

CONSTITUTION OF KENYA REVIEW COMMISSION

(CKRC)

Verbatim Report Of

**DISSEMINATION OF REPORT AND DRAFT BILL, MUMIAS
CONSTITUENCY, HELD AT ST. BEDAS SECONDARY SCHOOL**

ON

11TH OCTOBER 2002

Transcribed by Lillian Momanyi

Final Draft

**DISSEMINATION OF REPORT AND DRAFT BILL, MUMIAS CONSTITUENCY, HELD AT ST. BEDAS
SECONDARY SCHOOL ON
11TH OCTOBER 2002**

Present

1. Com Mutakha Kangu

Secretariat Staff in Attendance

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

Meeting started at 10.10 am

Anne Namiro: Our session. My names are Anne Namiro; I am very familiar to most of you because I have been here three times. Once for a public lecture with the Commissioner we have here today, another time for the public hearing, and I am very grateful to the management of the school that they have given us another chance for a public lecture on what we gave to the Commissioner in the month of August when they came here for the public hearings. We are at least going to have an opportunity to hear what was said elsewhere. For example by other schools like Butere Girls, Nairobi schools and the

community, the Kenyan community in its entirety.

So, before we begin I just wish to call upon one student volunteer to lead us in a word of prayer so that we can follow with other issues. A volunteer male student. Let us move forward. The one who is leading us in the word of prayer, you say your name and then you lead us in prayers for the purpose of taping.

Gilbert Makokha: My names are Gilbert Makokha and I would like to lead you in a word of prayer. The school is St Bedas Bukaya Secondary School. Let us stand up and pray.

(Prayers): Our Father in heaven we thank you for this session. We are gathered here to review the Constitution my Father. God I believe this is our future and I pray that you will be with us through out and that we will do it in peace. In Jesus name I pray, Amen.

Anne Nambiro: Our Commissioner today is Com Mutakha and he will be introduced to us later with his team from Nairobi. We also have our CCC that is the Constituency Constitution Committee and the Chairman comes from this particular Division, that is Esenge Division. Before I call the Chairman to introduce to us his team, I am very, very grateful to the management of the school and the community neighbouring this particular school for putting up this facility that has enabled the Constitution of Kenya Review Commission to use it every now and then for the various functions related to the review of our Constitution. I wish to thank the management of the school. At this juncture I call upon one of the members of staff... if Mwalimu Kweyu is in, to come at least and say a word of Jambo and if there is any announcement he may wish to make, you are welcome.

Kweyu Haron: Thank you very much. My names are Kweyu Haron. Commissioner, the Co-ordinators, parents, the students, Good morning.

(Response from the audience): Good morning.

Kweyu Haron: I do not have a lot to say. Mine is to take this particular opportunity on behalf of the headmaster and the whole school to welcome you again. We are also very grateful that you have been able to use our school as a centre for this kind of exercise. We are behind you and we are saying feel welcomed.

One announcement to the students, when the Commissioner will be talking, we expect a lot of co-operation. As you are seated, avoid movements in and out, you will have to persevere and bear with them. As they go through the session you can also come up with questions and so on. Otherwise, it is not my day... thank you very much.

(Laughing from the audience)

Anne Nambiro: Thank you Mr Kweyu. And for our students, I wish to promise that I will bring the draft Constitution and base it in our library or in the school so that even those who are at home, because our teachers have not sorted out a certain issue with the government will have a chance to go through the draft Constitution and will later on be in a position to receive the final draft. For as long as I am in the office, I am making these promises to this particular school.

So, I will begin by bringing in the news printouts that you have and all other books related to the Constitutional review. That one is a promise you are free to follow up with me, anytime from the 17th of October if they will not have arrived. Is that okay?

(Response from the audience): Yes.

Anne Nambiro: Thank you. I take this opportunity to hand over to the Chairman, who will at least say a word and then hand over to me. Our Chairman, Mr. Fred Muchivi thank you.

Fred Muchivi: My names are Fred W Muchivi, I come from this particular area, South Wanga Division. I wish to take this opportunity to welcome our Commissioner who is here with us today, Mr Kangu Mutakha, and as the Co-ordinator has said we have been here, this is more or less the third time you have been seeing us and we are interested in listening to the Draft Constitution.

As you all know, today is a public lecture, they are launching the proposed... What do we call this? Draft Constitution. Before I say much, I am taking this opportunity to welcome and introduce you to our members of the Committee. I would like them to introduce themselves. Let them say their names.

Zaitun Abdi: Good morning everybody. I am Zaitun Abdi from Nia Central.

Janice Ayieta: Good morning everybody. My names are Janice Ayieta, ni CCC member, South Wanga Division, Mumias Constituency.

Peter Sakwa: Good morning everybody. My names are Peter Sakwa, 3C member from East Wanga Location.

Fred Muchivi: Thank you very much. We also know that majority of the members are also on the way coming, except that we have very many funerals within the surrounding. So a few others have gone to the funerals. For those who are here, let us listen to this Draft Constitution. It is not my duty now or should I say much, except that we have come here to listen to the details of the Draft Constitution. With these few remarks, I would like to take you back to our District Co-ordinator.

Anne Nambiro: Thank you very much. Commissioner Mutakha, I will hand over to you.

Com. Mutakha Kangu: Thank you. Good morning everybody.

(Response from the audience): Good morning.

Com. Mutakha Kangu: You have been informed, my names are Mutakha Kangu. I am one of the Commissioners and I am accompanied by members of staff from the Commission. Leah Symekher, is the Program Officer she will be recording what we say so that we see whether the comments can improve the document, and there is Flora Wafula, who is in-charge of the verbatim recording.

The function for today is a follow-up to what the Kenyan people said regarding the kind of Constitution they would like to have.

When we started the process, we said that in terms of the Constitution of Kenya Review Act gives the process of writing the Constitution is supposed to be done by the Kenyan people themselves. The first step was to consult with the people for them to give their views. There after, the Commission sat down to analyse those views and prepare a report and then also prepare a draft Constitution based on those views.

The law then required that, once we have done that, we report back to the people so that they can be able to read, discuss and debate the proposals we have made in the draft Constitution, to ascertain whether or not the draft reflects their own views or carries what they would like to have as a Constitution.

Now, it is for that reason that we have come to you today. There are those of you who have been given copies of the draft you have proposed, so that you may read through. My business before you today therefore, is to try and guide you through that draft, try and explain some of the things we have put in the draft, show you how we have attempted to capture your views, so that if you are dissatisfied you can be able to point out which particular areas did not satisfy your wishes.

After my discussion, which is going to be fairly long, you will be given an opportunity to make comments. But if we do not have enough time and also because many of you have just been given the document now, you will have opportunities during your free time to study the document and of course guided by what I will have said, to be able to make your very well informed comments in writing and then pass them over to the District Co-ordinator, you can go through the Chairman. Those will be sent to us and they will help to refine the document when finally the National Constitutional Conference is called to adopt or reject the proposals.

Now, we considered the views of the Kenyan people. It took us about one month to do so and prepare a report that goes into one thousand pages and is in several volumes – about five. That main report is currently undergoing editing and once the editing

is through, it will be published for the consumption of the Kenyan people for them to read and see whether they understand the reasoning that took us to some of the conclusions.

We however have extracted a summary from that main report and what I have before you is what we have come up with as the summary and we call it the 'People's Choice' or 'Chaguo la Watu'. Na this summary touches on all the issues that are discussed in detail in the main report. It was published some time late last month when we were still in Mombasa in a number of newspapers and those of you who were able to get copies you have been able to study the whole of it. But if you did not, you can access the copies through her office, you can be able to make photocopies and be able to read through from her office.

Based on this, we have also done a draft Constitution that states what kind of Constitution you would like to have. The copies you have with you are the draft Constitution that you have proposed; they are similar to what I am holding before you. It has several clauses and I would like to take you through this document. I will not go section by section, but I will highlight the main areas, the most important areas and the contemptual phases for some of those clauses, the philosophy behind some of those clauses.

I will just go by first seeking to identify what the Constitution does in a given community. When I was here last time, I sought to explain that and I said that it is that kind of law that confirms the management of the common power, the public power, the definition of that power in various sectors, the division of this in various sections, the allocation of that power to different institutions to exercise it and ensuring that that power is exercised and controlled so that it benefits the welfare of the people.

For this purpose, I will say that a Constitution can be used to constitute a State. It can be used as a constitutive mechanism. It constitutes a people into a given society called a State. It constitutes the State itself. It defines the State concerned and the philosophy on which that State is going to be based. It defines the people that constitute that State and it is a power road map. It is a map for power as I have said earlier. It is a mechanism of showing how the public power in that particular society is going to be exercised. It will also state values that are supposed to guide that society. I propose therefore, to disseminate this draft to you on the basis of those key issues and the first one is the constitutive purpose of the Constitution.

As I said, the Constitution constitutes a State and a State in legal theory is supposed to be an entity that has first a territory and second a people and third a government and fourth certain values on the basis of which the third State or the people who constitute the State are governed.

So in this draft Constitution, we have sought to constitute Kenya as a State. But given our history, we didn't have to do so because; Kenya already existed as a State. We were constituted by the colonialists when we were put together, people from various tribes and called Kenyans and put in what is called Kenya. But in this Constitution, we have decided that we must recognise the existence of that State and we said that that State in terms of ideology is a republican State. So when you look at

chapter two of the draft Constitution that you have been given, chapter two article six, that chapter deals with the republic. Article six, we are proposing that we recognise the status of Kenya as a republic. And we are saying at article six, at sub-article one that Kenya is a sovereign republic.

Of course the current Constitution also says we are a republic, but we are trying in this particular draft to go a little further and explain what is entailed in a republic. I will come back to that issue when discussing the concept of values that are supposed to guide our republic so that we can be able to know what a republic means. It is not enough to say we are a republic when we do not know what is meant by that. It is only when we know that we can ensure that we run our affair as a State in a manner that is republican and in a manner that is consistent with republican principles.

We said a State must have a territory. It must have a particular portion of land that is referred to as a territory and that unit must be clearly defined. It is like when you have your piece of land, you must know where the boundary reaches, so that if your neighbour tries to move the boundary a bit, you can be able to say that he is interfering with the your parcel of land. Or if your chicken crosses over and goes to eat the beans of your neighbour, it can be known that there is a trespass from one person's land to the other. So as a country known as Kenya, we must be able to know our boundaries.

So at article seven of this proposed Constitution, we are strictly to define the territory of Kenya. The current Constitution which we are trying to review, which we are trying to move away from does not have any definition of the Kenya. So sometimes we cannot know when we are trespassing or when other people are trespassing on our territory.

And I am emphasising this because the people in Wanga here may not feel the effects of our failure to define the territory. But if you move to Busia down here, people who border Uganda, they are having a lot of problems because the territory is not clearly defined particularly in the Lake Victoria. Very many Kenyans seek to go and fish in the waters and they meet Ugandan security who tell them you are fishing in Ugandan waters.

And the reason is because although the colonialists had defined the territory and put beacons, when Ugandans made their Constitution in 1995, they defined their territory in the Constitution and in the process within the Lake, took certain parts that belonged to Kenya and defined them as part of Uganda, so that some people found themselves in a confused state. They do not know whether they are Kenyans or they are Ugandans and they have been having a lot of problems there.

So we are saying we must, this time round in this Constitution define the Kenyan territory clearly so that those Samias and Banyalas can be able to know that they are Kenyans and this is where Kenya reaches so that they can enjoy the Kenyan resources in the waters of Lake Victoria and so on. Many of them complain most of the rivers that pour into the lake come from Kenya and the fish breed at the point where the river pours into the lake and then it moves in to deeper waters to fatten before they are ready for a meal or for people. And when the Kenyans follow up the fattened fish they are told you are fishing

in Ugandan territory and that is wrong. So we want to get those boundaries clearly.

Article seven therefore attempts to do that and the details of article seven of those boundaries are given in the document you have towards the end in what is described as schedule one of the Constitution. We have put a first schedule, what is described as first schedule territory of the republic of Kenya. That schedule is trying to define, there is very technical language used there, survey language which is trying to say you move from this corner and you go to that corner, and there is this river and it borders this other particular place.

So the details are given there, you can look at them and if you understand the proper boundaries of Kenya you may be able to make comments to see whether what we are giving is satisfactory or not. I am aware that the Busia people are already saying that that definition is not in fact sufficient; it still leaves certain parts of Kenya in Uganda.

In defining the territories, we have also sought to define the Kenyan capital and we have said Nairobi is being identified as the capital of Kenya, if you look at article eight of the document you have been given. We are saying Nairobi is the capital of Kenya. And we are saying at article eight sub-article three, that although Nairobi is the capital of Kenya, it shall be the policy of the State to decentralize the headquarters of national government departments and national public institutions to all the provinces equitably.

The reason is that currently, Nairobi is the capital and so many things are put in Nairobi and those who come from very far from Nairobi spend a lot to access government services in Nairobi. And we are saying for purposes of fairness to all Kenyans, we need to distribute some of these things so that whereas you will be travelling from South Luanda to go and pursue something in Nairobi which involves the headquarters that is in Nairobi, another person may be able to travel from Nairobi to come to Kakamega to pursue another thing because another particular headquarter is in Kakamega and that has the effect of distributing the burdens and the benefits of locating things in certain places.

Because when you travel, it involves carrying money from here, going and spending it there, the money you earned here. And we are saying, if you must carry money from here and go and dump it in Nairobi, then the Nairobi person must also carry some money and also come and dump it here because there is something he is following here. But when there is nothing, there is money always flowing from here going there, it never flows coming back. And we are saying it will be the policy of the State to try and decentralize these things to locate them to different places. That is in as far as the territory is concerned.

We also said that the State must also have a people that constitute that State. A people are put together and constituted into a Kenyan people, and they form the State of Kenya. So we must be able to know who are these that are constituted as the Kenyan people and are entitled to rights as Kenyans.

So in this draft, we have attempted to define the Kenyan people in Chapter four, which starts at article sixteen running through to article twenty-eight. Here, we are talking about citizenship. Who are the citizens of Kenya? Who are the people that have been constituted into a people known as Kenya? We need to know. It is not every other busy bodies that find its way into Kenya that will be called a Kenyan.

When a Ugandan boards an Akamba bus and is going to Nairobi, he should be in Kenya but be able to be distinguished from a Kenyan citizen, so that we know who is entitled to certain rights and duties as a Kenyan. So that a Ugandan will not come here, since we are about to go to elections and purport to vote in the elections. He is not entitled to vote because he is not a Kenyan. So we have put here, who is a citizen? We are defining who is a citizen, how one can become a citizen if you have not been a Kenyan citizen and so on.

We have also said that you can have what they call dual-citizenship. You can be a citizen of Kenya and also be a citizen of another country. So you belong to two worlds and we have stated that there. We have also provided that if a Kenyan, whether a man or a woman marries from outside this country, his wife or her husband can also become a Kenyan through citizenship by marriage. And we are saying that citizenship cannot arise until after they have been married for at least three years, so that we can be sure that this is a serious marriage, it is not just a joke.

(Laughing from the audience)

Com. Mutakha Kangu: So we don't give you citizenship just because you met on the way yesterday and tomorrow you are saying you are married! You must have been together for a certain period before you are given that status. So we have given all those details.

We have also at article twenty-eight provided that there will be a citizen registration board so that for the non-Kenyans who want to become citizens go to a particular board that follows certain rules to ensure and to seek registration.

