

CONSTITUTION OF KENYA REVIEW COMMISSION

(CKRC)

Verbatim Report

DISSEMINATION OF DRAFT REPORT

**HELD AT SUBUKIA CONSTITUENCY IN SUBUKIA CATHOLIC
CHURCH**

ON

Friday, 11th October 2002

DISSEMINATION OF DRAFT HELD AT SUBUKIA CONSTITUENCY IN SUBUKIA CATHOLIC CHURCH ON 11-10-2002

Present:

Com. Dr. Adede

Secretariat Staff in Attendance:

Esther Mugo	-	Assistant Program Officer
Alice Thuo	-	Verbatim Recorder
John Kirui	-	District Coordinator

The meeting started at 10.00 a.m.

John Kirui (District Coordinator): Nitauliza Mzee Stephen, to Lead us with a word of prayer. Now, let me call the meeting to order. With a word of prayer Stephen.

Stephene Kariuki: Sasa tunataka kujitayarisha kwa maombi, na tungewauliza wale ambao pengine wanafanya kazi kwanza tutulie kidogo, ndio tuende mbele ya Mungu kwa maombi. Natuombe.

Prayer: Asante Bwana tunakushukuru asubuhi ya leo. Tunakushukuru kwa sababu Bwana siku hii wewe ndiye uliitenga, na tunafurahi sana kwa sababu Commissioner amefika na Coordinator wetu, ndio sababu Bwana umebariki safari yao. Tunakushukuru Bwana kwa sababu ya wema wako, tunavyo ona Bwana vile unavyo tuendeza kwa Kenya na shida ambazo tumekuwa nazo Bwana ungali wewe ndio mkono wetu. Wewe Bwana ndio tumekuweka uwe mbele yetu, ndiposa hata Kenya yetu iwe imekaa vile Bwana ungetaka. Tumekuomba Bwana tuwe na utulifu, na usalama, na Bwana uzidi kuwabariki wote ambao ni Wakenya katika Kenya yetu. Tunajua Bwana una nguvu ya kuleta usalama. Na Bwana ndipo tunakuomba mahali

popote watu wetu wameenda, Commissioners na wengine Bwana uzisi kuwabariki, na kuwapa nguvu na moyo ya kuendelea kazi yako. Tumeomba haya, kwa jina la Yesu Kristu, ambaye ni mkombozi wetu. Amen.

John Kirui: Asante sana. Hii ni siku nyingine ambaye Mungu ametuwekea ili tukutane. Zaidi sana tuko na lengo moja leo kubwa, kuhusu Katiba yetu. Kwanza ningependa kuwashukuru watu wa Subukia Constituency kwa jumla, na kwa sababu kikao hiki, ni kwa niamba ya watu wote wa Subukia mtachukuwa kwamba tunasema asante na tunawapongeza kwa kazi ambayo mlifanya.

Katika Subukia Constituency, tulikuwa na watu wa 3Cs. Wangapi wako 3Cs hebu weka mkono tujane kidogo. Members wa Constituency Committee. Walimu wetu wako? Those are the teachers. Mseme majina kwa haraka, kwa sababu ya wakati (inaudible) Asante sana. Kuna Councillors kati yetu. Nawakaribisha Councillor. Ukiingia utusalimie kwanza. Councillor, kuja utusalimie tu halafu tuendele.

Councillor Stephen Mwangi: Wananchi, hamjambo? Kwa wale ambao hawanijui, jina langu ni Stephen Mwangi, na ni Councillor wa area. Nikapata nafasi nita wazungumzia baadaye. Asante.

Kirui: Asante sana. Kuna tangazo kidogo.

Tangazo: Kwa sababu ya wageni waliofika hapa, ningetaka kuwajulisha ya kwamba, kuna choo ambazo ziko hapa nyuma ya hii hall, kuna urinal ya wanaume, na pia kuna choo zingine. Pia kuna zingine kwa upande wa juu wa kanisa. Tukiwa kwa kanisa, kuna gate utaona hapo hiyo pia inaenda haja. Pia, kuna mfereji wa maji hapa nyuma. Asante.

Kirui: Sasa, tumeanza mkutano etu, na ningetaka kuchukua nafasi ya kwanza kukaribisha nyinyi kwa hii mkutano. Ya pili, ni kueleza kidogo pahali tuko wakati huu, kwa maneno ama kazi ya Katiba yetu. Kwanza Commission kwa jumla, wanarudishia nyinyi asante sana kwa sababu kama muko kwenu, Constitution yetu, haingeandikwa. Kwa hivyo, mpokee shukrani sana kwa kile ambacho mmefanya kwa sababu kitabu ambacho tuko nacho wakati huu, ni nyinyi wenyewe mlitoa maoni. Kwa hivyo pongezi sana.

Ya pili ni kwamba leo, ni siku ambayo tunakutana, kuwaeleza kile ambacho kiko katika draft Constitution ama kitabu ambacho tunatarajia kuwa Constitution yetu ili tuone kama maoni yetu yote iko ndani ama kile ambacho kiko ndani ni kile ambacho mlikubaliana, ama mlizungumza. Tunaka kufanya verification. Tena mjue ni nini iko katika proposed Constitution. Hii ni ya maana sana. What is in the new Constitution, and does it tally with your expectations?

Report yetu ambayo Commissioner ataeleza baadaye, information ambayo iko draft Constitution na recommendation, the source ni wananchi katika Kenya. The source of information katika Draft Constitution, ni watu wenyewe, waliokaa chini

wakazungumza, wengine wa kaandika memo, wengine wakaja wakatieleza na hizo zote zikawa recorded, mwishowe tukatoa kitabu ambacho mtaelezwa baadaye, ambacho kina-itwa sasa, draft Constitution ambayo iko kwa hiyo gazeti ambao mmepata.

The CKRC, hawakuwa na maoni yao, walikuwa ni facilitating agent, wa kusaidia kuunganisha maoni ambayo tulipata Kenya. Wakati huu, it is almost the final stage, ambayo tunarudi kwa wananchi. Tukimaliza mikutano yetu, tunaenda National Conference ambayo itakuwa baraza kubwa kabisa, ambayo kila district itakuwa na delegate kama watatu. Tutakuwa na waheshimiwa wote katika Kenya, na wengine kutoka societies mbali mbali, na watakaa karibu mwezi mzima, wakichambua kitabu chetu, wakikubaliana, pale wanabishana wanazungumza. This will be the next stage. Kwa hivyo hii ni stage ambayo tungetaka muangalie na kama kuna vitu mnetaka kuongeza, tuongeze.

Kwa jumla, Commission imefanya kazi yote, ama kazi nyingi ilikuwa imepatiwa, kwanzisha kufundisha nyinyi, na mimi nafikiria, wengi mlipata bahati, mkafundishwa juu ya Katiba yetu ya zamani. Tukawa na public hearings. Katika Subukia tulikuwa na mbili. Upande huu tulikuwa Maili Kumi, na Tomboka katika hii Constituency, na moja katika upande wa Rongai, walikuwa wa second, kwa sababu mko neighbours. Public hearings zikaisha tuka andika reports, na ndio tumeleta hiyo report. Sasa we have now the draft Constitution ambayo tunawapatia nyinyi, na tukitoka hapa ni National Conference ile ambayo watakwenda kujandiliana. Wakikubaliana, Constitution inakuwa kile ambacho watakubali katika National Conference.

National Conference itachukua nafasi, that is mwisho wa mwezi huu, na tumechukua delegates watatu, ambao kwa hakika tulikuwa tumezaidia wao chini ya 3Cs lakini hawakuwa wamefika wakati ule. Report hii ni wananchi, that is why we call it people's choice. Si kile ambacho watu wana-andika wakiwa wachache. Kwa jumla wale ambao wametwambia matatizo ambayo wako nayo, kiuchumi, kiafya, matatizo mengi yameelezwa katika hii proposed Constitution. Wananchi kwa jumla wanatamani kuishi maisha mazuri. Yakuwa wana chakula cha kutosha, nyumba ya kutosha, elimu ya kutosha, afya ya kutosha, na security kwa jumla. Ile imeelezwa na wananchi. Wananchi vile vile wanataka kuishi kwa amani na umoja, na integrity. Kwa hivyo, kile ambacho tumeona kwa Constitution kile walisema, tuishi kama binadamu, ambao wanaheshimiana. Kwa hivyo kutoka leo, muwe mkiheshimiana. Pahali popote mkienda. Wapi makofi yangu basi? (clapping)

Nguvu zote za Serikali, zinatoka mikononi mwenu, kutoka kwa wananchi. That is what we said. Kwa hayo machache, sitachukua nafasi nyingi, ningetaka kuwachia nafasi hii, Commissioner wetu, Dr. Adede, ambaye atatuonyesha wako na nani na nani halafu tujuane. Ningeomba tuwe haraka kwa sababu ako safarini ya kutoka, na aende ng'ambo za kwenu leo. Kwa hivyo, angetaka kukaa nasisi. Kufika saa tano na nusu tuwe tumeliza kikao chetu, tumuachie aende safari njema mpaka Nairobi, kwa sababu jioni leo, anatakuwa kuwa huko ng'ambo. Daktari, you are welcome to Subukia and (inaudible)

