

**CONSTITUTION OF KENYA REVIEW COMMISSION**

**(CKRC)**

**Verbatim Report Of**

**DISSEMINATION OF REPORT AND DRAFT BILL RONGAI  
CONSTITUENCY, HELD AT ACK RONGAI CHURCH.**

**ON**

**ON 14<sup>TH</sup> OCTOBER 2002.**

**Present:**

P. O Wycliffe Owade on behalf of Com. Adede

**Secretariat**

- 1) Esther Mugo - Asst. Programme Officer
- 2) Alice Thuo - Verbatim Recorder
- 3) John Kirui - District Coordinator

The meeting was called to order at 10.45 a.m.

**Mr. John Kirui:** Kwa wale ambao wako nje, waanze kuingia, halafu tuanze mkutano wetu. Na unfortunately we don't even have one lady here. These are the secretariat, hawa ni wageni wangu. Ningetaka mfanye hivyo. Kwani mliacha watu, wapi akina mama? Tutaanza mkutano wetu na maombi, tutaauliza mzee Rotich aweze kuja atuombee.

**Mr. Rotich:** Bwana asifiwe.

**Audience:** Amen.

**Mr. John Kirui:** Ningeomba tusimame halafu tuombe. Mungu wetu uliye hai, tumekuja mbele zako asubuhi hii ya leo, tukikutegemea kwa kila jambo ambalo litatendeka hapa. Tunakushukuru kwa mambo mengi, tunakushukuru kwa uhai ambao tunao sasa kwa dakika hii. Tunajuwa ya kwamba kuna wengine walikuwa wakitarajiwa wakiwa na mpango mbali mbali, ya kusema ya kwamba tuiteleza siku hii ya leo, lakini hawako pamoja nasi leo. Kwa hivyo tukiwa hai Mungu wetu tunajuwa ya kwamba utatusaidia, hasa tukifikiria na kuchangia Katiba hii yetu ambayo ni nguzo ya nchi hii yetu, utusaidie eh Baba. Tunakuomba ya kwamba uwe na kila mmoja wetu ili jambo lolote ambalo tunaweza kuchangia hapa liwe ni la mhimu sana kwa sisi na hata kwa watoto wetu, vizazi vijavyo. Tunaomba hii nchi yetu ambayo iko na msuko msuko mingi sana, ya kwamba Mungu uchukuwe ushukani na utekeleze mambo yetu kama vile wewe mwenyewe unavyopenda. Tusitegemee mtu, kwa maana si haki ya kwamba tumtegemee binadamu ambaye wewe pia anakutegemea. Kwa haya yote tunajuwa ya kwamba unatupenda na unapenda nchi yetu, kwa hayo mema yatapendeka. Tunaomba hayo yote kwa jina la Yesu Mwokozi wetu. Amen.

**Mr. John Kirui:** Asante sana, ya pili ni kuchukuwa nafasi kuwakaribisha nyinyi katika mkutano huu. Huu mkutano ni wenu, na lengo lake kabisa, ni nyinyi mpate nafasi kuangailia kila neno ama report ambayo mlikuwa mumetupatia mwezi wa July. Kwa hivyo nimeletea nyinyi kile ambacho mlitupatia siku ile. Na tumeleta kwa report form, na tueleze katika draft form ya Constitution. Tumeona kila mtu yuko na .....(Inaudible) miwili, ya kwanza kitu kama gazeti ambayo tunaita draft Bill. Na kwa hakika hiyo kama gazeti ni ile ambayo kitatoka muweze .....(Inaudible).

Ile gazeti ambayo tumeona, ni kwamba ni draft Bill, itakuwa jinsi iko katika hicho kitabu. Kwa hivyo ukipata moja, keep it safe. Na the green book, kinatueleza tangu tuanze na nyinyi tulifanya nini, tukafanya nini, tukafanya nini mpaka tukatoa hiyo report. Na ametupatia summary katika Constitution review.

Vile vile hapa mbele yangu, niko na report ya Rongai Constituency ambayo ni kile mlitueleza siku ile tulikuwa hapa, na wale watu ambao walikuwa wa CEP wakaeleza, tukafanya .....(Inaudible). So, this one, tutakuwa na copies kwa chairman wetu wa three C's, tupatie DO, na mkitaka kila mtu, mimi nitauliza chairman aweze kuchukuwa na kufanya photocopy. Kwa hivyo ningepomba kwanza nimpatie one copy, chairman wetu wa three Cs, hii itakuwa ya DO, ile ingine 3C members.

**Speaker:** .....(Inaudible).

**Mr. John Kirui:** Sasa we give this chance, waalimu wetu walikuwa wanafundisha, Bado walimu wa civic education. Mta-share hiyo moja, ingine itapatiwa wewe, .....(Inaudible). Hiyo nimemaliza kwa sababu iko ingine, mtafanya photocopy because I want to see three Cs. I don't know if Nairobi tunaweza kuwa nayo. ....(Inaudible). Mheshimiwa achakuwe moja, .....(Inaudible). Yeah, for the DO, for the OCS, and for the .....(Inaudible).

**Speaker:** .....(Inaudible).

**Mr. John Kirui:** I have said the copies are not enough, but tupatiane hizo. Moja mpatiane upande ule. Basi, kwa hayo machache, ningechukuwa nafasi hii, kuanza kukaribisha wageni wetu kutoka Nairobi. Hasa tumekaribisha nyinyi wazee, pia akina mama. Lakini tunatarajia akina mama watakuja baadaye. Tangu tuanze kazi hii, Commission kwa jumla tunawarudishia nyinyi asante kama Wakenya wengine na zaidi sana kama Wakenya wa Rongai constituency. Vile mlikuwa kutoa maoni yetu, na tena mlikubali mbeleni mfundishwe jinsi ama juu ya Katiba yetu. Kwa hivyo ninawarudishia asante.

Ya pili ni kwamba, wakati tulimaza ku-offer civic education, kukawa nafasi ya hearing; sehemu ya Rongai tulikuwa nazo mbili, moja ikawa hapa, na ingine ilikuwa .....(Inaudible). Kutoka hapo, Commission ikachukuwa report yetu ya

constituency na wakakaa chini. Yaani maoni yenu yote, yalichukuliwa the way they were, either written, either oral, ama wale ambao walizungumza kwa kifupi, yakaweza kuwa analysed. Tukafanya analysis zote za ile kazi, zinaitwa analysis reports kama hii ya Rongai constituency itakaa kwa office yangu, mtu akitaka kuiona, atapata.

After that, Commission wakakaa chini ku-compile what was happening in the country. Maoni ya kila constituency, wakakaa chini, waka-compile. Waka compile zote maoni wakilinganisha na sheria na kazi hakutaka hivyo .....(Inaudible). The draft Bill is what we are proposing as our new Constitution. Na ningependa sana wale ambao wamepata kitu cha kusoma, mukae nyumbani msome kabisa. Mkae nyumbani, mkiwa kanisani, mkiwe kwa kivuli chochote, msome. Because we are trying to give you the power to decide on your future. So, we still have room for corrections .....(Inaudible) we will encourage you to use the powers of civic itself. Then what I would say also, don't be selfish. ....(Inaudible)

**Speaker:** .....(Inaudible).

**Mr. John Kirui:** Kutoka kwa ofisi yangu, niko na vijana wawili. ....(Inaudible). Na kwa naiba ya Commissioner Adede ambaye tulikuwa naye last week, ametutumia Programme Officer, kutoka Head Quarters kule Nairobi, Dr. Adede ambaye ni Commissioner, ni mfanye kazi ambaye ameshashugulikia Commission yetu hapa na ng'ambo. Kwa hivyo alikuwa na safari wiki hii na akaniambia nitakosa kuja lakini nitamutuma mdogo wangu, nitatuma kijana yangu ambaye atatumikia nyinyi ambaye ni Mr. Owade. Kwa hivyo nitampatia nafasi hii atujulishe watu kuto Nairobi halafu tutawapa yeye atuongoze katika kazi ambazo tuko nazo .....(Inaudible).

**Mr. P. O. Wycliff Owade:** Basi hamjambo wananchi. Kwa introduction, mimi naitwa Wycliff Owade, kama District Coordinator amesema na tuko na Esther Mugo, na tena Alice Thuo, ambao ni colleagues wetu huko kwa Commission. Sasa naomba mniruhusu nikae chini ndio tujadiliane vizuri. Mumenipatia ruhusa? Asante sana. Basi nitajaribu kuongea kwa kizungu na kiswahili pia, ili pia tuende haraka haraka. Na vile district coordinator amesema, mtapata nafasi, ata-organize workshop ingine siku nzima, ambayo mkisha soma hizi, kuanzia first chapter mpaka mwisho, mtakuwa na yeye, mjadiliane sawa sawa, you debate all the issues halafu hizo recommendations zenu, zitafika huko kwa Commission ili kujitayarisha kwa conference, sasa mkikuja kwa conference, mnajuwa maneno yako sawa sawa. Hiyo ni kweli? Basi sasa tutaanza , mko na copies za kiswahili ama kizungu?

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

**Mr. P. O. Wycliff Owade:** Kizungu, okay, sasa tutanza pole pole, nitasema kwa kizungu na kiswahili tukiendelea hivyo. Haya, tuangalie, tuko na twenty chapters za huu mswada wetu, ambao ulikuwa maoni yetu ambayo ni yenu kutoka pembe zote za nchi hii ya Kenya, sasa tuko na twenty chapters. Na nitajaribu niendeshe haraka haraka, highlighting many issues ili msikie maneno yako wapi, halafu mwishowe, ikiwa kuna comments kidogo, makosa mnaiona, mnaweza kutaja, namna hivyo.

Ndiyo, basi tuangalie hiyo first page pahali panaitwa hapo, preamble, yaani utangulizi. Kwa Katiba, tuko pamoja? Eeh. Kwa Katiba, wakenya wengi walisema, ni vizuri tuanze na hii, kama mwanzo, utangulizi. Kwa sababu hii ndio mwelekeo wa hii Katiba yetu. Hapo imwandikwa utangulizi, utangulizi ni kwamba hii Katiba inahusiana na maneno ya hapo yanasema, tukifahamu wingi wa tofauti zetu za kikabila, kitamaduni na kidini. Kwa hivyo hii Katiba inahusiana na maneno ya kikabila, kitamaduni na kidini. Tena kulinda masilahi ya kila mmoja, familia na jamii katika taifa letu, tena tukitambua matumaini ya wanawake, na wanaume wetu, ya kuwa na serikali ambayo imejengwa katika msingi mhimu, na inayo dhamini uhuru, demokrasia, haki ya kijamii na utawala wa sheria. Na tena tukitekeleza haki yetu isiyotengeka ya uhuru ili kuamua aina ya utawala wa nchi yetu. Na tunaikubali, tunaifanya sheria, na tunaitoa kwetu wenyewe na kwa vizazi vyetu vijavya Katiba hii, Mungu ibariki Kenya. Sasa huo ni utangulize wa hiyo Constitution yetu, ama Katiba.

Sasa tutaende kwa sura ya kwanza ambayo inaitwa uhuru wa wananchi na ukuu wa Katiba. Yaani, sovereignty of the people and supremacy of the Constitution. Point mhimu hapa ni kujuwa ya kwamba mamlaka yote ya uhuru, ni wananchi wa Kenya wenyewe. Na yanaweza kutekelezwa tu kulingana na Katiba. Hiyo tumeelewana mzuri, mamlaka yote ya uhuru ni ya wananchi wa Kenya, na yanaweza kutekelezwa tu kulingana na Katiba. Nyinyi ndio Katiba, na Katiba ni nyinyi. Kwa sababu Katiba ndio maisha ya watu wa Kenya. Na hakuna mtu ambaye anaweza kucheza na Katiba ama ku-underrate maneno ya Katiba kwa sababu maalaka hayo ya Katiba yanatoka kwenu nyinyi Wakenya wenyewe. Hiyo ni kweli? Basi, sasa huo ndio uhuru wa wananchi na ukuu wa Katiba.

Tukienda kwa sura ya pili, kuna hiyo tunaita the Republic. Maana ya republic ni nini, maana ya Jamhuri. Ninasema hapo kwa article six clause one, Kenya ni Jamhuri iliyo uhuru. Yaani, Jamhuri ya Kenya inamaanisha ya kwamba Kenya ni ya watu wote. Kenya ni ya watu wote, si kabila fulani, si jamii fulani, si upande fulani, lakini ni ya watu wote. Sasa hiyo ndio declaration ya republic, tuko pamoja?

Haya, tukiangalia sura ya tatu, inasema national goals, values and principles, that is page four, for those who have the draft in English, kwa kiswahili iko page four pia. Sura ya tatu, na nitasoma tu hiyo Article fourteen, clause one, malengo ya taifa, maadili, na kanuni. Malengo ya taifa, maadili na kanuni zilizomo katika sura hii, zinahusu mamlaka, sasa kuna malaka tofauti tofauti. Mamlaka ya nchi, mamlaka ya Bunge, mamlaka ya mahakama, tawala za wilayani na vyombo vingine vya serikali na viongozi, raia na miungano ya kibinafsi, pale ambapo chombo kimojawapo,

- a) Kinatumia na kuifafanua Katiba au sheria ingineyo na
- b) Kinatumia, kinaunda na kutekeleza maamuzi ya sera.

Two, Jamhuri itakuza umoja wa kitaifa, na kuendeleza hali ya kujitolea kwa raia wake kwa mwito wa utaiifa. Sasa ukisoma hiyo, mpaka eighteen, itakufundisha ama itakuonyesha ile maelekeo, malengo ya taifa, maadili na kanuni. Jinsi viongozi wanatakiwa wawe, na kwamba mamlaka ya wananchi, inatoka kwa, inahusu maamlaka ya nchi, Bunge, mahakama, tawala za

wilaya, na viombo vingine vya serikali.

Tukienda kwa hiyo sura ya mne, uraia yaani citizenship, that is page five, page five, citizenship. If you look at article sixteen-article sixteen, citizenship yaani uraia, are we together? Kanuni za jumla kuhusu uraia, kwa sababu maneno ya uraia ni mhimu sana. Mtu kukuwa Mkenya, lazima tuna ile sheria ambayo inawekwa, ambayo inasema huyu ni Mkenya ama la, kwa hivyo nataka kuangalia conditions za uraia ni gani.

Article sixteen, clause one inasema, isipokuwa pale ambako Katiba imeweka masharti tofauti, raia wote wa Kenya,

- a) Wana haki sawa ya kupata haki, fadhila na faida za uraia.
- b) Wana kiwango sawa cha wajibu na jukumu la uraia, na
- c) Wana haki sawa ya kupata passport ya Kenya, na kupata haki yeyote ile ya kitambulisho kinacho tolewa na serikali kwa raia. Hiyo tumeelewa vizuri?

Haya, kupata uraia, conditions ziko tatu. Hiyo ni article eighteen, uraia unaweza kupatikana kwa njia ya,

- a) Kuzaliwa
- b) Kusajilishwa na
- c) Kuandikishwa.

Sasa iko maoni ya Wakenya, wakati tulikuwa tumetembea kwa kila constituency, walitoa kuhusu hizi conditions za uraia. Na ndio tumekuja na huu mswada ili msikie kwa makini sana, ikiwa kuna mahali ambapo unaona ni makosa, mta-raise baada sisi kumaliza.

Sasa ukiangalia article nineteen, uraia kwa kuzaliwa, Constitution mpya, Katiba mpya inasema nini? That is citizenship by birth. So, article nineteen one, kila mtu aliyezaliwa baada ya utekelezaji wa Katiba, atakuwa raia wakenya ikiwa wakati wa tarehe ya kuzaliwa mtu huyo, mama ama baba yake, ni raia wa Kenya.

Two, mtu aliye raia wa Kenya, kuambatana na ibara hii, hawezi kupokonywa uraia wake.

Halafu kuna ile tunaita uraia na ndoa. Yaani, citizenship and marriage. Nataka msikilize makini sana, uraia na ndoa, sasa hiyo ni article twenty one. I read, mtu aliyefunga ndoa na raia wa Kenya kwa kipindi kisocho punguwa miaka mitatu, ana haki ya kusajilishwa kama raia wa Kenya akituma ombi. Nitarudia, article twenty, mtu, aliyefunga ndoa, na raia wa Kenya, kwa kipindi kisicho pungua miaka mitatu, ana haki ya kusajilishwa kama raia wa Kenya ikituma ombi.

