

**CONSTITUTION OF KENYA REVIEW COMMISSION**

**(CKRC)**

**Verbatim Report Of**

**DISSEMINATION OF REPORT AND DRAFT BILL,**

**LURAMBI CONSTITUENCY, HELD AT KAKAMEGA COUNTY  
COUNCIL HALL**

**ON**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**16<sup>TH</sup> OCTOBER, 2002**

[REDACTED]

[REDACTED]

**DISSEMINATION OF REPORT AND DRAFT BILL, LURAMBI CONSTITUENCY, HELD AT KAKAMEGA COUNTY COUNCIL HALL ON 16<sup>th</sup> OCTOBER 2002**

**Present:**

1. Com. Kavetsa Adagala

**Secretariat Staff In-Attendance.**

1. Vincent Watako - Assistant Program Officer
2. Patricia Mwangi - Verbatim Reporter
3. Gesishom Majanja - District Coordinator

**Members of 3 C's**

1. Hon. Newton Kuhindu (MP)
2. Mayor Sylvanus Otiende (Councillor)
3. Gerishom L. Majanja (District Coordinator)
4. Nicholas J. B. Wando (Chairman)
5. Mediatrix A. Ashibilcha (Mrs.)
6. Joseck Fitta
7. Dr. Jorne Watindi
8. Mrs. Zainab Muganda
9. Fr. Augustine Lubanga

**Gesishom Majanja:** As it is our normal practice we are all believers in the caring grace of our Lord so we want to start with a prayer and I ask any Muslim who is here can pray for us to start. Do we have any Muslim who can conduct a prayer?

**Rashid Maulidi:** Alhamdulillah Rabil Alamin, Wasalatu wasalamu ala sayidina Muhammad wa ala ali washabihi, ya Rabbi

tunamuomba Mwenyezi Mungu atujalie katika mkutano huu uwe mkutano wa amani. Mwenyezi Mungu atujalie kila tunalolizungumza liwe lenye manufaa ya kwetu sisi. Mwenyezi Mungu tunamuomba atujalie katika Serikali yetu iwe Serikali ya amani na viongozi wetu wawe viongozi wa kutumikia watu kwa haki bila kudhulumu mmoja wetu yeyote na basi na kujua ukabila ama kujua huyu ni nani huyu ni nani. Kiongozi yeyote ambaye tutamchagua katika Serikali hii yetu ya Kenya awe kiongozi mzuri na kiongozi mwenye kuogopa Mwenyezi Mungu na kiongozi mwenye kujua manufaa ya mwananchi. Mwenye kujua haki ya nini, kwa nini yeye achaguliwe. Aweze kutumikia wananchi kwa amani na tunaomba haya yote kwa ajili ya Mwenyezi Mungu, atujalie na awe ni mwenye kutubarikia.

**Mr. Majanja:** Thank you very much. Commissioner Kavetsa, I take this opportunity to welcome you here. You are not new, you have been here several times and I am sure you are familiar with this hall. You have been here several times. So you are welcome and I consider this to be a very important meeting, the way I have been telling people is that the Commissioners are now coming back to deliver what you requested them to do and it is good that they come and listen. Before I hand over to you, I would like to take this opportunity to introduce a few people here. I don't seem to see any of my committee members here yet. But we have one of the people who will be going to the NCC, Mr. Charles Lwanga Luore. This is Mr. Charles Lwanga Luore who is one of the three people who were elected. I asked him to come so that he can start getting us a feel of what people think and he can carry the message with him to the NCC. Apparently, most of my committee members from Lurambi haven't arrived. We will let you know as they come in and at this stage I would like to hand over the function to you. Thank you.

**Com. Adagala:** Thank you very much. *Milembe mwenzi, vandu wa Lurambi hano?* . Kwanza wacha nimjulishie wale wamekuja na mimi. Mimi ni Commissioner Kavetsa Adagala. Mimi ni mzaliwa wa hapa Western na vile civic education inakuwa Commissioners wanatumwa kwa Province yao. Sasa ndio tumekuja hearings haijakuwa tofauti, sote tulikuwa tunaenda kwa Province moja, one by one. Lakini civic education tunaambiwa turudi kwa Provinces kule tumetoka ili tuweze kuwasiliana vizuri na kuelewana vizuri na watu wako hapa. Nafikiri tutakaa hivyo na tutamiza hilo. Huyu ni kijana mzaliwa wa hapa pia. Wacha aji-introduce mwenyewe.

**Vincent Watako:** *Bushiele mwenzi enangwa Vincent Watako*

**Com. Adagala:** Yeye ni wakili, program officer kwa Commission na pia kwao ni hapa Wanga na kuna verbatim recorder ataji-introduce msikie sauti yake pia.

**Patricia Mwangi:** *Milembe bosi, Jina langu ni Patricia Mwangi.*

**Com. Adagala:** Asante. Patricia Mwangi ndiye ako incharge of verbatim recording yaani kila neno tunasema anaandika word for word. Hata huko plenary anafanya huko, tukiwa kwa Commission, mikutano yetu yote anafanya hivyo na watu wake pia

wanaenda kila mahali Commissioners wanaenda ndio wanaandika. Ripoti yenu ya hearings, iko hivyo. Ilichukuliwa word for word. Sasa tutazungumza hiyo baadaye. Lakini tuko hapa. Yeye ni mtu alikuwa anafanya Parliament. Sasa hii ni kama Hansard. Hansard ya Parliament wale mnajua mambo ya Parliament. Sijui tuanze vipi. Kuna sehemu nyingine Coordinator, ningependa kusema watu wengi wakiwa hapa. Kwa sababu ni ya process. Ningependa kungoja tuanze halafu tutafika mahali na kufanya kitu kama break kutoka kwa Constitution, when there are many people so that they we can explain. Many of the questions are on the process. May I do it like that? Yes. Thank you. Nafikiri mmepata nakala ya Katiba. Tumepata? Okey. Tungoje hiyo ikuje. Kama kijana bado anaenda, pengine ingefaa nieleze tuko hapa kukagua hii draft bill ya Constitution. Tuko hapa kukagua draft bill ili tujue:

1. Yale mambo mlisema.
2. Mnakubaliana na draft hii, hii ni Katiba pendekezo yote hapa. Kwa sababu tulienda kila mahali Kenya na tukachukua maoni halafu tukachanga pamoja na tukachukua ile ambayo ilikuwa inakuwa ya watu wengi au ile ilikuwa muhimu.
3. Bado draft tunaizungumzia. Hii bado ni pendekezo, bado tunajadiliana. Bado tunakuja mtushauri vile tunaweza kuendelea au kitu tunaweza kurekebisha zaidi. Tuelewe hapo. Sasa tuko tuseme Form Two. Form One, ilikuwa hearing. Sasa tumeweka pamoja, tumepita, tumeenda Form Two. Ukizungumza changa kutoka kwa hii na kwenda mbele. Nasema hivyo kwa sababu watu wengi ambao hawakuwa kwa hearings wanataka kulete mambo ile ilikuwa tumeshasikia. Au tuseme the situation as it exists now. We want to know the situation as it will exist in the future. Kwa sababu hii ni draft ya future. Tunataka tujue vile itakuwa in the future tukienda mbele. Sasa hiyo ndio imetuleta hapa na tunataka vile tukiendelea tujue siku hii ni siku ya muhimu sana. Haitakuwako tena, miaka hamsini, miaka mia moja.

Pengine yule mjukuu amezaliwa sasa ndiye pengine ataishi kuwa miaka mia moja aone hii mambo au miaka themanini na inafaa tuichukue kama hiyo. Si siku nyepesi ni siku nzito ambayo inafaa tuichukue with all the seriousness that it deserves. Ukipata hiyo draft, just hold it for a minute don't open it yet. Kwa sababu inafanya kelele nyingi tutafanya pamoja. Lakini ningependa tufanye hivi, tuta-proceed Chapter by Chapter. That is our approach in this particular panel. We will proceed Chapter by Chapter and as we finish a Chapter or two or three Chapters, we will ask if there are any contributions. If you have a proposal further to this, ile ambayo iko zaidi ya hapa, iko hapa halafu tutaandika hiyo. Tutaichukua tuandike. Pia tutakuwa na National Constitutional Conference ambapo tutakuwa bado tunajadiliana. Huyu ndiye representative, can take your views, extra ones which you will have afterwards when you have read. Okey? District Coordinator, your committee is not here but am wondering if they mobilized any women and youths. Did they mobilize any women? Unajua, umbaya ni kitu kidogo tu. Hii hasa ni kitu kipya na ikiwa wanaume pekee ndio watajua, our society will not advance. Ni kama kuishi na mtu ambaye si Mkristu na wewe ni Mkristu.

Unajua, unaamini au uko Muislamu, yeye hajui, haamini. Ni shida. Hiyo ndiyo itakuwa hii shida kwa sababu utakuwa umejua

mambo na yeye hajui. Sijui tufanyeje? Kawaida mimi nimesema nimechoka na kuzungumza na wanaume pekee. Hata nataka kujiuzuru kutoka kwa Commission kwa sababu tukienda mahali, wanawake hawako na hii views ziko hapa, only 17% were contributed by women. Ukiuliza, unaambiwa wako nyumbani wanafanya kazi. Tunaambiwa hawataki kuja. Tunaambiwa all kinds of things. But that is not a reason why we should accept it. When the committee comes please let us know if they mobilized everybody. This is town. There are a lot of people in this town. Okey? Kuna vitu vingine ambavyo nitaeleza tukiwa wengi lakini wacha tuanze. Tukiwa na nakala hiyo, this exercise is going on all over the Country. I think this is the last day. Sasa tutarudi Nairobi na pia kujitayarisha kwa conference hiyo kongomanina itakuwa Bomas na pia tutaangalia yale mapya imetokea. We write down what you say. So you don't need to worry. We will write it, we take it. So, you don't need to worry about record. When you come forward, when we say, 'if there are any questions', you just come forward na unapanga laini hapa na itakuwa sawa. Okey? Tumeelewana?

Page one, I want us to look at the table of contents so that....how many people bought the paper which had the supplement? Wale walinunua. How many got it ahead of time? Got earlier? The same ones. Si nilikuambia wale watu wanapata hizo copies, nakala ulikuwa nazo, hawafiki hapa kwa mkutano. Saa zingine wanapeleka tu nyumbani na wanakaa. Every constituency has two hundred copies but this one because it is a town, he had already distributed some of the others to PC, to the other people, heads of departments. So, these are the extra ones we brought and I think we will have enough. Hapo, table of contents.

We have preamble. Mlituambia utangulizi uweko na tumeweka utangulizi. Constitution ya sasa haina utangulizi hiyo tumehakikisha iko sasa. Hapo ya pili ni sovereignty of the people and the Constitution, hii ni ukuu. Yale mambo ambayo inaeleza nguvu zinatoka wapi. Where does the power come from and what is the Constitution, how does it relate to the people. In this constitutional dispensation, there are only two things which are important, the people and the Constitution. Only two things which are important. Constitution and the people. Katiba na watu. Watu na Katiba. There is nothing else that goes beyond that. There is no one else above that. There is nothing else outside that. So, you must be very careful when we are going through. You must make sure that the things you want to be in Katiba are there. Then the second one is the Republic. Jamhuri ya Kenya ni nini, na iko wapi? Hiyo yote tutazungumza.

Ya tatu ni National goals, hiyo ni nia na lengo la Kenya. Maadili ya Kenya iko hapo and we don't have this in our Constitution. If someone was doing anything, it was probably Government policy or it was kupenda kwake. Kama mtu amemfanyia development mahali ni kupenda kwake au anatafuta kura au pengine yeye anakupenda pengine. Ndiyo hiyo lakini there was no msimamo. Haikuwa na msimamo kwa Katiba tutafanya hii na ile.

Halafu hiyo ya nne ni Uraia, Citizenship. Raia wa Kenya ni nani. Nani anastahili kuwa raia wa Kenya. Tumesema Kenya iko, tumesema watu, tumesema nia lakini Mkenya ni nani. Hiyo iko hapo. Iko kwa present Constitution lakini hapa iko expanded. Imepanuliwa zaidi. Halafu kuna hapa, kuna hiyo uraia na hii inafuata Chapter Five ni Ukatiba. Inaitwa kwa Kiswahili, Kiswahili translation, Ukatiba, Bill of rights. Vile unaishi na Katiba. Katiba kwa maisha ya watu. Vile watu inatekelezwa ili watu wajisikie

Katiba ni yao. Unajua hii Katiba ingine haikuwa kwamaisha yetu. Ilipokuwa kwa maisha yetu ilikuwa negative. Kama sasa watu wengi tunachukua sheria ni kitu negative. Lakini inaweza kuwa positive ukijua. Ujue its freedoms rights. Ujue responsibilities, duties, ili ujue haki zako na jukumu yako. Kile kinafaa ufanye. Halafu tuna hapo Chapter Six, Representation of the people ambayo ni vile watu wanaakilishwa au vile watapeana nguvu. Nguvu zinatoka kwa wananchi, the people, then they give them for representation.

Those people you give to represent you, it doesnot mean, now they are bigger than you. Infact here, this representation is different from what is there now in practice. The practice now is power. If people give you nguvu, unachukua power hiyo. Wewe unakuwa sasa more powerful than them. Lakini sasa hii ukichukua hilo jukumu ya kuwakilisha watu, wewe you are in their service. I know we have said this a lot but now it is in the Constitution. It is in the service of the people. Halafu tutakiendelea tutakuwa na hizo Chapters zinafuatana. Tutazungumzia Bunge imebadilika, pendekezo ya kubadilisha aina ya Bunge. Kuna Executive, Urais. Hiyo pia imebadilika na kuna Chapter nine ambayo imeleta controversy nyingi na pengine inafaa tushukuru hawa Judges kwa sababu wametupatia publicity nyingi sana. Saa zingine unaweza kutusi mtu na kumbe unamtangaza. Unafikiri unamtusi lakini.....watu wanasema, 'na huyo ni nani?' Kwa nini wanamtusi. So, hapa hiyo ndio Judges tuzungumzie tukifika hapo, mtaamua kama mnataka kuzungumzia au la. Walitaka to espunch Chapter Nine. Yaani ni kama sponge. Unachukua unaweka kwa maji halafu ina disappear. Maji ina disappear. Hapa ilikuwa sasa itolewe kabisa na tusizungumzie. Kwanza kuna order mbele ya court hiyo izungumziwe, Kenya yote. Sasa ni kama watu thelathini milioni wamepigwa marufuku. Na ni kama sasa kwa sababu Judges walisema ni kama Kenya ni jela. Mjue hivyo. Watu hawa wana nguvu. Wakisema hivyo wanasema kila mtu kama ako kwa jela. Sasa hiyo tutaamua. Chapter ten, muhimu sana devolution. Hii ndio tuliambiwa nguvu ziteremke kwa wananchi. Devolve, ije chini na tunazungumzia hiyo. Halafu tunakuwa na ardhi na mali. Watu wengi walisema mambo mengi sana kuhusu mali na ardhi na mashamba na demarcation na ownership yote iko hapo. Kuna hiyo sehemu sasa ya kumi na mbili. Hiyo ni ya mazingara. Hapo tutazungumzia. Halafu kuna hii mbili inafuatana, public finance na public service.

Hizo zinafanana na hii ni kuhusu vitu vimetutatiza sana kwa maisha yetu. Hayo mambo watu wanasema, 'Oh njia ya Shinyalu imepigwa rami na haiko kwa matope vile imekuwa.' Sisemi walisema hivyo kwa hiyo lakini mfano tu na ikitokea inakuwa haiko. Mtu alichukua pesa akaweka kwa mfuko kwa afisa mkuu au walichukua hizo pesa ikapelekwa mahali kwingine. Hiyo yote itakuwa hapo na aina ya public service tutakuwa nayo wameweka hapo. Halafu ulinzi wa nchi, tuko hapo vile itakuwa. Majeshi, na hiyo yote na polisi. Halafu tukija karibu mwisho kuna leadership na integrity ni code ya leadership. Hiyo yote, declaration of wealth, tulisema watu wawe waaminifu kwa kazi yao. Hiyo yote ilisemekana hapo. Halafu kutekeleza zaidi Katiba au constitutionalism, kuna Commissions ambazo ziko constitutional. Hizi they are entrenched in here so that they will be there to help us learn constitutionalism all of us.

Halafu amendment to the Constitution, unajua hiyo ndiyo imekuwa shida ya Katiba hii ingine ya sasa iliyobadirishwa mara thelathini na nane, thelathini na tisa kwa miaka arobaini. Kama moja kwa mwaka. Ile ya America ambayo iko miaka mia mbili

na hamsini ina fifteen amendments. So, we need to look at the type of Constitution we have, that's what we did and how it can be amended. Hapo sasa ile inafuata ni interpretation ni kufafanua zaidi mambo ya Katiba. Halafu mwisho, Chapter twenty, we have transitional and consequential provisions. Hiyo ni kitu rahisi sana kwa sababu tunajua tuko kwa transition between leadership and now also between Constitutions.

So, we need to have a bridge. What will the bridge be? Hiyo daraja ya kuvuka kutoka kwa enzi moja kwenda kwa ingine itakuwa nini na ukifanya kitu lazima kiwe na consequences. Hizo consequences lazima ziangaliwe ni nini itakuweco. Halafu kuna hapo kitu kinaitwa schedules, hizo ni details, tukipitia kwa Katiba tutamwambia ipi inahusika na sehemu gani. Gani ni detailed zaidi. Kama tukisema the national flag of Kenya basi tutakuwa na schedule ambayo ita-describe the national flag of Kenya kwa sababu hiyo huwezi kuweka details ndani ya Katiba. Ndio nilitaka mjue we have twenty Chapters, sasa mtu akikuuliza utasema, 'Oh its twenty Chapters.' Sasa utaonekana mwerevu. Utaonekana, Oh, kweli anajua. Twenty Chapters. Atakuuliza, 'Chapter ten.' Unasema, devolution. Au, 'devolution iko kwa nini?' Kwa Chapter ten na unaendelea. Hapo ndio layout ya our Constitution. Most Constitutions have that layout.

Sasa pia mkisikia mambo, 'Oh mtu ameandika Constitution ingine.' In our database in the computers, in the documentation centre, there are very many Constitutions which were written by Kenyans. If you have just this red book, if you have this red book here, you can write a whole Constitution. Hata ukijaribu sasa, unaweza kufuata hii na kusoma hii. Unaweza kuandika Constitution na pengine inafaa mjitayarisha. Mlipata kitabu hiki? You see we keep having different audiences. Hii ilipitishwa hundreds and hundreds of copies in every place. So, do you have this representative? Usiwaambie watasema usiwa-represent. District Coordinator, we printed this but somehow we sent them out but it took us a long time to distribute them because I don't know where they were going but we were sending them out. So, they are there. You can ask this Coordinator. Nasema hivyo kwa sababu we have district councils na huenda district councils may want to own its own Constitution. Huenda ikawa. Kwa sababu you need to govern yourself in the district because power has come down to you. So, you need to have that kind of document or know how a Constitution...the layout of a Constitution is.

Only you can make a district Constitution just like an NGO, or a church as a Constitution. But it cannot go against what is here. It cannot go against what is here. Okey? Mnaelewa. Kitu chochote, any law we shall see if it goes against the Constitution that law does not apply. Okey, tukiendelea. Is there any response there? Okey. That is just how the thing is, so when we go forward you will know how far we have gone. We have preamble, mlituambia iwe na utangulizi. Lazima iwe na utangulizi kwa sababu ile ya sasa haina utangulizi.

Hii ya sasa, Mkoloni hawakuwa na haja na watu wa Kenya. Tulikuwa tumenyakua mali yake iliitwa Kenya na kama mnataka ndio hiyo. Hakuwa na haja ya kusema watu wa Kenya wana fikira gani, nia gani, what kind of decision they had. What kind of ideals, what kind of aspirations. He did not have, he didn't care. So, akaweka tu. Inaanza na Kenya is a sovereign republic. Watu wangapi wameona Katiba ya sasa? Hata mjaenda documentation centre kuiona? Sasa tutakuwa na shida hapa kwa

sababu we shall be referring to two documents which you don't know. Tutakuwaje? Tutaendelea tu.

So, preamble is there. All modern Constitutions have preamble and it is usually modern constitutions democratic. It is democratic and they are democracies. They start with, 'we the people.' We the people because it is the people who constitute. Constitution is to constitute, to make. Ni kama unachukua maji na sufuria na unga na mwiko na kuni, hiyo yote halafu unaanza kusonga. Lakini hii yetu kwa sababu watu hawakujua, watu hawakuwemo, hakuna kitu, ilikuwa tu ramani ya Kenya. Kenya is a republic. Sasa ikikosa hiyo moto, kama unakosa moto, haiwezi kuwa Ugali. Ndio unaona hatuendelei vizuri sana na watu ndio nguvu yenyewe ndio shield. That is the shield of the Constitution. It states, 'we the people of Kenya.' Some of us wanted it to be, 'we the peoples of Kenya, and others wanted.....we worked very hard on that small section. It had many many drafts. We drafted it many times ndio ikafika hapo. Hasa preamble inaonyesha vision, aspirations ideals. The wishes of the people, the desires of the people.

Watu wengi waliandika, they had written memoranda, wakasema preamble inafaa iseme hii na hii na ile. So, mwishowe tukafika na hii mambo iko hapa mafupi sana lakini Constitution nzima iko hapo kwa hiyo section ya preamble. Ya India is even shorter than this. The sentences are even shorter, its half a page. Its very short. So, ukipata nafasi ukienda kwa documentation centre pengine wanaweza kuwa na hiyo ili ujue. Ya America iko very elaborate. Lakini sasa watu wanaweka vile wanataka hivyo. Haya ni mambo mlituambia. Ya kwanza ilikuwa tujue tuko nchi moja, tuko tofauti tofauti, lakini tuko nchi moja. Ndio tukaweka hapo, 'we know, tunajua na tunakubali tuko watu tofauti tofauti, kabila tofauti tofauti.

Dini tofauti tofauti, wanawake, wanaume, watoto, vijana, walemavu wale ambao wako kwa professions, different professions, we are all in Kenya. Hiyo diversity ndio inasema hivyo. Kwa mambo yetu yote hata kwa sheria ilitengeneza hii Commission, ilikuwa tuangalie diversity na tuliweka wazi watu waseme vile wako diverse. Kama hapa Western Province tuko na some diversity hiyo ya kabila, Wateso, Wasaboti, Waluhya na Waluhya pia wako diverse. Nafikiri Wakalenjin wengine wako pande wa Tiriki na inaendelea hivyo. Inakuwa tu hivyo. It is to recognize. Hatutabishana wewe si Mkenya, mimi ni Mkenya, wewe kabila ndogo, mimi kabila kubwa, mimi nyumba kubwa, wewe nyumba ndogo.

Hata hiyo ya rich and poor iko hapo. We recognize, we are aware of our diversity. Sasa hiyo diversity tuna-recognize ili tuwe pamoja. Ili tuseme tunakubali, sote tuko hapa, tunakubali, tunaishi pamoja tutaishi pamoja. Halafu mkatuambia kitu muhimu sana ni jamii. Mkatuambia kitu muhimu ni familia. Mkatuambia kitu wanafaa wawe na haki zao. Kila mtu binafsi awe na haki zake, pia familia na jamii. Hiyo iko hapo tuangalie masilahi ya jamii. Hiyo iko hapo hata mbeleni tutaona kwa Chapter Five, masilahi imeangaliwa sana.

Tunatambua demokrasia kama haki. Demokrasia, kuna hiyo ya haki za binadamu na haki na utawala wa sheria. Hapo tunatambua hiyo iko. Halafu kuna hiyo haki ambayo haiwezi kutolewa (inaudible) ni kitu ambacho ni kama kiko kwa damu



yako. Ni kama yatovu (kibaluha). Nafikiri wanasema hivyo. Hicho kitu ambacho kikitolewa au ukikosa kuwa nacho huwezi kuwa binadamu. Sasa kuna hiyo haki ya kutengeneza Serikali yetu, Serikali bora, utawala bora na pia tumeshiriki kwa kutengeneza hii Constitution. Tumeshiriki kwa process, tumekuwako tumetoa maoni, tumekuwa kwa civic education na sasa tukiwa hapa tunapitisha, tunachukua na tunajipea sisi wenyewe. Tunajipea sisi wenyewe kama zawadi yetu au haki yetu. Sisi wenyewe na vizazi vijavyo. Vizazi vijavyo. Katiba iko hivyo. Watu wanaitengeneza halafu inakuwa sasa ni haki yao. Ni kama zawadi unajipea wewe mwenyewe. Sio wewe mwenyewe kama mtu mmoja lakini kama watu.

Sisi wenyewe tunajipea hiyo na watoto wetu vizazi na vizazi na mkatuambia tena tufanye kitu muhimu ya kuweka Mungu kwa Katiba na ilikuwa tofauti. Watu wengine walisema hii Katiba ya sasa haina Mungu ndani ndio unaona inayumbayumba nchi inaenda huku inatatisika na iwe hapo ili tujue Mungu ndiye anatulinda na Mungu ndiye analinda Kenya. Sasa tukaweka hapo, ‘God bless Kenya.’ Kwa Kiswahili tukaweka, hiyo nakala bado inatafsiriwa, ‘Mungu ibariki Kenya.’ Ile ya South Africa inasema ‘Nkosi sikeleli South Africa.’ Okey. Mnajua huo wimbo wa ‘Nkosi sikeleli.’ Wameweka hapo. Ya U.S.A pia ina hiyo. ‘One nation under God indivisible.’ Sasa hiyo ndio tumesema nchi yetu iko, its together.

The diversity is there we recognize it we accept it, we are together. So, that we shall not be dividing. People were very afraid that if we do some things, the Country will divide but we said one Country and we recognize that we are one country. Are there any comments there? Mlituambia haya mambo? Au hizi ndio pendekezo zenu? Okey, kama iko sawa kwa sababu tumeambiwa mahali kwingine tumetoa hii kitu ng’ambo, sijui ng’ambo gani. Hatukuwa na nafasi ya kuenda ng’ambo. Sasa hiyo ndio iko hivyo. Sasa tuendeleo, tutaenda haraka haraka kidogo kwa sababu hii siku haitatoshwa tukienda polepole sana. Kuna hiyo sovereignty of the people and sovereignty of the Constitution, hiyo ni kitu kimoja. Kitu kimoja ni sovereignty. Kwa Katiba kuna sovereignty of the people, sovereignty of the Constitution and sovereignty of the Republic tutafika kwa hiyo. Lakini hapa ni watu. Nguvu zote Kenya zinatoka kwa wananchi wa Kenya. Hazitoki mahali kwingine, hakuna mtu mwingine atatoka kule na atuletee hizo nguvu.

Hakuna mtu mwingine atatuwala au aje kututawala awe mkubwa kuliko Katiba yetu na wananchi. Nguvu za Kenya zinatoka kwa wananchi. Ukuu wa wananchi na ukuu wa Katiba ni kitu kimoja kiko hapa. Halafu hiyo nguvu na ukuu itatengenezwa kwa kupitia kwa kuakilishwa kwa njia ya demokrasia kwa watu ambao watachaguliwa kwa sehemu za Serikali. Hapo inaeleza itakuwa kwa matawi matatu ya Serikali; Bunge, Urais au the Executive na Mahakama separately. Kwa sababu sasa haziko separate, zimepitiana too much. Haziko separate. Hiyo ndio sababu tunarekebisha Katiba pia. They have gone too much into each other. Here it is spelt out. Huu ukuu hauwezi kupewa mtu mwingine au kuwa delegated au kusema mtu mwingine atatekeleza isipokuwa kwa hiyo njia ya demokrasia.

Sasa Kenya msingi wake ni huo ukuu wa Katiba na uongozi wa sheria au utawala wa sheria. Watu wote wamewekwa ndani ya Katiba na pia wote wako ndani na wote wawe kitu kimoja ndani ya Katiba. Njia za kupitisha Katiba hazitapingwa. Tuna njia na ziko hapo vile itafaa ipitishwe, hazitapingwa. Hiyo ni vitu kama amendments au njia zingine za referendum au hiyo process yote

haitapingwa. Sheria yeyote ambayo inagongana na Katiba haiwezi kuchukuliwa kama iko Kikatiba.

