyo wakati tutazungumza, mtapata nafasi wachache kupeana comments. Muda hautaturuhusu kusikiza kila mtu apeana comments, na tena pengine hamtakuwa mumesoma hayo, muelewe yote, lakini nami nasema, baada ya nyinyi ya kwenda kusoma na kuelewa kama hizo siku thelathini hazijaisha, unawezakaa chini na utengeneza comments zako kuhusu zile proposals umepeana, na upeane kwa District Co-ordinator, afikishe ndiyo tupate kujua maoni ya watu kuhusu yale tumependekeza yanasema nini.

Ama mupeane zingine kwa Delegate, ndipo wakati ataenda huko, muwe mushamueleza jambo hili hamupendelei, na upeane proposal ya aina Fulani, jambo hili tunataka libadilishwe hivi. Huyo sasa ndiye atawakilisha nyinyi. Tukifika huko, sisi hatutakua na la kuzungumza. Tutakaa, kwa sababu mtakuwa mmetuma watu wenu kuamua. Kwa hivyo mtasema maneno kidogo baada ya mimi kuwaeleza.

Tulisikiza maneno yenu kulingana na vile sheria inasema na mwishowe tukakaa chini kutengeneza report. Tulikuwa huko Mombasa mwezi mzima tukijaribu kutengeneza report na kuangalia mambo muliyosema yote. Tumemaliza reporti, hiyo na ni kubwa, ya kiasi ya volumes karibu nne, tano or about 1000 pages. Kwa sasa inafanyiwa editing, lakini tumefanya summary ya hiyo report, hii ndiyo the short version, a summary ya hiyo report tumetoa, yenye inachunguza maneno mumepeana, na kupendekeza vile tunaona tuendele. Hii ndio tulitoa na, inaitwa “ the report of the Constitution of Kenya Review, short version – The People’s Choice.”

Wakati tulikua huko tulikuwa tumesema tuiite the people’s design. Watu wenyewe wametoa muundo wao. Lakini tulipopeana kwa watafsiri wa Kiswahili wakasema, People’s Design haitokei kwa Kiswahili mzuri. Wakasema Chaguo La Watu, ndiyo inayotokea vizuri, na sasa ikawa kwa Kingereza tuiite the People’s Choice. Hiyo ndiyo short version na copies will come out but baada ya sisi kupeana report hii, newspapers, Nation, Standard, Kenya Times, People, wali-publish yote na wale walinunua wamewahi kusoma na kujua inasema nini.

Baada ya hii report and on the basis of that report, tumetengeneza The Draft Constitution. The Draft Bill to alter the constitution. Hii ndiyo hizo mumeapatiwa za magazeti. Hiyo, iko na yale yako hapa yote. The newspapers juzi ilikuwa na hayo yote tena, wale walinunua walipata na walitupatia extra copies ndizo tumeleta msome, muelewe tumependekeza katiba ya aina gani. Na tujue haya yote ni mapendekezo kwa sababu hii sheria inasema, we can only make recommendations, we can only make proposals but the people will make the final decision. Wakati watafika National Constitutional Conference.

Sasa huyu mama munaona hapa mumempatia a major job. Hawa ndio watakaa Nairobi, na kupitisha haya mapendekezo tumepeana kuwa inafaa ama ibadilishwe. Ndiyo huyo mama mumemweka. Na mimi najua mumemchagua yule mwenye atawapigania kabisa vile nilisema wakati nilikua hapa. So comments zile muko nazo, muhakikishe amesoma na ameelewa. Ni kweli? Akienda huko amejua inasema nini, na ni wapi watu wetu hawafurahi wanataka ibadilishwe hapa, ibadilishwe pale, halafu ndiyo watapigana maneno huko. Wakati huo sisi tutakua tumekaa tu. We will contribute in the debate lakini ikifika kupiga kura, the Commissioners will not be allowed to vote. We are ex-officio members the other delegates ndio watapiga kura ya kuamua imekua namna gani.

Sababu yangu ya kusitiza hilo ni kwamba there has been some other lone voices in the wilderness. Wenye wanasema “Oh, wameandika katiba mbaya, hii haitoki kwa watu”. These are mere proposals! Kama wewe hukubaliani nayo, basi kuja useme, “I do not agree with it for this reason and that reason” and it is not possible to disagree with everything. Sasa unasema yote ni mbaya? You come and point out useme, “hapa ndiyo iko ubaya, na mubadilishe iwe hivi”. Kama mgonjwa anaenda kwa daktari, ni mgonjwa. He is suffering, karibu akufe. The doctor does diagnosis halafu anasema “mimi naona ni malaria, wacha ni twange yeye sindano ya Malaria.” Na wewe utokee uanze kusema “no, this doctor is wrong! Infact even the diagnosis is wrong, he has not even prescribed proper medicine and you are not yourself diagnosing what the disease is.! You are not prescribing your own medicine. Si mgonjwa atakufa? The Kenyans walisema wanataka katiba mpya, na sisi tumefanya

diagnosis, tumependekeza hii ndiyo katiba Wakenya wanataka. Yule anasema, “This is not what the Kenyans said”. Na yeye aseme, “This is what they said, and this is what I am proposing”. It is not enough kwenda tu kusema “hawakusema hivi”. Who gave you the power to say that?

Na wengi wa hawa wabunge wanasema hivi, sisi tumetembea nchi hii. They were MP’s who were honest enough, walikuwa wanakuja wakati tunachukuwa maoni, wanakaa na watu hapo. Na mara yingi mimi nilikuwa nikiwaambia yeye, “Ngoja mzee, usikize watu wako wanasema nini. Tutakupatia nafasi tukielekea mwisho uzungumuze kama wewe umesikia watu wako wanasema nini” and there were some good MPs. They turned up, they attended the hearings lakini ziko sehemu zingine Wabunge hawakutokea kupeana maoni hata kusikiza watu walisema nini na hao ndio sasa wanaanza kutoka kusema, “this is not what the people said.”

Katiba mulitupatia nafasi tutengeneza na nilisema wakati nilikuwa hapa, katiba ni ile sheria inahusu vile tunaendesha mambo ya kijamii, mambo ya public power, how we manage it and so on. So, kufuatana na katiba, iko vitu kadhaa tunajaribu kufanya. There are a number of things that a constitution can be used to do and we are saying with a constitution, you can constitute a State, you can constitute a people and declare the sovereignty of the people and say this is how the people want to go.

Through a constitution, unaweza kupendekeza vile unataka nchi iendeshwe, you lay down the values and goals that the people want to govern them i.e. the aspirations. Through a constitution you can draw out power map on how you want public power to be shared out and to be exercised in the interest of the people. It is a power map which therefore creates or re-creates institutions, zenye zinapatia nafasi ya kutumia nguvu Fulani kwa niaba ya watu na sisi kulingana na maoni yenu, tumejaribu kufuatana na hii draft, to do those things. Ukiangalia kwa hii draft, tumesema, “We must use the constitution, to declare the sovereignty of the people. To constitute the Kenyan State, into a people, into a State and declare the values that have to govern us. Lakini tulisema, tukianza kutengeneza katiba, Kenya was already a State. It was a Republic. Kwa hivyo hatungetumia hii Katiba kwa ku-declare there shall be a Republic of Kenya. Because there was already a Republic na tumesema kupitia kwa Katiba, we can recognize the existence of that Republic. Na ndiyo tumesema ukiangalia hiyo Katiba yenye tume-proposal, Chapter 2, yenye ina anza na Article 6, we have said.. Kenya is a Sovereign Republic na tunasema for a constitution to constitute a State, to constitute a people it must declare that there is a Republic. It must define a territory that constitutes that State and it must define the people that constitute that State, the so-called the citizens. So ukiangalia in Chapter two, we have proposed that we recognize Kenya is a sovereign Republic na nitaeleza baadaye, the details of what is meant by a Republic.

What are the Republican principles? What entails Republicanism. Kwa sababu wakati huu tuko na katiba inasema we are Republic but nobody seems to know, what are the Republican principles and we have ended up operating as if we are a monarchy. So this time round, we want Kenyans to know when you say you are a Republic, maana yake ni nini? What are the values you must adhere to for you to be a Republic. At Article 2 of 6 defines some of those Republican principles.

Now, tumesema to constitute the Kenyan State, lazima to define the territories. Ile katiba tuko nayo saa hii, there is no definition of the Kenyan territory. Huwezi kujua inanzia wapi, inafika wapi. Na kwa sababu hiyo wakati Waganda walikuwa wanatengeneza katiba yao in 1995, they decided to define their territories and in the process they defined some parts that belong to Kenya, as part of Uganda territory and our government sat back and did nothing about it. Wakenya huko Busia wanalia, na kusema “sisi hapa hatujui tuko Wakenya ama tuko Waganda. Tunaumizwa”. Samaki is bred at the point where the river pours into the lake. I.e Kenyan rivers. That is where fish is breed but when it wants to fatten its meat, it goes into the deeper waters.

Wa-samia wakienda huko kutafuta samaki, Waganda wanawaambia “you are fishing in Uganda waters”. We are saying, this time round, katiba must define the Kenyan State, na ukienda kwa Schedule 1, yenye ina define the territory of Kenya. Inajaribu kupeana boundaries, upande wa Uganda, inatoka inaenda hivi. Na upande wa Ethiopia inaenda hivi, I know the Busia people wameshaangalia na wakaniambia this definition we put, still leaves certain parts of Kenya, in Uganda. Sasa niliwaambia mtengeneze comments mtupatie details, we want to define the Kenyan State properly, Wakenya wasikae kama hawajui hawana baba na mama hawajui ni wapi wataenda for security. So Article 7 defines the State by referring to Schedule 1 which gives the boundaries. They may be subject to corrections na watu wa Busia wamesema and we will look into that.

While constituting the State constituting it defines the territories, and goes further to define, ama to identify the Capitals, kwa hivyo Article 8, tuna identify Nairobi as the capital lakini tunasema hapo, under Sub-article 3, the constitution is about the welfare of the people na, under Article 3 we are saying, it shall be the policy of the State to decentralize the Headquarters of National Government department and National Public Institutions to all Provinces equitably. Tunasema hatutaki ile katiba ambayo itaweka mambo yote Nairobi halafu nyinyi you end up paying more to access government services when others are paying less. So, although the Capital city shall be Nairobi, it shall be the policy of the State, to insist on decentralization of government institutions and departments Headquarters to various provinces so that kila Mkenya ajisikie ako sawa sawa.

Under that, tumejaribu hata to define the Religion. We shall not be a religious state we shall be a secular State. Tumejaribu kuangalia maneno ya languages na tumesema national language shall be Kiswahili, official languages shall be English and Kiswahili. We are giving Kiswahili a higher status as a language of the State of Kenya.

Baada ya ku-define the territories, it also becomes necessary, wakati you are constituting a State, to define the people who constitute that State and under Chapter 4, we have tackled the question of citizenship. Tunajaribu ku-define watu wenyewe. Who is entitled to be a Kenyan citizen and what are the rights as a Kenyan citizen? So, hapo tumeangalia. Wamama walilia and we have provided sasa that citizenship itakuwa on equal basis hata mama akioa kijana kutoka huko nje, huyo kijana anaweza kuwa Kenyan a citizen. Ukizaa mtoto na mtu nje, pia namna hiyo. We have catered for what people said. So citizenship is defined under chapter 4 in the process of constituting the State of Kenya because a State must have a territory, it must have a people, it must have a government.

Now, people are defined. Wakati una-constitute the State, tumesema pia, the constitution ina saidia to identify the values by which the people in that State want to live. The guiding values, the aspirations, the goals, they set targets for themselves. Tukienda kwa the preamble, tumepeana hapo a short preamble, ndiyo ya mwanzo kabisa, ukimaliza the table of contents, yenye tunasema, we must recognize the sovereignty of the people of Kenya. The people are the ones making the constitution, they are the ones who give power and so on. So under the preamble, tuko nayo hapo inasema, we the people of Kenya na kwa sababu as a people of Kenya, tuliwekwa pamoja na Wa-colony so we are not a nation. We are many nations in one State. So we have cultural diversity, ethnic diversity, and religious diversity lakini tunasema, kama Wakenya, tunasema kuambatana na hii katiba, tumekubali kukaa pamoja kama Wakenya, regardless of our ethnic, cultural and religious diversity. Lazima tupeana heshima across these differences. We must accept unity in diversity. In the preamble, we are aware of these differences and we are ready to live as a sovereign indivisible State, regardless of the differences.

Pia tuna-recognize kwamba, umaana wa katiba, umaana wa serikali and I said it here before, is to serve the welfare of the people of Kenya kwa hivyo in the preamble we are saying we are aware of these diversity but we are committed to nurturing and protecting the well being of the Kenyan people whether as an individual, a family, or as a community. So the welfare of the people is set out as a very important value, serikali yeyote tunaweka kwa ofisi lazima ihakikishe kazi yake ni kutimiza masilahi ya Wakenya wote wasikie wanapate ile wanataka. Tunaendelea kusema tukifuatilia hiyo maneno ya welfare, we recognize the aspirations of Kenyan women and men so that wote wakubaliwe to participate na tutakuwa na serikali yenye ina-recognize freedom and democracy, justice and the rule of law. Hayo yote tumesema kuwa Wakenya wako na haki ya kuamua mambo yao vile itaendelea, they must be allowed to participate.

Tena ukienda to chapter one, ile ina-deal with the sovereignty of the people and the supremacy of the constitution, we have added more values there. Inahakikisha kwamba power comes from the people and then more values are also in chapter three, i.e National Goals, Values and Principles. Hapo ndio tumesema, kama these are the values tunataka zifuatiliwe.

In putting out all those values, mtataka kujua, na kusema, we constitute Kenya as a Republic na nimesema lazima tujue, Republicanism, maana wake ni nini? What does it mean? What are the values that underlie the Republican citizen? Chapter 2, Article 6(2), we have mentioned some of those things. Looking at what the Americans did, James Madison who was one of the makers of the American constitution, walipomaliza huo mkutano wao huko Philadelphia, na kutengeneza proposals, walipelekea watu na debate zilianza, ikawa wengine wanasema hiyo katiba ni mbaya kama vile hata sisi tunambiwa hapa. So ikawa the duty of these makers of the constitution should be to persuade the rest of the Americans to accept that it is a good proposal. And James Madison and Alexander Hamilton wakaanza kuandikisha, makaratasi na wakipeana watu wakisoma, what became known as the Federalist Papers.