We have also provided for the recovery of citizenship for Kenyans who may have lost citizenship. That comes about because under the current Constitution, we do not allow dual-citizenship. You cannot be a Kenyan and also be a Ugandan. And for that reason that Constitution had said, if you choose to become a Ugandan, then you cease being a Kenyan. You lose your Kenyan citizenship.

We are saying now that we are proposing that you can be a citizen of two countries, those who had lost Kenyan citizenship under such circumstances should be allowed to recover that citizenship if they want. They can recover and become Kenyans once again.

We are also providing for citizenship by way of adoption. If a Kenyan couple were to adopt a child from another country, that child should be able to become a Kenyan citizen. We are also providing for citizenship of what we call foundling or lost children. If we stumble on a child in Kenya, below a certain age and we do not know the parents, we do not know the mother, we do not know the father, this person should be accorded Kenyan citizenship. If he is a Ugandan, we cannot say go back to Uganda because this is a child who does not even know the parents. So we are providing for citizenship for lost children who are found in Kenya and they do not know where to go in what we call citizenship for foundlings. People who have been found, children who have been found without any specific abode. They do not know their parents, we are saying we will adopt them as Kenyan citizens and give them a home. Being good Kenyans, good people we can give them a home.

Now, that is in as far as citizenship goes. But we are saying if we are defining the Kenyan people, they must be a people who believe in some values and so on. They must be a people who speak a certain language. If you go certain countries you may find a country that is constituted by a people from one tribe. So you can easily say their language is the language of that particular tribe.

But Kenya as a people, we are of different tribes. We have brought together, we are of different cultures, we are of different religions. And we are saying because of that, we must identify one or two or three languages that we are going to call the Kenyan national language or languages. So we have said in this proposed Constitution under Chapter two that Kiswahili shall be the national language, look at article nine. Kiswahili shall be the national language and English and Kiswahili shall be the official languages.

The difference is that the national language is supposed to be our language which can be spoken all over. But official language(s) are the languages that will be used in official business, official government documents and so on. Used in Parliament and other places, Kiswahili and English. But of course we are saying, that is not to say that we ignore our mother tongue. We are saying at article nine, sub-article three that the State shall respect and protect the diversity of language of the people of Kenya and shall promote the development and use of Kiswahili, indigenous languages, sign language and Braille.

So we are saying although Kiswahili is the national language, although English and Kiswahili are the official languages, we recognise that we also have other tribal languages which must be protected and promoted so that they can grow and help us to also keep our cultures growing. Because you know language is tightly interlinked to culture. You cannot protect and promote a culture if you do not protect and promote the language that can be used as a vehicle for perpetuating that culture. So we are saying to be able to protect our different cultures, we must also protect and promote our languages. And it is appalling today that many Kenyans are not able to speak English properly, they cannot speak Kiswahili properly and they cannot speak their mother tongue properly. And when that happens, we are a lost people.

We are completely lost. We lose our culture we lose everything because we can't communicate! You know for culture to

move on, from father to parent, it needs a vehicle and the language is the vehicle. And most of our people today cannot say there is any language they can speak with fluency without any problem. Many of them cannot express all the ideas they have in a single language.

If you ask people... when some of us went to school, we used to learn in mother tongue up to I think Standard Four and there were very good books around. Recently I was looking around for books in Nairobi so that I may teach my children Kihyia and I couldn't find any. I could not. I took them to a school in Nairobi and even the teachers told me they only have their own teaching manual which they have developed and I said it is a pity! We need to do something about that.

So we are saying, the new Constitution we are proposing must protect and promote the local languages and probably very soon we will be insisting that the schools must go back to that. So when we were proposing this I had to call the old views but my colleagues couldn't agree. I was saying that when it comes to the devolved government at the local level, local languages should also be official languages for use in the offices, because *bashiele bano nibatsia mu tsiofisi*, they should be able to speak their mother tongue. *Tsiformu nibahebwa tsio khuchasa, shipande* they should be able to find a column *yo Luluhya, elira lilio ulangukwa wina?*

Now, my colleagues could not agree with that. But if you go to other countries, they are now developing local languages. If you go to Uganda here, they now use local languages at the University. If you go to South Africa, they teach local languages, they have eleven official languages, very many of them! Kitwsana, Kisutu, Kizulu, Kibenda... and so on. Very many of them and they are allowed, they are used in government offices. If you go to Maseno University, they have now started a local languages department. And I was arguing that it is important that now our people should be able to learn at least two, three local languages.

And my argument was that... if you read the books by Ali Mazrui, he says when the British came to Africa, they sought to colonise us, they sought to get us. They were looking for markets for their goods. So to get markets for their goods, they had to develop an appetite in us to buy their goods. So they had to get us abandon our cultures, look at our own things as bad and look at theirs as good so that we start buying their goods. Now, English is their language, English language and that is why we abandoned our cultural beliefs and so on then we took English all over. But in the process, they have realised, they gained in terms of selling their goods to us but they have lost one important thing, linguistic privacy. They have no privacy.

In those days, in those colonial days, they would sell all sorts of rubbish things about Blacks, about African. And newspapers in London would carry all sorts of abuses about Black because they knew the Blacks don't know English they wouldn't even know what they are talking about. They would back-bite you, they would plan how to deal with you in their language, because you don't know it you can know.

Today, they are unable to backbite anybody because everybody knows English. So they have lost linguistic privacy. People know what they talk about. If a newspaper in London says something racist, it would be known the world over the same day. And we are saying, if we are going to deal with tribalism in our country, that is what was my argument, we should try to deny people linguistic privacy. So that *nuwikhale mu bandu bano ukorongwa mbu kata khuchaka ukhumonyana mululuyia umusebe wuno anyala khuba nahulila noho?*

So you fear to start planning at anything and that way we will be able to live openly because if you know so many people know our language, you will be a bit afraid or embarrassed to start talking derogatorily about other communities. Reason is because you don't know whoever is sitting next to you whether he understands the language or not. I lost on that score but I hope it is not late. It will be develop. I would myself like to learn a few more so that I can know how to survive in any place I go to. Now, that is the question of language.

We talked about values and we said if a people have values, one of the most important values they must have is culture and culture is associated to religion. And so we are saying as a Kenyan people, since we come from different cultures, we cannot have a State religion. We cannot say this is the religion that is going to be the State religion, no other religion will be allowed. We are saying, Kenyans are different, let them be allowed freedom of worship or freedom of religion so that they can follow whatever religion they want.

So we are saying Kenya shall be a secular State. There will be no State religion. All religions will be treated on an equal basis. So we are saying that at article ten, so that we do not create discrimination or ill feelings amongst our people that some religions are being given priority as compared to others.

We have also thought to define national days. Those that are important to all Kenyans and we are saying there should be three national days at article thirteen. First June, which will be Madaraka Day as a national day and then twelfth December, Jamhuri Day as a national day and the third one we are proposing is the day when this Constitution will be passed which we shall call Katiba Day. Three national days, we are proposing.

(Laughing from the audience)

Now, going back to the concept of values, we are saying we have defined the Kenyan people. The Constitution constitutes a people but we are saying it is not just the Constitution. It is the people themselves who constitute themselves through a document known as a Constitution. So the people are the ones who are at the centre of everything. The people are the ones who make the Constitution.

And if you look at article one of chapter one, we are talking about the sovereignty of the people and the supremacy of the Constitution. And we are saying that all sovereign authority belongs to the people of Kenya and may be exercised only in

accordance with the Constitution. In sub-article two we are saying the people shall exercise their sovereign power, either directly or through their democratically elected representatives.

The argument here is that we said, when you constitute a State, the State must have a territory, it must have a people, it must have a government. And the government must know where its authority comes from. What is the source of government authority. And we are saying in this chapter, that the source of government authority are the people themselves. Authority belongs to the people, so they are the source of authority. They create a government which is constituted by a few people, they hand over their authority to that government and say exercise it on our behalf. So at article one, we are declaring the sovereignty of the people by saying all authority belongs to the people and the people exercise this sovereign authority either directly or through representatives elected in a democratic way. So the people are put at the centre of everything that we are talking about.

And we are saying that, if you go against the preamble, we are putting the people at the centre. They are the ones giving authority to the government through this Constitution, so they are the ones making the Constitution. So we say, 'We the people of Kenya... and conclude do adopt...The leaders must know they are drawing that authority from the people.

Coming to the values, the people again. The value of the people as the centre of everything is put central. The people and their welfare is the first and most important value. When we talk about the Kenyan people, we are saying they are people as individuals, as families, as communities and in their different religions and cultures and so on. So we say in the preamble that we the people of Kenya are aware that we are different types of people constituted, put together to form the people of Kenya. We are saying we are aware of our ethnic, cultural and religious diversity and are determined despite of all these differences to live in peace and unity as one indivisibly sovereign nation. In terms of different communities, in terms of different cultures, in terms of different religions, that we are determined to live together as one indivisible nation. We are not ready to be divided by these differences.

Then we go further and say, but by coming together, we are saying we are doing so to ensure the well being of all of us. So we say,...committed to nurturing the well being of the individual, the family and the community within our nation. That the purpose of our coming together, and I said this here when I was here last that the reason people come together to live in society, to live in political life, to live under government is because they want to use these things: societies, policies and government as instruments of serving the welfare of the people. As instruments of properly managing the resources of the country since those resources are very central to the very survival and the well being of the people, are very central to the well being of the people.

So we are constituting ourselves into a society known as the Republic of Kenya, so that we may be able to manage our resources properly and provide for everybody so as to protect our welfare. So we said we are committed to nurturing and protecting the well being of the people of Kenya at the individual level, at the family level and the community level. We also

recognise the aspirations of the Kenyan people. So in terms of values, we set certain aspirations, we want to aspire to a certain direction. And we are saying we recognise the aspiration of our women and men for a government based on the essential values of freedom, democracy, social justice and the rule of law.

In constituting or grafting a government, we are saying it must be a government based on certain values. We are saying some of the values that should be the foundation of our government are democracy, freedom, social justice and rule of law, nothing else.

Not a monarch, not a dictatorship, not an authoritarian system, we are saying a democratic system, a free system, a social justice system, the rule of law system. Those are some of the values we are setting.

Finally, we are saying, that having identified all these, we are exercising our sovereign and inalienable rights to determine the form of governance of our country and having fully participated in the Constitution making process, we adopt it. So we are saying, the people being the source of power, in any given nation, they are the ones who determine the form of government they want to have. If they decide they want to have a monarch, that is their own. If they decide they want to have a democratic system, that is their own business. Nobody can stop them. Not a single individual should determine do the people the kind of government they are going to have.

Kenyans through this proposed Constitution are saying, they want a republican government. That therefore means, we must expand on the values we are talking about so that we understand what republicanism means because we are saying Kenya is a sovereign republic. Many Constitutions say they are republics but they do not seek to explain what that means.

Our current Constitution says we are a republic but as all of you know, we have lived for many years as a dictatorship, we have lived for many years almost as a monarch. We are now being pushed towards a monarchical system of government where power is oscillating between two families and people must be able to say no, that should not be the case. And if you don't stand up, it is going to happen, because those who know what Moi is hatching in his mind is that his 'project' that is called Uhuru is not actually Uhuru, it is Gideon! The program is that Uhuru gets there and Moi's son becomes the Vice President. That is why people are refusing. We don't want to be a monarch; we are saying we are a republic. So people must stand up and says so. It is not because Moi likes Uhuru, it is because he likes his son and Uhuru is just supposed to be a stooge through which his son will be taking over and rule this country. So we need to be careful.

(Laughing from the audience)

We want to know what we mean by a republic. When talking about a republic, I refer people to what some of the makers of the American Constitution said. When the Americans wanted to make their Constitution some time over two hundred and fifty years ago. They had done the Articles of Confederation, which we supposed to bring the various independent American States together so that they work together. But they realized after some time, that the Articles of Confederation were not working

well. So some scholars sat down, some nationalists sat down and they said we need to call some convention to re-look at the Articles of Confederation to see whether we can improve them.

So they called a conference at Philadelphia, where about forty-two delegates were invited. Each State was sending a number of them and I think about thirty-nine turned up and they sat to look at the Articles of Confederation. In the process, they realised they would rather just write a new Constitution. So they proposed a Constitution and when they finished, they said, because the American people did not send us to Philadelphia with instructions to write a Constitution, we were supposed to look at the Articles of Confederation and improve them. Now that we have decided that we write a Constitution, we must go back to them for them to approve what we have written if they like it.

When they took the draft to the people, a lot of people criticised it and some of the delegates at Philadelphia decided they must persuade the people to accept what they were proposing. So they decided to start making some write-up, some papers, writing them and circulating them for people to read to see the argument behind the Constitution. These were mainly Alexander Hamilton and James Madison. They wrote what was later called the Federalist Papers. They wrote up to eighty-five papers.

The main argument in America at that time was whether to go federal or to leave each State independent. Hamilton and Madison were arguing that if they came together and formed one State but a federal State where individual States would retain some power, the eighty-five papers were used to persuade the people.

In some of those papers, on one paper, Federalist paper number thirty-nine, James Madison sought to define a republican State, a republic, because they were proposing a republican system of government. He sought to explain to the Americans what is meant by a republic. He said a republic is a system of government under which all authority is derived from the people. All power comes from the people, directly or indirectly. If he went further and said in such a system, the power that comes from the people is exercised by a few among them and those few who exercise that power do so only for a limited period of time. So when in a republic people decide to hand over their power, whether it is executive power, judicial power, legislative power to you to exercise it on their behalf, they do so for a limited period of time.

Then he went further and said, when they hand over power to you to exercise it for a limited period of time, they also expect that during that limited period when you are exercising power, you do so during the pleasure of the people. You do it when the people see, when they are not pleased, they may decide to remove you from office even before that limited period ends.

He went further and said they also exercise that power during the limited period of time, during the pleasure of the people and during their good behaviour. That they will retain you in office for that limited period of time if you behave well and serve their interests. But if you don't, they retain power to remove you from office. So essentially those are the most important aspects of the republican system of government.

One, it is a system that puts the people at the centre, that recognises that the people are the source of power. It is a system in which the people then delegate that power to others to exercise for them but for a limited period of time. That is why we go to elections, periodic elections. We say the term of parliament is five years. A limited period of time. When that time ends, the people must have an opportunity to decide again who is going to be put there to exercise power on their behalf. If you have behaved well then they can say they will put you back. If you have not been behaving well they can decide to tell you, you can retire we put someone else. So you hold office for a limited period of time during the pleasure of the people and during your good behaviour.

So we have elections for the executive, we have elections for the legislature, for a limited period of time. The judiciary are put in office almost for life but we are saying the candidates must be put in place to ensure that actually those who are there they hold office during the pleasure of the people and during their good behaviour. So that if they misbehave, there must be mechanisms through which the people must remove them from office. Secondly, before they are even put in office, there must be mechanisms of ensuring that only people of a behaviour that is acceptable to the people get to those offices, not just anybody.

Now, if you look at those principles, you get to several other things that are associated with good systems of government and you find incorporated in those three principles is the principle of democracy. If power belongs to the people and people may hand it over to other people, then we are saying there must be a mechanism through which the people hand over to others. There must be a mechanism through which the people can recruit the representatives. And we are saying the best known mechanism of recruiting representatives is a democratic mechanism. So democracy is an element of republicanism.

