

EASTERN PROVINCE PROVINCIAL VISIT - 17.07.01

CONSULTATIVE MEETING AT EMBU COUNTY HALL

PRESENT:

Prof. Yash Pal Ghai	-	Chairperson
Prof. Ahmed Idha Salim	-	1 st Vice-Chairperson
Mrs. Abida Ali-Aroni		Vice Chairperson
Bishop Njoroge Kariuki	-	Commissioner
Mr. Charles Maranga	-	“
Mr. Domiziano Ratanya	-	“
Mrs. Nancy Baraza	-	“
Dr. M. A. Swazuri	-	“
Dr. Mosonik arap Korir	-	“
Dr. Abdirizak Nunow	-	“
Mrs. Alice Yano	-	“
Ms. Salome Muigai	-	“
Mr. Isaac Lenaola	-	“
Pastor Zablon Ayonga	-	“
Mr. John Kangu	-	“
Mr. Zein Abubakar	-	“
Ms. Kavetsa Adagala	-	“
Mr. Ibrahim Lethome	-	“
Mr. Ahmed Hassan	-	“
Hon. Mrs. Phoebe Asiyo	-	“
Mr. Arthur Okoth-Owiro	-	Commission Secretary.

ABSENT WITH APOLOGIES:

Dr. Oki Ooko Ombaka	-	1 st Vice-Chairperson
Prof. H.W.O. Okoth-Ogendo	-	“
Mr. Githu Muigai	-	“
Mr. Paul Wambua	-	“
Dr. Wanjiku Kabira	-	“
Mr. Keriako Tobiko	-	“
Mr. Riunga Raiji	-	“
Hon. Amos Wako	-	Ex-Officio

The meeting started at 11.00 a.m. with Bishop Njue leading participants in singing the first stanza of the National Anthem and a Christian prayer, which was followed by a Muslim prayer.

The Provincial Commissioner then welcomed the Commissioners to Embu.

Com. Idha Salim introduced Commissioners to the participants.

The leaders present then introduced themselves and they included provincial heads, civil servants, Catholics from different Dioceses, Councillors, NCKK representatives, Kenya National Chamber of Commerce, Child Welfare Society, Peace and

Justice, different political parties, KNUT, Maendeleo ya Wanawake, NGO representatives, women organisations representatives, advocates, individuals, different churches representatives, Muslim representatives, representatives of persons with disabilities, three Assistant Ministers, etc.

Com. Lethome then invited Prof. Yash Pal Ghai to make his opening remarks.

Prof. Ghai said this was the first province the Commission was visiting and that it was a great pleasure to be in Embu. He said although the Commission was in Embu for just day, it would be returning at later date to receive the people's submission and recommendations for the new constitution. He said the purpose of the visit was to discuss arrangements that were to be made for further visits for consultations with the people of the province. He said the Constitution Review Act under which the Commission was operating places special importance on the participation of the people in the review process. People driven constitution meant that the most important element in the review process is the opinion of the people of this country.

He said this was the first time in the history of the nation that the people are being consulted on the future constitution. The Commission was taking this aspect of its work very seriously and wants to ensure that all arrangements that will facilitate the participation of the people are made as early as possible in the review process.

He mentioned two aspects of consultation with the provinces the first being that the Commission has to establish district documentation centers where the people can go and find out the progress it had made in discharging its work. He said there would be documents placed in these centers which will give people information about the work of the Commission and also documents that are received from all over the country so that people of one district can have an idea of what people in other districts are proposing.

He said the second aspect was the establishment of constitutional forums at constituency level. He said the Commission has to visit every constituency to receive ideas at constituency level and before that visit, it will establish a mechanism whereby people can meet and discuss the future constitution which the Commission will receive during its visit.

He said that visit should be used to discuss the way in which these two institutions can be established as quickly as possible.

