

CONSTITUTION OF KENYA REVIEW COMMISSION

(CKRC)

Verbatim Report Of

**DISSEMINATION OF REPORT AND DRAFT BILL – WAJIR EAST
CONSTITUENCY HELD AT NOMADIC PRIMARY HEALTH CARE**

ON

**DISSEMINATION OF REPORT AND DRAFT BILL – WAJIR EAST CONSTITUENCY HELD AT NOMADIC
PRIMARY HEALTH CARE ON 19TH OCTOBER 2002.**

Present

Com. Ibrahim Lethome – chairing

Secretariat in attendance

Hassan S. Mohamed – Programme officer

Halima Amran Adan – Verbatim recorder

The meeting started at 9:45 am

Mohamed Omar: Assalaam Aleikum, ningependa kufahamisha nyinyi ya kwamba kwanza tuko na na registration form, kwa hivyo kila mmoja wenu ambaye anataka kuongea ingekuwa vizuri ili tuandikishe na baadaye everybody to register. Kwa hivyo tuwe na nithamu, mnaadika majina, na tayarisha vile ulivyo andika jina lako. Kamati itakua hapa mpaka jioni kama mtakuwa na mawaidha bado. Kwa hivyo ningependa kuwafahamisha nyinyi kwanza leo tuna Commissioner ndugu yangu Ibrahim Lethome kutoka Nairobi, kuna Hassan Sheikh kijana wenu ambaye ametoka area hii na mnamjua, programme officer, kuna Halima Amran, dada wetu ambaye ni verbatim recorder. Kwa hivyo hao ni wageni kutoka Nairobi. Tulianza programme yetu, tukaanza na DC courtesy call na sasa tuko na nyinyi, kwa hivyo ningependa kuchukua fursa hii kwa kuwakaribisha ndugu zetu kutoka Nairobi. Ya pili nafikiri tutaanza na dua na itakuwa na Sheikh Haile. Bwana Sheikh Haile tafadhali.

Sheikh Haile: *Bismillahi rahmani rahim, alahu maraana atiina fii thuniyaa hasanati wa fil aqiratii hasanati wabana athaban nar, rabana inlanaa samecnama iman. Amin, amin.*

Mohamed Omar: Asante Sheikh Haile. Na next tutawafahamisha nyinyi makamati ambaye tulifanya kazi nao na mwanzo ni civic education providers kutoka Wajir East. Hapa tuko na three of them, kuna Adan Dahiye ambaye ni 3C's chairperson Wajir East Adan; Bwana Abdi Nasir ambaye ni committee member na kuna Abdi Yussuf ambaye pia ni committee member. Kuna Mohamed Osman, pia tulifanya kazi naye. Hao ni Wajir East Constituency Constitution Review Committee members. Tuko na civic education providers, Bwana Jelle Abdi Ibrahim, civic education provider, kuna Maendeleo Ya Wanawake hapo, nyuma na tuko na Yussuf ambaye ni civic education provider; hao ni part of the civic education providers ambao tuko nao. So ningependa kumpatia fursa hii I think tunaweza kuingia straight kwa programme nitamkaribisha Sheikh Ibrahim Lethome achukue fursa hii na atuongoze. Asante sana Sheikh Lethome.

Com. Lethome: *Bismilahi alhamdulillah salatu asalam allaa sayidina Muhammad waalaalihii ashabii ajmain ama baatha. Assalaamu Aleikum War-Rahmatu-Llahi Wa Bbarakatu.* Tunamshukuru mwenyezi Mungu subhanahu wataala kwa kutupatia hii fursa ya kukutana hapa na hii ndio mara ya pili sasa nimekuja katika hii hall. Mara ya kwanza nilikuja hapa wakati tukianzisha 3C's committees na nimekuja mara nyingine pia tulikua na kikao katika baraza park. Kwa hivyo alhamdulillah, hii kazi imenipatia fursa ya kujua Wajia vizuri sana na kujua ukaribu wa watu wa Wajir. Kabla sija anza nasikitika naona kina mama wote wamesimama na unajua tunalaumiwa sana kuwa tunaawapenda kina mama sana, sasa nikiangalia nyuma ninawaona kina mama wamesimama na kuna vijana wadogo wadogo wamekaa kidogo naona sio vizuri. Hebu tuwapeeni nafasi kina mama hawa wakae chini wasiseme tunawafanyia marginalisation, committee member's jaribuni kuwapatia kina mama viti wakae chini. Nafikiri sasa tunaweza kuanza kwa sababu ile kazi ambao tuko nao hapa ni kazi nyingi sana na ni kazi nzito na inahitaji pengine mchana mzima. Kwa hivyo ningependa tuanze bila kupoteza wakati.

Ndugu zangu mnajua kuwa hii kazi ya marekebisho ya Katiba ilipoanza tulianza kwa kufundisha watu haki zao za kiraia, ile inaitwa civic education. Baada ya hapo tuliingia katika daraja ya pili na hii daraja ya pili ilikua ni kukusanya maoni ya watu. Daraja ya tatu ilikua sisi kama ma-Commissioners kukaa chini na kuweza kuangalia hayo maoni ya watu kutoka Constituency zote mia mbili na kumi za Kenya na kuweza kuandika mapendekezo sio kuandika Katiba, Katiba bado haijaandikwa mapendekezo recommendations; kuandika mapendekezo ambao tungependa kuona katika Katiba mpya. Na hayo mapendekezo yametokana na maoni ya wananchi kama vile nyinyi na wengine katika sehemu zingine katika nchi ya Kenya. Alhamdulillah tumeweza kuandika hayo mapendekezo wengine wenu mumeona na wengine wenu bado hamjaona, baada ya kuandika hayo mapendekezo, sheria imetulazimisha sisi pia turudi kwa watu tena, kwa sababu baada ya kuandika yale mapendekezo tumeambiwa kwa muda wa mwezi moja, lazima wananchi wapatiwe nafasi kusoma hayo mapendekezo na kujadiliana na kuangalia, kama maoni yenu ile ambayo mmetoa imeweza kuwekwa katika hayo mapendekezo, au la. Ni kitu gani ambayo mngependa iongezwe katika hayo mapendekezo? Na ni kitu gani ambao mngependa itolewe ama ipunguzwe katika hayo mapendekezo? Ndio sababu tuko hapa leo.

Kisha baada ya hapo tunajua kuwa kulingana na sheria ambayo imeanzisha hii kazi ya marekebisho ya Katiba inasema kutakua na mkutano, tafadhalini ningependa tufanye kazi moja that paper can go round silently very quietly it can go round please. Baada ya wananchi kujadiliana kuhusu haya maoni ambayo yako katika mapendekezo, sheria imesema kutakua na mkutano wa Kitaifa. Na kumbuka wakati tulianza hii kazi tuliwaambia taratibi ile ambao tutafwata. Kutakuwa na mkutano au kwa lugha ya Kiswahili sanifu ina sema kongamano conference, ambayo itakusanya watu mia sita na thelatini wakiwemo wawakilishi wenu Bungeni, wakiweno watu watatu kutaka katika kila district na fikiri katika Wajir district wametoka watu watatu ambao watawakilisha katika hiyo conference. Vyama vya kisiasa, vyama vingine vya kinamama na vinginevyo. Wao ndio watapitia hayo mapendekezo mapoja na yale ambao mtaongeza leo, kama kuna mengine mtaongeza leo na wao ndio watapitisha ni kitu gani ambacho kitawekwa katika mapendekezo ya Katiba mpya, kabla haija pelekwa Bunge.

Kwa hivyo leo tuko hapa katika ile stage ambao imekaribia kufika katika stage ya mwisho kabisa. Ikiwa pengine kuna jambo lolote ambalo umeona katika draft na pengine umeona hilo jambo halija kupendeza au hauja fahamu hii ndio nafasi yako. Hii

ndio nafasi ya kusema sisi watu wa Wajir, au mimi kama mkaazi wa Wajir East kuna sehemu fulani ambao sikuipendelea, ningependa hiyo sehemu iwekwe; au ni fahamishwe maoni ili ambao tulitoa kuhusu kitu fulani mbona haikuwepo hapa au kama imewekwa ni fahamishe iko mahali gani. Na hapa niko na file, hii file imeandikwa Wajir East Constituency, iko na report ya kuonyesha yale maoni yote ambayo watu wa Wajir walitoa iko hapa. Iko na maelezo mengi kuhusu Wajir East. Na hii document, kama kweli wewe unajihusisha sana na mambo ya Katiba na umechukulia muhimu, itakua katika documentation centre, Mohamed anaweza kuwatolea photocopy mnaweza kuangalia ndani yake. Na kwa sasa tunaweza kuyafanyia reference kuangalia kama yale maoni yako katika Katiba pengine mengine yanatokana na maoni yenu mliotoa hapa.

Sasa bila kupoteza wakati ningependa tuanze shughuli ambaye imetuleta hapa leo, ni shughuli ndefu Dadab tumekaa mpaka saa kumi na mbili jioni. Tuli-break kidogo kuenda kusali al-thuhuri tukarudi saa nane mpaka saa kumi na mbili na huko walikua watu wachache kuliko hapa. Hapa inaonekana manshaallah watu ni wengi. Kwa hivyo ningependa tuanze na mtu ako na uhuru ya kuuliza swali lolote. Na mkumbuke kama vile tulivyo anza na ndio mnaona tumeita repoti yetu “The people’s choice”, tunataka tupate Katiba ya watu sio kama Katiba ambayo inatutawala ambayo watu hawakuhusika. Kwa hivyo bado una uhuru wako wa kutoa maoni yako na kusema vile unavyo taka, bora usitukane mtu kama vile tulivyo sema pale mwanzo kila mmoja na uhuru wa kusema vile anavyotaka. Si mnaona hata wengine wametumia hiyo uhuru kwa kuenda kortini ama sivyo? Wengine wametumia uhuru wao kwa kukenda kortini. Kwa hivyo hata wewe una uhuru; bora tu usitupige. Lakini una uhuru wa kuuliza swali lolote.

Sasa kwanza kabisa tuko na repoti. Hii repoti ya commission tumeita “The People Choice”, kwa sababu, kwa kadiri wa uwezo wetu tumejaribu kuangalia watu wa Kenya wanataka kitu gani. Sio sisi tunavyotaka, ni watu wa Kenya wanataka kitu gani ndio tukaita “The People’s Choice”, uamuzi wa watu, au chaguo la watu wa Kenya. Sasa hii repoti sio draft ya Constitution hii ni repoti ya kuonyesha kazi tulifanya namna gani, imeeleza ndani yake background; yaani historia, mambo ya marekebisho ya Katiba yalianza wakati gani na Tume ambayo ni Commission iliundwa namna gani na ilikua na utaratibu gani katika kufanya kazi yake. Na malengo ya commission ilikua ni gani katika kufanya kazi hii. Kwa sababu tunajua ile sheria ambayo imetengeneza commission, ili sema kuwa kuna malengo fulani goals ambazo lazima tuhakikishe zinapatikana wakati tunafanya hii kazi. Na moja katika hayo malengo yaani goals ilikuwa ni kuhakikisha kuwa Kenya inabaki as a sovereign state, yaani nchi ambalo inajitawala. Kwa hivyo hatutaki kufanya hii kazi halafu mwisho wake iwe Kenya inatawaliwa na nchi nyingine.

Pia katika malengo ambao tumeandika katika ripoti yetu ni kua, tulikua tunatakiwa tusajilishe watu waweze kuhusika katika hii shughuli. Ndio sababu kila wakati unaona tukitembelea watu. Tumetembea kila sehemu ya Kenya, kwa sababu ile sheria ambayo imetengeneza commission imesema lazima watu wa-participate lazima watu washiriki katika hii kazi. Na nafikiri katika historia ya Kenya miaka thelethini na tisa tangu tupate uhuru, hakuna shughuli nyingine imewahusisha watu kama hii shughuli. Ama sivyo! Kila wakati tunarudi kwa watu. Hata Bunge kupitisha hii itakua ni formality pekee yake. Lakini watu ndio watakua wameamua kile wanachotaka. Kwa hivyo katika malengo yake ni kuhakikisha participation of the people. Kushiriki watu katika kazi hii ya marekebisho ya Katiba. Na katika kwa malengo yake pia, na tumeandika katika hii repoti yetu, the process must be

all inclusive. Tusimwache mtu yoyote nyuma. Kusema huyu mtu niwa badhiya akaye huko nyuma, au huyu mtu ni mzee hafai kuwa hapa, au yeye ni kijana mdogo hafai kuwa hapa, au ni mtu mlemavu persons with disability hafai kuwa hapa, huyu ni mislamu, huyu ni mkristo, mkubwa, mdogo, tajiri na masikini. Tumesema it must be all-inclusive, hiyo yote iko hapa katika hii ripot. Tumejaribu kuhakikisha kuwa it is all-inclusive na ndio hata katika sehemu zingine tulipokua tunaenda kukchukua maoni ilibidi tuende na sign language interpreters. Wale watu ambao wanaweza kutumia sign, ili kuhakikisha kuwa watu ambao hawazungumzi ama kusikia wanashiriki ili kutoa maoni yao. Na hata hivi tunazungumza dada zetu Halima pia amebeba documents amazo zimeandikwa kwa Braille. Kwa hivyo kama kuna mtu ambayo anasoma kwa brail tunam-include pia can you read braille? So we have documents in brail also which will be given to you. Tukionyesha ile bidii tulifanya kuhakikisha hakuna mkenya anabaki nyuma, mpaka wale ambao hawaoni wana documents zao wanaweza kusoma kwa braille. Na pia katika mapendekezo ambao tumeweka katika Katiba tumesema katika lugha rasmi ambazo zitatumiwa wakenya baada ya Kizungu na Kingereza ni sign language na braille, documents zote lazima ziwe na braille pia.

Katika malengo mengine ambayo tumetoa na tumeandika katika hii ripot ni kuwa: lazima kazi hii ihakikishe kuwa tuko na amani. Hatutaki kufanya kazi halafu mwisho wake kunakuwa hakuna amani katika Kenya. Tumelazimishwa au sheria imetaka sisi tuhakikishe kuwa kuna amani Kenya na Kenya inaendelea kuwa nchi ya amani. Na pia kukakikisha kuwa kuna umoja, sisi tumeambmiwa na sheria kuwa hii kazi yetu tukishamaliza, lazima ihakikishe kuwa kuna umoja wa Kitaifa. Kenya isiwe imegawanyika, hiyo sio katika malengo ya hii. Na kama nilivyotangulia kusema maoni yetu yametokama na maoni ya watu, au mapendekezo yetu yamekua kutokana na maoni ya watu. Na hapa tumeeleza tumechukua hayo maoni namna gani na tunaweza kuyaandika mapendekezo ya Katiba namna gani. Na ndio tumesema kuna hiyo ripot ya Wajir East. Kila mependekezo ambayo tumeyaweka katika Katiba, unaweza kurudi hapa na kuiangalia, sisi tulisema hivo ama hatukusema hivyo. Kwa mfano kama ni mambo ya Provincial Administration; Katiba mpya au mapendekezo ya Katiba mpya inasema nini, na watu wa Wajir East walisema kitu gani? Mambo ya citizenship Katiba hiyo mpya au mapendekezo yanasema nini watu wa Wajir East wanasema nini? Unaweza kurudi hapa na kuangalia katika hiyo ripoti.

Tumejaribu kufanya kitu gani katika mapendekezo haya? Je tungoje kidogo ama namna gani? We are recording. Tuna rekodi proceedings, itakuwa na kelele, wacha tusimamishe kidogo watu wa.....(inaudible).

Kwa hivyo katika kuchukua hayo maoni ya watu na kupendekeza Katiba mpya, kuna baathi ya mambo tuliangalia tukazingatia ni mambo gani ambao ni muhimu sana kulingana na vile watu wanavyosema, kitu cha kwanza ni mambo ya:

Equality and equity- usawa na uadilifu. So ni kitu moja ambacho kila tukiandika mapedekezo yoyote tulikuwa tunaangalia. Je tukipendekeza kitu kama hii ndani yake kuna equality? Na je! Kuna equity ndani yake ama hakuna? Kwa sababu malalamishi mengi ya wakenya tulipokua tukizunguka ni kua, namna sheria ilivyo hivi sasa na vile nchi inavyoendeshwa sasa kuna baathi ya watu ambao wamefaidika na kuna wengine hawajafaidika. Ndivyo ama sivyo?

Audience: Ndivyo!

Com. Lethome: Kuna baathi ya watu ambao wamependelewa na wengine hawakupendelewa sivyo! Kuna baathi ya watu amabwo hata unasikia ukisema unataka mabadiliko wanasema hawataki mabadiliko, kwa sababu ya nini? Kwa sababu vile ilivyo sasa inawafaidi wao. Kuna sehemu ya nchi imeendelea na kuna sehemu ya nchi ambao imebaki nyuma. Ama sivyo! Kwa mfano North Eastern Province, mnaweza kusema kuna maendeleo yoyote imefanyika ukilinganisha na sehemu kama Western Kenya, Coast Province au pengine Central Kenya unaweza kulinganisha?

Kwa hivyo tumefikiria sana habari ya equality na mambo ya equity. Haya ukiangalia upande wa kina mama kwa mfano ingia skuli yoyote ambao ni mixed angalia idadi ya wasichana ni wangapi katika skuli na idada ya wavulana ni wangapi, utakuta hakuna usawa. Makabila utakuta hakuna usawa. Kwa hivyo tumekuwa tukiangalia sana habari ya equity na utaona katika draft yetu mara nyingi tunaangalia sana habari ya usawa kuhakikisha kuwa kuna usawa. Hata lugha ambao inatumiwa katika hii katiba mpya au mapendekezo mapya hii si Katiba mpya utaona iko sensitive inanagalia habari ya usawa inatumia lugha ambayo inawasisha watu. Ukiangalia hii Katiba ya zamani ama ili ambao tunaotumia hivi sasa, hapa ndani utakuta mara nyingi inazungumzia habari ya, “he”. He, kwa Kizungu ni mwanamume peke yake, tunajua Kenya kuna wanaume na wanawake au sivyo? Kwa hivyo lugha ambayo imetumiwa katika mapendekezo hapa tumeitumia “persons,” mahali ambapo pana “chairman” hapa, tumetumia “chairpersons”, katika mapendekezo haya ni kwa sababu ya kuangalia usawa.

Pia tumeangalia kitu inaitwa equity kwa sababu kuna tofauti baina ya equality na equity. Equity ina angalia uadilifu, kwa sababu sio lazima watu wote wawe sawa lakini kila moja apate haki yake. Kwa mfano tunasema kuwa katika sheria ya kiislamu ambao pia imetambuliwa katika haya mapendekezo, mwanamke anarithi ama harithi? Does a woman inherit under Islamic law? Anarithi na mwanamume je anarithi ama harithi? Anarithi basi wanarithi kwa usawa ama kwa haki kila mmoja anapata haki yake kwa hivyo unakuta kuna equity. Na pia sehemu zote haziwezi kuwa sawa lakini kila sehemu inahitaji kupewa haki yake hiyo ni equity. Kwa hivyo utaona katika hii draft tumezingatia sana mambo ya equity na equality.

Kitu kingine ambacho tumeangalia sana ni mambo ya haki ya binadhamu, human rights. Kwa sababu matatizo mengi ambao tumeipata miaka thelatini na tisa kama wananchi, ukichunguza utaona ya kuwa binadhamu haheshimiwi. Haki ya binadhamu imethulumiwa unakuta binadhamu anathulumiwa, kwa sababu haki zake haziangaliwi. Na ndio utaona katika mapendekezo yetu kifungo cha tano (chapter 5) utakuta ni mrefu sana hiyo tunaita bill of rights ile ambayo inatoa haki ya binadhamu. Na ili ujue kuwa hii ni haki ambao ni muhimu sana hakuna Serikali ambao ina patia mtu haki ya kuwa binadhamu au kukunyanganaya hiyo haki kwa sababu hiyo haki inatoka kwa mwenyezi Mungu. Hiyo ni haki ambao umepewa na Mwenyezi Mungu, hauja pewa na Serikali yoyote. Kwa hivyo hiyo ndio haki muhimu sana na utaona chapter 5 imeanzia; article 29 imeenda mpaka article 75 ni mrefu sana hiyo. Kwa sababu bila haki ya binadhamu, kuna haja yoyote ya kuwa na sheria ambao haiangalii haki ya binadhamu? Kuna haja ya kuwa na Serikali nzuri ikiwa binadhamu anakufa na njaa? Kuna haja ya kuwa na Serikali ikiwa binadhamu anakufa kwa kiu, hakuna maji? Kuna haja ya kuwa na Serikali ikiwa binadhamu hapati barabara ya kupitia? Utaona kuwa kila kitu inatakiwa kuwa ihakikishe kuwa binadhamu anapata haki yake. Kwa hivyo utakuta kuwa tumetilia mkazo sana mambo ya human rights, haki za binadhamu. Na utaona mpaka

tumepita kiwango ambacho imewekwa katika hii Katiba ya zamani. Tunasema kuwa hata binadhamu ambaye ameshikwa na makosa, kwa mfano mtu ni suspect amewekwa kwenye custody, yeye ni binadhamu ama si binadhamu? Sio mnyama. Hata kama ameshikwa hata kama amefungwa jela bado yeye ni binadhamu. Hata kama amekufa, hiyo maiti ni ya binadhamu haiwezi kufanyiwa kama maiti ya mnyama. Kwa hivyo utaona kuwa tumetilia sana mkazo kwa haki ya binadhamu na pia tumepatia watu haki na uwezo wa kupata hiyo haki yao, mpaka uwezo wa kushtaki Serikali ikiwa imevunja haki ya binadhamu, kwa sababu Serikali haitawali wanyama, ama miti, ama mchanga inatawala binadhamu. Na bila ya binadhamu hakuna Serikali, hakuna nchi, kuna nchi bila binadhamu? Haiwezekani. Kwa hivyo tumezingatia haki za binadhamu.

Kitu kengine tumezingatia ni security mambo ya security. Tumeangalia sana mambo ya security ya huyu binadhamu. Kwa sababu kama umempatia haki huyo binadhamu lazima kuwe na security ya kulinda huyo mtu na hiyo haki yake. Kwa mfano: tumesema kuwa kila binadhamu ana haki ya kuishi lakini bila security hiyo haki yako utaweza kutumia kweli? Huwezi kutumia utauliwa.

Tumesema kuwa pia ukona haki ya kumiliki mali, rights to own property. Lakini bila security hiyo mali utakaa nayo kweli? Kwa hivyo tumezingatia mambo ya security, kwa sababu kila mahali tumezunguka Kenya mzima, malalamshi mengi yamekuwa kuhusu mambo ya security. Kuwa binadhamu wanataka security, wakenya wanataka kuwa na security, kwa sababu bila kuwa na security maendeleo haiwezi kupatikana. Kwa sababu unalala usiku unawasiwasi mali yako ambao umewacha dukani yako haujui kama utakuta, hata unaogopa kufanya maendeleo yoyote kwa sababu hauna hakika kama hiyo maendeleo itabakia pale ama itachukuliwa na mtu mwingine. Kwa hivyo tumezingatia sana mambo ya security.

Kitu kingine tumezingatia pia ni mambo ya kuheshimu na kulinda Katiba. Kwa sababu hakuna haja ya kutumia pesa nyingi, tumetumia billions of Kenya shillings kuweza kutengeneza hii Katiba mpya. Hakuna haja ya watu kupoteza wakati; kwa mfano: si wengine wenu wako na wafanyi biashara, au sivyo? Wengine wameajiriwa kazi na Serikali, wengine ni watu wa skuli, wengine wako na profession zao wamewacha kazi zao na sio mara moja au mara mbili kuja kufanya kazi hii ya Katiba. Hakuna haja ya kupoteza huo wakati wote ikiwa mwisho wake tutapata Katiba ambao itachezewa na mtu vile anataka, kuna haja yoyote? Kwa hivyo tumezingatia pia protection of the Constitution and its principles, lazima iwe inalindwa. Sio Katiba kama hii ambao tulipata mwaka wa sitini na tatu, baada ya mda kidogo ilikuwa imebadilishwa yote na watu wachache. Ndio utaona tumependekeza hapo katika mambo ya kubadilisha Katiba. Bunge ikitaka kubadilisha Katiba tumeweka masharti gani? Kwa sababu hii Katiba mpya Inshaallah ikipatikana itakuwa ni Katiba ya wananchi. Bunge, uwezo wake umepunguzwa kuhusu kubadilisha hii Katiba. Na pia hakuna mtu ambaye yuko juu ya sheria watu wote wako chini ya sheria na kila mmoja lazima aheshimu hii sheria ili tuweze kuhifadhi. Isiwe ni sheria ambayo tunatengeneza leo na kesho ina chezewa na mtu mwingine. Kwa hivyo utaona katika hayo mapendekezo yetu utakuta kuwa tumezingatia sana mambo ya kuheshimu Katiba na kufuata hiyo Katiba ili iwezi kutumikia watu wote kwa sawa.

Kisha utakuta hapa kuna kitu ambacho tumezingatia sana, tunaita kwa Kizungu Constitutionalism kwa Kiswahili inaitwa Ukatiba, kwa sababu kuna kitu moja kutengeneza sheria nzuri na kitu kingine kuifuata hiyo sheria hayo ni mambo mawili tofauti. Kwa mfano tunasikia kuwa kuna uwizi mwingi sana Kenya, kuna sheria ambayo inazuia watu kuiba? Hiko ama

hakuna? Na kwa nini watu wanaiba? Haifuatwi hiyo sheria that is the bottom line nikua haifuatwi hiyo sheria. Hiyo ndio swali anauliza hii itafuatwa? Ndio hapa tunasema inategemea attitude ya wakenya, Kenyans will decide whether to follow this law or not. Kwa hivyo wakenya msiseme sasa tupigeni makofi tumepata sheria mpya mambo yote yamekuwa mazuri. Inaweza kuwa sheria nzuri lakini iwe vile Waarabu walisema "*hiblun alal waraqa*" yaani ni rangi tu wino kwenye karatasi, haina kazi yoyote inafanya.

Jamani hata sisi Waislamu, angalia Qurani. Qurani sini maneno la Mwenyezi Mungu? Si imezuia watu kulewa, Waislamu wanalewa ama hawalewi? Qurani si imesema watu wasizini. Waislamu wanazini ama hawazini? Imesema msiibe, Waislamu wanaiba ama hawaibi? Problem iko wapi? Where is the problem? Kufuata. That is the thing hiyo ndio muhimu. Tunaweza kufuata sheria muhimu kama Qurani lakini kama hatufuati kuna faida yoyote? Ndio tunasema offer to the people, at the end of the day it is the Kenyans who will decide. The attitude has to change, lazima sisi tubadilishe msimamo wetu kuhusu sheria. Kama vile tunavyoambiwa sisi Waislamu, Sheikh anasimama kwenye mimbar anasema "*Qalaa lahu waqala rasul*" mwisho anakuachia wewe, wewe ndio utafuata "*Qalaa lahu waqala rasul*" sio Sheikh. Ama sivyo? Quran iko, sheria iko kufuata sheria ni wajibu wetu our attitude have to change.

Ndio tunasema katika ripoti yetu tumeandika offer to the people tunawachia wananchi wa Kenya. Ile kazi wamefanya miaka hiyo yote wameamua kutawaliwa hivyo? Watafuata ama hawatafuata? Hiyo itakkuwa juu yetu kama wakenya kama hatuwezi kubadilisha attitude yetu. Na pia tuwe na commitment katika hiyo Constitution hivi leo mara nyingi unasema kama wewe ni officer mdogo, unasema ikiwa yule officer mkubwa anaiba hata mimi nitaiba, ama sivyo? Hiyo ni, we are not committed to the laws of the country. Kwa hivyo hata hii Katiba mpya ukisema yule mkubwa anavunja hata mimi nitavunja, itakuwa hakuna faida yoyote ambayo tumefanya. Kwa hivyo tunasema mambo mngi yale muhimu, yanategemea wananchi wenyewe attitude yao.

Na mwisho pia kuna kitu kimoja muhimu ambacho tunaita civic education. Civic education lazima iendeleo. Kama hii tunafanya hapa sasa ni civic education. Ukiangalia hapo nyuma watu hawakua wanajua haki zao katika sheria ama sivyo? Watu walikua hawajui haki zao wanatakiwa kufanyiwa nini na Serikali. Watu wameshindwa kudai haki zao, kwa sababu hawajui haki zao. Ndio tunasema hii sheria haiwezi kufanya kazi hata ikiwa ni nzuri namna gani bila watu kufundishwa haki zao, waweze kujua haki zao, ili waweze kufuata haki zao. Kwa hivyo katika ripoti yetu tumezingatia sana mambo ya civic education iwe continuous na watu waweze kufahamu. Ile propaganda ambayo ilikua zamani iondolewe, zamani ulikua ukisema juu ya civic education, wale ambao wako katika power wanasema hii civic education ni ya kufundisha watu kupindua Serikali, ama kuondoa ile Serikali ambao iko. Na wale wengine ambao wanafundisha civic education wanafikiria civic education ni ya kutoa wale ambao wako katika power wao waje wakalie hiyo kiti. Tunasema civic education ni ya kufundisha wananchi haki zao za kiraia. Kama sasa vile tunakaa hapa this is civic education. Watu wajue haki zao waweze kuuliza maswali wajibiwe. Kwa hivyo tumezingatia hayo katika ripoti yetu.

Kitu kingine ambaye utaona katika haya mapendekezo yetu hapa, lugha ambayo tumechagua kutumia katika hii Katiba mpya au mapendekezo (sorry sio Katiba mpya ni mapendekezo), tumetumia lugha ambayo ni rahisi, lugha ambayo

inafahamiwa na kila mwananchi. Kwa sababu hii ni Katiba ya wananchi hatutaki mtu akitaka kufahamu Katiba unaona hii ambayo hiko hapa hata MPs wengi wakisoma hii lazima atafute wakili wa kumsomea. Kwa sababu lugha ambayo imetumiwa hapa ni lugha ya kisheria, ni lugha ngumu ambayo mwananchi wa kawaida hawezi kufahamu. Hapo utaona kuwa maneno ambayo yametumiwa hapa yametumiwa maneno rahisi na itakuwa sasa kwa lugha mbili; kwa lugha ya Kiswahili na lugha ya Kingereza na pia katika braille ili watu wote waweze kusoma. Kwa hivyo tumezingatia hivyo. Sasa na fikiriri tutaingia katika kuangalia mapendekezo ambayo yako katika hii Katiba mpya, mapendekezo ambayo yako hapa na tofauti yake na ile Katiba mpya ni kitu gani. Sasa kuhusu ripoti kabla sija ingia katika kuchambua hii Katiba na kueleza ni sehemu gani ambazo ni muhimu kufahamu, sijui kama kuna swali lolote kabla sija ingia katika hiyo sehemu.

Mohamed noor Hussein: Thank you Bwana Commissioner, jina langu ni Mohamed Noor Hussein kutoka Wajir West. Swali langu ni hili: hapo tuko na draft Constitution ambayo umetueleza ni collection ya opinions ya watu wa Kenya wote. Sisi mbeleni hatuja pata nafasi ya kupitia through the draft Constitution, kuangalia kama ile maoni tulichanga mbeleni hiko ndani. Lakini sasa tuko tayari kuchangia. Kwa hivyo sasa tutafahamu namna gani na tutapata nafasi ya kuangalia ile maoni tulichanga mbeleni, sababu sioni kama tuko na nafasi ya kuangalia tena kuuliza na kuangalia kuuliza. Hiyo ndio suali langu.

Com. Lethome: Asante sana. Sio lazima utoe yale maoni yako leo, na kama nilivyo waambia uko na nafasi mpaka tarehe ishirini na nane ya mwezi huu. Kama una mapendekezo yako yoyote mnaweza kujadiliana halafu mlete hayo mapendekezo. Hii kikao ya leo ni kama kujaribu ku-initiate debate, tunajaribu ku-provoke nyinyi mwanze ku-debate juu yake? Kwa hivyo kama una maoni yoyote hayo bado ni mapendekezo, na mapendekezo maana yake inaweza kuongezwa au kupunguzwa ama kuondolewa. Kwa hivyo bado una nafasi ya kuangalia na kufikisha mapendekezo yako kwa commission kabla ya conference. Asante.

Dagane Siyat: Bwana Commissioner asante sana. Yangu ni kidogo tunaongeza vile mwenzangu amesema. Kwanza jina langu mimi ni Dagane Siyat Councillor. Yangu ni kuongeza kidogo tu ya kuwa, sisi kama wanakenya pengine katika nchi hii maneno ilichangwa mengi lakini hasa sisi watu wa North Eastern tulichanga tofauti na sehemu zingine. Kwa sababu sisi tulikua watu wamechelewa na wamepoteza haki yao kwa mda mwingi. Kwa hivyo juzi nilisikia kwa radio nilisikia katika hiyo Katiba kuna kitu fulani imetolewa hasa upande ya sheria, upande wa Khadi ilikua tumezungumza sana. Sasa hapo ndio sisi tunataka tueleze waziwazi sana hata wengine hatujui kusoma. Kwa hivyo kama wewe ni chairman tunataka utueleze ile mahali fulani imetolewa au kama haijatolewa utihakikishie ya kwamba ile maneno yote tuliandika hapa yote imekua correct na already itakua kitu ambacho kitafahamika. Asante.

Com. Lethome: Asante sana Bwana Councillor. Nafikiriri Councillor Dagane utasubiri tu tukifika upande wa kortini tutaangalia kuhusu mambo ya Khadi tumependekeza kitu gani. Na kama mtu yoyote anasema imetolewa nitakupatia hii Katiba ya zamani ama hii ya sasa na yale mapendekezo ulinganishe iangalie ni gani imepatia zaidi? Na ni gani ambao imepatia kidogo? Inshaallah fanya subra tu tufuke mambo ya kortini.

Omar Jibril Hussein: Jina langu naitwa Omar Jibril Hussein Councillor. Swali langu ni fupi. Nimeshukuru kwanza kwa vile wewe umetuita hapa Wajir township ambapo watu wa Wajir district wote wamekutania. Swali langu, nataka kujua leo wewe umeanza hapa Wajir township, Constituency ya Wajir district, hii ndilo nafasi yetu ya Wajir district leo peke yake ama mtazunguka Constituency zote nne. Hilo ndio swali langu. Asante.

Com. Lethome: Asante sana. Hilo swali lako ingawa ni fupi lakini ni nzuri sana. Saa hizi tunazungumza mwenzangu Commissioner Ahmed ako Griftu. Hiyo ni Wajir West, halafu akitoka hapo anaenda Bute na kuna mwingine anaitwa Doctor Arale atakuwa Habaswein. Kwa hivyo tunajaribu kila Constituency kupata nafasi, mimi nikitoka hapa naendelea mpaka upande wa Mandera. Kwa hivyo tunajaribu kila sehemu kupata kikao kama hiki Inshaallah. Haya! Swali la mwisho halafu tuendeleo sasa.

Abdullahi Hassan: Mimi ni Abdullahi Hassan sitaweza kusimama kwa sababu mimi ni mwelemavu representing Tarbach Society for disabled. Swali langu la kwanza vile umesema tuna-provoke debate baada ya nyinyi kufanya debate na draft yenu tutatumia kwamba kutoka Wajir East tutakuwa na draft mpya? Ya pili watu wa Wajir ama North Eastern wote wengi wao ni watu hawawezi kusoma ama kuandika. Sasa nikichukua hii draft na nipeleke mahali ninapotoka, kina mama na baba watatumia hii masufuria ya chakula kwa moto kwa sababu kwao haina maana. Sasa nataka kuuliza harakati gani ama mko na mpango gani wa kuhakikisha ya kwamba watu kutoka North Eastern Province, kutoka pembe zote, wamejulishwa ama mmefanya civic education amabayo hao watu wawe conversant na mambo ya sheria.

Com. Lethome: Asante sana kwa hilo swali, hilo ni swali ambalo ni muhimu sana na ni swali ambalo limetusumbua sana sisi hata kama Commissioners tunapo kaa huko. Kwa sababu hii kazi tumepewa muda fulani, kufikia muda fulani lazima tuwe tumemaliza. Na kwa mfano sasa tumekaa hapa ukilinganisha wale watu ambao wako hapa na population ya watu wote wa Wajir East, hawa ni watu wachache sana, ama siyo? Lakini sasa tunasema hiyo ndio ile kidogo ambao tunaweza kufanya lakini kila mmoja wetu ako na wajibu kwa kuweza kufikisha huo ujumbe mahali anatoka. Na pia tunajaribu kutumia redio, kama unasikiza redio tumeanza programme kila jumapili. Ikiwa KBC inafika hapa nyinyi mna bahati sana Wajir inafika, kuna sehemu nyingine haifiki. Kuna programme kuanzia saa tano asubuhi kwa lugha ya Kiswahili na kuanzia saa nane kwa lugha ya Kingereza, ambao hii draft inaanza kuchambuliwa kwa lugha ya Kiswahili na Kingereza. Mimi najua mtu mwingine atasema je na wale watu hawafahamu lugha ya Kiswahili ama lugha ya Kiingereza? Sasa hiyo ni matatizo ambayo tumeshindwa tunayaweza kufanya namna gani. Lakini tungekuwa na uwezo tungetaka kumfikishia kila mtu kwa lugha yake. Na hiyo ndio upungufu ambayo sasa unaona hiko katika hii nchi. Hiyo ni problem ambayo tuko nayo sasa, kama nchi kuwa kuna baathi ya sehemu ya watu ambao siki zote wamebaki nyuma hawapati haki yao. Kwa sababu ingefaa kwanza redio kama KBC ingefaa ifike kila mahali Kenya. Ukienda Mandera sasa wanasikiza redio Mogadisho ama BBC Kwa sababu KBC haifiki huko, na booster hii ya hapa Wajir sijui kama inafanya kazi ama haifanyi kazi. Unakuta watu wengi hawawezi kupata habari. Kama ni TV ya KBC hata Garissa peke yake haifiki. Ndio unaona matatizo ambao tuko nayo miaka hii thelathini na tisa baathi ya sehemu kubaki

nyuma na sehemu nyingine kuendelea. Ingefaa pia KBC iwe inatangaza kwa lugha zote. Kama ni Msomali anafikishiwa habari kwa lugha yake. Mborana kwa lugha yake, Mmassai lugha yake. Lakini hii ni matatizo ambayo commission haiwezi kutatua, ni Serikali ambaye itakuja kufanya kazi chini ya mapendekezo ya Katiba mpya ndio inatakiwa kuangalia matatizo kama haya. Lakini kwa sasa that is the problem that we have to live with for the time being and hope that the problem will be addressed by the new Constitution. Wacha tupate swali moja tu halafu tuendele. Ngoja kuna mzee hapa, mzee ataona kama ninambagua kwa sababu ya uzee.

Salat Ali: Asante kwa kunipatia nafasi. Mimi naitwa Salat Ali Councillor kutoka Griftu. Ni maswala mawili kuhusu zile shida tuko nazo sisi. Ya kwanza ni upande wa mahakama. Mahakama kama sisi watu wa North Eastern wewe unaweza kuona mtu anawekwa kwa jela ama police station na anakaa hapo kwa muda mrefu, kwa sababu hakuna judge na hiyo imetusumbua sana. Ya pili, ni mambo ya habari. Hata leo Kama mimi nikiwa na shida fulani nikienda hapa kwa KBC hawawezi kutangaza ripoti yangu, wanaweka tu. Hayo ndio maswala yangu mimi.asanteni sana.

Com. Lethome: Asante. Mambo ya mahakama tutaangalia tumesema nini katika mahakama na mambo ya information pia? Tutaangalia iko katika mapendekezo mpya. Haya wa pili.

Hillow Noor: Jina langu naitwa Hillow Noor Hussein Councillor Tarbach. Swali langu ni hii. Hii map ya Kenya na wale watu ambao wako ndani sasa wenye sheria. Yaani wale ambao sasa wanataka kuangalia maslahi ya wakenya wako ndani ya hii map. Hii map ndani sasa, ime-include Waarabu lakini imewacha nje Wasomali. Sasa kama nyinyi Commissioners mmeangalia pembe zote za Kenya na hiyo sheria ambayo nyinyi mnasema lazima iangalie haki ya kila mtu. Sasa Wasomali wako wapi? Maswali yangu ni hayo tu.

Com. Lethome: Nashukuru sana kwa hilo swali. Lakini ukiangalia ndugu yangu mimi nakubaliana na wewe hii picha ingefaa ipigwe mahali ambapo kuna wakenya wengi kila aina ya wa Kenya. Lakini ukiangalia hii picha inaonekana imepigwa Nairobi ama Central province au mahali pengine. Ingepigwa Garissa ama Wajir ingekuwa pia mwingine angesema wapi Mjalu au Mkikuyu. Na hii picha haikutengenezwa na commission wamechukuwa tu picha ambayo ina watu wengi. Lakini baadaye tutaangalia picha ambayo ina Msomali, Mwaarabu, Mborana na kila mtu Inshaalah. Haya wewe hapa halafu kuna Mzee pale halafu tumalize maswali halafu tuingie katika....

Yunis Abdi: Jina ni Yunis Abdi. Niko na swali moja muhimu sana kabisa. Ningependa mtujulishe vizuri nikitoa maoni hii sasa inahusu Kenya mzima sio Wajir pekee ama Garissa. Ikiwa maoni ya watu milioni thelatini na nafikiri itachukuliwa halafu itaenda kwa Bunge. Bunge wataamua yale yako wanataka na yale ambayo hawataki, sasa tuko na faida gani ya kuwa hapa na kutoa maoni sasa? Hilo ndilo swali.

Com. Lethome: Haya asante swali muhimu sana lakini tulipoanza hii kazi tulipokuja hapa kueleza habari ya taratibu na

nilipokua kama mlikua hapo Baraza park. Ulikuwa hapo Baraza park wakati nilizungumza? Tulizungumzia habari ya taratibu yote. Tukasema Bunge hakuna kitu itaamua, kwa sababu Bunge ni wale wa Bunge ama sivyo? Na Wabunge tumewahusisha kwanzia mwanzo:1) Tumewahusisha Wabunge katika Constituency Constitutional Committees. Wale watu kumi wa Constituency mmoja wao ni Mbunge, ama sivyo? Hiyo ndio mara ya kwanza tumewahusisha.

Mara ya pili tumewahusisha Wabunge ni katika conference. Tumesema Wabunge wote mia mbili ishirini na mbili lazima wakae kwa conference. Kwa hivyo watakua pia wamehusika katika kujadiliana haya maoni. Sasa ikifika Bunge itakua ile kitu tunaita kwa Kiingereza formality pekee yake. Kwa sababu watakua wameshapitia watakua wameshiriki kama wananchi. Kwa hivyo hatutarajii kuwa wao tunaweza kufanya hii kazi yote halafu watupe. Kwa sababu tena wao watakuwa wamejadiliana katika national conference na wananchi wengine. Kwa hivyo sheria imeweka utaratibu ya kuhakikisha kuwa Wabunge pia wameshiriki na sisi. Kwa hivyo hata ikienda Bunge itakuwa sio kitu mpya kwao watakua wameshiriki ndani yake. Hebu tumsikize yule Mzee halafu tafadhalini hatuja ingia kwa kazi haya huyu ndio mtu wa mwisho.

Abdi Abdow Ali: Abdi Abdow Ali disabled. Nafikiri sisi disabled Tume ilitulalia kidogo kwa sababu tulikua na hoja kwa Bunge ya kufanyia sisi namna ya kuishi, kama vile SouthAfrica, Uganda na nchi zingine. Lakini hapa Kenya hakuna nafasi ya disabled. Hiyo yote, hata Tume haijaingilia kwa hii mapendekezo mpya. Asante sana.