Hakuna kitu chochote ambacho kinagongana au kiko nje ya Katiba ambacho kitachukuliwa kuwa halali. Itakuwa ndiyo ya Serikali bora na utawala bora, haki za binadamu. Hapo kitu muhimu sana, inasimamia au inakuza kuthamini maendeleo na pia kwa kutekeleza hii itakuwa hatutaka vikwazo vikwazo vitu vingumu vingumu, vitu ambavyo vitaweka kama road blocks kwa kutekeleza Katiba. Hatutaki iwe kama hii ya sasa, hata kuisoma ni ngumu. Tumeitengeneza ili iwe rahisi na pia kutekeleza kwenyewe kuwe direct so that it is not difficult. No technicalities in the way. Mahakama ndio wanafaa wasimamie na kulinda Katiba na pia kuona hivi vitu vyote tumesema vinatekelezwa na munaona shida ni mahakama wamekataa. Sasa naona ni shida. Hapo ndio shida hutokea. Wao ndio wanafaa walinde na wao ndio wanatupa nje. Kama unapewa mtoto kulinda na unamtupa nje.

Haitakubaliwa na itakuwa haramu kutengeneza Serikali yeyote ambayo si ya Kikatiba. The laws of Kenya, sheria ya Kenya itakuwa na sehemu au sheria fulani ambayo iko pamoja. Ya kwanza ni Katiba hii ambayo tunapendekeza. Halafu hiyo sheria imepitishwa na Bunge, mila na sheria za Kiafrika asili. Hiyo ya Kiislamu na ya Kihindu. Kuna common law ambayo iko kwa tradition. We have East African Community ambayo inaendelea ambayo mnajua iko huko na mtu kutoka hapa Shamala ako huko, Honourable Shamala ako huko na tunaishi kwa eneo hilo. Sasa hii tumekubaliana, East African countries to work together so our laws should work together. There is a Parliament there, we should work together. Halafu kuna ile mila na treaties na conventions za kimataifa ambazo tumeweka sahihi. Hizo pia zitakubaliwa. Kulete hii yote pamoja, Parliament itakuwa na miaka miwili ya kuhakikisha hizi zote ziko harmonized. Zinaendelea pamoja, zinaendelea sambamba, zisiwe zile za kugonganisha. Sasa Parliament ijayo itakuwa na kazi nyingi sana. Sasa nataka muangalie hapo vizuri sana, mhakikishe ile sheria wewe unataka iweko au ile sehemu ya sheria ya maisha yako ambayo unaishi iko hapo. That's over.

Nataka tuzungumzie hiyo. Ningependa tuzungumzie hii kidogo tujadiliane nikitoa maoni. Angalieni kabisa hapa, yale mambo tuliwaambia, vile mlituambia na tukaandika. Muelewe Commission ni Secretariat yenu. Hapa constitutional forum kwa Constituency hiyo ndio important. Nyinyi ndio mmetengeneza Katiba sisi yetu ilikuwa kuandika kama karani. Kama clerk. Mnajua at present, the Commission looks very big but you are the ones who should decide. What you say, is what we shall look at, put together with other people and put it here. Kuna any comment there? Watu ambao walipata Katiba mapema wako hapa, wale ambao wako hapa hawakupata mapema lakini wacha tuendelee tu. We are very intelligent people. Isn't it? Come forward here. Where are the Committee members?

**Richard Andabwa:** My comment here is that, if we go reading every letter of the Constitution and interpret it in Kiswahili, by the end of the day we shall not have finished. I read this thing for a long time and tried to interpret. So, anyway it is just my comment sorry.

**Com. Adagala:** This is our last and sixth meeting we shall finish. Anybody else? You know we have to make sure Mr.

Andabwa. we could just as well sent it to you and then you read it like you were reading it. By the way. There is a way in which we do. Some sections take longer, at the beginning it is slower and towards the end it is quicker. Even then, as you can see this young man is helping me because my eyes are not good and this evening by four, I want to be in Sabatia so that they can operate on my eyes. So, we shall finish we shall go fast. It depends on how you will conduct yourselves.

**Seth Sore:** Jina ni Seth Sore. Mimi nilikuwa na bahati kupata ile kitabu ya kwanza, that green book. The green book ile inasema, a Constitution is just a paper unless there is the will of the people. I feel kama mimi, pengine mtu akinikosea na awe na nguvu na nini, if you want to misinterpret that book. He will look at that word halafu aseme hii ni karatasi tu, hii si kitu ya maana. Ningependa ku-suggest neno kama hilo iwe detached from that book. Kwa sababu, I think it should be in the preamble. Pahali mmesema a Constitution is just a paper, siwezi kukumbuka the particular area. That is my feeling.

**Com. Adagala:** Anything, even the Bible is just a bunch of papers. Even if you read it, you should believe in it. Then it becomes, that's the will, the belief. But we shall put it down. I want to just say, the way Parliament will function, is in Schedule six. You will look at it later on. Vile Andabwa amesema ni vingumu kusoma hiyo yote. At the back here we have schedules as I have told you and that is schedule six. You can even write there so that you will know it is in schedule six. But you need to know the details of how Parliament will do that. Tuendeleo basi. If you are not in front here, I will not accept. You will have to come and panga a line. I will accept this once. Watu wote wanataka kuzungumza kujeni hapa so that its quick. That's how we have done it everywhere else and it goes much quicker than hands everywhere.

**Simeon Nyakundi:** Majina ni Simeon Nyakundi. Mimi kwa Constitution ninasema watu tuishi sawasawa. Tuwe watu tunaishi maisha sawa. Lakini mahali ninaona, sisi watu wa Kenya, sehemu mbalimbali tunaishi kitofauti. Watu wa Nairobi wanaishi maisha yao, unaona huko wanaenda wanakunywa busaa free. Wanawake wanakunywa busaa free. Wa Mombasa wanakunywa ile inaitwa Mnazi. Lakini kwa sehemu zingine sisi tunafanywa kama ni wafungwa tunakimbizwa saa yote. Kwa hivyo kwa Constitution mngesema tuishi kisawa. Kitu kingine kwa Constitution mmeona ni Upper House.....(interjection)

**Com. Adagala:** Lakini hiyo umesema na hiyo diversity. Hiyo diversity pia vile ungefanya ni proposal, pendekezo. I think it is that diversity. Please look at that again. It should be diversity and equality. That's what we are saying or equal treatment. It's in the Bill of rights. Okey. Tafadhali ukija mbele, come with the proposal. Okey? Tuendeleo.

**Simon Nyakundi:** Katika national council, mnasema itaenda miaka minne.

**Com. Adagala:** We will come to National Council. Tukienda hivi, itakuwa kisirani bila sababu. Nataka kuangalia hiyo sehemu ya laws of Kenya. Kuna wakuu wa kanisa hapa? Officials of the church. Is there even one? I said these are the laws of Kenya and you should make sure that every part of your life which you live imezingatiwa na those laws of Kenya. The Constitution, Parliamentary Act, African Customary Laws, Islamic and Hindu, common law, East African Law and international law.

**Pastor Joseph Shamalla:** I have a suggestion and I thought that....my name is Pastor Joseph Shamalla from Friends Church. It is a suggestion but I thought that it would come in Chapter Five. I am seeing that we have laws including the Muslim and the Hindu laws. Knowing that this Country is made up of more than 80% Christians I would like to suggest that in the Constitution we should put there the laws of Christians governing the people who are Christians and who make a big percentage of this Country are supposed to be entrenched in the Constitution. Where we have even a council controlling all Christian issues and regulating activities of the Christians and stating exactly how the Christians are supposed to behave. So, am suggesting that a law included in the laws apart from the Hindu and the Muslim, we should have the Christian law stated down.

**Com. Adagala:** What is the Christian law? You have to say because Christians say, 'this is a time of grace there is no law. Isn't it?' You know Christians need to resolve that thing. But as it is now, Muslims are in the present Constitution. They are now in this proposed one. Na nikujitetea walijitetea and this governs their personal law. We shall see later on. So, Christians you know these are the laws of the, everytime you have Christians wanasema tu juu juu. Wanasema tu. Halafu wengine wanasema but we are many denominations and it doesn't come out. I don't know why. But you know you can't hold someone to certain principles or certain behaviours and say, 'na Wakristu kila mara mambo yao inaenda korti ya Caesar.' So, you are content, because this is what you are content. The Muslims are saying that is not our court, we have our own court, Kadhi's court. But Christians are content to go to Caesar's court. Even though you say, don't take each other to court.

**Pastor Joseph Shamalla:** That's why I was suggesting that...I propose that to have our law. We come together as Christians and make up our Council and since we already have our law book.

**Com. Adagala:** We have three Chapters upto the Bill of rights those are really the ones which are the essence of the Constitution. After that ni kama vile the institutions that will, before you have the institutions, you have to have this. So, it will be very hard to have a Council or a Commission or court of Christians before you have been, anyway kama kuna kiongozi mwingine anaweza kusaidia au Mkristu mwingine anaweza kusaidia. But that is definitely not there.

**Pastor Wellington Ekhuya:** I am Pastor Wellington Ekhuya from Church of God. From the observation my colleague has made, we observed that under Chapter Five, Bill of Rights, Section 44, where we have freedom of worship. I am just going ahead Madam you will excuse me. But many of us have observed that we ought to have had a Commission for religion which will incorporate any divisions that are coming up to set up their own beliefs and their own ways of doing things. This Commission will venture, will be able to actually vet which religion can be given a go ahead to set up. That exactly will also control this mushrooming devil worshipping that some of us are seeing and many of these religions that are coming up. So, I think that is what I had to say.

**Com. Adagala:** Kabla haujatekeleza kwa Commission, wengine walisema Ministries. We are not refusing. Before you implement or before you put institutions or institutionalize, you have to have it here. I keep telling Christians that they want something less than the Muslims have. So, if that is how you want it, the Muslims are in the laws of Kenya. If you want something less because they keep talking of a Ministry, a Commission, Court, Tribunal, so if you cannot get it to be included in the laws of Kenya and you would have to say what it is. Unajua Wakristu wanaishi tu, anaenda kwa kanisa. May be he should live a little bit like Muslims. Because for the Muslims, five days a day you have to be aware you are a Muslim. May be if it was like that it would be better. Kama mimi nikienda kanisa nitatoa sadaka. Halafu watasema, ‘wacha huyu Commissioner tuweke sadaka takatifu alete rafiki zake.’ So then you do that, you write a letter. I come with my ten friends and we give money and you accept. Never once is it asked, where is this money from. Nobody has asked that. Pastor do you ever ask? Pastor Shamalla, do you ever ask?

**Pastor Joseph Shamalla:** We only get the money.

**Com. Adagala:** Where did you get the money? It could be mtu ameua vile mnajua Waluhya tunajua, if you take (**Kibaluhya dialect**) Huenda ikawa hivyo. Huenda ikawa imeibiwa. Huenda ikawa nzuri bila kosa lolote. Lakini tunaishi bila kujua kitu kimetokea wapi. Tunaishi maisha ya hapa, tunaenda tunafanya, you know there is no, we assume. Even we have assumed that this Caesar’s court deal with that kind of thing. If a Christian has broken a Christian principle, where should they be taken? What should happen? Tunaacha tu. Au watu wanakushauri kwa kanisa. But it needed to be brought a little bit more. So that if you are saying a Ministry there is a reason for the Ministry here. Hizi ndizo principles. Hii ingine ni kutekeleza hizo principles. So, we have written it down, may be when we come to it again we will talk more about it. Lakini Waislamu wako hapa kwa sababu walijitetea na pia huyo the Sultan before he gave up the ten miles trip at the Coast, he said, ‘ you put in the Constitution Islamic law to govern personal law.’ Ndiyo iko kwa Constitution ya sasa na imeendelea hapa hata imetekelezwa zaidi. Because here they say Islamic law then later on under the Judiciary they say Kadhi’s court. Do you see that? Because it is coming from this law going forward. Tulikuwa na mtu alikuwa anataka kuzungumza. Mtu mwingine tumalize. Please don’t be standing up, come forward.

**Wilfred Audo:** My name is Wilfred Audo from Lurambi. Hawa watu wa dini ya devil worship wanakuja under which right? Hawa devil worship nimeonelea ya kwamba wangukuwa na sheria for them not to be doing what they are doing. Another proposal, kwa watu wa Muslim, wana mwakilishi wao katika Bunge na protestants wangukuwa na mwakilishi wao katika Bunge.

**Com. Adagala:** Mwakilishi wa Waislamu ni nani?

**Wilfred Audo:** Somebody Sheikh. Kuna mwakilishi Commissioner katika Bunge na protestants wangukuwa na mwakilishi wao.

**Com. Adagala:** Wakristu wanasema wako 80%, Muslim wanasema wako 40%. Yote ni 120%. Unaona? Hata niliuliza hapo hiyo swali. Nikasema ufisadi unatokea wapi kama Christians are 80%. You know, you need to....even if you are asking you people are not getting the point. You must be first in the principle in order to act for this. Hivi ni vitu vidogo vidogo. Basi itafika kwa hivyo vitu vidogo vidogo na watasema, 'kwa sheria ya Kenya, there is no such thing.'

So, you need to think about it, let's leave it at that because it is very very difficult. We asked. You know Muslims don't complain about devil worshippers. They don't. It's Christians who are complaining about devil worshippers. Mzee, nobody told us who devil worshippers are. No one. We asked. Wakasema wale wana-worship in the night. Tukasema, sasa wengine Wakristu tunakesha. Sasa hiyo pia. Wakasema, 'Oh you know they meditate.' Tukasema, 'Quakers meditate.' Are they also devil worshippers? Nobody has...you are saying these devil worshippers. Tell me who are the devil worshippers. Because there must be someone in the society who can be pinpointed. Tukisema Waislamu, tunajua ndio hawa. Tukasema Wakristu, tunajua ndio hawa. We have atheists who don't believe in God. They don't worship anything. Not even the devil.

So, tunajua hao pia wako hapo. Hata kwa Commission wako, wale ambao they don't worship anybody. Na tuko hapo Waislamu, Wakristu na wale ambao, but devil worshipper is beginning to be like an imagination. Because the way we are putting it, sasa itakuwa dini yangu ndiyo yenyewe. Wewe ndio devil worshipper. Itakuwa witch hunt. No one has told us who devil worshipper is. Infact, I don't know what they told the Commission on devil worship. I don't know what you said. Because we don't have that report. But I don't know what the church said devil worshippers are. So we cannot put something for a population that is not seen. Wewe ndio wa mwisho.

**Rashid Maulidi:** My name is Rashid Maulidi from Nagakholo. Mimi ninataka kuzungumza upande wa .....

**Com. Adagala:** Nitakupa nguvu zaidi.

**Rashid Maulidi:** Umenipa nguvu zaidi.

**Com. Adagala:** I will give you time to give your proposal.

**Rashid Maulidi:** Kwa mfano kwa upande wa Waislamu, wanachinja. ....

**Com. Adagala:** Give in your proposal.

**Rashid Maulidi:** Sasa hapo nitashindwa kwa sababu. Wacha nifikirie.

**Com. Adagala:** I want this to end. Kama unataka kuzungumza wewe pia hata niliuliza ndugu yangu kama unataka kuzungumza tungeleta microphone pale. But I asked him, do you want to speak he didn't say. This mwisho. Anybody who wants to speak will have to line up. We are not going to come up one by one.

**Linet Matuale:** Kwa majina ni Linet Matuale, mimi ni Mkristu. Pendekezo langu ni kwamba Wakristu sisi huwa tunaamini Yesu Kristu aliyekufa msalabani lakini watu wale tunasema devil worshipper ni wale watu ambao hawaamini Yesu Kristu ya kwamba alikufa msalabani na hawaamini Mungu yule ambaye tunaomba. Kwa hivyo hiyo ndio tulikuwa tunataka hao watu ambao wanaabudu vitu vingine sanamu, kuna watu wanaabudu ng'ombe. Kuna watu wanaabudu majiwe. Kuna watu ambao huenda kanisani,

**Com. Adagala:** Proposal yako ni nini?

**Linet Matuale:** Proposal yangu ni.....

**Com. Adagala:** Kwa sababu umeenda kuingilia dini zingine. Unatusi watu wengine.

**Linet Matuale:** Sasa pendekezo langu ni kwamba sisi kama Wakristu tulikuwa tunaomba maana Kenya ni nchi ya Ukristu.

**Com. Adagala:** Nilikuambia ukienda kando na mazungumzo.....sema pendekezo lako. Utangoja tu, endelea.

**Dr. Watindi:** I am not making a comment but I am making the provision of worship especially from the Christian point of view is that we are trying to promote the spiritual nourishment and I want to repeat this phrase. Religion is there basically to promote spiritual nourishment. When we talk of devil worship, we are implying that this freedom of giving everybody the right to worship his own God or devil is not promoting the spirit of this Constitution. It creates more problems when people are not controlled by any force other than the right to worship whatever they want. So, what we are trying to say Madam is that there should be a Section in the Constitution somewhere. That as long as it is for the spiritual nourishment, fine. But if it is contrary to the spirit of promoting good relationship, the spirit of nation, we should stop.

**Com. Adagala:** Thank you Dr. Watindi. Dada kuna mtu anaketi karibu na wewe hapo ni Muislamu. The sister who was here, is she over there. Where are you? Linet. Uko wapi Linet? Hebu nione, simama nione. Kuna mtu ameketi karibu na wewe hapo, yeye si Mkristu. Unajua ni kitu kingumu sana. Sasa yeye ni devil worshipper? Kenya sio Christian Country peke yake. So, you have to watch what you say. Let's talk about this when we get to Bill of rights. Linet, think about it, I want us to declare that we are moving with the Constitution. Think about what you are going to say and put it in context but you cannot begin with Kenya is a Christian country. It doesn't begin there. Ni ubaguzi.



The Republic here, Kenya ni nchi ambayo inajisimamia hakuna nchi ingine inasimamia Kenya, iko huru na inajisimamia. Iko na Serikali nzuri. Multi-party democracy imewekwa hapo sasa, imehifadhiwa haitakuwa tena one party. Hiyo Serikali ya kushiriki, hiyo ya uazi na wajibu. Hiyo ni mikono mitatu ya Serikali itakuwa tofauti, haitaingiliana. Haki za binadamu and hiyo kutawala kwa sheria. Nataka kusema hapa hii ni muhimu sana kwa sababu hii yote iko kwa Bill of rights. Iko kwa Bill of rights na pia kwa sehemu zingine zijazo. Hii yote iko kwa 1<sup>st</sup> Schedule, discription of what Kenya is, the territory is in the 1<sup>st</sup> schedule. The territory of Kenya it says the boundaries, the international boundaries. You find it is the 1<sup>st</sup> schedule there at the back and in the present Constitution it doesn't say where the capital of Kenya is. If you wanted now, you could assert before this Constitution is adopted. You could say that Kakamega is the capital of Kenya and there will be no one under the law who will dispute that. So, it is kind of tradition but now it has been enshrined in the Constitution that Nairobi is a capital.

Lakini tutakuwa na kitu, because it is part of devolution and this was part of our mandate. Departments of Government can be put in various parts of the Country. For instance, the people at the Coast said they want tourism there And the Maasai said, we also want because we are the ones who are really the symbol of Kenya. Ukiona Maasai, this is Kenya, everywhere. Kenya, Maasai. So, they want that also to be there and people from this region said, they want the Ministry of Agriculture to be this side kwa sababu hao ndio wakulima. It went on like that.

Even the people in North Eastern they said they wanted the Ministry of Livestock to be that side. Even departments and different parts where there are pastoralists. So, it is not necessary that all Government departments will be in Nairobi, it is part of de-concentration, De-concentrating so that we can have power and even access all over the Country. The languages of Kenya, lugha za Kenya ni mbili Kiswahili na Kiingereza na usiseme Kiingereza na Kiswahili. Kiswahili kwanza, Kiingereza second. Kwa Katiba hii ilikuwa Kiingereza. Kiswahili, Kingereza na juu yake Kiswahili ni lugha ya taifa na hizo lugha zetu zote zimehifadhiwa. Lugha zote za Kenya zimehifadhiwa hapo. Hiyo diversity pia imekuja. Si mliona kwa preamble? Imekuja hapa. Cultural diversity is recognized and here it comes.

Sign language iko kwa Act yetu. Ingekuwa na mtu hapa lazima anahitaji district coordinator angeleta kwa sababu hiyo lazima iweko na itakuwa kila mahali. Kwa sababu watu wanasumbuka sana na Braille ya wale watu hawaoni na hata sasa tumekuwa na nakala ya Braille. We have twenty copies for now of the Chapters that concerns them lakini yote itakuwa kwa Braille baadaye. Sasa hiyo ni ishara ya Kenya. Ukiona unajua hii ni Kenya, the national flag, the national anthem. Hiyo the court of arms, tunaita kilauni lakini nafikiri iko tafsiri, bado wanatafsiri. Sijui imetafsiriwa nini na hiyo muhuli wa Serikali pia ni, hiyo yote imekuwa described in the third schedule. So, you look for it in the third schedule, when you are reading it will all be described there. Then, tuna ile tukiapa, kuna kiapo ya aina mbili hapa.

Ile ya kuapa na Biblia au na Koran na ingine ile ya affirmation. Ya affirmation ni ile kama ya Quakers wanaapa bila Biblia lakini wanaapa wakiapa Mungu na wengine wako ambao hawaamini Mungu pia wao wanaapa bila hiyo. National holidays hapa ni 1<sup>st</sup> June, Juni Mosi, Madaraka day. 12<sup>TH</sup> December, Jamhuri day na Katiba day ile siku Katiba itatekelezwa. Tumekuwa hapa na



watu wa mpaka. Territory of Kenya has been a major problem. Wacha niwaeleze. Watu wa Turkana wanasema, sisi we are the barbed wire of Kenya.

Wanasema wao ndio wanalinda mipaka na hata haijulikani inakwisha wapi. Sasa imekuwa described watu wa L. Victoria wanasema wana shida, wanaenda kwa islands na wanaambiwa ni Uganda. Hata wengine wameuawa huko kwa sababu wameenda Uganda. So, those islands, watu wa Busia, watu wa Bondo, Rarieda hao wana shida sana. Kwa sababu inaonekana haijulikani na Mfangano huko upande wa Lake. Wana shida kwa sababu wakienda wanaambiwa wako Uganda na inafaa itambuliwe na iwe kamili. Any questions on the republic? That one is just dealing with the external boundaries, the territory. Just external boundaries, internal boundaries is a different story. Tuendeleo.

**Vincent Watako:** Tutaendelea na sura ya tatu ambayo inaongea juu ya malengo na maadili ya kitaifa.

**Com. Adagala:** If you have a question you come and stand here, if you don't....

**Charles Lwanga:** My name is Charles Lwanga. I thought that the issue of national holidays, we should have a provision whereby if a holiday falls in the middle of the week, like we had 10<sup>th</sup> on Thursday then people have to go and work again on Friday. May be we should have a provision whereby the holidays are moved to the end of the weekend or at the start of the weekend. So that in between there people can work continuously without having to break to go for holiday and come back. Thank you.

**Com. Adagala:** I don't think these ones can be moved but what you are saying is what Parliament will do. This is a principle. Parliament will do that. These are national days. The question that's usually asked and I don't know why it is not being asked here kwa sababu inaonekana tumekaa, the other holidays are public holidays. Those ones may be they can be shifted. I don't know if you can shift December 25<sup>th</sup>, there are some things which cannot be shifted. Like these ones, you cannot shift your independence day. You can shift; like in the U.S.A, they can shift the birthdays. Those who celebrate their birthdays and all that. Those are public holidays but these are national days. It cannot be. You want us to be changing changing 12<sup>th</sup>. I think it is understood. The rest of that actually the details is Act of Parliament. They will discuss it. Tuendeleo. You don't have to stand.

**Dr. Watindi:** It is on this oaths. I don't know whether Kenyans or the Commissioners ....what is the importance of an oath? I am asking this because we have seen people take oaths but after taking oaths, what they do, there is no respect for it. So, why do we have an oath in our Constitution when it is not really adhered to.

Secondly, if you look at the oath in the schedule as we shall be seeing them. They swear certain things like preservations, protections and so on. But actually they are not doing that. So, what is the legal provision of an oath in the Constitution. I don't know, I am asking this, I should be answering but I don't know. I would like to be helped.

**Com. Adagala:** You know Dr. Watindi you were with us here. You are taking us back to Form One and we are in Form Two. It is not just you but we need to understand we have already collected views, we have collated them, we are at second level. It is not just you. So, we need to be talking, if you see there is a gap there is something missing propose it. If you ask a question, it will not be of the weight that it should be at this stage. You make a proposal. At this time you make a proposal, unatoa pendekezo ni nguvu zaidi. Hii yote sasa ni mapendekezo, hakuna maswali. What you are saying is important but you need to put it in a proposal thing. People said hii mambo ya Biblia na Koran, watu wanabeba tu hata ingekuwa kibao. Wanabeba tu halafu wanaweka jina. Halafu mtu anatoa uwongo mfululizo au hawatekelezi ile wanaapa watafanya. Vile unasema. What oath would you propose? Don't say what is the use of having it in the Constitution. Although you said about religion, then you might as well not have a Constitution. Say, the Constitution is a reality. What would you like there to be in addition to the oath. What people said, Kamba people said, Meru people said, Luhya people said. All these people said. They said they wanted there to be the oath that binds and that is the traditional oath. Tell us how we can put it in the Constitution. The task we are here for is a much bigger task than what we were here for before. If you feel that way, we want to know how it will be in the Constitution and you know there are levels of Government also. There is the local level, there is the grassroot level and there is the mashinani and all these people have that diversity. So, tell us how you would want the oath to be that would bind.

**Dr. Watindi:** What I would prefer that at the end of the oath we should say, 'the breach of this oath is punishable under the law.' I would like that one to be added.

**Com. Adagala:** To break a Section of the Constitution, wewe wacha mambo ya Parliamentary Act, to break a part of the Constitution is a very serious offence. If you do something unconstitutional, in the Constitution it is a very serious offence. Anyway wacha tuendeleo, watu wengine wamechanga kwa hiyo pia. The next part it talks about the nation. The next part we have,

**Vincent Watako:** Sawa tutaendelea na sura ya tatu ambayo inatoa malengo na maadili ambayo Serikali itapaswa ifuate. Maadili haya na malengo yatafuatwa na matawi tofauti ya Serikali ambayo ni matawi ya mahakama, matawi ya Bunge na Urais. Malengo na maadili haya ni kama Umoja wa kitaifa, national unity. Pia tunatambua tofauti ya watu wa Kenya kitabaka, kidini, pia sela za demokrasia zitafuatwa na Serikali. Serikali pia itafuata ama jamhuri ya Kenya itafuata uazi na uajibu. Pia kutakuwa na sheria ambazo zitapigana na ufasidi. Zero tolerance to corruption. Maswala ya mashirika yasio ya Serikali katika kutoa huduma kwa wananchi pia yatashughulikiwa katika Katiba hii. Ile heshima na utu wa mwananchi pia umepewa kipa umbele. Afisa za Serikali ziwe za uteuzi ama za kuchaguliwa. Asilimia thelathini itashirikiwa na wanawake. Bora pia wazazi watakuwa na wajibu wa kukuza familia zao na kuwa na wajibu. Mahitaji ya kimsingi kama chakula, makazi, elimu, usafi, mazingara bora baadhi ya mengine pia yanatambuliwa katika Katiba hii. Katiba hii pia itakuza maendeleo katika kila pembe ya jamhuri ya Kenya. Uajibu wa Kenya wa kimataifa pia unatambuliwa ili kuweka Kenya katika ramani nzuri hapa duniani. Sura hii pia inampatia kila mwananchi wajibu. Kuna wajibu kama wa kujua, kuisoma na kuielewa Katiba. Uajibu wa kuipigania Katiba

na kuilinda Katiba. Uajibu wa kushiriki katika maswala ya demokrasia, maswala kama ya upigaji kura, kusimama na kupigia kura. Pia kila Mwanakenya ako na wajibu wa kushiriki katika kuinua masilahi ya jamii. Masilahi ya kila mmoja wa jamaa zetu. Pia kila Mwanakenya ako na wajibu wa kuinua sela za demokrasia. Kuikuza familia. Kuiangalia mazingara yetu na pia kila Mwanakenya atakuwa na wajibu wa kutoa habari muhimu muhimu kwa idara zinazohusika na usalama. Kila Mwanakenya pia ako na wajibu wa kupigana na ufiadini hatakuwa ufiadini na kila Mwanakenya ako na wajibu wa kuinua nchi yetu iwe katika sehemu nzuri katika ramani ya Afrika ama kidunia. Hayo ndio mapendekezo ambayo yako katika sura hii.