He said in June this year the National Assembly made various amendments to the Review Act under which the Commission is operating. He said the Commission had 29 members including the Attorney General who is an ex-officio member and the Secretary of the Commission. He said this body has been given the responsibility of making the draft constitution and write a report on its work. He said this report will then be presented to the people for their comments and they will be allowed sufficient time to read and understand the draft constitution and discuss it. Then a number of meetings will be organised throughout the country where the Commission will seek people's comments on the draft constitution. Once this report is ready and people's comments have been received, the Commission will convene a national constitutional conference which will be a body of just under 500 people including all the Members of Parliament, three representatives from every district, representatives of religious groups, professional bodies, political parties, women's groups and NGOs. The Commissioners will be members but they will not have a right to vote. This body will have the primary responsibility for making decisions on the future constitution. If that conference is able to reach a consensus on the constitution the draft constitution will be sent to Parliament for enactment. If, however, the conference is not able to agree on the draft constitution, there will be a referendum at which all registered voters will be able to decide on which version of the constitution to adopt. He said the result of the referendum along

with the draft constitution and the recommendations of the constitutional conference will be sent to Parliament so that the constitution can be adopted.

He said this can be a long process in order to enable all Kenyans to participate in the review process and establish a very representative body to make decisions. If there is a referendum, it will be the first time in the history of Kenya that there has been a referendum.

He said the constitution review process is divided into different stages. The first stage is one in which the Commissioners will study their own terms of reference, take steps to facilitate the participation of the people in particular by providing civic education so that people are familiar with the issues that have to be examined. The Commission has to write its report on the basis of the ideas the people give because it is the views of the people that must be reflected in the draft constitution. He said once the Commission has published its report and the draft bill, the first stage of the process comes to an end and using its own experience and as independent experts, the Commission will make recommendations. He said the Commission is supposed to be independent in its work, it does not take orders or instructions from anyone. He said the independence of the Commission is extremely important in ensuring that Kenya has a good constitution which reflects the diversity of the views of the people and which is rooted in the aspirations of the people.

He said the second stage of the process is negotiations which is where different groups will meet in the constitution conference and negotiate on the basis of the draft constitution. He said at that stage the importance of the Commission will be reduced and it will become a secretariat of the constitutional conference. The final stage he said will be enactment by Parliament. He said each stage has different mechanisms and dynamics but that at each level the people themselves will play an important role.

He said the Commission has been meeting to decide the time within which the whole process can be completed. He said the Act requires the Commission to complete the process by September 2002. If it is not possible for the Commission to do this despite working very hard, then after October this year it can request Parliament for extension of time. He however said that Parliament is not obliged to concede this request and that the Commission's primary responsibility at this stage is to make sure that it completes the process by September next year.

Prof. Ghai said that the Act said the constitution that emerges must ultimately be one which reflects the views of the people but also sets out some values and principles which must be included in the new constitution. He said these are about democracy, the rule of law, the protection of human rights and recognising the diversity of the people of Kenya. He said Kenya is made up of different communities with different religions, different languages, different traditions and the constitution must respect all these cultural, religious and social differences. These principles and values can be incorporated in the constitution in different ways and that is why consultation with the people becomes important. By way of example, he said the Commission is required to make a constitution that is democratic but there could be many ways which are democratic e.g. the parliamentary system of government in India, the presidential system of government in America and the system in Switzerland of power sharing are all democratic. He said in the review process the Commission would seek the people's ideas as to what kind of democracy is most appropriate for this country.

He said the Commission is also required to make recommendations on the distribution of power because sometimes it is thought that too much power is concentrate in Nairobi and provinces and districts should be given power. He said there are many

possibilities on the kind of system that should be adopted in the distribution of power. He said that although the Act sets out principles and values to be included in the constitution there are many choices to be made and this will be the responsibility of the people together with the Commission to develop these options and develop them.

He said the Commission will try to facilitate participation of people in the review process and under the Act it had to provide for a system of civic education. This education on the constitution, the role of the constitution, history of the constitution, different mechanisms that are used in constitutions to establish systems of governments, to subject the exercise of power to public scrutiny, accountability of officials to the public. He said other issues that are important in the process are relationships between different organs of government, for example, the Executive, Parliament, Judiciary, provincial administration and how they relate to each other is important to the constitution. He said that the Commission has to set up a mechanism whereby civic education can be conducted throughout the country and make sure that every part of the country, however remote, has an opportunity for civic education. He said the Commission wanted to discuss with the participants how civic education can be conducted. He said the Commission did not necessarily support the idea that the only people with knowledge are the people in Nairobi to come and tell the people of Eastern Province about civic education. He said the Commission wanted to find out the institutions that exist in the province and in districts that are able to conduct civic education. He said the Commission would very much like to use community based organisations like the ones represented at the meeting and he hoped that these institutions could be identified during the discussions.