Then there is the question of transparency and accountability. It is a mechanism of republicanism. If you are going to hold office for a limited period of time and the people have a right to assess your behaviour when you are in office then there must be openness in the manner in which you run the affairs of government. So that the people can be able to see and decide whether it displeases or pleases them to maintain you in office, so that they can remove you. You hold office during their pleasure, you hold office during the good behaviour.

You must be accountable to the people. Good behaviour connotes accountability. The pleasure of the people can only be exercised if they can be able to evaluate what you have done. So, accountability and transparency is something inherent in republican governance. The people must be able, when elections come we have said it is a period of accountability. It is a period when the leaders are expected to render account and say when you put me there for a limited period, this is what I have done. If you take me back, this is what I can do. So you are expected to render account. Accountability is very important in a republican system if you are going to have good governance.

Transparency is very important. That is why we have mechanisms of the Auditor General. You give certain amount of money to a particular department of government to expend on certain public functions. We are saying after you have expended, for purposes of accountability, you must bring a report so that the Auditor General can look at it and see that the money was properly used. So good governance, republican governance incorporates the concepts of transparency and accountability.

We are also saying, republicanism incorporates the concept of separation of powers. This is because the public power, the power of the people is constituted by different sectors. There is judicial power, there is executive power, and there is legislative power. So the people divide it and they say we do not want to put all of it in the hands of one person or one institution, we must separate. So, different institution power is exercised by each department independent of this other one which is executive, independent from this one which is legislative. So separation of powers and checks and balances are aspects of republican government.

Now, participatory government is again an aspect of republican government. So the people must put others in office. They must participate in the process of doing that. If people must hold office during the pleasure of the people then people must participate in expressing their pleasure or displeasure so that people oftenly are changed from offices. If you hold office during your good behaviour, the people must participate in determining which one amounts to good behaviour and which one amounts to bad behaviour.

All those are aspects of republican government. We are saying, the other aspect is that all these things are being done so that the welfare of the people is served. This is because the purpose of government is to serve the welfare of the people. So republican government seeks to put in place mechanisms that will ensure that public power is used for the purpose for which it was introduced which is serving the welfare of the people only.

If you look at article six sub-article two, we are saying the republic of Kenya is founded on republican principles of good governance which can be achieved through multi-party democracy, participatory governance, transparency and accountability, separation of powers, respect for human rights and fundamental freedom and the rule of law. These are some of the principles of republican government, which we are putting in place.

This draft we are proposing to Kenyans has attempted to provide sufficient mechanisms that can enable us to put in place republican governance. We have sought to provide for mechanisms that can ensure free and fair democratic elections. We have also sought to provide mechanisms for proper management of our resources, for proper accountability of our public officers so that public funds are not misused, they are used for the function they are meant. We have sought to make government participatory.

If you look at the topic dealing with the legislature, we are saying parliament shall establish a committee known as the ‘

Committee on Good Governance and Public Participation.’ So that the public can be able to participate in matters of legislation. When Bills are brought to parliament, that committee will be required to facilitate discussions and debates by the public before those Bills are based. So government based on public participation.

We have also proposed arrangements of the executive and the legislature, try to divide so that we enhance the mechanisms of checks and balances. The creation of a second chamber is attempting to enhance checks and balances in legislative matters. The creation of Prime Minister and President is seeking to enhance checks and balances to avoid abuse of power. We have created Supreme Court under the judiciary also aimed to enhance mechanisms of checks and balances. We have tried to improve the institutions of supervising these other institutions so that republican government is put in place.

Mechanisms of evolution if you look at them, our proposed evolution is strictly to improve governance. It is strictly to involve the people in running the affairs that affect them. So the ideology that runs through this proposed Constitution is a republican ideology. We are saying the people of Kenya must be able to stand up and protect that republican ideology so that any threat from individuals who want to turn us into monarchs must be resisted by all the available force.

If you look at chapter three, we have tried to put there the national goals and values and principles. If you read through, you will see most of those values, goals and principles are republican in nature. For example if you looked at article fourteen, sub-article four, we are saying that the republic is based on principles of democracy and shall promote the participation of the people in the public affairs and facilitate the sharing and devolution of power.

Article fourteen, five says the republic shall ensure open and transparent government and the accountability of State officials and public authorities. If you look at sub-article six we are saying the republic shall take effective measures to eradicate all forms of corruption. At sub-article seven, we are saying the republic shall ensure access of the people to independent, impartial and competent institutions of justice so that the courts must serve the people.

We are saying at sub-article eight that political parties shall observe democratic principles in their internal organization and procedures, respect the rights of others to participate in the political process and avoid violence and bribery. So we are saying even in political parties, we want these republican principles reflected in their running of affairs.

If you look at sub-article eleven, 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.

Sub-article fourteen we are saying the republic shall be committed to social justice and through appropriate policies and measure to providing for all Kenyans the basic needs of food, shelter, clean water, sanitation, education, health, a clean environment and security so that they live a life of dignity and comfort and can fulfil their potential.

We are also saying at fifteen that the republic shall promote a suitable development, recognise 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.

Finally at sixteen we are saying the republic shall recognise its responsibilities to future generations of Kenyans by pursuing policies for the sustainable development of the environment. So these are some of the values and you can see they are all republican in nature. We are trying to enhance the republican ideology so that it runs through our management and governance matters.

If you go to the chapter dealing with devolution, chapter ten, and look at the values and general principles of devolution, you will find again that we are trying to enhance the republican principles in matters of governance. That is article two, thirteen. We are saying 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 the exercise of the State.

We said republican government is based on the fact that power comes from the people so the people rule themselves. The people must participate. We are saying that through devolution, we want to enhance the ability of the people to participate in self governance. If you look at (c) we are saying, ensure democratic and accountable exercise of power, (d) increase check and balances and the separation of powers.

(e) promote social and economic development throughout Kenya.

(f) ensure equitable sharing of national and local resources throughout Kenya with special provision for marginalized areas.

(g) facilitate the decentralization of central government powers and the location of central government powers and the location of central government institutions and departments away from the capital territory to ensure equitable distribution of resources in all the provinces.

So when you look at this you see we are enhancing republican mechanism. You look at

(h) we are saying provide essential services to the people effectively and economically. Because government is supposed to serve the welfare of the people and nothing else.

So you can see we are proposing mechanisms that we believe should be able to increase the republican nature of our government. To improve the republican nature of running our affairs. We are saying if we succeed, then the people shall be happy. They shall have their welfare properly protected and so on.

We are saying to enhance these republican principles, as our values, as our ideologies, the burden does not only lie on the State,

the burden also lies on the individuals, the Kenyan citizens. They also have some duties to perform so that the republican principles are enhanced and we can be able to achieve good governance.

If you look at article fifteen under national goals, values and principles, we are talking about the duties of a citizen and we are saying in order to fulfil the national goals, values and principles, all citizens have the duty to acquaint themselves with the provisions of the Constitution and propagate its ideals and objectives. That is why we are here. If you are just going to sit back, you don't want to seek to learn about the Constitution we have then you will not be performing your duty as a good citizen of this republic.

We are saying the first duty of the Kenyan citizen is to acquaint himself with the Constitution of the republic. So when this Constitution is passed in addition to these discussions we are having, we will expect you to get copies to study them. We will be saying even schools curriculums should be changed so that students can start learning about the Constitution of this republic when they are still in school.

If you go to America you will not become an American citizen until you have taken courses in the American Constitution and you understand how the affairs of that country are being run. So we are saying the first duty is to know the values we have set through our Constitution that are supposed to run our country. We are saying, it is a duty of the citizens to uphold the Constitution and the law. You must defend the Constitution; you must behave in a constitutional manner so that we can develop this as our values.

We are saying that it is the duty of the citizen to exercise their democratic rights by voting and being involved in other forms of political participation. Voting is no longer going to be a right, it will also be a duty. You have a duty to vote.

This tendency of Kenyans crying you walk to Mathare, huko Kibera huko watu wanalia... If you go to Karen, the rich people there keep complaining ooh! they elected a bad leader for us. But the people who vote for the MP in Langata are the Kibera people. The big people in Karen don't want to vote. If you go to Westlands you will find the big people, the *Mhindis* in those big homes in Lavington and so on they don't want to vote. The people who vote and elect an MP for them are their gardeners and cooks who stay in Kangemi.

Then there after they start complaining you have elected wrong leaders for... You must go and cast your vote because that is the time for rendering account, and if someone has not rendered the account properly full and clear, you have a right to vote him out of office. You must vote! Right now I am hearing some people say if Moi insists with that Uhuru project of his, we shall not vote. Then you will be letting him in, go and vote to block him from coming in! Because you have the power. It is not enough to boycott. You are not solving problems by boycotting; you must go and exercise your democratic right, which has now been made a duty. And I hope you will develop law after a certain time, which will say on the basis of this clause that it

would be a criminal offence to refuse to vote.

We have put all this here. We are even suggesting that payment of taxes is another duty of the citizens; you must pay taxes as they are proposed. We are emphasising that, we have put a leadership code of conduct which is supposed to set the behaviour we expect from our leaders. The standards we expect from our leaders, because if leaders are going to hold office during their good behaviour, we must set what constitutes good behaviour. So we have put a leadership code of conduct.

We are saying non-payment of taxes is an offence against the leadership code of conduct. If you don't pay taxes we shall say you are not of the behaviour that depicts the holding of the high office of being a leader. This is because many of these fellows evade taxes, they import sugar without paying taxes that is why you people suffer here and we are saying that is not behaviour that should be allowed into leadership position. Holding office during good behaviour. So we have put all that and we are saying those are the values that we are setting out in the Constitution.

We also said that a Constitution is a road map, a power road map. It shows how power is supposed to be defined, shared out, exercised, controlled so that it is used for the benefit of the people, the common power, the public power. And in this Constitution, we have sought to draw that map clearly so that mwananchi can be able to know where there is a bend, where there is a pothole, if the driver deviates and uses some panya route, we can be able to know he has gone off the road.

So this Constitution is proposing to draw that map clearly. That public power, we want it exercised in this manner, by these people, for this period of time and for this purpose. In doing that, we have tried to create a number of institutions. We have tried to construct and de-construct a number of institutions that are supposed to be used in the exercise of public power to serve the welfare of the people.

We are proposing institutions of two types. The first set of institutions are those institutions that are allocated certain types of power, clearly defined to exercise on behalf of the people. Now, those institutions are the orthodox institutions of the three organs of State: the executive, the legislature and the judiciary. Those that exercise the clearly defined three departments of public power: the judicial power, the executive power and the legislative power. These institutions exercise that power and are expected to exercise it for the benefit of the people.

We have also sought to construct another set of institutions whose main function is to supervise these other institutions when they are exercising their power. To ensure that those who are given these three sets of power to exercise are exercising it for the benefit of the people and in the manner defined in the Constitution without any deviation. These are supervisory institutions.

Under that we have sought to construct a number of commissions that are supposed to do that.

As I said earlier, to ensure good behaviour you find that you should be having mechanisms of supervising those who have been

given power so that you ensure that they are behaving well. We are saying behaving well may start even before people get into offices. You must have a mechanism of identifying people of good behaviour as a supervisory mechanism. You supervise by ensuring the recruitment process itself is properly done so that you don't get the wrong people in office. So these institutions, they supervise, they manage the recruitment of officers to offices, they continue supervising them. They are the disciplinary mechanisms and so on. We hope that these institutions will be able to give us the republican government we want.

Those institutions that we have constructed, you will again note that they can be divided further into two. One; that there are those that exist under the current Constitution but which we have sought to reconstruct in the hope that through that surgery, through that reconstruction, we can be able to improve their policy and performance and be able to serve the welfare of the people. There is another set of institutions which do not exist under the current Constitution but which we have sought to construct so that we put them in place to start helping us perform some of these functions.

Starting with the orthodox institutions, we have sought to reconstruct them. The first is the legislature which we have sought to reconstruct parliament. In reconstructing it we are opening it by trying to show the centrality of the people. That if there are institutions that are supposed to serve the people, they are institutions that derive their power from the people. If you look at article 101, where parliament begins from, look article 102 which deals with the role of parliament. We are saying that parliament represents the cultural diversity of the people, symbolises the unity of the nation and determines the policy of the republic.

Two, in order to ensure that the State functions according to the will of the people, parliament has authority to exercise the sovereignty of the people. So we are saying right from the beginning that the parliament we are establishing is merely a representative of the people. It is supposed to express the will of the people and it exercises the sovereignty of the people. It is an agent of the people.

I want to explain a little further the will of the people. I have sought in some writings to distinguish two levels of the will of the people. The first level I say, the will of the people at the first level is the wish and instinctive wish seeking in every individual to survive. Every individual instinctively wants to survive and so the will of the people at the first level is an instinctive will. It is a natural instinct in every human being that when your welfare is threatened, you react to protect yourself, and I said this here the last time we were here, you react, you seek to protect, you seek to survive.

Self preservation is the first and most foundational will of the people that exists even in a baby who does not know how to talk. So that if you infringe a bit, the baby cries because the security is being threatened. And I said *abashiele mukari muno hata nibebusienjje omukhaye, omwana nakwakhwo butswa yilia wawuma ukhulila nibakala yakhaba ali habwene kweli* or something is wrong. And they normally pinch, they want to see whether the baby cries or not. If the baby cries, they know the baby is normal, but if it keeps quiet something must be absolutely wrong.

So the will of the people at the first level is that instinctive feeling in every individual to want to survive, to want to avoid danger, to want to eat. When the baby becomes hungry even if it doesn't know how to talk it starts crying. *Omushiele lwa ra tsa khulubele omwana alinya tsi*. Isn't it? So that is the will of the people. With that one we said it is a general will, it is inclusive, it does not distinguish between gender, it does not distinguish between tribe, it doesn't distinguish between religion, it doesn't distinguish between races, it is in everybody. Everybody wants to survive. That is the first will of the people.

The will of the people at the second level. At this level you find not everybody can participate in the management of the resources. Some must depend on the abilities of the others and that is why people came together so that they create strong enough power to ensure that even those who cannot manage on their own can survive. So the second will of the people is representative in nature. That is why government is going to be representative in nature. The people delegate their power to others to perform certain functions for them.

When we say power derived from the people we are saying the whole people who want to survive. And at that level you will find the distribution of people therefore is inter-generational, it includes the future generation. That is why in our preamble we are saying we adopt this Constitution for ourselves and to our future generation. Because even our future generation will want to survive and will want to access these resources when they are incumbent. So we are saying we are adopting this Constitution for the management of our resources so that we use today but we pass over something to the future generation, that we do not leave them with nothing. We do not just plunder everything and then when the next generation comes they find that there is nothing.

So Parliament exercises the will of the people at that representative level, the level of managing the resources so that the will of the people at the first level can be fulfilled, can be effected. So that there can be resources enough to enable everybody at the first level of the will of the people to access resources and survive. We have sought to reconstruct Parliament so that we enhance the mechanism of republicanism. And we are saying when power is concentrated in the hands of a single person or a single institution, the tendency to abuse that power is high. And we are saying, to enhance the mechanism of Checks and Balances, we need to disperse that power and spread it into more hands.

