

CONSTITUTION OF KENYA REVIEW COMMISSION

(CKRC)

Verbatim Report Of

**DISSEMINATION OF REPORT AND DRAFT BILL, COAST
PROVINCE, HELD AT KISAUNI BALUCHI HALL.**

ON

7TH OCTOBER 2002

DISSEMINATION OF REPORT AND DRAFT BILL – COAST PROVINCE HELD AT KISAUNI BALUCHI HALL ON MONDAY 7TH OCTOBER 2002

Present:

Com. Prof A.I. Salim

Secretariat Staff in Attendance

William Opili - Assistant Programme Officer.
Gladys Osimbo - Verbatim Recorder

Others

District Co-ordinator Sylvia Chidodo
District Cordinator Ahmmed Mohamed
Assistant D. Co-ordinator
Sheha Shamisi

The meeting started with at 10.15 am.

Com. Prof. Salim: Salaam Aleykum? Hamjambo nyote? Tafadhalini wale wajamaa waliosimama wakae tuanze, maana tuna marathon session, mkutano mrefu kidogo na tungenda kumaliza kabla ya saa (**inaudible**). Pia kabla ya kuanza ningomba mmoja wetu aje atufungulie mkutano kwa dua. Tafadhalini mmoja wenu aje hapa mbele tufungue mkutano. Any volunteers or volunteer? Tafadhali.

Sheikh Ali: Arabic dialect:

Translator

Sheikh Ali: Yarabi tujalie mkutano huu, mkutano mwema. Tujalie mkutano huu Yarabi utupe faidha na ulete makusidio iliyo kusudiwa. Yarabi jalia hii tume ifaulu, na Katiba hii ipite na iende Mwenyezi Mungu. Lipe nguvu Yarabi na utupe nguvu sisi wenye kuisemea na kuitetea. Utupe nguvu kuitetea na mpaka ipite.

Sheikh Ali: Arabic dialect:

Translator:

Com. Prof. Salim: Shukran Sheikh. Ningependa kwanza kuwashukuru nyote kwa kufika hivi leo katika mkutano huu. Na tunataraji vile tutaendelea jamaa wengine watafika kuongeza idadi ya watu katika mkutano huu ambayo, bila shaka sote twakubali kwamba ni mkutano muhimu sana. Lakini kabla kuendelea mbele ningependa kuwajulisha hawa wenzetu waliokuwa hapa kunisaidia katika kuendesha mkutano huu. Kwa upande wangu wa kulia yuko bwana Ahmed ambaye bila shaka nyote mwamjua – District co-ordinator Mombasa. Upande wangu wa kushoto ni mwenzake Silvia ambaye amekuwa kwa muda mrefu sasa akitusaidia katika kusambazisha, kuhamasisha watu kuhudhuria mikutano, na kutayarisha mikutano hiyo ifanyike kwa njia ambayo yafaa. Naal hamdulilhai amefaulu katika kazi hiyo. Pale wako wenzangu pia vijana, ni William, na Gladys, hayo kazi yao pia ni muhimu sana kuhakikisha kwamba yote ambayo yatasemwa, yatanaswa, na pia kwamba wataweka recodi au minutes ya mkutano huu ili tukirudi tutoe pia repoti yetu tukiwa kikundi kimoja cha wale ambayo wameshugulikia areas hizi za Pwani.

Mathumuni ya mkutano huu kwa hakika ni kuwaeleza juu ya mswada wa Katiba mpya ambayo tume imetayarisha. Na pia juu ya repoti ndogo ya kazi zetu. Nafikiri mumepata kusikia jinsi ambavyo tumekamilisha report. Tukakamilisha mswada wa Katiba katika muda ambayo ni wa recodi, maana tumekuwa katika pressure kubwa ili tumalize haraka na Mungu akipenda tuweze kuwa na Constitution hii, itumiwe kwa uchaguzi wa mwaka huu. Jambo ambalo kwa hakika ya wezekana lakini kuna mambo mengine ya kisiasa ambayo hatuwezi kuyaingilia na kwa hivyo letu ni kuomba tu kwamba itawezekana. Sitaki kupoteza wakati kwa hakika kueleza jinsi ambavyo tumefikia kiwango hiki cha kazi yetu. Nafikiri nyote mwafahamu, jinsi tulivyoanza, jinsi tulivyoanza kutembelea kila Province, tukaeleza kazi yetu kama Tume.

Jinsi ambavyo tumeweka agents wetu, district co-ordinators kila mahali, kila district ya Kenya. Jinsi ambavyo tulipeleka Civic Education providers kuwafahamisha wananchi juu ya Katiba iliyoko hivi sasa, na zaidi ya hivyo kuwaelimisha juu ya masala na maswali muhimu katika kila Katiba, na kupata kuwatayarisha ili kupokea maoni yao. Kisha tukapata tena safari zetu tukaenea kila sehemu ya Kenya, kukusanya maoni ya wananchi, haya maswala na maswali tafauti kuhusu Katiba. Baada ya hapo tukaanza kufanya kuchungua, kusoma, kuanalyze maoni ya wananchi, maoni ya mtu binafsi, maoni ya vyama tafauti, tafauti hapa nchini. Na tukaweka watu maalum wataalam maalum kuanalyze, kuchambua yaliomo katika maoni ya wananchi, mpaka tukafika hadi ya kuandika repoti yetu juu ya kazi yetu. Na pili mswada wa Constitution.

Repoti hii kwa hakika ni repoti fupi tu, (a short version) ya kazi yetu. Utakuwa na repoti kubwa zaidi ya volume tano, ambayo

hivi sasa yaendelea kutayarishwa na Mungu akipenda hivi karibuni itakamilishwa. Na katika ripoti hii tumeleza ile kazi yetu, tukaeleza maswala muhimu yalioko ambayo tulishugulikia na pili jinsi ambavyo tulifanya kazi yetu kukusanya habari. Wananchi walituambia kitu gani, ikiwa kila swala mutaona hapo sehemu kadha wa kadha tukaeleza jinsi ambavyo swala hili tulieleza umuhimu wake kisha tukasema kwamba wananchi walituambia tufanye hivi, tufanye vile, mkifanya vile kuhusu jambo hilo. Kwa maelezo ya kazi yetu yako katika repoti au tarifa lakini kutokana na maoni ya wananchi, tukaandika mswada wa Katiba. Tuna copies chache tu ya ripoti hii fupi au taarifa hii fupi. Lakikini inshalah tutachapisha copies zingine, au nakala nyingine ili kueleza kati ya leo na conference itakayo fanyika baadaye.

Pia kwa wale ambayo wana nafasi, ningewaambia waweze kufika katika ofisi yao hapa (**inaudible**) public library, na pale wana copies za kutosha ikiwa mtu ana saa, saa mbili aweza kuja pale, aweza akasoma, akafahamu yaliyomo katika reporti na pia yaliyomo kwa tafsiri katika hii Constitution. Ingawa Constitution au mswada wa Constitution ilichapishwa katika Nation na Standard, na wale walionunua Nation na Standard siku hiyo bila shaka waliweza kuhifadhi nakala zao za hii Constitution. Sasa kukatokea ni kwamba tuna siku thelathini kuazia tarehe ishirini na saba mwezi wa September kueneza, kusambazisha yaliyomo katika report. Na mswada Constitution wananchi wapate kusoma, watapata kufahamu, na waweze kutupa feed back, watueleze wamekubali yaliyomo, hawakubali, hawakukubali, haukubali, na ni mambo gani ambayo hukufurahia nayo. Na wataka mabadiliko gani yafanywe. In other words tuko pia katika hali ya kupokea maoni sasa.

Lakini maoni tunataka sasa ni juu ya repoti au taarifa na juu ya mswada wa Constitution. Maana tukumbuke kwamba hii si Constitution. Huu ni mswada wa Constitution, draft, mapendekezo tu. Baada ya mwezi mmoja kupita ya wananchi kujadiliana juu yake, kusikiza vipindi, kusoma kwenye magazetti, na kusikiza kwetu sisi wanatume. Kisha kina Silvy na Ahmed hapa na committee yao, Constituency Constitutional Committees, kila upande wa Kenya watahugulika na mikutano kutayarisha mikutano kama hii. Kueleza wananchi zaidi juu ya Constitution. Kwa hivyo tuna mwezi mmoja kufanya kazi hii.

Baada ya hapo kutakuwa na ule mkutano mkubwa, National Constitutional Conference ambapo kutakuwa na zaidi ya wajumbe mia sita. Waakilishi na wajumbe mia sita. Utakuwa na MP's wote (WaBunge wote), pamoja na wale nominated MP's, Commissioners wote, sisi Commissioners tutatayarisha mkutano lakini hatuna vote. Nikusikiza, take notes, na kufanya kutumikia Conference. Kisha kutakuwa na waakilishi watatu kutoka kila District. Kwa mfano hapa Mombasa naona kuna waakilishi wawili, iko Bwana Faruk, na nani mwingine? Councillor (**inaudible**) na Bi Amina hajafika, hayo ndiyo watatu. Kila district ni watatu.

Kisha kutakuwa na waakilishi wa vyama vya kidini, kila aina ya dini, wakristu, waislamu, wahindu, na kadhalika. Kisha kutakuwa na waakilishi wa vikundi maalum kama walemavu na kadhalika. Ili kuhakikisha kwamba mkutano huu ukijadiliana juu ya mswada wetu wa Katiba, kutakuwemo watu ambayo wakilisha kila sehemu au sector ya wananchi wa Kenya. Ili kwamba wakikata shauri juu yake na Mungu akipenda watakubaliana hii Constitution itumiwe iwe ndiyo Katiba yetu mpya. Itakuwa ni vote of confidence kutoka kila sehemu ya wananchi wa Kenya. Watu wa dini makabila tafauti tafauti, dini tafauti

tafauti, sehemu tafauti tafauti, akina mama pia watakuwa na waakilishi wao kwa wingi nakadhalika. Hii ndiyo itakuwa National conference itaendelea kwa muda wa mwezi mmoja, na tutataraji kwamba katika muda huo kutatokea ijumaa, mafkiana, makubaliano kwamba hii Constitution ipitishwe. Na Conference ikipitisha mswada wa Katiba utapelekwa Bungeni, Bunge litapitisha maana waBunge hawatachukua muda mrefu, maana watakuwako katika hiyo conference. Watashiriki katika hiyo consensus ya Conference kupitisha mswada wa Constitution. Nafikiri tumefahamiana hapo.

Kwa hivyo jambo nitakalo lifanya hivi leo, na naomba subra yenu, nitaeleza mambo yaliomuhimu katika kila sura ya Constitution ili tuifahamu vizuri. Na baadaye inshaala tutakuwa tukipokea maoni yenu, maswali yenu, baada ya hapo. Tumesikizana juu ya procedure hiyo? Bismillahi. Mswada wa Katiba hii, unanza na kitangulizi, Preamble. Katika kuzunguka kupokea maoni ya wananchi tumepata au tumepata mapendekezo mengi sana juu ya Preamble. Katiba tuliyonayo hivi sasa haina Preamble, kitambulizi. Kitangulizi ni hasa katika Katiba umuhimu wake ni kwamba imewapa wananchi wa inchi hiyo mwelekezo. Inawapa wananchi tuseme ndoto nzuri ya jinsi ambavyo wangependa inchi yao iendelee.

Preamble hii inasema, we the people of Kenya, hiyo ni phrase muhimu sana. We the people of Kenya (sisi wananchi wa Kenya, watu wa Kenya) kwa nini watu wa Kenya? Kwa nini tuanze kabisa na watu wa Kenya? Kwa kuwa tumeambiwa katika Tume yetu muhimu ni kwamba watu ndiyo ambayo watakata shauri juu ya Katiba watakayo. It is a people driven Constitution and that is why we emphasize the people, umma, umma ndiyo sehemu muhimu katika inchi yetu. We the people of Kenya aware of our ethnic, cultural and religious diversity and determined to live in peace and unity as one indivisible sovereign nation, committed to nurturing and protecting the well being of the individual the family, and the community within our nation recognising the aspirations of our women and men for a Government based on the essential values of freedom, democracy, social justice and the rule of law exercising our sovereign and inalienable rights to determine the form of Governance of our country, and having fully participated in the Constitution making process, do adapt and give to ourselves and to our future generations this Constitution, God bless Kenya.

Utaona kwamba the people are the centre of this Constitution. The people have the aspirations, the people determine the aspirations. Ni watu ambayo wanakata shauri, wanataka mukstabal wa aina gani, mukstabal ambayo msingi wake ni kitu gani. Nafikiri sina haja kueleza zaidi ya hivo. Sawa?

Sovereignty: Exercising our sovereign and inalienable right. Sovereignty ni siada kwa kiarabu, ufalme. Uwezo wa yule ambaye ana uwezo juu ya sehemu yeyote au mtu yeyote mwingine. Hapa therefore the people are the sovereign. Na kutoka Preamble ukiendelea chapter one or sura ya kwanza utaona sura ya kwanza au chapter ya kwanza inasema sovereignty of the people and supremacy of the Constitution. Ufalme wa watu, mamlaka ya watu. Na chapter hii au sura hii inazungumza juu ya sovereignty of the people kama nilivyo sema. Ufalme wa watu, watu ndiyo ambayo wanakata shauri juu ya maisha yao na jinsi ambavo wanataka kujitawala au watawaliwe na wengine, na wale ambayo watahika zimam au reins of power are not ruling the people. They are serving the people, that is the big difference. As I will explain later on.

Supremacy of the Constitution: Katiba ndiyo itakayo kuwa sheria kubwa ya nchi. Hakuna sheria iliyo kubwa zaidi ya hivyo. Na kila kazi itakayo fanywa na mfanyi kazi wowote wa nchi. Tangu Rais mapaka yule officer mdogo, the Judicial officer yeyote au administrative officer yeyote, wote wale watafanya kazi yao kufuatia Katiba. Yeyote kati yetu ambayo anaona kwamba kazi hii inafanywa kinyume cha Katiba basi mfanyi kazi huyo aweza kuwa amevunja sheria, anaweza kushtakiwa. Hiyo ni chapter ya kwanza. Sina haja kuisoma lakini nitahighlight one or two things.

All sovereign authority belongs to the people of Kenya and may be exercised only in accordance with the Constitution. The people shall exercise their sovereign power either directly, hayo wenyewe or through their democratically elected representatives. Yaani ikiwa watu wenyewe hawawezi kushughulikia kazi hiyo, watawakilisha watu kwa shuhuli hii, kama waBunge. Hayo kazi yao ni kuwakilisha wananchi, kuwafanyia kazi yao. Na kama tutakavyo ona baadaye: ikiwa mBunge hatafanya ile kazi inavyo takikana watu wanaweza kumtoa. Ni kama mtu kumkodisha kazi, kumuandikisha kazi. Watu mwishowe wanaweza kumuondoa yeyote kati yao.