Com. Lethome: Haya asante sana. Kwanza hiyo Bill ambayo iko Bunge sio Tume ambayo imelalia ni Wabunge. Kwa hivyo hebu mfuata MP wako Hon. Mohamed Abdi mulize kwa nini wanalalia hiyo Bill huko Bunge? Sisi mahali unaweza kutulaumu ni katika mapendekezo. Nafikiri ungojee tuangalie under the Bill of rights, tumesema nini kuhusu persons with disability watu ambao wanaulemavu. Ikiwa unaona pengine kuna upungufu tutachukua maoni yako kuhusu sehemu hiyo. Lakini naomba usubiri kidogo Inshaallah. Sasa mwisho kabisa maswali yule Mzee, *haye awow*.

Adan Abdi Abdilla: Mimi naitwa Adan Abdi Abdilla naishi hapa karibu na Baraza park, nyumba yangu hiko hapa. Mimi ni na swali kuhusu hapa Wajir town. Wajir town ni karibu miaka mia moja. Katika North Eastern province iko district tatu.

Interjection: Audience: Nne.

Adan Abdi Abdilla: Hapana ilikua zamani. Sasa kama tunaenda town mara gari inakaa katika barabara kama masaa mawili au tatu. Watu Wazee zaidi wanashinda wameshindwa kwenda town kwa sababu mchanga ni mingi. Kutoka Wajir kwenda Mandera ni mile mia mbili ishirini na tano. Na sasa kwa nini Wajir ijawekwa lami hata maram kidogo? Hata wakati juzi President alikuja maram ililetwa mahali yeye alipita peke yake. Wajir iko na thambi? Iko na makosa? Hata Kenya yenyewe imekua na miaka arubaini ya uhuru. Hata town ndogo ndogo mahali pengine kuna lami, na mahali hapo Wajir district hata katikati ya hapa town kama gari inakwama, na watu wanazunguka kando kando na gari inatembea kwa ukuta. Kwa hivyo swali langu ni hilo tu tafadhali.

Com. Lethome: Asante. Nafikiri hapo mzee ameeleza kuhusu yale matatizo ambayo tumekua nayo na kuonyesha upungufu ambao tuko nao katika sheria ilioko hivi sasa ambao inaangalia sehemu moja na haiangalii sehemu nyingine. Kwa hivyo tutaangalia katika hii mapendekezo ya sheria mpya, itakua inaangalia sehemu zote sawa sawa ama kuna baathi ya sehemu ambao itabaki nyuma. Naomba usubiri tuangalie. Kwa sababu makosa imetokea katika sheria ya zamani. Sasa tunataka kuangalia sheria mpya kama itasaidia kuondoa hiyo makosa. kama Wajir itakua na lami ama itabaki matope na mchanga mpaka hapa kama ulivyosema. Nafikiri is it a compelling question? Okay let me allow you, kwa sababu nimesema maswali yaulizwe hiyo ni ya mwisho, halafu tuendeleo tafadhali. Haya mpe mic huyo.

Mohamed Hassan: *Bismilahi rahmani rahim*, nitaanza na jina ya Mungu, Mungu atubariki. Swali langu.... Jina langu naitwa Mohammed Hassan mimi ni mchungaji kutoka Wajir East. Nafikiri Kenya kila mtu anaelewa wakati ambao uhuru wa kenya ilichukuliwa lakini sisi Wasomali tulichukua uhuru kutoka 1992 na bado tunakaa tukitawaliwa tu, tangu hii sheria mpya imeanza tumeona vile maneno ya Kenya inaendelea. Mbeleni tulikua tunatawalilwa vile hata(**inaudible**) Hatawali watu. Tunateswa, tukiingia sehemu fulani, yaani bendera ni Kenya lakini rangi ina tofauti mingi sana. Wale wametuletea hii sheria mpya ili mtu aongee fursa yake vile anataka au maoni yake, kwanza tunarudishia Bwana Commissioner shukrani kubwa sana na huyo mtu Mungu ambariki. Ya kwamba kuna Wakenya wamezaliwa na kwa tumbo na wengine kwa mgongo. Je ni gani na gani? Sisi Wasomali kutoka 1992 ndio tumezaliwa kwa tumbo. Tafadhali tunaomba kama sisi Wanakenya ili hii Katiba irekebishwe vizuri, yaani kila mtu hata mtoto wa miaka tano apewe fursa ya kuongea.

Com. Lethome: Haya Asante. Nafikiri hayo ni maoni umependekeza Inshaallah tunashukuru.

Mohamed Hassan: Naomba kwanza niongea kama kitu tano hivi.

Com. Lethome: Haya asante, nafikiri tumefunga maswali sasa.

Speaker: Wacha tuendeleo kwanza.

Com. Lethome: Hatujaanza, mnajua hata hatujaanza hii kazi wacha tuanze tafadhalini.

Interjection: many speakers speaking at the same time.

Speaker: *Sualaha hano thambeyan manta wa malin wein. Marka ripotki loimathey weli lithinmashegin marka nafas an sino commishnaga sualana ninkasta ha qorto wixi lashegithono.*

Com. Lethome: Haya Asanteni. Sasa tunaingia katika mapendekezo ile mpya na mambo yale ambao tutaona ni tofauti katika Katiba mpya ama mapendekezo mpya na ile ambao tunaotumia hivi sasa.

Ya kwanza kabisa utaona kuna kitu ambacho tumeita preamble, preamble ni utangulizi. Hii Katiba yetu ya zamani au ambao tunatumia sasa, ukifungua tu ukianza kusoma ndani yake kitu cha kwanza ambacho unaona ni Kenya is a sovereign Republic. Hiyo ndio kitu ya kwanza. Yaani haija eleza philosophy ya hiyo nchi, ni kitu gani iko katika hiyo nchi na kama ni binadamu wako katika hiyo nchi ni binadamu wa aina gani ambao wako katika hiyo nchi, na wanaamini kitu gani na wametoka wapi na wanaelekea wapi? Mfano wake ni: nimekuja kwako nyumbani kwa Mohamed nimebisha mlango hata kwanza sijabisha mlango nimefungua mlango wako halafu nimekuambia nipe pesa. Utanipatia?

Speaker: Hapana.

Com. Lethome: Kwa nini? Utaniambia kwanza wewe ni nani umetoka wapi, mbona haujabisha nyumba yangu? Kwa nini hata haujaniuliza habari yako kwanza halafu ndio uzungumze habari ya pesa? Lazima kuwe na utangulizi. So tumesema ukiangalia Katiba za nchi zote zingine kuna kitu ambacho kinaitwa utangulizi ambayo ni filosofia, philosophy ya ile nchi kuonyesha ni watu gani wako katika hiyo nchi wametoka wapi na wanaelekea wapi? Na hao watu ni wa aina gani? Ili tunapoingia katika Katiba enyewe tujue kila tukisoma sehemu yoyote ya hiyo Katiba tukumbuke ndani yake tunazungumzia habari ya Kenya ambayo iko na wananchi wa aina fulani ambao wako na historia fulani na ambao wanaelekea sehemu fulani.

Ukiangalia katika hii Katiba tumependekeza kuwa kwanza, kitu ambacho kimeleta ubaguzi katika nchi hii ni kuwa haijatambuliwa kuwa Wakenya ni makabila tofauti, tofauti. Wakenya wanamila tofauti, tofauti, Wakenya wana dini tofauti, tofauti. Kenya sisi sote ni kabila moja?

Audience: Hapana.

Com. Lethome: Ni dini moja?

Audience: Hapana.

Com. Lethome: Mila zetu ni moja?

Audience: Hapana.

Com. Lethome: Ukitoka hapa tu kuenda Isiolo Mborana mila yake ni tofauti na ya Msomali. Ukiende kwa Mmeru mila yake ni tofauti. Dini ya Muslamu ni tofauti na dini ya Mkristo na ya Mhindi na wale ambao hawana dini. Hao wote ni Wakenya ama si Wakenya? Kwa hivyo tumesema Katiba lazima itambue tofauti zetu na hiyo tofauti si makosa. Kwa sababu tukisema ni makosa tunamtoa nani makosa? Mwenyezi Mungu. Mwenyezi Mungu anajua kwa nini alituumba tofauti, tofauti na hatukuja hapa Kenya by accident. Unafikiri ni ajali ndio tuko hapa Kenya? Mwenyezi Mungu amepenga tuwe hapa Kenya: makabila tofauti, tofauti,

rangi tofauti, tofauti, dini tofauti, tofauti na kila mmoja lazima apatiwe haki yake. Kwa hivyo tumesema lazima tutambue hivo, Kenya ni nchi uhuru ni nchi moja lakini ndani yake kuna makabila tofauti, tofauti na dini tofauti tofauti. Halafu lazima pia tujue tufanye mambo yote lakini tujue kitu muhimu ni kua maslaha ka kila mtu lazima iangaliwe. Hakuna mtu mabaye ni bora kuliko mwingine maslaha ya kila mtu lazima iangaliwe.

Na lazima tujue kuwa familia, family ni kitu muhimu katika nchi. Bila familia hakutapatikana watu na bila watu hakuna nchi. Halafu pia lazima tuitambue katika hiyo nchi tuko katika communities' tofauti, tofauti. Kwa hivyo tunaanza na mtu binafsi, family halafu community, kama kwa mfano: tuseme Mohammad he is an individual lazima aheshimiwe maslaha yake iangaliwe, family ya Mohammad lazima iangaliwe maslaha yake iangaliwe na community ya Mohammad ambao ni ya Kisomali ambao ametoka ndani yake lazima pia zingatiwe. Kwa hivyo tumesema katika nchi hiyo yote lazima ipewe umuhimu, hatuwezi kusema kuwa he is just an individual; ni mtu mmoja, au he is just a family, au he is just one community. Hiyo nchi bila ya mtu mmoja haiwezi kuwa nchi, bila ya family haiwezi kuwa nchi na bila ya community haiwezi kuwa nchi.

Kisha lazima pia tujue kuwa watu wa Kenya wako na matumaini fulani, kama vile mzee anavyozungumzia leo. Anazungumzia habari ya kutawaliwa kwa njia nzuri habari, ya kuhakikishiwa kuwa kila kitu ambacho wanahitaji wanapata. Habari ya kuhakikishiwa kuwa ana uhuru wake, habari ya kuhakikishiwa kuwa sheria inatumika hiyo ndio matumaini, au tamaa ya kila mmoja. Au kila mmoja hataki hivyo? Si kila mtu anatamani hivyo? Unatamani kupata kile ambacho unahitaji kutawaliwa kulingana na sheria, kutawaliwa kwa kupewa uhuru wa kusema vile unavyotaka. Kwa hivyo lazima katika utangulizi hii sheria yetu itambue kuwa kuna kitu fulani ambacho tunataka kama Wakenya. Kisha tujue kuwa sisi ni taifa ambayo hatupokei amri kutoka katika nchi nyingine. Kwa hivyo tutawaliwe kulingana na matakwa yetu sio kulingana na matakwa ya nchi nyingine yoyote. Hata ikiwa kubwa, super power, ama sio super power; we are sovereign state ni nchi ambayo inajitawala. Na sisi ndio tunaamua tunataka kutawaliwa namna gani sio nchi nyingine ambao itatuamulia sisi tunataka kutawaliwa namna gani. Na tunatambua kuwa hii sheria ambayo imeundwa ni sheria yetu na tumehusika ndani yake. Kwa hivyo hata baada ya mia mmoja wale ambao watakuja watajua, kua hii sheria ambayo inatutawala ni sheria ambayo sisi wenyewe tumeitengeneza kinyume na hii imetengenezewa Lancaster. Sijui ni watu wangapi walikwenda huko Lancaster. Tumeambiwa ni watu kumi na wawili na North Eastern nafikiri ametoka mtu mmoja tu, marehemu Abdirashid, nduguye Ahmed Khalif. Na yeye alipoenda huko hakuenda kwa sababu ya Katiba ameenda kueleza matatizo ya watu ya North Eastern Province, au Northern Frontier. Kwa hivyo haikuhusisha wananchi wa Kenya.

Mwisho kabisa katika hiyo utangulizi, preamble: tunasema kuwa sisi baada ya kufanya hiyo kazi yote na kushiriki katika Katiba, au kutengeneza sheria tumeichukulia kuwa hii ndio sheria ambayo inatutawala. Halafu kitu ambayo ni mpya katika hii Katiba hakuna mahali hata imetajwa katika hii Katiba na fikiri ndio pengine tumepata matatizo mengi sana, tumesahau Mwenyezi Mungu katika hii Katiba ya zamani. Mnajua hakuna jina ya Mungu hapa hata moja, msione hii mimi ndio nimeandika hapa juu na Kiarabu hakuna jina ya Mwenyezi Mungu hapa hata moja. Ni kama kuwa sisi hatuamini kuna Mwenyezi Mungu. Lakini hapa katika Katiba mpya tumeomba Mwenyezi Mungu aibariki Kenya, tupate baraka za Mwenyezi Mungu. Na ni ajaba

kwa sababu utakuta hata nchi ambazo haziamini mambo ya dini sana utakuta kwenye pesa zao wameandika, America wameandika nini kwenye dollar? In God we trust. Tunaamini Mwenyezi Mungu. Na wao ndio kabisa wanakwenda kinyume na dini lakini wametambua. Na sisi ambao tunajidai ni watu wa dini hakuna jina ya Mwenyezi Mungu mahali yoyote. Ndio tumesema sasa iwekwe hapo, God bless Kenya. Hiyo ni mapendekezo tu kama nilivyo waambia ikiwa kuna kitu ambacho unaona kimepungua katika hiyo preamble unaweza kuongeza ndani yake. Kwa hivyo hiyo ndio sehemu ambayo tumetangulia nayo. Hiyo ni utangulizi, hatuja ingia kwenye Katiba. Na kuna watu wengine wanasema kuwa preamble kwa sababu ni utangulizi peke yake haina nguvu ya sheria, lakini na kuambia iko na nguvu ya sheria unaweza kwenda hata kumpeleka mtu kortini kwa sababu ya kuvunja hiyo preamble, unamwambia umekwenda kinyuma cha preamble. Kwa sababu hii preamble ndio imekusanya malengo yote ya hii Katiba na mwelekeo wa nchi, inaelekea wapi.

Halafu utakuta tunaingia katika sura ya kwanza ambayo ni chapter 1, hii chapter 1 imetambua umuhimu wa binadhamu, umuhimu wa watu. Utakuta katika hii Katiba haikutambulisha mtu au watu imetambulisha mambo mengine haikutambuliza watu. Kwa hivyo utaona kuwa uwezo wote umepatiwa watu wa Kenya na ndio sasa ukiangalia chini ya hii Katiba ambao imetutawala kwa miaka thelatini na tisa, una kwenda pengine...

Ama bendera, anasahau kuwa wewe kama binadhamu au kama Mkenya wewe ndio muhimu kuliko hiyo crown. Hiyo crown imewekwa sio kwa sababu ya mnyama au kwa sababu ya miti ni kwa sababu yako wewe na wewe ndio umemweka katika hiyo ofisi. MP anaweza kuwa MP bila ya wewe? DO anaweza kuletwa hapa kama hakungekuwa na binadhamu kungeletwa PC ama Chief. Kwa hivyo tunasema nguvu zote mamlaka yote ya nchi ni ya watu Wakenya. Kwa hivyo President anapotawala nchi anarudi kwenye Katiba na anaona kuwa mamlaka yangu ya kutawala nchi nimepewa na wananchi. Hiki kiti ninakalia ni kwa sababu ya wananchi, kiongozi yoyote ajulishwe kulingana na Katiba hii kuwa kazi ambayo anayofanya, madaraka yake yote, mamlaka yake yote, ile gari kubwa anayoendesha ni kwa sababu amepewa hayo mamlaka na wananchi. Na ndio utaona katika Katiba mpya tumepatia mwananchi uwezo au mapendekezo ya Katiba mpya tumependekeza kuwa mwananchi ako na uwezo wa kumchukulia hatua kiongozi yoyote mpaka Raisi. Akivunja sheria una haki ya kumchukulia hatua kwa sababu umepatia mamlaka atumie kulingana na sheria sio vile anavyotaka. Ndio utaona tumetoa baathi ya sehemu ambazo zinampatia Raisi powers kuliko hata sheria yenyewe. Kwa mfano: chini ya Katiba hii umeambiwa kuwa mtu kama vile Ammbassadors, hawa wanachaguliwa kwenda kuwakilisha nchi yetu nje High Commissioners, mtu kama Attorney General, Governor of the Central Bank, Controller and Auditor General, Majaji wa High Court na wale wengine wote ambao tunawaita Constitutional Office bareres, hata Cabinet Ministers wanaambiwa fanyeni kazi. But you hold the office at the pleasure of the President, sheria inasema hivyo. Kwa hivyo kama wewe ni DO, DC kama PC mtu mkubwa katika Serikali unaambiwa you hold that office at the pleasure of mtu binadhamu mmoja. At the pleasure. Sisi katika Kiislamu tunasema tunafanya mambo at the pleasure of God. Ama sivyo? Na hapa unaambiwa ata the pleasure of the President. Na ndio sababu chini ya Katiba hii ikiwa wewe ni Waziri, Assistant Minister ama, mtu yoyote ambaye ni Director wa Parastatal ama High Commissioner, ama Ambassador, unangojea taarifa ya habari ya saa ngapi? Yes! You could be sacked. Kwa sababu if you don't please the person who appointed you he will sack you.

Ndio tumesema chini ya hii sheria mamlaka ni ya wananchi na ndio utaona hata katika kuvunja Bunge. Leo hii tuko hapa lakini according to section 46 of this document here tunaweza kusikia saa nane Bunge imevunjwa leo, ama sasa hivi tuko hapa inaweza kuvunjwa. Na hatakuwa amevunja sheria. It will be within the Constitution for him to do that. Kwa sababu imempatia uwezo huo wa kuamua wakati ule anataka kuvunja Bunge. Hajavunja sheria, he is very much hata mimi kama ningekua President ningetumia hiyo vile nataka. Lakini utakuta mapendekezo ambao tumeweka katika chapter 1 imempatia mwananchi wa kawaida mamlaka yote, kwa mfano leo hii ukithulumiwa na mtu kama polisi au Chief au DO unakwenda wapi? Utakwenda kushtaki wapi? Kama mimi ni Chief ama DO ama polisi nitakuambia kwenda mahali unataka, ama sivyo? Hakuna mahali pa kuenda.

Kwa sababu kwanza yale mamlaka ambaaye akonayo pale haujampatia wewe. Ulichagua Chief yule ambaye ako pale? Na DO ulimchagua na Chief ulimchagua? Kwa hivyo yale mamlaka ako nayo sio wewe umempatia. Labda MP tu ndio unaweza kusema miaka tano imeisha sikupatii kura yangu, kwa sababu umemchagua wewe. Lakini hao wengine wote mamlaka sio wewe umempatia. Na Jaji je? Ikiwa kwa mfano kuna Magistrate mlevi hapa ama hafanyi kazi yake vizuri unaweza kumfuta kazi? Atakuambiya nenda mahali unapotaka, kwa sababu mamlaka ya Judiciary haikutokana na Wananchi. Lakini chini ya Katiba hii utaona kuwa the Executive that is: the President na Ministers na wengine ile power wanaotumia yote imetokana na wananchi. Judiciary ile power anatumia, kwa sababu tumesema hapa badala ya kuwa anachaguliwa na mtu mmoja anachaguliwa halafu inakuwa approved by Parliament na Parliament inatuwakilisha sisi kama Wananchi. Na Parliament, MP akishindwa kufanya kazi vizuri utaona hapa kuna section ambayo inasema you have the power to recall the MP. Leo hii kwa mfano ukishamchagua MP halafu akose kufanya kazi, kuna kitu unaweza kumfanya? Unangoja mpaka miaka tano iishe na wengine wanapotea utamwona baada ya miaka tano. Mara hii nafikiri wanakuja sana sasa sababu miaka tano imeisha na wanataka kura tena. Chini ya Katiba mpya utaona kuwa ile mamlaka ambayo anatumia Bunge ni yako na ikiwa hukurithika na yeye, kuna sehemu hapa inakuambia you can recall him. Kuna procedure ambayo inafuatwa una mwambia wewe rudi hapa tuchague mtu mwingine hiko hapa. Kwa hivyo chapter ya kwanza imeonyesha kuwa uwezo wote uko na mwanachi wa kawaida. Utaangalia zile details sitaingia kwenye details. Kama unaswali lolote utauliza baadaye.

Kisha nimeeleza kuwa umuhimu wa Katiba. Kuwa Katiba ni muhimu na hakuna mtu ambaye yuko juu ya hiyo Katiba, kila mmoja yuko chini ya hiyo Katiba na lazima aiweze kuifuata hiyo Katiba na akivunja unaweza kumchukulia hatua. Ndio watu wa Dadaab nilikua ninawaonyesha cartoon ambayo imechorwa hapa inaonyesha sheria kama wingu, clouds, halafu President yuko chini yake kuonyesha kuwa hata na yeye anaweza kuchukuliwa hatua kulingana na sheria. Na fikiri hiko mahali hapa hivi mnaweza kuangalia baadaye wale ambao wako na hii kitabu mtaona baadaye. Na ndio utaona hii Katiba kuonyhesha, kuwa haijali watu imeandikwa kwa lugha ambayo watu hawafahamu, kwa sababu haijali watu people are not important in this document. Lakini chini ya hii, kwa vile watu ni important, imeandikwa kwa lugha ambayo watu wengi wanafahamu. Na kisha utaangalia katika mapendekezo ambayo tumeiweka hapa hii ndio cartoon ambayo nilikua nasema wale ambao wako na hii kitabu angalia page 47. Utaona hapo kuna cloud hapo juu imeandikwa the law, sheria, na chini yake kuna mtu kidogo, hapo imeandikwa the President yuko chini ya sheria. Hiyo cartoon pia unaweza kuona ni picha pia ya kuchekesha watu lakini pia sio picha ya kuchekesha watu. Ni picha ya kuonyhesha kuwa hata yeye yuko chini ya sheria afuate sheria mamlaka ambayo

anatumia aitumie kulingana na sheria asiitumie vile anavyotaka. Kwa hivyo hiyo ni sehemu moja ambayo tumeizingatia sana kama Tume kuhusu mapendekezo ya hii Katiba mpya.

Kisha utakuta kuwa chini ya hayo mapednekezo hatukuangalia sana mambo ya government structures ingawa tumeangalia, lakini sana tumeangalia mapedekezo ya watu, the concerns of the people ni kitu gani ambacho kinawaumiza watu sana. Kama nilivyo waambia tulipoanza kuzunguka tulikwenda mahali ambapo panaitwa Kakamega tukauliza mama mmoja “mama shida yako katika hii sheria ni nini? Akasema shida yangu mimi ni nataka uzuie Chief asichukue kuku yangu bila ruhusa yangu. Hiyo ndio shida yake that is a concern kama vile mzee amesimama yeye hakuuliza swali ameeleza concern. Barabara ya Wajir ni mbaya; that is a concern. Huyu mama wa huko amesema concern yake huyo anatumia badaraka yake vibaya. Kwa hivyo tumeangalia hapo concerns za watu. Tunapopendekeza kwa mfano kiongozi awe na mamlaka fulani tunaangalia concern ya watu. Kama yule amelalamika kuhusu Chief. So the concern here is how do we control the Chief, so huyu chief tutam-control vipi asitumie mamlaka yake vibaya?

Kwa hivyo through out this draft, katika hii draft yote utaona kuwa tumeangalia matakwa ya watu mahitaji ya watu. Ukiangalia hata chini ya Bill of rights tumeangalia mahitaji ya watu wanahitaji kitu gani. Kwa mfano ukisimamisha mzee yoyote hapa wa Badthia umuulize, what is your concern? Most likely atakuambia water maji ya ngamia yangu na maji ya ngombe, mbuzi na maji ya binadamu ama sivyo? That is the concern. Hatutaki sheria ambayo tu inaandikwa without addressing the concerns of the people. Kwa sababu inafaida gani kama haiangalii mahitaji ya watu. Kwa hivyo utaona chapter 1 sana imezungumzia mahitaji ya watu na wale ambao wako na hicho kitabu mnaweza kuangalia chapter 1 inazungumzia sana kuhusu mambo kama hayo. Sijui kama kuna swali lolote hapo kabla sijaendelea; kuhusu umuhimu ambao imepatiwa watu, the sovereignty of the people, the authority of the people and the supremacy of the Constitution. Kabla sijaingia katika sehemu nyingi, kama kuna swali lolote hapo, sababu nitainngia kwenye specific article kulingana na swali ambalo nitaulizwa. Yes ndugu yangu. Sema jina na uulize swali.

Hashim Delmoge: Im Mr. Hashim Delmoge I would like to ask a question on the issue of the supremacy of the Constitution. If the Constitution is supreme does it mean that there is also judicial review involved because the two I think go hand in hand? The power of the Judiciary to declare laws passed by the Parliament if they are unconstitutional as unconstitutional to the extent of analysis?

Com. Lethome: Haya, huyu kijana anauliza kwa lugha ya kisheria kuwa kama tumesema Katiba ndio sheria ile kubwa, je tumeondoa kitu ambacho kinaitwa Judicial review; ambayo ni haki ya mahakama kuangalia sheria yoyote ambayo imepitishwa na Bunge ikiwa imekwenda kinyume na Constitution? Je tutakubalia mahkama ifanye hivyo? Yes very much. Kwa sababu that one now is an affirmation of the supremacy of the Constitution. Meaning that korti ikiona kuwa Constitution imevunjwa kwa sababu ya ile sheria ambayo imepitishwa na Bunge, basi korti ina haki ya kusema hii sheria haifai kwa sababu imeenda kinyume na Katiba. Infact hiyo ina-confirm the supremacy of the Constitution. Na ndio utaona, wale ambao wako na hii document go to

section 294 ama 194 ya mambo ya ku-review the Constitution, amendment of the Constitution. Hebu angalia article 294, ndio utaona the supremacy of the Constitution, ndio utaona hata Bunge haina uwezo wa kubadilisha Katiba vile inavyotaka. Haya wale wako na hiyo document hebu tuangalie vizuri, haya wale ambao hawana sikizeni vizuri tu na mtafahamu. Hakuna wasi, wasi mtaelezwa. Unaambiwa hapa kuwa subject to the provisions of this Constitution Parliament may in exercise of its Constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article. Imeeleza kuwa Bunge inaweza kubadilisha hii Katiba kwa kuongeza au kupunguza au kufutulia mbali kabisa sehemu yoyote ya hii Katiba lakini kulingana na sheria hiyo ambayo imewekwa hapo. Hebu tuangalie hiyo sheria inasema kitu gani. Inasema hivi: an amendment of this Constitution maybe initiated only by the introduction of a bill for the purpose in either house, kwa sababu itakuwa na Bunge mbili and when the Bill is passed in its second and third reading in each House, by not less than two thirds majority of the total Members of that House, it shall be presented to the President who shall give his assent to the Bill and there upon the Constitution shall stand amended in accordance with the terms of the Bill.

Utaratibu wake ni kuwa lazima iungwe mkono na thuluthi mbili, two thirds majority thuluthi mbili, kwa Kisomali mnasemaje...(inaudible) hivyo amesema mmefahamu, lakini mbili chini ya tatu. Waki weza kupitisha hiyo, halafu Raisi akipitisha wataweza kubadilisha hiyo sehemu ya Katiba. Tunaendelea bado, wanasema: an amendment that seeks to make any change in angalieni, hapo ndio muhimu sasa ya kuonnyesha nguvu ya Mwananchi, baada ya kusema kuwa Bunge inaweza kubadilisha lakini kuna sehemu ambayo haiwezi kubadilisha kabisa. Hata Bunge haiwezi kubadilisha mpaka irudi kwa Wananchi. Kwa mfano an amendment that seeks to make any change in the territory of Kenya. Kama wanataka kubadilisha katika Katiba tuseme kwa mfano, mpaka wa Kenya haiko Liboi hapa mpaka uko mahali gani? Inaitwaje ile town mpaka iko? Thiff, wasema sasa huo mpaka umekuja mpaka Yahudu, mpaka ya Kenya uko Yahudi sasa wabadilishe. Ama mpaka ya kutoka Ethiopia uko hapa Wargathuth, ama upande huu wa Uganda uko Naivasha ama ile ya Coast yote tumeondoa imekuja mpaka Voi. Ikiwa wanataka kubadilisha kama hiyo haiwezekani, kwa sababu inahusu territory ama mipaka ya Kenya. Lazima warudi kwa wananchi, wananchi wenyewe wapige kura na wananchi wakikubali ndio wanaweza kubadilisha hiyo.

Sehemu nyingine, the sovereignty of the people, utukufu wa watu na kuwa watu ndio wenye mamlaka. Bunge haiwezi kubadilisha hiyo sehemu. Hiyo chapter 1 tulikua tunazaungumzia sahizi. That chapter cannot be amended by Parliament without a referendum, lazimna wananchi wote wapige kura.

Sehemu nyingine kuhusu the principals and values of the republic are set out in article sub-article2 of the Constitution. Kuna sehemu ambayo inazungumzia juu ya Republic Jamhuri ya Kenya. Na mambo yale ambayo ni muhimu katika Jamhuri ya Kenya haiwezi kubadilishwa na Bunge mpaka ibadilishwe na watu wenyewe.

Kuhusu the Bill of Rights: hiyo ni muhimu sana. Haki za binadhamu za kimsingi, kwa mfano tumesema katika chini ya Bill of Rights, kila binadhamu ako na haki ya kuishi, hawawezi kubadilisha waseme kuanzia leo kila binadhamu hana haki ya kuishi mpaka waende wakapige kura kwa watu. Au kusema freedom of movement. Mimi kama Mkenya nina haki ya kuenda kila

mahali bila kubeba screen card, niko na haki hiyo. Hawawezi kuenda kubadilisha waseme tuondoe hiyo, au I have the freedom to own property anywhere in Kenya. Hawawezi kukbadilisha hiyo bila kupata kura ya wananchi. Kwa hivyo utaona kua kuna mambo mengine kama vile ya citizenship na kuna mambo mengine kama vile devolution, kama vile tutaona kuwa mamlaka badala ya kuwa iko Nairobi peke tumeigawanya mpaka hapa Wajir. Mtakua na madaraka yenu ya kuamua mambo yenu ambayo mnataka. Kama ni lami mnataka kuweka Wajir, approval sio lazima itoke Nairobi inatoka kwenye district headquarters, mnaweka lami mnaondoa hiyo mchanga yote.

Hizo sehemu zote Bunge haiwezi kubadilisha, hizo zote ni konyesha kuwa Katiba ni muhimu kuliko kitu kingine chochote. Hata kuliko Bunge, kuliko Raisi kuliko Judiciary hata kuliko sheria ambayo itapitishwa na Bunge. Nimejibu swali lako kijana nafikiri. Haya. Another question on chapter1 please, mpe mic na tujaribu kuenda haraka haraka.

Abdi M. Noor: My name is Abdi M. Noor and I would like to ask you; You said that the MPs have that power to amend part of the Constitution. But don't you see that the MPs will subject the Constitution to amendment the way they have been doing before. They have been making the secret amendment, which they always switch all the time. So if it is now the people's Constitution why do we have the MPs to answer this and yet you are saying this Constitution is the people's choice. Thank you.

Com. Lethome: Ndugu yetu anasema kwanini tuwapatie Mabunge nguvu ya kubadilisha Katiba na hii Katiba ni ya watu na tumeona ya kuwa wamekua wakitumia hayo mamlaka vibaya. Kwanza wacha nikuulize swali moja, Wabunge yale mambo wanazungumza katika Bunge do they consult the people?

Audience: No.

Com. Lethome: Okay. Is there a code of conduct that the MPs are required to follow? Kuna sheria fulani ambao wanatakiwa lazima wafuata hiyo sheria kwa sasa kulingana na sheria ya sasa? Sasa utaona ya kuwa chini ya Katiba hii mapendekezo ambayo tumeweka hapa ni kuwa kwanza kuna leadership code of conduct, ambayo every MP and every leader lazima afuate. Kisha tukifika habari ya Legislature habari MPs utakuta wanaambiwa they have to consult their people before doing anything. Halafu pia wameambiwa, currently, if you have an erent MP do you have a way of punishing him or disciplining him? Nothing. Umempatia kura ameenda miaka tano. Chini ya mapendekezo haya you can recall your MP. Kwa hivyo kumewekwa measures ya kuhakikisha kuwa they will not do anything that is against the peoples wish, kuna control on the MPs. Halafu pia utakuta wamepewa sehemu chache sana ya kubadilisha the important part they cannot amend those are the measures. But if you feel they are not enough, if you feel they should not amend any part of the Constitution hii ndio nafasi yako useme kuwa hapana sitaki wabadilishe sehemu yoyote. Our sister is recording na ana note down the new recomendations zitapelekwa huko zikiweza kupita kwenye conference you will find them here watakuwa hawana haki ya ku-amend chochote katika Katiba. Hawawezi kukudara hata sindiyo? Haya.

Interjection: (inaudible)

Hilow Tarbach: Naitwa Councillor Hilow Tarbach swali langu ni hili; sasa wewe umesema Wabunge hawawezi kubadilisha sheria.

Interjection: speakers: Wanaweza, sema wanaweza.

Hilow Tarbach: Sehemu fulani ukisema sasa kama election mnasema wananchi wapige kura na election inapatikana kwa population. Tuseme kama North Eastern wanasumbuliwa na majambazi na mambo mengi. Wakenya wengine sasa wakisema wacha mpaka ya Somalia tulete mpaka Garissa na election ifanywe kule na majority ikichukuliwa si itakua hasara. Wacha niongee kisomali. *Waxa ladaxay meel qar mpgalka mabathali karan waxalada wananchiga ya fol kudacay ba ladaxay waxan kasoqabtey mapakatha camal. Mapakathi somalitha quthuthka somaliya iyo Kenya udexeyso xalakeno Garis election hathii lagadigo rer northeastern ey iskuran ila garis xalakeno meshasna wa meshi mpgalka ey kuxesheni laxayen maxayeke wa populationki Kenya odan anaga wanalagabathanye so qasara manoqoneyso tas xathan rer Kenya naxay.meshas barlamanka xalothayowax kasta dhadki wakilka nagaax.*

Speakers: Nafikiri vile nimeelewa tuendele lakini mzee wetu anasema ma-MPs hawajapewa kila jukumu ya kubadilisha Katiba hasa upande wa mpaka lazima ipatikane two third majority. Lakini yeye anawasiwasi kuwa kulingana na population idadi ya watu wa Kenya sehemu ingine wako wengi kushinda ingine, kama watu wa North Eastern wako wachache. Kama tutakuwa na sehemu hiyo ya two third anahofu kutakuwa na shida.

Com. Lethome: Sasa kama nimefahamu swali lako vizuri nafikiri hapa pia. Haya ngoja kidogo. Hapa kuna swali muhimu sana, its an interesting question ambayo imesema kuwa kubadilisha territory, yaani mipaka ya Kenya haiwezi kufanywa na Bunge, lazima ipigiwe kura kwanza. Sasa ndio nasema majority je wakipiga hiyo kura kusema mpaka ya North Eastern ibadilishwe iletwe karibu si itawathuru wale watu wako hapa? Nafikiri that is something that should be noted tusitupe hilo swali. Wengine wanasema Commissioner tupa hiyo, situpi hiyo ni kitu muhimu iangaliwe. Lakini ukiangalia rights za kila mmoja lazima rights ya ile community itakuwa affected under the Bill of Rights na preamble, vile inavyosema lazima iangaliwe. Nafikiri that is an issue that needs to be considered, ni kitu muhimu sana Councillor ame-raise. Lazima iangaliwe, kwa sababu wale ambao ni wengi wanaweza kupiga kura ambao itathuru wale ambao ni wachache. Kwa hivyo ni muhimu, na it has been written Councillor, hata sisi tunachukua hiyo pia. Haya swali lingine? Wacha tumchukue Mohamed Siyat halafu wewe, Mohamed Hassan. Chapter 1 please.

Abdulkadir Hassan: Im Abdulkadir Hassan one thing I want to know if the new Constitution can take care, we know like the old Constitution whereby the Chiefs or the DO can tell.....(inaudible) whatever. So now you see that there is a place we cannot avoid. For instance like the police force, maybe you have a grudge with a police officer then he arrests, you then the prosecutor is the same man who comes from the police force. Now whoever takes you to jail is a police man and in the

prosecution case they are the same. So when it comes to whatever only the judge can allow... so these people they themselves know. What I mean is now not unless we dis-power them. The prosecutor.(**Inaudible**) not a government employee and he is just a LLB degree hold, he depends on his own, now there is no argument. What measures can you take in that circumstance to avoid those inconveniences your honour?

Com. Lethome: Swali yako haihusiani na hiyo chapter 1 ina husiana na sehemu nyingine kuhusu Kenya police service na kazi zile ambazo watafanya, kwa sababu kama sasa ulivyo sema police ndio anaku-arrest police ndio prosecutor kortini, au sivyo? Na wote ni kitu kimoja mamlaka tumewaondolea sasa mambo ya prosecution itakuwa chini ya another Constitutional office. The office of the director of prosecution ndio atakua anafanya hiyo kazi sio polisi ndio atakuwa anafanya kazi, ya prosecution. Kwa hivyo ungingoja tu tukifika hapo nitakuzungumzia. Na pia utaona kuwa under the Bill of Rights the right of the arrested person utaona kuwa amepewa mamlaka makubwa sana. Halafu pia there is an office ambao imekua created na hii kulingana na maoni ya watu. Na nafikiri hata hapa Wajir watu walitoa hayo maoni. The need for an independent office, ofisi ambayo iko uhuru ambapo mwananchi akiona amethulumiwa pengine na polisi, Chief au mtu yoyote katika Serikali unaweza kuenda kulalamika huko. Hapa tunaita public protector mlinzi wa wananchi hatakuwa amechaguliwa na President au na mtu mmoja atakuwa mtu ambaye, an office ambaye imechaguliwa na Bunge enyewe, public protector ambaye unaweza kuenda kulalamika kwake. Na nyingine ambayo inaitwa public defender ambayo itakua ni mlinzi wa wananchi pia. So you will have a lot of forum where you can go and complain if you are mishandled by anybody or anybody misuses powers when handling wananchi. Kwa hivyo utasubiri tu mpaka tuingie katika hiyo chapter, on chapter 1 please. Haya Sheikh.

Abdullahi: Mimi ni Abdullahi. Mambo ya sovereign, nafikiri mtu kusema sovereign...(**Inaudible**) justice is the backbone for somebody sovereign mpaka mtu awe anahaki kamili. Sasa nataka kuuliza justice ni mambo ya sheria, kama Wajir huwezi kusema mko na sovereign kwa sababu mtu anashikwa na anapelekwa huko kwa polisi na inasemekana magistrate ako Garissa, mara ako Nairobi leo hana nafasi na mtu bado anangojea tu anaangaika kama siku thelatini sasa kama hiyo hatuwezi kusema sovereignty ya mtu imebainishwa vizuri. Hata kama hii sheria mpya itapitishwa na tutatumia sasa Majistrate ama mtu wa kortini kama atakuwa kuhepa hepa hivi nafikiri hatuwezi kusema sovereignty imeangaliwa vizuri. Hiyo ni ya kwanza.

Ya pili, tuko na hapa chapter 1 mambo ya sovereignty ya binadamu inangaliwa vizuri na tunashukuru lakini I hope, kwa sababu hatuna na nafasi ya kusoma hii, I also hope the provision of that sovereignty not to be abused. Thank you.

Com. Lethome: Asante sana. Ni kweli kama ulivyosema haki za watu zinathulumiwa hata hiyo sovereignty inakuwa hakuna. Kwa mfano kama mtu ameshikwa kama suspect. Lakini utakuta hapa under the Bill of rights kuna the right of personals in custody. Just look at article 70 Bill of Rights that is chapter 5. Article 70 rights of persons held in custody, ukiangalia hapa utaona kuwa mtu ambaye ameshikwa na sheria kwa sababu bila sheria haufai kushikwa. Hakuna mtu anaweza akashikwa saa hizi bila sheria. Kwa hivyo mtu yote ambaye anashikwa chini ya sheria anatakiwa haki zake za kimsingi lazima ziingaliwe; lazima atumikiwe kama mwanadamu mwingine na ile human dignity yake lazima iingaliwe. Article 70 umepata ndugu yangu, just look at article 70; umeambiwa lazima afanyiwe muamala kama binadamu. Asiwe exploited na wale prisoners wengine ama na wale

wafanyi kazi kama vile askari, apewe mahali pa kukaa ammbapo inafaa binadhamu kukaa, kuna mpaka haki ya dini. Kwa mfano kama ni Mislamu apewe nafasi ya kusali mahali ambapo ni safi anaweza kuenda kusali. Unaambiwa hata kama amefungiwa ana haki ya kuweza kuzungumza na mawakili wake. Na ukiangalia mbele kabisa katika sehemu zingine utaona kuwa ana haki lazima afikishwe mbele ya Hakimu within 48 hours sio ile 14 days ilikua inasemekana, now it has been reduced to 48 hours ama awachiliwe au apelekwe kortini. Na wakati ameshikwa apewe haki zake zote. Kwa hivyo hiyo hiko na ni kweli vile ulivyosema without justice there is no sovereignty. Asante. Fatuma, wacha tumsikize dada yetu Fatuma na mama halafu nataka kufanya equity.

Fatuma Yussuf: *Bismillahi rahmani rahim*, kwa jina naitwa Fatuma Yussuf I'm the Chairlady of organisation of the disabled and I would like to ask one question to Commissioner. My question is if a disabled person wants to see one of the heads of a department. What Im talking about is my district whereby if a disabled wants to see one of the heads of department either the DC or DO, not the Commissioners actually any department. It has happened that the disabled person is not recognised, as a disabled person waiting at the door is not allowed to enter. The secretaries refuse to give their views and may be they are not considered in solving their problems. What can be done about it?

Com. Lethome: The question should be what has been done? What have you recommended about it? Hiyo pia inarudi katika Bill of Rights kwa sababu anauluza hapa kuhusu watu ambao ni walemavu. Mara nyingi, kwa sababu vile management yetu ilivyo Kenya utakuta mtu mlemavu hata akienda ofisi pengine ya PC, DO au mahali pengine popote wanatharauliwa. Hawawezi kuonekana pengine anaweza kuambiwa; “mwambie huyo karani hapo unataka kitu gani halafu wewe urudi”. Hata sio hiyo peke yake, pengine anataka kumwona DC ama DO mahali ofisi yake iko hawezi kupita na wheel chair yake, kama amevaa callipers ama ako na crutches hawezi kufikia yeye. The office is not even accessible, ama sivyo? Its not even accessible. Ndio tumesema hiyo ni discrimination. Na ukiangalia article 34 under the Bill of Rights freedom from discrimination, utakuta hapo tumesema that, the state shall not unfairly discriminate directly or indirectly against anyone on one more grounds including rape, sex, pregnancy, marital status, ethnical, social origin, colour, age, disability, religion, conscious, culture, language, believe, or birth. Hakuna mtu ambaye atabaguliwa. So you can use that to even go and sue the person who has stopped you from getting into the office. Unasikia Fatuma, you can use that. Na ukienda chini ya persons with disability, there is a section, article 39 look at article 39 I cannot talk about pages because we might be having different document but article 39; Persons with disability are entitled to enjoy all the rights and freedom stated out in this Bill of Rights and to participate fully in society as they are able. That is another section unaweza kumwambia Bwana DC, Bwana DO you are in breach of that section of that article of the Constitution. Ukiangalia pia D under the same sub-article 1, unaona D inasema: ensure access to all places including the DOs office including State House to public transport and to information and communication to persons with disability sufficient to overcome physical and other barriers to access. You must have access or even you can go to court and ask the DO to be brought to court because of the breach of that section of the Constitution. Fatuma umerithika. Ngoja tumsikize Ebla ako na swali hapa halafu mzee.