**Com. Adagala:** There we have national goals and we also have the responsibilities. It is important to realize the responsibilities of citizenship are here. The rights are in the Bill of rights because the responsibilities are very heavy. Hiyo kama ya kupigania ufiadini, huwezi kuona mtu anatoa rushwa au anapokea rushwa na useme, lakini hawa watu wanafanya nini. Una responsibility to fight it. To report it or to oppose it there or to bring it up in the open na hii yote ingine kama hiyo responsibility ya kupiga kura, una right na pia ni responsibility.

Kama kuna mambo imetokea hapo, itakuwa vizuri tungesema. Lakini nataka kusema tu haya mambo ya mbele, national goals, it is very important because we didn't have this and it is very difficult. There was no way you could hold anybody to anything. Kwa sababu walikuwa wanasema, it is directive of policy au mtu anasema tu au mtu anafanya tu. Lakini hapa iko sasa. It is what we shall be going by. If there are any people who have proposals, please come forward. Jina?

**Morris Otunga:** Kwa jina naitwa Morris Otunga. I would like to make a proposal, I think it is Section 12 which says that there should be a third of those representative positions to be women. I would also like to propose that at least ten percent of elected and appointed positions should be persons with disabilities. Otherwise, they may end up being forgotten. On the other areas I would like to propose that patriotism, hard work, enterprise, innovation, those should be included in part of the goals, values and virtues.

**Com. Adagala:** The first one, the proposal has been that the society has 15% people with disabilities. So, the proposal is 15%. We have said a third because we have signed the affirmative action agreement with the international community UN. There is that one third with women. The one for disabilities doesn't have but we shall put it there. You want it to be here or in Bill of rights?

**Morris Otunga:** In both.

**Com. Adagala:** In both yes. Because it is the Bill of rights na itatekelezwa. Kwa sababu sasa wakiajiri, itakaguliwa. Are there 10% or 15% who are people with disabilities? Because people with disabilities also want to be employed, they want to be trained, they want to be employed. So, there is no point to train them if you are not going to give them jobs. Even their children become dependent.

**Carolyn Masiya:** My name is Carolyn Masiya. I am proposing on casting of votes. I am visually impaired and in most cases when we go to cast our votes, we are told not to go with the guide. My proposal is we should be allowed to carry our guides with us. So that it becomes a secret to us.

**Com. Adagala:** Those are the details that Parliament will put but you have the right to vote. Once they have indicated that you have the right to vote, then the way of doing it will be done by Electoral Commission or Parliament. Parliament pass then Electoral Commission.

**Richard Andabwa:** My names are Richard Andabwa. The issue about the citizens having a responsibility of weighing themselves to the Constitution and I believe that requirement may be there. I believe it is better to have it also entrenched in our system. For example in the education system, to ensure that Constitution is also being taught in our schools. Otherwise, we shall not actually be acquainted to the Constitution. I have actually proposed therefore that we should have a machinery in place. For example, the education system should have it entrenched and constitutionalism in the schools system.

**Com. Adagala:** What you need to do actually is to say that, in here there should be a principle that constitutionalism or constitutional education will be there. Then, in the Parliamentary Act, Education Act, it will be put. First it has to be here as a principle then it will be put in the curriculum even women said they want to be taught more. Some women said that. In the former system...it will be in the Education Act but here it needs to be a principle. So, we put there the principle the knowledge of it. It is that you must know the Constitution. So, that principle which is here itatekezwa kwa Act. This is such a concentrated document that when you take it now it is like quencher. So now you have a gallon of quencher then you give everybody a cup and then you dilute with water for everybody to take. Otherwise, by itself, it cannot be taken but it is here.

**Lucas Wambongo:** I am Lucas Wambongo. I am looking at Chapter three, number eighteen and I want to propose that the President will be doing that good duty on Katiba day.

**Com. Adagala:** That is now the Parliament to act but we are putting it down. That is why we could say even that there should be a day for civic education in the Constitution. Asante. Hiyo itakuwa Act of Parliament.

**Ndombi Wamateche:** My names are Ndombi Wamateche. I have got proposals on eradication of corruption. First and foremost what brings corruption is poverty. So I am for the opinion that the Government should eradicate poverty right from the village level. The government must eradicate poverty right from village level. At the same time, our economy should also be reformed, because somebody goes into corruption when he is out of his pockets. So, when there will be enough money for people that nobody will rush for corruption. So, we want the Government to give us sizeable salaries or fat salaries to working fellows. Thank you very much.

**Com. Adagala:** On salaries, there is a Commission on Salaries and emoluments. Because wananchi walisema wabunge wanajiwekea mishahara minono minono in twenty minutes halafu waalimu wanahangaika. They were really complaining about waalimu. I want you to wait here Mzee because when you go there then you are very concerned about your name but here we finish then you go. So it is very important to know, we will get to Salaries commission. Salaries commission will be there na pia we have promotion of.....in the goals. What you have talked about is very good. It is principle. The principle should be here. Then it can happen. Also poverty has been.....infact in several of this, poverty has been talked about. So, I don't know if you wanted the word alleviation of poverty there, the phrase. You want it there. So, we can see whether it can be put there, where it will be put but those are principle. Because if they are not here, nobody will do them but there is a .....

**Vincent Watako:** Even matters of poverty can still be handled under the promotional basic needs.

**Com. Adagala:** There is a certain language that is used in order for it to remain at that level of principle. It will also come in the Bill of rights. Pay very close attention when it comes to Bill of rights.

**Boniface Tsalambo:** My name is Boniface Tsalambo. I hope you will allow me to make a proposal on Chapter 2. I came in a bit late. On national days, I would like you to add heroes day as a national day (heroes day). So that we can do that in commemoration of our national heroes. On Chapter 3, I would like to make a comment on..... (interjection)

**Com. Adagala:** It should be on what date?

**Boniface Tsalambo:** I think it should be the same one may be the one you removed the Kenyatta day. The one people are proposing. It should be heroes' day not necessarily using the name of a person. It is not there and that is what we were saying that we should have a heroes day, not using somebody's name.

**Com. Adagala:** Which date?

**Boniface Tsalambo:** I will give you the date, I had not worked on it. The same Kenyatta day 20<sup>th</sup> of October.

**Com. Adagala:** Siwezi kwenda na kuweka tarehe, you have to say it.

**Boniface Tsalambo:** 20<sup>th</sup> October. Then Chapter 3, I would like to make a comment on language especially number twelve. You have said that there will be 1/3 of the members of all elective and appointive bodies shall be women. I think we should state at least, not one third. Should be at least.

**Boniface Muhaya:** My name is Boniface Muhaya and I am commenting on national goals, values and principles. That is on number six. The republic shall take effective measures and remove all forms of corruption. I think specifically in our Country, I am proposing an issue that now when we talk about corruption, I was thinking we make it a tougher penalty. That is anybody found in a corrupt Act must be seriously charged. That is my proposal.

**Com. Adagala:** Now, that is parliamentary. Listen everybody. We are happy that you are giving these details because we are going to pass them on to parliamentarians in our databank. These are the details people wanted but the principle is here. How it will be in Parliament. Parliament will have two years. Mlielewa hiyo? The next Parliament will have two years. Infact theirs will just be to look through this and make Act. That is what they will do for two years. Now hiyo itagongana na sehemu ya Bill of rights where people said they don't want the death penalty. Did you give views? You are opposed to the Bill of rights? If you are opposed to the Bill of rights then we should put this in the garbage.

If you are opposed to the Bill of rights, tutupe hii. Now we have something called Form One and Form Two here. Form One tuliambiwa, some people were for the death penalty. Waislamu, ndugu yangu waislamu wanafanya nini ukiiba? Wanakata mkono. Ukiiba tena, wanakata ingine. Ukiiba mara tatu? Ya tatu? Unanyongwa. People in North Eastern told us that's what we want. Wanawake, wanaume said that's what we want. People cannot go on stealing. So, you have to understand we have already passed the stage where you are because we had views. Then we looked at the majority of the views and the middle. That's how you do in research. Halafu unawacha extreme na hii extreme ingine. Some people didn't even want life sentence, they wanted people to just be talked to. So, we are now in Form Two. I understand you are doing on corruption but if you say you are opposed to the death penalty then we are back in...we were here in July. We are back in July. There is no comment now, there is a proposal which you have made. Now is a time for further proposals but you have put, we have written. That is corruption should be punishable by death. Inagongana na Constitution lakini tumeweka.

**Wilfred Audo:** Jina Wilfred Audo. Nina pendekezo juu ya vitu viwili. Golden handshake na retrenchment. Hivi vitu vimeleta shida kwa mwananchi wa kawaida. Nikieleza ya kwamba tuwe na normal retirement. Badala ya hivi vyote vitu ambavyo vilileta fujo kwa mwananchi. Wizi umeingia, majambazi wameingia kwa sababu ya golden handshake na retrenchment. Tuwe tu na normal retirement.

Ya pili, colleges: Watoto wanaacha shule, wanaenda katika ma colleges, wengine wanaenda Kabete wanaenda wapi kwa Agriculture kwa veterinary. Lakini wakimaliza hiyo wanakuja tu wanakaa huku nyumbani. Lazima iwe katika Katiba, mtoto akimaliza tu shule au college apewe kazi.

**Com. Adagala:** Kwanza Mzee simama hapa ili usikie. Hii kitu golden handshake ilikuwa administrative hata haikuzungumziwa kwa Bunge. Hata retrenchment, hiyo ndiyo shida. Ukitaka unaweza kupinga hiyo retrenchment. Kwa sababu hata haiko parliamentary. Pili, kuna social security iko kwa Bill of rights. Hiyo social security vile utakuwa na pia tuna salaries and

emoluments hiyo pia itakuwa inaangalia vipi utapata mshahara na vitu kama hivyo. Iko hapa. Lakini hii umezungumzia ni mambo ambayo sasa itaenda kwa Parliament. Msimamo wenyewe uko hapa. Kutekelezwa ni Bunge. Itakuwa kwa Act ili ishike mtu asiachishwe kazi hivyo. Umesema, tutaandika. Sijui niwaambiaje watu wa town. Tumekuwa huko mashambani na watu walielewa haraka sana, Katiba ni msimamo halafu kutekelezwa details ni Parliament lakini bado tunaendelea hapo na tunaenda utaratibu wa sura kwa sura.

**Francis Machanja:** Kwa majina mimi ni Francis Machanja. Pendekezo ni juu ya mtu akisha-retire asipewe tena kuwa Chairman.

**Com. Adagala:** Wacha nijibu hiyo kwanza. That is Form One. We are in Form Two. Muelewe tuko kwa hatua ya pili. Tumechukua maoni, watu wengi walisema hivyo. Sijui niseme vipi, how should I say this. Understand we are moving forward na mkifanya hivi tutatoka hapa Lurambi Kakamega hapa town with very few proposals. We want kunyorosha hii, tunakagua hii. Hiyo views ingine hata hii ya retirement, nyingi imekuja, nishapewa. We want to move ahead. Hata kwa hiyo kuna salaries and emoluments hiyo ndiyo itakuwa inakagua vitu kama hivi.

**Francis Machanja:** Nitapendekeza juu ya shamba.....(interjection)

**Charles Lwanga:** My name is Charles Lwanga. On Section 12, this proposal is very clear on 1/3 women but it is silent on whether men are 1/3 or whatever. So, there should be an inclusion whether there are one thirds, two thirds or whatever. On Section, under the duties of citizens, Section B of number 15 says that people must engage in work. May be we should just change the word engage to sound something like must. So that it can enable people who have learned and are not utilized to utilize. Then the question of voting, I want to propose that it becomes mandatory. I don't know what the implications are but I think it is important. Because I have seen people who seek away from voting and I think that they affect the results by their inability to vote.

**Com. Adagala:** This is a protest vote but in Australia, if you don't vote you are arrested taken to court, taken to jail. Sasa inafaa tufikie hapa. Nafikiri akina mama we are safe kwa sababu tunaenda voting. Wazee ndio. Vijana hasa wanaketi wanaangalia ni kama cinema. But the other thing, if you say something and you are doing other things then it is very difficult. Because then your question will not be settled in your mind. The other people will hear you will not hear. What was your other point?

**Charles Lwanga:** Whether the issue of 1/3 should also apply to men.

**Com. Adagala:** This is actually .....at least what will that achieve?



**Charles Lwanga:** I am just hearing that we are soon going to have reverse discrimination. If you have been discriminating against women, certainly if we don't say anything about men, may be over time we might also just discriminate.

**Com. Adagala:** Let me tell you an institution which has 52% women and 48% men. It is called Kenyatta University and the men are complaining there are too many women and yet that is the proportion in the society. The men are really protesting. Even they have written songs about it and they protest too many women. I don't know where women are supposed to go. Lakini affirmative action is for a time. All affirmative action, even I was in the U.S.A and there was affirmative action. After a while it is not there. Ukitaka kwenda U.S.A. it becomes harder and harder. Isn't it? We were there with African Americans it was affirmative action because of civil rights. After a while, walisema, 'Okey we have now role models we have people there, we have something, so now you can continue.'

Even these ones now have formed a brand middle class they can continue. They can also help the others. So, affirmative action is always for a time and Parliament will put a time to it. It will say for the next so many. Even Uganda has. Then they say tutakagua after so many years. If it has not worked then it's added. So, the thing is; Wanaume if you let go quickly of your prejudices, hii kitu haitakuweko. Even in elections you say that, 'Yah I can also vote for a woman to go.' It is really attitude. Ikitekelezwa haraka hii kitu kitasema kimetekelezwa kitoke. But it is because a man will not vote for a woman. And then women will say, 'she is just a woman like myself.' So, that's what happens. So, it is going to correct that imbalance also for people with disability. People with disability I saw in Nyanza, they had a meeting. Dr. Watindi did you hear about this? They said they are going to stand for elections. Councillors and Members of Parliament everywhere. I don't know if they have a Presidential candidate. But they said they are going to stand everywhere. So it is that one which....ni kuinua baadaye inaendelea. I have heard President Moi saying, 'ninajaribu kuinua wanawake lakini hawainuki.' There is also on the part of women. You know, in Lurambi if no woman stands, how are you going to vote for a woman. If they have to inuka in that way, stand and be voted for at campaigns like others and then if they get 10%, itajazwa ili waonekane. Visibility.

That visibility and then afterwards if they reach their goals, 40%. So, tunaweza kutekeleza haraka hii 1/3 itoke. But you see it is the prejudices we have, the culture we have that keeps them from coming. I want this because the men are feelin, actually for me am not for one third, am for fifty percent. But, we had arguments, even it was the hottest issue then I said alright. Na niliungwa mkono na mtu wa njurincheke na Muislamu Sheikh. You think of those people that were saying, it should be fifty percent. It was at one point. Not in these principles but at one point we discussed that in the Commission. It was a major major issue but this something we have agreed to and also we see in our society that they should. But once inatekelezwa hivyo tunasema, 'basi wamepata nguvu.' Ni kama mtoto, unamlea unamlea halafu....ametosha ameenda. Even you are happy when they go. Okey. Asante.

**Dr. Watindi:** Thank you Commissioner Adagala. First, a comment for you to tell your Commissioners. Your task was to hear us and then in your own wisdom find out which presentation form or would form as an initial of the Constitution. That was your



business. But we told you what we thought in our own cumbered way. So, I want that one to be well understood. Again, I must apologize that I came late. So, I am not going back but the forty two tribes Commissioner Adagala is incomplete in the way you have written here. We don't want to entrench tribalism but we recognize that these tribes do exist. So, why don't we then finya kabisa kidogo. You should have said when we recognize, the forty two tribes is mentioned somewhere in the Constitution. Yes it is. I have read it somewhere either at the beginning,

**Com. Adagala:** Diversity?

**Dr. Watindi:** Yes. Diversity.

**Com. Adagala:** okey. One of the diversities is ethnic. The other one is culture. But the number is not mentioned because these forty two tribes someone decided and called the others, 'other.' People are saying, 'we are not other.' Marakot, have you ever heard of the Marakot? They are saying we are not other. The Almor are saying we are not other. But that is an administrative thing. We told them in the Constitution everybody's diversity is recognized but I think you have a point further to that.

**Dr. Watindi:** I want to defuse the forty two tribes whether they are mentioned or not that we have agreed that these forty two tribes will form a national community of Kenyans. I repeat, I want to see that word appearing somewhere. National community of Kenyans. The reason why I want it to be like that is that the values stated in Chapter three, Madam Commissioner, values are different from principles. Make it distinct. Don't put them together in the way it they appears here change them. In this way, values are the compass by which a nation navigates itself in this sea of uncertainty. They guide us as the beacons. Principles are different. We can adjudicate a code of principles. We work according to principles. We formulate policies from our principles. So, if you can make them, and Chapter three is so important for our children, for the teachers, for everybody. What are the values of Kenyans? You can see they are in the Constitution but what are they? The values sometimes, there are diversities here. But Madam values should have been declared in the preamble. But principles and goals should fall under Chapter three because they are quite vast and valid. Yet, they form the compass by which we work.

Now, coming to the principles, Madam, they are also scattered, these principles are not in one Chapter. They are all over the place. For a teacher, for our children, it is very difficult it would mean they will be looking what is the principle, what is the accepted principle here. No, I want the principles. Like the principle of peace, the principle of unity, the principle of integration. These are things which our children must know and should be distinct. Goals also are not very clear here and yet members had mentioned them. One of the goals a very important one, that the Kenya Government whatever Government, the most important goal is; to lift our people economically. So, the question of poverty becomes a goal at a national level. Corruption becomes a goal that we must eradicate so. So these issues come out in a certain sequence in the Constitution where the teachers of our children can very easily find out and teach. So that they are indicated in their upbringing.

**Com. Adagala:** What I would say, we will take note of that, but I would say these first Chapters upto the Bill of rights those are the principles. From preamble to Bill of rights. After that we get into the nitty gritty of how will the people, we have said it will be a multi-party democracy. Then we come to the representation. How will they be represented from then on. We have talked about Bill of rights. One of them is the right to vote. Then we go to Electoral Commission and how it will be. So, the principles are actually Chapter One to Five. I think we are talking about the theory part, is Chapter One to Five. Then after that it starts saying itakuwa hivi na hivi na Parliament also will tekeleza zaidi. These ones which the other people have been saying about retrenchment about what will come after. But still, I think now that you have this, I think it is very important to look at it the way you are saying and anybody else who can and really do a critic of it and give to your representative.

The others will come or the District Coordinator for the national council. Remember we are still debating. So, it has to be very quickly because the national council the way they cut our time, is on the 28<sup>th</sup>. It will be in November. So, this person must get it. But it would really mean you would have to do the critic and bring it. And we appreciate that. Professor Ghai, said we don't have. The monopoly of the wisdom. We don't and especially the speed at which we have worked it is very possible. For me I agree with you. Although we are saying we recognize our diversity and all that, there need to be something about indivisible or united or national unity. There should be a word there that says that because we are this, that. Or somewhere else like in the national goals bringing people together. May be we are assuming you know Kenyans we assume many things. We assume we are Kenyans and then we go on and then we find out there is a problems. Then we start dealing with it. So, thank you very much for that but I would like you to critic and really go it through especially the first five Chapters. Wacha tuendelee.

Kuna Chapter Four, tumezungumzia jamhuri, tumezungumzia watu, we the people of Kenya. Tumezungumzia hilo lengo na hiyo mambo yote daktari amesema hapa pia. Sasa kitu kinaitwa uraia. This uraia, this citizenship. Nani anastahili kuwa raia wa Kenya? Na hapo tuna definition. Tulipovuka kutoka ukoloni, it was said, all the people who are the subjects of the British colony will now become citizens of Kenya. So, we need to also have that, who is the citizen halafu tuendelee. From now on, who qualifies to be citizen? Kwanza hata hivyo kama hatujaendelea. All citizens wana usawa mbele ya Katiba. Wako na duties sio rights pekee or freedom pekee lakini duties pia. Unaajibika ufanye vitu fulani na tumezisoma hapo kwa Chapter hiyo imepita. Halafu una haki ya Kenyan passport. Nani amejaribu kupata passport kwenda mahali. Ni rahisi sana, sivyo? Nakwambia kwa mimi iko rahisi kwa sababu wanafunzi wangu wako huko. But that is favoritism. Because you look and say, how shall I do this. This thing it takes forever. I need to travel, I need my passport renewed. Hiyo pia inakuwa shida hata kama unayo. So, this thing is now a right. It is not a privilege.

You know the way it is a privilege and even for women its worse because you have to get your husband's permission to get it. And even for a single woman with children it is worse because they have to get a male guardian or foster or male relative to sign. Kama mimi lazima nipate sasa my brother to sign ....you know it is an endless thing. So, tuseme hiyo patriarchywanawake hiyo imetolewa. Hiyo ya kufinya lazima upate. They will just tell you. Especially if you put married, you will have to look for a husband to .....so now it is a right. It is a right that we have. Botswana kila mtu ana passport, they travel freely that kind of

thing. I think Kenya always thinks we are the ones who are ahead but Botswana is much ahead of us on this. And then all the other documents. Hizo stakabadhi zingine zozote ziko hapa, ID cards, all kinds of other identities you have a right. Sio usumbuliwe, sio vikwazo viwekwe. Sasa hiyo ni right ya citizen.

Sasa hiyo ya sasa wale watu wako citizens kama sisi au wale watu ambao ni raia wananchi, kutoka kwa Katiba ile kufika kwa hii itakapotekelezwa, wale wote walikuwa citizens will remain citizens. If we don't say this, then it means we shall now apply all of us na hiyo itakuwa mambo mengine. So, this is a transitional measure and I want you to get used to this transitional measures because they are coming up in many things. Wale walikuwa citizens, tunavuka nao and then the registered ones also. Sasa after that how will citizenship be? You will become by birth, kuzaliwa. (**Kibaluhya dialect**) Hiyo ni kuzaliwa na hiyo ya registration pia.

Naturalization ya application halafu unahojiwa au kitu kama hicho, Parliament will decide how that naturalization will be. Then, tukienda chini kidogo hiyo ya adopted children. Wale kwa Kiswahili, I don't know they say, 'wale wamenunuliwa.' Lakini I don't know what it is in Kiswahili. Lakini ukichukua mtoto ambaye sio wewe umezaa, huyo pia atakuwa citizen. Sasa if you get a Rwandese child and you want to live with this child to be your child, they will take your citizen as a Kenyan. Kuna ile uraia maradufu, hiyo mara pili. Hiyo imekubaliwa kwa sababu watu wa mipakani, Wandigo, Waturkana, Wasamia, hawa watu wa mipakani walilalamika sana. Wakasema, unaweza kuoia halafu mnakaa hata miaka thelathini, mnazaa watoto wa Kenya lakini you know there is no citizenship. Also, at the upper level of the society, hapo ni mashinani. Hiyo ya Turkana, Ndigo, kwa sababu Wandigo wako Tanzania wako Kenya. Waturkana wako kule wako huku. Wasamia wako kule.....sivyo? Wasamia. Hata ndio unaona Awori ako huko Presidential candidate, Awori mwingine ako kule, Presidential candidates brothers. Wateso wako hapa wachache, kule ni about three million. Msidharau Wateso, wako kule wengi sana. Hata wakitaka wanaweza kusema basi twende. Tukikosa kukata hii ya daktari amesema national unity, they can just say, 'Okey, let's go and we will be with the other Teso's Wamasai. Hiyo mashinani na kule sehemu ya juu inakuwa many of our people are abroad, the U.S.A., Germany, France but if they want to continue living there after a while, they want to be citizens.

Then because Kenya says you cannot be a citizen of two countries, they have to give up that citizenship. So, those are also the ones walichanga hiyo. Wakasema tafadhali tufanyieni dual citizenship. I have a sister who is in Zimbabwe. She is working there. She got married there but after a while she wanted to become a citizen. When she became a citizen, after a while the Kenyan embassy told her, 'you have to give up Kenyan citizenship .' Also, the Constitution of Zimbabwe says the same. This Constitutions of the British Colonial are kind of the same. Na mtoto wake akachelewa kufanya application in time. So her child is stateless. Her child was born in Kenya, she is living in Zimbabwe and she is stateless now. So, those are the people and also the ones who are working and going to school and living abroad. Germany, if you become a citizen of Germany, you give up all other citizenship na pia hiyo kuna provision hapa. So, dual citizenship is ready to cater for that kind of situation or if you want to be a citizen of here and Libya. You know if Libya has that, there is now that opening. It was too close and people were suffering and being left out.

Infact I hear this section which was on the internet. In the U.S.A, all that Kenyans have downloaded this and they are reading and saying, 'yes we can still be citizens in Kenya and in the U.S.A.' But there are other countries which have multi-citizenship, zaidi ya mbili. Wana sababu zao, yetu ilikuwa tu watu wetu wana, lakini muiangalie mukague inakaa vipi. What do we need to put as daktari alisema tukaze. We want to hear it. It is what we are looking for. Hiyo ya kukaza na ya kutengeneza iwe nzuri zaidi. Siku ya leo ni ya hiyo. Ukiwa ulipata uraia kwa njia ya magendo au ya uwongo au ukiipata in the future, ikigunduliwa hiyo citizenship inatoka. Nasikia siku hizi, citizenship is five million. Hii njia ya magendo. Wanaitafuta hapa, pale lakini mwishowe ni kama unapeana five million. So it is something high level magendo, isn't it? Okey, ikiwa mtoto atazaliwa babake akifariki kama hajazaliwa au hata mamake, inafanyika hivyo, huyo mtoto atachukua uraia akiwa Mkenya. Atachukua uraia wa Kenya. Sasa hapo hatakuwa na kuulizwa. Tena kuna ingine itakuja baadaye, mtoto akipatikana Kenya na ako miaka minane na wazazi hawajulikani na huenda kwa sababu kuna wakimbizi, sivyo? Huyo mtoto atachukuliwa kuwa raia wa Kenya na tunasema hivyo kwa sababu hapa mbele inasema, shule lazima. So, huyo mtoto, anyone who looks eight years old should be in school. So, huyo atachukuliwa kwa sababu ni mtoto, hana hatia atakuwa citizen ili apate elimu. Watu wa residence, ikiwa unataka kuwa citizen wa Ujeremani lakini ulikuwa former, wale walikuwa former citizen.

Wale walikuwa wanawake unajua wanawake hawakuwa saa zingine wakichukua uraia. Halafu mtoto wa mraia. Hiyo ni kama unazaa mtoto na uko Ethiopia, huyo mtoto wako pia ana right ya kuwa resident. Hiyo ni ya residence ya kuishi. Sasa wale ambao wamepoteza citizenship na wako kwa nchi ambayo inaruhusu only one citizenship, they can be residents here. So that there can be some compensation so that they don't loose completely. But, kuna mzee mwingine alichanga akasema, yeye alizaa wasichana, wakaenda ng'ambo wakasoma wakaolewa in different countries. Sasa anasema ikiwa there will be no citizenship by marriage. If a woman gets married then she can no longer be a citizen.

Then he will no longer have a line in Kenya. Kwa sababu hao watoto watakuwa citizens wa kule na itakuwa hivyo. Sasa hiyo ndio ilikuwa inatokea hata kwa Wandigo na Waturkana. Huenda watoto wako hata si wa Kenya. That's why it was done like that. Parliament has one year to work out all this citizenship the details of it. Ni nini na nani na penalty, if you cheat. So, all this is there. I think there was someone who was saying that if there is corruption, they should be punished. I am sure you are happy with this. Kwa sababu inasema utapoteza citizenship. Now, you need to think about that because Kenya is an attractive Country. You also think about that and think also that our citizens are also outside what should happen to them.

Hiyo ingine ni kueleza zaidi. There is citizenship registration board. Halmashauri ya kusajili raia itakuwako sasa sote tutakuwa kwa hiyo orodha. Ili tuwe na tujulikane. Any arguments there? Una uraia? Any discussion. Come forward everybody. Come forward quickly so that we finish. Where are committee members?

**Ojenge Okwe:** My names are Ojenge Okwe. I have an issue on Article 21 which talks of three years as minimal for a person to be registered. I think three years is too minimal. Further to that, a person marrying a Kenya may marry for a different

intention. Therefore, I propose that further conditions should be put into place. For instance, getting the details and backgrounds of such a person marrying a Kenya lest we accept somebody with different motives in the society. Thank you.