Com. Adede: Hebu mimi pia nianze kwa kuwapa shukrani sana nyinyi wote ambao mmeweza kufika hapa asubuhi kutuwezesha tuweze kuanza mambo yetu mapema. Jinsi Kirui ameeleza ya kwamba Katiba ambayo mmepewa sasa mbele yenu, imetolewa kwa lugha ya Kingereza lakini tumewahi kuiotoa tena kwa lugha ya Kiswahili, lakini hakija chapishwa kwa

wingi ili tugawanye kwa watu kila pahali. Hiyo itafanyika baadaye. Nina kitu kimoja ambayo ina tofauti ile ya zamani, ambayo ile ya zamani haikuwa kwa lugha ya Kiswahili, ilikuwa kwa lugha ya Kingereza na iliandikwa kwa style ambayo haikuwa easy kusoma kwa raia. Kwa hivyo, tume-jaribu sana wakati huu tutoe Katiba kwa Kingereza, na kwa Kiswahili. Kwa sababu, the text ambayo niko nayo ni ya Kingereza, itakuwa ngumu kutafsiri text ya Kingereza, na Kiswahili, nieleze, itanibidi basi niendeleo niwaelezeni Katiba in English. Maanake ndio lugha mnayo mbeleni mwenu. Kwa hivyo nitaanza mara moja kwa Kingereza, niendeleo, niwaeleze Katiba yenyewe jinsi ilivyo. Asante.

For as you know ladies and gentlemen, what Kenya is doing is very unique in that we were not in war, nothing happened to us, but I think there was just a feeling that it was time for us to have a more responsive Constitution than that which was given to us at independence, drafted at Lancaster House in 1960. Those people who wrote the Constitution under which we are living, the one which we have tried to ammend from time to time were not concerned with anything else except transfer of power to independent to Kenya. They never consulted us, they never asked us what we wanted, and therefore one of the things that moved all of you to wish to have another document, was that you wanted one that responds to your wishes. Something homegrown. Something African. Something Kenyan. Therefore, to cut a long story short, the Constitution of Kenya Review Commission was put together, the process you know and went about the only way possible namely, to go around the country-side and collect views of wananchi, having also structured all the questions imposed to you and the answers you gave as a guide. That process ended.

The Commission was mandated to collect the views of wananchi, to collate them, to synthesize them and to use it now for writing a new Constitution. That was started December last year, early April and ended in early August this year. The Commission then retreated in Mombasa, Commissioners having looked at the views as instilled from the people, the data collected and reports, began working in earnest to try to translate your views into a written document.

The Commission themselves divided themselves into a number of ematic areas and asigned responsibilities to various experts of the Commission to discuss specific issues, and prepare drafts. Mind you, Commissioners then helped us Kenyans, sitting down looking at the views of Kenyans and trying to translate them into a written draft Constitution. The result of the Mombasa retreat produced first of all, a summary of the report which is a synthesis of the major conclusions we put together countrywide. Each Constituency had its own report, will be even much bigger when put together. There is also verbatim report anybody who asked a question, who made a statement during the collection of views, views are retained. We therefore have reports, after reports, after reports. This is the synthesis of the countrywide information that contains the major issues we thought you told us on all the major issues that you want us to include in the Constitution. On that basis, we have now reduced it to the draft Constitution we have before here. The idea was to do something that responds to all of you.

The document has twenty chapters and has 299 articles. It is written in a more friendly style. No longer the stuffy English whereas, without prejudice, subject to. All those, we have tried to eliminate to write something which you can read easily.

Instead of saying something shall we say first, because that is what you understand and if it is may, I think you understand what may is.

To depart immediately from the old Constitution, the present one you have before you, has something called a preamble where it states the major objectives of the Constitution. This is followed by Chapter One, which is the sovereignty of the people and the supremacy of the Constitution itself.

Chapter Two is on the republic. What is the republic? Chapter Three deals with National goals, values and principles. Chapter Four deals with Citizenship. Chapter five, Bill of Rights. Chapter Six, representation of the people, principle of parties and all that. Chapter Seven, the legislature. Chapter Eight, the Executive. Chapter Nine, the Judiciary. Chapter Ten, devolution of power. Eleven, land. Twelve, environment. Thirteen, public finance. Fourteen, public service. Fifteen National Security. Sixteen, leadership and Integrity. Seventeen constitution of Commissions. Eighteen how to amend the Constitution.

Nineteen, use of terms. What has been used in the Constitution and the twentieth chapter, deals with transitional and consequential commissions. These are the major factors in which we have divided the draft Constitution to reflect the views of Kenyans. Now, I will try very briefly, to highlight for you a few things in each of the chapters which I would like to draw your attention.

The whole exercise is an attempt to put all of us on equal footing, so that even if you have never had a chance to look at the Constitution itself, later on you will read it, you might remember something emphasised at this meeting and look for it and also we will also give you a chance to raise some questions or clarifications, and all that. As the coordinator said, this is a process. You have given your views, we have tried to translate them, the Commissions, and it is for you to look at them again at the National Constitutional Conference which will take place on 28th of October for a month. You also have a month now since the paper is out, to go through it as we are doing now.

Let me begin with the preamble my friend. The preamble of our Constitution says two things which I would like to highlight for you. It is where we say that we are aware of our ethnic cultural and religious diversity but determined to live in peace and unity as one indivisible sovereign nation. It is important for us not to present. We realise that we have this diversity, but we are determined to live in unity and peace as an indivisible sovereign state. At the end of the preamble we have other things. Committed to nurturing and protecting the well being of the individual, the family and the communities in our Nation. Recognising the aspiration of our women and men for a governance based on essential values, freedom and democracy, and having fully participated in the Constitution making process, the one we are going through now. You are saying in this preamble, that you have participated in its making. It is true, you gave your views, it is true you are here now listening to us explaining to you. It is true you have represented in getting our results. You are therefore participating in making of this Constitution and at the end now you give it unto yourself. So, God bless Kenya. That is the preamble, which never existed in earlier Constitution.

In chapter one, sovereignty: That is where we say that all sovereign authority in Kenya belongs to the people, you, me, and may be exercised only in accordance with this Constitution, and we agreed that those people that may exercise for us are the following: The Legislature, to whom we entrust the legislative authority of the republic, to exercise in accordance with the legislature. The Executive, to whom the people we entrust to this authority, and the Judiciary and other independent and impartial tribunals to whom we entrust the Judicial authority. These are the three branches of the Government to whom we as Kenyans who owns sovereignty, donates the power to exercise it on our behalf. That is chapter one.

Under this chapter, we also outline what laws are going to be applied in Kenya to govern us, so that when cases come to the court they know what law to apply. It is very interesting my brothers, because we hear all the time that occasionally Kenya has a bad name, it has certain things which does not be-fit it as a citizen of the world, and that it does not apply international law for example. Now, our Constitution specifies that, let us also consider those international agreements which we freely entered into as a government, to negotiate things with our neighbours, bilaterally or within Africa, or the report of the world and bring them home. If they are applicable upon us, lets also look at them by our courts. Article five shows customary and international laws and international laws agreement applicable in Kenya is now part of our domestic law.

May I go to chapter two, the Republic. Kenya is a Republic. Do you know what it means? This is the first time we have attempted to define the principles of the republic. As you can see as we go to chapter two of the draft, it says, The Republic of Kenya is founded on republican principles of good governance, through multiparty democracy participatory governance, transparency, accountability, separation of powers and respect for human rights and fundamental freedoms focused on the individual, the human beings, you. Respect of human rights and fundamental freedoms being one of the ideas of republicanism which we are now suggesting the of Kenya Government under this Constitution should look at very carefully. With a whole chapter on human rights and bill of rights which will come later but it is mentioned very high up in our Constitution. So, pay attention to the fact that now your human rights and fundamental freedoms respect and observe all of them as real supreme and how will be shown in the Constitution.

Chapter three, we never had national goals, values to guide us. A-part from this republican principles, we have tried to suggest what should be Kenyans' national goals and principles. Eighteen of them have been suggested. Lets just single out may be six or so to illustrate what they are. Later on we can read the rest and learn what are our national goals and values are.

One, the republic shall take effective measures to eradicate all forms of corruption. Who can argue that? The republic shall ensure access of the people to independent, impartial and competent institution of justice. Again, the republic shall promote the role of civil society and provide a private sector here also in governance and facilitate its role in assuring the accountability of the Government.

Another one, the republic shall ensure the fullest participation of women, the disabled, the marginalised communities and sector societies in the political, social and economic life of the country.

Another on value and goals. The republic shall be committed to social justice and through appropriate policies and measures to provide for all Kenyans, the basic needs of food, shelter, clean water, sanitation, education, health, clean environment, and security, so that you can live a life of dignity and comfort and can full fil your potential. Huge goals, values to guide us.

