

**CONSTITUTION OF KENYA REVIEW COMMISSION  
(CKRC)**

**NATIONAL CONSTITUTIONAL CONFERENCE**

**Verbatim Report of**

**PLENARY PROCEEDINGS,  
PRESENTATION OF THE LANCASTER HOUSE  
CONSTITUTION, HELD AT BOMAS OF KENYA**

**ON**

**5<sup>TH</sup> MAY 2003**

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CONSTITUTION, HELD AT THE BOMAS OF KENYA ON 5<sup>TH</sup> MAY, 2003**

The meeting started at 10.45 with Hon. Godana Bonaya in the chair.

**Hon. Godana Bonaya:** Before we start the meeting I would like to request a woman or a man to pray for us.

**Speaker:** Ewe Bwana wetu, muumbaji wa viumbe vyote, tunakuomba utubariki katika kikao hiki, utupe usawa na pia tuweze kufanya kazi pamoja----- inaudible----- . Amen.

**Hon. Godana:** Inaudible

**Delegates:** We cannot hear.

**Hon. Godana Bonaya:** Can you hear me now?

**Delegates:** Yes,

**Hon. Godana:** Thank you. I presume all of us have a copy of the day's order paper and you will notice the first item of the business after prayers is the administration of oath. There are still members of our delegates who have not gone through the oathing process and I understand there are some here and they have to go through the process. May we have those people in front here, all those who have not been sworn in and who are ready to swear in now, may we have them in front of the podium I can see Mr. Murungaru and others there, please come over.

*(Delegates moving in front for swearing in. Prof. Yash Pal Ghai swears in the delegates)*

**Prof. Yash Ghai:** Honorable delegates, you repeat after me; Being appointed a delegate to the National Constitutional Conference under the Constitution of Kenya Review Act.

**Delegates:** Being appointed a delegate to the National Constitutional Conference under the Constitution of Kenya Review Act.

**Prof. Yash Ghai:** do solemnly swear,

**Delegates:** do solemnly swear,

**Prof. Yash Ghai:** that I will faithfully and fully,

**Delegates:** that I will faithfully and fully,

**Prof. Yash Ghai:** impartially and to the best of my ability,

**Delegates:** impartially and to the best of my ability,

**Prof. Yash Ghai:** discharge the trust,

**Delegates:** discharge the trust,

**Prof. Yash Ghai:** and perform the functions,

**Delegates:** and perform the functions,

**Prof. Yash:** and exercise the powers,

**Delegates:** and exercise the powers,

**Prof. Yash Ghai:** devolved upon me,

**Delegates:** devolved upon me,

**Prof. Yash Ghai:** by virtue of this appointment,

**Delegates:** by virtue of this appointment,

**Prof. Yash Ghai:** without fear,

**Delegates:** without fear,

**Prof. Yash Ghai:** favour,

**Delegates:** favour,

**Prof. Yash Ghai:** bias,

**Delegates:** bias,

**Prof. Yash Ghai:** affection,

**Delegates:** affection,

**Prof. Yash Ghai:** ill-will,

**Delegates:** ill-will,

**Prof. Yash Ghai:** or prejudice

**Delegates:** or prejudice.

**Prof. Yash Ghai:** and to the end.

**Delegates:** and to the end.

**Prof. Yash Ghai:** In the exercise of the functions and powers as such delegate,

**Delegates:** In the exercise of the functions and powers as such delegate,

**Prof. Yash Ghai:** I shall, at all times,

**Delegates:** I shall, at all times,

**Prof. Yash Ghai:** be guided by the national interest.

**Delegates:** be guided by the national interest.

**Prof. Yash Ghai:** So help me God.

**Delegates:** So help me God.

**Prof. Yash Ghai:** Thank you.

**Prof. Yash Ghai:** If you move to my left now, you can sign the oaths.

*(delegates signing the oaths).*

**Prof. Yash Ghai:** Well, I formally welcome you to the Conference and look forward to your constructive contributions.

**Hon. Godana:** Fellow delegates, I now want to give the chairperson of the Constitution of Kenya Review Commission, Prof. Yash Pal Ghai, the opportunity to make a statement. Prof. Ghai.

**Prof. Yash Ghai:** I just want to ask the Hon. Delegates to conduct the proceedings in a much more responsible way than we did last week. We got very adverse publicity for the way in which we conducted ourselves, we are in some danger of loosing the respect of Kenyans and I plead with you, please let's conduct ourselves with decorum, responsibility, and with the dignity that is appropriate for a distinguished body like this.

The delegates who have just sworn the oath have said, as you all did, that you will perform your functions without favour, fear, bias, affection, ill will or prejudice and that you will exercise these powers in the interest of the nation.

I think we need to constantly keep in mind this oath that we have taken and look at the wider national interest other than narrow interest. I also have to say that we now have three Vice Chairpersons who will be assisting me in the conduct of the work of this body and we are likely to have such distinguished persons as my colleague and I intend to share the chairing of the Conference with them. Starting today with Dr. Godana who brings great experience to this type of task and am sure he is much better qualified than I am, in keeping unruly members under control.

The programme today is going to be the presentation by delegates who went to the Lancaster House Conference to describe their experiences. When the Commission first began its work, and began to analyse the terms of reference and relevant experiences, we invited several delegates who had gone to London, to spend a couple of days with us in Mombasa and that is one of the most memorable periods of the Commission in this two and half years. They inspired us by the way in which they had conducted their own negotiations in London and put the national interest above all else. They were struggling for the freedom of this country under a Constitution which was democratic, provided for distribution of resources on equitable bases and provided many mechanisms of sharing power.

They also gave us their views on what had happened since then, what had been the weakness that had crept in to the present Constitution and we are very delighted that they are able to come back and join us today and speak to this wider audience. I hope you will listen to them carefully and see what lessons they have for us and what they have to tell us. So I welcome them very warmly and we look forward to the presentation. They will be coming to the chamber shortly and I am sure you will give them an appropriate welcome.

Let me just make a couple of other points. The order paper says that there will be the constitution of the main committee of the Conference. As you know we had asked the Provinces to give us names of delegates from the Provinces as proposals for the composition of these

committees. We are yet to receive the names and as soon as we do, the Steering Committee will use those names to establish the working committees. Working committees will not begin work for the few days yet, because in the beginning we will have a general debate and plenary. It is only when the draft bill is --- inaudible --- that their work will also begin. So we do have a few days before that and we need to finalise that, but if the Provinces could give us the list that they have we can begin the process.

We will be very concerned to ensure that all the committees are balanced, to have representation from different categories of the delegates and that persons with appropriate expertise appear in the committee, since they are likely to make the best contribution. The committees will also then nominate the leaders for these committees and we hope that may be by the end of the week we will be able to publish the list of the members of each committee and the communal for those committees.

Another item on the document order paper is the presentation of the rules and regulations. The Steering Committee met this morning, it was its first meeting since it was established on Friday and we decided that, because some of the rules are complex, and there had been various suggestions for some minor amendments to be done, the Steering Committee would examine those regulations and propose changes with the assistance of the working committee on the Steering Committee. Before that matter is brought to the Conference, we hope that by tomorrow we can bring the recommendations of the Steering Committees in conjunction with the CKRC as to the final frame of the regulations.

It is important to get the regulations in place, finally agreed and gazetted as soon as possible because work must be guided by these regulations. If they don't come to the Conference this afternoon, we hope they will come tomorrow morning. That is the same thing I would say about item 6, the presentation of the Conference documents will be made tomorrow morning.

These are the draft bill and the report, which you already have seen and read I am sure. And there are some other documents that the Commission has prepared which the Commission believe will assist the work of the Conference and we shall make those available as well. Whereas these are not official documents because they are not documents identified in the Review

Act, but we believe these documents will facilitate the work of this Conference and those will be available. We will do that tomorrow and once those are tabled, I will make a statement in support of those documents and then we can begin the debate and the proposals of the CKRC.

With that, I wish to invite Dr. Godana to take charge of the proceedings and invite the delegates from Lancaster House Conference to make their presentation. Thank you.

**Hon. Godana:** Thank you, Prof. Ghai, perhaps at this juncture I should also register my thanks to the delegates for the manner in which they entrusted one of the slots for the Vice Chair, me, and indeed I will be speaking on behalf of my Co-Vice Chairs for the manner in which again they entrusted responsibility to my Co-Vice Chairs.

I want to assure you that our responsibility is to work as your servants from the chair and you can expect fair and impartial conduct in the proceedings. We do hope we can count on the cooperation of each and every one of you, after all we all have a common respect in the successful delivery of the new Constitution and dispensation that we are seeking. New dispensation, which will accommodate all Kenyans in their diversities. I also want to announce on the subject of a re-look at the regulations, which Prof. Ghai already mentioned. The ---- inaudible---- committee of the Steering Committee, it has been mandated to have a re-look at the regulations in the light of suggestions which have come from various members, will be meeting over lunch hour today and we will wish therefore to request that anybody who has proposals on some of the provisions to submit them in writing to the office of the secretariat, Mr. Lumumba. Let me make an appeal, we are not re-writing the regulations, we are just going to look at those provisions where we find they need to be tidied up and where we think such tidying up will actually remove complexity and otherwise assist the Conference and its committees to proceed with its work smoothly. With those few remarks....

**Interjection:** Inaudible

**Hon. Godana:** I think the panelists, persons who will lead us in the discussions on the Lancaster House experience, they were to be led in by Mr. Lumumba, but I think they must be still on the way. I do see Hon. Shikuku sitted at the entrance of the hall.

**Interjection:** Point of order!

**Hon. Godana:** Yes, what is your point of order?

**Joel Kipyegon:** Mr Chairman, Hon. Chairperson, I am delegate number 368, Joel Kipyegon Sang. Before the veterans share their experiences with us, under regulation 32, I have a privilege motion I wish to raise. That the National Constitutional Conference recommends that the out of pocket allowance for delegates be adjusted from Kenya Shillings 2000 per day to Kenya Shillings 10,000 per day to adequately cater for the extra expenses arising from their re-location and inconveniences arising there from.

Mr. Chairman we stay in hotels and we have a lot of problems. We can't have our clothes go to the laundry because they are damn expensive and again we can not even afford a soda, because this laundry is costing us a lot of money and we do not have time to do some of the work we normally do at home.

We are pre-occupied with a very important exercise, we have left our families, our spouses, they come to visit us in these areas and we have to cater for them, they have to come. We cannot break families to make a Constitution. So Hon. Chairman that is the motion I am moving right now. Thank you very much.

*(Laughter)*

**Ms. Marida Owino:** Mr. Chairperson Sir, I am Marida Owino, representing Siaya district. In seconding this motion, I would like to confirm the sentiments conveyed by my colleague, the mover, and state here that his position is supported by all the honourable delegates. With those few remarks I beg to second. Thank you.

*(Clapping and discussion on the floor as the Lancaster House Conference Team gets seated.)*

**Hon. Godana:** Before I turn to the subject of discussion for this morning and the distinguished elder statesmen up here from the Lancaster experience I want to say regarding the proposal

which was seconded on the floor here, that the Secretariat of the Commission which works on a fixed budget has informed that the matter will be referred to the Steering Committee, or may be a joint meeting of the Steering Committee and the Commission and an appropriate response will be made to the delegates from the Chairman of the Commission or the secretary of the Commission. But I will advise that they are working on a fixed budget from the government.

Coming now to the subject of our business this morning, I think we are lucky, up here at the high table are, not in the order of seniority, but in the order in which they're sitting. I do not know who is senior and who is not, they all senior statesmen. Hon. John Keen to the extreme left, Hon. Shikuku, Hon. Nyagah.

**Hon. Nyagah:** Hamjamboni?

**Hon. Godana:** Hon. Oneko, Hon. Nthenge, Hon. De Souza, Hon. Kiano, Hon. Denis Okumu, Hon. J. S. Otiende, Hon. Taita Arap Toweet. Gentlemen, you are all most welcome and I am certain that these delegates whom you have not seen, some of you or many of you, some for a long time are very eager to get the benefit of your wisdom about the experience from the earlier Constitutional Conference negotiations, perhaps the most difficult Constitutional negotiations where you were negotiating with the colonial power whom you struggled to expel from this country.

I am told they have already agreed on the order of speaking, they haven't given me the list so I suppose once I say they may take the floor, they know who takes the floor first. Gentlemen, you may take the floor. Hon. De Souza, I am told is the first speaker.

**Fritz de Souza:** Honorable Chairmen, distinguished delegates, members of the review Commission, ladies and gentlemen. First of all, I would like to express our appreciation on behalf of all those members who survived 31 years since we drafted the Lancaster House Constitution and negotiated the freedom of Kenya till today. May all of them live a long and happy life.

*(Clapping)*

I would also like to thank my colleagues for giving me the honor and asking me to lead the discussions. I can assure you that it will be free and frank and we will tell you what we believe and we hope you will take some note of it.

As you are aware that 18 months ago, we were invited to a workshop in Mombasa to discuss our experiences in the Lancaster House and we gave you full memorandum of a 20 pages detailing all the problems that were faced then and I would advise for the future so that some of the mistakes since then are not repeated. I do not suppose to repeat to all of them here, since that would quite long and I would request secretariat to distribute that document to all of you because I think you will find that our experience has been useful, to guide you in this difficult task. Don't forget as we all went exactly through the same process that you are doing today.

Then we went to Lancaster House, we had preferred to move to London because we could not decide who to go and who not to go so we decided to take everybody and we comprised of all races, religions, tribes, cults, communities, rich and poor and everybody. And to our very great satisfaction, we came out unanimously and supported the new government. Don't forget that we started from very opposite points of view. One group wanted majimbo, another group wanted the secession of the coastal areas as a separate state such as of Zanzibar and another group wanted a strong unitary state. But we argued and argued and we talked and talked and in the spirit of compromise and in the spirit of determination to succeed for the good of the country, we are all giving in a little bit, nobody won totally his point of view and nobody totally lost his point of view but they came up with what I believe was the best Constitution that could possibly have been achieved in that particular time and I have no regrets and I think it was the best. It contained safeguards, checks and balances to ensure that no one person or group of persons could impose a dictatorial regime in the country. It included a totally independent competent judiciary, a fully elected parliament of two chambers, popularly elected Members of Parliament on an adult franchise for all citizens of Kenya and a Bill of Rights, which guaranteed basic human rights and the rule of law for all citizens.

We started with great euphoria and hope, the euphorian hope for a very happy and prosperous Kenya. for the first few years the economy in Kenya was moving ahead in leaps and bounds. However, following amendments to the original Constitution the stage was now set for Kenyans

to be subjected to one of the worst dictatorial and corrupt regimes in all Africa. We had lost our basic freedoms, our constitution had been seriously tampered with, and a once prosperous country was reduced to the verge of bankruptcy. With this came unrest, indiscriminate arrests, total subordination of the individual to the state and inhuman torture chambers.

With kind regards, how did this come about, how did they allow, how did this country allow this to come about. The decline began soon after independence. The colonial government, our common enemy, which had kept us together in the independence struggle, was not now any more an obvious threat. But pre-independence rivalries, personal and ideological, resurfaced again. This time they were fuelled by the cold war with foreign powers providing substantial resources and cash to their preferred friends inside and outside the Government. Rival leaders vied with each other to demonstrate their own loyalty to the President and to show that they were better able to provide support and resources. They also tried to accuse their rivals, not only of disloyalty but also of alleged conspiracies to take over the Government. Rumours of caches of arms abounded. The Government which had obtained most of its resources from one group of nations for the independent struggle was persuaded and suddenly agreed to move to a different group with greater resources.

In the move to prove its loyalty, some leaders claimed that some provisions in the law and the Constitution encumbered the free hand of Government and decided to dismantle them. First to go were the Majimbo based provincial assemblies and governments. The Senate, the second chamber intended to provide an opportunity for further reflection and debate on legislation was also scrapped.

When a bill was moved to reintroduce the formerly unacceptable “Detention without Trial”, I personally objected very strongly against it. I said that we had all fought and argued vehemently against this on principle during colonial rule and in my opinion nothing had changed to justify it now. I also argued that it could lead eventually to the arrest of innocent people and might eventually lead to the destruction of democracy and human rights in Kenya. I was told that when we fought against detention without trial it was because it was imposed upon us by foreign government. I called that rubbish, that time until now. Now that it was a free government, African government which knew and understood its people it would never be abused by Africans

against Africans. They declared that it was actually meant to protect democracy in the country. MPs with views like mine were overruled and the bill was passed into law. Gradually, other bills were introduced one by one ----- (inaudible) altogether which abolished safeguards that were specifically introduced at Lancaster House to ensure that Kenya never degenerated into a dictatorship. These bills were all passed into law with little or no debate. I will tell you exactly how it happened.

National Assemblies itself agreed all the members, passed all this self-destructive legislation. Each draft bill was distributed and the first or formal reading given. The titles of the bills were usually vague and nobody appeared to be innocuous or innocent enough. On the morning of the second reading the debate reading from the bill to be discussed to be passed. Parliamentary Group met under the chairmanship of the President. The Group praised the Government, demanded total unity in view of perceived enemies within and without parliament, spoke of the disastrous ways of the opposition and threatened those who appeared to be working against unity. We were all given some bogus enemies that we were fighting so that we pass this bill. The Group decided to stand firm and vote with one voice for the Government and what they said was for the good of the country. We then all sang KANU yajenga NCHI and after a good lunch, proceeded to voted en bloc and we passed the second reading, the committee stage, the report of committee stage and the third reading all in two hours or so without almost any debate. We then began singing KANU yajenga NCHI again to celebrate our super victory, not realizing that were actually facilitating the end of democracy and freedom in Kenya.

Kenya became a de facto party State because the Registrar General refused to register any other society interested in politics. According to the law as you all know, if a society or Political party is refused registration or if the registration is cancelled, that society becomes illegal. At the time the country was told that there would be full freedom within the ruling party, we are talking to Kenya one party state but if you have the chance to speak and to organize and etc. But soon KANU Headquarters announced that nobody could stand for any election whatsoever, nobody however important whether the Vice President or any minister or any single individual could stand even for parliament even from a single party without clearance from the Central Office. Except that nobody knew what central office was. Quite a few people who had views were refused clearance by Central Office and therefore pushed into political oblivion.

Now it is your job ladies and gentlemen and very important job at that. The draft Constitution that ensures that this does not and cannot happen again. As the President said on Wednesday 30<sup>th</sup> April, with great sacrifice and even loss of life we have now won the second liberation and I personally would like to say on all our behalf a great respect commendation of those young people who spent night and days and took great risks and fought for second the liberation and we are very lucky that we are here today because of those people who sacrificed and with willingness fought for their rights. Otherwise we would not have been here, we would -----  
--(inaudible) looking every time we make a new one -----(inaudible) behind us which is to happen in so many restaurants. We had an opportunity to rebuild Kenya both economically and politically. At one time remember we were economically equal to South Korea, Singapore, Indonesia Mauritius, many of the big countries that I have known as the -----(inaudible) of Asia etc. Today we are now among the poorest countries in the world. It came 114 out 120. It is very very sad.

We are fortunate however, to have as our new President, Mwai Kibaki, who is one of the most intelligent, liberal, honored, fair-minded and humble Presidents that I can think of. I can say this with some authority, as I have known him personally since over fifty years when we were fellow-students at the London School of Economics. He certainly is not vindictive. He forgets and forgives his enemies, sometimes people grumble that he is forgetting too quickly. His loyalty and love for the country far transcends all other loyalties. He is not a tribalist. Nationalism and patriotism have been the driving force in his devotion and motivation in his political life. He proved himself again on Wednesday when he made a really landmark speech which deserves to be read over and over again. I am sure it is not one of those speeches tackled by civil servants -----(inaudible), it is rather read these days. It deserves to be read over and over again and in which he fully supported democracy and human freedom. He has give this Conference his full support and he has promised to complete freehand to the CKRC that is yourselves, to draft a new Constitution in your wisdom and your experience. I am sure you will take advantage of this and give us the best Constitution, you give the country a Constitution that will keep fair play democracy and freedom for at least fifty years. They say experience is what their mistakes, and wisdom is to learn from your own mistakes but also from the mistakes of

others. Today, we confess our mistakes, and as elders of the country, permit me to give you some advise to enable you to avoid the same mistakes again.

