

CONSTITUTION OF KENYA REVIEW COMMISSION

(CKRC)

Verbatim Report Of

KAJIADO CENTRAL CONSTITUENCY,

HELD AT MASAI TECHNICAL INSTITUTE

ON

9TH OCTOBER 2002

**DISSEMINATION OF REPORT & DRAFT BILL, KAJIADO CENTRAL CONSTITUENCY HELD AT
MAASAI TRAINING INSTITUTE ON 9/10/02**

Present:

Com. Keriako Tobiko

Secretariat In Attendance

Mr. George Naholi	- Programme Officer
Mr. Maurice Raria	- Asst. Programme Officer
Mr. Ben Molel	- District Coordinator
Mr. Daniel Osoi	- Member of 3 C's

The meeting started at 8.20 a.m. with Com. Keriako Tobiko as the Chair.

Mr. Daniel Osoi: Bila kupoteza wakati mwingi, namkaribisha Bw. Commissioner aendelee. Asante sana.

Com. Tobiko: Asante sana Br. Osoi. Hamjamboni nyote?

Audience: Hatujambo.

Com. Tobiko: Kama vile Osoi amesema, kazi yetu leo ni kuja kupitia na nyinyi hii Draft ambayo ninaona kila mtu ako na copy yake kuhakisha kwamba zile maoni ambazo mlitoa hapa na pengine zimejumulishwa. Na kama uko na comments kuhusu kipengele chochote kile, ya hio Draft, unaweza toa kwa mwenzako hapa manaake itakuwa recorded verbatim ama unaweza kutoa kwa maandishi. Wakati tulikua tunachukua maoni yenu, tuliwambia kwamba, mtakua na muda wa siku sitini, kusoma hio Draft na baada ya siku hizo sitini, tutakuja kuchukua maoni yenu tena. Wakati tulikuwa tunaambia nyinyi namna hivyo, Sheria ilikua namna hivyo. Lakini baada ya sisi kutoka, Bunge ilibadilisha sheria. Kwa hivyo sasa katika sheria ambao inaunda hii Tume yetu, hamna hizo siku sitini. Ndio mnaona katika magazeti, mnaitwa hapa bila notice, kuja mara moja na kutoa comments zenu.

Kutoka hapa tukichukua, ama maoni zenu zikichukuliwa, Commission itaenda kurekebisha manake hii ni first Draft. Commission itaenda iketi na itakuwa na mkutano tarehe ishirini na nne, kwenda kuangalia maoni zile, comments zenu on this Draft.

National Constitutional Conference ambayo kila District itakua imeakilishwa na waakilishi watatu itakuwa kuanzia tarehe ishirini na nane. Kwa hivyo, wale ambao wako na maoni ama comments, lazima waharakishe hizo comments, waandike through the District Coordinator na ifike Commission kabla ya tarehe ishirini na mbili. Ndio Commission ikienda kukutana tarehe ishirini na nne, hizo comments zenu zitakuwa zimesha pokewa.

Hata tukikaa wiki nzima kuangalia Clause by Clause ya karatazi hii, hatutamaliza. Kwa hivyo kile tunaweza tu kufanya, ni kupitia juu, juu na kuangalia zile sections ambazo, nyinyi watu wa Kajiado mnaonelea kama inawahusu nyinyi hasua. Na kwa maoni yangu nafikiri pahali ya kuanzisha ni sehemu ambayo inahusiana na ardhi, land. Umesikia mambo mingi na umesoma kwa ma gazeti mambo mengi ya hii Constitution, hii mpya, watu wengine wanasema ni mbaya, wengine wanasema ni nzuri. Kile mimi ningeomba nyinyi, ni kwamba muiangalie kwa maakini. Usiseme ni mbaya bila kusoma. Ama usiseme ni nzuri bila kusoma. Angalia objectively. Na uone pahali ambayo labda imekupendeza na uone pahali ambao haijakupendeza na utueleze.

So, tungeanza na kuaangalia maneno ya kuhusu mashamba, ardhi. Na hio iko kwa Chapter 11 kuanzia kipengele ya mia mbili, thelathini na mbili, (Section 232). Inasema kwamba ardhi ni kitu cha muhimu sana, yaani ni mali ya maana kushinda mali zingine, sio kama gari ama nguo, ama mbuzi ama ng'ombe. Ni mali ambayo ni ya muhimu sana. It is a primary resource. Na kwa hivyo, lazima itunzwe ama itumiwe kwa njia ambayo inayofaa. Kwa njia ambayo haiwezi kudhuru ardhi hio ama kuharibu uchumi wa inchi. So, hata wewe kama ni mwenye shamba na uko na Title Deed lakini uko na responsibility kuitumia hiyo

shamba kwa njia mbayo inayofaa. Hiyo ni Sub-Section One.

Sub-Section Two, inasema Serikali yatikiwa kuwa na National Land Policy. Ni page 28 kwa hii pull-out. (It is page 28 on the pull-out). Serikali lazima iwe na land policy. Shikd ilioko sasa na tumeambiwa ni kwamba, Serikali haijawahi kuwa na mwelekeo kuhusu umilikaji wa mashamba. Na Katiba sasa inasema, mwelekeo utakuwa ni hii.

Ya kwanza, equitable access to land and associated resources, yaani, hakikisho kwamba kila mwana Kenya aweza kupata nafasi ya kupata shamba, kutumia shamba. Access to land, kila mwana Kenya awe na equitable access to land. Shida iliko sasa ni kwamba majority of the Kenyans hawana mashamba. They are squatters. Others live in slums and so and so forth. So, mwelekeo wa kwanza ni kwamba equitable access to land.

Mwelekeo wa pili ni security of land rights. Yaani kwamba, kama uko na Title Deed ama wa shamba lako, lazima iheshimiwe na wengine. Lazima iheshimie na wengine. Na lazima pia iheshimiwe, ukiwa na Title Deed, unaweza kupeleka kwa Bank na Bank iyaona hio kama ni document ya muhimu. Kama hauna Security ya Land rights, then hakuna maana ya kuwa na shamba ama na ardhi. Kwa hivyo, that is the second principle. Security of Land Rights.

Ingine, ni sustainable and productive management. Ninasema hivyo, ardhi utumiwe vizuri ndio iendeleze uchumi. Sustainable and productive management. Usi haribu shamba lako manake wewe ni mwenyewe. Unakata miti ovio, ovio na kadhalika.

Transparent and cost effective administration. Nakata kwamba ma ofisi za Serikali ambazo zinaangalia mambo za ardhi, ziwe zinawesa kuhudumia wenye mashamba kwa njia rahisi na njia ya upesi.

Namba (f) again sound conservation, protection and ecology hence social acceptable management na kadhalika.

Kipengele cha mia mbili thelathini na tatu, yaleta kitu tofauti na ile iko kwa Katiba ya sasa. Kwa Katiba ya sasa, ardhi yote ya Kenya, hata ile ambayo wewe mwenyewe uko na title deed, ki sheria inasemekana hiyo shamba, the ultimate owner, yaani mwenyeji wa mwisho sana, wa juu kabisa, ni Serikali. Ingawaje uko na title deed, lakini the ultimate owner wa hio ardhi ni Serikali. Hio ndio sheria ambayo tuko nayo kwa Katiba ya sasa. Katiba hii mpya, inabadilisha hiyo. Inasema, hapana, hakuna haja ya Serikali iendelee kuwa mwenye ardhi. Ardhi iwe ni ya wenyeji. The land or all land in Kenya should belong to the people of Kenya. Either as individuals, kama binafsi ama kama jamii and communities. So, hio ni kitu tofauti ambao imeletwa, ni kitu mpya.

Kitu ingine ya namba two, ni kwamba, saa hii kila mtu anaweza kununua shamba ama ardhi Kenya hata kama wewe sio Mkenya. Na namba two Sub-Section two inasema, mtu ambae sio mwana Kenya, sio citizen wa Kenya, hawezi kununua ardhi ama ku own ardhi in Kenya. Na hio ni tofauti na ile sheria tulioko nayo sasa.

Lakini namba tatu inasema, waweza kukodesha. Waweza kukodesha tu hio ardhi kama wewe sio mwenye nchi. Na ukikodesha, utakodesha kwa muuda usio zidi miaka tisaini na tisa. Saa hii umesikia for example pahali kama Magadi Soda na pengine na Tea Estates, so on and so forth, kwamba leases za miaka mia tisa tisaini na tisa. Na hii sheria mpya inasema, hapana. Hatutaki leases sasa za muda huo. The maximum lease you can have is a lease ya nine-nine years. Na swala ni kwamba, na itafanyika nini na wale ambao already wako na leases za nine hundred and ninety years? What happens with that? What happens to that? Na hio sheria hio, Katiba mpya imekujibu, ukiangalia pale transitional provisions, (interjection), ninaambiwa ni forty seven ya hio nyinyi muko nazo. (Yeah, the one on the last page, twenty seven -----) Pahali imeandikwa ownership of land. Page twenty-seven, I think. Forty-seven. Pole, pole. Arubanne na saba. Utaona hio namba 17 (1) inasema, kwamba uko na lease ambao imezidi hio miaka tisaini na tisa, hio, miaka za juu, zimefutuliwa mbali. Zimefutuliwa mbali na hauta lipwa malipo. There is no compensation. So, if you have a lease in Kenya now, that runs for more than ninety-nine years, the excess has been cancelled. So, ile swala niliulizwa imejibiwa na hio kipengele nimekusomea.

Then twende, ama kuna swala, so that we can follow, so that they don't lose their arguments. If they have them, ----- kipengele cha 234, yatafautisha aina ya ardhi mara tatu. Kwa sheria ilioko sasa, tuko na ardhi ya Serikali, yani Government land, tuko na Trust land ambayo inamilikiwa na ma-County Council na tuko na private land ambao wenyewe wako na title deeds. Hizo categories zimebadilishwa na Katiba mpya. Sasa, Government land itakua, public land. So, the first category ya land ni public land. We do not now, we should not, once this new Constitution is enacted, we will not have a category of land called Government land. Instead we will have public land. Na public land, ukiangalia public land, ni nani ataangalia public land?

Nani atakua mwenyewe? Who will own 'public land'? Ni kipengele cha 235, inasema, public land itamilikiwa na Commission inaitua, the National Land Commission. Instead of the Commission of Land, instead of the President or the Government, it will be the National Land Commission. The land Commission as a trustee for the people of Kenya, the present vizazi vya sasa na vizazi vijayo. Categories gani za mashamba zinaitwa public land? Na hizo utapata kwa 234 Sub-Section 2. They have been set out. Government land, ile ardhi sasa tunaita Government land itakua public land. Ardhi yoyote ambayo inatumiwa na Ministry ya Serikali, ama ardhi yoyote ile ambayo sasa iko katika mikono ya Local Authorities. So, all land being held, used and occupied by Government Ministries or Local Authorities vitakuwa public land.

Namba ya tatu, ardhi yoyote ile ambayo haina wenyewe ama imekosa mwenyewe, itakuwa public land.

La nne, mabarabara zote. Bara bara zote na road reserves will fall under that category of public land. Pia, lakes, mito, rivers, lakes and water bodies, all those will also fall under the category of public land. And of course lastly, bahari. Ile bahari within the jurisdiction of the Kenyan territory. The territorial sea and the sea bed. So, hizo ndizo ardhi ambazo tutakuwa tunaita public land. Na zitakuwa managed on behalf of Kenyans by the National Lands Commission.

Now, twende kwa category ingine. Number four, the second category of land. Community land. We have a category of land

called community land. Na hio itakuwa all Trust land. Trust land yoyote ambayo sasa inaangaliwa ama inamilikiwa na County Council na ambayo haijakuwa adjudicated, itakuwa community land.

Ya pili, all group ranches, all group ranches. Ingawaje ziko na titles na ziko na members wao lakini kwa Katiba mpya, lazima ziwe categorized as community land.

Ya tatu, ardhi ile ambayo kama misitu, water catchment areas, shrines, and so and so forth, mountains, grazing areas and so on, ambazo, zilikuwa zinaitwa government land now would fall under public land. A good example would be the Namanga Hills or the forest, which is a gazetted forest. But, which the Maasai communities have been assessing and utilizing as dry season grazing areas and as water sources. All those areas, you go for example to, unaenda Coast, in Coast kuna pahali Mjikenda wanaita 'Kayas', pahali wanaenda kuomba Mungu yao. Hizo zote, hata kama ziko kwa ardhi ya Serikali, katika hii Katiba mpya zitakuwa community land.

Halafu the last category of course, ni ile ardhi yoyote ambao imepeanwa specifically transferred or surrendered to the Community. So, that the second category of land.

Now, nani atakuwa akimiliki community land? Who will be the owner or who will hold the title, the radical title to community land? Na hio utaona 235 (2) (a). Community land shall vest in and be held by communities identified on the basis of ethnicity, culture, community or community of interest. In other words itakuwa kwa hio community. That land will vest in the community.