So we are saying, we do not want to have a single legislative institution, we must have more and we are proposing the establishment of a second chamber of Parliament, so that we have two houses the Lower house and the Upper house. The way some countries have done. If you go to Britain, they have a House of Lords and a House of Commons. If you go to Germany, they have a Bundestrat and a Bundestag. If you go to America, they have a House of Representatives and the Senate and when the two sit together, they become the Congress. If you go to Canada, they have a House of Representatives and the Senate. If you go to South Africa, they also have those distinctions. And we are saying, it is in the interest of the Republican Principles of enhancing Checks and Balances that we must also devise legislative power so that it is exercised by two different

institutions.

And in that regard, we are proposing a Lower House known as the National Assembly that will have three hundred (300) members. Two hundred and ten (210) constituency MPs, such as we have today and ninety (90) members who shall come in through the system we call proportional representation from a list of political parties. I will come to the details when talking about the representation of the people and the recruitment of the representatives election.

We are also proposing a second chamber, an Upper House, which we are saying should be called the National Council. This one shall have one hundred (100) members, and we are saying seventy (70) of these members should represent the districts in Kenya. We have sixty-nine (69) districts plus Nairobi as a district, it makes seventy. And we are saying, every district should be able to elect one person as their Member of Parliament in the National Council. So that we have seventy (70) members.

Then we are saying the remaining party members can be seats for women thirty (30) women. And we are saying these women should be elected on the basis of provinces. We have seven provinces, if you add Nairobi as a province, they become eight. And we are saying the seven provinces, each should have four women, that will give us twenty-eight and the remaining two seats shall be given to Nairobi as a province to elect. So in addition to electing a district representative for Butere, Mumias, being members of Western Province, you will also elect four women to go to the National Council that shall constitute one hundred members.

We are saying these two houses will be called Parliament that will be charged with the responsibility of legislation, that we note and we are saying no law shall be passed, no Bill shall become law until it has gone through the two houses. If it starts in the National Assembly, the National Assembly passes it, it will still have to go to the National Council and the National Council will also pass it. If the National Council rejects it, then it shall not become law. If it starts from the National Council and the Council passes it, it will also have to go to the National Assembly. If the National Assembly rejects it, it does not become law.

And we are saying, this should enhance Checks and Balances and at the same time should enhance the mechanism of participation. So that... currently you find... you just wake up one day and you hear Parliament has passed a Bill. Sana sana ni when it comes to their salaries, mnasikia tu they have passed. We are saying this time round you may hear the National Assembly has passed Bill. But then you will have an opportunity when that document is still going to the National Council to express your views. If you do not like it you may go to the roof tops and make noise and say we do not want that law. The National Council may listen to you, and having listened to the people may reject the document. So that it how we are proposing to reconstruct parliament.

We have also proposed in reconstructing parliament that there will be a number of committees, parliamentary Committees that

are supposed to deal with certain (?) issues so that the running of the affairs of Parliament are improved. And we are saying, one of such a committee will have to be a new committee we call, the Committee on Good Governance and Public participation. That Committee will be required any time a Bill is brought to Parliament to publicize that Bill and to facilitate participation by the members of the public to discuss and debate to see whether it is a Bill they would like to have or not.

When it comes to amendment of the Constitution, we are saying, the Bill to amend the Constitution after it has gone through the Second reading, it shall not be taken to the Third reading, until after ninety (90) days have elapsed. And we are saying during those ninety days, the Committee of Good Governance and Public Participation must facilitate the participation of the people, to discuss that Bill to see whether they want that amendment or not. Those are part of the elements we are introducing on Parliament to see whether we can improve the legislative process of our country.

We are also saying Parliament must have enhanced powers in the budgeting processes of this country. They must be able to do more than what they do today. Because in today's bill, the budget comes from the Ministries, wanaletewa tu, they make the noises for a few days and they pass it even without understanding what that means. We are saying Parliament will have to be given improved budgetary... it will have a budget office with experts in budgetary matters who can be able to advise them and help them understand these things and liaise with the ministries when they are preparing the budgets so that they can be able to make their contribution in advance before the budget comes to the house.

And we are saying, even after it has come, Parliament will have power to re-appropriate the finances as proposed by the ministries. Become the ministries can bring a budget which is say one hundred billion shillings for the year but they say there is so much for education, so much for health, so much for this... We are saying this time round, parliament should be able to explain this allocation. To say in our view, the priority is health and not roads. So more money should go here and less should go there. We are giving all these powers to parliament. If they don't do that, when they come back to you to render account, you should come out with your vote and say you didn't perform well. Those are some of the highlights we are giving about parliament.

The executive. We are also seeking to reconstruct it and be able to create an executive that can be able to serve the people. If you look at article 148, we are again starting by putting the people at the centre of everything. That the executive is an institution that is being established to serve the people and not to rule the people. If you look at 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. We are not giving powers to the executive to serve themselves. We are giving them powers to serve the welfare of the people.

Assume we are saying executive authority assigned to an office bearer by or in terms of this Constitution vests in that office bearer the power to serve the people rather than the power to rule and shall be exercised in a manner consistent with the purpose and object of this Constitution. If you look at the Constitution, we have said the object of the Constitution is to serve

the welfare of the people and it must be a democratic, it must be republican and so on.

So the executive must exercise that power in a manner consistent with this Constitution and not otherwise. The manner consistent, we are saying is a democratic manner, it is a republican manner and so on, not the manner you have got used to where you are being told...ni kura mtachagua... You are free to elect but after that you are told 'but elect this one'... 'it will be free elections but elect this one'. So now, how free is that in your view?

We are saying the Constitution doesn't allow that. It wants where you actually are free to make this decision. The executive must serve the people. Today, I am in doubt that it does serve the people. Today the way our economy has been run, it has been to plunder by the few who are in office. People steal but they are retained in office. Wananchi make noise but they continue plundering. You steal in this department, you are transferred to another one. The tendency has been, *mwana wefu ndakhurele yaho ulilekhwo habwene yaho*.

(Laughing from the audience)

Si it is very bad? And that is what has been going on. I hear he normally tells them...*'nimeshika ng'ombe miguu, kamueni tu.'* That is what I hear he tells his people. *Ulitsile mushele*.

So we are saying that is not the system we want. So we are seeking to reconstruct the executive. Many Kenyans complained the president has a lot of powers, we must find a way to reconstruct the executive. In the views or in the words of the Kenyans, they wanted the powers of the president reduced. But in our reasoning we said, it is not a question of reducing the powers of the government, it is a question of reallocating the powers of government.

This is because we do not want a banana stem. We do not want a government that is not effective, that does not have sufficient power to perform its functions to serve the people. But we are saying we do not want that power put in the hands of one person. So we remove some powers from here, but we must create other centres of power to which we can give these other powers. So that government remains effective without necessarily being concentrated in the hands of one person. So that there are checks and balances. Things are moving but power is not being abused.

So we are proposing that the manner to deal with the very powerful president is to divide that power between the President, the Vice President, the Prime Minister and two deputy Prime Ministers. We have already been accused of creating a ceremonial President, but we are saying that accusation is not founded. It is wrong, it is malicious and probably it is being made by people who have not yet read what we have proposed, or if they have read, they are people who are just dishonest, who are trying to protect their vested interests.

The President we have created is not ceremonial. But if it is true, that President is not the kind of presidency that was exercised

by Kenyatta or has been exercised by Moi. It is different. It has reduced powers but it is not ceremonial. The President has reasonable amount of power. We have also created a Prime Minister who is also not all-powerful; he also has certain powers, which are also controlled from the other end. So they are supposed to share power and we are saying people must be forced to share power, the concept of restrain upon power. We normally say constitutionalism, when I teach my students about constitutionalism, I say the concept of constitutionalism is the concept of limited power, restrained power. So that you don't just move around, there are constraints. You are limited on how you exercise power.

Recently I was attending a wedding of my colleague at the faculty and when I was asked to give a speech, I told them my friend has finally accepted constitutionalism. He shall no longer move around without restraint. So, we are trying to put restrain on power so that it is exercised in a manner that is acceptable and is not abused.

So the President is given certain amount of powers: he is the protector of the Constitution, he is the one therefore who upholds people to Constitutional commission but of course after he has proposed names, they have to be approved by parliament and so on. Those Constitutional commissions which I will come to which are supposed to be institutions for supervision of this and other organs are supposed to make annual reports to the President and parliament on their duties and so on, and what they think about other institutions and how they are performing and so on.

The President has a lot of powers, he is the Commander-In-Chief of the Armed Forces and so on. But one he is elected, he chooses a Prime Minister from amongst the majority party in parliament and his proposed choice must be approved by parliament. So if he chooses one and parliament rejects, too bad, he has to choose another one. If he tries another one and maybe that may explain why they are in a hurry to go to elections under the current Constitution. If you bring one they don't accept you are told bring another one. We are saying, if thirty days from the day you appointed the first one elapse before you have produced one that is acceptable to parliament, then parliament will be dissolved and take back to elections because you have been unable to form a government. That is what we are proposing.

We are also proposing there will be a Vice President shall be elected together with the President. So that when we go to elections, the President must nominate a person, known as a running mate. And so when you vote for the President, you are also suggesting you are approving his running mate. So you may like him but if he appoints a wrong running mate you may refuse to vote for him because he has taken a wrong running mate. If he wins, his running mate automatically becomes the Vice President and you cannot remove him from office without the approval of parliament.

We are saying that if the President dies, or resigns or something else happens, or is removed through impeachment, the Vice President takes over the remainder of the time without going back to the elections. This is because he was elected by you. People approved of him. And you can be sure the reason why they are insisting on going to elections with the current Constitution is because their plan is to have Uhuru appoint Gideon as the Vice President. Because they know if we go with the

new Constitution they will be required to name the Vice President, running mate in advance. And the moment Kenyan will see, this after all is Moi's son, they will say we are not going to vote for them.

So that is why they want to remain appointing so that they will continue cheating you, the way they have cheated you so many times...ooh, this time round, Vice President atakuwa kweli wenu. Akikuja hapa, *narula hano natsia ebukamba akatia bakamba narula yo natsia* ----namna hiyo, wakati mnamaliza kura, they appoint someone else. *Ne mtong'a nimung'ang'alile* That is what they are up to and Kenyans are aware. So you have to watch out. Anadanganya, danganya huku, I told other people... kama vijana wamezoea anadanganya huyu, nitakuowa wewe, nitakuoa wewe, mpaka wanafika watano. One day they meet *musimba* Anafikiria they will start fighting each other. Instead they decide no, let us gang up and beat him.

(Laughing from the audience)

And they do it thoroughly. So that is what is happening now. *Abakhana bakanile musimba* they have decided to forget their past differences, they have said let us gang up and deal with this man, and that is the position.

So that is the kind of executive we are proposing, a President, Vice President, Prime Minister and deputy Prime Ministers, fifteen Ministers and fifteen Assistant Ministers. We are saying no more than fifteen. And we are also proposing, this cabinet, the Ministers and their deputy Ministers will not be Members of Parliament. They must be appointed from outside parliament. So you have to make your choice. Do you think you want to be a Minister or do you want to be a Member of Parliament? You have to decide. That is what we are saying.

They have to be appointed from amongst professionals outside parliament. Once they have been appointed, the Prime Minister in consultation with the President they bring the names to parliament for approval. If parliament rejects, they have to go and look for someone else again. The reason we are saying this is because, one, many Ministers in the past have been... For one we are insisting of separation of powers, the republican principle of separation of powers.

We want parliament separate from the executive, from the government. Not the current situation where we have almost half of parliament being members of the cabinet – Ministers and deputy Ministers. So when parliament wants to pass anything or once to censure the government, they are unable to get the necessary majority because members of the government are also Members of Parliament. So they also participate in the voting and they block anything that parliament wants to do. So we want clear separation of powers. If the government is wrong, parliament should be able to censure it, it should be able to vote against it and so on.

We are also saying when Members of Parliament become Ministers, they become rogues that in their provinces and districts, they become rogues! They start terrorising other MPs from that province or district, lobbying over them and we say we don't want that. We want people to be on an equal basis. If you are Members of Parliament, you have your constituency I have

mine. You shouldn't start lobbying around because you are a Minister or something of the sort.

We are also saying when they become Ministers, sometimes they convert the ministry into the property of their constituency. They get everything and take to their constituencies because they are also afraid if elections come my people will ask me you were a Minister what did you do for us? So they start taking everything to their people, forgetting that the Ministry is the property of the entire nation. You go to their office and the people you find there are people from their villages. You don't find people from any other place. We are saying we don't want that.

We are also saying, some of them forget their responsibilities to their constituencies. They say they are busy with the Ministry so the people end up with nobody to serve them. Others even when they are not busy, they use that as an excuse when they want to run away from their people, they pretend they are very busy with ministerial responsibilities when in fact they are not. So we are saying we need this separation.

We are also saying that, if you end up with a parliament that does not have people with sufficient qualifications to run matters of Ministries, we should be able to look for people from outside parliament who have the necessary intellectual preparedness to run the affairs of the Ministry. So that is what we are proposing and we hope it will go through. I am doubtful that it will because I have already heard some MPs, including those in the opposition already complaining that their ambition in the opposition is that when they form the government they can become Ministers. So, they may not pass this, but we hope the delegates from the districts will help us to pass this.

We have also sought to reconstruct the judiciary. If you look at article 184, currently we have the Court of Appeal, High Court and the Magistrate's Court. But now we are proposing that we should have a higher court than the Court of Appeal. Before we go to that, if you look at article 184, we have again sought to put the people at the centre of everything and we are saying judicial power is derived from the people and shall be exercised by the courts in the name of the people, in conformity with the Constitution and the laws and in conformity with the values, norms and aspirations of the people.

So we are saying, even judicial officers must know that they are servants of the people and the judicial authority they exercise comes from the people and must be exercised in the name of the people and for the service of the people and not for their own interests like we have today. The courts have turned themselves into 'kiosks' through which the judges and magistrates make money from people, extort money from people and so on.

The situation is so bad, sometime two years ago we reached a point when one judge wrote two judgements and they were discovered. One allowing the case, another one rejecting so that you can be called in and be told... so and so, these are the two judgements, you have the power to choose which one you want. If I read this one, you have lost your case, if I read this other one, you have won. But this one I can read it at a time. That is happening, in our courts. Justice is not being done in

accordance to the law but courts magistrates and judges have converted the court into market places where they sell their services for money and in the process injure innocent parties. These people win as the innocent victims lose and we are saying this has to be restructured.

So we are proposing the establishment of a Supreme Court, which will be the highest court in the land. It will have seven judges; one of them shall be the Chief Justice. Then under it, it will have both appellate and original jurisdiction so that some cases can go to it on appeal from Lower Courts, others will go to it at first instance when it is especially from original jurisdiction. And one such an instance we are saying shall be when the President wants to seek his advisory opinion. When parliament has passed laws we are saying they will be passed to the President to give his assent to them. And if the President as the protector of the Constitution looks at those laws and believes that they look like they are inconsistent with the Constitution, the President may refer those laws to the Supreme Court for advice. Whether the Supreme Court thinks they are consistent or not consistent. And that will be in exercise of his original jurisdiction.

We are also saying after elections, if you want to challenge the election of a person as President, you will file your case straight into the Supreme Court so that we can have this matters determined strictly once and for all. So that the President can continue running the affairs of the State without being destructed by court cases and several other matters.