Pili: Supremacy of the Constitution: Katiba ndiyo kanuni au sheria kubwa kabisa katika nchi hii. Kenya is founded on the Supremacy of the Constitution and the rule of law and shall be governed in accordance with the Constitution. The Constitution is the Supreme law and binds all authorities and persons throughout the republic. The validity, legality, usheria au ukanuni wa Constitution hauwezi kufanyiwa challenge na mtu yeyote. Mtu yoyote hawezi kusema hii Constitution haina nguvu kufanya hivi au vile. Mtu yeyote, na nikisema yeyote I mean no one. The validity, legality of procedure of enactment or promulgation of this Constitution is not subject to challenge by or before any court, organ or agency of the State. Hakuna mtu ambayo aweza kwenda kotini akasema hii Constitution imekosea hapa. Na kanuni yeyote, au sheria yeyote nyingine ikiwa haiambatani na Katiba basi sheria hiyo ni **(inaudible)**, it is invalid. Any law that is inconsistent with the Constitution is an invalid law. Lakini muhimu ni kwamba hii Constitution itafsiriwe kwa njia ambayo itaendesha masilaha ya wananchi. It shall be interpreted in a way that promotes the values of good governance. Si nafikiri hapo chapter one nime highlight kutosha kuhusu chapter hiyo.

Chapter ya pili, inaitwa the Republic. Declaration of the Republic, Jamhuri ya Kenya. Katika sheria ile tuko nayo hivi sasa kuna mstari mmoja tu mfupi ambayo wasema kwamba Kenya ni Republic, ni Jamhuri. Lakini katika Katiba hii mpya tumeeleza kinaganaga Jamhuri ni kitu gani? What is a Republic? Lazima tufahamu, tukiitwa sisi ni Jamhuri ya Kenya, maana yake nini Jamhuri. Jamhuri ya au neno la Jamhuri limetokana na neno la Kiarabu. Jamhuri ni watu. Hata neno la kiingereza Republic, ni watu pia, jumla ya watu wanaoishi katika nchi, wanaitwa ni public. Republic ni nchi ambayo inhukumiwa na watu wake wenyewe ndiyo wamekata shauri aina gani ya Serikali wanataka iendeshe kazi yake.

The Republic of Kenya is founded on Republican principles. Jamhuri ya Kenya imewekwa msingi wake ni Republican principles. Ada au kanuni za kijamhuri. Kanuni hizo ni nini? Good governance. Kumekuwa na Republic zamani tangu siku za wa Greek, kama siku za uislaamu kujua na kila kitu. Magreek utaona kwamba do yao ilikuwa ni Republic pia, ambapo watu

wenyewe waliendesha kazi ya nchi yao. Good governance, utawala mzuri. So multi-party democracy. Democracia ambayo ni ya vyama vya kisiasa vingi. Participatory Governance, maanaka utawala ambamo watu wanashiriki katika utawala huu. Sikuwa wamewekwa kando na watu wachache ndiyo wanaendesha mambo bila kushauriana na watu.

Participatory Governance, watu wenyewe wanashiriki katika Serikali hiyo. Transparency and accountability, Serikali ambayo ni wazi unaweza kuona mambo yanavyo endelea, na ikiwa mambo yana kwenda kombo unaweza kuona mambo yanakwenda kombo. Accountability, yaani Serikali ambayo inaweka hesabu. Wananchi wanaweza kuifanyia hesabu. Kama ambavyo mwenyezi Mungu atatufanyia hesabu, wananchi pia wanaweza kufanyia Serikali hesabu. Transparency and accountability. Vipi mali ya uma inatumiwa? Accounts ziko wapi? Accounts zinatolewa kwa njia ambayo ni regular na kadhalika. Na ambapo pia kuna respect for Human Rights, Fundamental Freedom and the Rule of Law. Hiyo ni Serikali ya kijamhuri, Republican Government. Kenya is a Sovereign Republic. Tukiambiwa kwamba sisi ni Republic tunataraji kwamba Serikali yetu itawekwa juu ya misingi hii niliyo taja.

Pia chapter 3, tunazugumzia National goals, values and principles. Jambo muhimu sana. Ni kama tuseme club ya mpira au club ya kazi yoyote watakuwa na goals and principles zao jinsi ya kuendesha club ile. Basi nchi ni kama vile vile, nchi haiinuki tu ikaendeshwa ovyo. Lazima iwe na shabaha zake. Tunakwenda wapi?

Values, maadili: tunathamini kitu gani katika jamii yetu sisi? Thamani gani tunazo? Maadili katika neno la Kiswahili. Kenyan values and principles ziwe kanuni au kaida. Ni kitu gani ambacho sisi tunataka kiwekwe katika nchi yetu? Hapa tungetaja machache.

The Republic shall recognize the diversity of its people and promote the cultures of its communities. Hapo mwanzo tulisititisa umoja wa nchi. Umoja wa nchi yetu ya Kenya lazima ubakie. Katika desturi yeyote nchi lazima ibakie iwe ni moja. Lakini wakati huo huo inchi ambayo itatambua tafauti ziliyoko katika dini, tafauti zilioko katika utamaduni na kadhalika. Na kufanya kila jambo kuhifadhi kila aina ya utamaduni katika nchi hiyo. In other words diversity of cultures within the Unity of the State itatambulikana. Hiyo ni value moja na shabaha moja ya nchi yetu. The Republic shall ensure open and transparent Government and the accountability of State officials and Public Authorities, kama nilivyo sema hapo awali. Jamhuri itahakikisha kwamba Serikali yetu itakuwa ni transparent. Unaweza kuona ndani yake, it is not closed, haikufungiwa ikawa mmoja wetu hajui inafanyika nini? Katika treasury, kunafanyika nini? Hapa katika ofisi ile na kadhalika. Na iwe ofisi ile au wizara ile ni wazi, report zake zinajulikana, kazi yake inajulikana.

The Republic shall ensure access of the people to independent, impartial, and competent institutions of justice. Serikali ihakikishe kwamba watu wanaweza kufika ofisi yoyote bila taabu. Mtu ana taabu, ana mashaka yake hajui aende wapi, akienda hapa anaambiwa si hapa, ikawa mwishowe tatizo lake au mushkli wake haupati nafasi ya kufikiria yule mtu au ile ofisi ambayo itaweza kumsaidia. Kwa hivyo tutaunda Serikali ambapo mtu anaweza kufikishwa, akuambie tatizo lako lifikishwe

mahali fulani. Utakwenda sema kule, utamwona mtu fulani, anaitwa fulani, utaweza kumzungumzia juu ya shida yako. Kwa mfano kutakuwa na Public defender, Mlizi wa uma. Ofisi yake itakuwa kati ya njia nyingi sana ya mtu kwenda kushitaki akapata kuelezwa jinsi ambavyo shitaka lake litazingatiwa na khathalika.

Shabaha muhimu, lengo muhimu: the Republic shall be committed to social justice. Jamhuri italazimika kuweka uwadhilifu wa kijamii. Kutakuwa na uwadhilifu wa kijamii. Yaani mtu ahisi kwamba aishi kati ya watu ambayo wazingatia hali yake na tatizo lake. Kwa njia gani? Through appropriate policies and measures. Kutakuwa na siasa na hatua zitakazo chukuliwa kuhakikisha kwamba Wakenya wote watapata chakula cha kutosha. The basic needs for food, makao, shelter, clean water, maji masafi, sanitation, njia ya kuishi katika hali iliyo safi, elimu, matibabu na mazingara yaliyo safi, pia amani. Amani yake ita... Hilo ndilo shabaha kubwa ambalo jamhuri ya Kenya lazima watu wake wapiganie wapate haki kama hizi, ambazo haki, hizo zikipatikana kutakuwa na uwadhilifu wa kijamii katika nchi yetu ya Kenya.

Sehemu muhimu nyingine, lengo la kumi na tano au shabaha ya kumi na tano. The Republic shall promote equitable development. Jamhuri yetu ya Kenya itaeneza maendeleo au ustawi ambayo utafika kila eneo la nchi. Sikatika sehemu maalum tu. Equitable development, kuna mashtaka kwamba sehemu fulani zimepata maendeleo, zimepata pesa za kutosha, mabarabara ambayo ya kutosha. Lakini sehemu zingine zime kuwa ignored. Kwa hivyo lengo ya Jamhuri yetu itakuwa ni kuhakikisha kwamba maendeleo ni ya haki, kwamba yanafanyika na yanatekelezwa katika kila eneo la nchi.

Pia the role of science and technology: Kutumia science na maarifa ya elimu kuondosha disparities, kuondosha kutokuwa na usawa. Mwingine anaendelea zaidi kuliko mwingine. Na pia kumanaage National Resources fairly. Kuna mali ya asili, kuna mali ya uma. Mali ya asili ni kama vile wanyama wetu wa porini, dhahabu ikiwa iko, fedha ikiwa iko, diamonds na kadhalika, National Park, hizo ni mali za kiasili. Lakini pia kuna National Resources na Natural Resources. National Resources ni ile income tax inavyo ingia, mapato ya nchi kutoka kwa kila aina ya njia ambayo inakwenda treasury. Kwa hivyo Jamhuri yetu itahakikisha kwamba resources zetu, mali yetu, kila aina inatumiwa kwa njia ambayo ni ya uwadhilifu. Ili kila sehemu ya wananchi na kila sehemu ya nchi yenyewe inafikiwa na faida ya mali hiyo. Nafikiri kwa ufupi ni hayo ambayo ningependa kuhighlight katika chapter hiyo ya shabaha za Jamhuri yetu.

Chapter ya nne, ni citizenship: Hapa pia kumekuwa tumependekeza mambo tafauti kuliko hali ilivyo hivi sasa. Na mkisoma hapo wale ambayo muna ninino mutaona kwamba citizenship kwa kila mwananchi anahaki na ana duty au wajibu sawa na mwananchi mwenzake. Ikiwa mimi nina haki fulani singelazima awe nakama hizo not less. Mimi nikiwna wajibu wa kutimiza, wajibu pia, haki zinakwenda na wajibu. Wajibu wangu mimi lazima ni wajibu wake yeye. Hakuna mapendeleo kati yetu. Hiyo ndiyo principle ya muhimu ya wananchi.

Citizens are equally entitled to a Kenyan passport and to any document of identification issued by the State. Kila mwananchi anahaki ya kupata passport. Na conditions or masharti ya kupata passport kwa kile mmoja iwe ni ile ya mwenzake. Sio

mmoja anaambiwa wewe lazima in addition uwe na hivi na hivi na vile. Kama tujuavyo mambo hayo tumeyazungumza mara nyingi katika kukusanya maoni yenu. Tumepata malalamiko ya kwamba jamaa wengine wakienda kupata passport wanaambiwa leta pia na birth certificate ya nyanya yako na babu yako na kadhalika. Lakini mwingine haambiwi kufanya vile. That is discrimination. Kwa hivyo principles zilizoko hapa zimeondoa jambo kama hilo. The paper, the conditions for me should be the same for anybody else. All are going to be equal. Kisha tunaeleza jinsi ambavyo ni nani ambayo ni mwananchi.

Citizen by birth: Yeyote atakayezaliwa nchini Kenya ikiwa mzazi wake mmoja ni Mkenya basi huyo ni Mkenya automatically, si kwa kuzaliwa. Ikiwa baba ni Mkenya sio lazima mamake awe Mkenya. Every person born after coming into the Constitution is a Citizen of Kenya, if at the date of the person's birth either the mother or the father is a citizen of Kenya. Si lazima wote wawe ni Wakenya. Mama akiwa Mkenya mtoto awe ni Mkenya. Baba akiwa ni Mkenya lakini mama sio Mkenya pia ana haki ya uwananchi.

Kisha kuna citizenship and marriage. Hapo hawali kulikuwa na ubaguzi kidogo. Mama Mkenya au dada Mkenya, au mwanamke Mkenya akimuowa mtu wa ajinabi yule hapati na watoto wake huwa hawapati citizenship. Sasa ni sawa, wote wawili.

Citizenship by Naturalization: a person who has been a lawful resident in Kenya for a continuous period of not less than 7 years. Mutakikaa akishi Kenya kwa muda usiopungua miaka 7, huyo aweza kuapply kuwa Mkenya. Citizenship by Residence pia na kadhalika.

Chapter 5, kutakuwa na citizenship registration board. They will establish the citizenship registration board to deal with matters provided for under Act 27 consisting of not less than 5, and not more than 9 members appointed by the President with the approval of Parliament, from among persons of high moral standards. Body hiyo itashugulikia mambo haya. Ikiwa kuna mashtaka yoyote, malalamiko yote, body hii inaweza mtu anaweza kwenda kushtaki jambo lolote kuhusu wananchi.

Dual Citizenship: hili ni jambo jipya tumependekeza, amenikumbusha Silvia, sasa tunaruhusu kufuatia mswada huu wa Katiba kwamba mtu awe na haki ya kupata uwananchi zaidi ya nchi moja. Muhimu ni kwamba nchi hiyo ambayo mtu atakapopata wananchi wake iwe ni inchi ambayo inaruhusu dual citizenship. Kwa hivyo inasema Dual Citizenship is permitted under the laws of Kenya. A person who as a result of acquiring the citizenship of another country lost the citizenship of Kenya at any time before the coming into operation of the constitution is entitled on application to be registered as a citizen of Kenya. Yule ambayo alipoteza citizenship yake kwa kuwa alichukua citizenship nyingine kwanza huyo sasa aweza kurudi tena akawa citizen wa Kenya, au mwananchi wa Kenya. A person who loses Citizenship of Kenya as a result of acquiring the citizenship of another country is entitled on renunciation of the citizenship of that other country to regain that is the point I have just made. Sawa, yeyote ambayo hakufahamu anaweza kuuliza baadaye maana ni mswada mrefu na sitaweza kuwaeleza kwa kinaga naga kila jambo liloko.

Kisha chapter 5 au sura ya tano. Kuna the bill of rights ambayo ni muhimu sana. Kanuni ya haki. Haki ya kila aina. Kuna hiki wa kimsingi, kuna uhuru za kimsingi ambao kila mmoja wetu anahaki kuzipata. The Bill of Rights is the foundation stone of Kenya's Democratic State. Jiwe la msingi. Kanuni hii ya Bill of Rights ni jiwe la msingi, ukijenga jengo lolote lazima utie jiwego la msingi to (**inaudible**). The Bill of Rights is the foundation of Kenya as a Democratic State and is the framework for the adoption of social, Economic and cultural policies. Kufuatia kanuni hii, utajenga juu yake kila aina ya haki nyingine au siasa ambazo za mwathiri mwananchi katika kila sehemu. Inammwathiri hali yake kijamii, hali yake kiuchumi, hali yake kitamaduni na kadhalika.