Pili, uraia haupotei kwa njia ya ndoa ama wakati wa talaka. Narudia, uraia haupotei kwa njia ya ndoa, ama wakati wa talaka.

Are we together? Ama niko haraka sana. Okay, asante.

Haya, tena ile clause three, uraia wa kuandikishwa, uraia kwa kuandikishwa, yaani citizenship by naturalization. Inasema hivi, article twenty-one; Mtu alikuwa mkaazi wa Kenya kisheria, kwa mfulilizo, na kipindi kisichopungua miaka saba. Mtu aliyekuwa mkaazi wa Kenya kisheria kwa mfulilizo na kipindi cha miaka saba, na ambaye anatosheleza masharti, yaliyotolewa na sheria ya Bunge, anaweza kutuma ombi la kuwa raia wa Kenya kwa kuandikishwa. Sasa hiyo ndio sheria ya kuhusu uraia wa kuandikishwa.

Haya, watoto wanaopatikana Kenya, na watoto wa kupanga, article twenty two one, mtoto anayepatikana Kenya ambaye yuko chini ya umri wa miaka minane ambaye wazazi wake hawajulikani, atachukuliwa kuwa raia wa Kenya.

Pili, mtoto aliye na umri wa chini ya miaka na nane, ambaye anaishi na raia wa Kenya, ana haki ya kuwa raia wa Kenya anapotuma ombi. Sasa hizo pia ni conditions kuhusu maneno ya watoto.

Then, kuna hii nataka, you listen very carefully, dual citizenship, yaani uraia maradufu. Katiba mpya inasema nini? Haya, kwa sababu nakumbuka tuna wale watu kama Rendille, Somali, Turkana wanaishi unapata wengine wanaishi kwa mipaka, Kenya, wanaishi Tanzania. Sasa tulipowatembelea, pia tuliona maoni yao, na sasa tumependekeza hivi, uraia maradufu, twenty three one, uraia maradufu, unaruhusiwa chini ya sheria ya Kenya.

Two, mtu anayepoteza uraia wa Kenya kwa ajili ya kupata uraia wa nchi nyingine, na kabla ya kutekelezwa kwa Katiba hii, ana haki ya kusajiliwa kama raia wa Kenya anapotuma ombi lake.

Tatu, mtu anayepoteza uraia wa Kenya kwa ajili ya kupata uraia wa nchi nyingine. Anapowacha wa nchi ile nyingine, atakuwa na haki ya kurudia uraia wake wa Kenya ambao aliyo na uraia wa mwanzoni.

Haya, kuachishwa, kuachishwa uraia, article twenty-four. Mtu atapokonywa uraia wa Kenya ikiwa tu ameupata uraia huo kwa udanganyifu, wasilisho la uongo, kuficha kwa hoja muhimu ama kwa njia nyinginezo kinyume cha sheria.

Sasa hizo ndizo some of the guidelines for citizenship, zingine mnaweza kusoma. I want to take you to sheria that is in English, chapter five, the Bill of Rights. Kwa kiswahili, sheria ya haki. Hii ni muhimu sana, it is very very important that you understand your rights, but you are aware of your rights as Kenyan citizens. As we went all over the constituencies in Kenya, the opinions of Kenyans, there was a very big cry that Kenyans, most of them are not yet aware of their rights. And therefore, we thought it is very very important that we tell it out here very clearly what are your rights as a Kenyan. Are you aware of your rights? Because once you have your rights, then you know you are a democratic country, and you are able to do things in a responsible way and things which are done within the Constitution. So it is important that, that is why you have dedicated a whole chapter on the Bill of Rights. Sasa Bill of Rights na tunasoma hapo, sura ya tano, that is page six, the English version, sheria ya haki, na hapo imeandikwa haki za kimsingi na uhuru.

Then we are in article twenty nine, it reads, article twenty nine one, sheria ya haki ndio nguzo ya msingi wa serikali ya kidemokrasia, na ni muundo wa ukubalifu wa sera za kijamii, kiuchumi na kitamaduni.

Pili, madhumuni ya kutambua na kulinda haki za binadamu, ni kuihifadhi hadhi ya utu wa watu binafsi na jamii na kuitimisha vipawa vya binadamu wote. Kwa hivyo sasa hiyo ndio sasa kama foundation ya the Bill of Rights, na mtasoma hizo, lakini nilikuwa nataka kutaja machache kuhusu what we call mipaka ya haki, mipaka ya haki. Maybe if I take you back just in a article thirty, one to two, ni wajibu wa serikali kuendeleza haki na uhuru. I want you to see there, duty of the state to promote rights and freedom. So, that as we exercise these rights, you are also aware of the rights of the state to protect those rights. So, the state is duty bound to protect those rights.

So, if you read article thirty, ni wajibu wa serikali kuendeleza haki na uhuru. Thirty, article thirty clause one, serikali itaziangatia, itaheshimu, itailinda, itaendeleza na itatimiza haki na uhuru uliomo katika sheria ya haki. Sasa iko kama hapo number,

2. (a) Kinapo unda sera ama kupitisha sheria,
- (b) Kinapotekeleza sera ama sheria.
- (c) Kinapotekeleza wajibu wake wowote ama
- (d) Kinapotumia mamlaka yake yoyote.

Sasa ni vizuri tujue hii kwa sababu ni maneno ya sheria. Sasa kuna vikundi vingine, ambayo tumeweka hapa, various sectors of the society which I want to highlight in terms of the Bill of Rights that you understand what is all about. Sasa kuna hapo wanawake, tuko na watoto, tuko na wazee katika jamii, tuko na walemavu na tuko na familia. Basi hapa tukiangilia article thirty four, article thirty four, I want to take to Okay, let me take you back to article thirty two, haki ya kuishi right to life. It reads, article thirty two one, kila mtu ana haki ya kuishi, kwa nchi hii ya Kenya. Kila mtu ana haki ya kuishi. Na two, hukumu ya kifo imetupiliwa mbali, hapo hiyo ndio pendekezo mpya. Hukumu ya kifo imetupiliwa mbali.

Usawa ama equality; usawa unajumulisha kufurahia kikamulifu usawa wa haki zote na uhuru wote. Uhuru kutokana na ubaguzi, article thirty four one, serikali haitabagua kwa maonevu ya moja kwa moja ama kwa njia isiyo kuwa dhahari dhidi ya mtu yeyote kwa sababu moja au zaidi pamoja na jamii, jinsi ya ujaa uzito, ndoa, kabila ama hali ya kitabaka, rangi, umri, ulemavu, dini, dhamira, imani, utamadani, lugha ama kuzaliwa. Sasa huo ni uhuru kutoka na ubaguzi.

Are we together? Yes, halafu tuko na ile sheria, kulinda wakina mama ama wanawake. Na article thirty-five, nitasoma tu hiyo kwa kifupi, article thirty five one, inasema nini? Inasema, wanawake wana haki ya kutendewa sawa na wanaume. Pamoja na haki ya kupata fursa sawa katika pia kwa uchumi na shughuli za kijamii. Mahali tulipotembelea kila mahali, wanawake pia walikuwa na malalamiko, na ndio tumeweka hiyo tu-recognize them under the Bill of Rights.

Halafu article thirty six, tuna wale tunasema, tunaita wazee katika jamii. Yaani, older members of society, na article thirty six one, we read, wazee katika jamii wana haki ya kuendelea, kufurahia haki zote na uhuru kama ilivyo fafanuliwa, katika sheria ya haki. Pamoja na haki hizi,

- a) Kushiriki kikamilifu katika shughuli za kijamii.
- b) Kufuatilia maendeleo yao ya kibinafsi,
- c) Kuwa huru kutokana na aina zote za ubaguzi, unyanyasaji au dhuluma,
- d) Kuishi kwa heshima na utu na,
- e) Kubaki na uhuru wao.

Sasa unaweza kusema hapo chini, zinasema nini, lakini tunasema hapa lazima tu-recognize wazee, wako na hekima, wako na heshima na wako na ile akili ambayo lazima bado tutatumia tukiendesha nchi yetu. Na wako na special recognition katika Katiba yetu.

Halafu, the other class of people, watoto, watoto ama children, that is article 37. Children wherever we went all over the country, there was a lot of concern from various Kenyans that childrens' rights have not been fully recognized. Children have been abused, people don't care about children, you know, in terms of their basic needs, in terms of the upbringing, in terms of discipline, a lot of things have gone wrong. The new Constitution is recommending that we should respect the rights of the child. And that if you are found abusing the child, or denying the child his or her basic rights, then, you will be breaking the law. Therefore, the rights of the child have now been completely recognized in the new Constitution. So, if you read, article thirty seven one, I just want to read article thirty seven one only, the others you can read, inasema nini? Inasema hivi, article thirty seven one, watoto wana nafasi maalum katika jamii, ni jukumu la wazazi wao, ukoo, jamii na serikali kuwalea, kuwalinda na kuwaelimisha ili wawezi kuendelea katika mazingira salama na dhabiti, na katika hali ya furaha, upendo, heshima na maelewano na wawezi kutimiza upeo wa vipawa vyao katika hali zote, kimwili, kiakili, kihisia na kiroho, kwa manufaa yao wenyewe na jamii kwa jumla, tuko pamoja?

So, hiyo ni kuhusu haki za watoto, halafu tuna tena familia, article thirty eight, that is page seven those who have the English version. In kiswahili it is page seven also, so, article thirty eight, familia. Hii Katiba ime-recognize institution ya family, kwamba family ndio foundation ya nchi hii. Therefore, we have recognized the role of the family, the new Constitution, and it reads, article thirty eight one, serikali itambuo familia kuwa ndio msingi wa umoja wa kijamii, na ndio msingi muhimu wa taratibu za kijamii.

Pili, familia inastahili heshima na ulinzi wa serikali.

Tatu, kila mtu mwenye angalau umri wa miaka kumi na minane,

- a) Ana haki ya kuoa au kuolewa kulingana na makubaliano ya wanao husika na
- b) Ana haki ya kuanzisha familia

Ya nne, makundi yanayo-ona, yana haki sawa katika ndoa wakati wa kuoana kwao, na katika kuvunja ndoa yao. Sasa hiyo ni kuhusu family, ingine mtasoma baadaye.

Halafu tuna wale ambao tunaita walemavu, sheria imepatia hawa, the persons with disability, special recognition. Article thirty nine one, walemavu wana haki ya kufurahia haki zote za uhuru wote uliotajwa katika mswada huu wa sheria na kushiriki kikamilifu katika jamii kama wengine. So, we are also giving special recognition of persons with disability, if you read all those other, clauses, you will understand the special recognition which the new Constitution has given to persons with disability.

Can I take you to article forty four, the same page seven, freedom of religion, beliefs and opinion. Inasema, article forty four one, kila mtu katika nchi hii ya Kenya ana haki ya uhuru wa dhamira, dini, mawazo, imani na maoni. Kila mtu ana haki ya uhuru wa dhamira, dini, mawazo, imani na maoni. Sasa, the new Constitution also recognizes that freedom of religion, the freedom of thought, the freedom of conscience and the freedom opinion. As I kept on saying, if there are any comments you can raise them later but as for now, I kindly ask you just to listen very carefully so that as I read, you may pick up any issues which you can raise.

Can we turn to page eight, uhuru wa kutoa maoni, page eight there is freedom of expression. Uhuru wa kutoa maoni, it is the belief of the Commission that freedom of expression is essentially the whole work of democracy and that, unless Kenyans are allowed to freely access their views, then, we will be saying that democracy is not being practiced. So, let's read the article thirty five, are we together. ? Article forty five, that is page 8 freedom of expression, forty five one, we read, kila mtu ana haki ya uhuru wa kutoa mawazo ambayo ni pamoja na,

- a) Uhuru wa maandishi na vyombo vya habari
- b) Uhuru wa kupokea na kutoa habari au maoni,
- c) Uhuru wa ubinafsi, kisanaa na
- d) Uhuru wa kielimu na utafiti wa kisayansi.

Sasa, hiyo ndio some of the guidelines. Then, down there publication of opinion, article forty six, uchapishaji wa maoni, it reads, article forty six one, uhuru na uhuria wa vyombo vya utangazaji na vyombo vya habari, vya uchapishaji, vya aina zote, vimelindwa. Yaani, kila Mkenya ana uhuru wa vyombo vya utangazaji, vyombo vya habari, viko na uhuru. Kama ni KBC, kama ni KTN, kama ni ile ingine inaitwa nini? Nation ama Citizen, mko na haki, kila pembe ya Kenya kujuwa, na mtakuwa na ile haki hata ku-petition courts kwa nini hatuna Nation ama Citizen hapa Nakuru. Are we together? Kwa hivyo sheria ina-recognize that you have the right to be aware and you have the right to access all the channels without any hinderance, okay. Right, others you can read on your own. Before I tackle ...or there are also other aspects of human rights,

.....*interruption* okay, okay, hallo, okay, I will just continue, you will forgive us for that.

I want to take you back to page 8 on freedom of movement and residence, that is article fifty one, page eight on freedom of movement and residence, we may briefly read, freedom of movement, yaani uhuru wa kuenda utakako na makao, it is very important that you understand me. The draft Constitution is recommending article sixty one one, kila mtu ana haki, kila mtu ana haki ya uhuru wa kuenda atakak.

Pili kila mtu ana haki ya kuondoka katika Jamhuri ya Kenya.

Kila raia ana haki kuingia, kubaki na kuishi kokote katika Jamhuri ya Kenya. Are we together? Kila raia ana haki kuingia, kubaki, na kuishi kokote katika Jamhuri ya Kenya, that is freedom of movement and residence. Can I now take you to article fifty five, article fifty five one, that is page nine, are you hearing me?

**Audience:** Yes,

**Mr. P. O. Wycliff Owade:** Yes, article fifty five one, that is on page nine, uhusiano kikazi, labour relation, is very important for workers also to understand their rights and having, ..... (*End of tape A side a, words lost*)

... Za haki za kikazi, ili kila mfanyi kazi ana haki ya;

- a) Malipo ya kufaa
- b) Masharti ya wastani ya kutenda kazi
- c) Kuunda, kujiunga na au kushiriki katika shughuli na mipango ya chama cha wafanyi kazi, na
- d) Kugoma

Number tatu, kila mwajiri ana haki ya;

- a) Kuunda na kujiunga na chama cha wajiri na
- b) Kushiriki katika shughuli na mipango ya chama cha wajiri

Sasa, hapo mnaweza kusoma hizo chini, lakini there are also other aspects of the rights, like the rights of housing, rights of education, the right to food, the right to water, the right to social security. As you read, you will be able to understand. There is even article fifty four, consumer rights, which I think is very important for us to read and just have the highlights, because all of us are consumers, isn't it? If you read consumer rights, the Constitution will also come up with a special provision, that is article fifty-four one, and it reads, haki za wateja. Wateja wana haki ya;

- a) Kupata bidhaa na huduma zinazo faa,
- b) Kupata habari inayo wafaa ili waweze kunufaika kikamilifu kutokana na bidhaa na huduma,

- c) Kulindwa afya yao, usalama na maslahi yao ya kiuchumi na
- d) Kulipwa fidia kwa makosa yanayo sababisha hasara au majeraha.

Two, wanaotoa huduma, watajitahidi kutafuta ushauri kutoka kwa wateja na vyama vya wateja kuhusiana na maswala yanayo waadhiri. Sasa hiyo ni haki za consumers. Are we together? Yes, so, the Constitution has given a special recognition for that. I want to take you to article sixty eight, rights of arrested persons, article sixty eight one, article sixty eight one, haki za watu wanaotiwa nguvuni. Article sixty eight one, it reads, kila mtu anayetiwa nguvuni kwa madai ya kufanya kosa, ana haki ya;

- a) Kubakia kimya, hiyo ni haki yako
- b) Kufahamishwa kikamilifu katika lugha anayoelewa, tuko pamoja?
- c) Kuhusu haki ya kubakia kimya na pia inasema kuhusu hatari za kutobakia kimya.

Sasa hizo ukisoma, mtasikia inasema nini, lakini ni haki za watu wanao tiwa nguvuni. Now, to take, just go to article seventy, fair trial you can read on your own but let me just take you to article seventy on page 10, rights of persons held in custody. Rights of persons held in custody. That is article seventy, walio kizuizini, inasema, article seventy one, watu wote walio kizuizini chini ya sheria, wawe wamehukumiwa au la, wanaendelea kuwa na haki zao chini ya Katiba, isipokuwa haki hiyo iwe haimbatani na uhalishi wa kuwa kizuizini. Halafu sasa ukisoma hapo zote, mtajuwa inasema nini kuhusu wale watu ambao walio kizuizini.