First, Do not personalize the Draft Constitution. Do not draft the Constitution with any particular person or persons in mind, make sure that no person however good has got too much power concentrated in his or her hands. There should be provisions that---

*(Clapping)*

There should be provisions that the laws of the Constitution cannot be amended in a hurry. For example, in many countries before the Constitution is amended, they publish a white paper or a green paper which is left open to the country for discussion. Then the countries people are allowed to write memoranda, speeches, etc, then they get the feeling of the public. Something like going back to Wanjiku. It is important because you don't tamper with what you are doing because that will seem very easy as you did it thinking that you are fighting some imaginary enemy and then cutting out our legs or our hands without realizing it. We didn't realize what we were doing because we were pushed in a way that we don't want it happen to you. Then we got the first reading, the second reading and the full debate and what I am suggesting to you that you should have at least one month, at least some people will say two or three months before we do each reading. So that nobody can draft and rush people through by fears etc, you keep----- (inaudible) I think for six month at least for any of the bill to pass -----(inaudible), time, the public and the newspapers, the intellectuals, the professors, the trade unions and all the organizations can bring their genius and merit to bear on these things so that they can really expose if there are any wrongs in this Constitution amendments and so be very careful. We must maximize our safeguards and have in place obstacles to remove or tampering with them. We must make sure that the bill of rights is not denied, is not cancelled because that is the cornerstone of the Constitution.

Secondly, we are aware that the Constitutional or Law only creates a frame-work for the governance of the country. Unfortunately it cannot provide for every possible eventuality. In this unscrupulous persons in power who could possibly, with the help of conspirators in the armed forces, police etc., want to subvert the Constitution. We must make it as difficult indeed almost impossible for them to do so. One of the things here is education and democracy to the public, to

understand their rights and they should fight for these right and nobody should be entitled to put anybody in prison without trial. It doesn't matter what they say whether in this government or in government or any other government, it doesn't matter. Nobody should be put into prison until he is charged, is taken from open court and then he is got full right to get his lawyers to fight the state and even when he is convicted by a judge, an independent judge then he will only be put in prison and that also only for the time for which he has been committed is permitted to prison. Nobody however senior in government, the special branch of police etc is a genius that he can know whom to put and not to put and should not be given that power by any means.

Thirdly, the Commission has made the tremendous progress in its work in very difficult circumstances, and which I congratulate you all, I congratulate the Commission but there are still some very important issues to be decided.

- a) Position of Prime Minister and what powers to allocate him or her in the Constitution. I do not want to go into this because that is a very hotly disputed item. I think we are aware about, all I can ask is to admit over and over again, let us not have a division on this or public division. Parties should sit down together and argue and discuss and come up with an answer which is agreeable and suitable to all parties concerned and to the country as such. Is not the question of personality, it is the question of the country.
- b) Position of Sheria Law in our Constitution. At Lancaster House we also felt that it was not the wisest thing to have separate courts for only one religious group as other religious groups might also claim the same privilege and we might have ten Sheria court or something equivalent. However as this special arrangement had been in place since the time of Sultans in Zanzibar and also during British rule we decided that it would be best to leave well alone as English say. Provided the courts affect only Muslims and that they are also restricted to personal laws regarding marriage, divorce and succession only, we could let the provisions in the Lancaster House Constitution continue.

What I would like to say, is that there was a Commission here many years ago and -----  
------(inaudible) which has ------(inaudible) part in the ------(inaudible) law. It is a very important problem in Kenya because if persons of two tribe gets married, two

persons of different tribes get married like my friend S. M. Otieno, we do not know which tribal laws are senior and we do not know exactly what are tribal laws. If persons of two races marry or persons of two religions marry. So this I will suggest and it is always necessary for your view to decide is that all marriages in Kenya should be registered. Even religious marriages should be registered at the Registrar and at the time of registration, the two parties should declare on both personal affidavit which religion or oaths they want to be bound by in cases of divorce and succession, because succession is a very important point and of course in Kenya -----(inaudible). I think that is also something that they should announce at that place, that evening I die, I should be put in so and so place. I think that will solve a lot of problems in the future because they have decided. The other thing of course is also that the marriage should be polygamous or monogamous. That is another stage because some of ladies are taken into marriage, being promised that you would be my only wife and then of course the young bride comes along after 40 years of marriage she is told well you see this is part of African customary, if you don't like it, you can get out or sometimes physically go out. I am sure ladies here will understand the meaning.

*(Clapping)*

- c) what to do with new political districts? These have been established since 1963 and I think most lawyers will admit that the government did not have the powers at time to do so. However, as they have already been established it would arouse considerable opposition to scrap them unless it is very clear that they were purely to enhance the reputation of a particular political party and do not assist the residents of that district in any substantial way. But we should now make clear provisions or criteria and to have the standards and the procedure by which we can decide or the country can decide whether a particular district should be divided into two or more or whether two or three should be united. I suggest for this that we have a small inquiry to inquire the formation of all those districts, ease the problems of the people concerned and then recommend what should be done. I think this would avoid early arbitrary decision which might be short-term politically useful to the people who made that decision but it is a long run harmful to the country.

- d) Fair and just allocation of parliamentary seats for all the peoples of Kenya, which in our opinion that does not exist today. In England there is a principle which were to be called the golden moral principle. That which some areas which you don't like have got actually say 100,000 voters from one MP and another where you think you are likely popular you have got 20,000 voter for an MP. So indirectly you are giving 4 times the number of representation to one group rather than the other. I know my friend will now - -----(inaudible) these Provinces will not agree but basically we Parliament and parliamentary members are representing human beings. Not nils or deserts or camels or cows and they should be entitled to have all human beings be entitled to equal representation. It doesn't mean exactly equal but some balance should be done and more human beings than land. I know that people in the other areas have large sets of land -----(inaudible) to go by cars and etc. But nowadays they have got cars, they have got helicopter, they have got everything. So this in itself is not a criteria.
- e) A competent and fully independent Electoral Commission. Its members should be strong and fearless persons with the staff and machinery and finance to enable them to supervise fair elections and make rigging almost impossible. Your present Chairman is a very lovely person, I know him very well and in fact I supported him and I retired from politics to be the MP for Westlands, Parklands as it was then called and I still think he is a nice person. But you need a machinery and finance in which you can supervise election yourself and may be you feel there is rigging it must be stopped if necessary at that time and restarted again. As it is in India and many countries, Electoral Commission has got a lot of power and you need the machinery to do it. You don't to have rely on the police who may be biased one way or another. And I think the other point is this that you have to make sure that each member comes from all the tribes and all the groups but they are really strong not afraid to take any decisions.
- f) The Judiciary must be totally independent, competent and incorruptible. This is the most important part. Without competent Judiciary, an incorruptible Judiciary every country will fail. And we had very strong provisions for Judicial Service Commission but no Judge could be appointed without going through lots of things like checking his personal life, checking everything and asking his colleagues what do you think about him, finding

out whether he was corruptible, or not and so on. And all those were abolished in fact at one stage Justice is Majid Cocker and the Chief Justice of the last Judicial Service Commission, we supported his judicial service but we never ----- (inaudible). If it is still existed, it has been so -----(inaudible) taken for granted.

Corruption can take place not only by money but also by allocation of houses, farms and the distribution of judicial jobs on tribal basis to persons who are tribally biased or not competent enough. Judges should not be liable to influence and should be financially stable. They should not be addicted to alcohol or gambling. Let me put it this way, I am not saying that poor persons should not be judges but if a person is on the verge of bankruptcy or is incredibly in debt, then the chances and temptation for him to take bribes one part or another is very strong. With all -----(inaudible) judges have been appointed on political basis. A particular leader was called and said I want to give you a position in my area. Choose on somebody who will be very good and will do what we will tell him to do and they did that so that -----(inaudible) judges. We want to get people who are totally independent and Judicial Service Commission must have the powers to investigate this person's background. -----(inaudible) the other lawyers know all about him. So the Lawyers themselves will know private/secretly they can tell what are thing he did wrong. I also think people were addicted to alcoholic life. I don't say alcoholics or gamblers are a bit dangerous because they are the people who are likely to loose very heavily and they look for other ways or other places to recompense themselves for the losses they have done.

- g) Similar provisions should be made for senior appointments in the civil service, the Armed Forces, Police, GSU, Special Branch or Intelligent units, CID and Senior officials and CEOs, executive official of all parastatals. Because this is the arm of government, the government goes through these people and they are supposed be servants of the people not the servants of the government, servants of people. That is why we call them civil servants. All such persons should be fully vetted before appointment by a parliamentary committee with powers and resources to do the same and the appointments must be approved by the parliamentary committee concerned and by parliament itself before appointment.

As you know in America, if anybody is appointed to be a judge or any senior positions. There is awkwardly questions about all that he did, if he has previous conviction and anybody is allowed to object and say this man beat his wife or did this or this one or woman it would tell us he made illicit advances to her etc. So that the public knows that this man is not a clean man and if he is not a clean man, he should go. We do not want a man to be appointed and then to find out rules or something to get rid of him. He should in the first place probably proposed. I mean, it is known that there will be this sought of investigation and query about the person's past and present. They will be afraid to push a person undesirable even though he has a lot of money or he can prove strict.

h) The functions of the Attorney General should be specifically divided between the Minister of Justice and Constitutional Affairs on the one part and the Attorney General. For my parts view I will suggest that all statutory function which Attorney General's department used to hold before, should go with the Ministry of Justice and Constitutional Affairs. But the powers of Director of Public Prosecution, this is a very important power, should be given to a person who is not political, who is totally independent and incorruptible because he is the person who can refuse to charge somebody or charge somebody and let the case go by default. We know what is happening in some cases. I don't want to name cases here, they can 10 to 20 years and they can be dropped at night. This is something that we must make sure that it does not happen because this is also a protection for the victims. The people are attacked of murder, raped, etc., they go the police station, that person is arrested, he goes away and he is not charged and they say we will come back again threatening me now. Such thing shouldn't have happened. He should be charged and the Attorney General would end up with full power to ensure that he is charged by competent Prosecutors and he is put in prison if indeed he is guilty after a fair trial.

i) I would be failing in my duty if I did not point out ----(interjection). I would be failing my duty if I did not point out what is likely to be a cataclystic disaster in Kenya if we do not take immediate steps to focus our attention and finance on the plight of the aged in this country. Remember all of you are young today. Some are little older than others and

I am sure there no lady more that 29. But before you can say Jack Robinson and you will find yourself like us in the 60s and 70s and perhaps 80, what do you do then. In the past the old social security system enabled the aged people to retire to their villages, to live with their folks and perhaps satisfy their meagre demands for food etc from their families. Unfortunately there are many urban dwellers today who have no homes or relatives to go to. If there are any relatives, they are perhaps themselves so poor that they can hardly keep body and soul together from the small produce received from the poor shambas. The Social Security Fund or NSSF and I think here I am the one who gave the proposal to the government to introduce NSSF originally with professor ----- (inaudible) Geneva we met in Mogadishu and ----- (inaudible) with the British government.

The social Security Fund for which these workers contributed to and is supposed to give them some pension or assistance in their days of need, has been totally looted. They therefore have given up trying to go to the Nairobi offices to claim their pensions as they are constantly told that their files are missing or they should come another day to collect their money. Finally when they have finished whatever little money they had saved on the bus fares and expenses to live in Nairobi, they are left with with nothing to fall back on but to starve. In addition this is a great tragedy. Their sons and daughters on whom they could have relied for support have perished in the Aids pandemic, which has afflicted the whole country. It is really a great problem for us. They are therefore doomed to give the little they have to their grandchildren who are even more helpless and cannot possibly fend for themselves. I think that it is imperative that something is done to help them in this plight and I suggest that the Conference draws the government's attention and inserts provisions in the new Constitution to ensure that the Government undertakes to look after aged people wherever possible. This also applies to handicapped and disabled people and children and adults and we hope that your words will produce some help for these needy but really powerless persons we cannot come with delegations of money to look after themselves.

Finally, as an elder, and I will be 74 years old in two months time. Many of friends are in the 80s. As an elder I would like to appeal to our present government which is ruling coalition of

political parties, that they should themselves be united and be seen by the country to be an effective and a united government. Any divisions within the government, depresses the country and its citizens and damages the good name of Kenya's image abroad. Please enter into discussions again and again and dialogue and dialogue in a bid to find an amicable solution to the problems concerned.

I know that you always formulate your policies for the good of the country but always keep the other party's point of view in mind and also his or her contributions now and in the future. Most of our leaders are very good people, ambitious yes, but which politician is not ambitious? But they must also be fair and realistic. Our leaders have won a landslide election victory, fought on a fair and friendly basis; they have developed countrywide support, love and goodwill for the government and have also created a team spirit among themselves. Please do not lose it. If necessary compromise, nobody gets his or her way totally. Nobody is totally right and the other party is totally wrong. The answer is to discuss in a free and friendly manner for the good of the country. Please do not squander the great goodwill that exists in the country today. Do not spoil the goodwill you enjoy between yourselves.

These are big problems to solve. There are still big problems to solve but there will always be bigger problems in the future, but solve them amicably, in good humour without being personal and damaging the team spirit and goodwill and trust in each other that is vital for the success of any government.

What is the alternative? If the coalition splits up, some partners may find themselves being manipulated and probably seduced to fight each other by people outside the government waiting in the wings with lots and lots of money that could buy themselves into power again. Please do not say that it will never happen here. It has happened here only a few years ago and it could possibly happen again. If this happens, history and future generations will condemn you, blame you for the chaos and dictatorship that might, and probably will ensue.

Thank you very much ladies and gentlemen.

*(Clapping)*

**Hon. Godana:** Thank you Mr. De Souza I take it that the secretariat will reproduce and circulate your paper. Mr. De Souza as many of you will know held among other responsibilities that of Deputy Speaker of our Parliament at one time. And next in line is Honorable Jeremiah Nyaga who also held the position of Deputy Speaker at one time, the first African Deputy Speaker but also held many ministerial portfolio. Mr. Nyaga.

**Hon. Jeremiah Nyaga:** Bwana Mwenye kiti Wakenya wenzangu hamjamboni! Hamjamboni!

**Audience:** Hatujambo!

*Applause*

**Hon. Jeremiah Nyaga:** I will speak the language of Kingereza and Kiswahili where I can feel that I'm convincing you. First of all I must describe myself, I am a simple man who was a Minister for some 13 yrs and so years for the Kenya government and I was in Parliament for 36 years, Legislative council, they are one of the same. I was very happy when we were invited to come and share with you and make an appeal to you that we should do what our elders who fought for independence some died others recovered others are still crippled. We expect that we will create a Kenya that governs itself to the majority of our citizens.

Then we took over from them to establish what they were saying or what they were doing as they were having to, they said now that we have gotten independence and described ourselves as the Leaders of ourselves in the directions of prosperity. We must build a Kenya that is peaceful, a Kenya that is united, and a Kenya that is prosperous. We also discovered that we had to preach that we have few enemies, we discovered few enemies. Enemy number one: ukosefu ya elimu ya kutosha, walimu, wanafunzi, mashule kitu kama hicho wanasema hiyo ndio enemy number one. Enemy number two ni ujinga, tumesema ujinga, wale wako lack of advice. We had very few secondary schools and our education was not well as it is now, but we have not reached the end of our imaginations and expectations. Please my friends do your best to complete, we don't want Kenya that is divided, we don't want Kenya that is full of un attended diseases or health and we don't want a Kenya that is poor. Looking at you here I see and I say thank you God you have

made Kenya move a step in the right direction don't lose the direction of fighting for a Kenya that is free, united and prosperous.

### ***Applause***

Today you can have your heart operated here in Kenya, you can have very complicated operations and treatments for your health those days that we .....**(Inaudible)** we did not have enough doctors, we did not have enough educationist and so on teachers qualified. Today I'm glad to see that we have about over five universities, we didn't have people with degree and I'm sure that some of my friends here nyinyi wengine ni madaktari na elimu keep it up don't do anything that is going to stop. If you want your car to go along the road chungu mashimo, na utakwenda ukirukaruka chungu mashimo ambayo yanaweza kutokea. Nataka muwe united, Kenya iwe prosperous na tupendane.

When we went to Lancaster House all method has been shown of getting Mwafrika kusikizwa anavyosema. Every time there was meeting even when the colonial Secretary came here with his team, people will go in the night with the settlers that were here and what that they discuss or appeared to be favoring Mwafrika ina kosekana. Do we have MPs here? Kuna ma-MP?

**Audience:** Yes.

**Hon. Jeremiah Nyaga:** Wengi, mulipokwenda kujiandikisha mliulizwa kama unajua kusoma? Hapana. Uliulizwa mshahara wako au kitu chako kuleta utajiri kwako? Ni shilingi mia mbili kila mwezi, kulikuwa na a lot of handicaps, some of them were even loyal are you loyal? Not by individual, not by section of society lakini kwa Kenya. Tukapigana tukasikizana tukiwa hapa tufanyaje? Tuende mahali pengine nje ya Kenya pahali ambapo tukasema hakutakuwa na vitu vya kuharibu yale tuliokubaliana. Lancaster ikaingia hatujui cha Lancaster tulisema tukaenda Zanzibar huko kwa Kwi na Prime Minister wake. Tulikuwa wangapi walioanza kuuliza hivyo walikuwa watu wanane Wafrika selected, wale wengine kama Wazungu na Wahindi waliokuwa na watu wachache ambawo hawakuwa na shida kama zetu walikuwa wengi. Mwaka mwingine mmoja baada ya kuisha na wale jamaa waliochaguliwa wanane, watu wengine sita tukakubaliwa nikaingilia hapo, nani mwingine hakuna hapo. Tuliingia tukiwa watu sita tukaungana tukawa 14

na hawo 14 out of 200 aren't you mkashindwa na kutengeneza Kenya. Sisi tulitengeneza that is why you are dressed the way you are dressed. That is how we came here with convenience and that is why we are talking as independent Kenya. Kama mkipata nafasi tukirudi nyumbani tutunze ya kwamba iwe Kenya moja enye mabarikio ambayo inapigana na adui zote. Tulikuwa kumi na nne basi ngoja tuende nje hatukuweza kuenda Tanzania hatukuweza kuenda Uganda, Nigeria ambawo walikuwa wamepata uhuru wawo tukaenda mpaka ulaya. Tukapewa nyumba iliowachwa na Queen na Ma-king wa kule inaitwa Lancaster House, huko tukasema maneno mengi ambayo yalikataliwa na hawo majamaa na sisi tukangangana tukawa tunawinga maoni. Dr. Otieno yule na Bwana Taita hebu wasimame mwaone wale ambawo waliongeza hilo jambo, hebu simama! Hata wewe.

### *Applause*

Mwalimu wa chuo ki kuu wa university hapa Nairobi, Bwana mkubwa, PDO ambawo Wafrika wako nayo mimi nilikuwa mwalimu tu kutoka skuli ndogo ndogo lakini tulifanya bidii ambacho ilitufanya tuwe watu wa tafadhali na nyinyi mfanye kitu ili watoto wetu, wajukuu watoto wenu wapate nafasi ya kuenda mbele na kujifurahisha. Nasikia kuna ngamizi ya poaching ni nyinyi tu mnaharibu ni sisi tunaharibu, wacha kila Mkenya ambaye ni mzima ni mpenda Kenya akubaliwe kujiandikisha naye ajue ya kwamba anachukuwa responsibility ya watu milioni thelathini sasa imekuwa kama milioni mbili au tatu kitu kama hicho.