But that community will have to be identified. That Community will have to be identified under an Act of Parliament. Parliament itapitisha sheria ingine ku identify and demarcate the boundaries and the territories of that particular community. Na swali ni kwamba, kabla ya hio haijafanyika, then, community land itakua na nani? Na hio again utaangalia kwa hio transitional provision kwa page forty-seven. Page forty-seven. Yeah, forty seven. Again the same place tulisoma habari ya ownership of land, 17 (2). Kabla hizi communities hasijakuwa identified, kuna sheria ambazo zitategenezwa na Bunge. Hasijakuwa registered, hio ardhi itakuwa ikimilikiwa na National Land Commission. It will be administered, shall be held by the National Land Commission pending identification and registration of communities.

The last category of land, ni private land. Na private land ni ile shambe ambayo iko na title. So long as you have a title na wewe hapana group ranch, then that is private land. You have a title, it is registered, that is private land so long as you are not a group ranch and that land, who has the title. The ultimate title to that private land. Na hiyo utaona sub-Section 3, of 235. The ultimate title to private land, shall be in the registered owner whether you are an individual or you are another legal body. It is no longer the government. It is not the community but it is you the registered person. Something about community land. Na hiyo community land iko kwa hiyo 235 Sub-Section 2 (b). Na ni kwamba community land haitauzwa unless kulingana na sheria ambayo itaundwa na Bunge. In other words, there will be a restriction of the disposition or dealing with community land. There is no such restriction as regards private land.

Halafu tunaendelea kwamba, tunaendelea kwamba, niko kwa Sub-Section 4 of 235. Yasema hivi. Within two years of this Constitution being enacted, Parliament must enact a law to provide for all these things. Revision and consolidation of laws, revision of sectoral land laws, the way you can convert, vile inaweza badilisha one category of land to another, matrimonial property, na kadhalika na kadhalika. All these things now are being handles as we go on. Saa hizi, zinaangaliwa na the Njonjo Land Commission, dealing precisely with the issues that have been set out ambazo zimeguziwa hapo kwa Sub-Section 4 (a). Resettlement of landlessness and so on and so forth.

Lakini la muhimu sana kwa Wamaasai, ni paragraph (b). 235 (4) (b). Katika muda wa miaka miwili, Bunge lazima itengeneze sheria, au mechanism that will flow taratibu ya kwanza, ndio zile mashamba zote ambazo zimepeanwa na Serikali, zimepeanwa na Serikali, popote pale kwa Kenya, zichunguzwe, ziangaliwe kama zimepeanwa kulingana na sheria kwa njia ya halali. Na kama ikipatikana kwamba hazikupeanwa kwa njia halali, hizo titles ziwe nini? Ziwe revoked. So, Parliament is required within two years, kutengeneza mechanism ya ku investigate previous land allocations and if they are found to have been improperly allocated, the titles will be revoked.

Namba mbili, ni kile nyinyi Wamaasai mulikuwa mnasema habari ya ancestral claims. Kusema pia, Bunge ibuni taratibu ya kuangalia these ancestral claims, ya watu wa Coast, watu wa Rift Valley, watu wa North Eastern na popote kwingine katika Kenya na itafute namna ya kuhakikisha ya kwamba those claims zimekuwa sorted out, resolved in a peaceful manner.

But namba three, inasema Bunge lazima itatowa cut-off dates, because kuna swali namna hivyo, tutarudi nyuma mpaka siku gani? Mpaka mwaka gani? Mpaka wakati wa uhuru, tulipata uhuru ama mpaka wakati Kenya imekuwa colony in 1920, ama mpaka wakati Kenya ilikua protectorate, in 1895. So, number 3 inasema, Parliament itatoa cut-off date ya how back tunaweza kurudi kwa hio, tunajua Wamaasai wana-claim the land they lost during the Anglo-Maasai Treaty in 1904-1911 na swali itakua ni kwamba, ile cut-off date ambayo itapeanwa na Bunge, itakuwa itajumulisha hio ama hapana?

Now, 236 ni ya muhimu sana. Protection of property. Saa hii, tuko na Section 75 of the Constitution ambayo, kama uko na property inalindwa hata kama ilikuwa ni property ya uizi, hata kama ilikuwa ni property ulipata kwa njia isio halali. Katiba mpya inasema ni kwamba, ile property italindwa tu. Itakuwa ni ile property ambayo imepatikana kwa njia halali. A property will only be protected if it was lawfully acquired. Na hio utasoma pamoja na Section 54 (4). Read that along with Section 54 (4) , the last one. Na hii inasema,

(interjection)----- Page 9 (Inaudible)

Com. Tobiko: Na hio inasema kwamba, protection of property rights, shall not apply to property that was unlawfully acquired. So, wazee wa Lodaria wako hapa, wazee wa Musiro and Likesumeti na kadhalika, na kadhalika. Hii Section inawaangalia

wao. This Section will take care of the problem.

Halafu tunaendelea. Bado tuko kwa mashamba. We are going back to Section 236. Section 236 hio, Section 236 (2) ni kupea Serikali nguvu saa ingine inunue shamba lako kwa lazima. Saa zingine shamba, Serikali yaweza kua inataka ardhi, kwa matumizi ya kusaidisha uma. Tuseme ya kujenga shule, hospitali, airport na kadhalika. Na hio section imepea Serikali nguvu ya kunua shamba la mtu kwa nguvu lakini pia imeweka conditions, imeweka conditions na ya kwanza ni lazima iwe for a public purpose na tena lazima uliwe compensation.

Now, la mwisho, ni 237 na hio inaunda hii chama, tumesema, the National Lands Commission ambayo ndio itareplace Serikali kwa mambo ya mashamba na mambo ya ardhi. Lazima usome na Section ingine ya Constitutional offices, especially kuanzia Section 277? Is it 277? It is starting from 278.

Interjection: Kurasa wa (in audible)

Com. Tobiko: Page 34. Yes? Pardon? It is 197. So, lazima usome hio, ukitaka composition and establishment and criteria for establishment of that Commission, like other Constitutional Commissions, lazima utasoma 279, 281, especially 281 (2) (3) and (4). In other words, inatakikana kwamba, hio Commission iwe representative of the people in the District. It must be representative of the District because the Districts ndio sasa zinakuwa focal points. The focal points of land administration. The land Commission must have branches in the provinces, in the districts, locations and so on and so forth. So, kwa ufupi tu, hio ndio Katiba mpya imesema kuhusu ardhi. Katiba ya sasa haina Chapter yoyote, haina Section yoyote kuhusu ardhi. Kwa hivyo kuendelea mbele na kwenda topic ingine, ndio watu wasisahau vile, kama ameniambia kwa 238.

238 inasema, ina-define, inapeana definition ya land na inasema ni udongo na ile iko ndani yake. Na pamoja na maji na mito ambazo ziko juu yake. Na pia, air space mpaka mwisho yake. Kwa hivyo inakwenda ndani mpaka mwisho yake na inakwenda juu mpaka mwisho yake. Sasa hio ndio Katiba mpya inasema ardhi ndio tutayeelewa ardhi iwe ndio hio including the deposits, including minerals will fall within the definition of land for purposes of the new Constitution. Sijui kama kuna -----

Interjection: Speaker: Bw. Commissioner, mimi nimezowea kusimama nikizungumuza kwa hivyo, nafikiri nimemwonyesha Commissioner hio sababu wakati mulitoa maoni mulisema, ukipata Oil kwa shamba yako, ni ya Serikali. Ukipata dhahabu, ni ya Serikali, siumeona sasa umeambiwa, kila kitu, kama shamba ni private, kila kitu ni yako, mpaka mwisho yako, hata hewa ile iko juu ni yako. Si umeona hio ni nzuri?

Bw. Commissioner, I have only two comments to make concerning land and please I would request that you note. I am against, this is my view, it is the views of these people, kwamba kitu inaitua National Land Commission itolowe kabisa na

district land Commission itolowe ili watu wajue namna watachunga ardhi yao ili hakuna tofauti ya National Land Commission na Commissioner of Land. Iko tofauti? Kwa hivyo afadhali kitu inaitua National katika land itolewe kwa maoni yangu kabisa. Iwe ile ardhi ambayo ni Trust land yetu, iwe chini yetu, iwe chini ya district yetu. Kwa hivyo nilikua kwa maoni yangu, kitu inaitua National Land Commission itolewe kabisa. Ile ya district kwa sababu mukija kwa devolution of powers mtajua itakuwa chini yetu locals. Kwa hivyo, kitu inaitua National Land Commission, mimi naona si nzuri kwa Wamaasai.

Tena, on land, the second comments is the lease ya ninety-nine years for foreigners ama non-citizens. Hio mimi naona isemekane hivyo, lakini, with a Clause that, that lease can be reviewed from time to time. Kwa sababu hio ninety-nine years, (**in Kimaasai**) Kwa hivyo mimi naona isemekane hio lease inaweza kuwa reviewed frequently depending on the situations that may arise. Expatriate anaweza kuja, anapewa lease halafu anakuwa kichwa ngumu, anaanza kusumbua residents. Kwa hivyo hio lease iwe inaweza kuwa reviewed. Sio lazima imalize hizo nine-nine years. Hio ni ya pili kwa land yangu.

Hii pia inasema ati kabla community hazijakua identified, hio ma Trust land iwe na National land Commission. Sure, which community is not identified. I mean, which community is not identified saa hizi? Ni community gani aijulikani. Ati tunangoja Bunge ije igundue hii ni community gani. Hakuna community haijulikani? Kwa hizo land direct iende kwa wananchi. Hakuna kitu inasema ati kwa a period, labda hio period tunawekewa ati community iwe identified, ni period watu fulani wanataka kutumia kunyakwa hio ardhi. Hakuna community aijulikani. Kwa hivyo hio Clause itolewe hio, ya kusema ati, kitambo community iwe identified, land iwe under National Commission. Kwa hivyo mimi kwa ardhi nimependezwe sana na maneno ya ardhi ijapokuwa ni hao tu nimetoa kwa maoni yangu. Sijui wale wengine wataone namna gani. Asante.

Com. Tobiko: Kuna swali ingine? Kuna maoni ingine? Na utaje jina lako manake inarecordiwa hapa.

Erick Kalai Ngie: Kwanza nasema ni asante kwa ajili ya kuja kwenu kusikiza maswali ambao tulio nayo. Kwa majina mimi naitua Erick Kalai Ngie. So, may be nitazungumuza kwa lugha zote mbili. First of all I want to thank you very much because of the good work you have done. We are really happy as Kenyans and I being part of Kenyans, I am very happy. So, there is one thing that I am not sure whether it is very clear in the Draft Constitution. Let me start by making an observation that most of us Kenyans will agree with me that when we were growing especially in the pre-primary and primary when we were taught even the National Anthem and things like that, that at that level, sometimes it was not very easy at that beginning level to differentiate between the National Flag and one of the flags of the Parties we have in Kenya. I mean both flags have a lot of similarities like most of you have papers and the papers have a National Flag but when you pick one of the Parties that we have in the present situation is that one of the Parties has a flag that almost the same with the National Flag. So, in the new Constitution, we have a provision for the National Symbols, which includes the National Flag and the Court of Arms. So, my question is this and also if we try to look at the countries in the West, you find that like in America, there is a lot of patriotism. There is a lot of pride in the National Flag because there is little that is disassociated; there is little that we get,

I don't have much to say about land.

David ole Tukai: Bw. Chairman, asante sana kwa nafasi hii na langu ni kufuatana na yale ambaye tumesha zungumuzia kuhusu Katiba hii. Hapa nikiona hapa, naitua David ole Tukai. Tukiwa hapa Bw. Chairman, eh? Nimesema. Tukiwa hapa Bw. Chairman, tumeshapewa hizi makaratasi na wengine tumesoma tukiwa hapa. Lakini Bw. Chairman kwa ufupi, langu ni kuomba kwamba, kama ingewezekana tupewe nafasi kwa siku chache, turudi huko katika riza kule ambao tumetoka tukutane na watu wenyewe kule ambao tumewacha huko nyuma ambao hawajasoma hizi vitabu. Tuwasome vile inatakiwa na tukae chini, kila pembe wakati mahali pale tunatoka na tukae chini, tujadiliane yale ambao tunataka kubadilisha hapa au na yale ambao tunataka kuongeza hapa halafu ikifika tarehe ishirini na mbili, tuwe tumemaliza na tunakuletea iwe tiyari na wewe upeleke kwa Mkutano ya tarehe ishirini na nne. Kwa hivyo langu ilikuwa tu ninaomba namna hio.

Ben Molel: Hio haijakatazwa. Haijakatzwa. Lakini ningeomba tu, to-make comments kwa sababu nyinyi wote ni wana Kenya, mnajua vile inaendelea sasa. Mnajua pia wanakimbizwa. Wengine wanasema tufanye uchaguzi kwa new Constitution. Kwa hivyo kila kitu inakimbizwa. Kwa hivyo kama una uwezo wa ku-educate watu kule chini halafu ulete hio report kabla ya mkutano ya tarehe ishirini na mbili iwe Commissioner ameona, ama amapeleka. Haijakatazwa. Lakini naomba wale wako hapa, tunaweza tu kutoa maoni tu kidogo, ili tusipopata hio kurudi huko ndani, au asirudi kule kwa sababu naona hii kitu ni kama inakimbizwa sana. Kwa hivyo, hio nafikiri haijakatazwa. Bw. Timoi.