The Supreme Court, we are saying shall be headed by the Chief Justice, who shall be the head of the entire judiciary in the country. Under him there shall be a Court of Appeal, which we are saying shall be headed by a President of the Court of Appeal. That is to reduce some of the functions that are performed by the Chief Justice currently. Because we are saying the Chief Justice has also just become just a terror on his own and we must reduce these powers. So we are taking some and giving to the President of the Court of Appeal.

We are also saying the High Court shall be headed by a principle judge who shall also share some of the administrative functions that are currently being exercised by the Chief Justice as a mechanism of further reducing the powers of the Chief Justice.

Below that we have the magistrate's court and we are saying in addition we shall also reconstruct the Kadhis court. We are saying we shall have a District's Kadhis Court, Provincial Kadhis Court and then a Kadhis Court of Appeal, which will be presided over by the Chief Kadhi and two senior judges. Appeals from the Kadhis Court of Appeal shall go to the Supreme Court or matters of the Constitution and matters of law. I will go back to the details when we are looking at the transitional arrangement so that we can be able to understand why the judiciary has become panicky over these proposals.

Going back to the representation of the people, that is under bureaucracy article 76, dealing with the representation of the people. It is the one that deals with elections. At 76 we are saying, the electoral system is based on the right of all citizens to vote and to stand for elections in legislative and executive bodies. Under this, we will have to discuss three issues: one, the

system of elections itself, two, the electoral process itself and the management of the elections, the institutions for the management of the elections.

On the systems, we looked at three different systems. One, which we have today which is called the first past the post system. The first past the post system is based on simple majority. The one who gets more votes is the winner, even if he wins by one vote. Even if he is ahead of you by merely one vote, he is the winner. It is based on single member constituencies where you have every constituency elect one representative. The you people would elect in Mumias a particular representative as your MP.

This system has been criticized, people have complained about it because of various factors. One, they say that because of the simple majority rule, sometimes we end up with minority MPs. MPs who represent minorities instead of the majority in the constituency. How does this come about? One, you go to elections for example with five candidates. The winner gets five thousand votes. The person following probably gets four thousand nine hundred, so the difference is one hundred votes. The third person probably gets four thousand eight hundred. The fourth person gets four thousand seven hundred and the fifth person gets four thousand, five hundred or six hundred.

Now if you add the votes of the losers, you find that they are far more than the votes of the winner. So the end result is that the winner actually was voted in by a minority in the constituency. The majorities rejected him, but somehow he becomes the winner. And many of the MPs in Kenya are in parliament on that basis, they were elected by just a few people. And people have complained this is not a good system.

People also complain that there are some areas that are highly populated, others are sparsely populated and they are saying this creates some system of discrimination where some people's votes are seen as if they count more than those of others and so on. So people complain, they even say the process of demarcating constituencies is not clearly defined so people (inaudible) around with them and create constituencies for political reasons and so on. So they seem to be complaining they don't like this system.

The other system is what they call proportional representation system. That one has a number of advantages and disadvantages. And if it is said to be a system under which we do not have single member constituencies. We do not go to elections to elect a specific person as your Member of Parliament. You instead go to elect the political party. So political parties at elections present this.

If there are two hundred and ten seats, each party presents a list with two hundred and ten people. They are saying if we go to elections and our party is given one hundred per cent votes across the entire country, these are the two hundred and ten people who shall go to parliament as MPs from our party. If we take sixty percent of the votes, then you go to the list and we get a half of them upwards. Those who are down will remain.

This system is said to be advantageous in the sense that it helps the minority groups to get representatives. For example women, the disabled, small communities... because currently we have very few women in the Kenyan parliament, they don't even reach ten, they don't even reach five in the entire country. And we are saying the reason is because women find it difficult to fight for seats in the constituencies because that is the time when these men go wild. Even family men you find them talking obscenities on the platforms, abusing around and women find they can't stand some of these things and so they can't win. Some of them don't have money to pour around. Some of the campaigns have to be done at night running up and down, with thugs at night. And women find it is very difficult to do this.

We are saying a system of proportional representation may help women come to parliament. Why? Because when a party presents a list and you see if it put there women, ideally it is the party that is supposed to do the campaign for itself and women may be saved this problem. Party officials may run around campaigning while the women are at home cooking for their children. And if the party wins, the woman's name just goes through and she becomes an MP.

Secondly, if a party presents a list and the women see there are no women on that list, they may decide as a block, as women, not to vote for that party. So for a party to win the vote of women, they might be forced to put names of women on the list to persuade them.

Three, tribal political parties. Parties which you find when we go to elections that the party is just in a particular place. You go to D.P. you find it is in Kikuyuland, you go to Ford Kenya you find it is just in Bukusuland and they bring MPs to parliament from that community. Now, this time around we are saying if you use this system, people will be able to look at the list. And if they see D.P. has just put only Kikuyus, people from other communities will refuse to vote for it. So they will be forced to put some people from other communities. They will be forced to put on the list the disabled people for instance, so that they can appeal to the public and say you see we even care for the public. That way, you get some of this people coming to parliament.

On the other hand, this system has some problems. One major problem is that it disconnects the people from the representatives. This is because the people of Mumias will not be able to say so and so is our MP, because you did not elect any, you voted for a party and that list may not have had anybody who comes from this area. So you don't have a specific person. You may even find the nearest MP from you may be in Busia because that is where maybe someone came from on the list. So it disconnects people from representatives.

This method also makes political parties dictatorial because it is the party that prepares the list, the officials of the political parties become dictators. The parties are made so powerful and people become subservient to them. Because if you want them to put your name in the list you must behave in their liking. You may be a good leader but they just refuse to put your name on the list. So we are saying that may opt to be a big problem for the people.

The third system is what is called the mixed member proportional representation system. This is where you pick from the first and from the second, you mix and you get a cocktail. You pick something from the other and another from the other and you put together and move on. So we are saying in that system, you can maximise the advantages from the two other systems and come up with a hybrid that may be good.

So, for this Constitution, we are proposing that we go for that system, the third one which picks from both the mixed one. By that we mean, from the first system, we retain the constituencies we have, the two hundred and ten constituencies. So that the people can have someone they can look at as their MP, who they elected, whom they can go to with their complaints. But on the other hand we are saying we go to the other side and pick or borrow a little of the proportional representation. So we have some members elected on the basis of the party list.

So we are proposing for the national assembly, three hundred members. Two hundred and ten elected in the constituency but ninety elected on the basis of the party list. You have already heard some people saying we are proposing ninety nominated Members of Parliament. That is not true. We have in fact abolished the concept of nominated Members of Parliament. These ninety people will be elected. And we are saying when we go to elections, you will cast two votes. One vote for your MP in the constituency, and another vote for the party you want for these ninety people.

So that we will be saying the situation Kenyans have found themselves in they say ... 'huyu mzee ni mtu mzuri lakini in a wrong party.' So they refuse to vote for him because he is in a wrong party and then they end up voting for an idiot because he is in the wrong party. This has happened. If you look at the elections in 1992 and 1997, this happened. If you go to Nairobi there are people who say the strangest things in this country. In that if you go to the marginalized communities, the Turkana, the Northeastern people, they select the best amongst themselves. They best that they have. But if you go to a community like the Kikuyu, the experience in 1992 and 1997 show that they elect the worst amongst themselves because of the party.

So we are saying for this system to help us, you can look at someone and say he is good although he is in the wrong party let me just elect him as the MP for our area. But when it comes to the ninety seats, you choose the party that you want. So you cast a vote for the individual then another vote for the party. We are saying before we go to elections, the parties will be required to present to the Electoral Commission, their list of ninety people. Those lists will be publicized so that wananchi can read and say party so and so has put such and such people. They have good people in that list; let us vote for it so that they can get those seats.

At that stage we are saying, to deal with the problem of the women, the disabled and so on, we are demanding that when the political parties present their list of ninety, fifty per cent should be women. So we are saying each party must alternate. If number one is a man, number two is a woman. If number three is a man... to the end. So that at the end of elections we count the people on your list and they shall become the Members of Parliament. Forty-five of them shall be men and the other half

women.

If on the other hand, you win only say twenty seats, then we shall go on the list and take the first twenty. And because of that alternating process we shall know in that first twenty, we shall have ten men and ten women. If another party has won forty seats, we take the first forty on their list and we shall be aware that twenty of them are men and twenty of them women. So at the end of the day, women shall be assured of forty-five of their own in parliament.

We are also saying, when putting these ninety people on the list, you must also incorporate the disabled. Among the women and men alike there will be some disabled persons. So when the counting is done, some of the winners will be from among the disabled persons. That way we will be able to accommodate all the groups that are complaining and get where we want.

We are also proposing, in general terms that we must try as much as possible to get one-third of women in most of our elective positions and that is why we are saying on this list process, we give them forty-five. And you know that in a house of three hundred, if we say one-third, then that will mean one hundred. So even as we give them forty-five, we have not yet reached the general principle of one-third. And so we are saying for the constituency seat, each party will be required to nominate at least one-third of its candidates women. So that they can contest and see if they can win. That is the system of elections that we have decided on for the national assembly. For the national council, people will be elected in the district, directly by the people without following that mechanism.

On the electoral process itself, people complain about a number of things, registration and so on. We have provided for continuous registration of voters. So that nobody is stopped from voting because he was not registered and so on. We have also proposed a secret ballot with all the elections whether they are national or party elections, we have proposed the secret ballot. We have also proposed transparent ballot boxes, and counting of votes at the polling stations and things of that kind. That is dealing with the process of voting itself and the preparation for the votes and so on.

For qualifications to the national assembly, we are saying you must be above 21 years and having reached Form IV level. For President, we are saying, he must be a university graduate from a recognized university. You must be between 35 years and 70 years. We are saying, at the time you are presenting yourself to be elected as President, the oldest you should be is seventy years. The reason is because we are saying we don't want anybody in office as President who is over seventy-five. We are saying if you go to elections when you are seventy, by the time you are finishing your term of office of five years you shall be between seventy-four and seventy-five years.

We are also saying that you must have a running mate and so on. You will have a fixed term of five years, renewable once as a President and no more. In the transitional arrangements, we have said a person who has held the office of President before for two terms shall not be eligible to hold that office of President, office of Prime Minister, office of Vice Prime Minister, office of

deputy Prime Minister, office of Minister and office of deputy Minister. We are very clear that way. That the current President shall not hold any of those offices, even being Member of Parliament. We are saying he shall not be eligible. People may wonder why is he stopping from being the Member of Parliament? We are saying the office of President is a high office of respect and we do not want to demean it by someone coming from being President to become an MP, an ordinary Member of Parliament. The dignity of the office will be lowered and we are saying we don't want the dignity of the office of President to be lowered by someone who has been President becoming a mere Member of Parliament, or becoming a Councillor or an assistant Minister for that matter. So we are insisting that it should not be allowed, for the protection of the dignity of the office. That is the reason we are giving.

We are saying, elections the term of parliament in the national assembly shall be five years. A fixed term, elections shall be held forty-five days before the end of that term. When they go to elections, MPs shall continue to be MPs until their terms lapse. The reason is because in the past, we have been dissolving parliament before we go to elections. So in the running of our affairs, two institutions of government, two organs remain: the executive and the judiciary. They remain in office. But the legislative organ is gone, so there is a vacuum. And the worry is that if something urgent that requires legislation were to arise, there would be no parliament to legislate. We are saying that is an anomalous situation which we don't want to continue.

In Zimbabwe, the Constitution says when there is no parliament; the President shall legislate by way of decree. And that is how Mugabe has been going about the issues fixing the *wazungus* about land. When he knows parliament cannot pass his proposals, he waits until he has sent them home, then he passes all these laws. And then when they come back there are already laws in place. We are saying that that is not the best approach.

So we are saying, let us maintain parliament through out. So when they go to elections, forty-five days before the end of the term, they continue as MPs. If there is anything, they can abandon the campaign, come back to parliament and legislate and then go and continue with the campaign. Then they can even be elected before the end of those forty-five days and they continue with office until the end of the forty-five days, the end of their term. And the day their term ends is the day the new parliament is sworn in. So that there is no vacuum. We must have a parliament throughout. There should be no vacuum that is what we are proposing.

For the national council, we are saying their term shall be four years and elections can also be held forty-five days before the end of that term so that there is also no time when there is no national council. Qualifications for elections to the national council, we are saying are that you must be above thirty-five years. Because we are saying here you are representing a whole district or a province and so we want at least more mature people to go to the national council. Those are the proposals we are making. On the lower levels, we will discuss that when we deal with the devolution of powers.

We are saying, these qualifications we have given, certain people will be exempted from them if the coming elections are held

under this proposed Constitution. We are saying, anybody who has been a Member of Parliament before and is seeking to become President shall be exempted from the requirement of the age seventy-one, shall be exempted from the requirement of the university degree.

We are also saying, anybody seeking to be a Member of Parliament, who has been a Member of Parliament before shall be exempted from the Form IV requirement. We are also saying anybody seeking to go to the district council shall be exempted from the Form IV qualification if you have been a Councillor before.

The reason we are doing that is because we know this draft we have proposed must go to the national constitutional conference and must be passed. And we know some of these people will be at the conference. And we know if we do not give them some sweetener, they might reject the whole thing. And you know they can mobilise everybody. We know for a fact that Kibaki is now over seventy, so if we say that the rule applies, he will be barred. We know that Nyachae does not have a university degree. So if we insist, he will be barred. And you know these are people who can mobilise a large number of the members of the national conference to refuse to vote for this document. We also know of a number of Members of Parliament who do not have the Form IV level of education and they will be required to be members of the national conference and they can vote against it.

So we are saying for purposes of setting this document to go through, let us tell them, for these elections you will be exempted. But there after, you will not be exempted. Because we are saying if we exempt you now, we shall have given you five years notice to remedy your situation. So if you want to go back to school, go back to school. If you have mechanisms of reducing our age, you can do so. But we are giving you five years notice. It is a long period. Nobody gives anybody five years notice before you retire or you resign. That is a long period but that is the reason we are giving for that. So that is what we have to say about election.

The management of elections, I think I will address that if that concerns the institution that manages the elections themselves. If they are going to be democratic and so on, then the institution that manages them should be democratic and I have to deal with that when dealing with the other institutions I said we are constructing that supervise. We dealt with the other three organs, now we deal with the institutions that supervise.

Here we are saying, we are creating a number of commissions. Some have been existing, some are new. The existing ones we have sought to reconstruct them. The first one is the Electoral Commission, which we are seeking to reconstruct.

Currently it has twenty-two members. We are proposing it should now have eleven members. We are also saying it must be very independent, it must have people of high integrity, who have certain qualifications. Must be people who do not have links with political parties so that they can operate independently. Must have financial independence, so that it can get its own votes

directly from the consolidated fund so that it can operate without being arm-twisted because of finances. It must prepare its books of accounts and submit to the Auditor General and so on.

So we are proposing a very independent commission, an institution that should be able to manage the elections in an independent manner. When I talk about this I say, the commissions we are seeking to create or reconstruct are commissions we must try and make independent if they are going to serve the Kenyan people. My argument is that the Constitution Review Commission is the example we have of what an independent commission or independent institutions can do.

You know for a fact that quite a number of people within the political establishment have not been very happy with that and with what we are doing. But we are there because we are independent. The law that establishes us ensure that those people who are unhappy with us have no mechanism of removing us or even disbanding us or even denying us money. If they had mechanisms, they would have disbanded us a long time ago. But because this law says we are strictly independent and it has put in place mechanisms to make sure we are independent, they are unable to interfere with this commission.