They were aimed at persuading the Americans to accept the proposals that had come from Philadelphia na in those federalist

papers, James Madison in Federalist Paper number 39, they wrote 85 papers. James Madison wrote most of them and Alexander Hamilton. In paper number 39 which was dealing with Republican principles, James Madison said, a Republic is that system of government that derives all its powers from the great body of the people. It gets all its powers from the people.

The people who directly or indirectly delegate their powers to representatives as a government to exercise them on their behalf and he said that in such a system, when power is delegated by the people directly or indirectly to representatives, those representatives are required to exercise that power, for a limited period of time. So that mtu hawezi kukaa ofisi anasema I want to be there life. We are talking about Republicanism, limited period! You cannot be there for life! Life ya nani? Now, James Madison went further and said, those people hold office for a limited period of time and during the pleasure of the people. So you hold office during the pleasure of the people. Not during the pleasure of an individual. Our current constitution says, the public office holders in our country, they all hold office during the pleasure of the president. Any moment it displeases the president, Bwana DO can get fired and we are saying Republicanism does not say that. Republicanism says you hold office during the pleasure of the people. It is the people who can hire you and the people who can fire you!

Now James Madison went further and said that they hold office for a limited period of time, during the pleasure of the people and during their good behaviour. So when you have been given that office to hold it on behalf of the people you must hold it during your good behaviour. If you misbehave the people will tell you “pack and go!”.

Those are the key Republican principles. If you read through those Republican principles clearly, then you will find there are a lot of principles of good governance incorporated in that. One, democracy, two participatory governance. Three, transparency and accountability. Four, separation of powers. Five, checks and balances. All these are Republican principles. If you are going to hold office for a limited period of time, it follows that we must have democratic mechanisms through which we can recruit new leaders and remove those who are in office. So the concept of periodic elections is a concept of Republican governance. That you will be in office for five years, after which you will go back to the people through a democratic process so that you can be elected to continue or you can be told , “Pack and go, we put someone else” the people themselves directly choose. Not that they are told, “sasa mimi nimechagulia nyinyi huyu...”, that is not what we are doing. (*applause from audience*). Democracy says the people themselves should choose. (*In Luhya Dialect*)

Now, Republican principles, say, periodic elections, you can go back because tunasema limited period of time. So baada ya miaka tano, urudi, watu wakuchague tena through a democratic process. Tunasema accountability and transparency. Why? Because if you hold office for a limited period of time and you can go back to the people kuuliza “extend my time”. We are saying that is the period of rendering account. The people can subject you to accountability. “Before we extend your time, can we see whether you performed well when you are in office?” Isn’t it? So election period is a period for rendering accounts. We are saying people must hold office during the pleasure of the people. If the people are to be able to exercise their pleasure or displeasure, we are saying governance must be transparent so that people can be able to see and say, “this one has not made

the test of accountability, we cannot extend the time”.. If the people are able to remove someone because he is not performing well, that is a principle of accountability. They are saying they are ...a democracy, we are talking about participatory governance. James Madison said, they directly or indirectly appoint those who exercise power. That is a principle of participatory governance. People must be able to participate in making decisions about matters that affect. That is a Republican principle. Waamue tunataka maneno iende hivi, na mtu akikosa, they should have a right to remove him.

We are saying people who hold office must hold office during their good behaviour. Good behaviour is a requirement of accountability. That if you are not accountable to the people, you are of bad behaviour you can be removed. Isn't it? So, Republican principles require that these power is not put in the hands of one institution, it is spread over various institutions so that one can act as a check of the other. Separation of power and when James Madison was proposing this principle, that is when they proposed, legislature, judiciary, and so on. For separation of powers. This one can exercise these powers and this one those powers. So, Republicanism, you don't just have to say we are a Republic and you do not know what it means.

Republicanism requires that all these principles be in place. Mechanisms must be prepared of ensuring that all these things are put in place. That people can be able to hire and fire their leaders, they can control the affairs that concern their lives and so on.

Two, that the people are put at the centre of a Republican government. You heard James Madison say, it is a system that derives all its powers from the people. So authority stems from the people and the purpose of that power (*in Luhya*) is to ensure the welfare of the people and we have said in the preamble here, we are saying we want a government that serves the welfare of the people and if you run through the whole document, you will find we are putting the people at the centre of everything. Those principles I have discussed, we are trying by these proposals, to put them here. So that the people can run their own affairs.

The values we have said here, we are recommending these are values that concern serving the welfare of the people. Government must serve the welfare of the people. The people must participate in the governance of their affairs. The people must have fair elections, the people must do this and that. If you look at the national goals and values. For example number four, it says that 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 powers. We are trying to capture some of the Republican principles.

Now if you look at Article 14 (5), we are saying that the Republic shall ensure open and transparent government and accountability of state officials and public authorities. Now, if you go to Article 14(11) we are saying that the Republic shall ensure the fullest participation of women, the disabled and the marginalized communities and sectors of society in the political, social and economic life of the country. We are saying participation must bring on board even the weaker members of society. Must be allowed to participate.

If you look at Article 14 (14) we are saying the Republic shall be committed to social justice and through appropriate policies and measures, to providing for all Kenyans, the basic needs of food, shelter, clean water, sanitation, health, education, a clean environment and security so that they live a life of dignity and comfort and can fulfill their potential. Those are the principles we are saying should guide our governance in our country.

In Article 14(15) we are saying the Republic shall promote equitable development, recognize and enhance the role of science and technology, eliminate disparities in development between regions of the country and sectors of society and manage national resources fairly and efficiently for the welfare of the people.

So we are saying development must be even. You do not go and concentrate things in one place and leave other people sitting with nothing and think they will be willing to continue staying in the Republic. They may say “let us quit and go elsewhere”.

Now, if you look at Article 14 (16), we are saying the Republic shall recognize its responsibilities to future generations of Kenyans by pursuing policies for the sustainable management of the environment. So if we are saying the welfare of the people, we are talking of trans-generational people. The welfare not only of this generation, but even of our children to come. Isn't it? We must manage the resources *zenye tuko nayo kwa njia ya kuhakikisha* we pass over something to the future generation. So the people are playing centre stage.

If you look at Chapter 2, Article 6 sub-article (2), 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 freedom and the rule of law. Those are the Republican principles. So we are saying in all our affairs, we want to see these principles reflected if we have made a Republican constitution and that is the ideology on which our constitution is based. I was dealing with this when we were doing our thematic papers and I told my friends the ideology that run through the entire constitution must be Republican. *Ile inahusu* the welfare of the people and nothing else. The welfare of the people must take centre stage and, even under this national goals we have provided for duties of a citizen.

We are saying even citizens have a duty to contribute to this value and to exercise their democratic right by voting and being involved in other forms of political participation. So we are saying voting is not only going to be a right, but also be a duty and it is your duty as a citizen, to ensure you vote. When things start running badly and you start complaining yet you do not participate in the recruitment of the leaders, you are to blame yourself. Madison said, Authority derives from the people, who directly or indirectly choose their representatives. So when some of you choose to sit back while others are recruiting the leaders, you do not participate, then *baadaye unanza kulia*, you will have yourself to blame.

You have a duty to participate in the recruitment of the representatives so that we call people to account. If you think so and so

does not serve, vote him out! (*in luhya*) because when they loose their patience, they become very bad! (*In luhya*). The patience has run out isn't it? And it will runout for the entire nation. If someone tries to play around with this process, I am telling you the patience is going to runout and we will face some very difficult situation in this country. I have gone round this country, I have talked to people in very many places as I talk to you people here and I can assure you people want change. (*In luhya*). You will not stop them.

So those are the Republican principles. The people are put at the centre. Na ukiangalia other chapters for instance if you go to the Bill of Rights, it concerns the welfare of every individual. Chapter 5. This is the Bill of Rights. The Bill of Rights huwa inahusu the rights of individuals and we are saying if we are talking about the welfare of the people, we are talking about the welfare of each one of them. If one, two, three are happy and all members in the society are happy, then the whole society will be happy. But if you are going to say the majority are happy and other people are suffering, things will not be proper. So the Bill of Rights focuses on the individual. The welfare of the individual and if you go back to our preamble, you will notice that we have recognized that the individual is very important in the whole society. You do not ignore the individual and pretend to be serving the society. So that is why you find in the preamble we are saying that committed to nurturing and protecting the well being of the individual. The family and the community within our nation.

We are saying that we must take care of the welfare of every individual so that the whole society can be happy. That individual maybe you or me, one tribe or another, one sex or another sex and so on. We must identify who is every individual in our society. We cannot say there is fairness when one tribe is getting everything and the rest are getting nothing. The individual communities will feel offended.

We cannot say that we are taking care of individuals when men are taking everything and leaving women with nothing. The women will feel offended. We cannot say we are talking about the individuals we are able bodied and about the disabled. They will feel left out. So when we talk of the people, we are talking of the welfare of each one of them regardless of the circumstances in which they are. We must take care of their welfare.

So the Bill of Rights addresses the welfare of the individual, we have provided for the rights of all Kenyans generally. We have provided for rights of women, for rights of children, for rights of the disabled, for rights of the elderly. So that every individual can be taken care of. you can see that the people are playing centre stage in the constitution. We are proposing to the Kenyans so that, they can be able to say that this is what they wanted and if you go to Parliament, the chapter that deals with Parliament, you will find that again we are emphasizing the service of the people.

The legislature which starts at Article 102, says that Parliament represents the cultural diversity of the people, symbolizes the unity of the nation and determines the policy of the Republic.

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 the people are playing centre stage in everything that we are proposing in this constitution. If you look at the Executive again, you will find we have put the people at centre of things. Article 148, we are saying the powers of the Executive are to be exercised for the well being and benefit of the people and the Republic of Kenya. The power of the State are supposed to be exercised for the well being of the people and the benefit of the people and not for the individuals and if you go further down, we are saying, 148(2), we are saying that the executive authority assigned to an office bearer in terms of this constitution, has the power to serve the people, rather than the power to rule the people.

We are emphasizing the executive, we are giving them power to serve the people and not to rule the people. Are you getting the point? The people are at the centre of everything and I said here, I cannot remember the day, the origin of government was to ensure that the welfare of the people are served. It was the proper management and equitable distribution of resources which are essential in the process and project of preserving ourselves or preserving our welfare and we are saying here, the executive given power to serve the people and not to rule the people.

Now, if you go even to the judiciary, we are again mentioning the people. That is why this thing says the People's choice. We are putting the people in the midst of everything we are doing. Article 148 we are saying that 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 the judiciary must exercise their power in the name of the people and for the welfare of the people. The people are at the centre of Republican principles and if we are proposing a constitution that is based on a Republican ideology, then the people must be seen to be at the centre of everything. We have attempted to do that and we believe that when implemented, the people of Kenya should be able to feel happy.

I said at the beginning that the constitution constitutes the State, but it is also a power map. It is a map that defines how power is divided, shared out and used for the benefit of the people. So as a power map, the constitution we are proposing is seeking to create a number of institutions, to construct a number of institutions that are supposed to exercise power for the welfare of the people. Now the institutions we are proposing are of two kind. There are those institutions which are given or allocated certain state power to exercise it on behalf of other institutions. Kuna zile zinapatiwa uwezo Fulani kwa niaba ya raia, kuwasaidia raia. And those are the traditional 3 organs of State. The Judiciary, the Executive and the Legislature. They are allocated power.

Then there are other institutions which we are proposing whose main function is to supervise these other institutions when they are performing their functions. As a mechanism of checks and balances, to ensure they exercise the public power allocated to them in a proper manner. Those are supervisory institutions na mkienda mtapata we have created a number of Commissions which are supposed to supervise the activities of the other institutions to ensure they are been run properly. Now, these institutions we are proposing can again be divided in two different level. One level is what I have told you, those that exercise

power and those that supervise the exercise of power.

There is another level at which those institutions are divided into two. There are those institutions zenye tumekuwa nazo even under the current constitution but which we have sort to reconstruct. We are saying the manner in which they are constructed under the current constitution is bad. Then there are other institutions which we are constructing afresh which have never existed under the current constitution.

Now, those we are reconstructing, if we start with the Legislature, i.e. Parliament, we have sought to reconstruct Parliament. Kuhakikisha it performs its functions, it is answerable to the people, it is accountable to the people, it serves the welfare of the people. We are hoping ile proposal tutapeana, can ensure that we have a Parliament that can actually enhance these Republican principles of participation and so on. So the first reconstruction level of Parliament has been that we have said, si vizuri kuchukuwa all the legislative powers and put them in the hands of one institution. It is bound to abuse those powers. So we are saying, we want to reconstruct the legislative powers and share them between two institutions. We are proposing the introduction of an Upper House, to support the Lower House. Ndiyo tunasema, tunataka tuwe with the National Assembly as the Lower House and a National Council as an Upper House. Tunasema the National Assembly and I will come to that when I am talking about the recruitment of the representative to the legislature. When I am talking about the representation of the people and how the representatives are recruited, I will give details, but we are saying the national assembly should have the existing 210 members of Parliament representing various constituencies but in addition to that, they should also have another list of 90 kuongeza ifike 300. na tunasema hawa - mumesikia tukiambiwa "Oh, how can we allow for the nomination of a whole 90 people?" it is not true. Infact we have abolished in our proposal, the concept of nominated Members of Parliament. Those 90 people will be elected and I will give you details when I come back to the representation of the people and the recruitment of the representatives.

Now, the National Council, which is the Upper House, we are saying iwe na wabunge 100. 100 members of Parliament. 70 of them wawe wana-akilisha Wilaya. The districts. So that Butere-Mumias district, munaweza elect one person wa kuenda to the National Council as a Member of Parliament as a member of the Upper House to represent this district. We have 69 districts, ukiongeza Nairobi as a district, you get 70 seats. Tunasema 70 seats. Halafu tunasema ile inabaki thelathini, hiyo nayo itapatiwa wamama lakini tunasema hiyo, kwa hiyo thelathini, every province will get four women na Nairobi nayo ipate wawili. So if you put 7 provinces by 4 you get 28 is it not? Then you add there two for Nairobi they become 30. Those women will not be elected by women alone. But even men will participate in the elections.

Western province itoe wanawake wanne wa kuenda to that national council. Ndiyo tuhakikishe legislation ikipitshwa in one house, pia iende to the other house ipitishwe. So that if one house passes something halafu ifike in the other house and the other house refuses, that is the end of the road we are saying that given an opportunity to the public – wakati huu Bunge inaweza kaa tu, ipitisha kitu mara moja. Next thing munasikia iko sheria. Lakini now, we are saying ikipita in the Lower House, wakati

inaenda to the Upper House, maybe some public debate will begin na wananchi may notice it was not a good thing and they will be able to say, we do not want that and the Upper House may reject and that will be put in a check and balance. That will also enhance participation na hii legislature we are proposing that Parliament shall have what we call a committee on good governance and public participation. Ya kuhakikisha when Bills are pending in the House, that Committee publicizes the Bill, involves the public, facilitate the participation of the public so that the public can debate and see whether it is a good proposal or bad.