Speaker: My name is.

Interjection: speaker: Chapter 1, please.

Com. Lethome: From chapter haya endelea.

Fatuma Mohamed: I don't have from chapter 1.

Com. Lethome: Ask, uliza tu.

Fatuma Mohamed: My name is Fatuma Sheikh Mohamed Constitution Review Compeption Women representative for Wajir district. My question is on new legal system about the Khadi, here we have the district Khadis court, and traditional Khadis court and we also have the Khadis court of Appeal. My question is, also you mentioned that women should be there. Islamically women are not allowed may be to be Khadis or to sit where the Khadis are. So I don't see why we should sit there and you have already mentioned in the new Constitution. So that is the question I wanted to ask.

Com. Lethome: Okay. Although that is not chapter 1 but Im going to answer it, it will be coming. Nobody has recommend that we want women Khadis. In fact in the commission we have Muslims who said no we cannot allow a woman to be a Khadi, not us but the religion does not allow. But an assistant not Assistant Khadi, an assistant to the Khadi to be a Muslim woman to assist the Muslim women going to the Khadis court. Not necessarily to sit with the Khadi but to sit there at the office to assist the Muslim women. The reason or the logic behind that, sababu ya kuweka mwanamke akae kwa mahakama ya Khadi kusaidiana na Khadi ni kwa sababu: imesemekana kuna baathi ya mambo ambao mwanamke anataka kueleza Khadi lakini kwa sababu ya adabu ya Kiislamu hawezi kuzungumza hiyo maneno. Na kortini ili upewe haki zako lazima ueleze, mnajua kortini na hospitali ni mahali mbili ambao hakuna siri unaeleza kila kitu na ili daktari akutibu lazima utoe nguo zote uonyeshe mahali inakuuma, ama mahali, yote inakuuma lazima ueleze daktari ni mahali fulani inauma hauwezi kusema ile mahali ile mahali utamwambia ni hapa ama sivyo? Na kortini pia hiko namna hiyo hauwezi kusema si unajua hata wewe Khadi unajua ile maneno atakuuliza maneno gani, ama sivyo? Sasa tumesema adabu ya Kiislamu kuna baathi ya mambo ambao mwanamke kwa sababu ya haya yake hawezi kusema mbele ya mwanamume itabidi aeleze mwanamke mwenzake. Ndio tukasema tuwe na mwanamke pale, tumependekeza tu kuwe na mwanamke pale ambaye dada zetu, mama zetu wanaweza kuenda kumzungumzia kusema mimi nimekuja shida yangu ni khatha, khatha ile maneno unajua hivi na hivi ili yeye aweze kufikisha kwa Khadi. Mkiona hivyo ni sawa itabaki mkiona kinamama mnataka kuelezea Khadi mwenyewe hakuna shida itaondoka. Lakini we did not recommend awe Khadi ama Assistant Khadi. No, ni wa kusaidia kina mama wa Kiislamu pale kortini. Hapana msiseme nyinyi, wacha waseme wao kina mama, you have understood now. Now what do you think after that? Do you change?

Fatuma Mohamed: In my opinion the way I find it, most of these problems are between men and women. If a man has a

representative there and he can just say his problems especially divorce, inheritance which is between men and women and this is all problems, which are, there also women are party to those problems. So the way I see it, is we should have a woman representative there so that we women we can take our problems and we can say whatsoever problem with us we have that woman there. Because some of the things we cannot say to a man but it is very easy for us maybe to talk to another woman who is just a fellow woman like me. So I think that we should have a representative there.

Com. Lethome: Haya asante, point taken, nyinyi msizungumze hiyo ni kina mama. Haya chapter 1, please haya KNUT secretary.

Mahat S. Ahmed: Mimi naitwa Mahat Sheikh Ahmed I'm the Secretary Wajir branch KNUT. I want to take an issue with chapter 1 article 5 sub-sections C. The verse that talks about the laws of Kenya. I want to take issues with this customary law, especially when it comes to people who kill one another. Here people are Muslim there is the Constitution, there is Islamic law pertaining to murder and then there is this customary law. Sana sana watu wa hapa wakiuana wanaenda kwa ile ya customary hawaendi kwa ile ya Constitution na hawaendi kwa ile ya Waislamu. Na kwa ajili ya customary variant ya kulipa damu, kuuwana hapa imekuwa shida. Kwa sababu mtu akiua mwingine kimila ya Kisomali unalipa ngamia mia moja kwa wanaume na hamsini kwa mwanamke, na hiyo ngamia inakuwa shared. Watu wanafanya harambee kulipa hiyo damu na kwa sababu hiyo kuuana imekuwa rahisi hapa. Kwa hivyo mimi napendekeza hiyo maneno ya customary law isiwekwe kwa Katiba mpya. Na iwe tu Constitution na either ya Kiislamu ama Wakristo. Asante.

Com. Lethome: Hapa sababu ya kuweka hii African customary law infact sio katika mambo ya criminal matters ama commercial transactions it is the personal laws. Mara nyingi hapa ni kwa sababu ya urithi, mambo ya ndoa yaani kuoana na mambo ya talaka. Kwa “*ayeyo iska amus*” ngojeeni, wanasema unalipa ngamia mia moja na ukukata kulipa watafanya nini?

Speakers:(inaudible)

Com. Lethome: Wanasema nini? Clashes inanza, utakuta hapa everything that is done is not under the law. Hata hiyo ya kulipa ngamia mia moja its not even under the law it is not even recognise by the law. Kwa hivyo hapa utakuta hiyo ni criminal offence and in Kenya any criminal offense has to be subjected to the statutory law, the pinal code of Kenya. Kwa hivyo hiyo wanafanya ni kinyume na sheria. Lakini hapa mila ya Kiafrika sana inazungumzia habari ya personal matters, kama vile mambo ya kuoa mambo ya family na mambo mengine, kwa sababu mila lazima ibaki. Mimi nitakubaliana na wewe kitu kimoja tu hapa hivi, we should not leave it without a limit, iandikwe hapa on personal matters ama family matters tuseme African customary law on family matters. Lakini kuondoa kabisa mila nafikiri italeta shida. Kwa sababu mila zetu ni sheria zetu. Angalia kwa mfano: english law inaitwaje? English common law, mtu yote ambaye amesoma sheria atakuambia hizo ni mila za Wazungu, na imetokana na mila ya Kizungu kwani sisi hatuna mila zetu? Utakuta mpaka sheria ya Kiislamu inakubali mila to some extend, ambayo haivunji sheria ya Kiislamu iankubali. Kwa hivyo hatuwezu kuondoa hiyo kabisa lakini iwe limited isiwe inavuka mipaka

kama hiyo ya kuuana na mambo mengine, criminal matters have to be handled under the statutory law that is the pinal code. Okay just a minute give your name and suggestion. Ana mapendekezo.

Yussuf Adan: I'm Yussuf Adan, mimi naitwa Yussuf Adan, pia mimi ni Muslamu kama wale wengine hapa. Lakini ninaonelea kuwa kama sisi Waislamu lazima tupeane mapendekezo yetu katika nchi ya Kenya na ni lazima tufuatilie vile dini ya Kiislamu inatueleza, lakini si kuchukua sehemu za Korani na kutupa zingine kama ile sheria ambayo imetengenezwa na binadhamu. Hii ni sheria ya Kiislamu na ni ya Mwenyezi Mungu, na ni lazima either tuwache tufuatilie ile mila ya wale Wakenya wenngine au tufuate ile mila ya Kiislamu. Kuna sunna ya Mtume (p.b.u.h) tufuate hivyo.

Interjection: Com: Lethome: Pendekeza, una pendekeza nini?

Yussuf Adan: Tusichukue sehemu za dini na zingine ziandikwe kwa hivyo either tutoe yote ama tuwache yote.

Com: Lethome: Kwa hiyo chini ya hii Katiba umepednekeza personal laws za Kiislamu zichukuliwe, hatukupata zote ngoja. Unapendekeza nini sasa ile Khadis court na nini unapendekeza nini?

Yussuf Adan: Mimi napendekeza, tuchukue sheria za Kiislamu kikamilifu hata kama ni kuua tuue, kukata mkono hiyo ndio sheria ya Kiislamu.

Com: Lethome: Asante, haya ni mapendekezo mazuri sana sio mara ya kwanza tumesikia hiyo na ni kweli, tunaambiwa katika Qurani "*afathuminuna bibacthil kitabii watakfiruna bibathii*" ama sivyo? Mnaamini baathi ya Kitabu na mnaacha zingine, kwa hivyo mapendekezo yake ni kuwa tufanye takbith ya sheria ya Kiislamu sehemu zile za Kiislamu ama Kenya mzima?

Speaker: Kama wewe ni Mislamu.

Com: Lethome: Kama wewe ni Mwiislamu. Haya ni mapendekezo ambayo tutaichukua. Lakini sasa tumepeta kidogo ya Khadis court peke yake kuhusu mambo ya nikah, salat na urithi unaonaje tutupe hiyo ama tushikilie?

Yussuf Adan: Kama hatutachukua hiyo ingine ya kuuana, tuachane na hiyo ingine pia hiyo ni kidogo sana. Hakuna haja ya kuchukua sehemu ya dini na kuwacha zingine, these already are natural(**inaudible**) which must be followed or involved.

Com: Lethome: Haya, hiyo ni maoni yake tunashukuru. Yaani una mkate nusu afathali kupata mzima na ukukosa mzima hata hiyo nusu unaitupa. Mapendekezo yake haya asante. Any other question on chapter 1. Chapter 1 please.

Speaker: Bwana Chairman, Bwana Commissioner sijue hii jina ya Chairman ina sumbua Bwana Commissioner Sir, yangu inahusu mambo ya chapter1 hasa inahusu mambo ya Bunge wabadilishe sheria au kitu kama hiyo. Bunge, hii sehemu ya kupatia Bunge na kusema wabadilishe sheria sababu tumekua na Bunge zamani na tukipatia kidogo tunajua mtu akiingia hiyo Bunge ni wajanja watabadilisha mambo mengi. Inafaa kwa mfano: Bunge wakati huu ambao Kenya iko uchumi na mambo yote imeenda chini, Bunge wamejiongezea mishahara mikubwa kuliko sehemu zingine na hata upande ya wale watu wako chini yao kama wafanyikazi. Kama walimu, sasa watoto hawasomeshwi na tuko na shida kubwa na hiyo shida imeletwa na Bunge. Kwa nini Bunge wamejiongezea kama Serikali haina pesa? Kwa hivyo mambo ya kusema Bunge wapewe nafasi, hakuna mambo ya Bunge kubadilishia sheria, au kupatiwa nafasi. Sheria ibadilishwe na wananchi. Na wananchi vile wametengeneza kama ni kubadilisha, irudishwe kwa wananchi ndio wabadilishe. Yangu ni hayo.

Com: Lethome: Haya asante sana, hiyo ilikua chapter.....(**inaudible**) chapter nyingine, mambo ya Bunge. Lakini kukujibu tu nitakuambia kuwa uwezo ya Wabunge imekatwa sana, moja katika hiyo ambayo imekatwa ni ya kujiongezea mishahara. Article 121 inakuambia kuwa kutakuwa na Remuneration and Salaries Commission, kutakuwa na Tume ya kuweka mishahara. Hakuna mtu binadhamu ambaye anaweza wewe unataka chakula kiasi gani? Si utajiwekea mingi. Kuna mtu atajiwekea kidogo? Kila binadhamu ni *hunguri*. Kila binadhamu anatamaa, ama sivyo? imeondolewa hiyo Sheikh usiwe na wasi wasi. Nafikiri tutaendelea kwa chapter 2, haya wewe Bwana.

Speaker: *Bismillahi*, nafikiri lazima mfahamu kuwa tuko na chapter zaidi ya kumi na tisa precisely tuko na ishirini. Kwa hivyo sasa inaelekea saa sita kuna wakati, lazima tuende tukasali, na bado tuko chapter ya kwanza na inaonekana chapter zingine tumezishika. Kwa hivyo wacha tuendeleo kwa chapter2,3 na kama tuko kwa chapter 2 swali iwe kwa 2 na kama ni 3 swali iwe kwa 3 tafadhali.

Speaker: Mine is just a suggestion and I feel that maybe if everybody asks a question on particular chapters we would not be able to even reach chapter 5 by the end of the day. So Im just suggesting maybe if we can tell every individual to come here and present what they are concerned with and then Commissioner suggests. Commissioner suggests and cluster these things according to chapters. That will be a good way of doing it and we were doing it during the hearing I think that is a better way.

Com: Lethome: Sikiza, anamapendekezo fulani anasema badala ya sisi kuenda hivi tunaenda kila mmoja ile kitu ambacho hinamsumbua hata kama ni sehemu yoyote ya Katiba, wewe kuja uuliza hapa. Halafu nitakuambia hiko sehemu gani ya Katiba ama kama imewachwa nje ama kama iko. Mnaonaje haya mapendekezo?

Audience:.....(**inaudible**)

Com: Lethome: Is that okay? Any concern you raise it, haya. Kwanza tuchukue, lets take the first 10 people we see how they are concerned.

Mohamed Omar: Nafikiri tumechukua hiyo maoni ya Bwana Jelle. Tuko na representative ya disabled, kuna Gedow ambaye ni blind, tuwapatie hawa nafasi ya kwanza na kina mama nafasi ya pili, kwa hivyo kuna Fatuma Yussuf ambaye pia anataka kutetea haki ya walemavu, Ebla Osma pia ako hapa. Kuna Chairman wa Kulmiye pastoralisation Chairman Omar Jibril pia ako hapa, ama ameenda? Kuna professional group kina Hashim, Mohamed Delmoge, pia tunaweza kusema tuwapatie nafasi. Na kuna youth group, kwa hivyo lazima wao pia tuwapatie nafasi. Kuna wengine wanawakilisha commerce and industry kina Harbi Osman pia wako hapa. Local Authority, ma-Councillors tunawapatia nafasi, L opinion leaders tunapatia wao nafasi, kuna Political Parties Mohamed Noor Hussein, teachers everybody. Kwa hivyo tuseme tuanze na blind. Tumpe nafasi Gedow, Gedow.

Gedow Ali Moge: Mimi naitwa Gedow Ali, nakaa huko catholic katika special school Wajir. Mimi nina handle watoto tisa vipofu. Na kati ya hao watoto wa tisa kuna watatu wako katika upper primary ambao mimi mwenyewe nili-initiate from 1993, mpaka sahizi mmoja anaelekea standard eight. Sasa katika mambo ya blind sija sikia mambo mengi ya Constitution ikisema something about the blind. Lakini nilisikia ikisema about disabled. So I don't know what the Constitution does for the blind people, especially to the children. I have never heard of anything concerning the children.

Secondly, I have never heard of anything concerning the education of blind, sijasikia chochote. Although the main thing nimefurahia ni braille hiyo ndio kitu I was happy about. In our school we have inintergration and in this intergration there is a lot of negative attitude towards it, nobody is supporting it, nobody is aware about the intergration for the blind in Wajir. Even the public sectors, lets say the Heads of the departments they are not aware of it. So now I would be very happy if the disabled in general together with the blind their education especially is considered in the Constitution. Also in health sector we should have a representative for the disabled, at least also in the offices when we attend the offices kama tunaenda kwa office ya DEO...

Inteerjection: Com: Lethome: Let me interrupt you, you know now you are giving your views and we are not collecting views now. Raise the concern and then I will tell you whether it has been addressed please. Just raise the concern and ask me has this concern been addressed and then I will tell you where it has been addressed if not we shall address them now, it is like now we are having another session of collecting views please.

Gedow Ali Moge: Okay. So now my concern is really involved in the decision of the blind especially in North Eastern.

Com: Lethome: Okay, thank you very much. Let me answer them very quickly, anazungumzia habari ya watu ambao ni vipofu Gedow is blindness a disability or not?

Gedow Ali Moge: Yes it's a disability.

Com: Lethome: So when you are asking persons with disabilities watu ambao wana vilema ina include wote kabisa so you are also included under disability. Nafikiri Fatuma will understand that. The term used Internationally to address all disabilities, ni

kusema persons with disabilities ina-include wote kabisa ambao ni physical, mental, hearing, blindness na nini wote tunawaita persons with disability. So the article addressing persons with disability includes the blind also. Unless you want to tell me blindness is not a disability, if it is a disability your also included under that.

On children go to article 37 those who have the document. Article 37 specifically ina-address haki za watoto na tunapozungumzia habari za watoto it includes children with disability. About education, are you there? No he doesn't have that document lakini Fatuma has the document but that is not a draft I know it. Ukiangalia article 37 Fatuma, children article 39 persons with disability, it addresses that issue article 58 on education, when we talk about education it means everybody, kwa sababu there is an article on non-discrimination 34, article 34 nobody should be discriminated against. Hii mambo ya intergration comes under that. So all these issues have been intergrated. Is it only that question?

Speaker: ... (inaudible)

Abdi rashid: My name is Abdirashid, one of the officials for disabled, so our **(Inaudible)** One of the questions is concerned about Bill of Rights in disability. A person with disability must be considered politically that is there must be a seat for the post of MP and also for the Councillors, that post is eliminated in the new draft.

Interjection: Speaker: Weka mic mbali kidogo.

Abdi rashid: Okay. So I have said let me repeat again I have said on the side of disability, a persons with disability must be considered politically, that is it has been eliminated in the new draft. So I'm requesting it to be put on the side of MP and for the civic that is County Council. So it has been eliminated.

Secondly, persons with disability those ones who are working must be given free tax. Their salaries should be tax-free. The government should not charge tax on their salaries.

Then I have the third one that is if you notice. So the third point in the Constitution should also address a special ministry dealing with disabled issues, which should be created by the government.

The forth point is, persons with disability also should be given bursary. For disabled children bursary has also been eliminated. So we see it is biased.

The last point is on each ministry should preserve a speacial force for the persons with disabilities: A ministry should be created for those people with disability, and it has also been eliminated. Those are what people would like to present to you Mr. Commissioner. Thank you.

Com: Lethome: Okay thank you, those are views that you are giving if you look at article 39. Article 39 here talks about persons with disabilities are entitled to enjoy all the rights and freedom stated out in the Bill of Rights and that includes the freedom to associate, freedom of expression and to participate as fully into society as they are able which includes also

participating in decision making organ like Parliament. And that is why you look under the legislature under Parliament you find that the language to be used in Parliament should be English, Kiswahili, Braille and sign language. Who is going to use braille in Parliament? A person with disability, sign language a person with disability. One thing you should know is that the Constitution cannot come up with all the details. The Constitution outlines broad principles. Halafu the detail will come in an Act of Parliament. And we have said here if you look at chapter 1 there is a place where we have said that within two years the government and Parliament should enact laws in conformity with the Constitution.

So we expect, once this Constitution, sorry kwa wale hawafahamu Kizungu, tunatarajia kuwa ikifikia miaka miwili kuwe na sheria Bunge ambayo itatekeleza hayo mambo yote unasema kwa sababu details haziwezi kukuja hapa lakini all your points have been noted kuhusu wizara kuwe na wizara ya watu ambao wako na disability although mimi nafikiri tume-discuss kama Commission. That we dont marginalize them futher, we want to intergrate them. Persons with disability tunataka wawe pamoja na watu wengine, kusiwe na wizara yao hata watu waanze kusema unaenda wapi kwa ile Idara ya watu walemavu. We want to intergrate them lakini wawe na representative, because we want them to be intergrated in the society. Ni kama hii mambo ya kusema watoto wakasomeshe katika skuli special. Now the International way of doing things is you intergrate them so that they feel part of the society. Si akipitia mahali mtu ambaye ni disabled anakua marginalised na watu wengine he or she should grow up with other persons who have no disability. Kwa hivyo as ministry we have considered that as Commission we have dicussed that. Lakini tukasema the best way is they should not be discriminated they should be intergrated, they should have a representative to speak for them. But your points have been noted all of them have been noted. Lets allow somebody else please. Fatuma.

Fatuma Yussuf: Thank you, my name is Fatuma. What I want to talk about is 3rd December should be observed as National Day for the disabled just like Uhuru Day, Madaraka Day and 3rd Dcember to be recognised as World Disabled Day.

Com: Lethome: Haya that point taken.

Fatuma Yussuf: The other thing is as disabled woman I have two problems; the first thing as a woman and the second as disabled. In Somali if a person is disabled they believe it is a curse from God. So we want to improve the side of Somali and the people in the society about the disabled that it is not a curse from God.

And the other thing is, there should be a day for disabled to vote and it should be one special day for the disabled to vote alone because they can be hurt they can get a problem, whereby there is no recognition in North Eastern Province I will appreciate that too.

The other thing: is there should be a new method for fingerprint for the disabled, because there are some who don't have fingers if they want to look for a identity what will they do? There should be a new method for the disabled because some have problems with their fingers. Thank you.

Com: Lethome: Thank you Fatuma, all those things infact have been taken care of under the code of non-discrimination. Also accessibility and participation fully in the society; all things have been addressed. But the details can be legislated and Parliament should come up with a Legislation to take care of all those details. All the points have been taken. Okay on disability please kuna huyu halafu we are still on persons with disability.

Adan: Asante sana, mimi naitwa Adan na ni mlemavu. Maoni yangu mimi sasa nataka kusema watu walemavu wote kwa sababu sisi kama walemavu tumefukuzwa hapa Wajir. Kwa sababu sisi hatukimbi tunatembea na mkona na unaona vile hii mchanga ya Wajir vile inakaa. Tukifanyiwa vibaya tukija kwa DC hauwezi kumwona, kwa sababu yule mtu amekufanyia makosa ndio anaeleza huyu asikuje kwako. Na wewe unakaa mpaka saa kumi na mbili kwa ofisi ya DC, na unaona vile unakaa hauwezi kurudi nyumbani yaani bila gari. Unatembea na mguu na mkono mpaka unachomeka ndio unafika nyumbani. Tena kama wewe ni mlemavu ukipata pahali padogo pa kuishi kuna wengine wanakuvamia, wana sema hapo sio kwako na hauwezi kukaa hapa uende kabisa. Unaenda wapi sasa, wewe mwenyewe ni mlemavu na una watoto karibu dunia nzima na hakuna pale wewe unakaa. Sasa unaona hapa kama Wajir sisi tumeumia kabisa kama walemavu. Na hatujulikani hapa Wajir hata ukieleza mtu shida yako hakuna mtu ana sikiza. Kwa hivyo ujue namna hiyo kama wewe ni mtu ya Katiba.

Com: Lethome: Hiyo yote hiyo swali nafikiri alikua anauliza Fatuma na tukajibu. Lakini hiyo yote utakuta kuwa ni haki ambayo umepewa usibaguliwe, ama sivyo? Hautaki kubaguliwa kama Mkenya. Hiyo iko chini ya kifungo namba thelatini na nne umeambiwa kuwa Serikali isibague mtu yoyote kwa sababu yeye ni mwanamke au mwanamume au kwa sababu ni mlemavu na sio mlemavu. Kwa hivyo Katiba mpya imeangalia. Sasa ni juu ya Serikali chini ya Katiba mpya itenngeneze sheria ambayo itahakikisha kuwa hakuna mtu ananyanyaswa kwa sababu yeye ni mlemavu lakini Katiba imeeleza hivo, kifungo namba thelatini na nne. Na kuhusu haki yako ya kuwa na mali pia imeelezwa kuwa kila Mkenya ana haki ya kumiliki mali na Serikali iko na kumshtaki. Tumeweka hapa ofisi ambayo unaweza kulalamika kuwa umebaguliwa au mtu fulani hataki kukusikiza kwa hivyo kuna sehemu nyingi ambayo imeangalia hayo malalamishi yako. Haya tu mwangalie Mohamed halafu tuingie katika makundi mengine sasa. Kina mama, baada ya hawa ni kina mama.

Abdullahi Hassan: Mimi ni Abdullahi Hassan. Ya kwanza mimi naanza na I have a concern about political parties mambo ya disabled wacha iwe nyuma kawa sababu my friends have talked about it for long time so wacha ikae nyuma. Sasa inasemekana, kuna wakati moja watu wamependekeza political parties should be funded by the consolidated funds. Lakini mimi my concern, is that one might drain the economy further and at the same time that might be overtaken by personal greed. Kwa hivyo kama political party moja inataka kuingia siasa aweke let it dig deep into its own pocket na ijisimamie.

Ya pili, ni mambo ya legislature: kwanza ningesema the current National Assembly of 210 Members should be retained, lakini Wabunge ambao watachaguliwa, my concern is: MPs that might be elected may not be ones of high moral integrity. Lakini MPs wawe ones with very high moral integrity wawe professional from recognised Kenya schools and colleges but not necessarily degree holders as said by others. Because tukiingia hiyo maneno ya degree holder, a small number of Kenyans might have a degree. So una-deny voters ambao ni 90% who are not degree holders their chance of electing their choice.

Ya pili, mimi na sema MPs should not also be recalled. I also have a concern about that, why? Because that may promote clanism and unnecessary feuds between relatives, citizens and section. The other thing is it might create very funny suspicion and encourage witch hunting. Kwa hivyo mimi nimeona miaka tano sio kitu kubwa sana Wabunge wakichaguliwa wacha kwanza voters aendeleo ku-get development record yake na miaka tano ikifika basi anaondelewa tu. Lakini mambo ya kusema recall labda graph ya siasa mara huenda juu na mara inaenda chini. Sasa Mbunge fulani graph yake ikienda chini hawo wengine wanaweza kupata fursa ya kutumia hii maneno ya ku-recall na hiyo italeta balaa nyingi. There will be a lot of insecurity as pertains that.

My other concerned is: Parliament has I think that has been taken care of. Parliament should not give powers to one person to dissolve it. Parliamentary Service Commission I think wapatiwe nguvu kwa mambo ya remuneration na kitu kama hiyo. Ingine ni Executive, President should sometimes hire and fire lakini with consultation with the Parliament. Lakini kama President anataka ku-appoint mtu fulani.....

Interjection: Com. Lethome: You know you are giving views you know its like you are giving me views now.

Abdullahi Hassan: It's a concern.

Com. Lethome: Just a minute the way you should have put is this; according to the views of the people Parliament should not be dissolved by one person what recommendations have you made in the new draft? According to the concerns of the people Parliamentarians should not decide their own remunerations, what have you decided? According to the concerns of the people parties should not be funded.....

Abdullahi Hassan: So the Parliament should not be dissolved by one person but there should be a Parliamentary timetable that will dissolve itself. So that is my recommendation.

Com. Lethome: Your giving views now. You know we are going back now.

Abdullahi Hassan: No, its not going back some of us we are very much concerned with some of the things that have been going on.

Com. Lethome: That's why I'm hear that's why I want you to raise the concern and ask me has that been addressed?

Abdullahi Hassan: Yes, you will answer that after I finish. Sasa mambo ya disability ya mwisho ambaye amenipatia hii fursa, I m saying disabled persons working in civil service, nataka mimi wapewe special promotion na wawe na nafasi katika Bunge, nominated posts and in the civic. And there should also be census for disabled in Kenya ili Serikali wawe na mpango maalum na

wajue walemavu ni wangapi katika Kenya. Asante.

Com. Lethome: Haya asante sana, you know mambo mengine ambao umeuliza si ya Constitution kama hii ya kuwa na census ama nini hiyo itakua katika Act persons with disability Act it will go into that. Wacha nichukue mapendekezo yako now I 'm a going to continue today or not please allow me, please. Tumesema umeuliza hapa Legislature kuwa watu wabaki wale mia mbili na kumi, tumbekisha hao mia mbili na kumi katika mapendekezo yetu hapa. Lakini tume-recommend kuwe na wengine nominated ambao ni tisaini na kuwe na Bunge mbili that is what we have recommended here under the new Constitution. Hawa tisaini ni kwa sababu ya kuangalia sehemu ambazo pengine hazikua zimewakilishwa vizuri lakini haya ni mapendekezo yako it will be noted also. Lakini we have argued about it.

Na kuna hii kitu ya high moral integrity, you realise that under some of the articles here under Political Parties under Parliament tumependekeza kuwe na leadership code of conduct. Hiyo leadership ya code of conduct na pia chini ya qualification to be a Member of Parliament one of them is that mtu lazima awe na high moral standard. Sasa it is upon kutakua na Commission pia ya kuchunguza kama Mbunge ana high moral standard ama hana. Kutakuwa na Tume ambayo itachunguza hayo. Sasa ni juu yawo kuangalia ana satisfy hiyo code of conduct ama hapana. Kwa hivyo tumeweka hiyo. Na kusema wawe professional, yaani MPs wawe professional points taken although we did not address it in here. Tumesema tu wawe form four wasiwe degree holder, wawe form four ambaye amepita. Wajua unaweza kua form four kama Mwahima lakini haukupita. You just sat for the exams lakini haukupita lakini awe form four na amepita. Lakini ukiangalia maoni ya watu wengi walikua wamesema a degree holder. Lakini after considering so many factors tumesema awe form four amepita na awe anajua lugha ya Kiswahili na Kizungu. Na kama hajui hizo mbili kwa sababu pengine ya ulemavu awe anajua braille ama sign language, pia atakuwa anachukuliwa. If you look at the qualifications for Members of Parliament under Parliament you will see that.

Kuhusu ku-recall, we have recommended that MPs should be recalled. There should be that clause for recalling an MP. Ukiangalia the article, ngoja, ngoja iko ivo utaangalia. We argued tukasema, kwa mfano: mimi na Mohamed tumepigania kiti cha Ubunge cha Wajir East, ameshinda unafikiri mimi nitafurahia? Nitafurahia na wafuasi wangu watafurahia? Kwa hivyo tutafanya bidii tuanze kusema si Katiba imesema tuna haki ya kumtoa huyu kumwitisha hapa, nitaanza kuzunguka sasa kutafuta sababu ya kumtoa, ama sivyo?

Kwa hivyo sheria pia imeangalia hiyo. Even us we are not blind to that part, tumesema kutakua na witch hunting, tutaanza kuchimbana. Kwa hivyo tumeweka sharti. Ukiangalia chini ya hiyo article imesema hivi: ikiwa unataka kumtoa MP wenu kwa sababu mnaona hafanyi kazi vizuri, ana miss Parliament sana, haji kutembelea electorate. Kwanza lazima kuwe na petition to the Speaker of the National Assembly. Na hiyo petition has to be supported by 1000 people, lazima iwe supported na 1000 people. Na wale watu ambao wanaku-support sio watu wa sehemu yako peke yako na sehemu zingine pia katika ila Constituency, ndio mumweze kumtoa. Kwa hivyo kumewekwa masharti fulani lazima utimize. Halafu Speaker itafanya tribunal iende ikachunguze ni kweli vile unavyo sema ama si kweli. Ndio yule MP kiti chake kitakua declared vacant. Kwa hivyo kumewekwa masharti.

Kwa hivyo, kuna checks and balances it's not a blank check to recall an MP there are some conditions. Nafikiri kama mtu anaweza kuiangalia hiyo article ni gani tuisome hiyo article. Ni gani tuisome vizuri hiyo article. Hassan hebu niangalilie, which article that is to recall the MP it is important that we look at it. Look at article 112 recall of Member of Parliament tuangalie ile taratibu ambayo imewekwa tuone kama tumerithika nao 112.

Article 112 imesema hivi: a Member referred to in clause may be recalled from that office on any of the following grounds, sababu za kumwita MP nini physical or mental incapacity, akili yake au nguvu yake ama afya yake haimruhusu kufanya hiyo kazi. Kwa hivyo kwanza you have to satisfy kuwa huyu mtu physically ama mentally, he is not capable of carrying out his duties as a Member of Parliament.

Two, mis-conduct likely to bring hatred, ridicule contempt or repute to the office. Huyu mtu ametumia mamlaka yake vibaya, hiyo ofisi yake vibaya amevunja heshima ya hiyo ofisi ya kuwa Mbunge wetu, hafai kuitwa tena Mheshima wa Wajir East ama wa Wajir West ama mahali pengine popote.

There, persistent dissension of the electorate without reasonable cause: huyu mtu tangu mlipo mchagua hamjamwona hata siku moja na hakuna sababu. Kuna sehemu zingine MP anakuja baada ya miaka tano, sasa hizo ni sababu ambazo zinaweza kumfanya MP aitwe. Sasa utaratibu wa kumwita. The recall of Member of Parliament shall be initiated by a petition in writing lazima iwe imeandikwa hiyo petition. Stating out the grounds relied on useme, sababu: hakuji kuona watu yake, huyu mtu akili yake imeharibika sasa, au amepatikana na maraathi hawezi kufanya kazi yake au amevunja heshima ya hiyo kwa hivyo lazima. Halafu pole nimesema 1000 ni 30% it has to be signed by at least 30% of the registered voters of the Constituency, watu wathelathini asilimia katika Constituency. Kwa hivyo kama Constituency ya Wajir East its wale ambao ni registered voters ni elfu tatu utahitaji watu wangapi? Karibu elfu moja. Ukishapata elfu moja watu wa-sign hiyo petition yako utapeleka kwa Speaker sasa. Kwa hivyo kama unaweza ku-gather watu ambao ni registered voters, ndio unaweza kupeleka sasa kwa Speaker. Na speaker akichukua sio blind check pia kuna utaratibu fulani anaambiwa within 7 days to require Electoral Commission ikafanye inquiry, kwenda kuchunguza ni kweli ama si ukweli. Wakisha maliza kufanya hiyo uchunguzi ndio watarudi waende waka ripoti kwa Speaker ni kweli tumefanya uchunguzi tumeona Mbunge wa sehemu fulani ako na hiyo kasoro. Mental incapacity, physical incapacity, disrepute amevunja heshima ya hiyo ofisi, au harudi kwenda kuangalia watu wake. Wakisha fanya hiyo uchunguzi Speaker naye akiletewa hiyo ripoti he might declare the seat vacant. Atasema kiti cha Ubunge cha Wajir East au West kimekua vacant sasa. Au kama haku lazimika ama hakurithika kuwa kuna haki ya kumwondoa yule Mjumbe atatumia mbali hiyo.

Halafu tunaambiwa Bunge itatengeneza sheria ya hiyo mambo ya ku-recall Mbunge kutoka Parliament. Kwa hivyo sio kitu ambao ni blank cheque watu wamepatiwa. Kwa sababu kutakuwa na hiyo mambo ya witch hunting especially for the politicians. Ukinishinda the next day I will start collecting the signatures, then the very next day I will give you no peace at all or even forge the signatures. So that is why there has to be an enquiry Commission, the Electoral Commission has to send people out to go and enquire. Kwa hivyo it's a long process. So I think we need it ama mnaonaje? Kwa sababu Mbunge akijua kuwa

akipotea kwa watu wake anaweza kuja kuitwa atakua akirudi kuja kuona watu wake na atakua akifanya kazi vizuri.

Haya kuhusu funding. Article 87 nafikiri inazungumzia habari ya funding of political parties, look at article 87. There is a reason why we recommended that political parties should be funded.

Speaker:(Inaudible)

Com. Lethome: Sifahamu Kisomali ndugu yangu. Ngoja, tuko political parties sasa article 87 inazungumzia hapa kuwa kutakuwa na funding na ukiangalia, inasema: a Political Party is entitled to financial support from the State on the basis prescribed in an Act of Parliament. Kwa hivyo kutakuwa na sheria ambayo itapitishwa na Bunge itasema hizi Political Parties zitakuwa funded namna gani. I know the problem we might have here with such a clause, leo hii nikisikia kuwa Political Parties watapewa pesa na serikali, what will I do? I will go to Bill of Rights na nitasema I have freedom of association. So I have the freedom to form a Political Party of my choice. Nitaita bibi yangu na watoto tunatengeneza Political Party yetu ama sivyo? Ili nipate pesa. Kwa hivyo kuna restrictions hizo pesa zitapatiwa Political Parties za aina gani sio any political party. Halafu utakuta kutakuwa na fund, there will a fund under article 93 ambayo itaitwa political parties fund. Inasema: there is established fund known as Political Parties fund the fund shall be administered by the Electoral Commission. Sababu ya fund kama hiyo nikua vyama vyote havuko na nguvu sawa na ikifika wakati wa campaign utakuta kuna chama ambacho kina nguvu kuliko zingine ama sivyo? Kwa mfano: tukisema leo campaign imefunguliwa vyama vyote viko sawa? Kuna vingine vinauwezo na vingine havina uwezo. Kwa hivyo tunazuia watu wengine kuweza kupata haki yao ambayo tumewapa haki ya kimsingi. Kwa hivyo tukasema the State should fund the Political Parties ambazo zimetimiza masharti fulani. Bunge ni kazi yake kutengeneza sheria ambayo itahakikisha only genuine Political Parties are funded by the State. Ndio sababu tukaweka hiyo funding ya State.

Na pia utakuta hapo tumeeleza kuwa nobody should hold a political post in a political party ikiwa yeye pia anashikilia cheo kikubwa katika nchi. Kwa mfano: today the President of the country happens to be the Chairman of the ruling party, ama sivyo? So when he is addressing you, you don't know whether he is addressing you as the President of the Republic or the Chairman of the Political Party. For example when he is going to address a meeting of NEC of KANU the National Executive Committee of KANU which vehicle does he use? The State vehicle. When he is going out to address the people in Bukungu stadium, about the person to succeed him does he go there as the President of the country or the Chairman of Political Party? Both. Ndio hapo ukuangalia there is an article that says that once you become the President or the Prime Minister then hiyo kiti yako ya Political Party you leave it. When Raila Odinga was addressing people in Garissa we didn't know whether he was addressing as a Minister of Energy or the Secretary General of KANU. So there has to be separation of that. So there is a lot about Political Parties that is new that you have to look at.

Halafu there is also supervision, if you look under article 97: Electoral Commission imepewa jukumu ya kusimamia Political Parties. Halafu pia ukiangalia 98 kuna party discipline. Kwa sababu wakati mwingine watu wanazungumzia habari ya democracy. But once you go into the party itself there is no discipline there is no democracy within the Party. So we are also recommending that there should be a code of conduct for Political Parties. Lazima nao wawe disciplined na kuwe na njia ya

kuweza kuwa-disciplined.

Halafu ukiangalia article 99 inazungumzia habari ya restrictions on use of public resources. It says: except as provided for in this chapter a person whether or not a member of Political Party shall not use public resources to promote the interest of a Political Party. Is it happening today or not? So we had to take care of that, that in future you will not be allowed to use public resource to promote chama kimoja. Ukiangalia kwa mfano: KBC is a State owned radio ama sivyo? Lakini wakati inazungumzia habari ya vyama vya siasa wanapatiwa equal airtime?

Audience: Hapana.

Com. Lethome: No. You find that some parties without naming any are given more air time than the others, that is the public resource lazima itumiwe sawa ama isitumiwe kabisa na Political Party yoyote.

Halafu angalia article 100, the President and public officials of and above the rank of deputy Secretary shall not hold office in a Political Party. Kwa hivyo ikiwa wewe una cheo Deputy Secretary and above kama vile Permanent Secretary, Minister, an Assistant Minister, the President, Prime Minister hauwezi kuwa na cheo katika chama cha kisiasa, kwa sababu usitumie cheo chako katika kuendeleza shughuli ya chama. Mmefahamu hiyo?

Sasa kuna suggestion hapa: baathi ya mambo ambayo mnauliza pengine yako hapa. So there is a suggestion that I will quickly run through the chapter's halafu mtauliza maswali. I think that is a better suggestion, kwa sababu I will start receiving views and I had already received views. So very quickly I will go to chapter 3. Haya nitazungumzia Kiswahili sasa na Kisomali kidogo kidogo usijali. Nafikiri tuko chapter 2.

Chapter 2 utaona kuwa hapa tumezungumzia kuwa Kenya ni Jamhuri ambayo iko hapa katika Katiba ya zamani. Sababu ya kusema hivo ni mtu yoyote asijaribu kutumia Kenya kama nchi ya Kifalme. Mnajua kuna tofauti ya nchi ya Kifalme na Republic. Mnaona kama vile Saudi Arabia baba akifa mtoto anachukua, wanarithi. Ikiwa Republic inakua na sheria nyingine tofauti. Ndio tumesema Kenya is a Republic nitaangalia hiyo mambo yake. Halafu kuna territory, Katiba ya sasa haijaleza mipaka ya Kenya iko wapi. Katiba hii mpya watu wale wamesomea mambo ya survey mtaona kuwa kule nyuma tumeeleza mipaka ya Kenya mahali iko by using the latitude and longitude. Wale ambao wanajua hivi kuonyesha ukienda kama ni Mandera mpaka ya Kenya iko mahali inajulikana kwa sababu haitakiwi mtu yoyote kuja na kuanza kubadilisha mipaka ya Kenya. Mtu anaweza kuuliza kwa nini tuzungumzie habari ya territory na hakuna dispute? I will tell you there are a lot of disputes. Ukienda kwa upande wa Kisumu mpaka wa Kenya imefikia Lake Victoria kuna baathi ya islands visiwa Uganda wame-claim, kuna vingine ambavyo havijulikani viko Tanzania ama iko Kenya. Sehemu kama hiyo lazima iwekwe kwenye Katiba and nobody can change that except through the procedures done by the Constitution. Tunasema Nairobi is the capital city. Is there any way in the law that you can refer, that the law says Nairobi is the capital city? Hakuna. Ndio sababu sasa tumesema katika hii Katiba mpya tunaeleza kuwa mji mkuu ama jiji kuu la Kenya ni Nairobi. Imeeleza kuhusu lugha ijulikane wazi wazi lugha ya Kenya ni lugha gani? Tumesema ni lugha ya Taifa ni Kiswahili, lugha ya rasmi ni Kiingereza na kuna lugha zingine zimetanbuliwa sasa nazo ni

sign language, lazima itambuliwe na braille imetambuliwa. Na haina maana kuwa lugha zingine zimepunguzwa. Ukiangalia article 9 sub-article 3: The State shall respect and protect the diversity of language of the people of Kenya and shall promote the development and use of Kiswahili indigenous languages like Kisomali, sign language and braille. Kwa hivyo lugha zinatambuliwa mbili na braille ya tatu na zingine pia zinatambuliwa, lakini hizo ndio rasmi.

Hakuna pia mtu kusema Kenya ni nchi ya Kikristo au ni nchi ya Kiislamu au ya Kihindu hakuna State Religion kwa mfano: ukienda Saudi Arabia state religion ni gani? Arabic(Islam), Iraq Arabic(Islamic), Vatican Christianity hiyo ndio state religion. Lakini Kenya haina state religion, kwa hivyo mtu yoyote asije akasema Kenya inatawaliwa kwa Bible ama kwa Quran au kwa sheria nyingine ya dini. Hakuna dini ya nchi. Na hii ni tofauti na kusema Kenya is a secular State ukisema secular State, haina dini. Tunatambua kuwa ina dini lakini dini tofauti tofauti hakuna dini moja ambayo ndio ya taifa. Mmefahamu hiyo?

Halafu kuna National symbols, alama ambazo ukiona unajua hizo alama ni alama za nchi yangu. Kama vile, bendera kuna wimbo wa Taifa kuna coat of arms, mnajua coat of arms nini? Ile mnaita kirauni na vitu vingine kama muhuri wa Kenya ambayo itaelezwa zaidi katika sheria nyingine na katika schedule ambaye iko hapa. I don't think we need to go into those other details. Can we go to chapter 4 habari ya uraia?

Speaker:(inaudible)

Com. Lethome: The capital city, yes.