**Com. Adagala:** Propose the number of years.

**Ojenge Okwe:** Five years is okay.

**Com. Adagala:** Ngoja kidogo. Unajua, I think we have taken our Country for granted. If particularly they get married for the purpose and then they go their different ways because this person wanted to become a citizen. You have that responsibility. You want to sell Kenya. Is this person so smart that you are not smart enough to see that they are cheating you. You see this is where the personal element comes in. Vikwazo vitakuwako, fines zitakuwako, punishment zitakuwako lakini you, yourself what do you think. Are you genuinely marrying someone who wants to also marry you first? That kind of thing so you need to look at that. You have also that responsibility, patriotism. But if you say three years is too little, we will write it there. Some people have said even ten. But marriages usually break at three years and seven years and ten years. You know that. Those are the difficult times. So, go and register there. Jisajilisha. But the conditions, that is Parliamentary Act. Umemaliza? Okey.

Kwa majina naitwa Hamisi Muchela Wambalaka. Ninapendekeza kuhusu raia wa Kenya. Nikiwa mzazi nina watoto wa kike ambao wameolewa na huko wameolewa, mabwana zao wanalazimisha kubadilisha majina na dini. Kisha jina zangu mimi kama baba yao, haziko ndani ya kitambulisho chao. Mwisho, mtoto huyu ikiwa mimi nahofia kama mimi mzazi wake nikifa kama watoto wengine hao wangali wandogo hawamtambui, akija wakati fulani hao watoto watamkataa watamwambia, 'wewe majina yako ni tofauti na dini yako na baba yako.' Pendekezo ni kwamba Serikali ichunguze hapo vilivyo kwa sababu hii watoto wetu watarudi kuhangaika baadaye.

**Com. Adagala:** Tafadhali sema kile ambacho unataka.

**Hamisi Wambalaka:** Kile ambacho ninataka.....

**Com. Adagala:** Useme, nataka hii na hii.

**Hamisi Wambalaka:** Uraia yaani kitambulisho hicho. Pendekezo langu ni kwamba isiwe lazima jina la bwana kuwekwa kwa kitambulisho cha mtoto wangu. Kwa sababu atakuja kupoteza masilahi upande wangu wakati atataka uridhi kwangu mimi na kama siko....(interjection)

**Com. Adagala:** Una pointi Mzee. Dini yako ni? Dini yako?

**Hamis Wambalaka:** Dini yangu mimi Muislamu.

**Com. Adagala:** Waislamu hawafanyi. Mama kama unataka kuzungumza unakuja mapema. Wewe ndio utakuwa wa mwisho. Ngonja kidogo. Zima hiyo microphone. Mzee sikiliza halafu ujisajilishe pale. Kwanza msichana wako anakubali jina lake libadilishe. Ulimleaje? Unajua hiyo kitu wanawake wanachukua tayari. Hakuna mahali imewekwa kwa Katiba wabadirishe majina yao. Ni mtindo wa Kiingereza, Kifaransa, ki-what. Hiyo ndio ilikuja. Lakini kwa kimila ya Kiafrika, wanaume wana majina zao, wanawake na majina zao. Nimesema uwongo. Lakini wanawake wamechukua na pia sasa imechukuliwa, sijui wanajisikiaje, wabadishe majina yao iwe ya wanaume. Sijui kwa nini? Lakini pia hiyo ni sijui Muislamu mwingine alikuwa hapa pia. Hiyo sasa pengine ni.....unajua wanawake wenyewe wanajifunga kwa hilo jambo.

Hakuna sheria inasema. Hata wanawake wa Norway, they were ordered back to their maiden name. Kwa sababu unajua huko wanafunga ndoa mara sita na majina na majina but courts zikachoka zikasema kila mtu jina la kuzaliwa ili wakae. Lakini kile kinatendeka nafikiri kwa society yetu hasa mwanamke wa tabaka ya chini anaoa mwanaume wa tabaka ya juu. Hiyo ndio ilianza hivyo. Mimi nakumbuka siku ile mama yangu alilazimishwa kutumia jina la baba, 1956. Kwa shule tulikuwa tunaambiwa, jina lako haliwezi kuandikwa isipokuwa uwe na jina la baba hapo. Lakini tulikuwa tu, unaitwa Kavetsa, inakuwa Kavetsa kwa mila zetu. So, African traditions na pia hiyo ingine. Pengine hiyo sasa itakuja kwa Parliament. Hiyo sasa ni bolts hiyo ya kuweka. Lakini ujue wanawake wenyewe wanakubali na wenyewe wanachagua. Kuna wanawake wengi sasa siku hizi wamefunga ndoa na hawana jina ya wanaume. Kwa sababu wanachagua wanasema, no.

**Hamisi Wambalaka:** Kwa sababu sasa ana-control na huyo bwanake asikuje nyumbani.

**Com. Adagala:** Wanawake si watu ambao hawana nguvu. Wana nguvu lakini wanawacha nguvu zao zinaenda....(interjection)

**Hamisi Wambalaka:** Na ndio hapo tunaomba mtusaidie.

**Com. Adagala:** Sio Serikali, mtu mwenyewe anafaa awe na msimamo pia. Serikali pia.

**Hamisi Wambalaka:** Wengi hawafahamu hiyo shida ya kesho. Mtoto atafukuzwa na bwana hata kama karibu amekuwa mzee na akirudi nyumbani wenzake watamkataa na mimi nimeshagawa haki yake nimewapa wengine.

**Com. Adagala:** Muislamu unafaa ugawe hata kwa huyo. Muislamu anagawa. Nenda ujisajilishe. Sorry, some of the things we need to say are those kind of things. Even the thing of name. People need to think about it. Why are we walking around with European names? One thing I liked Mobutu for, except it was Imla. Alisema tu, kila mtu Zaire name. The way you are called. So, kama mimi ningekuwa Kavetsa na ilikuwa hivyo. Mwenyewe si alikuwa anaitwa kuku ya nini. Sijui. Hiyo ilikuwa kama kujisifu. Sasa hiyo inakuwa jina. Hata hawa waimbaji. Wana majina kama hayo. Sasa unajua kuna vitu. There is decolonization

also that should take place not just democratization. So if you put African customs muangalie pengine itakuwa kwa Parliament ili iseme, 'in our customs, women have their names, men have their names mkitaka.' Mkiona ni sawa kuitwa John na Jane na Mary ni sawa. Lakini wao pia hawajiiti. Mimi niliambia watu, siku nitakapopata Mzungu anaitwa Kavetsa nitachukua jina lake. Kwa sababu hiyo lazima iwe reciprocal culture. Endelea.

**Grace Makungu:** Kwa majina naitwa Grace Makungu. Pendekezo langu limezungumziwa lakini nitaongezea kitu kidogo tu juu ya majina hayo. Naonelea kuna wasichana wetu ambao watu wa ng'ambo wanakuja hapa halafu wanakuwa attracted. Halafu wanaenda nao, wanafanya ndoa huko lakini baadaye wanaachiliwa. Napendekeza ya kwamba kama ni wasichana namna hiyo hana kazi yeyote ambayo anafanya kwa hivyo Serikali yetu iwe lenient. Kama anataka kuja nyumbani arudishiwe citizenship yake.

Unajua hii iko hapa, alikuwa former citizen, anaweza kuwa pia. Lakini unajua kile kinatendeka, watu wanapokea pesa kutoka ng'ambo au mtoto ameniletea. Wanaenda kule hata si kufunga ndoa, wanawekwa kwa ukahaba mbaya sana na mnakubali hizo pesa zikitoka ng'ambo, sivyo? Hiyo kitu sio hata aende a nini....inafaa pia....unajua citizens have a right. Infact now we are saying dual citizenship. Mtoto wa America akiwa kwa kijiji cha Shinokho, American government will come there, the embassy will come there to find out how is this person living. May be you can find a way of raising it. You can find a way of raising it. Citizens should be protected also abroad especially in Germany, there are women living there a life that you cannot believe and they are Kenyans. Hata wanafungwa kwa nyumba halafu wanakuwa tu kifaa cha wanaume kupitia na ni mbaya sana. Au hawa watu wanaenda Saudi Arabia halafu wanakuwa kwa utumwa. You go for a job but you find that you are a slave. May be you have something there but you need to say something more about it.

**Grace Makungu:** Vile nimezungumzia hawa wasichana ambao wanakuwa attracted halafu anapata mtu anaenda huko. Sijui kama wakifika huko wana-register with our embassy. Nafikiria our offices there should be, wajaribu wajue hawa watu ambao wanaenda huko wako kwa register yao and can they be protected au warudishwe nyumbani.

**Com. Adagala:** Hao watu kabla hawajaenda ihakikishe. Unajua mtu mwingine alisema, kama kuna dual citizenship, ndiyo inasema inafaa ikazwe. Kama kuna dual citizenship upande wa mali, huyo mtu ako hapa na ana mali hapa ataapa hiyo mali itabaki hapo. You know that is one route. People will just make money here and then it goes to Canada. Tena asiweke mali ng'ambo aweke hapa. Walisema ndio tukaze ili siwe nini, ama hii ya Wahindi walisema, Asians. They have. So mama it takes a little bit more thought. It needs kukaguliwa huko na kule anaenda so that people, our girls just go. Even young men, they just go and then they reach there. Kama huyu alikuwa Msamburu, uliona vile alihangaika, the warrior who married a Briton sasa huyu Briton is just in love, she doesn't care and he goes there, then he is nothing. Thank you very much, citizenship. Some protection for citizenship. Asante, tuendelee.

**Gesishom Majanja:** Commissioner, there is something I feel strongly and I would like to recommend. I think that this



Constitution should protect Kenyans and I propose that citizenship by registration be suspended for about ten to fifteen years to allow more Kenyans to understand what it means by allowing more people into our Country. Because right now we are in danger of being swam. I think the Constitution should protect Kenyans by suspending citizenship by registration by foreigners for a number of years then we can re-open later. That's my recommendation.

**Vincent Watako:** Kuna tofauti ya registration na naturalization. Registration ni ya spouses ama watu ambao wako ndoa na mwanakenya. Naturalization ni ya mtu yeyote ambaye si Mkenya anaweza ku-apply.

**Gesishom Majanja:** Hiyo ndio naongea. Hiyo ya watu ambao si Wakenya, wasikubaliwe to become Kenyans. The Constitution should put some years control because I think people are so wealthy out there. They have the means and whatever we say, corruption is there, they will still buy citizenship. So, one way to stop that is simply to say no. Then put like ten years halafu we can renew it.

**Com. Adagala:** Because actually it is true there is a lot of corruption in this so it can be a way of dealing with it is may be to suspend. But I don't think with hold it as Parliament a Constitution. Secondly we have another neighbor actually. We have another neighbor, we have Kenya, Uganda, Tanzania, Ethiopia, Somali and people worry about the Somali border. But there is another neighbour called India. A lot of Asian men go to India to get wives and they come. You need to look at that. What would happen because I think Kenyans we don't quite know. Because you can really be flooded by people from other countries especially we have instability in other countries around us. So, we need to think further about this, how to tighten it, how to make it better.

**Dr. Watindi:** I am very happy that you have a very clear clause on this subject. I hope you will really represent, not only the Commission but us that this is an area which is very delicate. We are a young nation, very attractive to the foreigners. We are being swam and basically with due respect to my people we are still very ignorant of what is really happening in our own Country. In terms of exploitation, the Asians has exploited us because we don't know. The Europeans and others because they are more intelligent, they are more clever. So, we were captive but our people are now coming up and by the time we realize the Country will be gone. The minerals, transferring money to other banks and we are being left in poverty, place, under the guise that we are citizens of the Republic of Kenya. Please can we tighten that place a bit harder so that it will be difficult for the foreigners to exploit us. We are too generous. This particular aspect. Is very open. And I agree with my friend, my brother Majanja that an element of suspending some aspect of this should be considered in the interest of our future children. We are too liberal, too open out of ignorance. So, I support that we should suspend this particular aspect and Parliament should consider this very very deeply. Now, we have heard that there was somebody who was in Germany, who was Stateless and they said he was a Kenyan, Kenya said he was not a Kenyan and international forced ...

**Com. Adagala:** How did you reconcile that Daktari with foreign investments.



**Dr. Watindi:** Foreign investments is well covered in its own line.

**Com. Adagala:** What about someone who says, 'I am bringing my money there, I will abide by the rules which you have set down but I really want to invest and stay and I have something I am bringing a stake in the Country. He brings the investment and he also wants to be a citizen.

**Dr. Watindi:** No, I think that's a loophole. It is a loophole which should be sealed. If it is investment, let him invest and he will take his profit as under the agreement but not through the guise that he is a citizen and he will enjoy certain privileges which you and I. To enjoy, no.

**Com. Adagala:** If you don't say it, it is very difficult for us to get it from the blue. So, some people have said their wealth should be here and people have said, but what you are saying that a foreigner investor can come and be a foreign investor and take away. Isn't it? Because they will take away profits. That's what they do. That's also another way we are being exploited. But anyway let's think more about it and write more about it so that your contributions will be such that....you know there is a lot of arguments, we don't just sit down and I agree.

These are things which had a lot of arguments. But people are saying dual citizenship, dual citizenship, we have put it there, we are saying, there should be vikwazo. Isn't it? There should be some masharti in the Constitution. Now we go to the Bill of rights. Kwa Kiswahili translation inaitwa Ukatiba na hii Ukatiba is the way in which the Constitution lives in our lives. Which is constitutionalism. How you live with the Constitution. We have put some of it in national goals and that part of responsibilities of the State and of the person. Now here it's right. Okey. Freedoms and rights. This is the biggest Section I think of our Constitution na ina vitu vingi sana ndani lakini hapa ndio tutafanya hiyo kuona vipi wananchi walisema. These other things that talk about welfare, education, health, security. These are the things which people submitted on the most. So, it is there. In our present Constitution, the Bill of rights is much smaller and its at the back. It doesn't have peoples of disability in it, it doesn't have the child in it. Infact children have complained and said that word the child is not in the present Constitution.

So, this is part of the reason why we are reviewing this to the very expanded Bill of rights and infact there have been comments on the Constitution in general about our Bill of rights. Because I think we are now the latest draft Constitution in the world. So, we have looked at others. We have looked at what wananchi told us and people are saying it is really one of the best in the world. That does not mean then we cannot inspect it and criticize it but we shall look at it. I think it is just because it is the latest because we looked at everywhere else. The Ugandan one, the South African one, American, many many Constitutions, Indian and here the Bill of rights could be a very important section and probably the last of those principle Chapters. Then we will go on ahead. I will ask you to present it Vincent.

**Vincent Watako:** Tutaendelea na sura ya tano ambayo inaongea juu ya Katiba.

**Com. Adagala:** You see after this, we will take a break. Not a break to go but so that we can talk about the process, the things which are going on now around the Constitution, the time of elections, all that. Then, we will go on with the rest of it.

**Vincent Watako:** Haki za binadamu. Katika mwanzo wa sehemu hii tunaambiwa ya kwamba hizi ni haki ambazo ni zetu sisi. Hatujapewa na Serikali bali ni haki zetu na Serikali inapewa jukumu la kuzilinda haki hizi. Matawi yote ya Serikali inapewa jukumu ya kuhimiza na kulinda haki hizi. Pia haki hizi zinaweza keukwa tu kwa misingi ambayo iko ndani ya Katiba hii. Moja kwa moja nitaenda kwa haki zenyewe. Katika kifungu cha thelathini la mbili, kuna haki ya uhai. Katiba kifungu hiki, hukumu ya kifo inaondeva. Pia tuna haki ya usawa. Kila mwanadamu ni sawa na mtu yeyote yule. Pia tuna haki ya kutobaguliwa. Hatutabaguliwa kwa misingi ya jinsia. Kwa misingi ya jinsia, colour ama rangi, umri, ulemavu, dini, maoni yetu, lugha ama kuzaliwa. Pia wanawake wanapewa haki fulani katika Katiba. Watakuwa sawa na wanaume. Watakuwa na heshima sawa na wanaume. Watapewa haki ya kumiliki mali na Serikali inapewa jukumu ya kulinda haki hizi. Wakongwe pia wamepewa haki fulani katika Katiba. Haki hii ni kama kuwa huru, kutobaguliwa na watakuwa na heshima ama utu. Pia sehemu hii inawatambua watoto. Watoto wanapewa haki fulani na haki hizi ziko katika sehemu ama kifungu cha thelathini na saba. Kwa ufupi tu, haki hizi ni kama watakuwa na jina ama wana haki ya kutumia jina. Wako na haki ya kulindwa na wazazi. Haki ya masomo na yafaa tuelewe kwamba masomo ya msingi yatakuwa na bure. Pia wako na haki ya kutobaguliwa. Hawatanyanyaswa katika kazi.

Watoto watakuwa na haki ya makazi na haki ya kiafya. Adhabu ya viboko haswa shuleni imeondolewa. Watoto hawatasajiliwa katika jeshi. Watoto hawatapelekwa korokoroni haswa pamoja na watu wazima na iwapo watashikwa na maofisa wa usalama, watakuwa na haki ya kutetewa na mawakili. Familia pia imepewa haki na kila Mkenya ako na haki ya kubuni familia. Mkenya ambaye amefikisha umri wa miaka kumi na nane ako na haki hii ya kuanzisha familia. Bunge limepewa jukumu la kupitisha sheria fulani fulani kuhusu maswala ya ndoa. Watu walemavu wamepewa haki. Watakuwa sawa na binadamu wale wote.

Pia watakuwa na haki ya masomo. Katika vyombo vya mawasiliano na habari vitatengenezwa kwa njia ambayo watu hawa wataweza kuvitumia na njia za mawasiliano kama Braille na sign language iko katika Katiba hii. Pia kila mwanadamu ama kila Mkenya ako na haki ya utu ama human dignity. Kila mwananchi atapewa heshima. Kila Mwanakenya pia ako na haki ya ulinzi, atapewa ulinzi na Serikali. Kila Mwanakenya amepewa haki ya kutokuwa mtumwa na kazi ya lazima ama forced labour. Kila Mwanakenya pia ako na haki ya siri. Hivyo hatakaguliwa kimwili ama mali yake haitakaguliwa bila utaratibu uliowekwa katika sheria.

Kila Mwanakenya pia ako na haki ya kuwa na maoni. Kushiriki katika dini anapenda. Pia haki ya kujieleza iko katika Katiba katika sehemu ama kifungu cha arobaini na tano. Haki hii inapewa haswa vyombo vya habari hata wanasayansi, kujieleza kwa njia zozote bila kuingiliwa. Pia haki hii publication of opinion, kila Mwanakenya ako na haki ya kusambaza mawazo yake bila kusumbuliwa na vyombo vya habari ambavyo vinamilikiwa na Serikali vitakuwa huru. Kila Mwanakenya pia ako na haki ya

kupata habari, access to information. Haki hii amepewa kila Mwanakenya. Lakini pia kuna upungufu wa haki hii ambayo tutaipata katika sehemu ya nyuma ama schedules. Kila Mwanakenya pia ako na haki ya kujiunga na vyama vyovyote vile. Viwe vyama vya kisiasa ama vyama vya ufanyikazi ama vyama vyovyote vile. Wanakenya pia wamepewa haki ya kuandamana. Haki ya mgomo. Kila Mwanakenya pia ako na haki za kisiasa. Haki hizi ni kama haki ya kupiga kura, haki ya kupigiwa kura ama kusimama katika kura. Kila Mwanakenya pia ako na haki ya kutembea katika sehemu yeyote ile ya nchi. Wakimbizi wamepewa haki katika Katiba hii na Bunge limepewa muda wa mwaka mmoja kupitisha masharti ambayo wakimbizi watayitimiza katika kunufaika na haki hizi.

Kila Mwanakenya pia ako na haki ya kufanya kazi ama kitaaluma atakuwa na haki ya kutekeleza taaluma yake ama ujuzi wake bila kusumbuliwa. Kila Mwanakenya pia ako na haki ya kumiliki mali. Haki hii haswa ni kwa ile mali ambayo ilipatikana kwa njia ya halali. Wafanyikazi pia wamepewa haki katika kifungu cha hamsini na tano. Haki hizi ni kama watapata mshahara unaostahili. Watakuwa na haki ya kufanya mgomo, watakuwa na haki ya kujiunga na vyama vya wafanyikazi. Wastaafu pia wamepewa haki ama social security katika Katiba hii iko katika kifungu cha hamsini na sita. Haki zingine ni kama haki ya afya, haki ya elimu, makao, chakula, maji, usafi, mazingira baadhi ya zingine. Lugha za kitamaduni pia zimetambuliwa, zitakuzwa katika Katiba. Wanunuzi pia wamepewa haki katika Katiba. Haki hizi ni kuwakinga Wanakenya dhidi ya bidhaa hafifu. Kila Mwanakenya pia ako na haki ya kunufaika na utawala bora, a fair administration.

Kila Mwanakenya hatalazimika kukubali maagizo ambayo si ya halali. A right to obey unlawful instructions na kila Mwanakenya atakuwa na haki ya kuwasilisha kesi yake mahakamani ama kujitetea mahakamani bila vikwazo. Watu ambao wako korokoroni pia wako na haki fulani na watu ambao wako mahakamani pia wako na haki. Wako na haki ya kunyamaza kimya, wako na haki ya kupata huduma za wakili wanaompenda. Wako na haki ya kupata hukumu ya haki that is fair trial. Watu ambao wako korokoroni pia wako na haki fulani. Wako na haki kama ya kupata elimu ama taaluma fulani ya kiafya. Baadhi ya haki zingine ziko kama haki ya kuwasili, zingine mtajisomea. Wakati wa hali ya hatari, ama state of emergency, Wanakenya watakuwa na haki fulani na Bunge limepewa uwezo wa kupitisha sheria ambazo zitatumika.

Pia ili kupata manufaa zaidi kutokana na haki hizi, kumedumiwa Tume ya haki ama Commission of Human rights. Tume hii iko na vitu vingi hapo ambavyo labda mtajisomea. Lakini kwa mukhtasari tu, tume hii itakuwa na jukumu ya kuchunguza maswala ya haki za kibadamu na labda kupeleka wahalifu ama malalamishi katika idara zinazohusika. Katika ufafanuzi wa haki hizi ama ufafanuzi wa Ukatiba, mahakama imepewa uwezo wa kufafanua Katiba hizi. Kwa ufupi tu, hayo ndiyo mapendekezo yaliyo katika sura hiyo.

**Com. Adagala:** Unajua tulitaka tuwe na muda zaidi na nyinyi but our time was cut. We would like to discuss things really in depth lakini muda umefupisha sasa tuko tu na, hasa kama hiyo sehemu ili tuijue zaidi. But I think probably if it is clear, it will be good. Toa pendekezo, kupeleka, hii mbele. Endelea. Jina?

**Pastor Joseph Shamalla:** Jina langu ni Pastor Joseph Shamalla. Pendekezo langu ni kwa hicho kifungu cha arobaine, nne, sehemu ya pili. Inasema kwamba, every person has a right either individually or in community with others in public or in private to manifest any religion or belief through worship serve as practice of teaching. Pendekezo langu ni kwamba tungependa hapo tuongeze kitu kwa sababu tukiachilia vile iko, hiyo ndio italeti shida sana especially kwa mambo ya kuabudu. Ndiposa tumeshazungumzia mambo ya kuabudu shetani na mambo kama hayo. Ningependa tuongeze jambo la kusema kwamba, hiyo inafanyika provided hai-affect maisha ya watu wengine ama zidi ya haki za watu wengine ambao wako karibu. Kwa sababu tuki-allow tu, hiyo watu wanaanza ku-worship, watu wanajenga hata makanisa ndani, mahali ambapo watu wanaishi. Hiyo kitu tukiachilia hivyo, itakuwa inaleta kwa watu wengine ambao hata hawakuwa na matatizo.

**Com. Adagala:** Unajua daktari alizungumza hapa na akazungumza mambo ya spiritual nourishment, fulfillment. Unajua hawa watu wa devil worship wanakuwa spiritually nourished na fulfilled. You know, it is a very very difficult thing except to say that the right of faith, or the right of worship is the highest right among freedoms of expression and association. Kwa sababu lazima uamini.

You keep bringing up devil worship but I am telling you, unless you are going to get that devil worship report or tell us what devil worship is, it will be difficult. Some people were saying, 'worship the living God.' Halafu Linet, Linet sijui kama amesimama tena. Linet ako wapi? Linet hii ndio sehemu yako. Akasema, 'some people huabudu ng'ombe,' it is their religion. Ikiwa hata hapo tulikuwa nyuma, there shall be no State religion. Ikiwa kama Saudi Arabia wanasema Islamic Republic, sivyo Waislamu? Islamic! Kwa sababu wote wako Waislamu na ukiwa Christian you will be in the tiny minority. Kama Wahindu hapa. But you will live by their law. Because it is Islamic Republic, they declare it so but we are not a Christian Republic. There is such a thing kama hiyo ya Vatican. It is a Roman Catholic State na the Head of State is the Pope. Sasa hapo inaeleweka, very small but inaeleweka hiyo ni Roman Catholic. Ukiwa uko Protestant you are in the minority. That kind of thing. So, the right to worship, you can put very little vikwazo on it.

Watu wanasema tu devil worship lakini hamjatuambiwa because population ya Christians is known, sehemu ya Uislamu is known, Hindus are known. But this other thing, it may be happening and it is Christians who complain most. So it must be happening among Christians. There will have to be a way to deal with it but so far we haven't got to a point of doing that and there are people who are not devil worshippers but don't worship anything. Na si wachache. They just live, they know they are biological beings, they came from monkeys and they came from cells and they will live and they will die. Kama ng'ombe au mti au mbwa and they are just biological beings.

So, you see you really would have to say, kwa sababu wao pia wana haki ya kukaa hivyo. Ni jukumu lako Pastor to convince them and it happens you convince them. Those are the ones you are converting. Isn't it? So, they can believe in God. So, hilo pia ni jukumu lenu sio ya State peke yake. Ni jukumu lenu, nyinyi ndio mnajua devil worshippers wako wapi. You try to convert them. Even the State can say it but if you are doing nothing yourself, you are also leaving your Christian duty behind.

Because you are supposed to convert and spread the word. So, there are those two sehemus, sehemu mbili, hiyo ya State na hiyo. Lakini ya State hatujaipata kwa sababu State, ukipa kitu kinaitwa State nguvu, itakagua hata wewe na itakufuata.

That's what I say witch hunt, they will be following every religion. Wakifanya kosa kidogo watasema hii haijatimiza mambo ya Kikristo sasa hiyo ndio...inawekwa hivyo. Mnaona. Iko kitu kingumu sana hicho. So, don't say it is an easy thing. It is not an easy thing to put limitations on religious faith. Hata hii ni ya speech wanasema you can talk so long as you are not abusing somebody else, so long as you are tolerant, so long as...like that. Hiyo hata its easier to do. But hii ya faith ni ngumu sana. I am not defending devil worshippers but I am saying it will turn and we have heard watu wamesoma. ...we have heard the Spanish inquisition. Ilikuwa korti, unapelekwa korti unaambiwa wewe Shamalla umefanya hivi, umefanya hivi na wanakunyongea hapo. Christians not anybody else, they are the ones who are doing it. So, it can cut devil worshippers but it also comes, it's two edged. It's censorship which is a very difficult thing to put here and to limit freedoms in that way, it is unconstitutional. Kuna misingi ya Constitution, freedom ya speech, freedom of movement, freedom of worship, you can't quite cut them. So, you need to think much more and know that when it will start kukagua devil worshippers, wewe pia utakaguliwa, mjue hivyo. The State, kama hapa inasema compulsory free primary education. Halafu inasema na hao watoto hawatachapwa viboko. Mnaona? Hiyo ndio State sasa au Constitution. It gives you, but it is give and take, it is not just give, give. These rights are not just give, give, give. There is give and take. Lakini tutaandika maoni yako. Christians you are dealing with something much more serious than you think.

**Clement Were:** My names are Clement Were. Kuna proposal moja tu, kuhusu Section 70 ya rights of people in custody to vote. Now, that one is silent because it is not talking of how they will know their candidates. Here is a person in custody, the candidates are outside the custody. So, how will the prisoner in jail know their candidates because the candidates are campaigning outside prison and a prisoner is already in prison. So, what I am proposing is that if we allow a prisoner to vote then we must also allow the candidates to campaign inside prisons.