Here we are is a he is Mayor and he is just about to go he is not going anywhere, but unajua uzee huko harika yangu huyo miaka 84.

### *Applause*

Tunashukuru Mungu na atupe nafasi ya kuwarudilia, anaitwa Bwana Oneko. Ukipata nafasi nenda Kapenguria utaona nyumba walizokoa wakitufungia aina za cells zimewekwa kama part of the nation, hapo ndipo tulikwenda tukaona nyumba ya Kenyatta, Kagia kina Oneko, Paul Ngei, Karumba, wote wale hawa enjoy what they fought for ni nyinyi. That is the saying of view shughuli zenu za kufanya kazi hizi za kuandikisha au zimelegea tulitengeneza kiplani. Kiingereza nikaanza kuingilia kidogo ati we united with? United we?

**Audience: .....(Inaudible)**

**Hon. Jeremiah Nyaga:** Divided?

**Audience:** No.

**Hon. Jeremiah Nyaga:** Mnataka ku- divide ama mnataka kuungana? Inueni mikono wale wanasema hivyo. Mungu atusaidie katika jambo hilo ili wale ambawo watakuja baada yenu waweze kupata njia ambawo ni bora kidogo. You know I come from a place called Embu na Mbere hizo hakuna siku hii zamani zakale kabla hatujaanza kujitawala nilikuwa nikichukuwa siku mbili you go there at 6 o'clock about 9 nilikuwa hapa si ni maendeleo hayo? Wacha tutengeneze zaidi ya hapo. If you keep on saying wewe ni Mjalu, wewe ni Mkikuyu, huyu ni Mluhya, huyu ni Mkilifi call each other a Kenyan. Hakuna Mkenya ambaye hataki mambo ya maendeleo mambo ya utulivu katika siku hizi tulizo nazo na siku zitakazo kuja.

Don't underage the ordinary Mwafrika mwenzako, the ordinary Mkenya mwenzako hata yule mama mnyanya wanajua mambo usije ukamwona ovyo ovyo. Don't misinterpret or usi.....usifanye nini? Usidharau, usiharibu ukweli wa kitu fulani. Ati ukusikia Harambee unafikiri hapo umepata nafasi ya kufanya mambo yako ambayo hayafai? Ukisikia mtu amekuja kwako na anataka kuona mtu mwingine ama anataka kitu kiingine, be generous let him see let her see na usimwambie toa TTK toa kitu kidogo. I am not being forced to sit but I agree, nimeambiwa you cannot hear me well when I'm standing I'm far away from this gadget. Speakers tuko na moja kadogo na mimi naona zimejaa hapa hata ma television mnayo sasa you have facilities ambazo you can help yourself and the people. Matunda ya Uhuru yalitufikiaje? Mnajua alitusikiaje? Mnajua matunda ya uhuru yalitufikiaje? Mtu aliye hapa ambaye hakupata transport nzuri ya kuja hapa? Mtu aliye hapa ambaye alipitia kwenye vyumba ovyo ovyo na ana njaa? Mtu ambaye ako hapa ambaye hasikii Kiswahili? Mimi yangu ni Kiambu lakini nimeendela nimepata Kiswahili hata Kingereza naye, na wewe pia umepata nafasi ya kujifunza help Kenya to be a good Kenya educated, free of diseases and so on. I happened to be the Chief Scout, a Chief Scout anasema tukiwa ma-scout do your best for you country and for our God

help us at difficult time na tena obey the rules that are legal hapana kusikilizana ovyo ovyo. Rules hizo ndizo tunataka kutengeneza Kenya moja, Kenya nzuri ambaye imeathimika.

Nilipata nafasi ya kuandika miaka yangu yote hamsini na sita kuwa na mambo yangu katika Bunge: Ya kwanza wenzangu walinichagua nikawa first African Deputy Speaker.....(**Inaudible**). Na isitoshe President wa kwanza ambaye ametuwacha nilimwapisha sware him in, nyinyi nduguzanguni nataka kuwauliza kwa heshima mkubali kubadilisha wale ambawo wanauoga wa kubadilisha maneno ambawo yataleta maendeleo hapa Kenya aende akafanye..... can you hear me? Karibu nusu wa meno imekusha lakini isipokua akifundisha sikuwa na maneno ya namna hiyo. I hope you now being rich too by a man of 83 and a half years mtakwenda na sasa msem Kenya yetu ndio hii,. United we stand divided we fall. So we have traveled along way kutoka kule chini no education at all na hospitali hayakuwako hata health center ya kutosha na umasikini ulikuwako mwingi. Sasa imebaki kwangu kusema hii niliona marafiki wetu hapa Tanzania wameandika wakifundisha watu katika campi zao, wananchi tunzeni mmetoka mbali lakini tunakwenda mbali we have not finished and so is my hope and my prayers to you that you will try your best tufanye hivi.

Nafurahia sana, nikisema watu watatu hapa, Marehemu Tom Mboya aliyekuwa Secretary wa group yetu hiyo alifanya kazi nzuri sana. Marehemu Murumbi ambaye alikuwa anafanya kazi kule Ungereza alitusaidia sana, maana hata pesa za kulala tulikuwa tunapewa ndogo sana. Kwa hivyo tafadhalini tuseme asanta kwa Mungu kwa kutetea wale viongozi waliokuja na wale wengine waanze kuwaiga ili tuweze tutengeneza Kenya moja nzuri. We have traveled along way and you have along way to go. Hakuna state of emergency kulala usiku katika nyumba ya nyasi ukichungwa na watu kuzuiwa kuenda mahali unatetea Kenya. Nakumbuka nilipokua Waziri wa Kenya katika Kenya nilitaka group yangu moja ije itembee, nilikwenda Embu na Nyeri ilikuwa area yangu hiyo watu kumi na nne walikuwa wanafanya kazi nilikuwa nafanya because we are many 14 times of today. Atajaribu hakuna watu wa Nyeri hapa, wako na watu wa Pwani? Wataita? Wako na watu wa kule Maseno? Na watu wa Kakamega? You know are the leaders of our country don't be lazy, don't be selfish, don't be jealous do your best to make Kenya good. Sasa mimi nasema Mungu awasaidie mkitoka hapa mtoke mkiwa na positive outlook ya kwenda kutengeneza Kenya yetu. Asanteni.

**Hon. Godana:** Thank you very much Mzee Nyaga it is difficult to time veterans especially who are in their ages but I know they have also tried their best they could each take a whole day. I hope we will be able to get through with three before we break for lunch so that we can have the rest in the afternoon. Next in line is Honourable Achieng Oneko.

**Hon. Achieng Oneko:** Mr. Chairman I would have liked very much to speak while standing so that I may measure to the younger generations who have taken over the Leadership of this Nation they have taken the keys exercises themselves trying to do the best for themselves they will live to the age of Bwana Nyaga and myself have managed. I just wanted to demonstrate that. Mr. Chairman first of all I would like to tell our people to tell this gathering here today that our invitation was just near to come and discuss clauses and write this and that put on and keep that off and give it to the legal expert. We in fact and me particularly, I decided to spare my time after receiving message from Chairman Ghai that they would like me to join other Kenyans. I decided to come to bless this gathering and to wish it well, I didn't come here to talk about Political Parties how they did very well during the elections, how things were peaceful and whose now making a mess on in or a success of the whole thing. I have come together with my colleagues to bless this gathering.

We have a new team we did not come here to make law or the Constitution but there are so many things which governs around the Constitution. You understand the word Constitution better than I do, but it is very important to take certain messages that we are going to echo that we are going to express our self on. Mr. Chairman this is a very useful forum for us because we are not sure in the first five years time what is going to happen to us, but most of you here are contemplating how they are going to fight another election. And I would like to take this opportunity also to tell you who I am because Bwana Nyaga has already covered the area that I would have wish to talk about and that is just near history it is not making the Constitution. I'm, I assume the longest acting politician in this hall today, because my first appearance in political activities was in 1945 when I started publishing and printing newspapers like Munyereri, Mrinambosi and Ramogi in Nairobi. This is the first time that we started calling our age group come along the British are eating up this Nation come, let us all unite and we get unity, decide to drive this people out of this country. I'm glade that they came we fought and successfully achieved our aim our objectives and that is our independence.

So you have today come to make a Constitution a strong body that will guide this nation, we were just answering another message that cause the younger generation to work together. Mr. Chairman I would like to skip something because I don't want anything that will push me talking about the government today and tomorrow. Today I want to talk about tomorrow, I would wish when we are looking at the Constitution to consider the position of elders just the same way the government and the parties have considered and parents or the mother have considered the position of children. We as senior citizens to put in a very civil language but we are old, it is upon the government to look after the aged people. Yesterday when I received the message that I'm wanted here to come and share with the younger generation the discussion on future Kenya I felt younger I had to decided even to get some money to go and sleep in Kisumu hotel, so that I can get transport to get here on time.

So it is very important I'm calling upon you please work on a Constitution that includes the protection and the recognition of older people. I don't think older people here they require a lot more, no just because they want to be recognize and their position be always identified. And the blessing we are also conveying today will always be intact for the future generation.

**Hon. Achieng' Oneko:** Mr. Chairman, I have observed one thing, and this of course one might call it criticism. I did not come here to criticise anybody but it is a point that, witch hunting going on or attacking a particular person, trying to point certain incidents that had taken place during the struggle or during the campaign just as in the same way, we had problems with the British. But Jomo Kenyatta told us that we should not really try to revenge because much time would have been wasted if we were going for the man. Please, please just work for the future and leave alone certain things or take care of those things, and to solve them in an amicable manner rather than to go for revenging because if you revenge again my Father, I will also try to pick on you. So, the Constitution also should be made in such a way that we might keep Kenyans' unity but with revenge or having certain groups in mind is a very serious thing and I think before God it is a sin. This is my appeal to you, which you will have to consider when you are writing the Constitution. Our duty is not just sit and write. No. We bless it and we want you for that.

Then lastly, Mr. Chairman, I know, you are very mindful of time, but imagine, I had to walk eight miles in mud to catch a bus so that I could make it to the hall. So, you will just give me one more minute

**(Laughter and clapping).**

**Mr. Godana:** You two or three.

**Mr. Ramogi Achieng Oneko:** Now, I want to just say something a sentence about the media. We have the media but it appears to me that our media is very much controlled by investors or foreign powers.

**(Clapping)**

Please for goodness sake, time has come for our country to be independent and I want to mention one incident, which I have observed about the war in Iraq, the so-called war in Iraq. I would have said quite a lot about it but I don't recognise it as a war because the Iraqi people never declared war but I remember when the second world war, the British declared war in 1940 the British said they are at war with Germany but I heard that the Iraqi leader was prepared for anything, but he never declared war.

**(Clapping)**

All the news that was given to us was one sided. The press tried to come in the middle of the road, but they couldn't make it because they had already spoilt our minds with one-sided information. I say this because I was also once a journalist and you can't cheat me on that one. So, I am appealing to the press and I am appealing also when you are writing or talking about human rights, you should emphasize very strongly on that but don't leave the Government naked. The Government must always be protected, secure to protect itself and to govern well. I know that the press would think, oh! Mr. Oneko is coming back again to suppress us like he did in 1964, 1963. No. I am not nationalizing the Voice of Kenya. No. Those times are gone. So, I would want the press when it comes to making the correct cover in the Constitution, the freedom

is theirs. They don't buy freedom. No. Freedom is Godly freedom. But you've got to be very, very careful not to land Kenya as a subject to foreign countries.

Mr. Chairman, I think I have run out of my points. Thank you very much

**Mr. Godana:** Thank you very much Mr. Oneko. You didn't run out of your points. That is being very polite for the squeeze on time. Thank you very much. The next two speakers will be Hon. Dr. Gikonyo Kiano and Dr. Taiittaa Towetee in that order. First, Dr. Kiano. He is at the far end of this table. Please take this. Yes.

**Dr. J.G. Kiano:** Mr. Chairman, I want to start by thanking very much the Constitution of Kenya Review Commission for preparing a very detailed Draft Constitution which is now in front of us and as I was looking at it, one thing I was particularly interested in was the Bill of Rights. Human rights are the essential element of democracy. If human rights are not respected by many systems of government then to call it democratic is to make a mistake.

Now in 1960 when we held the first Lancaster House Conference, the matter of the Bill of Rights was an essential part of our address to the conference. We said, there must be a Bill of Right and that has continued to be in Kenya's Constitution until today. What I congratulate the Commission about is that they have gone one step further, not only to declare the Bill of Right for the individuals and the citizens but actually to create a Commission on Human Rights and administration of justice so that those rights which are listed there, there will be a Commission to make sure that they are respected and that they are carried out and this is a great thing.

*(Clapping).*

So that human rights, we don't just read about it if it is violated, there is a Commission to which you can go and then say, look our right are being violated and as I was going through the list, I was particularly interested to see how they deal with matters of forced labour and I chose that one Mr. Chairman because one of the issues that was outstanding in my campaign when I was trying to get into Legislative Council in 1958 was the question of communal and false labour in our area. In fact I may confess that one of the people who helped me in that campaign was my

colleague, George Wilson Nthenge sitting right here and later he became a Member of Parliament and he could see that women were being forced to do forced labour, digging for roads, digging trenches by force and so, as I was looking at the Draft Constitution, I wanted to see what have they said about forced labour? And if I may express a slight disappointment, it says, slavery, servitude, and forced labour may not be exercised in the country. 'May'. Now, why do we want to use a submissive phrase 'May'? We must say, forced labour shall not be allowed, Servitude shall not be allowed, and Slavery shall not be allowed. I am sure the Commission will make that correction. It may be small but it makes all the difference. So, that is one point that I want to stress very much on the Bill of Rights.

My colleague, Dr. D'Souza explained to you the tragedy he had in matters of having a Constitution and amending it almost at will. He is talking in the sacrifice and the prejudicial of views regarding human rights.

Now, when we were in Lancaster House, we thought we were very clever by saying to amend the Constitution requires three quarters of the numbers of the Senate and three quarters of the members of the Lower House or the National Assembly. We thought that was a big thing to get three quarters. It's got to be difficult to amend the Constitution. We later of course reduced it to sixty-five. But the point that we over-looked which came later, we did not know that KANU and KADU would join together, form themselves into one body in Parliament so that even if you wanted ninety-per cent to amend the Constitution, you will get it.

*(Clapping).*

And this was one of our biggest mistakes in having said in (inaudible).

Now I have looked at the current Draft Constitution and although they talk about two-thirds, if you get two-thirds in the National Council which should be called Senate anyway, that is much dignified phrase, and also the Lower House, they leave out the need for going for a referendum except in a few issues there. *Kitambo* we could even pass any amendment we wanted because we did not have to refer to mwananchi to get his view.

*(Clapping).*

We made this a monopoly of Parliament. In this new Constitution that we are going to make here, if there is going to be an amendment of the Constitution, if we don't want to suffer the consequences of what we had before, make sure that we require whatever percentage you want in Parliament and also the vote of the mwananchi, a referendum.

*(Clapping).*

A referendum whereby at least two thirds of the mwananchi, two thirds of the voters also endorsed in that amendment. Why leave them out? Otherwise you will pass a good Constitution and then later you see it all diluted. My proposal is that whenever you have a Constitutional amendment, agree on the percentage in the House but also reference to a referendum. That is a very important point.

I was then looking at when we were again at Lancaster House, we wanted to be free. We wanted to be independent at what model to follow. We took a thing known as the 'Westminster model', that is the Parliamentary system of Government. One of the aspects of Parliamentary systems is to give the Chief Executive power to dissolve Parliament. The Prime Minister of England can stand up tomorrow and say, we shall have an election next month and I dissolve Parliament and of course we swallowed that. It is a violation and the principle of separation of power for the Head of State to say, I dissolve this House. He is an Executive. He is not legislative.

*(Clapping).*

I want to stress that one because in the Draft Constitution, that power is not allowed. It is known it has been rejected. Parliament is to stay there for a defined number of years and without any external authority telling you to go home.

Now, within that spirit of separation of powers, I am a bit concerned by a section of the Draft Constitution whereby you are making provision for the electorate if they want to file a petition to recall a Member of Parliament having been elected and recalling him before the end of the term.

That is a very, very big despair you will be creating. If somebody loses today and another guy goes in, within a year you will get a number of people and make a petition and the sitting member is recalled. That must not be allowed. Let us not create instability in the House. If somebody gets insane, there are laws how to handle an insane person. If he becomes a lawbreaker, there are laws. If he misbehaves, there is Parliamentary discipline. But let the man elected for the period of five years be stable enough to do his job and if he does the job badly, then you can recall him after that period but not during the period of service of parliamentary session to which he is elected.

Mr. Chairman, I then looked at the Division of powers which we talked about in Lancaster House particularly in Lancaster House in 1962 (Lancaster House II) and again in 1963 when we came up with regional assembly, districts, county councils, locational councils and so on. What you forgot to consider seriously are the financial implications of creating all these institutions and particularly vis-à-vis the development fundings which we shall require in the country. I understand that the Government has embarked on writing a five-year development plan. I hope in so-doing they will examine the Constitutional proposals made here and see how much they will cost us. I am not recommending or I don't think these councils or whatever councils we have. I remember how many sub-locations we have in the country. How many locations we have and if we shall have nine councillors and they must be paid and their working capital must be paid and vis-à-vis, the development to the country, it is important that we keep financial implications or to create very much in mind. That is why, because we did not do that within four or five years, rightly or wrongly, the regional assembly had to go and because there just was not enough money to go round. So, I just thought that whatever institutions and to that extent, I may add that the Draft Constitution is extremely vague on the responsibilities to be carried out by what is called a village council and a locational council. They do not specify them at all. Where there have been specific have been on the duties of the National Government and the district Government and where I would like to recommend that the Seventh Schedule in the Draft Constitution which gives three lists. List one the duties to be performed by the National Government. List number two to be performed by the District Councils. List number three, duties, which are known as concurrent, that is they may be carried out by either the National Government or the Districts. The reason why I have brought this up is because the District Government has been given a lot of responsibilities but what caught my notice was that nothing

exactly primary and secondary education are exclusively listed in List number Two for the District.

Now, obviously you cannot leave all the secondary education and primary education only to the Districts. No matter how much money you give them, the Central Government must play a part in the educational development of this country.

*(Clapping).*

Otherwise, the relatively poor districts do not even have enough Primary schools let alone the Secondary schools. Look at what the Government has just done recently and congratulate the Government for it, for introducing free primary education. Could our County Councils do that alone? They could not. And now to give them exclusively that power needs to be re-examined again and so, if you want to have powers for the Districts and powers for the Central Government let us also ask ourselves, I see you have said that after this Constitution, Provincial Administration is hereby cancelled. That is what this thing says and I agree with that. But if I listen to them talk about Provincial Councils. Now, if you remove Provincial Administration, and I said I am not here to recommend or not to recommend, I am just here to analysing like Mwalimu. You remove the PC alright. You create a provincial council, alright. What happens to the Provincial Medical Officer? What happens to the Provincial Police Officer? What happens to the Provincial Agricultural Officer? What do we do with these Provincial guys? Are they to be ruled by the Central Government or the Provincial Council or whoever will do it? These are questions you must face.

