

CONSTITUTION OF KENYA REVIEW COMMISSION

(CKRC)

Verbatim Report Of

**DISSEMINATION OF REPORT AND DRAFT BILL, KIHARU
CONSTITUENCY, HELD AT MURANG'A COUNTY HALL.**

ON

16TH OCTOBER 2002

DISSEMINATION OF REPORT AND DRAFT BILL, KIHARU CONSTITUENCY HELD AT MURANG'A COUNTY HALL ON 16TH OCTOBER 2002

Commissioner present:

Com. Githu Muigai:

Secretariat in-attendance:

Anne Wairimu Miki -	Ass. Programme Officer
Grace Gitu -	Verbatim Recorder
Njeru -	District Cordinator

The meeting started at 11.20 am with Com. Githu Muigai in chair.

James Waweru: I think I am calling the meeting to order and we shall start our session with a brief prayer made by father Joachim Gitonga. He also happens to be the Chair person for that committee that dealt with Constitutional issues in this Constituency. Father Gitonga lead us in prayer.

Father Gitonga: Tuombe: (prayer in Kikuyu)

James Waweru: May I take this opportunity to welcome our Commissioner Githu Muigai to Murang'a and by extension and without taking a lot of time let us have some consensus. The first consensus is of course that mobile phones must be off so that we can have a clear session. Then the next consensus is the language. Mnetaka tutumie lugha gani. Kikuyu, Kingereza, Kiswahili,- yote mix- Kikuyu. But Kikuyu kuna watu ambao hawataelewa. I can see they will not follow hata Kizungu so use any of the languages. Okay I think we shall get started alright alright. This is a better position what I was thinking is that tumekubali tutumie Kiswahili, Kingereza , Kikuyu yeyote ile wewe binafsi utasikia is not disturbing you. But I don't want to give any commands at this juncture, I just wanted to welcome the Commissioner who came from Nairobi and also to welcome all of you to this session where you have come to deliberate on the Draft Constitution to disseminate, give other views, give other comments and because we are a little bit late I just want to welcome our commissioner from the CKRC to guide us on the way forward. Later on,. I will be a participant like any other participant. I will give my views like any other participant but I will briefly chair this morning session so that we can get started. Today have also another session at

Kangema Social Hall so those participants from Kangema Constituency are at Kangema with another Commissioner and our District Cordinator on the Constitutional issues in Murang'a District Cordinator Bwana Njeru is at Kangema but we shall still move forward. So Bwana Commissioner Githu I think it is high time that I hand over the mic to you so that you can give guidelines on how we shall move forward. Thank you.

Com. Githu: Thank you very much Chairman. Kila mtu anaelewa Kiswahili? . Okay jina langu ni Githu Muigai. Asante sana mwenye kiti, ninashukuru sana vile mmetukaribisha hapa kwenu. Jina langu ni Githu Muigai na mimi ni Commissioner wa Tume hii nina ma-officer wawili, yule ambaye ananasa sauti pale anaitwa Grace Gitu na yule mwingine anaitwa Wairimu. Tuna nahodha wetu ambaye hakuungia hapa anaitwa John Munyua kwa hivyo tumefika watu wanne kutoka Nairobi.

Kitu cha kwanza ningependa mutuwie radhi kwa sababu tumechelewa kidogo, tulipitia barabara yenu mpya kwa sababu tulikuwa hatujui kwamba haijakamilishwa kujengwa na ikawa ni vigumu kufika wakati unaofaa.

Kitu cha pili ni kwamba kikao cha leo sio kikao kirefu kwa sababu tumekuja kutimiza ahadi tuliowatolea ya kusema kwamba tukimaliza kuandika report ya Katiba na ndiyo hii hapa, na mimi natumaini kwamba mmeipata kila mtu amepata copy ya hiyo report. Tulisema tutarudi hapa kuleta hiyo report na tena kuleta report ingine ya maana zaidi na ndiyo hii, na hii report ndiyo ya Kiharu Constituency inaonyesha yale maoni nyinyi wenyewe mlitoa kwa yale mambo yote tuliosungumzia yanayo husu Katiba. Na tungelipenda sana nyinyi nyote kila mtu apate nafsi ya kuichambua na kuangalia kama yale yote mliyosema yako ndani ya hiyo report. Kitu kingine na cha mwisho ni kwamba tulisema tutakapo andika sheria yenyewe mpya ndiyo tunaita Katiba, mapendekezo ya Katiba ndiyo haya tutakuja tena ndio tuzungumze na nyinyi tujadiliane tena msema kama yale yote mliyoyasema yako au kama Kama mna mengine yale mngependa kuongeza au kuna mengine mngependa tutoe. Kwa hivyo kikao hiki kinahusu hayo mambo matatu.

Kabla hatujaanza, ningependa kuwakumbusha pahali tumefika sasa katika hizi harakati za kurekebisha Katiba yetu. Mwanzioni tulikuja hapa kwenu na tukawa pamoja na watu wa makanisa , walimu na wengineo, tukawa na masomo ya raia yanayohusu Katiba. Na katika masomo hayo ndiyo tulizungumzia jinzi ya Katiba ya serikali, ya sheria zinazounda serikali na mengineo. Baadaye tulirudi hapa na kuchukua maoni yenu ambayo ndiyo yale maoni sasa tumeweka kwenye hii report yenu inahusu Constituency ya Kiharu.

Sasa tuliketi chini na kuandika report ambayo nimewaonyesha. Hii report imeandikwa hapa kwa kimombo imeandikwa short version. Yaani kwa Kiswahili ni kusema hii imeandikwa kwa mkutasari tu. Kuna report kubwa sana ambayo iko inapitia page mia sita na hamsini ambayo ina mambo mengi zaidi ambayo pengine tungeileta hapa haingetusaidia sana kuzungumzia yale mambo tunataka na ndiyo tukaleta hii ndogo.

Na kuna hii Draft ambayo tumesema ni mapendekezo. Kutoka hapa tunaingia mkondo wa mwisho wa kazi yetu. Kwa sababu

wengi wenu mmesoma kwa magazine wiki hii tutakutana kule Bomas Of Kenya taraha ishirini na nane na Mungu akitujalia tutamaliza tarehe ishirini na nane mwezi ujao, au tutakuwa tumemaliza kabla ya siku hiyo kufika.

Tutafanyaje huko National Conference?. Huko tutajadiliana ndiyo tukubaliane vile Katiba ya mwisho siyo Draft , siyo mapendekezo ya mwisho itakavyokuwa imeandikwa. Hapa kwenu Murang'a mna Districts tatu Bwana Chairman, lakini hapa tuko Murang'a District mna watu watatu ambao mmechagua sijui kama wako hapa pengine one of them is here, father yuko hapa, Bwana Chairman yuko hapa na kuna mama mmoja pengine alikuwa lakini akarudi. Hawa watu watatu ndiyo watakaofika kule na kusimamia Districts yetu na ndiyo watakao peleka yale mambo ambayo tutakubaliana hapa leo. Kwa hivyo hiyo National Conference ina maana zaid na ndiyo mkondo wa mwisho na tukitoka hapo Katiba itaenda kwa Bunge na vile sheria imeandikwa, Bunge haitaongeza au kutoa kitu chochote ambacho tutakuwa tumekubaliana kule Bomas of Kenya. Tumelewana? Kwa hivyo mkutano wa leo una maana zaidi kwa sababu ni lazima tuzikizane kama kuna vitu vyovyote tungependa kuongeza au kutoa au vinginevyo.

Kabla hatujaanza, tena nataka kuwakumbusha mambo mengine mawili. Jambo la kwanza, msiulizane kwa nini tulisema hivi na vile na vinginevyo na haiko kwenye Katiba. Ni kwa sababu Katiba haiwekwi kila jambo, Katiba inawekwa yale mambo ya maana zaidi, yale mambo ambayo ni lazima yaelezwe kwenye Katiba yenyewe. Mambo mengine tunaweka kwenye sheria za Kenya. Kwa mfano kwenye Katiba tunaandika kwamba kila mtu ana haki ya kumiliki shamba pahali popote katika Jamhuri ya Kenya. Tunaweza kuandika kwa Katiba pahali utapata title deeds? Hapana, kwa sababu basi tukiandika hivyo Katiba itakuwa kurasa kama elfu mia moja. Kwa hivyo kwa Katiba yenyewe tunaandika tu yale mafupi ya maana, yale mawe ambayo ndiyo yanajenga nyumba kwa kona. Katiba ni lile jiwe la kona ambalo ambacho linasimamia mzingi wa sheria zote. Kwa hivyo usiulize kwa nini pale hawajandika kitu fulani ambacho hakiwezi kuandikwa hapo, kitandikwa kwenye sheria za Kenya. Kwa mfano, masomo. Kwenye Katiba tunandika jambo kama

- a) Ni haki ya kila mwananchi kupata masomo ya mzingi.
- b) Tunasema ni haki ya kila dhehebu kuanzisha shule zao na kuongoza hizo shule kulingana na dini yao na mila zao, lakini hatuwezi kuandika ndani ya Katiba kwamba Board of Governors ya shule itakuwa watu kumi. Tunaelewana? Yale mambo ambayo yanaingia kwa Katiba ni yale mambo ya maana zaidi ambayo inasimamia sheria zingine.

Jambo la pili, nataka mkumbuke kwamba Kenya kuna makabila 42 kuna dini za kikristo hatuwezi kuhesabu hizo ni nyingi zaidi- kuna dini zingine za kiafrica pia hatuwezi kuhesabu. Kuna dini za kislamu, kuna za kihindi na kuna zinginezo. Kuna wazungu, kuna Wahindi, kuna Waarabu na kuna wengineo. Kwa hivyo mkisoma hii Katiba ambayo tumeandika mkumbuke kwamba ni vigumu sana kuandika yale yote ambayo nyinyi mnayoapenda, ni nyinyi mliyoaitisha kwa sababu tuliandika Katiba ndiyo ilete watu wote wa Kenya pamoja. Kwa mfano, nyinyi mlitumbia hamtaki Majimbo , mlisema Majimbo yanagawanya , watu wa Kenya yanazorotesha uchumi na mengineo.

Tulienda Kenya nzima tukapata watu wengi zaidi waliosema hatutaki Katiba ikiwa haina Majimbo. Mnaelewa? Kwa hivyo ukisoma yale unayoona hapa ukumbuke kwamba wale wako kando nyinyi mko kando na sisi tunajaribu kuwaleta njia ya katikati. Mfano mwingine. Nyinyi mlituambia hamtaki pombe. Pombe zinaharibu watu, watu wanakuwa vipovu, wengine wanauwawa na hizi pombe ambazo zinapikwa huku vijijini. Tulienda Kenya mzima tukapata watu wengi waliosema mwingilieni chochote kile, lakini msingilie tembo. Sisi Waswahili tumekula mnazi kutoka zamani na hatuna shida na mnazi. Tukaenda Kisumu wengine wakasema, hapa sisi tunakunywa chang'aa ndiye kinywaji cha maskini anajiburudisha nacho akimaliza kazi. Tukaenda Kakamega wengine wakasema hapa tunakula buzaa na msingilie buzaa tafuteni kazi ingine. Mnaona pale sasa. Kwa hivyo ni vigumu sana kuandika mambo pale ambayo kila mtu atakubaliana nayo. Tunajaribu kufuata yale ambayo wengi wetu wanao nia nzuri. wanaweza kukubaliana nayo na ndiyo pengine unakuta pengine tumesema kuna Parliament itagawanywa. Mara mbili, kuna chumba cha juu na kuna chumba cha chini. Kuna Prime Minister, kuna President na mambo mengine na nyinyi wenyewe mnajuuliza kwa nini haya yote yanafanywa, ni kutafuata ule msimamo wakadri ambao utaleta kila mmoja ndiyo akubali kwamba sisi tunaweza kuendelea kama nchi moja.

Na lingine zingine, jambo la mwisho, mukubali kwamba kuna mambo mengi ambao sisi kama wananchi yalikuwa katika sheria ya Kenya lakini tulikuwa hatuyajui. Lakini sasa vile Katiba imeandikwa kwa magazeti, imeletwa kwa radio na kwingineko sasa wananchi tunajua na tunauliza mambo na tunauliza maswali. Kwa mfano, watu wengine wameshangaa kuona korti moja ambayo inaitwa Kadhis korti na watu wengi wameniuliza kwa nini nyinyi mmeenda kutengeneza korti zingine mpya ambazo zina nguvu kushinda koti za kawaida, na nimewaambia kwamba koti za kwanza Kenya za Wafrika zilikuwa Kadhis korti mwaka wa 1898. Kwa hivyo hatutengenezi koti mpya, hizi ni koti ambazo zina miaka mia moja na kurukia. Vile tumefanya ni ndugu zetu wa-islam wamesema hii Kadhis koti haifanyi kazi vizuri kwa sababu kadhi yuko Nairobi na Kadhi yuko iko Mombasa lakini sisi wenyewe tuko Murang'a, tuko Isiolo, tuko kwingineko na tunataka hizi korti zitukuribie kwa sababu siyo korti mpya ni korti ambazo zinakaribia wananchi. Na kuna mambo mengine kama hayo ambayo tutazungumzia hivi karibuni. Tumelewana vizuri.

Basi sasa wacha tuingie kuangalia yale ambayo tumejaribu kuyafanya. Kitu cha kwanza wale ambao mnao hii karatasi yetu. Katika Katiba yetu ya zamani palikuwa hapana kielelezo nchi ya aina gani na tunajaribu kufanya nini tukiwa watu wa Kenya. Tumetoka wapi tunaenda wapi, tunayataka yapi. Watoto wetu tungewatakiya yapi. Na sisi ndiyo tumesema ni vizuri tuandike hii preamble ndiyo iwe kielelezo cha kusema sisi Wanakenya ni kina nani na tunaenda wapi. Kitu cha kwanza mtaona pale tumesema kwamba Kenya ni nchi moja kwa sababu mnajua ki-historia kuna watu wamesema katika nchi yetu kwamba Kenya inaweza kukatakatwa iwe Majimbo iwe vitu vingine ndani ya nchi hii lakini hii Katiba inasema Kenya ni nchi moja wala haitakatakatwa kwa majimbo yeyote na vitu vingine vyovyote vitaendelea kuwakwa nchi moja ya watu wote wa Kenya hilo ni la kwanza. La pili ni kuhimiza tena kwamba Kenya ni nchi ya demokrasia na demokrasia ni kusema hii ni nchi ambayo yeyote yule ambaye angelipenda kusimamia vitu vya uma, mali ya uma, mambo ya umma lazima achaguliwe na wananchi wenyewe. Na tunasema hivi kwa sababu kutoka siku za mkoloni mpaka wa leo katika nchi yetu watu wengi ambao wemekuwa wanasimamia mali ya umma na mambo ya uma hawakuchaguliwa na wananchi. Na kwa hivyo wamekuwa hawana

heshima ya wananchi au mali yao na ndiyo tumeandika hayo.

Ya pili kutoka mwisho ndiyo kwa Kizungu tunaita Social Justice. Kwa Kiswahili hii ni kusema ni haki ya kijamii na haki ya kamili ni kusema Kenya iwe nchi ambayo kuna watu wanao tajirika, wanao soma, wanao pata matibabu ya magonjwa, wanao mali na hali, na wengine wetu na wananchi wenzetu hawana chakula cha kula, hawana masomo ya watoto wao wanazidi kuzoroteka ki afya na kurudi nyuma. Kwa hivyo tungelipenda nchi ya Kenya iwe na Social Justice. Ni kusema kuwe na haki ya kijamii, ndio peza za umma zitumiwe kuletea kila mtu masomo, hali nzuri ya afya, barabara, maji, mazingara na vingenevyo.