Another one, the republic shall promote equitable development. Recognise and enhance the role of science and technology for development. Eliminate disparities in development between regions of the country and sectors in the society, and manage national resources fairly and efficiently for the welfare of the people. Not for the welfare of the Government, but for the welfare of the people. The people will raise supreme again, and attempt to focus our Government to service to the people, and no duplications. No longer personal advertisement (inaudible).

The last one for this section, is the republic shall recognize its responsibility to future generations of Kenyans by pursuing policies for sustainable development of the environment. A concept of sustainable development. It means our ability to use the resources that we have today to cater for our needs, in such a way as not to prevent the future generations also to give the same resources to cater for them. We use them in a way that they are made sustainable. We will give you an example when we deal with forests and issues under the environment.

These are broad National Goals. They will form the pillar of which conduct for various individuals in responsible positions in Kenya will be measured. Later on you will hear there is some leadership codes requiring people in Africa to behave in a certain way following the national goals, and paying attention to international goals. They are not empty to be fed, they will be the source of your complaints. You say, in my Constitution, I want this to be done. Is this being done? If you raise it, I may ask you where did you get it? The Constitution. This document is not the place where you will have any single rule written. Otherwise we will have a full book of thousands of pages if you look at it. It is something which is essential and this is a sign post. This road leads to Subukia. This way. You will take a matatu, whether you are going to take a limousine, ride a bicycle, Those are the details. The Constitution says give the details done by the sensitive measures, ranging from, acts of Parliament. That is the gist of chapter three, dealing with national goals, aspirations and principles.

We move to chapter four, on citizenship I believe. There, an attempt is made to do away with certain discriminations, particularly that which was suffered by our women in old laws, and the truth is, which I would like to highlight for you here, which is new and which will require your attention, one of them is that, under the present draft, we now for the first time allow Kenyans to have two citizenships. This is because some of the citizens, when circumstances forces them to acquire citizenship from other countries, to acquire other things they are being compelled to give up their citizenship. Now we are saying that we are free. You can have two citizenships when permitted to live in a country. That is new and it will be looked at by those who

can take advantage of it.

Secondly, the draft Constitution now allows possibilities of acquisition of citizenship through registration. Meaning that a foreigner who is married to a Kenyan, after three years, that foreigner can apply to register as a citizen of Kenya. This is not in the old Constitution. It is also registration by naturalisation. The important thing I would like to remember now, is that all the problems you think this may raise, all the fears that have been voiced about duplication of having citizenship by registration, if Constitution provides that the Parliament will enact registration, that will establish specific criteria and modalities for enjoyment of this specific right of registration and naturalisation as a means of acquiring Kenyan citizenship.

The important thing is that somebody cannot say that I have a chance to apply. You may apply and be rejected, you may but be accepted because the Parliament will put the procedures. These are the two things I want to put in focus for you in the areas of chapter four for citizenship. The rest is to clean up, and making sure that women are not required to do certain things that they have done before, like asking for permission from the husband to get a passport. Everybody is a grown up, and they have access to human rights to have registration and documents available to the Government on their own individual merit. Look at that in the old times and see the attempt made by the Constitution to create new rights for Kenyans.

We move quickly to chapter five, called the Bill of rights. The most comprehensive. The largest chapter. The most upto date better than most I have seen in Africa. We did not write this in a vacuum. We have a large mirror of history to look at. We took examples, we rejected some, we recruited some. This chapter on human rights and the bill of rights also reminds us that, as I suggested to you earlier, the place of human rights in the Kenyan Constitution, and you find that the Constitution says that the bill of rights in chapter five, is the foundation stone, of Kenya's democratic state, and it is the framework for the adoption of social, economic and cultural processes.

The purpose of the recognition and protection of human rights is to preserve the dignity of individuals and communities, and to promote social justice and the realisation of the potential of human beings. The Constitution divides these rights into two categories and the third one, there are civil and political rights where your rights to assembly, your freedom of speech, your right to fair trial, your right to belong to a party of your choice, your right to vote, your right to participate in the civil work of the society, and the right to life. Under this right to life, I warn you, the Constitution says, death penalty is hereby abolished.

A-part from this civil and political rights, there are categories of social, economic and cultural rights which are also written in the Constitution. They include, the right to health, education, housing, food, water, sanitation. I mentioned them earlier where they are listed, but this chapter now they are being provided for and each of them has a statement requesting what Government should do. All that money that is available which will be managed properly under chapter 14, should be used by Government to initiate programmes under which the cost of giving to wananchi, these rights will be realised. These are the kinds of rights that depend on Government's or the country's financial availability and capability. What is the use of being given the right to vote if I

have an empty stomach, I can't even walk to the polling station? What is the use of giving you the right to join trade unions if I don't have health care, I am too sick to even (inaudible) so an attempt to combine these rights, even the rights to social security, the rights to live in a clean environment are now all enumerated under chapter five of the draft Constitution for you called the bill of rights. I commend it to you to read it again and find questions at the end. Note it down my brother, I will go through twenty chapters, then you will have a chance to ask questions and clarifications. My I? Thank you.

The available copies were being given at the door as you entered. If you don't have one that means we have run out of them and shamefully that is all I can say. You can share. My discussion rather, may I get your attention? The idea is for you to listen. You will read the Constitution later on. You will get the opportunity to read it. In fact, I am not referring, this is why I am not reading all the articles. I am reading the highlights, and then you can later on go and read the Constitution in your good time.

We will talk about the possibilities of making it available to all of you who don't have it. May I continue? Thank you.

You may also note that under the Constitution, even prisoners have a right to vote and the Parliament will enact the law which will decide as to whether or not the person (retain) jailed for more than two years and above without being tried. Anybody who is in jail for six months for reasons like that and they are in and they are going on, we are saying that they should not be denied the right to vote. So, under this Constitution, even prisoners have the right to vote as human rights.

When you approach human rights, you will find that the Constitution also attempts to provide the machinery for implementing these rights. It is suggesting the creation of what we call the commission on human rights and administrative justice. This commission will be appointed in the manner, described in the Constitution, and will have very important functions of having also within it, various Commissioners, those who deal with gender questions, those who deal with problems of children, those who are specialised on the disabled, and those who are dealing with other forms of marginalisation and basic issues. There is a place where we will have what we call the people's protector. There is a place where you can send your complaints about administrative and other matters that impede your rights. However, you must know your rights first of all, before you can complain. This is why it is important that all of us Kenyans know something about the Katiba. This why efforts have been made to introduce it in the end, in the language that all of us can find accessible, at least Kiswahili. This is because traditionally, democracy which we are striving on, which we aiming at, only thrives in an informed community.

If you look for your rights, you will ensure that they are protected. If you do not know, you will be trampled upon, and who will care? Somebody else will try to exercise them for before you and try to say what they think is right for you, and you create a defender. Therefore, know your Katiba. In fact, it is one of the requirements of the duties of acitizen under this Constitution, knowing your Constitution and using it. It is the only way you will be able to to check our future leaders, by always putting them on their toes, and raising issues seeking legitimately, to have your bill of rights protected. I recommend chapter five, the bill of rights for you with those key areas to the existence of means of implementation, the abolition of death penalty, the rights of the prisoners to vote, divisions of social, economic, cultural rights on one hand and civil and political rights on the other, balancing

them and switching ways to observe them for the welfare of the individuals in Kenya.

Chapter six, representation of the people. Political parties and the rest. Here, the draft Constitution has principles for representation for the people of Kenya, through a responsible electoral system and process going to establish a new Electoral Commission with more streamlined powers and functions. Political parties will now be registered or be de-registered by this Electoral Commission. They will no longer go and apply for registration in the AG Chambers as societies.

Voting is by secret ballot. Election is free and fair. Elections shall ensure the fairest representation. Ballot boxes to be transparent. Votes to be counted at the polling stations. No more transportation of the votes from area B to area C where a lot of things happen in intervening space and you know about it. These are new things that this draft Constitution has singled out.

Political parties will follow a code. They will have to behave responsibly because we know that their aim is to allow you to express your views through joining a party. (end of the tape, some information not recorded)

We requesting that a certain figure of the national budget be devoted for financing political parties. That does not mean that you and I can get together and form a political party and register it and just stretch our hands every year to be funded. Never, the Constitution allows the Electoral Commission, for various reasons for disqualifying and even de-registering such political parties. If for example it is found out that one political party in the last two National elections, it never even won a seat, then for what reason does it exist? It becomes de-registered. Or if it is found to violate some of the codes that are written in this Constitution, will also be de-registered. The point or the fact is that we are streamlining the functions of political parties and making them more responsible so that you can use them as vehicles for representing your views to the Government, including forming one and administering.

The right to vote is there as a human right, and also as required under the electoral commission's laws. There is now requirement of continuous registration, not waiting until elections and then you begin to register. The Commission will now be charged with the duty of undertaking continuous registration of wananchi, so that voters' register is kept upto date and properly done, instead of doing it in a hurry only in the context of a pending election. This concept of continuous registration is repeated almost three times throughout the republic.