Now, I want to take now to, on elections, or generally, on electoral system and process. I would like to handle it after discussing devolution. So, I want to take you straight to the Legislature ama Bunge, that is, it is discussed from page thirteen, but open page fourteen. Are we together. Yes, page fourteen. Just page fourteen, and, you will allow me to speak in English maybe then I will translate a little bit.

Now, just a provision for the establishment of Parliament, it reads, .....(Inaudible) shall be a Parliament of Kenya which shall consist of the National Council and the National Assembly. Now, this takes us to the devolution structure and I am requesting that you listen very very keenly so that in case there are any issues you don't understand, we maybe able to clarify. As went all over the constituencies in Kenya, a lot of things were expressed on the structure of Parliament, and the way Parliament should be run, so that it may be able perform according to the will of the electorate. Kenyans expressed various feelings, various views, various opinions on how they feel Parliament should be structured. And because of that, the Constitution of Kenya Review Commission has recommended that Parliament will have two Houses. The first House will be what we call the Upper House, ambayo tunaita National Council, that is the Upper House. The Lower House, we shall call the National Assembly.

Now, the Lower House is the one we have at the moment. The National Assembly ni ile tuko nayo kwa sasa, ile Bunge ya kisasa. Hiyo tunaita National Assembly, and it has two hundred and ten members plus the twelve nominated so, in total two

hundred and twenty two, is it okay? So, that is the Lower House, it is known as, it will be known as National Assembly. Then we have, the Upper House, the Upper House will be known as the National Council. Now, what is the composition of the National Council? The National Council will be a House of one hundred representatives, throughout Kenya. The National Council will be composed of one hundred parliamentarians. Now, one hundred parliamentarians are drawn from all over the districts in Kenya. In Kenya, we have got sixty eight districts, are we together? In Kenya we have sixty eight districts, we are recommending that in each district there will be one representative to represent the district and these representatives will be elected directly by the people in that district, right? So, sixty eight districts, means sixty eight representatives. Then, we are having one hundred, isn't it? Now, the other two to make it seventy will be two representatives from Nairobi, Nairobi being the capital city will be classified as a district. So, in total we have seventy representatives or seventy districts taken care of, are we okay? So, we remain with how many? We remain with thirty, the Commission is recommending, the rest of the thirty seats be left for women. Now, how will women distribute these seats? They will distribute the seats as follows:

Each province will elect four representatives to the National Council. So, we are saying, four representatives times 7 apart from of Nairobi, 4 times 7 becomes twenty eight. The other two will again come from Nairobi. So, we are saying each province will have four representatives, but Nairobi will have two representatives. So, in total, thirty have been catered for. Are we together? So, that is the composition of the National Council, parliamentarians who will be there, who will be representing various districts all over the country.

Now, apart from that, we have another list of MPs. As we were crisscrossing the constituencies all over the country, there was a big concern of another section of the Kenya society that they seem not to be directly reflected that their interests seem not to be directly represented in Parliament. So, they held a view that there could also be a possibility that their interests are catered for. Having listened to all that, the Constitution of Kenya Review Commission recommended that all the political parties in Kenya, all the registered political parties in Kenya will submit a list of ninety Kenyans, right? To be considered for another clause, what we call proportional representation in now the National Assembly, that Lower House I was talking to you about. In the current Parliament, that we have an additional ninety members.

These ninety members will come from all the political parties in Kenya. What will happen, each political party, for example Democratic Party, it will have a list of ninety, how they choose, Parliament, the Electoral Commission will work on that. But the position, the frame work we are giving is, say Democratic Party will draw up a list of ninety people. These ninety people will be submitted to the Electoral Commission of Kenya. But, they will have some conditions. The ninety people or the ninety list will reflect persons with disability, the youth, women and other people of some wealth and experience.

And also, the list must reflect the national outlook .....(Inaudible) region like this is belonging to you know, a certain particular tribe or a particular region.

And it will also taken to account, the minority regions or the marginalized areas all over the country. Having drawn up that list of ninety, they will then present them to the Electoral Commission of Kenya one year prior to the election. Then on the voting day, when you are voting, the voters will be allowed to vote twice, you know, normally sometimes it happens like when you are voting, you may be interested just to vote for a party, isn't it? And not a candidate, and sometimes you want to just vote for the candidate and not the party, isn't it? But in some cases you vote, so in this case, we are giving you the freedom that you should vote twice. You can vote for the party and the candidate, vote twice.

Come the end of the election, what will happen? What will happen, the number of votes a political party gets all over the country, the number of votes, for example DP they get let's say 10% of the votes in the whole country, 10% of the total votes in the whole country, that will be the percentage, the votes will be against the number of seats, the number of seats are ninety isn't it? So, we are saying if DP gets 10% of ninety, how many seats should DP get? They should get nine. 10% of 90 seats, we are giving DP nine.

So, we shall tally all the votes, and depending on how many the voters give you on your political party. If you get a hundred percent of ninety, it means you sweep the seats, right? If you get a hundred percent of the ninety you sweep all the seats, below that we calculate it against the total number of seats. But there are conditions remember, which must be fulfilled one year to the general election. Taking to account various interestes, marginalized communities, the disabled, women and all other groups as such.

So, this is a proposal we have recommended. It is upon you the people of Kenya because as we went you gave us these views and we have decided to recommend it here, but is upon you to approve it or reject it. Are we together? So, that is basically composition of Parliament. I want now to go to devolution.

Devolution which they described in Kiswahili...(Inaudible)

**Interjection:** .....(Inaudible).

**Mr. P. O. Wycliff Owade:** Now, I would rather we discuss that, over question, time so that we move very first then, those issues we shall tackle, but basically then the framework of Parliament, Parliament is composed of two Houses, National Assembly and the National Council. National Assembly, the normal one, we two hundred and ten, National Council we have one hundred plus the ninety party list.

Now, let us go now to devoluton, again as we went all over the constituencies in Kenya there was a big concern that wananchi seem not to be directly involved in their affairs of management of the country. Therefore, we came up with the structure of devolution because wananchi felt power and development should start right down from the people, Okay, powers should start

from the villages going up, not coming from Nairobi to down, Okay, so, out of that, we came with your proposals, and the proposal is as follows; We shall have various structures of devolution, the first one we call the village council.

**Speaker:** .....(Inaudible).

**Mr. P. O. Wycliff Owade:** Which one?

**Speaker:** .....(Inaudible).

**Mr. P. O. Wycliff Owade:** Devolution, okay, can I read it in kiswahili, fine I can do that, yaah, pardon.

**Speaker:** .....(Inaudible).

**Mr. P. O. Wycliff Owade:** Okay, let me read. What page is it? I want the devolution, whoever has gotten it, page 26. Page 26, devolution of powers. That is page 26 chapter 10, chapter 10 are we together. Now, the main objectives of devolution, the main objectives of devolution which the Commission has come up with are as follows:

The general principles, article 213, it reads;

- D) The principles and objectives of devolution are to,
- a) Give powers of self governance to the people at all levels and enhance the participation people and communities in the exercise of the powers of the state.
  - b) Strengthen national unity by recognizing diversity in ways that promote the sense among all citizens that they belong to Kenya and share in its government.
  - c) Ensure democratic and accountable exercise of power.
  - d) Increase checks and balances and separation of power.
  - e) Promote social and economic development throughout Kenya
  - f) Ensure equitable sharing of national and local resources. I want to repeat that, ensure equitable sharing of national and local resources throughout Kenya, with special provisions for marginalized areas.
  - g) Facilitate the decentralization of central government powers and the location of central government institutions and departments away from the capital territory to ensure equitable distribution of resources in all the provinces. In other words, that time has come that we can now decentralize central government powers all over the country, are we together?
  - h) Provide essential services to the people effectively and economically.
  - i) Protect and promote the interest and rights of minorities and disadvantaged groups and,
  - j) Facilitate cooperation between national and devolved authorities.

So, that is about the devolution, but I would like to take you to article 215, levels of government. Levels of government, article 215, it reads powers are to the following levels: Are we together?

- a) We have the village, that is the lowest unity,
- b) We have the location,
- c) We have the district and
- d) We have the province,

So, can we read village government and see what it is all about. Village, article 216

- I) The village decides whether the village council is constituted by village elders or through elections. In other words, the village can either directly elect people to head them at the village or, they can simply decide whether there is some kind of an electoral college to determine who will be the leader. Are we together?
- II) Number two, the village councils shall consist of no less than six members and no more than ten members, and this village council by the way will be reflective of all the units, all the clans and whatever is within that village, then it must be filled with the representatives of all corners within the village. So, the village council shall consist of no less than six members.
- III) The village decides the system of village government including the role of the village council. So they shall decide what it should constitute and what its roles are.

Article 217, locational government. From village council, you go to locational council, or what we call the locational government. 217

- I) It reads, the location council consist of two representatives, one of whom shall be a woman, elected by each village council from among its members. In other words, the grouping of all the village council from the locational government, are we together? And that each village must send two representatives at the locational council and these two representatives, we are suggesting, that one should be a woman.
- II) The location administrator is the executive authority of the location, we shall have what call the executive authority. And shall be elected by the village councils.
- III) The locational administrator shall be elected by the registered voters of the location, that is from all the villages.

Then, we go to district government. So, already we have seen village government, locational, now we are coming to district government. 218

- I) The Legislative Authority of the district is vested in the district council.

- II) The district council consists of members directly elected by the registered voters of the district. Are we okay? The district council, they will be elected by members who are registered voters in the district. The district council consist of not less than twenty or more than thirty members. These are twenty or more but less nthan thirty drawn from all the locational units within the district. Are we together?
- III) The district administrator is the executive authority of the district. Anything doing with administration, management, any development in the district, we want whoever is heading the district to be somebody who is directly elected by the people within that district. Are you getting it?
- IV) The district adminstrator is elected by the district registered voters
- V) The district administrator, with the approval of the district council, appoints chief officers from persons who are not members of the district council. I come again, the district administrator with approval of the district council, appoints chief officers from persons who are not members of the district council. In other words as at the district level, we shall have secretariat who are in charge of various functions and departments within districts and we shall have chief officers who will be helping in various administrative and management aspect but under the district administrator. Are you okay?
- VI) The district administrator can be dismissed, can be dismissed by the vote of an absolute majority of members of the district council, that is supported in a referendum by a majority of those voting in the refrundum. In other words, we want now to see, we are submitting in the new constitution that whoever is leading, be it at the district, at the locational, at the village, he must be seen, he or she must be seen to bje a performing leader, to be value driven, he is somebody efficient, he is able to deliver to the people who elected him. If he doesn't, you have the power of the votes to recall him, you have the power of the votes to dismiss him from the job, is it okay? And this should be done through a referundum, because we want somebody directly responsible to the needs of the people in that district, and that is why you are emphasizing that let the district administator be elected directly by the people in that district, not somebody coming from far and coming to work there as a leader, are we okay? So, that is the recommendation we have.

Then, let us go to the provincial government. Article 219

- I) The Legislative Authority of the province vested in the provincial council.
- II) The provincial council consists, of two representatives, one of whom shall be a woman chosen by each district council from among its members. So, again you see, the provincial council is again constituted by representatives from district councils all over that province, are we together? So, that means no one from the outside the province. Whoever is even heading the provincial council, provincial council is more or less a coordinating body but the power of autonomy, the power of management resides in the districts. Are we together? So, provincial council here which is coordinating let us say like assets, you may have a big hospital which is, you know like maybe Nakuru, you have a provincial hospital, isn't it? Maybe a road is going through this district, that district, resources shared

between the districts. Now, with you as the district councils who constitute the provincial council you will sit, determine things together, reflect on same these things, and make binding decision. But provincial government really is a coordinating body, but the power rests at the district units. Are we okay,

Now, maybe if I could read to you so that it is clear, 219

- I) The legislative authority of the provinces is vested upon the provincial council
- II) The provincial council consists of two representatives, one of whom shall be a woman chosen by each district council from among its members. The provincial executive committee of district administrators, the administrators we were talking we were about.
- III) The provincial administrator is the executive authority of the province, is an executive authority.
- IV) The provincial administrator is appointed by the provincial council on the nomination of the provincial executive committee from among its members.

So, basically what I can say is that this is just a framework out of the views of Kenyans. Already, the Commission at the moment is working on another big volume on what we call the nitty-gritty, or you know, finer details of how the district will share some of these assets, how will they run them. What we have given you is just to give you some kind of a focus of what we think should be done. The input now we leave for you to decide, are we together? So, we have just given you a framework of how we are recommending, it should be. So, that is all about devolution and also Parliament, although we are going to Parliament again much later, but if you read in more details, there, like in page 27, there is that part three dealing with powers of devolved government. We have powers of district government, we have functions provincial government, we have urban government, we have share of natural resources, cooperation between district councils. If you are interested to know how they are going to cooperate, so, all those details you can read and then understand what it is all about.

Having said all that, I think I want us to go back to the Executive now, the Executive, which page is it? If you have seen the page just tell me. I am told it is page 19, page 19, that is chapter 8, the Executive. It is very important that we listen very carefully, to this chapter, pengine hii ndio mambo yote, isn't it? Yaah, just as devolution is a very sensitive issue, I know you are still trying to get it. You are still trying to digest it but I am sure it will come out. Even us in the Commission we have really not exhausted it. We have just given you a picture of how we would want it to be and we are depending on you, so that when you come to the national conference, you will have to give us a lot of input of how you want it to be.

So, the Executive here, would you like me to read it in Kiswahili or I just continue in English? Okay, so the Executive, this is actually one of the organs of government, a very crucial organ and remember that when we talk of the three organs, we have the Judiciary, the Legislature, the Executive. Two basic principles coming to be, we have the principle of the separation of power and we also have checks and balances. These institutions are there because of you, the wananchi of Kenya, without them, they have no legitimacy. Are we together? We were just talking about the republic, what is a republic, what is the

sovereignty of the people? It is through you, it is through you in the sovereignty, through you as a republic of Kenya, that these offices are there. Therefore, they are public offices, without you, these offices cannot be there and you have a right to dismantle them if you want, isn't it?

So, we have the Executive and I want to go very first, if you check at article 148, article 148, principles of executive authority. It reads, the powers of the executive are to be exercised for the wellbeing and benefit of the people and republic of Kenya. So, when we went all over the constituencies, there were also some concerns that the executive President at the moment has a lot of powers. And that these powers need to be distributed. That is the feeling of quite a number of Kenyans. And therefore, out of that, we decided to create another new structure of the National Executive.

So, article 149 reads, the National Executive of the republic of Kenya comprises so this the composition of the National Executive the President, the Vice President and the cabinet. Authority of President, we want to see whether the President in the new Constitution will have some powers still, because he is not a ceremonial President, he is actually an Executive President. And we are calling him the head of government, and the Prime Minister we are going to talk about, I mean we are calling the Executive President, the head of state and the Prime Minister the head of government.

So, let us see the authority of president article 151

- a) The President is the head of state, commander in chief of defence forces, the chairperson of the national security council and the chairperson of the defence council.
- b) He/she is a symbol of unity of the nation, and has the responsibility to promote and enhance the unity of the nation, safeguard the sovereignty of the republic, promote and respect the diversity of the people, and protect the human rights and fundamental freedoms and
- c) Shall uphold, safeguard and respect the Constitution as the rule of law.

Two, the powers of the President shall be exercised in accordance to the Constitution and the laws and;

Three, the President shall not hold any other public office and note that please, the President shall not hold any other public office, including any elected or appointed office within a political party. Are we together?

State functions of the President, the Commission came with the following recommendations: Article 151

- a) The President shall address the opening of each newly elected Parliament, in accordance with article 141.
- b) The President shall address a special sitting of Parliament once each year as provided for in article one four.
- c) He/she may address Parliament at any other time, and
- d) May dissolve Parliament only in the circumstances contemplated in article 142.