Haki hizi, the Bill of Rights ni haki za kila mtu, na muhimu zaidi are not granted by the State. Ni haki ambazo umezaliwa nazo. Si haki ambazo umepewa na dola au na Serikali. ambayo kesho itakuambia nakupa haki hizi basi sasa nitakupokonya, la. They are inborn, ni haki yako tangu kuzaliwa na ambazo huwezi kunyanganywa tena. In alian rights, haki ambazo haziwezi ku...

Munajua hivyo pia Serikali ina wajibu, the State shall observe the respect, protect, promote and fulfill the rights and freedoms in this Bills of Rights. Si kulinda tu lakini kueneza haki hizo. Kutia moyo na kufanya kila jambo ili kila mtu apate haki zake. Na afahamishwe haki zake, ni wajibu wa Serikali kufanya hivyo. The State shall take reasonable legislative policy and other measures to achieve the progressive realization of the rights guaranteed in Act 56, 57,58,59,60,61 and 62. Ukisoma hii Katiba, articles hizo, vifungu hivo yinahusu zile basic needs tulizozitaja hapo awali. Haki ya kila mwananchi kupata chakula cha kutosha, matibabu ya kutosha, amani kwake yeye na jamii yake, elimu, makao, maji masafi na kadhalika. Kwa hivyo Serikali inawajibishwa na Katiba hii mpya au mswada wa Katiba hii kuhakikisha kwamba mambo haya yamekamilishwa na mwananchi atapata haki hizo.

Kuwatajia tu kijuu juu kuna right to life. Everyone has a right to life hakuna ambayo ana haki kuchukua roho au maisha ya mwenzake. Pia jambo lingine ambalo tumelifanya the death penalty is abolished. Hakutakuwa na adhabu ya kumtia kifo katika Kenya ikiwa mswada utakubaliwa.

Equality: haki ya usawa, kama nilivyo taja hapo awali, haki ya mtu kupata passport, birth certificate na kadhalika, ni haki ya kila mwananchi. Hapa every person is equal before the law and has a right to equal protection and equal benefit of the law.

Freedom from discrimination: haki ya kulindwa dhidi ya discrimination, ubaguzi. Hiyo ni haki.

Haki ya watoto: children (**inaudible**) it is the duty of their parents, wider families, society and the State to nurture, kuwalisha, protect, kuwalinda, educate them, kuwasomesha, so that they can develop in a safe and stable environment. In an atmosphere of happiness, love, respect and understanding, maybe able to fulfill their full potential in all respects. Nafikiri hiyo ni wazi.

Haki ya jamii au familia: the State shall recognize the family as the natural fundamental unit of society and has the necessary basis of social order.

Persons with disability, walemavu, haki zao: wanasisitizwa katika hii Bill of Rights kwa kila njia. Kwa upande wa elimu, kusahilisha maisha yao kwa hivi sasa wanapata taabu, hawana njia ya kupanda matatu hawezi, akitaka kupanda juu gorofa ya tatu hakuna lift, lazima apande kwa ngazi, na khadhalika. Ikiwa ni mtu ambayo hasikii ana taabu ya kusikia mambo yanayoelezwa. Ni kipofu hawezi kusoma hii Katiba ilivyoandikwa lazima aelezwe na mwingine. All these things will have to change. Lazima mabadiliko yafanywe ili kwamba walemavu wa kila aina, wanawezeshwa kushiriki katika maisha kama wenzao ambayo wemepata bahati ya kuwa hawana ulemavu wowote.

Human dignity: hii kwa uhakika ni sifa, taabu sana kuipin down. Human dignity ni mtu kuwa na sharafu yake. Bill of Rights inasisitiza kwamba kila mtu ana dignity yake ambayo Mungu amempa na lazima dignity hiyo, sharafu yake ile, iliendwe. Everyone has inherent dignity, amezaliwa na mtu ana sharafu yake, lazima mtu mwingine, mwenzake aiheshimu. The Right to have that dignity respected and protected.

Freedom and security of the person: awe amelindwa, vidi ya hatari yoyote, kwa njia yoyote. Ikiwa kuntaabu njiani, ghasia njiani, kuna violence ni wajibu wa wale ambayo wanashughulikia kuweka amani kumlinda kila mmoja wetu asifuatie na adhaa yeyote au hatari yoyote.

Not to be subjected to corporal punishment or to be treated or punished in a cruel, inhuman or degrading manner. Awe asiadhibiwe kwa njia ambayo ni ya kinyama, kama nilivyo sema hapo hawali mtu amezaliwa na sharafu yake. Inherent dignity, kumuadhibu, kumdhili, kumbadilisha, hiyo ni thidi ya Bill of Rights. Yeye au watu wake wanaweza kushtaki kuwa huyu ambadhibiwa kwa njia ya kinyama na hii ni thidi ya Constitution na yule aliye muathibu au kumjadilisha ataweza kustakiwa.

Slavery, servitude and forced labour: Mtu asilazimishwe, asifanywe mtumwa, mtu asilazimishwe kufanya kazi asiotaka kufanya yeye mwenyewe. Forced labour therefore is prohibited under the Bill of Rights na khadhalika.

.....Mwenyezi Mungu kwa njia ambayo yeye ataka kumuabudu na asilazimishwe kuhudhuria ibada ambayo yeye hataki kuhudhuria ya dini nyingine. Ikiwa ni mkristu asilazimishwe kuhudhuria ibada ya dini nyingine mwislaam pia asilazimishwe, mtoto wa kiswaam katika shule ambayo si ya kiswaam asilazimishwe kuhudhuria ibada ya dini nyingine, na khadhalika. Mutasoma kwa urefu zaidi jambo kama hilo.

To receive religious instructions or to take part in or attend a religious ceremony or to observe the day of rest of other observers that is not the person's religion. Yaani mtu kulazimishwa kufuata mila, dini na kusherekea siku ambayo ina

sherehekewa na dini nyingine na yeye analazimishwa kusherekea na khadhalika.

Freedom of expression: uwezo wa mtu kusema atakavyo. Awe na huru kusema bila kuogopa kwamba ataadhibiwa, atatiwa athabu, atafungwa na khadhalika. Lakini haki hii tuone kwamba pia ina mipaka yake. Ile haki yako ya kusema utakavyo isipite mipaka ukafikiria kwamba unaweza kutoa propaganda. Au kufanya jambo ambalo ni kama ni jambo la kivita, Mungiki vile kufanya haki yao ya kusema na kuteta, incitement, violence. Kuwahimiza watu kufanya jambo la kuvunja sheria na kupiga wenzao. Maana ukisema jambo ukatukana dini fulani, mathani, wale walioko katika dini hiyo ambayo umetukana wataudthika, sio? Hapa kutatokea na mapigano, vita na damu kumwagika. Mtu hanahaja kusema jambo, ana haja kusema atakavyo lakini ikiwa jambo lile ambalo atalisema litaleta hathari ya watu kupigana basi hiyo itakuwa si haki tena.

Advocacy of hatred that is based on discrimination and that constitutes the vilification of on others or incitement to cause harm. Propagation of all forms of prejudice. Kueneza ubaguzi wa kila aina. Ubaguzi wa dini, rangi, kabila na kahadhalika. Mtu atakaye toa maneno ambayo yatakuwa ni ya aina hiyo ya ubaguzi wa kirangi kutukana kabila fulani kwa kabila lile ni hivi, na vile au dini fulani ni hivi na vile, hiyo hairuhusiwi. That is not a right hiyo ni incitement to cause armed conflict or loss of life. Huenda ikasababisha watu kuuwawa au watu kuuliwa.

Publication of opinion: haki ya kuchapisha, access to information. Hivi sasa ukitaka kupata maelezo juu ya jambo fulani na khadhalika si rahisi kupata. Lakini sasa tunafikiria kwamba mwananchi sasa awe na haki ya kwenda kwokwote akasema nataka list ya watu ambayo ni hivi na hivi na vile kwa kuwa ninafanya kazi hino.

Tunataka tupate census sisi ni idadi gani ya watu katika District hii ya Mombasa. Na watoto ni wangapi, na akina mama ni wangapi. Walemavu katika Mombasa District ni wangapi. Kina mama ni wangapi? Inatakiwa ni haki yako kupewa habari hii katika zile wizara ambazo zinaweka maelezo kama hayo. Access to information ni jambo la muhimu sana. Maana mtu akipanga akitaka kufanya mipango ya maendeleo na khadhalika bila shaka atahitajia kila aina ya maarifa na information na itakuwa ni haki yake. Tuseme haki hii ya access of information ni haki ambayo hatuna hivi sasa lakini ukitimaza huu mswada wa Katiba mwisho kabisa kuna sixth schedule.

Wale ambayo wamekuwa wakinunua magazeti mutaona kwamba tulipo toa mswada wa Katiba hapo awali as a result of mistake kwa makosa tuliwacha sixth schedule au schedule no. six. Sasa hii sixth schedule ina mambo ambayo kuna haja ya kufanywa na Serikali. Ni muhimu kufanywa na Serikali ili kwamba hii Katiba iweze kutiliwa implementation. Kwa mfano right of access information tumesema time limit within which action shall be taken ni six months. Baada ya miezi sita Katiba hii mpya kutekelezwa au kutiwa iwe ni kanuni, lazima ile haki ya right to information iwe ishaanzishwa. Na baada ya hapo yeyote kati yetu akiwa na haja kujua jambo fulani, aweza kupata hiyo information atakayo.

Haki, Freedom of Association: mtu awe na haki kujiunga na chama chochote ambacho ni cha halali kama (**inaudible**) na

khadhalika.

Assembly, demonstration, picketing and petition: mtu ana haki kupeleka mashtaka yake akitaka, petition yake popote katika wizara yoyote kwa njia ambayo bila shaka itaelezwa baadaye. Pia haki ya kupicket, kusimama nje ya Municipal Council, nje ya uhuru na kazi, kuwazuia wale ambayo wako katika Union yako wasiendeleo na kazi. Hiyo ni haki inayofuatwa katika nchi nyingine, ili mashtaka yako yapate kuwa na umoja na wenzako kufuatia...

Political Rights: demonstration pia unahaki. Maadam demonstration ni ya kiamani unahaki ya kudemonstrate hakuna ambayo anaweza kukuzuiya. Political Rights unahaki to make political choices kama nilivyo sema kujiunga na chama chochote cha kisiasa. Hakuna atakaye kulazimisha kujiunga na kile ambcho yeye ataka uungane nacho.

Freedom of movement and Residence: every person has a right to freedom of movement. Hakuna atakaye kuzuia usitoke Kenya, usitoke Mombasa na kahadhalika. Pia everyone has the right to leave the Republic. Hakuna atakaye kuzuiya airport kukuambia usitoke. Every citizen has a right to enter into the Republic. Una haja ya kurudi, umetoka ukazuiliwa airport huwezi kuingia ikiwa wewe ni mwananchi una citizenship hakuna atakuwa na haki ya kukuzuia kurudi nchini na khadhalika.

Refugees and Asylum: freedom of trade, occupation and profession. Una haja ya kufanya hijara au biashara yeyote utakayo na khadhalika. Haki ya kumiliki jambo lolote maadam ni malie ya halal. Unahaki ya kuimilikia.

Haki ya Social Security: huwezi kulazimishwa kusema wewe ni kabila gani (**inaudible**) ni nini. Hii ni kuondoa mambo iliomo katika forms zingine ambazo tuwaziona saa zingine kwamba jina lako ni nini? Umri wako ni ngapi? Kabila lako ni kabila gani? Na khadhalika. Tunataka kuondoa mambo yote kwamba mtu ni mwananchi tu. Hakuna ambayo atalazimishwa kusema mimi ni Mluhya, mimi ni Mwamu, mimi ni Mbajuni, mimi ni Mdigo na khadhalika, hiyo si lazima tena, haina haja. A citizen is a citizen, tuache mambo hayo ya ukabila na mambo ya kusema huyu ni mwislaam, huyu ni Mkristu, huyu ni kadhalika

Pia yule atakaye shitakiwa anahaki pia. Every person who is arrested for allegedly committing an offence has a right to remain silent. Hii ni sheria ambayo inatumiwa kule Europe hivi sasa kwa muda mrefu. Maana yake hana maarifa ya kanuni. Asije akasema jambo akajitia katika kitanzi. Kwa hivyo na aweze kunyamaza kimya, mimi siwezi mpaka ni mpate wakili wangu. Na aweza kuremain silent, abakie kimya mpaka wakili wake atakapokuja ambayo atamtetea. Na kila mmoja ana haki ya kuelezwa ameshitakiwa kwa jili ya jambo gani. Kwa lugha ambae anaifahamu pia. Na haki zingine zilizoko. Pia yule ambaye atashikwa leo asiwekwe na wale ambayo tangu hapo wako kwenye jela, awe mbali na hayo. To be brought before the court as soon as possible but not later than 48 hours of being arrested. Ataletwa mbele ya mahakama isichelewe zaidi ya masaa arubaini na nane. Akiwekwa zaidi ya hivyo ni (**inaudible**) ya kanuni. Tunajua kwamba wengine saa zingine wanashikwa wanakaa siku mbili, tatu, inne hajatolewa. Kwa hivyo mambo kama haya ambayo malalamiko mengi tumepata katika kuzunguka hapa na pale. Wengi wanashitaki kwamba watoto wao au ndugu zao na khadhalika au jamaa zao wanashikwa wanakaa indefinitely,

bila kupelekwa mbele ya korti. Fair trial, Rights of persons highly held in custody pia.

Chapter six: Representation of the people - mambo ya Bunge na election na Khadhalika, yameelezwa kwa kinaganaga kirefu.

Mambo ambayo ningetaja hapa ni machache tu.

Elections shall ensure fair representation of the people. Mwishowe baada ya kila elections tuone kwamba Bunge ukitizama unrepresentation ya kutosha ya watu. Pia kwamba kutakuwa na representation ya akina mama, walemavu, na minority. Zile groups ambazo ni ndogo ndogo. Kwa hivyo sasa kuna makabila madogo sana ya watu ambayo si zaidi ya watu mia moja, mia mbili kama Ogiek. Nina wasikia hawa, ambayo hawana representation huwaoni kwokwote. Si katika Bunge peke yake lakini hata zile councils na kila baraza ambayo kuna wakilishi wa uma. Kwa hivyo tumefanya mpango wa kuhakikisha kwamba hawa kutakuwa na njia ya kuwapatia representation.