Even in the amendment of the constitution we are saying there are certain sections which cannot be amended before you go back to the people by way of referendum. But we are saying in all the amendments, there must be allowed a period of 90 days, after the second reading of the Bill, you will not go to the third reading of the Bill until you have allowed 90 days and during those 90 days the committee on good governance and public participation, lazima iende inje I-publicize maneno and I-mobilize wananchi to debate this proposed amendments before they can go through so that the two houses can know that this is what the people would like to have.

We are attempting to enhance the mechanism of Republican governance.i.e Participation by the people, accountability and serving the welfare of the people and so that the people actually know what is going on. We have also sought to reconstruct the executive. Saa hii munajua katiba tuko nayo inasema we have an executive that constitutes the president, the vice president and the Ministers. That is the Executive we have and many Kenyans have cried that the president has excessive powers, he uses them to abuse people around, to do all sorts of things na watu walisema tunataka hizi nguvu zipunguzwe. Lakini nasi tukasema, na mimi niliwaambia hapa, it is not just a question of reducing the powers, cutting them and throwing away. Because we will end up with a banana state that cannot function. We must put these powers elsewhere because we need them to get things moving. But what we want is that we do not put all those powers in the hands of one person. They must be spread across so that nobody can abuse them and the government should check if things are moving and there is a balance.

So we are proposing a reconstructed Executive that will have a president, a Vice President, a Prime Minister two, Deputy Prime Ministers ,15 Ministers and 15 Assistant Ministers. No more. We are very clear. That there shall be 15 Ministers. Not ministries but Ministers. Because tunajua currently they hide behind - - “Oh we have 15 ministries, but you find a ministry with 3 – Ministers. We are saying there shall be 15 Ministers only. And we have said na mumesikia we have been accused that we are creating a ceremonial president. I want to say here and now, maybe those who are saying that have not read this draft. Or if they have and understood, they are been dishonest. The presidency we are proposing is not ceremonial. We are trying to move away from a presidential system, without creating a ceremonial president. We are trying to move nearer the Parliamentary system without creating a ceremonial president. So tumegawa nguvu, president ako na nguvu kiwango Fulani, na Prime Minister naye ako na nguvu kiwango Fulani. We must force these people into negotiations. Saa ingine it helps. Even when people are not friends, lakini mtu anapata I cannot do this, unless I negotiate with him, they tend to act in a proper way.

Na nimesema vile munaona inaendelea kwa KANU saa hii. They have been forced to negotiate. Inafika kiwango unasikia group moja inasema we can do without them, we do not need the project. Another one says, we do not need the Rainbow. Lakini wakifika hatua Fulani wanapata we need each other. Muda kidogo unasikia Mzee ameita mkutano wa KANU, this time we have had so many of them. They are trying to negotiate and we are saying we want the governance that will force leaders to negotiate. They need not to be friends but they are forced to the negotiating table. That is how the affairs of this country will be run properly. Lakini ukipata mtu he can do anything on his own there is nobody who can stop him, he thinks he can just walk over people. But when you find you need the other one, you will be able to give a little as he gives a little and the country will go on well to the interest of the people.

So we are proposing that. We are saying the president we have given him various functions, inanza at Article 148. We are saying his most important function is to protect this constitution and constitutionality. So all those institutions zenye nilisema ziko of a supervisory nature, and the Commissions, the appointments are done by the president, with the approval of Parliament isn't it? And those Commissions will be making annual reports to the President and Parliament and when the president sees the reports, if he finds the Commission is saying "Mr. President this particular institution is not performing well" the president can take action. He can call the Prime Minister and tell him look, "there is this report complaining about your government, what are you doing about your cabinet?" so that things can be able to run.

This Commissions are very important yet there are under the president. So the president is not ceremonial. He has very important functions. He is even the commander in Chief under our proposals. You cannot say (*In Luhya*) what are you talking about? And he is the one who has the weapon.

Now, the Prime Minister also he has some functions. We are saying the president will be elected directly by the people. Then he appoints a Prime Minister from the majority party katika bunge. Ile chama iko na watu wengi Bunge, atachagua Prime Minister kutoka kwa hicho chama lakini baada ya kuchagua, bunge lazima ipitishie. It must approve. Na tunasema hapa, akileta jina wakatae, alete ingine wakatae, alete ingine wakatae. 30 days ziishe, he has not been able to appoint the Prime Minister, you dissolve everything he tells them to go back to the elections. Wameshindwa to form a government!

Therefore, there are sufficient checks and balances we are proposing. Kuhakikisha hakuna yule atachezea wananchi. There are there. Ministers tunasema hawatakuwa watu kutoka Bunge. Ministers and assistant Ministers tunasema lazima wachaguliwe professionals from outside. Wasiwe wabunge. Sababu ni kwamba tunasema, one of the principles of Republicanism, is separation of powers. Right now, the President anaweza chagua – you know he has even powers to create ministries and appoint people. He can ensure a half of the house are members of the cabinet. So that when a motion comes in the house, he can defeat it and that interferes with the separation of powers. Parliament cannot be able to act as a proper check on the Executive because the majority of Members of Parliament are also members of the Executive. So we are saying we want that separation. Wawe wabunge na kazi yao ni kutengeneza sheria, lakini wale wako serikali wawe kando. They do not come from

the Legislature. But wanachaguliwa kutoka nje. Wawe watu wako na ujuzi wa kufaa, kwa kazi yenye wamepatiwa na wakichaguliwa, lazima bunge I-approve.

Bunge ikikataa, unambiwa “tafuta mwingine”. Na once they become Ministers and assistant Ministers, they become ex-officio members of Parliament. Wanaweza kuja bunge kujibu maswali ama kusikiza vile debate is going on ndiyo waweze kuelewa the policies zenye zinatoka na legislations if they are going to be able to implement them. They must attend Parliament. But we are saying ikifika kiwango ya kupiga kura ya kupitisha sheria, they are not entitled to vote in Parliament.

It is only members of Parliament who can vote and pass legislation. These other ones are merely observers. So that they understand the policies to go and implement them. That is what we are proposing. Na ninajua wengi hawafurahi hiyo. Juzi mwingine alisema hata wa opposition akasema, “unajua, ya every member of Parliament ni kwamba when their party takes over he may become a Minister” we said “too bad and I am praying with you people, approve them that way so that it becomes too bad for them. There are those who are hoping that.

Now, tulikuwa na sababu kadhaa. One reason ni kwamba tunataka hiyo separation of power. Another reason ni kwamba wakati huu tumekuwa na situation una pata ukiwa Minister, you start handling the ministry as if it is the property of Mumias constituency. Unashahau this is, a national office that is supposed to serve the entire nation. Ukienda ofisi ya Minister una pata imejaa watu wa Mumias. Sasa unashindwa, is this a national office or a property ya Mumias? Na sababu anafanya hivyo ni kwamba, because he will come back to you people mmupatie kura, mtakuwa mkiuliza when you were a Minister what did you do for us? You also go wrong kwa sababu that is when you encouraged them to misuse the ministry instead of serving the people. So tunataka akiwa Minister, he does not have a constituency to turn to, wenye wanamuliza mbona hukutufanyia hii na hii? So that he serves the entire nation.

Wengine wamesema, when someone is a Minister, anasahau constituency ama anatumia maneno ya ministry kujifisha kutoka kwa wananchi. Mkiuliza anasema “you know I am very busy as a Minister!” when infact he was not doing anything. So, tunasema if you are an MP, you must represent the people. Minister naye afanye kazi ya ministry. We are also saying kumekuwa na tabia, watu wetu wakiwa Minister, anafikiria now he has become the MP of the entire province, or the MP of the entire district, he starts loading over other MPs in his district. We are saying we do not want that. MPs must be on an equal basis. You do not have to start loading over your colleagues in the districts or in the province. So we want that separation. That is why we are proposing that. So the Executive is been reconstructed in that manner and they are those who are unhappy but you are the people, we are reporting to you, we are appealing to you, if you approve, these things will go through na nimewambia equal representatives (In Luhya) Hawa ndio watatenda kuzungumza haya maneno at the National Constitutional Conference. Wakati maneno yataondolewa and I know they will say it. The will say “we want Ministers to be members of Parliament” because some of them sasa wameshindwa watachagua either apigania kiti kama Mbunge ama angoje akibahatisha atachaguliwa Ministry. The do not know which one to choose. We have put them in that fix. So that is the position.

Now we have also tried to reconstruct the Judiciary na mumesikia wakilialia wakisema they want to oppose this process and we told them, I have told people and I am repeating here and now, Wa-kenya wameamua they want change. Na hii sheria inasema comprehensive review na nilisema juzi kwa radio, comprehensive review is a revolution. You cannot put vote to comprehensive review and retain the status quo. The Kenyans are saying we are tired with the status quo, they want change and so those who expect that tutamaliza hii review and then leave the status quo intact, you are mistaken! It is a revolution isipokua ninasema, Wakenya walichagua they want a peaceful revolution. Lakini ikifika kiwango, watu wakatae, nimewaambia when patience runs out, a patient person becomes very bad and the Kenyan people have been extremely patient. They want peaceful changes. So somebody who thinks he will stand in the way of this review process is mistaken. This process is now coming (*In Luhya*) if you stand in the way you will be washed away! And I must say at this point we are very grateful to the Kenyan people, when we released our report and the draft bill the response we have received from the Kenyans has been very encouraging. We have been very happy kwamba mumejitokeza kusema ndio hii iko na maoni yetu tunataka iendelee mbele na mtu akijaribu kusimama mbele, munagonga yeye, tupite tuendelee. The Judiciary walimangamanga wakaenda na cases in court. We said we will ignore them. If they want to put us in jail for contempt, let them do so.

We have ignored, them and now they are trying to find a way to withdraw those cases of theirs without losing face.

But we said we will go on, this law said we must review all the organs. We cannot talk about comprehensive review and then some organ of State is saying, “sisi tubaki hivyo” that is not the case. We are going to review everything. So we are reconstructing the Judiciary. I will give you details when I come to the transitional arrangements.

Tunasema, we want a supreme court introduced as the highest court. Currently the highest court is the court of appeal lakini that court of appeal has only appellate jurisdiction. It only hears appeals and cannot hear matters at the level of original jurisdiction but the supreme court we are introducing tunasema itakuwa inasikiza Appeal, but there are also certain matters that can be taken to it at first instance when it is exercising original jurisdiction. For example, tunasema, wakati Parliament inapitisha sheria, inafika kiwango ya president kupeana assent. President anaweza soma hiyo Bill, na aone there is something wrong. ‘Hii inaonekana haiambatani na katiba, the president has the authority to hand over that document to the supreme court and request them for an advisory opinion on whether or not to assent to that law. whether or not it is consistent with the constitution. When we go to elections, we are saying anybody who wants to challenge the election of the president, will have to file his case in the supreme court, inasikizwa huko, inamalizika huko. Ikiisha, imeisha. No appeal from there because we are saying, we do not want the president to be kept in court for five years. Amalize, anakimbia imepandishwa hapa, imeenda High Court Appeal, imetoka huko imeenda Court of Appeal, we want a president to serve, so petitioning against the election of a president must be decided once and for all. Mambo inakwisha. So we are saying hiyo case inaenda kwa Supreme Court, inaishia huko. Kama umeshindwa, umeshindwa, anaendelea.

Mumesikia huko Zambia iko maneno courtini. Imetokea huko Chiluba alienda akatafuta Mwanawasa from somewhere akasema, “Ya this is the weaker candidate, nikiweka huko I will just be pushing him around, he will protect me and so on. Mwanawasa behaved a fool then he got there. Kufika huko akasema to hell! Next thing wananchi walikuwa wanasema, no we cannot have a President who is not also the Chairman of the ruling party but someone else somewhere is calling himself Chairman of the Party. We say no, the president must also be the Chairman of the party. The next thing was, Chiluba to stop, relinquish the position of party chairman so that the president becomes the party chairman. Akatolewa hivyo. Next thing alikuwa napelekwa courtini on corruption. Saa hii mimi nasikia naye ameenda amechukuwa evidence yote amepelekea Bwana Tembo anamwambia “you know this man, I rigged him in”, so that the petition may go through and I am saying, tumeambia wengine hapa, it will be the same here. (*In Luhya*) and people are rejecting. Particularly the way they are rejecting Uhuru like this, when he gets there his first mission will be to prove the world wrong. Ati they said I am a Protégé of Moi? No, I want to prove him wrong.

So he will start by fixing him so that he can proof to the world, “you see, I am not what you thought I was!” That is what Mwanawasa is doing. When he got there and people were saying he was rigged in, he decided the easier way to get the Zambians behind him, is to prove to the Zambians that he is not what they thought he was. So the first step was to deal with Chiluba and people went behind him. The international community went behind now. They said now, I think Mwanawasa can continue and it will happen. Some people do not seem to see, that some of us have seen and we are saying, we are not mincing words about it, we are saying, it will come to pass. Niliambia wengine, I do not know (*In Luhya*) but I am sure of who cannot! I may not be sure of who can, but I am sure who cannot. So, we are reconstructing the Judiciary, it will have a Supreme Court, a Court of Appeal, a High Court and then the Lower Court. We have also tried to reconstruct the Kadhi’s Courts. A lot of submissions came from Muslims and this area is Muslim. We have proposed there should be a Kadhi’s Court at the District level, there should be provincial Kadhi's and then we will have a Kadhi’s court of Appeal, which will be presided over or constituted by the Chief Kadhi and two senior Kadhi’s. Then Appeal from the Kadhi’s court of appeal will go to the Supreme Court on matters of law and matters of the constitution. That is what we have proposed in the process of reconstructing the Judiciary.