He said that in Commission meetings, a national curriculum has been developed as the Commission believed that the same issues should be discussed all over the country so that when it goes round the country it has a common frame work for discussion. He said civic education will have different stages to correspond to the stages of the review process. He said the first phase of civic education will focus on general civic education which is a broad introduction to constitution concepts. Before the Commission starts receiving people's ideas, it will have had discussion on the issues it is required to consider under the Act, for example, whether Kenya should be a unitary or federal state, what is the most effective way of protecting human rights, how can policy and institutions be arranged so that every Kenyan's basic rights are met, that is education, health, food, shelter. The Commission would like to stimulate public debate to find out what people think about these issues.

He said the second stage of civic education will be after the Commission's report has been published in that the Commission has to ensure that the people of Kenya understand the proposals it has put forward. The Commission will make summaries of the proposals and it would like to translate them into as many languages as possible. It will use the media, television, radio, newspapers and so on to explain its recommendations.

He said the third stage of the civic education will be if the constitutional conference rejects the Commission's recommendations and substitutes them, it will make sure that the public knows about the changes made. If there is to be a referendum, the people of Kenya must understand the issues on which they are to vote and this will be very important because the people will decide directly by voting.

He said finally when the constitution is made it will be important that people's knowledge of the constitution continues to grow because a good constitution will only become effective if people understand and if they are willing to use the mechanisms that it provides. If it has mechanisms to protect human rights, rights of communities and rights about land, the people must know how

to use it, how to complain and how to go to court. He said the institutions represented have a very important role to continue civic education after the constitution is put in place.

Prof. Ghai said that when the Commission goes to constituencies it will be listening to the people not to talk to them and it therefore wants to make sure that the process of civic education is effective. He said that people should speak very frankly from their hearts and tell the Commission what they find wrong with the present constitution and explain it in their own language, what they find wrong in their every day lives, relationships with the government, relationships with provincial administration, district administration, medical policies and what they would like to see in the future of this country. He said the Commission would make sure that these views would be accommodated in the new constitution.

He said if the Commission has to ask for extension of time, it may have to recommend to Parliament what to do in the interim because this will mean that the work of the Commission will not be complete. He said the Commission will discuss with the people what should happen in terms of elections. He said there are different options like if Parliament should be extended, or have elections and the work of the Commission continues after the elections. He gave an example of South Africa when they were not able to finish the review on time and they decided to have an interim constitution. He said that at every stage the Commission will refer to the people.

Prof. Ghai then invited Com. Abida Ali-Aroni to give a Kiswahili translation of his speech.

Com. Lethome informed participants that after the consultation forum the Commission would proceed to the stadium to hear the views of the people on civic education and documentation centers and urged participants to keep to these topics. He then handed over to Com. Kavetsa Adagala to conduct the consultative open forum. She urged participants to keep to the subject of civic education and documentation centers.

Several people said there should be an interim constitution if the Commission does not complete its work on time and suggested that the Commission should divide itself into groups so that they can be able to cover the whole country in a short time. One speaker said in the pastoralist areas, transport is not easy and to reach people in every part to educate them on civic education will not be easy. He said this education should be continued from where NGO's have reached because they have been conducting civic education.

Bishop Njue said he was happy to see the Commissioners in Embu and asked them to be united in order to perform their task efficiently. He said he would like to see a constitution that unites all Kenyans and civic education has to be conducted using the available structures like religious bodies, Justice of Peace Commission and recognised NGO's. He said through these institutions civic education will reach the grassroots. He said if the process is not completed in the stipulated time, there should be an interim constitution but that Parliament should not be extended.

A representative of the disabled persons said that civic education should be done at locational level because this will enable even disabled persons to get to the venues and that there should be an interim constitution if the Commission is unable to finish its work.

Another speaker said civic education should start from the grassroots in order to include everybody and that Parliament should not be extended but that there should be an interim constitution if need be.