Ole Timoi: Speaker: Asante sana Bw. Chairman. Comment yangu ya kwanza ni under tenure of land. Under tenure of land Number 44, which says the protection of dependants of deceased persons. What I would like to enquire is dependants even dependants of the living. Kwa sababu hata huko Kajiado, many people dependants are losing because of land losses like said. So, it is not the dead ones because it applies to areas not particularly here. Am I speaking clear? Regardless whether dead or living.

The second one is still under tenure of land (d) number 3, when Parliament shall determine the cut-off, I think it should be on the onset of creation of tenure because laws are normally good but they are manipulated by people for their own interests. We don't want it to start from the tribal clashes. It should be from the on-set of creation of tenure.

Interjection: (In audible)

Ole Timoi: Pardon? Then the other one is this protection of property in land. That is number one, that is 236, subject to the Constitution, property rights in the land lawfully acquired shall be protected and may be freely alienated. Does alienation mean, you can sell or dispose of? That links to the other one of dependant. It should not just be freely alienated because we are talking about specific areas like in Kajiado. If land is freely alienated like this, sold like goats, the whole community is affected and it should be considered in the interest of the area.

Land policy framework. That is 232 Number (2) (c) when he talks of sound conservation and protection, I would also wish to add appropriate use. You find land which is suitable only for pastoralists or grazing put into cultivation and that really can cause even destruction. So, we should put appropriate use not only protection because protection might mean fencing, manuring but the use can cause damage to the land.

Ben Molel: (*in Kimaasai*)

Barmol Maora: Basi, yangu nafikiri watu wengi wanajua mimi, mimi ni Barmol Maora (*in Kimaasai*). Na maneno yangu, mimi nasema asante sana kwa Mungu kwa sababu sisi iko hapa kwa ajili yake. Na kama naona umati hii inaendelea kufanya kazi ya nchi yetu na usimamizi yetu ni (word not clear) unaendelea kupangia wananchi ya Wamaasai plan ya kujichunga. Nasema asante sana kwa sababu hakuna kitu inashinda sisi tena kama waongoze wetu anaendelea kuingia ndani yetu kuonyesha namna ya kufanya. Na maneno yangu, mimi naona hata nasema maneno kama nne.

Neno la kwanza, nauliza waongozi wetu tutafutie ile committee ya wazee inaitua adjudication board kwa sababu zamani wakati tulikuwa na committee hio, hakuna kitu inakua mbaya kwa district yetu. Kwa sababu sisi wazee wa sehemu mmoja nakwenda zungumuza, wazee wa district wanaendelea kukutana hata hapa Kajiado na kama watu wengi wanakutana kwa kuzungumuza maneno ya kusaidia nchi yao, hapana wachana bure. Kwa sababu kama watu wanakua mia moja, Mungu iko ndani yao. Kwa hivyo mimi nauliza waongozi wetu, tupange njia ya kutapa adjudication board ili committee ya wazee ya nchi, ya district. Hio ni neno la kwanza.

Neno la pili, hii maneno sisi tunasema tuzungumuze habari ya nchi, iko hadithi Wamaasai wanasema zamani, (*in Kimaasai*). Yaani, zuia nchi au kufa. Na anasema bora kama na zuia nchi. Maneno ya nchi, hakuna kitu ngumu kuliko maneno ya nchi. Na kwa sababu ni kitu ngumu namna DC yenu nasema au mtu mwingine hakuna kitu ngumu kuliko nchi, hakuna kitu ngumu kuliko nchi. Na hakuna iko, maneno mengi tofauti, kuliko nchi. Na ninaomba kama sisi napata kamati hio ya wazee wa adjudication board, bila shaka sisi tutafaulu.

Na mimi naona sasa wakati huu, kwa sababu mimi hapana taka kusema maneno, mimi naona pahali kama, pahali tatu au nne, naharibika na ninaomba waongozi, ma Chief, ma DC na DO, tuangalie sasa kama mimi nasikia maneno iko pande ya Lessos katikati ya (names not clear) nasikia iko watu wengi wetu ya Matapato wako upande wa Kisongo hapana iko ndani ya Matapato, wako kati kati ya Imarapatato na Kisongo lakini iko ndani ya Kisongo. Kwa hivyo mimi naona ni nzuri kama mnarudisha hao watu wetu wawe wako ndani ya Imarapatato iko ndani ya Kajiado. Kwa hivyo naomba hata kama bado hakuna nafasi ya kukaa hapo, nataka angalieni kitu kama hio.

Kitu cha pili, juzi sisi maneno kubwa sana kwa Isinya. DC iko kwa mkutano hio, na Bishop, wazee wetu waongozi wa Kajiado

kurogana na wananchi wale wanataka kuchukua hizi mashamba zote za Kajiado, center saba, zipasuliwe ziwe za wananchi, ziwe za wenyewe. Na hizo mashamba ziko center saba, district hii, na ni kitu nafanya kazi nzuri sana za wananchi, nzuri kabisa za Wamaasai.

Kwa sababu kila center iko hospitali, iko Kanisa na iko skuli. Na mambo hizo zote, si ya watoto wa hapa sasa. Ni kitu itasiadia watoto wa milele. Na sisi tulisema kwa mkutano hio, hakuna ruhusa ya mtu kuingilia ndani ya mashamba hizo mpaka sisi tunasema kwa mkutano hio, mpaka ma Chief na DC na watu wote wa Kanisa na waongozi wa nchi wanataka kuzungumuza kutafuta mpango ya kutengeneza kwa sababu yuko mpaka utaseka na iko mpaka Lessos na iko Ngaroni, na iko Sorosei na iko Ngasofia na iko mpaka Senya. Na ma centers kama hizo, na mimi nawaambia nyinyi, kama paramount Chief, hapana taka watu wanaguzwa kwa sababu si kitu ya watoto ya sasa, ni kitu ya milele ya watoto ya Wamaasai.

Neno la pilo ninaongeza, mimi niko na kilio na ninajulisha nyinyi kusudi kwa sababu DC yetu iko, iko malalamiko iko ndani ya (word not clear) iko ----- na kadhilika kuandikwa kwa scheme. Wale watoto wa nchi hio, watu mia tatu sabini na saba. Mimi nasema hawa watu, mimi nitakuja kupeleka kwa DC na nitasema ninataka waandikwe kwa sababu atakwenda wapi au wapi? Kwa hivyo najulisha nyinyi kitu kama hio kama nyinyi hapana iko nafasi sasa, tupange, mimi napanga na DC na wakubwa wetu wa District, ninataka kutengeneze kitu kama hio.

Neno lingine, mimi nasikia natajwa (inaudible) na mimi nataka vile, vile hapo, waongozi ninataka tuangalie. Kwa sababu kama naangalia (inaudible) wakati nakata District hii, kugawanya Narok na Kajiado, DC nasema (inaudible) iko nchi ya Kajiado, lakini iko nchi ya (inaudible) na si nzuri kama sisi nawacha hawa waendeleo kukorogana kwa sababu kweli ni ya Kajiado lakini nchi iko ni ya (inaudible) kama na kaa pamoja na wao kwa amani au kwa heshima. Kwa hivyo, hio maneno la nne, mimi nataka kusema, lakini naomba tupate njia ya kupata hio mkutano ya wazee kwa sababu ikipatikana mambo ya dunia hii, au ya District hii, inakua nzuri kuliko sana. Asante sana.

Ben Molel: (*in Kimaasai*) Something on land? (*in Kimaasai*) Something on land.

Kai Kai ole Tip Tip: My name is Kai Kai ole Tip Tip. Yeah, I think I have got about two points. Well also to just comment about what the Mzee has said, I think on the issue of Matapato being on the Kisongo side, there is an interesting angle because I think it has been covered somewhere on dual citizenship possibly because to him, he is scared but I think it would be good if it could be put across to him that it has been covered in the dual citizenship.

Well one: It is like a question, just react to this, this one I would like you to react, about tenure of land, Section 235 Number 4 (7) and (8), where it says the resettlement of landless people including spontaneous settlement communities in Urban areas, are as the establishment of land to enable Kenyans gain access to land on an equitable basis. Well, I think, land as affinite resource, I mean it cannot expand any further, is that one a clause that, you know is to be included in the Constitution, knowing that there

is no elasticity to whatever now we have and the democratic changes that are coming everyday?

Number two: 236, I would suggest the change from the word the State wherever the sentences, you know the Section starting with the word State to interchange it with the word the Government which possibly will also be used in the devolved government while the State somehow, it will remove the devolution spirit of the Constitution.

Number Three: the issue of the National Land Commission. I will suggest to me, as much as the Chairman here has articulated the biggest danger of having the body which could be again just like the centralized system of before with all its danger, but because of things that we anticipate, for example from Section that, of the past historical land rights and all that, I believe it will be very, very important that there is a body that could be coordinating at the National level. So, I suggest that it be decentralized, rather decentralize it, but at the district level. The District Government level should be reflecting the body at the District level and hence it is not like the final authority at the national level. Thank you.

Ben Molel: Thank you. On land?

Pesi Pesi: Hello. My name is Pesi Pesi. I have just three comments to make on land. The first one is on land tenure. That should be sub-Section 2 (b), establishment of mechanisms for the review of all grants and dispositions of government. I think, may be the Commissioner will tell me the difference between an 'Act of Law for' and 'establishment mechanism for', because I 'll propose that instead of saying we 'establish mechanism for we say enact Law for'. I am afraid that if we say establish mechanism for, then probably we might not live to see the reality of the whole thing. So, we say 'enact law for'.

Second is Parliament shall determine the cut-off date. I think I want to put a proposal that this Constitution Reform Process should put a cut-off and to my opinion, it should be in 1895. That should be the reference time when this 'enact law for' should probably start.

Then the other issue is, the issue of non-citizens owning land. Fine. But I want to make some little changes here that probably instead of the lease of ninety-nine years, I want to suggest the lease of thirty-three years and subject to approval by the District Land Commission. Second on that, I want to say that we should not have a National Land Commission. I propose that because we say that land should be owned by the people, then the best way is that the District Land Commission should totally own land. Then the Central government rather should not own land at all. So, it should be the District Land Commission and it should purely comprise of locals. There should be nobody from outside the District who should come and own land.

Ben Molel: Thank you so much. I think that is the much comments on land. I don't know whether there is anything else on land so that I give the Commissioner to continue with something else? I think land is well covered now and you have given enough comments. If those one are going to go down, they will be catered for.

Com. Tobiko: Okey, asante sana. Now, tuende sasa kwa Utawala ama what we call devolution of power. Najua wengi wenu sana wakati tulikua tumezunguka, muliongea habari ya majimboa, Rift Valley, Coast na kadhalika, na kadhalika. Na sasa, nataka tuangalie tuone kiasi gani ile Serikali nyinyi mulitaka, mumepata ama namnagani?

So, Chapter Ten, devolution of powers: I think it is Section 213 up to Section 231. Ya kwanza ningetaka kusema hivi, kwamba saa hii under the new Constitution ikipitishwa, Provincial Administration imekua abolished. Na hio utapata kwa Section 223. Kwa hivyo ikipitishwa hii Katiba mpya hautakua na Chiefs, hautakua na Assistant Chiefs, Chiefs, DO's, DC's, PC's na kadhalika. Kwa hivyo hio ni kitu cha kwanza kujua.

Inginge ni kwamba ile structure imewekwa badala ya Provincial Administration ni ya kujaribu kuleta nguvu chini kwa mashinani. To try and devolve powers to the lowest levels of the community.

Na Section 213 ina set out the principles of devolution. Na ningetaka tu ku-mention a few of them ambao I am sure ni ya muhimu kwenu. No. 213 (a), to give powers of self-governance to the people at all levels. Yaani unawapatia nguvu wananchi at the lowest level.

Number F, nimeruka hizo zingine, (F), ensure equitable sharing of National and Local resources throughout Kenya with special provision for marginalized groups. Yaani lengo ya hii system ya devolution, one of the goals and aims on objectives of the devolution is to ensure equitable distribution of National and Local resources and make special provision for the marginalized communities.

Then 213 Sub-two, the next sub-paragraph, Section (2), devolved authorities are entitled to an equitable share of revenue raised nationally to enable them to provide basic services and discharge their responsibilities. So, manake sasa tumeleta what we call devolved government na I will give saa hii the details of the devolved government. Lakini one of the principles ni kwamba lazima wawe na share, a substantial share of the revenue that is collected by the National Government to enable them to provide services and so on.

Number 3, devolved governments are entitled to the benefit of local resources. Yaani hizi Serikali za chini, ziko na haki za kujisaidisha kutoka kwa revenue generated na resources within their local areas.