So, those are the institutions that exercise power which we have reconstructed. Then there are those institutions that supervise the exercise of power. Some of which have been in existence. Tumeamua to reconstruct them. And also construct new ones. Now, the first one we have reconstructed is the electoral Commission. We are reconstructing it and be reduced from 22 members, to 11 members. It will have people appointed by the President but approved by the National Council. They will be in office for five years, renewable once. Because we have said, you must hold office for a limited period and during the pleasure of the people and we are saying when the time of renewal comes, that is when the people will express their pleasure and if you are not accountable, you will be kicked out. Now, that Commission must be independent. Both, in terms of appointment of its own staff and in terms of financing. We are saying, all these Commissions must exercise their power only in terms of the constitution and they shall not be controlled by anybody else except the constitution then they will have finances, money voted to them direct

kutoka kwa consolidated funds, so that they will not have to go to any ministry begging for money. Na nimeambia watu, our Commission, is the example Wakenya wanatakikana watumie kujua if we invest in institutions, independent institutions, we can go very far. Munajua hii Commission yetu, wakati tulichaguliwa ilikuwa advertisement ilipeanwa na Bunge.

Tukapeana applications. We were interviewed, tukachukuliwa and then the Parliamentary Select Committee only submitted to the president the names of the appointed people and the role of the president was to simply formerly appoint us. He did not play a role, in the appointment of the Commissioners. Now, you also know in our Commission, if any Commissioner has to be removed from office, the law says, that it is the Commission itself which will have to hear the case and decide whether the person should be removed or not and in doing so, it must decide by a two thirds majority na munajua wakati tulikuwa tunataka kutoa secretary, ilikuwa kazi ngumu kabisa. Bwana Okoth Owiro. It was very difficult, ndiyo mwishowe tukamtoa.

You also know hii sheria inasema, when there is a vacancy to be filled, sheria inasema, the Commission yenyewe ita-advertise. Watu wanatuma maombi, we short list, we interview, tunachagua watu watatu, tunatuma kwa Parliamentary Select Committee three names, nayo Parliamentary Select Committee inachunguza those three, inawacha moja, inachukuwa wawili, inapelekea Rais, Rais naye anachunguza, anachukua mmoja from the two. So the role of the President is to choose one out of two presented to him. He has no choice. He might not like both of them but he has no choice but to pick one of the two. That is how we have been able to operate as an independent Commission na ninataka kuwaambia saa hii, if we were not that independent, I am telling you if the president was able to disband this Commission or to remove any Commissioner, we may not be in office by today. He would have removed Ghai along time ago but we are there because the law has created an independent Commission which nobody can play around with.

Now we are given a vote from Parliament, direct from the consolidated funds, tumepatiwa our vote in the budget. Secretary anaenda kuiitisha Treasury, tunapatiwa pesa yetu tunaweka on our funds. I want to tell you if we did not have that, pengine tap ingekuwa imefungwa, then you find you have no money to operate. So, that is an example of what an independent Commission can do. Our Commission should be used as an example by Wakenya kusema, “tumeona tukitengeneza independent institutions”, we can run this country bila shida.

Munajua hii report wakati tulimaliza tukatoa, we never reported to the President? Hata mulisikia alikataa kuja kutoa maoni kwetu. We never reported to Parliament. We first reported to the people. We published, watu wasome kwa sababu sheria inasema we report to the people directly. So we are insisting that the Commissions we are creating must be independent in terms of finances, in terms of recruiting their own staff and so on. So that wanaitisha pesa yao direct from the budget and at the end of the financial year, they file their own accounts, and reports with Auditor General and they answer their questions directly.

That way, the Electoral Commission will be able to perform its functions properly.

We have also given it a lot of functions including the registration of political parties. It is the Electoral Commission that is

supposed to register political parties after they have satisfied certain conditions ndiyo wawe registered. Now, we have also reconstructed the Judicial Service Commission kuhakikisha, we can get an independent Judicial Service Commission yenye inaweza supervise the appointment of judges and magistrates, the performance of those judges and magistrates, they can also discipline them. An independent Judicial Service Commission, yenye tena tunasema lazima iwe with its own finances and, not accountable or answerable to anyone else except the people and the constitution.

Hiyo Commission tunasema itakuwa na a substantive chairman, to serve for five years, renewable once. That chairman lazima awe mtu mwenye ako qualified to be a judge of the Supreme Court. Tunasema that Judicial Service Commission will also have one Muslim woman to represent the interest of Muslim women. It will have the Attorney General as an ex-officio member. It will have one judge of the Supreme Court elected by the Judges of the Supreme Court themselves, one Judge of the Court of Appeal elected by the Judges of the Court of Appeal.

One judge of the High Court, elected by the Judges of the High Court. Two magistrates elected by the Magistrates themselves. Two representatives of the Law Society- appointed by the Law Society. Two law teachers representing the two law faculties in our country. Right now we have a faculty of law at Nairobi University and a Faculty of Law at Moi University. Each one of those Universities will send one person from the faculty. Then a representative of the council for Legal Education and the Chairperson of the Public Service Commission and three representatives of a lay person, one of whom will be a woman. Now, these are the members of the Judicial Service Commission and we are saying if we go it that way, we will be able to get a very independent Judicial Service Commission, na tunasema it is this Commission that will have the power to recommend people for appointment as Judges to the Supreme Court, to the Court of Appeal to the High Court, it will recommend appointment of Magistrates, and the one disciplining those who are errand. An independent body and in appointing those people, this time round haitakuwa siri, tumesema transparency. Open, those positions will be advertised. Si kama wakati huu, munamka tu and you find the President is swearing in a judge. How he was appointed you do not know.

When that vacancy arose you never knew. If you were interested, you could not have applied. You must have some politicians to go and plead for you. Anasema “Oh, mheshimiwa (*In Luhya*) hata hatuna judge hata moja” Halafu mzee anauliza “sasa munaona nani anatosha?” na those politicians wanasema Fulani. They may be pointing at the completely wrong person. Now, we are saying this time round, those positions should be advertised. We want to get the best brain in those courts. Because we are saying the judicial process is an intellectual process. Tunataka watu who can develop our law, let it grow properly to take into account the welfare of the people. So the Judicial Service Commission is there and we have reconstructed it from what it has been today to make it more independent, transparent, so that it can perform its functions properly.

We also have reconstructed the Public Service Commission kuhakikisha that in appointing Public Officers, certain principles are taken into account so that we get proper officers in some of those offices. If you look at Article 258, you will find the principles of the Public Service Commission which have to be taken into account and then the composition of that Commission and how it

should be able to operate. Now, we have also proposed the establishment of other new Commissions which have not been in existence. We are trying to construct some new Commissions and we are saying that we should have a Commission on what we call the Human Rights and Administrative Justice Commission.

This one is a broad based Commission under which we have put, departments that would have been Commissions on their own, but we have decided there should be divisions under the Human Rights and Administrative Justice Commission we have here a division on Human Rights which will be headed by a Commissioner on Human Rights, we have a division on the protection of the people where we have put what we call the People's Protector who is supposed to be the equivalent of the Ombudsman. You people kept talking about an Ombudsman, we said that rather than calling him an Ombudsman, we should have our own name and we called him a People's Protector. In South Africa they called him a Public Protector. We have a division on gender so we will have a Gender Commissioner in this Commission. We have a division on basic rights, we have a division on children's rights and disabled and they will all work under the umbrella of the Human Rights and Administrative Justice Commission.

Then we have proposed the establishment of another very important Commission which we are calling it the Ethics and Integrity Commission. We are responding to the cries by the Kenyan people that there is no Leadership Code in our country. Leaders do not follow any set values, we have no standard in leadership. There is a lot of corruption and we are now proposing an Ethics and Integrity Commission. This Commission will be the custodian of the Leadership Code of conduct. We are proposing a Leadership Code of conduct which sets certain values that a leader must meet before he can be put in office and if you can not meet those standards you will not be allowed to hold certain offices.

For people to hold certain offices, they must be able to declare their wealth and the sources thereof, their liabilities and it is to the Ethics and Integrity Commission that people will be required to make these declarations. You go to Commission, you declare your wealth and how you got it and the Commission has power to investigate. If it suspects that you have not made proper declarations, you have not disclosed everything, or you have not even properly disclosed the sources, maybe some of the wealth was acquired in the wrong way, they have powers to investigate, if they find truth, then they will recommend that this person does not deserve to hold the high office that he has been given.

Even members of Parliament, the President, the Prime Minister, once they get into office, they must go to this Commission and declare their wealth, the sources and their liability so that we are able to know what is happening.

Matters of corruption, they will have again to be taken to this particular Ethics and Integrity Commission so that we can be able to fight corruption and so on. If you look at the Leadership Code, you need to look at - Schedule V, Leadership and Integrity Code of Conduct. We have set out there the standards that we expect from leaders, you will need to go through them, we will not entertain leaders who do not want to pay taxes, but evade taxes from time to time. The Ethics and Integrity Commission

will investigate and if we find you are the type who keeps evading taxes, you will not be allowed to hold office. It has several clauses covering about 3 pages in my booklet here with clauses running from 1 – 19. You need to read through if you have any intention of holding a leadership office in the Republic. So we have proposed that, the Ethics and Integrity Commission.

We have also proposed the establishment or the construction of a salaries and remuneration Commission. This will be a periodic Commission, not permanent but appointed say after about 5 years or 10 years to look at the salaries of Public Officers, harmonize them and so on. We are saying we do not want to continue with a situation where members of Parliament wake up and decide their own salaries.

Salaries of the president, the Prime Minister, the Vice President, Members of Parliament and other public officers will be determined by the Salaries and Remuneration Commission. Even these other Commissions we are proposing, the salaries of the Commissioners in those Commissions will be determined by the Salaries and Remuneration Commission. That we are saying is supposed to be a periodic Commission, it need not be permanent. It can be appointed periodically to address the question of salaries at a given point and then we give it again time before there is need for review.

Then we looked at the question of the teachers. At one point we almost said no, the Teachers service can be put under the Public Service Commission but we were informed that the current teachers Commission has a history that goes to 1962 when there was a strike by teachers and another one in 1967 and we were told if you abolished that you will get into trouble with the teachers so we decided that there will be a Teachers Service Commission to address the question of the teachers.

Now, we have also addressed the question of other constitutional offices, the office of the Attorney General, we have reconstructed so that the Director of Public Prosecutions is completely separate from the office of the Attorney General, he is not answerable to the Attorney General, he is an independent constitutional office to deal with prosecutions.

We have also reconstructed the office of the Controller and Auditor General and divided it into two, so that has been have an Auditor General separate from a Controller of Budget such that we have two. We were addressed on this by some experts on matters of finance who told us that although we have a controller and Auditor General, that office all it does is to audit. There are no proper mechanisms of controlling expenditure before harm is done. They only audit after expenditure. But the Controller is supposed to control expenditure before you spend, if we realize that you are spending wrongly, we can stop you before we loss more money from spending. So we have divided the two offices. We will have a controller of budget and an Auditor General. So the Controller of Budget will deal with preparation of budgets and he is the one who will have responsibility of following up expenditure to ensure that we do not get reports from the Auditor when the horse has already bolted and save nothing. So we have created those offices.

We have also reconstructed the office of Commissioner of Prisons and renamed it the Director of the Kenya Correctional

Services. The Prisons we want to refer to them as Correctional Services. We have talked about a Commissioner of Police and stated how he should be appointed and how he should be removed from office. We have provided for a Governor of the Central Bank and, for a Public Defender. Those are some of the offices we have proposed.

Now, coming back to the question of the recruitment of the representatives of the people. The representation of the people. If you go to your document starting with Article 76, we are dealing with the representation of the people. Here we have proposed how elections should be done and we are saying first, we address the question of the system of elections particularly for the National Assembly and we have said there are three categories or systems of elections which we had to choose from. The first one ni ile tunaita the First Past, the Post Electoral System. Hiyo inasema simple majority and it is based on single members constituency. Every constituency elects one representative and the one who gets the highest votes as compared to the next candidate is the winner.

Many Kenyans complained that under that system, many of the MPs in Kenya are minority MPs. So that if you have in Mumias 10 candidates and the winner has 5,000 votes, the next candidate has 4,500, the next one has 4,300, the other one has 4,200, you find that if you add the total of the losers, they have far more than the votes the winner got. So most of the Kenyan MPs actually are minority representatives. So that is one of the problem with the First Past, the Post system.

We have also had complains, wale watu wanasema there are sparsely populated areas and there are densely populated areas and those densely populated areas are not well represented. This system also does not give an opportunity to representation to marginalized groups like women, the disabled because they are not able to compete in the male dominated election process which in our country munajua it is full of violence, abuse, derogatory speech, very dirty speech by men, when they get on the rostrum to address people for elections, I do not know what goes through the heads of the men.

Kura ikifika wanazungumuza maneno hata ile hawawezi kuzungumuza mbele ya watoto yao mpaka unashindwa, this man has been a very good man in the house. Amefika namna gani kusema (*In Luhya*) and women find it very difficult to compete in that arrangement. That is the system we have in Kenya, Kenyans have complained.

The second system is the one that is called proportional representation system. Hiyo nayo, you do not vote for an individual, you vote for a party. So parties prepare lists. So unaenda kura unasema “mini nataka chama hii” mwingine anasema chama hii, at the end of the elections, they work out the total and if one party has 60% of the votes around the country, then it becomes entitled to 60% of the seats in Parliament. It is the party which will have prepared the list from whom we pick the MP. So that system they say disconnects the people from representatives. There is no link between the people and a specific person they can say our MP. Because it does not represent your constituency. He was picked from a list.

The other problem of that system is that, it gives a lot of power to the parties because the parties are the ones who decide who

should go into the list so if you do not behave nicely to them, your name will never appear on their list or if it does, it appears at the tail end of the list and you may never become an MP at all. So it makes political parties become dictatorial to their members. Then that system on the other hand is good in the sense that it can enable marginalized groups to get representation because saa ile munaleta list before we go to elections, watu wanangalia list. wanataka kujua hii ni chama ya Waluhya pekee ama ni chama ya kabla zote?

Wakipata the entire list they are all Luhyas, they will say “to hell with those Luhyas!”. If it is a tribal party we are not going to vote for them. So if you want to get votes as a party from other communities, you will be forced to put names on your list of people from other communities. If you want to get votes from women, you will be forced to put some names of women on your list. Because women watangalia watasema basi, “kama hii ni chama ya wanaume, to hell with them we are not going to vote for them”. So it helps to bring in these marginalized groups. So that is the second one.

The third one is what they call mixed member proportional representation. That one borrows from each of these two. It has 6 constituencies which elect MPs whom they can say, this is our MP, It also has some other members who come on the basis of proportional representation so that we are able to enable people to feel that they have an MP they can go to as their own, at the same time, we are able to create an opportunity for marginalized groups to be represented without giving a lot of power to the political parties to start dictating around. So we have proposed that approach for the National Assembly.