Qualifications, eighteen years and above to vote, provided that you fulfil other requirements, mainly that you are of a sound mind and (inaudible) and issues of that kind. The funding will come from the Government. There will be other sources for funding political parties, indicating who and who is not allowed to contribute to the fund that may be given to political parties. In sum, what we had is quite different from what we have now. We have a new Electoral Commission with the power to register and de-register. We have political parties now being funded by the Government. We also have political parties being requested

much earlier that in organising their work and appointing themselves to various positions, let them encourage women to participate in their work, so that a party as an inducement, may be given more funds, if it has shown that it has encouraged more women to join and to participate in the political process. These are new ideas that we have put in here for Kenyans to look at as an attempt to improve on our systems of representation, through a responsible electoral system and process as now detailed in chapter six.

We go to chapter seven. The Legislature: Here are the radical changes that we made in that having listened to the views of the wananchi talking about majimboism, regionalism, nature of government, unitary, bicameral, two houses, the question came, what can you suggest? The Constitution makes a choice for you to look at. It has decided on what we call a Parliamentary system of Government, with two houses. An Upper House, and a Lower House. An Upper House called National Council, and the Lower House called National Assembly. The Upper House is supposed to give a chance for equal representation of the districts. It is made up of a hundred Parliamentarians, Seventy, fifty nine and Nairobi districts, and then thirty preserved for women. A house, seventy plus thirty, one hundred. Seventy elected on a single member district, so that each district sends its representatives equally and then reserve thirty places for women.

Thirty women will be elected provincially. Seven full provinces producing four each, and Nairobi two. It will be elected for four years. It is a gender of maturity and we think the age of becoming a member of the Upper House to be higher than that of the Lower House, so that if you are able elected to the Upper House, you have to be thirty five or above. That is the National Council, the Upper Chamber.

We now have the lower house. We are suggesting of three hundred. 210 plus 90. 210 from districts and another 90. 210 members will be elected on the normal single member district first, as opposed to the system we have now. Then the 90 we have added, to be elected by the system we call mixed proportional representation, where each party is permitted to prepare its list for the candidate they want to be elected on the 90. They are required to make that list in order of preference. They are also required that if they are making that list, if for example Kanu is given six slots they have to make it in terms of man, woman alternatively like that. In fact it is this method, M,W,M,W. The 90, mixed proportional representation from a party list. There is no nomination. It is election of the ninety from a party list, prepared by the party, written by the order of priority and prosperity. That is how the National Assembly is going to be constituted of 300, elected for five years. National Council, four. National Assembly, five. Age of membership, twenty one and above. Requirements in education, secondary education.

In this election system now as the Constitution continues its gender sensitivity, article 109, that is the first one I read that is why I called by name, requires that attempts should be made from one third of the entire membership in the Parliament should be women. One third of the Parliament as a whole in the two houses should be women. How to achieve that, go to details and things should be found out. The only thing we now have is that we have a Constitution to point at. We need a process which will help us to achieve this immediately, and the Constitution says that, three years after entry to force of these convention,

Parliament should enact the law that would help in facilitating in enjoyment of this right. The right of women to have one third of their number supplemented in our Parliament.

Our Parliament now is made up of two houses, the Upper House, and the Lower House. That means that the President is not a Member of the Parliament. He is not even elected to represent a Constituency. He is elected by Kenyans as a whole. The Constitution requires that the President should have his or her running mate and they are directly elected by the people, not to represent a Constituency. I remember, I was in Government then, it is amusing, it was a shock and very practical too, when Martin Shikuku, refused to stand in the Parliament, when President Kenyatta entered the Parliament on the Budget day. His argument was that, why was everybody excited when members of Gatundu entered the House? At that particular time, he was coming in, not as a president, but as a member for Gatundu to listen to the debate on the Budget. That was a joke, but he did it and he was on his right because our President is member of the Baringo Central. He represents the Constituency. In the new system, the President is not a member of the House. He is elected as a President. He has to be 35 years of age at least, but below 70. They can serve two terms of five years each. No more.

However, let me tell you, he is not ceremonial. He is the Commander in Chief of the armed forces of the country. He is the Chairman of the National Security Council. He appoints the Prime Minister and the Cabinet, that as you see, will be charged with duties of day to day running of the Government. He appoints the Prime Minister, the Deputy Prime Ministers, and the Cabinet. The catch is that this appointment, is now subject to vetting by the Parliament. He can choose to stick to the vetting. If he appoints the person that he wants, then he is told he doesn't have power to do that.

When those legislators have done a draft bill, and he receives it, look at it, that is the President, a draft bill from either Upper House or the Lower House, then has a question, and suspects there is something unconstitutional about it, he has the power to refer the draft bill to the (inaudible) to determine the management or having looked at it, find some faults in it, doesn't like all the suggestions, they reverse it back to the House on stage for reconsideration.

He is required to address the country once every year, to tell us how we fared in our attempt to achieve the national goals on what Kenyans are doing in effort to comply with the Constitution which he supported as an individual and he is the one who is empowered to make sure that is done. That is power. For this reason, the Prime Minister is required to keep him well informed of the various activities of the Government. He can address the President at any time he wishes. That is the kind of President we have in this Constitution. It is for you now to go and read it again and make up your mind what does it mean ceremonial? What is negative about it? Of course, he opens up every session of the Parliament. That's ceremonial, but look at the other things he does.

The Prime Minister: now we will come under the executive as a whole now. Since I took a detour, I am just reading about the President to put him up there, so that you know what kind of President we are suggesting. Now we come to the Prime

Minister. Both of them being in the so called executive branch. It is chapter eight of the draft Constitution. This Prime Minister as I told you, is appointed by the President among the leaders of the majority at elections. He must be a Member of Parliament. He is elected to represent a Constituency through his society. Before I give goodbye to the President, beware of the fact that to be a candidate for the Presidency, you can have your political party or you can stand as an independent candidate. Any person who has one thousand signatures, supporting his or her candidature as President, with those thousands including ten of each of the provinces at least ten each provinces, qualifies to stand as a President for election by all Kenyans. The Prime Minister however must be elected as a Member of Constituency. If by the end of elections one party emerges, the leader of that party is invited by the President, is appointed the Prime Minister. We will also appoint two Deputy Prime Ministers. All to be done by the President and vetted by the National Assembly.

Let me pause here and tell you one thing that all appointments which are going to be made for high offices under this Constitution will be subject to approval of the Parliament. The Constitution has even done better, has already indicated which house is going to vet who. There is therefore a list provided by the Constitution that appointments of ambassadors, permanent secretaries, ministers and public servants, the Attorney General, will be by the lower house assembly. Others like the Chief Justice and so on will be the Upper House. The list is clear. In case of doubts, read the Constitution, it will guide you on that.

The appointment of the Prime ministers and deputy ministers by the President will be vetted by the National Assembly. This Prime Minister, there are two things radical things about him which I would like you to know. He is required to be served by a cabinet of not more than fifteen. There can be less than fifteen but not more than fifteen. These fifteen my friends, are supposed to come from outside. Professionals from outside, and not from Members of the Parliament. Kenya Ministries, will be headed by professionals in their fields, appointed by the Prime Minister and approved by the President. That means in an ideal situation, lets say you want to have a Minister for environment, somebody who knows about the value of forests. Multiple uses, forests as a source of energy where some trees have just been cut down just to make the next meal, or to burn charcoal. Forests as a source of timber, which is used for trade or for building things that we have, forests as a recreational area, forests as a home of biodiversity, our rich culture where we get medicines. Forests' role in the carbon cycle that help us by dealing with the attraction of rain and drought and all that. We know that all these acts must be balanced sustainably, then you initiate policies and ensure that his ministry will implement appropriate measures and even encourage Government to pass regulations that can protect our forests, for example.

The complained that some of the Ministers, come to us during elections, we give them votes, and they disappear for five years. We do not even see them. The next elections they come around again. Some of them claim that they are very busy running the Government, they are busy, so we can't see them. Let them legislate, Parliamentarians be busy, legislate debates, go to your Constituency, know what is happening and let the day to day running of the Government be done by professionals in the cabinet appointed by the Prime Minister. Mark you, about these legislatures. They may be in trouble now, because if one of them just identifies a building in Nairobi that this is the Parliament and he or she walks in, walks out and gets paid at the end of the month,

all that he or she does is walking in and walking out and he does nothing, his constituents will catch up with him and say, he is doing nothing, recall. Wananchi now have the right to recall non performing Members of Parliament. They are there to serve them. That is in the new Constitution, so that they can spend more time in their Constituencies, knowing what is happening there, and going up to their to legislate things on informed basis knowing what their people, your people want. Let the people do the administrative work as Ministers, supported by Permanent Secretaries, who are also qualified and vetted through the whole system.