Pia jambo ambalo halifanyiki hivi sasa, elections kutakuwa na continuous registration of citizens/voters. Hatutangojea mpaka karibu na uchaguzi ndiyo tuanze kuregister watu au ile voters register kuiupdate na khathalika. Pia kwa mara ya kwanza tumependekeza kwamba wananchi walioko nje ya Kenya wapate uwezo wa kuchagua au kupiga kura.

Pia at least 1/3 of the candidates of a political party nominated for Parliament wawe ni a kina mama.

Pia 50% of the candidates of a Political Party wawe ni wanawake wale wa proportional representation. Nitaeleza hivi sasa proportional representation ni kitu gani.

Ballot boxes zitakuwa transparent. Unaweza kuona kwamba hii sasa ni tupu. Hii 1/3 full, ili kwanza tukianzisha huwa hakuna hatari yoyote. Na pia kura zitahesabiwa pale pale kwenye polling station. Hazitachukuliwa kutoka pale kupelekwa kwingine kuhesabiwa.

Unopposed candidates: kukiwa na candidate ambaye hakupata mtu kumpinga huyo pia lazima apigiwe kura. Si kusema kwamba, he is unopposed automatically he is a member of Parliament. Lazima uchaguzi ufanywe, kisha tuhesabu kura zake. Hii ina faida moja ambayo tunafikiria itatokea hivi karibuni. Mbali na wale ambayo watachaguliwa kwenye Constituency 210, kutakuwa kila party kura zake zitahesabiwa total. Na kisha kutakuwa na 90 seats maana yake tunapendekeza kwamba bali na Constituency ya MPs kutakuwa na 90 seats nyingine ziwe mia tatu. House of National Assembly kutakuwa na watu 300. 210 from the Constituencies and 90 wengine ambayo hawatatokea katika ile proportional representation.

Kwamba kila Party ambayo itashiriki katika uchaguzi, votes zake as a Party will be counted. Na kutegemea idadi ya voti zake zile 90 seats zitagawanywa kati yao. Kwa njia hii kila party itapatakuongezewa seats zingine. Kwa njia hii pia kutakuwa more democracy. Maana hivi sasa utaona katika uchaguzi wa viti maslan mtu ambayo ameshindwa kwa votes tatu, inne tano tu, na amepata votes nyingi lakini ameshindwa kwa votes tatu, inne au Kisuani, lets not be misunderstood, nimesema vita just by

accident it could be any Lamu west, mathalan. Yule aliyeshindwa bila shaka amejipatia yeye votes, ameshindwa kwa votes mbili, tatu, kwa hivo hatutaki votes zake zipotee. Tunataka Party yake pia ifaidike.

Kwa hivyo votes zake zile yule ameshindwa zita jumulishwa na votes za chama chake zote in total. Na wale pia waliofuzu winning party votes zake pia zitajumlishwa. Na zile 90 seats sasa zitagawanywa kati ya Party zote zilizo shiriki katika Kwa hivyo mtaona hii ni system ambayo italeta udemocracia mkubwa zaidi. Sylvia amenikumbusha kwamba zile 90 seats pia, 45 zitakuwa za kina mama. Kila party itahimizwa kwamba tuseme Party hii in addition to zile seats za Constituency zake ile proportional representation, kila Party itatafikana kwamba katika ile list yake, mimi tuseme KANU in addition to its seats wamepata representation 30 seats. Watahakikisha kwamba 15 seats katika zile extra wapewe kina mama. Na kumi na tano ni wamaume. Sawa? Tumefahamiana.

Kutakuwa na Electoral Commission kama ilivyo sasa. Haki ya kuanzisha Political Parties imeelezwa hapo na pia kazi ya kila Political Party imeelezwa. Roles and functions, registration of Political Parties. Sasa registration haitakuwa katika ile ofisi ya registrar of societies. Kutakuwa Electoral Commission, ndiyo watakapo shughulika na kazi ya kuregister Political Parties, not the registrar of societies. Wale watashughulikia mambo mengine. Electoral Commission itashughulikia registration of Political Parties na pia itasimamia elections of Political Parties. Ikiwa Political Party ina election ya office bearers wake, chairman, secretary general na khadhalika. Uchaguzi huu utasimamiwa na Electoral Commission kuhakikisha kwamba kuna uwathilifu. That those elections have taken place in a transparent and right manner.

Tunaeleza ni Party gani ambayo ya weza kufanyiwa registration, kuandikishwa. Si kila Party ambayo yaweza kuaandikishwa. Lazima kila Party iwe itapromote and uphold National Unity. Party ambayo itafikiria sisi tutakaa uhuru wetu section hii or sehemu hii ya Kenya. Tunataka kujitoa, Party kama hiyo haitaruhusiwa kupewa registration.

To promote and respect Human Rights and engenda equality and equity. Party lazima iwe inshughulikia mambo ya haki za binadamu na kufikiria akina mama pia, na haki zao kushiriki katika Party hiyo.

Pia Commission haiwezi kuregister Party ambayo imebuniwa juu ya msingi wa ukabila. Kabila aina mbili, tribalism or racism juu ya dini, lugha. Maana mukishaanzisha Party ya wale ambayo wanasema lugha ya whatever language. Haiwezi kuandikishwa na kadhalika.

Pia Party haitasajiliwa ikiwa itakuwa na paramilitary force, kikundi chake cha kuzunguka hapa na pale kuwatisha wale ambayo ni wa Party zingine na kuwapiga na khadhalika, Mungiki style or Bagdaad boys.

Party ambayo itajulikana kwamba imejiwekea jeshi lake kama hilo, hata ikiwa baadaye ikiwa imeruhusia imeandikiswa lakini baadaye ikajulikana kwamba imejiwekea jeshi lake basi Party hiyo itafanywa deregistration.

Pia Party ambayo kwa muda wa uchaguzi mbili, has not for each of the two chances secured at least 1% of the National votes, ita counciliwa registration yake.

Mbunge ambaye au Councillor ambaye ata resign kutoka Party or kutoka Council ambayo ilimsponser basi mtu huyu atapoteza kiti chake.

Sasa tunaingilia mambo haya ya Bunge, the Legislature. Na hapa tumependekeza mambo tafauti kidogo. Kutakuwa na two houses of Parliament. Kutakuwa na National Assembly na National Council.

National Assembly: ni hiyo ilioko hivi sasa, ambapo wanachama wake watakuwa wakichaguliwa the way we are doing it now. Watakuwa ni hayo ambayo ni 210 walioka hivi sasa, na kisha wale ambayo wataongezwa kufwatia mixed member proportional system. Kama nilivyo eleza hapo iwali, kufuatia idadi ya votes kuzipata. Hawatawakilisha Constituency maalum. Watachaguliwa na Party yao kufuatia idadi ya votes ambazo Party ile illipata. Na idadi ya viti kwa kila Party kupata itategemea ile idadi ya votes uliyopata. Nafikiri nimeshawaeleza hapo.

Kisha kuna maelezo ya jinsi ya election za Members of Parliament itafanyika, tenure of office of Members of Parliament, iwe ni miaka mitano. Member of Parliament atapewa terms mbili. Ataingia elections, akifaulu ataingia five years, elections za pili ataweza kuingia akifaulu atatumikia maika mitano mingine. Lakini hawezi kuingia election ya tatu, only two terms. Maximum kwa kila mBunge ni miaka kumi. Pia mBunge aweza, kama nilivyo sema hapo awali aweza kuondolewa kuwa mBunge, to recall a Member of Parliament. Sababu ya kumuondoa huwa ni moja kati ya sababu khadha.

- 1) Physical or mental incapacity: ikiwa amepata ugonjwa hawezi kufanya ile kazi au ana ugonjwa wa akili pia, kazi hawezi kuendesha, basi huyo ataondolewa na elections zitafanywa ili mwingine aingie.
- 2) Misconduct, likely to bring hatred, ridicule, contempt, or disrepute to the office. Afanye mambo ambayo kwa hakika ni aibu kwa mBunge kufanya. Kwa njia ambayo ataleta sifa mbaya sana kwa jina la uBunge or Parliament.
- 3) Persistent desertion of the electorate without reasonable cause. Ikiwa ataendelea kuwadharau wale waliomchagua, hawatembelei, ukitaka kuja kupata msaada wake hapatikani. The word is persistent ikiwa ataendelea, akiwa ni mashtaka tu au fitina au kila kitu basi hiyo haitafaa. Lazima ufanye uchunguzi, kwamba hakika huyu ametharao watu wake. Amedharau Constituents wake, hawashughlikii kabisa Constituents wake.
- 4) The recall of a Member of Parliament shall be initiated by petition in writing. Ipelekwe petition, stating down the grounds relied on and signed by at least 30 percent of the registered voters of the Constituency. Halakal at least 30% kwa wale waliojiandikisha kuwa ni voters katika Constituency ile, lazima wao wasign ile petition. Na itafanyiwa uchuguzi kuhakikisha ya kwamba wale hakika ni watu wa pale. Sasa ile petition ikipatikana the speaker of Parliament shall within 7 days require the Electoral Commission to conduct a Public inquiry into the matters alleged in the petition,

and the electoral commission shall in expeditiously conduct the necessary inquiries and report its findings to the speaker. Speaker atataka uchunguzi ufanywe na results za uchunguzi uitafanywa Speaker, ikiwa itathibitishwa kwamba mashaka yale yana msingi, basi yule jamaa ataondolewa.

Jambo lingine ambalo tumeelezwa na wananchi vile vile tukizunguka ni kwamba hawataki waBunge kukata shauri mshahara wao utakuwa vipi. Kama tujuavyo kulikuwa na mashtaka kwamba waBunge wamekuwa wakiongeza mishahara yao bila kufikiria hali ya nchi na kadhalikha uchumi wa nchi. Kwa hivyo sasa tunapendekezo kwamba kutakuwa na salaries and remuneration commission. Commission maalum, tume maalum ambayo itakuwa ikikata shauri juu ya mishahara. Sio waBunge peke yao lakini pia mshahara wa Rais wa Makamu wa Rais, Wazir Mkuu na Mawaziri. Mishahara yao itafikiriwa na itazingatiwa na mwishowe kukatiwa shauri na hii Commission.

Pia kuna mengi juu ya Executive powers za Rais zimeelezwa hapa, nafikiri nitapitia lakini wale ambayo wataka tueleze tutaeleza baadaye. Quoram in the house shall be 30% of all members. Hivi sasa quoram iko chini na kwa hivyo kuna haja ya kubadilisha. Parliament itakuwa na committee kadha wa kadha. Usailishwa kazi zake. Executive kuna authority of the President, mamlaka yake yameelezwa hapo, ni wangapi wako na copies? Very few. Nasikitika kwamba wengi hawana. Sasa Rais ni sehemu ya Executive. Executive ni wale ambayo wanatimizia kazi ya Serikali. Wenye kutimiza kazi ya Serikali ni President, Vice President, na baraza la Mawaziri. Together wanaitwa Executive. The President's functions zake ni kama ifuatavyo:-

- 1) The President shall address the opening of each newly elected Parliament in accordance with article 141. Shall address the special seating of Parliament once a year, may address Parliament at any other time akitaka. May dissolve Parliament only in the circumstances contemplated in Article 142. Ataweza kudisolve Parliament ikiwa Parliament haikuweza kuunda Serikali. Maana Parliament ni lazima imchague Prime Minister, kufuatia huu mswada wa Katiba. Na ikiwa Parliament kisikia hawakumpenda yule Prime Minister watajaribu tena, wasipoweza itabidi sasa kuwe na new elections. President hawezi kudisolve Parliament except in the circumstances ambazo nimeeleza.
- 2) The President shall appoint and may in accordance to this Constitution dismiss the Cabinet. Aweza kuappoint na kudismiss.

Cabinet or baraza la Mawaziri ni Prime Minister (Waziri Mkuu) na Waziri Mkuu atakuwa ni leader of the Political Party that enjoys the majority support in Parliament. Cabinet will consist of two Deputy Prime Ministers nominated by the Prime Minister.

Kisha kutakuwa na more than 15 Ministers. Cabinet will have 15 Ministers only according to this, nominated by the Prime Minister.

Judicial officers pia watachaguliwa na Rais any other public officer who the Constitution requires the President to appoint, subject to the applicable provisions of the Constitution or Legislation. Maanake yake appointment szingine itabidi Parliament

iapprove. Rais atachagua, Parliament ita-approve. Pia with propria consent of the Cabinet, the President may appoint Commissions of enquiry, sign instruments of consent by Kenya to be bound by International agreements. Pia after consultations with the Cabinet and the national defense council the President may declare a State of Emergency, appoint persons to represent the republic as High Commissioners, Ambassadors or Diplomats appointed as representatives with the approval of the National Assembly, and he may dismiss them also. Lakini nimeona hapa ya kwamba kuna haja ya kurudia Parliament for approval over these appointments.

Pia the President will receive foreign diplomatic and consular representatives, to seek the advise and opinion from the Supreme Council, Supreme Court of Kenya, on any matter concerning the interpretation, protection or reinforcement of the Constitution. Maanake President anatakikana kuwa ni mlinzi wa Katiba. Kwa hivyo kukiwa kuna jambo lolote ambalo President ataka lizingatiwe tena katika Katiba aweza kupeleka ombi lake kwenye Supreme Court of Kenya, ili sehemu hiyo ya Katiba itizamwe au itafsiriwe ikiwa si wazi. Pia Rais a-pardon or reprieve offenders. Kama tujuavia anaweza kuwasamehe wale wafungua pia kushauriana na Waziri Mkuu Rais aweza -confer honours in the name of the people and the Republic of Kenya, kutoa zile sharaf, zile orders, elder of the burning spear na kahadhalika, mambo kama hayo. Pia Rais ahakikishe kwamba wajibu wa Kenya kuhusu dola nyingine unatimizwa ifaaavyo na khadhalika.

The President may initiate or propose the Legislation. Aweza kuambia Parliament fikirini juu ya kuunda sheria kuhusu jambo hili. Ningependa sheria, jambo hili lifikiriwe, na Parliament itashugulikia jambo kama hilo. Kutakua na Committee maalum ya Parliament na kuhusiana na wanasheria wengine, mswada wa sheria utafanywa kufuatia pendekezo la Rais na khathalika. Kwa hivyo mtaona kwamba Rais atakuwa na mamlaka yake chini ya Katiba hii mpya.

Pia tuna qualifications za Rais. Rais awe na qualifications gani ile aweze kusimama?

- 1) Awe ni Mkenya
- 2) Awe amefika age ya 35 years, lakini below 70 years.