Mumesikia tumeambiwa “Oh, you know they decided we should have a whole 90 nominated MPs.” That is not true. Those people will not be nominated, they will be elected. Infact we are saying, we are abolishing the concept of nominated MPs. So the National Assembly we are saying we will retain the existing 210 constituencies. So that you can go and elect your MP as the people of Mumias; when we were deciding we thought what do we do? Someone asked me “how did you come up with the number 90 for proportional representation because, in addition to the 210, we shall have other 90 MPs who will come on the basis of proportional representation? I said the reason we came up with that number is that we said we want to decide on a number of a House to be 300. We said we could not make it more than 90 because we cannot dissolve any one of the existing constituency without getting into problems with the people. So we said, let us retain the existing 210 and then add there 90 to make 300. that is the system we are proposing.

Those 90 people will be elected by you people. When you go to the votes, to the ballot box, you will cast two votes. You will cast one vote for the MP in your area. Kama ni Mumias ama Matungu, you choose, nataka Fulani. Then you will also cast a vote for a political party na tunasema, we know they are many Kenyans wenye watasema, tunapenda huyu mzee, tunataka tuchague yeye Mbunge. Lakini ubaya ako kwa chama mbaya. Si ni kweli? So we are saying you should be able to say, “Tunataka huyu mzee, he can perform, wacha tuchague yeye as a member of our constituency” lakini ikija kwa chama, “wacha tuchague hichi chama kingine. “

So you cast one vote for the area MP then you cast another vote for the party you want. before we go to the kura, those parties will be required to submit the list of 90 people. Mukisema if as KANU we win 100% of the votes under that proportional representation hii ya chama, we shall be entitled to bring 90 people in Parliament to add to those they will have got in the constituency. “the list of the 90 people we are proposing, ndio hawa”. Ndio wananchi wanalielewa, tutapelekwa kwa Electoral Commission, na Electoral Commission will be required to publicize. Mujue kwa ile group ya 90, hawa ndio watu KANU imechagua. Kwa hiyo group ya 90, hawa ndio watu DP imechagua, hawa ndio watu Ford Kenya imechagua. So that you can look at the list and be able to say, “Oh, this Ford People ni chama cha Waluhya pekee. They do not want to put there any Wakambas like Bwana DO there? We will not vote for it!”. Isn't it? So when you go to Ukambani to campaign, the Wakamba will say, why should we vote for them if their list does not have any Mkamba there? Why should we bother with them? Isn't it?

If women come and look at your list and they see, “but tulijua tukiwachia hawa hawataweka wanawake”. Tukasema, generally in this draft we are proposing, we should try as much as possible to make sure at least one third of representatives in various organizations are women na tumesema parliament should make legislation ya ku-facilitate that. Lakini tukasema tukiachia Bunge hawatafanya haraka ama wafanye hata kidogo, so we said, what can we do in the constitution ya kupatia women some seats? Ndiyo tukasema hizi 90 seats this katiba is proposing, every political party will be required to put 50% women. So that munaleta list ya 90 people, 45 men, 45 women. That is what we are proposing!

We are also saying, if we leave it at that tuseme tu 45 women, wataenda waweke wanawake chini ya list. We are saying it will have to be what we call the zip system or. Alternate. If number one is a man, number two is a woman, number three a man, number four is a woman. Na hiyo sheria inasema that will be required for every political party ile inaleta 90 names, you alternate them to the end so that at the end of the elections, if this political party debating on the percentage they have won of the votes they are entitled to a point, 10 members of parliament, we will take the first 10 which will be five men and five women.

If this other party is entitled to 30 seats, we shall take the first 10, which will be 15 men, 15 women. If this other party has won 20 seats, tutachukuwa the first two, it will be 10 men, 10 women. At the end of the day, women under those 90 seats, you will be guaranteed 45 women in the National Assembly. That is what we are saying.

We are also saying, for the constituency, for the 210, when we go to elections, political parties will be required to nominate at least one third of their candidates, women. For the 210 constituency. If a party is able to nominate candidates in all the 210 constituencies, they must make sure one third of those candidates are women so that if they fight well, some of those women in the constituencies and add on this number of 45 and we will end up with more women in the National Assembly.

We are saying that National Assembly will run for a fixed term of five years and elections must always be held at least 45 days before the term of office lapses and we are saying the reason we want that is because hatutaki kuendelea with the current

situation where there is normally a vacuum in the legislature when we go to elections. Tukienda kura, the Judiciary inabaki, the Executive inabaki but the Legislature is dissolved. So there is nobody to exercise legislative power if it became necessary and urgent to exercise legislative power.

In Zimbabwe, what Mugabe did, katiba yao inasema, when there is no parliament, the legislative powers are exercised by the president. So Mugabe hii sheria yote ya kuhusu mashamba na kufukuza wazungu, huwa anavunja Bunge. When they are at home, then he passes all those laws. That is what he has been doing.

We have looked at that and we said no, that is not the best approach. Let us find an approach that will ensure that we have a legislature through out. There is no time when we do not have a legislature so that if need arises for the legislature we do not know what do to. Kura ipigwe 45 days before the lapse of the period na wakati tunaenda campaign, Wabunge bado no Wabunge. Waendele tu kama Wabunge. They go and campaign, kura inafanywa when parliament is still going on, hata saa zingine ikimalizika before the 45 days end, the new ones do not assume office immediately, but wait until, their term ends, and then they are sworn in so that things flow in to - -- there is no vacuum. That is what we are proposing.

Now, we are also saying, for one to qualify to be elected to the National Assembly, you must be 21 years old and above. You must at least be of form four level to qualify. We are saying the National Council will be for four years, not five years. Those ones I said Districts and Provinces, 100 people for four years. One per district and then for women, four per province. Now these ones, their elections will also be held 45 days before the lapse of the National Council. Now, the National Council are people representing a large area, a whole district and if it is supposed to be a House of wise men and women to act as a check on the lower house, we have to put a little higher qualification in terms of age for you to go to the National Council, you must be at least 35 years and above and not below. That is what we are proposing.

For the president, we are saying you must be between 35 and, 70 and years. By the time we are going to elections and you are presenting yourself as a candidate for the office of president, we will not accept if you are beyond 70 years i.e at the time of elections. The reason we are saying that is that is we do not want to have anybody in office as president who is over 75 years of age. So that if you are elected when you are 70, if you are in office for five years, by the term your term of office ends, you are 75 years. So that is why we are saying, we cannot allow you as a candidate if you are 72. Because we know you will reach 75 before the lapse of your term. So we are fixing it at that. END OF TAPE 2 PART A

The Ministers and the Prime Minister will consult the president, to appoint them from outside parliament but parliament must approve. Those are the elections were talking about, now, we have something called devolution of power. In principles of devolution of power and this one starts at Article 213 and 214 are giving the principles of devolution of power and if you read through those principles of devolution of power, you will find that the republican principles we talked about at the beginning are captured. We should be able to use devolution of power to enhance these Republican principles for instance principle one, that

the principles and objects of devolution are to give powers of self-governance to the people at all levels and enhance the participation of people and communities in exercise of powers of the State. We are trying to ensure democratic and accountable exercise of power. We are trying to increase checks and balances and separation of powers. We are trying to promote social and economic development throughout Kenya, we are trying to ensure equitable sharing of national and local resources throughout Kenya with special provisions for marginalized areas. We are trying to facilitate the decentralization of central government powers and the location of central government institutions and department away from the capital territory to ensure equitable distribution of resources in all provinces and many more principles.

When we were talking about the capital, that Kenya shall have Nairobi as the Capital, we said it shall be the policy of the State to decentralize the institutions of the central government. In devolution, we are emphasizing that the institutions of the central government department and whatever else must be distributed across the country so that they are not concentrated in the same place. If you look at Article 214, we have given more principles of devolution. So if you read through, you will see we are trying to emphasize the republican principles we mentioned at the beginning.

In these arrangements of devolution, we have therefore created five levels of government. There is the central level of government, the provincial level of government, the district level of government, the locational level of government and the village level of government. We are defining the village level, to be equivalent of the current sub-location, that is the village. We are saying although they are five levels of government, in terms of devolution, since power is been devolved from one level to other levels, we have four levels of devolved power because the central level is the one that is devolving power downwards. So there are four levels of devolution. The province, the district, the location and the village.

Now, all these levels must have elected representatives and not appointed people. In this regard, we have proposed the abolition of Provincial Administration and the members of the Provincial Administration will be required to report back to the Public Service Commission for redeployment so that at this level we have elected leaders. People can be able to play a role in the recruitment of the people who run their own affairs.

In dividing the powers, we are proposing that there are certain levels that will have the three organs of state and there are others that will have only two organs of state. At the central level, we will have the three organs. The Executive, the Judiciary and the Legislature. But at the lower level, we will only have two levels of government that is the Executive and the Legislature. The Judiciary we shall have one judiciary running from the top to the bottom so that the lower levels will not be allowed to run their own judicial arrangements. Although at the village level we can have some little local settlements of disputes in terms of panel of elders but the judiciary will be run from the top to down. But the Executive and the Legislature, we shall have a District Council of elected people to exercise legislative powers at the district level.

We shall also have a district executive headed by a district administrator, elected directly by the people in the district and then

he will form a cabinet from the professional people within the offices in the districts to decide policy and implement policy in terms of the district. Now this district administrator will not be the kind of the county council chairmen you have today who are removed and put in by the councilors the way they like. This is a person who will be elected by the people themselves and if he has to be removed from office, the District Council can vote to remove him by majority vote but even after they have voted to remove him, a referendum in the district will have to be held, to confirm whether the people want him removed or not. If the people vote that they want him to continue, the decision of the district council will be ignored and this person continues in office.

Now, we shall have councils at the locational level elected by the people to run the affairs at the locational level. We shall have councils at the village level and then the provincial level will be co-ordinating so that those elected at the district level will be co-ordinated at the provincial level. So each district council will nominate two of its members to go and sit in the provincial council, which is supposed to co-ordinate the affairs of the province on behalf of the province.

So, effectively the devolution we are proposing is that power does not flow direct from the centre to the province. Power flows direct from the centre to the district then from the district to the location and from the location to the village but then the province receives power flowing from the district upwards. They connect at the Provincial level. That is the devolution we are proposing and the distribution of functions is stated here. At Schedule VII. In devolution of power all you are doing is to say, that certain functions should be performed at a certain level of government and others at another level. So it involves power sharing. You do not have everything been done at the centre and in distributing functions, you will find an approach that may say, you either have functions that are purely for the centre and functions that are purely for the lower level.

In other systems, you can have two approaches, where there are certain functions purely for the center, others purely for the lower level and those that are concurrent over which both levels meet and exercise them jointly. So we have proposed that approach. We have defined functions that are purely for the centre in Schedule VII, those that are purely for the district and then we have identified areas of concurrent functions where both the centre and the district exercise power.

Now, in distributing those functions, we said that the guiding principle is what has been developed in the world inaitwa the doctrine of subsidiarity. The doctrine of subsidiarity says that functions should be performed or responsibilities should be discharged by the lowest level of government at which those functions can appropriately be performed. So that if at the district level certain things can be done, there is no reason why those things should be left to the centre.

Those things that can be done by the district should be done by the district. Only those which cannot be done by the district should be left to higher level of government. That is the approach we are using the doctrine of subsidiarity. Because, when matters affect people, it is better when those people themselves make decisions about them. But when you leave them to other people who are not affected by them, sometimes you get wrong decisions. So let the people make decisions about the matters that concern them directly themselves, at the lower level.

Now we are saying in dividing those powers, once you have divided the responsibilities, you must also divide means to perform those responsibilities. You start with allocating the power to raise revenue. Which level of government should have how much power to raise revenue? Revenue is raised through taxes and borrowing. Which level should have power to tax and to borrow? Now if both or all the levels share this power, in what ratio should they share?

Quite often you will find in most systems, there are normally more powers to raise revenue left to the centre and the lower levels are given lesser powers but we are saying if that happens, then the principle that should be used in allocating the means or sharing out the means that are required to perform the functions, is by one important principle, i.e. the needs principle. That will require you to look at the allocation of responsibilities. If the districts have more responsibilities to perform than the centre has, and it is the centre that has more powers to raise more power to raise revenue than the districts have, then the centre must have a higher responsibility to give more grants to the districts so that the districts can perform their higher responsibilities. So you give more money where there are more responsibilities. Isn't it?

That is what we are saying should guide the budgetary arrangements. If this devolution takes place, the budgetary arrangements at the national assembly will not be to allocate money to the ministries at the national level but to first allocate money to the districts and then what remains at the centre, that is when now they can budget in terms of allocating it to the ministries. But the districts must get this money first. We are saying the National Council will play a role in this and so when you elect your representatives to the National Council mujue, huyo ndiye mtu anatakikana atoe macho saa zile budget inafanywa asema "why is my district getting less money?" They must look into that. We are saying, on the basis of the needs principle, we must address the question of the marginalized districts. Zile districts zenye zilibaki nyuma, how do we address that issue? And we are saying the principle of equalization grants must be put in place. When allocating money ni lazima tuangalie zile zilibaki nyuma, there must be get more finances in terms of equalization grants so that they can be lifted to come almost to the same level with the rest. In doing this, we are also saying we must address the question of winding up of Provincial Administration and of existing local authorities. You all know they own properties. Kuna zile county council ziko na mali, provincial administration there are a lot of properties around and we are saying those properties in the transitional arrangements must be protected so that they do not disappear before we elect the new devolved councils and so on. Protection has to be given to a public property.

Those are the arrangements we are proposing on devolution. Then we have also talked about political parties in the context of elections. Watu wengi walisema limit the number of political parties, tulisema hapana, we do not want to limit the number directly by saying there shall be two parties or three parties, but we shall set condition that will ensure that we do not have too many parties and we are saying in doing that, the first thing that will reduce the number of parties, is that we are providing that for you to contest for office you can be nominated by a political party or you can stand as an independent candidate

We are aware that most of these parties are been created because people feel if you do not have a party to nominate you, you cannot participate in elections and it is true it has been happening. So, we are saying if we do away with the requirement of party nomination and we allow people to contest as independent, they will not see the need to form political parties; after all, they are expensive things to run. So that will reduce the numbers, since people know they can contest as independent, they will not belong to political parties.

Secondly, we have set conditions; tough conditions that must be made. One condition, is that, if in two subsequent elections, your party has not been able to secure the elections of a single person even to the local council, then it should be deregistered. That is what we are proposing. That will limit the numbers.