*(Clapping),*

How much of the Central Government do we want. Let us be not so afraid of power because the mistake we have been thinking about is how, is not removing power, it is how to control power. If you have a Head of State and he wants to create a cabinet, let him check with Parliament, which are the people, talk to them. If the President wants to spend some money, he must not add but the budget as passed by Parliament so that we as we go from the current Constitution which has got a lot of shortcomings, we don't create another one which will make the Government

unable to perform. You have sat here like Thomas Jefferson and other Americans who made their Constitution over two hundred years ago. Take your responsibilities very seriously. What comes out of here will also affect your children and your grandchildren. Don't let anybody try to mislead you for a temporary advantage. Thank you very much.

*(Clapping)*

**Mr. Godana:** Thank you, thank you very much Dr. Kiano. Now, the last but not least important speaker for this morning before we break for lunch will be Hon. Dr. Taaitaa Towett and I think we will have to make some rearrangement here by allowing him to come here. I see Hon. Nthenge has offered his seat. So, I hope we will be able to break for lunch at one and I do hope also that all of us, all us including the veterans who have already made their presentations, will be back here.

The last speaker for this Session will be Hon. J.D. Otiende. The veteran of the veterans. I am told he was a teacher at Alliance High School, who taught Hon. Nyagah but he still has a razor mind. So, don't think you (in audible). Thank you very much.

*(Clapping)*

**Hon. Taita arapTowett:** Mr. Chairman and all the delegates, validly and invalidly invited to this Conference. I salute you all and I feel very proud to see you with lensed eyes, I had an operation in my eyes already in .... (inaudible) and I can see some of you but I cannot recognize unless you are very close like Bwana speaker here. Now, Mr. Chairman, mine is very brief, after saluting you, very brief. I take over from Dr. Kiano where you say problem of sharing of powers. Everything in this world today is based on sharing of powers.

*(Clapping)*

**Hon. Taita arap Towett:** Whether you are a manager in a company who has got the powers to direct, whether you are a sweeper there must be a senior sweeper.

*Laughter*

**Hon. Taitta arap Towett:** So there is the problem of sharing powers that I am going to mention now or say something about it, the way I see it Mr. Chairman. I have no written speech and I hope my memory serves me well. Now you are here as delegates to write a Constitution for Kenya for tomorrow and years to come. You are only am telling you copying what has been done before. There is nothing knew you are going to write in your Constitution. What you are going to write is to copy and make it to measure from my height and from the height of my friend here Oneko.

*Laughter*

**Hon. Taitta arap Towett:** The same suit cannot fit him and fit me at the same time. So you as delegates have to remember that. The Elmolo men will not enjoy the facilities of Nairobi, even if you bring him here he will wonder what is happening.

*(Clapping)*

**Hon. Taitta arap Towett:** So when you write your Constitution to bring in parts of it from all over the world, remember we did it before. Mr. Chairman I hope the delegates have been given the original copy of the Lancaster House first Constitution. Delegates : no, they have got to read it. The original Lancaster House Constitution that we 14 African elected members now 10 have gone to heaven or hell and 4 are still remaining, produced and then we make this Kenya the free way you now are in. So I appeal to you that you read through the original one and then you read through the present one which we Kenyans in Kenya messed up. We did mess it up. We made amendments so as to enable us to get Oneko out of Parliament, locked him up, get to you - because of an amendment that you made in the original Constitution. He was locked up in .... (inaudible) because of that sharing of powers. Who gave the order and why was there a contrary order to that one. That is sharing of power Dr. Kiano.

Now we talk about sharing of power: in the original Constitution we shared power to various people, Commissions, as there was Prison Commission, ... Commission, what Commission, we all made provisions and be lived at that time that we would respect those powers given to every

Commissions. But later on we made amendments to make the Commission sound weaker and weaker in operation. That is how the problem came about. So I want you to remember you can have the holy bible or the Quran. .... (inaudible) but unless you believe in what is there you cannot go to heaven. Mr. Chairman even now on a serious point, the late John M. O. a lawyer wrote and published a private member state which went through Parliament through the necessary stages, our late President Kenyatta refused to sign it, because he was told that was going to remove some of the powers of the President to give to Parliament. He either said I am not signing it – I was present when he said it, I am not signing it, take it to Seroney to sign.

*Laughter*

**Hon. Taitta arap Towett:** And .... (inaudible) which went through all the necessary stages in Parliament – never became law it was never effected. Now we are last asking for sharing of powers – how do we share powers when .... (inaudible) to sign the sharing of powers. Now you are here producing a beautiful – I hope, written Constitution. Supposing President Kibaki says I am not signing it – what will you do about it?

*Laughter*

**Hon. Taitta arap Towett:** Supposing what will you do about it, what will do to him to make him sign? Those are the things to be considered in the writing of a Constitution. How do you process those things? You give powers to a person and then you don't know how to get them back.

*Laughter*

**Hon. Taitta arap Towett:** That is what I appeal to the delegates to remember. I would ask again the Chairman here to ask Parliament to produce a copy of that guided members bill which the President of Kenya refused to sign. For these to see because we are sharing powers between the President and Parliament. I would like you to read that document before you start talking of sharing of powers. Some of you do not even know what they are. So I don't have much but that is sharing of powers. Remember we did it the other years, you are doing it now, others will

come but we want Kenya to continue. Kenyatta was a democratic man but also said that one I am not signing, depending on how he was advised. It is the advisor sometimes who misleads a leader.

*(Clapping)*

**Hon. Taitta arap Towett:** So I want you to think hard and then produce something that will please people's hearts. Economy will come later. Don't concentrate too much on economy at the moment. Economy comes when there are people who want to eat and so on and are happy – that economy will come. Don't be cheated into thinking in terms of economy when you are producing a Constitution.

*(Clapping)*

**Hon. Taitta arap Towett:** For the last 10 years Kenya was refused money by World Bank – foreign capitals and Kenya survived in the last 10 years. So I appeal to you that you think hard the sharing of powers. Once you have given them out how do you get them back?

**Interjections: Inaudible**

**Hon. Taitta arap Towett:** Mr. Chairman I don't have much, I wish you all the best of luck and make sure that you read Seroney's Private Members Bills which Parliament passed but it never went through. And also get a copy of the Lancaster House original Constitution, which .... (inaudible) had an American lawyer, we had Silvester from Switzerland, we had lawyers from overseas who were first in this things – lawyers of Constitutions and we drafted what we could and it worked - until we Kenyans messed it up. Lower House was there, Upper House was there – we killed the Upper House and then remained with Lower House, then we could stand to left and right, left and right lock up this man and lock up the others. Who sent Shikuku to detention and Seroney? It was Parliament, they were in Parliament. They were taken out of Parliament, without provision and Parliament never did anything anyway. We should have resigned those Members of Parliament, we did not we were cowards.

*(Clapping)*

**Hon. Taitta arap Towett:** Mr. Chairman, thank you very much.

*(Clapping)*

**Hon. Bonaya Godana:** Thank you very much Honourable Taita arap Towett. I feel like I have to announce the lunch break against the climax. It looks like we are getting towards the crescendo but I hope we will pick up from where we left after lunch. I will now want to announce that we break up for lunch and reassemble here at 2.30 pm, so that we can hear the remaining five veterans. I hope you all come because the conclusion will be by somebody with a razor mind while in his 90's. Thank you very much have nice lunch.

*Interjections: Very good that was very good veterans.*

**Hon. Bonaya Godana:** Distinguished delegates the meeting is called to order as we start the second part of presentations by the Lancaster House Constitutional Negotiations Team, and next on my list who I will call upon to take the floor is Honourable George Nthenge. Hon. Nthenge please take the floor.

**Hon. George Nthenge:** Thank you very much Mr. Chairman all the leaders, ladies, and gentlemen. I am very very pleased to get this chance to talk to you before I disappear.

*Laughter*

**Hon. George Nthenge:** And I am disappearing because of the process of nature, I am over 70, and once you are over 70 it means you are living on bonus. So I am living on bonus, I am glad to leave you with a few words. I started making Constitutions for small organizations in the early 40's when I was still a school boy. Then we went on making for parties nini, nini, until in 1961 we started meeting all the members of Kenya Legislative Council. You better realize the first group to be elected was 1957, eight members. Then they complained at Lancaster House they were added another six, they became fourteen. Then they went and complained and now each district had to have a member.

So I came as a member for Machakos and because it was a large district, I had a colleague by name Henry Muli who is either not invited or known where he is. I am pleased to inform you that we were very very busy in 1961 formulating what we wanted Kenya to be. And Kenyatta wouldn't allow us when he joined us at a meeting and said kwenda ita Nthenge and so on. So we made a wonderful Constitution the one you were shown by Dr. Taita Towett, who was by then we called him Member for Kericho, NLC for Kericho. Now if you look at that document our idea was based on what? Freedom for Africans and power to be divided among many. And when we went to Britain although we were two African parties, and we had hidden our documents from each other, we in KANU thought we had a unique document from KADU. But when we opened them in the Conference, we found we all wanted about the same things, so it became very easy to formulate Kenya Constitution, and we came back here with a very very Constitution.

And power, and I am warning you power, the "word power", power is very dangerous. Those who were in power went on amending the Constitution giving themselves more power until now we are in a country where corruption is what matters. What kind of a car do you have? How you got the car nobody cares. How you got the money nobody cares. And I am warning now my nation, because you are the nation, we are the nation of Kenya now.

We are the leaders. That we must formulate, produce a Constitution which is more strict than even that one of our time. And the first thing I would to ask you to do is to make sure that Constitution must be practiced, without amendment for the first fifty years. Fifty years no amendment whether I like it or not, when I am in power or not, because so many brains of Kenya met and agreed why should we a caucus of a few leaders get together and bribe or whatever and frighten and get the whole job undone. Like it was done in 1961, 1962, we came with a wonderful Constitution. By 1969 when I went back to that Parliament, you know what I found, I found a totally knew thing I had never formulated. Yet, in London I was not going to listen to members. I was one of the producers of ideas. So I found most of my ideas and my colleagues' ideas had been changed. The senate had been done away with, the provincial Government had been done away with. We came back to the PC's and DC's. Things we had changed they came back. So I am now advising you and honestly humbly begging you to say that the Constitution must be practiced for at least fifty years.

Therefore, the first thing I would like you to know and take into consideration, a Constitution is not the monopoly of we who are here, the Constitution is for we, our children, our grand children, our great grand children and their great grand children. So we have to produce something very very good, because it is the nation's Constitution. And it is supposed to guide the country forever.

Now, ladies and gentlemen, I am asking you honourably and humbly also to remember and make wherever you can get, make leadership a vocation, a lot of people in leadership later on went into politics and leaderships to make money because it is a corrupt country. The original time when Kiano, D'Souza and we you see us here we went there – you know our salary was Shs.800/= per month. And we went there to serve the country honourably, not to make money. So I am now asking, we who are writing the Constitution to make leadership a vocational occupation not an occupation for one to make money. Don't go to leadership to make money, go to leadership to help your children, your grand children, and those who will come later.

Now ladies and gentlemen you may wonder why things change first, it is because we don't have enough love. Let us love each other and let us know as Nyagah put it, I am not a Mkamba, I am not a Kikuyu, I am not a Luo, I am a Kenyan and we are all Kenyans. For heavens sake

*(Clapping)*

**Hon. George Nthenge:** Ukiulizwa wewe umetoka wapi, mimi nimetoka Kenya, kabila gani – mimi ni Mkenya. Mimi ni Mkenya. Ukienda Tanzania unakuta wanajiita Watanzania, lakini hapa kwenu mimi Mjalu, mimi Mkikuyu, mimi Mkamba ya nini? Nataka tupendane na haya mapenzi yalete kuwa kitu kimoja watoto wa Kenya, Kenya nationalists. Watoto wa Kenya, we look at us as people in one room. Let us look at Kenya as a room – chumba kimoja cha kulala. Kwa hivyo ikiharibika pande moja umepata hasara. Kwa hivyo nataka wale tunaotengeneza Katiba ya sasa, tuitengeneze in such a way and there are scholars now. During our time we hardly had doctorates. I think we had only Dr. Kiano and Dr. D'Souza by then, because Dr. Towett had not got his. He went on studying as a politician, he is only man I found taking a degree and yet he is a cabinet minister. But anyway, now you have scholars there so many of

them. Akina Dr. Bonaya everywhere you get lawyers, you get brilliant boys. I am telling you when you are writing the details make it in such a way that it will be very difficult to get a person to change Kenya to a corrupt country again. Make sure that you block all the ways for anybody driving a good car, yet he can't explain how he got it, living in a big house and he can't explain how he got it because this is now very common. A boy who was born by Jeremiah Nyagah now he has two cars better than Jeremiah Nyagah a better house. How does he make money that fast? He has corrupted himself.

So I would like a Constitution which blocks theft and makes theft almost like murder. ... (inaudible) especially ukiiba mali ya umma, when you steal from the Government kitty unaweza uawa. Kwa sababu wewe unataka watoto wafe. May I tell you something which is not very happy and yet very true, during British time you never went to a hospital and you were told there is no dawa. Here is Kiano, here is D'Souza all these old men they will tell you. There was medicine all the time. There was no theft. These days you go – even they are selling Kitanda hospitali – anakwambia hakuna kitanda, ukitoa mia imepatikana. They are selling your ... (inaudible). Kama unakwenda unaambiwa hakuna kitanda lakini ukitoa shilling mia mbili, mia tatu unapataka kitanda. I want that to end, let it die with me, sababu mimi naenda kufa.

*(Clapping)*

Now, ladies and gentlemen when you are also formulating Constitution, remember population is very important but you should not give one member 30 square miles and another member 100,000 square miles – how will he work? I would like to strike a balance so that you consider the vastness of the country and the population. The two must be considered. Because if you come from a densely populated area like Nairobi and you say we want so many, Nairobi will half of the seats of Kenya and then you go to Marsabit, you go to Kajiado, you go to these others and you find they don't have members, why? Watu ni wachache. Hata wakiwa wachache ni wa Kenya na wanataka kusaidiwa. So I am calling on you, intellectuals future hopes of many, I hope on you to make sure that you take these two things into consideration both population and vastness of the area.

Kwa hivyo muwe na minimum area, sababu sehemu zingine hazina watu wengi na hawa watu ni wetu, hawa watu ni wa Kenya. Hawa watu wana haki ya kuwa na Mbunge na huwezi kumuambia Mbunge aende siku mbili akipiga corner moja. That is the by-gone things, when John Keen used to represent the whole of Kajiado. When George Nthenge used to represent Makueni and Machakos. We never had one weekend free because it was too large. Now make it reasonable so that a member can visit all his voters, all his areas conveniently. Mabibi na mabwana - usifikiri ni wewe tu, fikiriri yule mwingine. Kama kwenu hakuna watu na mko watu mia moja na kwengine kuna elfu moja utasema wale elfu moja waletewe chakula na wale mia moja wafe. No, that is not love, huwapendi. Therefore, let us remember we are to love each other.

Na wakati tunapopanga Katiba watu watakuwa waki-appoint-iwa namna gani? Qualifications are very essential, lazima mtu a-qualify ABCD, asipokuwa na hizo hakuna appointment. Hii mambo ya dada yako nimemuona mimi ni mkubwa nimeku-appoint, hii wacha. Lazima tumpe mtu kazi ambayo anaweza kuifanya na anastahili kuifanya. Kama tunataka mtu aliye na doctorate ya law tutakwenda kwa Bonaya. Hakuna shauri ametoka wapi. We want the one who knows law best, lazima tuende kwa Bonaya hakuna shauri ya who is that?

Kile tunachotaka ni ability na qualification – kwa hivyo wakati mnatengeneza nafikiri akina Kiraitu na ma-lawyer wale wengine mnanisikia. Wakati mnapotengeneza, mnapotengeneza m-make sure that such appointments you have got 2,3,4,5,6 qualification. Kwanza wewe ni mlevi ondoa, wewe ni mjeuri ondoa, wewe umesoma sana ndio hiyo umepata, namna hiyo umepata, upate hiki kitu cha kutosha then you can be appointed. Na ikiwa nime-appoint mtu kimapendeleo nikiwa Minister, the Parliament should be given the right to question and cancel, mnaelewa? Not like now when Minister hata akifanya kosa ni kama Mungu, haulizwi. Kwa hivyo mimi ningelipenda wakati mtu anapopewa kazi awe ndiye yule mzuri kuliko wale wengine wote. Huu mpango wa siku hizi mnasikia nani anaongoza, unanza kutafuta huyo ni nani. Na kuna watu mafundi, kama mimi nataka wale watu waliosoma sana, waliokuwa wakija number one kilasini wanajulikana. Tukifanya exam zote hatuwezi kushinda.

Ngoja niwaambie akili sio kitu cha mchezo. Siku moja tukwenda State House na medali zikaanza kupeanwa kipendeleo. Wacha ya Kipchoge Keino ipeanwe, hakuna mtu alitwambia

tupige makofi zote, because he deserves a medal, ile ingine ni kujuana tu. Office ya President nimeandika rafiki, lakini ya Kipchoge Keino everybody in State House clapped, because he deserved it. Kwa hivyo ninavyosema ni kwamba ikiwa Minister katika Constitution anapewa ruhusa ya ku-appoint, au President awe ata-appoint according to qualification which shall be checked by a committee and then that committee recommends the best men. We are looking for a lawyer who is a professor. We go to Professor Ghai whether we like him or not, because he is a professor, not George Nthenge. If we want a doctorate in law we have no alternative but to go for Dr. Oki or Dr. Bonaya hakuna mwingine ana doctorate. Let's be honest. Mtu anaenda kuongoza University na yeye mwenyewe he is almost a failure.

*(Laughter)*

**Hon. George Nthenge:** You know I don't like that. Ikiwa mimi nachagua vijana na usikie George Nthenge ambaye hana meno amenunua yote eti yeye ndiye amechaguliwa katika vijana, hiyo itakuwa haki? Mtu asiye na meno. If I was young I would have meno.

So I want this country to be run fairly and I want the policy to be: kila mtu anaweza ongoza na kila mtu anaweza ongozwa, na yule atakayeongoza ni yule atapendwa na wote, yule anapendwa zaidi. There is no question that I must lead. Inaitwa ku-lobby ile kuomba omba tu na saa yote una wakubwa unaomba omba. That should not be the qualification. We should go and pick somebody from Kajiado, from Narok, from Kisumu because he is qualified. Even if you don't apply but we know you are the best for the job and when you do that job it's for the nation, therefore, you are building your nation, my nation, everybody's nation. So I want the young gentlemen who are here, young ladies who are here, to accept to lead and also to accept to be led. You must accept to be led because may be others don't see proper leadership qualities in you but they see them in that other lady. They see that top qualifications for leadership in that other gentleman. So don't insist uongozi ni wangu, uongozi ni wangu, kwani wewe umeumbwa na Mungu peke yako?

Now, ladies and gentlemen parties, what are political parties? Nataka iwe this country must have a minimum of four parties all the time, minimum. Hakuna tena chama kimoja. I am one of those .. (inaudible), who stood that there must be many parties, na watu wakatumwa wengi, Nthenge

wacha mtauawa, wacha wacha. Nikasema even if I die, I will die for the right and we went on. It took us a lot of pain to have multi-partism. Therefore, let it not die, come what may. It should also be that each party must have a policy, because either wewe unataka watu wote wawe maskini hiyo ni party yako. Na mimi party yangu inasema watu wote wawe ni warefu, hii ni yangu. Party ile ingine iseme watu wote wasiwe na dini, ile ingine iseme kila mtu awe na dini. You know there must be a policy, so that you don't overlap, so that you don't ask for leadership because you know nikiketi hapa Dr. Bonaya tu ndiye atachaguliwa Chairman, na mimi nataka kuwa chairman na mimi natengeneza yangu. That's what we are doing now. Just because I know the other person will win, I say I have to form my own party. And what are the differences of the parties, they all preach one and the same thing? Hata makanisa yameanza kuwa namna hiyo, na that same thing. Unaulizwa wewe ni Muislamu, uislamu ni ule ule. Quran ni ile ile lakini unataka kuanzisha ka-sect uongoze. Na wewe ni Mkristo, bible ni ile ile. Mimi nataka ka-sect kangu niongoze, that is wrong.