Kumekuwa na watu ambayo wamestaki kwamba pendekezo hili ni kwa kuwa sisi Tume hatumtaki mtu kama Kibaki asimame kwenye elections za uraisi. Lakini kama nilivyo sema hapo awali kuna sheria nyingine ambazo hazitatimizwa, or they will not become operative immediately this becomes law, kutakuwa na muda fulani. Kwa hivyo tunasema kwamba kwa uchaguzi utakao kuja kanuni hii ya umri haitatumiwa. Utatumiwa for the following elections not the next elections. Kwa hivyo Kibaki na anyone else who is over 70 years at the moment he can stand for the elections. Lakini elections zitakazo fuata baada ya Katiba hii kutiwa mizizi kutakua kila mmoja atakaye simama kwenye kiti cha urais lazima awe under 70 years. Below 35 years he cannot stand. Hata hii pia for the next elections is alright. The issue of age comes after next elections.

- 3) Awe a person of high moral integrity. Mtu anatabia njema ambayo ni moral, religious. Tabia njema, impeccable

character, character ambayo haina doar.

- 4) Hold a degree from a recognized university and a degree kutoka chuo kikuu.
- 5) Nominated by a registered Political Party or nominated as an independent candidate by at least 1000 registered voters who shall include not less than 100 registered votes from each Province. Nafikiria hapo ni wazi. Maana yake si lazima mtu atoke kwenye Party fulani ukitaka kuwa Rais. Yeyote ambayo pia si mwanachama wa Party yoyote aweza kusimama. Bora awe na hizi qualifications ambazo nimezitaja. Nafikiri hapo nitasimama maana kuna maelezo mengi zaidi. Mimi ninataja yale ni muhimu tu, maana hatuna wakati mrefu.

Katika miaka yake ya kuwa Rais, amelindwa kushitakiwa. Ikiwa anaendesha kazi zake subject to clause two of this article, no criminal proceedings maybe instituted or continued in any Court against the President or a person performing the functions (**inaudible**) during the tenure office. No civil proceedings may be instituted in any Court against the President or the person performing the functions of the office of the President in respect of anything done or not done in the exercise of the power under the Constitution during the tenure office. Unless such proceedings are only of a private nature. At least 30 days notice of the proceedings have been served on the President or the person performing the functions of the office. The nature of proceedings, the cause of actions, the name and the address of the claimant and the relief sort as specified in the notice. Yaani lazima kwanza kuwe na ushahidi wa kutosha, otherwise he is protected saa zile yuko kwenye kazi itakuwa ni taabu hawezi kuendesha kazi juu kila siku mtu anatia charges, juu ya Rais kwenye Parliament.

Lakini kuna uwezo wa kumuondoa Rais ikiwa hawezi kufanya mambo fulani. If it is resolved by $\frac{1}{2}$ of all the Members of the National Assembly. Kama nilivyo sema kuna two houses, National Assembly na National Council. National Assembly ni hii ya wabunge tujuayo hivi sasa. If it is resolved by $\frac{1}{2}$ of all the Members of the National Assembly that the question of the physical or mental capacity of the President to his charge the functions of the office ought to be investigated.

So inform the Chief Justice, and the Chief Justice shall within 7 days of the resolution appoint a tribunal consisting of five persons qualified as medical practitioners under the laws of Kenya to investigate the matter. Mumefahamu hapo? Yuko asiofahamu? Yaani kukitokea shtaka lolote kwamba Rais wa inchi yetu hawezi kuendesha kazi yake kwa kuwa ana physical or mental, maradhi ya mwili au maradhi ya akili na hawezi kuendesha kazi yake, basi ikiwa nusu ya waBunge wataandika petition kusema hivyo basi Chief Justice atafanya kamati ndogo kufanya uchunguzi wa jambo hilo. Ikiwa Chief Justice atakataa kufanya hivyo basi $\frac{2}{3}$ of the National Assembly wakipitisha resolution watamwambia speaker of the National Assembly appoint hiyo kamati or tribunal. Kufanya uchunguzi katika hali ya Rais. Na ikiwa tribunal hiyo au kamati hiyo itareport kwamba the President is incapable of discharging the functions of the office, the Chief Justice or the Speaker of the National Assembly shall certify in writing accordingly, and table the certificate together with the report with the tribunal before the National Assembly. The National Assembly may on a motion supported by the voters of $\frac{2}{3}$ of its members ractify the decision of the tribunal.

Ikiwa tribunal imefanya uchunguzi wakasema kwamba Rais hawezi kufanya kazi yake maana mwili wake ana ugonjwa ambayo

haumwezeshi kufanya kazi yake, ikiwa sasa National Assembly kwa 2/3 itaafikiana na report hiyo ya tribunal, basi President ataondoka kwenye kiti chake.

Speaker: (inaudible)

Com. Saalim: Kutumia watu ambayo wanauwezo kufanya uchunguzi. Lazima medical. Hebu ngoja niwasomee mufahamu zaidi. Tribunal shall inquire into the matter maana yake ile kamati ita inquire. Na ile inquiry ya tribunal itahusisha watu ambayo wana imu, sawa?

Speaker: (inaudible)

Com. Prof. Salim: Hapo ataendelea na kazi yake.

Bwana Ali: (inaudible)

Com. Prof. Salim: Hapo pia imetajwa, naeendelea sijafika hapo. Hapa niko upande wa ugonjwa tu. Sasa kujibu swala lako mzee hapo mbele.

Impeachment and removal of the President: inasema kwamba if 2/3's of the Members of the National Assembly approve a motion for the impeachment of the President for violation of the Constitution, kuvunja Katiba. Ikiwa Rais amevunja Katiba, or gross misconduct or kufanya jambo mbaya sana the speaker of the National Assembly shall convene a meeting of the National Council to hear charges against the President. Kwa hivyo ya wezekana, sio lazima awe ni mgonjwa tu. Ikiwa ameteua jambo ambalo limevunja Katiba ya nchi au amefanya jambo la misconduct. Misconduct ni pia kutenda jambo ambalo ni mbaya sana. Sawa?

Nafikiri hapa itanibidi, kwa vile wakati sikujua ya kwamba itakuwa ni muda mrefu, ningependa labda sasa kusita hapa na kuwauliza ikiwa muna maswala yoyote kuhusu Katiba mutakumbuka kwamba saa zile tukizunguka tuliwapa vitabu vidogo vile maswala na maswali na mulikuwa mukitoa maoni yenu juu ya mambo tafauti tafauti na bila shaka sasa mko katika hali ya kutaka kujua mambo ambayo mulizingatia siku zile na mungependa kujua je huu mswada wa Katiba hii umetaja jambo hili au hakutaja. Nafikiri kwa njia hii tutamaliza haraka zaidi.

Bwana Ali: (inaudible)

Com. Prof. Salim: National Council. Basi hiyo itakuwa na swali nitakayo kueleza.

Bwaba Ali: (inaudible)

Com. Prof. Salim: Hapo ni swali. Kwa hivyo tutakwenda kwa njia ya maswala nafikiri. Baadala ya kuwaeleza kila jambo lilioko, sikujua kwamba wakati utakuwa mfupi sana. Kwa hivyo swali lako Bwana Ali nitalijibu hivi. Kutakua kama nilivosema two houses of Parliament. Tumetaja National Assembly na National Council. Kwanza wanachama wa National Council. Tunazungumzia juu ya wanachama wa Bunge right? National Assembly. Hawa watakuwa ni wale 210.

Ali Abdalla: Jina langu ni Ali Abdalla Almawi na vaa kofia mbili nikiwa hapa. Kofia ya kwanza mimi ni chairman wa chama ambacho kinaitwa the Kenya Assembly of Ulema. Hii ni mbali na imam council na vile vile hapa mimi ni founder member of MSET na niko hapa kama member of MSET. Nauliza kwa (inaudible) kwamba tumelezwa zaidi juu ya National Assembly, lakini National Council ambayo ndiyo mpya maanake sasa kutakuwa na nyumba mbili, Parliament mbili, ambayo nyumba mpya hatukuipata kuisikia na maelezo yake itakuwa aje. Uchunguzi wake Bwana ametueleza kuwa tutapata watu 170 watoke kwa wanaume na katika madistricts na 30 watoke kwa wanawake. Lakini bado hatujaifahamu hasa what will be his role, kazi yake kubwa itakuwa nini, na itakuwa na power gani, na madaraka gani? Hapa na pale tumeona kwamba Speaker atarudisha maneno kwa National Council lakini mpaka sasa hatujafahamiana ina madaraka gani, na itakuwa na hiso gani ya kufanya kazi? Hili ndilo swala langu Bwana, asanti sana.

Com. Prof. Salim: Hilo ni swala nzuri Bwana Shekh Ali na kwanza nataka kusahihisha jambo moja. Wale 70 si lazima wawe wanaume, inawezekana kwamba katika wale 70 pia akitaka mwanamke kusimama aweza kusimama. Itakuwa elective posts. Zote hizi ni elective posts. Yeyote atakaye kutaka kusimama kuwa mjumbe katika National Council aweza kusimama lakini zile 30 bila shaka zitakuwa ni za kina mama peke yao. Sawa?

Sasa powers of the National Government, kisha kutakuwa na District Government powers. Let me just get this. I am just checking to make sure that I don't leave anything out. Maana ni swala muhimu hilo. Sheikh Ali I think I am ready now.

Page 14, Members of the National Council. Kama nilivyo eleza membership nishaeleza. Elections of the National Assembly shall be based on the mixed member propotional system in which 210 Members. Hiyo nishaeleza hii ni National Assembly.

Powers of the National Council, sheikh Ali:-

- a) To act as a second body or second house for Parliament. This will be taken both in the National Assembly as well as well as in the National Council for approval.
- b) When it comes to issues such as impeachment of the President, the National Council shall play a very important role. Ukisoma the details sijui kama unayo copy? Of the Presidency, utaona kwamba the National Council plays a fairly important part in that one.
- c) Speaker and Deputy Speaker of the National Council per page 15 kuna maelezo hapo. There shall be a Speaker of

the National Council who shall be elected by the Council in accordance with standing orders from among persons who are Members of the Council, who are qualified to be elected as such Members.

The Deputy Speaker who shall be elected by the Council in accordance in the standing order from among the persons who are Members of the Council.

Sheikh Ali: (inaudible)

Com. Prof. Salim: Naam, okay, the functions are not specified.

Sheikh Ali: Yaa that's is what we were wondering. Sisi twataka kujua kuwa bill ikipita katika National Assembly will it have to get a consent in the National Council?

Com. Prof. Salim: The answer is yes.

Sheikh Ali: That is what we want to know. Tunataka kujua maana yake ili Bill ikizungumzwa katika Parliament hii ya chini, isiokuwa ndiyo mwisho. Twataka kujua kuwa kisha itakwenda kukizungumzwa tena katika National Council. Na vile vile election yake itafanywa vipi?

Com. Prof. Salim: Two things Ali umeuliza hapo. Kwanza ni kuhakikisha kwamba, National Council is part of Parliament so it forms the same functions of Parliament or role of Parliament include the National Council. Na ukitizama page 14, it explains the role of Parliament. You see the word Parliament is not applied to the National Assembly. It is not sinanomous with National Assembly. Parliament is taking together the National Council and the National Assembly. The two of them form Parliament. Sawa? Nikama wingereza kule. Ungereza ina House of Common and the House of Lords. The two together form Parliament. Kwa hivyo you cannot see the role of the National Assembly separate from the National Council. The two of them together form Parliament. Sawa? Sasa ukisoma role of Parliament on page 14 utajua. Therefore the Bills have to pass through both. Labda tukisoma utafahamu zaidi. Sijui niwasomee lakini hatuna wakati. The main thing to remember is a Bill will have to pass through the National Council also for its approval. Sawa? Tafathali Sheikh Amed utapewa majina for the people are asking questions. Let us have, I want people to give their names, what is your name? Sudi, okay, next Sheikh Abdurahman by the way, nyuma kule Munyi Ngao, na Bwana Msambuli, uapande huu naam, James Ono, Mohammed Mwanyumba, yes Bwana Muhanji, yule jamaa next to you, Sheikh Kazim Bay, hayo kwa sasa kisha wengine tutawaomba wainue mikono tupate kujua. Kwanza Bwana Sudi.

Bwana Sudi Hussein: Kwa majina naitwa Bwana Sudi Hussein faki, kutoka Barisheba Kisauni Constituency. Mimi nina maswali matatu.

Swali la kwanza ni masitikiko makubwa kwamba inaonekana Prof. Eva na team yake hamukujitayarisha kisawasawa kwa mujadala huyu wa leo hapa. Kwa sababu sisi wengi tumepotea kulingana na haya mambo yanayoendelea. Hatuna vidodosi vyovyote via kutusaidia sisi kulu kulu na kuzifuatizia majadala haya kikamilifu. Kwa hivyo ningependa kama inawezekana hii siku ya leo sisi tuicauncel tuwape muda kidogo mujitayarishe zaidi, vipatikane vijitabu vya kuweza kuwasaidia watu tupate kufafanua kila kitu. Kwa sababu huu ni muda muhimu sana katika historia ya nchi yetu ya Kenya. Na tukiuwacha upite namna hii kiholela kwetu sisi itakuwa ni pigo moja kubwa zaidi.

Jambo la pili, ningependa kuzugumza kwa niaba ya ndugu zangu waliotoka bridge kwenda kule mbele. Nathani sisi ndiyo majority tuliowengi upande ule wa kule. Hapa leo tukiuliza mtu kutoka Utange au Mwakirunge utapata ni watu wachache sana waliowahi kufika hapa. Kwa hivyo twashangaa ni kwa nini jambo kama hili halikuweza kupewa mbele lifanyike upande wa Mlaleo au upande wa Bamburi kuliko kuletwa upande huu, wakati sisi Wakisauni wa upande wa bridge ndiyo tuliowengi kuliko ndungu zetu walio hapa? **(clapping)**

Jambo la tatu, mimi kama Kijana wa Kenya nilizaliwa baada ya uhuru. Nasikia uchungu mimi wa kunisikitisha ni kwamba katika yale maswaala ya kutaka requirement ya Urais, mimi yote nimetimiza isipokuwa kitu kimoja peke yake, umri. Ikiwa ni degree iko, tena safi sana, ikiwa ni mambo mengine yote yako, kama ni morally upright mimi pia niko, lakini kwa nini muweke age 35 years old. When I am only 33 years old and I am capable of leading this Republic of Kenya without any problem. Kwa hivyo ningependa swali kama hilo pia lifikiwiwe kinaga ubaga. Kwa hayo machache asante.

Com. Prof. Salim: Bwana Abdulrahman Badawi. Au tumjibu Bwana Sudi, tukujibu Hussein. Kwa hakika hiki ni kikao chetu cha kwanza na kwa hivyo maswala ambayo yatatokea kwenye hall ni maswala ambayo hatukutaraji and therefore we have to look through the document very carefully before we answer it. Maana huenda mtu akajibu kwa njia ambayo si ya sawa. The reason is not because we don't know what we are doing is because we need to be careful. Sawa?