Speaker:(inaudible)

Com. Lethome: Hapa tumesema article 8 the capital of Kenya is Nairobi.

Speaker:(inaudible) chapter 2.

Com. Lethome: Which article?

Speaker: Its not written an article what I have is a different one, its something on capital you mentioned capital city taken as land.

Com. Lethome: May be you are reading something different.

Speaker:.....(inaudible)

Com. Lethome: Okay. The capital of Kenya is Nairobi, haya asante hebu twendeni chapter 4 mzee una swali? Ndio. Ngoja tumsikize mzee akisema.

Abdi Billow: Mimi naitwa Abdi Billow. Kweli Nairobi ni capital city lakini tuko na karibu 42 tribes, kwa hivyo mimi ningependekeza kabisa hiyo 42 tribes kila moja iwe na sehemu yake. Sisi watu wa North Eastern tukuwe na sehemu yetu katika capital city.

Com. Lethome: Sehemu gani?

Abdi Billow: Sehemu igawanywe hapana sehemu ya capital pekee yake igawanywe kwa kila province, kila province iwe na area yawo.

Com. Lethome: Kwa hivyo Eastleigh tutafanya ya.....

Abdi Billow: Eastleigh iwe ya North Eastern.

Com. Lethome: Haya. Sasa tuingia katika sehemu muhimu sana sikizeni vizuri, chapter 4 ni muhimu sana. Katika hii Katiba ya sasa imewekwa mbali sana lakini katika Katiba hii tumeiweka karibu mwanzo kwa sababu ni muhimu sana na tulipokua tunazunguka watu wengi hasa North Eastern wana hiyo matatizo. Mambo ya citizenship. Mambo ambayo ni ya uraia, kwa sababu kwa mfano leo mimi na wewe tukitembea Nairobi tukikutana na polisi nani atasimamishwa? Kwa nini uta simamishwa? Utaambiwa Wariya simama wewe. Mimi nywele ngumu nitapita tu wewe utasimamishwa utaanza kuulizwa toa kitambulisho ukitoa kitambulisho utaulizwa, uko na screen card na ukitoa yote utaambiwa hii yote ni fogery, ama sivyo? Utawekwa ndani. Utakuta citizenship imekua kuna discrimination kubwa sanan na ndio sababu tumesema hiyo ni chapter muhimu sanan na watu wa North Eastern mnataikana msikize vizuri sana hiyo. Kwa hivyo tuambiwa hapa kuwa watu wote ni sawa ikifika mambo ya citizenship watu wote wa Kenya ni sawa. Kwa hivyo mtu yoyote chini ya hii Katiba mpya akikusimamisha aanze kukuita Wariya wewe na aanze kukuitisha screen card una haki ya kumshtaki huyu mtu kwa sababu anaku-discriminate. Kun wengine wana-discriminatiwa kwa sababu ya kabila kama Wasomali, kuna wengine kama mimi I m not a Somali lakini nakuwa discriminated kwa sababu ya dini. Unaambiwa kwa nini uko na jina ya Kiworia kwa sababu niko na jina ya Ibrahim ninaambiwa hiyo ni jina ya woria, yet I am a citizen of this country. Kwa hivyo tumesema hapa watu wote ni equal na ndio tumesema all citizens are equally entitled to a Kenyan passport and to any document of identification issued by the State to citizen. Sio mambo ya kuenda kuhongana ati tafadhali chukua kitu kidogo ni patie passport ama nipatie kitambulisho. Under the new Constitution it is your right ni haki yako. Kama inapatiwa Mjalu na wewe pia upatiwe kama inapatiwa Mkikuyu na wewe pia upatiwe watu wote wako sawa.

Speakers:(inaudible)

Com. Lethome: Hiyo tume-tick zamani hiyo. Haya unawezaji kupata uraia? Ni wakati gani unaweza kusema mimi ni citizen wa Kenya? Article 18 ukizaliwa Kenya ama umezaliwa na Wakenya. Kwa sababu unaweza kuwa Mkenya unaishi Britain au mahali pengine. Mtoto yeyote amezaliwa Kenya ama amezaliwa na Wakenya ambao wako nje basi mtu kama huyu ni Mkenya hakuna mtu anaweza kumnyanganya uraia wake.

Kuna citizenship by marriage articles 20 kwa kuoa. Leo Mohamed, Mohamed yuko ama ametoroka? Yuko Mohamed Hassan, ukioa msichana kutoka Somalia wakati ile umemwoa amekua na haki ya kuwa Mkenya citizenship by marriage. Au msichana Mkenya ameolewa na kijana kutoka Somalia au Ethiopia au nchi nyingine yoyote, basi huyo kijana anakua automatically, anakua ni citizen. Ile Katiba ya sasa hii imepagua imesema: wanaume akioa msichana ya nje huyu msichana anakua Mkenya lakini msichana ya Kenya kama Fatuma sasa akiolewa na Msomali huyo Msomali hawezi kuwa Mkenya tumeondoa hiyo tumesema wote lazima wawe sawa. Kwa hivyo Mohamed kwanzia leo ukioa huko anakua Mkenya bila wasi wasi usiwe na wasi wasi. Haya hiyo umeweka tick Councillor? Haya.

Kuna ingine article 21 Naturalisation, okay haya. Tutavunja ngoja.

Speaker: You said if a Kenyan marries a non-Kenyan then that non-Kenyan automatically becomes Kenyan.

Com. Lethome: Sorry, is entitled not automatically.

Speaker: Entitled to be Kenyan. So Fatuma who is a Kenyan is married to E thioian then what is Fatuma?

Com. Lethome: The Ethiopian becomes a Kenyan also. Lakini why we are saying is entitled and not automatically suppose he decide he doesn't want to be a Kenyan can you force him? So he can either decide to take Fatuma to Ethiopia or he can decide to remain with Fatuma here and become a Kenyan but you are entitled. You can go and apply and say Im entitled to be a Kenyan because I have married Fatuma and Fatuma is a Kenyan do you understand?

Speaker: I have understood that.....(inaudible)

Com. Lethome: Haya citizenship by naturalisation. Hebu ngoja.

Ibrahim Mohamed: Jina langu naitwa Ibrahim Mohamed ulisema Fatuma kwa mfano ameolewa na mtu Methiopia na Fatuma ni Mkenya, huyu mtu anastahili kuwa na kitambulisho mbili?

Com. Lethome: Haya.tutakuja hiyo dual citizeship sikiliza tu itakuja. Naturalisation. Okay.

Speaker: Tumesikia na tunajua na sio mbaya kama mtu kutoka a foreign country marries a Kenyan lady is entitled the case as

the lady. Lakini unajua this neighbouring country wako na vituko nyingi na a lot of conflict within themselves. Kama Wasomali wanaweza kuoa wasichana kwa wingi na waingie hapa wapate citizenship.....(inaudible).

Com. Lethome: Sikizeni hii article vile inazungumza inasema hivi: a person who has been married to a citizen of Kenya for a period of not less than 3 years is entitled to application to be registered as a citizen of Kenya. Kwa hivyo muoane miaka mitatu then you apply. Sasa wakati uki-apply there will be vetting, kwa sababu najua kuna watu wakioa nia yake ni kuja kufanya pengine ujambazi hapa Kenya au wanaoa kwa sababu wanataka kutoroka huko halafu wakati mwingine akiwa huko anatorokea upande hule mwingine we call those administrative measures they cannot go now in the Constitution its for the government now to set up these things.

Speaker:(inaudible)

Com. Lethome: Yes to sort out those things. Lakini tumepatia hiyo licence lakini how is the government going to give that licence that is administrative, it shall not into the Constitution. Hiyo ni ruhusa wamepatiwa watu okay. Halafu inasema: citizenship is not lost through marriage or dissolution of marriages. Swali lako ni gani? Nani mwingine ana swali hapo hivi? Hii ndio swali ya mwisho on that issue.

Speaker: Yangu.....(inaudible)

Hussein Adan Dahiye: *Bismilahi rahmani rahim*, mimi naitwa Hussein Adan Dahiye tukiwa katika citizenship nimeona ya kwamba birth certificate upande wake wa nyuma imeandikwa si lazima kuwa citizen na ni birth certificate hiyo ndio imenishangaza na sijui ni kitu gani ina maanisha namna hiyo?

Com. Lethome: Unajua sababu ya hiyo ni hii kwa mfano: wale watoto wote wanazaliwa Kenya are they Kenyans? Kwa mfano si tuko na Wazungu wanaishi hapa pengine wanafanya kazi hapa Kenya. Tuko na diplomats ambao wanafanya hapa, watu wengine wamekuja hapa kwa biashara na bibi yako amezalia hapa. Okay wanapewa certificate ama hawapewi? Kwa sababu certificate ni ya kuonyesha mahali umezaliwa haionyeshi wewe ni mtu wa nchi gani. Leo hii wewe ukisafiri nchi ya nje halafu bibi yako azalie huko huyu mtoto amezaliwa huko ama amezaliwa Kenya? Utapatiwa certificate ya huko kuonyesha alizaliwa mahali hapo. Ndio maana imeandikwa: birth certificate is not a document to show that you are a citizen of the country, it just shows that you are born in that place.

Sasa mambo ya citizenship nimegundua kitu kimoja ngojeeni nimegundua kitu kimoja pengine nisome yote pengine ile mnataka kuuliza hiko. Haya.

Citizenship through birth tumeona, through marriage kuna ingine inaitwa through naturalisation: mtu ambaye amekaa Kenya kwa mda zaidi ya miaka saba ambaye ni continues amekaa mda mrefu sana mpaka imefikisha miaka saba hajatoka, basi tunaambiwa

akitimiza baathi ya masharti asiwe ni mwizi, ama ni mtu ambaye anakuja kuleta matatizo Kenya. Basi mtu kama huyu anaweza kupewa citizenship ya Kenya. Kwa hivyo unaweza kuiishi mda mrefu ambayo umepitisha miaka saba bila kutoka basi mtu kama huyu ana haki akifanya application aweze kupewa citizenship, hiyo haina maana kuwa ni automatic pia inaweza kukataliwa inaweza kubaliwa. Haya.

Watoto ambaye wamepatikana Kenya na hawajulikani wametoka mahali gani hawajulikani wazazi wao. Children found in Kenya and adopted children. A child found in Kenya who appears to be less than 8 years of age, chini ya miaka nane na wazazi wake hawajulikani basi mtu kama huyo atachukuliwa kuwa ni mtoto ambaye ni Mkenya chini ya miaka nane wazazi hawajulikani hajulikani ametoka wapi basi atakuwa ni Mkenya. Mtoto ambaye yuko chini ya miaka kumi na minane ambaye si Mkenya ambaye amekua adopted hiyo Waislamu hatufanyi hiyo tunaita kwa Kiarabu *asabani*, ni unachukua mtoto unaandikisha ni wako na sio mtoto wako inafanyika sana lakini Waislamu ni haramu kufanya hivo. Hata Mtume (p.b.u.h) alikatazwa, alikua anataka kuchukua Zeid awe mtoto wake akaambiwa hawezi kufanya hivyo hauwezi kuchukua mtoto umfanye ni wako, unaweza kumsaidia lakini hauwezi kuchukua awe wake.

Lakini ikiwa kuna Mkenya ambaye amechukua mtoto kutoka nje chini ya miaka kumi na minane akaandikisha kuwa ni mtoto wake basi atakuwa ni citizen wa Kenya.

Dual citizenship, ile ambao ulikua unauliza. Kulingana na hii Katiba tuko nayo sasa hauwezi kuwa na passport ya Kenya na passport ya nchi nyingine, hauwezi kuwa Mkenya na uwe citizen wa nchi nyingine unaweza tu kuwa citizen wa nchi mmoja. Chini ya hii mapendekezo mpya unaweza kuwa na mbili unaweza kuwa Methiopia na Mkenya, Msomalia na Mkenya, Mbritish na Mkenya, Mganda na Mkenya haiwezi kuharibu. Sasa tumependekeza hivyo. Sasa tunasema hapa, a person who as a result of acquiring the citizenship of another country lost the citizenship of Kenya at anytime before the coming into operation of the Constitution is entitled on application to be registered as a citizen of Kenya. Kuna baathi ya watu sasa amepoteza citizenship ya Kenya kwa sababu ameenda nchi nyingine amepata passport nyingine huko. Kwa mfano: kama leo ukisafiri uende nje uchukue uraia ya nchi hiyo you loose your citizenship of Kenya. Labda ufanye kimagendo tu unaficha moja, kuna watu wanaficha moja anasaifiri na moja akifika Kenya anatoa ya Kenya lakini kisheria umepoteza moja ya Kenya. Unaambiwa hii sheria mpya ikipitishwa unapata ile uraia wako wa Kenya wa zamani ambao ulikua umepoteza.

A person who loses citizenship of Kenya as a result of acquiring the citizenship of another country is entitled on renunciation of the citizenship of that other country to regain the same citizenship status, which the person formally enjoyed. Kuna watu ambao walikua kwa sababu alipata citizenship ya Kenya imebidi atupe ile yake ya zamani kwa mfano: Msudan au Methiopia alikuja Kenya akapewa uraia wa Kenya kulingana na hii sheria ya sasa amepoteza gani? Ile ya Ethiopia. Lakini sheria hii ikianza kufanya kazi atapata tena ile ya Ethiopia ana haki ya kupata hiyo ingine anaweza kupata mbili. Hii inazuia matatizo ile ambayo anasema Siyat. Ndio amesema ina matatizo wewe kwa sababu matatizo yako ni nini?

Abdi Hussein: Mimi kwa jina naitwa Abdi Hussein Councillor, pengine mimi nimetoka Somalia niko na citizenship ya Somalia

na nimepata ya Kenya mimi nafanya hapa na hapa naenda Somalia kitu kama hiyo.

Com. Lethome: Hiyo tunasema that is an administrative thing Serikali inatakiwa iangalie hiyo ni ruhusu tu watu wamepewa.

Abdi Hussein: Niko na swali ingine. Mimi nimezaliwa Kenya sina kitu chochote inaonyesha kitambulisho au haki ya kuzaliwa na mimi najulikana ni Mwanakenya, sasa mimi

ni Mwanakenya ama sio Mwanakenya?

Com. Lethome: Hauna kitambulisho, hauna certificate.

Abdi Hussein: Na nimezaliwa Kenya. Na kuna Wasomali hivyo wengi hata saa hii.

Com. Lethome: Najua kuna wengi, sababu ya kukosa ni nini?

Abdi Hussein: Hawashughuliki.

Com. Lethome: Ni kwa sababu mambo ya registration of persons ime fanywa iwe complicated sana na iwe ngumu, sababu ya discrimination. Na mambo ile yote ambayo tumezungumzia hapa. Sasa that is administrative haiwezi kuingia kwenye Katiba, lakini Katiba inakuambia ni haki yako. Kama hauna kitambulisho ni makosa Serikali imefanya. Ni haki yako upate hiyo kitambulisho.

Abdi Hussein: Pengine sasa sijapewa hiyo kitambulisho na mimi nimezaliwa Kenya. Sheria itanifanyia kesi kwa kukosa kuwa na kitambulisho ya Kenya.

Com. Lethome: Sasa sheria ile ambayo iko ina kasoro inaweza kukushtaki.

Abdi Hussein: Hii mpya ndio mimi nasema.

Com. Lethome: Hii mpya kukushtaki? Hii mpya imesema kila mmoja atakuwa nayo kila mtu atakuwa nayo.

Abdi Hussein: Niko na haki ya kupata?

Com. Lethome: Ndio, na wakikataa kukupatia kwa mfano umeenda kwa Chief ama kwa yule ambaye anaandikisha una haki ya kuenda kumshtaki.

Abdi Hussein: Okay swali langu ni hilo.

Com. Lethome: Sasa citizenship nafikiri tumefikia hapa, swali lolote kuhusu citizenship halafu tuendeleo mambo ya Bill of Rights. Haya. Sheikh anataka tuvunje kikao tukaswali halafu turudi haya. Kusha athiniwa? Bado, haya swali moja halafu twende tuka swali. Swali moja tu.

Speaker: On citizenship...(inaudible) and its not covered in and.....(Inaudible) I went through the document and then.....

Interjection: Com. Lethome: Hebu sikizeni kuna swali muhimu hapa.

Speaker: What is your name?

Jelle Abdi: My name is Jelle Abdi I'm an agriculturalist and as I went through the document I happened to read it over last night may be there is something I could not discover through the chapters which we were reading. When we were doing the hearing most of the people in this province were so much talking about the past loses, how their rights have been violated how they have lost properties and how they have faced the massacres like Wagalla massacre and like one which took place in 1981 in Garissa, Malkamare one. We were expecting that there is going to be new sections to indicate that what we have lost in the past will be compensated accordingly to or there will be a provision in which it has happened in South Africa where there was a Truth and Reconciliation Commission something at least to please people so that we have a new beginning I don't see any section such chapters. Do we have such a provision in the new Constitution?

Com. Lethome: Ndugu yetu anauliza kuhusu ile thuluma ambayo imetokea watu kama hapa Wajir Wagalla massacre kuna Markamale na kuna sehemu nyingi kama Likoni watu wameumia upande wa Molo watu waliumia, na unajua tunasema tunataka kuendelea pamoja kama Wakenya na bado watu wako na hiyo uchungu ndani yao. Lazima ile thuluma imefanyika lazima iangaliwe. Ndio nasema hii Katiba mpya inaonekana haikuzungumzia habari ya hizo thulma. Okay, sisi kama Commission tumezungumzia habari hiyo na kulikua na baathi ya maoni inasema tuwe na hiyo Commission ya Peace and Reconciliation ili watu waweze kusameheana na kulipwa ile thulma.

Nafikiri tutaendelea sasa, asubuhi tulikua tunazungumzia haki ya uraia na tumeona haki ile ambao tumepatiwa kuhusu mambo ya uraia chini ya mapendekezo ya Katiba mpya. Sasa ningependa tuingie katika chapter 5 ambayo inazungumzia habari ya Bill of Rights haki za kimsingi. Haya kina mama mko na swali yoyote kuhusu mambo ya uraia? Haya.

Habiba Sheikh: Assalamu aleykum, mimi naitwa Habiba Sheikh nominated Councillor Wajir East naongea kidogo Bwana Commissioner amenipatia nafasi asante sana. Yangu ni hii Wajir or North Eastern kwa upande ya wasichana shule ni chini kabisa. Sana kusema kweli Wajir shule za sekondari ni saba na moja ndio ya wasichana na hii mimi naona ni thuluma kidogo. Mandera pia ni namna hiyo Garissa ndio afathali hiko mbili. Tena pande ingine ya Serikali kina mama hata kama wanasoma

inaonekana kupata madaraka kama wengine ni short kidogo. Sasa mambo ni mengi, lakini kwa sasa ingine mimi nimesikia katika maneno. Yenu na tutaandika maoni yetu tena na tutampatia Mr. Mohamed alete kwenu. Tuko na maoni mengi sana kuhusu mambo ya Katiba. Lakini kwa hayo, sisi tunalalamika sana kwa upande ya kina mama. Kama shule hakuna msichana au wanawake kwanza wataendelea namna gani? Kama kungekuwa na shule moja hapa Habaswein moja hapa Tarbach, Buna moja, ndio mambo ingekuwa mzuri lakini moja peke yake na hiyo ndio inatoa mthani Y kila mara, hata kupata results nzuri ni ngumu. Yangu ni hayo na ingine nikisia nitaongea. Asante.

Com. Lethome: Haya asante mama Councillor, ukiangalia those of you who have the document, article 34; mambo ya discrimination, yaani kubaguliwa. Tumesema hakuna mtu ambaye anafaa kubaguliwa kwa sababu yeye ni mwanamke ama ni mwanaume hiyo ni haki ya msingi. Haki yako hiyo, hakuna ruhusa ya kubaguliwa, katika elimu katika kazi katika kila kitu hakuna kupaguliwa katika kila kitu hakuna kubaguliwa. Bora tu kwa sababu kama ni Mislamu pia unaambiwa kulingana na ule msingi wa dini yako. Ukiangalia pia article 58 ambayo inazungumzia habari ya elimu, wale ambao wana hiyo document angalia article 58. Tumeambiwa: kila mtu ana haki ya elimu ya msingi kila mtu msichana na mvulana wote wako na haki ya elimu ya msingi. Lets check article 58 you know I have a different document from you, okay page 9. Wale wako na ile pull out from the newspaper is page 9. Haya sikizeni inasema: kila mtu ana haki ya elimu ya msingi ambayo tikizungumza habari ya elimu ya msingi ni pre-primary ile ambao tunaita nursery kila mtu ana haki hiyo, primary and secondary education. Kwa hivyo ni juu ya Serikali kuhakikisha kiyo skuli yote hiko kama ni wasichana ambao hawana skuli Serikali wahakikishe kuna skuli kama ni wavulana ihakikishe kuna skuli, kama ni watu ambao hawajiwezi wahakikishe kuna skuli zao.

Halafu namba mbili tunaambiwa Serikali itatengeneza programme ya kuhakikisha kuwa kila mtoto anapata elimu ya bure ya primary. Inakua ni bure kwa sababu ukisema kila mtu ako na haki masikini hana pesa ya kupeleka mtoto skuli hiyo haki hawezi kupata ama mtu ambaye ni disabled hawezi kupeleka mtoto wake shule. Sasa ndio tumesema ni free na ikishakua ni free kuna wajibu pia kwa wazazi, compulsory. Yaani chini ya Katiba mpya mzazi anaweza kushtakiwa mimi naweza kuja niseme nitakushtaki kwa sababu umekata kumpeleka mtoto wako skuli. Lakini sasa ukikuja unishtaki nitakuambia sina pesa ya kulipa utafanyaje?

Lakini hapa tumeambiwa Serikali ihakikishe kuna free and compulsory primary education. Halafu tumeambiwa the State through reasonable measures shall make progressively available and accessible for secondary education. Ihakikishe kuwa wale wamemaliza sekondari pia wanapata masomo ni wajibu wa Serikali kufanya hivyo. Kwa hivyo utaona yale maswali ambayo umeuliza iko chini ya haki ya kimsingi fundamental rights na ndio ile ambayo tulikua tunataka kuzungumzia sasa.

Bill of Rights chapter 5 sehemu ya tano ambayo nataka tuangalie sasa. Kwa hivyo maswali mengi kuhusu haki za binadhamu tutaona sasa. Bill of Rights hapa tunasema kuwa ukiangalia article 29 inazungumzia kuhusu haki za kimsingi, haki ambazo uko nazo, sio kwa sababu weweni tajiri au masikini au mweupe au mweusi au mkubwa au mdogo. Ikiwa wewe ni binadhamu tu basi hizo haki zote uko nazo ni haki ambazo tunasema za kimsingi ndio tunaita fundamental right. Hakuna mtu anaweza kukunyanganya hizo haki kwa sababu hakuna mtu amekupatia wewe nani amekufanya binadhamu? Ni Serikali, ni Mungu alikufanya binadhamu kwa hivyo Mungu alipokufanya binadhamu alikupatia haki fulani na hizo haki hakuna mtu anaweza

kuchukua na zinatambuliwa kila mahali ulimwenguni.

Halafu article 30 inasema ni jukumu ya Serikali kuhakikisha kuwa hizi haki zinapatiwa kila mtu, kwa sababu tukikosa kuweka hiyo wajibu kwa Serikali hakuna mtu atatekeleza. Kwa mfano, haki moja ambayo kila moja ako nayo ni haki ya maji. Tukiwacha bila kusema ni wajibu ya nani kuhakikisha kila mtu ako na maji? Itakuwa hakuna kitu tumefanya. Kwa hivyo hapa tunasema kuna haki za binadhamu na hizi haki ni za kimsingi lakini ni nani anatakiwa kuhakikisha hizo haki ziko? Serikali. Kwa hivyo Serikali lazima itengeneze sheria ambazo zitahakikisha kuwa kila mmoja anapata haki zake ambazo mtaziona baadaye.

Halafu tunaingia hapa article 31, kuna kitu kinaitwa limitations. Hata katika sheria ya Mwenyezi Mungu hauwezi kupata sheria ambayo inakupatia haki zote bila mpaka. Kila haki ikona mpaka yake kwa mfano: ukiwa msikitini una haki ya kusoma Qurani ama hauna?

Haya kuna mtu anaswali hapo kushinda mwingine umeambiwa? Mimi nimekuambiaje kuhusu hiyo haki yake ya kusoma Qurani? Angalia mpaka katika ibada uko na limitations unaambiwa haki yako ya kusoma Qurani sasa soma chini chini usimharibie mwingine swala yake, hivyo hivyo hauwezi kusema tunaabudu tunaswali usiku mzima tunapiga kelele town mzima hakuna watu kulala, itakuwa umefanya thambi, unaumiza watu wengine. Hata hivyo haki za kimsingi pia ziko na mipaka yake. Kwa mfano unaambiwa kuwa una haki ya kuishi hiyo haki yako ya kuishi ndio maana unaweza kuua watu wengine wote? Hapana. Haki yako ya kuishi isithulumu haki ya wengine. Haki yako ya kumiliki mali, unaambiwa uko na haki ya kumiliki property sasa ina maana uibe mali? Unaweza kuiba? Huwezi kuiba ama ku-grab kwa nguvu iwe umepeta kwa njia ya halali. Kwa hivyo utaona kuna limitation, kuna mpaka kwa hiyo haki.

Hebu tuangalie mpaka ya haki hizo tunaambiwa: a right or freedom stated out in the Bill of Rights may be limited, inaweza kupunguzwa au kuwekewa mpaka. Wakati gani inaweza kuwekewa mpaka kwanza na sheria? Sheria inaweza kuweka mpaka, for example freedom of movement; unaambiwa hapo chini ya sheria uko na haki ya kuenda mahali unataka, unaweza kusafiri Nairobi, Mombasa kila mahali. Lakini ikiwa unasafiri huko kwenda kuvunja sheria? Haki yako unawekewa mpaka. Ama kuna marathi fulani ukienda huko itakupata au mathara fulani ukienda pale itakupata unaambiwa hiyo haki yako sheria imezuia imeweka mpaka. Tunaambiwa pia only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom taking into an account all relevant factors including the nature of the right, the importance of the purpose of limitations, the nature and extend of limitation, the relation between the limitation and its purpose and whether they are laid restrictively to achieve the purpose.

Kwa mfano freedom of movement unahaki ya kutembea vile unavyotaka. Kwa hivyo hakuna mtu ana haki ya kukuzuia. Lakini mimi kama nimeajiriwa na serikali kuzuia uhalifu naweza kuja ni-limit hiyo freedom yako, niseme you don't have that freedom ya kutembea mahali unataka nitakufungia kulingana na sheria. Na nitakapo kufungia unaambiwa lazima iwe reasonable and justifiable. Iwe isipitishe ile mpaka, iwe ni kitu ambayo inakubalika kisheria, tutasema kuna limitation. Ama kwa mfano mimi nataka kujenga nyumba kubwa ya gorofa nikijenga hapa hiyo nyumba ya gorofa hiyo ni haki yangu fundamental right. Lakini(inaudible) kwa sababu umejenga nyumba kubwa sana hata jua siwezi kupata. Sasa Serikali County Council ya

Wajir ita limit hiyo haki yako. Isema unaweza kujenga nyumba yako lakini usizuie jirani yako kupata mwangaza wa jua, usizuie jirani yako kupata upepo, usizuie jirani yako barabara ya kupita lazima kuwe na barabara. Hata plot ukinunua unajenga yote ama unawacha barabara? Iko nafasi ndio ni yako lakini sheria ya County Council inakuambia ni yako lakini iko haki ya wengine wacha barabara.

Hizo ndizo tunaita limitations lakini ziwe reasonable and justifiable. Nafikiri hiyo imefahamika. Hata juzi nilikua na patia watu wa Dadaab mfano na waabia Wahindi walipopata uhuru kwao walikua wanatembea na nguvu sana mpaka walikua wanagonga watu wengine barabarani, India. Walipoulizwa kwa nini alisema nyinyi hamjui tuko na uhuru sasa tumepata independence. Sasa wakaambiwa na Jaji independence ya mkono wako inaishia pahali pua yangu inaanzia. kwa hivyo wewe fanya independence yako lakini usinigonge mimi. Hiyo ni limitations ya freedom huwezi kusema Kenya ni uhuru kwa hivyo mimi nitafanya vile navyotaka inawezekana? Ama niseme Kenya ni uhuru kwa hivyo nikiingia ofisi ya DO sasa mimi nitakanyanga juu ya meza. Inawezekana hivo? Ile haki yako tumia ina mpaka wake.

Hata mtoto ndani ya nyumba mtoto wako unamwambia abo fanya vile unataka halafu aanze kupasuapasua makaratasi yako utakubali? Unamwambia hivyo freedom yako usiharibu vitu katika nyumba, uko na freedom lakini iko na mipaka. Ndio tumeweka hapo limitations haki zote lazima ziwe na mipaka.

Article 32 kila mmoja iko na haki ya kuishi, right to life, hiyo hakuna binadhamu anaweza kukunyanganya hiyo haki ya kuishi na hapa wamesema kuwa: wakenya wengi wamesema hivyo ile hukumu ya kunyongwa iondolewe. Wamesema mtu akiua asiuliwe afungwe maisha badala ya kuuliwa, kwa sababu wamesema haki ya kuishi ni haki ambayo Mwenyezi Mungu peke yake ndio ametoa na wewe mwenyewe ndio ana haki ya kukuchukua.

Equality: inasema hapa watu wote wako sawa mbele ya sheria, tukienda kortini kwa mfano huwezi kusema wewe tajiri na wewe ni masikini au tukifungwa jela huwezi kusema kuna jela ya masikini ya jela ya tajiri watu wote wako sawa chini ya sheria.

Haya tukiangalia article 34, tumeizungumzia sana mambo ya ubaguzi. Hakuna kubaguliwa kwa sababu ya kabila kwa sababu ya dini kwa sababu wewe ni mwanamke au mwanamume au kwa sababu ya disability. Utakuta watu wengi wanabaguliwa kwa sababu pengine ni kiwete kama Gedow ananiabia ana baguliwa sana si mnambagua nyinyi? Hamu mbague Gedow? Fatuma mnambagua Gedow kwa nini? Kwa sababu ya disability. Hiyo ni haki yake ya kimsingi asibaguliwe na mtu yoyote. Ama wewe kijana tuseme wariya wewe ni mdogo sana toka nje usisikize hii kikao. Utasikiaje?

Audience: Vibaya.

Com. Lethome: Kwa sababu utasema umebaguliwa unaona. Kwa hivyo sheria imesema mtu asibaguliwe na ukibaguliwa kama mambo ya screen card hebu jiulizeni katika Kenya mzima ni kabila gani ingine iko na screen card? Kwa nini Wasomali peke yao ndio wako na screen card? Kwa sababu wako kwenye boarder, Wasomali peke ndio wako kwa boarder?

Audience: Hapana.

Com. Lethome: Waluhya wako kwenye boarder, Wabukusi, Massai sisi tuko kwenye boarder pia, Waborana wako kwenye border na Ethiopia ama sivyo? Na Jaluo pia. Wajaluo sikiza kwanza Wajaluo na Luhya tuko na Assistant Minister hapa Kenya na ndugu yake ni Minister Uganda Moody Awori. Watu kwenye mpaka wanaishi pande hii na pande hii lakini wako na screen card? Kwa hivyo hapa tunasema ni ubaguzi discrimination.

Speaker: (inaudible)

Com. Lethome: Tunajua ni mengi sana mama ndio tunasema hapa hakuna ruhusa ya mtu kubaguliwa kwa sababu yoyote.

Haya tunaingia article 35-kuhusu wananwake. Wanawake pia wamepewa haki zao sawa na wanaume. Lakini pia kuna mahali ambao tunaambiwa kuna sehemu ambao inafuata mambo ya dini kwa mfano mambo ya urithi, hapa kuna article ambao inasema: women and men have an equal right to inherit article 35 sub article 3. Najua hapo baathi ya wazee watauliza swali, kwa nini tumesema wanawake wako na equal right ya kurithi? Lakini hapa ni kulingana na sheria. Kuna mahali kuna exceptional rules yakusema kuwa ila ikiwa ni dini yawo inaruhusu kufanya hivyo na hiyo hatusemi kuwa ni discrimination. Mwanamke wa Kislamu anaporithi nusu ya ile mwanamume anarithi, hatusemi kuwa hiyo ni discrimination Mwenyezi Mungu mwenyewe ndio ameamua apate hizo na ni kwa sababu kuna nyingine zaidi anapata.

Unajua mifano ya urithi katika sheria ya Kislamu unaambiwa mtu akifa awache watoto wawili mtoto wa kiume na wa kike. Kwanza yule mtoto wa kiume ndio amewachiwa wajibu ya kuangalia dada yake, ama sivyo kulingana na sheria ya Kislamu? Na yule msichana anapewa nusu. Kwa mfano tuseme msichana amepata hamsini na huyu atapata mia moja kijana nani anatakiwa kumnunulia chakula huyu msichana? Ni yule kijana. Haya kijana akifika kuoa ni nani anatoa mahari ni yule bibi ndio anatoa ama ni yeye ndio anatoa mahari? Ile ndio moja yake anaangalia dada yake na anatoa mahari. Msichana akiolewa anapatiwa ama ni yeye ndio anapeana? Anapatiwa, akienda kwa bwana yake nani anaangalia mambo ya nyumbani? Ni bwana, kwa hiyo ile hamsini yake imeongezwa juu yake mahari, imeongezwa juu yake ile bwana atampatia na vile atamwaangalia. Kwa hivyo kuna uathilifu, there is equitable kulingana na sheria ya Kiislamu. Hiyo nimetaja kwa sababu najua Waislamu wengi watauliza kwa nini mumeweka hapo? Equal right to inherit ni kwa sababu kuna mahali inasema tutafuata sheria ya Kiislamu ikiwa ni mambo ya urithi.

Equal right to have access to and console property, hiyo tunajua sheria ya Kiislamu imepatia kina mama haki hiyo. Haki ya kumiliki property, naona mimi unajua uko na property. Kuna mtu anaweza kukuingilia kwenye property yako? Sheria imekupatia hiyo haki kuwa mwanamke ako na haki yake ya property. Kuna watu wengine pia wanabaguliwa sana wazee. Hii sheria mpya imesema wazee wasibaguliwe wako na haki ya kushiriki katika society.

Article 37 watoto, na hiyo nimesoma haki za watoto wako na nafasi katika community wapewe haki zao, na Serikali pia lazima ihakikishe kuwa kila mtoto anapata haki zake, hiyo hiko chini ya kifungo number thelathini na saba. Ukiangalia kifunga ya

the lathini na saba sub article 5B ni haki ya mtoto kupata parental care, mtoto lazima apate haki ya kuangaliwa na wazazi wake. Kwa hivyo ikiwa wewe ni mzazi Mwenyezi Mungu amekupatia mtoto na ukose kumwangalia yule mtoto, chini ya Katiba mpya unaweza kushtakiwa kuwa umekataa kumwangalia mtoto wako. Kwa hivyo parental care ni haki ya mtoto.

3C ukiangalia kuna free basic education, which shall be compulsory ambao tumesoma sehemu nyingine. Haya kuna ile mambo ya labour, kuajiri watoto kufanya kazi hiyo ni kinyuume cha sheria kuwafanyisha watoto wadogo kazi. Na pia timeambiwa watoto ambao wanashikwa mara nyingine watu hawajui lakini sheria imekataa mtoto akishikwa aende aka wekwe kwa cell na watu wazima. Unataka hivyo mtoto mdogo hajafikisha miaka kumi na nane ana enda kufungiwa kwenye cell na watu wazima au anapelekwa kortini ile watu wazima wanapelekwa. Mtoto kuna korti zao special zinaitajwe? Juvenile court wanapelekwa kwa juvenile court. Kwa hivyo mtoto lazima aangaliwe kama mtoto na apewe haki zake.

Na mtoto ni nani? Waria wewe si mtoto unamiaka mingapi? Ishirini hiyo si mtoto, mtoto ni chini ya miaka kumi na nane ndio unaambiwa chini ya miaka kumi na nane ndio mtoto.

Haki ya family pia, lazima family ipatiwe haki yake. Persons with disability watu ambao ni walemavu hiyo tumeangalia sana Gedow asubuhi alifanya tuangalie sana article 39.

Haya tuangalie article 40 heshima ya binadhamu, mwanadhamu aheshimiwe kwa sababu yeye ni binadhamu na hiyo imewekwa pia katika mapendekezo ya sheria mpya.

Freedom and security of the person, mtu ana haki ya kufanya vile anavyotaka na uhuru wake ufunguliwe na pia awe na amani na imani na usalama security ina maana ya usalama hapa kuwe na usalama. Now kwa mfano North Eastern province kuna ukosefu wa usalama, ama sivyo? Na ndio imeleta nyuma maendeleo kama sisi jana tunakuja lazima tubebe askari wawili ndani ya gari. Wakati naenda upande wa Nairobi na ninajua kuna wezi wengi siendi na askari ndani ya gari. Na kwa sababu kuna insecurity. Ni wajibu ya nani kuhakikisha kuwa kuna usalama? Ni Serikali. Kwa hivyo watu wa North Eastern chini ya sheria hii mnaweza kuenda kortini kushtaki Serikali kwa nini? Hakuna usalama? Kwa sababu ni jukumu ya Serikali kulinda usalama ya kila mwananchi.

Article 42 mambo ya utumwa, hakuna utumwa adon mnajua adon? Hakuna kuweka mtu kama adon ni kinyume ya sheria ama kumlazimisha mtu kufanya kazi. Kwa mfano mzee ako na lorry yake anataka dereva mimi ni dereva uje uniambie Warya hii lorry yangu endesha mpaka Nairobi nitakupatia mshahara shilingi mia nne ni kuambie sitaki unaweza kunilazimisha? Mimi si hari yangu kazi nitafanya kwa mapenzi yangu hakuna mtu anaweza kuni lazimisha there is no forced labour.

Privacy tunasema hii kuna ile usiri wa mtu kwa mfano unaweza kutaka wakati unazungumza kwa simu wewe na mke wako au na mtu mwingine halafu mtu mwingine aje asikilize unasema nini? That is your privacy ni haki yako ya binadhamu, au ndani ya nyumba yako polisi wanaingia vile wanataka that is ...(*interjection inaudible*) wanafanya search unatakiwa polisi akija kufanya search unamuuliza una search warrant kwa sababu that is your private home hana ruhusa ya kuingia vile wanataka. Au kwenye barrier polisi anaanza kukushika mwili kila mahali anafanya search au polisi mwanamume anashikashika mwanamke kufanya search hiyo ni interference na privacy yake ambayo ni a basic human right haki yake ya kimsingi.

Freedom of religion article 44 hakuna mtu anaweza kukulazimisha kufuata dini nyingine isipokua dini yako, hakuna mtu anaweza kukulazimisha skulini inatokea sana kusoma masomo ambayo sio ya dini yako au kwa mfano wakati wa ibada unalazimishwa. Kwa mfano polisi, kuna mtu hapa polisi ama AP ama anafanya kwa serikali? Utakuta wanamume polisi Waislamu wanalazimishwa lazima wanyoe ndevu wanaambiwa hiyo ni chafu, si ndio? Anasema ni sunna na yule mkubwa hajui kama ni sunna anamwambia hiyo ni chafu toa hiyo chafu. Tunataka haki za dini iheshimiwe. Kila mmoja akubaliwe kufanya ibada yake vile inavyotakikana. Sasa hii freedom of worship au freedom of religion, tulipokua tunazunguka sehemu nyingi za Kenya watu walilalamika wakasema imetimiwa vibaya, kama wale watu wanasema ni devil worshipper ukiwauliza kwa nini? Wanasema Kuna freedom of religion that is my religion. Sasa watu wengi walikua wanasema hiyo freedom of religion lazima iwe na mipaka yake iwe ni religion ambaye inamwabudu Mwenyezi Mungu mmoja ndivyo watu wengi walisema. Kwa hivyo nitaanngalia hiyo yote hapo kuhusu mambo ya dini. Na hiyo freedom of religion kwa mfano ukishikwa mimi sikuambie utashikwa inshaalah hauta shikwa, uwekwe kwa jela hiyo freedom of religion uko nayo mpaka jela ama imeondolewa? Kwa hivyo unatakiwa hata ukiwa cell ya polisi freedom yako ya kuabudu uko nao. Kwa mfano wanamke Mwislamu akafungwe jela religion yake inamwambia avae nguo ya aina fulani sio nguo ambaye itamvutia heshima yake ya kidini. Kwa hivyo hiyo freedom of religion kila mahali ukiwa kazini, ukiwa umefungwa, ukiwa nyumbani kwako uko na hiyo freedom of religion kila mahali.

Freedom of expression, ni kama hii tukonao hapa, unasema vile ambavyo unavyotaka tuko na uhuru au wewe nakuambia sema vile unavyotaka uliza maswali unavyotaka kuuliza si kusema hiyo usiulize hiyo ni kuzua freedom of expression kila mmoja ako na haki ya kujieleza. Kwa mfano umeona serikali haifanyi kazi vizuri kuna freedom ya kuji-express. Walimu vile wanafanya sasa kugoma na kufanya demonstration that is haki yawo ya kuji-express hawarithiki na serikali. Kuna(**Inaudible**) hii hapa yangu imepotea imeanguka hiyo ni freedom of expression pia kuwa Im expressing my solidarity mimi naunga mkono mambo ya Katiba that is freedom of expression isizuiwe na mtu yoyote lakini nayo iko na limit. Ukiangalia article 45-sub article 2-iko na mpaka yake, mpaka yake ni kuwa wakati uko na uhuru wa kujieleza usifanye propaganda au kuingiza watu katika vita au fitina ni makosa hiyo. Kwa mfano ukianza kuchochea watu nisema mimi niko na freedom of expression nataka leo Wajir tuendeni tukapigane na watu ya Griftu, hiyo sasa inakua umevuka ile mipaka ya expression, ama freedom of expression unaanza kutukana dini ya watu wengine au kutukana watu wengine ambayo inaweza kusababisha kuvunjika kwa amani hiyo freedom of expression ina kuwa ina mipaka yake. Kwa hivyo article 45 sub article 2 inatuonyesha mipaka ya hiyo freedom. Na article 46 ni ile ya kuwa expression inaendelea lakini sasa ni kuhusu mambo ya maandishi unaweza kuandika au ku-publish maoni yako vile unavyotaka kama ni kitabu uandike lakini bora tu usivuke ile mipaka ya sheria.

47 inazungumzia habari ya information, update ti information. Kama kuna mtu alikua wakati wa Wagalla massacre serikali ilichukua hatua gani nani anaweza kutuambia? Councillor pengine unaweza kutuambia, hakuna Commission ilitengenezwa ya kuchunguza hiyo maneno? Hamukwambiwa hiyo maneno imechunguzwa mniambie mimi? Unajua nataka kutoa mfano ya kuwa access to information ni haki.

Speaker: Bwana Commissioner kwanza Wagalla massacre Serikali wenyewe ndio walikua wanamaliza watu.

Com. Lethome: Sawa ilipotokea.

Speaker: Ilipotokea ile Commission ilisemekana itumwe ya kuchunguza hiyo haikuwa ni Commission ni Serikali tu inatuma watu wake.

Com. Lethome: Ngoja, commission ya kuchunguza sio?

Audience: Ndio.

Com. Lethome: Ilichunguza?

Audience: Bado.

Speaker: Hakuna Commission imetolewa ya kuchunguza.

Com. Lethome: Okay, na matokeo ya hiyo kuchunguza hiko wapi?

Speaker: Hatujui mahali hiko.