Mwisho, ndiyo tunaita kwa Kizungu the rule of law. Hivyo ni kusema tungelipenda Kenya iwe nchi ambayo inatawalwa kwa sheria. Hapa zamani wengi wetu tuna kumbuka kumekuwa mara nyingi wale wanao ongoza nchi wamefanya mambo ambayo hayasimamiwi na sheria ilioko nchini, na tumesema tungelipanda Kenya iwe nchi ambayo inatawala na sheria, siyo na watu binafsi, tumelewana?

Okay tusonge mbele, Ningependa sasa muangalie pahali Tume- chapter two yes ya Katiba ile tunasemea ni hii, nikisema angalieni pahali mjue tunangalia wapi, hapa. Na ningelipenda muangalie chapter two. Kitu cha kwanza tunasema hapo ni kwamba Kenya is a sovereign republic. Hivyo ni kusema nini? Hivyo ni kusema Kenya ni nchi huru na kusema kwamba Kenya inajitawala, Kenya siyo koloni, Kenya siyo dominion, Kenya haisimamiwi na nchi nyingine yeyote. Lakini kitu kingine pale, tumesema- ningependa muangalie number nane hapo hapo. Kenya ilikuwa zamani katika Katiba yetu ya kwanza ya 1963 tulikuwa tumeweka boundary za nchi yetu. Tulipoendelea kufanya marekebisho, kwa yale marekebisho ya zamani yule mwenye kurekebisha akasahau, na 69 ile chapter ilikuwa na boundaries ikapotea sasa tunairudisha tena kwa sababu katika nchi yetu tungependa tujue, na wengi wenu mkisoma pale nyuma mtaona kuna schedule moja kubwa inaweka ile boundary yetu na Ethiopia na Somali na Uganda na Tanzania ndiyo tuwe tunafahamu na tunaelewa jinzi ya nchi yetu. Na haya mambo ya boundary ni mambo magumu kwa sababu wengi wenu mmesoma kwa gazeti Cameroon na Nigeria juzi wiki iliyopita, Mahakama ya dunia imetoa amri ya kutengeneza boundary ya Cameroon na Nigeria na imerudishia Cameroon. Nchi ambayo ina mafuta mengi zaidi na Cameroon sasa na Nigeria pengine watanza kusosona. Kenya, mnajua kule juu kuna karibu na Sudan kuna mafuta ambayo bado hayajatolewa na hiyo boundary ina mambo ya kikando. Kwenye ziwa ya Victoria, watu wengi tulipoenda huko Kisumu walisema Waganda wameingilia ziwa ya Victoria na wanavua samaki za watu wa Kenya na mambo mengine namna hiyo. Kwa hivyo tunataka kwa hii Katiba tuweke boundary yetu ndiyo tujue vizuri.

Halafu mambo mengine tumefanya na boundary tutarudi kuzungumza hayo kabla sija maliza.

Tumeweka mambo mengine yasiwe Bunge inaweza kufanya marekebisho. Unajua Katiba yetu ya zamani ilirekebishwa mara nyingi zaidi, na Wabunge. Saa zingine wanafika huko sa nane na ikifika jioni washarekebisha na kuondoka na kuenda na kutumia pombe na vinginevyo. Tumesema sasa hatutaki hivyo. Kitu kimoja tumesema Wabunge hawawezi kupitisha bila Wananchi kukubali ni kupeana boundary ya Kenya vile tumeeleza hapo. Kitu kingine hapo tumesema Nairobi ndiyo mji mkuu

wa Kenya. Ndiyo siku za usoni kusije watu wengine wa kusema wacha mji mkuu uende Mombasa, au Wajir, au Eldoret, au Kisumu au kwingineko, hayo mambo yamemalizika.

Tumesema lugha ya kitaifa ya Kenya, lugha za kitaifa ni Kiswahili na Kizungu. Kiswahili kwanza halafu Kizungu. Hii kusema kwamba kila mwananchi ana haki ya kuingia office ya serikali na kuitisha makaratasi yeyote katika ile lugha ambayo anaelewa. Na sisi tunafikiria kwamba wananchi wote wanaelewa Kiswahili. Na hapo mtaona number tisa, mtaona lugha ni mara pili, kuna ile tu tunaita official language na ndiyo Kizungu na Kiswahili, na kuna ile tunaita National language na hiyo ni Kiswahili pekee na nafikiri mnaelewa hayo. Kitu cha tatu hapo kwa lugha tumesema ni kwamba kila lugha ambayo inaongewa na watu wa Kenya hiyo lugha lazima ifadhawe na serikali ipatiane pesa ya kuhifadhi hizo lugha. Kwa hivyo ikiwa ni lugha ya Kisomali, Kiborani, Kikuyu, Kikamba, Kijaluo hizo lugha lazima zifundishwe watoto wa shule na zihifadhiwe. Na wengi wenu wanajua kuna lugha ambazo zimepotea miaka iliyopita kama hamsini. Kuna lugha nyingi zimepotea na kuna watu wengi pia wamepotea na wanazidi kupotea na tunataka kuhifadhi kila watu katika nchi yetu.

Tumesema katika Kenya hakuna dini ya kiserikali, (there is no state religion) serikali ya Kenya haina dini, na kwa hivyo kila dini katika Kenya inasimamiwa na sheria kama dini zingine. Kenya siyo nchi ya kikristo na kuna watu wengi wangependa hivyo lakini siyo nchi ya kikristo, wala si nchi ya ki-islam, wala si nchi ya Kihindi, wala si nchi ambayo inaongozwa na dini za kiafrica. Kenya ni nchi ya dini zote. Tunaelewana? Hiyo ina maana yake na maana ambayo inafaa -kwa Kizungu ndiyo tunasema Kenya is a secular state basi ni kusema sisi tuko mbele, tuko mbele ya Britain kwa sababu Britain is a Christian republic where the Prime Minister ndiye ambaye ana mteua yule Arch-bishop of the church of England na mengineo. Na sisi siyo Iraq au Iran au wengineo ambao ni republic ya kidini ya kislamu an singinizo saa ingine Kenya ni nchi ambayo dini zote ziko na usawa.

Mambo mawili ya mwisho mlituambia tulipokuja hapa kuchukuwa maoni yenu ni kwamba wimbo wa Taifa, bendera ya Kenya, ule mhuru wa Kenya na vile vitu vyote ambavyo vilitumiwa kulete uhuru hapa Kenya ziwekwe kwa Katiba na zilindwe zisije kuondolewa na tumesiweka hapo, mnaona 11 ziko hapo tumeziweka.

Mwisho ni holiday za Kenya; Nyinyi wananchi mlisema holiday katika Kenya zimekuwa nyingi sana na mkasema zote ziondolewe zibaki mbili au tatu. Tumeweka mbili ya Jamhuri day na Madaraka day, kuna ingine hapo tumesema pengine Katiba day lakini hiyo ni yenu. Kuna kwingine tumeambiwa na watu kwamba tuweka ile siku ya wale watu waliopigania uhuru zamani na wale ambao wanaendelea kuitetea na kuilinda demokrasia ya Kenya. Basi tutazungumzia hayo hivi karibuni.

Tuende sasa chapter four- Citizenship- uraia. Katika Katiba ya zamani kulikuwa na mambo mawili ambayo yalikuwa yanatatiza. Jambo la kwanza ni kwamba wanawake walikuwa hawana haki ya kupatia uraia waume wao ambao walikuwa siyo Wakenya. Tunaelewana? Na walikuwa pia hawana haki ya kupatia uraia wa Kenya watoto wao ambao wamezaliwa na watu wasio Wakenya. Lakini nyinyi mlituambia, wengi wenu mlituambia haifai hivyo kwa sababu tungelipenda wanaume na wanawake wawe na haki sawa. Na sasa tumerekebisha na kusema kila raia wa Kenya awe mwanamke awe mwanamme

anaweza kumpatia uraia wa Kenya yeyote yule ambaye atamuoa ni vibaya? Tunakubaliana? Hamkubali haya? Tutazungumza baadaye. Maana ya kuandika hivyo ni kwa sababu tuliona kwamba kuna watoto wengi wa Kenya ambao wamezaliwa na wasichana wa Kenya ambao hawana uraia wa Kenya hata baada ya mama na baba kuwachana mnaelewa hapo? Tuseme msichana Mkenya ameolewa na Mganda au Mjeremani au Mu-America, sasa yule mtoto siyo Mkenya, tuko pamoja, halafu mamake wakiachana na babake na asimfuata babake Ujeremani atabaki Kenya lakini hana Kipande na hana passport na hana chochote kwa sababu yeye sio Mkenya. Mnaelewa sasa? Tukawana sasa ile ingefaa tuondoe ndiyo wale watoto waendelea kuwa Wakenya.

Kitu cha pili katika sheria za Kenya ilikuwa ya kwamba ungelipata uraia wa nchi nyingine ungenyang'anywa uraia wako wa Kenya. Na sisi tumesema sasa haifai. Watu wengi wameenda ng'ambo kusoma wamepata uraia huko, wanaishi huko, wanatuma pesa hapa Kenya na nyinyi mnaponda hayo mali mnatumiwa na hamjateta au mmeteta? Tukaone yule mtu ambaye mali yake tunaichukuwa hata yeye tumewachie kitu siyo? Tukasema mwana Kenya yeyote akiwa amepata uraia wa Australia, wa South Africa, wa Jeremani aendelea kuwa mwana Kenya. Na pia ndio wakati ukifika wa kufanya uchaguzi tunampelekea debe huko anaweka kura. Vile anaweka pesa kwa posta zinatufikia na yeye afikiwe na debe ya kura apige. Na kitu kingine akitaka kurudi Kenya siende kwa Embassy kusema nipatie visa kwenda nchi yangu niliozaliwa na yule karani wa visa amuambie "rejected" imekataliwa wewe keti hapa America, inafaa, ndiyo tukaondoa hiyo.

Kitu cha mwisho cha uraia, nyinyi mlitueleza kwamba mwenye kuangalia haya mambo ya uraia kule Nairobi na Ma-office mengine kazi yao ni kuchukuwa rushwa na uraia unapewa watu ambao hawafai, sijui kama juzi mmesoma mzee mmoja kutoka Mozambique amesomesha hapa Kenya miaka thalathini na miwili kule Hola, ni watu wangapi hapa wanaweza kwenda kufanya kazi Hola? Amesomesha huko miaka thalathini na miwili, ameo msichana mkenya wamepata watoto na sasa wana wajukuu. Ameenda kupata uraia wa Kenya amekataliwa. Tumesema tuondoe mamlaka ya kupatiana uraia kutoka kwa makarani wa Ministry tutengeneze body ya kupatiana uraia ndiyo hiyo body isimamiwe na watu ambao ni watu wanaheshimiwa na raia na wanajeshimu wenyewe na ndiyo tumetengeneza citizenship body. Pengine pale pia, citizenship body itangalia mambo ya work permit. Wale wengi wanasema Kenya, mlango umefunguliwa tu mtu akitaka anaingia akitaka kwenda anaenda. Mtu wa kuchokora kwenye mapipa ako na work permit tumesema hii kazi iondolewe kwa makarani wa Ministry ipewe hii body ndiyo watu ambao wanaleta mali na ujuaji na technology ya Kenya wapewe barua za kuja. Watu ambao wanataka kukuja kupika na kufanya mambo mengineo pengine wabaki kwa sababu hapa wapikaji ni wengi na namna hiyo,

Tuko chapter five sasa tunaangalia zile haki za kibinadamu. Kuna haki nyingi hapo na ningependa muangalie kutoka kifungo cha ishirini na tisa kwenda kwa sabini na tano na ni mambo mengi. Hatuna wakati wa kuingilia kila mmoja ya yale mambo. Lakini ningependa kuchukuwa mawili au matatu. Ya kwanza ni haki za kina mama. Kuna haki za kina mama. Hii Katiba inasema kina mama ni lazima wapatiwe haki ambazo zinawawezesha kuwa Wanakenya kamili. Na pasiwe sheria yeyote au jambo lolote katika nchi kama yetu ambayo imeendelea tuko pamoja?

Kitu kingine tumesema ni walemavu. Mkiangalia hapa tumekuja na Katiba, hii ni Katiba yetu na imeandikwa katika ili michoro ambayo inasomwa na wale ambao hawaoni. Ni kwa sababu sisi tungependa kuwa kielelezo cha mambo mazuri na tungependa serikali ya Kenya ambayo tutaunda iwe inapatia walemavu haki zao za kibinadamu.

Wafungwa wa jela; katika Kenya yetu mfungwa amekuwa mtu ambaye anangojea kufa kwa jela hakuna chakula, hakuna dawa, hakuna nguo, hakuna blanket, hakuna kitanda haifai. Nia ya sheria si kumpeleka mtu jela ndiyo akufe huko, ni kumpeleka jela ndiyo adhibike, na akishaa dhibika arude nyumbani ajisaidie mwenyewe na asaidie familia yake na tumesema Kenya ni lazima iwe nchi ambayo inaonyesha nchi zingine vile ya kuchunga mahabusi. Mmekubali? haya tusonge mbele.

Mambo mengine yanamruhusu yule mtu ameshtakiwa kortini. Nyinyi mmetuambia kwamba katika Kenya yetu mtu akishtakiwa kortini ni rahisi zaidi afungwe kabla hajaelewa kesi ilikuwa juu ya nini. Kwa sababu serikali imesimamiwa na prosecutor mwenye hakimu anazungumza pale juu kwa Kizungu, wengi wao wanazungumza kwa upole na pale mwananchi ameletwa na police harakaharaka anaulizwa ni kweli? ama siyo ukweli anasema ngoja kidogo, “ngoja nieleze” anambiwa sema ndiyo au la anasema siyo ndiyo au la, wacha nieleze” anarudi uko ndani. Kurushwa ndani unasikia jela ndiyo hiyo, wiki ya tatu kesi yake inaitwa wanasema alikufa akiwa anangojea kesi. Tumesema hatutaki mambo kama hayo. Kenya ni nchi ambayo imendelea, hayo mambo yafanyike kwenye nchi zingine na tumesema kuna Wakili wa umma Public Defender- tumesema hiyo office ya Public Defender itengenezwe. Kenya yote kwa korti zote ndiyo mwananchi awe kwa kesi yake anaweza kusema ngoja kidogo niitiwe yule Wakiri wetu sisi wananchi ndiyo asikie yale ambayo mnanieleza na ndiyo nijue vile nitafanya. Tumesema hayo yafanywe.