Pili, kwa upande wa umri wa Rais, ungependa kwamba uwe ni less than 35 years. Kwa hivyo tunataka tukumbuke kitu kimoja kwamba haya ni mapendekezo. These are not proposals inscribed in stone. Yaweza kubadilika. Kuna watu kama wewe ambaye wangependa wewe ni umri wa? Mdogo zaidi, hata katika kuzunguka kutafuta maoni ya watu tumepata mapendekezo kwamba Rais awe 25 years old. Sasa 35 years tumeweka tu pale ni kama proposal, huenda age 35 ikabadilishwa ikawa ni 25 years. Nahuenda Bwana Sudi uka qualify na ishaallah Mungu atakuwezesha kuqualify pia tupate na Rais kutoka Pwani. Sijui kama maswall mengine nimeyajibu? Kwa hakika utaona kwamba hii. Pia tumefikiria kabla hujataja kwamba Constituency ya Kisauni, kufanyiwa kikao kimoja hapa haitatosha. Na kabla haujauliza swala lako nilikuwa nimeshazungumza na District co-ordinator wetu, na twafikiria kuwafanyia labda kikao cha pili pande za Kisauni. Si Kisauni peke yake hata Changamwe na Mvita, tupate vikao viwili alalal at least kwa kila Constituency. Nafikiri hapo mutafurahia zaidi.

Abdulrahman Ahmed : Jina langu ni Abdulrahman Ahmed Dadari mimi nina kofia nyingi maoja ni Secretary of Council of Imams Malindi, na vile vile ni delegate wa National Convention ya Constitution kutoka Malindi. Swala langu ni hili,

Katika recommendation tulifanya ni kwamba tunataka President asi appoint, a recommend for appointment only. We want the Parliament to appoint. Sijui kwa nini mumerudisha tena appointment kwa President. Kwa vile kuna ile tendency pengine itakuja kuwa pale ndani ya Parliament, maadam President ame appoint na Parliament itaapprove appointment inaweza kuwa ikawa ni technical au mechanical approval. Kwa hivyo kitu cha appointment nataka kiondoke kiwe ni recommendation peke yake. Yeye ana recommend anapeleka list ya watu anaowataka katika Parliament peke yake na Parliament iappoint na kuapprove.

Com. Prof. Salim: Nafikiri Sheikh Abdulrahman pia ningekuomba usome vzuri hii Katiba or Draft Constitution. Utaona kwamba katika kazi yake nyingi Rais anatakikana apate approval of Parliament. Na hata katika kueleza hapo awali nilisema kwamba mambo mengine ambayo Raisi atafanya lazima apate approval of Parliament. Naweza kukupa examples hapa kwenye page, unajua hizi page hatujazoea sisi, that is the trouble. Kama hivi with the prior consent of the Cabinet, ujue saa zingine anashauriana na Cabinet, saa nyingine anashauriana na Parliament juu ya mambo yote haya. Appointment Mathalan ya Ambassadors na khadhalika huwa atashauriana na Parliament, the National Assembly in particular. Kwa hivyo mara ni Parliament mara ni Cabinet. Kwa mambo yanayo husu amani ya nchi, security atafanya mashauriano na Cabinet kabla kukata shauri juu ya jambo lolote. Kwa hivyo ningesisitiza usome maakini ujue katika jambo hili President ataka ashauriane na nani, is it Parliament? Is it the National Assembly, the National Council na khadhalika? Lakini utaona kwamba power zake nyingi anaambiwa afanye kushauriana na hayo. Unajua hatuna wakati kukueleza kila jambo atakalo lifanya yeye, na kueleza kwa urefu, atalifanya na nani. Kama ningendelea kuwaeleza vile nilivyo waeleza hapo hawali tungekuwa na kufahamu zaidi, lakini kwa kuwa hatuna time tukaona afadhali tuache sasa tu tegeme maswala ya watu na tuwajibu, badala ya kusoma one point after the other, ambayo utachukua muda mrefu sana. Lakini bila shaka ukisoma utaona kwamba President mambo mengi muhimu kama kuwachagua watu, kuchagua mawaziri na khadhalika wale lazima wawe approved na Parliament.

Nimekumbushwa na Silvia hapa labda yeyote ambayo ana swala lolote au pendekezo kama nilivyo waeleza tuhakikishe kwamba mapendekezo yenu yanafuata muweze kutuandikia. Tutawapa makaratasi mtaeleza jambo hili mimi nilisoma katika mswada wa Constitution mulisema hivi, mini ningependekeza mbadilishe iwe hivi. Maana tunaendelea kupata mapendekezo yenu. Hatujamaliza hii kazi. Sasa ni kama kuambia sisi tumefanya hivi je, muaona je? Mutasoma na wale ambayo wana magazeti yao Nation na supplement ile pullout ningepomba kwamba waenda wakasome tena, na jambo ambalo halikuwapendeza waje warudi kwetu watueleze watuandikie na tutapokea maoni yao. Pia katika hiyo National Conference pia kutakuwa na pendekezo kubadilisha. Kwa hivyo haya si mapendekezo ya mwisho kabisa. Lakini tuko tayari kupokea mapendekezo ya kubadilisha jambo lolote katika Constitution. Sawa? Sasa kuendelea na maswala tunaye Munyi Ngao, Munyi Ngao yuko?

Munyi Ngao: Mimi naitwa Munyi Ngao kama mulivyo sikia. Swala langu ni kuhusu hasa National Council, kutegemea

maelezo na majadiliano yaliofanyika haikuhidiriwa wazi kuwa kuna haja ya National Council. Maana yake inaonyesha kazi zake na National Assembly hazikuweza kutafautishwa kiasi ambacho tungeweza kuamini kuwa tutanufaika kwa kuwa na second chamber. Kwa hivyo tungeomba professor utuelezee zaidi shughuli za hiyo National Council maanake mpaka sasa hatujaweza kurithika kuwa palikuwa na haja ya chamber ya pili, ambayo kazi zake na zile za National Assembly hazikuweza kutafautishwa. Hilo ni swala langu la kwanza.

La pili, ambalo linahusu Bill of Rights. Tumeambiwa miongoni za zile haki ambazo mwananchi aweza kuzipata ni tumehakikishiwa kuwa tutapata chakula, medicine na vitu kama hivyo. Lakini hata Katiba ya hivi sasa haki hizo zilitajwa na hazikutimizwa na mwananchi hakuweza kufanya chochote. Je katika hii mpya, kuna kifungu chochote ambacho cha eleza haki zile mwananchi hakutimizwa iko njia za kujitetea kuzihakikisha kuwa Serikali imemtimizia haki hizi? Maanake zimo katika Katiba ya sasa na hapana moja ambalo limefanywa na tumekuwa helpless, hatukuweza kujitetea. Swala langu la pili ndilo hilo, asante.

Com. Prof. Salim: Shukran Bwana Munyi Ngao, swala yako kama nilivyo jaribu mimi kukueleza National Council ni kama second house of Parliament. Kwa hivyo kazi yake ni kazi ya Parliament. Ni sehemu ya Parliament, ni nusu ya Parliament. Kuna National Assembly na National Council, together they become Parliament. Kwa hivyo zile kazi za Parliament zitafanywa pamoja. Mswada wa kanuni yeyote kwa mfano, lazima upitishwe na both Houses of Parliament, the National Council na the National Assembly.

Kwa Mfano Rais akitaka kuhukumiwa utaona kwamba National Assembly itaipaa kazi hii National Council kuifanya. Speaker wa National Assembly atampelekea Speaker wa National Council kwamba kuna mashtaka fulani please ask your Council to look into it that is the National Council. Sawa? Kwa hivyo ukitizama katika hii page ya 14, role of Parliament ukisoma role of Parliament nkama kusoma also role of the National Council pia imo hapo. So role of Parliament, hapa nikisoma, represents the cultural diversity of the people. Parliament enacts Legislation and consults on the promulgation of regulations. It means together the National Council and the National Assembly wanapromulgate au wanaunda sheria pamoja. Kwa hivyo kazi ya National Council ni kushiriki katika kuunda sheria. Parliament provides a National Forum for the deliberation on and the rules of issues of concern to the people. Kwa hivyo National Council na National Assembly ni pahala ambapo mazungumzo, majadiliano inafanyika kuhusu mambo inayo husu wananchi. Approving the expenditure of the State and approving funds as required to meet those expenditures. Kutizama mizania, budget, makisio ya matumizi, hiyo ni kazi pia ya National Council na National Assembly together we will look into this. Kwa hivyo kazi yake ni parallel, inasambazana na kazi ya National Assembly. Kwa hivyo ningeleza zaidi kwa urefu lakini time ndiyo nafikiri kuwa hatuna.

Bill of Rights, nafikiri swala lako ulitaka kujua vipi wananchi watahakikishiwa kwamba watapata chakula na khadhalika. Kwa hivyo ukitizama kwenye hii Draft Constitution towards the end kuna schedule maalum, tutasema katika schedule hiyo kwamba Serikali ichukue muda fulani kutimiza jambo hili. Katika mambo hayo Mathalan tunasema ichukue baada ya mwezi sita

jambo hili litimizwe. Baada ya miaka mitatu jambo hili litimizwe. Pia naweza kukueleza kwa urefu, ni mambo gani ambayo yatatimizwa baada ya hii Draft Constitution to become the new Constitution. Kwa hivyo kuna time stay, kwa upande wa Bill of Rights, tunasema ya kwamba kwa muda wa haraka iwezekanavyo wananchi wapewe haki hizo. Nafikirih ata pale nikieleza juu ya Bill of Rights na haki tafauti tafauti mwananchi, nilisema kwamba itakuwa ni wajibu wa Serikali kuhakikisha kwamba itatia kanuni za kutosha zitakikanavyo ili kwamba haki hizi zitimizwe. Hasa haki hizi na nikasema kwamba haki ni number 56, 57, 58, na kadhalika. Hizo 56,57,58, ni hizo haki za chakula, makao, matibabu na kadhalika.

Kwa mfano amenionyesha sixth schedule realization of the rights to Social Security, health, education, housing, food, water and sanitation, haki hizo hazina time limit. Maana hatuwezi kuambia Serikali within six months lazima kila Mkenya awe na housing, kila Mkenya awe na tap water, while there is no time limit? Because there are a lot of economic problems in the country. Kusema kuwa kwenye Constitution labda within six months kila Mkenya lazima apate elimu ya bure, kila Mkenya apate matibabu ya bure itakuwa ni irresponsible kidogo. Maana itakuwa hatufikiri uchumi wa nchi. Kwa hivyo hatukuweka kiwango cha time lakini tumeimiza kwamba Serikali ishugulikie mambo haya na ianze kutimiza as soon as possible. Na mwingine ni Bwana Stanbul nafikiri, karibu.

Stanbuli Abdulahi: (Arabic dialect)

Translator:

Stanbuli Abdulahi: Kwa jina ni Stanbuli Addulahi Nasir na mimi ni mwanaharakati wa dini ya islaam. Kwa ufupi kuna mambo matatu, mane au ambayo hayapungui manne, ambayo ningependa kuulizia baada ya kusoma mswada ulikuwa umechapishwa kwenye gazetti. Na baadhi ya maneno umeyazungumza sasa hivi mzee wangu au ndugu yangu katika dini ya Islaam, Prof. Salim,

Kwanza ningependa kuhusu mkataba ambayo nimeugusia mara nyingi ambayo ulikuwa Serikali ya Kenya na KANU walikubali kuwa wataulinda na kuuthibiti kwenye Katiba. Mkataba huno ulitiliwa sign tarehe 5th October 1963, ambayo mpaka sasa hivi haukutekelezwa na miaka 39 kufikia juzi tarehe tano October. Hii nikusema wamekwenda kinyume na kutotimiza kwa mkataba uno na umeathiri sana maisha ya waislaam kwenye sehemu hino na hili ni jambo muhimu. Katika kuja pia Nairobi nimempa Prof. Yash Pal Ghai na Lumumba ushahidi wowote unotakikana kuthibitisha jambo hilo lakini kwenye mswada wenu sikuliona kama limezungumziwa. Na hivi nalitilia mkazo kwa sababu kwenye mswada mumetaja watu kama Ogiek, Maasai, na Pokot, malalamishi yao yaonekana mumeypa umbele zaidi. Hii ni moja, sijui ndugu yangu utatueleza nini kuhusu hii?

Halafu kuna neno freedom of religion, inafurahisha kuwa mumelitoa kwenye freedom of worship mumelitia kwenye freedom of religion. Lakini swala, je Serikali ambayo ina wengi wasio waislaam, watakuwa waimaanisha vipi hii freedom of religion, tutakuwa na uhuru wa kutekeleza na kutenda kazi dini ya Islaam kama ipasavyo au tutawekewa vipengeo ambavyo ukitaka kutekeleza uislaam, ukiwa utakwenda kinyume na watakavyo wakubwa wa Serikali basi itabidi watutie vumbi na kutuzuia?

Kwa sababu moja kwenye sura ya lafazabu ya 36, tunaeleza wazi kuwa Mungu na mtume wake ikiwa watakatikiwa shauri lao sisi hatuna hiyari nalo. Hii ni ya pili.

Tatu, ni kuhusu, Khadhi's Court: kuna kifungu cha maneno, kwenye Katiba au mswada wa Katiba, kifungu cha 6 kwenye ukurasa kumi na nne, sehemu iliyoandikwa raia wa Kenya ni nani? Hii ningependa utilie maanani kabla sijaingililia kwenye Khadhi. Watu wasio na nchi kwa sababu ya kihistoria na ambayo wamezaliwa Kenya kabla ama baada ya Uhuru ni Wakenya.

Hawa wasiokuwa na nchi ni akina nani? Na upande wa makhadhi kwenye ukurasa wa 25 kuna kifungu cha maneno ambacho cha eleza, watu wasio wananchi kwa sababu ya kihistoria, hii ni ukurasa wa 14 kifungu cha sita, naam.

Na kuna sehemu inahusu makadhi ambayo iko kwenye ukurasa ishirini na tano. Sehemu yenyewe ya sema hivi kifungu cha maneno. Makadhi watakuwa maafisa wa mahakama kikamilifu na hawatahitajika kutekeleza wajibu wa kidini? (**inaudible – interjection**) ukurasa ishirini na tano.

Sasa swala langu la mwisho natumai. Wawakilishi wa Mombasa nafikiri wako hapa? Swala langu ikiwa utaweza kulijibu wewe ni sawa, ikiwa watakuja wenyewe kulijibu ni sawa.