Com. Lethome: Hatujui mahali hiko. Basi nimepata ile example nilikua nataka, nilikuwa nataka kuonyesha kuwa ni haki ya kimsingi kwa kila mtu kupata information ambayo iko na Serikali. Kwa mfano ni haki yetu kuuliza Commission imefanya uchunguzi, where is the results repoti yawo iko wapi? Tunataka kujua. Kuna Commission ambayo imefanya inquiry kuhusu mambo ya devil worship ni haki ya mwananchi pia chini ya mapendekezo haya kupata hiyo information matokea yake ni nini. Mambo mengi ambayo inatokea ama information ambayo iko na serikali isipokua pia pengine kama hiyo information imewekwa na serikali kwa sababu ya kuhifathi usalama wa nchi. Lakini information yoyote nyingine unaambiwa kuwa ni haki ya mwananchi kupata hiyo information. Kwa sababu kwa mmfano: ukikaa na wasi wasi haujui hata kesho kutatokea nini katika nchi hata hauwezi kufanya shughuli ya maendeleo, hauwezi kupanga maisha yako. Kwa hiyo ni haki ya kimsingi kupata information held by the State ile ambao iko na Serikali. Lakini iko na mipaka yake kama vile nilivyosema ikiwa itahatarisha usalama wa nchi kwa mfano Kenya tuko na silaha zetu tumeficha mahali fulani ya kulinda nchi sasa hauwezi kusema I demand that information silaha zimewekwa wapi. Sasa hapa utakua unahatarisha usalama wa nchi, kwa hivyo kuna limitations kama vile tuliposema mwanzo, hiyo haki ingawa sheria imekupatia lakini iko na mipaka yake sawa. Hata mtoto wako nyumbani nafikiri haumpatie information yoyote, unampatia yote? Iko mwingine unaona huyu ukimpatia hii itaharibu mambo nyumbani. Hata kuna wazee wengine kuna mwingine hawampatii mama information ingine, si ndio mzee? Wengine wanasema hiyo mama hajui, hata hataki mama ajue.

Speaker:(Inaudible)

Com. Lethome: Hapana hiyo ya mali ni haki yake kuonyesha. Halafu tunaambiwa kuwa sub article 4 Bunge kufikia miezi tisa basi italeta sheria ambayo itasaidia katika kuhakikisha hii haki ya kupata information ambayo iko na serikali au iko na mtu mwingine.

Freedom of association hii sana wanasiasa ndio tumia ama wale wote wanajihusisha na mambo ya kisiasa. Uko na haki ya kujiunga na kikundu yoyote. Kwa mfano kujiunga na chama cha kisiasa au muunde kunde yenu ya kina mama au kila kitu ambacho mnataka kufanya kujikusanya na watu wengine, hiyo ni haki yako hakuna mtu anaweza kukuzuia. Mzee kwa nini wewe umejiunga na chama ya party ya KANU au DP au Safina? Hiyo ni haki yako hakuna mtu anawza kukuzuia.

49 inazungumzia habari ya kukusanyana pamoja assembly ni haki yako. Kwa mfano tuko hapa hivi ni haki yako kukusanyana hapa haki ya bindhamu wengine wako msikitini sasa kusikiza mawaidha au mahali pengine pa ibada hiyo ni haki yao. Kuna wengine wamekutana mahali wanafikiria namna ya kuchimba bore hole hiyo ni haki yao hakuna mtu anaweza kuwaingilia. Na hiyo mambo ya demonstration, peaceful demonstration hiyo ni haki pia ya binadhamu kufanya hivyo waweze kujieleza kama hakufurahishwa na kitu.

Haki za kisiasa, kila mmoja na haki ya kisiasa na kuamua anataka kuelekea upande gani wa kisiasa nataka kupiga kura pande gani? Nataka kusema nini katika mabo ya kisiasa? Hiyo ni haki ambayo sheria imekupatia na hata ile Katiba ya zamani au Katiba hii ya sasa iko na mambo kama hayo.

Freedom of movement and residence hiyo nafikiri watu wa North Eastern imewasumbua sana. Si ndio? Freedom of movement. Unaambiwa hapa kila mmoja na haki ya kutembea, kila mmoja wetu ako na haki ya kuenda nje. Lakini bila passport unaweza kuenda nje? Kupata passport ni rahisi? Ina maana ili Wakenya waweze kutumia hii haki ya movement kama ni kutoka nje Serikali lazima pia ifanye rahisi kupata passport ili mtu aweze kuenda mahali anapotaka. Kwa hivyo mambo ya passport pia iwe ni rahisi ili kuwezesha mtu kutumia hii haki.

Kisha tunaambiwa mtu ana haki ya kuishi mahali popote katika hii nchi. Kwa mfano mimi ninahaki ya kununua plot hapa Wajir, mimi ni Mmasaai ni jenge nyumba na nikae hapa mnasemaje? Mnaonaje? Ama mtasema huyu sio Degodia ama Ajuran anafanya nini hapa? Arudi kule kwao. Nina haki ya kuishi mahali popote Kenya. Umepatiwa hiyo uhuru hapa hivi. Na wewe pia una haki ya kuishi mahali popote.

Speaker:(inaudible) Ile Katiba tunatumia sana inasema nini juu ya hii?

Com. Lethome: No, there is freedom of movement iko freedom of movement ilikua hapo. Unajua hizi haki nyingi hapa ni Internationally recognised ni standard hizi Bill of Rights lakini ngoja tuangalie. Freedom of movement hiko under article 81

protection of freedom of movement hata sasa iko freedom of movement.

Speaker: You have the freedom to go anywhere to stay anywhere to develop anywhere in Kenya.

Com. Lethome: Okay, hizo details hazijawekwa ile Katiba ya sasa haijaweka details kama hii. Kwa sababu hii imesema haki ya kuenda kuishi mahali popote, haija weka details hivyo.

Kisha tunajua kuwa wakati mwingine hutokea matatizo katika nchi za jirani, kukitokea matatizo kama hayo watu huenda kukimbia nchi nyingine. Kwa mfano hapa Kenya sasa tuko na wakimbizi kutoka Sudan, Ethiopia na Somalia wako hapa wanaishi ama sivyo? Wao wana haki za kibinadhamu ama hawana haki? Wana haki ya kibinadhamu, na hapo ndio wakati mwingine tunakua wachoyo sana we become selfish unasahau kuwa wewe siku moja pia unaweza kuwa refugee, ama sivyo? Sasa ungependa upewe haki zako kama binadhamu ama usipewe ukiwa refugee? Sasa ndio tunasema hapa kuna umuhimu wa katambua haki za refugee na watu wengine ambao wanataka ukimbizi ama kupewa hifathi.

Ndio tumesema Bunge itengeneze sheria. Mnajua kuna Bill hivi sasa kuna Bill ambayo iko Bunge sheria nyingi ambazo sasa inatumika Kenya sasa kuhusu refugee ni ile International law. Lakini inatakiwa tuwe na sheria yetu kuhusu wakimbizi. Kwa mfano ukienda mahali kama Dadaab mahali nimetoka jana, locals wanalalamika wanasema kumetokea kitu inaitwa environmental degregation, kuwa mazingira imeharibika kwa sababu watu ni wengi sana halafu wanashangaa sana wanasema, kwa nini refugees wanaletwe North Eastern province? Kwa nini wasipelekwe Western Kenya au mahali pengine? Hata ndio tunasema hapa imependekezwa Bunge ibuni sheria ambayo itakuwa ikisimamia wakimbizi. Na of course katika hiyo sheria iseme kuwa wasipelekwe mahali ambapo enviroment haiwezi ku-support population kubwa. Kama hapa enviroment haiwezi ku-support population kubwa sana. Tumepitia Hagardere, Ifo tumeona vile ambavyo kuna uchafuzi wa mazingira, kwa sababu enviroment enyewe kwanza haiwezi ku-support watu wengi hivyo. Halafu unaongeza watu wengine juu yake. Ni kwa sababu hatuna sheria ya wakimbizi mpaka sasa.

Hamsini na tatu haki ya kufanya biashara, bora tu isiwe biashara haramu. Usianiambie umepata biashara upewe haki ya kufanya biashara ya kuuza silaha, hiyo ni haramu. Lakini biashara halali yote uko na haki ya kufanya biashara kama hiyo. Una haki ya kuamua unataka kufanya kazi gani ukitaka kuwa mwalimu, dereva hakuna mtu anaweza kukuliza hiyo ni haki yako ya ki-binadhamu.

Hamsini na nne inazungumzia, habari ya mali property. Sheria imekupa uwezo wa kumiliki mali na hiyo mali yako serikali ina wajibu wa kuhifathi hiyo mali yako. Kwa hivyo tunapozungumzia habari ya security ni security ya mali na nafsi ya watu.

Hamsini na tano, inazungumzia habari za wafanyi kazi wao ni bindhamu pia lazima mazingara ya kazi yawe ya ni ya ki binadhamu. Nilikua na toa mfano jana kuwa sheria ya labour inasema kuwa mwajiri lazima ahakikishe kuwa mazingira ya kazi haiatarishi maisha ya yule mwenye kufanya kazi hapo. Kwa mfano unafanya kazi kwenye kiwanda ya chemicals, chemicals

ambayo ikiingia kwenye mwili wako inakuthuru, sheria inasema kuwa yule mwenye kazi hiyo lazima akupatie vitu vya kuhifathi ukithuhurika basi ni wajibu wake kukuangalia ama kukulipa compensation. Kwa hivyo mtaangalia article 55-amabaye inazungumzia habari ya labour. Kuhusu social security, ni kuhusu watu wale ambao hawajiwezi. Kwa mfano uko na family lakini kwa sababu ambayo haiko kwa mkono wako umeshindwa ku-support family yako. Kama nchi zingine utakuta kuna kitu tunaita social welfare. Watu ambao hawajiwezi au watu wamezeeka sana au mtu ameshindwa kujiangalia yeye mwenyewe. Serikali inamwaangalia inampa marupurupu fulani ya kuweza kujisaidia, hiyo ndio tunaita social security kuweza ku-support wale watu ambao hawawezi kuji-support.

Health ni problem kubwa sana. Mtu akiagua akiwa pale Lasbogat anaenda wapi? Unakufia huko? Unafanya nini? Unafanya first aid, iko pale hivi. Sasa tunaambiwa hapa kila mmoja ako na haki ya matibabu ile matibabu ni haki. Na wakati wa emergency ni haki yako kupata matibabu. Si mnajua hivi sasa mara nyingi hospitali inaweza kuweko, lakini kwanza unaambiwa lete pesa kwanza kabla haujaingia. Hata wakati wa emergency watu katha wamekufa unapata habari kuwa mtu amekufa kwa sababu hana pesa ya kuingia ndani ya hospitali. Kwa hivyo wakati wa emergency unatafikana upewe haki ya matibabu.

Elimu, tuaningia katika elimu tulikuwa tumesoma article 58. ni haki ya kila Mkenya kupata elimu. Ni jukumu ya serikali kuhakikisha kila Mkenya amepata elimu ya msingi. Makaazi housing pia ni haki ya kimsingi, hakuna binadamu anayeishi kwenye miti kama myama.

Chakula: na hapo tunapozungumzia habari ya chakula sio chakula yoyote lakini ni chakula ambayo inakubalika. Kuna chakula ambayo haikubaliki, kwa mfano: ikiwa watu wa hapa ni Waislamu halafu kumetokea njaa, nikiwaletea nyama ya nguruwe nimewaletea chakula kweli? Kwa hivyo tunapotele hapa ni chakula ambayo ina kubalika. Kuna sehemu nyingine ambayo tumeandikiwa kuwa iwe ina kubalika hata hapa tumeambiwa quality and cultural acceptability ambayo ina kubalika katika hiyo sehemu. Kwa mfano watu wa China tunaambiwa wengine wanakula chura, wengine wana kula mbwa hiyo ni chakula yao, sehemu yetu hivyo vitu havikuliwi sio chakula kwetu, kwa hivyo lazima iwe inakubalika.

Na pia hapa tunazungumzia habari ya food security. Kwa mfano sehemu hii wakati kuna ukame inakua hakuna chakula ni jukumu serikali kuhakikisha kila mmoja anapata chakula.

Tatizo zingine article 61 maji, jana tukija njiani tumekuja tukigawa ile maji kidogo ambawo tuko nayo hakuna maji. Ni jukumu ya nani kuhakikisha kila mmoja ako na maji?

Audience: Serikali.

Com. Lethome: Serikali, na hapa tumesema adequate quantities kiasa ya kutosha. Satisfactory quality ambayo inakubalika. Nimekwenda mali inaitwa Hola kijiji kidogo ukitoka Ramu unakwenda upande ya Takaba na Banisa hiko mahali kidogo unaambiwa family mmoja wanapatiwa lita ishirini kwa wiki moja. Family lita ishirini. Hao ni Waislamu wantakiwa kutawatha,

wanaoga, wanafua nguo, wanakunywa na mifuho yao inakunywa hebu niambiye litre ishirini ni ya kufanya nini? Ndio hapo tumesema adequate quantity ya kutosha and satisfactory quality, ukimpatia mtu maji ya chumvi au maji ya matope umempatia maji ya kutosha? Hiyo sio maji umempatia kitu ambacho kina kubalika.

Sanitation, kila mmoja ako na haki ya kuangaliwa kiusafi kama vile mambo ya choo mambo ya sewage hiyo ni haki ya kimsingi. Hakuna binadamu anaweza kuishi bila choo. What goes in has to go out ama sivyo? Where does it go? The government has to provide adequate sanitation na pia mahali pa kuzika maiti, hiyo pia ni sanitation ambayo pia ina heshima yake. Naona kuna swali kuna mtu alikua akiinua mkono wake hapo kuhusu maji.

Issa Hussein: Mimi naitwa Issa Hussein Ahmed. Kuna mahali pengine unaona Serikali inapatia watu contract ya maji ambayo ni karibu sana. Mahali kama hapa Tarbach ni 48.....(inaudible) na unapatia mtu pesa milioni kadha 5 million shillings ambayo 2 million shillings inaweza kupeleka maji Tarbach of which you can just find. Ni hiyo tu asante.

Com. Lethome: Asante kwa maoni yako, sasa hiyo unajua mimi kuingia kwenye Katiba hiyo ni administrative sasa tunataka ufanye bidii uchague Serikali ambayo utahakikisha wanatumia milioni mbili ama 200,000 badala ya milioni tano. Yes. Wacha ni malize Bill of Rights halafu muulize swali, okay raise that.

Speaker:(inaudible)

Mohamed Noor: Bwana Commissioner mimi ni Mohamed Noor nimesema mara nyingi sana jina langu. Kwa ile sheria tunatumia sasa katika Kenya ku laws ambazo zinatumiwa sehemu hii ya North Eastern na haitumiwa kwa sehemu zingine. Ingawa hata sasa imetulia kidogo kama emergency law kama GSU inatoa amri kadha, so many laws which are not applicable in other parts of Kenya. Katika hii draft Constitution ambayo nyinyi Commissioners mnaandika tulikua tunathani kuna privilege fulani mnapatia sehemu hii, kama kupata maji kama mambo ya basic education mpaka secondary, kama health facilities. Tunapata privilege kidogo kuliko Wanakenya wengine? Hiyo ndio nilikua nataka kuuliza.

Com. Lethome: Sasa mnaona hapa tutazungumzia habari ya fundamentals rights. Halafu tumezungumzia kila mmoja anahaki ya maji ana haki ya chakula ina include watu wote. Lakini sasa kuna mahali ambapo tutazungumzia habari ya affirmative action ili kuhakikisha kuwa zile sehemu zilikuwa zimebaki nyuma zimekuja mbele nafikiri hizo details tutapitia baadaye. Lakini tunapozungumzia hapa habari ya fundamental rights ina maana kuwa watu wote ni sawa katika haya mambo. Kwa mfano tunaposema every one has the right to water, does that include the people of North Eastern? If the people of Central province have adequate water it means people without ni wale wako North Eastern province. Kwa hivyo hata hiyo article inakuangalia hata wewe mtu wa North Eastern Province. Tunapozungumzia juu ya food everyone has the right to be free from hunger and to have access to food. Sasa hapa yule ambaye yuko mahali kuna chakula hataangaliwa kwa sababu yeye hahitaji ni yule ambaye hana chakula ndio atakaye anngaliwa. Kwa hivyo hata hii sasa ina address wewe.

Ibrahim Mohamed: Mimi naitwa Ibrahim Mohamed niko katika contract hiyo ya maji. Ningependa kuuliza swali juu ya contract kwa niaba ya Serikali.

Interjection: Com. Lethome: Hiyo ni administration sasa.

Ibrahim Mohamed: No, haiwezi kuwa administration peke yake kwa maana contract ukipewa lazima Mwanasiasa awe kwa hiyo maneno.

Com. Lethome: Mwanasiasa.

Ibrahim Mohamed: Yes ndio mtu akipewa contract huyo Mwanasiasa anapata marupurupu kwa huyu mtu mwenye alipewa contract the same person baadaya ya contract ku-fail anaenda ku-raise point kwa Parliament ya kwamba hiyo contract haijulikani, mlifanya kwa njia mbaya na wananchi hawajui contract haijatumika na hiyo pesa mahali imetolewa. Kwa mfano vile huyu kijana ametuambia ni 48 kilometres from here to Tarbach na contract ni milioni tano kuletewa hiyo maji. Hiyo contract ilipeanwa, na pesa ikalipwa lakini wananchi hawajapata maji. Serikali kwani hawana uwezo ya kushitaki huyo mtu?

Com. Lethome: Wanauwezo lakini nimesema this is an administrative matters hii ni mambo ya administration, hapa kwa mfano watu ambao wanahitaji maji ni wa Tarbach si ndio? Hiyo ndio Katiba inazungumzia hapo vile maji itafika huko kwa Tarbach that is now administrative haitakuwa chini ya Katiba itakua chini ya sheria nyingine maji ifike namna gani huko. Kwa mfano security tumesema hapa ni haki ya kila Mkenya kupata security, vile hiyo security itafika kwa kila Mkenya haitakuweko kwa Katiba kila Mkenya apewe tanker ama apewe AK47 ama apatiwe jeshi yake mwenyewe that is another issue all together. Ile ambao Katiba inataka ni kuona kila mmoja ako na security kila mmoja ako na chakula, how they will get that food that is now administration. Ndugu yangu kama ni hiyo mambo ya Tarbach.

Speaker: (inaudible)

Ibrahim Mohamed: Yangu sio mambo ingine ni contract. Mtu akipewa contract na ameharibu bado kesho mwingine akitokea anapewa sasa.

Speaker: (inaudible)

Com. Lethome: Hiyo point tumechukua.

Speaker: Hiyo point imekua noted na tumeandika, okay asante sana mama mmoja sasa.

Halima Adow: Mimi naitwa Halima Adow I would like to talk about ways of upgrading and promoting civil servants. In this place normally females are the most uncorrupt people in the community.

Interjection: Com. Lethome: Un corrupt or corrupt?

Halima Adow: Uncorrupt, and here promotion and grading are normally given through corruption and other ways women are most of the time engaged in the family issues and they are also restricted by the religion not to move freely like men. So here unless you move to Nairobi or go to those big offices you cannot be promoted. And there is no proper system of upgrading the civil servants. There is no straight forward way that you can even mention today, you can just see somebody sitting next to you getting promoted to where I tried in a year.

Interjection: Com. Lethome: Why do you have to go to Nairobi?

Halima Adow: You have to bribe and do something.

Com. Lethome: Why Nairobi and not here?

Halima Adow: No, this is now the system, which is there. But is there anything that is in place in the new Constitution addressing that?

Com. Lethome: Yes, under chapter 10 part 2 you will not have to go to Nairobi we have something called devolution that is chapter 10 na tuko mbali sana hatuja fikia bado chapter 10. Ukiangalia hiyo chapter 10 for you to be promoted you don't have to go Nairobi because we are devolving power. From Nairobi we are bringing it close to you tunailete hapa karibu na wewe. About that corrupt man kwa sababu umesema women are not corrupt maana yake wamaume ni corrupt there is a body here that will deal with corrupt people. About not being promoted wakati ambao wewe una-disserve kuwa promoted hiyo ni discrimination, ama sivyo? Article 34 inazungumza habari ya discrimination na tumeisoma hivi sasa, si tumeona article ya discrimination? Kwa hivyo ukikosa, article 34 ukikosa kuwa promoted kwa sababu wewe ni mama una haki ya kuchukua hiyo sheria na kusema unani discriminate na ni kinyuma cha haki yangu ya kibinadhamu. Concerns zako zote have been addressed. Hata ile ya kwenda Nairobi we have realized Wakenya walipokua wanatuzungumzia problem kubwa ambawo tuko nayo Kenya ni kuwa mambo yote iko mahali moja kila kitu iko uko. Tukimaliza kuzungumzia hayo mapendekezo utaona kuwa huna haja hata ya kuenda Garissa mambo yote tunaweza kumalizia hapa hapa Wajir kwa sababu ya devolution of power. Mamlaka imetolewa huko juu imeletwa karibu na watu tutaona hiyo chini ya devolution of power.

Com. Lethome: Imebaki dakika kumi tafadhali.....(inaudible) haya mzee baada ya mama ni wewe.

Fatuma Yussuf: My name is Fatuma. Mine is just an opinion infact I have gone through this draft and it has really taken care of women interests and Im very thankful to this Commission for the way things were done I wish may be one day I will see we

will use this new Constitution it has really taken care of us we have been oppressed enough we have been crying for long time. Those of us who are working for the government because I myself Im a teacher and I was being maybe today the person whom I taught in class is maybe a head of me and he is not a head of me because he is better than me in academically but because he is a man. So Im really thanking what is written in this draft and it has really taken care of us that is good.

Com. Lethome: At least is good to hear something positive it relieves me.

Barre Mohamed: Mimi mzee wa hii mji naitwa Barre Mohamed. Tafadhali tumefurahia sana hii maneno leo mmekuja kutujulisha. Kwa hivyo wewe uko na vitabu viwili: ya ukoloni na kitabu ya sasa pia uko nayo. Nakuuliza neno moja ambayo itawekwa mbele ya yote. Kenya ikiwa mtu ako remand kabla bado hajahukumiwa polisi wanawake ndani ya cell kwa mda mrefu(**inaudible**) watu watakua na haki yao?

Ya pili, nataka kujua wanapataa pesa ya mshahara ngapi na chakula gani wanapewa namna gani. Kama mtu ni mgonjwa au kama mtu ni saum hiko chakula au daktari.

Com. Lethome: Sasa ngojeni tujibu swali ya huyu mzee, na hiko chini ya hiyo tulikua tukizungumzia fundamental rights haki ya kibinadamu ya kimsingi. Kwa sababu tumesema mtu akishikwa amefungiwa kwenye cell ni binadamu akiwekwa kwenye jela ni binadamu. Kwa hivyo haki zake za kimsingi haziwezi kuvunjwa kwa sababu ameshikwa ile haki yake moja tu imeondolewa kwa sababu ya sheria ni freedom of movement peke yake. Lakini haki zingine zote haki ya dini haki ya maisha, haki ya kumiliki hawezi kunyanganywa na mtu heshima ya binadamu hawezi kunyanganywa na mtu. Sasa ndio mzee anauliza hapa mtu kama huyo chakula yao ni sawa ama si sawa? Mahali pa kulala wanapata pesa ngapi?

Article 70, angalieni article 70 rights of person held in custody haki za watu ambao wamefungiwa. Tunaambiwa watu ambao wamefungiwa chini ya sheria kwa sababu huwezi kufungwa bila sheria ni makosa kufungwa bila sheria, wale wamehukumiwa au hawaja hukumiwa yule yuko rumande hajahukumiwa yule amepelekwa jela amehukumiwa prison okay. Wao bado wana haki zao zote za kimsingi kwa sababu ni binadamu haki ya kula ni haki ya kimsingi, haki ya kunywa ni haki ya kimsingi, haki ya kunywa ni haki ya kimsingi, haki ya kulala, haki ya mambo yote ya kidini hizo ni haki zake za kimsingi, except isipokua ile haki ambayo imemfanya aingie jela. Kwa mfano ameiba ama anashukiwa kuwa ameiba, haki yake ya kutembea sasa imezuiwa kwa sababu hawezi kuwa na hiyo haki. Tunaambiwa mtu ambaye amefungiwa ako na haki angalieni 2A to be treated in a way that respect their human dignity heshima ya binadamu. Na pia asiwe mwenye kubaguliwa, kubaguliwa maana yake ni discrimination ana baguliwa anaonewa asionewe.

B, not to be exploited or abused by some or fellow prisoners asiwe ni mwenye kutumiwa vibaya ama kuthulumiwa na wafanyi kazi au na wafungwa wenzake. Kwa mfano tunasikia malalamishi mengi wafungwa wanapigwa mpaka ana kufa si mumesikia jela ama kwenye cell? Ukiingia cell kwanza unafinnywa sitaki kusema namna gani mnajua ama sivyo? Ndio uzungumze maneno. Si ndio? Hayo yote ni kinyume cha sheria. Hata kama umefungiwa uko na haki hakuna mambo ya torture and the state shall take adequate step to ensure their protection, lazima walindwe. Mmesikia ile kesi ya Kingongo wale sita waliokufa Kingongo mpaka maiti zao zilirudi kututuliwa kwenda kuchunguzwa? Wapi? Thika pia walifungiwa mahali kidogo mpaka wakakufa hiyo ni

kukosa kuangalia haki zao za kibinadhamu.

Haya mahali pa kulala, inasema nini? Wako na right ya accomadation and facilities satisfying the standard of decent clothing, housing, food health and sanitation guranteed elsewhere in the Bill of Rights. Wako na haki ya mavazi ya heshima siku hizi prison nafikiri wame-introduce kuna suti ingine ya three piece ya suruwali ndefu.

Speaker: Hapa bado.

Com. Lethome: Haijafika? Itafika, wana haki ya mavazi mazuru mahali ya kulala mzuri chakula na pia matibabu dawa hiyo unasema and sanitation kama ni mahali ya choo ama mahali pengine ambayo amepewa mahali pengine pia kwa sababu yeye ni bindhamu bado lazima apewe hizo haki zote. Wanapewa pia haki ya health care na pia mabo ya kufanya exercise kama mchezo sio ufungiwe mahali mpaka ukitoka mkono imeshikamana wako na hiyo haki ya ku-exercise haki ya elimu kufundushwa wakiwa huko ndani. Kwa sababu katika hii Katiba mpya prison tumebadilisha jina Hassan tumeitaje prison? Correctional services. Hakuna jina prison chini ya hii Katiba mpya tumeziita correctional serviceses, maana yake mahali pa kubadilisha tabia. Kwa sababu inatakiwa mtu akifungwa jela akitoka amekuwa binadhamu mzuri kuliko vile alipokua. Kwa hivyo tumeondoa jina hiyo ya prison kwa sababu jina yenyewe ukisikia mtu yuko prison huyo ni mhalifu tu, hata akitoka jama ametoka prison juzi huyu sycologically unaona huyu mtu ni mhalifu tu, lakini mtu akisema ametoka kwenye correctional center ametoka kurekebishwa. Ina maana kuwa training ya prison askari ya prison lazima wafundishwe kubadilisha tabia ya watu, sio kama leo umekwenda prison ukitoka umekua hard core umefundishwa namna ya kuiba zaidi au umepigwa huko ukitoka huko wewe ni kiwete. Imekua inaitwa correctional services, kwa hivyo ufundishwe una haki ya kufanya kazi huko in return for reasonable remuneration. Na ukifanya kazi jela pia una haki ya kulipwa, pesa ambazo ni *maaqul ambao* ina kubalika. Kuna mtu anajua wanalipwa ngapi saa hizi jela kwa siku? Hakuna mtu anajua, 10-cent kwa mwezi ina maana kwa mwezi uko na shilingi tatu. Sheria mpya imesema hapo reasonable remuneration. Sasa hi inatakiwa Bunge itengeneze sheria ya kuangalia hiyo reasonable ni kiasi gani kama 10 cents ni reasonable hiyo ndio reasonable. Kwa sababu kwa mfano sasa ikiwa kwa mwezi unapata shilingi tatu na umefungwa miezi tisa unapata shilingi kumi na nane utafanya na nini siku ya kutoka naye hiyo shilingi kumi na nane?

Kisha haki ya dini kwa sababu tumepata malalamisho watu wengine wakifungwa hata mahali ya kuswali hakuna mavazi ile anavaaa hawezi kusali nayo amevungiwa haki ya dini ana haki ya dini. Sahizi una haki ya kuwasiliana wa Wakili wake akuwakilishe katika sheria mtu akifungwa pia ako na haki ya kuwasiliana na wakili yake na pia kama kwa mfano mtu ambaye amefunngwa ni Mwiislamu na anataka kuzungumza na Sheikh wake anataka mawaidha ya dini ana haki pia kuzungumzia na wale wanao mshauri katika mambo ya dini. Close family, ana haki ya kukutana na watu wake wa family, spouses ana haki ya kukutana na mke wake kama ni mume na kama ni mke kukutana na mumewe details itakuja kwenye sheria nyingine. And are entitled to visit of reasonable frequency and duration na pia nafasi ya kuja kutembelewa off course hawezi kusema kila siku bibi yake akuja haiwezekana yuko jela huyu mtu ataonekana yuko nyumbani yuko kwenye holiday huko. Watu watakua waibe waende huko wanakula chakula cha bure wanakaa tu hakuna kulipa bill ya maji na ya stima na bibi anamtembelea kila siku watoto, lakini watakua wataweka sheria atakua anatembelewa siku gani lakini hizo haki zote ziko. Haki yake za privacy kama

ni barua ametumiwa na mkewe isingiliwe kwa kuchunguza ndani yake kwa sababu yeye ni haki yake hiyo. Including the separation of men and women, wanaume na wanawake wasiwekwe mahali moja hiyo itakua imevunja haki ya privacy. Watoto wasiwekwe na watu wazima na pia kuwe na discipline ndani ya jela. Kama tunasikia habari za watu wametoka jela unakuta ile mambo amefanyiwa huko sitaki kutaja. Amefanyiwa mambo ya ajabu huko ndani ya jela si mumesikia hiyo maneno? Ndio, lazima kuwe na discipline katika jela. Haya wanawake wawekwe kando na wanaume nafikiri tumerudia hiyo tumezungumza hiyo.

Kwa hivyo hapo hizo haki ambao wamefungiwa haki ziko na mwisho kabisa tumeambiwa kuwa the State shall ensure that the prison system to far as it relates to convicted prisoners observe the minimum standard layed down under relevant International law and International standard. Lazima kiwango ya jela zetu kiwe kiwango ambayo inakubalika kimataifa na nchi zingine, hapa kwetu nafikiri mfungwa mahali ana lala, ana lala chini tu kwenye simiti ama anapewa blanketi moja nusu analalia na nusu anajifunika. Mavazi ile anavaa haikubaliki, chakula kila anakula unaambiwa unaenda kula maharagwe mbichi binadhamu anaweza kula maharagwe mbichi ama kama haijaiva vizuri? Chai haikubaliwi, lakini unajua hauwezi kubaliwa kila kitu kuna wengine watasema *khat* (miraa) wakubaliwe huko. Hiyo sasa imekataliwa chini hii mapendekezo ya sheria kwa sababu binadhamu ni binadhamu hata kama amefungiwa. Wacheni tuendele kidogo ndio tumalize hiyo chapter ya fundamental rights.

Tulizungumzia habari ya maji na chakula sasa tunaingia katika mazingara. Kila binadhamu ana haki ya kuwa na mazingara ambayo haitaharibu maisha yake. Kwa mfano: mtu akuje hapa atengeneze factory hapa ambayo inatoa vumbi, kwa mfano factory ha simiti iwekwe hapa baada ya wiki moja kila mtu hapa atakua na asthma kwa sababu ya ile vumbi ambayo itakuingia hapa hapa inaharibu mazingira. Au chemicals nilisikia kuna mahali kulimwagwa sijui kitu gani hapa kuna chemicals ilimwagwa mahali fulani hapa, hiyo ni kinyume na haki za binadhamu. Kwa sababu imeharibu mazingara. Nasikia imeingia ndani ya maji hiyo maji hata mbuzi ikinywa itakufa hata binadhamu kwa hiyo mazingara lazima zihifathiwe ni haki ya binadhamu.

Consumer right, kina mama sikizeni hii muhimu kwenu unaweza kuta unajua kinamama wanapenda kujipakapaka vitu ni haki yao haki ya binadhamu, lakini pia wasiuziwe bithaa ambao itawathuru. Au kuna watu wengine ambao advertisement inafanyiwa ambao inadanganya watu ina mislead watu hiyo ni kuvunja haki ya consumers wale ambao wanatumia bithaa. Kwa mmfano, wakati wana-advertise mambo ya sigara uvutaji wa sigara wanakuonyesha mtu ambaye nakimbia sana kweli mmvutaji sigara anakimbia sana? Kama farasi anakimbia kweli? Ama mlevi ndio ana nguvu sana, mlevi kawaida ananguvu?

Kwa hivyo watu wawe protected consumers wale ambao wanatumia bithaa wasidanganywe na ni haki ya serikali kuhakikisha kuwa tunapata information ya sawa sawa kuhusu bidha, kama bidha ni mbaya ni mbaya na kama ni nzuri ni nzuri na kama bidha hii ina mathara isaandikwe. Kwa mfano kama pakiti ya sigara ukiangalia imeandikwa embassy king filtered na kwenye advertisement unaonyeshwa ukikunywa hii utakua kijana mzuri na wasichana wote watakufuata ama sivyo inaonyesha? Halafu hapa inaadikwa kidogo sigara ni mbaya hiyo ni kundanganya consumers. Mzee kumbe unajua umeona wapi hiyo? Haya.

Article 65 mambo ya fair administration, wale ambao wamepewa jukumu ya kusimamia watu wengine kama vile viongozi, DO,

chief na wengine ni haki ya kila mwanadhamu kuwa anahudumiwa kwa njia ambayo haimuthulumu ambayo ni sawa ya uathilifu. Na ni jukumu ya Bunge kuvuni sheria ambayo itahakikisha kuwa kuna administration ambayo haithulumu watu, kama hiyo mambo sasa unazungumzia habari ya Tarbach sijui huyu amepewa contract ya pesa nyingi halafu mara nyinge anapewa yeye. Ndio tunasema tunataka fair administration hiyo ni haki ya kila mwanadhamu.

Kuna article 66 amri ambayo ni kinyuma ya sheria, sio lazima kui-take kwa mfano boss wako anakuamrisha ufanye kitu ambacho ni kinyume cha sheria ambayo ni uvunjaji wa sheria. Kwa mfano boss wako akuambie nenda ukaue mtu fulani hiyo amri una haki ya kuifuata? Hakuna haki yoyote ya kufuata amri yoyote ambayo ni kinyume cha sheria ni haki yako kama binadhamu kukataa kutii amri ambaye ni kinyume cha sheria. Nafikiri wale waliokua katika Jeshi zamani unaambiwa shoot halafu unaulizwa maswali baadaye si ndiyo? Mzee wakati wenu si mnaambiwa piga risasi hata kama ni mama yako piga risasi?

Speaker:(Inaudible)

Com. Lethome: Hakuna kuuliza kwa nini ni pige? Haya, hakuna kitu kama hiyo ni kinyume cha sheria.

Mambo ya kortini nani alikua ameuliza habari ya kortini? Hiyo nafikiri haiko sasa lakini kama hiko tunapendekeza iondolewe. Access to court mzee ni wewe ndio umezungumza habari ya kortini? Haya. Mambo ya kortini mnajua kuwa kuna tatizo hapa Kenya, tatizo enyewe ni kufikia mahakama wakati mwingine inakua iko mbali sana au hata kuifikia inachukua gharama mingi sana kufika kortini au inachukua mda mrefu sana to reach kortini au kwa watu ambao ni disabled unakuta pengine hawawezi kufikia ile korti au lugha inaotumiwa ndio inafanya watu waogope. Ndio watu wengi.

Interjection: speaker: Serikali inakupa transfer Garissa mtu anaambiwa yeye ako na case hapa hakuna magistarate polisi wanakuandikia unatajikana kortini Garissa na wewe hauna bus fare na ukichelewa utashtakiwa kwa kukosa kufikia kortini.

Com. Lethome: Kwa hivyo ni haki ya kimsingi kuweza kufikia mahakama iwe karibu na wewe, lugha inayo tumiwa kwenye mahakama iwe ni lugha ambayo inafahamika na watu wote. Nimeshawahi kuona watu nje ukimkuta anazungumza vizuri sana lakini akifika kortini anatetemeka kwa nini?

Audience: Anaogopa.

Com. Lethome: Kwa sababu ile environment ya kortini inatisha mtu kabisa ama? Na Jaji anavaa kitu hapa hivi una wekwa kwenye sanduku na unatetemeka. Kwa hivyo tunasema korti ziwe zinafikiwa na watu wote.

Haki ya mmtu ambaye ameshikwa article 68 ambayo imekaribiana na ile mtu amefungiwa, tunaambiwa ikiwa mtu ameshikwa kwa mfano kuna polisi amekuja amekushika una haki ya kunyamaza useme mimi sitaki kusema kitu nitasemea kortini hiyo ni haki yako, lakini leo hii ukisema sisema nitasemea kortini? Utavunjwa sio? Kulazimishwa ama sivyo? Unatishwa mpaka useme, una haki ya kunyamaza ama kuzungumza au pia huwezi kulazimishwa kusema. Kwa mfano mimi nafikiri najua ile mambo

inatokea kortini, Mohamed Ibrahim umeshtakiwa siku fulani umeiba ngamia ya mtu fulani ukisema hapa afande kuna tokea nini? Unaambiwa rudi rumande kesi yako itatajwa tarehe fulani baada ya mwezi, sasa Mohamed anaogopa kukaa huko rumande anasema nini?

Audience: Nimekubali.

Com. Lethome: Hata saa zingine wakili huambia mtu, wewe kubali kuliko fine ama ufungwe mara moja ama sivyo? Sasa tumesema hapo hakuna mtu kulazimishwa kutoa information yoyote ama kwa polisi. Kwanza inatokea kwenye cell sana, unafungiwa kwenye cell huko polisi anakuja na rungu ulivuta bangi ama haukuvuta bangi? Ulikua na bangi ama hauna? Utafanya nini? Utaasema uko nayo kwa sababu umelazimishwa pengine umepigwa ni kinyume cha haki ya binadhamu. Kwa hivyo tunaambiwa hakuna mtu ambaye atayelazimishwa kukubali makosa yoyote ambaye hajafanya isipokua mbele ya Magistrate. Labda umeletwe mbele ya Magistrate ama mbele ya kortini ndio unaweza kwenda kusema hivyo lakini huku kwa polis cells wewe una haki ya kusema sizungumzi nitazungumzia kortini. Sio kama leo kama hauzungumzi unavunjwawunjwa na unaambiwa ukienda kusema kwa kortini utaona si utarudi hapa tu utaniona? Sasa hiyo ni thuluma kubwa ambayo watu wengi wamefungwa na hawana makosa kwa sababu ya kuogopa.

Mohamud Ibrahim: Mimi ni Mohamud Ibrahim nauliza kama polisi watashika mtu na hawata andika statement kule kwa court itakua na kazi ya prosecutor?

Com. Lethome: Sasa kuna ile statement wanaandika namna walivyokushika, walikushikia mahali gani? Wewe kama mtu umeshikwa sio wewe ambao unaandika statement mara nyingi complainers ndio wanaandika yule mwenye kulalamika, wewe ambaye umeshikwa kana suspect una haki ya kunyamaza kama hautaki kusema chochote na ukitataka kusema tunaambiwa hapa ukianngalia under B una haki ya kusema lakini matokeo yake consequence zake lazima unaambiwa. Unaambiwa consequence ya kunyamaza na consequence ya kusema kama, ile maneno imechukuliwa kama ni ushahidi ama si ushahidi. Halafu pia kama umeshikwa usiwekwe pamoja na wale watu ambao tayari wamehukumiwa ni makosa kulingana na mapendekezo ambao tumeweka katika sheria hii. Tatizo lingine mtu unasikia ameshikwa bado siku kumi na nne yuko kwenye rumande bado hajapelekwa kortini hata hajui makosa ile ameshtakiwa nayo. Hapa tumeambiwa kuwa ukiangalia under E lazima apelekwe kortini haraka iwezekanavyo kabla ya kufika masaa arubaini na nane. Na kama kwa mfano ni weekend siku mbili itakua pengine zitakua zimepita haraka iwezekanavyo ile siku ya kazi ikifika lazima upelekwe kortini. Hayo mengine mtaangalia nyinyi wenyewe lakini hapa nimejaribu kuhifathi haki ya mtu ambaye ameshikwa.

Article 69 inazungumzia habari ya kortini. Vile ambavyo kesi inaendelea kortini, mzee anainua mkono juu huko anasemaje?

Speaker: Bwana Commissioner kusema ile mambo ya polisi hata ile sheria ya zamani inasema polisi wasipige wasifanye hivi na hata imetokea ya kuwa kama wewe kidogo unachuki na polisi pengine watoto wake ama mtoto wako wamepigana au bibi

yake na nini mambo fulani imetokea. Kwa vile polisi wakona sheria mikononi yao wanakupangia maneno na unashikwa unapelekwa kortini na wewe hauna makosa Hakimumu naye anafuata maneno ya polisi hawezi kufuata maneno yako. Kwa hivyo hiyo shida hiko na sijui ni kwa njia gani tunaweza kutatua Bwana Commissioner.

Com. Lethome: Huyu mtu alikua hapa, tumesema hapa chini ya sheria hii polisi aki kuthulumu unaenda kushtaki wapi? Yaani akikuthulumu unaenda kushtaki wapi? Sasa ndio tumesema chini ya hii sheria kuna ofisi ambayo imevuniwa inaitwa public protector nchi zingine wanaita Ombudsman, Hii ni ofisi ambayo si ya serikali ni independence lakini inauwezo chini ya Katiba kumchukulia hatua mtu yoyote ambaye ametumia ofisi yake vibaya. Na utakuta pia hata Majaji vile wanachaguliwa na kazi zao wata kua more independent, Prosecutor kortini utaona kua ni tofauti na vile iko sasa, kwa hivyo utaona kuna tofauti kubwa sana. Inaeleweka sasa haya asante.

Kortini sasa mtu akipelekwa kortini, tunaambiwa kuwa ni haki ya kibinadamu akipelkwa kortini afanyiwe haki. Kwanza tunaambiwa mtu akishikwa hana hatia mpaka korti impate na hatia innocent until proved guilty, lakini hapa kwetu your guilty until proved innocent si ndivyo ilivyo hapa? Kwa sababu wakati polisi amekushika anaanza kukupiga makofi maana yake nini? Wewe ni mwizi ama sivyo? Unaenda kortini pengine mahakama inakupata hauna hatia yoyote you are free na tayari ushakula ngumi pengine meno ushavunjwa na polisi.