Kwa hivyo ningelipenda kuwauliza kwa heshima mnapotengeneza hii Constitution m-make sure muwe na hakika lazima kuwe na party nyingi lakini zisipungue nne. Kwa nini? Sababu mafikiro yangu, kwa mfano mafikiro yangu sasa ni uhuru, haki, na ukweli. Na kama wewe unataka kitu kingine unaweka yako, mimi nafundisha yangu, na sasa ile nitakayokuwa nikifundisha next is the Government must be rich and not the individual leaders to be rich. Because siku za zamani ilikuwa Serikali ndio tajiri, sasa imekuwa matajiri ni viongozi. Serikali yenyewe haina pesa, ukienda kunywa dawa unaambiwa imekwisha. Sasa ukisema sasa nitakwenda kuona Mheshimiwa wangu bwana Bonaya mpaka uende Nairobi. Utakuwa umekosa pesa ya kununua dawa utapata ya tikiti kwenda kuona Bonaya umuambie nimekosa dawa? Tena ukifika Nairobi yule mgonjwa amekufa. So I want the Government to be rich and the leaders to be ordinary. That is going to be my new policy. The Government must be rich so that it gives service to the people, but this business that I as a leader must be very rich and my colleague Kiano must be stinking rich and my colleague D'Souza must be terribly rich.

*Interjections: Inaudible.*

**Hon. George Nthenge:** Lakini sauti yangu si ni kubwa hamsikii. Asante sana. Thank you Mr. Chairman, I will talk to the mic if I remember. Thank you very much. Wajua mimi hushikwa na

wazimu wa moto kidogo, sasa nawachilia kabisa, lakini point ninayotaka ni nchi iwe nzuri, so good turudi pale tulikuwa baada ya uhuru, na hata tufike hapo tuwe a developed country. We were about to become developed, Kiano si ulijua? Halafu sasa we are – tumerudi nyuma kule I don't know number what. Nataka tuende tufike pale tulipokuwa na tuende zaidi tuwe a developed country. When you are a leader, you are a leader because you deserve. Hakuna cha mapendeleo.

Now nimesema msije mkafikiri yule mtu anatoa kifua mbele, eti ndiye kiongozi mzuri. The best leader is noticed and known to the people, not unto himself. There are some people who are over ambitious and they pretend to be leaders and they go and call press and they publicize themselves but they don't have qualities of leadership and that's how we came to go where we are. Because leadership went to many crooks - bad people who don't have love for others. So when you are making the Constitution block all these chances – za watu ambitious kuwa ndio viongozi rahisi.

Now ninachotaka sasa Mr. Chairman na Mr. Lumumba the Secretary, the next time you are calling us, we who were in Lancaster House, remember we had somebody called Mr. Robert Matano he used to be Member for Kwale, he is still alive; Mr. Henry Muli he wa Member for Machakos; and Mr. Eliud Ngala Mwe ndwa the author of kile kitu kinaitwa NSSF (inaudible) kile kilikua tajiri halafu mkaiba – NSSF sijui inaitwa nini. Those people na William Murgor, the four who were with us, who have never been invited please remember them they are still alive. Once we were invited with Robert Matano, but this time he is not here, I hope he was called, but I would like them all to be called because it gives a bad picture that we are discussing things we did with them and we are omitting them.

Now, mimi nina mengi ya kusema lakini nikisema nitamalizia watu wakati, kina John Keen watasema nini. Basi nifike hapo asante sana.

*(Clapping)*

**Hon. Bonaya Godana:** Our next speaker on the list is Mr. John Keen.

**Mr. John Keen:** Mr. Chairman, Professor Yash Pal Ghai, the talented Commissioners, the Chairman of this Plenary session, Honourable Ministers, Honourable Members of Parliament and Honourable delegates. Mr. Chairman, I would like to request that the delegates here present to bear with me, if I was to say anything that may offend them as I am bound to say because John Keen has not changed very much in spite of his age. Mr. Chairman, ninaomba ruhusa ikiwa nitaudhi au nitasema mambo fulani ambayo haitapendeza masikio ya wengine tafadhali munisamehe sababu yake tukisema ukweli hapa, ndio tunaweza kupata suluhisho ya shida zetu tulizonazo za Katiba.

Mr. Chairman, I would like to take this opportunity to record our appreciation for being invited as special observers to the ongoing Constitutional Conference. By so doing the Commission has taken into consideration and recognition experiences of a few remaining veterans of the Lancaster House Constitution of 1962. Mr. Chairman, our past experiences of forty years may help to serve as an introduction and shed some guidelines to this historical occasion. We are honoured to be able to share our experiences with you Mr. Chairman. Mr. Chairman, constitutionalism is the supreme law of the land and it is the property of the people who are stakeholders themselves. Constitution making is a sensitive and delicate issue that must be tackled carefully by sober minds. Constitution making is not the property of one man, group, tribe or a few interested persons in positions of power and influence. The final authority of our new proposed Constitution would be the people of Kenya themselves through their elected Members of Parliament, the Review Commission, the learned Commissioners headed by you Professor Yash Pal Ghai and all honourable delegates here we have assembled. Professor Yash Pal Ghai, you may be of a different color, but I consider you to be Thomas Jefferson and your Commissioners, Hamilton of Philadelphia who made the first Constitution of the United States. Do not be afraid to tell them Mr. Chairman, tell them the truth what you feel like, you may be of different color but we respect your stand. Thank you Mr. Chairman.

Mr. Chairman, all those delegates delegated and charged with making this Constitution must realize Kenyans require a lasting Constitution of many years, which will not be tailored or unnecessarily amended to suit certain interests. Presidents and Heads of States, Prime Ministers and others charged with the operation of Government come and go, but the Constitution of a country remains solely to guide the nation at all times regardless of who may be on the Steering

group or who may be a President or Head of State. On this occasion you are charged to making a Constitution of the nation that will not please anybody, group or tribe. Mr. Chairman, for better results and successful objectives to be achieved goodwill, patience, tolerance and understanding of divergent views however unpalatable they may, be must prevail for the next thirty days if Kenya is to have a new Constitution that will guarantee freedom, peace, security for years and generations to come.

The Lancaster House Constitutional Conference: Mr. Chairman, the Lancaster House Constitutional Conference was a product of many years of political struggle by Kenyans to obtain freedom and independence from the British Government. Thousands died and many languished in prisons and detention camps for Kenya to be a free nation. The 1962 Constitution was not easy going because of the various interested groups we had political parties, settlers in the British Government themselves but because of the spirit of tolerance and give and take all was achieved. Not everybody was happy but in the end a regional Constitution was accepted and adopted. Mr. Chairman, human nature is interesting. It is baffling for me to realize that people who have lived under a colonial system use the same powers that the colonial Government used to suppress their own black people. You should be ashamed. The regional or majimbo Constitution was basically ethnically based federal system of Government. It addressed or rather sought to allay fears of many Kenyans who genuinely feared economic and political domination or exploitation by the numerically strong big tribes. Mr. Chairman, this is one of the causes which lead to the partition of India when the Muslims thought they were dominated by the Hindu's and that is why the State of Pakistan was created. Mr. Chairman, judging from my experience of forty years, those fears do exist up to this day and let us not pretend Kenya is one nation, if we are succeed we must accept that we are still tribal and this Constitution must help to find permanent solution and Mr. Chairman, let us be frank if we are to achieve required results.

The spirit of nationalism which once existed has been replaced by a tribal culture of eating and stripping of public properties and finances. Government appointment of senior positions and allocation of prime plots and land were tribal oriented and motivated and that is the Kenya of today. These are facts and must be addressed if we are to avoid political upheavals and chaos that have plagued the continent of Africa. Mr. Chairman, federalism does not mean dismembering a country but the way of equitable distribution of resources and decentralization

of power as opposed to unitary forms of Government which have been the causes of dictatorship and misery in the continent of Africa. Mr. Chairman, after Lancaster House the regional or majimbo Constitution did not last long as bribery and inducement took root in order to get a two third majority to amend and change the regional Constitution and give more powers to the Executive who in turn because of the insatiable greed for power and wealth entrenched themselves and became untouchables.

Mr. Chairman, in order for the Executive to achieve their designs of absolute power draconian, despotic and oppressive system of Government was perfected. The murder of Gama Pinto, Tom Mboya, J.M. Kariuki, Robert Ouko, tribal clashes and Nyayo House torture chambers were products of absolute power. I can not understand for one moment, why Tom Mboya was killed having spearheaded the struggle for independence and brought KANU party to victory. I can not understand why J.M. Kariuki was murdered, he was murdered just because he said Kenya had ten millionaires and thirty million people. Was that a qualification for J.M. Kariuki to have been murdered? I can not understand. Mr. Chairman, Gama Pinto the same, he is a veteran of the struggle for independence, Robert Ouko. It baffles me. I can not understand. Africa can be a crazy place to live..

Mr. Chairman, I do remember at one time when I was a young reporter and an editor of the Citizen newspaper, I went and covered an electioneering campaign by Colonel Earhart Grogan, at that time Walter Odede took over from Jomo Kenyatta as the Chairman of Kenya African Union. He said at the pre-electioneering campaign at Westlands here, he said Walter Odede is guilty of treason against Her Majesty's Government, had it not been for the advent of the British Empire, Walter Odede would have been a simple Jalu along the shores of Lake Victoria eating crocodile chunks. 'What is the best way out of it? drag him and hang him from the nearest tree'. He said about the Kikuyu's who were in the forest, the Kikuyu's have no radio in the bush, no newspaper, how do you get the message around? Arrest one hundred, shoot seventy five, load twenty five with bags of posho and let them trek to the bush to tell the others what had happened. Those were colonial days and I can not understand the Africa of today why African leaders have resorted to the same colonial laws to suppress, intimidate and harass their own people. History will have to tell.

Mr. Chairman, Section 79, 81 of the amended 1962 Constitution establishes freedom of assembly, movement and expression but the State machinery over the years criminalized, harassed the expression of divergent and unpalatable views of political opponents and resorted to old colonial laws of detention without trial in an effort to silence dissent. Mr. Chairman, I was briefly detained by the British in 1953 and detained without trial by Kenyatta in 1967 for no reason other than being accused of advocating the overthrow of a legally constituted Government of the Republic of Kenya. Just that English alone, advocated, advocated, I am not a Professor of English but at least if a thief is to be accused today for advocating to steal five shillings from Kariuki and you send him to prison, unfairness, I have never seen anything like this. I did not have the means anyway and I wish I had the means. Kenya would be a different world today. My colleague, Martin Shikuku detained and when released he was hobbling and a lame man. The Late Seroney, detained and died later after being released. Kenneth Matiba was a strange man when he was released from prison. The Minister for Works, Honourable Raila Odinga and many other Kenyans were all detained without trial typical cases of misuse of power.

Mr. Chairman, one mans rule. Mr. Chairman, in order to achieve absolute power Kenya like all other African States, saw changes of guard at State Houses where white colonial Governors were replaced by black leaders who as I said before, moved swiftly to establish a one mans rule to ensure their continued hold to power in total disregard to their citizens wishes. To abuse the power nepotism, tribalism, massive corruption, plunder and theft of public resources were institutionalized as instruments of honour and prestige by all those who saw goals to protect and defend instruments of Constitutionalism. Functions of the Legislature, Judiciary and other arms of Government were systematically used by decrees and directives without being supported by any written law. Jameni, watu wanakwenda, wanaapa kulinda Katiba, nahao ndiyo wanaharibu Katiba. Mutatwambia baadaye. Fundamental human rights violated and a free press muzzled. The Police and the other law enforcement agencies became a one mans rule private armies to oppress and intimidate all dissenting views. These are some of the bitter factors and reasons why Kenyans are writing a new Constitution. Tumeona hivi majuzi majuzi, Police wanatumwa kwa amri wa wakubwa kwendeni mukavunje mkutano fulani na ni mkutano wa kutetea haki. Jamani, mambo gani tumeona katika nchi hii. Na hii ndiyo sababu tunataka Katiba mpya ambao itaondoa uchafu huu wote na Bwana Commissioners, nyinyi na Professor Ghai na nyinyi delegates hapa, muangalie mambo kama hayo kwasababu nyinyi ndio mutaumia na

nakwambia sisi watu wa siasa akili yetu ni ndogo sana sababu na kumbuka wakati walipopitisha sheria ya kufukuza watu katika chama kwanza waliosema ya kua watu wafukuze moja alikuwa Charles Njonjo, wa pili alikuwa the Late Oloitiptip na wengine wao na wao they became the first victims to be thrown out of KANU.

Mr. Chairman, the monopoly and concentration of power to one man or group can be dangerous as evident by President Robert Mugabe's policy of Gukurahundi of annihilation directed against the Ndebele's. Ten thousand Ndebele's were killed, women repeatedly raped, villages razed to the ground, thousands made homeless. One wonders whether that was democracy of the independence Zimbabweans fought for, a bitter war against Ian Smith.

Mr. Chairman, I know it is a sensitive issue of Maasai land rights. Mr. Chairman, Maasai land rights were discussed at length at the Lancaster House Constitutional Conference, nothing was concluded to the satisfaction of the Maasai delegation present. The Maasai have been victims of injustices, plunder, marginalization over the last one hundred years of British and Kenyan Government rule. The Maasai have been swindled, cheated, dispossessed, robbed, exploited, our culture polluted and commercialized to the detriment and degradation of our people. Maasai men rights are human rights and the Constitutional Conference must recognize the existence of Maasai treaties of 1904 and 1911, between the Maasai and the British Government, it is a serious and delicate issue that can not be brushed aside. The agreements exist and will continue to exist until justice and restoration of our lands is achieved. Mr. Chairman, the removal of the Maasai from their best lands of the whole of Rift Valley by the British and settlers constituted the height of injustice and misuse of international law by the so called civilizing powers of Europe. Mr. Chairman, the bitter truth is that the Maasai were in permanent occupation of the whole of Rift Valley and Maasai names and places can not be disputed, establish the true history. Uasin Gishu, Eldoret, Rongai, Molo, Londiani, Subukia, Nakuru, Gilgil, Kinangop, Ol Kalou, Rumuruti, Nyanyuki, Donyo Sabuk, Naivasha, Nyahururu, Mesos, Solai, Solio and above all the city of Nairobi, they are all Maasai (inaudible)

Mr. Chairman, the Maasai were isolated from the rest of the world, denied education and our social structures and cultures interfered with without replacement of a better system rendered the Maasai on the road of extinction. The Maasai delegation to the Lancaster House Constitutional

Conference, refused and declined to sign the final draft as we considered cheated and taken for a ride through the conspiracy of the British and the KANU Government in order to confine the Maasai community to be of no consequences and unworthy of being given any justice. It may take the Maasai years to get any form of justice redressed but regardless of the time factor we will continue to demand the restoration of our land rights. The British and the Kenya Government can not be exonerated from blame and Mr. Chairman, this Constitutional Conference should take note of this historical factors. The British should have enlisted the use of their rifles to forcibly remove us from Rift Valley rather than enter into agreement and broken promises that were unlikely to be honoured. Mr. Chairman, by comparison the Sultan of Zanzibar was being paid sixteen thousand pounds annually as royalties because of the ten mile coastal strip and the Maasai who were deprived of thirty thousand square miles got nothing not even any consideration while signing the agreements. Mr. Chairman, you have many lawyers in your Constitutional forum, normally when you sign agreements of some kind there is always a token ten percent of consideration. The Maasai were not even given one percent. What a terrible situation.

Mr. Chairman, to establishment of National Parks and wildlife areas within Maasai lands brings a lot of revenue to Government and generates employment but the Maasai get nothing other than being exploited to the last degree of our blood. We have coexisted with wildlife from time immemorial and unless our land rights are critically addressed and our rights restored, wildlife one day may pass into history as extinct. Kama tungetaka kuwauwa hawa wanyama tutawaua wote, hatutaki bunduki hatutaki mikuki lakini hatutaki kufanya namna hiyo. Ile tunataka ni land rights yetu iheshimiwe, kama haiheshimiwi haya. Mr. Chairman, this one is an interesting one. Mr. Chairman, wildlife is not a national heritage it is a Maasai heritage, that is why wildlife is there and not in Mount Kenya region, Nyanza or any other places. Mr. Chairman, saa ingine yafaa tuseme ukweli. Kawaida KANU ujuwe KANU ilikua chama kama simba, simba mwenye meno kali na kucha na pesa na administration. Na kwa kawaida sisi Maasai lazima iko Moran moja ambaye atapiga Simba akiweka mfuko na sisi tuwache kujidanganya hapa, iko Moran moja peke yake aliweka mkuki KANU akaweka mkuki KANU, wengine kama waliweka mkuki lakini yule alimuweka mkuki kwanza ndiye Moran ambaye anapewa mkia ya simba na kichwa aende akacheze na wasichana kule nyumbani na mimi sitaki kutaja huyo Moran ni nani munamjuwa wote apewe simba apewe kichwa ya simba ankaimbie wasichana kule nyumbani kwao.

Mr. Chairman, finally I would like to chip in a few proposals for the benefit of the Conference. One, in the absence of a federal or majimbo system, Kenya should seriously consider decentralization of powers to permit the district level and local authority to have more powers to shape their own destiny. The Central Government should be responsible for defence, external affairs, international trade, customs and economic development. Two, the appointment of a Prime Minister does not mean a reduction of presidential powers, the Prime Minister should be appointed and be responsible answerable to Parliament and be in charge of all Government functions and operations in consultation with the President. Mr. Chairman, the Constitutional Review Commission must define the functions and separation of powers of the President and the Prime Minister in order to reduce possible areas of conflict between the two. After all Kenya is going to be a Government of power sharing and a Government of National Unity.

Three, Parliament should have two chambers, the Lower House and the Senate. Mambo ya Kenya ni magumu sana, tulikua na Senate zamani, Lower House zamani, lakini kwa ajili ya ulafi, ulafi ndiyo imeharibu nchi hii kuliko kitu kingine yote. Hilo zote zivutiliwe mbali. Halafu ya mwisho, the Muslims are entitled to Kadhi courts as provided in the old Constitution. There should not be any arguments about this. Waislamu, mabwana na mabibi, Waislamu hawajauliza wapewe keurto mia moja, Waislamu hawajauliza wapewe Prime Minister, Waislamu hawajauliza wapewe wasichana wote wa shule katika nchi hii. La. ni hii Kadhi Court, wapewe hiyo wafanye ceremonies zao, harusi zao na kila kitu. Hiyo mimi sioni ya kuwa hiyo italeta tatizo kubwa na nyinyi Wakristu muna mambo zenu mbona Waislamu hawajazungumuza mambo yenu na nyinyi mbona munataka kuwaingilia hawa wengine.

Mr. Chairman, thank you very much for giving me this opportunity to address this Constitutional Conference. Thank you.

**Hon. Godana Bonaya Adhi:** I thank honourable John Keen, as fiery as he has always been. The next speaker is the Honorable Martin Shikuku who as you is a delegate in his own right and I am sure he will have many other occasions on which to address us. Mr. Shikuku.

**Hon. Martin Shikuku:** Mimi nitazungumza nikisimama, kwa sababu nataka tuonane. Nikikaa chini sikuoni na wewe hunioni, unaona hizi mikes hapa. Kwa sababu yule mzee Bwana Kenyatta alikuwa akisema wanaume ni kuonana wajuane. Yeye alikuwa akisema, I am quoting on. Kama ni vita lazima umuone mwanaume mwenzako. Basi?