Number 4, the National and devolved government will ensure local participation of people and communities and so on and so forth.

Now, twende kwa structure. Structure itaanza kutoka kwa sub-Location, it starts from the sub-Location ambao tunaita

Village. So, badala ya sub-Chief ambae sasa Katiba ikipitishwa atakua ameenda, utakua na Village Councils. Kutakua na Village elders ambao ni wao watakua wanaangalia maneno, biashara, development, land disputes and so and so forth within the village and village ni equivalent of the present sub-Location.

Composition ya Village Council. So, we will have the Village government with a Village Council. Village Council itakua na watu between not less than six and not more than ten members ambao ni wenye kijiji wenyewe ndio wataamua wanataka wachakuguliwe namna gani? Wawe village elders wale wako saa hii au wawe watu wengine ambao wamechaguliwa na residents of the sub-Location and the residents of the Village, wenyewe ndio wataamua wanataka watawaliwe namna gani? They have a choice of how they should run their affairs and how they should be governed. So, instead of the sub-Location, now we have Village Councils ndio inaanza.

Kutoka kwa Village, tunaenda kwa Location and Location kutakua na Locational Government with a Locational Council. Hii Village, kila Village Council itanominate watu wawili, mmoja mwanaume na mmoja mmama. Every Village Council nominates two of their own, one a woman and one a man ikuje i-represent village kwa Locational Council. The size of the Locational Government will depend, itategemea wingi wa vijiji within that particular Location. So, every village will have two representatives in the Locational Government. Kutakua na mtu tunaita Locational Administrator. Instead of a Chief, kuna Locational Administrator ambae ndio atakua aki-exercise administrative authority. The Locational Council yao ni kama Bunge. Itakua kama Bunge lakini Serikali, the Executive power, nguvu ya Serikali itakua kwa Locational Administrator and Locational Administrator anachaguliwa na wale wote, watu ambao wamekua registered as voters in the Location.

Tukitoka kwa Locational Government, tunaenda kwa District Government. Now, District Government iko kwanza na District Council ambae ndio itakua kama Bunge ya District hio. It will be like the Parliament, it will exercise nguvu za kutengeneza sheria at the District level. Na hio, Bunge, the District Council itakua na watu between twenty and thirty representatives. I don't know whether you will call them councillors or MP's or whatever, but between twenty and thirty people elected, wanachaguliwa directly na wale watu ambao wameandikishwa kama wapigaji kura wa District Councils exercising Legislative Authority and then uko na District Administrator. District Administrator amechukua nafasi ya DC sasa. Na yeye ndio atakua ana-exercise executive powers, yaani nguvu za Serikali. Na yeye again, anachaguliwa na wale ambao wamejiandikisha kama wapigaji kura wa District. So, nyinyi watu wa Kajiado District, mtakua na Kajiado District Council of twenty to thirty members ambao nyinyi mumewachaguwa, mtakua na District Administrator aki-exercise executive powers ambae nyinyi ndio mumechaguwa. District Administrators anaweza kuandika, kuajiri kazi public chief officers manake anataka watu wa lands, anataka watu wa survey, anataka watu wa agriculture and so and so forth. Ana nguvu ya kuajiri public officers lakini iwe approved na District Council.

Now, District Administrator anaweza kufutua kazi kwa namna gani? Anaweza kufutua kazi na kura ya zaidi ya asilimia hamsini. Asilimia hamsini na mmoja na kuendelea juu. Na District Council na hio decision ikiwa supported na kura ya majority ya wale

ambao wamekua registered as voters in the District. So, swali ni hivi tena ambao I am sure mtakua munauliza. Nguvu ya District Government itakua ni nini? Yaani functions of the District Council. Na hio utaenda kwa Schedule Seven, ile tunaita second list, Page 45, I am told. Page 45 imeandikwa List two, District Government List. Hio ndio list ambao inaonyesha vile vitu ambavyo District Government yaweza kufanya. Implementation of development plans, Local taxes, kwa hivyo iko na nguvu ya kutosha Kordi, educational services, Nursery Schools, Primary Schools, Secondary Schools, health services and medical services, maji, mabarabara, soko, district planning na kadhalika na kadhalika. Agriculture na inaendelea, inaendelea, inaendelea mpaka (in audible). So, hizo ndizo nguvu ama areas ambalo district government itakua ikijuhusisha.

Kutoka kwa District Council, unaenda kwa Provincial Government. Provincial Government pia iko na several organs, that is Section 219. Iko na Provincial Council, there is a Provincial Council ambao itakua representatives wawili wa kila District Council. So, every District Council will nominate two representatives of their own, one who must be a woman aende akiilish District kwa Provincial Council. So, we have Provincial Council as a first organ, na hio ndio itakua bunge ya Province. The second organ of the Provincial Government ni Provincial Executive Committee. Na hio itakua all the District Administrators, wote watakua in the Provincial Executive Committee. They will form the Provincial Executive Committee within a Province. So, that if you are talking about the Rift Valley, the Provincial Council will consist of administrators of all Districts falling within the Province and then tuko na Provincial Administrator. Provincial Administrator ni kama PC ama anachukua nafasi ya PC. Na huyo anakua appointed na Provincial Council after nomination by the Provincial Executive Committee. Yaani you will pick one of the District Administrators proposed by the Provincial Executive Council to be the Provincial Administrator.

Je, nguvu ya Provincial Government ni nini? What are the functions of the Provincial Government?

Section 221: Enhance and promote cooperation between the District Councils. Kubunisha na kuendeleza uhusiano bora baina ya District Councils, cooperation. Kusaidia District Council ku-promote, kujijenga, yaani capacity building and (3) kuunda policies and plans for the development of the provincial infrastructure na ku-manage provincial institutions. So, that is the Provincial Government.

Ukitoka kwa Provincial Government, then unaenda kwa National Government ambao hio tutarudia baadaye.

National Government, you are at the National Government with the Executive and Parliament na kadhalika and Judiciary? Lakini tuko na, unauliza sasa na je miji? What happens to the Urban centers? City Councils? Municipal Councils? Town Council? Urban Councils? Zitakua wapi? Even County Councils? Zitakua wapi?

Na hio, Section 222, inasema itakua a special Capital territory. So, Nairobi will be a special Capital territory na Bunge itapitisha Sheria, hatutaki Nairobi iwe ni ya mtu fulani. City na Municipalities, tuko na cities sasa, nasikia tuko na Mombasa na Kisumu na Municipalities. Hizo zitakua Districts. They will be equal. They will have the status sawa, sawa na District

Councils. Size ya District Councils? Ya District? So, they will have District Governments in the place the Local Government. Then Town and Urban centers zitakua the same na locational, so they will have locational government. So, we have in Kajiado, a Town, ----- is it a Town Council or -----?

Interjection: (In audible)

Com. Tobiko: Itakua na Serikali ya Location. Now, endelea to Section 224. Section 224 inasema habari ya collection of revenue, manake kila kitu ni revenue, ni mali. Sasa baina ya National Government and this devolved government, nani atakua akichukua, akirokota revenue? Na 224 inakuambia kwamba Serikali, the National Government will be responsible for collection of major sources of revenue. But 224 (2) inasema District Government zaweza kukua authorized, kukubaliwa na Bunge wa levy taxes, wafanye taxation, impose taxes and levies and (3) hizo revenue zikishakuwa collected, all the revenue once they are collected by the National Government, Number (3) inasema 224 sub-Section 3, kwamba zitakua shared equitably, zitagawanywa kwa njia inayofaa baina ya Serikali ya juu na hizi Serikali zetu za chini.

Ninaenda kwa 226. 226, resources. Inasema Districts zitakua na haki ya kupata share kubwa ya revenue zile zimetoka kwa resources za hioi District. So, for example; if I can use Magadi Soda, for example

Com. Tobiko: And then, communities zile ziko Kajiado maanake ukisema Kajiado itasema Kajiado District Government but there are local communities within Kajiado itself. What happens to them? Na hiyo section inasema watakuwa allocated a fixed per centage communities zile ambazo zinaishi katika area ambazo hizo resources zimo zitakuwa allocated a fixed per centage of that revenue.

Sub-section 3 of 226 itapitisha sheria kuonyesha taratibu ile na vile hiyo revenue inaweza kuwa ikingawanywa. So Parliament will sit down and pass a legislation to show the manner of distribution of this revenue. 227 because hiyo ndiyo inaonyesha kwa umuhimu sana uhusiano wa maserikali ya juu na zile zinaitwa devolved Government . National Government nguvu zake ziko kwa list inaitwa the first list. District Government ziko na nguvu zake tumesha-mention, the second list. Halafu kuna third list where nguvu zinachanganyikana. Serikali ya wilaya na National Government, ziko na nguvu sawa sawa. Na those lists zimo kwa schedule seven page 46.

List number one ambayo ina-set out nguvu za National Government . Tulisoma list number two ya district Government . Halafu kuna concurrent list ambayo ina-set out aspects ambazo serikali ya National Government na serikali ya district ziko sawa sawa. Na moja yao on the third list concurrent list ningetaka m-note number four and number five. Number ni Natural resources utilization and revenue generation. And five preservation of environment, forest na kadhalika. So natural resources utilization and revenue generation is a matter that revolves within serikali zote mbili. Serikali ya juu na serikali ya chini.

Pia m-note section 226 sub-section 5 and 6, kwamba serikali ya juu yaweza ku-suspend subject to certain conditions and for some specified period of time serikali za wilaya. You must also note.

Also lazima m-note section 228, you cannot, if you are working na devolved Government ama kama umechaguliwa kama muwakilishi wa devolved Government huwezi pia at the same time kuwa unafanya kazi na National Government . So there is that separation, ndio ujue wewe mwakilishi hapo unafanya kazi hapa, district Government hali kadhalika unafanya kazi ama wewe ni muwakilishi somewhere in the National Government .

You note section 230. Inasema kwamba Bunge itaunda sheria ambayo itatoa taratibu, detail ya ku-set up, ya kuunda this devolved Government na kupeana structures, nguvu zao, functions, kutengeneza sheria ya kuunda this devolved Government .

Na ukiwa hapo uangalie schedule six. (interjection) hamuna schedule six? Hiyo schedule six inaweka time table kusema Bunge kama Katiba imesema Bunge itafanya kitu fulani, kama imesema Bunge itatoa sheria fulani hiyo schedule six imepeana timeframe. Ndiyo Bunge ikienda ikalale miaka mbili ama miaka mitatu ama kabisa bila kufanya namna hiyo. Na schedule six inapeana timeframe. One thing you should note ni kwamba kwa haya mambo ya setting up of devolved Government, because it is important tupate comments zenu hakuna timeframe. There is no timeframe.

The other thing you should note ni twende kwa transitional provision, I think it is schedule eight. Under devolution number 5 (2) because it relates to these Councils. Inasema “until such time as district Councils and provincial Councils are constituted,” kabla hazija undwa na Bunge na niliwaambia nyinyi hakuna muda umewekwa wa kuunda. Kabla haijaundwa functions zoa na nguvu zoa zitatekelezwa na National Government (number A). B, zile mali zote ambazo saa hizi zinamilikiwa na local authorities all assets presently held by local authorities shall become public properties and shall be held by the National Government on behalf of the appropriate Councils. Zile ambazo saa hizi zinamilikiwa na Municipalities, County Councils, Town Councils, Urban Councils and so on, zitakuwa kwa muda huo zikimilikiwa na serikali ya juu kwa niamba ya Councils. Now, kwa niamba ya Councils ukisema Councils unamaanisha Councils gani? We mean, utaangalia section 231. It means the Provincial Council, in short it does not mean a local authority as we know it. Of course swali nafikiri mtakuwa mnajiuliza. What happened to the local authorities?

Kabla sijamalizia devolution you must also note the elections, how elections are to be done for the devolved Council na mtaangalia section, think section 17 page 1. Wabunge watapitisha sheria ya kutengeneza, to provide for the number of Constituencies for election of Members of Parliament of the Provincial Councils, of the District Councils, of the Local Councils, Village Councils and any other local authority. Bunge bado itakuja kusema for purposes of the Village Councils, mtakuwa na so many wards. Na watu watachaguliwa namna gani? The District Councils, ya district itakuwa na ward number fulani, kiasi fulani na nini, na nini. But note the last words and any other local authority. Because I told you niliwambia nyinyi swali kama sijamaliza mnajiuliza, what happens to the local authorities? By implication are still there, local authorities are still there.

Now, that is all what I want to say juu ya hii tunaita devolution of power to the people. Na kama kuna specific comments ningefurahi kuchukua.

Speaker: Thank you Commissioner na mimi sitakuwa na marefu lakini kwanza nime-note katika Village Government hakuna Village Administrator. Hawajasema who will do the village administration wamesema tu Village Council. So that one at least they should guide us on how the village is going to be administrated.