**Lucas Wabongo:** Mimi ni Lucas Wabongo. This Bill of rights na nimeona kama ni mzuri sana. I would like to apologise to Madam Commissioner that I would like to propose something that which may be taken with a mistake. But I would like to suggest like this, 'the Bill of rights Section 29, could have been 30 and 30 to be 29. Then, the Commissioners would have outlined fundamental rights alone and then fundamental freedoms alone.

**Com. Adagala:** It is true, not you particularly because you have seen it but actually for many of us who are literate who can read this Chapter is actually too long. You know for reading it is too long. But may be that is one. But the other one is that, if there are fundamental rights and then fundamental freedoms that's what you are saying. Imeorodheshwa tu hivyo. It's a good suggestion. It's handleable and knowable. Especially when it is going to be in the school system.

**Dondi Mateche:** I am once again on the stage. My names are Dondi Mateche. When you look at the Bill of rights, Chapter

Five, women are covered, children are covered. But I don't know what is happening with men. Because we have child abuse and wives abuse. But your wife can as well beat you momentarily. So I am of the opinion that we should also have husband abuse. Because women are covered, children are covered. But there is nowhere men are covered. So, I am for the opinion.....(interjection)

**Com. Adagala:** Please give not an opinion, give a proposal.

**Dondi Mateche:** It's a proposal that men should also be covered. So that when your wife throws you down, you know where you can take her to as far as legal system is concerned.

**Com. Adagala:** I don't take it as a right matter myself. My brother was killed by his wife and such that it became like a different argument. Lakini if it is the other way round, they say the man is in the wrong. It is as if the man is the victim, somehow again he is in the wrong. So I don't take it that very lightly but for me women issues and children issues are really a window of making the society more humane. So, we should leave this other nini alone and a lot of women are actually victimized but they keep quiet. They are embarrassed and people will laugh at you. They should admit. If men admitted how they are oppressed more even by just paying brideprice, that's an oppression, isn't it? You have to really look for this thing but since you are looking and saying, 'lakini akija nitamtawala.' So you familia. So those kind of things need to be done. You are proposing that men should be covered. How does it read? Or it is the whole Section.

**Dondi Mateche:** Because we have wife abuse, children abuse but I have not seen where you have written...(interjection)

**Com. Adagala:** Can we say spouse abuse?

**Dondi Mateche:** Yes. Thank you very much. Number two, I am going to talk about number 74. The authority ofcourse to uphold and enforce the Bill of rights. I think here...(interjection)

**Com. Adagala:** Please there is only one person speaking. I know Luhyas like to discuss and discuss everything. But give a chance. Because if you talk, his words will not be clear and Mrs. Mwangi will have a very difficult time transcribing. Even people listen to it fifty years from now, it will not be clear. We are not doing it to make you all like school children, we are doing it so that we can have clear transcription and recording.

**Dondi Mateche:** Judges and advocates are causing a lot of miasmas in people. They are causing a lot of psychological miasmas to people. Because when you are in court, an advocate will use his professional language to silence you or to derail you. So, I am of the opinion that advocates should use a simple and understandable language. When they are using English as the media of communication. At the same time.....(interjection)

**Com. Adagala:** Now actually Kiswahili has an upper hand on English and you can actually insist that they speak in Kiswahili so that you understand.

**Dondi Mateche:** But even the language should matter.

**Com. Adagala:** Well. Most of us when it comes to Kiswahili we are simple. It is only hawa watu wa Coast na watu kama Lumumba ndio wana hiyo lugha ngumu ngumu.

**Dondi Mateche:** At the same time, judges or magistrates should not be allowed to carry out cases involving land.

**Com. Adagala:** That is already taken care of, watu walituambiwa the whole Country, walisema land itoke mahakamani iende village elders.

**Dondi Mateche:** He has been to Bunyula and then he asks you, 'Oh when you were paying this, where is the agreement form, where is what' and he has never been to Bunyula to see how the land was being sold. So, they should be snatched away those.

**Com. Adagala:** It is already in the.....(interjection)

**Dondi Mateche:** Yes, these fellows are really fumbling.

**Com. Adagala:** Excuse me, you are taking us to Form One.

**Dondi Mateche:** Pole sana.

**Com. Adagala:** Just keep that under the land chapter. We will come to it under land. Thank you very much. Wape hawa.

**Morris Otunga:** I am Otunga once more. First I would like to remind the Commission that.....(interjection)

**Com. Adagala:** Tafadhali even if you are talking bhandu bhetu, you have to talk as if you are in Kakamega market. Tafadhali heshima. For the person who is talking even if you whisper a little it will be okay. But mnazungumza kama mko barabarani.

**Morris Otunga:** Article 39 about persons with disabilities, 2 (G) I would like to retaliate the figure, 15% and then on the same level, I would also like to.....



**Com. Adagala:** Just quote. What does it say?

**Morris Otunga:** 'Take part in decision making at all levels.' Because later on when we come to bodies like Parliament as well as the Commissions there are no figures inserted. Then I would like to mention something about. While we have Article 55 on labour right, I would like us to have a separate article on the right of employment. Those to me are not the same. Then when it comes to freedom of worship, .....that everyone

**Com. Adagala:** No, you have to propose what you want to be written.

**Morris Otunga:** That everyone in Kenya has a right to employment. Therefore, it is the role of the Government in power to make sure that it runs the economy in a way that it generates implement at least for the majority of persons if not everybody.

Now on the point on freedom of worship, really I don't have a conclusion but I am concerned because as we are aware and particularly here in Western Province, there have arisen so many churches and other faiths that unfortunately are derailing people. Actually, people are trying to take advantage of other people's ignorance and are actually instilling fear in people's lives. So, I would propose that the religious fraternity is given more time in order to find ways of controlling. Because even what is called devil worshipping is particularly in churches even though they sometimes do not want to accept. The devil worshippers are the church leaders themselves.

On health, I would rather propose that the word 'free quality primary health care be inserted because if we just say that there should be healthcare we may end up with hospitals without medicines and the like. So, free quality healthcare. That is on the primary level. But at the specialized level, I would suggest that the State subsidizes, thank you.

**Com. Adagala:** What is primary?

**Morris Otunga:** Primary should be free for all but at the specialized treatment level, I suggest that the State should be able to subsidize.

**Com. Adagala:** The education is okay if it is primary which is subsidized.

**Morris Otunga:** Education should be free for all.

**Com. Adagala:** Quality?

**Morris Otunga:** Quality education and when it comes with the children with disabilities, then infact, I think my sister will talk



more on that.

**Carolyn Musiya:** I am Carolyn Musiya once more. I would like to suggest something on education. The Government, especially they have talked about integration education. I would like to suggest that at primary level, let these children be at special schools, especially the blind and the deaf. What the Government should do is that they should have special primary schools at district level to make sure that all these children get free primary education. But at higher level, they can be integrated because we are ending up having Braille that is not standard and cannot be read because of this integration programmes.

**Com. Adagala:** My sister does that means that it will be boarding facilities kama hiyo ya Mumias. Because Primary if you put it at district, then it has to be boarding.

**Carolyn Musiya:** Of course it should be boarding of primary level. But at higher level it can be intergrated.

**Com. Adagala:** In other schools.

**Com. Adagala:** Asante sana kwa hiyo kuchanga. Thank you very much for all your maoni. Because they are refining. That is what we want to do, to refine the draft. Endelea. Jina?

**Emuhaya Boniface:** Kwa majina mimi ni Muhaya Boniface na ningependa kuongea kwa Bill of rights kwa kipengele cha number thirty two. Which talks about right of life. Jambo la kwanza, it is stated there that everybody has a right of life na nakubaliana na hiyo. Ya pili kwamba death penalty iwe abolished. Hapo nilikuwa nasema ya kwamba, tuongezee, I am proposing part 2 (III) that kuna taabu kwamba mtu anaweza kuuu mtu wa kwanza leo, auwe mwingine kesho, the following day. Halafu inakuwa sasa ni hali yake ya maisha. Sio kama ni hatia. So, if somebody does a mistake recurrently.....(interjection)

**Com. Adagala:** where will he be killing these people?

**Emuhaya Boniface:** I have seen this Madam for one time. Recently, I saw in my village somebody murdered three years ago. He was jailed.

**Com. Adagala:** He should have been put in for life.

**Emuhaya Boniface:** Manslaughter. I am talking of manslaughter. Then, after sometime again, the same person was out for some time and he murdered another person again. His worker so such a person now actually that is his way of life.

**Com. Adagala:** Actually inasemekana ukiua mtu mmoja, sasa binadamu si kitu kwa wewe.

**Emuhaya Boniface:** That's it. For instance, this man who has killed three times. He murdered his mother and then recently the worker.

**Com. Adagala:** What does African culture in that area say about it?

**Emuhaya Boniface:** Such a person used to be murdered also.

**Com. Adagala:** He used to be?

**Emuhaya Boniface:** Murdered.

**Com. Adagala:** Don't hakikisha. Usiseme kitu hujui. Have the old men said that....(interjection)

**Emuhaya Boniface:** Olden days, what they used to say.

**Com. Adagala:** Because we were told, hasa Waluhya ndio walichanga hiyo kabisa. Wakasema death sentences ni repugnant we don't do it in our society even if someone kills, anahamiswa. The problem kama huyo alikuwa Warutego hapa ambaye alikata kichwa cha mwanamke wake, akaketi hapo akakunywa chai. In the family it happened somewhere else na wakahamishwa na wakaja huku and the son or the grandson did it.

**Emuhaya Boniface:** I believe they gave you information which mistaken a bit because what I know, anybody mischievous in the society anahamishwa.

**Com. Adagala:** Kuhamishwa ni kupeleka jela sasa.

**Emuhaya Boniface:** But now akiua mtu mara ya kwanza alikuwa anahamishwa na akizoea, they used to murder him on the spot at a crowd.

**Com. Adagala:** So, they should not have, au hiyo ya Waislamu wanatupa mawe. Let me think this through. Even the Christians said, it is not an eye for an eye. It is a very difficult thing because we were given these views. So, with the views we were given, you cannot now, you can.....but tumechanga imekuwa death sentence is repugnant to the Christians, to the culture all over we were told. Except Waislamu ndio walisema, 'kata mkono, kata ingine.'

**Emuhaya Boniface:** But the question here.....(interjection)

**Com. Adagala:** It is not a question now, you are going to Form One and we are in Form Two. We will put it down because we are saying these are people who are not pennants they are mad. It is pathology. These are people who are psychotic or neurotic

**Emuhaya Boniface:** I have got another issue on Bill of rights about women. That is 35 (3) inheritance of property. This one I thought, this one we can actually have another kipengele talking about it, it should be dual. That means actually it could be now you have a wife, who will inherit from the father and also from you. So, that is my proposal about women inheritance. Thank you.

**Com. Adagala:** You are saying that they should inherit from the husband and what you bring, what happens to it. But you know a lot of the times you were....this is really the disadvantage we had in these hearings. We were talking mainly to pleasant so, you know they see that they come and the property is there, the one the husband inherited and they get on it. But if it was another level of society, they would say that a woman can have property. So, the inheritance makes it that also the ownership should be the other way round.

Even if you make marriages last a little longer. Your name is on mine and my name is on yours. Then you would say that you are bound together na ingine pia ilikuwa hapa. If you are coming to changa, hao watu wametosha. Hauwezi kuketi na kungonjea ndio usimame baadaye. You are the ones who are bringing discussions rather than proposals. I will not accept. People have to stand up from the beginning. All of you mmesimama nyumaye. We need to move. I would like there to be participation but we need to move quickly. Kulikuwa na kitu hasa Umaasaini, walisema na mahali kwingine, watoto pia wawe hapo. I see in a way if you are a polygamous marriage which is an unequal practice, may be you need to say this property for this wife and these children. Even if it is monogamous, the children are there so the practice which is now at the land board that the children must be asked. The children wao dhoreshwe hapo kwa title deed. It is a matter of making a new document. Okey? So, hiyo joint ownership by spouses.

**Johnstone Shikuri:** Mimi kwa jina ni Johnstone Shikuri na natoa maoni kuhusu korti. Ningeonelea ya kwamba, kama watu wameenda kortini, mshtakiwa na mshtaki, mtu awe na uhuru wa kuonelea kama yule mwingine atakuwa na advocate kama yeye hana.

**Com. Adagala:** Free legal aid iko hapo under Bill of rights. Kama hauna Serikali inakupea.

**Johnstone Shikuri:** Jambo la pili natoa maoni kwa upande wa chakula ya kwamba....

**Com. Adagala:** Pendekezo

**Johnstone Shikuri:** Pendekezo ya kwamba tunajua ya kwamba kazi haziko katika Serikali yetu. Tungeonelea ya kwamba watu wale ambao hawana kazi waweze kuandikiwa mshahara kidogo kwa sababu ya kutosheleza mahitaji ya nyumbani. Asante.

**Linnet Madwabe:** Kwa majina ni Linet.

**Com. Adagala:** Usikimbilie jina. Watu wakienda pale sijui unawapa nini. Hiyo ilichangiwa sana na tutarudisha tuseme imezungumziwa, unemployment welfare. Unemployment, kama mtu hako employed awe na kitu. Iko kwa senior citizen but ilichangiwa sana. Once again I want to say, there are so many things and that's why we have come back to you so that you can remind us of that. Lakini tukiangalia kwa database tutaona hiyo. Endelea.

**Linnet Madwabe:** Kwa majina ni Linet. Upande wangu ni kuhusu masomo. Pendekezo; kuna mahali ambapo wanafunzi huwa wanateseka wakimaliza kidato cha nne.

**Com. Adagala:** Tunataka upendekeze, mambo ya kazi tunaelewa kwa sababu sisi sote ni Wakenya na tunajua hiyo yote. Toa pendekezo lako ili shida iondolewe. I am saying this because of shortage of time.

**Linnet Madwabe:** Pendekezo langu ni kwamba wakati watoto wanamaliza mtihani na ipatikane ya kwamba shule ilikuwa na makosa ya kufanya hiyo mtihani ikuwe cancelled, Serikali ichunguze hiyo maneno, shule ishughulikie kurudia kwa wanafunzi. Shule ishughulikie wakati watoto wanarudia mtihani maana labda mzazi hakuwasiliana na waalimu wafanye hiyo na labda hana pesa ya kulipia karo.

**Com. Adagala:** Unataka nini. Pendekeza.

**Linnet Madwabe:** Pendekezo ni kwamba wakati inatakikana mtoto arudie mtihani, shule igharamie.

**Alfonse Musambai:** My names are Alfonse Musambai. We have the right of worship as well as health. So these two things actually collide, where as we have some denominations, however it is their belief that when they pray, some of them pray at night and shout with very high voices actually interfering with those ones sleeping. Putting in mind that, when you are asleep, actually this really disturbs one's health. Therefore, where these people are shouting so high are actually interfering with the ones sleeping. I therefore feel that these people actually should be restricted. I propose that all these people who are shouting for their belief that they are praying, they should be instructed to be praying at a low sound.

**Com. Adagala:** katika constitution inasema nini?

**Alfonce Musambai:** But how do we feel when these people are actually interfering.

**Com. Adagala:** It is not that I am disagreeing with you. You have to say it the way it can be here. What you want to say is that the right of freedom of worship should not interfere with other people au the right of speech should not interfere with other people. Tafadhali huyo ni nani? Please this old man ...you cannot wait and wait. We shall not have an end. Huyu Mzee wa tai nyekundu ndio wa mwisho. Please we will have discipline here. We will have discipline here. Hiyo ndiyo unataka kusema hivyo. Okey. A religion should not interfere or if a right. Any right by the way. You are not supposed to interfere with other peoples' rights by the way. Okay. You hear. These rights are not that you can do whatever you want. You have to also respect other people's rights like you are saying to sleep. Tuendelee.

**Amos Mulubi:** My names are Amos Mulubi. I would like to propose something on Bill of rights and it will go may be in line with Chapter Two on State and religion.

**Com. Adagala:** I don't want you to stay...I am giving you more power, propose.

**Amos Mulubi:** The issue with...(interjection)

**Com. Adagala:** Don't discuss it. I want you to propose. All your discussions will be proposing.

**Amos Mulubi:** I am proposing on freedom of live and opinion that's forty four. May be after the sub-section two, it should have may be a breakdown on 2 (A) which reads every person has a right either individually or in community with others or public, in private to manifest on religion or belief through worship observance, practice or teaching. I am proposing that it should be read with another sub-paragraph that, this should be in line with the provisions in Chapter two of this Constitution. Which also I would propose that, it should read in Chapter Two, sub-section four. Which I propose that it should read that, the State shall control the emergence and spreading of religion. That's my proposal.

**Com. Adagala:** You tell the State to control mtalia. Mtalialia, kwanza. It's like when people said that the State should control expression of opinion and this and this na Odinga na Kenyatta ndio waliandika na Kenyatta alikuwa ameshatoka detention. He knew what this meant. Do you know who the first person to go to detention was? Oginga Odinga. Don't just say...I want you to think. Kama China, it says, you can only have one child and it sounds very nice because it's a big population.

But do you know what people do, they get pregnant, they go and find a scan and they find if it is a girl they abort. Because they

are only supposed to have one child. If it is a boy, they give birth and then now because the State is controlling and now there are so many men in China. The State can be draconian. It can dictate. Nahaitakuhurumia ati wewe ni mtu mzuri au Pastor ni mtu mzuri, itakagua. Do not play around with the state. We shall write it down but the State can come mpaka unashangaa hii nini. Kwa sababu wewe unafikiri ita-control yule mwingine na ita-control pia wewe na ita-control kile utahubiri. Don't play around with the State.

**Amos Mulubi:** I was saying that the groups that are not existing now they may be allowed to exist but then they should not allow more. Because you see like 'mungiki' is now proving to be a religious group. Such things that's what I am saying.

**Com. Adagala:** And what makes you think that the State will control them. Let me tell you if any of them....Waislamu wanasema hii ni Isa bin maliam. Yesu, ni mtoto wa Mary si mtoto wa Mungu. Have I said wrongly. Isa bin maliam. He is just a prophet. Why are you making him a God. I am telling you, it is not like, Linet alisema wengine wanaabudu ng'ombe. You know, we just see the ng'ombe but there is a whole religious spiritual system behind it. Do not think, hii dawa unapea mtu mwingine mwishowe utaioja ikiwa State. Let me tell you I am not defending but I am just letting you know this thing of saying, the State, the State na nimempa hiyo ya nini. The State will give you free compulsory education and then it tells you, 'hutapiga huyo mtoto.' So you don't get everything, it gives and it takes. We will write it down if this is what you want the State to control.

**Joseph Kinuthia:** Mimi ni Joseph Kinuthia, nilikuwa na jambo la kuchangia juu ya disabled mahali ambapo wameongea juu ya disabled. Hapa pahali sijapaelewa ndipo sababu nimekuja kusema ya kwamba, tumeona ya kwamba watoto wote wamepatiwa wasome sawa.

**Com. Adagala:** Give your proposals. Hata ile ambayo hujaelewa itaeleweka kwa hivyo it will give you a lot more hardwork than you wanted.

**John Kinuthia:** Pendekezo langu ni kwamba huyu mlemavu akisoma mpaka Standard eight ama Standard seven, baadaye ataendelea namna gani na yeye ni mlemavu. Pendekezo langu ni kwamba kungelikuwa na jambo ambalo lingeweza kuendeleza huyu mlemavu kwendelea mbele kusoma kama jinsi vile hao watoto wengine wamepatiwa right ya kusoma mpaka Standard Seven. Hilo ndilo langu langu. Huyu mlemavu atabaki peke yake.

**Com. Adagala:** Mlemavu na pia yatima na pia maskini.

**John Kinuthia:** Yote.

**Com. Adagala:** Okey. Hata wasichana watoto wa kike in primary.

**John Kinuthia:** Watoto wa kike ambao hawajiendeleshi.

**Com. Adagala:** Watu walichanga hapo walikuwa wanasema, State subsidy. State itakuwa na kitu. Serikali kusaidia upande mmoja na familia upande mmoja.

**John Kinuthia:** Asante, ilikuwa hiyo tu.

**Fanolo Onyende:** Jina langu ni Fanolo Onyende. Proposal yangu ni kwa Bill of rights. Proposal yangu nasema, there are so many tribes in Kenya. I propose that every tribe should have a President.

**Com. Adagala:** Tafadhali, please silence. Nitachukua imla sasa nimembembeza kila mtu if you have a view to give, wewe njoo and give your view.

**Fanolo Onyende:** This is a proposal which is very nice, it can curb everything. So the Commission should enable everybody to have a right to propose their own President provided he has qualifications for.....(interjection).

**Com. Adagala:** Can you talk to the Commission instead of being Councillor. Talk this side. Ukizungumza kule ni siasa hapa ni proposal.

**Fanolo Onyende:** I propose the Commission to put into consideration that the issue should be taken to every tribe in Kenya. Any tribe which is having a qualified candidate who can be a President, then it comes from that one by law.

**Com. Adagala:** Let me tell you, Bill of rights....I think you are misunderstanding Bill of rights a little bit. Please explain what Bill of rights is.

**Dr. Watindi:** Bill of rights inaongea juu ya haki za Mkenya na swala ambalo linaongea about qualifications of the President iko mbele labda unaweza toa maoni yako. Lakini hizi ni haki zetu ambazo tuko nazo.

**Fanolo Onyende:** Na-propose kwa sababu sikusema itoke kwa tribe fulani. Nilisema kuandikwe, kama iko sheria inatakikana, iandikiwe Commissioner ai-propose. Every kama ni law ichukuliwe kutoka kwa tribe. Sisemi.....(interjection)

**Com. Adagala:** Kwanza Kenya haina tribe. Jaribu kutumia jina lingine. Unajua hili jambo la tribe, there is a lot of matusi na Wazungu walikuwa wanazungumzia. Kwa dictionary yao wanasema a band of savages led by a savage chief. Hili jambo tribe ni matusi. I am not saying for you alone because other people are using it. Heri you say, every group it is even better or even that



one people have, lakini tribe ni kitu, kwa sababu also the British or the English are an ethnic group. Lakini hiyo vitu vernacular na tribe are very bad.

Two, do you want a rotational presidency? Kwa sababu unazungumza na hasira. Hii mambo ya kiti ya President watu wana hasira sijui kwa nini. Pengine hata hapa hapa Kakamega. Kwa nini mna hasira. Sio wewe peke yako. Watu wanafika kwa hili jambo halafu inakuwa lazima ni lazima. Unajua, do they have a right?

**Fanolo Onyende:** Inaonekana watu wengine wanaona uchungu kwa maana kama Kenya iko na...mimi nasema kama tribes. Sijui unaweza sema namna gani.

**Com. Adagala:** Tribe ni jina mbaya. Tribe ni jina mbaya.

**Fanolo Onyende:** Ama tuseme kama kikundi yaani kwa clarifications. Waluhya ni nani kwa clarification.

**Com. Adagala:** It is an ethnic group. Ukitumia Kiingereza tumia jambo ethnic group, ukitumia Kiswahili unaweza kusema Kabila.

**Fanolo Onyende:** Wacha tuseme kama watu wengine wa kabila fulani wanaona uchungu wao wanatawala sana. Afadhali Commission ichukue hiyo hatua kama kipindi. Ichukue kama...(interjection)

**Com. Adagala:** Pendekeza.

**Fanolo Onyende:** Napendekeza iingie kwa Parliament halafu Parliament ipitishie halafu Commission ifanye kazi. Ikuwe rotation.

**Com. Adagala:** Rotation haitafaulu. Unajua hii ni kusema ni lazima kila kabila iwe na Presidential candidate hiyo ni tofauti kuliko kusema rotational. Unataka ipi?

**Fanolo Onyende:** Nasema kama iko kabila arobaini na mbili. Si ndiyo?

**Com. Adagala:** Ziko zaidi.

**Fanolo Onyende:** Hata ikuwe zaidi lakini ikuwe pendekezo iandikwe kwa Katiba iendelee kutoka kwa hii, inaenda kwa hii.

**Com. Adagala:** Rotational Presidency. Kaa hapa tukifika kwa hiyo utachanga sana. Tunakuja kwa Urais. Okey. Where is the

district coordinator? Come abit. Haya tumemaliza Bill of rights. But you know when people have questions, they know very well they can ask for the microphone.

**Dr. Watindi:** Madam Commissioner, wajua hii sehemu ambayo twazungumzia ni inayohusu kila Mwanakenya. Haswa makosa pengine sijui. Madam hii ni makosa yenu. Hii mambo ya Bill of rights ni zile zimetolewa kwa U.N. conventions, I.L.O mmezifanya kuwa your...you have domesticated this convention.

**Com. Adagala:** No, no you say an example ya ile ambayo tumechukua kwa hiyo. Halafu nitakwambia vile wananchi walichanga.

**Dr. Watindi:** Najua hii yote si jambo geni. It is direct. That's why you are very honest with us to say ni Kenya peke yake which has a very comprehensive Bill of rights. Many other countries have a shorter version. They have a good reason and I am saying this with my sincerity. That this is very dangerous. Political rights yes. When you come to economic rights it is not very easy to implement and once you make it part of the Constitution, Kenyans are going to spend their whole lives in it. Arguing my right has been breached, the Constitution says this, I haven't got this and we shall spend all our time arguing in courts. It is a very dangerous thing.

**Com. Adagala: (inaudible).**

**Dr. Watindi:** Well with due respect wananchi. No,

**Com. Adagala:** You have to go back and say sorry.

**Dr. Watindi:** Your business was to hear us and then chew it, then say this issue becomes a Constitutional issue. That was your business. There is no argument about it. These people can tell you everything under the sun. You can't write the Constitution because we can't implement it. Like compulsory primary education is now a Constitutional right Madam and a child takes the parents to court. But the parents are poor.

**Com. Adagala:** But it will be provided for free. It means that the parents will not pay. I don't know if it will be uniform which will...but the actual malipo hapo kwa shule ya kusoma will be free and it is not a difficult thing to implement. You see this is part of that poverty alleviation. Where is the person who was talking about poverty alleviation. You know here we are saying it will be free. I don't know how bila malipo kwa Kiswahili.

May be what the parents can say is even uniform should be provided or what or even transport. May be those kinds of things. But let me tell you wananchi, here they said the children are not going to school because of poverty. So, we said if it's free will

they take, they said yes. Umasaaini walisema wazazi don't know the meaning of education and the work of education and the children also don't know and that is okay for children because they need to be told. So, they said that there they wanted free and compulsory.

Here they said, you don't even have to make it compulsory. Just provide us with the support from the State and the children will go to school. Because walikuwa wamesema, matajiri wamejitengea, our children don't go to school even if they pass. What Linet was talking about here and they have to go to school. They said our children go to hospital, you go with the child, you are told go and look for two hundred shillings. Unaenda.

These were things they were saying but cost-sharing. Unaenda, wanakwambia nenda utafute two hundred shillings. Unaenda kwa kanisa, unaenda kwa women groups, ukirudi mtoto amefariki. They are saying the rich have made a life for themselves and actually we saw it in the Constitution. They were not bothering. These bill of rights they are not bothering. Because they will have an advocate. They will have several houses. They will take their children to any school they want and all that. So, what it is we are trying to now bring that there will be a minimum of education which will be provided so that children don't drop out in Standard four and Standard three. At least they can get to Standard eight.

**Dr. Watindi:** I agree, infact what you are saying we are in total agreement. My concern and my worry is this; we have had this issue before like free medical services. You know what is happening there is no free medical services. We had even free primary education, there is no free primary education. Because the State turns round and said, 'we don't have the money.'

**Com. Adagala:** They will not say it. If it is in the Constitution. What was there before were directives campaign manifestos. Even Kanu told us and it is Raila and Kajwang who came to present. We asked them in your manifesto, the only role of mwananchi is to vote, what about Bill of rights, what about.....they said you know those things are Government policy. You cannot force a Government to do that. But if it is in the Constitution, lazima ititimiza. Okay? We have five years, we have ten, this is a Constitution for a hundred years, two hundred years. So, now the focus will have to be, not how to build private schools and take the children. But it will be...and you know rich people don't pay taxes. They will have to pay the taxes that will help other children come up so that the society can inuka a little bit.

There is something called old wine in old skins. There is new wine in old skins and there is new wine in new skin. Hiyo ya transitional, hiyo tumezungumzia ni new wine in old skin. Lakini ile tunataka eventually new wine in new skin. Because if you keep putting new wine in old skin it bursts, isn't it? Old wine in old skin is where we keep saying but the parent is poor. We are saying there must be so that Parliament and the Government have to find ways. If a child is out of school, there must be, --- another reason but not because the parent is poor. We want support for that poor parent. Okay? So, what I want us to do is to move forward. There are other people who told us, this is too romantic. I think essentially that's what it should be. This is too utopian. But let me tell you. If you don't dream, if you don't have a vision, they say you perish. You have to have a vision. You

may never achieve the full basic needs to be guaranteed by basic rights. Otherwise if we are not going to deal with basic needs there will be strike in this Country over this Constitution.