Kuna mambo mengine pale uhuru wa magazeti uhuru wa maredio uhuru wa vyombo vya habari, uhuru wa mwananchi kufanya demonstration au maandamano -ukisoma hapo uk urasa wa arubaini na tisa, haki ya mwananchi kuandamana bila kupigwa na police ni haki ya maana zaidi kwa sababu maandamano ndiyo yanayo waleta pamoja wale watu ambao wangelipenda kuliza serikali irekebishe mambo ambayo yamezorota. Tumeandika pale. Haki zenu wananchi, kuunda vyama iko pale 50, 51,54, haki ya mtu yeyote Mkenya kuwa na shamba lake, na mali yake na isichukuliwe na mtu yeyote, haki ya kila mwanakenya kuishi pahali popote, haki za wakimbizi mnaona naona pale 52? Ningependa kutumia fursa hiyo kuwaeleza kidogo. Kwa nini tuandike katika Katiba ya Kenya haki za watu wasio wa Kenya? Watu wengi tulipoenda, Daadab wengi wengine wenu mnajua Daadab yangu kule karibu na Somalia kuna kambi moja kubwa zaidi ya wakimbizi, tulipoenda Kakuma karibu na Sudan kuna kambi kubwa zaidi ya wakimbizi. Wakenya wengi walisema hatutaki wakimbizi waondolewe mara moja warudi kwao. Sasa hapa ndipo tulipotumia ujuzi wetu, saa zingine wananchi, saa zingine raia anasema kitu cha maana ambacho anakisikia mwenyewe lakini haziambatani na sheria za ulimwengu na hakiambatani na mambo ya kisiasa ya sasa wala hakiambatani na dini zetu ambazo sisi kila mmoja wetu anaabudu Mungu wake. Yule mtu ambayo amekimbia kutoka nchi yake, ni mtu ambaye ana shida. Kenya ni nchi ya wastaarabu sisi ni watu tuliosoma, sisi ni watu tunaomuogopa Mungu, sisi ni watu ambao tunajiheshimu wenyewe. Hakuna mtu ambaye anaweza kuingia Kenya amekimbizwa na wenzake, wanataka kumua halafu tumwambie rudi kwa hao wanaokua. Tunaweza kufanya hivyo? Kile kitu ambacho inahistahili tufanye ni hii; kwa vile Mungu ametupatia Kenya amani, ni kusema wale watu watakapo kuja Kenya watakaa hapa, watafanya vile hawataingilia

wenyeji wale hawatafanya haya wanafanya na mengineo na ndipo tukandika pale mambo haya.

Tumesema mambo ya afya- 57- kuna watu wengine wemesema mambo ambayo mimi sikubaliani nayo. Mnangalia 57, inasema Kenya kila mtu ana haki ya dawa, na hiyo haki kuna haki pia za mtu kupata matibabu na mawaidha yanaohusu uzazi. Watu wengine wamesema hii Katiba inataka kusema wakina mama wanaweza kutoa mimba? Lise,aukweli mimi sioni, na tusome pamoja mniambie kama mnaona haya. Wapi? Sijui mwenye kuandika Katiba news, lakini mimi naweza kukuambia nitaisoma pia mimi naweza kukuambia mimi mwenyewe ni mmoja wa wale watu walioandika hii section ya basic rights. Na katika kichwa changu na cha na mwenzangu tulipoandika hivi tulikuwa tunafikiria haki za wananchi kuelezwa mambo yanaohusu pengine kwa mfano, kupanga uzazi wa watoto wako, ndiyo mtu akitaka kuwa na watoto wawili anaweza kujua --- yeyote ambayo yanambatana na vile bibilia inasomesha na kanisa inasomesha na waislamu wanasomesha na wengineo. Lakini si kumpelekea mtu mambo ambayo hayambatani na dini yake na mafunzo yake. Tunaelewana? Tilitaka kwamba mtu ambaye anaingia kwa hospital ya serikali awe anaweza kuuliza katika daktari ikiwa ni mama ikiwa ni baba amuambie nieleze vile ningeweza kupanga uzazi wangu ndiyo niwe na wale watoto au niwe watoto wangu wasikaribiane sana, ndiyo niwe naweza kuwalinda. Hiyo ndiyo tuliandika na wale ambao tutaenda kwa National Conference wanaweza kulichukuwa hili jambo ndiyo ile lugha ambayo imetumiwa hapa inaweza kutengenezwa zaidi na kuondoa mambo ambayo yanaleta tashuwishi kwa sababu haikuwa nia yetu kabisa kuleta mambo ambaye hayambatani na dini zetu au mila zetu Tumelewana?

Kuna mambo mengine hapo tulisema juu ya adhabu ya kifo. Tena hapa ni mahali ambao wananchi walikuwa hawakubaliani kabisa. Wananchi wengine wengi walisema adhabu ya kifo iondolewe lakini wale wengine walisema tunataka adhabu ya kifo kwa sababu tunasumbuliwa sana na wakora na wanaji wenye kufanya mauji na mengineo. Sisi kama Tume tulifikiria tunafaa kuondoa adhabu ya kifo. Kwa sababu mbili. Sababu ya kwanza tulipata kujua kwamba Kenya hakuna mtu ameuwawa. na serikali ya Kenya kule jela kubwa kutoka mwaka wa 1983 hakuna mtu ameuwawa. Watu wote wanajasana huku, wamewekwa kama mifugo wamefungiwa tu. Kwa hivyo wale wananchi ambao wanafikiria watu wameenda huko kuuwawa kwa hivyo hiyo inasaidia si kweli. Kwa miaka karibu ishirini sasa hakuna watu wamewawa huko wameketi kama wanyama wamefungiwa. Na unajua katika sheria za leo katika Kenya, ukiwa umefungiwa ukingojea kunyongwa huna haki ya kutoka nje, huna haki ya mazoezi, una haki ya kufanya kazi, huna kazi ya chochote unafungiwa tu kama mnyama.

Hilo limekuwa jambo la kwanza. Jambo la pili. Tuliona kwamba watu wengi- wakora wengi wanaua wananchi wakifikiria kwamba akimua mwananchi basi huyo mwananchi hataenda kortini, kutoa ushahidi. Kwa hivyo hii kusema kuna adabu ya kifo inaongeza ule ukora wa hicho ni kitu cha pili. Na cha mwisho tukapata kwamba katika nchi nyingi za dunia hii adhabu ya kifo inazidi kuondolewa mbali kwa sababu inasemekana kwamba hakuna nchi hata moja ambayo imeweza kuonyesha kwamba mkiendelea kuua watu ukora unakwisha. Nchi nyingi zimeonyesha kwamba hata zile zina mauwaji na American na mimi nimeishi huko na nimesoma huko, katika America kwenye states nyingi wana hii sheria ya kuua watu. Na vile wanazidi kuua watu ndiyo wakora wanazidi kuua wenzao na haina haki ambayo inaonyesha kwamba inasaidia chochote. Lakini hii Katiba ni Katiba ya wananchi wa Kenya. Wananchi wa Kenya wakitaka wakisema wanataka watu wauwawe kila siku, au kila wiki

au kila mwezi basi tutaandika hivyo. Tusonge mbele.

Tuingie uchaguzi- chapter six. Nyinyi mlituambia kwamba katika mambo ya uchaguzi wananchi wamepoteza sifa ya ile Tume. Kwa sababu wananchi walisema lile Tume linalo simamia uchaguzi linao watu wengi pale ambao wamechaguliwa kwa njia ambayo nyinyi wananchi hamuelewi. Na tumesema sasa, vile tungependa kufanya ni ile Tume ya uchaguzi iwe inaundwa pakiwa na wale wenye wana kamati wawe wamedhinishwa na Bunge ndiyo kila Commissioner anayo makaratasi yake, yanaletwa kwa Bunge, na Wabunge wanangalia halafu wanapitisha. Halafu tukasema lile Tume ni kubwa zaidi. Lina watu wengi zaidi na Kenya ni nchi ambayo ina shida ya kiuchumi. Tukasema ile Tume yao iwe ina watu wanane au kumi lakini siyo hao ishirini na kitu.

Pia pale kwa uchaguzi nyinyi mlisema mngenda mkipiga kura, kura ziwe zinahesabiwa pahali mlipigia ndiyo muwe mnaweza kujua kwamba kweli zile kura wamesema zimepigwa na zile mlipiga wenyewe ni moja. Kitu kingine mlisema ni kwamba mlituambia kwamba vyama vya kisiasa katika Kenya ni vingi zaidi. Pengine wananchi walikuwa hata hawajui ni vingapi. Sasa juzi tumejaribu kuhesabu tumepata Kenya vyama ni arubaini na sita. Hii ni kusema hakuna nchi nyingine yeyote dunia nzima ina vyama vingi kama Kenya ni kusema kila mtu Kenya, ana chama chake au tusema kila mwana siasa ana chama chake. Wengine juzi tumejaribu kuwaita katika huu mkutano wa National Conference, tukashindwa kabisa tutawapata wapi, hawana office, hawana posta office box number na hawana simu. Kwa hivyo kila chama kiko kwa ule mfuko wa mwenye chama na nyinyi wananchi mlisema ondoeni hizo vyama vyote vibaki vyama vitatu, vinne au vitano. Tulipofikiria sana tukaona hii italeta shida kwa sababu ikiwa kuna mtu wa kuogopewa zaidi ni mwana siasa. Wanasiasa ukisema utaondoa chama chake atakufukuza zaidi. Kwa hivyo vile tulifanya ni kuandika kwenye Katiba mpya tukasema Tume ya uchaguzi ndiyo itasimamia vyama vyote. Halafu tukasema vile vyama vyote ambavyo tuko navyo sasa vitaendelea. Lakini kila mwaka lazima chama kilete makaratasi yake kwenye Tume kuonyesha mambo mengi ambavyo zimetimiza. Kwa mfano kila chama ni lazima kiwe na wana chama Kenya yote. Kusiwe kuna chama - tuchukuwe mahali kama Mathare North tuwe tuna chama chetu, watu wa Kibera wana chama chao, watu wa Dagoreti corner wako na chama chao, tumesema vyama ni lazima viwe National parties. Kwa hivyo ni kazi ya Tume kufuatilia na kuona hayo yamefanywa na mengine mengi ambayo yanatakikana.

Kitu kingine tulisema ni kwamba, ni lazima vyama vipewe pesa na serikali ya Kenya. Kwa sababu vyama hapa Kenya vina dausika sana kwa sababu hazina mali. Lakini siyo kila chama kitapata pesa. Si kila chama kitapata pesa ni lazima chama, ndiyo kipate pesa kiwe ni chama ambacho kina Wabunge na Ma-councillors. Kwa hivyo ikiwa chama chako hakina Wabunge na hakina Ma-councillors hicho ni chama ambacho kwanza kitatupiliwa mbali. Lakini hata zile ziko na Ma-councillors na Wabunge siyo vyote, ni lazima wawe Ma-councillors fulani kiwango fulani na Ma-MPs fulani. Kwa hivyo vile nyinyi mlituambia tufanye itafanyika kwa njia nyingine. Kwa sababu hata wenye vyama vidogo vidogo itawabidi waende wakokutane ndiyo watengeneze chama kikubwa ndiyo wapate pesa. Lakini hata zile peza zikipeanwa siyo za wale wenye parties watumie wenyewe ni kuwa hizo pesa ziende kupitia vyama na ma-office, wafanyi kazi na hivyo vingine mtavyona kwenye hiyo sheria ambayo tumeweka.

Kitu cha mwisho kulingana na yale mliotueleza, tumetupilia mbali ile sheria inyosema kwamba ni lazima kabla hujasimama, kiti cha Diwani au kiti cha Ubunge au kiti cha President uwe una chama. Tumefundisha ile sheria ya zamani iliyo sema unaweza kusimama kiti chochote ukiwa raia wa kawaida na kwa Kizungu tunaita independent candidate. Kwa hivyo ukienda kwa KANU wakukatae uende kwa DP wakukatae uende kwengineko wakukatae na iwe wewe mwenyewe unafikiria watu wanakutaka ni vyama ambavyo havikutaki utaingia kama independent candidate. Na pia kuna ingine hapo ambayo ina maana zaidi. Unaweza kuwa President wa Kenya as an independent candidate na hiyo tutazungumza mambo yake baadaye. Tumemaliza kwa chama, tusonge mbele tuingie Bunge.

Bunge, tumeshika ile Bunge ya zamani na tukaitengeneza sasa tuna Bunge mbili kwa moja tunaelewana hapo. Bunge ina vyumba viwili, chumba cha juu na chumba cha chini. Chumba cha juu tunaita National council, Chumba cha chini tunaita National Assembly. Kwa hivyo ni kusema hii Katiba itakapo anza kufanya kazi tutakuwa na Wabunge mara mbili. Wabunge wengine watakuwa chumba cha juu, tuanze juu au tuanze chini? Tuanze juu? Haya. Chumba cha juu wazee wengine wanakumbuka wale watu waliokuwako zamani wanaweza kukumbuka katika Katiba yetu ya zamani kulikuwa na Bunge tulikuwa tunaita senate. Senate ilikuwa chumba cha juu cha Bunge na hiyo ilitupiliwa mbali wakati huo. Sasa sisi tunasema ya kwamba tutengeneze chumba kule juu kinaitwa National Council. Nani atakuwa kwenye hii National Council. Kutakuwa na watu sabini Wabunge sabini watakuwa kwenye National Council. Hawa sabini thelathini watakuwa wanawake peke. Hii ni kusema kina mama watapata viti vyao in the Upper chamber ambao watagombania wenyewe kwa wenyewe bila wanaume mnasikia. Nieleze tena au tumelewana? Tumesema kule Bunge ya juu itakuwa na viti sabini, kwenye hizo sabini thelathini ni za kina mama na ni kusema kina mama watambambania hizo viti wenyewe kwa wenyewe bila wanaume. Halafu zitabaki --- I am so sorry.

Kuna hii Bunge ina watu mia moja, kina mama, watakuwa thelathini tumelewana vizuri? Na zingine za kila mtu ni sabini kwa hivyo hiyo Bunge ina watu mia moja thelathini kina mama, sabini ni za kila mtu. Kwa hivyo kutakuwa na kura mara mbili za kujaza hizo chumba. Ya kwanza ni ya kila mtu, watoe watu sabini ingine ni ya kina mama tutoe thelathini. Hizo za kina mama zitafanywa- kwanza tuangalie hizo sabini. Hizo sabini sitajaswa na Districts, na hapo ni vizuri muelewi vizuri kwa sababu hiki chumba ni cha kulinda sana sana masilahi districts, mnaelewa? Kwa sababu mnaweza kuliza ni kwa nini tunajaribu kutengeneza chumba kingine ni kwa sababu, na hapa mkikumbuka tulipoanza niliwambia, kuna watu walikuwa sana wanatetea majimbo. Na hii Upper chamber tumetengeneza ni ile compromise tulijaribu kutengeneza compromise ndiyo wale watu ambao wanatetea Majimbo sana wasifikirie kwamba hii Katiba imewa-acha nyuma are we together.

Kwa hivyo zile viti sabini zitapiganiwa kulingana na Districts na tunaweza kurudi hapo. Vya kina mama pia ni vya Province mnangalia hapo one or six three- kuna akina mama wanne wanne wa kila Province na wawili kutoka Nairobi. Kuna watu na pengine tutazungumza tukifika kwa kujadiliana- kuna watu wanasema hawa ni watu wengi zaidi na Kenya ni nchi ambayo haina

mali tutazungumza hayo tukifika hapo.

Kitu kingine tulifanya, tulichukuwa ile Bunge ya zamani tukaiongeza viti tisini. Ikawa sasa Bunge ya tisini National Assembly, ina viti mia tatu. Mnakumbuka mia mbili na kumi. Hapa ningependa msikilize vizuri kwa sababu hapa ndiyo ambapo pana swali kubwa. Waniasia wanasema hizi viti tisini tumetengeneza ni vya nomination- hapana. Bunge ya chini itakuwa na Constituency mia mbili na kumi kama vilivyo sasa. Lakini kuna viti vingine tisini ambazo zitakuwa siyo za Constituency na hivyo viti vitajaswa na vyama. Kwa nini? Kwa sababu tulipokuwa tunasikiliza maoni ya wananchi, wananchi walitambua kwamba Constituency zingine ni kubwa zaidi na zingine ni ndogo zaidi lakini Mbunge ni mmoja.