This Prime Minister with his radical cabinet I suggested, he is in trouble also. He may be dismissed, but only when there is a vote of no confidence supported by fifty percent of the Parliament's views. Vote of no confidence Prime Minister A. When a vote of no confidence is successful, the Prime Minister has no choice but to resign. However, upon resignation of the Prime Minister, the Government does not fall immediately. That President of yours, has another power. He has the power to look around and find out if he can find somebody else who will command majority acceptance to form a Government. If in twenty one days he has not found somebody to replace the outgoing Prime Minister, it is only then that the Government falls and a new elections are held, so the Prime Minister, may be dismissed. The President has the power to try to renegotiate, to find a replacement.

Parliament, legislature, executive, the three arms of the Government, a lot of cleaning up has now been done. For example, now we know that the Parliament will be revoked, every 30th of November every year, and resumes every 2nd February the following year. We also know now that all elections for the President or for the Parliamentarians when they fall due should take place on the third Tuesday of October, on the year the election falls. A particular date and weekday day is elected by the Constitution to avoid problems that arise, elections held on Saturdays, the SDAs are complaining rightfully, it is against their religion to do things on Saturday or Sunday and all that. Therefore, all these elections will be held on the third Tuesday of October, every five years when elections are due. You can now know in advance. You can. Even if it will require closing up schools and inconveniencing them and all that, but it is something which happens once for every five years, or if there is a fall of the Government and the elections are called that we cannot complain but at least now, under normal circumstances, we know that every third Tuesday of October of the fifth year will be general elections, and you can plan for it ahead hence the continuous registration is also required.

With the powers of the President as mentioned, the two Houses of our Parliament, the cabinet, the Prime Minister, and of course the Vice President who is the Assistant President and takes over from him in all the functions ahead of the Prime Minister, this is the new system that the Constitution suggests in terms of these two branches of Government. We have gone from seven and eight.

We move to number nine, the Judiciary: Those who were not here when I began, missed my appeal, the fact that this discussion takes place in English for the reason that the text available for everybody is written only in English for the time being,

and that the efforts by the Commission to make sure that the documents appears in both languages has succeeded only to the extent that this report is out both in English and Kiswahili, the people's choice. Katiba itself is already being translated into Kiswahili and will be out soon. It is immensely difficult for anybody to pretend to translate from English to Swahili and explain in Kiswahili. I cannot try it. Unfortunately, arrangements for translations have not been made, but bear with us, let us just continue to do our best. Thank you.

The Judiciary; here again, we have tried to come up with some new ideas, one of which is that this chapter now says that the judicial powers is derived from the people and shall be exercised by the Courts in the name of the people, in conformity with, under the laws of Kenya, and in conformity with the values, norms and aspirations of the people. You remember them? Those norms, they are everywhere. They will be the yard sticks for measuring whether or not our Judiciary, our judicial officers, are really performing their functions in service to us. Therefore, under this chapter, there are new institutions established. Now we have a new Court hierarchy, which begins with Courts of records as the lower Courts, there is High Court of Kenya, Court of Appeal and now the Supreme Court of Kenya. The Supreme Court is one Court where the President can send a bill requesting determination as to its constitutionality.

There are new standards of qualifications of all these levels of Courts and those who will be invited to participate in them as Judges. Two things, to emphasise for you which is different from the system we have today, is that under this Constitutional draft, there is a suggestion that Judges should retire willingly at the age of sixty five, instead of the current, seventy four. It says they may if they wish, to retire at sixty, but must retire at sixty five, and that is one of the problems that the Judiciary did have with the Review Commission, by reducing the retirement age from seventy four, to sixty five.

We also retain the provision of the Kadhi Courts in our system for reasons that are actually historical. We understand that part of Kenya was given to Kenya on the promise that Kadhi Courts will be maintained, and it is even in the existing Constitution, the only such Court sorely recognised. You have seen some comments in the papers, some people are rejecting the fact that this Kadhis' Court is emphasised by the Constitution and theret are not. We now have to retain Kadhis' Courts up to Provincial level, and at the kin's level.

Ladies and gentlemen, the issue of Judiciary has become a hot one in the press and the news up to this morning. You know that our Chairman Professor Yash Pal Ghai and ourselves as Commissioners were taken to Court, first by lawyers who are claiming that we were trying to destroy the Judiciary. We have an interest, because there was a rumour circulating that we, as the Commissioners in this draft had suggested a sacking of all the Judges immediately, and that if we destroy the Judges, where will they practise? We have an interest to make sure that we don't discuss those ideas. Judges themselves also took us to Court, and we were being accused for the contempt of Court for refusing to stop our work because we kept working up to now and so on and so forth.

What we have suggested here, was in response to the general feeling gathered everywhere. Voice by wananchi, saying that all these new ideas we are trying to write into the new Constitution for the benefit of wananchi will probably come to nought, if we leave the results of these rights in the hands of the kind of Judicial officers we have today. The people were expressing the lack of confidence and competence and integrity of generally members of the judiciary, and this was summarised in this report. We therefore had to address this issue, and suggested a transitional measure to address it. Apart from the new Constitution that establishes any qualifications and provides that judges will be appointed by a newly established Judicial Commission that will look at the qualifications and make suggestions for appointments later vetted by the house, this is for the future. How then do we deal with the present concern of wananchi concerning the present judiciary before...(inaudible) and it is our transitional measures that was not clearly understood. This resulted in rumours that we were suggesting that judges should be sacked, but this is what we suggested, that the present Judges as soon as this Constitution enters into force, can retire at the age of sixty five, because they are young, they are not so old, so generally the law says that you may elect to retire at age of fifty five, and if you do so, there is a package for you. Your terminal benefits, your incentives will be calculated with another five years additional. So, fifty five plus five equals sixty. (end of the tape, some information not recorded)

Either some misconduct of one or the other, either in the LSK books or the Attorney General or what have you. Now the idea is that if any of the present members of the Judiciary elect to stay on, not to retire at fifty five, five years earlier, they will all be made subject to investigation according to the new Judicial proposed. They will have to declare their wealth, and all cases turning against any of them will be taken up for examination and dispositions and in the end, a decision is made. Some who have cases against them may be cleared and continue until sixty five. Those whose claims are justified, will have to go now, but without the bonus. Therefore, any of them who thinks he has no skeletons in the closet can stay on, and be subject to the vetting which is now established under the new accordance, but you can quickly take your fifty five and you are free to go. There is no wholesale sacking of Judges. An attempt to make them comply with the leadership code and the qualifications so that the quality of service, which we are now trying to introduce in the new system also applies to them. Those who will remain, will remain, and those who would like to go will go. This is the idea. Therefore, our Judiciary, will be selected by a Judicial Committee. Qualifications clearly stated, appointments vetted, leadership code available, and we hope for the best.

Eleven, land: I have just been reminded that I skipped ten. How clumsy? Ten, devolution of power: As I mentioned to you, the views of wananchi as this Constitutional review Process began, were those who were talking about the system of Government, majimbo, unitary Government, what have you, and we have now selected a Parliamentary system with two houses. Our response to this was to introduce a system of devolution of power, because what the people wanted was to have a system in which decisions that affect you in the village, in the district should be made by you directly to the people whom you have elected and whom you have confidence in.

This system of devolution of power from the National Government has levels. The district level is the corner stone of the devolution of power, co-ordinated by the provinces, but the power goes down to the village and to the locations. The trick is

that the whole process is elective. No more Government by civil servants sent from the Central Government. The idea takes full knowledge of the fact that the district component system has the most powerful and is the closest to the people, with people with enough experience knowing how to do what, how to deal with wananchis' wishes. The district is therefore the centre of the division of power, then efforts are made to make sure that power devolves to the local people at the village level, and at the locational level. The village councils elected or elders, depending upon the decision of the local people. We take note of the fact that some other communities have even elders who are more powerful than the DC himself. People listen to them more than the those in the Government Branches. Since they deal with leadership, they deal with security, they deal with the Government, why not use them? Why not elect them to be the people to whom the power now belong? They can decide, and they can discuss that health centre, that road, that education.

Taken together with the Constitutional provision that Kiswahili and English are the official languages of the Country with provision made for encouraging other languages, indigenous languages, including sign languages and braille. It means that in specific areas where available, discussions may be held in the vernacular in particular councils, so long as the report that is prepared is later given in either Kiswahili or English for Government purposes. This allows the possibility of people in the village discussing things that touch them in either language. This is the system. How it is going to be effected is still a subject for discussion even up to now, but the frame work is there and perhaps it might be useful just to read the principal of devolution of power, to tell you what the idea is. What we are planning to do.

They are quite a number but I will give you six of them. The principle and objective of division of powers are, give power of state governance to the people at all level and enhance the participation of the people and communities in the exercise of their power in the state.

Strengthen National Unity by recognising diversity in ways that denote the sense among all citizens that they belong to Kenya and share in its Government.

Another one, ensure equitable sharing of National and local Resources throughout Kenya, with special provisions for marginalised areas.