Mr. Kaaria Kiara wanted to know how independent the Commission was. He said the Commission was talking about 4.5

billion shillings and Hon. Raila Odinga has said that this money was too much and he wanted to know the role of Raila in the Commission. He said he hoped the Commission would be giving reports to the people so that they know the progress it was making. He said through these reports, the people will know whether the Commission will finish its work within the agreed period and if it is not possible, there should be an interim constitution.

Three Assistant Ministers from Eastern Province said that people being limited on time to speak was not a good beginning because the constitution review process is a very serious matter. They said the constitution belongs to the people of Kenya but the people do not even know what the present constitution says and that makes civic education very important. They said the Commission should decide who should conduct civic education but that it should not work with NGO's at district level. They suggested that community based organisations at village level are best placed to do civic education. They said the Commission should take more time to hear people's views because one day was not enough. If the Commission does not finish its work in time and there is an interim constitution, they wanted to know who would draw up this constitution and said this question should be discussed when it was clear that the Commission will not be able to complete its work in time.

Dr. Wako said documentation centers should be in a place that is accessible to the public. He said NGO's and churches only want to conduct civic education because of the money but community based organisations should be used for this purpose with guidelines from the Commission. He said that if the Commission does not finish its work in time, they should ask extension but general elections should continue.

Women representatives said that the already established NGO's, religious bodies and CBO's should be used at grassroots level for civic education and that this should be done in a language that everyone will understand. The youth, women and disabled persons should be special targets of civic education. Civic education should provide for the protection of children. They said documentation centers should be at location centers because people will not be able to travel long distances to district headquarters. In areas where transport is very difficult, they suggested that mobile documentation centers should be introduced.

As for extra time for the Commission, they said preparations should begin now in case extra time is needed instead of waiting for the time when it is apparent that extension is needed. They said Parliament should not be extended, elections should be held and that there should be an interim constitution. However, they wanted to know who would be responsible for the interim constitution and suggested that the people should be allowed to decide.

One speaker said Parliament should not be extended, elections should continue and there should be an interim constitution. He said Kenyans should be educated and empowered to make decisions affecting them and they should be educated on the old constitution and the new constitution and the curriculum should include the aspect of ideologies. He said there are many people who do not know how to read and therefore the media, songs and drama should be used as a means of civic education. Documentation centers should be accessible to every member of the public at locational level and not provincial or district headquarters. He thanked all the leaders who were present.

Dr. Nyamasia said that there should be training materials at different levels in the relevant languages and there should be district civic education committees with wide representation from schools, churches, NGO's and CBO's but said that the emphasis should be on teachers as they can understand teaching methods. These committees should have sub-committees in different centers to distribute training materials. There should be a curriculum that addresses the attitude of change. He said the current

leaders have led Kenya to a state of poverty, corruption and loss of self esteem and that Kenyans want a constitution that will change people's attitudes so that they can trust their leaders and the government.

Another speaker that civic education should reach people with disabilities, there should be equality in the civic education at grassroots and that it should not be rushed. Civic education should be made interesting for young people through theatres and music and there should be comparisons of civic education between districts.

National Graduates Forum said they believed when the Commission was formed and the time limit was agreed, the Commissioners knew that this time would be adequate and therefore the question of extension should not arise. They said the Commission should recruit civic education providers itself. They said documentation centers should be at location level and there should be mobile documentation centers to reach the people who cannot go to the centers.

Councillor Dionisia Muriithi said religious organisations and locally-based NGO's are able to carry out civic education as they had already started the work through other forums and civic education on the constitution is only enforcing what they have been doing. All the need is the curriculum on constitution civic education. She said the Commission has not said if it has money to rent offices for documentation centers and although churches and mosques are good centers, local authorities can also find rooms to act as data centers to act as a national library. Women groups in locations have structures that are not fully used and these can also be used. She opposed the extension of Parliament.

Beatta Mulli of Catholic Justice and Peace, Machakos said methodologies of disseminating civic education should include the media and should be at grassroots and include school children, dances and drama. Community members should be empowered so that they are not scared of talking about civic education. She said the Commission should try and finish its work by September 2002 as they promised and elections can be done after that.

Another speaker said the Commission should try to complete its work within the timeframe but if it is not able to then there should be an interim government until the constitution is ready.