We have also put tough financial conditions. We are proposing the financing of political parties and to some extent by the State. We are saying 0.3% of the national budget will be allocated to the political parties fund, every year. That fund will be managed by the electoral commission. for our party to be entitled to share in that money, it must have gotten at least 5% in the last national elections, i.e 5% of the votes. If your party cannot get 5%, it has no business asking for a share in that money and we are saying that money, once it comes, 50% of it will be shared equally by all the parties that have received 5% and above of the votes but the remaining 50% will be shared on the basis of how much percentage of the votes each party got. So those that had a higher percentage, will get more of these remaining 50% of the money.

We are also saying to encourage political parties to support women to come to parliament, those political parties that will have brought more women to parliament, will get more of this 50% of the money. I told some people in Nairobi that we know even if these men do not like getting women to parliament, they like money. So when they hear there is money, they might be forced to push women so that they become members of parliament. They will get more money. That way we will encourage and be able to meet the one third we were talking about. So, political parties will operate in that manner.

When this constitution comes into force, the existing political parties shall remain and shall be allowed to contest the elections but they will be given 12 months, i.e one year within which they must regularize their registration with the Electoral Commission because the Electoral Commission is going to be the Registrar of Political Parties. They must go there and satisfy all the conditions. If they fail, at the end of the 12 months, they will stand dissolved and if they will be anybody who will have been elected to Parliament or to any other council on the ticket of that political party, that person will remain in that body but as an independent candidate. No party. So if 12 months end na bado munalala na party yenu, mujue there will be a slash and it is forgotten about.

The Electoral Commission will have powers from time to time, when these people receive money, they will be required within certain periods, to submit their statements of accounts both to the Auditor General and to the Electoral Commission. The Electoral Commission will have power to deregister any party which is not complying with the conditions set out. If any party

does not find proper accounts, then party can be deregistered. But still deregistered, you have a right of Appeal to the High Court and so on as a party. That is what we are proposing.

Then finally we have the question of transitional arrangements. We are trying to change. We are moving from a particular situation to a particular situation and this change will involve to carry forward some of the things of our past and abandon some as we bring in new ones. So we need to provide for how to transit from one State to another State and, there are a number of things we must do. One, we have said the Kenyan State as a republic has been existing in this constitution making and we have only recognized that. We have not constructed afresh. So Kenya as a State has been having its own right and duty and for purposes of transition those rights and obligations shall continue.

We are saying there are laws in place which are existing, we do not want to create anarchy, we must continue in an orderly way, so things must continue operating and the existing laws will continue in existence but it is subject to their been modified in application to be consistent with the new constitution as we await parliament to amend them and make them consistent with the constitution and maybe at this point I should refer you back to one commission I forgot to mention when I was mentioning commissions. We have proposed what we call a constitution commission. It was initially conceived as a constitution implementation commission. It will oversee the implementation of the new constitution to ensure that where parliament is required to make laws, it is actually making those laws.

So, while we are waiting for this commission to start pushing parliament to change some of these laws, those laws will continue but they must be interpreted consistently with this constitution. We are saying, existing proceedings in the court shall continue as proceedings by those court on Elections, if we go for elections under this proposed constitution those elections must be held within 60 days of the coming into force of this constitution. There will be no delay and within 60 days Election must be held after which we have a new parliament.

We are saying that the new offices and the commissions we have created, no appointment shall be made to those offices and if elections have been held and we have elected a new National Assembly, a National Council a new President and Prime Minister, if you ask there, I will tell you, we do not want to say that we are changing and then create all new institutions and then allow Moi and this Parliament to fill those offices before they leave office. It must be after the elections. It is the new government that should start filling these offices following the procedures laid down.

After the elections have been held and those elections be managed by the existing Electoral Commission pending the appointment of the new commission, the existing electoral commission after the elections will be given 90 days within which to wind up and hand over to the new Electoral Commission.

Now, in terms of the Judiciary, we will have an interim judicial service commission. na mumesikia judiciary wakilia we need to

know why they are very worried. That interim Judicial Service Commission will be the commission as I stated earlier, but excluding the representative of the Supreme Court since we will not have appointed the Supreme Court. It will be excluding the representatives of the Court of Appeal since we are saying the Court of Appeal must not appoint its representatives until it has been reconstituted in terms of this new constitution. It will exclude the representative of the High Court because the High Court cannot appoint its representatives until the High Court has been reconstituted in terms of this new constitution. And in terms of this new constitution, the Supreme Court shall have 7 judges one of whom shall be the Chief Justice and, none of the Judges in the present Court of Appeal and the High Court, shall qualify to go to the Supreme Court. That shows you why Honourable Chunga is not comfortable because he knows effectively we are saying he is not going to be the Chief Justice anyway. That is why he is very uncomfortable.

We are reducing the retirement age of judges from 74 to 65. Now, I said earlier, republican principles require that you hold office for a limited time and members of the Executive, members of the Legislature have their terms limited. It is only the Judiciary which does not have a limited term and in our country they go up to 74. It is like holding office for life. We must reduce harmonize the retirement age of all constitutional office holders. It must be the same so that even holders of offices in these other commissions I have said, although they hold office for a term of five years renewable once, but they must retire at age 65. So if you are appointed to that commission when you are 63, you serve for two years and then you retire.

So we are saying we must harmonize. We cannot have a situation where certain public servants retire 55 and others at 74. So we are saying this must be reduced. We are believing that when we do so, we shall be able to get rid of a number of judges in the existing courts because once this constitution comes into force if you approve it, those who are 65 and above will have to retire and go.

We are also saying that if you are not 65 years, but you are 55 and above, you will be given 30 days within which to accept voluntary early retirement and you will be paid your retirement benefits and in calculating those benefits, we shall add you five years. Because, you were expecting to go up to 74 but we are telling you now go, we add you five years. It is our hope that quite a number of the judges in the High Court and the Court of Appeal will be off loaded under that clause. If you are not 65 and above and you are 55 and above or not even 55, and you are not opting for this clause, if there is any complaint against you with the Anti-corruption unit, na mulisikia one time there is a judge against whom the Attorney General is supposed to proceed with criminal proceedings but nothing has been done. If there any complaints against you with the Anti-Corruption Unit, with the Judicial Service Commission, with the Attorney General or, with the Law Society Disciplinary Committee, those complaints will all be taken and handed over to the Interim Judicial Service Commission, the Interim Judicial Service Commission will look through them and if they are satisfied, that actually there may be some substance which needs to be investigated, you will be send on compulsory leave pending investigations. If the investigations prove that actually you have committed this wrong, you will be removed from office and your office will be sealed.

We are proposing that if you do not opt for early retirement and there is no complaint against you, and you want to continue to serve as a judge, you will be required to go to the Ethics and Integrity Commission and declare your wealth and the sources and your liabilities. The Ethics and Integrity Commission will be required to file its reports on you, with the Interim Judicial Service Commission so that if they say they are not satisfied with your declaration, you will have to cease to hold office. I want to assure you, that when it comes to declaring wealth, most of those people will not pass the test because they have wealth which cannot be justified by the salaries they earn and they will not be able to explain how otherwise they got this wealth. So we are hoping that if this process is done properly, a lot of vacancies will be created in the High Court and in the Court of Appeal. They will be advertised and other Kenyans will apply, they will be interviewed and those who qualify will be appointed and it is only after that that the High Court and the Court of Appeal will be allowed to appoint their representatives to the Judicial Service Commission.

We are saying, the Judiciary is very important, if we want to change this country. If we do not change the judiciary fundamentally, what we are doing is a waste of time. If we get a serious judiciary, it will help us to instill discipline in politics, in economics and in all other social spheres of our lives.

These politicians will not play around if they know, if you go to court even as a simple poor man. The court will listen to you and they will deal with that politician. They will not play around. If we do not change the judiciary, all these things we are doing are a waste of time. That is the engine that can make this new constitution start ticking and moving and that is why we are saying, the surgeon's knife must be sharper when it reaches the judiciary. Those are the proposals we are making.

Under transitional arrangements, we are also addressing the issue of accumulated rights. Officers like Bwana DO here, they have served, they have accumulated pensions and gratitudes. The coming into force of the new constitution should not mean that they do not get their accumulated benefits. So we have a transitional clause on pension, gratitudes and benefits. That people who have been serving and whom may be affected by the coming into force of the new constitution must be entitled to get their benefits, their accumulated pension and so on. That is why we said at the beginning of these transitional arrangements, that the rights and obligations of the State that are in existence now, shall have to continue subject to the new constitution.

We are also saying in the new constitution, that a person, who is not a Kenyan, shall not be allowed to own land in Kenya, which is bigger than a leasehold. A non-citizen can only own land on a leased basis. He cannot own a freehold title and in the transitional arrangements, if there are any citizens who own land on a tenure basis that is bigger than a leasehold of 99 years, that tenure will be converted automatically into a leasehold of 99 years. When it lapses, the land reverts to the government of Kenya, which can reallocate it afresh. That is what we are saying in transitional arrangement.

That is the summary of the proposals we are making to you as the Kenyan people. Hayo ndiyo mapendekezo kama ma-commissioners mulichagua mukatupatia kazi, tumetengeneza. Sasa ni jukumu lenu, we were required to report to you, we

have reported back to you. Tumewaeleza hivi ndivyo tumefanya na ikiwa munaona tumekosea mahali popote. This stage is a stage for discussion for debate, and for improving what we have proposed. Muko na uhuru wa kupeana comments zenu, munataka tu-adjust namna gani. Na hizo comments nimesema we can take a few now but the others, munaweza chukua an opportunity, but first, you go and study those documents you have been given, make your write-ups. We may have made mistakes, we are not saying we are angels, we are human beings, we may have made mistakes, we may have been completely wrong in accessing the views of the people and you can tell us you were wrong here we wanted this in this manner.

You can make write-ups, hand them over to the District Co-ordinators office, she will pass over to us. Give copies to the Delegate who will be going to the National Constitutional Conference represent Butere/Mumias district, hata na yeye ajue, how to argue the comments of you people from Butere/Mumias. Kama munaweza ku-organize your own seminars here, you get more speakers to assist you understand these things with those delegates, because those delegates must by all means, become very conversant with this documents na with your feelings and comments kwa sababu wakifika huko, they are the ones who will be making decisions na sisi tukikaa tukiangalia tu.

The commissioners will be allowed to participate in the debate at the National Constitutional Conference, but they will not be allowed to vote when decisions are been made whether to approve or not. The people who are going to vote are those delegates you are sending. Kwa hivyo mufikiriye muone tumesema maneno yenu ama apana. Tunajua kuna wale wamesema “Oh, we have not reflected the views of the people and we have said they are entitled to those views, but we would like, if you say this does not reflect the views of the people, you should be able to tell us what reflects the views of the people.

I want to add at this point, we have prepared constituency reports ya kuonyesha vile mulieleza maoni yenu hapa, na ndiyo mta-compare with what we have proposed to see whether we have taken into account your views. Those copies did you carry them? They are available in the office. You can go there to peruse, kuangalia kweli yale maneno tulizungumuza, was it taken into account. Constituency by constituency. We have prepared 210 reports each for each constituency, mujue inasema namna gani. Otherwise mimi nawaambia my ideology in this document is republic ideology. A government that puts the people at the centre of everything. That is what we are proposing.

If some of the proposals we have made you will not they are not clearly addressing the people and putting the people at the centre, you assist us on how to put the people at the centre of everything. Thank you.

Ann Nabiro: Thank you Commissioner Mutakha. Nafikiri sisi sote tumesikia, na tume elewa na tutachukua yale makala ambayo tuko nayo leo na tusome. This newspaper print. Ukienda na uweke chini ya kitanda au chini ya meza au usaidie mwenzako kusoma, hautakua umejisaidia. Sababu katiba tunayo tengeneza ni katiba yetu. Nilirudi na ile mapendekezo mulipeana kwa commissioners wakati walikua hapa. Na tayari tumejua iko Nabongo location au Mumias Division. Sababu nyinyi ndiyo muko na the District Office. Karibu kuanzia next week Tuesday, tupate kujifunza hata zaidi. Wale ambao

hawajapata the draft, hii karatasi, mukija kwa ofisi mutaweza kusoma.

Sina makaratasi mengi ambayo yatatosha sisi wote. Lakini mukija wengine mtapata, wengine ambao hamutakua mumezata munaweza jadiliana na wale ambao wamezata ili muweze kuchangia kwa kunipatia maoni yenu au kupeana kwa Madam Rita ambaye atatuwakilisha huko Nairobi kwa conference. At this juncture, I request anybody who has an issue, - thank you, I have seen you former CEO – anybody who has an issue or a question (*In Luhya*). Can we take those five? The CEO one, Joseph 2, 3, there was 4 and 5. Are we together? Wacha tuanze na hawa watano, na kama nafasi bado itakuweco, tutapata kusikiza wengine.

Joshua Mwekulu Magwana: Madam Co-ordinator, my names are Joshua Mwekulu Magwana. I have a very small question and it is regarding the Judiciary. First of all, I am very grateful. Most of those views, I was in a committee which presented a report here and my views have been captured, most of them. Secondly, in the constitution review, there is an act which prohibits, commissioners to be taken to court on criminal offence or a civil suit in the course of their duty. Why is it that the Judges have taken the commissioners to court when we have those sections in the review? Thank you.

Joseph Nagabo Malala: Thank you very much commissioner and my fellow listeners who have come to listen to the review. My name is Joseph Nagabo Malala. My comment is about the section to deal with Parliament. I read the Review draft and think the number of women representatives that was proposed in the Draft maybe abit too high. If instead of one third of parliament, the women could be given one tenth of parliament, I think that one would be better.

Also on the presidency, it is better to call a spade a spade. We speak avery nice language and we act very shamefully. My suggestion is that let us accept that we are many communities in Kenya. Let us accept we are tribes, if we can call ourselves tribes and let one tribe produce a president now, after five years let another tribe produce a president. Let us be frank and honest so that every province gets a chance to produce a president and if a tribe has produced a president, let it wait for another round of 31 tribes and then it comes back to claim for presidency. I think that one would be fair.

On the section of judges, I agree very much with the commission and my suggestion is that, the whole of the judiciary is virtually rotten so I suggest magistrates, Judges and court clerks, go away so that the poor man can also accuse a rich man in court and win a case. But if we have the present system, the poor do not have a chance to be heard in court and receive a fair judgement. Thank you very much.

Salim Shikhanda: My names are Salim Shikhanda and I have two comments. One is on citizenship especially on marriage. I tend to notice a problem that might arise especially when it comes that we have so many refugees on our Kenyan soil from Somalia. They might quickly get citizenship and our population will be growing through marriage and other clauses I have noticed here. So I would say that even on the case of land ownership, it is very quick for a foreigner to pick a girl in Kenya and

just own land like that. It is possible for some people to start operating as a business like some girls who are single. They might start getting men from outside Kenya and making them husbands to get money.