Bwana Chairman, nashukuru. Nashukuru kwanza Mwenyezi Mungu ambaye ameweka hawa wazee waliokuwa Lancaster House mpaka wakati huu ili waweze kuwaambia yale waliona. Ameweka hawa wazee, Bwana Chairman, kwa sababu, wahenga wanasema palipo na wazee jambo haliharibiki. Lakini siku hizi hawa wa dot.com, saa zingine wanaona hawa wazee hawafai, na kama wangukuwa na uwezo wa kuweza kuzuia hewa isiingie kwa mapua yetu, wange-switch off.

Bwana Chairman, wajue sisi tulio hapa tulikuwa pia vijana, na hawa wazee tulipokuwa Lancaster, nilikuwa kijana. Mimi nilikuwa natumwa, kwenda pale, kwenda pale. Leo tulipokuja hapa wazee tukakutana, wananiambia Shikuku tengeneza meza ya wazee watakuja kula, kwa sababu siwezi ku-overtake them in age. They were older than me, they continue being older than me. So I am the errand boy among these distinguished old men.

Bwana Chairman kabla sijaendelea, jambo hili nataka kusema, tumetoka mbali. Wengi wa hawa tulipigana na Beberu. Na wengi wetu walikufa. Ajabu ninapokwenda kwa kila mkutano, sioni mkisimama kukumbuka wale waliojitoa wakafa ili mkae namna hii. Hili jambo linaniudhi sana. Na hali kuna wazungu waliopigana katika vita vya pili kutoka Uingereza, kutoka sijui wapi wakaja hapa Nairobi wamevaa midila yao kusimama kwa makaburi ya wale waliokufa katika vita vya pili na kuweka maua. Sisi Waafrika, hatuwezi kukumbuka Dedan Kimathi. Hatuwezi kukumbuka General Nandi na wale wengine wote. Hata Bwana Mandela alipokuja hapa aliuliza, sijui kama mimi ndiye nimesikia, aliuliza bibi ya Dedan Kimathi na watoto wake wako namna gani? Hakupewa jibu. Na yeye alikasirika. Hata wakati moja alikuja hapa airport, akajidai analala amechoka hakuvingia hapa. Kwa sababu sisi tuna ile culture ambayo haitaki kukumbuka wale waliokufa kufanya uhuru uje, na mimi kwa niaba ya wale hawawezi kusema kwa sababu amekufa, nataka nyinyi, kabla sijaendelea msimame mkumbuke damu ya watu waliokufa. **(Delegates standing up for one minute)** Silence please, tuwakumbuke waliokufa. Asanteni.

Ukweli ni kwamba mnaposahau wale waliowafanya kuwa hapa, inaweza kuwa ni mkosi kwa sisi. Hata wazungu wanakumbukana. Wasikuambie hii ni maneno ya kienyeji ati shetani, ah ah kukumbukana, sisi pia tuwakumbuke waliokufa.

Jambo la pili, asante tumewakumbuka leo. Jambo la pili, kuna wale ambao wangali hai ambao wamewaletea huu uhuru sasa mmekaa hapa, tear gas hakuna. Wale watu sita: Jomo Kenyatta, Bildad Kagia, Fred Kubai, Achieng Oneko, Paul Ngei, and Kungu Karumba. Hawa ndio walileta uhuru huu, na hawakumbukwi. Watatu kwa watu sita walikufa, saa hii tuna Achieng Oneko, tuna Bildad Kagia, na nitakuja zungumza juu ya jambo hilo, na kuna Paul Ngei. Wewe hujali Oneko anakula nini, yuko wapi, umekalia madaraka, hujali hata kuangalia afya yake iko namna gani. Mungu tu, ndiye anamlinda. Kama mngekuwa na ile style ya switch off, Oneko angekufa lakini bahati yake Mungu ndiye anamletea hewa. Saa hii tumekaa hapa, Bildad Kagia amekuwa mgonjwa sana. Serikali hiyo iliyoondoka, na serikali hii hawajui Bwana Kagia yuko wapi. Anakaa Mbotela na binti yake. Anakaa, yuko Jericho sasa? No, tulikuwa naye Mbotela. Saa hii anakaa na binti yake Mbotela, ndiyo watu wakubwa wanakaa wapi hapa? Mbotela ni Muthaiga? Ni ile nyumba, ni ile nyumba ya madirisha ya mbao. Wewe unakuja hapa kama Shikuku, umeweka bow-tie yako, hujui Kagia yuko wapi. Hata kumlipia gharama ya matibabu hakuna anayefikiria. Mkifanya hivyo, hawa wakipata taabu na sisi tunakula, tutakuwa na taabu kushinda hapo. Na inasemekana, kama wewe ni mtoto wa mtu fulani, na una-mistreat your daddy, watoto wako watakufanya hivyo hivyo. Na nyinyi muamke kutoka leo. Kama hamuwezi kukumbuka and recognize these people, even one of them is a beggar.

Now we are in the Nyayo government. Some of us have fought so hard. We told somebody; with or without a license we are going to Kamukunji. Ten o'clock in the morning. Hapana usiku, aaah, tulimwambia ten o'clock, na tutaleta vyama vingi katika Kenya hii. Akasema, watu wengine wanafikiri hakuna serikali. Ati wanasema watakwenda Kamukunji, hawajui iko serikali? Tulienda. And wananchi wengine waliumia, mmoja akafa siku hiyo, ndio sasa tunakaa hapa. Bwana Chairman, do you know? Ijapokuwa kuna Katiba, an Act, ambayo inasema katika Sectiono 27 (b) inasema vyama vya siasa vitawakilishwa katika conference hii, hiyo tumekuja. Lakini ukiangalia katika Steering Committee, vyama vya siasa walikuwa wakipigwa tear gas na kuvunjwa miguu, hawako katika Steering Committee. Would you believe it? Sasa wanatuambia tutawapa one seat. Surely you would not be sitting here if the political parties did not do their

part. You must be very unfair. Hiyo culture lazima itoke. Vyama lazima viwakilishwe katika Katiba, katika hii Steering Committee.

Sasa tunaambiwa tunaweza kukupa moja, under what Act? The Act clearly states the political parties shall be here, and hawasemi political parties of non-Parliamentary, small parties, no wanasema political parties. Kuna constituencies nne. Members of hii imetusaidia kuja hapa, CKRC, wamewekwa pale. Wanafuatiwa na wabunge. Baadaye katika B iko political parties, NGOs, and so forth. Wanatuambia tupate kiti kimoja na sisi ndio tumeleta nyama.

Unaona wazee wenzangu nataka kuwaambia hawa vijana wako matata kweli. Itakuwaje aliyekwenda kutafuta hiyo nyama msituni ameileta. Sasa unapika, unapika ikishakuwa tayari wageni wanakuja unamwambia mwenye kupika hebu toka nje kidogo tunataka kula. I take great exception to that. Na hii Conference lazima muwape wanasiasa, political parties, you cannot tell us because the MPs are in the Central Committees, the political parties they are representing political parties, no, without Oyondi, you see no Shikuku. It is the parties, which gave birth to MPs. We will fight; I fought the colonialists, I fought the Kenyatta regime, and detained, I fought Moi's regime, and I shall fight you, and if there need be we can leave this Conference, political parties, and call upon those who shed their blood, call upon them that that blood be upon you, that we can do. Until you recognize the politicians the political parties must be there. Not by asking, by right.

Mr. Chairman, I would like to suggest the following:

Let us remember these old men, I am still young to them. These old men who are still alive. It is not too much to cater for them. Let them not die in poverty. Some have died in poverty. This government must wake up and make sure those who are still alive are taken care of. Because one day you will also be old. Oh yes, you will be old. And if you don't put your foot down to look after those who are aged, you will also be mistreated by the young ones and you shall feel what we are feeling.

Two, Mr. Chairman, I would like us to recognize and respect and above all have a clause in this Constitution to provide for those heroes, even if they died, we must give them, EGH, why are they babies being given EGH, and Kagia hana EBS? What have you done for this country? Mr. Chairman let us also remember, those who recently, because if we talk of 1960, nineteen what, it is not ringing a bell. I am sure there is not delegate here who was not born in 1991, November 16<sup>th</sup> there is no delegate. You were all born, grown-ups, whether woman or man, you were born. That pick-up was not full. The pick-up we went to Kamukunji. Orengo and I sat on top of the cabin, Muliro was behind me, Phillip Gachoka was behind Orengo. Four people can't fill a pick up. But they didn't come because they knew what was there. Death in form of bullets from the police. Now once you have cooked everything is ready, you tell us: ngojeni kidogo, tunataka kula. We shall curse you and our curse will hold.

- Let us remember the recent; even some men are sitting here who were in charge of internal security when our people were being tortured in the Nyayo torture chambers. They are here also as delegates.
  
- The youth, during the colonial days the civil servants used to tell us, nyinyi mnababaika mnapigia uhuru, mnapigania uhuru, lakini hata uhuru huo ukija sisi tutakuwa juu, and indeed they were right and they are still there, and their children hold high positions in government. But the children of freedom fighters are nowhere to be seen. That we must correct, oh yes, that you are going to correct, and I am sure God is not all that stupid to keep us alive. He has got a reason why we are still alive. We have got a mission to fulfill before we kick the bucket. Let us remember those political parties that I have told you.

Now, may I come to some of the points I would like to recall what happened in Lancaster House. Lancaster House was in London. We did not ask to go to London but we were asked to go. It was coldest year in history of Britain, and imagine an African from the tropics going to the coldest parts of the world. Tulikuwa na taabu, tulipata, mimi mwenyewe nilikuwa nimefikiria nimepata ugonjwa kwa sababu nilikuwa nikikatika, all joints huku, wapi, huko. Nikafikiri nimepata ugonjwa hapa London. Nikaenda kuuliza doctor, mbona nimepata ugonjwa London,

na sikupiga corner? Akaniambia; kawaida doctor anakuambia; toa nguo. Nikatoa, nikabaki uchi. Akaangalia, akaangalia. Akaniuliza, “have you ever been to Britain during winter?” Nikamwambia, “ No, this is my first time. I always come during summer or something.”

“Oh, I see. You are you from Kenya?”

“Yes.”

“Jomo Kenyatta area?”

Nikasema “Ndio.”

Akaniambia, “There is nothing wrong with you. You take a bath everyday?”

Nikasema, “Ndio”

Akaniambia Katika winter huogi kila siku.

### *Laughter*

Ukioga kila siku unatoa ile mafuta na zile pores zikifunguka, baridi ikiingia ndani inakata. So akaniambia, “Just go round the corner to a chemist here, get Vaseline, and I don’t have to charge you for that. Thank you very much.” Nikaondoka kutafuta Vaseline na nioge mara moja kwa wiki.

Why had we to undergo those pains? We underwent it because we wanted independence. We wanted our people to be free. We wanted our people to have that yoke removed from them. Tuka-suffer tukapata. Sasa tulipoambiwa hiyo Final Constitution Conference, that is why I am a bit slightly bitter, and you will have to... and I don’t have to apologize, I am bitter, that is why. The last Constitution Conference, I can read you the names if you so wish was made up of six KADU, and 15 of KANU. To your surprise, do you know how many are alive? In KADU were six, only two of us now are alive, the rest are gone. In KANU, I think they have only got four alive.

Those were political parties, because it was politics that told the Mzungu to go home, and he recognized that. I want you to keep in mind, political parties here must have a prominent position, if you want progress. If you don’t, because you are now ready to eat; I know when we were being tear-gased in the streets some of you were taking coffee with your families. “Look,

look the police are stabbing that one” when you are eating. Today you tell us, ngojea huko nje tunataka kula. Mimi ni Professor, sijui mimi ni Minister, sijui mimi ni nini.

Jambo la pili, tulipokuwa Lancaster House, Mheshimiwa mmoja ame-refer to the question of the Coastal Strip the 15, ten mile Coastal Strip, which was the property of the Sultan of Zanzibar. Tuli-argue, tulipigana, tulizungumza mpaka saa nane na nusu ya asubuhi chini ya kiti cha Bwana Duncan Sands, Colonial Secretary at that time, now ni marehemu. Mwisho Duncan Sands alisema: “Now coastal people should listen to this and you must never relent, I am with you and I know.” Duncan Sands alisema Kenya haiwezi kuwa independent.. Sultan of Zanzibar alikuwa anataka Kenya iwe independent kutoka Ten-mile Strip kukuja huku lakini kwenda hivi, hakuna hiyo mpaka tupitie kwa Sultan. Tuka-argue, aka-argue. Halafu Duncan Sands akasema, “As the Chairman, I am giving my ruling. The ruling is, Kenya lazima iwe independent 200 miles from the sea up, na Sultan of Zanzibar tuta-compensate wewe.” That is how we got this Coastal Ten- mile Strip.

I want you to listen to this, the injustice an African can do to another. Robert Matano who was in Lancaster Final Constitution Talks tukapewa Coastal Strip, alikuja hapa akamuuliza marehemu Kenyatta, “Now that the Sultan of Zanzibar is no more, no control of the coastal Strip, can we get the Miji Kenda getting title deeds?” Kenyatta akamwambia, na alisema hivyo, tulipokuwa Mombasa, kwamba, “Ilikuwa ya Sultan, sasa ni yangu.” Na alisema hapa juzi tulipokuwa Mombasa. Now listen to this, this made Matano a frustrated man. Matano is a very poor man, he started taking something. Matano is a poor man, because he resorted to taking something to try and you know, get rid of the problem.

The irony of it is this, the people from up-country who own land in the Coast have got title deeds including the speaker, me. I got a plot in Nyali which I declared in 1975, many of you have never declared your wealth, 1975, I declared my wealth and part of my wealth is a house in Nyali. I have got a title deed. Why are the coastal people, the Miji Kenda not being given a title deed, why? The colonials have gone, we are black Africans. Why are you not giving the Miji Kenda their rights? If this Conference concludes without settling the Coastal Strip business where they are still squatters on their land and some of the owners of the land are not here. I

want the Miji Kenda and I speak for them, they must be given their rights, but not to remain squatters after 40 years of independence.

We would like to have checks and balances. Why do we want checks and balances? I think I have the right to speak very authoritatively about that, because I have tasted it. When you have too much power in one man's hand, it is deadly. I came from prison almost dead. You, honorable delegates, you are already enjoying the immunity here. I have seen in our documents here, no honorable delegate will be arrested coming to the Conference, or leaving the Conference or inside the Conference. You are already enjoying the privilege, the Powers and Privilege Act. We were picked, when there is too much power you get drunk also. We were picked up from the floor of the House. We talked on the floor of the House, under all immunity, we were picked up from there, and I am very angry and very very frustrated because Seroney is no more with us. I just said you want to kill this parliament as you have killed KANU and somebody said, "Can you substantiate that KANU is dead?" Then when I stood up to explain and substantiate, Seroney in the Chair said, "Order, Order Mr. Shikuku. You know it is completely out of order to substantiate the obvious, continue." Then I said, "Thank you Mr. Speaker." I thanked him and continued only to be arrested later.

The family of Seroney as we are seated here, are languishing in poverty. The land Seroney had borrowed money for and he had not paid, I am told is taken away from them. You know, I am lucky I am alive. If you people, Seroney who was arrested, if they can give him, compensate him for the time he was in prison for three years, five months and fifteen days, that is enough to buy land for the family to live, and not to be beggars anymore. That was the most illegal thing to prove to you that power can be very bad when it is concentrated in one man's hand.

I would like to appeal to all of you, fellow delegates, because I am also a delegate in my capacity as the Secretary General of Ford Asili, the Party that went to Kamukunji: I appeal to you, and let those lawyers, let the Chairman who is a lawyer and anybody else not to underrate us. Some of us are not lawyers, but we know procedures. We are here under this Act 3(a), na hiyo ndiyo itakuwa Katiba yetu. Mtu ambaye hayuko katika hiyo Katiba, wengine wakiletwa kutoka kando kando kuingia. Na referee nataka kumwambia hivi, the Conference will be successful if the rules are followed and the Act followed to the letter. It is just like football.

**Audience:** Clapping.

**Hon Martin Shikuku:** It is just like football Mr. Chairman. If the referee does not whistle when somebody is stepped on, there is nothing more pleasing to a player when he finds he has been kicked, and the referee whistles and runs away to award him a free kick. He is very pleased, though he is hurt. But when he is hurt and the referee does not whistle and then a member of that team anakanyaga mwingine pande ile na referee anapiga filimbi, hapo ndipo ngumi inatokea.

I want to warn all our chairmen, let us be fair. Let anybody if he stands on a point of order, let him be heard.

**Audience:** Clapping

**Hon. Martin Shikuku:** Don't say I am the Chair, I am moving forward. No!. There was the time in Parliament if you remember. A Member of Parliament stood on a point of order, he was not ruled out, only to tell us "Mr. Speaker there is smoke coming from there, there is fire". So we all started rushing. The door to outside was so small, we were running over each other because he told us "point of order, moto iko pale". So you cannot dismiss a point of order without giving him the chance to say what he has got to say.

The Colonial Secretary Mr. Duncan Sands I recall, he never ruled out anybody on a point of order until he heard him. So let it be. But don't you also use point of order as a means to argue. Point of order maana yake tuna order number one or number two, tunazungumza habari ya ng'ombe hiyo ni order number two. Sasa mwingine anasimama anataka kusema habari ya kanga. He is out of order.

**Audience:** Laughter.

**Hon Martin Shikuku:** That's my business I think I know better.

Now devolution of power, these I am glad my colleagues have referred to. These must be done. Oh yes! It must be done. If it is not done, then this Conference will have failed. Devolution of power Mr. Speaker, tunataka Senate iwe huko. Lower House hapa, Regional Provincial whatever, chini, Districts mpaka huko chini, ili kila mtu apate kazi. Na kutuambia eti itakuwa expensive. I want to react to the argument, "Oh! Hakuna pesa hakuna nini", na hii pesa mnaiba billions na bilioni inatoka wapi? When I used to ask you to declare your wealth, way back in 1971---

**Interjection- Audience:** Tell them.

**Hon Martin Shikuku:** I'll tell them, I am here I am still alive. Mr. Chairman, when I used to ask people to declare their wealth, way back in 1971, they thought I was a mad man, but I think they are more mad than I was--

**Audience:** Laughter.

**Hon Martin Shikuku:**--for the truth never rots, it will stay. It can be buried for a while but it will ooze out later. We want these Chairmen of these committees to listen to everybody. I am glad somebody has mentioned, there is no hurry.

In Lancaster tulikuwa tunaenda chapter after chapter. Wakatuuliza are you satisfied? Yes. Next chapter. Kusukumwa oh there is no time, let us move. Where are you going? To Jerusalem?

**Audience:** Laughter.

**Hon Martin Shikuku:** There is a lot of war in Jerusalem, so we are here. And this is the Lancaster House in the Bomas of Kenya. Where are you going?

**Audience:** Nowhere.

**Hon Martin Shikuku:** Tuisukumwe. Kila mtu atoe maoni yake mpaka atosheke. Justice, wale wa Judiciary people, nataka kuwaambia, the common man in Kenya has no justice. Justice in

Kenya is for the rich! Mtu mdogo hana pesa hata ya ku-file case, na wadogo wananyang'anywa mashamba na hawana pesa ya kupeleka appeal. Justice in Kenya is too expensive, I want the common man ambaye hana uwezo, akiwa ana shida apewe free service, apewe wakili apeleke kesi yake apate haki yake. So far haki ni ya wakubwa, tena wakishikwa wanapelekwa cell, siku mbili, tatu wametoka na kuna; as we are sitting here Mr. Chairman, there are people, commoners, who are in jail and they have been in for years. Kuna mmoja alikaa jela miaka kumi, ishirini na viboko kumi na tano, only on appeal akaambiwa kwenda nyumbani and he has never been compensated. That you can see, that's what an African is, he is a very bad animal.