Number two, the President shall appoint and may in accordance to the Constitution dismiss the cabinet consisting of

- I) A Prime Minister who shall be the leader of the political party that enjoys the majority support Parliament subject to approval of Parliament.
- II) Two deputy prime ministers nominated by the prime minister, I will explain that as we come to the Prime Minister. But I just want to give the duties of the President.
- III) Not more than fifteen, ministers nominated by the Prime Minister and
- IV) Not more than fifteen deputy ministers nominated by the Prime Minister, judicial officers and any other public officer who the Constitution requires the President to appoint subject to the applicable provisions to the Constitution or legislation. So, you can read all that, but basically that gives us the powers of the President. We even have legislative functions of President, which you can read, regarding the cabinet with the proposed legislative functions, committee of Parliament, Bill enacted by Parliament, what is the role of President like assent or signing a Bill and you know, being a custodian of the population of the republic of Kenya. So, those are some of the legislative functions of the President, you can read.

I want to take you to qualifications for election as President. That is page 20 Article 156, qualifications for elections as President. The President, which we are looking for in the new Constitution, what should be his or her qualifications? Because again as went all over in this country, Kenyans were of the view that the President in the new Constitution should be of some level and therefore, these were some of the qualifications the Commission came up with 155, 156, a person is qualified for nominations as a presidential candidate if the person;

- a) Is a citizen of Kenya by birth, hiyo ni condition number one.
- b) Has attained the age of 35 years but below the age of 70 years that is all the new constitution says.
- c) Is of high moral integrity and impeccable character.
- d) Holds a degree from a recognized university and
- e) Is nominated by a registered political party or
- f) Is nominated as an independent candidate by atleast one thousand registered voters who shall include not less than one hundred voters from each province. In other words, somebody can also vie as an independent candidate provided he is nominated by atleast one thousand registered voters and this will include not less than one hundred registered voters from each province, and then there is number two speaking of somebody who is not qualified as a president, you can read it on your own.

There is something I just want to highlight that this provision does not apply to those candidates who are 70 years above at the moment. But, it will apply during the next general election after the 5 years, is that clear? So, it does not apply for the current prospective candidates for the presidency.

Article 160, term of office of President. Article 161, it reads

- a) The President shall hold office for a term not exceeding five years beginning from the date of assumption of office and,
- b) A person shall not hold office as the President for more than two terms of five years each. Are we together? Yaah,

Then, we have another one which will be of interest to you, protection of President in respect to legal proceedings during the office. We want to see whether the president can be sued under the court of law, so, it reads, article one... Am I too fast?

**Audience:** No,

**Mr. P. O. Wycliff Owade:** Okay, article 161

- I) It reads, subject to clause two of this article, no criminal proceedings may be instituted or continued in any court against the President or a person performing the functions of that office during their tenure of office.
- II) No civil proceedings may be instituted in any court against the President or the person performing the functions of that office in respect to anything done or not done in the exercise of the powers under the Constitution during their tenure of office unless such proceedings are wholly of a private nature. If they are of a private nature then you have the rights.

So, those are some of the conditions or protection of President in respect of legal proceedings.

Then there is also this other article 162 dealing with removal of President on grounds of incapacity, you can read that but maybe as a point of interest I would like to read through on page 21, page 21 at the Article 163...*(End of side B, words lost)*

...Recommending how should the President be impeached, how can a President be removed? Because the President is the custodian of the people of Kenya, I told you about the Republic, that the Republic belongs to the people of Kenya, it will be the sovereignty of the nation is owned by you people. And therefore, you also have a duty just as you elect him, you also have a duty to remove him or to impeach if you feel he or she has not performed, are we together? So, what are the conditions?

Article 163 reads;

- I) If two thirds of the members of the National Assembly, approve a motion for the impeachment of the President for violation of the Constitution or gross misconduct, the speaker of the National Council shall convene a meeting of the National Council to hear charges against the President. So, it is the two thirds of the National Assembly who will move a motion and then shall go to the National council to hear and determine, are we together?

So, that is all about the President, but perhaps what I wanted to say about the President and office of the Vice President is that we shall have direct election. And they shall be elected directly by the people of Kenya. Of interest to all of us, because this was also the concern of Kenya, that from now on in the new Constitution, whoever is running as a president, must announce whoever will be his Vice President. Are we together? That is in other words, your running mate will automatically become the

Vice President and will also be directly be elected. Are we together? So, whoever is running as President will also announce who his running mate will be. Are we together? Yaah, so, that is about the position of the Vice President, you can read those functions.

I want now to take you to this new position in the Executive, the Prime Minister. The Prime Minister, that is page 21, page 21 part three, the Prime Minister. I said earlier that as the President will be the head of the state, the Prime Minister will be the head of government. Maybe something I may say on the appointment of ministers, the executive President shall appoint the ministers but based strictly on the recommendation of the Prime Minister, are we together? The executive President shall appoint ministers based strictly on the recommendation of the Prime Minister. But even that, before that appointment is effected, Parliament will have to approve that list of ministers. If Parliament rejects, then they cannot be ministers. But if they approve, then they will be ministers, are we together? Okay, so, let us just come to the Prime Minister and see what his roles are, article 170. It reads;

- D) The Prime Minister is the leader of the cabinet and presides at meetings of the cabinet. The Prime Minister is the leader of the cabinet and presides over the meetings of the cabinet. Then, we want to see the executive authority which he or she has within the republic
  - a) Developing and implementing national budgets and policy.
  - b) Preparing and initiating government legislation for introduction in Parliament, page 22.
  - c) Implementing and administering Acts of Parliament.
  - d) Coordinating the functions of ministries and departments and
  - e) Performing any other executive functions provided for, by the Constitution or an Act of Parliament, except those functions that are assigned to the President.

Those are some of the executive functions of the Prime Minister. Now, we want now to look at the process of appointment of Prime Minister. How do we recommend that it be done? So, we are on article 171 clause one, are we together? Within seven days following the summoning of the National Assembly or whenever necessary to fill a vacancy in the office of a Prime Minister, the President shall propose to the speaker of the National Assembly the appointment as prime minister of, we want to see;

- a) The leader of the majority political party or coalition of parties represented in the National Assembly. In other words we are saying whereas the President has the executive authority to appoint the Prime Minister, the President will have no choice, the Prime Minister will have to be the leader of the majority party in Parliament. Are we together? The prime minister will be the leader of the majority party in Parliament. If there is no majority parties, there is also a provision of a coalition of party. So, then, the leader of the coalition automatically becomes the Prime Minister, are we together?
- b) We also now have a recognition of the leader of the minority political party or coalition of parties represented the National Assembly. You know for along time, we have really not been practicing democracy, you know, so like, if somebody is just leading a minority party, let us talk of maybe Honorable George Anyona, in Kenya Social Congress. People see him

as you know, maybe of no consequence or no impact at all, isn't it? But he has got his role to play in Parliament. He has not a very very important role to play in Parliament. So, in this provision we are recommending, let the leader of the minority party in Parliament, because you never know, a time can come when it is him who will lead there at the top, isn't it? So, we are recommending, let the leader of the minority party also be protected, have some rights and privileges in Parliament. Even in state functions let him be accorded some special recognition as the leader of a minority party. That is also our recommendation, but it will depend on you whatever you, whatever you feel.

- c) The leader of the minority political party or coalition of parties represented the National Assembly, if the leader of the majority party or coalition has been unable to command or retain the confidence of the National Assembly, because there may reach a time when the Prime Minister, who is the leader of the majority party, may no longer hold the confidence of the Parliamentarians, isn't it? So, that is why we are creating those set backs for somebody to come in to avoid any crisis.

#### Term of office for the Prime Minister, article 172

- I) A person whose appointment as Prime Minister has been confirmed by the National Assembly, he assumes the office of the Prime Minister by swearing or affirming faithfulness to the people of the republic of Kenya, so the term of the office of the Prime Minister continues until,
- a) The Prime Minister dies, resigns or is dismissed from office, or
- b) Until the next person appointed Prime Minister following the general election assumes office.

So, even in the dismissal of the Prime Minister, as you read article 175

- I) It says, the Prime Minister cannot just be dismissed. He is appointed by the President, subject to approval from Parliament and therefore, for him to be dismissed, Parliament must also approve, right, are we together? Parliament must be involved in all of the stages. Then down there article 175, again we have the cabinet, but what we are saying in the cabinet, we are recommending, according to the views of Kenyans again, there was concern, some major concern,
- I) That a cabinet minister, normally they are too busy to be accessed in the offices, he is busy doing state duties up and down, constituents were to a crying or lamenting in some constituencies went that, we rather he be here as a member of Parliament or just take himself to be a minister, because when he is a minister, he is busy up and down, we can't access him any more, that was one concern.
- II) The second concern of the minister is that, sometimes, he doesn't have that patriotism or loyalty of serving the needs of the people. But he might serve the needs of some selfish interests.
- III) Number three also, which was also the views of Kenyans, is that ministers need to be professionals, where they are, are we together? For example, if he is minister for education, or minister of health, let him be a person who is professionally qualified for that ministry. The new Constitution is recommending, let us have highly professional people manning those ministries so that even if there are policy issues, proposals on funding to be written, you don't have to depend on somebody to do

it for you. Si umeona hawa hata katika Bunge saa zingine, inakuwa ngumu ku-answer question from parliamentarians, isn't it? Inakuwa ngumu sana, kwa sababu sometimes he has not done enough research or there are no enough qualifications for him to answer those questions. Like for example it is even in an international conference, because like now you know, Kenya cannot be on its own, it is an international village now, isn't it?

So, we need ministers who can dedicate themselves to their ministries, without minding politics all the time, so that you the wananchi who made them to be there as ministers, they can be able to answer your basic needs. If you go to that office, you are able to access him and he is a technocrat, he understands what the ministry is all about. Are we together? So, out of all those we recommended again, there is no need having too many ministries in this country, let us harmonize them, right? So what we have recommended, but it depends on Kenyans again, that we should strictly have fifteen ministers. Fifteen ministers to head fifteen ministries in this country. That is a recommendation which we have made.

Two, let us also have fifteen deputy ministers, right? We will also have the Prime Minister who will be assisted by two deputy Prime Ministers. So, normally in Parliament, we don't want this issue of lack of quorum, ministers are absent, normally you hear about that. We need ministers who can be dedicated in Parliament. So, what we are recommending, let the deputy ministers be completely in Parliament throughout, right? So that they don't have any excuse like they were in other functions or they were in other offices. Deputy ministers will be permanently in Parliament, but ministers will come when they are important Bills or important decisions to be made. Otherwise, they should be technocrats in their offices, helping wananchi there, are we together? So, in a nutshell, that is the structure of the cabinet, we have the Prime Minister with his two deputies, down there we have fifteen ministers and also fifteen deputy ministers. Are we together?

Then also we shall have permanent secretaries, article 181. What is important to note here again is that for permanent secretaries also, we need highly professional permanent secretaries, right? And the permanent secretaries will also be appointed-if you can read there-article 181

- I) Whenever the Prime Minister, a deputy Prime Minister or any other minister is charged with the responsibility of government ministry, they shall exercise general direction and control over that ministry, that is the role of the permanent secretary.
- II) There is established the office of permanent secretary which is an office in the public service.
- III) Each government ministry shall be under the supervision of a permanent secretary and
- IV) One permanent secretary shall be assigned by the Prime Minister to be the secretary to the cabinet.

What is important to observe there also, that even in the offices of the permanent secretaries, everything will be done but with the approval of Parliament. Are we together? Yes, so, I think, in a nutshell, I have given you a framework of how the executive should look like. Maybe the other thing I just wanted to do is to take you to this chapter on representation and say something

very briefly, representation which... Before representation maybe just on page 15, nitawa-take to page 15, page 15 there is article 112, article 112, page 15. And I would like to read it so that you understand it very clearly because in the new Constitution, we are giving the voters, the Kenyan voters more power in determining the affairs of their country. We can ... please you can raise it later. We want to go very first,

**Speaker:** ...

**Mr. P. O. Wycliff Owade:** Yaah, but that is, you know, I had started in kiswahili then you suggested should be done faster in English, so .....(Inaudible).

**Speaker:** .....(Inaudible)

**Mr. P. O. Wycliff Owade:** Yes,

**Speaker:** .....(Inaudible)

**Mr. P. O. Wycliff Owade:** Yes,

**Speaker:** .....(Inaudible)

**Mr. P. O. Wycliff Owade:** Okay, are we together?

**Speaker:** .....(Inaudible)

**Mr. P. O. Wycliff Owade:** Yaah,

**Speaker:** .....(Inaudible)

**Mr. P. O. Wycliff Owade:** Yaah, okay, that is fine, are we really together? Okay, so, there is that article 112/1 page 15, recall of a member of parliament, 112

- D) Subject to this article, the electorate of any constituency have the right to recall their Member of Parliament before the expiry of the term of Parliament. In the new Constitution, we are saying because there have been a lot of complains that some parliamentarians are not performing, they are not attending to the needs of the constituents, isn't

t it? Therefore, we are giving a provision now here, in the new Constitution, subject to your approval as the people of Kenya that you as voters have a right to recall a Member of Parliament, and that the seat will be declared vacant immediately, right? You don't have to wait for five years for a poor performer in Parliament. Once there is a percentage you have gotten, and various procedures you have followed with the Speaker and everything, you can read it there, you will have the power, as the voters to recall a Member of Parliament, are we together? Yaah, so that is the power which has been given to you to decide.

Having said all that, I think we now go to the Judiciary, somebody has seen that page? Page 23, we have page 23, that is chapter 9, that is the judicial and legal system. I may not read all of it, but I want to say that again as we were going all over the constituencies in Kenya, a lot of concern was raised against our penal code system and the courts;

- I) That cases take too long in the courts, isn't it? They take too long, you go, you are told come next month, come next year, until you don't even see the value of justice and fairness, isn't it?
- II) That expenses involved are too high, aren't they? Be it with the advocate or you know, those other proceedings, it is very expensive, wanachi were crying, is there a way we can make these courts accessible to wananchi? Are we together?
- III) There was also loss of files in the courts, so that sometimes you go, maybe a file has gotten lost or something like that, I don't know whether you experience it here also in Nakuru. But this was also a concern with other people. And so, again, people were seeing the courts as something very far from wananchi, right? That the court is living in a world of its own. Out of all that, just in brief, the Constitution of Kenya Review Commission recommended that we need to create good public relations between wananchi and the courts, because without you, the courts cannot be there isn't it? It is you who has given the Judiciary the mandate to be where they are. And therefore, in order to improve efficiency in our courts, the Constitution of Kenya Review Commission has recommended a new hierarchy of courts, and they are as follows;

(a) If you check page 23, we have the supreme courts, the supreme courts article 197, what is the composition.

The Chief Justice who is the head of the Judiciary and

(b) Not more than six judges, that will be the supreme court at the very top.

Then, number two we have the court of appeal that is article 191, the court of appeal consists of;

- a) The President of the courts and
- b) Not less than ten Judges.

Then, down there, article 192, we have the High Court, the High Court consists of

- a) The Principle Judge of the court and
- b) Such number of Judges not being less than fifty as maybe described by an Act of Parliament.

And then, of course the lower courts, the magistrate. So, basically we have the Supreme Courts, the Court of Appeal, and the High Courts, are we together. Then, I want to take you now to qualifications for appointment of Judges. Kenyans also felt that the judges need to be seen to be people who are qualified for those jobs, and that therefore, a criteria should be adopted because they are there to serve wananchi, they are dispensing justice and therefore, we need people whose CVs or whose records we know, they are not living in an island of their own. They are living with the people, they are living for the people. And therefore, let the qualifications be cleared.

Therefore, out of all that, the Commission came with the following recommendations, that for the Chief Justice and Judges of the Supreme Court, and for the Judges of the Courts of Appeal, and for the Judges of the High Court, they should have the following two conditions in consideration of the appointments.

- I) Intellectual ability as demonstrated by academic qualifications and legal practice.
- II) High moral character and integrity

Then of course as you look at various structures, there are other various qualifications we look for like number of years in work, he must have either worked as an advocate or a full time law teacher. So, you can read all that, but basically, those are the qualifications required for judges in various levels.

Then I want to go to the tenure of office of Judges. If you have issues to raise, you can raise them later, but this is our recommendation, 1961 that is page 24

- 1) A Judge and other judicial officers of the subordinate courts, a Judge and other judicial officers of the subordinate courts, shall retire from office on attaining the age of 65 years, at the moment they retire at 74 isn't it? But we are recommending that now they retire at the age of 65, but that they may also retire at 60.
- 2) Then number two it reads, on attaining the retirement age, a Judge of superior courts of record may continue in office for a period not exceeding six months in order to enable the Judge to deliver a judgement, or perform any other functions relating to proceedings that were commenced before the Judge prior to attaining the age of retirement.