Nataka tuende pole pole tuelewana kwa sababu hii ni jambo ambalo linatitisha kidogo. Wananchi walitambua, Mathare Constituency ina wapiga kura elfu moja hamsini lakini ina Mbunge mmoja. North Horr Constituency, ina Mbunge mmoja lakini ina wapiga kura elfu tano. Watu wa Horr Pole wakutambua ati na sisi hapa tuna Constituency ambayo kutoka corner moja kwenda ingine ni mile mia sita tupewe zingine. Tunaelewana sasa shida pahali iko. Kitu cha pili na pia cha maana zaidi tulipo soma historia ya kupiga kura hapa Kenya, tulipata kwamba inawezekana chama kipatiwe kura na wananchi ambayo inashindwa na vyama vingine lakini kiwe ndiyo lile chama ambayo kitaunda serikali kwa sababu kina viti vingi. Nitarudia hapo.

Ukiangalia vile Katiba ya leo inasema inawezekana chama kiwe na Wabunge wengi zaidi ya vyama vingine lakini kiwe na kura ambayo siyo ya kushinda vyama vingine. Kwa Kizungu ni kusema one party-- inaweza kuwa na absolute ni majority lakini iwe na viti ambavyo inashindwa nayo --. Wacha niwapatieni kwa mfano. Chama kinacho tawala leo cha KANU kiko na viti kwenye Bunge kushinda vyama vingine vyote. Lakini kiko na less than thirty four percent of the popular votes, tunaelewa? Sasa, hii system tunajaribu kuleta ni ya kujaribu kuunganisha popular vote na Constituency vote mnaelewa? Kwa hivyo, ikiwa chama kinaenda kwa uchaguzi, inatoa watu mia mbili na kumi wasimamie Constituency. Lakini tuseme kwa mfano hapa kwetu Murang'a Kiharu, tuseme hapa tuko wangapi? Mko wengi zaidi. The last election, 67 thousand. Tuseme kwamba in Kihara Constituency wananchi 60 thousand wamempigia kura mtu ambaye, chama chake, tuseme chama kama Shirikisho party, okay?. Tuseme hapa Murang'a 60 thousand wamechagua Shirikisho party wamechagua Mbunge wa Shirikisho party. Yule Mbunge akiingia kwenye Bunge zile kura zingine zote zinapotea kwa sababu anaenda kukalia kiti kimoja, yule vile vile aliye chagua na kura elfu tano amekalia kiti kimoja kwa hivyo 55 thousand votes zinapotea. Kwenye hii system ambayo tunaikemea sasa ----

James Waweru: Asante sana, Commissioner Githu Muigai. Napendekeza tuanze na upande huu tulize maswali tuseme kama kumi, atajibu, halafu tuende kwa wengine kumi hivi halafu awajibu ndiyo tuweze kuendelea mbele. Kabla wengine wetu kufika tulikuwa tumesikizana ya kwamba wale ambao wako na mobile either tufunge ama uweke vibration canteen kazini pale. Basi tuendelea na watu kumi wa kwanz Reverence.

Bishop Mahiami John : Asante sana mwenye kiti nilikuwa nauliza swali fupi kwa sababu halijatajwa. My name is Bishop Mahiani retired Bishop for Mt. Kenya Central. Na mimi nimekuwa nikifanya kazi , kazi ya watu wazee tangu nilipo- retire na

nilitaka kusikia jambo hilo kama limetajwa kwa sababu naona wazee wameandibiwa tangu nifike nyumbani nimekuta wazee, wamama wazee, hawana pension, hawa kitu chochote na hii serikali naona imetuachia sisi mzigo. Vijana wameenda Nairobi wamekwenda kufanya kazi zao lakini wamesahau na hao wazee wengine wanakufa hapa kwa sababu ya kukosa msaada. Hiyo ndiyo nilitaka kusema je kama kuna nchi zingine kama America au Britain wana senior citizens kama ni mzee akingia kwa matatu, bus analipa nusu ticket au kama kuna ni gari la mwoshi akienda kununua vitu anapatiwa bei ya chini yaani ananunua vitu kwa sababu ni mtu senior; Hawa wetu, na ndiyo wamefanya nchi hii ikafika mahali ilipo na wakapigania uhuru na nini kwa nini tumewasahau? Thank you.

Charles Waithaka. Jina langu naitwa Charles Waithaka mimi ni Mwalimu. Nina mapendekezo matatu na nina swali moja. Pendekezo la kwanza ni kuhusu umri. Ningependa tuondoe ule umri wa juu wa kusema ati Rais a-retire akifikisha miaka sabini. Kwa sababu kuna watu wengine ambao hata wakiwa miaka sabini bado akili zao ni nzuri. Vile vile ma-Judge wacha tuwawekea sabini tuwache kuwaondoa kusema sitini na tano. Pendekezo lingine ni kuhusu elimu. Sijui hii District Council itasimamia elimu namna gani. Itasimamia elimu ki-curriculum, itasimamia ki-facility ama itasimamia ki-human resource?. Na mwisho ningemuliza Commissioner cost za implementation ya hii Katiba and maintenance of the same itatoka wapi? Asante.

Irungu Kang'ata: Kwa hayo maswali, yangu ni hata tukisoma katika page 45 ya Draft tuangalie six page- kwa jina naitwa Irungu Kang'ata kwetu ni hapa Murang'a katika six page utaona kuanzia a 12th article kuendeya chini muangalia that corner imeandikwa "time limit within which actions shall be taken" Kuanzia kwenye time limit inamaanisha pana uwezekano haya mambo yote ambayo tumeambiwa katika Katiba time kama uongo ama kiti tu kimeandikwa kwa karatasi. Kwani serikali itakuwa ikitumia hii six schedule ku-argue ya kwamba time bado bado tunaendelea yaani kwa Kizungu tutaziita draw back clauses.

La pili, ni kusema religion ama dini imepigwa sana sana katika hii Katiba. Katika hapa nita-prove kusema ni vibaya katika Katiba kuweka demarcation between the state and the religion because mtu hapo anaweza kuitumia hiyo kuwa kila mahali religion inasema kitu anatumia hiyo kitu akisema religion hataki kuongea. Katika hiyo hiyo point, naweza sema ya kwamba ni vibaya hapa NGO role katika hii Katiba imekuwa mbaya. Wame-introduce abortion katika hiyo ndiyo tunaongea mambo ya abortion katika production female reproduction rights. Hiki kitabu ambacho kiliandikwa na nyinyi watu wa Katiba ambacho ni September issue hapa tuna-define what the female reproductive rights rise wanawake ndiyo wanaongea mambo ya abortion abortion kwa hivyo tunaweza kusema wamekuja nyuma waka-introduce abortion na sisi ni wakristo tulikuwa tumepinga.

La mwisho, ni kusema NGO sisi tuko na NGO kwa nini zinapewa where as they are not accounting for the money ambazo wana-get lakini kwa mfano tunasema a political party should not get money from a non citizen of Kenya. But, NGOs which is being empowered is getting money from non citizens. There is a contradiction. Why should you empower NGOs na party hizi zingine hazipewi pesa (inaudible) we suggest kwamba wanasiasa wataanza NGO ndiyo wa-get pesa za hizo waendeleze mambo yao.

La mwisho kabisa ambalo nilikuwa nataka kuongea lilikuwa katika ile sehemu ya censorship. Ninasema it is possible to censor electronic media lakini press media hamuongeti mambo ya censorship why? Ambapo tumeona kumekuwa proliferation of pornographic – magazines. While electronics you can censor, but you are not censoring his ingine ambayo ni ya kuleta mambo mabaya na pia, sisi youth tunaona tumelaliwa sana-----.

Rev. Miano: I am Rev. Miano. Mimi kwanza hii ya Judicial and legal system, I have been looking through it but I don't see the local tribunal if they are explicit. Then when you come to the local government we are talking about the village decides whether the village council is constituted from the village elders or through election. But then we are (inaudible) two six members or no more than ten members.

When we come to the location, tunasema ya kwamba the location council consists of two representatives one of whom shall be a woman elected by each village council from among its members. Kuna uwezekano vile mimi naona, kuwa ile village council hawa watu sita au kumi wote ni wanaume. Na hakuna mwanamke. Mimi ningependekeza tusema hawa watu six members or more, tuweke kinagaubaga kwanza mmoja awe mwanamke na mmoja awe kijana let us not leave the young men and women. Then tukija kwa Districts Administrator, the District Administrator anaonekana ana nguvu na tena ana kuwa elected. And then we are saying, the District Council consist of members directly elected by the registered voters of the District. The District Council consist of not less than 20 or more than 30 members. Why then are we not putting a clause that women will be represented and young men and women youth will be represented in these District Councils. That was my question.

Then we come to the issue of the President. Tunasema asiwe mwana Bunge na ni vizuri hivyo. I support that but then I will add that if a President amepata a certain percentage of the National votes, awe member wa National Council because we can look at the people we have Presidential candidates who have been there. If right people like Kibaki, like Ngilu, like Wamalwa like suppose they never made it to the Presidency but now wangekuwa nyumbani and they are people whom we like. So I said if someone starts for awe amesimama kiti cha Rais na hakupata awe member wa National Council. Asante.

Speaker: Thank you Chairman yangu ni mapendekezo mawili na maswali matatu. Pendekezo ya kwanza Bwana Chairman, katika hii document yetu ya Kiharu ukisoma watu wa Kiharu walisema lazima jina la Mungu liwekwe katika Preamble. Lakini hakuna maneno kama hayo yamewekwa katika Preamble except the last word God bless Kenya na hii tunaonelea haitoshi. Mimi nikipendekeza tusema kama vile our National Anthem starts with the Oh God of all creation ningependekeza tuanze Preamble yetu na maneno haya nimeisoma kwa Kingereza "Oh God of all creation" though being the maker of the National and the moral Constitution which guide the human race on earth and on which base our human Constitution we the people of Kenya then we continue with these words which are here. We say aware the people of kenya aware of our ethnic cultural and so on. So I would ask Mr. Chairman that those words be put in the Preamble then the Preamble continue then put

here.

Another pendekezo Bwana Chairman katika hii Kiharu Constituency ukisoma sana utaona sisi tulisema mambo ya mkulima yaangaliwe sana lakini katika document hizi mbili Bwana Chairman, hii na hiyo nyingine hakuna kitu chochote kimetajwa juu ya mkulima. Ingali ya mkulima hapa nimesema, mkulima agriculture being the backbone of Kenya economy and livelihood of Kenya and being the most (inaudible) sector and (inaudible) to the farmer and all the existing agricultural bodies such as Coffee Board, Tea Board, Cereal Board, Rice Board Co-operative societies, Sugar Board, KFA and KCC and the ministry of agriculture, having failed the farmers desparately, I suggest the farmers Commission be established and be entrenched in the Constitution and whose objectives would be to revival agricultural industry, to bring competence among farmers, to enhance and revive Co-operative movement be the custodian of farmers properties invested in huge building. These cost the farmers billions of shillings and now they are desperate waiting for vandalization like the one in Nyeri Kiganjo or being sold as it is being done in some of the parastatals. These Commission will also ;

Look for the market for the farmers produce. Advise farmers on where they could buy all the farm inputs in respect of their crops compensate farmers when there is crop failure or any crop, disaster

Facilitate farmers with soft loans of subsidies so that they can produce enough food for home consumption and export and be ombudsman for farmers where they settle their grievances.

Those are my two pendekezo. Swali lile lingine Bwana Chairman ni hii ya religion our sate has not religion. Although you mentioned there before, but although we said all religion are equal in front of our Government yes the appointment of Kadhi here I don't want to be seen as though I am against the Muslim religion, but I want justice to be done. It seems there is contradiction; One side we said the state has no religion and it does not favour any religion on the other hand full chapter of Kadhis being appointed by the Chief Justice and at these Kadhis all over the country are paid by the Government. This shows that there is kind of favourism on one religion against the other.

The one is about holidays. Kenyatta day has been abolished and nothing has been put in its place I agree with you that we cannot be giving every President who comes we give him a day or her a day they will be too many but there should be a day where we honour our freedom fighters who liberated this country from the colonial Government. It will be very unfair if we forget history if we don't even remember the people the people who died for this country. Whether we call it Mau Mau day or Heros day we must put something there.

The other thing Mr. Chairman, is the children right. According to you definition in this document child is somebody from one year to eighteen. As I understand. But a child does not start at year one it start nine months before. There is no provision to protect unborn child that from the moment of conception he has the right to lives he has the right to be taken care of. But the Katiba here has not mentioned the right of unborn child and I think it could be better because we are against abortion and many children are being aborted, killed and murdered through abortion because it looks as if they have no right although the

Government does not approve of it. It should be in the Constitution on how should be protected. With that Mr. Chairman I think I don't want to ask more questions. Thank you very much.

Jeremiah Kamau Muirigi: My names are Jeremiah Kamau Muirigi and I am the Branch Secretary of Kenya Local Government Workers Union Murang'a county Branch. I have one question and three recommendations. And I start with a question. This Constitution Review is a very important exercise which we feel that should be supervised and carried on by people of integrity. I have a question here where would like to know of the representative like the three we have whether we have the power to check their integrity and if need be recall on That was the question. I have the the recommendation on starting with the devolution authority that is in chapter 2, 33 part two I would propose that the District Government employ their own staff but the employment should actually be controlled by the Public Service Commission and I would say this because we may have the local differences being extended to the employees who are employed by those Council and we have an example like now we all know the problems we have in Local authorities Councils and employees right in Murang'a County Council, Thika Municipal Council, Eldoret Municipal , Mombasa and many others.

And in part three the deployment also should be recommended by the Councils to the Public Service Commission which in compliance with the employment Act and terms and condition of service agreed by the Trade Union, will implement.

Also, in part three the organization of devolution principles in the devolved Government. Part B and C, the policies made by the Legislative Council should start from the Electorate.

Since most of the policies will be going towards the service delivery whereby the electorate and are recipient, they should be given the authority to supervise various projects as this is where corruption is practiced at the highest level- and should be empowered to reject substandard the performances and exaggerated rates. Thank you.

James Waweru: Let us give the Commissioner time to answer those questions so that we can take another ten after he has dealt with those ones.

Com. Githu Muigai: Except for my Lord Bishop who asked a question in the language we were discussing, everybody else asked in English .I assume that you want us to change the language of this deliberation to English. (kikuyu). Let me answer in English because Bishop there is a whole section actually on the elderly it is only that we never had sufficient time to go the details. If you lost Look at the Bill of rights article 36 is one of those interesting provisions you would think should elicit no problem no dispute. I can tell you we discussed this for a whole morning because there were many people who said first, the term 'elderly' is not correct it has the wrong meaning so we settled on 'older members' and if you look at look at chapter six it has a whole set pf provision relating to older person in our society. President somebody said President should be 75 years that is an opinion, Judges should be 70 -that is an opinion. Somebody asked what are the powers of the District Council om relation to Education. And I want to remind you what we said at the beginning that the power of a specific department

are not set out in the Constitution. But when we are back in the office starting tomorrow we shall be working on the Legislation that will give power specific power - power of employment, power of taxation power of allocation of resources and so on and that will come later; What we have here is the principle and what we need to agree on is whether the Principle is right or wrong.