A speaker from Chamber of Commerce and Biashara Sacco requested that the Chairperson's speech is put in the papers for everyone to read.

Mr. Stanley Gura of Catholic Diocese of Meru said constituency forums should in district headquarters including stakeholders who should advise the Commission on how documentation centers should be set up.

Coun. Swaleh said since the Commission knew how long it would need, the question of time extension should not arise. He said someone in the Commission should coordinate civic education.

Another speaker said that in this process, people should not be arrested and the work of the Commission should not be interfered with so that they can work independently and if there is any problem it should tell the people.

A representative of KNUT said teachers are the people on the ground closest to the people and civic education should be channelled through them.

A representative of Mbeere District said that NGO's and churches are the right people to conduct civic education. She said people understand civic education but do not understand the language. She said the Commission should finish its work within the time given and there should be no extension of Parliament. Documentation centers to be at location level.

Prof. Ghai, in response to the points raised, thanked the people for their comments and said he was glad that everyone wanted

to speak. He said when the Commission comes back they will hear those who had not had a chance to speak.

He said he would not respond to the views put forward because the Commission had come to listen to those views and then make its final decision. He said all the views will be taken very seriously. He clarified that the civic education the Commission wants is that which is related to constitution review, which would stimulate public awareness and discussion on constitutional issues. He said the Commission had no right to stop any group from conducting civic education but that its interest was to ensure that all Kenyans wherever they live have an opportunity to benefit from civic education. The Commission is not in a position to undertake that task and it would rely very much on existing institutions and institutions that have an interest in civic education. He said the Commission wants to involve as many groups as possible because it wants the whole process to be participatory. He said these groups should have the capacity to deliver the civic education. He however said civic education in Kenya is very controversial and exaggerated. He said civic education will be on a national curriculum to ensure that they are doing civic education and not advocacy and people had to be made aware of all the options. All the groups engaged in this exercise will have a code of conduct. He said the question of coordination is a serious issue and asked participants to give ideas that they may have.

On the question of time frame and what happens if the Commission does not finish its work on time Prof. Ghai this does not really depend on the Commission because even if the work is completed Parliament might say they want time to absorb the new constitution. The question of extension of Parliament and interim constitution are matters for Parliament to decide.

He said the Commission has drawn up a very detailed timetable on the whole process which shows it is possible to finish the work by July next year. The Commission's intention is to finish this work in the stipulated period and it will constantly review progress. He said it is premature to start thinking about interim government at this stage and that the task in hand is constitution making so that there can be public debate later if the Commission is not able to finish its work in time.

On the independence of the Commission, Prof. Ghai said that unless the Commission is independent it will not be able to do its work. He said interference with the work of the Commission has to stop and he would personally fight for the independence of the Commission because it is the only way it can make a good constitution. He requested participants to assist in protecting the independence of the Commission as it was fundamental.

Meeting was closed at 2.10 p.m and people proceeded to the Stadium.

Meeting at the Stadium started at 3.15 p.m.

The Commissioners were welcomed to the Stadium and the meeting was opened with a Christian and Muslim prayer.

Prof. Idha Salim introduced Commissioners present who were the same ones attending the morning meeting.

Prof. Ghai apologised that the Commission was not able to be at the stadium at 12.00 as planned. He said the purpose of the meeting was to meet the people and tell them about the work of the Commission and procedures it has to follow to do the work and also make arrangements for further visits to hear the views of the people. As there was not enough time, he asked Com. Abida Ali-Aroni to explain the Commission's work in Kiswahili.

Com. Abida Ali-Aroni delivered the opening remarks in Kiswahili on same lines as the one made at County Hall.

A representative from Meru South said civic education should be done at the grassroots through churches, NGO's or different

societies so that even those who have not gone to school can participate.

Another speaker from Meru South representing Vuta Magendo asked what will happen if the draft constitution is not approved and said that Parliament should not be extended. He said civic education should be at locational level and documentation centers should start with the sub-chief in local language for all people to understand.

A speaker from Meru South representing CBO's said these are the organisations nearest to mwananchi. He said the common man should get the Commission's report when it was ready. Some constituencies are very large and it would be difficult to get to the headquarters and documentation centers should be at the sub-chief level but provincial administration offices should not be used for this process.