**Dr. Watindi:** Lastly Madam, the devil worship you have always avoided it but the people are concerned and you cannot....

**Com. Adagala:** Take me to a devil worshipper.

**Dr. Watindi:** Yes, it is true. But there is a real concern. People are really worried about this devil worship. It is infact the opposite of the spiritual nourishment.

**Com. Adagala:** We have written it down.

**Dr. Watindi:** It nullifies that freedom of worship. Thank you very much.

**Com. Adagala:** Okey. All I am saying is that, actually it is only the Christian church which is complaining about this and someone has said here it's Pastors, because someone is---. So I am not avoiding it. It is very difficult and nobody has ever stood up and said, ' I am a devil worshipper, I want this and this and that.' Of course they don't. Even when we went to the Theosophical society in Nairobi, it was in the newspapers. Waliwaambia, this is the Bible and may be they just put it there for that day.' They say it was open. This is the Bible we go by the Bible. It is a very difficult thing and I know it is not just in this Country. Tulikuwa na hiyo ya Uganda, people killed villagers, in the U.S.A, where, but what we have done, what somebody has told us in these places we have been. Religion should not be injurious to people. That you can say is a blanket thing. Isidhulumu binadamu na isikeuke human rights. Below there, that's a principle. So if you are now killing someone and taking genital organs to go and worship and do what with, then it becomes a violation.

But I wanted also to discuss it here a little bit to see also how difficult it is. We are proposing that....we got that proposal from two places and I can see because if there is a religion which harm, then it is bad. But also it means Christianity has justified the oppression of women and the repression of children. They will have to think about it because they keep quoting. They have quoted us the Bible all over the place, Genesis 3:16, what, what and then we tell them what about where it says, 'there shall not be.' 'There is no Jew or Gentile woman or man .' Then wanasema mwanamume ndio ako mwenye nyumba hiyo and then you say, 'yes this is a Christian man whose Head is Christ. They read only halfway.

So you have to think about this oppression of women which you are justifying and they quote you the Proverbs but they don't quote you what Paul says about children, 'fathers do not anger your children.' The others says, the rod even the proverbs are saying and in the new testament under grace what is there. It means our lives are going to be more refined but more difficult. So you are not just pick and beat. So, you will have to agree, Christians particularly will have to agree to. They would have to think about this corporal punishment. Because you have to talk with that child. Don't anger, isn't it? Or do I read another Bible. It

says that. Okey. So, this religion you are saying is actually going to be tougher. Sijui kama kulikuwa na mtu alichanga hapa saa hii, ameelewa? Mmeelewa? Tukiwa na kitu kinasema, 'dini isidhulumu binadamu au watu wala haki zao.' I don't know if it will be taken. You know when we get there we have lots of arguments. So, we can put like that as a general principle and then we see how it will be. Here also, I really wish Christians would put out, but they needed it much earlier. You needed it much earlier.

To be that Christian principles. Inaweza kusoma tu kama hiyo ya mwisho in those laws of Kenya the one on customary international law. It can be even principles of...but you need to say it. Me I can say it because I will be told that I am giving my views. You know Prof. Ghai occasionally gives...then he says, 'why are you giving your views, people are supposed to give you.' Even when we were trying to do civic education, you keep out and there are many things to be understood here. Okey, tumemaliza hiyo. Huyo Mzee mwingine alikuwa amesimama ako wapi? Tumalize tu. Sitaki kudhulumu mtu. Ako wapi? There is a young man, a tall man.

**Ojende Okwe:** Thank you Madam Commissioner, I had a proposal on Article 58 on education, Part II. I would rather like it to go like the Government shall institute a program to implement the right of every child to free and compulsory education upto University. Then, now the source of funds for this education should be addressed. We should have an education fund which should be tapped from those who are already learned and paying for the same. Thank you. My names are Ojende Okwe.

**Com. Adagala:** Hiyo ilichangiwa, that's why I am saying, you people are saying primary. Some people are even just saying, nursery should be free and they were saying; No, hii ingine wazazi wanaweza. But we know the poverty level in this Country. The others were saying a subsidy bursary for Secondary. Others were saying Secondary should also be free. Others were saying scholarship or bursary for University. Others were saying it the way you are saying, all the way. Okey. Now actually you have a point let me tell you. If you are saying that the Presidential candidate should have a degree, then you are actually saying that everybody is capable of becoming a Presidential candidate. So, the education should go upto that. We will take that, that people are saying, or some people are saying that the primary is too low a point. For us, this way by the way that is too low. This region. This region hata Luo land and Central Province. But for North Eastern and Turkana it is a major thing. They used to reach to Primary school. So, also we consider the balance like that. But anyway the major thing is that when they pass, then Secondary is difficult. Suppose they say may be what the people were proposing and saying that you will have saved in Primary which you can pay the four years. I don't know. Because this is wananchi who were saying. I don't know what you think of that the rest of you but it was a view which was there. So, let's also see how it went. I was not there when the Bill of rights were being discussed because I was at that time burying my father. So, some of the argumentation that went into something like that, I do not know. I know that I myself would have preferred a much higher level in order for people to be in school. For instance, Bill of rights says that you have a right to get married and bring up a family from eighteen years old on.

Anything after that is unconstitutional whether it is you yourself doing it or your parents. Believe me the submissions from

particularly the pastoralists areas were not a joke. Girls were crying, ‘wanasema, hawa wazazi wanatuza tu tukiwa wasichana wandogo,’ and they were telling them directly, very angry. But I think if we are saying upto age eighteen you are a child you are dependent, upto age eighteen you cannot get married and raise a family. It means upto age eighteen you should be somewhere.

That’s probably the way to approach it. Because I know in the U.S.A you have to be in school upto age sixteen. A parent cannot keep you out, you cannot stay out. A child doesn’t go to school, a social worker goes and looks after them. That’s also creation of jobs by the way. We have jobs for social workers. I know that not everything is satisfactory but remember a Constitution is a compromise. A Constitution is a compromise.

Sometimes it is after national war of independence like ours or after civil strife. But ours, we have had oppression and civil strife and a Constitution which people don’t know so if we are doing it peacefully, but actually fight over these things. They fight over it. So, perhaps you could make a proposal because if you are eighteen and still under care, perhaps, that’s what you should say and when I am saying you should say, it doesn’t mean you sit there, it means that you state because I can’t say it. I want us to end this. You don’t put up your hand, you come and stand here.

**Wilfred Nyaundo:** Nina pendekezo kwa hili jambo. Jambo lenyewe ni kuhusu mavazi ya akina mama. Jina ni Wilfred Nyaundo.

**Com. Adagala:** Unaturudisha Form One. Sio kwa sababu mimi na mama lakini unaturudisha Form One. Kwa sababu hiyo ilichangiwa hapa sana. So, I don’t know, you want us to go back to June and May and March, sijui. Kwa sababu hii imechangwa hapa, ile tunatekeleza ni hii ya kuzidisha.

**Wilfred Nyaundo:** Since I don’t how....

**Com. Adagala:** I don’t know. It is very difficult because people are now going to basic submissions and these are collated submissions. Tafadhali wacha nikuambie tu kama hujaendelea hiyo ni freedom. There is that freedom. Hata wengine hawapendi hii nimevaa. Ingefika hapa, ni Waislamu. Huwezi ukasema tuvae---, hawa Waislamu kuona hata mikono yangu hapa ni kitu kibaya. You know Mzee tuko hapa, ---. Mkitaka tuvae kama Waislamu lakini sasa ile mavazi wewe umevaa si nzuri kwa Mwafrika. Unajua hivyo? Nguo ya Mwafrika, niambia wewe ni mzee, nguo ya Mwafrika hasili traditional ni nini hapa, wacha Mwafrika, Muluhya. Ukifanya hivyo ujue sote tumekeuka njia zetu. Ukiendelea ujue ile mtindo iko ni ya Kiingereza okey all round.

**Wilfred Nyaundo:** No. Lakini ungeacha niendeleo kidogo. Kwa hivyo basi....(interjection)

**Com. Adagala:** Nataka utoe pendekezo.

**Wilfred Nyaundo:** Pendekezo. Mimi kama Mwanakenya ningependekeza ya kwamba hatutaki mwanamke Mkenya awe akitumia long trousers. I will tell you why.

**Com. Adagala:** Give me a reason why. Endelea.

**Wilfred Nyaundo:** Kama Mwanakenya.....

**Com. Adagala:** Sikizeni mzee hapa.

**Wilfred Nyaundo:** Kama Mwanakenya. Sasa wameendelea kupasua hii nguo. Huku wamepasua, huku wamepasua. Sasa.

**Com. Adagala:** Lakini mwanaume Mwafrika atavaa nini? Si umesema hasa Mwafrika.

**Wilfred Nyaundo:** Avae tu nguo ya kawaida.

**Com. Adagala:** Ya kawaida ni nini, ndio nilikuuliza mwanzo.

**Wilfred Nyaundo:** Bila kupasua hapa.

**Com. Adagala:** Hii ni nguo ya Mzungu unavaa. You know we have those arguments wengine wanasema hivyo. Wengine wanasimama hii ni nguo ya Wazungu na wengine wanasema, Waislamu ndio wako kwa nini kamili. Kwa sababu wanawake, wasichana, wanavaa nguo fulani. Watu walitaka msichana avae ile nguo ambayo mama ambaye ako mzazi avae pia tofauti. Wanaume wavae....you want us to have a uniform? Because we can have a uniform. So, everybody will wear this and that and this. Hiyo kitu ya regulation muelewe iko vingumu kwa sababu itakufikia wewe.

**Wilfred Nyaundo:** Upande wa afya.....

**Com. Adagala:** Pendekezo.

**Wilfred Nyaundo:** Pendekezo, kuzuia magonjwa ambayo imekuja hii mageni. Ugonjwa huu mgeni (AIDS). Upande wa kwangu au kama Mwafrika kama Mwanakenya, mambo ya kutumia condom, iwe katika Katiba, mtu mwenyewe ajilinde. Badala ya kutumia condom, kuvaa mpira. Hii imeeneza umalaya mwingi sana. Upande wa sisi kama mwanadamu, mke na mume. Tuwe self-controlled. Tena upande wa watoto. Ati mtoto hawezi kupigwa kiboko kwa shule, hiyo imefanya watoto wamekuwa na kichwa bofu hata hawasomi. Mimi nilipitia kwa kiboko ndio sababu nimevaa hii tai. Kwa hivyo mambo ya



kiboko, ninapendekeza ya kwamba kiboko irudi katika shule. Mtoto achapwe kiboko ndio.....(interjection).

**Com. Adagala:** Hiyo ya condom, hiyo ni pengine Parliament itazungumzia. Lakini hii ingine umesema ya kiboko. Wewe na mimi tulikula viboko. Vilikuwa vya kikoloni mingi sana. Dunia inaendelea na kuna njia nyingi za ku-correct mtu na hata let me tell you, watoto wanapigwa, kile wanaogopa tu ni kiboko. If you watch the child who is beaten the most in schools, he is just afraid na mwishowe hasomi. ‘Nitapigwa, nitapigwa, nitasema nini, 2+2 is it five, is it three, is it twenty two. Anaogopa tu.

Lakini kuna njia za kufundisha. Waalimu wako hapa? Kuna waalimu hapa. Hebu nione kwa mikono. There are many ways to teach. Better ways than kiboko na hata hivyo, unajua ukimpa hata hao waalimu wamejifunga sana. Ukimpa mtu mwingine mtoto wako kupiga, na pia ilisemekana kwa hii, mwishowe hata inatokea kupiga na kuua na imekuweco. Lakini ikiwekwa hapa sasa corporal punishment iko, watoto wa watu wataumia sana. Watoto wana haki zao ni binadamu, mwili wao ni kama wako. Nikitaka kukuchapa sasa au mnaona vile mnachapa wanawake hawasikii. Mtoto ana shida, anachapwa shuleni, anachapwa nyumbani. Wacha hii mambo ya wanawake ikae. Mtoto ndio anachapwa kabisa. Haya tuendeleo.

**Wilfred Nyaundo:** Finally mambo ya advocates.....(interjection)

**Com. Adagala:** Utaketi chini. Kama ulitaka kuzungumza, kumekuwa na muda mrefu sana kwa Bill of rights.

**Wilfred Nyaundo:** Nilikuwa najaribu kutaja jambo kuhusu an advocate. Advocate anakaa Mombasa na mimi niko hapa .....(interjection)

**Com. Adagala:** Pendekezo.

**Wilfred Nyaundo:** Mimi nakaa hapa.....

**Com. Adagala:** Pendekeza tunajua.

**Wilfred Nyaundo:** Hatutaki advocate aingilie jambo la mashamba.

**Com. Adagala:** Tumeshajibu mzee, keti tu tafadhali tuendeleo tumejibu hiyo na hiyo ni Standard One. Tafadhali mzee kama unatoa ile kitu itakupeleka mbele, tutakubali lakini kama unaanza.....hata hao watu wanazungumza na nguvu sana ndio hawakuchanga. Tuliita watu wachange watu wakaa nyumbani. Tumeita wakague, wengine wamekaa nyumbani halafu watasema hii ilitokea wapi. Najua hujasoma hiyo nini mzee....sikiliza. Hujasoma hiyo Constitution vizuri lakini umeruka kwa sehemu ya Chapter what? Eleven. Umeenda Chapter eleven. Tunataka kuenda mbele lakini sasa tumalize hizo za principles na right na

hiyo, ningependa nirudie vile tungeanza mngekuwa hapa nyote na tungeanza na introduction ya kile tunafanya. Hii itachukua tu muda mfupi lakini controversies mingi ambazo ziko, mabishano mengi iko kwa process. Okey, sio hivyo? Vile tunaendelea kama kura, kama nini, hiyo kitu kama hicho. So we are here vile nimesema kukagua haya mambo na kuchangia zaidi. Hii Katiba tulitoa ripoti, tulianza kwa Act yetu you will release to the public. Tukasoma tukahakikisha, 'yes it says that, tukaweka kwa magazeti. Mlipata ripoti sivyo? Tukamaliza Bill pia tukaweka kwa magazeti. Hiyo ni public as public as we could have gone.

Halafu tumemletea ingine hapa tukichapisha ingine zaidi itakuja pia. But that was the quickest way to release. Okey. So, we are here for this stage of the process which is coming back to you. Our Act says that , kila kitu tunafanya tunafanya kwa sheria ile ambayo Parliament ilitengeneza, Constitutionals review na ndani yake ikiwa Commission. Hatujageuka hiyo, sasa mtu akianza hasa Member of Parliament, wao ndio walitengeneza hiyo sheria na walisikizana wakatengeneza. Sasa hiyo ni yao. Kuna sababu tulifanya review na tunapitia tu juu juu lakini tulikuwa na civic education kuhusu hiyo hata launching. Lakini kurudia juu juu Katiba yetu kwanza ni mbovu. Hata kwanza kuliko hiyo, Katiba yetu haikutengenezwa na wananchi na haikutengenezwa hapa. Kwa sababu hiyo, wananchi hata hawajui.

How many people have ever seen the old Constitution? How many have read it through? How many found it easy to read? Ungesema, 'we find it easy to read.' Kwa sababu Professor Ghai yeye mwenyewe pia anasema, 'this Constitution is unreadable.' Because of the language that was used. So, even if you have it, unasoma sura ya kwanza, ya pili, ya tatu au unachagua ile unataka, halafu, it is old legal language. Isn't it? So, hiyo pia ni sababu na tumeweka hii kwa lugha rahisi. Ya Kiswahili pia itakuwa lugha rahisi. Mkiwa hapa kwa district mnaweza kutambua, kusema mnaweza kuiweka hata kwa lugha yenu. Ikiwa zile lugha hizo hapa kwa district mkitaka. Kama district mtakuwa na hiyo decision making na pia, na tumeona watu wamependa sana. Hata watu wameuliza hata district coordinator ameniambia watu wanakuja huko anasema, 'sasa huyu ataniuliza transport.' Wanasema, unaonakala moja imebaki nichukue. Kimekuwa kitu kizuri kwa watu kuwa nayo. So, it is not hard if you are just in Standard eight or Form two you can read it may be with a dictionary here and there. But you can read it. Na pia hii Katiba yetu ya sasa, imefanywa jua-kali job mbaya sana. Imebomolewa, imefanyiwa nini, imepata madirisha hii yote wameziba. Wameziba vile unajenga halafu baadaye unaeka matofali. Hiyo ni kama multiparty. Yote ikizikwa itabaki ndirisha moja peke yake au mlango moja. Wameweka vile namwambia tu kama hii mlango wamefungua, iko kule juu. Hii sehemu ya paa, imekuja huku. Choo iko ndani ya jikoni.

The sitting room imeenda bedroom na bedroom imeenda nje. Hiyo kitu iko kama hivyo kwa sababu kuna artichitecture ya Constitution na hii ndio nilikuwa nawaambia kuna njia ya kutengeneza outline au layout ya Katiba. Hiyo articheture yetu imeharibika sana na amendments. We have thirty nine amendments over the last forty years na hiyo ni mbaya. Kwa sababu zingine zimekaa na kufanya amendments kwa Katiba ni kitu kigumu sana. Ndio ya kwanza wali-amend. Hawa watu walienda U.K, walisikizana, tukitaka uhuru, wacha tukubali hii Constitution ya majimbo. Kwa sababu waliambiwa mkikosa kusikizana, hamtapata uhuru. Wakasema, 'aah wacha tusikizane, we will see what will happen then.' That's a Kenyan attitude. Tutaona vile

na haiwezi kuwa hivyo lazima iwe msimamo. Sasa walipofanya hivyo, wakafika hapa 1964 ya kwanza walibomoa ni the way of amending the Constitution. Walikuwa wameweka 65% wakarudisha, simple majority. Lakini walirahisisha na kwa sababu walifanya hiyo kwa amendments, Zimbabwe walipopata uhuru waliambiwa kwa Constitution yao, this Constitution will not be amended for ten years. Kwa sababu walisema wao watafanya vile Kenyans did. Sasa tuko mfano mbaya by the way hiyo Katiba yetu.

So, hiyo ndio ya kwanza walifungua, ya pili wakaanza wakachukua. Sasa ilikuwa rahisi. Very easy to make amendments. Zingine zilikuwa tu personal amendments. Paul Ngei ako bankrupt lakini anataka kusimama na kwa vile ni rafiki wa Mzee Kenyatta anaenda anamwambia mzee sasa siwezi kusimama kwa sababu Katiba inafanya hivi. Halafu wanaweka the Ngei amendment. So, Ngei is exempted halafu wengine wanakuwa pia exempted. Actually those are the kind of things that happened that brought about corruption. So, what happened is that zingine walifanya ni hiyo ya President. Hapo lazima turekebishe the amendments and we have a Chapter here, amendments to the Constitution vile itatendeka. We have another thing which is the Presidency. Presidency by 1964 ilikuwa imekuwa changed, powers za governor zikaenda kwa Prime Minister. Zingine za Parliament kama hiyo ya dissolving Parliament ikaenda hapo kwa ya Prime Minister. Hapo ikawekwa pamoja. Ya majimbo hiyo ilikuwa uwezo wa watu kule, ikafurutwa ikaletwa hapo ingine. Na ya Judiciary imeenda kufitilia imeenda hapo kwa presidency na hiyo presidency yote ilitengenezwa ili mwishowe hata President hakusimama for elections. We did not have actual presidential elections till 1992.

Yote ilikuwa tu unopposed, unopposed, that's a very long time. So, the very first President never stood for elections lakini imejengwa vile kwa ufupi kusema ni kama presidency ina vichwa sita hivi. Ni kama mtoto anazaliwa na vichwa sita. Tukaja hapa mkasema limit, regulate hizo powers za President. Maneno ingine ilikuwa reduce...mlituambia tuchonge na tukachonga ndio hiyo naona pendine inaleta tatizo kwa watu wengi. Kwa sababu the people told us limit the powers, reduce sasa tukachonga ndio ikawa hivo na tukafanya pia ikawa kila tawi la Serikali hiko independent. Judiciary haitakuwa.

Sasa mko kama three brothers or three sisters or three siblings. Sasa kwa nini mmoja anachaguliwa na mwingine anafunga nyumba ya mwingine na kitu kama hicho. Sasa Presidency had gone too big and the others had shrunk. So, that's what we have done ili ziwe sawa. The Judiciary will be independent, there will be a Judiciary Service Commission. There will be ways of choosing Judges and so forth. Kwa sababu yao ilikuwa shida ni independence. Halafu tumeipewa power ya supreme court juu yake na Parliament imepewa kazi zile za kukagua top jobs. Kukagua au kuchagua na pia hiyo ya kuwa na calendar yake na kazi zingine za kufanya. Sasa presidency imekuja laini na hizo zingine na presidency ina mambo yake.

Juu yake imekuwa na ofisi ilitolewa ilikuwa Prime Minister. Hiyo watu wengi walichangia wakisema iwekwe na pia ni modern system hiyo ya Prime Minister. Kwingine hakuna Prime Minister kama U.S.A. Hii tuseme ni kama hiyo ya India au zaidi kama ya India, kuna Prime Minister, kuna two deputies, kuna President na Vice President na wawe running mates. Ukichukua President wako, muwe running mates ili msipoteleane. Isiwe pendo la mtu. Vijana dot com walisema the President should not

appoint and disappoint the Vice President. So, werevu. Tukasema okey hiyo pia itakuwa hivyo na tukaona pia ile sababu tuli...hasa sababu ilikuwa hii process iendelee, wananchi hawajui Katiba. Huwezi kusema mimi ni Mtsotso na hujui mienendo na mila ya watsotso. Unaweza? Huwezi kusema, 'ooh mimi sasa ni kabrass,' na hujui mila ya kabrass ni nini na sheria yao ni nini. Huwezi kusema mimi Mkristo na hujui Biblia. Sio hata kusoma, kujua. Au Muislamu na hujui Koran na ile inahitaji kwa wewe. So, hii ndio inafaa watu wajue. Nasema hivyo kwa sababu hii Constitution ni kitu cha kuamini. You have to believe in it. Ndio kitu kimoja...hii ribbon imepewanwa.

Ingingine kuna sehemu fulani za society za umma za Kenya hawakutaka wakaguliwe. Mojawapo ikiwa mahakama. Walipoona, alah hawa watu wametuweka darubini wanafanya nini. Wakasema, 'msitudhulumu sisi hatuko kwa hiyo. Na kitu cha kushangaza ni, mahakama ndio inafaaa ilinde Katiba. Sasa vile nilisema asubuhi. Excuse me, ukifungulia hiyo hapa, hizo bottle tops usifanye kelele. Otherwise, open them outside kwa sababu inafanya kelele na inaenda kwa recording. Better to even open them outside ...hiyo ndio sitaki hiyo kelele. Kwa sababu inaenda kwa recording.

Sasa ni kama kupewa mtoto umlinda na wewe umtupe nje. Hiyo ndio mahakama imefanya na kweli wana uwoga fulani kwa sababu wamejiweka kama wao ndio juu ya hii yote na hasa ikiwa na godfathers na vitu kama hivo. Wameweka juu lakini kile tunasema, kila mtu ako chini ya Katiba na nia yetu ilikuwa lazima tufanye na tukague vizuri ili watu wote wawe chini ya Katiba. Sasa hiyo ndio mambo iko. Ikifika mambo ya presidency, kweli ilikuwa kitu kama hii presidency ni powerful. Please don't make noise with these bottles and those bottle tops. Fanyia kwa nini...yote inaingia. Please do it on the grass. Hiyo ndio sitaki. It is a very powerful presidency. I don't know if there is any other presidency except probably kama ya Mugabe au ya nani. Hata hiyo pengine, this one is very powerful. It is very powerful and it is distorted. It has distorted the society. So, it is very important to take it that what we have done is to bring it more under control and to be equal with others. You know the thing of the Constitution ni equality. Hiyo ndio yenyewe kabisa ya chini nguzo zenyewe zinashika. Au foundation yenyewe, msingi wenyewe ni equality. So, when you see us even talking about equality and children have rights and women have rights, if they are also human beings. It is all human rights.

When we say human rights it takes all those things. So, that's why we have had to change the Constitution, the last one being to review the Constitution. The last one being that the time has changed. Most people who got this Constitution walirekebisha. Independence came na wakarekibisha kwa sababu haikuwa Constituion ya kuishi nayo. Wakajaribu kuweka hiyo, the people ndani na hii vitu vingine lakini sisi tulikaa nayo tukarekebisha kipande kipande hapa na pale. Mwishowe, it is like a house which you keep. Some people add house. They keep extending or they keep cutting in. Mwishowe haiko proportional sasa hii ni hiyo ya kuileta iwe proportional and also up todate. Siku tuli-release ripoti yetu, wale wana computers, on the website around the world in the nation site, one hundred thousand people downloaded it. Wale waliangalia tu na kusoma ilikuwa 1.8 Million, ile first day pekee. Hiyo hit, you know you just looking at that particular section. 1.8 Million. So, ni kitu ambacho kimetarajiwa sana na watu all over the world. The eyes have been on us because Kenyans are changing a Constitution peacefully and they are asking the people and they are putting together this. Sometimes actually like in Zimbabwe they had a Constitutional review.

Wakachagua wakili mmoja, akaketi hapo, jina lake ni Moyo. Moyo akaketi hapo akaandika na watu waka-reject. Walisema hii kitu ni kitu cha mtu mmoja na pengine na President hatutaki, so imekwama. Ya Zimbabwe ilikuwa, msikize mambo ya Zimbabwe. Mnajua Chiluba? Alikuwa opposition na akasema, when I get, his campaign issue was the new Constitution. Akapigania, akapata. Watu wakasema, 'huyu ndiyemwenyewe.' Akafika hapo akaketi vizuri wakamwambia, 'na Constitution?' Akasema, 'ooh then I was in the opposition, now I am in the government.' Inafaa tuelewe sio kitu cha kupigania tu, it is something to believe in. Ni kama unapigania Upastor, Upastor, halafu ukifika hapo, unasema, 'wacha hii mambo ya Biblia' na ulikuwa unachambua yule Pastor mwingine. Sasa hiyo ndio sehemu tuko sasa. If we go ahead with the elections with the old Constitution, know that all these things we are talking about, it is not just the presidency and the MPs and Bunge.

All these things we are talking about the Bill of rights and all those citizenship things and all that. Itakaa and you know the Parliament will make stay. Itakaa mpaka upto the year 2007. Mtoto alikuwa ako Standard one, atakuwa hata hajafika Standard eight kwa sababu hakufika. Kwa sababu of poverty like daktari said. Mwingine atakuwa ameshapita hata hiyo free compulsory education, sasa itakuwa kwa rika ingine. Kile kizazi kingine cha nyuma. So, we have very serious issues here. We have a problem because it was delayed because of disagreements here and there. You know, politicians you cannot know where they are manipulating you into. They can be manipulating you into a corner but meanwhile you are looking at the door. When you get there you are in the corner.

So, we are in a bit of corner because all of us, not just the Commission, all of us. Because those of us who want the Constitution to be adopted and enacted are finding that there is no time. Hata tumekata tumekata. We have cut one month from these consultations with you. We have cut another month from National Constitutional Conference na haingii.. Okey, tunauliza extension. We have given upto the 3<sup>rd</sup> of January na sio extension ya sisi. Actually it is for all people. Then they said they will see after that but others are saying, you can't extend because it means extending the term of the President. Vitu kama hivyo. Halafu President anasema, 'I told you to extend, but you thought I was saying to extend my term.' Now you are stuck because I can call elections any time now.

It is true, all you have to do is to wait wakati budget imemalizika na hiyo ni 30<sup>th</sup> October na avunje Bunge na hii process itakuwa na shida. Kwa sababu national constitutional conference, is in November. It starts on October 28<sup>th</sup>. It is in November na wabunge wakikosa kuweco, haitaendelea because wako 1/3 of the members. Because that is six nunder people. More than six hunder people, nearly 700 and they are 1/3 and they are in the Act that they should be there. So, hiyo itakwama pengine. Lakini sisi tunajitahidi tunaendelea mbele kawaida. Kama vile Judges walisema tutaenda jela. Tukasema, basi tutaenda lakini tutaendelea na kazi. Professor Ghai akasema, 'Oh if I am taken to Kamiti maximum, it will be very nice, because it is near home.' He was born in Ruiru. He says, 'it will be near home, so nitaenda tu.' Wengine tukasema tutaenda. Hotel ingine ikasema, 'Ah mkienda, tutamletea outside catering.' Mwingine akasema, 'tukienda tutafanya civic education huko. ' Wakenya wako huko.