What is the cost of implementing this Constitution I don't know, it is the problems, with my job the job of the Commission. Our work is like that of architecture. We ask you, what kind of house do you want and you say mimi iko na nyumba kubwa, mimi niko na watoto menyar this and that then we sketch the house. Then there is another man called quantity surveyor, he is the one who tells you this will cost you a lot of money and so on. In America you know there is no job called quantity surveyer the architects are the quantity surveyors. So maybe that is what you wanted us to do. In that regard, we were trying to think of Kenya as a more efficient country and efficiency cost but you also save a lot of money. You cannot believe none of us can believe here if we are told how much money is lost in Kenya due to corruption true or not true?

The other day there was an item in the Newspaper about the National debt and I think it said that every Kenyans now owes a hundred and twenty thousand? Twenty thousand We owe Kenya twenty thousand each thirty one millions Kenyans owe people the band or whatever twenty thousand each. That is a lot of money. How was the money borrowed you don't know, how was it used you don't know. Now we are saying we want a Government that makes it possible when there is a borrowing you know, how the money was used you know so that even ten years from today if another economy is spelt out Kenyans now owes not twenty but fifty - we shall still be able to say haidhuru because we know how it was borrowed and we know how it has been used. So I am not sure that I would be very worried myself about the larger issue of expense. The narrow issue I agree with entirely, should Parliament be four hundred or three fifty can we achieve on the same thing by cutting fifty that one I agree with you this Commission should they be ten or five or seven that one I am happy with. So I think that is something we can discuss.

Time limit in which things has to be done; I must take personal responsibility for this particular problem that you have identified. I am one of those who insisted very much that there should be a time limit and in my view it was a simple reason. If you write in the Consitution Kenyans are entitled to free education , free health, free water, sanitation, and come first January 2003, they don't have it what do they think of the Constitution? They think it is a piece of paper written by people who are not serious. And that is why I among others think let us have time limit so that Government can know free, universal basic education must be achieved within a certain time. Both borrow, beg but don't steal bring the money put the system laid by that time frame so I think it can be defended.

Abortion; this is a very very controversial matter- extremely controversial. I respect the sensitivity of those who feel that it should find its way in the Constitution as a clear unequivocal statement. But let me tell you; in Mombasa where we did this Draft we removed many other things for the same reason. Because when you are trying to create a consensus you must not have an issue that is alightning rod tunaelewana?. **(kikuyu dialect) Tape two side B)** I drafted this my friend give me a

chance also. That provision was in the Draft as it exists in the South African Constitution. You understand what I mean? It is precisely for the reason-----**(Kikuyu)** The purpose of the law is to protect the individual including minority from the autocracies or even of a majority and to protect the majority from the militancy of the minority. **(kikuyu dialect)**

NGOs; why are we giving power to NGOs and not political Parties? Because at the moment we are legislating against the misconduct of political parties that we know. In this country political parties have a history and its not a good history. And you told us, go and sort out these people- within their parties so that they are democratic they are accountable they representatives and that is what we would like. In Kenya in my view which could be wrong many NGOs do a good job . It is only the Catholic Church. The Catholic is the Government. They feed with the people they take the people to school they run the hospital and the church does that through its various organs and they are many other churches maybe its not fair to say just the Catholic church for the Catholic church was more active than the others in the regions insisted. **(kikuyu)**.

I agree with you Rev., village councils we should be clear --- over 50% of our people are people who are youth. True or not true.

On the Preamble, I agree with you entirely that was always it was always my view and I am one of those who drafted the Preamble and I can tell you- there is another thing about consensus. You start with a document drafted by five people it goes to a committee of ten then it ends up with a committee of thirty. God there are many many people who said God. Infact the original preamble read. We the people of Kenya we trusting in God, which I thought was a good idea. And then there are many other people who said no come on come on you are saying Kenya is a secular state so you cant have God in every other aspects' But you will be happy to hear and maybe - at the National Conference it will carry the day all the Christian, all the Muslims felt very strongly.

On the environment (inaudible) farmers, further chapter 11 and 12 we talked about land as environment and few other things. I think what you mean is that there should be a probably a framework for state support of agricultural activities, I will agree with that by the way you will be surprised that when we went to North Eastern, North Rift, South Rift people said that there should be never be a ministry of agriculture without a ministry of Livestock. Agriculture recognizes people with Tea and Coffee- we have camels and sheep. We went to Kisumu and they said there must be a Ministry of fish- fisheries and so on. So it has been always a little bit tricky because people have their own special concerns. And I think we can take that to the National Conference I think there would be many people subjected to that.

Kadhis court; Now I want you to trust that. This is a very controversial question like abortion and the other issues but which we must address. Kenya has historical compromises they have re-negotiated over a hundred years. It is very difficulty to undo them now, without threatening the stability of the Nation that is Kenyan. **(kikuyu dialect).Tape 3 side A.**

Finally staff of Local Government I agree with you makes a lot of sense and they should be a system to allow (kikuyu dialect) and I think that is a good idea. Thank you.

James Waweru: Thank you very much the Commissioner, I think we shall now take another set of questions first is the Wakili second, third four-----

Gichuki: Thank you Chairman. My name is Gichuki I am member of Kiharu Constituency Constitutional Committee. First, I would like to commend the Commission for doing a fairly good job. Mine are not questions really; they are more of asking for clarification. There is an article in the Draft which I think I require some enlightenment and this is 127 sub-section 2 B (i) It says that any of the Houses of Parliament can affirm its decision or its Bill even when it has been rejected by the other House I would like to know the practical effect of that and the end results of that legislative process. There is an area of concern which I would like to express, And this is because I tried as much as possible to follow the Commissioner as he was leading us through the Draft. Mr. Chairman the Commissioner said that in the next electios they have provided that those contesters who are over 70 years are still free to contest. I would like to be guided on this because I haven't see that specific provision. I am stating that because, if this Constitution is adopted and enacted before the elections a lot of contestants would be shut out. That is what I would like to see that provision. And let me declare I am not over 70 and I am not contesting.

I have other area of concern Mr. Chairman and this is on the provisions or the Articles in the Draft which require Parliament to enact laws. First and can be corrected I don't believe the Attorney General as either the man power or even the intellectual resources to effect this Legislative programme. And the requirements seem to be of Legislation which is quite deep. We know or at least I think that CKRC has party members. I wanted to know whether in their wisdom they had formerly some committee so as to Draft some of this Legislation. And if they have not done so I propose that since they have many lawyers of Committee then take time to draft those laws. The AG --- to do is. My views is that even if this will require extension of the life of the Commission beyond the enactment of the Constitution, a recommendation to that effect should be made. Thank you Mr. Chaiman.

John Kamau: Bwana Chairman asante sana. Kwanza mimi naitwa John Kamau Githinji Chairman wa Kiharu Education Programme Murang'a District. Yangu kwanza nataka kueleza wasiwasi tulio nao Commissioner, kwa sababu kama sisi tumesha kuwa tukiandamana kwa muda huu wote wa kujaribu kurekebisha Katiba tumesha kuwa tukipata matatizo mengi sana kwa kweli kama Katiba itaweza kurekebishwa Na hasa Bwana Commissioner watu wengi wangetaka Katiba hii mpya iwe ndiyo inatuendesha wakati wa uchaguzi. Hapo ikawa ni vigumu kukueleza in the Draft Bwana Commissioner utufahimishe kwa maoni yako, kwa sababu wananchi wengi ninajua wangeteka Katiba mpya tuandamana nayo katika uchuguzi na wakati ufao.. Vile vile swali ingawa hapo naweza kusahishwa ni kwa katika sehemu ya National Symbols nilikuwa nikifikiria kitu kama currencey zetu. Ni kitu kimoja kinachotuunganisha. Na hapo ningetaka tuwe na sehemu ya

kutowezesha kiongozi yeyote ajaye awe akibadilisha currency wakati wowote apendevyo kwa sababu hapo ndipo (inaudible)

George Karonga : May I thank you Mr. Commissioner for convening this meeting. My name is George Chege Karonga from Kahuyia in Kaharu Constituency. My question is on for the economic basis as when the Commission was laid about this. Its layout. My opinion is that our Country is very very poor economically is very very low. And by this time when we read the Country has done a lot of retrenchment the Commission has created a large number of the National Assembly. The Parliament or the senate as I would call it. That way we find it very difficulty while the other people are dying misteriously and now the Commision allows this Parliament to take a lot of money to enlarge the number other than reducing this. I remember at one time I had a suggestion with my group as a Civic education facilitator sometime somewhere, with a group of over six hundred people they suggested and we wrote that Draft. Let the Parliament any seats be reduced to be reduced one MP as per the old Districts. Let them have about 35 MPs and this time with Councillors about four and one for the old District. That it comprises the Councils and Municipality because they are dealing with the same people those who are in urban areas are the same in Councils so I feel economically this was formally to my observation it was not catered for properly as far as the situation of finance is concerned in our Country.

George Njoya : Thank you Chairman and our Commissioner. My names are George Njoya in the private schools Association Murang'a and Muragwa. I am excited to see our recommendation are catered for in the Constitution on the right to own and to run education institution but I have something to raise in devolution. I seek clarification on whether these Councillors that you spoke about who are capable of impeaching the District Administrator are actually going to be elected by the entire Districts Councillors that we know the current set up because it's a ---- that the District Administrator, is elected by the entire voters in the Districts and also easily be impeached by some Councillors seated down and not elected by the entire voters in the Districts. An in the spirit of empowering the people I would recommend that be looked at so that his tenure office is protected.

The other one is my recommendation. That we should have a limited period the MPs should serve in that Parliament and I recommend two terms of five years. It is not just MPs but every elected person even a Councillor so that we don't have a Councillor hanging on to a ppoint that he makes the electorate or the voters tired and be productive. I see the Constitution a bit silent on the election procedure particularly on the time frame. We have a lot of elected official right from the President to the MPs, to the Administrators, to the Councillors to the locational. I tend to think you were silence so that we give the Electoral Commission time fo set rules but of these things have to carry weight when the light is shed on the Constitution. My other worry and I also seek your opinion is why do we empower there is a lot of language of every citizen in in the Constitution. Why do we say particularly in chapter five clause 54 that says every citizen has the right to own property instead of saying every citizen has the right. By this I am trying to put control in the Natural resources and control of property in the country. We have now recently seen foreigners flow down and start owning land here and farming and the previous

Constitution really gave guidance as to who should have the right to farming and start running agricultural sector. That is a lot of another point that have been raised. Thank you very much.

Speaker: Thank you very much. Asante sana Bwana Commissioner I am very sorry to say that maybe some of us have not gone through this document completely and so we might have problems, before I can correct things here and there.

Kitu cha kwanza ningeweza kupendekezo or I am sorry to have repeat this issue again about the National days. I feel (inaudible) we recommmed other than erasing the Kenyatta day it should incorporate the Kimathi day and the rest of our hero and freedom fighten.. Again on matters about corruption I believe the Constitution should reflect the true picture of protecting the ordinary mwananchi all over the Country in Kenya. It should be defined clearly that whatever has been looted should be reposed whether it is people within or outside our republic. And at the same time it (inaudible) On the currency I think that question has been repeated already,.. About the issue on basic I recommend that it has to be clear defined that the position of religion verses----- from devil worship which has not been understood clearly up to now yet there is a lot of investigations, a lot of things has been said and yet we don't know the truth about it. I think if the Constitution should defend us against these things.

When you talk about the parties (inaudible) the Constitution has tried to show us the way on how it is going like to reduce these parties they have been so many. Because we find that they are still manned by the same political leaders we have either KANU who have defected from the opposition. So the Constitution should declare on how many properties. Because today as we stand we could be in a big problem. Right now so many politician have defected ---- others have dissolved their own parties others have merged and again after merging they have again defected and made some other new parties meaning up to now, they have not gone back to the electorate to seek their mandate so that they go back to Parliament. So right now, those politicians in Parliament are doing business there illegally. We have another issue about the land ownership. It has to be a bit clear in the Constitution on the issue of ownership. It is extremely unfair to find one individual owning 600,000 acres of land while other Kenyans own not even a mere one square foot of land. We should not allow the few luck to have advantage over other Kenyans simply because they have enormous amount of money. Asante Bwana Commissioner.

John Mwangi: Thank you Mr. Chairman and Mr. Commission I am John Mwangi interested in Trade Union. Mine is on chapter five which talks about labour relations. I will recommend that we have either a Committee or a Commission to be registration Trade Union other than one person waking up and striking out any union as he feels.

To arbitrate over any disputes that come along labour Unions might (inaudible) in some arguments. The other one on the District councils. It looks you have given them a lot of power and for these powers to be carried out well I think you should specify academic qualification of the Districts Councils. We have of some of our Councils who cannot even write their

names. I guess they cannot handle this. This Constitution should be outright over who should be elected as a District councillor and the in qualifications. Thank you.

Annet Muganja: I would like to ask a few points of clarification as well as some recommendations. My name is Annet Mugwanja from Muranga. Article number 11 talks about National Symbols then the society schedule at the back which is about also the National Assembly but it simply repeats the same list I wonder whether it meant to have more details about the National Assembly and it was put in. Article 14 is about the proportion of women --- anyway it is about --- the question of women in power ---- members of Parliament should be women and another article just says 1/3 of the members. I think there that read at least one third I think one third. Article clause 2 t says parental care; I think we should have in these where the child is separated from his parents. The alternative care might also refer to adoption- I think that is to be mentioned there. Now 5 of Article 37 the child should be protected from other forms of violence or cruel and inhumane treatment in schools etc I think that should have inserted inhuman treatment whether in the care of the parents or other person or in schools or institutions. We do read quite a lot of of cases of even parents or employers of young girls beating the children and harming them very seriously. . Article 35 clause four I think we should talk about the question. Female Genital Mutilation and forced early marriages. Its not specifically mentioned there but I think this is something that we should be very specific about because there are things that constitute serious cruelty and discrimination against women and here they are still prevelant in our society I think we should make it clear that this is not acceptable in the Kenya society as a whole I am very very specific on that one.

Article 72, clause four I think there is just a word somewhere. Natural or a juristic person I feel that a juristic person is something like a legal ambiguous person such a company or an organization. But then clause 4, I think the word juristic has been left out so that should be corrected.

Article 68 clause one then article 69 clause 2 this is about to those who are arrested or accused people I think they should include sign language. . Okay article 9 clause one says the official language in Kenya are Kiswahili and English. (inaudible) Now when we come to the question of languages I think it is article one clause four the languages shall be Kiswahili, English. So these implies that MPs should also be proficiency in Kiswahili English sing language. But it is not very realistic to expect all MPs to see profficient is sing language. working in English and sign languages. (inaudible) Kiswahili, English and sign languages. So I am suggesting that in order to facilitate should ---- the participation of the deaf people they are the ones who are supposed to use a sign language there should be a state or provision for a sign language in parliament it should be available any time there is a member who depends on sign language so he or she participate fully in the proceedings of Parliament.