Mr. Chairman, we must have truth and reconciliation. Hamuwezi kutuambia mambo ni sawa sasa tusahau ya zamani, how do I sauhau ya zamani Bw. Chairman? When I was in detention my mum died, you tell me I have to forget about this? No! let these people come and apologise, let them come out and ask for forgiveness, then we can forgive them. But kutuambia tusahau yaliyopita, na mtoto wako aliua wangu, na wako yuko, you are asking too much. We are not Jesus here.

**Audience:** Laughter.

**Hon Martin Shikuku:** Kwa hivyo hii Conference itengezwe. Truth and Reconciliation Commission, ndiyo itatusaidia. Wale walikuwa wana-torture watu, wale walikuwa incharge of the Ministry at that time, who are with us here must come up and apologise. (Clapping)

I would like to support the expression by Hon. Dr. Towett who gave me this Constitution, because this is the whole Constitution, the 1963. When I was detained in 1975, they took all my documents and all my minutes, and they have never returned them to me, yet they know Shikuku is still alive. You should look at this copy, when you talk of devolution of power, it is all provided there.

Now the question of money to the region, I have said money is not the problem. Do you want us not to do the right because it is expensive?

**Audience:** No.

**Hon. Martin Shikuku:** Do you?

**Audience:** No.

**Hon. Martin Shikuku:** Well the truth of the matter and I have got documents, you know documents are Shikuku's hobby. When we came back, Kanu government refused to let the money go to Regions as provided by that Constitution, so that it fails. I have got documentary evidence here if you want, because this guy never says things he doesn't substantiate. They killed it that way. This time in devolution of power, we are not going to let them get away with it. With those few remarks Mr. Speaker, I beg to ask the Delegate Chair, Hon. Delegates, if you are in committee you better be there and keep time, no shopping. You were sent here by those who sent you to represent them 24 hours. Thank you Mr. Chairman. (clapping)

**Hon. Bonaya Godana:** Thank you. Thank you Mr. Martin Shikuku. Hon. Martin, thank you very much. The next speaker, who is the last but one speaker from this panel is a veteran trade unionist. Hon. Dennis Akumu. Dennis please.

**Hon. Dennis Akumu:** Ladies and Gentlemen, I realise that you have taken more time than initially allocated. I do also realise the fact that practically everything that everybody wanted to say about Lancaster has been said, so that a lot of them would be repetition. Therefore I will not take even half the time my friend Shikuku has taken.

First, I want to thank you all Ladies and Gentlemen and congratulate you for the confidence that Kenyans have bestowed on you. You are the Delegates, and I think it is a great honour that the country has bestowed on you. The country you may not know, but the country and everywhere, people are watching what you are doing and your discussion. If the press exaggerates that you people were heckling, booing, quarrelling, fighting, everybody is discussing this. This is why you have to take your job here very very seriously. I have one or two points to add, which have already been said.

I played part and initially we all did in the 50's, we did not know that things would change. A late friend of mine even called the liberation leader a god, that he was a semi-god. We fought hard, got him to be freed. I called a general strike July 7<sup>th</sup>, 1959 in Mombasa, demanding that those who are in detention, who have now left jail, like Mzee Oneko, Kenyatta, and everybody should be released. Oh but you know when they were released and they went to State House, by 1966 August, I was the among the first people to be detained without trial.

**Audience:** Laughter.

**Hon. Dennis Akumu:** And you know one of the first Vice Presidents of the Republic who had said the liberation leader was god was among the second lot to be detained without trial. So it is extremely important that you people here, must make sure that the Constitution you are going to approve here has all the necessary safeguards. That nobody can manipulate Members of Parliament, that can use the Senators, that can be used to change the Constitution. There must be a final referendum. That final reference should be to the wananchi. Make it difficult for a club, or a group in Nairobi here or anywhere to change the Constitution, unless it is referred to wananchi. That is important.

*(clapping)*

Ladies and Gentlemen, I also want you people to emphasize what Dr. Kiano has already said here. There are things that you have not done properly, there are things that if you still go round Kenya, you will think the country is not free. The workers in the sisal, in the tea, in the sugar, the houses they are living in conditions are terrible. You are talking about compulsory, it is almost compulsory every morning, if they don't they are evicted. So you must entrench that. Make sure that the Chairman and P.L.O Lumumba, when you have finally approved the new Constitution, I am confident the country has confidence in you people. Just be thorough and be strict and don't be rushed. If it means elongating this a longer time than thirty days, debate that and get it. *(clapping)* But when you have done that, do what the American people, like somebody mentioned Jefferson, let Lumumba and Prof. Ghai put it on the floor here, let you sign that this is the delegate from Namanga, this is the delegate from this place, you sign for us, for

history. You are making history. It is extremely important that you sign that you have finally approved the Constitution.

I am not going to be long. Over the devolution, you will be failing if you do not back up the devolution with funds. I have been in two Parliaments, one during Mzee Kenyatta, another one during Nyayo period. Nyayo told us yes you have done devolution, the District Development Fund and so on. You know, the funds have all been in Nairobi here controlled. You may be lucky if you go to State House, or you go somewhere and you look nice, then maybe you can get a road. You people must support your theory of devolution with funds, that money must be transferred to those Districts and the Provinces. There are people who could retain some money, but there are areas that would take some time before they could raise their own money. That is very important in your discussion on devolution.

It is also important Chairman, that in the Constitution entrench certain special interests, the disabled. And whether you like it or not you will still have to entrench position of the women for a while, the rights of the women, representation by women. You have to give working class representation. As we are talking today, even next door we were more advanced, we fought more. The late Mboya went to organize Trade Union in Uganda and Tanzania, they are doing better; Uganda has at least 5 seats in Parliament for Trade Union, Tanzania has nearly about 10. Kenya doesn't. But do that; the disabled women, and the working class. (clapping)

It is important, Waswahili wanasema "asiye na mila ni mtumwa": whoever does not have a culture is like a slave. It is extremely important that you people entrench in the Constitution, somebody talked about education. It is important, that is why Asia is better because an Asian is an Asian. An African is a poor imitation of a French man, a British or American and so on. He doesn't know whether he is an African. You must get the African. We must get our children and grand children that they become African. He can only be an African if he is learning his culture, his mother tongue, during the first five years and so on. You must entrench that in the Constitution that culturally the African must grow and learn to be an African, not a poor imitation of the British or the American or the French. This is extremely important, if you don't do it, look at what the Asians are. The Japanese is a smart man, he is highly developed technically, but the Japanese you see the way they greet each other, they knock each other's

heads and noses and so on and has not left his culture. And you see the Koreans doing the same, you see the Indians doing the same. The only person who wants to be British, wants to be French is the African. Please try and do something about this.

Finally, Shikuku has said, I want to emphasize it, you must respect your heroes. The people who fought for independence, Dedan Kimathi, the Mau Mau, the Giriama that were killed by the British at the beginning of last century, the Nandis, the Kisii, the Turkana, you must respect your heroes and then you must have a heroes place. If you go today, get time, go to Zimbabwe, go to Mozambique, go to Angola, go to Namibia, you will find that there are places where they respect their heroes. You must respect, you tell me if somebody asked you where is your heroes, garden, where do you respect your heroes, what do you do? Do you have? Please try and do that.

And finally I want to tell you, you will argue here, you will disagree on issues but you must continue to discuss. Many of you don't know in Lancaster, there were serious disagreements, there were threats that Northern Kenya was splitting, Coast was ceding, part of Rift Valley was going, the Massai Ole Tipis told us "as a matter of fact now that the British are leaving, the Massai were never colonized. Actually we had a treaty with the British, now that we are going to revoke the treaty, we just want to adjust the maps, claim our land up to Laikipia and Elgon and so on and then declare the Republic of Massai". So to be able to talk and come back as still Kenyans is a great thing. Therefore you people have the opportunity, discuss every thing, give and take but finally get us a good Constitution that protects everybody, protects the children, protects the women, and the disabled.

Look after the old aged, it is very important. I can see that the late Mboya must be turning in his grave as his wife is the President of Help-Age because Mboya used to care very much about the aged, the poor and so on. You can see what the wife is doing about them. All of you, as Shikuku is warning you, you will be old tomorrow. I didn't know when I was in Lancaster I was the leader of Jinja Action Group, we were militants. They were scared because we wanted to take action. Look now I am an old man. Therefore, you must also entrench in the Constitution, care for the old. May God of Africa bless you, so that you get a good Constitution. Thank you.

(clapping)

**Hon. Bonaya Godana:** Thank you very much Mr. Dennis Akumu. We have now come to the last speaker, the Hon. J.D. Otiende, who I understand taught at least four of these senior citizens at the high table, at Alliance High School. I am told he taught the Hon. Kiano, he taught the Hon. Towett, He taught the Hon. Nyaga and he taught the Hon. Jonh Keen and yet he looks so much younger than all of them. Doesn't he?

**Delegates:** Laughter and clapping

**Hon. Bonaya Godana:** I am told he also has a razor sharp mind. Bwana Otiende.

**Hon J.D. Otiende:** Ahsante wananchi hamjamboi.

**Delegates:** Hatujambo.

**Hon. J.D. Otiende:** Mimi ni mzee kijana, kwa hivyo mtanisikiza nataka kufanya summary kidogo vijana wangu wamesema sana. Huoni niliwafundisha vizuri?

**Delegates:** Sana.

**Hon. J.D. Otiende:** Na wote wamepewa Minister, kwa hivyo wananiita mwalimu. Sivyo?

**Delegates:** Ndiyo

**Hon. J.D. Otiende:** Sasa, asanteni sana. Kwanza nataka kuwaambia vile mambo yalianza kabisa. Mwaka wa ishirini na moja (1921), masettler walikaa hapa, katika Legislative Council ya wazungu watupu, wakasema kwamba Kenya ni Colony. Kabla ya hayo 1915, ilikuwa Kenya Protectorate and Colony. Utastaajabu Colony ilikuwa wapi. Coast walikuwa Protectorate, sisi huko kwetu juu kutoka Rift Valley Nakuru Westward mpaka Lake Rudolph tulikuwa Protectorate na Kenya Colony ilikuwa hapa Nairobi na Central Province peke yake. Sasa, wazungu wakataka kueleza mambo yao, wanataka wachukue mashamba Westward kama Uasin Gishu, ndiyo wakatengeneza hiyo sheria baada ya vita vya kwanza. Na jambo hilo lilikasirisha wazee wa siku hizo sana. Unajua wakati huo mimi nilikuwa bado niko Uganda sikuwa ndani ya

Kenya. Nilisomea mambo ya Uganda hata nilimlizia masomo yangu kule Uganda. Na nikikumbuka vizuri, map ambayo tulisomea tuliandika ndani ya Geography, ilikuwa tofauti sana na Kenya ya sasa. Kwanza upande wa Somalia, sikuona mtu akitaja Somalia, hii Somalia ya Kenya sisemi ile Somalia ya kule, mpaka wetu ulifika mpaka Kismayu. Ndiyo sababu Mzee Harry Thuku akahamishwa alipofanya vita hapa Nairobi sijui kama umesoma maneno haya? watu wakauawa, akahamishwa zaidi ya miaka ishirini akawa kule Kismayu, deported. Alifanyiwa deportation, kufukuzwa hapa kwa sababu anafundisha watu mambo mabaya.

Vile vile upande wa North, mpaka wa Kenya umegeuzwa, sijui kwa watu wa katiba hii, delegates, mkifika kwa mambo ya mpaka mwangalie sana, iko matata huko Lokichogio. Nchi yenu imeachwa nje ya map, na lazima muichukue.

**Delegates:** Clapping.

**Hon. J.D. Otiende:** Eh? Au hamutaki tupigane? Hakuna vita lakini mutachukua tu bila vita ni nchi yenu mumeogopa tu kupeleka D.C. huko. Na nchi hiyo ni nzuri sana nikiwaambia. Tena katika mpaka wa Lake Victoria unanikasirisha sana kwa sababu upande wa Kenya umeenda ukipungua, ukipungua, ukipungua, hata sasa tumenyanganywa sehemu nyingi. Nataka hapo mutengeneze mambo na Tanzania na Uganda, kusiwe na mpaka ambao unazuia watu kutafuta samaki. Hapo mutakuwa mumesaidia sana.

**Delegates:** Clapping.

**Hon. J.D. Otiende:** Sasa mambo yaliyo fanyika ni haya, ilipofika mwaka 1925 sote tulikuwa ndani ya Kenya Colony. Pesa zikageuzwa, tukaleta pesa mpya, zamani tulikuwa na rupia ikipatoea, na pesa nyingine tukaletewa Kenya shilling. Halafa ikaja ile njaa ambayo ililetwa na nchi kukauka saana, kwani nakumbuka Ukambani ilikuwa nchi nzuri lakini baada ya miaka kumi Ukambani ikawa nchi dry. Mambo tumeona mengi na njaa na nini, kwa hivyo nataka kuwaambia hivi, nchi hii vile munaita Kenya sasa, mutengeneze map mpya, maana hii ni Kenya ambayo ni Coast pamoja na bahari yenu ambayo munaisahau. Kuna visiwa vingine vya Kenya mumevisahau kule, hamuendi kule. Hii sehemu ni yetu pamoja na Coast hii ambayo mumesikia tulipata kwa Sultani, na vile vile Colony ya zamani hapa katikati, vile vile Western, na ya nne,

nchi ambayo zamani iliitwa Northern Frontier District. Na nadhani mutageuza map kidogo mutakapo pata nafasi, map yetu inataka igeuzwe kidogo ndani kwa mipaka, na nimesoma ndani ya katiba yenu, muangalie mipaka hii ya ndani.

Sasa, nitasema jambo lingine, kwa sababu mumekuja hapa kutengeneza katiba mpya ni vizuri musome ile katiba ya zamani kidogo, itawasidia. Kwanza katiba hii, haikuwa ya part moja ya utetezi, Lancaster watu walikuwa na vyama viwili vikubwa na viwili vingine vidogo. Hata tulipoingia hapa 1963 nikachaguliwa kuwa Minister wa Education hatukuwa na chama kimoja, kwa hivyo mambo yalipokuja ya kusema ati tuwe na KANU peke yake, ilikuwa makosa. Musirudie makosa hiyo. Na hiyo imetuletea taabu imetuletea vifo, imetuletea kuonewa, imeletea watu wengine kunyang'anya wengine mashamba, na hii mambo ya mashamba bwani Maasai moran na Maasai amesema maneno makali sana, lakini ni mwanafunzi wangu nitamwambie apoe kidogo. Jambo lililo la haki kabisa, mwaka wa elfu moja mia tisa na tatu (1903), Sir Charles Elliot alindanganya Wamaasai wakaweka saina karatasi na vidole namna hii, kumbe alikuwa akichukua nchi yao yote. Sir Charles Elliot alikuwa Governor wa Kenya, hapo ndiyo makosa yalianzia hakuna pahali pengine. Lakini badala ya kabila zingine na Wamaasai hakuna taabu, wamekaa pamoja miaka hii yote na watasikizana. Lakini Wamaasai wanaweza kuendelea kutafuta ile 1903 Agreement ivunjwe iwekwe kitu kipya, hii ni haki kabisa.

Jambo la pili, sheria za Land, iko sheria 1915 ambayo imeongoza Kenya lakini juzi katika wakati wetu, kumbe watu wengine wenye akili sana waliandika tu Land Bill, mpya bila hata kutujulisha na tukakuta ina-circulate. Hata ndiyo iko sasa hii Land Bill lazima nyinyi ma-delegates muingeuzi. Iko makosa mengi, kwanza haifuati sheria za Kiafrika. Haitegemei mwananchi, inategemea sheria za nchi nyingine ambazo si za Kenya. Hapa nigetaka hii Land Bill waanze kiuchunguza sana iwe ya kuweza kusaidia watu wetu, kwa sababu musipo angalia, nchi yenu hii mutakuta nyinyi mutakuwa squatters tu. Mukiangalia, mutakuta nyinyi ni squatter na ninaona watu wengine wanapenda sana kwenda ndani ya Benki na kuchukua loan kwa shamba. Jamaa, munajifanya squatter tu mukiona? Na munauziwa mashamba yenu kila mara, kwa sheria ambayo sii ya Kenya. Hiyo sheria ya kuuza shamba lako sababu umekopa pesa, ni sheria ya Government of India ilipokuwa ya Ma-British 1887 Chattle Act ambayo haifai hata kukatiwa kesi ndani ya korti ya Kenya. Kataeni, mkatae maneno hayo, hakuna sheria ya kuuza shamba lako kwa sababu umekopa pesa ndani ya Bank, ni sheria ya Kenya namba ngapi? Tuna hapa

mawakili wengi waniambie, lakini ninajua ni sheria ya India, British Government of India. Na tunataka sheria zetu zote, baada ya kutengeneza hii katiba mpya iwe hizo sheria za Kenya zinaweza toka kwa watu wa Kenya walio pendeza sheria hizo. Lakini mtu anakwenda chukua sheria America anakwenda ndani ya Court anatumia hiyo na anakukatia kesi, hii ni haki kweli?

**Delegates:** Hapana.

**Hon. J.D. Otiende:** Mutakubali namna hiyo?

**Delegates:** Hapana

**Hon. J.D. Otiende:** Haya, sasa, nataka kupambana na wanafunzi wangu, hasa wajukuu wangu, siku zote. Hata wewe ni mmoja tulificha tukapeleka huko America. Hakwenda straight, tulikuwa tukificha watu kuwapeleka ng'ambo. Na wengine wamefika huko wamekwama huko, hawana faida kwetu. Wengine wamerudi lakini wamejifanya ni kwamba wao si wananchi wa Kenya, wanakaa maisha mengine kabisa ya kizungu, hata watoto hawajui lugha, wanasema kizungu tu hata nyumbani kwao. Sasa, sikatai mtu kujifunza kizungu lakini ni haki kabisa kwa destruri yetu kwamba tusijue lugha za mama zetu, tusijue lugha yetu ya nyumbani, tusijue desturi zetu za nyumbani? Kuna kijana mmoja hapa Nairobi wa kwetu, alifika huko wakamwambia, umefiwa na kwa desturi ya wa Luhya lazima ufanye feast kidogo, ya kukumbuka mtu aliye kufa. Hii ni compulsory maana inafanywa, tena munanyoa nywele, watu wanakula vitu wanakwenda, hakuna ceremony kubwa. Akasema mambo haya mimi sitaki, sitaki maneno hayo, mambo ya primitive hiyo. Wakamwambia nenda tu. Alipofika hapa Nairobi, jambo la haki lilifanyika mimi niliona, usiku, akaanza kuona vitu. "Hai bibi yangu ni nini?" Si alirudi akaomba, nifanyieni, tukamfanyia. Sasa hana matata.

**Delegates:** Laughter and clapping.

**Hon. J.D. Otiende:** Kwa hivyo nasema hivi, desturi zetu zingine sii mbaya, zina maana. Usizikatae hovyoy, hovyoy bila kujua sababu. Na tena nawaombeni, mukifanya katiba hii mukimaliza, iwe katiba ya Mwafrika isihitilafiane na mambo ya Waafrika ambaye itafanya nyinyi proud kwamba nyinyi ni Waafrika na wenyeji wa nchi hii, citizens wa nchi hii.