Location ama locational Government hiyo ni sawa, imeongea vizuri. District sasa, kwa district ni-messed kidogo kwa sababu they are only talking of the administrative part of the district but there is no legislative part of the district at the moment. And I would suggest wangeweka kwa Constitution a clause that will allow for elections of the district Councils at the same time as the Parliamentary elections. So that they can also sit down and they can take part in the elections of the district administrators on decision making. Again so that they take care of the property right now owned by the Councils. The property right now owned by the Councils ikisimamiwa na National Councils I am sure when those Councils will be constituted, the National Government might have messed up with those properties. Depending on the interests of the people. Kwa sababu local authorities saa hii katika district level kuna zingine ziko na mali, kuna zingine maskini. Na National Government ikisimamia, I am sure utasikia pengine property kutoka Kajiado imechukuliwa West pokot ama kitu kama hicho. Kwa hivyo local authorities, County Councils wafanye elections vile tunavanya kawaida. Halafu wa-define the electoral wards, where are the electoral wards now in the new Constitution? wamepoteza wards zote, hakuna electoral ward. So you should define the electoral wards, the number of Councillors to be elected. Kwa sababu wakisema on the administrative part of the district hawajasema criteria ya hawa watu watachaguliwa namna gani, wata-represent kila Constituency namna gani. So everything is in the dark.

Again they should specify the qualifications of these members. Honesty huwezi kusema tu District Administrator. District Administrator lazima awe na qualification fulani. At the District Council, the district representatives must have specified qualifications. So that you don't just dump somebody there na anaenda kulala ama hajui kufanya kazi fulani.

Again there should be issue of payment and whatever. It is not mentioned anywhere. I don't know kama watu wa Village Council ama wa Locational Council, sijui ni volunteers, sijui ni nini? Hawajasema anything to do with the appointments or how the Government is going to do that.

I come to revenue collection. My suggestion is the district Council ama the district local authority vile itakuwa constituted sijui wataenda kuandika, wawe na absolute power ya kuokota revenue yao katika district yao. District iokote revenue yote ile iko kwa district yao waweke kwa account yao ya district, halafu wapee National Government 20%. Hiyo ingine watumie kuhudumia watu wao. Nikisema revenue yote ina-include National parks, National resources zetu zote, ina-include makapuni zile ziko huko, district iokote revenue yake yote halafu serikali ipewe 20% from the total collection.

Nilikuwa nimesema uchaguzi pia wa local authorities kwa sababu ya gharama. Kwanza Bunge ichaguliwa iende ikae, halafu tena uweke Act of Parliament, halafu uchaguzi utengenezwe na urudiwe tena, that is too expensive. Waandike tu katika Katiba hii ya sasa kwamba local authorities itakuwa namna hii, electoral wards zitabaki vile vile ama ziongezwe ama zipunguzwe na uchaguzi ufanywe pamoja na hule wa Bunge.

Halafu uchaguzi wa chama wa county Council. Watu wa district wawe na ruhusa ya kupigia chairman wao kura. Hata kama watu watakuwa million gapi, chairman achaguliwe direct na watu. Kwa sababu Councillors wanakuwa manipulated kidogo kidogo hapa na pesa kidogo, kidogo unakuta wanachugua mtu ambaye sio competent. Lakini kuwe na provision ya district kupigia chairman wao kura. Kwa hivyo hiyo ndiyo comment ninaweza kutoa kwa hiyo. Lakini nina-support kutolewa kwa Provincial Administration ili wale administrators katika village, location na district wawe directly answerable to the people. Kama yule Chief aliyeko sasa atafanyia watu kazi na ni popular ndiye atachaguliwa tu katika location. Lakini wale wana issue ya dictatorship katika wananchi wachapokee hiyo I support that. Kwa hivyo mimi nina hizo comments za ku-make katika devolution of power somebody else naweza ongea Bwana Commissioner.

Speaker: I will talk also on devolution of power and first and foremost I want to agree with all the principles. The first one is on – Mr. Chairman you realize that we have accepted to devolve powers but we are refusing to devolve resources collection. I think if purely if we accept that pattern we will be falling on the hands of the politicians. Because politicians want to devolve power so that they can share it among themselves but they don't want to devolve the resources. I think that is not right. We should have all resources revenue collected at the district level and the district to remit a certain per centage to the central Government. That should be the bottom line.

The other point is the share of National resources. I think National resources are not going to be shared infact the district Government should remit a certain per centage to the central Government. We are not going to share it as it is said here that we have to share it equitably. No, that is not possible.

Then, I come to the Provincial Government. I don't think we require the Provincial Government according to my proposal we don't need the provincial Government. We only need up to the district Government and then direct to the Central Government.

The other point is, personally I wanted the levels of Government. I think the village here according to my understanding should be the current location. Sub-location? What about the Locational Government? Because my proposal is, I would propose that we have the current location as the village, the current division as the location and then the district. The location becomes the village, the current divisional such that we have Locational Government, a divisional Government then a district Government. (interjection) I am saying the current Locational Government becomes the village, okay? Then from there, you go to a divisional

Government where the DO is right now, it becomes Locational Government then the district. Because if we say that the current village Government is the current sub-locational Government you see now we have no the current Locational Government. I don't know whether you are getting. (interjection) The current sub-location and location becomes one village (interjection) no, where the division is right now for instance Mashuru becomes Locational Government. There is not division in this matter should be a Locational Government.

There is also something on Parliament ... what they say that the District Government cannot impose some tax unless there is a Act of Parliament. I think personally I want to say that the District Government should be allowed to impose some tax without necessary involving the Central Government. (Interjection) yes, purposely my reason why I am against the central Government from collecting taxes you realize that according to the alignment of politics which is taking place right now, infact the creation of the post of the Prime Minister, Vice President has given them the majority tribe in this country an opportunity to work together. And this will work against the minority tribe, because right now for you to be given such a senior position, you must the number of people, the number of voters that you bring on board must be considered. So it will be very necessary for us to make sure that the District Government is properly given powers in order to avoid people being marginalized. Thank you.

George Nakholi: Amesema saa hizi tuko na district, division, location na sub-location. Anasema tuunganishe sub-location na location iwe inaitwa village. Halafu badala ya division ndio tunaita location and then the district. Halafu anasema to abolish Provincial Council. Na mimi naunga mkono hiyo kwa sababu katika Province Rift Valley tuko na eighteen district na district za Wamaasai ni nne tu. That is eight votes na ile ingine ni vote thelathini na gapi out of thirty six. So we will not have a say there, kwa hivyo hiyo tuwache tuseme iwe abolished, tuwe na District Government halafu direct to the National Government . So anybody else on devolution of powers?

Speaker: Yangu ni kwamba I just want to support... I don't see this Provincial Government I don't see any good justification in its functions except what they call managed provincial institutions. I think it should be abolished then the institutions which are necessary for the development should be developed in the district that should be equitable development in the country. Because when we have provincial and we have some institution which are supposed to be in the province, they might still help and benefiting parts of the province and the district still remains undeveloped. So I think we should just have the District Government.

Com. Tobiko: Yes mama

Lona Maika: My name is Lona Maika. Na nilitaka kusema habari ya uchaguzi wa village, location and district to the provincial. Amjatieleza wale ambao watachaguliwa hapo watakuwa na kiwango cha masomo. Kwani nikiangalia sana watu wetu hawajasoma sana kwa hivyo wale watakuwa chini huko kwa village wengi watakuwa wale hawajasoma. Na tukipeana nafasi kama hiyo ya uchaguzi upto those levels tutakuwa na watu wengi ambao watakuwa viongozi ambao hawajasoma. Kwa

hivyo ningependa katika hii Constitution iwe na level of education for those who want to be elected there. My suggestion is those who want to be elected should be let say form four orders, form four level at least.

Maurice Raria: Okay huyo mama anasema qualification ya wale watu wanachaguliwa wawe kutoka village mpaka at least mtu awe ameliza form four. Any other suggestion?

Speaker: My first suggestion is that from section 213 sub-section 2 to 5, I think the gentleman who was here I think he was referring to that area that seems to be confusing the whole spirit of the whole Constitution. Because it is talking about devolved authorities and it is what exactly it is denying again the district rightfully collecting revenue on its own behalf. So from sub-section 2 to sub-section 5 it seems it is what is causing a lot of confusion sort of the central Government delegating to the districts. And I don't see what all those clauses are – what purpose they are serving.

On the Village Government and to location, we have to be very careful there, because I think the most important about this structure that is being proposed is to be functional at the lowest level. And I think it is very compatible with our own traditional – if I talk about our own I am talking about the dominant group in Kajiado because in our own traditional set up and institution of planning things from the that is the most and I believe location will be too wide for people to be meeting. Hence whichever level, it is one level that has been suggested to be removed. I believe this is not the lowest unit that ought to be removed, any other between the level to the district. So that you don't miss the point at the grassroots.

On the Provincial Government, it is just this Constitution that did seem to.. it was not given much really, I believe it was not hurry or something. Because it doesn't seem to serve any functional purpose. However, in deed we are not looking here only decision making levels, I think here we are also looking at viable units, viability of units, of sizes and combining homogeneous groups that could have been sub-divided in the rough sketches of drawing the line that defining our Provincial boundaries, hence I really suggest that it is only may be for some of us we give it much thought that we can be able to present by 22nd not sort of to remove, but it is a unit that can be supportive of a district. Because sometimes the district on its own cannot survive and then they can fall in to the danger of the pasture first republic how they devolved responsibility of the region was taken away by the region not being able to financially support themselves. Thank you.

Raphael Kimatu: Thank you. I think I have some observations to make on the levels of Government. And more so when we talk about qualifications you can be a form four, fine but you just went there by a mistake and you stayed there for four years and that was that. And anybody is good is suggest a minimum grade of may be B form four level all these people to start with. To start with for the village people because it is important. The thing which is very interesting here we have said that the District Administrators can be dismissed, that is important. It should also go down from the Village Government because lets say that you are there for life. For how long are you going to become a Village Administrator, a Locational Administrator? There should be that link. I mean how long are you going to be there?

Finally, according to me we don't require the Provincial Government. Even by the way things are today the province does very little as per the Government of the district. So we have competent people in the district, they are enough. Let this Government be answerable to the National Government. Thank you.

Speaker: Somebody else on devolution of powers?

Speaker: Actually mine is a comment. The set up of village Council and district Councils has been defined. But I understand that there will also be a local authority to match along with the village Councils and the district Councils. And their functions have not been defined. At the same time revenue collection from the village Councils and district Councils has also been defined. The local authority to me looks like it has been silently abolished. Unless who is a current Councillor now can tell me how the local authority is going to function in this set up. Thank you.

Speaker: It seems to me, you have said Parliament first of all will be elected and then you will go and enact a law, they allow people to go back and elect Councillors at the local authority constituted. Well, according to the way I see at the village level and the locational level, some locations of course cannot get any revenue even they were given a go ahead to collect their revenues. So, I thought may be they said that, then it is not defined that because they are expected the local authority or the District Council to collect and then share it among the sub-locations or the locations on the Village Governments. Otherwise we need the local authority, I think I said. Somebody on devolution of powers so that we go to another issue. We still have health, education, whatever and so forth. So if those comments are enough for the devolution of powers, or still you can go down home and write everything and then present it before 22nd to the Commission. Thank you.

Com. Tobiko: Thank you. Lets now go briefly and just have an overview of the Legislature - Bunge because it is also connected with what we have been talking about. Chapter 7 starting from section 102, in brief tutakuwa na Bunge ambayo itakuwa na two Chambers. We will have a two Chamber Parliament. The Upper Chamber itakuwa National Council it is sort of like what used to be the Senate (inaudible) of the National Council or the Upper House ni one hundred members. It will have one hundred members. Seventy of them will be representatives of districts. In other words, every district in the country will elect representatives to the National Council. Then, we have thirty six, tuko na viti vingine thelathini ambavyo vimewekwa kando viwe vya akina mama – thirty reserved seats for women. Those thirty seats will be shared in the following manner. Women will be elected from every province a part from Nairobi. So each province will elect four women to represent the province in the Council. And Nairobi will elect two women so they make thirty. A Council will have a term of office of four years watakuwa ofisi kwa miaka minne. Halafu kura itafanywa tena.

Now, nguvu ya National Council ni nini ama kazi yake ni nini? Kazi yake kwanza ni kuakilisha interests za district or of the devolved Government in the National Government . So mnaweza kusema itakuwa the connection between the District

Government and the National Government as the first function.

It will also, itasaidia ku-control the Lower House. Maanake zile sheria ambazo sasa zinatoka kwa Lower House haziwezi kupita kama hazijakuwa supported na the required majority in the Council, so they can regulate. They can control, wanaweza ku-control na ku-check the excesses of the National Assembly. Na Council inaweza yenyewe ku-regulate bill, so the National Council a part from just supporting the bill ambazo zimetoka kwa Lower House can also originate bill of sheria isipokuwa ile inaitwa money bills. Isishike, haina nguvu ku-originate money bills which must originate from the Lower House.