There is another point about Braille in this is Article 131- which says public registry of Kenya laws which shall be maintained in English, Kiswahili and Braille. I will like to point our that Braille is not a language of such. If it is a means of writing any

language whether in Kiswahili, English in whichever language blind people can read. So I suggest that a system of different wording here it should be in Kiswahili, English -both in written form and Braille form;

Councillor Gidion : I am Councillor Gidion .K of Murang'a municipality. Yangu ni machache sana kwa sababu ni kueleza kuhusu mambo ya elderly people. We define the elderly but it does not appear in the Constitution the definition of the elderly is not clarified and I remember we said about 70 years and above so we need to define who is an elderly person.

In addition to that the state does not commit itself at all on the care of the elderly. It says it state Article 36 line three says the elderly have a duty to take care of themselves. Not this should not be the case. The state should state what it is going to take care of the elderly. These are the other senior members of the society they have worked for the society, and need care of the state. So the state should clearly state in the Constitution what it is going to do for the elderly having defined the elderly age.

The other point I have is about the National days. I would say we do not need the Katiba day. It should not be there we have had the Katiba, this is another one we shall have even another one. We do not need Katiba day at all. But we need a National liberation day which will incorporate the Mau Mau uprisings and the start of the struggle by the late Mzee Jomo Kenyatta. So we need a liberation day in addition to the other two National days you have put up there but Katiba day with my recommendation we do not need it.

My third point is on the administration of oaths. We have to be specific the Katiba should be specific on who is going to administer the oaths right from the Executives to the village.

Time frame on the administration of that oath. whether immediately elections are announced there should be a time frame when where it should be. Whether the following day after a week so as to avoid controversy. The administrator of oath and the person elected. Thank you.

James Waweru: I think we can give the Commissioner time to answer those questions.

Com.Githu Muigai: I must tell you this is our eighth centre since we started disseminating the Draft of the new Constitution and we have not sat from 11 to 3 o'clock. So, first is to commend you for being so many of you and so active. It is was a very good show and it confirms our believe that the people of Kenya are interested in this process and in these issues and that is why we We must put you in our guinness book or whatever book we shall create.

There was a question here by (inaudible) and I must confess it is one of the few questions that I am unable to answer. But I also did not quite agree that there is necessarily any logic if you have two chambers of Parliament your intention is that those two chambers should be involved in the Legislation and if one chamber refuses this Legislation for good reason which includes getting the Bill back to them organizing the committee to arbitrate and they still refuse I personally will think refuses

you do sir that Legislation should not pass because that is why that chamber is to block that kind of Legislation.

Presidential age; actually this issue of Presidential age is in the transitional provision schedule 8. There are many things tacked away. Some are might say to even a way in this transitional provisions are a number of issues including the issue of if you look at elections chapter 33, it says that under 3,4 it says that a person who before the entry that is to prohibit anybody who has been President from running again on the basis that this is the new new Constitution not the old one. But then five is where the detail is. Any person who would be otherwise have been qualified to stand for election but for the provisions of this Constitution is eligible to stand as a candidates in the first election held under this Constituion. That is where it is has hidden very far as lawyer are wont to do and probably it does take care of that concern.

I agree with about the Legislative agenda set per this Constitution is very very big and I agree with you that the Attorney General neither has the resources nor probably the commitment to ensure that all this is done. At some point within the Commission we had thought that part of our job was to write the Constition then write all the consequential Legislation and repeat the inconsistent Legslation. We have been disa-abused of that believes and we have been told that our work is the Constitution and we must leave that to another group. Now what have the Commissioners decided to do is to set up a Constitutional Commission which still doesn't what you want done because it is not its work to write the Legislation. It is to ensure that it is being done and I agree with you, there is a big danger that the real meal of the Constitution is in the Legislation that we are waiting for which may not come unless in the Constitution we make sure there is a procedure for that.

There is a very difficult question that we have been asked everywhere, how do you guarantee that election is held under the new Constitution? We cant guarantee. The Commission is an organ set up for the narrow job of reviewing the Constitution once we have done that the political process must proceed. It is for should we have the currency changing regularly? I agree with you that is something Kenyans said we should and at some point we had it in the Draft then we removed it, we said we don't want this level of detail we shall have it in the Central bank of Kenya Act, and I hope we will get there.

There is a gentleman who asked; Are we worried about money as we should and again; I want to consider that this is avery important question. Can we afford the numerous institution that we are trying to but we must nost ask that question without asking ourselves the other question. Are they necessary? Because if we asked such question whether they necessary in the affirmative, then we shall go to the question of how can we make them cheaper more efficient more affordable. Devolution by the way under article 218 Councillors are elected from the District the Districts is the Electorate College for the District Councillors I wish we would find another name for these people because they are not actually the Councillors we know they are the District Parliament but I wish we would find another name for them. But I also to agree with those who said there should be an academic and other qualification for Councillors and probably terms limit ans so on for it's a serious job for serious people. .

Land; the truth is actually that this Constitution has resolved the issue of land better than the old one. That this Constitution

says if you are a foreigner you cannot own land in Kenya other than by a leasehold. But in the old Constitution foreigners could own land through free hold meaning perpetuated I would personally think that there has been in some kind of improvement although I personally I don't worry much about that . I worry more about people who steal money in Kenya and take it away than any person working a shamba that its here because can see him and if anything goes wrong we can reposses it but a man who has taken his money to Geneva we may not be able to get him.

Devil Worship this is a very serious question. Many people told us we want freedom of religion but we do not want their views of that religion so that people do things that undermine our society and I personally believe that the best way to deal with that is to have a kind of frame work. Maybe I can tell you that I come to this process of writing the Constitution with an open mind and I can I tell you the one issue that shocked me is how strongly Kenyans feel, not in favour of what I would have thought is religious freedom but in favour of restricting religious freedom. Kenyans told us everywhere there are two many many sects and they are preaching at night and so on and we want them controlled. That surprised me a little. Not because I don't live here but because I never thought of it as such a serious questions as it finally became and devil worship was another problem that people kept talking about and I was shocked by the magnitude of the concern and I think it is something that eventually we would have to resolve within a kind of religious groups legislation if we may be required to do.

I agree that in Trade Unions we should be as worried about Trade Union as we are worried about political parties. That the registration , management , accountability and so on I agree with that. I agree with the lady of course that we intended to insert the national symbols

The other thing about making this Constitution that is probably unknown to the public is that we worked against huge deadlines that were almost super human. Many times when we said that we were through and ready, a lot of things remained to be done and some of my colleagues have worked throughout the day, throughout the night trying to get things in place so that we could meet the deadlines we told you about because we didn't want you lose confidence in the process and to feel that we told you things we couldn't do or we promised things we couldn't do. So that those symbols ought it have been there but we were not quite able to insert them by the time we needed to publish. I agree with you , of least 1/3 Women can be 50% or 70% or 90% but not men. I agree about -----

Now, female genital mutilation. This is as controversial as abortion as sexual orientation,. Those three are issues that if you put them on any papers you will not move an extra inch I don't know whether I can persuade you that we went to places in Maasai country, in Turkana country in Isiolo in Kisii one of the best educated populations in Kenya is in Kisii they said they want to circumsize their girls; do you get that?. Well and it's a such controversial question that if you try to deal with it you will have a lot of opposition both ways. In the international covenant dealing with human rights, this issue is not dealt with as at a compulsory issue. It is its dealt with as a question for each community to judges by itself. And as you know in kikuyu country I keep Country reminding a lot of people I will say that in English at the moment just to make sure that everybody is with me.

(kikuyu dialect) **Tape 3 side B at the beginning**) In Kikuyu Country, the engagement of the Kikuyu community with the missionaries and the settler Government on the question of female circumcision is now over 80 years. And Jomo Kenyatta went to London on the first occasion to agitate the question of the Kikuyu land (kikuyu) and right for Kikuyu to circumcise their women. Things have changed the churches among others institution has fought a long and many will say a very unsuccessfully battle on that question. Today its not very easy to go to Maasai country or Kikuyu country and say from tomorrow don't do it or even Kisii country and if we wrote it here, it would would create a very serious problem. Let me give you as slightly different problem that we dealt with. Seventh Day Adventist. A very important, a very vocal members of the Christian community in this Country. They said we want you write in the Constitution that every Saturday nothing could happen, and I could tell you that I spent a lot of time with people from the church drafting and redrafting an acceptable provision. And if you read carefully now in the bill of right you will find it but it doesn't state that Saturday Day will not it says no person shall be have you seen it? No person shall be forced to take an oath, to do any work and to attend wherever. That is the language of Constitutional writing. We must write it in order not to cross the doors for people but to open for those who I think that we agreed on that question. I agree entirely on sign language but to have everybody know the sign language may be a bit ambitious.

Mau Mau or National day no problem. Article 36 I think, that is a legitimate question and probably something is going to be done about it.

Finally, about the oath I agree again, the language can be lightened when how. Asante mwenye kiti.

James Waweru: I am sure you will agree with me that if we are to if you are to ask questions it will go up to possibly past six. But however before we started this session our idea was to go without a lunch break and possibly close at around 3pm. It is already past 3pm. So I seek the indulgency of the Commissioner as to possibly how more questions we can take so that we can close at 3.30pm without necessary closing the questions abruptly. So we will pick one woman there another one okay six, seven, eight, nine ten. (inaudible) please bear with us. Who was number one?.

Jane Kamwaga: Thank you Mr. Chairman and the Commissioner. My name is Jane Kamwaga I represent the women of Murang'a.

First of all I have a feeling that Kiharu Constituency is quite big It consist of two Divisions there is Kahura Division and Kiharu Division. I had a feeling that we should have had two sitting of the dissemination of the Draft Report, so that we are able to reach each person in the Division even in the location because like now, from Murang'atha, from Kithambo it is not possible for them to come down here to share because transport is quite high and you understand the economy of this Country. Mine are just a comment. I will first of all recommend the Commission for the good work they have been doing for

the sacrifice that they have made, they have worked nights they have spend sleepless nights so that we have a new Constitution because the old Constitution has not been very favourable to us. I would say that as women we are quite happy with what is contained in the Constitution because the women now shall have equal treatment including their rights to equal opportunities and equal political and economic activities. In the new Constitution we have the right to be protected and this is taking into account I don't know whether we are together with the Commissioner. But I want a response from him. I was saying we feel that our rights shall be protected and taking into account that we have unique status of the natural maternal role in the society. We have a very big role we have been left out for along time and now that the Constitution is giving us some areas where we shall be heard we are very happy about it.

The other view is that since we shall be provided with reasonable facilities and opportunities that will enhance our potential, we shall work hand in hand and specially where there is the Distric governance or I don't know what you call it. We feel that since there is a provision of women we are also happy that we shall come out and work together. Thank you very much.

Maina Gitu: My name is Maina Gitu and I want to tackle a very sensitive- I think it is sensitive, it is the issue of the President having the authority to declare a state of emergency and to declare war. And it is stated that he will only consult with the National Defence Council and the Cabinet I think that is too lenient. It should be with the National Assembly. We have by- cameral system right now, we have a National Council that is Upper House, we have the Lower House and we have bi-cameral system. He should at least consult with one of the representative body that is the National Council or with the Lower House. Then it tends to contradict what is stated in 142, that they can extend their time that the two Houses can extend their House if there is a state of emergency or if there is war. Now if they can extend they time or their term then they should also be a part of the that decision that is of declaring a state of emergency because it's a very serious time a time, that Kenyans need stability and need a sober mind. So we should not have just the President and his Cabinet seating down and deciding they are going to declare a state of emergency or declare war, it should be after consulting with the House not only with the Cabinet. Thank you.

Oscar Nuguna: Thank you very much Bwana Commissioner. My names are Oscar Njuguna . My question is simple, it's a kind of ni maongezzo kidogo. Bwana Commissioner I think you mentioned something like historical agreements that were made between some people in their country in some past years. There is a very big controversial issue about land ownership or property ownership in Kenya and I am putting a case like the pokomo case in Laikipia. Most people in that community are very adventurous (inaudible) so I feel that land ownership should be enacted in the Constitution and there is such cases (inaudible)I think that Bwana Commissioner in the provision of land ownership --- thank you very much.

Joseph Mwenda: Thank you Mr. Chairman. My name is Joseph Mundwa I am a resident of this Municipality. My question

Mr. Chairman is concerned particularly in fact the clarification or the way to protect the freedom land verses (inaudible) The main reason of asking this question is that land as my colleague has just talked about. Land is the most controversial issues Kenya has. Now whether (inaudible) the land section that is section 232, 233, 234, 235 and 236. It is not clear to me how the protection of land in a municipality like this and many others is going to be affected.

The reason for asking this question in Commissioner is that much of what you will call trust land in a place like Muranga has already been dished out. I am very sure when it comes to further Development you should the people who run these municipalities will encroach on the land that belong to the people the feehold. And my fear who will be affected and many other and I am very sure many of us and many others in other municipalities. We don't see how we shall be protected from this encroachment and there is need that whoever is going to be the District Administrator and his council to guide us on what they are going to do. When we look of the devolution of power we see there is the local District and even provincial. It is not very clear what the Provincial section is going to do. Thank you Mr. Chairman.

James Makumi Kariuki: Mine is rather an observation. I find that in the salaries and remuneration Commission it is stated very well that the Commission will handle the salary of all public officers including employees of Parastatal. My name is James Makumi Kariuki I am representing the Kadhis Commission contestant --- in Murang'a I am a teacher by profession. Now I go back to my statement. I know that--- the Judicial Commission who earns salaries of public officer including employees of Parastatal. My question is what about the teachers. The teaching profession has a very large number of employees and section two 91 that is --- he said on the salaries and remuneration I think the Constitution that the Constitutional to more specific for the purposes of interpretation in future where the money to pay teachers should come from that one should take previously from the consolidated fund.

Somo Kamau: I am Rev. Somo Kamau from the --- Mine are two meaning questions. Because we have the PS as a person holding the Ministry then you get the Ministers who is not elected by the People then we say we will be duplicating the work. In the PS comes from in the technical --- also the Ministers technical person where will be the point of the people be --- controversial in that sense.

The other one is the removal of the President. It says that the National Assembly will vote first a vote of no confidence then they pass it for seven days before the next house see my recommendation is that because the President is one and when we come to talk of the President is a very sensitive National which is why could not the Constitution make a provision where you would have discuss the President the two houses with ----- the seven days is a wrong time for campaign the main agenda which might have been the reality is covered by others by criticizing the whole issues so I will recommend the two house because its one issue and very important National they did that day -----

Simon Ndirangu: Thank you my name is Simon Ndirangu. (inaudible) I want to revise preference on the National day. One is that the National days we are having in Kenya that is Kenyatta day. I want us to have another day of freedom for example ---

where we are supposed to (inaudible) multiparty democracy. The current Constitution we have the issue the District Council and the right that one I am aware ---- you are telling me Another things is that we are headed by Professor Yash Pal Ghai but something is supposed to live started working. In October if I am not wrong, but if you look at the papers today we are told all the legislative or members of Parliament and are the ---- are there. But what if the President dissolves Parliament today or before the weekend what can the Commission do about the National Conference scheduled for 28th October? Also prof. Anyang Nyong'o as bring a vote of no confidence in the government with these two issues in mind and the fact that we have used so much money in the Commission where are we heading?