So, basically that is the retirement age. If you have any issues to raise, you are free to do so. We also have the removal of the judge. Then I want to go to the Kadhis courts, I may not read everything, but I want to go to the qualifications for appointment of Kadhis. What we have come up with is that again, the muslim community also lamented that, their interests have not been taken to account in as far as various issues affecting them or Islam, is concerned. And therefore, we decided also to do some kind of a leveling of the Kadhis, starting with the High Court and going downwards. And here you can see the qualifications for appointment of Kadhis, if you look at page 25 202 I) A person is qualified to be appointed as a chief Kadhi if

that person

- a) Is a muslim of not less than 35 years of age,
- b) Is an advocate of the High Court of Kenya with atleast ten years experience, and as a legal practitioner and ... recognized qualification in Muslim personal law,
- c) Has obtained a degree in Islamic laws in a recognized university.

And again, these are also some of the guidance we are using for the qualifications of the Kadhi. Now, before I finish this part, I want just to take you through the Judicial Service Commission, there are some very new interesting dimensions that we have introduced, article 204

D) What we are saying is that, we need good harmonization between the Judiciary and the public in the conduct of the Judges, in the conduct of our judicial system. So, what we have done, unlike in the current Constitution, we have expanded the composition the Judicial Service Commission, and as you can see, a part from a and b or maybe I could just read;

- a) The full time chairperson will be a Judge of the Supreme Court, and
- b) A muslim woman should also represent the muslim community in the Judicial Service Commission. We shall also have the Attorney General, we shall have one Supreme Court Judge, we shall have one Court of Appeal Judge, we shall have one High Court Judge, we shall have the Chief Kadhi. Then, note now the following:
  - h) We shall have two magistrates, but one of them must be a woman elected by the magistrates.
  - i) We shall have two advocates for the law society of Kenya, but one of them shall be a woman, so we are even involving the law society of Kenya now,
  - j) We shall have two law teachers, one of them shall be a woman.
  - k) A member nominated by the council of legal education
  - l) The chairperson of the Public Service Commission or a nominee of the chairperson and
  - m) 3 lay members one of whom is a woman to be nominated by the NGOs.

So, we have really embarked on expanding the Judicial Service Commission, their duties, you can read. I want to take you to the legal system part two, page 25, we have two major offices there, the Attorney General and the director of public prosecutions. What we have done is that, the Director of Public Prosecutions, we are recommending that it be a Constitutional office. We feel that if it becomes autonomous, then it will be able to help in dispensing justice. You can read again what it involves but basically, is the office of the Attorney General and Director of Public Prosecutions has now been clearly demarcated.

If you look at page 26, in response to Kenyans' views, on expenses of the court and all these things, how expensive it is, we have created a new office in the new Consitution, out of your fear, out of your feelings on the court system. So, we have established the office of the public defender. The public defender will be a Constitutional office, the public defender shall be

appointed by the President, that is article 210 2, on the recommendation the Judicial Service Commission and with approval of the National council.

Qualifications for appointment as public defender are the same as the appointment to the High Court. What will be the duties of the public defender to wananchi of Kenya? The public defender shall provide legal advice and the representation to persons who are unable to afford legal services. This is a new office, and it will be able to give free service, to those who are unable to afford legal services. Are we together?

And just very very briefly, we have part three of the legal system on the legal profession, that is article 212, the profession of law. There has also been a concern over the behaviour of some advocates, as they deal with their clients, haven't you experienced it also? And that is a concern so that we are not just touching the courts and all these kinds of things, but we are even saying the profession of law should be completely respected because even there, they are doing it for the honour of the people of Kenya, isn't it? So, there are also some guidelines to regulate the profession of law. And therefore, it will be very important for you also to read that and see what it entails.

Having said all that, I have tackled the Legislature, the Executive, the Judiciary in a nutshell, I want to take you to the Public Service, which page is it? I hope I am not too fast please, bear with me, I am not too fast. I want to take you to the Public Service page 32, Public Service, page 32, the Public Service chapter 14. Yes, the Public Service is a very critical organ in the formulation of policies. It is part of the Executive organ, they implement policy for the people of Kenya in delivering services to the public. And therefore, it is a very very important area. In various constituencies where where we were going to hear the views of Kenyans, there was concern that not much is known, of the Public Service. Apart from hospitals and schools, the ordinary mwananchi doesn't know what is going on in various ministries, is it okay, is it true? So, that you go to the office of a civil servant, he is not happy, he is looking gloomy, he is looking tired, and it is as if he is not very concerned, isn't it? And therefore, wananchi go there, they think it is a public office where they are supposed to be served, but perhaps things are not going well.

Again files are getting lost, isn't it? And again people who are supposed to be promoted are not promoted, there is biasness in promotion. Promotion is not on merit, but again we were saying perhaps there is a cause for this. Again, civil servants whom we were interviewing were saying a lot of things are also going wrong. Their terms and conditions of service at work, right? Training is very difficult to get, you will find for example somebody has worked in the service maybe for two years or three years, he may fly to Europe and wherever, but somebody has been here for the last ten years or so, with all the qualifications, yet, he has not even reached Uganda. Are you getting the point. So, can there be some leveling, can there be some criteria on merit, terms and conditions of service, efficiency. These were the cries of Kenya.

Promotion must be strictly on merit. Appointment of people in the public service to be completely on merit without saying a

particular region, a particular group or a particular class, right? Or it is only for the rich. You know it reaches an extend where Kenyans were even saying, that when you employ somebody these days, if you don't have money, you know, it can't happen. But if you have money, you will be recruited, isn't it? So, having listened to the views of Kenyans on all that, the Commission has made various recommendations on the Public Service. But I would just like to highlight to you as it is written there, chapter fourteen, values and principles in administration generally, 258, the guiding values and systems of public administration include, it is important to understand them;

- a) Maintenance and promotion of high standards of professional ethics in the public service.
- b) Promotion of efficient, effective and economic use of resources.
- c) Impartial fair and equitable provision of services
- d) Encouraging of people to participate in the process of policy making
- e) Prompt and time by response people's needs, accountability of administrative act of omissions and commission, transparency fostered by providing the public with timely accessible and accurate information. You can see all that like the age, merit as the basis of the appointment and promotions. So, all these are the concerns of Kenyans and due to all that, we have recommended

- I) That the Public Service Commission should be completely entrenched,
- II) Should be completely independent, these were the views of Kenyans, right, are we together?

So, having said all that, I want to take on the Police Service, that is article 265,

- I) One very unique dimension you will see here, that now, that we are proposing that let this body be called Kenya Police Service, are we together? Because the Police are also there, because of you the people of Kenya, isn't it? Without you, the Police Service will not be there, they are there to maintain law and order, they are there to service you not to rule you, are we together? So, we are recommending the establishment of the Kenya Police Service. Kenyan society, including the policemen themselves, we should improve good relations between wananchi and the police. The wananchi and police should not see each other as enemies, are we together. We are there to build this nation of Kenya, we are there to help the police, and therefore, even as you read the devolutional structure, from the village, the location, the district, you will see the emphasis on community service. Basically based on the police in that local area. We are creating a new culture of bettering the relationship between mwananchi and the police, so the police is there to serve and you as wanachi, on your duties as citizens, you are there to help the police so that law and order is maintained in a fair and in a just way, are we together? So, that is why we call it the Police Service.

I want to take you now to the appointment of the Commissioner of the Kenya Police Service. The Constitution of Kenya Review Commission came up with the following recommendations on who is to be appointed. But just before that, the strong recommendation was that the Kenya Police Service should be an independent autonomous body, are we together? They should be completely independent in the Constitution, and therefore, these are the recommendations, 266

- II) There shall be a Commissioner of Kenya Police Service,
- III) The Commissioner shall be appointed by the President but with the approval of Parliament for one term of ten years. Are we together?
- IV) He is appointed by the President just as he is now, but this time, we want Parliament to be involved, that is number one,

Number two, he will be in that office for a fixed term of ten years without interruption, so that he is completely independent and he is able to execute his duties independently without any direction, without any instruction, are we together? So, once he has that term for ten years, he will be there until the ten years lapse. If he is not performing, the President can dismiss him, right? But again, with approval of Parliament. Are we together, right?

Then let us look at number three, no person may be appointed as a Commissioner unless that person

- a) Has a degree from a recognized university, you want the commission of Kenya Police Service to have atleast a degree from a recognized university, right? Because that is as powerful position, he is heading the state actually. Isn't it? So, that is our recommendation, but again we will leave it for you to decide.
- b) He must have served in the Police Service for atleast ten years. The Kenya Police Service shall be under the command of the Commissioner who shall be assisted by two deputy commissioners. So, this time, we shall only have strictly two deputy Commissioners. Are we together? So, that is all about the Kenya police.

I want to take you now to the prisons. The Constitution of Kenya Review Commission has given it a new name, we are now calling it Correctional Services. We interviewed prisoners throughout this country including the prison officers, and there was a big concern that our brothers and sisters in prison, it seems as if you are seeing them as sinners, sinners who cannot reform, right? These are just condemned criminals. You visit there, you see the situation there, it is deplorable, and we are saying surely, do we need just to condemn these people? Should this not be a place to counsel them, to guide them, right? And to make them become more responsible citizens, but how can we do that? We can do it only by correcting them. So, we have decided, subject of approval to the people of Kenya, that it be called correctional services, are we together? So, again you can read there and see what it is all about. We even have a new director, we call him the director of the Kenya Correctional Services.

I want to move now to chapter 15 on page 33, the Defence Forces and National Security. As you know it is a very very important issue in our country, and therefore, without proper organization of our security system, Kenya will be in complete anarchy. You may read all those, on the principles, but I want you to reflect on the establishment of the National Security Council, that is article 272 so that you just understand what is the composition of our National Security Council in Kenya? There is established a National Security Council consisting of the following,

- a) The President

- b) The Vice President
- c) The Prime minister
- d) The minister incharge of defence
- e) The Chief of General Staff,
- f) The Army Commander,
- g) The Navy Commander
- h) The Airforce Commander
- i) The Commissioner of Police,
- j) The Director of Kenya Correctional Services,
- k) The Director of National Security Intelligent Service
- l) The Chairperson the Relevant Parliamentary Committee.
- m) The Attorney General

So, these are members who will be in the National Security Council. You can see there of interest that even now Parliament is involved isn't it? Yah, that is the composition, functions you can read. If you look at the Defence Forces, article 274, defence forces, no one may raise a defence force or military, or a paramilitary organization except by or under the authority of an Act of Parliament, are we together. No one may raise a defence force, or military or a parliamentary organization. So, this is the composition of the defence forces, we have the President, the Vice President, the Prime Minister, the minister in charge of defence, the Chief of General Staff, Army commander, Navy and Airforce Commander.

So, that is about the defence forces. In a nutshell, I have finished all the three organs of the government, I would now like to take you to land, land is on page 28. I must say before you here, that of all the issues which raised a lot of concern in Kenya, land seems to have topped the list. Maybe you know why land seems to have topped the list, it is a highly emotive issue, very sensitive, Kenyans were very concerned all over the country. Land is a very very critical issue. There has been a lot of corruption which Kenyans have expressed on land, either on sale, ownership of land, tenure, land being public land, private land, all that kind of thing. So, Kenyans were concerned that there should be some level playground on ownership and management.

So, what we have decided as a Commission to do, in chapter 11, are we there? Land and property, what we are saying is that, we are calling for a new land policy framework, and 232, there are highlights;

- D) Land being Kenyans primary resource and the basis of livelihood for the people, shall-and please note those words-land being Kenyans' primary resource and basis of livelihood of the people, shall be held, used and managed in a manner which is equitable, efficient, productive and sustainable. So, we don't even want idle land any more. In the new Constitution, we want you to make use of the that land, are we together? You must sustain it, if it is idle, it will have to be repossessed. Because why should you have a large tract of land and you are not using it,

are we together? So, these are some of the concerns which Kenyans have, land should not just be seen as a symbol of power, a symbol of prestige like you know it is done in many societies in Africa, right? But now we are saying, let it be used accountably to the people of Kenya because that land belongs to the people of Kenya, are we together? Yes, ownership of land, I want to read those three clauses so that if you have any observation you may wish to make or clarify. So, article 233;

- I) All land in Kenya belongs to the people of Kenya collectively, as communities and as individuals.
- II) Subject to this Constitution, no person other than a citizen of Kenya shall have the right to acquire any interest or rights in land in Kenya, are we together?
- III) Non citizens of Kenya may hold or use land on the basis of leasehold tenure only and such leases, however granted, shall not exceed 99 years. Are we together? So, non citizens may not hold the land for a period of more than 99 years. Maybe if I could clarify, we may have some visitors from outside the country, or some foreigners or wazungus or whatever, and they would like to be investors, right? To invest in something maybe a factory or something like that is put up. So, we were recommending, is there criteria, a period we can give them? Again it is upon you Kenyans to decide whether you want that investor to be there for that period, or you see it is not necessary to have that period. Are we together? So, before I finish on, land, what I want to highlight on is that the Constitution of Kenya Review Commission is recommending article 233, 7, establishment of the National Land Commission. This is an independent commission recognized in Constitution, it is autonomous and will address all issues related to land, are we together? So, you can read, incase of any additional functions you want we can compare notes.

Can we now go to chapter 12, Environment and natural resources, Chapter 12 page 29, I think we are moving well, please don't be tired, we are almost through we will try our level best. Now on environment and natural resources again, resources are a big concern among Kenyans, but forests, have been destroyed, there has been a lot of pollution of rivers, minerals, everything has been abused, isn't it? Therefore, Kenyans really lamented because as you realize the environment is a very very important issue, and that yet, if you abuse the environment, you as an ordinary citizen, you have no right under the current Constitution to sue the state or whoever is interfering with the environment in the court of law, are you aware of that? You are not allowed because if you go there, it will be taken over maybe that Attorney General or something like that. Because you have no rights.

But the new Constitution is giving you a right as a Kenyan citizen that if somebody is interfering with the environment in any way, you have a right to sue that company or that person or even to sue the government in a court of law. In other words we are now calling the new Constitution for your active participation in environment. That each citizen should be responsible when it comes to trees, nobody should just cut trees, interfere with them in any way. If a neighbour of yours is interfering with the trees or forests in any way, you have a right to report that, and that legal action must be taken because we must preserve our environment, are we together? So, it reads, if I finish there 239;

- I) Every person in Kenya has a duty to safeguard and enhance the environment, you have a duty,
- II) All state officials exercising power or performing a function involving the administration, protection or exploitation of land or natural resources, shall have regard to the following principles. So, those principles you can read, but what you are being told is that you have to be accountable on issues of environment, and that nobody should abuse, the environment. The environment must be respected and must be recognized, that is what the new Constitution says, are we together?
- III) Public finance and revenue management, page 29, (... *End of side A some words lost*).

Public finance and revenue management system in the Republic of Kenya is to ensure:

- a) Efficient and effective generation of revenue
- b) To enhance the participation of people, communities and civil society,
- c) To ensure equitable sharing of national and local resources,
- d) Ensure the equity of division of revenue raised nationally among national, provincial, district and local levels
- e) Ensure that in allocation and distribution of national revenue adequate for consultation is conducted and,
- f) Ensure that the budgets and budgeted processes promote transparency, accountability and effective financial management of the economy.

So, these are guidelines again, Kenyans were crying wherever we went, but a lot of things have gone wrong in our management, corporations, institutions, even in our companies, hata kibiashara, mambo mengi yameenda vibaya kabisa. There is no proper, you know... Pesa, usipotumia pesa kwa hali ile nzuri, ndio hii taabu tonaona kila saa, si ndiyo? Sasa maneno ya pesa ama utumishi wa pesa, has brought a lot of problems in our community. Even we are now going to talk of various units in of the government, location council, village council, district council, unless we know how to utilize money and manage it properly, this will be useless, isn't it? So, again in the new Constitution, we have a specific provision giving us guidelines on the disciplinary procedures of how we should conduct our public finance, and revenue management so that if anybody is against those provisions, then, he will have, he or she will have to face the law, are we together?

Yaah, now, having said all that, I think now I want to take you to page 31 article 253, we have the controller of budgets, this is a new office, which will also be a constitutional office to help on various budgeted provisions, you can read it.