For example, our process of appointment was through application to the Parliamentary Select Committee, which interviewed us and took those who qualified and simply submitted the names to the President to announce the appointment. So the President played no major role in our appointment.

Secondly, the law says if a member of the commission has to be removed, he is not removed by parliament, he is not removed by the President, he is removed by the commission itself. Which finds charges stating what offence he/she has committed, listens to the charges and must pass the charges by a vote of two-thirds for the person to be removed. And you people remember the problems we had when trying to remove Owiro as secretary. It was a difficult process. So nobody can remove any Commissioner. That is why Ghai can afford to say anything and nobody can remove him, they only lament but there is nothing they can do about it.

If a vacancy occurs, this law again says it is not the President who will just go and pick anybody and bring. It is the Commission that will announce the vacancy, people will apply, we shall meet as a Commission and interview them. And we are told if there is a vacancy for one person, we appoint three, we submit to the Parliamentary Select Committee, the Committee looks at the name and the CVs. It may call them for interviews, it drops one and appoints two. Then they submit to the President those two and the President is forced to pick one of the two. Even if he does not like all the two, he has no choice, he must pick one of the two and drop one.

That therefore shows how independent we are. The law also says our vote done in parliament when they are doing the budget. Then they decide how much money to give us, our secretary follows it, it is established by this Act, a Review Fund. The money is then taken and put in the fund so that we can be able to operate. If donors want to give us some little money, we take and put in that fund. So we are not the Commission, which depends on a Ministry or the office of the President for financing so

that they can turn off the money or refuse to give us money when they think we are not performing the way they want. It is for that reason that we are here talking to you in spite of the complaints or the advance comments they have made about this proposal. They have nothing they can do to touch us.

So we are saying, if we want institutions that will supervise these other ones and make sure things are running properly, we must make them independent. As independent as the Review Commission or even more independent than the Review Commission. Things will run properly. So the Electoral Commission we are proposing is supposed to be that independent.

There are several other commissions, which we have sought to reconstruct. The other one is the Judicial Service Commission, which supervises the exercise of judicial authority starting with recommending persons to be appointed to the judiciary. And we are seeking to reconstruct that Commission so as to be able to make it truly independent and be able to enhance the republican principles we talked about so that it can serve the people.

That Commission, we are saying should be headed by a substantive chairman who shall hold office for five years renewable once. He must be a person of high integrity, a person who is qualified to be appointed a judge in the Supreme Court and in addition to him, we shall have one Muslim woman appointed by Muslim organisations to represent Muslim interests. The Attorney General shall be a member of the Judicial Service Commission. The Supreme Court shall elect one of their own, the Court of Appeal shall elect one of the own and the High Court the same, to represent them in the Judicial service Commission.

The Chief Kadhi shall be a member of the Judicial Service Commission. The magistrate shall elect two magistrates to represent them. The Law Society shall elect two lawyers to represent them and the law faculties in Kenya shall elect two law teachers to represent them, that is Nairobi and Moi Universities. Then there shall be a representative of the Council for Legal Education. The Chairperson of the Public Service Commission or his nominee and three main persons, one of whom shall be a woman elected by the Civil Society. These are the people who shall constitute the Judicial Service Commission.

This Commission is extremely important because it is the one to recommend persons to be appointed judges to the Supreme Court, Court of Appeal and the High Court. It appoints magistrates, disciplines them, and deals with matters of their welfare and so on. So it is going to be an important decision in the Commission.

The other commission we are proposing is the Public Service Commission, which is supposed to be reconstructed so that the Public service is properly run and serves the welfare of the people. We have in this draft given certain values that must guide the Public Service Commission so that that Commission serves what the public would like. If you look at Article 258, you will see some of the values and principles that must guide the Public Service Commission, which we are seeking to reconstruct. We have also decided to retain the Teachers Service commission as an independent Commission to deal with matters of teachers and so on. There are other commissions which we have proposed to include or create which must also be independent in the

manner that I have stated and which are supposed to supervise the performance of certain functions.

The first one is the Commission on Human Rights and Administrative Justice. This one is a broad based Commission that under it has various divisions that would otherwise have been Commissions on their own but we thought we didn't want too many Commissions. So under this we shall have a division on Human Rights headed by a Human Rights Commissioner. The people's protector who is the equivalent of the Ombudsman headed by a people's protector or the people's protection department headed by peoples protector. The Gender division, which shall be headed by a Commissioner referred to as a Gender Commissioner. The Basic Rights division, the Children's division and the division of the disabled. That is the Commission on Human Rights and Administrative Justice, to address matters on Human Rights, matters of gender, matters of mal-administration, matters of rights of children, matters of the disabled rights and matters of basic rights for all citizens. That is one commission we are proposing.

We are also proposing another very important commission, which is stated at Article 289 known as the Ethics and Integrity Commission. The Ethics and Integrity Commission you will remember we said those who exercise power should exercise it during their good behaviour. And we said that we have provided for a leadership code of conduct, which is supposed to guide leaders. If you look at Article 276, going down we have what we call leadership and integrity. Through those articles we have established a leadership code of conduct, which is provided as schedule five, where we have detailed what amounts to good behaviour that is expected from a leader.

The Ethics and Integrity Commission shall be the custodian of the leadership code of conduct. It shall be the custodian of the leadership code of conduct, it shall be the Commission to which its leaders who fall within the category of those we define as leaders subject to this leadership code of conduct will go to declare their wealth, the sources and their liabilities. So there are certain leaders who shall not be allowed to hold office or to remain in office until they have made declaration about their wealth, how they earned it and their liabilities.

We are saying one problem in our country is that we have become so committed to money that someone who comes here with money and gives you, you quickly make him a leader even without bothering whether that money was stolen or not. That is why we are demanding those who want to be leaders must declare what they have and tell us how they got it. So if it is stolen money, we shall be saying our standards of leadership is not complete. We do not want thieves so you do not qualify to become a leader. If you cannot explain how you earned this money, then you cannot be trusted with public funds and you cannot be trusted with public leadership.

So that Commission will be dealing with that. All people: judges, Presidents, Prime Minister, Vice President, MPs, everybody will be required to go to this Commission to declare their wealth. This Commission will be supposed to investigate them and see whether they are making truthful declarations or not. People who don't pay taxes, this Commission will investigate and

report that they are not of good behaviour that should hold certain public office that are of importance. If you make wrong declarations, they will investigate and report. If you are already in office, you shall be removed for being of behaviour that is not acceptable to the people. This Commission will also deal with matters of corruption and so on. So that is the Ethics and Integrity Commission, a very important Commission.

We have also proposed a Salaries and Remuneration Commission which will determine the salaries of various public officers, President, Prime Minister, Members of Parliament and so on. Even members of Commissions, their salaries will be determined by a Salaries and Remuneration Commission. Never again shall Members of Parliament be allowed to go and determine their salaries themselves. I hear they are now in a hurry to pass another salary scheme before they dissolve, before this Constitution comes into being and we hope that they don't. But if they do, we shall say, when this new Constitution comes into force, the Salaries and Remuneration Commission once appointed shall have to review and harmonise salaries of all the various public officers. So that even if they had to pass them, if this Commission shall say that those salaries are too high, they shall have to be reduced. So that we move on the way people would like. This Commission will be periodic. It will not be permanent. It will be appointed within certain periodic intervals so that it can review salaries when the need arises.

Then we have another important commission, the Constitution Commission, otherwise conceived as the Constitution Implementation Commission. We are saying when we got independence, the independence Constitution says because there was nobody to follow up to ensure that what had been proposed in that Constitution is done, instead we embarked on amending it left, right and centre. This time round we are saying we do not want to repeat the same mistake. We want to establish a Commission that will follow-up to ensure that most of the things that are provided here are put in place to get things running. So we are proposing a Constitution Implementation Commission.

If you look through your papers, you will see there is a schedule, schedule six, under which we have tried to identify some of the articles of this Constitution which shall require the passage of certain laws to make them effective. And it will be the duty of this Commission to look through and follow up to ensure that parliament is passing these laws that are necessary to implement the Constitution; the Constitution Implementation Commission.

We have also sought to restructure certain office to make them more republican and serve the people. For example, the office of the Attorney General has been reconstructed to create a separate office from it called the Director of Public Prosecution. It shall operate independently of the Attorney General's office as an independent Constitutional office, then the Attorney General will remain with other matters. So prosecution shall be done by an independent Constitutional Director of Public Prosecution.

We have also sought to reconstruct the Controller and Auditor General's office to create two offices. The office of the Auditor General and the office of the Controller of the Budget. The reason for this is that, currently we have a Controller and Auditor General but who ends up only doing audits. In most cases, belatedly when the roads are rotten, when the money has been

squandered and has already changed many hands.

We are saying we want an office that can control expenditure before all the money is lost. A bodyguard can be following up after money has been appropriated to a department; they follow up at short intervals to see that that money is actually being applied to the functions it was appropriated. If they notice that there are some deviations, they can stop the expenditure before all the money is lost. But today, the reports of the Public Accounts Committee, you know they normally come three, four, five years late when the money has completely disappeared such that even if you try to trace you cannot find it. So we are saying we need to change, and several other offices, which we have dealt with.

When it comes to the devolution, if you look at Article 213, 214, we are giving principles of devolution there and we are hoping this enhances checks and balances and the participation of the people in governance. We are saying under this arrangements, we should be able to have five levels of government: the central or national level of government, the provincial level of government, the district level of government, the locational level of government and the village level of government.

In our definition the village is supposed to be the equivalent of the current sub location, that is what we are calling the village. These levels will exercise power as defined in this draft Constitution. We are saying that although there are five levels of government, there are four levels of devolution of government. The fifth level is the one we are starting from the central level, it is the one that devolves power down. But those that are receiving devolved power are only four: the province, the district, the location and the village.

We are saying in this draft, power shall not be devolved direct from the centre to the province but to the district. So devolution goes straight to the district, which is allocated quite a number of functions and then from the district to the location and then to the village. But for the province, power comes from the district to the province, because the province is basically a co-ordinating level at which districts in the province are co-ordinated in the running of the affairs at the district level.

In this devolution, we are proposing that we shall have the three organs of State at the central level, the national level: the executive, the judiciary and the legislature. But when you come down, we shall only have two organs instead; the executive and the legislature. The judiciary we are saying we must have just one judiciary for the entire nation. Running from up to down. But for these other levels, they can exercise legislative and executive power.

We are saying we want to separate powers so that if you go to the district we have separation of powers. We do not have a mixture such as we have today with the County Councils or the Municipalities, where the Council is elected, then it elects its own mayor and they meet the executive and legislative function. We are saying we want to separate so that even at the district level there is a distinction between the executive and the legislature.

We are saying, the district shall have District Council, which shall be the legislative arm of the district. But it should also have an executive arm headed by a District Administrator, elected directly by the people. Not by the Councillors but by the people. So in a district you will go and elect your own district administrator. You need to note that we have abolished provincial administration. So there will be no D.C. here. The person you appoint will be the one in charge of the entire district as the executive, with his own cabinet, drawn from the professionals in the department who shall be implementing policies and formulating some of the policies, but the Council shall be legislating on those matters that they can legislate at the local level. So that the connection is there.

The person we want elected as the district administrator, we had proposed but I saw it is missing her I will follow it up. He should be a person with qualifications almost similar to those of someone seeking to be President. He must be thirty-five and above and of that higher level of education. This person can be removed from office. When we were talking about people holding office at or during the pleasure of the people, we said we need to create mechanisms through which the people can express their pleasure or displeasure and remove people from office. So for parliament we have provided here that the people can recall a Member of Parliament through certain votes you will read through. They can say we are displeased, he will know which. You don't have to wait for five years, you can remove him even after two years.

For the District Administrator, we are also providing a mechanism for the people to express their displeasure. They have elected him, they must be able to remove him if he is not behaving the way they like. And we are saying the district council may vote to have him removed from office and they require two-thirds to remove him. Once they have voted with two-thirds to remove him, then a referendum will be held to confirm whether they want him removed or not. The people shall be given an opportunity through a referendum to confirm the removal. If the people reject, then the decision of the council will not be effective, the District Administrator will continue. But if the people confirm, then you are removed from office and you pack and go, they elect someone else to take over the office. That is what we are proposing.

We are also saying that in this arrangement of devolution, devolution is about power sharing, sharing of responsibilities. So there is a mechanism of allocating those responsibilities. There are two approaches. One approach they say, you have responsibilities that are purely for the central government and you have responsibilities that are purely for the lower level of government, say the district.

Another approach they say, you have responsibilities that are purely for the central and those that are purely for the lower levels but you have others that are concurrent where the two levels meet. They perform them jointly. So we have gone for that system. And if you look at schedule seven, we have tried to show how these powers could be divided. The powers of the centre, the responsibilities of the district and then the concurrent ones where both levels perform.

Now, we argued that in dividing those responsibilities, we must be informed by one very important principle, the principle of

subsidiarity. There is a doctrine that is developing in the world known as subsidiarity, which is saying that in allocating functions you must ensure that responsibilities are performed or discharged by the lowest level of government that is able to appropriately perform those functions.

What that means is that if the districts can perform certain functions appropriately, there is no reason leaving those functions or responsibilities to the central government. What can be done at the district should be done at the district. Only that which cannot be done at the district level should be left to the next level of government. That is the doctrine of subsidiarity. So that you do not get some officers at the centre, nosing around here and taking everything that you can do yourself and telling you they can do it for you. We are saying what you can yourself at the district you must be left to do it yourself. Then let the government at the higher level do only that which you are not able yourself to do at the lower level.

In doing that, you may find that most of the functions will end up being at the district level and therefore in that atone, the question of the need to discharge those responsibilities. Once you have allocated responsibilities, you must also allocate the means that are necessary for the discharge of those responsibilities. And that involves the allocation of the power to raise revenues that is necessary to perform those functions, the revenue raising power. We are saying, revenue can be raised through taxes or through borrowing and we need to decide. If we have divided the functions, how do we divide the power to raise revenue?

In an ideal situation, the approach would be the principle of need. You are looking for revenue to perform functions so you must look at the functions each person has. When you are *nopimanga abandu tsingubo umalanga uhenga uli mukhongo nupimakho imbana numunyelele nopima inyelele*, the need principle. So we must look at the responsibilities to be able to see. If the districts have more responsibilities it therefore follows that, they need more money to perform those functions as compared to the centre which may have lesser responsibilities. So in dividing the power to raise revenue, in dividing the means to perform the functions, you must look at the functions. Who has more functions and therefore needs more money? That must be borne in mind.

That is the ideal situation. But in most places you find that many countries leave most of the powers to raise revenue at the centre because when it comes to...(end of tape)...they want to lend to the main government. So most powers are normally left at the centre and we are saying that if more powers are left at the centre, then the need principle must apply when it comes to sharing what the centre has raised. When it comes to sharing the money that has been raised by the centre, the need principle must come in. If the centre has lesser responsibilities, it must not retain more money, it must retain less and more should go to the district to enable them to perform their functions. The need principle, it must be applied here.

There is also the question of equalization, which is also an aspect of the need principle. We don't start at the same level. There are those, which have already gone ahead. Some districts are doing well, others are doing poorly. Now how do we equalize

to make sure they are the same? And that would mean those that are behind they have higher needs they should be given a little more money to pull them up, so that they can come to the same level. We have provided for equalization and we are supposed to be working on more detail so that equalization is taken into account and we see.