Ndegwa: I am Ndegwa, I have an observation here about democracy. Democracy as the rule of the people. What I see is that when you talk about democracy in capitalism it will end up to be Bureaucracy. Bureaucracy is the rule by the rich people. Right now in this Constitution we have a lot of people a lot leaders of are going to be voted by the people. But what will guarantee them of these vote is the economy power that they command. This economic power gives them the social powers to be voted. Now after this now democracy changes to be Bureaucracy So this Constitution what I see Mr. Chairman is that it is protecting the poor as poor and the rich as the rich. When I was going through, I read in this short version page 32 that the Constitution cannot prescribe detailed rules for the economic management of a Country. So my question is, is it the right time now in Kenya to as explicitly declare whether we are adopting capitalism whether we are adopting Communism or whether we are adopting democratic socialism. My problem in capitalism is this Bureaucrats. Like Kenya now when we have Bureaucracy political parties become like political kiosks they become commercial the politics is commercial like. So I would like to propose democratic socialism. Democratic socialism is where the factors of production for instance land, capital, labour and organization are owned by the state and individuals.

Out of this whole realm we shall have something called the dictatorship of the poor. For instance like the Mungiki, Mungiki is a tyrann, of the poor. So this is a loophole I see in the Constitution. But as a matter of observation and I am seeking clarification from Mr. Chairman, whether this is now the right time when we have to do away with capitalism where we have production that is not geared to the welfare of the citizen but for profit making, exploiting people. You produce because you want to make profit. I can produce bombs, I can produce condoms as far as I make profit. So I want the Constitution to address this as a matter of clarification. Thank you very much.

Muumin Adam: My first question is about the voting process. The Constitution talks about maybe the voting process simple. But we find that North Eastern Province people are referred making as illiterate or rendered illiterate by the use of English in the rating process where actually most of them.

We come to the issue of provision of tenure of office . You have put tenure of office for the President's where as in reality it is the Prime Minister who has executive power. . When Kenyans talked about limiting the President term of office they meant the term of office for the that person who is number one in power. Forget about the (inaudible) They

meant the office of the person to two terms necessarily.

When you close the electors register for a half a year like has already been done this year, I believe that you are locking out about five hundred thousand Kenyans from voting that year. Because Kenya raises up about a million children per year. Removing the capital punishment I believe, is a contradiction of the wishes of Kenyans. Because action speak louder than words. Everyday Kenyans tynch criminals. By observing that you see that Kenyans actually want capital punishment I ask that it should be retained.

I will also ask that Constitution gives allowance for two muslims in a dispute to be allowed to go to the Kadhis court instead of going to the secular court if that is possible. And there is also a provision or requirement you have which is somehow ironical. You have also talked about the Kadhis applicants who are supposed to have got a certain experience. In the Kadhis court there are no lawyers. Where are these applicants supposed to get experience? And I wonder what you have done about the discriminatory aspects of Kenyans law e.g Chang'a is illegal and the Tusker is legal- I think that is a way of denying some Kenyans the basic rights. Why don't you promote this Chang'a free into companies?

Stanley Macharia: Asante sana Bwana mwenye kiti. Mimi nitaongea kwa Kiswahili. Kwanza jina langu ni Stanely Macharia wa Macharia na kwetu ni hapa Murang'a. Mimi Ningependa ufafanusi wa kiti kutokana na swali la unyakusi wa aridhi ya uma. Jambo la kwanza ambalo ningetaka kuuliza ni kwamba mashamba ama ardhi ya umma itakuwa ikisimamiwa na nani, na ni nani atakayekuwa akitoa jukumu la hayo mashamba kutumiwa na umma. Nafikiria hayo maswali ni muhimu zaidi.

James Waweru: I think we have come to the end of the question session. I dont want to add any other question but there is an issue Bwana Commissioner, I would also like to bring to your attention. I don't want to be seen to asking questions but under devolution, the Draft proposes that the minimum number of members of the District Council be 20 to 30 Councillors. To meet the minimum Bwana Commissioner, is rather too high. Because even today we have Districts with eight elected members. Therefore if we were to propose twenty as the minimum, its tantamount to saying that we add an extra burden to the tax payers of that particular District. So, my suggestion is that we can have between ten and thirty members. The other issue bwana chairman is that as a local government practioner I am not very comfortable with the word 'Administrator' at the district level, or the 'Administrator' at the municipality level, because we have to conform with the global of standard of the local government. Because for example like last yea,r you know there was this global conference on local government which is actually attended by the mayors and chairmen through out the world. So it would look a bit peculiar for Kenya to be represented by people called administrator where in other world countries we do not have the name. But my problem is with the name.

The third point is under staff of the local government; Even as a local government practioner I am not very comfortable with administrator given the overwhelming powers of hiring. So I would propose that we have a small committee say a Districts service commission- the example of the Ugandan style where we have a commission of say 5 respected leaders in the district

that is charged with the responsibility of employment. Because in this set up under the new Constitution the employees of the local government in a district will be very many. So I tend to think we should have a separate body advising the district chairman or the mayor over the employment issues. And my fourth point is on the capacity. The capacity of qualifications of the elected leaders at the district level I think the draft should specify that the qualifications that relate to the members of parliament because it is a minimum O-level -applies to those seeking the elections of leadership at the district level. Because we are not talking of the local authorities under this new Constitution we are replacing the local authorities with a better set-up of the government.

The other issue is on the re-constitution of the district local government. At what stage are they constituted. For the government, I think it is constituted after 24 hours after the election. So we should also say that the district local government to be reconstituted after say, 48 hours after the elections, two days, three days, four days, etc. I do not want to be seen as a chairman, who is also asking questions, but those are some of the issues that I wanted to tackle. The other issue, there is somewhere on laws, where the districts can make laws, but if we go to first page where you have the set of laws, the district laws are not recognized. So I would like those laws to be recognized and I think I cannot remember the specific chapter. And we have another issue on the schedule of courts. If you look at the schedule of court, the industrial court does not appear either as the clarification of high court, court of appeal or a lower court. So it is not clear to us under what capacity is the industrial court. Because today we know the industrial court has no appeal and things like that. I have other comments but those are comments I can relay to the commission any time- things like 20th October has been an issue, where would like it to be retained, but under a different name, may be the freedom fighters day or something like that.

May I take this opportunity to say therefore now to give you time, and the other issue on the capital city, and things like that I think the draft specify the basic minimum requirement for a municipality. It is not very clear although those are issue that can be tackled by an Act of parliament but we can even see municipalities with 200,000 population entity and things like that., but in this it is not very clear. So let us take those questions that have been forwarded by the participants so that we may be able to continue.

Com. Dr. Githu: Thank you Mr. Chairman. Most of the issues you raised were by way of comment and that is appropriate or by way of suggestions and I will not necessarily refer to them except this questions on what we are going to do with Presidential powers to declare a state of emergency and to declare war. One of the problems in our history is that we are swallowed to the other extreme we don't trust anybody else and that is not good. Government must be in the hands of somebody and once we have them at that point we can put checks and balances but at some point we have to listen, to act in their good Judgement. And I keep saying that one of the things we should be very worried about is that one day in our lives times I hope we will elect a President, whose is very intent on doing good but you find he has no power to do anything. He will like to distribute food to (inaudible) but the law says don't do that ask so and so and so and so had to ask so and so which could be but the hopes say don't do that act so and so and so had to work and so and so, so and so has to ask so

and so. We must get the balance right between containing powers so that its abused and giving a person whom we have elected to do because we elected and if he doesn't do it then we remove him. And so I would not be worried when when they were debating this I kept asking do we want the President to call Parliament if there is an attack by Ethiopia an Air attack. An air attack minutes not hours. Does he need to call Parliament to report? We must be realistic about how government works and so on. But I agree with you but again we must be careful that a President does not go on a furore of his own attacking our neighbour and using our resources without any checks on his power.

Property ownership in Laikipia I am not an expert I must confess- I am not an expert on land. It is one of those areas they have never quite developed a know how in the expertis. Maybe it is because I am not a land owner. But also because probably it's a very technical area, there are experts in that area. The little I know about the Maasai agreements does not confirm the interpretation that you have given. The Maasai agreements were agreements between the colonial government and Maasai. I think one of the most interesting things about our Constitutional history some of you will remember that the were actually two Maasai agreements. The first one, the British refused to honor and the Maasai went to court saying you told us you will never move us until when the Maasai (inaudible) and when they went to court the court said we cannot adjudicate between you and the crown because British Constitutional law does not allow that to happen and so on and so forth.

So those agreement must be deemed to have been superceded by all the Legislation that came into force including the crown land ordinance of 1915 and the subsequent land laws that included Governement land Act which is the successor to that. But again, as I have said I am not an expert but I don't think that there is any (inaudible) that in Kenya there is any treaty between the Maasai and the Kenya Government there is none as far as I know and I think the title there will be governed in accordance to the law as set out,

The salaries of teachers, I agree this is a very emotive subject and a very important at the moment. All Government money all Governement expenditure should come from the consolidated fund for that purpose voted in accordance with the relevant law. Infact in this Constitution and again I am not an expert in that area one of the most interesting and innovative things we have tried to do is to restructure public finance so that we can be sure that the governement does not spend money unless that money can be accounted for in very definite and very very specific ways. . I agree that there is a very a serious questions here the Rev. I think has asked this question. If the PS is a technocrat thy should the Minister also be a technocrat? And I will not pretend to be able to answer that question. It is a very legimate question and those people who keep saying let us go back to the Government where Ministers are elected maybe the argument is that the Ministers assumes political accountability for the Ministry not technical management of the ministry which is in the hands of the . Civil Service and maybe this is one of the issues we shall debate at National Conference.

Let me tell before I answer the next question. Some of the best ideas I have had about the Constitution are from laymen. And I found that a very hambling experience and very interesting. Because although I have many years as student of the Constitution, probably that was one of the things I overlooked and the points that the Rev. has made is one of those genes

about why do you want a vote of no confidence that is separated by seven days? why not get the two Houses to sit together as one and finish the business? I couldn't put it better. I think that is much more efficient so much more decisive so that the nation can move on it implement business. The President is removed if he is to be removed, if not he goes on with his work and if (inaudible). There is this controversial question that I have tried to avoid or tried to answer it in a very opaque way because I am not sure I know the answer. What can happen today if the President dissolves Parliament? The law will take its course. The old Constitution is in – place we are we are making a new Constitution but the old ones is in force. And therefore we cannot stop the President exercising his powers under the old Constitution until the new Consitution takes place. For you as practical men and women a you may find that rather confusing you know lawyers talk. In Uganda there was one very interesting situation. After Tito Okello was over thrown remember Tito Okello?, after Tito Okello was over thrown there is a new Government that came in with I believe Binaisa and so on. One of the things that bothered lawyers in Uganda was to who was to swear in the new President. And the lawyers said it is the Chief Justice. But then they said but we have a new one because the old one has gone with the Tito Okello? So who is to swear in the new Chief Justice so he can swear the President?. And you will be surprised that for lawyers that can take hours and hours I am sure for practical men and women you will say it doesn't matter let us get on with the Job. But that is one of the problem we have at the moment.

Later, the gentlemen who talked about democracy by the rich , the commercialization of politics, unfortunately that is so very true not only of our Country but of so many others. democracies in the world and one of the challenges of the Constitution making is to be able to safeshard democracy. The party person that Constitution is to safeguard democracy and sometimes to modify democracy. When we say that there are thirty special seats for women is that democratic? No Democracy is one man, or one women one vote. But Constitution sometimes tries to guide democracy so that democracy does not become inefficient and what you have suggested sir is correct that in our democracies money is one of those evils that manipulate democracy and other things like violence like political violency, and so on and so forth. And therefore we must find ways of containing that. One of the ways we have tried in the past is to say you cannot spend so much money in the compaign.

I can tell you I don't think that there is anybody in Kenya who knows how much money should be spent in a compaign. And then, the existing law says no candidate should spend more than 40 thousands. If you ask our Chairman here and that as a practicing politician, what can he do with 40 thousand? he cannot buy all of us here a cup of tea probably and so on. So we need to think I agree with you about innovative ways of containing the use of money. That is why we are saying here political parties cannot receive foreign money.

In our minds we are thinking that this is one of the influence of money in politics. But again we will be the first to admit that it is not fool proof and we probably need to think of more innovative ways of doing that. Maybe we should set a side like they have done in India. India have set aside seats for the poor for the lower caste. for the lower case. Maybe its not the best solution but maybe we ought to think about, about our slum areas about Mukuru kwa Njenga , about Mathare, about Kibera , about so many other places and including the slums we have in our own rural areas. But I would like to caution that

my friend there who talked about the democratic socialism, Hitler was a democratic socialist So we might want to be a little cautious about that brand of democracy socialism.

I agree we should make voting simple and we have tried to do that maybe we cant do some more I am not sure that the use of Arabic will be a good solution because again we have said that there are two languages in Kenya, Kiswahili, and English. Every Kenyan must make an effort to learn either English or Kiswahili or preferable both. If we have Arabic the other people will say the Kikuyu are twenty five percent of Kenyans, Kikuyu also and so we will never be able to cross the category of people. I hope I am right about that figure of 25% but it is an example anyway.

Somebody made this very interesting observation do we want to limit the term of the President or the Prime Minister?. I agree that we wanted to limit the term of the Executive. In my understanding the Executive remains the President. It is his term we are warned about. The Prime Ministers can be removed by vote of no confidence at any time any day of the week in the National Assembly. But, I agree with you that we should be worried whether the Prime Minister can be returned year after year after year. Can we have a Prime Minister who has done four five years terms twenty years as the prime Minister? Then we would lose what we wanted to capture there. Muslims to use Kadhis court we agree for the limited purpose of Muslims personal law. Because if we extend and we debated this for a whole week if we try to extend the category of actions that the Kadhis court can deal then other communities will say I am a Maikinyu, I have killed my neighbour I want to be judged in accordance with Kikuyu law which says that I should pay ten heifer bulls three helpers and so on. And then you will never be able to cross that as well.

Public land; we have formed a Commission here we are calling the National Land Commission. It will hold all National Land and then be able to manage it on behalf of the people of the various communities in the various places. I couldn't agree again with you more Mr. Chairman, this is again where people like me and others working on this document sometimes we sit somewhere and think how in our mind we imagined things could work well. But people like you working on the ground know law that twenty councillors cannot function. Maybe we should have five or ten Councillors and that is an argument which we shall take and vote. You did not tell us the name of the Administration. What name would you like us to give the administrator of the district or the the location.

I think we should all think about it maybe we can find some good Kiswahili or other term for both and then we can use that . But then I agree with you this as a very very good point. How to recruit District stand I agree with you that it goes against the spirit of this proposed Constitution to give those powers to one individual and then create a service is not meritocratic. I agree entirely and I agree we should have a time limit when we the new Local Government should kick in. District law its something that we can sort out. The industrial court finally. We went through a Draft where we had drafted all the various divisions of the High court and the industrial court was one of them then we removed all that because we said we want to keep the Constitution very flexible so that tomorrow if we decide that the High court should have more Division we don't need

a Constitutional amendment. So all these now will follow under Adjudicature Act which will set out the various divisions. We want to remove Industrial court from the Ministry of labour so that it becomes a proper judicial tribunal within the normal Judicial system and there will be abuse if they try workers are dissatisfied they can appeal to the court appeal and to the Supreme court. If the employers are dissatisfied On that very happy note Mr. Chairman .

Now there is something here in the Constitution which is very complicated. We have set up Commission to deal with the whole questions of local government finances. We are starting a meeting in Nairobi tomorrow with some experts on this whole question because I can tell myself, the most difficulty question, in this new Constitution is how the devolved Government will function and that question money is at the bottom of how they work and I can tell you are still trying to find out the details and it will follow under specific Local Government Legislation. Thank you Mr. Chairman.