We also have the Auditor General, article 251, the Auditor General will still remain an independent body but again the office shall be a Constitutional office. And that he shall be appointed by the President, again with approval of National Assembly. But there has been also some concern, that the Auditor General seems to enjoy a lot of power and autonomy. He is auditing everything on the public, isn't it? But the question rises, who audits the Auditor General? Have you ever asked yourself, who audits the auditor general? Nobody, and therefore, he might just do anything he wants, and yet we don't know. Because he is

the key to the auditing, and you know this is a very essential position, isn't it? So, if you look at article 256, (I), we also now want to monitor the Auditor General. So, how will he be monitored? 2356, 1, reads, the accounts of the offices of the Controller of Budgets and is a new office which we have just created, and the Auditor General, shall be audited and reported on by on by an auditor appointed by the National Assembly. So we are saying even for the Auditor General now, an auditor appointed by Parliament will have to scrutinize him, are we together? So, that is all about it.

Then, down there 257, just say .....(Inaudible) social council, which you can read on your own, which is generally giving guidelines, on how to answer to your basic needs on various issues. Now, which chapter is remaining now? I think we are now going to almost the last chapter, yes, we have the... Before we go to the amendment of the Constitution, I want to take you to the establishment of Commissions, that is chapter page 34, page 34 chapter 17, just down there article 278, okay, so, on the Constitutional Commissions and Constitutional offices, the main point to observe here is that from now on in the new constitution, we are recommending, having listened to the views of Kenyans, they were saying, some of these Commissions are formed but wanachi never hear what they are all about, right? And yet, they are there because of you, you know they are being given salaries, allowances, they are enjoying taxes, but whose taxes? It is the public, yet sometimes some of these recommendations or resolutions they have come up with, a Commission might go, let us say like the one of ethnic classes, which had gone all over the county, but they have never been made public, isn't it?

So, if it is not public, made by the republic, then, it is for who? It is useless, so these were again some of the concerns of Kenya, can't we have these commissions be made public? Having heard that, the Constitution of Kenya Review Commission recommended, let these Commission be known, right, in the open, let them be entrenched in the constitutions, so that they are independent, and that you as a raia ama mwananchi, you have the right to access them, go to their offices, know what is going on, because this is your country. This Republic belongs to you as the people of Kenya, isn't it? So, we have what we call the constitutional commission, and offices. From, right now, what it will mean, is that these Commissions are now protected under the constitution, so, we have got various Commissions, the first one, is the Commission on human rights and administrative justice so that if you have a problem with the human rights, you know the office to go to. It is an autonomous office, it doesn't belong to anybody, it is completely independent. Are we together? So, issues of human rights, we will have the Commission on human rights.

Then we have got Ethics and Integrity Commission, we need leaders who are ethical, we need leaders who are morally upright, I don't want to see a leader in the village, he may be a teacher, he may be a civil servant, he may be a priest, he may be a judge, but when you look at him, his behaviour in the public, what he thinks, how he relates with the people, where he goes, you know that carries a lot, isn't it? So, do we have manners anymore in this country? This was also the feeling of Kenyans, that perhaps it is time we set up what we call code of conduct, isn't it? So, that these leaders can have some code of conduct, because they are leaders and they are there as public officers. We need to have leaders of some high moral standards in this society. So, we have what we call the Ethics and Integrity commission so that if things go wrong, you as wananchi you

have a right to go and petition that Commission and to take necessary action, are we together? But down there, on page 35 just under Commission on human rights and administration of justice, there is this section dealing with this is three B, the people's protector, are you seeing it? The people's protector, are we together? That is page 35, article 288, 3B, are we there? It reads, in relation to the jurisdiction of the people's protector with their duties, the people's protector here, all the complains which wananchi have, there is also that new office which will listen to your needs, are we together? Fine.

Then, we have another Commission, we call it, that is page 36, Salaries and Remuneration Commission. Salaries and remuneration Commission, article 290, there is composition and its functions, but I think the most important thing I wanted to say, again Kenyans were saying that some people are getting higher salaries than others, isn't it? If you go to Parliament, they just come one morning and decide let it be 100% and so it is, because they are law makers. Isn't it? *Najuwa hata nyinyi mlisikia vibaya sana wakati watu wa Bunge walisema mishahara yao wanapandisha juu isn't it?* You were concerned and now when you are told teachers cannot get their money, you are surprised, isn't it? So, we are saying, let there be an independent Commission which is dealing with anything to do with salaries. For example, *kama ni maneno ya waalimu*, it will have nothing to do with the government, it is between that Commission and the trade union. Are we together? So, that the government is out of it.

The dispute can only be between the trade union and that Commission which is established, right? So, we have salaries and remuneration Commission and the functions are stated there. The functions of the salaries and remuneration, it will deal with, as it reads, it states the salaries, that is number 2, 292, the functions of the Salaries remuneration Commission are to set the salaries, allowances, pensions and other benefits of whole Constitutional office holders, and members of all Constitutional Commissions. So, all those are stated there. And you can read that and see.

But of importance, I would like to take you to article 293, of the Constitutional offices, some of which I have already highlighted. Article 293, there is a provision in the Constitution establishing the following offices, so that they are completely independent:

- a) The Attorney General, are we there?
- b) The Auditor General
- c) The Controller of the Budget,
- d) Director of Central Bureau Statistics,
- e) Director of the Kenya Correctional Services
- f) Director of the Kenya Police Service
- g) Director of Public Prosecutions
- h) Governor of Central Bank and
- i) Public Defender

So, these are the Constitutional offices and we want this to be very very clear. Before I go to maybe the second last chapter before we finish which is amendment of the Constitution, I would like to take you to... There is this section on Parliament, on the calendar, Calendar of Parliament, how Parliament should set its calendar and I am just looking at it. Yes, I want to take you to page 20, article 155, down there.

When I was taking you through the Bill of Rights, maybe I forgot to mention something very important, that there is also a new provision that all the wananchi of Kenya, you will have the right to vote. Unajuwa wakati wa kura kuna watu wengine ambao kazi yao ni mdomo tu, ati sisi ni hiki, chama peke yake, ama ni huyu mtu peke yake, lakini wakati wa kura, wako tu nyumbani. Hiyo ni kweli? Yes, but we are saying in the new Constitution, let us all participate in the democratic elections by voting, isn't it? If you don't vote, then, you are in problems, isn't it? So, if you read there, the right to vote and timing of presidential elections, I just want to take you to one aspect, 155. It reads;

- I) The election of the President shall be direct by universal suffrage through a secret ballot and shall be conducted in accordance to this Act and with any Act of Parliament, regulating presidential elections. There is that part I want you to listen very cautiously.
- II) Number two, an election of the President shall be held:
  - a) On the second Tuesday in August and there-after on the second Tuesday in August every fifth year. In other words, we want wananchi to be involved in these electioneering dates, right? Let wananchi know that after every five years, when are we holding the election? Let it be very clear in the new Constitution, let it be very clear as the new Constitution states that from now on, we shall know the calendar how it is. Are we together? And we are also saying, just in addition to brief you, that for the National Assembly I had told you about, it will be the normal five years which we have. But the National Council, we are proposing four years, are we together?

So, let us now go to amendment of the Constitution, which is chapter 19, which page is that? Page 37, we are almost through, I am just asking you to be patient, amendment of the Constitution, chapter, page 36, amendment of the Constitution, are we together? Again as we went round the constituencies, Kenyans were asking us, and I hope you included that sometimes you people are talking of the constitution, but we have seen what they do in Parliament. They keep on amending any time they want, isn't it? Yes, you go there, after some period, it has been amended, like we were being told more than 30 times or as has been amended since independence, quite struct quite more, so, are we people in the Commission going to do? What are going to provide? So, Kenyans were really concerned about this idea of piecemeal amendments all the time given to Parliament. This time, we have put very strict conditions, and I want to read them word by word. Chapter 18 page 36, amendment of the Constitution, 294: (1)

- I) 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 to the procedure laid down in this article.

II) An amendment of this Constitution may be initiated only by the introduction of a Bill, for the purpose in either House of Parliament, that is either the Lower House or the Upper House, and when the Bill is passed in its second and third reading in each House, second and third reading in each House, by no less than two thirds majority of total members of that House, it shall be presented to the President who shall give assent to the Bill and there upon the Constitution shall stand amended in accordance with the terms of this Bill, are we together? So, what we are saying, this time it is rigorous, both the two Houses, it has to pass, in both the second and third reading and that it must have the two thirds majority, right?

So, at that stage, the Constitution can be amended. However, note clause three, an amendment that seeks to make any change in:

- a) The territory of Kenya,
- b) The sovereignty of the people
- c) The principles and values of the republic as set out in article 62
- d) The Bill of rights,
- e) The Structure, values and principles of devolution as set out in chapter ten of the Constitution.
- f) Citizenship and
- g) The provisions this Article,

In other words, the whole of clause three, no matter what happens, it is impossible of Parliament to amend, right. If it is to do with the territory, the sovereignty, Bill of rights, principles of the republic, the devolution which I was telling you about, the local council, the village and the district council, that one whatever Parliament does, those two Houses, it is impossible, it is against the Constitution, they cannot do anything about it. They have to consult you the wananchi of Kenya. And it is you to give them vadict, whether you want to amend those provisions, are we together? So, that is about the amendment of the Constitution.

Chapter 19 there is nothing much about it, just trying to give interpretations, public officer a for what, what, what, that one you can read on your own. I want now to take you to chapter 20 which is the headline there as you can see, Transitional and consequential provisions, and here we have got various schedules which I may not go to detail, but perhaps what I may highlight, just from schedule one, first schedule chapter, what chapter is that. Chapter 20, page 37, you know earlier I had told you that we are a republic isn't it? And we belong to the Republic of Kenya, this republic belongs to us, and therefore, as for that provision in the Consitution I have just said, we have a defined territory, isn't it? So, Kenyans were also of the view that let this one be very clear. Where does the territory reach, between or among the borders, even if it is the lake, or it is whatever, is there a clear cut territory which is defined? So, the first schedule there is just telling about the territory concerning Kenya-Uganda border, so if you read it, it will guide you in what it contains, are we together?

Then, if you come to page 39, there is Kenya-Sudan international boundaries, so we are really capturing where we are

bordering so that we know what category and to what extent we reach. So, that is about Kenya-Sudan international boundary, we also have the other one on Kenya-Ethiopia international boundaries, we also have Kenya-Somalia international boundaries, are we together?

Then we have also something to do with the management of our territorial seas, the territorial seas, and the exclusive economic zones, boundaries. Like when you talk about the Indian Ocean, you want to see where does it start, where does it end, and the details are there.

Then finally on page forty, we have Kenya-Tanzania international boundaries, again it is spelt out where it commences, where it stretches, and all that kind of thing.

Having talked about the territory, I want to take you to the second schedule of our Constitution, and this is on provinces and districts. So, this basically highlights the number of district we have in Kenya, and the number of provinces we have in Kenya, and for the purposes of your district here, I want to read and see whether it is there so that you know you are part and parcel of this Constitution. So, this is Rift Valley province, isn't it? We have Baringo, Keiyo, Uasin Gishu, Nandi, Marakwet, Trans Nzoia, Turkana, Samburu, West Pokot, Buret, Kericho, Laikipia, Nakuru, Koibatek, Bomet, Transmara, Narok and Kajiado. Are we in there, yaah, so, that really gives you the legitimacy.

Then, there is the third schedule on page 42, these are the national symbols, as a country, as a republic, we are Constitutionally entitled to some specific symbols. So, we have there those four symbols,

- a) We have the national flag,
- b) We have the national anthem
- c) We have the coat of arms
- d) We have the public seal of Kenya

So, these symbols will remain as they are in the new Constitution. Apart from the symbols, we go to the fourth schedule which is just dealing with the national oaths and affirmations. In other words, whatever level of responsibility you take, be it from the village, locational, going upwards even to the office of the President, there are some specific oaths which you must take and normally, it is oath to protect and defend the Constitution of Kenya. Again you can read those, and then, see what it is all about.

And then, fifth schedule page 44, we have leadership and integrity code of conduct, which I have already told you about, it basically guides us on who is a public officer, what is required before you go or you take that office, so that we have leaders who are behaving morally and ethically and therefore, they are able to serve us as per that position. They are not just there because they are there, but they are there because of the people of Kenya, who have entrusted them to those offices.

There is the sixth schedule, the sixth schedule which is generally giving us actions to be taken by Parliament. You see that table, the sixth schedule, actions to be taken by Parliament, I cannot read all of them but as you are aware, normally, when the Constitution is in place, and more so at this time of transition, when we are closing the past and going to the new, normally Parliament which is going to sit has got the Legislative responsibility to work out a timetable of how to interpret these laws, of how to define these laws, and of how to specify these laws. The Constitution cannot do everything, we cannot write everything in the Constitution. Once you have given the framework, it is now upon Parliament to define, to specify, but based strictly on the Constitution framework. I just wanted to highlight to you that where it is written no time limits, you put there three years, where it is written no time limits, put it there, three years. Those are the new changes which have been made, and so, therefore, actions to be taken by Parliament, first column talks of legislation to govern, provide for, regulate and prescribe, and you will see all the issues indicated there.

Then second column is dealing with articles which are there in the Constitution.

Then the third is basically dealing with time limits within which actions shall be taken. So, even in this transitional period, as you can see, we are even setting a time limit. Even if it is Parliament, the Constitution is giving time limits, in order for it to act, on a certain provision within the Constitution, are we together? So, this has to be very clear, and wananchi have to know.

Now, before I go to the eighth schedule or rather the seventh schedule, there was another area dealing with national holidays, I have lost the page, it is I thought it is important for us to see. There was an area dealing with the national holidays, whoever has seen it can just help me, there is an area dealing with the national holidays, I just want to remind you of something there, are we together? Yes, there was an area dealing with the national holidays, I am still looking for it, yes, page 4. Page, 4. Again, having listened to the views of Kenyans on national holidays, there was a strong feeling emerging that perhaps we should reduce these national holidays. And therefore, the Commission came up with the following recommendations, that is page 4 article thirteen, are we there? National days, the following days shall be observed as national days,

- a) 1<sup>st</sup> of June, that shall be Madaraka Day, that will be maintained in the new Constitution.
- b) 12<sup>th</sup> December, that is Jamhuri Day and
- c) The date of enactment of the Constitution, which we call the Katiba Day.

So, those are the three days we have classified as national days, are we together? If you have any other observations, you can raise, but apart from that, you also have public holidays like Labour Day. But what is important to us, are these three days which we mark as national holidays, are we together?

So, may I now take you to the last chapters, the last chapters, which page was it? Yaah, page 36, basically, on powers of national and district governments, you can read them, it is stating duties which the national government will do and its limitations, and if you check at list two, it is dealing with district government lists, and then there is list three dealing with the

concurrent lists. What I may say is that the Commission is still working on the finer details of the devolution structure, but as I had said earlier, we have simply given you a framework of how the structure should look like.

Then the eighth schedule, I need also not to go about it anymore, apart from the fact that you need to know your rights and duties and obligations in this republic. Basically we are handling the transition at this particular stage when we really need to be aware of what is going to take place, and I think I want to say in summary that whatever is in the current Constitution now will be maintained. In other words, the status quo, as enshrined in the current constitution, will be maintained. We are not saying, that if the new Constitution comes in place tomorrow therefore the current Constitution is useless, are you getting me, yes. We are not saying that if the new constitution comes into effect immediately, therefore the current Constitution is useless no, the laws and provisions stated there will remain intact in the new Constitution until Parliament comes out clearly and then this things. In other words they will take phases, that is why we have time limit and all those kinds of things, are we together?

So, those structures are not just going to move away, no. So, basically, I don't want to repeat all these, but I want to take you very briefly to the provincial administration, chapter 46, number 7.

- I) The provincial administration, it reads, on the coming into force of this Constitution, the system of administration, comprising subchiefs, chiefs, district officers, District Commissioners and Provincial Commissioners, commonly known as the provincial administration shall stand abolished.
- II) All public officers serving under the provincial administration shall report to the Public Service Commission for deployment.
- III) I had just briefed you on the structure of devolution. And I said from the village, to the locational, the district council, we are going to have direct elections, right? So that whoever you elect at those units are people coming from that specific region, are we together?
- IV) Somebody maybe wondering, what are we going to do with the chiefs, the subchiefs, the District Commissioners and the Provincial Commissioners.