Again, facilitate the decentralisation of Central Government powers and the location of Central Government Institutions, and the departments away from the capital territory to ensure equitable distribution of resources in all the Provinces. Provide essential services to the people effectively and economically. Two more, protect and promote the interests and rights of the minorities and disadvantaged groups, and facilitate co-operation between National and devolve authorities.

The National and the devolved Government shall ensure the participation of communities in decisions relating to the exploitation of natural resources, in their areas, and the preservation of the environment. Local people must decide whether, they mind

taking place or not. What are the rules? What are they going to benefit in it? Is it the Government benefiting or is it us? If it is the Government, how are they going to get that money generating from our local areas? Participating communities in deciding how to exploit and explore the natural resources of a particular country. These are the broad ideas that are supposed to be achieved by the process of devolution of powers by making sure that the Central Government devolves the powers to the district level, to the province level, with co-ordination by the provinces and the system also to supervise at that level. It will also allow the Central Government to send some representatives at the lower level just to make sure that those to whom the power has devolved are indeed exercising it properly.

I repeat, the detailed mechanics of bringing this into actions is being discussed, but that is idea. If you like it, that is the position required and we will have a power devolved from the Central Government instead of being accumulated up there as it today.

It is under this that section mention is made of the following statement: that the provincial administration as we know it today will stand dissolved on the coming on to effect of the Constitution. Let me hasten to add, there will be no vacuum. No vacuum is intended. Power will just pass from one structure to another. In the transitional provision, it is clearly stated that when that happens, anybody who will be holding an office in the old provincial administration which is dissolved shall report to the Public Service Commission with the new Government for redeployment. We are not cold hearted thinking that we can just throw out our citizens off the system without considerations. The same thing says that, at independence recalls there were two houses, then we amended the Constitution, we did away with the senate. Do you know what happened to the senators? They were not thrown away, they merely, what did they do? They created new Constituencies and absorbed them and then they became Members of Parliament. We have a system of trying to take care of our people.

Here again, no persons who belongs the current provincial administration will suffer as a result of the change from one system to the other. In fact, the new one will rely heavily on the experience. They are the ones that recruits the people, there are the ones who know what it means to sit down in the office from the morning to hear wananchi coming to you with their complaints, we wanted school fees, wanting all kind of things. They have it all, and that is what we would like to continue but through an elective process with people taking part and deciding who it is they have the confidence to do what, to give them the services. Devolution for you. Now we go to land.

Eleven, land, being Kenya's primary resource, and the basis of livelihood for the people, shall be held, used and managed in a manner which is equitable, efficient, productive, and sustainable. Land in Kenya belongs to the people of Kenya collectively as communities and as individuals. Now we have three types of land recognised in the Constitution, not as before. We have public land, defined clearly in article 234, we have private land, defined under that article, and now community land. The Constitution defines clearly the ownership and the nature of this land being the primary resource of Kenya that must be managed carefully, efficiently and all that. Anything community land is now a category of land recognised in the Constitution.

There is going to be established a new land Commission. It is this Land Commission to which all the public lands will be held in trust for the people. Not for the Government. It will be the Commissioner of Land made up of individuals elected, appointed and vetted by the Parliament regime. People who are qualified, who will follow the leadership code, the new culture of less corruption, the new culture of *hakuna kitu kidogo*, the new culture of doing what you are supposed to do because that is how you earn your living. Land Commission will be established, and new functions streamlined.

Under the new Constitution, a non citizen of Kenya who currently holds a piece of land with a title deed larger than 99 years, is over. That land must be reduced to no more than 99 years maximum. I understand there are areas where some people hold 399 years leasehold. Those are now prohibited under the new Constitution. It is nothing really going on, but now the Constitution says that non citizen cannot hold land under leasehold larger than 99 years. You must be waiting to hear what the Commission wants to do about this general feeling that some land changed hands improperly, dubiously or probably grabbed. What happens? We would like to encourage security of tenure. Willing buyer willing seller, and where there is a bonafide purchaser that title ought to be protected as a general rule.

Listening to specific comments and aspirations, this Constitutions now provides in article 235 (b) (ii), asks the Parliament within two years of coming to force of this new Constitution, to enact laws for the review and assessment of all claims to unjust expropriation of land in the Coast, North Eastern, and Rift valley Provinces or elsewhere, whether arising from historical, or other causes, in order to establish their validity, and how best they can be justly, peacefully, and equitably resolved, and Parliament shall determine the cut off date with reference to which the review is required in paragraph one that I have just read. This is the solution the Constitution Review Commission has suggested to be placed in the Constitution, to compel the Government within two years after this Constitution comes to effect, to enact the law for making this happen, to undertake this review and that is the best we can do because now, it becomes a Constitutional right. Every citizen who feels in any way wronged by this can now pester their Parliamentarians and make sure that in two years, a law is passed to address these issues as recognised. It is a special solution suggested by the Constitution, pending future implementation by the Parliament.

Apart from creating a new Land Commission with more powers streamlined and describing how land tenure is to be organised, to be streamlined so that Kenyans should begin to use and own the land. The right to own property is also a human right on the bill of rights. All these issues will come up from all angles. If your right to own and enjoy and dispose off property in any way affected, you can tackle this from the human rights based pending the solution arrived at by the Government through the Parliamentary Review process. That is all I am about to say about this important question of land.

Twelve, is environment I believe. Here we had already realised that Kenya wants to pursue a policy of sustainable development and the right to healthy environment is also part of the human rights, the way we deal with our natural resources to make them useful to us and to the future generation is important. Therefore, the Constitution does two important things in this chapter.

One, it entrenches the National Environment Management Authority as a medium, as a place where all our environmental policies are going to emanate. That is one.

Secondly, it directs that the question of the preparation and implementation of environmental impact assessment with respect to all development projects which deal with natural resources exploitation must be conducted. The role of environmental impact assessment in enabling the government to deal responsibly with environmental dimensions of development projects is now a Constitution issue. It must be done properly and if a group of people in certain areas have a complaint that perhaps something is being done which is going to affect their livelihood and they have not been consulted, they have not taken part in the divisions, that or the compensations which are being given the individual doesn't own, they have the right to make sure that it is done.

Secondly, it is in this area where we give this Environmental Management Authority, the right to help Kenya comply with its international obligations relating to the protection of the environment. Just as we give the Commission on human rights and administer justice the right to help Kenya to comply with its international obligations in human rights area. The same thing is there on the environment. Those are the key things I want you to remember that the Government is serious in following the policy of sustainable development, and this is the chapter where the machinery is established.

Thirteen is public finance. Where again I attempt to define the purposes of public finance in away that would coincide with our national goals and aspirations. A couple of things, the office of the Auditor General and the operational budget is now split. It is no longer one and the same person to be able to manage our revenues properly, we have now split the office of the Auditor General from that of the controller of the budget. This is where the functions of the Central Bank are also defined and we have all these funds now, before except withdrawals from them is now more streamlined and the uses of the fund are now geared towards service to the people and will be controlled in a much better way. Public finance is chapter thirteen on which these new ideas are contained. The principle of objectives of the public funds are explained and perhaps just to read briefly what they say, anyway, these are not very new, in that it just an attempt to streamline the fact that the funds of our republic have been poorly managed in the past, and now it is time to organise it with a view of focusing things to benefit wananchi including funding for political parties, including funding to give incentives for good conduct and all that, and making sure that corruption is eliminated.

Fifteen is public service: the principles of public service values and principles. In the Constitution where possible, each chapter will begin by outlining the principles, where applicable. Here is one, where the chapter begins with telling us what are the principles of administration. They are about ten here. There is maintenance and promotion of high standards of professional ethics, promotion of efficient effective and economic use of resources, impartial, fair and equitable acquisition of services and so on. What I wanted to bring to your attention here is that with our theme of focusing on the service to the people, would you believe that we are suggesting that the police services now come under public services chapter of the Constitution. It has to

emphasise that they are being established to provide service to the people. There are human beings that you could go to for directions if you are lost, or the new place where you can get Kencel cards, or so forth and not a person who you are afraid to approach because you think that their tendency is to look at you and even to harass you.

To emphasise the need for associating this with a service foremost, connecting the security is a rationale for putting the police service and collecting services under the chapter on public service. There will be a Public Service Commission also established to help in the personnel management for the entire Kenya, the appointment and all managerial aspects. The police services shall remain a National Police Force and the division of its functions shall be organised to take into account the structure of devolution. That means that the APs are not out in cold. They are absorbed, because in the service structure, it will be taken into account the devolution process when the power goes ahead those people will be solved. The Public Service will give directives and make sure that anybody who has a responsibility to do something for Kenyans in a position of leadership will be called upon to take up the values and principles which are set out in meeting our goals and values. The leadership code will therefore be there to guide our public service in performance of its function for our new Kenya under the new Constitution.