Com. Githu: So I can answer that. You see this Constitutional Conference is the a one of Conference. What we try to do in the Constitution with the Bill is to propose ways of recalling permanent and on going officers like an MP or so. At the moment we start the Conference in another twelve days now and I can tell you and therefore maybe take some responsibility for some of your concerns. I sat in the tribunal of the Commission that considered complaints about how people have been elected and I can tell you it is very very difficult in issues of this nature to find a process where that everybody is satisfied. In many places we received complains that we are not happy with the woman representative now yet man. And then the next one will say there was a party sat before in the somebody house --- will really must move forward and our concern has been that there are many people who are trying to stop this process they are many who were trying to make sure we don't enter the National Conference in twelve days this time. We don't want to stall the same by re-opening and saying by opening the delegates list. Because if we are open we will never agree.

Let me start by saying that closing has nothing to do with the academic freedom because academic freedom as far I understand it is the freedom to receive communicate generate ideas. and so on and so forth. The freedom of scientific research is also freedom within the existing law. I do not know any country in the world to name in which cloning of human being is legal not in U.S.A not in Germany not in U.K not in any country that I can think of . So that this is not what we are trying to say. We try to say we want to encourage scientific research so that we can improve our society. When those issues arise, they will be dealt with on a case to case basis and they are even more equally contraversial questions that we cannot address in this Constitution.

Speaker: (question inaudible)

Githu Muigai: Your last question is one of the most contraversial issues that we had views about all over the Country. There were many people who said I remember sitting in a railway station in Kisumu called Kibos and many men came there

and said, we don't want women to inherit Property. ever here they should go and inherit where they are married. And I decided to engage them in a little discussion in logic and I asked them are all your women married? They said no Okay, but what are we to do with those who are not married? Even they should not inherit that is what they said - because if they inherit we encourage them not to get married. So I said, what is the average age of marriage here? they said 20 to 25. So I said should we allow those who have reached 35 or 40 to inherit because for them they are past. They said no not even those ones. So I said okay how about do they have children these women? they said yes, most of them do . So if the mother doesn't inherit should the child inherit? No; why? they should go and inherit where the father comes from. Then I said who are their fathers, are they not you? They said no no so I said let us go to another point. What harm has this child done: We can punish the mother for not getting married we can even punish her for having a baby. But what shall we punish the baby for? These are very contraversial questions. They are very controversial questions. In my mind the correct thing for us to do is what we have proposed. If there is something to be- inherited I thought your concern will be increasingly in our community there is nothing to inherit. Whether you are a man or a woman. The land that you talked about most in many of our places here in Central Province, the land has reached levels that it cannot be sub-divided and remain economic. So I think that this question on inheritance of land in my judgemtn, in my private opinion which is shared by the opinion which is shared by the Commission this is a red ----.We should be worried about the fundamental principle. Much is this Can there be a basis in our law in our customs , in our culture for treating one child different from another. If the answer is no the rest will take care of itself.

Speaker: Now that you have you gathered views and now you are going back, are you going now to re-write these things to put the views which you have gathered from the country or what are you going to do? The other question; now those who are going to the National Conference and they are here and they have brought their views to you, are they going to say anything else there or they are just going to listen?

Com.Githu Muigai: Thank you very much so; The National Conference Father, is the final authority on how the Draft will look. For me, this has been a very useful exercise because when I go to the National Conference and as part of the Drafting team I will remember what the people said about the Draft so that the language of the Draft moves closer and closer to what people specifically want in the specific areas. But like you sir and the Chairman and the lady you are going there;

First you are a delegates, so you must know what the people of Muranga want and therefore if any proposal are made to amend the Draft you must say I don't think the people of Muranga will be in favour of that because I am here to represent them if there is anything like some of the things will have discussed take something like say an issue like Devil worship. If the people of Murang'a feel as that is a very important very fundmental issue that should be addressed it in some way it is your job to raise it at the National Conference. Again at the National Conference we shall work in committees and at the beginning you will be assigned to committees and hopefully within those committees you may be able to influence the direction

of debate and agreement on the various provisions.

Rev. Kamau: Thank you Mr. Chairman just hold on. You have mentioned devil worship. If in our Constitution and especially the Preamble (inaudible) devil worshipping, communism or anything else

Com. Githu Muigai: But you know Father that is why I think that you will make a very good contribution at the National Conference. The day we will discuss the preamble you will stand up and say I am here as a delegate from Murang'a and in Murang'a we want the preamble to have reference to God and then to go and then there will be other people from all over the country who have similar contribution. And if the consensus is that it should we in the Drafting team will be very quickly I can assure you in less than twenty minutes, be able to write a revision where God appears in the Preamble. And that is true of all those other issues that we have discussed.

Speaker: (inaudible) – we tend to think is one of the people who are undermining the new Constitution and I suppose he being a member of Baringo Central he must be a member of this committee. Could you devise a way sir of trying to talk to him from the Committee side of it because as a member of the constitutional committee, he should it be undermining its own efforts. Thank you.

Speaker: Let us say we want to have elections under a new Constitution and we are appealing to the Government as the head of state in his good judgement that he should allow and also I don't think that it is big sacrifice for we Kenyans if we can hold elections in two months time so that we can use our new Constitution. Hatutaki mambo ya kuambiwa tuache 1997, just before the elections we had the IPPG under which we were told we are going to have the elections in 1997 then immediately after that we shall have a new Constitution. Na tumeona hizi hurdle that have been put to the Constitution one hand out after another, one hurdle after another and this time we have said we need a new Constitution.

James Waweru: This gentlemen had a question and I am told by Commissioner Githu to allow that question as the last question.

Speaker: I am asking what should be done to guarantee as us as citizens that we are going to re-cover whatever has been looted by our politicians. And again I had insisted on a question of land ownership. Can we please tame it hata hata matatu ziko na speed limit so that they don't cause accident. We should not allow an evident of owning 50 thousand acres of land when almost half of Kenyans don't own even a piece of land. So the Commissioner, you can address that issue.

Com. Githu Muigai: I am sorry I didn't intend to ignore your question. On the question on what is to happen to offices or human right or whatever. If you look at the transitional provision the ones at the back you will find in article 16 there the Commission on human rights must within six months of the coming into force of the Constitution either on his own motion or

the motion of anybody investigate all human rights abuses investigate the causes of civil strife and so on and so forth. And then do several things including awarding compensation reparation and so. But also the next thing we have done is to create the office of Director of public prosecution. We didn't have time to go into all that because you told us that one of the reasons the Government has not prosecuted persons who have looted public property who have misused public property and so on is because of the lack of independence in the office of the Attorney General. Because you told us the Attorney General is appended to the Executive. So what we did was to remove from the Attorney General's office the office of the Director of public prosecution make it an independent office with security of tenure and manner of other guarantees so that it can do you one saying which is to investigate all allegation of corruption and so on.

On the questions of land I am afraid that not everybody agrees with you on that question. We debated it at great length, there are many many Kenyans who said there should be a ceiling of land ownership. By the way, there were many many Kenyans you be shocked how many said in Kenya when you attain the age of 18 you should get an ID card, a passport and your title to your land. They were very many. very many. Again we found that it may not be very practical. What we decided to do in respect of land was to deal with that problem in the taxation provisions and we thought that we would have ---- but I understand what you are saying it's a very popular sentiment in this Country. But I think and I hope this is my last comment on that controversial factor land re-distribution and land curbing has not necessarily worked elsewhere in the world. Zimbabwe was one of the largest producers of food in the whole of Africa. And is mainly a question of how the re-distribution has been done. Zimbabwe today is receiving food aid like Ethiopia or like Somali or like Kenya for that matter. And I think that I do not necessarily disagree that curb come on land ownership. But I think what we want to make sure is that land is properly utilized. If you look at us that today I don't know about you here in Muranga, but the maize they eat through out the year. Do you have such places left? Where I come from the plots of for lands now available to people are not enough for people to grow the maize that they require or even the beans throughout the year. And therefore I am not saying this is not an economic issue but I think we need a long term. If we go to Kitale and subdivide all the land where our maize is now coming from or go to Nairobi or go to Laikipia and other places maybe it may not be the solution. But I think that it is important and I think it is related to the issue you have raised. Squatters, landlessness and all those issues must be addressed.

And I think probably the way to address them is to have a long term Government policies that are allow for resettlement of people so that without affecting commercial farmers because I think there may be some value in what commercial farmer do.

Speaker: I will request to know whether constitution has provision containing defections. Otherwise we are in trouble with these defections. Today a politician is in party B, tomorrow is in party C after two days he is back to party A and so on. And I am wondering now, if that trend is allowed to proceed we might reach some places where Parliamentarians might use this one to render the government in place illegal.

Com. Githu Muigai: --- In this Constitution, I must confess that I am one of those who thought we didn't need this

provision anymore that was two months ago. Maybe I have changed my mind since then. But it is there in that Constitution. It says that if you defect from the party that you were elected under then you would be obliged to seek the election more or less in terms of the old provision.

Now the implementation of this is another matter. I can give you my private legal opinion and another lawyer will have another opinion on whether the Speaker of the National Assembly has been right in some of the cases he has dealt with. But I don't want to go into that. What we are trying to do in this is to say new Constitution says that we want people to remain faithful. We don't want to destroy the party system because the party system is at the heart of democratic process and therefore person who defects from their parties must maybe I should my last act if you promise not to ask any other question I promise to show where the defection procedure appears. I think it is under , anybody can see, It is under the representation of the people chapter six I think. Can anybody see it? No I think it is in chapter seven which is Legislation. Is it under one (111) I think that is where it should be. Yes its one (111) one G. A party ---- An MP's office becomes vacant if he leaves the political party for which he stood as a candidate in the election to Parliament to join another party or to remain in Parliament as an independent candidate. That is the defection provision. Article 98 as where? For a member of Parliament or Local council who resigns from the political party that sponsored him loses the seat. Okay on that happy note Mr. Chairman I thank you very much. I want to thank you the people of Kiharu and to receive the we have to been to eight other seatings we normally start at 11 and we finish finish at 12.30 latest at one. So you must be a very special people and thank you very much.

James Waweru: Thank you very much. Before I close the session, the District Coordinator has come in as we were proceeding and I think if he has any major announcement this is best time lakini tutulie tumalize pamoja ndiyo hata tuombe pamoja. The Coordinator.

Mr. Njeru: (Coordinator) Thank you very much Commissioner Githu and your group. I thank you Chairman in this particular session. I do not have much to say if anything is to thank you very much Commissioner Githu for having come to Murang'a and give what was required. I would also like to tell everybody that I did not come deliberately late it is because I was in another session of this nature. Somehow, the commission decided that Murang'a had to have two meetings both Kangema and Kiharu in the same day. So I have been at Kangema and the MP for Kangema Mr. Michuki was there throughout the morning and he has just left for Nairobi and so we were with Com. Professor Wanjiku Kabira. And the attendance was slightly--- but I want to thank you very very much because you availed yourself and I can see you have also (inaudible) yesterday we were in Kiriari in Mathiyoa Constituency. I thank you very much for every discussion that has been going on.

James Waweru: Okay, thank you very much. May I now take this opportunity to pass a vote of thanks first and foremost

to Commissioner Githu for having guided us through the Draft Constitution, the dissemination of the Draft Constitution and his entire team from Nairobi. Commissioner Githu, may I take this opportunity on behalf of the people of Murang'a District, the people of Kiharu and the entire District at large to also pass a vote of thanks to your Chairman and the entire group of the Commissioners for actually coming up with the Draft Constitution that respects the views of all Kenyans even despite working under at times under very unhealthy circumstances and even unfriendly environment. When you go back to Nairobi pass our thanks to your Chairman. Infact, he has endeared himself to hearts of so many Kenyans. He has proved to be one of the great Kenyans that Kenyans have been looking for. Finally, the issues disturbing all of you including ourselves the issue of dissolution of Parliament before the enactment of the Constitution. If for those of you who have attended the Ufungamano initiative meeting which are held every Tuesday and Wednesdays Wednsdays - this has been the contentious issue I don't want to tell you that the forum has an answer to that but there are so many proposals.

But what I would like to assure you Commissioner Githu when the people of Kenya have said in bold that they want the election under a new Constitution for obvious reason they have consulted with professionals and that is the mood throughout the country and I would like to say specifically throughout Central. When this Draft was released we held several meetings as the committee and Civic leaders from the Province. Because I am the Chairman of the Local authority in Central Province, I will say the unanimous agreement is that we go to the election under a new Constitution. Under normal circumstances as a politicians those elected people are supposed to do or to act as per the wishes of those who have elected them. We are therefore appealing to the President as the representative of all Kenyans because Kenya as a Constituency is represented by the President to respect the views of Kenyans. Because in another forum that I attended infact there was a participant who argued that nobody has a right to overrule all Kenyans. We had another woman who was not very fast in Kingereza or Kiswahili alituambia mimi nataka kusema hivi one Jogoos cannot overrule thirty millions Jogoos. So everybody, those who are learned those who are not learned have got one consensus that they go to the elections under a new Constitution.

So many proposals have been made particularly the Ufungamano forum as we have made them here. There was a proposal. There was the Bishops and the religious groups had sent to the head of state. There was yet another directly to the members of Parliament, to go to parliament and seek ways of having a Bill passed that prohibits the dissolution of Parliament before the enactment of this Constitution Draft. So there have been so many other proposals and there was a very controversial proposal that because the President has not necessarily elected all the members of Parliament there was a proposal to the effect that supposing he dissolves Parliament and by so doing dissolves the Local Government and after that we all decide go home. Parliamentarians continue being in Parliament, elect the presiding. Speaker in the name of say Joab Omino, the Draft Constitution is taken to Parliament and the day the Draft Constitution is taken to Parliament we all go to Parliament and the Parliamentarians because they are representatives of the people, pass the document a peoples' Constitution. So that person asked, what will happen? So there are too many proposals which have been given by the Kenyans and all of these proposals are directed to one common goal that, we go to the election under a new Constitution.

Finally, Kenyans have said that there were even other proposals that what do we do to curtail this interference with the Constitutional making process. And the one Bishop told us that this Constitution has reached where it has reached because of the prayers that have been held by Kenyans, prayers, cooperation, assistance and extra. And therefore you told us if God is for us, nobody is likely to be against us and who is against us will not succeed. Therefore my appeal is that you take charge of the process even now, because the Commissioners have done their part, you were asking them what to do; But I think the ball is in our court we take charge of the Review Process and we say that we don't require anybody to stand in between us and the new Constitution only what we require is fresh air to enable Kenyans to continue with the process to the bitter end. It is not a simple war but Kenyans are going to win the battle. I don't want to make a very long speech I want to say that anything that has a start has an end and I therefore do declare this session officially closed after a word of prayer from Rev. Miano.

Speaker: Before we close on behalf of Murang'a Kiharu District I want to present this books to Commissioner Githu Muigai you have had about that

James Waweru: Finally we have a word of closing prayer from Rev. Miano.

Rev. Miano: Let us pray. We thank you God because you have been with us since morning and you helped us through Doctor Githu to see through the Constitution- the Draft Constitution and we are praying that God, you help us to have a new Constitution by the time we go to the forth coming general election. As we go home we pray that you will be with us, protect us along the way and also be with the Commissioner as he goes back to Nairobi and we pray for the remaining parts of the Constitution that be with them in Jesus name we pray. Amen.