National Council itakuwa na nguvu ya ku-approve certain appointment to be made by the President, na hizo mtaziona hapo in section 103 sub-section 3. You will approve this appointment Judicial Service Commission, extra you can give all of them, including approval of the appointment of Judges. And the Commissioner of Police and the Chief Kadhi and so on and so forth.

Tuko na National Assembly which is the Lower House. The National Assembly itakuwa na term ya five years, unlike the National Council with a term of four years it will be five years. Na members of the National Assembly will be as follows, section 107. Two hundred and ten Members of the Parliament for members in the National Assembly each representing a single Constituency. So kwa vile saa hizi kuna two hundred and ten so tutaendelea kuchangua MPs, one MP for every Constituency 110. Kutakuwa na 90 seats tumeleta inasemekana kwa Kizungu kwa kisheria a mixed member proportional system. Kutakuwa na 90 seats ambazo the political parties will contest for those 90 seats. Na zita-contest namna gani? Kabla ya elections kila political party ambayo itasimama kwa election inatuma kwa Electoral Commission lists ya preferred candidate wake. In terms of ranking, kuna rank we prefer that one in terms of ranking. Na una-alternate unaweka mwanaume ama mwanamke (alternate men and women) alternate so that we also have the disabled, the marginalized groups in that party list.

Halafu sasa ukipiga kura, unapiga kura mara mbili. Unapiga kura ya kuchagua representative MP, na kura ya kuchagua party, so you will have two votes. A vote for the MP to represent his Constituency and a vote for the political party. Hizi kura zikaesabiwa na political parties because they will now all be total unaona KANU imepeta votes ngapi? DP ama NARC whatever you call it imepata votes ngapi as a party? Then you get the percentage, what is the per centage have I gotten of the votes. Then you use that percentage now to allocate and distribute the ninety seats. So unajua KANU imepata 10% of the votes. Then KANU will get 10% of the ninety seats. Sababu ni kwamba – complain ilikuwa ni kwamba unakuta party ambayo imepata majority votes but as few MPs in Parliament. An example is given like 1997 in total KANU got 38% of the votes. The ...position got 62% of the votes cast. But in the sitting Parliament KANU gets the majority so ndio tukaleta hii idea sasa ya a mixed member proportional system. Where you vote for the party and the party chooses the candidate according to the ranking in the party list. Know that is set out in 107 (**end of side A**)

Status of a Member of Parliament. Whether a member of the National Council or a Member of the National Assembly. Must be a citizen of Kenya. Must be thirty five years of age kama atafuta National Council. Must be twenty one years of age kama

anatafuta National Assembly. And is qualified to vote in an election for Parliament, in other words lazima awe amekuwa registered voter in a Constituency.

Number five; has attained at least form four standard of education with a pass. Sasa under the new Constitution Wabunge wetu lazima wewe ni watu wamefika form four na sio tu kufika form four lakini na kupata at least a pass. In addition lazima wawe watu ambao wanajua kuongea Kiswahili, Kizungu ama ile lugha tunasema sign language. sign language for the deaf, lugha ya ishara hiyo sasa imekubalika pia.

Lastly, awe ni mtu ambaye ako na tabia ama moral or ethical standards. In brief those are the qualification. Kuna disqualifications I don't want to go into the details. But 109 hasa sana hiyo lazima muone hiyo ni ya akina mama. Inasema at least one third of Members of each House wawe ni kina mama. Asilimia thelathini 30% kwa National Council na kwa National Assembly wawe ni kina mama. Na 109 (2) inasema Bunge lazima itengeneze sheria within three year kuhakikisha kwamba hiyo imefanyika. Hiyo ni siku ile kura inapigwa, tenure of office ya MPs.

I just want to refer 111 (1F) maanake hiyo lazima usome pamoja na 114. hiyo inapeana nguvu section 111 (1F) na section 114 inapea nguvu watu wa Constituency kuondoa Mbunge wao kabla wakati haujaisha. Complain ile tulikuwa tumepata sana ni kwamba tunaona Mbunge tu siku ile anaomba kura na hatumuoni tena mpaka siku ile anakuja kutafuta kura hapa. Na sasa katika Katiba mpya mtaweza kuwa na nguvu ya ku-recall your MPs, kama specifically ukiangalia 112 (2C) persistence desertion of the electorate without reasonable cause. Akitorekea Nairobi na hasikuje huku kwa Constituency mnaweza kumuondoa. Na munaweza kumuondoa yeye namna gani?

Mnaweza kwa ku-sign petition 30% ya wale registered voters wa Constituency. Tusema sasa hapa ni Kajiado Central for example 30% of the registered voters wanaandika petition to the Speaker na kusema Mbunge wetu amefanya hii na hii na hii, na ku-sign. And then hiyo petition inapelekewa Speaker of Parliament whether of the National Council or Speaker of the National Assembly. Speaker akipata hiyo petition within seven days atapeleka hiyo petition kwa Electoral Commission ichunguze hizo allegations against the MP. Na ikifanya inquiry inarudisha report kwa Speaker either kusema hizo allegations ni za kweli ama ni za uongo. Akisema ni za ukweli the seat will be declared vacant by the Speaker. Akisema sio za ukweli zitatupiliwa mbali.

Section 120 m-note hii ni concept ingine mpya kwa Kenyans. Saa hii hata the understanding orders za Parliament tuko na leader of official opposition. Yaani kama wewe ndio leader wa party ile ya opposition ambaye iko na Wabunge wengi sana unakuwa leader of the of the official opposition. Sasa hapa tumetengeza ofisi ya mtu anaitwa leader of minority party, in other words kama wewe ndio kongozi kuna ile party. Because now Prime Minister atakuwa the leader of the majority party kwa hivyo ana-form Government. The leader of the majority party forms the Government. But the leader of the parties or coalition of parties strictly speaking are in the opposition are not in Government of minority parties. Na atakuwa in terms of ranking

atakuwa na official status na atakuwa na rank immediately tutakuwa na President, then we will have the Prime Minister and then the leader of the minority party will occupy in terms of official ranking the third slot. Na takuwa na nguvu zingine.

Also muangalie number 121 mishahara ya Wambunge. Complain sana ile tulipata sana tukiwa tunaenda round ni kwamba MPs wanakaa na kujiundia mishahara yao. Na sasa Commission imetengenezwa na hii Katiba mpya ya kuangalia habari ya mishahara sio tu ya MP but hata ya President, Vice President, Prime Minister, Deputy Prime Minister and so on and so forth. Na hiyo Commission ikiwa imetengezwa na section 290 if you want to get the details for the Salaries and Remuneration Commission.

Also note section 131 (4) sheria zote za Kenya lazima sasa tuwe na registry ya sheria zote za Kenya kwa lugha ya Kizungu, Kiswahili na in braille form. Na kuwe na copy ya kila sheria kwa kila public library in the country.

You note section 142 about the term of Parliament for National Council it is four years. For the National Assembly it is five years. Number 3 is extension of the life of Parliament. It can only be extended if Kenya is at war, kama kuna vita na ikiwa supported by 55% (two-thirds) kwa muda usiozidi miezi sita at a time, na usiozidi miezi kumi na mbili kwa jumla. But note also 142 (5) prorogation of Parliament. Kwa Katiba ya sasa Rais ako na nguvu ya ku-prolong Parliament na ku-dissolve Parliament at any time hata kama mmekutana tu within a month. Sasa Katiba ime-set out automatic date ya prorogation of Parliament and the recall or resumption of session of Parliament.

Section 143 ni vote of no confidence. Parliament inaweza kupitisha vote of no confidence kwa serikali. Kwa hivyo Prime Minister kwa a-resign. Once a vote of no confidence has been passed then the Prime Minister must resign and the President now must appoint another Prime Minister of course with the approval of Parliament. Na kama hiyo hatiwazekana within 21 days Parliament be dissolved and new election called.

Section 147 ni Parliament Service Commission, it about Parliament. Kabla hamjauliza maswali tuende kwa Electoral law representation, chapter six page 11. Na section 76 ina-set out general principles, it passes the new electoral system. Ya kwanza voting by secret ballot. Nafikiri watu waliogapa sana Kasarani sasa wakaona that the Constitution must declare secret ballot. Election lazima iwe free and fair na lazima iwe na fair representation ya akina mama, walemavu, na minorities. And lastly must be conducted by an independent audit.

77 Bunge itapitisha sheria ya kutengeneza Constituencies for Members of Parliament, for Provincial Councils, District Councils, Locational Councils, Village Councils and local authorities. Nomination of candidates and so on. Number 77 (1D), is important because it talks about continuous registration of voters. Sasa hii under the new Constitution if it is enacted it will be by the Constitution not under an Act of Parliament, continuous registration for voters. The following says (G) registration and voting of citizens who are outside the country, saa hii wale

Wakenya ambao wako nje hawaruhusiwe hawana nafasi ya kupiga kura.

How can one register? Qualification to register as a voter, section 79 ime-set out. Must be over 18 years of age. A resident, a citizen. Ordinarily residence in the country. But number (C) as regards the Constituency you must for a period or period in aggregate not less than five months in the twelve months immediately preceding the date been an ordinary resident in the Constituency where you are seeking to register – an ordinary resident for a total of five months in the twelve month preceding your registration. Ama you have been carrying business or you own land or building in that Constituency. Then we have the Electoral Commission and so on and so forth.

The other section is section 86 about Constituency boundaries. Because tulisikia hapa complain sana from some areas that you have some areas, constituencies, size are based on geographical sizes and they should be based on population instead and so on and so forth. Section 86 combines all those aspects. So that aitapendelea population peke yake imeweka density of population. But geographical factors also have been taken into account. So people in those sparsely or marginalized areas should have no reason to worry about.

Then sections 87, 88, 89 talks about political parties. Kwa mara ya kwanza sasa political parties zinakuwa governed by the Constitution. Currently, political parties ni kama tu society zingine, society za akina mama, ama the youth groups ambao wana-register..... lakini sasa inasema political parties ziwe registered and be controlled and regulated. Na zitakuwa registered by the Electoral Commission. Na pia inasema they should have a national outlook. You should not just set up a party for your tribe or for your clan, or for members of your religion. No, a political party must have a national outlook. And it must not advocate or encourage violence. And section 90 sub-section 3B, must not maintain paramilitary militia or similar organization. So it will be wrong or illegal, unconstitutional for a party for example to support Mungiki or what you call Kamjesh or so on and so forth.

Section 93 talks about funding. Sasa serikali itakuwa inapeana pesa. The Government will now fund political parties.

Section 98 ni kuleta adabu – discipline, bring some discipline and promote internal democracy for political parties and so on and so forth. Now sijui kama tuko na maswali. Legislature and the Electoral System kwa ufupi, ama niendelea.

Margaret Yego: Kwa jina ni Margaret Yego. Yangu ni swali kuhusu the National Council, imeandikwa tu watachaguliwa. Ningetaka Commissioner atueleze watachaguliwa namna gani? Hilo ndilo swali langu la kwanza.

Pili, tumeambiwa National Council wakichaguliwa wanakaa miaka minne na National Assembly wanakaa five years. Kwa hivyo inaonekana kwamba kutakuwa na uchaguzi labda tukiwa na uchaguzi wa mwaka huu wa National Assembly tuwe tena na ya National Council. National Council itachaguana mwaka mmoja tena kabla. Na tukiendelea watachaguana miaka miwili

kabla ya National Assembly. Hapo mimi ninaonelea kama itakuwa ni kazi kubwa kwa wananchi. Kwa nini uchaguzi isifanywe mara moja wote?

Com. Tobiko: Uliuliza namna ya kuchagua Members of the National Council. Nilipitia section 77 dealing with Electoral laws. Ikasemekana 77 (1 A,B,C) kwamba Bunge itapitisha sheria kutengeneza Constituencies na kuonyesha njia ya ku-nominate the candidates na manner of voting at the election. So hiyo ni Bunge (interjection) 106 which one? Number? (Interjection) For the elections of kina mama separate the two. If you read sub-section 3 of 106 separate the seventy members representing district and the thirty women representing provinces, okay? Are you talking about the election of the women or? (interjection)

Speaker: For example in 106 Election for the National Councils shall be held for seventy members on the basis of Single Member Constituency. So first of all seventy members Constituencies. And that Members of the National Assembly elections to the National Assembly shall be based on the mixed member proportional system in which 210 members shall be elected on the basis of Single Member Constituencies.

Speaker: Seventy members of the National Council, they should have said one member per district. (interjection) they are saying Constituency. They are saying Single Member Constituency while you are supposed to have said district. (interjection)

Com. Tobiko: For purposes of the seventy members of the National Council, the district if you read 106 sub-section 2. The district will become a Constituency, alright? But as regard the detail of the seventy members. There are two categories of Members of the National Council. The seventy members represent district and the thirty women representing provinces. Now for the seventy they are elected by the Constituencies. Now, the Constituency is what? Is the district that is what I am saying. And the details of how they are going to be nominated, how they are going to be voted is what I refer to section to 77. Parliament has to set out still the detailed procedures for doing so.

Maurice Raria: To add on what the Commissioner has said those seventy district Nairobi is included. It is also treated as a district, so we have seventy districts.