- a) Ni kiwango gani cha elimu na ufahamu wa dini ya Islaam mulipo nacho? Pili historia sehemu hino na watu wake mwaielewa kiasi gani?
- b) Na malengo yenu na msimamo wenu kwenda kutuwakilisha ni nini? Mapaka hapo asanteni sana, (**Arabic dialect**)

Com. Prof. Salim: Elimu gani, kiwango gani cha elimu. Shukrani Bwana Stanbul maswala yako ni mengi kwa hakika, na nitajaribu kama iwezekanavyo kuharakisha jawabu, Kwanza, mkatabu kati ya Zanzibar na Kenya tumepata, mimi mwenyewe nilipokea makala ya hiyo na mimi mwenyewe nilikuambia siku ile tulikutana hapa kwamba mimi mwenyewe nimepitia treaty hiyo, tangu siku zile zangu za kufanya uchunguzi kule ulaya kwa hivyo tunaelewa sana. Lakini unajua mkataba kama huo haina haja kutiwa moja kwa moja kwenye Constitution. Tumefanya ni kutimiza ahadi ilioko katika kadiri tuwezavyo ilioka katika mkataba huo. Mkataba huo ulizungumzba juu ya haki ya kulinda dini ya kiislaam na waislaam wa Pwani, ili kwamba waweze kuendesha maisha yao ya kiislaam na utamaduni wao wa kiislaam bila pingamizi yoyote.

Free hold titles pia, nitakujia, ardhi ukitizama ile section inahusu land katika hii Katiba utaona kwamba ardhi, make ya ardhi mtu alionayo ataendelea kuwanayo. Hakuna atakaye weza kumuingilia na kumpokonya ardhi yake kabisa. There is protection for land in ones hands leagally. Ardhi ambayo itafanyiwa challenge ni ile ambayo mtu ameipata kwa njia isio ya kikanuni. Kwa hivyo ukisoma chapter ya land kuna guarantee of title to land. Nafikiri unazungumzia habari ya security of tenure is there. Kuna kifungu kimoja hapo pengine ambapo tumesema kwamba kuna disputes hapa na pale. Samahani vivungu mingi siwezi kukumbuka ni page gani. Nakuna different documents, page Nation is therefore different.

Lakini tunasema kwamba Serikali kama ile schedule ya kazi ambavyo zitakazo fanywa, Serikali ni lazima itimize kazi ya kufanya uchunguzi wa kutosha katika maeneo ambapo kuna matatizo ya ardhi na kujaribu kusuhilisha matatizo hayo ya ardhi kwa njia inayofaa na kwa njia ya uadilifu. Kwa hivyo nafikiri hakuna conflict hapa. Mtu ambayo ana miliki ardhi na ana title deed yake hii Constitution inamlinda kutokana na hatari yoyote kupokonywa ardhi yake. Serikali inaweza kumpokonya mtu ardhi yake ikiwa kunahaja kutumia kwa njia fulani kwa faida ya nchi. The Government can acquire land only in public interest and it has to convince the courts that it is in the public interest. The person whose land is taken will have to be fairly compensated, that is all there. Between them all the clauses referring to land I think take care of the sort of situations you have in mind.

Speaker: (inaudible)

Com. Prof. Salim: There will be a land Commission bali na land's office. There will be no land office or Commissioner for land's but a land Commission to deal with issues of land.

Istanbul Abdilahi: Hii kwenye mkataba no. 4, hii nafikiri **(inaudible)** kabisa kwa kuona umuhimu wa ufundishaji wa Kiarabu kwa uthabiti wa dini ya kiislaam. Watoto wa kiislaam watakuwa kiasi inavyo wezekana kufanyika, kufunzwa Kiarabu, shule za msingi za kiislaam zilizo Pwani ya (**inaudible**) wala hata sasa hivi tunaushahidi mkubwa wakuthibitisha ya kwamba Serikali wasimamia watu ambayo wanasomea upadri au ukasisi na wanawachukua kwenye (**inaudible**) lakini waislaam hawajapata nafasi hii.

Com. Prof. Salim: Wajua ukitizama vifungo via Bill of Rights na Citizenship na kadhalika utaona kwamba kusiwe na ubaguzi wowote kwa upande wa dini, au kwa msingi wa kidini na kadhalika. Kwa hivyo if there is anything that can be done to challenge anything it should be done. Wale ambayo wahisi kwamba they are grieved kwamba kunafanywa uchaguzi au kuna mapendeleo, pia mapendeleo ya kidini hayaruhusiwi. Kwa hivyo if there is anything you feel in the Constitution kuhusu elimu, kwa mfano kila dini inahaki pia kuendesha dini yake kupropagate the religion, to establish schools for it's religion na kadhalika. Where a Government is involved it is supposed to treat all religions equally. Kwa hivyo kifungu kama hicho mtaweza kukitumia kuchallenge anything baadaye. Kwa hivyo ningewahimiza musome kwa makini kila kifungu na mtaona kwamba kuna sehemu nyingine ambazo haziko katika, kuna crossing issues. Sana kwa upande wa dini na kwa upande wa Bill of Rights. Bill of Rights ukilinganisha na ile section kuhusu khadhi's courts, utaona kuna mambo ambayo yana saidiana pale. This are cross issues abazo ziko katika sehemu zaidi ya moja na ambazo lakini they are related to one another. Ulisema kuhusu muslim rights kidogo.

Speaker: (inaudible)

Com. Pro. Saalim: Kwa hakika again I think if you look there is no, wale ni watu kwa hakika hawakuwa na rights zozote ambazo zaonekana. Muslims halamdulilai sisi hatukuwa na njia yoyote ambapo we were ignored. We ran our affairs and under

this new Constitution we have established even stronger systems for the muslims with courts. For example Khadhi's courts we are saying there should be no less than 30 khadhi's courts. Na kuna ile system ya appeals from the Khadhi's Court to the District Court, to the Provincial Courts to the Court of Appeal ya kislama peke yake.

Istanbuli Abdulahi: Hiyo point ya Ogiek, I think (**inaudible**) kwa sababu mimi personally nimekwenda nikitaka kitambulisho, lakini siku hizi (**inaudible**). Lakini mimi personally napinga kwa sababu wewe pia wajua kwamba Waswahili wako na kabila yao. Kwa nini (**inaudible**) sisi ni Semite ambayo twakutana na Mwarabu, kulala na Mbantua ambao (**inaudible**) hata professor wa history wajua kuwa Bantu wengi wamekuja after sisi kuwa tumeshapatikana. Tumekubali kuwa Bantu's na Waarabu wametuzaa lakini si jana.

Com. Prof. Salim: Wajua hatutaki maanake kikao hiki kiwe ni cha history na khadhalika. Jambo ambalo ningependa kusema ni kwamba mambo haya ya ubaguzi ulioko sasa, I/D tumeshazungumza kwamba kutoka sasa ikiwa Katiba hii mswada wa Katiba hii utakubaliwa hakutakuwa na haja ya list ya Mkenya ni nani na nani. Kama nilivyo sema kutakuwa na no reference to religion, or no reference to race. Hii itakuwa ni internal matter mtu kujijua mimi ni nani. Lakini the main identity at the National level will be this one is a Kenyan. A Kenyan is one who is born here, regardless of his religion, regardless of the mixture of his ethnic origin na khadhalika. This is by way of avoiding tribal labels and tribal connotations na khadhalika. Lakini mtu within his own kama nilivyo sema kwa wale zile principles na Preamble na khadhalika, zinasisitiza umoja wa inchi yetu ya Kenya regardless of the diversity. Ile diversity iwe kama urithi na hiyo ni kama ni mali ya kiasili yetu. Kila mtu awe proud na culture yake aipromote, lakini ajijue kwamba mimi ni Mkenya. Lakini ni Mkenya mwislaam, au mimi ni Mkenya Muhindi, au mimi ni Mkenya Mzungu, mimi ni Mkenya Tharaka type na khadhalika. Hiyo it is internal to himself.

Of course yaa atajijua kuwa Mkenya Mswahili, lakini kusiwe na ile tabia ya kwamba mimi ni bora kuliko so and so. We want to eliminate that sense of tribal superiority or ethnic superiority na khadhalika. That is the spirit behind the new Constitution. That is not to deny that there exist all sorts of communities with their own internal culture. Everything is done in the new Constitution to promote that culture is the work of the Government. To promote it and encourage it. Pia lugha, it is not only Kiswahili and English we are trying to promote. These two are the official languages. Kiswahili is the National language, but we say everything should be done to promote the other ethnic languages or the other mother tongues. There is promotion of culture and cultural identity but in such a way that you also promote unity of the Nation. So that there is unity within diversity or diversity within unity. That is one of the main goals or principles or values ambazo tunajaribu kuzieneza.

Khadhis Courts tumesema kwamba nafikiri ulisomea ile tafsiri sio ya taifa. Hapo ni makosa maanake haiwezekani kuwa Khadhi atashugulikia mambo ya mirathi, mambo ya abdi na harusi na talaka na kila kitu na asiwe hakuhusika na mambo ya kidini. Hayo yenywe ni mambo ya kidini. Na pia sisi wenyewe wale ambayo ni Waislaam katika Commission tumeeleza mambo kama hayo. That I think is mistranslation.

Juzi kulikuwa na small workshop ya journalists pia tumedokezewa kwamba tafsiri fulani katika hii report yetu haikuwa ni nzuri

sana. Kwa hivyo utatusamehe labda hapo kuna su tarjama na ambayo therefore convey the wrong impression. You cannot have a Khadhi without the Khadhi being involved in religious affairs. It is a contradiction in terms as the English might say.

Umesema kwamba delegates hapa Mombasa hawana ujuzi

Istanbul Abdilahi: Wao kama kutueleza wana ujuzi kiasi gani ya kusema mambo ya **(inaudible)**

Com. Prof. Salim: Wajua tuliofanya sisi niku-give guidelines to how they should be elected. They should be elected at the District Municipal Council. Hili ni jambo ambalo mimi sitaki kuwa objective or subjective, but it was up to the people of Mombasa to concern themselves in this issue. Nafikiri nimezungumza na Sheikh Ali pake jinsi ambavyo hawa walichaguliwa na nilijua kwamba walifanyiwa uchunguzi, wakaonekana kwamba wa qualify and they got the right votes. It was an elective thing, they were elected the three delegates. How they were elected by whom the details are there.

Istanbul Abdilahi: Did they campaign?

Com. Prof. Salim: Yes, those and others who feel they are more qualified or although those among us who say so and so is better qualified and so and so should have campaigned for the one he thinks is more qualified, atainingia yule, sio? Ni mambo ya kufanya campaigning ukampigania mtu aingie. Lakini ukiwa utakaa kando jamaa mwingine akajiendesha mbele na yule akachaguliwa because that person won there is nothing we can do about it. It was a free and open election.

Istanbul Abdulahi: If I can prove there was money used?

Com. Prof. Salim: If you can prove that there was money used we can disqualify somebody. That we can assure you. Ukiwa kuna ushahidi wowote kwamba hawa wameingia kwa njia isio faa tuko tayari ku-take action and there have been such complaints about some of the delegates.

Istanbul Abdulahi: **(inaudible)**

Com. Prof. Salim: Wajua sisi twafuata njia ambayo kwa hakika haisaidie wenzetu. Samahani Bwana Istanbuli (**inaudible**) Nafikiri nimemalizana na Bwana Istanbuli. Bwana James samahani nimekuweka kitambo.

James Ole Pono: Nashukuru Prof. Salim akiwa Commissioner wetu na nyinyi wote ambayo mumehudhuria. Jina langu James ole Pono Oleminis kutoka Kisauni Mshomoroni. Swali langu ni kuhusu ardhi. Nimepitia katika Draft zote zile zilitokea kwa Taifa kwa Daily Nation na kwa kitabu tumepewa kuhusu ardhi, nasitikika maana Commissioners wetu wameogopa kutaja kuhusu ardhi. Wakasukuma hiyo mawasiliano yote ya ardhi iwe itashuhulishwa na Land Commision baada ya miaka miwili

baada ya mbunge mpya kuteuliwa. Sisi wenyeji wa Kisauni hatuwezi kugoja. Tulitoa maoni yetu na tukapendekeza kila Mkenya ahakikishiwe ndani ya Consitution mpya atakuwa anamiliki ardhi ikiwa ni ndogo sana foot 50 kwa foot 100 (yaani plot moja) na apewe title deed iwe kwake kabisa. Wale wanaishi ndani ya miji kama Mombasa au kwingineko. Na ikiwa ni shamba la kufuga ngombe, au kuku au kupanda mimea ya chini kabisa iwe ekari tano minimum na apewe (**inaudible**) zote title deed na kila kitu. Tulipendekeza hivyo. Na tulitaka Katiba mpya ikitokea itaje exactly hivyo ndiyo iwe kinga ama iwe assurance kwa roho ya kila Mkenya ambae ako zaidi ya miaka ishirini na moja ya kuwa yeye ni Mkenya halisi na ako salaama.

Hapa Pwani tuko na shida kubwa kuhusu ardhi. Baluchi hall imejengwa juu ya ardhi. Kama hakungekuwa na ardhi hatungekuwa ndani ya hii mji. Kwa hivyo kila nyumba lazima kuwe na ardhi chini yake. Lakini hapa kutoka South Coast mpaka Lamu kuna kitu kinaitwa house without land. Sijui hiyo nyumba inakaa juu ya nini? Hata karatasi imekataa kukaa hewani imeanguka ardhini. Kila nyumba na ardhi yake na tulitaka Constitution mpya itaje hivyo. Sasa nitarudishia Bwana Salim prof. Wetu atujibu kwa nini wanasema mambo yote ya ardhi ipelekwe kwa Land Commission na sisi tunataka majibu sasa. Asante sana.

A BREAK AS THE PRAYERS ARE BEING SAID.

Com. Prof. Salim: Shukran kwa swala lako Bwana John ni swala muhimu na tulijua kwamba hapa Pwani maswala kama haya kuhusu ardhi yatatokea, lakini kuna mambo fulani tumeyafanya ingawa hatukusema kila Mkenya apate ardhi. Tumesema kwamba tatizo la squatterdom na landlessness kutakua na ardhi lazima Serikali ifikirie jambo kama hilo.

Pia tukumbuke jambo moja kwamba hivi sasa sisi tukakatika kazi hii ya Tume hii kuna Tume nyingine ambayo ilianza kazi kabla ya Tume yetu, Njonjo Commission. Na tulijaribu kuzungumza na wanachama wa Njonjo Commission kuhusu jambo hili kuona jinsi ambavyo kazi yao iliendelea na ni mapendekezo gani ambayo huenda wakayatoa juu ya tatizo hili kubwa la ardhi. Lakini kwa kuwa kazi yao ni very confidential wao ni Presidential Commission, sisi ni Parliamentary Commission. Tume yetu ni wazi, kazi yetu ni wazi mpaka minutes za mikutano yetu mtu anaweza kusoma akitaka. Lakini ile Presidential Commission on Land ni very confidential and they can only report directly to the President on that. Kwa hivyo ilibidi sisi tuwe very careful in terms of our recommendations isije ikawa recommendations zetu zitagongana na recommendations za Land Commission ya Njonjo baadaye. Kwa hivyo the only thing we have done is to suggest that problems of land must be tackled.