Since we are living in a State of proper competition, we should not lie to low on women because women will establish themselves and after some decades, we might find that it is the men that are weaker. That is all I can recommend.

Mohammed Mateba: Thank you very much. My name is Mohammed Mateba. I had only two questions. One, as the commissioner addresses us, he did not give us the rights of those people who are blind and lame. Whether they are also eligible to be in Parliament because I understand that shares are between the men and women who are seeing. So I do not know whether Dr. Ooko Ombaka when he passed away everything also went across, that one I will be told.

Secondly, it is on the side of administration. As you are aware, we have village elders, assistance chiefs, chiefs DOs and DCs. You have said that we are forming committees. These committees are they going to be paid? And if they are going to be paid, from which funds. Thank you very much.

Esafu David: Thank you for the chance. I am Esafu David and my question goes to the institutions especially the second institution, supervisory institution. Specifically to the Houses, the Lower House and the Upper House. According to the Anti-constitution draft interim, they claim that the number will be increased from 210 to 300 and they said that currently, our economy has gone to the dogs, so they say that if that number is increased and the salary will also be included that it will retard our economy or if anything, deviate it negatively. What will be the answer to that?

Martha Odonde: I am Martha Odonde. Mine is about Parliament. We were told somebody can go for two terms in parliament but he will only quit the post 45 days after the elections. Now, when I am a minister and I still have that vote of allowances when I will do the campaign, will I be using the money for the government or my own funds?

Ann Nabiro: Thank you. The commissioner will respond to those questions before we can allow any other if time allows. Thank you.

Com. Mutakha Kangu: Now, I want to start with the lady. One, we said that ministers will not be members of parliament. They will be ex-officio members of parliament but not elected members of parliament. So when sitting members of parliament go for re-elections, unless the minister has decided he wants to become an elected member of parliament, there will be no chances because those will be elections of members of parliament and not of ministers. So, there is no chance for him to use the ministry money to do that. If the MPs want to use their salaries, there is no problem because that is theirs.

Two, David said they are those who are saying that the number of MPs is too high and we cannot afford. We have heard that

before. They are those who are even saying, we are creating too many institutions and commissions. But we are saying that we should be able to save a lot of money if these institutions we are proposing are put in place and things are run in a proper way. We are losing a lot of money because of mismanagement and because of corruption and we think that if these structures are well run, this country should be able to save a lot of money that is otherwise lost. This country should be able to get the economy running well and should be able to produce more money to finance this thing.

They are those who have told us, where are you going to get money to pay all these devolved stages you are talking about? People are forgetting we are abolishing Provincial Administration and Provincial Administration as it is constituted today is paid money. We have eight PCs, we have seventy something DCs, we have so many DOs, we have so many chiefs, we have so many Assistant Chiefs. They all are paid salaries so what we are doing is simply to say, “The money that you have been spending here, now we want to spend on elected leaders.” So I believe that if all these structures are put in place, those who are alleging that we will not have enough money to run this thing, will see that actually we will be able to save money than loose money. If you talk to most Economist they will tell you, the system we have today is very expensive. We could be able to run a better system in a cheaper way than the system we have today because it has a lot of loopholes and mismanagement. So, I do not buy the argument they are putting. It cannot be sustained.

Now, the devolved governments we are talking about, these are going to be elected representatives and in distribution of finances, arrangements will certainly have to be made for the payment of the remuneration for some of the people serving in those devolved ranks so that they are not serving for nothing.

Now, are the disabled represented? Yes! We have emphasized in various parts that the disabled must be taken into account. When I was reading the principles, I clearly said that we talk about participation by women, participation by the disabled, participation by the marginalized groups. There are many clauses that talk about this and we are also saying that when the list for the 90 people is been prepared, we have 45 men and 45 women. But we have also stated that in providing the 45 men and the 45 women, we must also take into account these other factors: disability and marginalized groups, youth and so on. So that you can have a list that has 45 women but maybe 10 of them, disabled. You can have a list that has 45 men, but maybe 10 of them disabled. So that way we are capturing the interest of all the people. We have not forgotten about them.

Now, citizenship. Whether people will start marrying so that they can get citizenship. We have proposed establishment of a Citizenship Registration Board, which will be dealing with the registration of non Kenyans who are seeking to be registered as citizens. We are hoping that if that Board operates independently and in a transparent manner, we will not have the situation we have today where Asians come in, they pay money and are made citizens overnight and things of that kind. So if the institutions we are proposing are put in place, there will be proper checks and mechanisms and if we are able to identify commercial marriages, then we will deny people that kind of citizenship.

We also proposed that this marriage will not confer citizenship until after 3 years, because we are saying even the current law says, you cannot go to court for divorce before you have been married at least for 3 years. You are given a period of 3 years within which they are saying, “you are newly married people, you need time to adjust”. You might quarrel after one year and you think you are incompatible when in fact you are just still adjusting and given a little time, you become very close and just make a very good couple. So the law currently does not even allow anybody to seek divorce before they have been married at least for 3 years. That is for the marriages conducted under the Marriage Act and the African-Christian Marriage Act.

So, we are also saying that for citizenship to be conferred by marriage, you will be required to have been married for at least 3 years before you can confer citizenship to your spouse. So I hope that will not arise but it is a good point to be aware of when we are making the details that will go into legislation.

Now, the comment about the entire Judiciary, I agree that a lot of dirty things go on in the judiciary not only among the judges of the High Court and the Court of Appeal but even the Magistrates particularly ever since they increased the jurisdiction of magistrates so that some of them can now handle cases up to half a million shillings, and some can handle one million and so on. A lot of corruption has come in. Previously a Senior Magistrate used to handle only up to about Ksh. 45,000/=. Now they can handle cases concerning matters that go into a lot of money and many of them are extremely corrupt and even court clerks. I know of a court clerk who was so clever, he goes to court and he had studied the Psychology of the Magistrates he used to serve in his courts. So he would listen to the proceedings of the case and he knows the way the evidence is going, after it has reached a certain level, he knows this man is going to be acquitted and he will wait when the case has been adjourned, he follows you outside and tells you “na wewe umekaa je kama mjinga namna hii? Unafikiria maneno inafanywa iwe hiyo? Utafungwa. Si unajua huyu mzee huwa anaonwa kidogo? Unapatiwa kitu kidogo? Wewe umekaa tu ati unangoja! Utafungwa!” so you ask him, “what can I do?” “Mzee naweza kuzungumuza na yeye, you will get something little”. Unampatia kitu kidogo, “you will be acquitted”. So, utatoa pesa, utapatie yeye maybe elfu kumi, anaweka mfuko ananyamaza kwa sababu he already knows you are going to be acquitted. Then the evidence goes on, you get acquitted. When you get acquitted, you yourself you will go to him supplicating “Oh, I am so thankful, umenisaidia kabisa! Aki ningefungwa, na wewe chukuwa hii ule.”

They do that. We know. But we are saying if we put in place a proper Judicial Service Commission, the most difficult people to deal with, whom we must deal with by this constitution, are those that have security of tenure, that is at the High Court and the Court of Appeal. The other for Magistrates, if there is a proper Judicial Service Commission, then that is a place where you make a complaint and the Judicial Service Commission should be able to quickly investigate and take action and it should be able to clean up some of these places quite peacefully.

Secondly, we know that when magistrates – if we succeed with what we are proposing, if Magistrates see the Judges been shown the door, they will know the red flag has been waved, and we must immediately change. If not, we will also be shown

the door and we believe that will be easy to deal with. Those are not matters we really need to put on gloves for. In terms of the constitution.

Now, someone commented about why the judges have gone to court when the Act clearly says, while in the course of our work, we cannot be sued, or any proceedings whether civil or criminal, cannot be brought against us as commissioners or as a commission for something we have done in the course of our work in good faith. That is what the Act says. This Act says, you cannot even arrest me while I am traveling to, or from my business as a commissioner. So when I leave here and I start going to Kakamega, a Police Officer is not supposed to stop me here and arrest me. I am supposed to tell him “you know I am tired, I am coming from the commission’s work.” But some people are very strange. That is why we are saying, if this section says that, then you can only come to two conclusion. That what we are saying about them is true. Either they are incompetent, or they are dishonest. Therefore they lack integrity to hold those high offices. This law is very clear and any judge should be able to read and know that this law says they cannot take us to court but if against this law they are taking us there, then what we are saying about them is correct. They are either incompetent, or completely dishonest and therefore lacking the integrity of holding those offices.

That is why we have said, we know law says that. That is why we have said, we will ignore. They will bring their orders, we will ignore them and go on with our work. If they want to arrest us and put us in for contempt, we are saying the people will be our protector and the people have come out very strongly and we are happy about that. Because of that, at least we can now notice they are starting to find a way to reconcile. Because they thought they will threaten us with contempt and then we fold our hands and go in and go back and we said if we did that, we would have let the Kenyan people down. So we said we are ready to stick our heads out and say “come and put us in!” and the international community was watching. We have put all these things on the internet. We are receiving messages from all over the world, how our proposals are going to make one of the best constitutions in the 21st or 22nd century forever. So we said we would be wrong. We would really have let Kenyans down if we withdrew because we are been threatened by the Judiciary.

We also said – and you know sometimes circumstances happen in a very good way. I think God is on the side of the Kenyan people. You know when we went to Mombasa, his Excellency had proposed to come and see us and give to us his views. Then some people went and cheated him, he changed his mind and we went and knelt and prayed and said Thank God. We have been cleaned. Because many Kenyans were thinking, we can never be independent, we will be doing what the president wants. So when the Kenyans read that infact he had refused to come to us saying alleging that we have gone around for two years without even going to him, they realized so after all he is not controlling them. We said thank God, we have been cleaned.

Secondly, when the judiciary attempted to interfere with this process, we again said, “thank God”, they are doing so after the president has said he does not want to talk to us. So people will read the hand of politicians in their activities so that is why we

said “let us stick our heads up high” and things are moving. So I agree with you, it is absolutely wrong what they are doing and what the chairman said the other day is true. This man, first he refused to swear in Commissioner Adede, for no good reason and we said this is abuse of office. When we raised the issue with the Parliamentary Select Committee and Parliament said they were taking up the issue, they went and they instructed the clerk to the National Assembly to write a letter to the Attorney General, to find out why the Chief Justice has not sworn in Commissioner Adede. Attorney General picked the phone and called there and the next thing, the secretary was receiving a telephone call from the Office of the Attorney General telling him “urgently take Commissioner Adede to the Chief Justice’s office to swear him in” and he was sworn in and we said, that is a sign that we are on the right path and we shall walk it to the bitter end. We are not turning back. I have said this time and again, this is a revolution and those who have vested interest like the members of the Judiciary, who are trying to protect their vested interest (*in Luhya*) we are not going to relent, we will pull it out of their month and if they are not ready to negotiate with the larger interest of society, I can assure you they will get nothing.

I have said time and again, those who have vested interest must know, one, that you cannot be able to retain your interests intact. If you want to retain something out of your vested interest, it will only be something and you must be able to negotiate. To give away the rest and retain just a little. But if you feel that you are going to retain everything, you will retain nothing. That is what we are saying. The larger interest of society are saying they have suffered enough and they want their interests to be taken care of and so those who have vested interest would rather know things have changed.

I have even advised generally, that those who are seeking to become president of this Republic must know that nobody will ever rule this country the way Kenyatta did and the way Moi has done. Anybody expecting to become president must know you are now becoming president of a lesser type. You are going to become president of a highly enlightened people whom you will not just cheat around! they must know that.

The people have woken up and I will tell you for information, the session we have heard this afternoon. I have spoken in many places ever since this process started. Mnakumbuka walikuwa wanasema hawataki civic education. Because they knew when we got in, we are poisonous. I have gone to all sorts of places and we have spoken to the people and Kenyan people are behind this process with all their energy.

These booklets you are seeing, the red books, are in every corner of this country. There are in every village. The people of Kenya were so happy when we would go and sit and listen to them from 8.00 a.m. to 6.00 p.m. in the evening and they would say, these people, for the first time, someone can come and listen to us and ask us what we want or what we think. We are used to politicians who come and hijack our mother’s funerals and start talking their own things. They never ask us what we think! For once we are been asked what we want. They were very grateful, I am telling you and they are not ready to turn away from that. They are saying they now want a governance that will build that culture that involves having them or sometimes being consulted. What did you think? And they have ideas.

I was in Turkana in Kakuma and Lokitang. I am telling you, Turkana's, they are very brilliant people. They know their problems, they know what they want and some politicians were sitting in Nairobi saying, "What are the commissioners doing in Turkana? They have left - - -in Nairobi, he is the one who knows about cattle herders. I am telling you they are intelligent people, they know what they want. You cannot just dismiss them. That is all I have to say.

Let me say, the Kenyan women form 52% of the Kenyan population. So they are more than men and we are saying, if the ideology of this constitution is a Republican ideology that puts the people at the centre of everything, we cannot be saying we are pursuing a Republican ideology if we want to leave 52% of the people outside the affairs of this country. I can tell you some of us have been very conservative and we had to fight very high. We had to counsel some of our colleagues women, telling them we want women to have something. But we know the society in which we live is still conservative. If we go to the National Conference and say women should get half, they will get nothing because the men who will be at the conference will just become annoyed and dismiss everything. So we told them, if you want to get something, let us go slowly. Let us start with one third. Something we know we can persuade the National Conference to pass. But they were demanding for half and we told them we know the conservative nature of our society, so let us go slowly. We cannot push them at once. Because you know there is a social structure in our society which you cannot just change overnight, without causing dislocation in society. So we really had to argue, to get them to accept the principle of one third and you can see they were even demanding that we must immediately put in place, mechanisms that are going to put one third women in Parliament. We said no, we can leave some of the details to Parliament but we can do a little. That is why when I was personally chairing the Thematic Task Force that was dealing with the representation of the people, I will tell you when we come to proportional representation. Personally, I had proposed the Ugandan system which would have created Districts seats for women in the National Assembly and that would have meant 70 women.

I lost on that argument. The chairman opposed and several other people opposed and they insisted on the mixed member proportional representation that has talked about the 90 seats. So when now I said we are dealing with the 90 seats, I personally said, "it is this 90 seats that we can give women something". That is when I said, the list should have 50% men, 50% women.i.e 45 – 45". but you will see that even when you bring that 45, in a House of 300 MPs, one third is 100, so they are not yet even one third. So we have not given them a lot. They still need more, but we do not want to push these men because we also understand their feelings!