So, we are going with that kind of courage because we took oath. Without fear or favour. So, hatuwezi kuwa na upendeleo wala uwoga. Tunaendelea tu na kazi yetu. So, those are some of the things which have come up, which are controversial. The other one, is the Provincial administration. Ukichukua soda chukua polepole. Kwa sababu unasema, 'utapata Fanta.' Provincial administration has said that we have abolished it. Or people have said we have abolished provincial administration. Let me say it here because this is headquarters for Western.

We have not abolished Provincial administration. Because we could not abolish provincial administration because it is not in the Constitution. Provincial administration is one of the reasons why we are reviewing the Constitution because it is an institution which came from the colonial time and was brought by Kenyatta to serve him. Because he wanted to serve the President. Because it is an institution which serves the President. Nimeambiwa, every morning there are eight calls which are made to find out what is happening in every province. So, it helps. It is not elected and it is kind of like the civil service. But it is not. But it has taken kind of the powers of the elected officials. Because people told us, 'why is the chief and the councillor there.' Either one is doing the work of the other one or the other one should not be there. That's how it manifests itself in people's lives. That the chiefs and the councillor are kind of...and that's the elected line and the provincial line. Sasa tumesema tu, waende wafanye nini? They report to their employer. Which is? Public service. Wata-report kwa public service and they will be deployed. That's all we said so that they can know that we are not firing them. Hasa chiefs are thinking that they are being fired. We are not...that's a transitional mechanism, between the old Constitution and the new Constitution, we are building a bridge. So, that the whole society doesn't...watu wasizame kwa maji.

So, we have said let them report. Because they are appointed and you also told us, 'if the chief is appointed,' and you know when you say chief you are really talking about the whole system. If the chief is appointed, let that chief be transferable but he is elected and we are the ones who have elected then the chief can be there. Okey? So, this is what you told us. When you told us those things and the one which was saying, scrap provincial administration. Hata mngesema ya mahakam zaidi mngesema, scrap the Judiciary tuende African courts na vitu kama hivo. Kwa sababu ni kitu cha ukoloni sana hiyo ya Judiciary. So, it mainly comes down to that we said, okey even if we are doing, let's do soft landing for everyone so that it is not so harsh. We have other transitional measures and we will talk about them. One of them is about the presidency.

Ingingine ni ya presidency. Let me talk about transitional things here, so tutafupisha. The President we have said like the present Constitution says, 'anybody who has had two terms or more cannot stand for presidency.' To build the bridge we have said, MPs and Councillors who have been Councillors for this coming elections, if it is under the new Constitution they can stand. Kwa sababu wana ujuzi. Wao wana ujuzi. They can stand but in the year 2007, the age and the educational level will apply. We have said that...so those who are seventy two or don't have a degree. Like in the Presidential situation and MP situation can stand. May be we shall talk about them as we go on. There are transitional measures we have put so that we can...tunaweza kuvuka, "ovhoralu". Nafikiri tunaiita "**Ovoralu**" pia. Kwa Kimaragoli tunasema "**Ovoralu**", ili tuvuke tusizame. Au mtu



ataenda kwa maji halafu ateleze kwa jiwe na anguke huko na haitakuwa vizuri. Hivyo ndio nataka kusema. What is remaining?

Tulikuja civic education, tulikuja provincial launch, tukaja ingine tena ya hapa district. Halafu tukaja civic education na pia tukaja kitu cha kuchukua views. Tukaja tukachukua maoni yenu. Tukaenda. Hiyo inasema collect and collate. Sasa tumeichukua na kuchanganya yote ya nchi nzima. Halafu tumeandika report na proposed Bill kwa sababu hiyo ni kazi yetu. Walituambia mlime. Sisi ni wafanyikazi, wametuambia, 'lima kutoka hapa mpaka pale.' Halafu ukimaliza, *wirarire mfuse*. Hiyo ndio ilikuwa. Tukalima halafu tukarudia. Sasa yule mtu ambaye anasema tumezidi iko kwa Act, inafaa tutoke na Bill. Collate and present to the public the report and draft a Bill and present to national constitutional conference and also to the public. Ndio tuko hapa sasa. Hii ni Bill.

Halafu tutaenda national constitutional conference. Hapo ndio nimesema watu karibu mia saba. Sisi tutakuwa secretariat. All our arguments we have done already. Okey, we argued. When we were in Mombasa, tulichukua all the views na tukaenda huko. Tukakagua and we have a database. Those of you who have a computers, all these views are in the computer and the database with a matrix. Hiyo ni lugha ya statistics. Kama hawa watu wa mahakama, Judges as they are saying. They are saying that we should not talk about them. But wananchi gave us, 1,800 pages of views. Mnajua hiyo ni kitu ya computer. It is a small place. Hiyo iko 1,800 pages, four rims of views.

Sasa kama hawaamini, pengine tutawapelekea hizo views. Nimechoka kidogo kwa sababu hii ndio mwisho. Hizo ndio views. Mkitaka kuona, mtapata muangalie. Zile views zilitoka hapa Lurambi tunazo kwa ripoti, a constituency report. We have the Constituency report, we have the short version of the report which we put in the newspapers and also you can get from district coordinator. We have the big report which is four volumes na pia kuna hii Draft Bill. Sasa hizi documents ziko na hiyo ripoti bado inachapishwa kwa sababu ni kubwa na Draft Bill iko kwa Kiswahili na Kiingereza. Kiswahili bado inatafsiriwa na pia hiyo itawekwa. Tutaenda national constitutional conference, your representative is here.

You need to know your three representatives from the district, a woman, a Councillor and another person you choose freely. So you need to know that. Hapo pia tutakuwa tunaendelea na majadiliano na haitakuwa vile ilikuwa kwa Commission. Nafikiri pia nje itakuwa hata zaidi. Kwa sababu you need to have people there who will argue your case. Pengine watu wa Kakamega hawana haja sana na zile districts mpya lakini we had to struggle very hard some of us because other people were saying forty two districts hizo ndizo ziko. Wakasema hizi zingine zilibuniwa na mtu. Sasa tukasema na hizi forty two zikibuniwa na mkoloni. Hiyo ni nini sasa, so they wanted us to go in the old Kakamega and that will be the district of devolution. When we were talking about devolution. When we were talking about bringing powers down. So, there are things like that. These women issues, these children's issues. There are Commissioners who think children should be thrashed properly. So don't think we are just one mind. There was a lot of argument, a lot of discussion, looking at other Constitutions. Even preamble ilituchukua muda, many many drafts ndio tukafika hapo.



Hata kama tumewacha kitu moja au mbili nje, there were so many drafts we kept looking at. If you look at the Indian one, it is even shorter than this one. It is just half a page sentence, it just goes, very very short. Very short, lakini yetu hivi ndio tulifika mwishowe. In the Act it says as far as possible we shall make decisions by concensus. Okay. Huku kwetu tunasema, “uhuninya”, nyinyi mnasema je huku? To agree by consensus sio “kuhudizana” hiyo ni tofauti. Ile watu wote mwishowe wanasema na ina-bind. Mwingine hawezi kusema, mnazungumza, mnazungumza mpaka watu wote wanakubaliana, okey tuko hapa. (*kibaluhya dialect*) iko hivo kama hiyo. Sasa tukafika kwa hiyo hata siku moja tukapiga kura kwa jambo fulani halafu watu wakasema tulipoenda kwa kura hii ni kitu gani. Kwa nini tumepiga kura kwa hii, kwa nini hatukujadiliana zaidi. Tuliporudi, tulisema, we have to open up this issue again. Na ilikuwa kama tumesikizana concensus hamrudii. Lakini hiyo haikuwa concensus, tukasema itakuwa record mbaya sana. Lazima tuzungumze tusikilizane. Ndio tukasikilizana na tukaendelea na kazi yetu imekuwa kazi ngumu sana. Kazi ngumu sana. Huyu mama ako incharge ya hiyo verbatim hiyo ya Hansard, anaandika hapa kwa hii ya tape, wanaenda wanafanya transcription. Idara yake ilikuwa inafanya twenty four hours, eight hours shift.

Pengine tungeambia watu wapitie hapo Kencom, taa zinawaka mpaka che. Inginge ilikuwa hiyo ya data analyst hiyo ya vijana wa computer, ilikuwa twenty four hours. Na sisi wenyewe tulikuwa, hizi siku za mwisho mwisho, hata hizo za kuchukua views, tulikuwa tumechoka sawasawa. Kwa sababu unapeana views halafu una-rush kwa next thing. Even now even when we are doing this, really we are rushing much more. So, in the end we have worked overtime. Hata nafikiri kuna watu wamelipwa overtime among staff. Commissioners ni hivo tu. Ukiwa kwa kikao, ni kikao moja. Lakini kumekuwa watu wa overtime. Watu wakaajiriwe wengi ili tufanye kazi tumalize ile muda tulisema. Kwa ile tarehe tulisema kwa ile tarehe tulisema. Tulipokuwa Mombasa, watu wa leisure lodge walisema, hatujawahi kuona waasha kama hii. Mnafanya usiku na mchana na mnalala kama saa zimepita, mnaamka asubuhi. Ukilala sana, unapata wengine wako kwa mkutano wanaendelea na wakipitisha, utaambiwa, ‘ ulikuwa wapi? Lazima uwe hapa.’ Sasa ilikuwa kung’ang’ania wacha niende. Unalala kidogo halafu unaenda. Lakini mwisho mwisho kabisa tuliporudi Kencom, ilikuwa kama eleven O’clock ndio mnaenda nyumbani ya usiku. Saa saba ya usiku, saa tisa ya usiku, saa kumi na lazima uamke urudi hapo. Ukienda nyumbani hauna uzingizi, unajilazimisha halafu unalala kidogo unaamka. Professor Ghai tulikuwa tunamwacha hapo ako kwa computer sasa, vile vitu anajaribu kuweka kuona kama.....hakuwa anafanya typing ya Constitution lakini yeye lazima akague na ukija asubuhi, unampata ameenda nyumbani, amelala masaa mawili matatu, amerudi ako hapo.

So, he was really working very very hard ndio tukafika kwa hiyo deadline nafikiri it was two days off. Vile mmesikia kulikuwa na Commissioners wengine ambao hawakuweco, wao waliungana na Judges kujaribu ku-scattle hii Constitution. Lakini sisi tukasema, hapo mbeleni kweli, kama mtu kama mimi sikuwa nasikizana na Ghai kwa sababu alikuwa anatuziua kufanya kazi. Tungonjee hii, tungojee ile. Nikamwambia mimi, vile I was brought up, I was brought up to work. Nafikiri kila Mluhya analea mtoto wake hivyo. My mother told me that I cannot just sit. I have to work. Alipokubali kazi, hata saa tisa haikuwa kitu kwa sababu hiyo tunazoea. Tunafanya mpaka usiku, hata waalimu unajua unakaa mpaka saa kumi hivo ndio unamaliza marking. So, tunazoea hiyo.

Lakini ilikuwa kweli kazi ngumu. Ilikuwa kazi ngumu siwezi kusema ilikuwa kazi rahisi. Lakini wote tuko hapo na kila mtu ni mtaalamu wa kitu fulani na tukifanya kazi. Hata huyu Late Ombaka alikuwa anafanya kazi katika hali ya juu. Mpaka mwishowe tukasema hata hii wanasema, 'inability is not disability.' Hii ni super ability na hata kusema ya kweli, Ombaka was better than the whole Commission put together. Kazi yake ilikuwa safi sana. Kuna watu kama Professor Ogendo. Professor Ogendo they produce documents and you wonder when did they work. Ako hapo, wanafanya hii, wanafanya ile, document inakuja. Tunasema eeh kweli, halafu tunakagua. Kulikuwa na kitu eti Constitution ilikuwa imeshaandikwa. Hapo we have dozens of Constitutions which were submitted by wananchi. Dozens, several dozens na ukiwa tu na kitabu hiki, unaweza kutengeneza Constitution. Hata nikimpa huyu. Daktari ulipata hii wakati ule. You can write a whole Constitution on this, kwa sababu this is the structure of it, the questions which go under there and people have submitted.

Nafikiri hata there is another one which is red. The NGO's who have submitted. So all the drafts which were there, those were proposals. Tukasema, hizi zote ni documents tutatumia. There are some things which we have got from NGO because it phrased it so nicely. There are others which we have got. Others from views of wananchi and others from international things. We cannot say we live in a vacuum. Others just by even looking at what Uganda is structured like, or what S. Africa did. That kind of thing. So, that's how we came to all this.

We had many many seminars, infact I am supposes to be at one tomorrow. We had many seminars on devolution, on even the financing of federalism, we had on environment, we had on Judiciary. Judiciary wakakataa kuja hivyo. So, it is something which we have worked at and let me tell you, I have appreciated having one job to do. Halafu hapo University kwa sababu mishahara iko kombo, kombo, unaenda unafundisha U.S.I.U, unaenda Catholic University, unaenda una-give a lecture to some American students who are coming by. Unaenda unafanya research. Halafu mwishowe unachoka lakini mwishowe hujisikii kama...but the involvement of just concentrating on one job. Just one job and let me tell you not worrying about milk in the house. Because most of us are at that stage.

That's why teachers are complaining. Because you are going to teach and your child doesn't have school fees. Me, I have been in class and my child is at home. Hasa hii Secondary school. You know you don't have the salary to go and pay. Teachers are not wrong at this. They are right. Even that's why parents have agreed. So, we are at that stage where probably we should say, one job, one person with good salary. So that tupoe kidogo ili nisichukue kazi ingekuwa ya mwanafunzi wangu kwenda kufanya kazi ingine ndogo ndogo huko au ile inaweza kumfanya akue, aendelee. It has been very good to just concentrate on one job. So that's how we have gone so hivo ndio tumeendelea na ningependa tukunywe soda tukifikira process. You have many questions people ask us, 'will the elections be held under the new Constitution?' We say it is beyond us. Lakini it is not beyond Parliament. It is beyond the Constitution. It is not beyond wananchi, it is not beyond wananchi. Lakini there is a small problem which is a problem we had from the beginning. If we had started this Constitutional Review in 1998, there would have been time. Hata haingeingiana na hii electioneering. Kwa sababu naona watu wanang'ang'ania hii wanasema, 'lakini hivi vitu viko hapa, where are they...' We should have just stayed 1998,1999,2000. May be 2001 mwisho. Halafu elections zingekuwa na

may be it would have been opted. But now we have a problem of time na watu wanasema, 'wacha nichangie vile what we have got.' People said, 'but we should do this, we should do....' Lakini time is ticking away, 30<sup>th</sup> October, the budget gets finished and so elections can be declared under the old Constitution.

We don't have a Constitutional crisis, we have a social crisis. People want this Bill of rights to go on. Don't just pay attention to what politicians are saying alone. You should see also that you have a stake in the new Constitution and especially Bill of rights. Wengine hata hiyo citizenship na wengine hata nini. Lakini hata hiyo ya type of Parliament, you have a stake in this. Hata devolution, so don't just...wale watu wanang'ang'ania because they are piganiaring that, lakini it is very important to know that, these things ambazo tumesema hazitatekelezwa. The new Parliament will get in and it will do a Chiluba. You know the new President will get in under the old Constitution and they will say, 'but you know this is a good document.' It's a good document that's what Chiluba said, hata aliambia Ghai. Ghai alikuwa consultant. 'It is a good document, a very nice document,' Professor anamwambia. Na Chiluba akamwambia, 'Professor, I was in the opposition and now I am in the government, I want this old Constitution.' Na hakuna mtu utampigia kura halafu he will give up halfway because of the Constitution.

Lazima awe mtu mzuri sana ndio atasema, 'Okey, I have been in three years or two years, we have discussed this Constitution because next Parliament lazima wazungumzie hii na kunyorosha to see which law. Lazima wazungumzie lakini kutekeleza hawatakubali watoke Parliament ili tupige kura ili hii itekelezwe. So that it can be adopted or adopted and enacted. It can even be adopted and then it will sit there until the term is finished. So, you must know there is a problem of time. Okey? May be we can have a few comments on this so that we can move forward. The rest of this is not very difficult but I just wanted to say that when the most people are here. Kama una kitu cha kusema njoo mbele haraka haraka. It can be comments but really proposals. Wananchi wanapendekeza.

**Luvayo Francis:** My name is Luvayo Francis. I would like to thank the Commission through you. Actually what you have told us shows that you have done a very good work. My suggestion is on distribution. I will have to appreciate the fact that, having this document is the pride of a citizens. We have learnt that you are distributing it through newspapers to the public.

**Com. Adagala:** To the public. In the same way we distribute to the public very quickly and also to.....that has already come. So tumechapisha hii two hundred copies to go to the district coordinators and some other copies which we have given away. It doesn't mean that the need has been fulfilled but hiyo ilikuwa kuanzisha. Okey?

**Luvayo Francis:** So, we are suggesting in future, if in case it is going to be released again through newspapers, let them announce over the radio so that even people in the interior would have an access of coming that newspaper that day. Because some of us just realized it is selling in the market. No, but you see it is only those people who are in town or in places where there are newspapers. Suppose if they announce over the radio, then people will have an opportunity of going to buy it. That's my suggestion.

**Com. Adagala:** Then you can tell me, it is the middle class which bought. That's what you can tell me because those are the people who buy newspapers. Ya Kiswahili inakuja, I don't know since I have been away, I don't know.....(interjection).

**Luvayo Francis:** Infact I have one, I have a copy of that one. The Kiswahili report you have. The Bill you don't have.

I have the draft. The draft is there in Kiswahili, I have a copy.

**Com. Adagala:** When did it come out?

**Luvayo Francis:** On Sunday.

**Com. Adagala:** On Sunday, yes. On Sunday I was working, I didn't even.....was it there? You saw it? Whatever it was. Next time we announce.

**Luvayo Francis:** Yes, over the radio. Thank you.

**Com. Adagala:** May be it could be published.kama hii --- The only thing ndio itachapishwa baadaye. The only problem is that the people who bought it are not usually the people who come to hearings. So, I don't know.

**Simeon Nyakundi:** My name is Simeon Nyakundi. I propose that the Constitution should come to power before the elections and the councillors must be affected to have the education qualifications mentioned. Experienced is not mentioned here. I propose again that the national council and the national assembly should have the same term of life. Five years.

**Com. Adagala:** Propose.

**Simeon Nyakundi:** I have proposed.

**Com. Adagala:** The first one you had proposed (inaudible). What did you say for the first one?

**Simeon Nyakundi:** The education qualifications for councillors should be there.

**Com. Adagala:** You were proposing that elections should be done under the new Constitution. The Commission has no power over that. Parliament has and the people too. Okey. We are servants. You cannot say your maid should do what I don't know in your house. We are servants. Okey? So it is upto you if you sit, if you wait and you think that the Commission is going to do

it, it will not work. Ulion Professor Ghai is even attempting to push it by being in a demonstration. Lakini wengine mmekeki and time is ticking away and it is only you and Parliament. Only the people and Parliament who have that power. It is your proposal, you should try to implement it. Endelea.

**Morris Otunga:** I am Otunga once more, I would like to find out what preparations are there to make sure that persons with disabilities also attend the national constitutional conference. Because alongside also what a colleague has said earlier, we do not get information in time. It is accepted that the print media is one of the best forms of disseminating information. But for us and especially those with visual disability are not well placed to benefit from that. So again if such information was put on the electronic media, many more would be accessed. Electronic media particularly the radio. But the other interest was, what arrangements are there to make sure that persons with disabilities.....(interjection)

There was a list published was it yesterday or today. Both yesterday and today in the Nation and the Standard. It takes care of people with disabilities. You are in NGO's isn't it? Are you not in NGO?

**Morris Otunga:** We are not aware.

**Com. Adagala:** If you are not aware of NGO's I mean if you are not in.....(interjection)

**Morris Otunga:** I mean the groups you divided us into, we are not aware of where we fall.

**Com. Adagala:** What did we divide you into?

**Morris Otunga:** I mean, you said that from each district there are three representatives.

**Com. Adagala:** Yes this is up to the people in the districts to choose but also NGO's have representation and the physically disabled of Kenya. People with disabilities in Kenya and such like. Are you part of those organizations?

**Morris Otunga:** Yes.

**Com. Adagala:** You fall under civil society so you have an additional category and ....are you aware you are in an organization like that?

**Morris Otunga:** Yes I am.

**Com. Adagala:** Those are the ones who should communicate to you also. But I have heard what you have said. It is not only

for you. Most people listen to the radio, newspaper is another story.

**Morris Otunga:** Then the last bit, I wanted to find out whether in this sitting, are you taking any written proposals?

**Com. Adagala:** Yes, please bring. We have a file sitting here, the program officer Vincent is ready to accept them. Okey? Pass the microphone on and bring. I can sympathize a lot with people with visual disability because I have cataracts in both eyes and it is really an amazing thing, to be without sight. It is an amazing thing. Nimeanguka, mwishowe I was just going home to work and back. Even shopping I couldnot do. So, nimepasuliwa hili jicho so it is seeing a little bit, you people. But I cannot see who is that but atleast I can see. Lakini hii ingine ni kama yellow. Yellow tu. Viumbe vya yellow. Hii inaenda jioni ipasuliwe hapo Sabakia. Ukitaka kuja tuende pamoja kama una cataracts kama mimi.

Kwanza nasema pole sana kwa magonjwa yako na nasema tulianza kwa furaha, sasa inaonekana tutamalizia kwa huzuni. Hawa ... (interjection)

**Com. Adagala:** Sema jina lako kwa sababu ya recording.

**Ndombi Mateche:** Jina langu ni Ndombi Mateche.

**Com. Adagala:** Endelea.

**Ndombi Mateche:** Sasa ningependelea wewe urudishe shukrani kwa Ghai na timu yake umwambie watu wa Kakamega wanataka elections iwe carried kwa the new Constitution. Kwa sababu hawa watu wa provincial administration ndio huwa wanatuletea taabu mara kwa mara. Provincial administration. They sometimes tend to forget themselves. They are just employees just like other fellows but when it comes to elections, they play the first role. We are all employed, we are just paid by the State. They think that they are paid by the ruling party. This is very wrong. So, I am of the opinion that we carry out these elections under the new Constitution whereby these fellows will not be allowed to participate. Please let us do away with them.

**Applause from the audience.**

**Com. Adagala:** I don't want to...you know the way you are talking all of you, you are talking so that it is now the responsibility of the Commission. It is not the responsibility of the Commission. It is your responsibility and your representatives. Hata when Judges were taking us to court. Mwishowe tuliketi hapa tukazungumza na Kalonzo ako kwa hiyo kamati ya nini akasema, 'why are they suing the Commission?' The Commission is a child of Parliament. The Judiciary, Parliament and Executive wanatoshana ni kama you are suing a child of your brother over land. You know. You will have to sue your brother

ndio mnatoshana. Sasa sema, let them sue Parliament. Wapelekee clerk instead of harassing Ghai. You know we were just being harassed and there was nothing we could do.

This is a very good document and if you like it, you will have to act on what you have proposed. It will look like I am inciting you let me say, but since I am used to that environment of incitement in the University. But now I cannot act like that. Even when the students are there doing things, I cannot be seen to be inciting them because those are their issues. I am just there as servant. They are the owners of the University. So, you are the owner of this because you gave views and you know how you suffer. You must find a way of making sure that this Constitution is there. (*vandu vaki, vandu vaki*) endelea. Please do quickly, I want to move.

**Lucas Wambongo:** I am Lucas Wambongo. I want to propose that we do elections with the new Constitution and if it is not possible, I want to say an alternative of using the old Constitution for elections and propose that whatever government that may have been formed, may take one year to change.....(interjection)

**Com. Adagala:** Please propose.

**Lucas Wambongo:** To change into the new Constitution. My other issue is.....(interjection)

**Com. Adagala:** But you have to propose something that will make it possible for that to happen.

**Lucas Wambongo:** What I was trying to say is that, if the new Government will be elected using the old Constitution, they can sit down and work even if it means.....(interjection)

**Com. Adagala:** I know but you have to suggest what will happen.

**Lucas Wambongo:** The Parliament will discuss the new Constitution....(interjection)

**Com. Adagala:** And then get out of Parliament and come to campaign.

**Lucas Wambongo:** I am proposing that they can just change into a new Constitution. I would like to ask Madam Commissioner, I don't know if it is because I am not able. But I have not seen trade unions catered for in this document.

**Com. Adagala:** We are getting that. I know you have just got it today, we will get it. It is a Bill of right. Infact, listen Bill of rights, all these rights are there. Infact Mr. Atwori I want to sit with him and then he tells me where it isn't. Because as I said, I didn't read because of my eyes. I didn't read it, I had a lot of work. Teachers, waalimu wenzangu, your problem has been



solved and you are out there and you are not coming. Infact you should be all of you here. Making sure that hii itatekelezwa. It is not teachers who gave us views, it is parents about teachers. Because teachers pia, they didn't come to give views. Then, they were in the classrooms. But now, they are not in the classrooms and they are not here.

The right to strike, the right to unionize and then in addition to other rights which have been put there is the Commission on salary and emolument. Which will decide everybody's salary and make sure. Those are now Constitutional Commissions. Okey? And all these other kama Serikali inakulipia mtoto wako, Primary, kama mfanyikazi that load has been taken from you. Kama health, primary health that load has been taken from you. But unions are there, the right to unionize, a right to strike. You know now there is no right and actually some other people get kicked out of unions. Even when you are in union, there is a lot of problems. Tripartite it agreement. Hiyo yote...union is not connected with Government anymore.

**Lucas Wambongo:** Lastly, I would like to hand in my small document.

**Com. Adagala:** If you have any documents bring them.

**Dr. Watindi:** Madam Commissioner I just have something and I propose that all Kenyans we need to go to the new elections under the new Constitution. I am also proposing that we have read the Constitution draft. It is well written. We don't want to hear as parliamentarians said, they want to go for elections with minimum Constitution review document. We want them to go with a full document as written by the Commissioners. Because we as the taxpayers we gave those duties and you have done it to the best of our knowledge, so we want that Constitution just to go on. But the minimum requirements we don't want that.

**Com. Adagala:** Let me put it this way, you may want to have meat or let me say this, chicken, you may want to eat chicken. Okey. Nataka kukula kuku. Why we come to you is so that you can help us in thinking. You can help us and now you are just telling us, 'hii kuku iko tukule.' We want you to help us think through how this can be. Obviously me I like this document. Otherwise I wouldn't be sitting here. But you also like it. Sisi tumeona tumetengeneza. We have come to you so that you can help us to find out how it can be. Okey? But it is okey, I am sure people will think about it and they will come up with many things. We will see from all over the Country. Mtaketi chini nyote vile nimesema....ulitaka kuzungumza zamani?Ulikuwa na kitu cha kusema au imetokezea tu saa hii. You stand up and stand here in line. Take the microphone.

**Pius Mwanje:** Madam Chairman, the way I see it is this; We should not make the Draft Constitution as a debating subject. We don't want to be involved in controversies of politicians. If we do that one, we shall be killing a job which has been done under very difficult circumstances. Madam my proposal is simple. We continue with the work you are doing because we have not reach to the end yet. We still have, two or three handles infront of us. Complete your work within the time that you have. You have done a commendable job. Kenyans are with you. They want to know more about this Constitution. Let us understand that this Constitution is not a Commission. It is the people's Constitution and I would urge my fellow Kenyans especially *Abaluhya*

*vandu*, read the Constitution. Don't rush in this question.

Eventually, Kenya will be...if they understand correctly, they will appreciate this Constitution and then later it will be an issue that this is the Constitution that should be implemented. Whether it is a new Government or not. But if we make it now before it becomes law, we are going to kill it and avoid that. It is an advice I am rendering it free to you Luhyas and my fellow Commission. If you force it down the people they are going to get a resistance and it will not work. It will be a pity, if the document well done went down the drain. Madam you have done a commendable job. Tell your Commissioners we are with you but don't make it with an issue where it will be either for or against. And then it gets lost. No, thank you.