These officers are not going to loose their jobs at all. Let this one be very very clear. These officers are employees of the Public Service Commission, right? And therefore, what we have done, we have recommended that they be redeployed to the Public Service Commission, but the Public Service Commission, the Constitution is giving the public Service Commission power that these people are not going to be rendered jobless. Let them be given some jobs, clearly defined, clearly placed so that they serve the people in whatever capacity. But they are not going to remain as these units at the districts, and the provinces, and the locations, are we together? They are going to maintain their salaries.

Now, when the devolution takes place, the district administrator whom you will directly elect, because he will have powers, he will be having some kind of a secretariat or some kind of an executive to help him run the district, right? But not to interfere, because you will be the overall supreme person elected by you people, are we together? The Public Service Commission may

decide, after they are redeployed, to take them to these various districts under some specific departments. Are you getting it? So, it is not that they are being rendered jobless, the Constitution is not doing that, what we are saying, the offices have been abolished, but they are going to be redeployed as the Public Service Commission deems necessary right? But of course if a chief in a location or a subchief wants to contest directly from those units, let him contest, he is free to do so. If he is popular, why is he not being elected? Are we getting the point? So, that is the message I wanted to bring across.

Having said all that, I would like to say that our duty here as a Commission was just to present to you this draft, you gave us a mission, we came here, you gave us your views, isn't it? We also went to all the constituencies in the country, we listened to people. So, what we did, we went and sat as a Commission, constituted ourselves in various specific groups as far as your issues were concerned, thereafter, we came up with a report, and then out of these reports, we developed the draft. This is the draft, which has now come out in the pull out in the newspapers, and our mission here really is not to listen to you giving us a lot of questions your questions are more or less comments and giving us what you think as far as the draft is concerned, are we together? So, that whatever you tell us, we are not here to argue with you or tell you no this is not the position. We are here to take whatever you have to tell us, we are just reporting them, and taking them to the Commission.

And then, you will have a forum with the district coordinator, to debate them fully, again the district coordinator will come with those recommendations and bring to us so that when we meet at the National Conference, we expect you to come and defend your position as far as the draft is concerned, are we together? So, I would like to stop there, and leave for the district coordinator to conduct the remaining session, thank you. *End of side B*

**Mr. Kirui:** Wananchi si mmefurahia? Ningependa tumpigie makofi. Mimi nafikiri kusema ukweli, you need time to read. You have had a lot of bad publicity, because people don't read. Just as we have said, some of them look at the top and have no time to read. I would say that this is your opinion, Kenyans' opinions, Kenyans feelings, Kenyans recommendations, and we feel sometimes embarrassed when people say it is not Kenyan inspired. When he was reading, I was reading also your report, constituency report, what he talked about the land issues is inside here, Judiciary is covered very well here, everything which was mentioned, even the public offices, the way you people recommended, even the elections of the President, what Rongai people said is here. And that is what other people also said in their constituencies, and finally, all the Commission did was one thing, compile the opinions of all Kenyans.

So, people should not make it as a play, we spent a lot to resources, we have spent a lot of energy, we have spent a lot of time meeting people and they were giving out their opinions. I don't know what you feel about your own opinion. I think one thing, we need to respect, other people's opinion. We have had very bad remarks, people calling it from Utopia! Utopia means nowhere, then I fail to understand how somebody can make up all those pages out of nowhere. So, we feel some of our leaders also need to see what we are talking about, whether it means something substantial. We need to respect Kenyans opinions. Akina mama walitoka, wazee wakajitokeza, vijana waka-jitokeza, disabled waka-jitokeza, the prisoners wenyewe,

waka jitokeza kusema this is the way I see this country.

For this reason I want you to clap for yourselves, mjipigie makofi hapo tafadhali. **(Clapping)**

I think this is Constitution which has been developed by the people throughout the world, not only in Kenya, all over the world. This is the first Constitution developed by people. Because you need to know how you are governed. Governing or governance is a contract, between those people who want to govern you and those people seeing governed, is a contract, is just like a marriage. Si ndiyo.

So, we need to be very strong as Kenyans to agitate for our rights and to know how are we being governed, you are being driven by a driver, the first thing something you tend to trust is whether he has a licence. So, in most cases, the next round is when you ask, how do you have a licence to drive a car. Or you don't want to be driven by a person who has no licence. So, it is the same thing we are saying, the new Constitution is Kenyan made for Kenyans and they want to know how they are being driven by their leaders. They also want work on contract since independence verred almost six elections, and in most cases we don't have any contract with our leaders, they keep promising, and they don't fulfil their promises. As soon as wanapata kura wanaruka ng'ambo ile, you have no way to call him back because you have no contract. We are now telling them, "Gentlemen if you want my vote, you tell me what you want me to buy out of you". So, we also want to say, this is your making and I must congratulate you Kenyans for having spent time.

Now, I would like to see allow you to comment on one or two things. One thing I would like to emphasize is that, wale wako kanisani, please, just organize one Sunday afternoon mkutane hata kama ni twenty minutes, brief other people. Write those points ambazo mmeona labda ziko ndani but need see some changes. Patia my 3Cs wale wako hapa, Bwana Busienei, msimame kama wengine wako hapa. I just want to...

**Speaker:** .....(Inaudible).

**Mr. Kirui:** No, we would like to finish, because we have another appointment, we may not have the five minutes. So, straight away we would like to hear your views, then allow you now to go back to your places, have the time until 24<sup>th</sup>. Muandike chochote ambacho mtapata, hata kama mtu binafsi ukisha-soma, questions ama .....(Inaudible) utupatie, and that will be the deliberated at National Conference. National Conference will take place from 28<sup>th</sup> of this month, if things work out is made up of all the MPs. How many MPs do we have? 210 plus the 12 that are special, nominated. They must be in that conference under the Act they gave us. Plus three nominees, elected delegates per district, so we expect 210 delegates from all the seventy districts we have in this country, more or less like that. Then, including all civil societies representatives, like the Trade Unions, they are also represented. Like all the political parties are represented, all religious organizations are represented, all those organizations are represented with another bunch of about 147 people.

So, that baraza lenyewe litakuwa na watu karibu mia saba. It will be a Parliament which will now go page by page, see how these things look like, and that is the time people can now criticize. This is the time they can also make amendments, they can also adopt and finally they agree, these are things we want. If they don't agree, it will force Kenyans to carry out referendum, opinion. We will carry out elections and that will be more expensive. We pray God, you will study, discuss, debate and agree. We pray God, because if it means opinion changes and pulling and pushing, it must as per the regulations, be carried out a referendum. And referendum will be more expensive because it will involve all Kenyans carrying out, polling about that opinion. So, most of you as Christians, most of us as Muslims, let us pray that we have leaders who will see the sense and work together as one team.

So, I may not allow the five minutes. Let me start with, let me start by giving you the floor, maybe for the first four people so that we can now respond to them. Let me start with the Chairman. Eeh, no, let me start with you. Let us not have questions, I want you to make an overview, ukisimama kwa mlima, utasema upande ule naona kuna bonde, upande ule ni milima, si ndiyo? Kwa hivyo ukisimama kabisa kuangalia Constitution, what are your views? Gentleman, na ukija hapa, kuja useme jina lako, kwa sababu we are also recording. Then you will also sign a book there.

**Mr. Geoffrey Kamau:** Yes my names are Geoffrey, I am a Teacher by profession, teaching here in Rongai. We are very grateful for the work that the Review Commission did, and actually they gave a similar picture of what we gave them. We are very grateful for that, but I would like us to go to section 290, these are on salaries and remuneration Commission and I feel that this Commission has not been given a time limit on when it should sit and review the salaries and allowances or whatever remunerations. So, I feel that they should be given a time limit. Ama nina maoni ya kwamba, hii kamati ambayo itakuwa ikiketi chini, na kukabilia jinsi mishahara na marupurupu ya wafanyikazi wa serikali inastahili kuwa, wapitiwe muda. Kwa mfano, after awarding people salaries, let us say this year two thousand and two, they should be given time limit that after three years, after one year, after four years, they review the same, because inflation rates do not actually stop, it continues, and that it differs from year to year. Therefore, they should have a time limit of when they should meet and actually review on the same. So, the whole of that section, salaries and remuneration, that section of time limit, when they should meet, again and review should be included there.

When we go to this other section probably that affects me, this is the Teachers Service Commission, I go to clause two, that is 291, section two and I go to (B). Indeed it is talking about to terminate the employment of any such teacher, to terminate the employment of any such teacher, I think that one has given this Commission a very broad area, whereby, they can terminate the services of a teacher for any reason. The Constitution should actually state clearly why and how the services of a teacher should be terminated. Not just because somebody has just done ABCD then the Commission decides that the services of that particular person should be terminated. It should be clearly stated in the Constitution, just as in the presidential line, the way it is stated, the President if he has done ABCD, his services should be terminated depending on that provision, that should be

clearly stated if a teacher does ABCD, then his services are free to be terminated. That one should also be included on that line.

**Mr. Joseph Kiburu Muturi:** .....(Inaudible). Now, I don't think I have a clause which I have to refer because whatever I have, whatever I had... Sorry, my name is Joseph Kiburu Muturi. Anyway, I don't have any clause which I can refer to because even when we had some comments the other day when we were with this man here, we didn't really know whether these things might come the way they have now. So, what it has really brought to us is what we will really understand, I could not have said something like presidency, I could not have said something like, anything which is written here. But now because it was really handled by a person I mean by persons who know what they were doing, we don't have a person thanking them. They have really done a lot. That is what we should say, because they have put us in the line of understanding things which they knew before we were saying it. Hiyo ni kusema, sisi hatukujuwa, hata sasa tukipewa ile karatasi ile ya Rongai, labda ni kitu kidogo sana tumesema kiko hapa kwa sababu hatukujuwa mengi. Therefore, we should thank them, we should thank you in all manners, we should say that. There is one thing I should say about the, our women here, hii constitution imetufinya sana kutuelekeza kwa akina mama, kwa sababu hiyo akina mama tumekubali, Consitution imekubali wapewe, iko pahali wanapewa thirty out of ninety. Kwa hivyo ni kitu gani ingine wanataka? Tuwachane na hawo kwa Constitution, sisi tumenyane na akina mama, wacha tumenyane kwa election.

**Speaker:** Asante, patiana jina lako hapa. I want a comment.

**Mr. Paul Muthama:** Thank you very much. My name is Paul Muthama, I am a member, representative of one of the churches in Rongai, under the Justice and peace Commission, the Constitution Commission. Maybe, I may not understand or we may not understand why the question of rejection' is arising in the meeting of the Kenyan Consitution. Because for one, we believe that you were appointed by the government, we the electorate gave the mandate for you to go ahead with the Constitutional review. Now, we may wonder because we have of late heard from the newspapers, from the electronic media, that there is this sort of rejection of the new Constitution or the Consitution which is to be put in place after the National Referendum. Now we wonder and so, as to get rid of .....(Inaudible) in us, and because we have one of the Commissioners, could you please take this time to give an explanation as to why we have all this rejection while we are the ones who gave you the mandate. The government is the one which gave you the mandate, so that we may understand. Thank you.

**Speaker:** Please,.....(Inaudible) chairman, just continue about the conference.

**Mr. Shem Busienei:** My names are Shem Busienei, na nilikuwa mwenye kiti wa three C's and a retired education officer. Nataka kuchukuwa nafasi ya kwanza mwenye kiti wa siku ya leo, kushukuru kwa nafasi ya kwanza, this is a very recommendable job. Imekuwa ndoto yetu ambayo imekuja ukweli, it is a dream that, has the truth and reality today. Tumeota

kwamba roho wa Mungu amefanya kazi kwa sababu kulingana na vile tumesomewa na vile tulikuwa tumeandika, mambo mengi yamekuja pamoja na hatukutana hata siku moja Kenya nzima tukiwa pamoja, tuweke mawazo yetu yaonekane kama vile yameonekana leo, kwa hivyo nashukuru sana.

Ya pili, kwa sababu nafikiri ilikuwa launching, mwenye kiti, kwa maoni yangu, mambo haya mengine ambayo yako hapa ni very technical. Tunahitaji nafasi tujadiliane, tukosowe ikiwezekana, tuongeze kama kuna mambo mengine yamewachwa, tuwe na nafasi nzuri, ili tuweze kujadiliana na ikiwezekana, tuwe na forum kama hii ambapo itakuwa kama ile ya kwanza, tuweze kupeana kwa maandiko ile yaweze kuungana na haya.

Ya mwisho nipatie nafasi, kama vile tunajuwa hapa kwetu Rongai constituency ni kubwa sana. Ingewezekana, tuwe na nafasi tuweze kufika pembeni zingine tuweze pia tupate nafasi na wale wandugu ambao hawakuweza kufika hapa. Kwa hivyo kwa uchache, kama ingewezekana Commissioner, a-extend time for this issue ili tuweze ku-digest na tupeane maoni pia to this effect.

**Mr. John Kirui:** Ngojeni kidogo, one, two, three, four, five, baadaye, then let us comment on whatever has been raised first. Before I can hand over to the Commissioner, I have got few things. Kwanza tume-furahi na-tume receive your congratulations and appreciation, asante sana for the good work done. Ya kwanza ni kuhusu section 290 ya Commission ya salaries, the Commission will be formed it is not yet in place will be formed. So, what we have now recommended in the timetable is when it will be formed when Parliament reads. There will be some amendements to be made. First, lets agree that this Consitution only come to place after then National Delegates Conference, after National Delegate Conference. Because after National Delegates Conference. They will now come out with more or less a final constitution, and that is a final constitution which be placed before parliament for adaptations. Parliament will only do one thing, adapting the draft Constitution which has come from National Delegate Conference. They will not be debate in the House, after which it will be given to the President for the conference.

So, let us pray the Parliament is not dissolved before the Constitution is stable. Let us all pray for that. And let us request our Head of state to be patient enough to take this opinion first, before the House is dissolved. Because if the House is dissolved, this will not take place, until the next Parliament. That is as it is provided for in the Act we are using.

So, the next stage we were moving to is the national delegate. Now from there, if it is adopted at the National Conference as it is in this draft Bill, then a process will be made in Parliament to create these institutions, amendements will be created. And time will be required, that it will be created at this time. Are we together up to that point? So, it will go through Parliament.

Now, the other thing is that, all the details relating to the dismissal of a teacher, it is the Constitution to state. Whenever to state a president, we don't want position, and Vice President, only those two positions. We are going to talk about teachers, over

220,000. Those are the details which will be with the employer the TSC, who will say wishes these are the things we want to employ you with, these are the things which if you fail to fulfill, I will sack you and it will be agreed, that will be the employer's role. So, we will not be in a position to give all the details which you have mentioned, and .....(Inaudible) the teachers and the teachers service and the salary remunerations.

.....(Inaudible) Mr. Mungai who talked of rejection, one thing, the Constitution is radical, the draft Constitution is radical. It is shifting powers from some corners to some corners, and people tend to fear changes. We all fear changes. So one of the things why people are rejecting is that they feel uncertain. When you talked to us the other time, you mentioned the weakness, and people don't like to be told their own weaknesses. Nobody wants, so, truly why people are rejecting is because they fear changes, they also don't want to be told their weaknesses. But nevertheless, we have told them what we think as Kenyans. So, let them respect your opinion.

The other question is on... The others were contributions and I would not like to say anything unless.....(Inaudible).

Thank you, now let me take two other comments, let us start with him. Sasa akina mama nyinyi watu, ilikuwa nani kwanza? Huyu ama huyu, wacha waje.

**Mr. Samuel Kosgey:** So, my names are Samuel Kosgey and my worry, I think the Commissioner has talked about it, my worry was if Parliament is dissolved before the National Conference, what shall we do? I think it is clear, I want to talk about two or three things, freedom of worship and assembly, education and Judiciary. I want to talk of the freedom of worship. I think the government should be specific and decide what the people should worship. Because you find that people are worshipping idols others, are worshipping when not in public, that means the worship should be in public, not in private.

The other thing is that, if the government wants people to have free association, I don't see why the government should ban some societies. For example the Taliban, Jeshi la Mzee and the Mungiki and the others. The other thing is, access to information. I think this one should be defined and the government has to give the people the information they need. For example; the many Commissions have been set, and yet the findings have been between the government and maybe the leaders.