Ikiwa una Draft yako page 28 tunasema under tenure of land. Tunasema under tenure of land within two years of the coming into force of this Constitution Parliament shall enact a law for:-

- 1) The revision, consolidation and rationalization of the existing land laws. Jambo moja tuliambia na Land Commission ya Njonjo ni kwamba hivi sasa hapa Kenya kanuni zinazo husu land, there are so many, so confusing, so confused, so

complex. Kuna haja ya kutatua mambo haya ili sheria hizi za land ziwe wazi zaidi na nyepesi zaidi kufahamu. Pia the Government we are saying in this Constitution should enact law for the revision of all (**inaudible**) land, land use laws in accordance to the National Land policy, and the manner in which any land maybe converted from one category to another. The protection of dependants of deceased person holding interest in any land, including the interest of spouses in actual occupation of land. Hili ni tatizo by the way. Hapa labda haliko sana lakini kule bara utaona kwamba kukiwa na watoto mmoja wa kike mmoja wa kiume, mtu mtoto wake wa kike hapati haki ya kurithi na khadhalika.

Pia tumesema there should be work for the establishment of an efficient and cost effective Land Administrative system, including the management and extra judicial settlement of land disputes. Kuna land disputes hapa, hatuwezi kusema kwamba hawa ni sawa wale wamekosea, therefore this is our verdict because there is a Commission that goes.... But we say that land disputes should be looked into. Pia tumesema under section 7 of the same clause 2,3,5 there is resettlement of landless people including spontaneous settlement of communities in urban areas. Tumetaja juu ya urban areas. That should be tackled.

The establishment of a land firm to enable Kenyans gain access to land on an equitable basis. So we have guidelines here for solving all the land problems, but we could not say each and every Kenyan must have 5 acres of land. That much I know many people wanted, but you see we can only go so far and no further, in terms of our recommendations because of the implications of some of these more detailed things. Lakini tume appreciate sana problem of land na tumesema kwamba we should establish mechanisms for the review of all grants, all dispositions of Government, or other public land to establish their propriety and legality, and to determine whether or not such grants or disposition should be revoked. Again as you know the big problem is kwamba many people claim the same piece of land. This is on individual basis as well as a group basis. So we are ordering the mechanisms to be put in place in order to settle these things.

Then we also establish mechanisms for the review on assessment of all claims to unjust expropriation of land in the Coast, North Eastern and Rift Valley Provinces or elsewhere whether arising from historical or other causes in order to establish their validity and how best they can be justly, peacefully and equitably resolved. So you see we have looked at the land but we have not said this land belongs to so and so. We know their disputes but we cannot as a Commission solve those disputes. There is a Land Commission trying to do that but we are saying that mechanisms should be put in place. Kuwekwe all sorts of ways whereby these problems are resolved. So we are aware of the problems.

Jame ole Pono: If I can request that Salim katika Katiba mpya itajue kabisa ya kuwa kila Mkenya ako na haki ya ardhi. Hilo ni jukumu la Serikali kuhakikisha huyo Mkenya amepata ardhi atakama ni ndogo namna gani iwe ni kwake.

Com. Prof. Salim: Wajua tukisema kwamba kila mtu ambayo hana ardhi hivi sasa he is suffering from landlessness.

Tunasema kwamba Serikali ijaribu kadiri iwezayo kwamba hawa wapatiwe ardhi. Tumesema hivyo.

James ole Pono: Imeandikwa?

Com. Prof. Salim: Oh yes hapo nimekusomea. The resettlement of landless people including simultaneous settlement communities in urban areas. That we have said we have gone further. We have said even farms should be made available. The establishment of a land farm to enable Kenyans gain access to land on equitable basis. Kwa hivyo tatizo hili tumelifahamu lakini hatuwezi kusema kila mtu apatiwe acre 5. Hatujui how many acres across Kenya are available for all of us and whether each one of us can get five acres. Wengine labda hawataki land, wangenda wapewe housing tu. Hana haja hajui kulima. Lakini tunasema mambo haya yasahilishwe. Mtu apatiwe fund anajua kwamba kuna amri fulani apatiwe. Wale ambayo ni landless squatters na kila kitu tunasema hawa pia wafikiriwe. Na pale wewe pia tuna schedule kwamba nafikiri mambo ya land na land disputes should be resolved within 3 years. Hapo tumetia time limit. Mambo yale mengine Bill of Rights, the right to education, the right to health care, the right to clean water, na mambo hayo mengine tumesema haina time limit yategemea ule uchumi wa nchi na jinsi ambavyo Serikali inaweza kusaidia kutimiza mambo hayo. The more we have in terms of money the more, but we are saying the Government must work for the implementation of this Bill of Rights. Basic rights tumesema ni lazima zifanyiwe kazi. Na pia kuwe President mwenyewe a-report juu ya jinsi ambavyo the Bill of Rights ilioko kwenye the Bill of Rights. A-riporti kila mwaka mara moja kwa Parliament. Ni mambo gani ambayo imefanywa katika mwaka huu kuendesha the realization the rights we discussed as basic rights, hayo tumesema. Sijui kama aliyefuata mwingine Mohamed Mwanyumba?

Mohamed Mwanyumba: Mimi naitwa Mohammed Mwanyumba kutoka Matuga. Nitarudia hapa hapa kwenye mambo ya ploti. Kuna wale watu ambayo wanataka kupatiwa ploti leo. Lakini kuna watu ambayo walichumua ploti zao kwa mfano mtu kama Njonjo, hiyo Commission ya Njonjo havezi kuleta uzuri kwa wananchi kwa sababu yeye mwenyewe yuko na ploti huko South Coast, ni beach plot ambayo hakuuziwa na mtu kutoka South Coast, Matiba vile vile, na Uhuru Kenyatta, hizo ploti hizo sisi wananchi tutazipata vipi. Maanake Katiba hii ambayo iko hapa, hatuwezi tukapata hizo ploti zetu ata hii ambayo unaona inaendelea pia haiwezi kutupa hizo ploti. Tutapata vipi mali zetu? Maswali yangu ni hayo tu.

Com. Prof. Salim: Kama ndiyo nilisema hapo awali mambo ya ardhi ni mambo ambayo ni ya matatizo makubwa, lakini tumesema kwamba kutafanywa uchunguzi ikiwa mtu amepata ardhi kwa njia ilio halali huyu hataguswa. Amepata ardhi kwa njia ya halali kwa hivyo haki yake haiwezi kuguswa. Lakini kukiwa kufanywa uchunguzi ikawa mtu amepata ardhi kwa njia isio halali na simtaji mtu maalum hapa, kokote nchini. Mtu huyo ambayo amepata ardhi hiyo au ploti hiyo kwa njia isio halali itachukuliwa. Pia ukitizama kwenye Constitution, details sina, ile clause sikuitaja hapa lakini imo hapo. Nafikiri wenzangu hapa wakinfanyia uchunguzi kidogo wataiona na nitawasomea, lakini kuna clause hapo inasema kutafanyiwa uchunguzi, basic principle ni kwamba mtu ambaye ana ardhi haki yake haitaguswa. That is the basic clause lakini kukifanywa uchunguzi kukapatikana kwamba ardhi fulani ilichukuliwa kwa njia ambayo si halali basi ardhi hiyo atapokonywa mtu.

Speaker: Ardhi ya halali ni gani?

Com. Prof. Salim: Yani umepata kwa njia ya sheria. Umepewa umejiadikisha, umepewa na una title deed. Na mwingine ni Mr Muhanji, na baadaye Sheikh Kassim.

Joseph Onyango: Excuse me chairman bahati mbaya Bwana Muhanji is not me. Lakini we are coming from the same department we are representing workers as Trade Unions.

Com. Prof. Salim: You want to speak on his behalf?

Joseph Onyango: Correct on his behalf. Salaam Alekum, mimi kwa majina naitwa Joseph Onyango. Mimi ni mwakilishi wa wafanyaji kazi katika wizara ya transport. Nina maswali matatu Mr Chairman.

Ulipokuwa Tononoka, we presented our views and this was particularly based on regulations and registrations of trade unions. Tulisema ya kwamba there is establishment of Industrial Courts na mara mingi Trade Unions are registered under Trade Union Act na Utakuja kukuta onces a Trade Union has been registered somebody is obligated to go to High Court rather than Industrial Court, while all collective bargaining agreements are dealt with by the Industrial Court. Na sisi tukasema there should be a disassociation by the involvement of any other Court rather than the Industrial Court. This is not captured anywhere Mr Chairman.

The other thing tulizungumzia hali kuhusu trade union elections. Tulisema Mr Chairman Trade Union elections registrar of Trade Union atavunja offisi ya ma officials baada ya miaka tano. Lakini baadaye anaappoint labour officers as the supervisory agents. We said this is prone to corruption. Na imeleta matatizo makubwa natuliomba kwamba Trade Union Elections iwe na Commission maalum ambayo inasimamia mambo ya uchaguzi ya viama via wafanyi kazi. It is not captured anywhere, nime jaribu kuangalis sikuona.

Mr Chairman tulizugumza kuhusu participation ya vyama vya wafanyi kazi katika siasa ya nchi hii. Tulipendekeza kwamba ikiwezekana Presidential nomination rule in the Constitution be amended ili Trade Union representatives at least five, two of whom iwe wanawake na watatu wawe waume. So that at least the voice of wokers isikizwe katika Bunge la Kenya. We gave that proposal and it is not captured anywhere.

At the same time tulisema interfearence by the Executive isiweko kati ya Trade Unions na wanasiasa, because we cannot separate Trade Union and Politics. Na unasikia President anasema watu wa viama vya wafanyi kazi wasiingilie siasa and we are part and parcel.

Na mwisho Mr Chairman, you heard the Secretary General of Cotu saying that Trade Unions were left out. Me I say we were not left out because we gave our views to that extent na hizo views hazikuwekwa katika orotha ya recommendations which have been given.

Finally Mr Chairman, sisi tulisema mambo ya receivership of the companies. Ikiwa kuna negotiations which we do collectively na tunachukua makubaliano tunapeleka kwa Industrial Court na company inakuja inafilisika. Kampuni ikifilisika it is not being dealt with within the Trade Dispute Acts which wafanyi kazi wapewe nafasi ya kutetewa kwa Industrial Court. Inapelekwa katika Company's Act cap 486, na sisi tulipendekeza all the disputes related to workers including receivership iwe transferred to Trade Act so tha we can have an opportunity to negotiate. Watu wengi wa Kenya wamepoteza miaka thalathini, arubaine, na tajiri wanakuja wanasema wameafilisika na wafanyi kazi wanaenda bila kitu. This is not reflected Mr Chairman. Kwa hivyo sisi tungetaka kupata jawabu kuhusi hizi.

Com. Prof. Salim: Kwa hakika mambo kama hayo uliyo ya taja na ungependekeza iwemo. Ni mambo huwa haiandikwi kwenye Katiba hasa. Huandikwa kwenye Acts ambayo hufuatana na Katiba. Kama hii Trade Dispute Act, that is where the details can come. You see the Katiba is the umbrella law of the country it cannot provide for each and everything concerning for examples Trade Unions. The only thing we have done sijui kama muliona this is Labour Elections. Mumeona section hiyo? Ya labour elections, mumeona? Or you are not happy with that? You see details as to what happens in case of disputes, and so on, we cannot have them in the Katiba. But they can come on other supplementary Acts.

Kama mambo ya elimu na haki ya elimu na khadhalika. There will also be other laws related to education ambayo yatafanyika. Hapa you give the broad guidelines and the basic principles only. The details you leave to various ministries to propose Bills to Parliament concerning that particular aspect. Lakini we have taken note of what the Secretary General has said. I believe he has sent us something and as you said these are not by way final proposals. Maybe they will be amended there will be the National Conference, and at the National Conference hopefully they will be represented by the way of the National Conference. COTU will be represented at the National Conference, and therefore that will probably be the forum at which these matters will be detailed, amendments made or additions made. I think rather than that I cannot tell you, but our ears are open, we have received your views. I am sure they will be expressed at the National Conference and then we see what happens at that level.

Joseph Onyango: Kuna side moja wewe nigependelea utuelezee kama participation umesema (
inaudible)

Com. Prof. Hassan: You wanted the nominations from

Joseph Onyango: (**inaudible**)

Kama hii shida ya waalimu. These people have no **(inaudible)**

Joseph Onyango: You want in terms of the Presidential nominations you want Trade Union to be what?

Joseph Onyango: **(inaudible)**

Com. Prof. Salim: That is out now, it is not there. There is no more nominated MPs anymore. There will be 210
nimewaeleza and then another 90.

Joseph Onyango: Those 90 are now the remaining (**inaudible**)

Com. Prof. Salim: You see if you look at that we say we identify the groups and we say other interested groups. That can
include them, we leave it open deliberately in some ways here and there, so that coming from the floor of the National
Conference nothing can be argued and maybe suggested for example that Trade Union should be there. Sawa? Nafikiri wa
mwisho kabisa Sheikh Kassim, ahasema? Ameondoka, sala.

Kwa hakika ndor imeingia nafikiri hawatuliowajibu na kuzungumza juu ya, ningependa tuweze kuendelea baada ya adhthuri, in
the afternoon. Those of you who are interested to continue in this exercise, otherwise as I said we will do our best kwamba
kwa upande wa Kisauni tuwe na kikao cha pili. Ili kwamba tupate maoni zaidi na kueleza zaidi kwa wingi. Samahani ikiwa
hapa na pale tumesita, kusita kwangu nikitaka kuhakikisha kwamba tumepata zile clauses ambazo zinahusika na kuwasomea
mfahamu bora zaidi. Sawa?

Speaker: **(inaudible)**

Com. Prof. Salim: Naam, tunafikiria Bombolulu au Khadija is it? Khadija primary na huenda tukafanya this weekend or the
following weekend. Sawa? Nawashukuru sana na inshaallah tutaendelea kuelezana na tuko tayari kupokea mapendekezo yenu
zaidi juu ya jambo lolote. Na wahimiza tu muendeleo kusoma na kufahamu zaidi mswada wetu. This is my own I am using it I
am sorry.

Kuna tangazo hapa. MSET are going to go round using the mosque to all over location Mombasa to explain the Constitution.
Kwa hivyo mukisikia matangazo ya MSET ya kueleza Constitution mutafika muelezwe zaidi. Sawa? Shukran.

The meeting closed at 1.00 Pm.

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