George Nakholi: I also wanted to give a comment on the provision that was to look into the salary of the National Assembly and whatever. I suggest one Commission (interjection) that is a recommendation you are making and I think you are making a lot of sense. Why would you have these four years?

Maurice Raria: Okay, I am going to try and answer the issue of having elections two different times of Members of the National Assembly. The reason is there was a feeling among people that at the moment there is time when Parliament when it goes to recess there could be a National emergency and they are no sitting MPs because they are on recess or the House has been dissolved. So by so doing by having elections at two different times there is no single time when there will no sitting MPs.

So perhaps members in the Lower House may be on recess or the House will have dissolved then Members of the other House will be on session. And if there is National emergency they are going to address that situation. Thank you.

Speaker: I was wondering whether on comment whether this Commission or this committee on salaries issue of MPs and whatever can be a Commission for the salaries for every worker in Kenya. That included the District Council, the Village Councils, the Councillors and everything so that we can have a uniform body dealing with remuneration of everybody. Instead of having only for Parliamentarian and the rest of the people no guideline. So you take that as a suggestion.

Maurice Raira: Section 290 it will tell you the categories of officers for whom the Salaries Remuneration Commission can set salaries to. (interjection) section 290 sub-section 2. Your argument is this that why don't we have that one organ dealing with salaries for everybody including those who work in the village Council. But how does that again reconcile with your devolution. These are people who are employed those local Government or devolved Government. Would they be comfortable again referring to a National organ to determine salaries for those staffs? You think about. Anything else? Yes Kimoi.

Timoi: It is about nomination of members of the Councils through voting for a party. Although we said that may be we don't need, the Constitution does not allow political parties on the basis of tribal lines, that is an ideal situation. I see members are nominated on party, where the party is giving the opportunity because of the votes it received from the voters. I think there is danger of the majorities still having a leeway, am I clear? My worry is those fellows should just be nominated on either through a criteria like minorities and either the political involves daily by political party. The 90, why don't you reduce them?

Maurice Raria: Section 107 (5) what should go into the party list. Each list shall rank nominees in order of priority, alternate men and women in priority of nominees. Take into account need for representation of the disabled, youth, minorities. (d) reflect National character. And then you read sub-section 7 Parliament shall provide the method of allocation of 6 on the bases of party list bla bla bla. So your case if this instead of those seats be reserved for special interest groups (interjection) and then for the party.

Timoi: The issue of proportional representation the party list to me I see it as an incentive to wipe out tribalism. Simply because the parties that have prepared list that attract for instance minorities and total marginalized areas those parties will be coming to attract minority parties by showing them that they have included them in their list and they will show that they are a priority. That is minorities could be in the docket of the first ten so the minorities will choose that party. So may be you might choose your Member of Parliament who could be in NARC but you find that another party lets say SAFINA has a strong feeling for the marginalized groups. So you go to that one you vote for it because it has included you in the list. So I think the issue of minorities will be taken care of by that proportional representation. Thank you.

Oloitiptip: Thank you Mr. Timoi, I think Mr. Timoi has raised a very important issue. One, I wish politics was a game of

honesty, but the way it is known the nature of politics and especially political parties survive on polarization and countering. Just taking advantage of the whatever point you can be able to make. Hence I don't think it is something that we just want leave it but it could possibly be an intention. As much as it has been listed here possibilities of the criteria that have proposed, and Parliament is yet again to show the criteria. Those are good words that you don't expect may be at the end of the day will work. So I suggest for sure let it be very, very clear that it is this proportional representation for sure it is a another strategy I am seeing for domination by the dominant groups simple.

It is very clear for anybody who can recall the two elections when we never knew about tribe and that is before 1992. For sure it is as easy as saying you can talk about ethnicity as one bottom block. Hence about representation about numbering it is just giving advantage to the dominant groups and considering again it is Parliament that is going to correct you don't expect any changes to happen.

Speaker: I think what Mr. Timoi is saying there is a big worry there. I want to ask the Commissioner suppose at the end of the day we go to the votes KANU gets ten out of the ninety. What criteria will it use so that at least we like the Maasai will get one or two of the ten we voted? So at least it is not clear. So I think we better go back and say. Like now we are doing nominations at the moment and the way they are doing right now they looked at areas and then they take one person, they go to another place they pick somebody else but this one it is a bit mixing. So it need some clarity.

Agnes: I have a kind of a question on chapter 109 about women representatives. One- third and I don't know how you have being going through it, we have to acquire something equal. Because already for women it is 6 and I have not seen where men or You know gender sensitivity should be there. I think you should clarify that or you remove that system.

Speaker: That is a very important point because what it should say is at least one third should be women but then a 100% can be women. And noting that women form actually the majority of the population for voters. So infact in other areas it has been argued that you should say at least shall be women or men. So you add or men just to ensure that also that we don't have the whole House just full of women. So I understand your point.

Maurice Raria: In that case we know the implication of the woman in the African context especially when you present yourself for elections. Today in our country if we say women present themselves for elections, may ten women will be elected against the majority of men. So in this case they are not counting those one who will be ...by votes. No, they are only counting those specified that the seats have been left vacant to ensure that there are women in Parliament. Even if they are not voted in by the public at least that clause will bring the women in Parliament. So actually it doesn't mean women cannot present themselves for nominations or more than 30% can't be women. No, they can be women but in case of a women not being elected the 30% clause will bring them to Parliament.

Robin Wachia: Thank you very much. My name is Robia Wachia. I also want to ask on the issue of women representation because he said at least 30%. Let's say in the National Assembly you are having one representative from each of the Constituencies. And there are going to be some Constituencies set aside that it is only a woman who can be voted in. Because if two hundred and ten Constituencies all decide to vote on the basis of ... I mean it is competitive politics. So a woman and a man would be considered as two competitors, so I don't know how you will arrive at the 30%.

I also wanted to ask about the Ministers. I think the new Constitution has said that Ministers will be appointed from outside the elected Members of Parliament. Outside the 210 or I don't know whether they will be in the Upper House or in the Lower House. Where actually will they be, the Ministers? Deputy Ministers will be appointed from outside Parliament, so will they be in the Lower House or in the Upper House?

Lona Maika: My names are Lona Maika. Nilitaka kuangalia habari ya hii formation of these Constituencies, whether it is geographical or what. But I want to suggest that a Constituency should have all the people of that section. What I mean is for example we the Maasai's we have sections Mtovatu, Kaptei, Lalelok etc. My opinion here is all people from one section should be in one Constituency. For example now we the Matavato some are in South and some are in Central. And when it comes to voting it is really very hard and it is not good for them. Because we want to elect one person but some people are outside the Constituency.

Another one is the qualification of these members of the National Council and the National Assembly. Sijaona hapa pahali ambapo panasema huwezi ku-contest hicho kiti kama ujazaliwa pahali hapo. Niliona kwamba kama huko na nyumba na umeishi kwa miaka fulani hapo that one you can contest. Lakini yangu nasema hapa unaweza ku-contest kama wewe ni mzaliwa wa hapo, sio kwamba nimenunua shamba au niko na nyumba pale ninakuja ku-contest hicho kiti na mimi sio mzaliwa wa hapo. So I am very much against that also. (interjection) wacha hapo niongeze pia yangu niseme ya kwamba hapa tuna Mjalu aliyezaliwa hapa, tuna Mchaga aliyezaliwa hapa. Lakini tuseme kama ni district ya Kajiado tunajua wenyewe ni kina nani. Kwa hivyo tuseme ni kabila, the original people of that place.

Speaker: Provision for registration that is section 79 C which says that one has to for periods amounting to the aggregate to not less than five months, in twelve months immediately preceding that place. I think I want to say that, that is a short period, one to have stayed in an area, learned personalities of that particular area, learn what people of that particular want. And therefore we should put a slightly longer period. I think even a year is short, lets says five years. Five years because you might go against the wishes of the locals.

Com. Tobiko: To be brief you again lets finish up with the Executives, serikali. Na hiyo serikali utapata kwa chapter 8 section 148 to 183 so I will just be brief.

Com. Tobiko :----- The Executive the following --- The President. The President is directly elected by Kenyans. He or she is elected for a period, a term of 5 years and cannot be elected for more than two terms. (B) The winning candidate, wins a Presidential election, he or she must garner at least 51% of the total votes cast. In addition, he or she must get at least 20% in majority of the provinces. Kwa hivyo lazima apate asili mia hamsini na moja ya kura zote na asili mia ishirini katika wingi ya provinces, majority of the provinces. Under the current Constitution, the only qualification ni kwamba amepata majority votes na amepata 25% in at least five of the eight provinces. Kama hawezi kupata hiyo, tutakuwa na a run-off, another election to follow between the candidate who has got the highest votes and the candidate who has got the second highest votes. And whoever gets majority of the votes, then he is declared, he becomes the winning candidate.

The qualifications for the President, for one to contest. Qualification for the election of the President is set out in Section 156. Kenyan citizen aged 35 years but below 70 years. Saa hii, under the current Constitution we only have the minimum age of 35 years but we don't have the maximum age. Must be a person of high moral integrity, number (b) at least holds a degree from a recognized university. And e) and f) either awe amependekezwa na chama ama aweza kusimama bila chama. Unaona hapa tume-introduce a new dimension of what we call independent candidates and this applies both to MPs and the President. Sio lazima uwe nominated by a political party. You can stand as an independent candidate. Presidential candidate must not contest a Parliamentary seat. Kwa hivyo sasa unlike the present Constitution where the President first of all has to be elected as a member of Parliament by a constituency, now he should not be a member of Parliament. The argument being that he or she must representation constituency or a national Constituency. The President can be impeached by Parliament and so on and so forth.

Then we have the Vice President. The Vice President must also have the same qualification as the Presidential candidate. And each Presidential candidate must announce his or her running mate. And if the Presidential candidate wins, then automatically the running mate is declared as elected, the Vice President. So that the Vice President does not have to undergo a separate vote. The Vice President is to deputize, he is the assistant of the President. If there is a vacancy of the Office the President before the term expires then the Vice President comes into the Office of the President and performs the functions of the President until the expiry of the term. Kwa Katiba ile tuko nayo saa hii, kukiwa na vacancy kwa office ya Rais, Makamu wa Rais anashikilia kwa muda wa miezi mitatu ndio election ingine ifanywe. Kwa Katiba mpya atakuwa anaendelea mpaka amalize term.

Nguvu za President zimekuwa set out kwa Section 151, 152, 4, the context of those powers in kwamba they are really more or less ceremonial. Zile nguvu ambazo... complain ya watu wengi wakati tumezunguka ni kwamba there is too much power vested in the Presidency. Now what this new draft Constitution does is to render the Presidency quafy or nearly ceremonial.

After the Vice President then we have the Cabinet. The Cabinet consists of the Prime Minister, Deputy Prime Ministers, 15 Ministers or not more than 15 Minister and not more than 15 Deputy Ministers. Under this new draft, under this draft the Prime Minister is appointed by the President from the majority party or coalition of parties that have the majority of seats in

Parliament. And the Prime Minister, the day to day running of the government rests in the Prime Minister. He has executive powers and although the Deputy Prime Minister, Deputy Ministers and Ministers are appointed by the President, they are only appointed on nomination (inaudible) minister. And each of them individually and collectively responsible to the Prime Minister. Wote wako na ... they owe their responsibility to the Prime Minister.

Prime Minister anaweza transfer responsibilities of a particular minister to kupatia minister mwingine fulani. Ministers should not be members of Parliament. They will be sourced from outside the Parliament. And the argument ni kwamba saa ingine tunataka professionals, and you can't get them among the elected MPs. And two, you want also to give a lot of time to the MPs. Uwapatie nafasi nao wakae na constituency wao. Kwa ufupi sana – overview – that is what, hivyo ndivyo executive na hapo ndipo kuna debate nyingi. Kila party inasema tunataka Katiba mpya, ingine inasema hatutaki, woo tuanze na hii to rudi. Wanaenda mbele na nyuma shida yote iko hapo hiyo section. Nani atakuwa na nguvu? Ni Rais ama ni Prime Minister. So in summary hiyo ndio Executive.

Unaweza chukuwa ama nimalize? There is only one topic remaining halafu twende. Hee? Iko moja?

Speaker : Bwana Chairman, hapo kidogo labda sijaelewa vizuri election ya ministers yaani hapa inasemekana kwamba unaweza (inaudible) yaani ministers, inasemekana wanaweza kupatikana (inaudible) wakati wa sasa tunapata minister kutoka wale ambao walichaguliwa na wananchi, na wananchi ndio wanawafahamu ndivyo unaona mtu amechaguliwa amechaguliwa kwa sababu wananchi wanajua anafanya kazi na ndivyo atapata votes anaenda Parliament sasa anaweza --- kumchagua mwananchi moja chini ambaye anasemekana awe minister. Lakini atapokuja kuwa minister, pengine hataweza kufanya, hajulikani sana na wale ambao (inaudible) anachaguliwa, sijui kwa, ni kama nani atachagua huyu minister, ni wananchi wenyewe watasema ndio huyu tunataka (inaudible) kutoka kwa watu ambao wamechaguliwa na wananchi waende Parliament. Sasa minister atapatikana si lazima awe kama huyo minister wale watu ambao wamechaguliwa na wananchi. Ni mtu----- mwananchi ambaye hatachaguliwa, je unaweza kujua vipi yule mtu unachagua anaweza kufanya ile kazi (inaudible) hawana imani na yeye.