The other thing is education, article 54, number 4, I think that article should be done away with, this article talks of private institutions. Private institutions are very instrumental to poor standards of education in this country:

- I) The rich parents send their children to private schools. So, you find that private schools are catered for at the expense of the public schools.
- II) Buildings, you find that the buildings in private schools are better than those in public schools.

So, I would like the government to make it a provision that all the schools should be equal, no private schools. All the schools should be public.

The other thing is that it should also .....(Inaudible) should also include the health facilities. We should not have the public health facilities and private health facilities. We have seen that many people have died at the gates of private facilities because they cannot afford the fees.

The other thing is, the last one, the last one please, is the judicial and legal system. This, I want it to be known that the Commission should have put a clause on the customary laws. You will find that I am a Kipsigis, and may be when a Kipsigis kills a person, the clan, they compensate the killer and yet maybe that killer has been taken to prison. So, I would like to have the customary law courts like the Kadhi courts. Thank you.

**Mr. John Kirui:** Yaah, one question, one comment.....(Inaudible)

**Mr. Nicholas Mbugua:** Majina yangu ni Nicholas Mbugua, na mimi ni Chairman wa Rongai Interdenominational Fellowship. Ukiangalia hapo mwanzo pameeliza state and religion na inasema, state and religion shall be separated. Halafu hiyo ingine inasema, ya kwamba, there shall be no state religion, the state shall treat all religions equally. Mini naona hapa ya kwamba wa Kristo katika Kenya ni themanini kwa mia, 80% of Kenyans are Christians, na wa Islamu ni wachache sana, utakuja kupata katika sheria hii mpya, imewapa kipao mbele, kwamba kuna court ya Kadhi. Kwa hivyo Muislamu atafanyiwa kesi kulingana na dini anayo amini. Na mimi Mkristo je, na nina sheria zangu katika Biblia, mimi naona zangu zimewachwa, yangu inafwata tu ya state na Muislamu anapewa kipao mbele. Kwa hivyo ningependa, kama Wakenya sote ni sawa, sheria hii iwe sawa kwa kila mukenya. Muislamu akiuwa, ameuwa Mkenya, hakuuwa Muislamu. Kwa hivyo sheria iwe sawa kwa kila mmoja.

Halafu nayo ya mwisho, ni kuhusu hizi districts. Nataka kuongea kuhusu hizi districts. Utakuja kupata, districts nyingi ambazo ziko hapa ambazo zimechapishwa katika vitabu vingi zilianzishwa kwa njia ya kisiasa ili watu pengine waweze kupata au vyama vingine vyote viweze kupata kipao mbele kwa vile vingine. Kwa hivyo, nigeomba ya kwamba zile districts ambazo zilianzishwa kwa njia ya kisiasa, zivunjiliwe mbali tubaki na zile districts ambazo ni sawa. Kwa sababu utapata Rongai yetu hii ni divison, na pengine ni kubwa zaidi kuliko hata districts zingine ambazo zimewekwa hapa. Ni hayo tu, asanteni.

**Mr. John Kirui:** Asante. ....(Inaudible)

**Mr. Alex Wang'ondy:** In the first place, mimi naitwa Alex Wango'ondy, and we agreed earlier on that we use kiswahili so that everybody here in the hall knows what is happening. Si ni namna hiyo? Kwa hivyo tuzungumze kwa kiswahili. Kitu cha kwanza ni kuwa shukuru Commissioners kwa kufanya kazi nzuri sana, si ni namna hiyo? Sababu hata yale mambo yamewekwa hapa ni mambo hata mengine hatakuona kama itawekwa.

Ya pili, hayo yote ambayo yako hapa kama mumezungumza hapa mbele ni vile sisi tulitoa katika constituency hii. And I am

happy to state, mambo yale tulitoa hapa ni nimeyaona katika draft hii, kwa hivyo thank you very much.

Ya tatu imeguzwa na Bwana Mbugua Commissioner Owade, kuna constituencies zingine na districts zingine ambazo labda zimeundwa kwa sababu ya hii na ile. Mtafanya namna gani kuona ya kwamba, constituencies zote zimekuwa sawa kulingana na population na mambo yake? Ile ingine katika area hii, na mnaifahamu sana katika constituency hii yetu, iko mambo kombo kombo sana, katika Rongai. Tumeambiwa tuizungumzie Katiba mwezie mmoja, 18<sup>th</sup> September to 18<sup>th</sup> October. Halafu the national constituency conference, wale watu watatu watachaguliwa, criteria ya kuwachaguwa ni ipi, sababu, hata three Cs wale walichaguwa, hatukujuwa walichaguliwa namna gani. We would like to have people from those constituencies hii wale watu wanafahamu district hii. Wale watu wanahaja na wana inchi, na mambo ya district hii. Isije ikawa tu sababu huyu ni rafiki yangu, huyu ni rafiki yangu, aende pale, na ikichukuliwa ya kwamba this is a very cosmopolitan area, watu wote wachaguliwe. Kama ni kabila hili, lionekane pale, kabila hii lionekane pale, ile maslahi yetu katika National Conference, wacha kwanza, hii Constitution, mambo ya National Conference pale, iwe imetoka kwetu. Lakini Bwana Commissioner Owade, sisi tunashindwa na mambo ya kuongea na kutoa toa, yale mambo yenye yako katika Katiba hii, ni mambo ya maana sana, hata Mungu wa Isreal, na Mungu wa Kenya, Mungu asikie pahali ako, sababu hii Katiba imekuja wakati ule sawa sawa, tungekuwa tumeumia kabisa.

**Mr. John Kirui:** Be very very brief,

**Mr. John Kwayera:** Kwa jina, my name is John na I am a resident from the area. John Kwayera. I would like to touch on section 15 of chapter 2, which says that every citizen has a duty, and I wonder whether that one can be defined as whether it is a must or just but a duty because we have seen some citizens like the Indians, they don't care to contribute to the welfare of wherever they live. And if you go through this section you will see things like corruption. So, if the citizens will just feel that it is a duty and nothing is going to be done, then they will continue with this thing. So, it requires a special definition.

I also have something to say about the Parliament. Now, I don't know how the Parliament came I mean your Commission came up, with this idea of having 90 representatives from the political parties because in my opinion, this one is a very big number and it may bite into our economy. And why again, if you have members of Parliament, in the Lower House, why again do we have another 90 from the parties? So, I think the Commission should look into that.

The other thing is regarding women, how do we give them 30 seats and again they participate in the 70? So, you see there is favouritism into that. So, you better look into that. And again, the devolution of power. Devolution of power is that you can see that in the village or in the village government, it is only the village government that has been given a system of governance, whereas the district government has no system. So, this may end up in a clash because the village government might clash with the top government. So, there should be a system of governance from the National government throughout to the Provincial, up to the village government.

And again as regards the term of office of the Commissioner, it is not good to put it that he must serve for ten years because you see, if he is appointed by the President and the President goes only for five years, it may give a wrong impression for the other incoming President, he may want to sack the Commissioner who was appointed outgoing President. That one, in my opinion, should not work. I think if the Commissioner of police should go, I mean it should be five years, but not ten. Thank you.

**Mr. John Kirui:** Can we respond to those ones first before we get others. Tuachie kidogo tuweze ku-respond to things which you have mentioned.

**Mr. Wyclif Owade:** As I told you wananchi, we are not here really to debate these issues, we are just raising them, you know I didn't really go into to all the details, righ. But I may say just on the village govement already we have functions there in the village government, and provincial units, you can read them word word. Again I had told you we have just given you a framework, isn't it? So, please bear with us. Commissioner of police, your concern of five years, we have taken it into account, but please also make sure that the issue of a new President coming, and therefore sacking does not arise, because then, the new Consitution will be in place. However, we have taken your comments. The other one someboy raised on the 90 party lists, we have taken that and need not to say anything Concerning women, I have also taken that, I need not to say anything. I think the other issue which arose from Samuel Kosgey on freedom of worship, that it should be stated very clearly, we have taken that also.

Private schools also, access to information. Clause on customary law, we have something on customary law, I am still looking for it. We have it somewhere really giving a provision and inaddition to that, we are also saying that in this new Constitution, we want everybody to access it, will be in the local languages, in kiswahili and English, maybe that is something I didn't say, so that this time you just don't hear there is a Constitution but you don't know what it is all about. Isn't it? So, this time we are going to translate them in languages which you can understand.

Creation of districts, some hanging issues still lying, we are still working on that but we have given you the framework, we need your recommendations on what you think should be done where we have not done it properly. Otherwise, other people have appreciated the work we have done, and we are also grateful for that. Thank you.

**Mr. John Kirui:** Maybe before I call towards ... there was this question of national delegates or these national delegates,

**Speaker:** .....(Inaudible).

**Mr. John Kirui:** There was a question of on... The representation is already set, and they are supposed to go to Nairobi by

next week and they have been commissioned and gazzeted as well. If you just look at the newspapers, lets also be interested if they are. I think the rest have been mentioned, but I would very much say for those two gentlemen who are standing to talk, say something which has not been said.

**Mr. James Kipyego:** Thank you. My names are James Kipyego and here I stand for JPC Lower Subukia wa Seges. My major question is actually based on the stakeholders, when I look at the people who are here, the percentage in Rongai Constituency is very small. I may seem to say or have a feeling that the Constitution is meant for the elite group only. Now I am crying that it is a stakeholders Constitution for the people, and that is what we have been crying for. My major worry is, I would call upon the Constitution Review Commission of Kenya to carry on with the education on the Constitution so that atleast it maybe well understood by the peoples' of Kenya. So that atleast they can posses it and make it their own because the former one was not theirs. It was for the leaders.

Now on taxes, I have not seen anywhere that it is imperative to be the role of Kenyan citizens to pay taxes, it should be imperative and it is a must.

On the aspect of the President, he is not supposed to be a head of the party, but now if he is to be elected from a party, people will say he is our leader from our party. So, I don't know how he is going to be elected, yet he is not supposed to be a head a party or belong to any party.

On the question of the council of elders or the village councilors, there should be qualities and qualifications to make them fit there, the 6-10 plus the administrative person that is incharge at each level.

Now, my last question is based on the.. Today is 14<sup>th</sup>, the referendum is there on 28<sup>th</sup>. The time between now and that date, we are not going to be able to have a referendum or a meeting with our people to be able to get the views from them. I don't know, I would have called upon the referendum to be pushed a little bit, so that atleast, you-know we have time to meet our people and tell them what is the content of the Constitution because even now, the kiswahili paper, there are very scarce, apart from that one which was sold yesterday. They are very scarce.

Now, recalling of the MPs, the percentage is too high, 30% is too high. So, this Constitution, for me to get 30% to be able to recall our MP back to our constituency, then that will need to be lessened so that we have an access to be able to recall him very fast.

Now it is a people's Constitution, we need that it should be referred back to the people to be amended because it, is we who made it isn't it? Therefore, we are calling it back to the people, any part that should be amended should be brought back to us, not the minister or the assemblies that are there. Thank you.

**Mr. Gitau Kagunga:** .....(Inaudible).

**Mr. John Kirui:** .....(Inaudible) on the issue, kusema kweli hii baraza ingekuwa ya kila mtu na tungetaka kila mtu akuje. Ningetaka tu kuomba kitu kimoja ambacho mumeona katika Consitution review process, huu mkutano ungechukuwa miezi mbili mbeleni, wakati tuli-set, lakini juzi wakati tuliomba tuongezewe muda kama Commission, hatakubaliwa. Kwa hivyo tukalazimishwa tuchukuwe miezi mbili iwe mwezi mmoja. National Conference ingechukuwa tu 60 days. Lakini hata nayo imekuwa 30 days, kwa sababu kile wako na haja, kuwa na hii Consitution before election. Kwa hivyo tunafanya kazi kwa haraka sana tena kwa muda kidogo kwa sababu hatuna nafasi. Lakini kwa jumla, wote wote ambao wangepata nafasi kuja, mkujje kwa sababu tulijaribu sana. Hata nasi, we have very very short time, kwa sababu the national delegates, conference itakuwa on 28<sup>th</sup>, na wakati huo ni next week. Kwa hivyo kwa jumla ni muda ambao tuko nayo ni kidogo sana, lakini bear with us kwa sababu we have already moved. And also we don't want to discourage Kenyans kusema we need two months if we can work 24 hours. In Nairobi we must admit, the office works for 24 hours, especially this lady and other people who are really doing analysis on information. Because they work 24 hours, they have three shifts, mchana wote mpaka usiku na kesho kutwa. For almost one, two months, it means they were dedicated to make the Constitution the way we have done it. Kwa hivyo bear with us for the time factor.

The one recalling of the MPs by 30% has been noted, we quite agree it could be a large number, the .....(Inaudible) qualities, I quite agreed that it also needs to describe qualities and qualification, we have noted.

We have also noted the education and private business, I think there is freedom, we have actually given Kenyans almost 18, what we call human rights and expressions. So, we cannot also go out and say, we cannot have private business. Businesses, kama ni ya shule, kama ni ya health, let it be open to whoever wants to go there, would have also decided to go wherever they want. Let them have that choice.

Population representation is a good issue, it is coming up every now and then and I think the next thing, we feel some of the constituencies are larger than a district yet they have na less representation. I would ask my friend here to comment kidogo and on the question of 90 people being added to parliament we have noted, that truly is a large number considering what is actually happening at the moment.

Then what was the last one? National halidays have also been mentioned, and I think we have taken note of that. I think those comments, unless mwalimu wangu uko na kitu kidogo kuongeza .

**Mr. Weycliff Owade:** Just really to take this opportunity and thank you for taking your time to be with us here, for this important document. As I said before, we are not able really to answer all the questions, what we have given you is a

framework, and I think what we are agreeing is that the views, more or less, reflect what you people of Rongai constituency gave us. Isn't it? So, what now remains is now working on other details, whether we leave it to the Constitution to work on details of the devolution, various structures, we leave it for the Parliament, the new Constitution to work on finer details because the Constitution cannot include everything. In other words, I can assure you whatever views you have given us, we have already reported them and they are also being recorded here so that so it is really your views. We are going to type them up, more than that, your coordinator is going to hold a big forum with you, where again after reading them thoroughly word by word, you will be able to come up with further input. And this input is the one we shall now debate at the conference.

Otherwise, somebody asked about the laws of Kenya and the African customary law, it is there on page 4, Article 5 on the laws of Kenya. You will see the African customary law among them. Otherwise I would like to stop there, to thank you for your patience, and listening to us, and I would request you to join us in this struggle. Don't be tired of what other forces might do. Just join us in this struggle so that we get a new Constitution. Thank you very much.

*(Clapping from the audience)*

**Mr. John Kirui.** .....(Inaudible) nafasi kuja hapa. Ningetaka nimalize, nikisema, kusema ukweli tungetaka ku-hold one more session, lakini si sana hapa, ningetaka labda nitafikiria na Chairman, labda tutarudi Wa Seges ama .....(Inaudible). Lakini nyinyi ambao mmekuja hapa ningeomba tu kila ambacho nilikuwa nacho mbeleni, mkutane, kama ni kanisani ama popote mko. So, nyinyi ni ambassordors. Make comment wherever you can and handover to our office, our office is at is the county council of Nakuru, kama mtakuja town, mlete tu, ... **End of side tape three side A**

Wa section watakuja karibu na .....(Inaudible) wakuje hapo chini, lakini tutazungumza na Chairman tuende pahali pengine .....(Inaudible) Rongai constituency.

Kwa jumla nafasi ilikuwa kidogo, ne tena wakati, mpaka kesho tumalize launching huko Kuresoi. Lakini wakati kidogo ule umebaki, I am .....(Inaudible). Kwa jumla tumefurahia nyinyi sana. Na, you protect your Constitution, hayo ni maoni yako, kwa hivyo muende mbele mkisema haya ni maoni yetu. Na uuze maoni yako. Watu wasiseme hii ni bure, this is the fruit of your own energy and effort. Kwa hivyo kidogo nasema asante, na niko tayari kila wakati tukutane na nyinyi tuzungumze ana kima ambacho nitaomba Commissioner kama ataweza baadaye labda ni civic education, immediately the memorandum is agreed.

The final touch, we need to educate our people, we need to teach people about election, devolution of power is going to be taught. So, kesho ukiona kwamba chief ametolewa, hitakubali kusema maneno yako mbele ya wazee, kwa hivyo there will need for continued education to our people.

Kwa hayo machache, ningerudishia nyinyi asante na niombe mmoja wetu aje mbele, atufungie na maombi, na Mungu aendelee