Fifteen, the defence forces and national security: there shall be established a national security council chaired by the President as you know as the Commander in Chief of the Armed Forces and defined forces are also established. They are now called defence forces not armed forces. The principles and objectives of national security are laid out in article 271, and you can read them. The primary objectives in defence forces and security system in republic of Kenya is to safeguard the well being of the people of Kenya, the peace, national unity and integrity of the republic.

The defence and national council, national security of the Republic of Kenya shall be promoted and guaranteed in accordance with the following principles. They are written down there. The establishment of national council, in order for the President and the Vice President, the Prime Minister, the Minister in charge of defence, Chief of General Staff, Army commander, Navy commander, Airforce, the Commissioner of police, Director of Kenya correction services, Director of national security intelligence services, the Chairperson of the relevant Parliamentary committee and the Attorney general. That composes our National Security Council presided over by the President and in his absence, the Vice President and the Prime Minister in that order. You may not be interested to know the name of the armed forces but this is also outlined in article 274 which is another council also presided over by the President called the Defence Forces Council which is going to deal now with the day to day of the security system of outside and attack situations.

Ladies and Gentlemen we are going to chapter seventeen with a new short chapter on leadership and integrity which is very important as the new idea in this Constitution. The leadership and integrity chapter applies to the President, the Prime Minister, the Deputy Prime Minister, the Ministers and the Deputy Prime Ministers. All Members of Parliament. All members of local councils. All Constitutional office holders. All other republic officers. The responsibilities of the office are outlined in this belief chapter but unlike Uganda we have a more detailed leadership codes schedule at the end which outlines what are the details of

the leadership and the integrity code that is going to be the standard of review where all public office holders will be judged which will lead to their dismissal which lead to their renewal of contract which will lead to their being rewarded for various reasons, getting honours for performing the services to the people.

We now have a leadership code all aimed at making sure that corruption is a thing of the past, and failure to perform functions properly in services of the people is a thing of the past. We are all in it together and people are watching, and if you don't there will be a procedure. Individuals have the right to go to the person's protector and complain against any official who he or she believes has acted in a manner that is inconsistent with public service. That means, if I need a license, and I am supposed to pay twenty five shillings, I pay twenty five shillings, I get the license. Nothing more. Anything more would be against the conduct of the leadership code and let him know who it is and there will be procedures of dealing with this without fear or favor. When all this is said and done it belongs to you. You will be the ones who will take on to assert your own rights. They will be here on a piece of paper if not tried, things will go on as before. We need to see if we are just bluffing for people just go on doing corruption, people being innovative, willingly giving bribes because they want a thing so bad that they forget the leadership code which can protect them against such. This leadership code and the schedule that deals with it is important. It is a new addition to the Constitution.

Seventeen is the Constitution of Commissions and Constitutional offices. Here is where we have now described in details the functions of the various Commissions which are established in the Constitution as mentioned earlier. We have Special Commissions, we have Commission on Human Rights and Administrative Justice, with the power to investigate any conduct in state affairs or in public administration in any fear of Government that is alleged or suspected to be improper or that could result in any impropriety of prejudice. Very broad. You know it is there. Use it.

The functions of the Commission are huge. There is the Ethics and Integrity Commission that will also deal with ethical matters, anybody who is charged with misconduct. There is Salaries and Remuneration Commission, there is the Teachers Service Commission and there are Constitution Commission and Constitutional Offices such as the Attorney General, Auditor General, Controller of the Budget, Director of the Central Bureau of Statistics, Director of the Kenya Control of Correction Services, Director of the Kenya Police Service, Director of the Public prosecutions, Governor of Central Bank and Public Defenders. These are called Constitutional offices with specific duties and rights and obligations.

Chapter eighteen deals with amendments how we can patch up this document once we have adopted it and we have tried for some years and we would like to improve on it. The procedures for amending it are laid down in chapter eighteen.

Chapter nineteen is on interpretations. Telling us what civil societies are, financial year, persons, the words used in the Constitution which would have a particular meaning to you are described in this chapter.

The final chapter twenty is called Transitional and consequential provisions that deals with what we need to do while waiting for

the Constitution to take effect, or immediately upon taking effect, what procedures will be in distribution to giving effect. Therefore, we have gone through the twenty chapters of the Constitution divided into 299 articles in my attempt to highlight for you the basic ones.

Ladies and Gentlemen, inevitably not all the recommendations the Commission received could be accommodated within the draft Constitution, without making it an impossible long document or unduly restricting the discretion and judgement of the Government and the legislature as future policy emerge. Therefore, we the drafters of the Constitution aim to make politics responsible and peaceful and a national in outlook. We are proposing the regulation of principle parties to ensure internal democracy and public accountability and the discipline of the code of conduct under which the right of all to participate in the political process without violence, threat of violence are secured. We have tried to place the people at the centre of the Constitution, Constantly emphasising people's participation. Bringing power closest to you. Giving you greater control over your every rights. We have recommended affirmative action where it would help to eliminate past injustices and disadvantage where the gender communities and based regions.

Our proposal seeks to make Kenya a good regional and global citizen, promoting peace, economic development and human rights and welfare. We want Kenya to play a constructive role in Africa and International affairs, and we believe that a Kenya which governs itself through a democratic patriogatory and just constitutional order will have greater moral authority in the international forum. In some, the Commissioners recommended a Constitution that departs in radical ways from the present Constitution. We believe that these article departures are necessary to find new directions, to a national unity, economic and social development. The dignity of individuals and community and social justice as well as for the renew of our national institution. We do not pretend to have the monopoly of wisdom, we commend this to you to look at, the process is still going on throughout the month. If there are any specific, suggestions for improving it, please, this is the reason why we went through this exercise to give you time now to go and read it and then through your representatives to the Constitutional Conference which will be held in Nairobi on 28th for another month, we can improve on the text and come up with something which is truly ours. This is our exercise. It is our Kenya's. There is nothing foreign in it. What we have borrowed we have adjusted to suit us and rejected and even made better. I thank you. (clapping)

Kirui: Mimi nafikiria mmefurahia sana. Hiyo ni kweli? Ni pole tu kwa sababu wengine hawakuwa wanasikia kwa lugha ya kimombo, lakini kwa hakika karibuni tutakuwa na version ya Kiswahili. Na tukipata, wale wamekaa hapo mbele ndio members wenu ambao watakuwa wakishughulikia kuletea nyinyi hizo karatasi ambazo zitakuwa kwa Kiswahili. Tutaongeza hizi versions, hizi karatasi nyinyi, tu tawaletea kutegemea vile mnavyo- taka. Ningependa kwa sababu nilikuwa nimeelezea mbeleni mgeni wetu, ako na safari ya mbali, na anatakiwa saa tisa Nairobi saa kumi na moja atapanda ndege kwenda Ng'ambo. Ni daktari Adede. Daktari Adede ni International Diplomat. Anatumfanyia kazi nje ya Kenya. Yeye ni mwana-sheria hata kwa Eastern African Court Arusha, hasa wakati huu kwa hii kesi ya Kigali, Rwanda na leo anatakiwa aende kazi ng'ambo na atatoka mapema tukimaliza. Kwa hivyo nitaomba, mimi najua mko na maswali, maswali mengi, tukubaliane tuwe na nne tu, halafu

nitaomba wakati atatoka tukae na nyinyi kidogo, halafu tujue mbele tufanya nini. I think that will be better. I will accommodate four questions to allow him to be in Nairobi before three. Na iwe very precise. Uwe umejua nini unataka kuuliza. Kwa hivyo ni nani wa kwanza? Ya pili, ya tatu, wapi mama? sijaona mkono wa mama kwa hivyo la nne litakuwa la mama. Kuja hapa na utwambie jina lako.

Rev. Robert Njoroge Mbugua: I am Reverend Robert Njoroge Mbugua, I am a Pastor with the PCEA Church. My question is on recalling back, that is on chapter six, 112 part three, where we have the authority to recall a parliamentarian. I can see that you are recommending 30% of the registered voters. To me the figure seems to be quite big. When I did some Mathematics, I saw that if our Constitution says 30, 000 registered voters we shall require about nine thousand to put a sign. I think that can be cumbersome. Can't we recommend a smaller number than that?

Com Adede: That is the way to go. Those are the things we would like to hear about. May be we did not do the Mathematics the way you did it, this is subject to improvement. I take the question on board and if it is true that what is written there means that nine thousand registered voters are required, it has to be reconsidered. I am sure the people who put thirty per cent also did Mathematics but we shall compare. Good, thank you.