Com. Tobiko: Minister watakuwa appointed na President na watakuwa vetted na Parliament (inaudible)

Speaker : On the matter again of Presidential election and 51% lack of such leader. Again I want to follow the same logic for Timoi that there is a very big danger again when we set again Presidential nomination for numbers because the other bigger danger is that for sure there are about 40 ethnic groups and community of interest, they shall no doubt and dominated by majority again. I think the same and to ensure because the word here their operational work here is efficiency. Equality in administration, equality in most issue majority of the --- provinces, and those I think--- national cake about the candidates so long as the majority are on the line.

(inaudible) whereby a doctor is appointed in the -----let them appointed with their names.

Speaker : I firstly support the nomination of the ministers and at the same time ----- but it is good for the economy of the country. Secondly you know Kenya is a tribal country and a part of the country we may not have people who have gone to school. Who will be nominate as ministers. So at the end of the day we might find, say two communities in Kenya (inaudible) almost the entire country. Because they are the ones who have gone to school they are the ones who are qualified, the rest of the country is ----- because I have carried the definition of ministers right now efficient and visionary. So I think in that sense part of the country will remain without even the National government. And also the MPs currently are seeking nomination, so that they are elected because of those posts so when they are elected they are not qualified it means there is going to be a lot of frustration at the National Assembly. (inaudible). One part of the country will benefit the other three quarters of the country will not benefit at all. And as we know we are all tribal ... nominated as ministers, may be they are very many. May be from two tribes while the (inaudible). So the other parts of the country just -----

Speaker: You have put in the Constitution the qualification of the President, elected direct by the people. But this President later ends up being a ceremonial President. That means, I don't think they will be answerable for the failing state of the economy or other bad things happening to the country. But a Prime Minister who again ends up being powerful we have not given qualification for that Prime Minister. We need to have a academic qualifications for the Prime Minister. I would rather have a Prime Minister who must be a university graduate other than a President who is ceremonial.

Com. Tobiko : I just want to highlight a few of them. It comes from page 6. Section 30, the State shall observe and respect and promote at certain and fulfill the Bill of Rights etc. etc. Now the Constitution specifically gives an obligation on the State to observe, respect, promote, protect and fulfill the rights and freedoms of the Bill of Rights, one.

Then we have Section 32 abolishes death penalty. There is no death penalty anymore if this Draft is enacted. Section 34 (3) inaongea habari ya Affirmative Action for disadvantaged groups. So this section requires Parliament to initiate legislative and other measures for the benefit of individuals and groups who have been... who are disadvantaged. So this now allows Affirmative Action programme for minorities, marginalized groups, falls, disabled, women, pastoralists and so on and so forth.

Section 35, equality between men and women,. Under that Section, inasema kinaganaga kwamba kutakuwa na usawa baina ya wanaume na wanawake, kisiasa, kiuchumi na hata kwa urithi, mali na kadhalika. Na ukiangalia Section 35 Sub-Section 4, inasema kwamba any culture or law customary tradition ambayo inadhulumu kina mama hiyo custom ama practice ama sheria itakuwa outlawed.

Section 36 ni right of the elderly population, haki za wazee. Wamepewa haki zao kuangaliwa na familia na kuangaliwa na Serikali nakadhalika. Section 37 ni haki za watoto. Watoto wako na hanki ya kulindwa na wazazi, na jamii kulindwa na kusomeshwa na wazazi, jamii na Serikali. And 37 (2) inasema mtoto ni mtoto hata kama ni mtoto wa - what we call an

illegitimate in Kiswahili. Hee? Ah, ah, illegitimate. Hata yule mtoto kwa Kimasai, 'ola talak' somebody like that, is still a child and has all, ako na haki sawasawa na yule ambao amezaliwa ndani ya ndoa. Angalia Subsection 4 of Section 37. Baba na mama wa mtoto hata kama hawajaoana kirasmi, wote wako na duty ya kuangalia mtoto. So what it means ni kwamba sasa vijana wawe waangalifu. Maana yake ukipata mtoto hata kama hujaoana na msichana huyo Katiba inasema uko na duty ya kuangalia mtoto huyu. Section 37 (5)(c) free basic education, kwa hivyo sasa tumepata free basic education. 5 (g) corporal punishment, hakuna kupiga watoto viboko tena. Katiba inasema namna hiyo. Subsection 9 ina-define mtoto, a child. Mtoto ni nani. Na mtoto ni yule ambayo huko chini ya umri wa miaka 18.

Then tuko na haki ya familia Section 38, ndio Section inatambua umuhimu wa familia na inasema kwamba Serikali lazima ilinde family masilahi yake, I-respect and protect the family. Na inapeana haki kwa kila mtu ambaye ako juu ya zaidi miaka 18 kuanzisha family yake. Kuoia ama kuolewa kwa hiari yake. Subsection 4 of Section 38 inaweka usawa kwa ndoa, usawa wa bwana na bibi juu ya mali ya familia. Subsection 4 equality, equal rights between husband and wife during and after dissolution of marriage.

Section 39 the rights of the disabled – walemavu – details zimetolewa hapo. Section 44 freedom of religion, belief and opinion. Tunaelekea. Political rights Section 50 uko na haki ya kutengeneza party yako na kufanya campaign na propaganda ya party yako, hiyo ni haki yako ya kikatiba. Hata hapo juu section 49 yapeana haki ya ku-demonstrate, watu kwenda kwa street na kufanya peaceful demonstration. Hiyo ni haki yako sasa hii Katiba ikipitishwa. Haki ya kupiga kura, secret ballot.

Section 51, ni haki ya kila mwana Kenya kutembea popote pale Kenya na kununua mali na kuishi popote Kenya. Freedom of movement and residence.

Section 54, ina-protect property rights haki ya mali lakini Subsection 4 ile niliwapa earlier mali, that protection only applies where the property was lawfully acquired. Mali ile umenyakua ama umepata kwa kuvunja sheria is not protected by the Constitution.

Section 55 rights of the workers wafanyi kazi. Section 56 Social security, hii ndio inasema social welfare. Ni jukumu ya Serikali sasa kuangalia wale ambao hawajiwezi hawana kazi na dependants wao. Kwa country zingine kuna malipo ya kila mwezi inaitwa doll kila mwisho wa mwezi kama hauna kazi unaenda kwa office ya Social Services na unapata cheque yako na unaendelea.

Now, 57 ni matibabu, health. Every person has a right to health, which includes the right to health care services including reproductive health care. Subsection 2, emergency medical services, watu wengine, saa zingine unakimbizwa kuna accident unapelekwa kwa hospitali labda wakati hiyo wallet yako imeibiwa na wakora hauna ndururu kwako na hospitali hukataa kuku-admit maana yake, to admit you because you cannot raise the deposit. Na watu wengi hufa na kama wangepata

matibabu mapema labda na wangekufa. Sasa hiyo Katiba inasema huwezi kukatazwa emergency medical treatment.

Section 58 ni education tuko na free and compulsory basic education including pre-primary education. Halafu Subsection 3 ni ya muhimu sana maana yake inasemeka Serikali lazima iunde taratibu ya kuangalia kwamba fees gharama ya masomo ya secondary is affordable, so we have free basic education and affordable secondary and post secondary including university education. Subsection 4 tried to establish private schools and private institutions.

Section 59 ni nyumba – shelter – Serikali lazima ihakikishe kwamba kila mtu ako at least na shelter. You have adequate access to housing kila mwana-Kenya ako na haki hiyo. Halafu Subsection 2 huwezi kuondolewa kwa pahali ile umeishi huwezi kutolewa hata kama wewe ni squatter uko kwa shamba la mtu kama for example it is in the slum areas, na pia County Council imeingia na bulldozer na nini na imeraruwa for eviction, sasa under this new Draft huwezi kuondolewa evicted from your home unless kama mtu ambayo anakutoa ameshaenda kortini kwanza na akapata order ya kortini.

Section 60 ni chakula, kila mtu, there is a right to be free from hunger. Your freedom from hunger na kuwa pia na access to food, quality and culturally accepted food. Tuko na water, maji provision of water kila mtu ako na haki ya kupata maji ya kutosha na safi. Sanitation pia, disposal of waste. Section 60 ni environment, Section 64 ni consumer rights na Section 65 ni fair administration. Na important sana ni – sorry hatujamaliza -.

Section 70 ni right of the prisoners, wale wako hapo gerezeni. Pia wao wako na haki. Halafu Section 73 na 74 ndio ya muhimu sana maana yake inasema kama hizo haki zako zote tumesoma zimepuuzwa kama Serikali hajafanya vile Katiba inataka, uko na njia gani ya kupata compensation ama kulazimisha Serikali kufanya namna hivyo. Na Section 73 na 74 inakupatia mechanism ya ku-impose your right under the Bill of Rights. Kuna hiyo Human Rights and Administrative Justice Commission which can enforce Bill of Rights then tuko na Section 74, no from this human rights, on the Human Rights Commission, I think also look at the transitional mechanism. Past human rights abuses. Page 46. Yaani kama haki zako zilikuwa zimepuuzwa ama zimekanyagwa kabla Constitution mpya kuwa in place waweza kufanya namna hii, inasema kuna hiyo Commission ambaye itakuwa formed na ita-investigate, itafanya investigation ya all human rights abuses committed before the coming into operation of the Constitution.

The Commission will also investigate a civil strife, massacres, ethnic clashes, and identify the perpetrators. So, ulikuwa unasikia tribal clashes ya Enosupukia, Molo, Burnt Forest, nakadhalika, nakadhalika, na Bombolulu hapo na likoni zote lazima sasa zipigwe tarubini na hiyo Commission itaangalia ijue ni kina nani walikuwa responsible na kusema washtakiwe na wale victims wawe resettled ama wapewe compensation. Tulisema Section 74 has established a court to enforce the human rights. Kwa ufupi tu. This is just an overview of our Draft Constitution.

Kile mimi ningeomba nyinyi ni muiangalie with an open mind. Usisikilize vile politicians wanasema, wengine wanasema ni mzuri,

wengine wanasema ni mbaya. You exercise your own independent judgement. Look at it na uone ni wapi mbaya ni wapi mzuri na ni wapi unaweza rekebisha. Waweza kwenda wakae chini na ufanya commentary yako ni writing na urudishe upesi kwa district co-ordinator ndio ifike Commission kabla ya tarehe 22/10/02 maana yake tarehe 28/10/02 National Constitutional Conference itakuwa imeanza ku-debate hii, na tuko na bahati sana I think with us tuko na representatives wetu wa District watatu, tuko na Ole Speaker pale, the Margaret Kego and Ole Osoi ndio watakuwa District representatives wa Kajiado District kwa National Constitutional Conference. Asanteni sana.

Speaker : On the issue of land, it talked of classification of land but that is on the basis of ownership but there is also what we call ecological status of the land. When it is said of equitable distribution of land, it should be cleared that not on equal acreage because there is what we call carrying capacity, if you go to Kiambu one acre can support 4 heads of cattle on zero grazing but if you go to Magadi you need about 100 acres to support one stock unit throughout the year. So there should be a denominator to access the acreage that is required to support a household a given area.

The other one is on this land ownership. I remember when we gave views we talked of sectional ownership of land as communities, but what I hear here, what I see here is community land, public land and individual land and I feel there is need for special consideration in certain areas because land disappearance in Kajiado is a calamity like AIDS, HIV and it is very clear it is like that and if people are actually threatened to diminish I think, there is need for special consideration. Because when we talk of the right to food, the right to housing, the right to other things, if you don't have land you may not have the right to food. So there should be protection against losing the rights.

Com. Tobiko : Thank you very much. I don't want to close anybody out or to block anyone out so if there is anything one can say before we

Speaker : Let me say that I am sorry I think I came late and I found that you were quite far but I will just be very brief for what I was saying. So I was saying that being a member of the Constitution Constituency my contribution to this process being to foster the growth of patriotism in our country so to help (inaudible) of patriotism in our country. I wish to propose that no political party, no grouping of any kind will be allowed to use any of the National Symbols or any part be it colour or element, check for instance and I am not against any party at the moment, one of the parties currently has three of the colours of the National Flag as their colours of its flag and one of the element we found in Code of Arms being also in their flag.

So mine proposal is that in the future, through this Constitutional Review Process no grouping, no party no any kind of grouping will be allowed to use these symbols or any of them for either political mileage or any kind of thing so that I as a Kenyan, I will have a lot of pride in my independent National Flag, independent Code of Arms, independent flag, national symbol. God bless you.