Now, the issue of rotational president, it is a good comment, it can be pursued at the National Conference.

Ann Nabiro: That you Commissioner. Any other suggestions from the ladies? Any other views? O.K. we shall take one, two, three, four, five.

Musa Akello Makokha: My name is Musa Akello Makokha. Thank you very much Mr. Commissioner. I am not quite clear on the Administration, because you wanted it to be scrapped but, you said Kenya has money. This money is either borrowed or is by taxes. Now, if you have an instance like a District in North Eastern comparing it to Butere/Mumias. Whereas Butere/Mumias has got a lot of resources it can have its own taxes but in Northern or Eastern Provinces, districts do not have many ways of getting resources. Now, it will either be forced to borrow the money or get from the Central Government.

Now, if you have a situation where such a District will get a lot of money from the Central Government, and you will have a District like Butere/Mumias which can stand on its own feet, and in the end refuse not to contribute money to the Central Government. We will have a situation, where the District Councils, or have Majimboism and some Districts might want to recede from the Central Government. Thank you very much.

Joseph Shiundu: Joseph Shiundu are my names. I thank the commission for the good work they are doing but we hear that they are some commissioners who are trying to undermine the commission and they have been mentioned in the newspapers. Can you enlighten us on that please? Thank you.

Andrew Arunga: Majina yangu ni Andrew Arunga. Nilikuwa na mambo mawili ya kuzungumuzia. Jambo la kwanza ni kwamba, tukiangalia walioko hapa, asili mia tisaini of your speech was in English and I am requesting you as you move around, try to consider the people who do not understand the language because you know Kenya we have a problem. It is almost the way our government has handled Education system, the rate of illiteracy is going very much high. Sasa kuna wamama walikuwa wamekuja kusikiza lakini I am very sure they have been disappointed maybe they did not hear what you are talking. So try to keep on mixing the way the co-ordinator talked about mixing English, Kiswahili and Kiluhya if possible i.e. (The mother) tongue. It will assist very much.

Jambo la pili, in the constitution, I have just looked at it briefly. In our society, there is domestic violence, men and women. Especially, the girl child are very much molested by the society. I do not know, if there could be at least a court, just to cater for these type of cases, where by a child can have the right to go and express his or her feelings when he/she is molested. It is a common thing that is happening everywhere in the society this time and especially the women.

Lastly, about the draft, I was proposing that if you could have the chance to produce this thing in Kiswahili, so that it can move round to these people so that at least this less fortunate in terms of education can also look at it, read it and understand it. It would be very much advantageous for them. Thank you.

Wilson Musungu: My name is Wilson Musungu. I have got two suggestions. One was about men and women who are

supposed to be members of the National Council. In other words, the Upper House. I feel that these should be people who are well educated and with high integrity. We should not just look at people who have just finished Form Four level because if we can equate this House to perhaps the House of Lords in other countries or Senate in say America, we can make it an important house also, where we need some people with high integrity.

Two, I am also looking at the age of people qualified to be Members of Parliament in National Assembly or even in the National Council. I feel the age of 21 though the law states that he is a fully grown up mature person but I feel that person is not really mature. So I feel that age, the commissioners should have looked at it and perhaps made it 30 years. Those are my two suggestions. Thank you.

Walter Oyare: Thank you very much the commissioner. My names are Walter Oyare. I have something to comment about. Before I say that I would like to thank you very much for the work you have done and we are very much appreciative of the task you were given by the public and you have really answered our dreams which we thought they could not have been completed by such a short period. I personally work with a Parastatal which has now been turned into a private firm. I have been reading the constitution and you have not actually addressed the Union issues. Because when you say one person representing the workers problems, we do not know how he is going to be chosen from that forum.

Another thing is the Expatriates. Sometimes you get these people who bring their property in the country.i.e the investors. Sometimes they bring semi-qualified people and they do not allow our qualified people to work just because their properties are their. I do not know how that area you are going to find out and address how you can help such a situation.

Another issue is liberalization. When you liberalize the system, some things have been dumped in the country, e.g. like sugar and what are we going to do about them?

The last one is, the independent politicians you are talking about, that they can be given time to contest. I do not know how they are going to be funded because other parties will get the funds.

Lastly, the problem of these people who never went to school properly like labourers. I do not know how you are going to help them get - - - - situation the way it is now. Thank you Sir.

Rita Katamu: My names are Rita Katamu. I want to thank the commission very much for having captured most of our views but I am not still very happy with the representation of women in the parliament because we had talked about a third of members being women. Now by giving us 90 and making half of 90, that will not give us a third. Therefore, I do not know whether it is because most commissioners are men and they never gave women chances to see why we should be a third. We needed exactly a third of the members of the Parliament. Just a third. We looked into that half issue and so that it was too

much. But we wanted a third. So you would have come up with which ever way so that we have a third of the people in the House been women, not 45 out of 90. Now that you have given us the 45 out of 90, men are not going to give us any chance.

Let me give you an example of the District Representatives, where we were to have three district delegates. One must be a woman. After they gave me a chance as a woman, they never listened to any woman voice. Therefore we know, the 210, very few if not a very small fraction will be women. We request that something be done so that the House carries a third of members been women. Thank you very much.

Ann Nabiro: Let us allow the commissioner to respond and he will tell us whether he has some time for more.

Com. Mutakha Kangu: Now, the issue of women as I mentioned Rita, it had those problems but if you go back to what I said earlier, we proposed one third . The general principle is one third. What remains is how to find that general principle implemented - - - for the 210 seats, each political party should nominate at least one third of women candidates. They could nominate more. Of course we know that they can decide to nominate them where they cannot win so that they can say, “yes, we nominated” but at the end of the day, the women do not win. It is like DP going to nominate a woman in Baringo Central, or KANU going to nominate a woman in Othaya when you know very well that the Othaya people will vote for Kibaki. So, that is why when dealing with the political parties we said, in giving money to political parties, we will need to encourage political parties to bring more women by showing them money and that is why we said, - it is commissioner Asiyo who brought that idea and they had left it at the level of nominating more women and my position was, it is not a question of nominating, they will get more money if they actually bring more women to parliament.

We are hoping that with that, the political parties will be forced to nominate strong women in constituencies where they know at least they can win. Of course, I know that they will not be able to bring the exact one third we are talking about. But there is one clause we have put here that, in addition to what we have done, there will be need to be legislation because we are saying a lot more thinking has to be done which may go into legislation that will capture that issue clearly. The electoral law will now come out clearly on how we are going to secure this one third women. I agree with you that once they have been given that, it may not be easy but the example of Uganda shows a different experience.

Uganda started off with Districts seats for women. So that you elect your MPs but you also elect a woman per District. So there is an election that is conducted just for women alone in every district, women will get into Parliament through the District but during the next elections, some of them will say, “I think now I am strong enough to go and contest a constituency seat rather than contest the District seat” and that way a number of Ugandan women now feel they do not even want to come through the District seats that are reserved for women because they are now able to fight it out with men. So we are trying to create room that will be able to cultivate the ability for women to fight it out with men and secondly we also want to create and opportunity for men and the rest of the society to start seeing that infact women can perform well.

You know the problem we have in our country, even as we say that women are 52% of the population and they are infact voters, many of them still find themselves reluctant to vote in fellow women. So as we start bringing in some women through these processes, this will give people an opportunity to see, that we can have better leaders in women than men and very soon after a short while you will find they are many who are willing to contest with the men in the constituencies and they will weigh, but we will still need to think about how to give them the exact one third.

Liberalization, we need to think about it. Funding of independent candidates I think this was mentioned sometimes when we were discussing – but touching on presidential candidates and I think we must have said if I can remember clearly, that a presidential candidate who runs as an independent, if he secures a certain percentage of the vote, maybe required to get some reimbursement of his votes. I cannot remember exactly which clause we put that. But it must be appearing somewhere in the report.

Trade Unions, COTU has already raised that issue and we are starting to think about it. How best we will co-operate them so that they properly represented. Parastatals, we have tried to address that under the Public Service Commission. If you look at how we have defined the Public Service, it captures Parastatals and we are saying appointments in those places must take into account certain principles.

The age of 21. They are a number of people who think the same way but you know this is an age in which Kenyans are fighting as groups and we are sure that even what we have proposed will meet a lot of resistance at the National Constitutional Conference from that category of people who regard themselves as youth but it is something to think about. It is true that at age 21 actually some of these people may not be ready to shoulder the responsibility of governance and I would not mind it been raised at the Conference so that we see whether the conference can reconsider.

I had myself thought along those lines but we are working in a commission and majority decisions carry the day. If I was writing this constitution alone, I would have said that nobody should go to Parliament either at the National Assembly or the National Council unless he holds a University degree but this issue was debated at great length. Infact there is one issue which you people have not raised which has been raised before and which I argued over for a long time in our meetings but I lost. The fact that the president is required to be a university degree holder, but the Prime Minister can be appointed from any one of the Members of Parliament who may just be Form four. We argued over that a great deal and a number of people have raised it so we are starting to rethink about it. What do we do with it.

So, high qualifications maybe important because my argument is that right now the value and respect for education has been lost because we have allowed money to be the determining factor. People who do not take education seriously but they can find some funny way through which they can make money in very dirty ways. They come around, bragging around and even tell

people, “mimi sikuenda kusoma but now I have money, wewe unanishindia nini?” so we are arguing that we must be able to show that there is some respect shown to education by limiting some these things to people with proper educational standards. Then of course there is the question of the intellectual preparedness to be able to clearly discern the welfare of the people and to discern both policies that can serve the welfare of the people. Added knowledge sometimes helps if it is actually supported by honesty and commitment. Because knowledge alone does not help. Today we see again a number of people dancing around our president, who are highly educated and yet because of lack of commitment they do not seem to be good leaders. So education counts but also these other moral standards and ethical standards will need to come in to support that.

There was the question of the language. I get it and I think I made a mistake today. Normally I try but I knew I was going to cover a lot but I think it is important that we capture everybody to get what we are talking about. Then the draft in Kiswahili. This People’s choice has already been translated in Kiswahili. Infact by the time we were going to the press in Mombasa, we had already translated. This one is being translated in Kiswahili and once it is ready copies will be availed to the people and those who can read Kiswahili will be able to do so. Even the main report will also be translated into Kiswahili so that every Kenyan can be able to read.

Now, commissioners who have been said to be undermining the commission and you rightly say they have been mentioned in the newspapers. I want to leave my answer at that. They have been mentioned in the newspapers and you have read. Isn’t it? I do not need to elaborate. Infact yesterday’s nation had very detailed analysis of the various re-groupings and cleavages in the commission and which group revolves around what matter and what issue and if you read that, you will be able to understand who stands where and who does what. I think it will be in the interest of the process that I do not myself start discussing who is good and who is bad. Isn’t it? So you can read the papers yourself and be able to see.

Now, raising of revenue. We will have to find a way. We started by saying this constitution in the preamble that we recognize our ethnic diversity, our cultural diversity, our religious diversity but we are determined to live together as one indivisible sovereign state. So, by that commitment, districts which are able, must know they will only be able to continue dealing with this other district if they are willing to lift them and assist so that they can also come forward and that is why I said, when it comes to distributing powers to raise revenue, you will find that in a state where – there are areas that are marginalized, it would be wrong for us to distribute the power to raise revenue in a manner that gives more power to the Districts and leaves less power to the centre. So we are better of in such a situation, leaving more power to raise revenue at the centre, so that it is the centre that is obligated to give higher grants to the districts that are left behind by way of equalizing grants. That way we can avoid a situation where rich districts are saying “we are not remitting support to the other districts”. We want to design an arrangement, that enables the centre to be the one to control the sharing of the cake so that we do not leave other districts suffering. But on the other hand, we need to note that some of those districts are suffering because they have been marginalized and the centre had a lot of powers with nobody to control. Budgetary allocations have been to ministries and sometimes when money is allocated to say the Ministry of Health, the whole of it is taken to health centres in one district and others are forgotten.

This time round, budgetary allocations will have a section that makes allocation to districts and so there will be no way an amount set aside for a particular district can be diverted to another district because they will be able to ask, “where is our share this time round?” And that is the only way they can slowly start coming up and they will be able to sustain themselves. Some of the places we are thinking are poor, they are not poor. It is just because of mismanagement.

We were in Marsabit and Turkana and I found information. That a number of Arabian countries have been willing and offering to get into arrangements with some of those places and develop the livestock industry. The camel meat sells in the Arabian countries very expensively and some of the Arabian countries wanted to develop that, even put an airport so that meat can be exported direct to the Arabian countries and those areas would get money but our problem has been foreign policy. The central government in its foreign policy does not want to offend the Americans, they do not want to take a decision or get into an arrangement that will show the Americans that they are now leaning to these Arabs who the Americans regard as terrorists. We really need to address even some of these foreign policies.

Our government must know that its first responsibility is to the Kenyan people and so in making decisions even at the foreign policy level, it is the welfare of the Kenyan people they should take into account and not the fear of some so called super powers when our people are suffering.

Ann Nabiro: Thank you commissioner Mutakha. I think we are coming to the end of our session and I will call upon Mr. Muchelule to say at least a word to our commissioner. There after,. CJPC please lead us in a word of prayer and we finish.

Mr. Ismail Muchelule: My names are Ismail Muchelule. I would like to blend the language because of our colleagues who might not get it clear. Kwanza Bwana Commissioner nimeshukuru kwa niaba ya wote tuliohudhuria hapa. Kwa hii katiba kuwa imekamilika na kitu ambacho ningelipenda uelewe ya kwamba sasa hii katiba ni katiba ya wananchi, ni chaguo letu na wala sio chaguo lenu na nyinyi kama commissioners, we are proud of you kwamba the work which we assigned you people, at least you have made it to our satisfaction and it is our sincere belief that, if 10% of our professionals in Kenya, could behave the way you people behaved, this country could have been saved in this trauma of irrational movement which is taking us backward instead of forward.

With that, I would like just to remind you that, we are the people who empowered you and we are the people who are supposed to answer for all your queries. We are behind you. Justice tells us that. Where there is the will of people, nothing can stop them. The two governments of East and West German could not stop the falling of Berlin wall. The wall which was constructed by chains, machines, iron, but it was leveled by only hands and chisels. The government of Sher just ended without even a single bullet. Chesesko government also ended without a single bullet. That shows that any idea of which its time has come, there is no force which can stop it. It is high time that our government realized that and we are proud of you as our professionals and we are behind you and we are going to support you to the end to ensure that the end of this work actually will