Speaker:(inaudible)

Com. Lethome: Kwa hivyo hiyo yote ni thuluma, kwa hivyo tunaambiwa mtu yoyote akishikwa yeye ni innocent hana hatia mpaka korti impate na hatia. Mama sikizeni mpaka apatikane na hatia na lazima mmtu ajulishwe makosa yake mara nyingi mtu anapelekwa huko unapelekwa kama mbuzi haujui makosa yako ni nini ni haki yako, watu wengine wakiuliza wanaambiwa utajulia huko mbele wanatakiwa wakujuklishe makosa yako nini na pia uelezwa hata kama ni hiyo kortini uelezwe kwa urefu. Siku hizi, mimi ni wakili naenda kortini kila mara na Halima anafanya kazi huko kortini Jaji court anazungumza kwa Kizungu kuna mtu ambaye hapa anaitwa translator ana farisi lugha, mimi niko pale hivi kwanza anatetemeka yule amewekwa kwenye sanduku huyu anazungumza na sauti taratibu huyu anazungumza na sauti haraka haraka, yule anaulizwa umekubali ama haujakubali pengine anaweza kukubali na hata hajasikia vizuri hiyo yote ni thuluma. Kwa hivyo uelezwe vizuri mpaka ufahamu. Kortini siku hizi ukisema sijafahamu mara mbili itakua sasa wewe umetharau korti ama sivyo? Hawawezi kukupatia wewe nafasi. Na upatiwe nafasi ya kutosha ya kujitetea lazima upewe nafasi ya kujitetea na pia korti yako ifanywe wazi kesi yako isikizwe wazi wazi na isicheleweshwe kuna watu wengine unasikia wanakaa kwa rumande mwaka moja mzima. Kuna kesi najua Mandera kuna kijana amekaa miaka tisa mpaka sasa hajahukumiwa, yuko jela lakini hajahukumiwa watu wengi wanakaa hivyo. Kwa hivyo tunaambiwa ni haki ya kibinadamu kesi imalizwe haraka. Watu wengine ukimwambia mzee unadai haki yako kuenda kortini. Mzee anafikiria anasema wacha tu ipotelee hiyo haki kwa sababu ninaenda kusumbuliwa tu kortini si ndiyo mzee? Kwa hivyo ni haki ya binadamu kesi iweze kusikizwa haraka. Haya twendeni, yes please Fatuma.

Fatuma Yussuf: My name is Fatuma. About the prisons especially females: we Muslims females we usually see the way the prison women wear their clothes is abit anti-Islamic usually in this current or whatever Constitution they wear a short dress which is anti- Islamic and the hair uncovered. So and then most of(**Inaudible**) or whatever you call they stay in one small room maybe they have different type of diseases you can sleep with somebody with scabies or whatsoever disease and may be you get different diseases religion also is not protected. So we want something to be done about it especially our religion so that the prisoners women who are Muslims should dress the way Im dressed now and at least they can look like Muslim.

Speaker:..... (Inaudible)

Speaker: Okay mtu akishikwa if somebody is arrested huwa anaandikisha statement sasa area hii mtu akishikwa statement yake inaandikwa na polisi na ile imeandikwa yule mtu ambaye statement yake imesemekana imeandikwa hana habari. Sasa kuna provision kwa hii constitution draft kama niki-arestiwa na sina lawyer si nikiita jamaa yangu moja ambaye ako literate. Is that possible? Iko kitu kama hiyo? Kwa sababu polisi huwa wanaandika something that they(**Inaudible**) which is not something that is from you.

Com. Lethome: Sasa unajua details will come under, maybe another position of the law. Lakini hapa Katiba imekupatia haki, mtu ambaye ameshikwa ni haki yako kujua in details the charges against you meaning: whatever will be written lazima ujue na kama kwa mfano haujui ni haki yako uletewe mtu ambaye atakujulisha, either a lawyer na kuna mahali ambapo tumesema kuwa serikali lazima i-provide free legal service for those people who cannot afford to hire the services of a lawyer.

Speaker: So that is person cannot be taken to court unless you are...

Com. Lethome: You are satisfied until you are told in details. Halafu tuendelea.

Abdi Hussein: Mimi kwa jina naitwa Abdi Hussein Councillor wa(**inaudible**) kama sisi ni Waislamu sheria ile tuko nayo sasa wewe ukiingia kortini mpaka wewe unainama, dini yetu haikubali kuinamia mtu ila Mungu. Hii mapendekezo inaongea juu ya hiyo ama ni namna gani?

Com. Lethome: Sasa katika hii Katiba ya zamani hakuna mahali imesema ukiingia katika kortini uiname.

Abdi Hussein: Na mbona watu wanainama?

Com. Lethome: Hebu wailize kwa nini wanainama? Mimi si inami. Hebu ngoja Halima anafanya kazi kortini, is there a law like that requiring people to bend? Halima anafanya High Court hebu ngoja.

Halima Amran Adan: Hakuna sheria inasema unatakikana kuinama ukiingia kwenye korti.

Com. Lethome: Kwa hivyo nimazoea tu kuzoea. Sasa nakuambia hakuna sheria kama hiyo sasa watu ngojeeni niwaambie kuna kitu kimoja hapa Kenya sikizeni, sikizeni. Kuna kitu kimoja watu hawajui haki zao, hiyo ndio shida ambayo tuko nao hapa. Kwa sababu kwa mfano saa hizi polisi akija agonge kwa mlano akuambie mzee nataka kufanya search ndani ya nyumba yako utafanya nini saa hizi? Kawaida mnafanya nini?

Audience:(inaudible).

Com. Lethome: Mnamfungulia mlango si ndiyo? Ingia, ni wangapi wanauliza search warrant? Unasema kwa sababu ni polisi ni polisi. Anakuambia kwanza fungua ama niingie nayo si ndivyo atakuambia hivyo? Ama atavunja mlango, halafu wengine wanasema si ni polisi wacheni aingie tu.

Speaker:(inaudible)

Com. Lethome: Ndio, kwa sababu anajua haujui haki yako. Kwa mfano mtu anakuja anakuambia Wariya nimekushika unatakiwa umuulize uko na arrest warrant? Unless amekukuta uko karibu pengine kuiba uko karibu kuua ndio ana haki ya kukushika bila warrant. Lakini kawaida unatakikana umuulize kama ako na warrant of arrest? Watu wangapi wanauliza polisi hivyo? Unaanza kutetemeka. Kwa hivyo ni haki watu hawajui.

Hiyo mambo ya kuingia kortini na kuinama ni adha, watu wamezoea kufanya hivyo. Hata kwenye vikao vingine kama hivi tunaenda kama Commissioners kuna mtu ambao akiingia anatoa kofia kwanza halafu wakati wa kutoka ana inama huko ndio ana toka nani amemwambia? Kwa sababu watu wamezoea kiti kama hiyo kwa sababu kuna mkubwa pale mbele lazima ni iname. Hakuna sheria kama hiyo. Wewe ingia kortini kesho bora usivunje sheria ya korti huko usifanye ukosefu wa adabu utafungwa kwa sababu ya conscience, lakini ingia bila kuinama uone utachukuliwa hatua gani? Hakuna hatua yoyote utachukuliwa.

Speaker:(Inaudible)

Com. Lethome: Jamani let us not delay because of those things, haiko hakuna kwenye sheria ya zamani ama sheria mpya jamani.

Speaker: Okay, nafikiri kwa ajili ya time tunaendelea.

Com. Lethome: Ngoja, ngoja hata kama iko sikiza ni makosa kama ameshikwa ni makosa. Halafu pia hapo umeambiwa haki yako ya dini usivunjiwe. Kama haki imesema usisujudie binadhamu hakuna sheria ambayo imekulazimisha kusujudia binadhamu, unaweza kwenda na ukija kwangu kama wakili nitaenda kukutetea nitasema kuwa hiyo ni kinyuma na dini yako. Kwa hivyo

sasa wacha tuingie katika mambo ingine, ngoja kuna kitu moja hapa. Kuna kitu ambao kinaitwa enforcement, mnajua vile vitu vote tumezungumzia sasa ni haki si ndio? Lakini kuna mechanism gani za ku-enforce hizi haki? Kwa sababu unaweza kuwa na haki lakini hizo haki hauwezi kuzisikia kuna njia gani. Now Im looking at authority of the court to uphold and enforce the Bill of Rights article 74. Sasa hapa tumeweka namna mbili ya kuweza kufikia hiyo haki yako, ya kwanza ni ya kupitia kortini unaweza kupitia court unathimisha haki yako ya kibinadhamu na unaweza kupitia kwa Commission ambayo tunaita Human Right Commission unaweza kupitia hiyo na pia unaweza kupitia kwa hiyo ofisi ambaye tumesema public defender. Kwa hivyo kumewekwa mechanism ambazo unaweza kuzitumia ili kuweza kufikia haki zako. Nataka kuingia katika chapter nyingine sasa.

Chapter 6 representation of the people, mambo ya election sasa tuingie mambo ya election ambayo ni muhimu sana pia tusikie kuna mabadiliko gani tumeweka katika elections. Uliza moja tu Wariya, haya. Uko na maswali mingi ya elections basi ngoja, ngoja. Haya mpatie mama kule mbele ngoja mambo ya election msiulize kwanza mpaka msikie, ngoja tu warya.

Hawa: Kwa jina naitwa Hawa, mimi nauliza ikiwa umesema sheria imeandika ama sheria inasema mtu ama watu wako na haki ya kupata maji safi ama haki ya kulindwa na serikali. Ikiwa sasa niko na haki ya kupata maji safi na sipati hiyo wakupitia maji safi na sina uwezo wa kupitia wakili nipate hiyo maji safi ama Human Rights Commission ya kupata hiyo maji, iko faida gani ya hiyo mtu katika hiyo sheria?

Com. Lethome: Kama hauwezi kufikia haina faida yoyote na ndio tumesema tumeweka provision ya kuhakikisha kuwa umefikia hiyo haki yako. Kwa mfano tulipokua tunazungumzia habari ya usalama security, haki ya maji na haki zinginen tulisema wajib ya ku-provide hizo vitu ni wajibu ya nani? Ni juu ya Serikali, haya Serikali ni nani? Ni wale Viongozi ambao mumewachagua mumewaweka, okay ni sisi kupitia kwa wale ambao watatuwakilisha. Kwa mfano sasa hapa Wajir tukizungumza habari ya Serikali, Serikali inawakilishwa nani hapa DC, DO, Chief kuna Serikali ya wilaya ambayo inawakilishwa na wewe Councillor na Mayor ama.....*(interjection inaudible)* ngoja lakini ni Serikali pia, sheria ambayo hiko sasa kuna hatua gani unaweza kumchukulia DC kwa sababu ya kukosa maji? Hiko?

Audience: Hapana.

Com. Lethome: Ndio maana tumesema hapa unaweza kumchukulia hatua chini ya sheria mpya na mungengoja mpaka tufike mwisho wa hiyo swali mungeona vile tungejibu, kwa sababu tumebadilisha hata hiyo administration, tumeibadilisha. ikipita kwenye Conference kuta kuwa hata hakuna mambo ya DO, DC ama Chief ama PC, itakua administration ambao mumuchagua nyinyi wenyewe. Kwa mfano katika district yule ambaye atakua anasimamia district ambao tumemwita district administrator atakua ni mtu ambaye ametoka pale pale na amechaguliwa na watu wa pale pale na wanahaki ya kumwondoa asipofanya kazi.

Location ambaye inasimamia na Chief saa itasimamiwa na locational administrator, mtu ambaye mmemchagua pale pale mkitaka mnamwondoa. Kwa hivyo utakuta kuwa tumeweka nithamu ambayo ina hakikisha mtu akiwekwa kwenye ofisi amewekwa na watu na asipowatumikia wale watu kuna haki ya kumwondoa. Tunapozungumza habari ya devolution of power tunatoa hiyo

power kule juu kwa sababu Assistant Chief amechaguliwa na nani? Ukienda nje ya ofisi ya Assistant Chief mbele imeandikwa Office of the President, Chief of Office of the President ndio amemweka ndio ana haki ya kumwondoa you don't any say. Sasa ndio tunasema powers hiko Nairobi kwa sababu President yuko huko ndio tunasema devolution of power imelete power karibu so that yule mtu umelete hapa Wajir you can go and complain at Wajir haunahaja ya kuenda ku-complain huko juu. Leo hii ukitaka kumtoa Assistant Chief you have to inform the Office of the President ndio Assistant Chief aweze kuondolewa, kwa sababu amewekwa pale na ofisi ya Raisi. Kwa hivyo mngoje mpaka tufike devolution of power. Usiogope.

Audience: Endelea:

Com. Lethome: Tunainngia mambo ya elections ni muhimu sana article 76 kila mmoja ana haki ya kupiga kura: kwa hivyo kila mwananchi ana haki ya kupiga kura, mimi najua Wasomali watasema wengi hatupigi kura kwa sababu hatuna ID kwa sababu bila ID hatupati voting card. Ni jukumu ya Serikali kuhakikisha kila mmoja ambaye amefikisha umri ya kupiga kura ako na kadi ya kupiga kura. Kama ni kitambulisho inatakiwa ndio apate kadi Serikali ihakikishe that is administrative, lakini tumesema ni haki. Kwa hivyo unaweza kusimama kusema Katiba imenipa haki ya kupiga kura nataka mnipatie kitambulisho ndio ni weze kupiga kura. Itakuwa kwa secret ballot, sio mambo ya acclamation na na iwe ni yenye uadilifu hakuna thuluma ndani yake.

Article 77, tuaambiwa Bunge ndio itaweka sheria ambazo zinahusiana na mambo ya election kuhakikisha kuwa election imefanyika katika njia ilio sawa. Kuna kitu hapo chini ya article 77 sub-article 1D mambo ya registration ya wapigaji kura, kwa mfano saa hizi kuna mtu hana kadi ya kupiga kura? Nani hana? Yule kijana hana. Ungependa kupiga kura? Unaweza kujiandikisha sasa?

Speaker: Hapana.

Com. Lethome: Kwa nini?

Speaker: Mpaka ni pate kitambulisho.

Com. Lethome: Lakini hata kama ungekua na kitambulisho unaweza kujiandikisha sasa? Utaambiwa imefungwa kwa sababu voter registration is not continuous. Kwa hivyo unakuta Wakenya wengi wanakua disenfranchised wamenyimwa haki yao ya kupiga kura. Ndio tunasema chini Katiba mpya mambo ya kuandikisha watu kupiga kura iwe continuous hakuna kusema tarahae fulani itafungwa ama itafunguliwa tarehe fulani it has to be continuous ili watu wote wapate haki.

Anngalia haki ya kupiga kura pia article 78, kila mmoja ambaye amefikisha miaka kumi na nane na zaidi ako na haki ya kupiga kura. Sub-article 2 imesema kuwekwe mipango na Serikali ya kuhakikisha kuwa mtu amefanya hiyo kazi yake ya kupiga kura na mtu akiwa amefikisha miaka kumi na nane na amekua anaishi katika nchi ya Kenya kwa zaidi ya mwaka moja kabla ya ile siku ya uchaguzi ana haki ya kupiga kura na hizo sehemu zingine zimeelezwa hapo.

Kuna watu ambao wamekua disqualified hawezi kupiga kura au hawezi kuwa registered article 88 imeeleza: mwananchi hawezi kuwa na haki ya kuwa registered kama mpiga kura ikiwa, 80 ikiwa mtu huyu chini ya sheria ya Kenya ametangazwa kuwa mtu ambaye hana akili timamu kwa sababu unapo piga kura uchagua na mtu bila akili timamu unaweza kuchagua? Huwezi, kwa hivyo ikiwa sheria imepitisha wewe ni mtu ambaye huna akili timamu huwe kupiga kura. Au umekuwa umepigwa marafuku kwa sheria ya Bunge kwa sababu umefanya hatia ya uchaguzi pengine mambo ya rigging ama mambo mengine halafu kwa sababu ya sheria ambayo imepitishwa na Bunge imesemekana wewe huna haki ya kupiga kura, basi wewe huna haki ya kupiga kura. Kwa hivyo hii sehemu inazungumzia juu ya watu wale ambao hawana haki ya kupiga kura.

Mambo ya kupiga kura proper now hebu tuangalie. Voting itakua namna gani? Utakuta nyanya mzee sana akitaka kuenda kupiga kura anaweza kupiga kura peke yake? Inakua ni ngumu sana lazima aka saidiwe wakati mwingine kama mtuni kipofu lazima asaidiwe inakua ni ngumu, hata wakati mwingine mtu wa kawaida kupiga kura inakua ni vingumu sana. Kwa hivyo tunataka iwe ni procedure ambayo ni simple ambayo inafahamika na kila mtu ambayo haina matatizo yoyote. Halafu pia sanduku ya kura rangi yake ni gani siku hizi? Nyeusi si ndio? Unaona ile kitu iko ndani? Hata ukiinamishiwa hivi ndani ya ile debe haijui huko nadani iko na kitu gani ama sivyo? Nchi nyinngi wanatumia vitu kama hii transparent. Kwa hivyo tumependekeza ballot box iwe transparent.

Kitu kiingine kwa mfano election ya 1997 polling station ilikua wapi hapa Wajir? Primary hapa hivi. Lakini kura ilienda kuhesabiwa wapi? Cereal board okay, between hapa primary na cereal board mnajua ile kitu imetendeka hapo katikati? Na watu ya Griftu walipigia kura wapi, polling station yao? Na kura ilihesabiwa wapi? Kutoka hapo Griftu mpaka hapo cereal board ile mambo imetokea katikati(**inaudible**) Khorof Xarar. Sasa wananchi wamesema kura ihesabiwe katika polling station, ikipigiwa kura hapa hakuna kupelekwa pale inahesabiwa hapo hapo. Kwa sababu wananchi wengi wamelalamika kura huwa inapotelea au inazaa au ina kufa pale njia ni wakati inapelekwa huko ilikua kumi ikifika huko imekua ishirini au tano. Kwa hivyo wamesema kuwa ihesabiwe pale pale.

Tuangukie article 83 kuhusu Electoral Commission, mnajua hivi sasa kuna Electoral Commission lakini sasa tungependa Electoral Commission ambayo ni tofauti na Electoral Commission ambayo iko hivi sasa. Kwanza hii Electoral Commission imepewa uwezo zaidi, ukiangalia under article 84 hebu tuangalie functions za Electoral Commission ile Tume ambayo inasimamia uchaguzi.

Kwanza tunaambiwa kazi yake ya kwanza ni voter registration iwe inaendelea kusajili watu.

Mambo ya mipaka ya constituencies, Commission hii ndio inasimamia kuweka mipaka ya constituencies.

Kusimamia uchaguzi ni kazi yake, na kuhakikisha kuwa kuna free and fair election ama kuna referendum, kura ya maoni.

Kusimamia vyama vya kisiasa, hivi sasa Electoral Commission iko na jukumu lolote juu ya Political Party? Haina, kwa hivyo imepewa jukumu juu ya Political Party iweze ku-console Political Party.

Tulisema kuwa kutakuwa na Political Parties funds, fund ya kusimamia au pesa za kusimamia vyama vya kisiasa, Electoral

Commission ndio itasimamia, kwa sababu ndio itajua chama fualani imetumia kiasi fulani kwenye uchaguzi watalipwa kiasi gani? Na tatizo ikitokea kwenye uchaguzi ndio itasimamia kuamliza hayo matatizo.

Mambo ya voter education kama vile wanavyofanya sasa wanaeleza watu namna ya kupiga kura, kura ni haki yako, usiuze kura. Basi ni juu ya hiyo Electoral Commission kuenda kufundisha watu kuhusu mambo ya kupiga kura. Mambo ya observation na mambo ya monitoring na mambo mengine yana husiana na kura ni kazi yake.

Political Parties. Ukirudi katika fundamental rights article 87 mwanzo tulizungumza habari ya freedom of associations na political freedom ina maana, una haki ya kujiunga na chama chochote unachotaka au kuunda chama chochote ambacho unataka. Sasa hiyo article 87 ndio imekupa hapa haki ya kutengeneza chama. Lakini umeambiwa usitumie pesa za Serikali katika ku-support Political Party. Hivi sasa inatokea ama haitokei? Inatokea lakini tusieleze sana ni party gani inafanya hivyo tunajua sote. Kwa hivyo unaambiwa hapa hakuna mtu ambaye ana haki ya kutumia State resources ku-support Political Party yoyote. Na ndio kwa sababu huku mwisho utaona tunapozungumzia juu ya President tumeeleza kuwa: mtu akichaguliwa kuwa President na alikua na cheo katika chama anawacha hicho cheo chake kutoka katika chama. Mtu yeyote ambaye ana cheo zaidi ya Deputy Secretary hana haki ya kuwa na cheo katika chama. Kwa mfano leo utakuta Chairmana wa Chama ni Kiongozi wa Kitaifa, Secretary General ni Kiongozi wa Kitaifa, Organising Secretary ni Kiongozi wa Kitaifa. Anapofanya kazi ya chama kuwezi kujua anafanya hiyo kazi in his capacity ama her capacity kama Minister au kama Secretary General wa Chama. Ndio tukasema hapa lazima kuwe na separation baina ya chama na Serikali. Mumefahamu hiyo?

Tuanguzie kazi ya Political Party. Kwa sasa kazi ya Political Parties ni gani? Hebu ngoja nione kama mnajua? Warya wewe ni wa party gani.

Speaker: Mimi ni wa KANU.

Com. Lethome: Haya kazi ya KANU as Political Party kazi yake ni nini.

Speaker: Ni kuongoza nchi na kufanya Maendeleo.

Com. Lethome: Kuongoza nchi kwa sababu it's the ruling Party kama ni DP kazi yake ni nini?

Speaker: Kazi yake ni kuangalia ile KANU inaharibu.

Com. Lethome: Ama ni ku-oppose.

Speaker: Ku-oppose is almost ni kuangalia tu.

Com. Lethome: Kama ni Opposition ni ku-oppose na kuvuruga akili za watu wana-insight watu ama sivyo? They insight people. Kwa sababu kwanza hakuna code of conduct kwa Political Party, chini ya hii Katiba mpya tumesema lazima kuwe na code of conduct. Political Party zote wapate. Kama kuna political party ambayo inachochoea watu, watukanane ama vita basi itachukuliwa hatua. Sasa angalia article 88 tumeelezwa functions of Political Parties. Hata mimi niko na party yangu lakini nilikua sijui functions zake, nilikua nafikiri functions zake nikutafuta kura tu. Nikishinda I become the ruling party, nikishindwa I become the opposing party hiyo tu ndio nilikua nafikiri ni kazi yake.

Chini ya Katiba mpya political parties should mobilised public opinion on matters of national interest and poster national values and outlook. Hiyo ni kazi ya kwanza ya Political Party ku-mobilise public opinion. Kwa mfano tunataka kujua maoni ya wananchi kuhusu Kenya kuenda ku-sign agreement fulani, that is National issue. Au should we go to the election under a new Constitution or the current Constitution? That is a National issue, ni juu yetu ku-mobilise wananchi na ku-mobilise ni tofauti na ku-insight, ku-mobilise, kuenda kuwasajirisha wasi zungumzie juu ya mambo kama hayo. And to poster national values and outlook. Nafikiri mimi nikiwa kiongozi wa chama cha kisiasa nikisimama hapa mbele yenu nianze kusema ile chama ambaye alama yake ni kuku hiyo ni chama cha bure kabisa ambayo ile mambo inaleta chuki ama sivyo? So we should poster national values and outlook.

Angalia B vile inavyosema, bring together opinion and resources of people with similar views of interest or pasuation so as to generate development of the Republic. Wako na jukumu ya development kuleta maendeleo katika nchi. Hebu tuanglieni kuanzia 1992 kila mmoja aniambie chama chake kimelete maendeleo gani? Sitaki mniambie saa hizi utafikiria mwenyewe baadaye. Kwa hivyo unatakiwa chini ya sheria mpya kila chama kilete maendeleo. Provide the means through which people participate in the political and Constitutional processes and exercise their Civil and Political right. Kusaidia watu waweze kuhakikisha malengo yao ya kisiasa na kushiriki katika mambo ya Katiba kama hii tunaofanya sasa na waweze kupata haki zao kama wananchi wa Kenya, utajiuliza kama chama chako kimefanya hivyo.

It should use its facilities to mediate between Civil and institutions of State. Kwa mfano ikiwa kumetokea kutoelewana baina ya NGO fulani, ni NGO gani inafanya hapa kazi? Oxfam, that is a Civil Society ama nyingine ambayo ni local inafanya kazi hapo Arid Land and the others, Arid Land niya Serikali? Basi ni juu ya Political Party kujaribu kama kuna matatizo yoyote baina ya Serikali na civil society kama hiyo waweze kuwalete karibu sio kuchochea. Halafu use its facilities to secure representation of the people in state institution and offer them economic, political and social choices through the Electoral process.

Wakati tunasema vyama vingi imekuwa sasa tumepewa choices leo hii kwa mfano kama mimi ni KANU na sirithiki nina uhuru wa kuingia chama kingine? Kwa hivyo Political Parties inatupatia hiyo freedom of choice unachagua mahali ile unataka kuenda, ama sivyo? Leo niko hapa kesho nimeamua kwenda mahali pengine although huko mbele utaona kuwa ukishachaguliwa kwa tikiti ya chama fulani chini ya Katiba hii tumesema ukitoka katika hicho cha ambacho kimekuchagua kuenda Bunge unapoteza kiti chako mpaka urudi kwa wananchi. Kwa sababu kwa mfano kama watu wa Wajir East wamemchagua MP wao kwa tikiti

ya KANU ina maana wamerithika na hicho chama, ama sivyo? Kwa hivyo hana haki akienda hiko kuenda kusema mimi nimeamua kujiunga na Safina au chama kingine, hapo tutaona kua haki yake amepoteza na kiti chake atapoteza.

Kuna registration, mambo ya registration ya Political Parties, article 89 Electoral Commission ndio itasimamia mambo ya registration ya parties. Sasa registration inasimamiwa na nani? Registerer of society, umesemaje Sheikh?

Speaker:(inaudible)

Com. Lethome: Kwa hivyo sasa Electoral Commission ndio itakua inasimamia mambo ya registration ya Political Parties for registration, ni chama yoyote ambao Warya kama unataka freedom of expression sema kwa nguvu sote tusikie, wapi 76 unataka turudi huko nyuma kabisa?

Speaker: Hapana minority, hapa maanake ni by number or by age?

Speakers: By numbers.

Speaker: Halafu 77B.

Com. Lethome: Hebu tuangalie ni vyama gani vya kisiasa vinaweza kusajiliwa?

Speaker: Tuseme Mbunge wenu mlimchagua kwa tikiti ya KANU na ako na majority ya wananchi ambao wanapigia kura KANU hawataki huyu MP wanamtaka MP ambaye ataleta interest ya Serikali baadaye, je huyu Mbunge akijiunga na Wapinzani?

Com. Lethome: Atajiunga akiwa Mbunge ama atarudi kwenu?

Speaker: Atarudi kwetu.

Com. Lethome: Tulisema arudi kwenu anarudi kwenu. Haya registration, tumesema sio kila chama ambayo itakua registered. Tumesema party ile ambaye itakuwa registered lazima iwe na National character. Kusema kweli ukichunguza sasa vyama vingi vya kisiasa, are they National kweli ? ni vya kikabila ama sivyo? Bila kuogopa DP ni ya kabila gani?

Audience: Kikuyu.

Com. Lethome: FORD Kenya ni ya kabila gani?

Audience: Jaluo.

Com. Lethome: Na Baluhya haya NDP ni ya kina nani?

Audience: Wajaluo.

Com. Lethome: Safina ni ya nani?

Audience: Somali.

Com. Lethome: Wasomali, haya KANU ni ya kabila gani?

Audience: Wote.

Com. Lethome: Sasa sikizeni ndio tunasema in future tunataka Political Parties ambazo zina National outlook. hatutaki vyama vya kikabila. Kisha tunaambiwa chama ambacho kita-promote na kita-uphold National unity ambayo italeta umoja wa nchi, ya kikabila haiwezi kuleta umoja wa nchi. Halafu pia chama ambayo inatumia democrasia yaani haigandamizi wale wanachama wake, inapatia democracy, hata katika kile chama kukona na democracy ndani yake. Kwa hivyo iwe ndio inafanya uchaguzi ndani yake kila wakati. Halafu iwe ina heshimu haki za kibinadhamu na pia iwe na gender equality and equity. Kuna vyama vingine ukijaribu kutafuta mama ndani yake hakuna ama sivyo kina mama? Hakuna kabsa.

Interjection: Speaker: Sio lazima tuweke mama lakini apiganie.

Com. Lethome: Apiganie kuingia katika chama?

Speaker: Hata wanaume hawapewi kiti, hawapatiwi wanapambana wanachukua gari wanaomba kura ndio wanapata kiti.

Com. Lethome: Sasa hatuseme habari ya kuomba kura tunasema habari ya Political Parties wafuasi members wa Political Party. Tunasema chama iwe pia na mambo ya gender equality and equity, kuwe na kina mama ndani yake pia iwe na vijana ndani yake pia.....(**inaudible**). Na pia kiwe ni chama ambacho kinazingatia mafundisho ya Katiba na sheria.

Kwa hivyo chama chochote ambacho kitakua msingi ni ya kidini au lugha au kabila au ni ya wanawake peke yao na ya wanaume peke yao au ni ya sehemu moja ya nchi, basi tunasema chama kama hiyo haitakua registered. Nafikiri ndio hata IPK imekataa kuwa registered kwa sababu ni ya kiislamu.

Kisha ukianngalia upande wa pili sub-article 3, 93, mambo ya chama kuchochea mambo ya violence, na chama yoyote mabaya itatumia Mungiki kuvuruga watu chama kama hiyo hatutaki. Nimetoa tu mfano: iko Mungiki hapa kama hiko basi chama isiwe na watu kama hao.

Article 93 mambo ya funding ya Political Parties. Unaambiwa kutakua na fund ambayo itaitwa Political Parties Fund na hii fund itasimamiwa na Electoral Commission. Hio ni kuhakikisha kuwa kila chama kimepewa uwezo ya kufanya campaign na kufikia

watu wao. Kwa sababu tumesema hii chama iwe na national outlook. Chama kama haina funding ya kutosha haiwezi kufikia wafuasi wake katika sehemu zingine. Ndio unakuta chama inakaa mahali moja tu. Utakuta wakati wa campaign ina bidhi members wa chama kingine wale ma-candidates wanaenda kuomba magari ya kufanya campaign, ama sivyo? Kwa sababu hawana. Wanaomba lift.

Speaker: Hata kwa sababu ndio KANU inashinda kila wakati, kwa sababu pesa iko nao vyama vingine hawana pesa.....(inaudible).

Com. Lethome: Hiyo pesa itatoka wapi? Hiyo pesa tumesema itatoka kwa, Parliament itweka kwa budget. Wakati budget inasomwa kutakuwa na Political Party Fund, lakini isipite 0.3% ya ile national budget. Mmefahamu hiyo? Isipitishe 0.3% asilimia nukta tatu katika kila mwaka. Pia kutakuwa na contributions ama donations kutoka katika sehemu zingine.

Article 95 imekueleza hiyo fund kazi yake ni nini? Inasaidia katika kazi gani? Halafu Political Party isiwe inatarajia tu kupata pesa kutoka kwa hiyo funds, wanaweza kuwa na subscription ya wale wanachama wake na contribution kutoka kwa members na wale supporters. Kwa hivyo ile fund niya ku-supplement ina supplement ile ambayo wako nayo kutoka kwa subscription na pia tunajua kuwa kuna watu wengine wanapata donations kutoka kwa party members au wale supporters.

Article 97 ni usimamizi wa hizi Political Parties. Kwa sasa who supervises Political Parties? Nani ana-supervise Political Parties? Hakuna. Kila mmoja inajisimamia yenyewe. Kwa hivyo tumesema lazima Electoral Commission i-supervise Political Parties. Na ndio tunaambiwa ukiangalia sub-article 2 a Political Party shall within 7 months after the end of its financial year submit to the Electoral Commission an annual report on its activities including the auditors report on its account. Sababu ya hiyo ni kuwa mpaka sasa kuna briefcase party mnajua hivo? Ambaye imesagiliwa certificate imewekwa haijatumiwa na sisi katika Commission juzi ndio tumejua kuwa kuna party zingine hazina hata ofisi hata postal address hakuna. Chini ya sheria tumeambiwa katika ile National Conference all registered Political Parties lazima itume mtu mmoja. Sasa ikabidi Secretary wetu aandikie Secretary General wa Political Parties kwa sababu tumetumiwa list kutoka kwa registerer general vyama arubaini na mbili walikua 42 tumetumiwa list ya hizo parties. Tumetuma barua nyingi tumepata return to sender address yao haijulikani mahali hiko lakini they are registered. Sasa ndio tunaambiwa chini ya sheria mpya kila mwaka lazima wafanye return ya kuonyesha pesa wametumia vipi ndio wanapewa funding na pia activities. Mwaka huo wote Political Party X imefanya kazi gani.

Speaker:(inaudible)

Com. Lethome: Electoral Commission is the supervisor of Political Parties. Umefahamu sasa?

Halafu unaambiwa mtu yoyote anahaki ya kuenda kukagua ile au kuangalia ile annual report ya kila chama cha kisiasa. Kwa mfano mimi nina haki kama Mkenya niingie katika ofisi niseme nataka kuangalia annual report yaani ofisi ya Electoral Commission natakuangalia chama fualani kwa mfano NDP ama SAFINA ama IPK nataka kujua mwaka huu wote walikua na activities gani. Because maybe I'm interested in joining the party and I don't want to join a dormant party ama sivyo? Kwa

hivyo ni haki yako kwenda kupata hiyo report ya kujua chama kinafanya nini?

Party discipline article 98. Chini ya hii Katiba mpya tunataka kuwe na discipline ya parties. Unaambiwa the Constitution of the articles of association of a Political Party shall contain provisions that ensure internal discipline consistent with the principals of democracy, justice and the rule of law. Isiwe chama mtu anatumia kama ni yake mwenyewe anafanya vile anataka, ama chama ambaye haizingatii democracy ama sheria yoyote. Kwa hivyo Katiba itataka kuwa kila chama waonyeshe ile Katiba yao waonyeshe kuwa wanazingatia democracy na wanazingatia sheria.

A political Party shall not punish a Member of Parliament of the Party for anything said in the Parliament by the Member in exercise of privileges of freedom of speech in Parliament. Kwa mfano mumenichagua kwa tikiti ya chama cha IPK na nimeenda Bunge nikatumia freedom yangu ya speech katika Parliament kusema kitu fulani, chama changu hakina haki ya kunichukulia hatua kwa sababu ya kutumia hiyo haki yangu ya kujieleza katika Bunge. Hivi leo tunajua kuwa ukizungumza ile party inaweza kukufanyia chochote kinacho taka tunaona watu wengine wanafukuzwa kwa chama kwa sababu alitumia freedom of expression kwa njia fulani.

A Member of Parliament of local council who resigns from the Political Party that sponsored the members election loses the seat. Ndio ile nilikua nazungumzia. Umeingia katika Bunge kwa tikiti ya chama fulani ukiamua I want to exercise my freedom of association hiyo ni fundamental right uko na haki basi you loose your seat mumeifahamu hiyo? Ni ile siku hizi wanaita, wanatumia lugha mbaya wanaita Political prostitution. Unatoka hapa unaingia hapa, ukirukaruka ni haki yako kurukaruka wewe tanga tanga vile unataka lakini unapotesha kiti chako. Hii tumeiweka hapo kwa sababu mwenye kuthulumiwa ni yule mwenye kupiga kura. Kwa sababu mkinipigia kura kwa chama fulani kwa mfano, cha KANU inamaana kuwa umerithika na hicho chama umerithika na siasa ya hicho chama. Halafu mimi nina enda Bunge, na ni wewe ndio umenipeleka, ninaamua sitaki hicho chama nataka chama kingine. Kwa hivyo umeambiwa rudi kwa wananchi tena ukatafute kura, ikiwa wamekubaliana na wewe hicho chama kingine umeenda si wata kurudisha? Kwa hivyo tumeweka hiyo.

Restriction of public resources article 99. Hakuna chama ambacho kitatumia public resources to promote the influence of a Political Party, huwezi kutumia mali ya umma. Kwa mfano mimi nina gari ya GK hapa ninatumia hiyo ni mali yangu ama ni ya umma?

Audience: Ni ya umma.

Com. Lethome: Hiyo ni tofauti na chama changu. Siwezi kuitumia ile niweke microphone juu kwa vile mimi na-support Mbunge wa hapa na ni wa KANU nianze kutangaza yeye na kumfanyia campaign nitakua nimetumia mali ya umma kimakosa. Au kwa mfano mimi niko kwa ofisi ya Serikali nakosa kuitumia hiyo ofisi kwa sababu ya maslaha ya chama, hiyo si mnaona ni mzuri? Kwa sababu imetumiwa vibaya sana ama sivyo?

Ya mwisho, article 100 President na public officials ambao wako katika madaraka ya Deputy Secretary na zaidi hawawezi kuwa na cheo chochote katika Political Party. Hiyo tulikua tumezungumzia, nafikiri imefahamika hiyo? Maswali dakika kumi, ngoja kwanza.

Speakers:(Inaudible).

Ismail Dubale: Bwana Commissioner ile mimi nataka kuuliza, mimi naitwa Ismail Dubale, hivi ni vyama vingi ya arubaini na mbili, nilikua nataka viwe kama tano ama sita hivi nyinyi mmekubali yote ibaki hivyo?

Com. Lethome: Sasa sijakuambia nimetaja arubaini na mbili, sikiza kwanza. Tumesema chini ya sheria anbaye imeunda Commission tumeambiwa tuandikie all registered Political Parties for the National Conference tuka andika barua kwa registerer tukamwambia atupatie list ya registered Political Parties. Akatutumia list ambayo iko na 42 Political Parties, sasa ikatubidi tuwaandikie wote. So when I'm talking of 42, I'm talking of the existing one. Chini ya Katiba mpya hatujaweka minutes ya Political Parties zitakua ngapi? Lakini kumewekwa conditions na hizi conditions infact hizi zote haziwezi ku-fulfill hizo conditions.

Ismail Dubale: Kwa hivyo tunataka iwe limited, ziwe kama tano.

Com. Lethome: Iko limited, by these conditions zitakua limited.

Ismail Dubale: Ni hiyo tu.

Speaker: Number 2.

Dagane Siyat: Bwana Commissioner mimi ni Dagane Siyat kulinngana na ile swali ambaye umetusomea juu ya Parliament ama juu ya hiyo chama mingi hapa kwa hiyo mambo ya Political Party katika nchi hii imeleta shida nyingi sana. Kwa Sababu nyinyi wenyewe Commissioners mmeangalia kuwa wanakenya wote wamejua kuwa hizi Parties ni za ukoo sio ya clan ni ya ukoo. Kama ni Msomali pengine ni Dagodia, nyingine hata kama ni Kikuyu wanasema ni watu ya Muranga iko yao na ya sehemu ingine. Yaani imekua clan ya ndani yaani family. Kwa hivyo hiyo imetuletea hasara kubwa katika Kenya hata hizo chama zingine wameharibu uchumi ya nchi ya kwamba wengine wamesimamisha mpaka ile msaada tunapata kutoka nchi za nje ambayo ingesaidia kwa mambo, ya development ama mambo yote wamekomesha. Kulingana nahiyo inafaa hizo chama mingi ziwe na limit na ile chama ibaki tu hata kama ni chama mbili au hata moja ile yetu ya zamani niendeleo ambayo ilikua na Katiba mzuri.

Ya pili, tunazungumza mambo ya Wabunge na vile wamefanywa, lakini sijasikia civic leaders ambao hata wao wanapigiwa kura hata mimi ni mmoja wao. Kwa hivyo hii Katiba inaangalia tu Parliament au haiangalie upande wa Civic. Kwa hivyo hapo

nimeongeza na tungependa hata hiyo tusikie.

Com. Lethome: Hiyo ni chapter nyinine ambayo inahusu mambo ya Local Government ama local authority kama kutakuwa nayo. Sinimekuambia kama Provincial Administration: hakuta kuwa. Kwa hivyo kama tutakua na Local Government uchaguzi wake utakuja. Lakini hapa tunapozungumzia habari ya election inakusanya Parliamentary na Civic na Presidential uchaguzi yote.

Speaker: Number 3.

Hashim: Mr. Commissioner I would like to ask a question on article 97 sub-articles 4, which reads: the Electoral Commission shall by order prescribe the maximum amount of money that Political Party might spend on each of its Candidates for elections to a public officer the amount of money that..... So in the event of a Political Party spending amount of money beyond the prescribed amount by the Electoral Commission does that lead to its automatic disqualification? Please note that one I have another question to ask.

If a member of Parliament will be given the opportunity to say anything and everything in Parliament and he will not be punished because of those privileges he has as a Member of Parliament, would that not be an abuse of Parliamentary privileges and immunities?

Thirdly, before I ask this question you will have to elaborate something for me because, article 100 reads the President and Public Officials and above the level of Deputy Secretary shall not hold office in a Political Party. Therefore will the current elections be conducted under this new Constitution? And if yes because we have Presidential Candidate running on a Political Party ticket how will it affect? Thank you.

Com. Lethome: Okay, let me start with the first one, the Electoral Commission shall by order prescribe the maximum amount of money that a Political Party may spend on each of its Candidates for elections to a public office. Ni kwa sababu the money will come from the Political Parties Fund and this money will be given proportional to strength of the Political Parties. So if they overspend then they will not be paid from the funds, the amount has been overspending haitatoka kwenye funds. That is now to limit the expenditure by its Political Party. Kwa sababu tunajua sasa because some Political Parties are stronger financially than others they can spend as much as they want others don't have anything, but to bring Parties at par. That is why we are saying the Electoral Commission will prescribe how much each one of them will use for its Candidates.

Hashim: I have understood, but these Political Parties overspending the prescribed amount would insist on amount to election irregularity and mal-practice.

Com. Lethome: Okay, let us look at the cancellation of registration article 92, whether that is one of the grounds for cancellation. Tumeambiwa article 92 the Electoral Commission shall cancel the registration of a Political Party if satisfied that the Political Party:

- (a) Is in bridge of article 90,95,96 of the provision of this of its own Constitution or articles of association.
- (b) Or has not complied in material particular with a provision of article 90 and 95.
- (c) Or obtained its registration in a fraudulent manner.
- (d) Or instigated or conive in the Commission of an election offence.
- (e) Has lost for each of two present general elections secured at least 1% of National vote.
- (f) Has used money allocated to it for purposes not allowed by article 95. number 2 before the Electoral Commission cancels the registration

Okay those are the grounds under which a Political Party can be deregistered. Now overspending has not been stated as one of them would you recommend that overspending be one of the grounds for deregistration?

Hashim: Yes, because for the purpose of free and fair election there must not be only a level play in ground but there must be also a minimum or the same amount to be spend by all Political Parties, because the expenditure by a certain Political Party or others as you said others have more finances than others will amount be rigging of elections, that is buying votes and not conversing for votes.

Com. Lethome: Okay thank you very much, lets come to the second question whether or not the elections will be held under this Constitution? That s a question that I cannot answer myself that can be answered else where, because if Parliament is dissolve today or before we hold the National Constitutional Conference the process will come to a stop. Hii document ambaye niko nayo hapa it is just a draft and until it goes through the National Conference and then Parliament its exactly that a draft and nothing more. So if you don't go to the National Conference this year then that means we shall go to elections, if we are going for elections this year without the new Constitution we will go as per the current Constitution over the old Constitution and there is nothing the Commission can do about it or you can do about it. Because under this current Constitution the President had been empowered under article 46 to dissolve Parliament anytime. So if he does so by using this Constitution there is nothing you or me can do about it.

Hashim: Question?

Com. Lethome: Answered. Article 100 about no alikua na swali ingine.

Hashim:(Inaudible) 98 column 2.

Com. Lethome: Okay, a Political Party shall not punish a Member of Parliament yes of course we are confirming that, that is a view of privileges Parliamentary, he will be using his privilege in Parliament. Then article 100 did you have a question there?

Hashim: 98 of column 2.

Com. Lethome: Okay, I have answered it, but first you answered it yourself.

Hashim: Okay it's I suppose to be abuse of Parliamentary privileges okay, 100.

Com. Lethome: 100 is it not clear?

Hashim: Yes it is clear, if the current Constitution will be the one governing the elections 100 will apply and therefore those running on Political Party ticket will have to.....