Anthony Ndeke of Catholic Men's Association, Embu, said churches and religious organisations are the most acceptable community based organisation and should be used for civic education. As for timeframe he believed 24 months are enough to complete the process and that the Commission should be totally independent. He said Parliament should not be extended.

Julius Mbori of Embu said the Commissioners should not allow themselves to be used by anyone. He said the Commission should work with all NGO's and churches on civic education. Documentation centers should be based with the sub-chief for easy access by everyone.

Nathan Muratho of Embu said he gave his memorandum for Lancaster House constitution and said they should be shown the old constitution and a draft of the new one so that they can compare them.

Philip Muchangi of Embu said for civic education the already existing social institutions should be used, that there should be no bias in the process and it should be objective.

Felix Njue of Mbeere said civic education should be through churches, mosques. He said people should be given notice of meetings and they should not be rushed.

A speaker from Isiolo said cbo's, NGO's and churches should be used for civic education and pastoralist areas should be considered in the new constitution as they were left out in the present constitution.

Joseph Kathuku of Machakos said that when the Commission is collecting views from the public, the public should be protected from the police so that they are not harassed.

Kioko of Machakos said in civic education, the already established machinery should be used. He said documentation centers should be at locational and divisional levels. He said the right methods should be used in civic education and it should be from bottom to top. Civic education should also be continuous. He asked all churches to pray for the success of the Commission.

Beatta Muli of Machakos said women should be included in civic education. She said even at the meeting there were very few women and civic education should be simplified and a language that can be understood so that even the local women can understand it.

A speaker from Makueni said his area has no food and it is very difficult to teach a hungry person so civic education should be done when there is food to ensure that people do not participate because they have been given money which is what happens during elections.

Another speaker said that the Commission should observe time and punctuality because the people present had been there for a long time and they had travelled long distances. He also said the Commission should take more time in a venue so that more

people can give their views.

Another speaker complained that MP's had been given a chance to speak in County Hall but that wananchi are the ones who should be given a chance to speak because this is their chance to give their views on the constitution.

Richard Nthiga of Embu said civic education should be at locational level because people have to travel long distances to get to provincial headquarters.

Another speaker said that the Commission should guard itself against corruption. He said civic education should be done by women and youth groups.

Another speaker said that many people present did not know the contents of the old constitution that they are supposed to review. He said the old constitution has to be explained to them in civic education so that they can understand what they are supposed to change.

Former councillor Njiru asked the Chairperson to repeat that the Commission was independent and it will not be like all the other commissions that do not produce reports. He said MP's should also give their views. He commended Com. Abida on her Kiswahili translation.

A speaker from Makeni wanted to know how they will be contacted to be assured that their views had been taken into consideration.

Alex Mburu said there are many different types of constitutions and they should be taught to wananchi through civic education.

Another speaker said the Commission should guard against anyone who wants to divide the Commissioners and they should be committed.

Lena said a shairi entitled "Now or Never".

Com Lethome informed the participants that after consultations it had been decided to conclude the meeting at the Stadium instead of going back to County Hall and invited leaders who had not had a chance to speak to come forward.

A speaker from Meru South said reforms should be from locational levels by groups who are not after monetary gains. Women groups, youth groups, churches and all religious groups should elect representatives in these forums. He also said the constitution should be sold at a cheaper price so that the public can buy them. There should be mobile documentation centers in locations.

A speaker from Embu said civic education should be done at locational levels and wards in towns. Centers should also be established in schools to teach students as well. He said Parliament should not be extended. The Commission should work hard so that it can complete its work in the timeframe allowed. He said the Commission itself should employ people to teach civic education and it should not be done by the church or NGO's.

Mrs. Nyagah from Meru said she was pleased to see that gender was well represented in the Commission because women's affairs would be addressed. She said civic education should be taught to women as many of them do not know how to read or write. Women should be taught their rights so that they are not harassed by men.

Prof. Idha Salim delivered a vote of thanks to all those who had come. He assured the participants that the Commission was independent and they could present their views without fear.

Prof. Ghai thanked all the people for coming and assured them that the Commission will get in touch with them on the many

suggestions that had been made.

The meeting closed at 5.30 p.m.