Daniel Njoroge: Thank you Chairman. I am Daniel Njoroge. I am the Chairman of the African National Congress of East Africa Kenya. I had studied the existing document but when I came to the question of finding then I felt that the Commissioner will be of importance to express here on the question of the President's age. That is age, that is of High court. When we come to a question of the Supreme Court Judges, take an example of what we did, we recommended. For the first time we recommended for the creation of the Supreme Court of Kenya, at that moment we also recommended the creation of the (end of tape some information not recorded) the most important question of the Presidential age, let us come to example of what has happened in Africa. When we came to the question of the presidential age, we noted that in Kenya, the Commission did not take into account that the Presidency is the most important Institution. Take an example of what has happened in South Africa. Mandela was so old. When we come to a question of what happened between African Presidents and overseas Presidents, we noted that age is what matters most for a better leader. We thought that the most important thing the Commission would have done, they would have proved that Supreme Court Judges are mature enough to handle the question. Ningependa iwapo, Commission yenyewe ingechukuwa umri wa ma-Judge wa High Court, pamoja na wale wa Supreme Court, uwe juu. Hali kadhalika ule umri wa Rais, nimeona unaweza kuhatarishwa pale mimi naona Rais aliyezeeka, ni muhimu kuliko kijana. Tumechukuwa mfano wa Clinton, mfano wa Rengan, na mfano wa Rais Mandela. Tungependa swala hilo lifikiwiwe sana ikiwezekana.

Com. Adede: Thank you very much. It is true that in England the question of reducing the Judges age from seventy four, which they have now, which we followed to sixty five, but for their own reasons they decided to stick to seventy four. The commission has suggested reducing it to seventy five as was tried before to sixty five. These are facts, but it there a basis for

that, because we would like to encourage the Judges that are still prime in their life. Some of you the advocates have appeared before Judges have described them to us and we have solid basis for requesting that the age be reduced to sixty five. That once again is a proposal this afternoon to agree with the rationale provided in the Commissioner report for the age to be sixty five. For the age of the President, we have a Parliamentary system not a Presidential system and therefore the examples the speaker has given relates to the age where that President is the centre and all and be all. Ours is a mixture of a Parliament, a Prime Minister, and the President combined and therefore we have suggested thirty five up to seventy. If there is any reason where Kenyans would want to increase it would be your decision but this is a suggestion

Lawrence Gakuna : Thank you very much. My name is Lawrence Gakuna Mbao. My point is on land tenure. Nafikiri nitautiliza kwa Kiswahili ndio hata wazee waweze kusikia sawa sawa. Katika hizi sheria za land, tuna private land, na tuna public land. Yaani private land ni kama ile shamba yangu , tuna public land ambayo ni mabarabara, cementry, na swali langu la kwanza, ni katika hizi public lands ambazo zimenyakuliwa na zina zidi kunyakuliwa. Je Katiba yetu hapa ina protect ile land ambayo imechukuliwa? Tutaipata namna gani? Imenyakuliwa, makaburi zimenyakuliwa, hata bara bara yamenyakuliwa hata kwa dakika hii wanazidi kunyakuwa.

Vile vile katika swali la pili, ni katika property. Private land ambayo ni yangu, nina title deed yangu unakuta, shamba moja kama langu lina title tatu, maanake nilihama huko Molo, ama nilitoroka mahali pengine, nikurudi huku unakuta mtu ako na title, mimi nina title, mwingine ako na title. Vile vile hata public lands zimenyakuliwa, unakuta wanaume watatu wanapigania land ambayo walinyakuwa lakini kila mtu ako na title. Je Katiba, itatusaidia hapo namna gani?

Com. Adede: Perhaps you were not following, that is the one issue I even posed and discussed exquisitely. Noting it has one of the most important issues for which the Constitution even mentions the areas affected. The areas where there is dubious kind of land tenure. Wale ambao walinyakuliwa, grabbed, dubious titles and all that. Since the Constitution itself cannot write the details of the law that should be followed, it has directed the Parliament within two years of coming into force of this Katiba, to undertake a review and assessment of all claims to unjust exploitation of land in the Coast, North Eastern and Rift Valley Provinces or elsewhere. Whether arising from the historical or other uses, in order to establish their validity and how best they can be justly, peacefully and equitably resolved. The Constitution inalizimisha Bunge iunde sheria inayohusika na mambo ya hii kitu ya ardhi ambayo ilichukuliwa kwa nguvu, ilichukuliwa kwa njia mbaya mbaya wapeleleze kabisa, waone hii ilifanywaje. Ilinunuliwa na nani kwanza, nani ana title, nani hana title, kuna wengi ambao wanauza plot moja mara nne. Haya yote imesemwa kwa Katiba ya kwamba itapelelezwa kwa Katiba hii ikianza kufanya kazi ili kusaidia. Kama haijafanyika, tutatesema tuko na haki yetu kwenye Katiba. Serikali, unafanya nini. Si uliwambiwa. Baada ya miaka miwili, muanze kupeleka mambo haya. Sasa kwenda kwa MP wako umueleze ya kwamba, 235. Endelea. Ndio jibu lako. Asante.

Kurui: Final Question. Wapi mama mmoja.

Njeri Mwaura: My name is Njeri Mwaura. My question refers to rights of religion, opinion and believes. According to what the draft has, it does not show us, or it does not define properly what kind of religion. By this I mean, we have had in Kenya devil worshipping, and you know how it has violated rights of religion and opinion to other religions. How much is our Constitution going to help us? Is it going to define properly because we would like to hear about worship of the true God but not any other God.

Com. Adede: Thank you, I think the lady is quite right. All the Constitution has said apart from the freedom of religion and worship is that state and religion shall be separate. That is one thing. There shall be no state religion. State and religion are separate in England but there is Church of England. We do not have church of Kenya. The state shall treat all religions equally.

That's all the Constitution says. Now, the way to deal with other sects that indulge in what the Government may call anti social who may adhere to what people of Kenya don't want. It will depend with precisely as a human right question, but protectors of people can take it on to say that a particular group of people are conducting themselves in a way that we feel doesn't conform to the religion as we know it. However, since the state also says that we will treat them equally, we cannot turn around and do something which will again be discriminatory. There is just so much we can legislate to guard our lives. It is hoped that when a group of people call themselves religious, and since the Government has shied away from deciding as to what religion is, we will leave that to our good senses as the people of Kenya, to see how we deal with them, in case by case. It is greater to leave than one than to enforce us to have one religion and to prevent us from what we think, what we want, so long as we do so in a way that does not harm the interest of the others. That is the rule. Not every rule is perfect, but at least we tried to the level of making sure that we can encourage a conduct. In the end may be there will be some encouragement of religions being given certain exemptions, to encourage them if they follow certain rules laid down by the protector which will deny prevention to do things like, that but the Constitution cannot be seen to enter the details that will veer towards either stopping you Kenyans from forming your what we call religion. You see, some of the things we call religion, they do not call religion. According to whose standards will we judge whether this, that and the other is not religion? Doing more creates more problems, but doing less will allow us to allow certain mainstream conducts to emerge and the rights will be protected and the rest will fall by the waysides, and that is how the society governs itself.

I must thank all of you very for listening. You see in the end, the preamble says, having taken part in the process of making the Constitution, we will give it unto you. You have thirty three more days to continue debating it. You have shown great interest and I repeat, the Commission doesn't have the monopoly of wisdom. We have given you a draft. If it is fine, it is fine, if you need to make some adjustment here and there to suit you, let us do it through the process that remains. The National Conference, will be the forum, it will be fine tuned then later on the Parliament will enact it. If there is a problem at the end there will be a referendum, but the process is clear. We would like to have you on board. We would like to have administrators to know that we rely on their experience. The devolution of power down the line will rely on their experience. I must go but I thank you all. (clapping)

Stephene Waweru: Jina yangu ni Stephen Waweru, nimeokoka. Mimi nataka kusema kama vile Constitution tumeona, kwa maoni yangu iko vile tungetaka kwa sababu tumeona maoni mengi tulitoa huko ubande wa Bahati, imechukuliwa. Ningewashukuru sana niseme, tuko nyuma ya hawa, na wasiogope. Mimi naweza kuwaeleza hawa, wasiogope. Hata wakichuliwa Kortini, tuko nyuma ya hawa. Asante sana. (clapping)

Eunice Nduta: Kwa majina ni Eunice Nduta. Nimeokoka. Nampenda Bwana kwa sababu alinipenda kwanza. Natuombe. Baba tunakushukuru wakati huu, kwa sababu umekuwa pamoja nasi na pia ungependa kutujilisha vile tunaweza kuiweka nchi yetu kwa ajili ya manufaa yetu. Nakuomba Baba, uzidi kuwabariki wote ambao wamejitolea kueneza mambo haya ya kukuza nchi yetu ili nasi tuwe watu huru katika nchi huru. Basi Baba tunakuomba kwa ajili ya wageni uliotuletea. Wakati huu Baba wanataka kuondoka, Baba tunakushukuru uwe pamoja nao. Wakinge na yule mwovu, wakati watakuwa barabarani. Wakienda na wakifika mahali wanaenda salama, watalisifu na kulishukuru jina lako. Pia sisi tutakapo sikia walifika salama tutaitukuza jina lako. Basi Baba yote twayaweka mkononi mwako, tukijua hata wakati tutabaki hapa utakuwa pamoja nasi, na wale watakapoondoka utakuwa pamoja nao. Na ni katika jina la Yesu Kristu aliye Bwana na Mwokozi wetu tumeomba, Amen.

[illegible]