Com. Lethome: No, there is a difference here what we are saying is this under article 100 if you are elected as a President or you hold an office higher than from a Deputy Secretary and above then you should not hold any political position in your Political Party. For example: if lets say you're the Secretary General of your Political Party, once you have been elected to a position as a Minister who is higher than a Deputy Secretary or you are appointed to become a Permanent Secretary or a Deputy Secretary in a certain ministry then you have to relinquish your position in the party. Reasons, we want to separate between a public office and a political office you understand that?

Hashim: So you agree with me that article 93-sub column 2 requires consideration.

Com. Lethome: I mean, you mean it needs to be removed?

Hashim: No, I recommend that it should be again reconsidered because of what we just said it(**inaudible**) to abuse of Parliamentary privileges and immunities.

Com. Lethome: Okay, just read it and understand it what it says, what does it say?

Hashim: A political Party shall not punish a Member of Parliament of the party or anything said in Parliament by the Member in exercise of the privileges of freedom of speech in Parliament.

Com. Lethome: Okay, now would you like it to be reconsidered otherwise or you want it to remain as it is?

Hashim: Yes, I want it to be reconsidered; to because if he will not be punished this man can say anything and everything inside the House and he will not be punished it amounts to the abuse of Parliamentary privileges. Like when Njega Mungai

wanted to run from the Molo clashes and locked himself in Parliament in order to avoid police arrest that was actually abuse of Parliamentary privileges. So I want it to be reconsidered otherwise that is my recommendation.

Com. Lethome: So you want that Member to be punished?

Hashim: Yes there has to be exceptions if he makes certain utterances.

Com. Lethome: Then your Political Party can punish you for that.

Hashim: Not the Political Party it has to be a legal issue.

Com. Lethome: So the Electoral Commission can punish.

Hashim: Yes I recommend that way.

Com. Lethome: Okay, in other words the privileges that Members of Parliament have must be limited now it has to be limited.

Hashim: Sure, thank you.

Com. Lethome: Thank you. Note, we have noted that.

Speaker: Nafikiri kama ilikua imesemekana arubaini na mbili, kwanza kumi na mbili wameungana ngapi imebaki? Imepaki thelatini.

Com. Lethome: Na hiyo mmoja ambaye imeungana itakua thelatini na moja.

Speaker: Kuna moja imeungana tena?

Com. Lethome: Arubaini na mbili, kumi na mbili imeungana inamaana tumebakisha zingine thelatini na hii moja ambayo tunafikiri kumi na moja imekua moja kwa hivyo hii 30 plus 1, 31.

Speaker: Kwa hivyo imepungua?

Com. Lethome: Endelea wewe.

Speaker: Sasa mimi naona waungane vile hao wameungana ili wakue chama 4 yenye power.

Com. Lethome: Haya, this has nothing to do with the Constitution kabisa.

Habiba Sheikh: Mimi ni Habiba Sheikh tena narudia, kutoka asubuhi sisi tuko hapa na tuko na masikio tunasikia mingi kutoka Commissioner mimi naona kila kitu hapana mbaya nzuri sana. Sababu sisi tunakaa zamani na tunakaa na sheria ya zamani na mnajua vile sasa tumepanga ni mambo mazuri ya kufurahisha sana na ninarudisha shukrani kwa ma-commissioner wale wamefanya hii maneno. Kusema ukweli tu wache maneno mingi ya kusema hii na hii ambaye haifai. Na hata kama mtu haja soma ako na akili kidogo ya kufahamu. Sasa ile kitu kidogo mimi nasikilia hapana tajwa ni mshahara ya Bunge. Bunge wako na mshahara kubwa sana na kuna vijana hawana kazi hapa ndio kidogo mumekosea kama mnabadilisha ni vizuri lakini mambo ingine yote ile sisi tumesikia leo hapana mbaya. Yangu ni hayo tu.

Com. Lethome: Haya asante sana, tunaingia katika Bunge sasa na ndio mambo ya mshahara ya Wabunge itatajwa sasa, hii chapter 7 ndio itataja mshahara ya Wabunge. Asante sana mama. Ukiangalia hiyo swali ya mama hiko article 121 emolument of Members of Parliament malipo ya Wabunge article 121 umepata hiyo? Kutakuwa na Commission ambayo itaitwa salaries and Remuneration Commission hiyo ndio itapitisha mshahara sio wao ndio wanajipitishia. Asubuhi nimesema hapa binadhamu yote ni *hunguri* ama sivyo? Ukimwambia ajipakulie chakula atapakua kidogo ama nyingi?

Audience: Nyingi.

Com. Lethome: Sahizi mama nikikuambia weka mshahara yako ya Councillor sema tu utaweka ngapi leo? Elfu thelatini si ndio.

Habiba Sheikh: Nitafanya mingi.

Com. Lethome: Ndio hivyo, kwa hivyo tumeondoa hiyo na Councillor huyu pia ana weka pia yake kwa hivyo Tumesema hakuna kujiwekea mshahara tena kuna Commission ambayo itaweka mishahara yao, article 12.

Na sasa tunaingia maswala ya Bunge tuangalie Bunge, kwanza hapo ndio kutakuwa na mabadiliko kubwa kutakuwa na Bunge ambayo inaitwa Parliament lakini Parliament hii itakua na nyumba mbili, ya kwanza tutaita National Council, ya pili tutaita National Assembly zote mbili zikiungana ndio tunaziita Parliament.

National Council itakua ni gani ambayo tutaita Upper House nchi zingine wanaita senate. Hii itakua na wakilishi kutoka katika district. Tuko na district ngapi Kenya? 70. Kwa hivyo kila district itachagua mtu mmoja halafu tunaongeza vituzingine kutoka district thelatini. Hizi thelatini tumeiweka kwa sababu ya affirmative action ya kinamama hivi viti thelatini ni ya kinamama, sasa provinces za Kenya ni ngapi? 8 watagawanya aje hizi viti thelatini? Tumesema kila province isipokua Nairobi iatatoa wamama

wane, nne mara saba ni ngapi? Ishirini na nane, wale wawili ambao wamebaki tunawapatia Nairobi, kwa sababu Nairobi, hata kama ni Province lakini ni ndogo kuliko provinces zingine.

Kwa hivyo National Council itakua na Wajumbe wangapi? Mia moja, hiyo ndio itakua National Council sababu ya hiyo National Council kuwekwa ni kwa sababu tunataka kuwe na checks and balances one House will check on the other one na hao watakua wakilishi ambao wamechaguliwa kutoka katika kila district. Hayo ni mapendekezo ambayo tuliisikia kutoka watu wengi although watu wengi walikua wanazungumzia habari ya Majimbo na ikaonekana kuwa Majimbo inaweza kuleta mambo ya watu kugawanyika. Kwa hivyo hapa utaona kuwa hakuna mahali tumezungumzia habari ya Majimbo ama Regional Government, tumezungumzia habari ya devolution of power kwa sababu tumesema power now has to be devolved to devolve to the local people.

Sasa kabla sijaendela sana kuzungumzia habari ya National Assembly ni muhimu tukaanngalie maswala ya devolution ili uweze kujua hiyo Council itapatikana namna gani ama hiyo Council itafanya kazi namna gani?

Speaker:(inaudible) itakua wanawake wote.

Com. Lethome: Tumesema hakuna discrimination ndani yake.

Hebu angalia article 215, chapter 10-kuanzia articles 214 mpaka 219-ndio uweze kujua hiyo council imetoka wapi. Haya saa ukiangalia kuanzia hiyo article 13-tunazungumzia sasa kuhusu devolution of powers yaani mamlaka yaweze kusambazwa, sasa tuendeleo tuangalie hayo mamlaka yanasambazwa vipi?

Ukiangalia katika article 214 principles of devolved government ndio tunaona hapa under sub-article 2, tumeambiwa Legislation to implement this chapter shall observe this principles halafu chini yake 215 tumeambiwa; powers are dissolved to the following levels. Kutakuwa na councils ya village na council ya location, council ya district na council ya province. Kwa hivyo tutakua na Serikali ya kijiji kwa mfano hii village inaitwaje? Haya basi kwa hivyo hiyo jiji itakua na Serikali yake.

Kwa hivyo hapa tunaambiwa under 216 sub-articles 1 the village decides whether the village council is constituted by village elders or through elections. Kwa hivyo watu wa kijiji wenyewe wataamua. Halafu the village council shall contain not less than six members and not more than ten members, watu wa kijiji wenyewe watachagua watu wao waamue kufanya hiyo campaign yao. The village decide on the system of village government including the role of village council. Muhimu hapa ni kuwa kutakua na village government governed by a village council. Hii si mmefahamu?

Speaker: ...(inaudible) ni kama sub-location.

Com. Lethome: Ni sub-location infact, sasa sub-location hiyo itakua na Serikali yake. hii Serikali....(*interjection inaudible*) ngoja hebu ngojeni. The village decides whether the village council is constituted by village elders or through election na watu

wa hio sub-location ndio wataamua, tunataka kuchagua wale watu watatuongoza katika hii village yetu au tunataka wale village elders. Kwa mfano saa hizi hapa tukisema mko na elders wenu hapa ama hakuna? Haya, do you want them to constitute the village council ama you want to elect them?

Audience: Elect them.

Com. Lethome: Sasa ndio mnaambiwa the recommendation here is that it is left to the village to decide whether you want the council, council ni kama committee you can call it anything but we are calling it a council.

Speaker1: Excuse me, Bwana Commissioner.

Speaker2:(inaudible)

Com. Lethome: Katiba ndio imeunda hiyo.

Speaker2: Kila sub-location hiko kamati lakini hapana Serikali.

Com. Lethome: Sasa hiyo kamati imechaguliwa, sasa itakua Serikali?

Speaker2: Imechaguliwa ndio, lakini hapana hiko Serikali sasa.

Com. Lethome: Sasa itaitwa Serikali chini ya Katiba mpya.

Speaker2: Hebu ngojeeni kwa hivyo wananchi ndio watachagua.

Com. Lethome: Sasa hapa tumependekeza wachague au wale ambao wako wale elder's si kuna wale wazee wa kijiji? Sasa hao wanawezeka kuendelea hao wawe council au mkiamua nyinyi wenyewe mnasema tutachagua. Mnajua hii ni mapendekezo sisi tumependekeza, haya ni watu wangapi tumesema wasiwe chini ya na sita na wasizidi kumi? Ngoja kwanza.

Speaker: Swali hiyo baadaye kidogo.

Com. Lethome: Hebu Mohamed hii sub-location inaitwaje? Ngojeeni Mohamed anambie mtu mmoja bwana.

Mohamed: Waaberi.

Com. Lethome: Hii sub-location inaitwa Waaberi si ndio? Iko na Assistant Chief sasa sahau Assistant Chief hakuna, ondoeni kwenye akili yenu Chief, Assistant Chief, DO, DC, PC ondoa sasa, sasa mpya haya.

Sasa tunasema hiyo sub-location tunaita Waaberi.

Speaker: Abdi Hussein tulia kidogo.

Com. Lethome: Si mko na elders pale? Watu ya Waaberi wataamua mnataka hao elders wawe ndio Serikali ya hapa ama mnataka kuchagua? Nyinyi wenyewe mtaamua. Mkichagua lazima hao watu wawe zaidi ya sita na wasizidishe kumi sawa, wao hao wataitwa sasa village council. Halafu nyinyi ambao mko hapa Waaberi ndio mtaamua the system of village government, hiyo itakua Serikali sasa ya village Council mtaamua mnataka... iendelee kufanya namna gani kufanya kazi yake hiyo mumefahamu sasa? Tutoke kwenye village ambao ni sub-location sasa, sahau hiyo sasa.

Tuje kwa ile sehemu imesimamiwa na Chief sasa location, location yenu mnaitaje? Waaberi, haya sawa tunaingia waaberi sasa unaambiwa hapa article 217 the location council will consist of 2 representatives 1 of which of shall be a woman elected by each village council from among its member. Ile yenu ya village tuseme tuliweka watu kumi na tuseme katika location moja kuko na village tatu ama nne. Kila village itatoa watu wao wawili mmoja mwanamume mmoja mwanamke wanapelekwa kwenye location council. Mumefahamu hiyo? Haya tunapeleka hiyo kwenye hiyo location council.

Halafu tunachagua mmoja wao anapigiwa kura anakua ndio location administrator mahali, kama Chief yuko sasa kutakua na mtu anaitwa location administrator amechaguliwa na wananchi wenyewe. Mumefahamu hiyo? Haya tuendelee sasa.

The location administrator shall be elected by the registered voters of the location, watu wale wenye kupiga kura wote wamejiandikisha kupiga kura katika hiyo location ndio watapiga kura, tunataka Haji fulani awe ndiye administrator wetu yaani chief kwa sasa. Lakini jina itakua ni administrator. Haya tumemaliza mambo ya location sasa? Tuende katika district sasa mahali ni kaliwa sasa na DC hakuna mahali ya DO division tunataka iwe karibu na watu kwa hivyo DO hakuna.

Tunaingia katika district sasa Wajir district si ndio? Wajir district unaambiwa the Legislative authority of the district is invested in the district council. Kutakua na Serikali ambayo itaitwa district council ondoeni mambo ya administration ni mpya sasa ni council ondoa County Council pia sasa. Kuna district Council sasa itakua namna gani? The district council consists of members directly elected by the registered voters of the district. Watachaguliwa na watu ambawo wamejiandikisha kupiga kura katika ile district. The district council shall consist of not less than 20 or more than 30 members; watu wasiwe chini ya ishirini na wasiwe zaidi ya thelatini. Kwa hivyo katika district mtachagua, halafu mmoja wao ataitwa district administrator na yeye ndio atakuwa ndio Executive Officer katika ile district. Na yule atachaguliwaje? Atapewa hio mamlaka na nani? The district Administrator is elected directly by the registered voters, sio wale ambao wako kwenye Council peke yao kama vile Mayor leo ana chaguliwa na nani? Ama Chairman wa Council anachaguliwa na nani? Na Councillor si ndio? Halafu mnasikia mnapewa kitu kidogo mnachagua. Sasa anachaguliwa na watu wote directly watu wote wa district wanampigia kura tunataka nani awe ndiye wakichagua mama ndiye, atakua District Administrator. Hakuna DC hakuna Chairman wa Council kuna district Administrator

ndio atakua anasimamia hiyo Council.

The district administrator with approval of the District Council appoint Chief Officers from persons who are not members of the district Council. Atachagua Chief Officers. Chief Officers wa County Council amara hii wanatoka wapi? Ministry of Local Government, lakini sasa tunataka wawe ni watu local pale, pale atakua anachagua wale watu ambao sio katika Members wa district council kuwa Chief Officers ambao watasaidia na kazi naye pale. Halafu ikiwa hamkurithika, kwa mfano nani leo anasimamia district? DC. If you're not happy with the DC what can you do today? Hakuna you did not appoint him, you did not elect him you have no right over him. Lakini hapa unaambiwa the District Administrator can be dismissed, anaweza kufutwa kazi by the votes of an absolute majority of members of the district Council wanaweza kupitisha vote of no confidence, tuseme huyu Kiongozi wetu wa district hatumtaki na lazima iwe imeungwa mkono by referendum by a majority of those voting in the referendum. Kwa hivyo wananchi wote wapiga kura katika district watahusika katika kumtoa. In short vile tunavyosema hapa ni kuwa: kuanzia katika village, location halafu katika district wale Viongozi mbawo mmewaweka hapo ni Viongozi ambawo mmewachagua na kama hawafanyi kazi mnaweza kuwaondoa.

Provincial Government, tunaenda taratibu kwa sababu nataka sasa tufike kwenye National Council.

Interjection: Speaker: Tumeelewa sasa hii mambo ya kuchagua mpaka district representative na katika district tuko na department tofauti tofauti ni nani ataendesha hii ma departments tofauti tofauti katika wilaya?

Com. Lethome: Departmental Head ama sivyo wale watakao simamia zile departments.

Speaker: And who appoints them?

Com. Lethome: Sasa hapa tumeambiwa the District Administrator appoints Chief Officers from persons who are not members of the district Councils. Lakini tumeambiwa hapo with the approval of the District Council.

Speaker: So these Guys who are going to be appointed are the ones who are going to run the different departments.

Com. Lethome: Wale ndio watakuwa wanasimamia. They will be appointees of the district administrator with the approval of the whole council.

Speaker: Okay.

Com. Lethome: Haya angalia 223 kuna kitu ambayo nimekubushwa hapo kuhusiana na swali lako, ukiangalia article 223 sub-article 3 okay the whole of it unaambiwa:

- 1) Staffing of the devolved authority wale wafanyi kazi watatoka wapi? Unaambiwa for the avoidance of doubt the system of Provincial Administration existing at the time of coming into force of the Constitution is abolished. Kwanza hiyo tumeondoa sio sasa usiwe na wasi wasi bado wako baadaye ikipitishwa hii, haija pitishwa.
- 2) District government may employ their own staff. Kwa hivyo Wajir district Council wataamua kuajiri wafanyi kazi wao.
- 3) The National Government in consultation with the devolved authority may deploy its public officers in the provinces and districts to carry out its policies. Wanaweza kutoka katika National government kutuma Officers kukuja kufanya kazi hapa, wanaweza, may sio lazima.

Sasa tutaingia katika financial arrangement hiyo ni article nyingine. Mambo ya resources na mambo ya finances itakuja baadaye. Mnajua nataka tumalize hiyo Council mpaka Province halafu turudi katika National Council ile ya Parliament. Mnajua ni kitu mpya hii kwa hivyo mambo ya ajabu hii, ama sivyo?

Speaker:(Inaudible) sasa hii sub-location hizi zote za Kenya kama sitachukuliwa six au mpaka 10 sitaoneka watu wote watakua..... kwanza hao watu watalipwa mshahara ama ni kitu ya kukaa ovyo?

Com. Lethome: No, wanalipwa mshahara.

Speaker: Basi sasa inaonekana watu wote watapata kazi, kwa hivyo hiyo ni mzuri.

Com. Lethome: Watu wawili wawili.

Speaker: Watu wawili wawili wanasema kila sub-location ni 6 mpaka 10, halafu sub-location hapa ni mingi hiyo sub-location yote watu hao pengine sisi tunataka watu waajiriwe tutaweka kumi kumi. Sisi hata already tumekata kauli ya kuwa itakuwa kumi kumi. Hiyo kumi kumi ni mara ya kwanza baada ya kuchaguliwa au wengine wataenda zao?

Com. Lethome: Hapana watabaki hivyo hivyo.

Speaker: Okay hiyo ni mzuri sana kwa hivyo tunashukuru.

Com. Lethome: Haya, kwa mfano wacha nikuulize Wajir County Council hivi sasa hiko na Councillors wangapi?

Speaker: Wajir County Council unajua hata DC ni Councillor, tuko 105 Councillors, na ni watu katika Kenya hii iko district mingi.

Com. Lethome: Ni 105 iko na ward ngapi?

Speaker: Ward nafikiri ni 78.

Com. Lethome: Sasa unaona kuna ward zingine ina zaidi ya Councillor moja ama sivyo?

Speaker: Hakuna.

Com. Lethome: Lakini ni Councillor ama si Councillor?

Speaker: Hapana.

Com. Lethome: Anapewa mshahara ama hapewi mshahara?

Speaker: Si ward, ile kitu ambao imemaliza sisi hapa ambao Councillor wamekua wengi ni nominated Councillors ambao without Sub-Chief hii ndio iko mingi sana, kwa sababu kila Councillor ako na nominated moja. Hiyo ndio hesabu imekua mingi. Kwa hivyo mambo ya nomination imevutwa au iko kwa hio agenda?

Com. Lethome: Kwanza hakuna Wajir County Council ni district council ndio hiko, hakuna hiyo County Council, kwa sababu hatutaki duplication. Kwa mfano kuna mugongano sasa hivi baina ya Provincial Administration na Local Authority haijulikani kazi yao ni ipi. Kwa hivyo sasa kuna moja peke yake. Kuna swali hapo nyuma.

Adan: Jina ni Adan, swali ni kuwa kutakuwa na Councillors ama hakuna Councillors?

Com. Lethome: Sasa hawa ndio members of the district Council hakuna Councillors vile tunawafahamu hivi sasa.

Adan: So there will be no election of Councillors?

Com. Lethome: Only the district election kama vile tumesema sasa for the government. Haya sio kubadilishwa ni anachaguliwa atapigiwa kura, hebu ngoja tuendeleo hamjaisha mzee usiseme tumekwisha hamjakwisha bado.

Speaker: Wacha tuendeleo kidogo.

Com. Lethome: Tuingie katika province sasa, Provincial government article 219, tunaambiwa katika province authority itakua katika provincial council. Kwa mfano kama North Eastern Province itakua inatawaliwa na council ambayo tutaita Provincial Council, ngoja. Halafu the provincial council itakuwa na watu wangapi? Tunaambiwa itakua na watu wawili one of whom should be a woman chosen by each district council from among its members. North Eastern Province iko na district ngapi? Nne, Ijara, Garissa, Wajir, Mandera kila moja itatuma watu wawili ambao watakuja katika provincial council mmoja awe

mwanamke na mwingine awe mwanamume. Ata wanawake wanapata kazi, wako na haki ya kazi.

Halafu sikizeni, kutakuwa na Executive Committee ambayo itakuwa na district administrators kutakuwa na Provincial Executive Committee ambayo itakuwa na wale district administrators. kwa hivyo kila district hizi nne kila mmoja ako na administrator wake kwa hivyo au administrators wale ndio watakuwa ni Provincial Executive Committee. Wakisha kuwa yale mambo katika Province yana endelea. Kwa mfano hivi sasa Provincial Executive Commiitte iko wapi hivi sasa? Garissa, lakini chini ya huu mpango mpya ni kuwa Provincial Executive Committee itakuwa na mwakilishi kutoka kila district. Kwa hivyo maslaha ya kila district itakuwa inaanngaliwa na Provincial Administrator kwa sababu hiko na mwakilishi wake. The Provincial Administrator is the Executive authority of the province, huyo hatakuwa PC sasa tunamwita Provincial Administrator.

Ana chaguliwa vipi? Anachaguliwa na Provincial Council na provincial Council tulisema ni kina nani? 2 Representative from each District Council. Kwa hivyo the Provincial Administrator is appointed by the provincial Council on the Nomination of the Provincial Executive Committee from among its members. Kwa hivyo kuna Provincial Executive Commiitte ambao ni wale administrators wane siyoy? Wao wata-nominate watakua wame-nominate watu wao wale watakwenda katika Province na wao ndio wata-appoint nani atakua Provincial Administrator. Kwa hivyo itakua hakuna Provincial Commissioner kutakuwa na Provincial Administrator.

Kwa hivyo tumesema kutakuwa na devolution of power, sasa turudi tena kwa Parliament. Hii imefahamika kwanza? Ni mpya lakini mkisoma pole pole itaingia ukisoma usiku itaingia. (*Interjection inaudible*) devolution, but I have not done the whole of the devolution basi nafikiri I will have to finish the devolution.

Fatuma: My name is Fatuma again; Im asking a question. Is this a Majimbo type of Government? Because I can see we locals are the ones who will be running the whole thing from the location to the district.

Com. Lethome: Okay, its not Majimbo its just bringing governance closer to the people, simple as that because if you talk about Majimboism we are talking about Regionalism where by each region will be running its affairs but now we are not talking about regionalism we are talking about bringing governance close to the people. Watu wenyewe wanahusika katika decision making and governance close to the people. Powers zimetoka huko juu zimeletwa hapa chini. Kwa mfano now under the current arrangement we have the Provincial Commissioner he is in Garissa when he is making decision does he involve the people of Garissa? You can say may be yes through the DC, does the DC consult the locals? He is not even an appointee of the local people. Okay if today lets say the DC is not serving you properly what action can you take? So in other word what we are saying is we want to give people say, we want to give them authority to decide how they want to be governed and you can only have that say if you had a say in the appointment and you can only have that say if the person is a local person. Halafu lets say this, the locals have more interest with the local issues that is the fact we have to say. Sasa hiyo criteria haijawekwa hapa that is an issue of another aticle.

Haya ngoja hapo kuonyesha kuwa this is not a Majimbo whereby each region will govern itself and will have its own resources, hiyo Serikali mzuri hebu ngojeni sikizeni sasa.

What are the powers of the District Council powers za hiyo District Council kwa mfano Wajir kazi yake nini? Wacha tumalize hiyo devolution kabisa, kwa sababu tumeonja wacha tumalize. Tunaambiwa kuwa the District Government is the principal devolution of powers kwa hivyo powers zimetoka kule juu zimekuja katika district. The powers of the district government are contained in list 2 of the seventh schedule, sijui kama mko na hiyo schedule katika hiyo fullout? Let us look at that schedule, the seventh schedule, tukisema page hatutajua.

Speaker: Page 46.

Com. Lethome: Ukiangalia kuna list number 2 imeandikwa hapo District Government list mmeona hiyo? Implementation of development plan, haya mumeangalia hiyo?

Speaker: Ndio tumeona.

Com. Lethome: Haya watakua wanasimamia mambo ya development ku-implement development, local taxes ile tax ambayo mnachukua hapa Wajir, mnajua leo ile tax ambayo mnakusanya hapa Wajir mahali inaenda? It goes first to the local government halafu ndio Local Government ita-sign what is to come back to Wajir. Sasa tunasema local taxes itakua juu yao, mambo ya education itakua ni juu yao nursery, primary and secondary education, mambo ya medical and health services, mambo ya maji, mambo ya barabara. Kwa hivyo yule mzee alizungumzia hapa asubuhi akasema kuwa Serikali ituangalie barabara mchanga imefika mpaka kwa kiuno ameonyesha kiuno yake, sasa itakua hilo swali hawezi kuuliza Nairobi ama Garissa anauliza hapa hapa Wajir kwa sababu they will be incharge of the road also.

- 1) Road services, construction, rehabilitation na maintenance, market and trading centres utaona kazi mingi zinafanywa na administration na County Council wamezisanya hizo kazi zote pamoja.
- 2) Provision of other services and activities as followed kama planning katika district wao ndio watafanya, district statistical services, kufanya statistic kama kuna watu wangapi? Kuna wanyama kiasi gani? Kuna barabara kiasi gani katika district? Kuna skuli ngapi? Mambo statistics wao ndio watafanya.
- 3) District project identification tunataka project gani hapo, kwa mfano who knows best what are the needs of the people of Wajir? The local people ndio wanajua wanahitaji project gani hapa, kwa hivyo project identification itakua ni kazi ya district Council.
- 4) Agricultural services: yoyote mpaka mwisho wao ndio watakua wanaangalia.
- 5) Watakua pia wanasimamia, nambari tatu hapo ukiangalia, regulate control manage, administer, promote and lighten any of the services which the district is empowered or requires to do. Kwa hivyo mnaweza kuamua kuna kampuni fulani

ambayo wanaweza kufanya kazi moja katika hizi kazi mnaweza kutoa licenses here.

- 6) Establish, maintain, control manage, administer and prescribe fees or charges to be levied in respect of services provided. Mambo ya rate ambazo zitalipwa wao ndio wataamua.
- 7) And support establishment and maintainance of school, clinics and provide assistance to the youth, women and persons with disabilities.
- 8) Identification, administration and management of resources within the district. Kwa mfano hapa Wajir resources ya Wajir kubwa ni gani? Livestock si ndio? Sasa itakua ni kazi ya Serikali ya district kusimamia hiyo mambo ya resources katika hii district.
- 9) Mambo ya security, leo hii mambo ya security iko chini ya nani hapa Wajir? Provincial Administrations.
- 10) Decisions, where are the decisions made? From the PC, DCs and may be Office of the President. Sasa tunataka iwe open door. Halafu mambo ingine yote ambayo inahusiana na polisi service katika district hiyo administration ambayo imechaguliwa na wananchi ndio itasimamia mambo ya police services.
- 11) Mambo ya Civil Servant appointment na recruitment na disciplinary measures zote zitafanywa na hiyo Serikali katika Wilaya na hizo zote ambazo ziko hapo sinahaja ya kupitia zote. Kwa hivyo hiyo ndio itakua kazi ya District Council ama District Government.

Functions of the Provincial government article 221. The principle functions of the Provincial Council are:

- 1) To enhance the capacity of the District Council and to promote co-operation between the District Council. Kwa hivyo hii Council ambayo itakua Garissa kwa mfano kazi yake ni ku-promote co-operation, uhusiano mwema baina ya District Council zote katika ile province. Kwa hivyo itahakikisha kuwa Wajir, Garissa, Mandera na Iajra Councils zake zinafanya kazi kwa co-operation. Kwa hivyo utaona hapa hakuna Majimbo hakuna ile ambayo inajitenga peke yake kuna co-operation baina yao.
- 2) Assist district to develop their capacity to discharge their functions, kuzidisha nguvu kwa kila Wilaya.
- 3) Formulate plans and policies for the exploitations of the Provincial resources and development of provincial infrastructure. Mambo ya barabara, infrastructures ni mambo ya barabara, resources zingine zitapatikana katika province itakua ni kazi ya provincial government kuhakikisha kuna policies ambazo zitaaidia kuweza kufaidika na hizo resources ambazo ziko katika ile province.
- 4) Manage provincial institutions. Kama kuna provincial hospital, provincial schools and other provincials institutions zitakua chini ya Provincial Government.
- 5) Halafu tunaambiwa kutakua na urban government, Nairobi has the status of capital territory and shall be managed inaccordance with an act of Parliament. Kutakua na sheria ambazo zitasimamia Nairobi as the capital city.
- 6) A city of municipality has the status of a district. Kwa hivyo town yoyote ambayo ianitwa city hivi sasa au municipality basi itakua na status kama ya district.
- 7) Towns and urban centres have the status of a location, nafikiri inafahamika.

Hebu tuende article 226, halafu nataka kuuliza swali kabla sijasoma hii. Kwa mfano tuko na resources mingi hapa Kenya kwa mfano Lake Victoria that is a natural resource, si ndio? Okay is it a national one or is it a regional resource? Who is supposed to benefit from Lake Victoria? The local people there, what about we other Kenyans who are far away from lake Victoria are we entitled to benefit from lake Victoria?

Audience: Yes.

Com. Lethome: Yes, it is a national resources. Kwa sababu tukisema it is a regional resource watu wa Mombasa nao wameseme Kilindini harbour is their resource na sisi hapa tuseme mifugo hapa ni resource yetu peke yetu, utakuta kuwa tutathulumu watu wengine. Ama kwa mfano kupatikane petroli hapa North Eastern itakua petroli ni ya watu wa North Eastern ama ni ya Kenya mzima? Niya Kenya mzima, kwa hivyo hapa lazima tujue kuna national resources.

Sasa article 226 inazungumzia namna ya kutumia hizo national resource zitatumiwa namna gani? Utakuta wakati mwingine kunatokea thuluma wale watu ambao ni locals pale kuna resource fulani lakini hawapati faida yoyote that is not proper. Au tuseme only the locals will benefit from that resource utakuta kutatokea thuluma. Kwa mfano tumeenda Pokot kuna hydroelectric generation power station ambayo inaitwa Turwell dam mmeisikia hiyo? Hiko sehemu ya Wapokot tulipokwenda kuchukua maoni ya Wapokot walisema hawajapata kuona umeme katika maisha yao what they see ni power lines zimepita kwao zinaenda sehemu ingine. Masinga hapa hivi Wakamba wanalalamika wanasema there is no power anywhere near there what they can see is power lines zinapita zinaenda mahali pengine. Complain hapa ni kuwa kuna national resources zingine ambazo zinafaidi watu wengine and locals are not benefiting from that. So there has to be a balance we have to find a balance whereby wale watu pale locals wanafaidika na pia other people wanafaidika.

Sasa tuangalie habari ya ku-share the National resources sub-article 1, district shall be entitled to a subsetential share of the national revenue from the local resources and for the allocation of a fixed percentage to the communities' in which areas the resources are generated. Kwa mfano ikiwa kuna resource fulani ambayo imekuwa generated au revenue imekua generated kutoka kwa locals province kutakuwa na percentage fulani ambayo itafaidi watu wa pale na hiyo zingine lazima ziende katika national fund ama the national government. Sijui kama inafahamika hiyo? Yaani kuwe na balance. Kwa mfano ikiwa kuna mbuga ya wanayama hapa, watalii wanakuja kuangalia herola si herola hiko upande hii? Hiko Garissa sasa kuna income fulani ambayo inapatikana kutokana na huyu mnyama, ambao sio ni myama ambao watu wa Garissa wamefuga it is a national resource. Kwa hivyo tunataka watu wa Garissa wafaidike and people from other places wafaidike. The locals should get a share and other people from else where should get a share of that. Kama ni mto kama tana river ina-generate power there is income there is revenue generated by that, a certain percentage of the income should benefit the locals and certain percentage should go to the national government.

The revenue from national resources shall be shared equitably between the district and the national government. Kutakuwa na

uadilifu hapa tuseme usawa ni equitably, kutokana na neno equity kutakuwa na uadilifu katika kugawanya hiyo resource ambayo tunaita national resource baina ya serikali ya wilaya na serikali ya kitaifa. The manner of the distribution of revenue shall be set out in an act of Parliament. Vile watagawanya ni Bunge itaamua itatengeneza sheria ambayo itaweza kuangalia namna hiyo watakayo gawanya. Swali?

Speaker: Tumefahamu.

Com. Lethome: Mmefahamu asante, wacha tuendeleo kama mmefahamu. Uliza.

Abdi Hussein: Mimi kwa jina ni Abdi Hussein Councillor. Ikiwa hii ni mapendekezo ya sheria na ikipitishwa kwa national Parliament sheria gani wewe sasa unasema Parliament inapitisha?

Com. Lethome: Asante unajua hii ni Katiba si ndio? Katiba haiwezi kuandika kila kitu kuna Katiba kuna act of Parliament kwa mfano nyinyi si mko na Local Authority act?

Abdi Hussein: Kweli.

Com. Lethome: Sasa hiyo ni tofauti na Katiba. Tunasema hio Local Authority act inazungumza habari ya Councillor wanachaguliwa vipi? Mshahara yao ni kiasi gani? Wanafanya kazi gani ama siyoy? Haiko kwenye Katiba nani amepitisha hiyo Local Authority act?

Abdi Hussein: Ni Parliament. Okay nimeelewa.

Com. Lethome: Kuna sheria tofauti tofauti na tumesema hii Katiba ikipita tumewapatia Parliament miaka miwili wahaklikishe hizo sheria zote mpya zimetengenezwa. Kwa sababu tunapitisha sheria moja tu Katiba, chini ya hiyo Katiba sheria nyingi sana zitatengenezwa na zitapitishwa na zingine zitabadilishwa. Haya asante.

Hashim Mohamed: Mr. Commissioner I'm Hashim Mohamed I would like to ask a question on article 226 column 1 and 2 the facts that says that the national revenue generated from any district, substantial share of the national revenue should be given to the district from which it is generated from that is column 1 and column 2 says equitable distribution of those national resources do you find any contradictions between those 2 clauses?

Com. Lethome: Point out the contradiction.

Hashim Mohamed: A substantial share of the national revenue to be given to the district from which the resources are

generated and then equitable distribution of those resources among the district.

Interjection: Com. Lethome: Read everything don't skip anything read everything.

Hashim Mohamed: Article 1 district shall entitled to a substantial share of national revenue from local resources and for the allocation of a fixed percentage to the communities in which areas the resources are generated. I'm underlining in which areas the resources are generated. Then here the revenue from national resources shall be shared equitably between the districts and national government. So it appears that those whose district is the one which generates the national revenue will have a substantial share from those of other districts.

Com. Lethome: Of course, it is only logical that they have substantial share. Kwa sababu kuna wezakanaje something is generated here but faida yote mnapeleka sehemu nyingine. It should benefit the locals more. There is no problem with the substantial share being here but also the manner of distribution has been left to Parliament under sub-article 3.

Hashim Mohamed: Okay thank you.

Com. Lethome: Then you can read article 227 to see if there is governmental relation. How do the various district government relate to each other and do they relate to the national government. Huko juu, then I would like not to go back to the rest you can read on your own because we still have the Judiciary and the Executive that we have not gone through and its already 5 o'clock.

Now we are doing the Legislature, Parliament, Parliament is the Legislature. Haya nilioanza pale nikasema kutawa na Bunge mara mbili: ya kwanza ni National Council ambayo itakuwa na representative from the district which is different now from the district council, this is different iko katika National level and for the relationship between the 2 you can read article 227. Halafu tumesema hii itakua na watu mia moja. Then we have the National Assembly ambayo itakua ni ile ya kawaida tunachagua watu but on top of that there will be 90 Nominated Members of Parliament so we shall have a total of 300 Members of Parliament then a 100 from the National Council so National Assembly itakua na watu wangapi? 400. Hayo ni mapendekezo.

Under the new Constitution Parliament has been given more powers, hiyo nikuleta garama nyingi. These are just recommendations the final approval shall come from the NCC when and if we shall hold it, okay?

Utakuta kuwa Parliament under the New Constitution has been given more powers especially on appointments. Hivi sasa tunajua who appoints the Cabinet? Who appoints somebody like the Attorney General, the Governor of Central Bank, the Head of Parastatals and the rest?

Audience: The President.

Com. Lethome: All those powers now have been removed from the President he can only appoint but approval will come from Parliament. So Parliament now has been given more powers. If you look at article 103 sub-article 3 and 4 utakuta there is a list a very long list there from A to M to de.....(**inaudible**) by the National Council article 103 sub-article 3 and 4 you find that under sub- article 3 hao ni wale watu ambao uchaguzi wao lazima ipitie kwa National Council ili ipitiskwe ya kwanza ni: Judicial Service Commission, Ethics and Integrity Commission, National Lands Commission and all the rest mpaka mwisho kabisa Judges and the Chief Khadi uchaguzi yawo lazima upitishwe na National Council. Kwa sasa uchaguzi wao haupitii huko inapitia kwa President peke yake. Sub- article 4 National Assembly lazima ipitishe uchaguzi ya Prime Minister, Deputy wake wawili, Minister, Deputy Ministers na hapa hatuwaiti Assistant Minister. Have you noticed that difference we are calling them Deputy there is a difference between an Assistant and a Deputy. Assistant hana kazi yoyote anangoja wakati Waziri hayuko aende kuwakilisha Waziri lakini a Deputy will have function assigned to him by the Constitution itself.(**inaudible**) yes that is the word ata-deputize not to assist. Kuna watu kama Governor of Central Bank appointment yao pia itakua through the National Assembly.

Hebu tuangalie ni nani anaweza kuchaguliwa kwenda kwa Bunge ya Kenya. Anaweza kuingi National Assembly kama ilivyo sasa na pia ni mtu ambaye unahaki ya kupiga kura, qualified to vote, halafu uwe umefikisha form four Wariya umefikisha form four? Sasa unahaki hapa ya kupigania kiti cha Ubunge. Na uwe umepita na ujue lugha ya Kiswahili na Kingereza na wale ambao hawawezi hizo lugha sign language. Mtu pia anajua sign language, Fatuma you have taken care of the disability they, are qualified also. Na pia kuna mtu alikua anauliza habari ya morals and integrity of Members of Parliament, satisfied any moral and ethical requirement prescribed by the Constitution or an act of Parliament kwa hivyo kutakua na requirements za mtu kuwa na aklaq fulani.

Disqualifications under sub-article 2. Ikiwa a person holds an elective or appointive office in the Republic other than as a Member of Parliament then that is disqualification meaning: you have to disqualify yourself from that position for you to be qualify to a Member of Parliament. If he is of unsound mind hiyo inajulikana mtu ambaye ni mwenda wazimu, au ni mtu ambaye mufilis amefilisika au mtu ambaye yuko jela amefungwa kwa sababu ya kufanya hatia yoyote ambaye ni ya crime, au pengine alikua amefungwa miaka kumi iliopita alikua amefungwa kwa sababu ya hatia fulani kwa mda ambao umezidi miaka mitatu au alikua amefutwa kwnye ofisi ya umma kwa sababu ya makosa, mtu kama huyu hafai kuwa katika kupigania kiti cha Ubunge.

Sub-article 3 mnaweza kuangalia wenyewe, Representation of Women, yule mzee ameenda yule alikua anasema kinamama wapigania kiti? Kwa wale nayo nimesema atleast one side of the Members of this House shall be Women tunataka affirmative action. Halafu tunaambiwa within 3 years of coming into force of thi Constitution Parliament shall enact a law, itapitisha sheria to implement the requirements of article 1 itapitisha sheria ya kuhakikisha kuwa kinamama wakati wote wanakua one third of Parliament. Parliament will have to come now with a law for that.

Kuna uchaguzi utafanywaje uchaguzi wa Bunge utaangalia 110 Im not trying to rush, na Bunge itakaa mda gani? Tenure of

office of Members Parliament, under 111 utaona wanakaa mda gani Parliament na mda gani wanatoka kwa Parliament?

Article 112 recall of Member of Parliament hiyo nafikiri tulikua tumepitia, ikiwa hamjarithika na Mbunge wenu mnawezaje kumtoa Bunge? I don't want to go into part 3 how will Parliament function those are details you can look at them.

Article 111-kuhusu mishahara ya Wabunge itaamuliwa na nani you look at that. Kuna article 124 is important Presidential assent and reference. Tunajua kuwa sheria ikipitishwa na Bunge haiwezi kuwa sheria mpaka President a sign. Councillor tutakufuta kazi sasa, unajua tumefuta Makansilas wote kazi chini ya hii Katiba mpya wote wameenda. Mnajua kuwa sheria ikipitishwa na Bunge mpaka ipitie kwa President aweze ku-sign ama sivyo? Lakini tatizo ambao hiko ni kua wakati mwingine inachukua mda mrefu sana bila ya President kufanya chochote. Sasa hapa tumesema kuwa President akipelekewa Bill na Speaker wa National Assembly, tunaita Bill kabla haijawekwa sign ya President, akipelekewa siku saba within seven days lazima achukue hatua. Ya kwanza ikiwa ana wasi wasi na ile Bill na Bill kwa sababu ni kitu cha kisheria anaweza kupeleka kwa supreme court for advice. Supreme court itaweza kum-advice kuwa hii inafaa. Ama haifai au anaweza kumrudishia Speaker amwambie anataka irudishwe katika Bunge ikaangaliwe tena au anaweza kuipitisha. Kwa hivyo within seven days anatakiwa afanye moja kati ya hayo mambo machache. Utakuta hapa alikua na mda mrefu zaidi kuliko sasa.

Quorum ya Parliament. Hivi sasa tuko na Members wangapi kwa Bunge 222 what is the quorum of our a current Parliament? 30 what is 30%, thelatini that is very low ama sivyo? Meaning if they want to pass something 30 MPs can come together and decide to pass something they have a quorum. Na wakati mwingine tunasikia inakua ni shida hata ku-raise hiyo quorum si mmesikia hiyo? Kwa sababu ya mambo ya technical appearances wengine hawa endi Bunge is a problem. Lakini sasa quorum imekuwa lifted tu 30% of all the Members of the House. Kama ni National Assembly 30% watakua ni wangapi? No National Assembly Members are 300 and I have raised 30% that will be around 70, lakini tunasema hiyoBunge ikiwa ni National Assembly ambayo itakua na watu mia tatu 30% is likely over 100. Halafu kama ni ile nyingine ambayo ni National Council which has a membership of 100 it will be around 33 Members, kwa hivyo the quorum has been raised.

Halafu 134 inazungumzia habari ya lugha ambayo itatumiwa huko na kuna sign language ndani yake pia. Namna ya kupiga kura katika Parliament imewekwa hapo, procedures of Parliament, standing inorders, the kind of Bills, allocation of time for Bill, Parliament Committees zimewekwa zote hapo under article 140 the type of committees we shall have in Parliament.