**Delegates:** Clapping.

**Hon. J.D. Otiende:** Musijifanye kama nyinyi wageni, hii ni nchi yenu. Na jambo moja ningesema, nyinyi munajua hata kabla wageni kuja ndani ya nchi hii, Waafrika, hawakupigana. Watu walikuwa wakitembea kutoka hapa mpaka pwani, wanafanya biashara wanarudi, Wakambia walikukwa wakiza tumbako kule Marsabit na hata wanakwenda Turkana. Nani aliwauwa? Hakuna mtu aliwafukuza, tulikaa vizuri. Na tena mimi nikianagalia, nimekaa hapa Nairobi miaka mingi sana, ukitazama Wakikuyu wa hapa, nikitazaaama, sio wale Wakikuyu niliona nilipokuwa hapa mtoto mdogo, sura zimegeuka. Sitaki kusema mengi, lakini munafahamu.

**Delegates:** Laughther

**Hon. J.D. Otiende:** Watu wetu wamejiunga sasa, sasa ni watu wa Kenya. Ni watu wa? Kenya. Ni watu wa.....?

**Delegates:** Kenya

**Hon. J.D. Otiende:** Watu wameona, watu ..... sasa munataka mufanye nini? Ninawaomba sana mufanye katiba hii kwa nguvu ili watu wa Kenya wawe kitu kimoja. Na mtu akija, akiwaambia, kwamba mimi ni Mbere, nilikuwa hapa na na mji uko hapa ifanye District hapa, musikubali. Katika katiba ya Lancaster ya kwanza, hayo maneno yalikatazwa, lakini sijui kwa nini. Kama serikali haisomi katiba, sasa nani atasoma? Government yenyewe inavunja katiba, halafu tutakwenda wapi? Inasema nobody shall create a new District unless certain conditions are put. Lakini hizi zinawekwa tu, ooh, wewe uko na yako, wewe kuwa na yako. Ni mtengeze sheria zenu mukanye watu kabisa, wasigawanye watu. Wasigawanye watu kwa ukabila na mipaka ya kuleta vita na watu kupigana na mikuki. Maana siku za mikuki zimekwisha, na hivi nawaomba sana, musome, neno moja tuliandika na marehemu Mboya, ndiye alikuwa na haya maneno. Katika sheria za KANU, KANU sisemi Nyayo, nasema KANU. Sijui munajua tofauti. Munajua tofauti ya Nyayo na KANU? KANU ni ile ilikuwa KANU na KANU ya Nyayo ilikuwa KANU nyingine, mimi nilikuwa wa KANU ile ya kwanza, na sikuwa wa KANU ya

Nyayo, maana sijui. Maana hii ninasema, tuna adui watatu tu, si Mmasaai, wala Mkikuyu, wala kabila ingine, adui yetu ni umaskini. Sivyo?

**Delegates:** Ndiyo

**Hon. J.D. Otiende:** Adui yetu ni ujinga, kutojua kusoma, adui yetu ni ugonjwa, unatumaliza. Usisihau jambo hilo. Mukitengenza hii katiba, iwe na mambo hayo matatu, na nimesikia wakisema, ukienda hospitali, hakuna dawa, hakuna kitanda, na pesa zinatolewa kununua madawa. Ukienda school, school fees imeruka maelfu, na kuna zile special schools kwa wale mtajiri walio iba pesa na nyinyi watoto wenu hawawezi kusoma. Ukienda kununua kitu dukani, bei imefanywa mara mia moja kuliko ilivyo. Jana nilistaajabu sana, nilikwenda kunywa chai, unajua mimi mtu wa reserve siku hizi sikai hapa sana, nikaona chai katika hoteli yangu. Nikaja nikanywa kikombe hiki kimoja, na kakeki kadogo, nikasema, “how much is that?” Nikampa noti ya mia mbili anirudishie senti. “Ooh mzee, imetosha”. He!

**Delegates:** Laughter.

**Hon. J.D. Otiende:** Jana, jana Kshs. 200/= a cup of coffee? Jamani, hata kama nyinyi ni matajiri namna gani, hiyo ni haki kweli?

**Delegates:** Hapana.

**Hon. J.D. Otiende:** Basi, sasa nawaambia namna hii, ikiwa coffee ni Ksh. 200/=, sasa wewe mtu masikini akitaka coffee, atakunywa kweli?

**Delegates:** Hapana.

**Hon. J.D. Otiende:** Kwa hivyo hii mambo ya kuweka bei ya vitu juu... na vitu vishinde watu, mupigane na hiyo. Na tena muulize wale watu walio na pesa nyingi ngambo, kama ni mimi ningewapa notice tu, zile siku tisaini (90) za Amin, ningewapa 90 za Amin zile pesa mulizoweka ndani ya Bank ya ng'ambo, zirudi, zisiporudi, mimi nitaleta pesa mpya na hizo zenu zitapotea.

**Delegates:** Clapping.

**Hon. J.D. Otiende:** Eh! Lazima mutumie kitu namna hii? .....Hatuwabembelezi, hatubenbelezi mtu, tunasema umefanya makosa njoo ukiri makosa pengine tutakusamehe. Lakini akisema mimi tajiri, fanyeni namna hiyo, kwani hakuna njia za kuweza ku-punish watu kama hao?

**Delegates:** Iko.

**Hon. J.D. Otiende:** Kwa hivyo, nimewapa tu summary, ili muende mukafikiri na mufanye kazi nzuri halafu baadaye mukatae kabisa mtu atakaye kuja kufanya amendment, na amendment hii inafanywa namna hii, hatumii sheri. Amendment inakuja kwa upande wa Provincial Administration. Now, jambo la ajabu katika Ministry zetu, ni kusikia kwamba kuna Ministry mja inaitwa President's Office. Mimi ninauliza, President's office nini? What is President's office? Hata niligombana na Sub-Chief wa kwetu anasema mimi niko na ndani ya President's office. Nikamwambia wewe mjinga unaweza kuwa ndani ya President's office?

**Delegates:** Laughter.

**Hon. J.D. Otiende:** Mpumbavu wewe hata hujui chochote. Wanawekwa kofia hapa wanaambiwa, wewe President's office, mtetezi akiseme usisikie wewe President's office. Nataka kuomba leo hiyo President's office, scrap it out of the constitution, kabisa.

**Delegates:** Clapping.

**Hon. J.D. Otiende:** Maana kila Minsiter ana kazi yake. Sio?

**Delegates:** Ndiyo.

**Hon. J.D. Otiende:** Na ya nini President's office? Nikiwa President mimi sitataka office, mimi nakaa State House niko na cheo. Nitakwenda President's office kufanya nini? Wape watu madaraka, repoti itakuja tu kwako, ikiwa wewe President. Tena President anatakiwa awe

anafanya mambo ya nje (National matters) hapana kuingilia mitaro ya maji, watu wanafanyi nini, ninakuja ku-inspect kuona maendeleo, hii ni upuzi, kupoteza pesa.

**Delegates:** Laughter

**Hon. J.D. Otiende:** Kwani hakuna Sub-Chief pale, hakuna Chief, hakuna Agricultural Officer, hakuna Veterinary, anakuja ku-inspect nini? Kwa hivyo mambo hayo mukatae kabisa, President awe mutu wa kuleta heshima kwa nchi yake, kwa sababu yeye ndiye National Head, mkubwa wa nchi aseme na wale wakubwa wenzake wanaotoka ng'ambo. Hapana akina raia, akina yaya, natangatanga, nafanya harambee ndani ya mijini, ni harambee ya nini?

Kwa hivyo, mwisho, nawapa huu wasia, tafadhalini mwangalie sana mambo muliambiwa na wazee wa zamani na mimi sitaki kuwasumbua lakini nilianza kitambo. Tulifanya bidii tukapeleka Bwana marehemu Eliud Mathu Parliament mwaka wa 1944, tulifanya bidii sana. Halafu baada ya hiyo, tukawapeleka hawa ndani ya Parliament wakapigana, wakapigana, wakapigana pole, pole, mpaka tukachosha waingereza ndiyo wakatupa Uhuru. Hatukupata Uhuru kwa kukaa nyumbani .....(*inaudible*), tulifanya mambo mpaka wazungu wakachoka wakasema tuwape kile wanachotaka. Na nyinyi vile vile sasa, mumepewa chance ya pili kutengeneza constitution hii. Ile ya kwanza naona ilikuwa na vitu vingine vizuri, lakini serikali ndiyo ilikuwa mbaya watu waliokuwa ndani ya serikali ndiyo waliiharibu. Sasa mutengeneze nyingine kufuatana na ile nzuri zaidi ambayo hakuna mtu ataiharibu. Ahsanteni sana Mungu awalinde.

**Delegates:** Clapping.

**Hon Bonaya Godana:** Thank you very much, thank you very much Mzee Otiende. Well that brings us to the end of the presentations by the panelists of senior citizens. And I want to say on your behalf and on my own behalf that we thank them very much for that mind of wisdom that they have imparted on us. I have no doubt that you all feel ready for the collective work of their presentations, it is really immeasurable. We do hope that the 629 delegates assembled to design a new constitution for our country, we will be able to approach it, with the strictness which they

did, that was selflessly, when they were fighting for independence. We hope we can do that as a way of honoring that generation, hoping to see you thank you very much. I think I eeh...

**Delegates:** Clapping

**Hon. J.D. Otiende:** .. I have one important announcement to make, Rift Valley Delegates are requested to meet tomorrow morning at tent No. 2 at 8.00 a.m. and you are requested please to be punctual. Repeat, Rift Valley Delegates are requested to meet at 8.00 a.m. at Tent No. 2 tomorrow morning and be punctual. The steering Committee .....(*interruption*) (I will recognize you shortly), the Steering Committee meeting is on at 8.00 a.m. tomorrow morning. Yes Mr. Haji.

**Hon. Yusuf Haji:** Mr. Chairman, distinguished delegates, I want to make an observation and this observation is a very glaring one. Glaring in the sense that, the distinguished elders who are sitting on the high table if you look very carefully, you will find that there is an omission, an omission which is traditional in this country, that some sections of the society are always forgotten. I am saying this because these are not the only people who have been to the Lancaster House conference. There are so many other people ..... (*interruption*)

**Delegates:** Clapping

**Hon. Yusuf Haji:** ...and I will just read some of them, there was Hon. Arare, there was Hon. Konkole, there was Yusuf Haji, there was Mohamed Sheikh Ali, there was Hon. Abdi Rizak Khalif, there was Wako Hapi. All of them and so many other people, .....(*interruption*).

**Delegate:** Abdi Lar

**Hon. Yusuf Haji:** Abdi Lar, and all of them today are dead. They could not come and sit here. The question here is, why are they dead, all of them? It is because of the hardship and the marginalization that they have gone through.

**Delegates:** Clapping.

**Hon. Yusuf Haji:** It is also happening here because when the Speakers were speaking, and they were trying to emphasize the needs of the unity of this country, so that we may forget about tribes, they continued mentioning either Kalenjins, Luos and the Kikuyus. They did not even by mistake, mention communities like the Bajunis, they did not mention the Somali, they don't mention the Borana, and if we are going to continue this way, there is no way we are going to achieve any unity in this country. I want these delegates here to address the plight of the unfortunate, the plight of the marginalized people, the plight of the people who are dying because they have no water, they have no medicine and they have no schools. Thank you very much.

**Delegates:** Clapping.

**Hon. Godana Bonaya:** Who is calling for a point of order?

**Speaker:** Here, here.

**Hon. Bonaya Godana:** Yes, and please when you speak, give your name or your delegate No.

**Ole Osoi:** Thank you Mr. Chairman, I am ole Osoi from Kajiado and first of all Mr. Chairman, I would request the Steering Committee to give us a way whereby we can regret the decisions of the chair, because I gave out this notice ten o'clock in the morning (10.00 a.m.), it was a matter of urgency and the Chairman deliberately turned it down. Therefore we should have a way to redress this. This is a matter of, actually the importance of this nation because on Friday we did elections of the Steering Committee and every member or delegate who was seated here participated not unless if he or she never wanted to do it, and we elected competent people that record speaks for themselves. And one calling himself a Dr. Kamau Kuria decided to attack the whole delegates over the press .....(*interruption*)

**Delegates:** Clapping.

**Ole Osoi:** ...to say that we were not competent, to say we were serving the interests of the failed KANU regime and gave us every other name, and if my memory serves me better, Mr. Chairman, towards the end of last year when we were gathered here, we even had to dance on this floor saying “yote yawezekana bila Moi” which became a catch-phrase for the campaign of the present NARC government, just almost as popular as the ‘unbwogable’ slogan, which made this government right now, and he says that democracy to him means electing people of his choice. Who in this hall doubts the capability or the knowledge of Hon. Bonaya Godana who is a Ph D holder and an international law expert? We want to warn the likes of Hon., I don’t know whether he is a delegate or what, Kamau Kuria, that he said all delegates should resign or change. We are not resigning neither are we changing, but he is the one ...(*interruption*)

**Delegates:** Clapping

**Ole Osoi:** ....who should put up with the delegates and assist in the process or shut up and let delegates prepare the constitution for Kenyans. Thank you so much.

**Delegates:** Clapping.

**Bonaya Godana:** It is really a burning I hope really ... No, somebody here. You are standing on a point of order?

**Speaker:** It is not order Mr. Chairman. Mr. Chairman I was so much impressed by the work which has been done by the Lancaster, my name is Father Gitonga, delegate from Muranga. I was so much impressed by the work done by the Hon. Gentlemen of the Lancaster House. I would like to move a motion that this conference honors them by facilitating them to plant trees here round Bomas of Kenya, which will be remembered by the future generation and if they can’t plant today, they be given a day when they will come before we close the constitution conference, so that they can come here one day and plant trees written their names so that they will be remembered by the future generation, and during that day if you accept my motion, I would request Hon. John Keen to bring mbuzis and goats from Maasai land which is near us. We slaughter that they may bless this conference and the new constitution. Thank you Mr. Chairman.

**Delegates:** Clapping.

**Hon. Bonaya Godana:** Thank you I take it that the clapping is to accept the proposal as the clapping earlier was also to express solidarity with the sentiments expressed, I don't think I need to dwell on those. As regards your last proposal, I will pass it on to the Secretariat, I understand they are all or the panelists of this afternoon and this morning, the Lancaster team are guests of the commission obviously it will not be possible for them to plant the trees today, you need some logistics, some planning. It needs on what is the right time and way of doing it, I think we will be able to inform the conference tomorrow depending on the reaction of the commission. I undertake to carry out the duty of informing the commission of the wish of the conference. Now, I think we will come to the end of the day's deliberations. I see two more requests for points of orders, you know as Hon. Shikuku pleaded points of orders should be relating the subjects before us but ...*(interruption)*.

**Orie Rogo Manduli:** Point of order. My name of Orie Rogo Manduli. I am delegate No. 594. I am a political delegate, the ones that scare you so much when you hear of them. We are the ones that need representation there Chairman, and we are the ones that will help you with the work that we have here. This is a political event, it is not a tea party. Now we have a situation here where these seats, you have been talking first of all of those who went to Lancaster House and look at even that train, there wasn't a woman who went to Lancaster. But I do know that there was a Mama Priscillar Abwao who went along with these Lancaster. Did she go? And she lives here in Nairobi and nobody has bothered to invite her to be here. This same ignoring of women continues up to today and I would like Mrs. Abwao...*(interruption)*

**Delegates:** Clapping.

**Orie Rogo Manduli:** ...to be given a special chance to come here and address us. I know how to reach her, give me the duty I will make sure Chair that she is here to talk to us. I am also suggesting Chair, that the Lancaster House Wazee stay on as consultants and points of reference throughout this conference and be paid for being here.

**Delegates:** Clapping.

**Orie Rogho manduli:** they have done a good job, they a good reference point and I know after today you are going to ask them to go back, because you don't want to spend any money on them. Let them stay and be paid as a reference point to help us. We will be using them as our gauge to go we will be talking to them when we are stuck and there are many times when we are going to be stuck here and they will be the people who will arbitrate and I would like them to officially stay on as our reference. I seem not to finish, has somebody seconded that? Is it seconded?

**Delegates:** Yes.

**Orie Rogo Manduli:** Beautiful.

**Delegates:** Laughter.

**Orie Rogo Manduli:** As if that is not enough, it is raining on us poor delegates. We see the workers of the commission with umbrellas some of them three some of them four, eh?...

**Delegates:** Laughter.

**Orie Rogo Manduli:** But it is raining on us, and when we ask we are told those are samples eh.... Ours will be brought, when are they going to be brought? When we have been rained on to death and we are all sick and we can't do the work that we are sitting here to do? That has to stop we need umbrellas. Another thing that I want the chair to hear, is that we are not about to be squeezed, these spaces are not big enough. When we are told to stand up we can't stand, there is no room. When we are coming in we squeeze in like children, this hall is big can we be spread out, spread out, so that there is room, observers only tabled the opening many but as you can see they will not be filling all those spaces. So, these chairs should be spread out so we have adequate and respectable room for respectable and honorable delegates not squeezing around like children.

**Delegates:** Laughter and clapping.

**Orie Rogo Manduli:** Now, we have had a wonderful day today, and this from today and because of these wazees, I can promise Kenyans that they are going to come out with an ‘unbwogable’ constitution and that there is nothing that will stop us from getting the constitution. The only draw back is one, we have dictatorial prescribing Chair. You have done a good job today you have listened to everybody, you were about even to stop me but you realized I was ‘unbwogable’ and I wasn’t going to stop.

**Delegates:** Laughter and clapping.

**Orie Rogo Manduli:** You heard our veteran Shikuku tell you about the role of political parties in this place. We have a motion which motion I don’t even think there is any need for moving. You are going to accommodate four of our delegates, only four out of forty five political parties. Is there any objection to that?

**Delegates:** No.

**Orie Rogo Manduli:** Are we seconded?

**Orie Rogo Manduli:** Are we supported?

**Delegates:** Yes.

**Orie Rogo Manduli:** Hiyo peke yake. Only four out of forty five political parties let us not waste time arguing over nothing, we are the engine that makes this thing drive. We are the hosts and hostesses of this conference. Thank you very much.

**Hon. Bonaya Godana:** Thank you, thank you. Mr. Kung’u are you sure it is not the same subject? Mr. Kung’u, I hope that is the last point of order for this evening.

**Njuguna Kung'u:** Thank you, thank you sir. First, thank you Mr. Chairman, I would like to make an observation Mr. Chairman, a special one to our special delegates who addressed us this afternoon. Standing from the delegate side not from the high table, we would like to record our appreciation of their presentation this afternoon and particularly when they tell us what they have gone through and we have the opportunity to hear from them directly. Mr. Chairman I would want the delegates to appreciate by applause, we applaud for those who addressed us this afternoon Mr. Chairman. Can we do that delegates? Clapping for them?

**Delegates:** Clapping

**Njuguna Kung'u:** This is our appreciation. We have had a veering oath from the main address this afternoon Mr. Chairman, I notice the sentiments have been taken but what I would like to support most important, is to find a way of accommodating those who are able to be with us those in the Lancaster Conference last time to share their experience along with us, in this conference, if it is possible. I am supporting that position. And finally, I do not want to appear to move a motion from the back but the presentations from those veterans have impressed, emphasized on the importance of involving political parties in the constitutional process. We are not as political parties begging for any position, we think it is our right.

Interruption - (inaudible)

**Njuguna Kung'u:** When the political parties sat, 32 delegates, we thought it fair to give one delegate for those small political parties who were not represented in the steering, we suggested a name and you have that name Mr. Chairman, we thought it is also important to propose one delegate to represent the interests of none political parties. Those are two positions. We also said the women constituency for the political party must be represented. We gave you a name for a delegate. And finally the fourth one, it is a delegate for the youth constituency, asking 32 political parties Mr. Chairman asking for four slots we think is very fair, this is a political process. I do not know why the Chair thinks it is important that political parties must come here on the floor and plead. We should not be seen to be causing trouble of pleading; it is fair demand Mr. Chairman. If we include the four in the Steering Committee and I think I'll have the support from the delegates on this one, Mr. Chairman, if we show by hands you include the four