Then there is also the question of the resources themselves that are located in the area. We are seeking, we are trying to see how to define national resources as distinguished from regional resources. So that resources that are located in certain places must benefit more the people who come from that area than other people. So that when you are sharing out resources from Mumias Sugar Company, the people of this region should get a little more than other districts that want to get from that. All those are going to be looked into.

Then we have the question of inter governmental relationships. When you create different levels of government, you must expect dispute. How do you deal with those issues when they arise? What is the role of the judiciary in settlement of those disputes and so on? All that has to be addressed and we have tried to mention we are still working on detail.

In those arrangements, there is the question of the power to intervene. Can the centre intervene in the affairs of the lower levels of government or not? And we are providing here that in certain circumstances if the district is found to have become a rogue, it is not serving the people in the interests of the welfare of the people, the central government may intervene. But we are saying if it does intervene, because we are saying we want republican principles, people must themselves choose their leaders. It can only intervene for ninety days, within which fresh elections should be held to elect a new district government or Council.

So the people must quickly be given an opportunity. And there are grounds that must be proved before the centre can intervene in the affairs of the district alleging that the government in place in the district is not running their affairs properly. There are certain grounds that must be proved and if they are proved, the centre must intervene and remain governing the district only for ninety days within which elections must be held within which elections must be held for a new Council or a new administrator to be elected to continue running the district on behalf of the people.

Then there is the question of staff, recruitment of staff. The district shall have their own powers to recruit their own staff, and the centre will have its powers to recruit its own staff. But we are saying because the centre in performing all functions may find it has to do some of the things in the district, it will be forced to post some of its officers in the district. Because some of the things that are supposed to be done by the centre cover the entire country and so the centre must post its officers in the district.

However, we are saying since the purpose is to serve the welfare of the people and therefore what the centre is supposed to do in the district is that it is supposed to serve the welfare of the people, we are saying the people in the district must have some control, must have some say on who is being posted there to serve them on behalf of the centre. And we are providing that in sending representatives of the centre to the district, the centre must consult with the district. If the district finds the centre is

trying to send thieves there who have been stealing from all over the district can say they don't want. They can reject.

We are saying there is a power for co-operation between different districts so that you can liaise with another district. And in this respect, if someone is being sent here in Butere Mumias and you here he has been serving in Siaya, you can co-operate with the Siaya District and find out how he was performing and what kind of person he is. If he has been a thief, they will tell you he has been a thief and you can be able to say we don't want that.

And we are saying that should help us in getting serious public service. Those public servants who believe you are sent here to steal and thereafter you go to your godfather at the headquarters when the people are complaining here and you are transferred to another place and you again steal and you keep moving on... Times are now changing. You will be rejected in one or two districts and you will become unemployed. You will simply lose your job because no district is willing to accept you. Then you have to go and look for other ways to survive. That is what we are saying about devolution of power.

Finally, there is the question of transitional arrangements. You will see we have talked about land, we have talked about public finances and we have put the people at the centre so that the management of finances is for the benefit of the people. But coming to transitional arrangement, we are saying we are moving from a particular situation to another situation. We are transiting from a past to a future. But when you are transiting you must know how to go about it.

I said the other time when I was here *babolanga ebuluyia likhaniafu nilienya okhwibula liatikhanga ta? Na baana bakwa yiyo nalio likwa yiyo nilifwa*. When the chameleon wants to give birth the Luhyias say it bursts, the children fall there as they move on, the mother falls there as it dies. So the question is, this Constitution that we are making we are trying to use the existing Constitution to produce a new Constitution. How is our chameleon going to give birth? Will it give birth like the ordinary chameleon so that it bursts and then it dies as this one moves on or is the death going to be gradual? So that certain elements of the past are carried forward as new elements are introduced to that one? How do we go about that?

We are saying our chameleon may not die in that style of instant death, it had to be gradual. And we are saying there are certain elements of the past which we will want to carry forward. There are elements that are new which we are introducing and infusing in as we move on.

So we want to identify what we are carrying forward, how do we move in? *Nga lulola igiya ye indika munyololo kuchendanga nikunina nikutsia kuri*. How do we move in from the past to the future? And we are saying that in doing that, the State, which we have created, the republic has certain rights and obligations. We are saying those rights and obligations will not die with the chameleon because we have introduced a new Constitution. They must continue. If the government owes you money, it owes you money. It should not refuse to pay you, because the new Constitution has come into place. The rights and duties of the State shall have to continue.

We are saying existing laws shall continue but subject to their being modified to be consistent with this Constitution pending their being repealed and replaced by those that are consistent. Because we don't want anarchy, life must continue and if we say everything has died, then we might find we have a Constitution but with no laws. So we are saying the existing laws shall continue but they must be interpreted in such a manner as to be consistent with this Constitution until parliament has changed them to replace them with those that are purely consistent with the Constitution.

Cases that are pending in court shall continue. The courts shall continue serving the people until they have been reconstituted. Officers who hold certain offices shall continue until new ones have been appointed. That is what we are saying. Now those Kenyans we are saying we are abolishing death penalty. So anybody who has been sentenced to death, but has not been executed, we are saying that sentence shall now be commuted to life imprisonment automatically. When the Constitution comes in, if they were just putting the rope to hang, we say stop it at that, it is now over you cannot hang. That is what we are proposing.

Elections; we are saying if the coming elections are held under this proposed Constitution, they will be conducted by the existing Electoral Commission, pending the appointment of the reconstituted Electoral Commission. And we are saying that the Electoral Commission that is in place will be given ninety days within which to wind up after those elections and hand over to the new Commission because we are expecting it will have been appointed by that time.

We are saying that if we go to those elections under this Constitution, I told you those who are exempted from some of the new rules we have put here and so on. We therefore are saying, the new offices we are proposing here must not be filled. Appointments to them must not be done until elections have been done, for the national council, for the national assembly and for the new government. Until the new government has been put in place. The reason being, that we are saying we are coming from a past.

We are saying we have been having a bad system, Moi has been putting his own people, incompetent people and so on. Parliament is bad... We don't want to allow him to fill these offices before he leaves. So we are saying, they will remain vacant until we have finished elections and a new government is in place so that we can start appointing fresh people to start us off.

Now, we are also saying, when we go to elections, political parties... I did not talk about them when I was talking about elections. But we are saying political parties, we are not limiting them to a specific number, although people asked for that. We are saying on political parties, we set certain conditions that will ensure the numbers are reduced.

One, we are saying the reason why many people seek to register political parties is because today you cannot go to elections unless you are nominated by a political party. So we are saying this time round you can be nominated by a political party or

you can be an independent candidate nominated by a thousand people. So if you can get one thousand people to sign, you will be an independent candidate. And our position is that, if that happens, some of the parties will just die away because people will know you don't need a party to contest for elections.

We are also setting conditions on the basis of which political parties should be registered and we are saying if you don't meet those conditions you cannot be registered. We are saying if you go to elections twice, consecutively and your party is not able to win any single seat, it will be de-registered. We are saying the parties will be funded by the government. 0.3% of the annual budget will go to the political parties funds and you will not be entitled to share in that fund unless your party has secured 5% in the national elections.

When we have elections your party must get at least 5% of the national vote before it can be entitled to share in the money. That money we are saying 50% of this will be shared among the qualifying parties on an equal basis. The remaining 50% will be shared on the basis of the percentage of the votes each party received in those elections.

We also have said in sharing that money, we shall also give more money to those political parties that have managed to bring more women to parliament. Because we said when you say nominate, they can nominate where they cannot win, they can nominate and decide not to bother to campaign for them to win and say we have nominated. So we are saying you force them to nominate women who can win. You force them to campaign for those women so that they can win, we should wave some money in their eyes. And tell them if you can do so, much as they may not like the women, if they hear money, they may say 'well, wacha tumweke yeye tu because we will get money.' So we hope that will bring more women to parliament.

We are saying for transitional arrangement that the parties that are registered now, when this Constitution comes into force, if we go into elections under this Constitution, those parties will be allowed to nominate candidates to participate in the elections. But they will be given twelve months within which to regularize their positions. And we are saying the registrar of political parties is going to be the Electoral Commission to regularize their position with the Electoral Commission, to show that they meet the required standard as a political party.

If twelve months end and you have not regularized your position or you have tried to regularize and the Electoral Commission has said you don't qualify, then that party shall stand dissolved. And those who would have been elected to parliament or to any other office on the basis of that party will remain members but will be converted into independent candidates. So that when the next elections come, they can choose to go to any other party or to continue running as independent candidates. That is what we are saying about the political parties.

About the executive, I said the President we have today will not be allowed even to be the Member of Parliament for Baringo Central. Provincial administration, we have said it is abolished. The people must role themselves through elected leaders, so

there shall be no provincial administration. And we are saying in the first place it is a misnomer for us to say we are abolishing it because in the first place it didn't exist with the Constitution. It was not provided for by the Constitution, even in the law. The only office of provincial administration which was provided for in law under the Chief Authority Act is the office of the chief. These other people do not exist in law, D.Os, D.Cs, they don't exist in law. But we are saying because we know on the ground they exist, for the avoidance of doubt, we are saying in this Constitution they are abolished. And we are saying they will report back to their employer, the Public Service Commission for redeployment.

We are saying, pending the constitution of the new councils, the devolved councils, the affairs of those councils will be run by the central government as we still wait for the election of the councils and so on. And the central government may choose to delegate its own provincial administration in the meantime as we elect the new people, or it may choose to delegate to the existing county councils and so on. And once we have constituted the devolved councils, then they quit and the new councils come in, start recruiting their staff and so on.

However we are saying the pensions and gratuities that are accumulated by those people shall be payable. They will not be abolished by the Constitution; they will still be entitled to get those gratuities and pensions so that they continue.

The judiciary, which you have heard has been up in arms against us, we are saying it must be reconstituted afresh, thoroughly, so that it can streamline the politics and the economics and other social lives in our country to get things moving. And it is our position that if we write a new Constitution without clearly changing the judiciary, fundamentally we will be wasting our times. Even that Constitution will not take root.

So we are saying, the Supreme Court shall be appointed after we have appointed an interim Judicial Service Commission. The Judicial Service Commission shall be appointed on an interim basis because:

- One, the representative of the Supreme Court will not be there because the Supreme Court will not have been appointed.
- Two, we will not allow the Court of Appeal to appoint its representative until we have reconstituted the Court of Appeal.
- Three, we will not allow the High Court to appoint its representative until we have reconstituted the High Court.

So, we shall have the other people mentioned operating on an interim basis until these other things have been done.

We are saying the Supreme Court shall have seven judges, one of them the Chief Justice. And we are saying the judges of the current Court of Appeal and the High Court will not qualify to go to the Supreme Court, that means Chunga will not be the Chief Justice, that is why you can see he is very bitter, but we are very serious about it.

We are also saying that, the retirement age of judges shall be reduced from seventy-four to sixty-five. Right now, the judges of the High Court and the Court of Appeal are supposed to retire at age seventy-four. We are saying, we are reducing that age because republican principles require people to hold office for a limited period and we think seventy-four is too far. We are also saying we want harmonised retirement ages for all constitutional office holders. So all constitutional holders will retire at age sixty-five. Commissioners in the commissions we have mentioned and so on at age sixty-five and no more.

Now, we are saying therefore that any judge in the Court of Appeal and in the High Court who shall be sixty-five and above when this Constitution comes into force shall automatically have to retire and take his benefits. We are also saying that if you are not sixty-five but you are at least fifty-five, you shall be given an option to accept voluntary, early retirement and you shall be given your benefits. We are saying in calculating your benefits, we shall give you an additional five years of service and then you get and go. You will be given an extra five years to look like you had served for an extra five years and you retire and go. And you must accept that voluntary early retirement within thirty days of the coming into force of this Constitution.

We are saying if those days end and you have not accepted that voluntary retirement, then the next step will be for us to look at whatever complaint that has been logged with the anti-corruption unit, with the Attorney General's office, or with the Law Society's Disciplinary Committee. Any judge who has any complaint logged against him in these departments, all those complaints will be handed over to the interim Judicial Service Commission which shall look through them. If they find that any of them have substance that merit further investigation, you shall immediately be sent on compulsory leave pending the investigations and if they are proved, you shall be removed from office as judged.

Three, we are saying, those judges who are not sixty-five and who do not opt for voluntary retirement and who do not have any complaint against them, shall be required to immediately, within sixty days to report to the Ethics and Integrity Commission and declare their wealth and the sources. The Commission shall report back to the Judicial Service Commission. If they report that your declarations are not satisfactory, you shall be removed from office as judges. And we are saying the vacancies created shall be filled by the Judicial Service Commission, which shall advertise them, so that people know. Today you just hear people have been appointed, people are being sworn in and how they are appointed, nobody knows. We are saying this time round, the Judicial Service Commission shall be required to advertise, to let people know, to let advocates know, to let magistrates know. Let those who are interested apply and let us look at their merit, before they are appointed.

Once the vacancies have been filled, that is when the High Court, the Court of Appeal and the Supreme Court shall be allowed to elect their representative to the Judicial Service Commission. Those are the proposals we are making.

We are also saying here, land in Kenya shall not be owned by non-citizens otherwise than on a leasehold basis of a maximum of ninety-nine years. So if you are not a Kenyan citizen you cannot hold own a free hold, you can only own a lease, and the highest lease you can have on land in Kenya shall be ninety-nine years. So we are saying, when this Constitution comes into

force, those non-citizens who own land with a lease of more than ninety-nine years shall have that land automatically converted into a lease of ninety-nine years. And at the end of the lease, the land can revert to the Kenyan government and to the Kenyan people for their benefit. Those are the proposals we are making.

Time has run out, but I think I have now given you all the highlights. That is the Constitution we have proposed. We are not perfect. We are saying we are reporting to you, you should be able to debate, you should be able to discuss, you should be able to give us your comments and if you think that there is anything we have proposed which is not good you should tell us. You should also tell us what changes you want put.

You have thirty days from the 27th of last month, to discuss and debate and hand in your comments. Because there after, a national constitutional conference will be called to discuss, debate, adopt or reject this as a Constitution. That is subject to Moi not calling elections or dissolving parliament this month and calling for elections. If he doesn't, we shall proceed towards the end of the month with the national conference. But if he does, we will have to wait until elections are held because Members of Parliament are supposed to be part of the national constitutional conference. Thank you.

Anne Nambiro: Thank you Commissioner.

(Clapping from the audience)

Anne Nambiro: For those who came in late, my name is Anne Nambiro. I think most of you are familiar with me, my face and talk. I will take this opportunity to invite anybody who has got any issue or question to raise with the Commissioner. Students first, any issue? The community, *nikaba ulicho nende liswali liosi, liosi nohomba shiokhubola shiosi, shiosi nyala khukhuhakho* 30 seconds One, any other? Two, three, four... thank you. I will take up those four names.