Calender of Parliament. Hiyo ni muhimu sana. Ukiangalia article 142 tuangalieni article 142 kwa sababu inazungumzia habari ya resolution. It is the President who has the powers to dissolve Parliament ama sivyo? Tumeambiwa the term of the National Council is 4 years na hii nyingine ya National Assembly 5 years, kama vile hiko hivi sasa. Article 142 inazungumzia habari ya dissolution and proposition of Parliament. Utasaidiwa na Mohamed wewe umekuja umechelewa. Sasa ukiangalia hapa unaona kuwa the President has no powers to dissolve Parliament under this Parliament will have its own calender, itakuwa na calender yake. Kwa mfano ukiangalia under article 142 sub-article 5 you realise that Parliament will have its own calender. Kwa mfano nikiuliza mtu hapa siku ya mwisho ya Bunge itakua lini? Could be today, it is unknown. Haya siku ya kwanza ya Bunge mpya itakua siku gani? Haijulikani, kwa hivyo tunasema under the new Constitution it should be known. Parliament lazima iwe na

calender yake wanajua leo tumeingia katika Parliament, ikifika tarehe fulani tunatoka katika Parliament siku yetu imekwisha so there will be no dissolution of Parliament by a person, Parliament will dissolve itself as per the calender.

There can be only extension in case of war under sub-article 3 kukiwa na vita ndio Parliament inaweza kuongeza mda wake. Kuna mambo ya no confidence motion and the rest you should read all that. I'm now being tempted to go to the Executive halafu to the Judiciary.

The Executive kwa sababu mnajua kuna mabadiliko makubwa katika Executive sasa. (*Interjection inaudible*) hamjaswali? Mimi nimeswali, Asir mnatakaje? Haya dakika kumi halafu mswali na mrudi.....(*inaudible*) you can sneak out quietly uswali halafu urudi lakini tunaendelea.

Chini ya hii Katiba tunapozungumzia habari ya Executive, the Chief Executive is the President halafu anasaidiwa katika Executive na Cabinet Ministers ambao amewachagua yeye mwenyewe na amewachagua kutoka Bunge ama sivyo? Sasa kuna mabadiliko kidogo hapa habari ya Executive. Tunaambiwa sasa kutakuwa na President na Vice President. Ukiangalia hapa chini ya article 150 kutakuwa na President. President ndio atakuwa Kiongozi wa Taifa, Head of State, Commander in Chief of the Armed Forces, atakua the Chairperson of the National Security Council and the Chairperson of the Defence Council. Hiyo ndio kazi ya tumempatia President na tumemwita Chairperson kwa sababu anaweza kuwa ni mwanamke. Na President pia atakua yeye ndiye alama ya umoja wa nchi, the symbol of unity of the Nation, na atakua na wajibu wakuphakikisha kuwa Wakenya wanaishi kama watu wamoja yaani umoja na pia atahifathi utukufu wa nchi wa Kenya na pia ataangalia watu tofauti tofauti walioko katika nchi ya Kenya na kuphakikisha kuwa haki za kibinadamu za kila mmoja zimepatikana. Na pia under sub-articles C yaani 1C yeye ndiye atakaye linda Katiba kwa hivyo lazima aheshimu Katiba. Na tumeambiwa kuwa President hatapata mamlaka mengine. The President shall not hold any other office including any elected or appointed office within a Political Party. Hiyo nafikiri tulikua tumeona under article 100-mnakumbuka hiyo?

Kuna mamlaka ya Raisi katika nchi. The State functions of the President. Hata kama vile kuzungumzia Bunge itakua kazi yake na at least mara moja kwa mwaka atakua anazungumzia Bunge. Sasa tuingie katika kuchagua Cabinet yake. Hapo ndio kuna mabadiliko ambayo ilikua hakuna katika hii sheria ya sasa. Tumeambiwa President yeye kulingana hii Katiba ndio atachagua Cabinet na hii Cabinet yake itakua na Prime Minister na yeye atakua Kiongozi wa Political Party ambao iko na majority in Parliament. Kwa hivyo, kwa mfano baada ya Parliament kuchaguliwa President ataenda kwa Parliament na kuchagua na Kiongozi wa the majority party atamchagua awe Prime Minister halafu kuchaguliwa two Deputy Prime Ministers, hawa watachaguliwa na Prime Minister. Halafu kutakua na Ministers not more than 15 na hawa pia watakuwa wamechaguliwa na Prime Minister. Lakini tunaambiwa hawa Ministers, hivi sasa Minister ni Members of Parliament, lakini kulingana na sheria mpya watakuwa ni watu kutoka nje ya Parliament. Hii ndio watu wengi wamelalamika, watu wanamaoni tofauti tofauti. Na sababu ya kusema wachaguliwa kutoka nje ni kuwa kwa mfano MP anapochaguliwa si watu wake wanatarajia kuwa atawafaa watu wa Constituency yake ama sivyo? Mkipatia ministry mmempatia kazi nyingine under the Minister unatakiwa ku-serve watu wa Kenya mzima ama watu wa Constituency yako? Sasa tunakuta kuna thuluma kwa sababu hatuwezi kuchagua MPs

wote wawe Ministers. Kama hapa tunasema only 15 Ministers meaning only 15 constituencies will have Ministers hizo zingine zitakua hazina Ministers. Ndio hapa ikapendekezwa kuwa wachaguliwe kutoka watu wengine ambao sio Members of Parliament. Na pia wawe ni professional, professionals maana yake ni nini? Kwa mfano ikiwa ni Minister of Health ajaguliwe mtu gani? Daktari, kama ni Minister of Finance, achaguliwe mtu ambaye amesomea mambo ya Finance kama ni Minister of Agriculture achaguliwe mtu ambaye anajua ukulima. Kwa hivyo kutakuwa Ministers kumi na watano wasizidishe kumi na watano.

Halafu kutakuwa na 15 Deputy Ministers, sio Minister moja ako na Assistant wawili ama watatu, kila Minister atakua na Deputy mmoja ambao pia watakua wamechaguliwa na Prime Minister.

Halafu kuna Majaji wao pia watakua wanachaguliwa na President kwa sababu tunazungumzia habari ya appointment of the President. Lakini tumeona mahali pengine it has to be with the approval of Parliament. Atachagua pia maofisa wengine chini ya Katiba. Kisha kuna Commissions ambazo anaweza kuchagua lakini apate ithini kutoka kwa Cabinet sub-article 3 itakuambia anaweza ku-appoint a Commission of Enquiry, kama vile kumetokea Wagala, Malkamare ama Likoni, anachagua Commission ya kwenda kuchunguza, lakini he has to get the consent of the Cabinet, from the Cabinet. Na pia ikiwa kuna documents za International kama International agreement ama zingine hawezi kuweka sahihi isipokua kwanza apate nini? Consent ya Parliament. Mumefahamu hiyo?

Kuna ile mambo ya declaration of emergency. Hivi sasa tunajua President anaweza ku-declare state of emergency. Hapa tunaambiwa a state of emergency can only be declared... President ata-consult kwanza na Cabinet na National Defense Council, halafu ata-declare state of emergency. Vita it has to be declared with the consultation. President will consult with the Cabinet and the National Defence Council.

Halafu tuangalie kazi zingine zote za President ambazo ziko hapo. Article 152-inazungumzia habari ya Legislative functions of the President vile zinahusiana na kutengeneza sheria.

Article 153 decisions of the President. A decision by the President under the authority of Constitution or any law shall be in writing and shall bear the signature of the President. Sio kusema tu Rasi alisema. There wil be something in writing to show that the President has made a decesion kuonyesha kuwa President aliamua kitu fulani.

Article 154 inaonyesha namna ambavyo mamlaka ya Raisi imepunguzwa au imewekewa kiwango fulani.

Uchaguzi wa Raisi kwa chini ya article 155 Raisi atachaguliwa vipi? Lakini ni muhimu tuangalie ni nani ambaye ana-qualify kuwa President ama a Nominee of Presidential election. Must be a Kenyan by birth, kwa nini tumesema by birth? Kwa sababu asubuhi tumesema you can be a kenyan by birth, by marriage, naturalisation na registration si ndio? Sasa hapa must be by birth amezaliwa Kenya na wazazi wa Kenya au kama amezaliwa nje amezaliwa na wazazi wa Kenya so by birth. Awe na umri zaida ya miaka thelathini na tano na chini ya miaka sabini, awe ni mtu ambaye ana akhlaki ya hali ya juu na awe ni mtu ambaye ana

degree kutoka katika university chuo kikuu. Hiyo tumechukua kulingana na maoni ya watu. Na awe pia amechaguliwa na chama a registered Political Party, although you can also be an independent Candidate kwa sababu under the current Constitution the recommendations allow for independent Candidate. That is your Political freedom unaweza kujiunga na chama au kusema mimi ni independent you have that freedom.

Kisha ukiangalia sub-article 2 inaonyesha ni nani ambaye sio qualified kusimama kama Raisi imelezwa hapo yote ya kwanza:

1) Mtu ambaye anakiapo cha kua yeye ni mtu wa nchi nyingine ama ana-support nchi nyingine. Kwa mfano: ikiwa nina passport ya Kenya na passport ya Britain ni kama kuwa mimi ni nina kiapo ya nchi mbili. Kwa hivyo hatuwezi kukubali mtu ambaye ako na dual citizenship kusimamia Raisi. Lazima awe kama ana mbili. Kwa mfano kama sasa mimi nakubaliwa kuwa na mbili chini ya sheria mpya lakini ni simamia kiti cha Uraisi I have to denounce moja ile ya nje. Kwa sababu tunataka Raisi ambaye yeye ana alegency yake yote ni ya Kenya si ya nchi nyingine. Mnaweza kuangalia hiyo yote.

Procedure of Presidential election under article 157. Hivi sasa tunajua Raisi anaweza kupata simple majority, halafu kuna ile rule ya 25% votes from how many provinces? 5 provinces, imebadilika hiyo. Ukiangalia article 157 sub-article 4 inasema: a Candidate for President who receives more than 50% of all the votes cast in the election. Kwanza atapata 50%, kwa hivyo kama Kenya mzima watu elfu kumi wamepiga kura 50% ni ngapi? Ni above 5000, ulizeni swali ni pumzike kidogo.

Abbey Mohamed: Mimi naitwa Abbey Mohamed Yarrow na mimi ni mtu ya Wajir kwanza nimeshukuru sana vile mmeangaika. Hiko wengine mimi nimesikia walikua karibu kuanguka katika bahari huko upande wa Lamu wakati mlienda kwa Katiba, hata yule daktari wetu amekua mngojuwa. Sasa swali langu ni hii. Hapo ulisema in this article yaani President with his Ministers ndio wanaweza kufanya kila kitu bila ma-MPs chini ya article**(Inaudible)** as a Cabinet kama ni emergency kama ni nini yaani Raisi peke yake.

Ya pili, kwa nini mliweka hata mimi naunga Raisi Moi mkono Nominated MPs tisini mishahara yao itatoka wapi? Kama hao tisini without portfolio hakuna mtu amechagua hawa wanaenda kuwa rebel katika Bunge na wanataka coalition government yao, mtu hajachaguliwa anaweza kuongoza wewe?

Com. Lethome: Unapendekeza nini?

Abbey Mohamed: Mimi napendekeza tukae kama zamani kila province ikuwe inatoa kama North Eastern Manderu moja, Garissa moja. Kama wakati wa Kenyatta nominated members walitoka Garissa peke yake kwa sababu hapo ndipo kulikua na watu wana powers na pia wale walikua na godfathers. Sasa ya tatu**(inaudible)**.

Ya tatu, nyinyi wenyewe watu wa kubadilisha Katiba hata juzi mimi nasikia Raisi amekosa na nyinyi kwa sababu ya kitu fulani. Sisi ni Wafrika sisi ni Wasomali unasikia? Katiba yetu inatakiwa itembee na utamaduni wetu ile sheria ya zamani tunaishi nayo

ya kienyeji. Ile ya kutoka Kikuyu haitoshani na yetu. Kama kwa mfano wewe unaua mtu leo unaambiwa lipa ngamia mia moja tangu zamani ni desturi yetu. Katiba yetu lazima itengenezwe kulingana na desturi yetu. Asante sana.

Com. Lethome: Nimeelewa maneno yako vizuri sana. Yaani 50% kura zote ambazo zinapigwa katika nchi na zaidi ya hapo apate zaidi ya isirini kwa mia 20% kutoka nusu ya mikoa yote ya Kenya kwa mfano 4 provinces only hiyo ndio tumependekeza. Imependekezwa hapa 50% of all the votes kwa mfano kama ni 10000 imepigwa Kenya apate 5000 sawa. On top of that kuwe na minimum ya 20% of the votes cast in more than half of the provinces basi yule ndiye atakua President. Kwa hivyo President tunataka awe na popular votes, asiwe popular tu sehemu moja, baali awe popular at least in half of the provinces in Kenya.

Speaker:(inaudible)

Com. Lethome: Karibu kama hiyo its almost the same. Hebu tusikize maswali huko nyuma.

Hashim Mohamed: Mr. Commissioner I would like to ask a question concerning article 143 of the Constitution that is no confidence motion, Im Mr. Hashim Mohamed Delmoge again.

Interjection: Com. Lethome: 143?

Hashim Mohamed: Yes clause 1 because when I wanted to ask you were in a hurry so a left it. So question talks about no confidence motion that: it is National Assembly persons are resolutions that it has no confidence in the government then the Prime Minister shall resign, the National Assembly fails to approve the appointment of a Prime Minister within 21days or the death vacancy arises the President shall dissolve the National Assembly. Therefore what we know and again article 151 clause 1 sub-article 2: the Prime Minister who shall be the Leader of Political Party and that enjoys the majority support in Parliament shall form the government. So it appears, what form of government does he adopted is it Presidential or Parliamentary?

Com. Lethome: It is Parliamentary.

Hashim Mohamed: The second one is, this no confidence motion can bring a problem, because in the eventual a Prime Minister resigning and the Parliament being dissolved this can happen with an alarming frequency and rampancy. For example in Italy between 1919 and 1921 there were as many as 6 changes of government and this was due to a coalition government based to heterogeneous majority of discordant factions. In order to prevent the same from happening why don't we reconsider this provision in order to avoid the dissolution on the collapse of the Parliament?

Com. Lethome: Okay, now we are debating these are just recommendations what are your alternative recommendations?

Hashim Mohamed: My alternative recommendation is that here it reads if a Prime Minister resigns the President should Nominate as Prime Minister a Member of the National Assembly who in his or her views enjoys the support of the majority of the Members of Assembly. So it is the President who does that. So why don't we adopt the Parliamentary system that is in practice or in operation in UK where till he loses the elections the Prime Minister remains the Leader of the government business and the leader of his party and the Prime Minister of the country till the next general elections. Because we Africans can decide to form coalition in order..... like the 30% which is required to recall an MP, such witch hunting can take place may decide to removal a Prime Minister from power and you know how expensive such dissolution is, because it will lead to a general election to be held again. So we may have five elections in five years time.

Com. Lethome: Haya points taken, under article 160 the terms of office of the President, 159 assumption of Office of the President how does he assume the office? Ni wakati gani tunasema Raisi sasa ameingia katika ofisi akisha chaguliwa. Tunaona hapo anaweza kukaa baada ya kuchaguliwa anaweza kuwa Raisi kwa mda gani? Tumebakisha ile vile ilivyo hivi sasa full term of 5 years each or a maximum of 10 years.

Kuna protection of the President in respect of legal proceedings during office kwa sababu Raisi anapokua ofisini lazima pia asiwe anakaa na wasi wasi wakati wowote ambao anaweza kuchukuliwa hatua, lakini pia asivunje Katiba. aendeshe kazi kulingana na Katiba. Inaeleza kuwa akivunja Katiba basi anaweza kuchukuliwa hatua.

Article 164-tunaonyeshwa vile Raisi ambaye hawezi kutekeleza kazi yake kwa sababu amekua pengine uwezo wa kiakili au uwezo wa kiafya haumruhusu kuendesha kazi yake anaweza kuondolewa namna gani? Article 162 sub-articles 1 mpaka mwisho. 163 impeachment.

Interjection: speaker:(inaudible)

Com. Lethome: Nakumbuka tu we looked at the areas, which Parliament can amend, I think this one is not under the exception so Parliament can amend that. With the two thirds majority then they can, unless it falls under the areas that require referendum and I don't think it falls under that, whether it increases another term. Hebu angalia amendment by Parliament article 294 he does not fall under the areas mentioned under sub-article 3 umeona article 294 sub-article 3 sasa nikikuambia page hautapata look at page 36, if he does fall under what is numerated under sub-article 3 then Parliament can amend that article. It is article 294 sub-article 3, His question was on article 160 the 2 term limitations for the President, his question was can Parliament amend that article? And I'm saying if it does not fall under sub-article 3 article 294, then Parliament can amend with two thirds majority.

161 protection of the President, 162 removal of the President on grounds of incapacity. Because, ikiwa watu wanaona kuwa yule Raisi hafai hawezi kufanya kazi yake ni mgonjwa au akili imepungua wanaweza kufuata utaratibu fulani ili kuweza kumwondoa na it requires kuwe na certificate from medical partioners kuonyesha vile mnavyosema ni kweli. Kwa sababu ikiwachwa na free hand kutakua na witch hunting tutasema huyu mzee kichwa imeharibika kwa hivyo atolewe au huyu ni

mwogonjwa mwili wake ni mgonjwa atolewe. Lazima kupatikane na certificate to certify kwa medical practioner kuwa huyu mtu kweli ni mgonjwa. Ukiangalia sub-article 4 inakuambia hivi; kutakua na tribunal ambaye itakwenda kuchunguza na lazima kupatikane certificate. Impeachment under article 163-kuonyesha ni wakati gani ambao President anaweza kuwa impeached.

Office of the Vice President, very important 165. Under the current law nani anachagua Vice President? Who is our Vice President right now? Kwa hivyo hakuna Vice President saa hivi kwa sababu anachaguliwa na Raisi na anaondolewa na Raisi. Lakini under this New Constitution tunataka Vice President awe ni running mate wa President elected directly by the people. So he can only be removed by the people. So we shall have somebody running as a Vice President, kama vile America tunasikia kuna President na kuna rallying mate wake. Kwa hivyo Vice President atakuwa hivyo.

Functions of the Vice President under article 167, salaries and allowance of the President and Vice President kutakuwa na Commission ile ambao itaamua mshahara wake.

Halafu 170 you can look at the Prime Minister and the Cabinet and the functions and how the Prime Minister is appointed by President?

Im tempted now to run to the Judiciary so we have very little time remaining na Judiciary ni mingi sana na mngependa kusikia habari ya Khadis court ama sivyo? Wacha tuingie katika Judiciary. Let me tell you one thing, sababu ya kuja hapa leo sikuweza ku-discuss yote hii ni ku-generate debate. Kwa hivyo hata baada ya sisi kuenda muendeleo na debate yenu, wakati mnakaa jioni kwenye baraza yenu mimi sisemi mabaraza ya miraa siungi mkono, lakini wakati mko katika mabaraza yenu keep on debating. Wakati kinamama mnakaa mahali debate on this document. Kwa hivyo nataka tuingie kwenye Judiciary.

Yunis Abdi:(Inaudible) Jina ni Yunis Abdi nimeona kwamba Presidential powers kuna tashwishi kidogo.

Com. Lethome: Tashwishi gani?

Yunis Abdi: Ile vile watu wameamua Wanakenya wameamua.

Com. Lethome: Wameamua nini?

Yunis Abdi: Nimeona wame-reduce powers of President kabisa, completely na vile tena tunasoma tumeona kama nyinyi Commisssoners, nafikiri mlikosana na Mzee kidogo. Ndio sasa kidogo nafikiri mlipatia power, tena mkamrudishia power.

Com. Lethome: Sasa why are you talking of Mzee, Mzee is going?

Yunis Abdi: Hapana ni maoni yangu, ile kitu inatusumbua hapa ndani ni maoni ya Wanakenya walitoa hiko tofauti kabisa. So

nimeona kwamba at least mlikaa huko Mombasa beach I don't know ndio mkaa.....(inaudible) kwa sababu Wakenya wengi walisema kuwa Presidential powers iwe reduced completely. Hapa bado naona ni kama ile Constitution ya zamani hakuna tofauti.

Com. Lethome: Tofauti ni ile appointment, zamani alikua ana appoint Cabinet without consulting anybody ana dismiss without consulting anybody lakini sasa anaambiwa with the approval of Parliament. Hawezi ku-declare emergency ama vita. Ana dissolve Parliament under the current Constitution, chini ya hii hawezi ku-dissolve Parliament. kwa hivyo Yunis hiko, halafu ile kusema ku-reduce kabisa kabisa what kind of a President is that? A President must have some powers. Kwa nini ni campaign nipate kura 50% na halafu 20% from 4 provinces without any powers why should I struggle? And what kind of a President is that anyway? Kwa hivyo tunajaribu ku-balance asiwe na powers nyingi sana na asiwe na hana powers kabisa tuna-balance, hatukuenda kwake.

Haya tuingie Judiciary sasa, tunapozungumzia habari ya Judiciary hii ni sehemu muhimu sana katika sheria ya nchi. Judiciary ni mmoja katika vile kiungo vitatu ya Serikali; kiungo ya kwanza ni Legislature ya kutengeneza sheria Bunge, Executive ya kutekeleza hizo sheria. Halafu kuna hii ambayo ni Judiciary ambayo ni muhimu sana ambayo ni ya Administration of Justice. Hivi sasa katika chini ya hii Katiba tuko na system ya korti ya juu kabisa, High Court, kwanza kuna Court of Appeal ambayo hiko chini ya High Court halafu Subordinate Court na chini ya Subordinate Court kuna Majistrate Court halafu kuna Khadis Court. Sasa katika chini ya hii Katiba mpya unapendekeza kuwe na juu kabisa Supreme Court. Supreme Court will be the highest court in the country. Halafu chini yake kutakua na Court of Appeal, chini yake High Court halafu chini yake ndio tutakua na hizi subordinate Court hizi za Majistrate na Khadis Court itakua hapo, hiyo ni article 185 you can look at the hierarchy of the court under article 185. Kisha kuna article 186 independence of the Judiciary ni muhimu sana. Wakenya wengi sana wamezungumzia habari ya independence of the Judiciary, kwa sababu Judiciary ikiwa sio independent inafanya kazi kwa uhuru basi kunatokea thuluma mingi sana. Na independence yake inaweza kupatikana vipi? Kwanza wale ambao wanafanya kazi huko wasiwe wanaogopa mtu fulani kuwa lazima ni mrithishe mtu fulani au idara fulani ili niwezi kupaki katika kazi. Kwa hivyo uchaguzi wao iwe ni independent, we have tried to provide that, kuwa wanapochaguliwa Majaji and other Judicial Officers is very independent ili wawezi kuwa independent.

Supreme Court kazi yake itakua ni kazi gani ama itasimamiwa na kina nani? Angalia article 187, kutakua na Chief Justice na Halafu Chief Justice anachaguliwa vipi? Utaangalia katika ile sehemu ambayo inahusika kuhusu Chief Justice kwa sababu yeye ndio atakua Jaji mkuu. Kitu muhimu ya kujua ni kuwa ili Chief Justice asiwe na ile superiority complex tumependekeza chini ya Katiba mpya achaguliwe from the most senior Judges of the Supreme Court. Na kukitoa vacancy kwa mfano amekufa ama mda wake umepita he will only be replaced by the most senior Judge in the Supreme Court. Kwa mfano Chesoni alipokufa amekua replaced na nani? Ni Mjaluuo anaitwa Bernard Chunga, was he the senior most Judge of the Court of Appeal? Sasa unakuta hapo kidogo kunatokea matatizo kwa sababu una-subject watu ambao ni Senoir to a superior person who is junior to them. Katika kazi ni junior. Kwa mfano wewe unafanya kazi katika County Council tuseme wewe ni Clerk of the Council ama

Chief Officer halafu mtu ambaye ako chini yako aletwe awe juu yako utamsikiza kweli? Kwa hivyo kuna matatizo hapo, tumependekeza hivyo. Halafu ukiangalia pia utaona katika Court of Appeal Jaji mkubwa katika Court of Appeal ataitwa President of Court of Appeal. Halafu akiondoka yeye atakua replaced by the senior most Judges in that Court of Appeal, High Court pia kutakua na yule Jaji ambaye atakua ni mkubwa hapo akiondoka tutachagua yule Senior most halafu yeye ndio atasimamia High Court. Kwa hivyo tumejaribu kufanya the hierarchy of the court iwe nzuri kuliko vile ilivyo sasa.

Speaker: Halafu nani atachagua High Court Judge kabla hajakufa?

Com. Lethome: Chief Justice, ngoja sasa turudi katika article 184 appointment of Judges, mzee huyu swali lake anauliza kukitokaa nafasi katika kiti cha Chief Justice vile kilitokea wakati wa Chesoni alipokufa to the most senior Judge of the Supreme Court by reference to the date of appointment shall be appointed to the Chief Justice atakua atachaguliwa hapa. Hiyo nafikiri yote nimezungumzia hapo hivi, lakini kuchaguliwa Majaji wote watakua wanachaguliwa na Judicial Service Commission.

195 qualifications. Mtu akichaguliwa kuwa Jaji anatakiwa awe na qualifications ya hali gani, hii inaendelea mpaka article 196 mtu akichaguliwa anakaa kama Jaji kwa mda gani? Hapa unajua lazima uwe na security of 10 years wasiwe watu wanababaiwa wakati wowote. Tunaambiwa, article 196 judge ama mtu mwingine yeyote ambaye anafanya kazi katika idara ya mahakama ata-retire kutoka ofisi yake akifikia umri wa miaka sitini na tano, lakini anaweza ku-retire kwa mapenzi yake akifikisha umri wa miaka sitini. Hii column ndio imepeleka watu wengine kortini.

Haya kuondolewa katika kazi. Jaji anaweza kuondolewa ama hawezi kuondolewa? Article 197-inakuambia ni wakati gani ambao Jaji anaweza kuondolewa katika kazi yake. Kwa sababu hawezi kuwekwa ikiwa anaharibu. Kwa hivyo Constitution imeweka nafasi ya yeye kuondolewa. Kwa mfano ikiwa hawezi kufanya kazi yake kwa sababu ya ugonjwa wa kimwili ama ya kiakili, anaweza kuondolewa au amevunja ile code of conduct amekwenda kinyuma na sheria ya Majaji au amekua misconduct na incompetence anaweza kuondolewa.

Tuingie katika Khadis Court article 199. Hivi sasa tuko na level moja ya Khadis court, chini ya sheria mpya. Article 199 inasema kutakuwa na Khadis court na kutakuwa na ofisi ya Chief Khadi na ofisi ya Senior Khadi. Kwa hivyo kutakuwa na Khadi mara tatu Khadi, Senior Khadi na Chief Khadi. Khadi atakua katika district, Senior Khadi katika Province na Chief Khadi National. Mmefahamu hiyo?

Kazi ya Khadi ni kama vile ilikua katika sheria hii ambao tunatumia sasa mambo ya personal laws za Waislamu marriage, divorce and inheritance. Halafu ameongezewa mambo mengine mambo ya commercial dispute between Muslims wakitaka wanaweza kuenda wote wawili ikiwa wote ni Waislamu, kwa hivyo ameongezewa powers zaidi. Kwa mfano mimi nakudai ama wewe unaidai na sote ni Waislamu tunaweza kupelekana kwa Khadi na atuamulie hiyo kesi yetu. Mas'ala ya waqti tunajua kuwa kuna waqti mali ambayo inatolewa kwa maslaha ya Waislamu, kukitokea matatizo yoyote inahusika na waqt basi kesi inapelekwa kwa Khadi. Muhimu sana ni makhadi kuchaguliwa watachaguliwa namna gani? Article 201 inaeleza vila watakavyo

chaguliwa makhadi, watachaguliwa na Judicial Service Commission na katika kuchaguliwa makhadi hawa wataangalia kama ni mtu ambaye anajua sheria ya Kiislamu ambayo inatumika na watu wote wa Kiislamu, kwa sababu tunajua Waislamu sio sehemu moja peke yake kuna *anathii, hambathi, mali,sharti* kwa hivyo ni mtu ambaye anajua hiyo. Na Chief Khadi malalamishi mengi imetokana na ofisi ya Chief Khadi, Waislamu wengi wamelalamika sana kuhusu Chief Khadi, kwa sababu Waislamu hawakua consulted alipochaguliwa. Kwa hivyo hata kutoka kwake Waislamu have no say at all. Wamesema Chief Khadi kwanza yeye atapewa privilege kama ya Jaji ya High court hiyo ndio privilege ambayo atapewa Chief Khadi. Halafu tunaambiwa Senior Khadi atapewa madaraka kama ile ya Chief Magistrate, halafu na district Khadi atapewa mamlaka sawa na district Magistrate. Kwa hivyo itakua hicho kiwango, sio kama sasa wanatharauliwa sana. Mmeingia katika ofisi ya Khadi mmeona vile hiko? Inaitwa kangaroo court, mmesema hakuna kiti wanakalia nini? Mtu kuchaguliwa kama Chief Khadi ama Khadi anatakiwa awe na masomo kiwango gani, imeelezwa chini ya 202 na kuna mahali imelezwa kuwa anapochaguliwa Chief Khadi chama cha Kiislamu lazima kiulizwe kwanza. They have to be consulted. Kama Council of Imam, kama Supreme Council.

Halafu kuna kitu kingine kuna masala ya rules or procedure. Khadi hivi leo anachaguliwa anapelekwa kortini, ile sheria ambayo anafuata pale ni sheria ya Kizungu, civil procedure na evidence ambayo si sheria ya Kiislamu. Kwa hivyo tumeambiwa baada ya Chief Khadi kuchaguliwa anatakiwa yeye na Chief Justice na Law Society of Kenya na waweze kutengeneza sheria ambazo zitafuatwa. Kama haukurithika na senior Khadi unakwenda kwa Chief Khadi ambaye atasikiza akiwa na Makhadi wawili; hiyo mtaona hapo vile iliovyo.

Speaker: Swali moja.....(inaudible)

Com. Lethome: Haya tumesema Khadi court mbili kwa kiti aina gani?

Speaker:(inaudible) kesi ambaye umenyanyaswa.....(inaudible)

Com. Lethome: Hiyo haihusiki na Khadi's court.

Speaker:(Inaudible)

Com. Lethome: Hapana hauwezi kwenda kwa Khadi, haya asante. Judicial Service Commission articles 204 ni muhimu sana kuangalia hiyo.

Speaker: Bwana Commissioner I wanted to ask hiyo mambo ya Court of appeal it is mentioned in the article ikiwa haujarithika na Khadi's na mahakama yako ya Kiislamu may be divorce ama kurithi, is there still to appeal for(Inaudible)

Com. Lethome: You can go now and appeal to the Court Appeal.

Speaker: Hapo kwa Court of Appeal who will be the Judges?

Com. Lethome: There must be atleast two Khadis to sit there. Ofcourse there will be Judges from court of appeal there must be people who are coversant with Islamic law at that level. Haya Judicial Service Commission ni muhimu sana kwa sababu, Judicial Service Commission ndio itakaye chagua Majaji na Makhadi. Sasa composition ya hawa Judicial Service Commission hiko under article 204 tunaona hapo kutakuwa na mwanamke wa Kislamu atakua katika hii Juducial Service Commission na hatuna sasa, na pia huyu mwanamke wa Kislamu atakua amechaguliwa na Organisation ya Kislami yoyote kama Imam Council ama Supreme Council of Kenya Muslim. Chief Khadi pia atakua hapo na watu wengine kama walimu wa sheria, kutakuwa na watu kutoka kwa universities ya Kenya, Magistrates kutakuwa na High Court Judge kutakuwa na Judge kutoka Court of Appeal na Supreme Court, na Attorney General atakua katika hiyo Judicial Service Commission. Soma hiyo 204 utaona yote, na 205 inaeleza functions of the Judicial Service Commission.

Haya tuende katika article 209. Kuna Director of public prosecution. The office of the Director of public prosecutor is established as Constitutional office, kwa hivyo yeye ndio atasimamia mambo ya prosecution yote. The Director of public prosecution shall be appointed by the President on the recommendation of the Public Service Commission and with the approval of the National Council, ndio tumesema hapo President hana power ya kuchagua tu lazima arudishe ikipate approval. Qualifications zake tumeona hapo anatakiwa awe ni mtu anaweza ku-appointed to the High court as a Judge. Kwa hivyo ni mtu ana-experience ya sheria. Na the Director of Public Prosecution shall exercise State powers of prosecution in the exercise of that power he shall not be subjected to the control of any other person or authority atakuwa ni independent. The Director of the public prosecution shall have power to direct the police to investigate any information or alleagation of criminal conduct. Parliament may control powers of prosecution of other authority. Kwa hivyo mambo ya Director of public prosecution hiko yote hapo under 209. Yes.

Speaker: You said he is not answerable to any other authority.

Com. Lethome: He shall not be subject to the control of any other authority, he is answerable but not under the control of anybody. Those are two different things, being answerable and being under the control of somebody.

Speaker: Suppose you are not contented with his ruling or the decision he has made. Kama haurithiki na ile hatua amechukua and he is not supposed to be under any authority.

Com. Lethome: Kama haukurithika just like the other public offices tumesema there will be the office of public defender or the public protector unakwenda unashtaki huko. Tumesema there is an office now where you can go and complain against any

public officer including the Director of Public Prosecution. Hebu someni article 210 where we have the Public Defender look at that.

Devolution of powers nafikiri tumepitia tmeona vile power itakua devolved, mtasoma pole pole zingine mimi najua watu wamechoka na mimi nimechoka pia. Halafu pia mambo ya land: tumeona kuwa mambo ya land katika district itakua chini ya ile district government. Kwa hivyo mambo ya land haitakua centralised in one place it will be decentralised. Look at article 232 about ownership of land, 233 and all the other issues pertaining to land. Kuna watu pia wanauliza maswali mengi, hii Katiba kwa mfano leo hii ikipitishwa what happens to the existing officers? Kwa mfano ikipitishwa kama leo what happens to the sitting Provincial Administration? What happens to the Provincial Administration yote kuanzia juu mpaka chini? The Councillors kama wewe na wengine what will happen? Si wewe ni Councillor sio, sorry.

Kwa hivyo angalieni kwenye transitional mechanism, kuna transition mechanism ambazo zinazungumzia juu ya.... what happens in the meantime, kwa sababu we are not existing in avoid, mnaona. Angalia the eighth schedule wale wako na pullout page 46, what will happen to the existing laws? What will happen to the elections? What will happened to the Political Parties? What will happend to devolution? Kwa sababu hii kitu haiwezi kufanywa kwa siku moja we need to put new structures in place, we need to an act a new laws. It will be gradually na ndio maana tumesema within two years ndio tunataka hayo mabadiliko yote yafanyike. Kwa hivyo it will be step by step.

The Executive also will take step-by-step na ukiangalia kwa mfano habari ya Provincial Administration itakuwaje. Unaambiwa, on the coming into force of this Constitution the system of administration comprising Sub-Chief, Chief, DOs, DCs and PCs shall stand disloved, hiyo itakua imeondoka. Tukipitisha tu sheria inaondoka. All public officers serving under the Provincial Administration shall report to the Public Service Commission for re-deployment, waende wakapewe instructions watakwenda wapi. Lakini utakuta katika sehemu zingine hawaondolewe mara moja hivyo. Kuhusu polisi kuna, mtu anauliza kuhusu polisi. There will be only one police service, hakuna mambo ya AP hakuna mambo ya GSU ukisoma utakuta, ukiangalia under police service which article is that? Tafuta tu utpata police service under public offices, there will be only one kutakuwa hakuna GSU ama AP police service itakua ni moja. Commissioner of police will not be an appointee of the President but will be an appointee of Parliament; he will be approved by Parliament. kwa hivyo he will not be under the control or answerable to one person but answerable to the National Assembly. That is a Constitutional office now not answerable to one person.

On the police, hebu tuangalie 264 protection of public officers: The Kenya police service iko chini ya principles and objects 264 iko mmeona? You can read about that. Angalia appointment of the Commissioner of the Kenya police service 266, there shall be a Commissioner of the Kenya police service the Commissioner shall be appointed by the President with the approval of the Parliament for one term of how many years? 10 years. Kwa hivyo asipofanya makosa anajua kuwa yuko hapo kwa mda ya miaka kumi. So he will not be scared by anybody or threatened by anybody as long as anafuata sheria anajua anakaa hapo kwa miaka kumi.

Halafu tuangalie anatakiwa awe na degree from a recognised university, awe katika ile police service for at least 10 years, halafu tunaambiwa the Kenya Police Service shall be under the command of the Commissioner who shall be assisted by two

Deputy Commissioners. Mnajua leo mko na Deputy Commissioners wangapi? There so many Deputy Commissioners, Assistant Deputy Commissioners wengi sana, they are political appointees.

Hebu tuangalie ni wakati gani anaweza kumtoa? The Commissioner of Police may be removed from office by the President for a good course with the approval of Parliament, lazima irudi Parliament. Kwa hivyo yule anasema kuwa President ako na zile powers hapana. Zamani kama sasa Abongo can be sacked one of these days anaambiwa kwenda, the others before him have gone like that. Under the new Constitution no, he has to refer it back to Parliament.

Halafu tukiangalia 267 mambo ya prisons tumeziita correctional services haziitwi prisons tena. Okay utaangalia under disciplined forces uta-find habari wa watu wa Game na wengine wote. 274 habari ya defence services. Nafikiri tutakomea hapo wacha tupate maswali mawili matatu halafu tuondoke.

Speaker: Its question time how many questions shall we allow? One from the youth, one from akina mama na one from wazee kwisha sasa. Haya Hashim one youth.

Com. Lethome: Yule haja zungumza.

Speaker: Number 2.

Com. Lethome: Kina mama hawataki.

Speaker: Okay number 3 Yunis, Yunis sasa.

Yunis Abdi: Bwana Commissioner jina bado ni Yunis, ningependa kuuliza swali moja hivi sasa wakati election inatokea Rais ambayo yuko kwa Serikali ndio anatoka kufanya vile kura yake iwe. Ningeomba ama maoni yangu kwamba in any election of President, President awache ofisi 6 months before election, akae kama raia halafu independent Commission kama ECK ichukue hapo ndio sasa free and fair election itokee hiyo ni maoni moja.

Com. Lethome: Ndio akiingi kwenye campaign asiwe kama President.

Yunis Abdi: Ndio akae kama raia ndio asitumie magari ya GK na mandege.

Com. Lethome: Hakuna bodyguard hakuna chochote.

Yunis Abdi: Halafu hii ya Judge, hii mambo ya 65 years niona ni kidogo sana, even kwa ile position umetetea hapa kidogo

inafanana na Americans na Britain na nimeona kwa British and Americans kuna Judges who is over 102 ako bado Judge. Kwa hivyo nimeona wakati mtu mzee ni kabisa ndio atafaa kusaidia watu. Lakini hii(inaudible)

Com. Lethome: Sasa unataka age ya retirement iwe ngapi?

Yunis Abdi: Age yawo iwe 150 years, hiyo ni maoni yangu.

Com. Lethome: Points taken.

Yunis Abdi: Halafu hii ingine ni ya ECK wapewe 2 to 3 weeks kabla results haija tangazwa. Ninasema hivi kwa sababu unajua tuko na ID card, ID card hata tukienda kila mahali ni moja, lakini ile voters card sasa tuchukue na serial number iwe kama ID card tu ambaye ukiwa Kamkunji unaweza kumpigia kura mtu ako kwa East. Unaweza kumpigia kura ili usizuiliwe. Kwa hivyo tusiwe na boundaries ya voters cards. Yaani wakenya wote lakini umetupatia freedom mzuri sana katika Human Rights sasa ningomba kuwa kila mtu mahali ako.... for example wakati wa Elnino kulikua na watu wengi hawakufika mahali voting yao ilikua. Kwa sababu kulikua na problems kama hizo, tafadhal naomba maoni yangu kwamba voter card ziwe kama ID card mtu yoyote ambaye ako mahali popote apige kura yake mahali anataka.

Com. Lethome: Haya asante sana, points taken mkiona siandiki hiko tape inanasa sauti yote.

Hashim: Now my questions are linked. I would like to request the Commissioner to note them down because they are several. One is, Mr Commissioner article 61 of the New Constitution draft guarantee citizens the right to have sufficient quantity and quality water. What we know is there is something known as righterian right of individual the righterian right of the people of Wajir has been profulently violated and infringed. River Uasin Nyiro has been blocked of obscured point of Aberdare's and Isiolo rangers by those communities, which inhabit those particular areas. First violating the Constitutional right of that who live around Habasweyn the right to enjoyment of the water, which they are entitled to and that right to water is a Constitutional provision. I'm recommending the righterian right of people of Wajir to be restored.

Secondly is, besides the preamble and besides the Bill of Rights there is something known as direct principals of State policy which must have guided you in drafting of this Constitution and which will also help the government in the execution and implementation of the Constitution itself. Therefore I would like in the Constitution to be embodied director principals of such a policy.

Another thing is, there is an Act that is used to be called the Indemnity Act which clearly and categorically stated that the people of North Eastern province do not have the authority take to the government to any law courts for any mistreat, atrocities,

genocide and massacres that has ever been committed against them. Now that it has been abolished we want that Act to be given a retrospective interpretation and not a prospective interpretation so that we can sue the government for all the atrocities that it has committed against us.

The third one is, under the land tenure reclassification of land and the bases of trust land, community land: I would like you to explain to us what trust land means. I'm recommending that lands should be owned on the bases of the community. That we the people of North Eastern Province should be the one owning and inpossetion of our land and the resources that will be extracted from there. Therefore I don't understand what trust land means and I would like you to explain to us that. Thank you very much.

Com. Lethome: Trust land means: land held by the government for the benefit of the people, in trust of the people the government owns that land but in trust for the people.

Hashim: Yes, but does the government hold the land as a trustee of the people in all over the country or its only the land in trust of the people of North Eastern alone?

Com. Lethome: Okay, just make your recommendations.

Hashim: Therefore we would like communal ownership of the land and not the government to be the trustee of our land.

Com. Lethome: So there should be no trust land in other word, okay point taken. One thing that I want to tell about the atrocities that have been committed to the people and the issue of Indemnity Act I would like you look at article 288 the one which is talking about the Commission on Human Right and administrative justice. It has sub-close 1,2,3 part seven look at that the whole of that, because that Commission is suppose to address some of the atrocities against Human Right. And what happened in North Eastern Province and another part of Kenya constitute an intringement of Human Right and they have to be addressed, that is the Commission that will be addressing those issues.

Abdirahman Ali: Mr. Commissioner mimi naitwa Abdirahman Ali ningetaka kusema juu ya mambo ya Judiciary kuwa sisi watu wa North Eastern sisi wote 98% ni Waislamu kuwa kila wakati wanasema.....(**inaudible**) and according to Muslims iko kitu inaitwa Katiba ya Islamu ambaye Mwenyezi Mungu ametuteremshia kutoka juu. Sasa vile sisi tunahukumiwa na sheria ambaye haihusiani na dini yetu ningependa tuhukumiwe na sheria ambayo dini yetu inakubali. Sasa kama Mungu amasema katika aya ya Qurani anasema yaani mtu amewahi kuua kama yeye anaenda kuzini iko sheria ambayo itachukuliwa na kama hajawahi kuua akizini hiko sheria inachukuliwa na akiua pia kuna sheria inasema atafanywa hivyo. Commissioner hiko sheria yetu Mwenyezi Mungu ametuteremshia kwa nini sisi hapana hukumiwa na sheria hiyo ya Kislamu?

Com. Lethome: Unapendekeza nini?