Nahashon Were: My name is Mr Nahashon Were. I have one word and I will speak in Luhya. *(In vernacular)*

Mr. Commissioner, *nditsire ninjelewe, ne habundu ha human rights, nende customary laws, shimbere neshili ukhufafanuliwakho nohomba khengorwa, efindu fino ndola khurakhokhomo fifa vilimo, habundu ha bandu bapendekesinja amakuwa ka kienyeji, tsimila tsiabo ukhutimiswa, yilo nilio lirebo liandikombelekho khureba, nikakhaba mbu elienelo lirelwakhwo mukaso noho mba tawe. Kwa mfano abaluyia bali nende imila mbu nibafwililwe bakholanga emisiro chiabo noho tsichenjachenja bulano bise bino eshindu nga abaluyia be shikofu ukhuba nende eliga yabo traditionally kama busaa, ke tsinzeshe, findu fie ikabila yeyo, yako nako amarebo ka ndakhareba bulano.*

Anne Nambiro: Number two.

Speaker: Mr Commissioner, Sir I would like to thank you first for having produced a good Constitution that promises

Kenyan's milk and honey. My questions are...

(Interjection): Inaudible.

Sakwa Jackson: Oh, I am sorry to have forgotten to give my full names. I am Sakwa Jackson, a student of Law from Moi University. I would really want to ask the practicability of this Constitution. We are sure that Kenya is not a country like the U.S., how can we really implement it with our little resources? These so many offices that you have come up with? Thank you.

Then on the case of dual-citizenship. Supposing Kenya is at war with Uganda, how will it carry out that case of dual-citizenship? Supposing a Kenyan citizen is also a Ugandan citizen gives information concerning Kenya to Uganda?

Then, in case of women, we see that you have provided them with equal opportunities of education and other things. So, we should have an equal level playing ground between men and women, not this case of giving them on a silver platter whatever they want.

In the case of the Prime Ministers and the President. I find it uncouth having a Prime Minister who is a Head of Government, who is not directly elected by the people and a President who is somehow ceremonial, elected directly by the people. Here the people are not directly involved. Thank you that is enough for now.

Lwando Mungalla Isaiah: My names are Lwando Mungalla Isaiah. I would like to thank the Commission on what they came up with. But looking at land ownership, when you give one a leasehold on ninety-nine years and this land is unproductive... Lets say someone owns five hundred acres of land and the land is unproductive for ninety-nine years, there is nothing being grown there. That land is just but useless and therefore, I would like to suggest that the land lease also should have conditions that the land is productive.

Apart from that, I would like to look at the rights of women. The rights of women seem to be very much emphasized over those of men and the youth. I would like to say that there should be equal opportunities for example when it comes to university entry points, you find that women's points are lowered, while the men's side is raised. That is not equality.

Apart from that, I want to say that when it comes to exercising of powers for those people who will be elected on the district level, we should not just say that it should at least be the Form IV leaver. This person must be capable and the employment of those people who are going to serve in those district levels should also be qualified. Not Class Eight leavers, like those people who are collecting revenues in markets. They should be Form IV leavers who are well versed in what they are doing.

Anne Wanalo: My names are Anne Wanalo. Langu ni Kwamba ningependa nimuulize Commissioner nikiwa na neno langu la kuongeza ama kutoa, niandike nipeleke kwa District Co-ordinator, nitajuaje kama it was looked into?

Com. Mutakha Kangu: I will start with the lady. You can see that we have come back to you and the experience we have had kila mahali tumeenda ni kwamba ingawaje people are making small comments here and there, generally people are saying what we have proposed has reflected what they have said. So there is some measure of trust that should start developing. And the position is, if you give your document to the District Co-ordinator, we will get them. Because they normally bring everything to us.

However, the alternative is, Butere Mumias District has three delegates who have been elected to go to the national constitutional conference. You also need to know them. You can give your suggestions to them because these are the people who will be debating at the conference.

In addition to those three delegates from the district, you also need to know that all your Members of Parliament will be part of the national constitutional conference. You can also hand over whatever you have to them. They will be free to raise those things at the national constitutional conference. We are in the process of planning how that conference will be made open and if we have financial facilities, it is our hope that the conference proceeding should be broadcast live. And people wherever they are seated will be able to listen to the debate as they go on. We hope to get facilities to get that done. So I think that will take care of your concerns.

The level of education for district leaders, I understand it is important; the people are concerned about quality leadership that is based on sufficient intellectual preparedness. Enhancements have been going on for example the issue of the qualifications of the Prime Minister. I personally argued and I lost the argument but people have started raising it again. There are people who are asking, if the President must be a university graduate why shouldn't the Prime Minister also be a university graduate?

We had a long argument on that but I lost the argument because my position was, the Prime Minister should also be a university graduate. And the argument was put that you see the Prime Minister is chosen from the majority party in parliament and if we are saying to be in parliament you only need to have gone through Form IV, then anybody who goes to parliament should qualify to be Prime Minister and I was saying no. if a party becomes the majority party but it doesn't have amongst its own Members of Parliament any graduate, then too bad for them. Then they should understand the Constitution and know that if they are seeking to run the government, to produce a Prime Minister, they should be able to bring some MPs to the house who qualify for the Prime Minister. I lost the argument but it has been raised in many other places and I think they are arguments that will re-appear at the national constitutional conference.

So even your argument that why should a Prime Minister who is not elected by the people be the one to run the government have started coming up and you can pass over the argument to those who will attend the conference to bring it so that we see if the issue can be reconsidered. But of course you see what we are saying is that the President has a fixed term and unless

removed through a vote of no confidence, he remains president until the end of the term. The Prime Minister on the other hand is so temporal, parliament could vote no confidence in him and he is removed. The president could recommend processes of removing him and if he gets the consent of parliament, he can remove him even before the end of the five years. So his position is a bit temporal. But the president whose position is determined is the one we are saying must have those qualifications but it is an argument, one we are picking up.

That issue of qualifications again, we had a long argument. My colleague Hassan was really in agreement with me, because there are those of us who are saying, even parliament we should insist on university qualifications. But there are those who argued against that and we lost but we believe that if the Kenyan people finally agree on Form IV, then that will be a consensus and we must respect it despite of our personal views and thinking.

Women, you are saying we have given them too much. Maybe I need to ask a question. When I was talking about devolution and I talked about equalization... *enywe shinga na bandu ba Butere, Mumias* Can you have moral authority to stand up and say, 'Kiambu District *yatsia imbeli sana* we want equalization money to bring us to the same level? Now, if you can have moral authority to ask for that, that is what we are trying to do for women. You see, if as a region you can say we were left behind, we need equalization money to raise us to the same level with other districts, then women have moral authority to say as women we have been left behind. Before we even talk about competition, can you first bring us to the same game? Because we are not competing on an equal basis because of past imbalances and injustices. And they normally say, equality is not treating people equally. It is treating equal people equally.

So if you start off with people who are not equal, it will not be equality to say you want to treat them equally. *Nutsia munzu yumo obusuma ni bwakharenjekhwa, umushiele amalanga amanya omwana ulitsanga kalaha khandi ushili ukhumanya okhumeka aranganga amumechela afura bupoha khwamuhesia ta? Nalola abandi bano nibayungubala bali okhumala nayoyamwo shironje shikhongo nara kando abola mwana wanje ikhala kando betsa ukhukhumalila* Isn't it? Because *nobekhasia hano akhashieka ukhumeka khalia nende abamanya ukhumeka bano nubabolela mbu mbwobo lie khatsia khurulakhwo inzala*. That is what we are trying to... We are saying women have been left behind. Before we talk about equality, can we bring them to the same level? *Notsia mutsisikuli muno belukha yi-relay wayirebakho why etsilaini tsichorongwa* the one who is in the inner lane *yanzira hanyuma hano nulondakhwa, asutakhwo hano*, why do they do that? Because they know the circumference these people are running is not equal. The one in the outer lane, if he has to go round the field will cover a longer distance than the one in the inner lane. So that is why they say the finishing lane is the same but the starting point is such that they begin at different points so that they run equal distance. If you are trying to measure who is running faster, you must give them equal distance to run. And we are saying our women have been left behind. To say let us start dealing with them as if they are equal now, we will be lying that we are treating them fairly. It will still be unfair because they will be running longer distances than the men are running.

Affirmative Action, ideally is normally periodic and we may have to think about how long should we give them. Like Uganda, when they provided the district seats, they put a period of review. They review I think after ten or five years to see whether women have started winning seats on their own, then they can do away with the district seats. So we can consider. Because Affirmative Action must be periodic, once they have reached a certain level, we say they can compete equally.

The practicability of this Constitution and the finances for implementation; we are saying the system of government we have today is very expensive because a lot of money is lost through corruption, mismanagement, incompetence and so on. This is because we lack proper mechanisms of putting competent people in offices. We are saying the structures we are providing if well implemented, they should be able to do away with mismanagement, corruption, incompetence and in the process we should be able to make some saving. That should be able to give us enough money to run the government.

We are saying we are abolishing provincial administration. We are instead putting there elected positions. That will be able to save money. People have said that even the second chamber is going to be expensive and so on. But it is our belief that if all these structures are properly implemented, first we will save money, secondly the economy will be properly managed and it will start growing. So we will produce money and we should be able to have enough money to pay the people. The people who will be holding those offices are Kenyans who are looking for jobs. I have argued over the question of retrenchment and said, it is a very stupid policy of doing things.

Retrenchment is like you are saying *Lelo lwa khurali no busuma munzu muno bulahela tawe ne ndi nende abana munane banne balalia ni banne bakone inzala*. You are not solving the problem. The solution is how to look for enough food, *bosi balie shichira lwa ukhali ni nabo*, isn't it? So we are saying, the solution is not for us to worry about expenses, the solution is for us to worry about how best to manage our economy to create enough resources that can be enough to go around. And we believe this should help us to create more finances to implement the Constitution.

Secondly, Kenyans need to know that our leaders behave like they don't even know the potential this country has. This country has enough to go around. The problem with this country is that most of its wealth is in the hands of a few. The distribution is not fair, that is why we normally say we are poor. You will notice, the two presidents we have had, over the past thirty something years, have engaged in plunder, in plundering of resources.

The World Bank and the IMF, refused to give us money I think around 1990, but you can be surprised that the Kenyan economy has survived those ten or twelve years without donor money. That means, we just have enough, if we are able to manage it properly, we can actually live without those donors. Our problem has been mismanagement.

The potential, if you look through the constituency report in which we have put the potential of this country. You will be shocked that about 80% of the Kenyan land is not arable through the use of natural rain, you will need to irrigate. But the

percentage of the irrigation potential we are using is so little. There is a lot of land, *notsia kutsia Moyale* ... (incomplete) A country like Botswana right now earns a lot of money from livestock farming, they export meat to very many European countries. So there is a lot of potential and if you let the local people themselves start running these things, they will be able to harness this potential and things will be able to move. So we hope that will help us to move.

Human Rights, culture and customary law, I am sorry I didn't mention. But if you look at your documents, Chapter Five is the Bill of Rights. A very elaborate Bill of Rights, talking about human rights, you will need to go and look at it. Then on culture, you go to the preamble, I said we started by recognising our ethnic, cultural and religious diversity which we want to protect. Then if you go to the Bill of Rights, Article 63(a) which deals with language and culture, we are saying everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of these Bill of Rights.

Persons belonging to a cultural, religious or linguistic community may not be denied the right with other members of that community to enjoy their culture, practice their religion and use their language or to form, join, maintain, cultural, religious and linguistic associations and other organs of the civil society. No person may compel another person to perform, observe or undergo any cultural or religious practice or rite. That is where you will get the things that women have been complaining about, FGM and so on. We are saying nobody shall be compelled, because those are cultural practices, let them do them if they consent. No person may be compelled to indicate or define his or her ethnic or racial affiliation on any document or whatever.

So culture is mentioned there and I think laws shall be developed that shall be able to identify the details of the cultural activities that we are talking about. The things we are talking about like traditional beer, it is not only here that we have been told, in many other places too. In fact in Teso, it was brought out in a very intelligent way I had never thought about. They told us, in Teso the traditional beer was a mechanism for exchange in labour at the traditional level. *Abashiele sana bakofula abalanyala okhulima mukunda tawe lakini balitsinjia omukhono omulayi okhuyenga amalwa, nibayenjele nibatililekhwo nikalula kabisa*, all they used to do *nikhuyenga ni munwa kukhupwa lelo kayenjele wa fulani lakini mutsie khuchaka nende emilimu*.. So people would come in the morning, *batsie mumukunda kwo mushiele bamulimile bakhole* everything *barache bulano* in the evening *nibosia ebelenje betas bulano batira oluseshe*, and they were complaining because of the banning of the traditional beer *abashiele* of that time do not have anybody to till their land for them. And they have no money to pay people to come and till their land for them. But otherwise traditionally, all they would do *nokhuyenga amalwa na bandu betas babalimila* and they pay them by way of giving them *amalwa*. And that is all. Thank you.

Anne Nambiro: Thank you Commissioner. I think now we have one hour, we still have another session in the afternoon in Butere Constituency. So before Madam Janet prays for us, I take this opportunity to invite Councillor to give a vote of thanks.

Thank you.

Anna Wanalo: My names are Anna Wanalo, nominated Councillor. Ningependa nichukue nafasi hii kumshukuru Principal wa Bukaya Secondary School pamoja na walimu wenezake na wanafunzi to have given us this hall. Tuwe na mkutano mmoja.

La pili, ningependa nimshukuru Assistant Chief wa Bukaya sub-location though Katiba mpya ime-abolish provincial administration. Lakini kama ingekuwa leo, we could have taken care of him. Now, we want leaders who attend such meetings.

So wananchi you keep an eye, mjue ni akina nani wanakuja kwa mikutano kama hii. Katiba mpya... will just select by itself.

Thirdly, ningependa niwashukuru kina mama, wazee, na wanafunzi ambao wameichukua nafasi hii ku-attend mkutano huu wa leo. Wamepoteza nafasi zao lakini wamekuja, we have learnt a very important issue.

Lastly, nitamshukuru Commissioner. You have been very educative. I think all your students have been passing your examinations very well. Kama leo tungekuwa your students, because all your time here you have tried to use the three languages. Hata kama pengine umekosea kwa hii unatumia ile nyingine. Thank you very much. Nitamshukuru pia the District Co-ordinator, mama Anne Nambiro for the good job you have been doing. You have been running round, sending information to every mwananchi. Thank you very much.

I also cannot forget our Chairman. He has been very sick, but he has tried and come here which is good. Lastly, ninawashukuru nyinyi nyote ambao mmekuja. For the Commission, I wish you a safe drive back to Nairobi and may God bless you.

(Clapping from the audience)

Anne Nambiro: Thank you Councillor Anne Wanalo. Now, I call upon Madam Janet Ayieta to pray for us, she is our CCC member from Esengere.

Janet Ayieta: Haya tusimame na tuombe. Kwa majina ni Janet Ayieta, CCC member. Tuombe.

Prayers: Mungu Baba, Mwana Roho Mtakatifu, kwa utatu twasema ni asante. Wakati tuliingia hapa tulikuomba na tuliombea siku ya leo, tarehe kumi na moja ili wananchi wa South Lwanga wakuje hapa wasikize yale maoni ambayo walitoa na waone kama ni mazuri ama ni mabaya. Yote tumeyasikia na tunaona ni ya kufaa. Na tunakuomba utupe nguvu ili tujaribu tufanye mengi ambayo yanaweza kulinda nchi yetu ya Kenya. Pia tunakuomba utupe usalama katika nchi yetu. Tunaangalia mbele kwa uchaguzi ambao huwa na vita na ghasia mbalimbali lakini wewe mwenyewe utuinue na uinue mkono wako ili chochote ambacho kitakua kipitie katika mikono yako.