**Com. Adagala:** Our work will actually go on because we have an extension till 3<sup>rd</sup> January and the reason for 3<sup>rd</sup> January is because the President was sworn in on 4<sup>th</sup> of January 1997. So, they said, let's give you an extension upto then. But after 30<sup>th</sup> October and the national constitutional conference will have started on the 28<sup>th</sup> October. If Bunge is dissolved, the national constitutional conference comes to a standstill. Because MPs and Councillors...I just said 1/3 but actually I think they are about half of the people who will be there. Because there will be Councillors, there will be MPs, they will be back. They cannot go on because they are no longer. Isn't it? Is there a councillor here? They will no longer be MPs or councillors.

Even then anybody who is in politics will be out campaigning by then. So, this is the problem. It is actually whether national constitutional conference will go on and we don't even mind having to work double time and finish. But it is whether the national constitutional conference will go on without those people. So, now it will be NGO's. Even political parties will no longer be interested because members of political parties will also be there representatives. Those are the ones I didn't mention. They will now be interested in the political scene. It is very unfortunate that we did not start when we should have and then we will have ended like the year 2001.

Then even if it was enacted or not, we would not have mixed it with politics. Thank you very much for your advisal. It is true and that is how we have worked. In spite of all these things we have just kept on going ahead. Fupisha.

**Clement Were:** Mine is simple Madam Commissioner. My names are Clement Were. We realize the efforts you have done.

**Com. Adagala:** Move the mic. down.

**Clement Were:** We realize the efforts you have done as a Commission in this exercise and we appreciate this. The hassles you have got up and down between us, the Judiciary and the others. My proposal is simple that you proceed and take our recommendation serious on record. One of which is that the Commission has spend a lot of money in this exercise. If an individual Kenyan tampers with the present Constitution and he dissolves Parliament before the exercise is finished, then my proposal is that, that particular individual pays back to the taxpayer the amount of money, that the exercise has taken in this

Commission. It goes as a proposal from me and from Kakamega. That he pays full money on the day he dissolves Parliament.

Thank you Madam.

**Com. Adagala:** My brother, there are people in this Country who can buy Kenya leave alone pay the money. People who have hundreds of billions of shillings. So, 1.2 Million which we have not even been able to finish. Ni kama unamwambia ninunulie ndizi. It is not that easy, it is true we will put it down. There should be some kind of penalty. But he will not have done wrong because he is right under the present Constitution. Okey? Let's move ahead. Hiyo amendments which are being done which created the present Constitution, were done by Parliament. So, all those other Parliaments. The first one and the second and the third. So, it's really something which is not illegal. It's just not keeping with the time and the spirit but it's legal. Where are we my brother?

Representation of the people. The ways in which you can give the power which is yours to people to represent you. A very important principle here, actually representatives has been seen as lords. Hata hiyo term Mheshimiwa na nani mwingine haheshimiki. Si kila mwananchi anaheshimika, au anataka aheshimiwe. So, may be we are going to....hiyo ilikuwa zamani Mtukufu, Mheshimiwa kitu kama hicho. Lakini sasa itakuwa Mtumishi.

It will be a service kind of representation. People to serve. Even the kind of institutions now are serviced. You give service to the people. So, may be the types of Presidents or MPs or Councillors we have change because you don't go there so that you can enrich yourself or so that you can have powers. Or so that you can be above the law. But you are there so that you can serve the people. Okey? I know we say this all the time but it is truly so. When we come like to the police force. It is no longer police force, it is police service. Because hii police force wamechukua hata na ku-force and the kind of leadership we have had actually is that which is a power based. Now it will be people based. Okey? We will finish but my approach is participation. Kaa tu, I know you are very interested. But you will see how clever Kenyans are, isn't it? When they are talking including yourself.

**Vincent Watako:** Nitapitia kwa mukhtasari kuhusu.....siri na uchaguzi utakuwa wa huru na wa haki ambao utawezesha uwakilishi wa Wakenya wote. Kupiga kura kutakuwa siri. Uchaguzi huo, kila Mkenya katika sura hii amepewa haki ya kupiga kura na haki ya kusajiliwa kama mpiga kura. Kuna masharti fulani ambayo Mkenya huyu yampasa ayatimize. Masharti haya yako katika kifungu cha sabini na tisa. Masharti ni kama haya; awe mtu ambaye amefikisha umri wa miaka kumi na nane. Awe mkaazi wa Kenya kwa kipindi cha mwaka mmoja na masharti mengine ambayo yanafuata hapo chini. Lakini Wakenya wanaweza poteza haki hii iwapo hawatakuwa na akili timamu ama watapatikana na hatia ya kura. Sura hii pia inabunu tume ya uchaguzi. Tume ya uchaguzi itakuwa na Commissioners kati ya wanane na kumi. Kutakuwa na mwenyekiti na makamu wa mwenyekiti ambaye atachaguliwa na watu. Watu hawa lazima watimize masharti fulani. Masharti hayo yuko hapo chini katika kifungu cha themanini na tatu. Kazi ya tume ya uchaguzi pia iko hapo; kama kusajili wapiga kura. Kutenga maeneo ya upigaji kura. Kusitawisha uchaguzi wa huru na haki. Kukagua harakati za vyama vya kisiasa na pia kukagua maswala ya vyama vya

kisiasa haswa maswala ya kifedha. Tume hiyo pia itakuwa na uwezo wa kuajili watu ambao watawezesha tume hiyo kufanya kazi. Usajili wa vyama sasa utafanywa na tume hii na kazi ama jukumu la vyama vya kisiasa pia imebuniwa katika Katiba hii. Jukumu hizi ziko katika kifungu cha themanini na nane.

Vyama hivi lazima vitekeleze ama vitimize masharti fulani, kama vile. Ni lazima viwe vyama vya kitaifa ambavyo vinaeneza sela ya demokrasia na pia vinaeneza uheshimu wa haki za kibinadamu. Vyama hivi havitakuwa vya misingi ya kikabila, misingi ya kidini ama misingi hiyo yote ambayo iko katika sehemu ya kifungu cha tisini. Iwapo vyama hivi vitakeuka masharti fulani ambayo yako katika sura hii, vitapoteza usajili wake haswa vikishiriki kwa maswala ya fujo ama vipatikane vinafanya mambo ambayo yanakeuka haki ya kibinadamu, vitapoteza usajili wake.

Kumbuniwa katika sura hii, kitu kama fedha za umma ambazo zitatengewa vyama vya kisiasa. Sasa vyama vya kisiasa vitapewa misaada ama vitatengewa fedha fulani kutoka kwa fund ambayo imebuniwa katika sehemu hii. Katika kutumia fedha hizi, Tume ya uchaguzi imepewa uwezo wa kukagua matumizi haswa vitabu vya fedha na ikiwa vyama hivi vitakiuka masharti ambayo yamewekwa katika sehemu hii. Basi vitapoteza haki ya kupata fedha za umma. Kwa ufupi tu, hayo ndio mapendekezo ambayo yako katika sura hiyo ya sita.

Pia nitapitia kwa ufupi tu sura ya saba ambayo inaongea juu ya Bunge. Sasa sote tuwe katika sura ya saba ambayo inaongea juu ya Bunge. Bunge sasa itakuwa na milango miwili ama nyumba mbili. Nyumba ya kwanza itakuwa ya national council na nyumba ingine ya national assembly. National council labda nitaiita baraza la kitaifa. Jukumu la Bunge pia limebuniwa katika sehemu ya mia moja na mbili. Majukumu haya haswa ni kupitisha sheria, kupindua sheria, kukagua maswala ya fedha za Serikali na pia kuidhinisha uteuzi wa Rais. Haswa wa watu ambao watahika hatamu za uongozi katika afisi mbalimbali za jamhuri. Haswa uteuzi wa Ma-Judge, uteuzi wa watu ambao watahikilia nyadhifa katika tume ambazo zimebuniwa katika Katiba hii. Uteuzi wa Waziri Mkuu, Mabalazi, manibu wa waziri na mawaziri, uteuzi wa governor wa bank kuu la taifa ama Central Bank. Lazima utaidhinishwa na Bunge. Bunge la national council ama baraza litakuwa na wanachama sabini ambao watateuliwa kutoka kwa maeneo ya Bunge. Watateuliwa kutoka kwa maeneo ya wilaya. Pia yatakuwa na wanachama thelathini ambao watateuliwa kutoka kwa vikundi vya wanawake na katika Bunge hili la national council, kila mkoa utawakilishwa na wanawake wawili. Mkoa wa Nairobi nao utawakilishwa na....kila mkoa utawakilishwa na wanawake wanne, samahani. Halafu Mkoa wa Nairobi utawakilishwa na wanawake wawili.

Nalo Bunge la national assembly ama Bunge la kawaida, litakuwa na wanachama mia mbili na kumi ambao watachaguliwa kutoka kwa maeneo ya Bunge ama constituencies. Pia yatakuwa na wanachama tisaini ambao watateuliwa kutoka kwa vyama vya kisiasa. Ni masharti yapi ambao watu hawa ama wabunge watahitaji kuyatimiza? Lazima wawe raia wa Kenya. Katika wabunge ambao watajiunga na national council, lazima watimize umri wa miaka thelathini na mitano. Ilhali wale wa national assembly lazima watimize miaka ishirini na moja. Lazima wawe wamesajiliwa kama wapiga kura. Wawe watu wenye ustahiki, watu wanaoheshimika, moral integrity. Iwapo watu hawa hawana akili ama hawawezi kulipa madeni yao, watapoteza hiyo haki

ya kuwa mbunge .

Bunge la national council litakuwa na kipindi cha miaka nne. Nalo Bunge la national assembly litakuwa na miaka mitano. Uchaguzi huu utafanyika kwa kipindi cha siku arobaini na tano kabla ya mwisho wa kipindi cha Bunge. Kila Bunge. Kama ni Bunge la national assembly lazima uchaguzi ufanyike siku arobaini na tano kabla ya mwisho wa kipindi chake. Hivyo Bunge la national assembly. Wananchi wamepewa haki ya kuwafuta kazi wabunge ama wajumbe, ile inaitwa power of recall. Pia mishahara ya wabunge itakadiliwa na tume ya mishahara ambayo ilibuniwa katika Katiba. Sehemu hii pia inabuni ofisi tofauti. Afisi za maofisa wa Bunge. Kuna ofisi ya Speaker wa Bunge ya national assembly. Speaker wa Bunge la national council, manaibu wa Speaker na pia karani wa Bunge.

Utaratibu wa Bunge pia umepewa sehemu katika sura hii na natumai mtapata fursa ya kupitia fulusa hii. Pia hali ya kupitisha sheria katika Bunge na utaratibu fulani fulani pia umeandikwa na natumai nitapitia.

Yafaa tuelewe ya kwamba lugha ya Bunge sasa itakuwa lugha ya Kiswahili na Kiingereza. Pia lugha ya ishara ama sign language itatumika. Kamati tofauti za Bunge zinazoshikiria maswala tofauti ya Bunge pia zimebuniwa katika Katiba. Natumai pia mtapitia katika kamati hizo. Ziko katika kifungu cha mia moja na arobaini. Kikao cha Bunge kitakuwa Nairobi lakini kikao hiki kinaweza songeshwa kwa sehemu yoyote ile ya nchi iwapo panahitajika. Wabunge wanapewa immunity ama hawawezi kushitakiwa kwa mambo wanayosema wakiwa Bunge. Raia wa kawaida wamepewa uwezo wa kuhudhuria vikao vya Bunge bila kutatizwa. Lakini panapohitajika siri, raia wataulizwa wasonge ama waondoke nje. Kwa ufupi hayo ndiyo mapendekezo yaliyo katika sehemu ya wabunge.

**Com. Adagala:** Tukisema wabunge kwa pendekezo hii ni nyumba mbili. Mnaelewa? Ni nyumba mbili. Or we just continue. One, I have to go kwa sababu daktari ananingojea ili kupasuliwa. Tulisikizana niende leo. Lakini district coordinator na program officer wanaweza kumaliza. Hiyo ingine zaidi ni maelezo. Ile pengine ngumu ngumu. Mtapeana tu proposal. Please stick to that, that you just give proposal and it will be written. You know the reason why I did it like this is because other places I have done, they just talk mfululizo halafu wanasema you bring your proposal. But I wanted it to be participatory. So it falls more in terms of time. But mtanisamehe niende kupasuliwa macho.

**Audience:** Yes.

**Com. Adagala:** Na kesho nitakuwa ninaona. Ni kama miujiza. Ni kama.....really now I know what Jesus was doing in the mud with his saliva. He was making lens na hiyo ingine ya kuona. Mtanisamehe nampenda sana, lakini wacha niende kufanywa hivi. Otherwise I will end up without vision. Okey? Mungu amubariki. Please give good proposals. There are very good proposals coming form here msisahau. Endelea.

**Pastor Joseph Shamalla:** Proposal yangu ni kuhusu hiyo power ya ku-recall. Nafikiria kwamba ni vingumu sana kulingana na vile wanakenya wako. Just bringing our people, kama Lurambi. Kama humpendi afanye kazi na tuseme kwamba we want to recall him. Na propose kwamba, there should be a committee that is working for the Member of Parliament representing the people. It is through this committee that, that member can be recalled.

**Pastor Joseph Shamalla:** Two, my proposal is.....

**Com. Adagala:** And they are working for the Member of Parliament.

**Pastor Joseph Shamalla:** It's like apart from the Member of Parliament who is representing the people, he has a committee.

**Com. Adagala:** Hiyo ni mambo ya.....hiyo vitu vya kutekeleza hivyo ni ya Parliament. Hii ingine, the principle is here, power of recall, rights of recall. Then inakuwa, the Speaker and E.C.K will work it out and then Parliament will work it out.

**Pastor Joseph Shamalla:** I have another proposal on the same on the Member of Parliament. I wanted us to have a proposal that, we say that a Member of Parliament should have an office in his Constituency.

**Com. Adagala:** Hiyo iko.

**Morris Otunga:** My name is Otunga.

**Com. Adagala:** Your proposal.

**Morris Otunga:** One, the electoral commission should have at least one disabled person. Two, the political party created or formed at any time should make sure that they are actually different from the already existing ones to avoid duplication. Three, on the level of constituencies, I propose that the number be reduced because now we have proposal representation. If the number will be reduced by about a quarter so that we don't have so many representatives in the same area. Also, we have the principle of equal representation and yet some are very small and others are very large in population.

**Com. Adagala:** Those are the things, all those things you have said including disability are the ones we made sure that they are covered. Some areas are small, others are big. So we will take that into consideration. I don't know what this means, it can be geography, it can be population taken into consideration. But because we are talking about democracy, the main proponent should be population here. Then, on the Provincial.....(interjection)

**Com. Adagala:** Not necessarily so because democracy people are impeded by... North Eastern you go for a hundred

kilometers before.....they are impeded in their democracy because of that. Don't think because you are heavily populated therefore you only think of.....

**Morris Otunga:** I am not saying that this is the only reason but of the main one, because here we are talking about people.

**Com. Adagala:** Yes, we are talking about people. We are talking about people and access. Please don't be prejudiced against other people who have difficulty also.

**Morris Otunga:** Something else that I expected would have been here was a boundaries commission.

**Com. Adagala:** Boundaries commission is there, we will talk about it.

**Morris Otunga:** Where?

**Com. Adagala:** Under Commissions. Constitutional commissions. Internal boundaries.

**Morris Otunga:** Then, in the parliamentary representation, there is no particular mention about disabilities also as regards to number. Because again here we wanted a 15% in each of the houses to be persons with disabilities.

**Com. Adagala:** You see also parties will be obligated to do affirmative action. They are covered under affirmative action and I know that you want it highlighted by that 15% but they really have to. They are bound. Okey. Say quickly the time has really gone.

**Morris Otunga:** The bit on women representation there is no mention of women with disability.

**Com. Adagala:** The women have to take that board. If they bring women who are not.....infact this kind of thing is for women with disability, minority women, that kind of thing. If they didn't bring themselves it will be disqualified.

**Morris Otunga:** Can we also talk of constituencies for persons with disabilities. Two in each Province.

**Com. Adagala:** Right what is I about? Who is saying I? Hujawahi kuwa disabled pengine.

**Morris Otunga:** Because if we had two in each province then we would make sure that one is from female and one from male.



**Com. Adagala:** Yes we have put. Also, the districts you know infact with the second House, the point is the district. The district is the one that goes to...and that actually is one, one. We wanted two, two. One male, one female. Some of us say that there are too many females, a hundred and forty. You have to think all the way from down. Don't just think about top things. You have to think of the grassroot.

**Morris Otunga:** I also mentioned the district level because again even there.....

**Com. Adagala:** And in the village?

**Morris Otunga:** All of them. Infact I have written down.

**Com. Adagala:** So you should say, they should be that throughout. Msaidie muonyeshe pahali ataketi.

**Richard Andabwa:** I think one of the proposals was going back to a one House parliamentary system because in the beginning we had two Houses and it appeared not to work well. So, I don't know whether this time would be experimenting again. Because reading through the Constitution, I thought there is also a bit of duplication.

**Com. Adagala:** How did it not work well?

**Richard Andabwa:** Why do we go back to one?

**Com. Adagala:** They killed it. They killed the Senate. Any mzee hapa? It was murdered. Mzee ilikuwa aje? But it was killed for the sake of making a unitary concentration of power.

**Richard Andabwa:** The next one is the issue of nominations of MPs.

**Com. Adagala:** There are no nominated MPs.

**Richard Andabwa:** But you have provision for ninety.

**Com. Adagala:** They are elected by parties.

**Richard Andabwa:** But you see the resources that Kenya has, I think .....(interjection)

**Com. Adagala:** Kenya is a rich Country. The mbeba is in people's pockets who never pay taxes. Please let's not have the issue of money. Because you bring it up, then it comes down to also the thing of having a dispensary near people and they say it is too expensive. What is more expensive a dispensary or a dead child. Please sometimes is just a way of getting around democratization and devolution. Richard we have I am sorry if I have handled you roughly but if we had more time we would discuss.

**Lucas Wambongo:** I am Lucas Wambongo. I am sorry Madam Commissioner I have got some proposals here which may make me look like a dictator. One, ....

**Com. Adagala:** You have your right.

**Lucas Wambongo:** I want to propose that any Kenyan at eighteen years of age and is registered for a national ID, should also register as a voter. Two, during general elections, all people aged eighteen years should vote. Three, I would like to propose that the number of political parties in our Country be reduced i.e to number three.

**Com. Adagala:** We cannot reduce parties. We cannot reduce churches and at the same time say freedom of association. You told us and we said this will be self regulated and there is a time by which they have to register with E.C.K. There is a time by which they have to register with electoral commission with the manifesto that is distinct. I am sorry my brother went away before we talked about this. If you limit that, you will find yourself in court. It will be a contradiction in the freedom of association, freedom of expression, freedom to choose and those are the foundations. It's like building a house then one wall doesn't have a foundation. One of the political parties or one of the religious churches. Because the churches they say they are too many. The Muslim people did not complain it is the churches. Okey?

**Hudson Ludeki:** I am Hudson Ludeki Mbaliti. First and foremost I would like to thank the Madam Commissioner for the starling job that you have come out with. My proposal is that voting should be made compulsory as one of the duties of the Kenyan citizens.

**Com. Adagala:** That's a right.

**Hudson Ludeki:** It should not be just a right. It should be a duty. A duty that a citizen of Kenya should be able to render to this country. Then.....(interjection)

**Com. Adagala:** I think in Constitution, you should say, every Kenyan citizen who is over eighteen and above shall vote.

**Hudson Ludeki:** Yes Madam.

**Com. Adagala:** Hiyo 'shall' ndio lugha ya Katiba.

**Hudson Ludeki:** Then, on the side of nominated MPs, that is the ninety. I think

**Com. Adagala:** Read the Constitution. A politician gets hold of something. Even he can get hold of your mother and lead her in another direction. You know in voting. Instead of voting here she will go and vote somewhere else. Please now that politicians have their own motives for saying these things. Those are not nominated MPs, particularly those parties which are strong, have nothing to complain about. All it needs for instance like in Hamisi, there is a minority community there or like in Kisumu rural. So, those people I understand that they have never been represented. So it will be considered what do we do here. These people need representation. This Mt. Elgon thing. Minority. Okey. Then women. If there are a lot of people there, then people with disabilities, then...those kinds of people who need affirmative action. You know, they will have to be considered. So that for instance, here in Malaba we have Matete. What can happen is that because they feel....someone will say, Okey the MP is from here. That same party, let us see if we can....and it is just ninety people and it is to cover all the people. There are some people who have never had an MP, not even a Councillor in this Country. This is minority or even the people with disability. I think those are the main categories and sometimes pastoralists people. Okey?

**Hudson Ludeki:** Otherwise, as I think of other things may be I will make the proposals. I think the trade unions are also part of the minorities.

**Com. Adagala:** yes, wewe sema hivyo.

**Hudson Ludeki:** So there should be something. I mean there should be a clause put in the Constitution which should also be able to cater for the trade unions in the Country. Because as you can see, most of them are almost dying of. It was infact our Excellency the President who moved a motion in 1957 to Parliament for the creation of KNUT but you can see he is now the one who is killing KNUT. Thank you.

**Ndombi Mateche:** My names are Ndombi Mateche. I have got proposals on elections. In some developed countries, one has got to appear on the screen and convince the wananchi that he is fit. So, I am also proposing that in future we should also be putting presidential aspirants on the screen to see how knowledgeable they are. How eloquent they are and how they can convince people. So whoever outnumbers the other is picked upon.

Number two, I am also proposing that any President should not solicit votes for any aspiring candidate of his party. People should be just left alone to struggle for themselves.

Number three, the electoral areas should be cut to size. There is no need of having numerous electoral areas just because somebody somewhere wants to fulfill his desires. So, the electoral areas should be cut to sizes.

**Com. Adagala:** Infact there is a Bill before Parliament that will be placed in Parliament and our last meeting with P.S.C. there was a fight if you read about it between Sunkuli and Ruto on one hand and Raila on the other. Raila said, we are already putting this in process. The press can stay and they stayed throughout. So we made a fact that Parliament Select Committee was actually under the view of the cameras.

Secondly, hii ingine umesema ya mwisho. We didn't want to touch constituencies. We said let these all boundaries things, E.C.K will deal with it. Because E.C.K needs to go around electoral commission and if we had said, 'let's change.' That's one thing that would have even delayed the Constitution even more and I think that some politicians were hoping we say that and then you say, 'well you have to make..... Let's not touch any boundary, district, province, Constituency, we leave it. Because also now we concentrate on that and forget the essential things of the Constitution.

So, this one, E.C.K will have to go around, it will be the new E.C.K. Did you talk about transitional provision of E.C.K? That one....the present electoral commission will be .....if we adopt this Constitution, we will be in place to conduct elections. Then ninety days to wind up their business, then a new electoral commission will be formed. In other words they will be in place to put there the national council and the national assembly which will now get a new electoral commission in place. In other words, they will be cutting their necks. So, that's what will happen. We didn't want to touch boundaries. They will be done but nikukagua. Lazima ikaguliwe kabisa so that it can be like that. Tutaonana, you can give your proposals to these two young people. Wacha niende kuona daktari. Wages this one is how they will be put in place. Thank you.

**Majanja:** Thank you very much. On behalf of all the people who attended may I thank you very much and I believe we will wish you quick recovery and that you will be with us next time. Thank you very much.

**Com. Adagala:** We had planned to do it last night. Because they do it, you sleep, they take off the nini...and then you can function. So I had planned to be here the whole day but the doctor was busy yesterday so then it is today. Otherwise I will not be able to go to the national constitutional conference. So I will miss out on many things. God bless you all.

**Vincent Watako:** Tutaendelea na sura ya nane ambayo inaongea juu ya Executive ama Urais. Sura hii katika mwanzo inasema kwamba nguvu ya mamlaka ni watu. Mswada wa Katiba hii umebuni sela mpya ya Serikali ama sela mpya ya tawi hili la Serikali. Nitapitia tu kwa mukhtasari. Kwanza kutakuwa na ofisi ya Rais. Rais atachaguliwa na watu na ni lazima atimize masharti fulani. Masharti hayo yako katika sehemu ya mia moja na hamsini na sita. Atakuwa raia wa Kenya, awe ametimiza miaka thelathini na mitano. Awe mtu msitahiki, awe amesajiliwa kama mpiga kura na pia independent candidates watakubaliwa lakini lazima apitishwe ama aidhinishwe na wapiga kura wanaopita elfu moja.

Kuna masharti fulani pia ambayo nitapitia ambayo inapeana maelezo zaidi ambayo yako katika kifungu hicho. Kazi ya Rias ama wajibu wa Rais pia umefafanuliwa katika Katiba na wajibu huu ni kama kutoa hotuba kwa Bunge mara moja kwa mwaka. Hasa katika kikao cha kwanza. Atawateua Waziri Mkuu na manaibu wa Waziri Mkuu wawili. Atateua pia Ma-Judge. Atawateua watu ambao watahika nyadhifa katika tume ambazo zimebuniwa chini ya Katiba hii. Pia atawateua mawaziri lakini lazima hawa watu wataidhinishwa na Bunge.

Calendar ya uchaguzi wa Rais sasa iko chini ya Katiba. Mtapata katika kifungu cha mia moja na hamsini na tano. Kwa ufupi tu, uchaguzi wa Rais utafanyika siku ya jumanne, agosti kabla ya mwisho wa kipindi cha Rais. Rais mteuliwa atahudumu katika afisi kwa kipindi kimoja cha miaka mitano na anaweza kuchaguliwa tena kwa kipindi kingine cha miaka mitano. Baada ya vipindi hivo viwili hawezi tena kusimama kama mgombeaji wa Urais. Rais anaweza kushitakiwa kwa Bunge ama impeachment. Haya ni mapendekezo ambayo yako katika kifungu cha mia moja na sitini na tatu. Pia katika tawi hili la Serikali kuna ofisi ya makamu wa Rais ambaye atakuwa running mate wa Rais. Jukumu la makamu Rais pia limefafanuliwa katika kifungu cha mia moja na sitini na saba.

Mishahara ya Rais na makamwa wa Rais itabuniwa ama itakaguliwa na Tume ya mishahara ambayo imebuniwa katika Katiba hii. Bali na Rais na makamu wa Rais kutakuwa pia na ofisi ya Waziri Mkuu kama nilivyosema. Waziri Mkuu atachaguliwa na Rais kutoka kwa chama chenye wabunge wengi bungeni. Lakini uteuzi huu utaidhinishwa na Bunge. Pia kutakuwa na manaibu wawili wa Waziri Mkuu ambao watachaguliwa na Rais na kuidhinishwa na Bunge. Kutakuwa na baraza la mawaziri. Baraza la mawaziri litakuwa na mawaziri kumi na tano. Pia kutakuwa na manaibu wa Waziri ama deputy ministers ambao watakuwa kumi na tano. Watu hao wote watateuliwa na Rais na wataidhinishwa na Bunge. Mishahara ya Waziri Mkuu na manaibu wa Waziri Mkuu na Mawaziri ia itakadiliwa na tume hii ya mishahara ambayo iko katika Katiba hii. Pia kutakuwa na makatibu wa wizara na kila wizara itakuwa na Katibu mmoja. Hivyo tutakuwa na makatibu kumi na tano. Viapo vya watu hawa, watu ambao nimetaja ama watu ambao watahikilia nyadhifa tumetaja viko katika sehemu ya mwisho ya mswada huu. Labda mtaangalia baadaye. Kwa ufupi tu, haya ndio mapendekezo ambayo yako katika sura ya nane inayoongea juu ya Executive.

Pia mtaniruhusu nipitie sura ya tisa ambayo inaongea juu ya mahakama. Sura hii imebuni utaratibu mpya wa mahakama na imebuni mahakama ya juu zaidi ambayo itaitwa supreme court ambayo itakuwa chini ya Judge Mkuu na ma Judge wengine sita. Jukumu la korti hili liko katika kifungu cha mia moja na themanini na nane. Baadhi ya jukumu zake itakuwa kusikiliza rufani kutoka kwa korti za chini haswa court of appeal ama korti ya rufani. Itasikiza maswala yanayohusu uchaguzi wa Rais na ndio itakuwa korti kuu zaidi. Pia kutakuwa na court of appeal ambayo itakuwa chini ya Rais wa korti na Ma-Judge wasiopungua kumi. Kortu hii itasikia rufani kutoka kwa the high court na mamlaka ya korti hii pia yako katika sehemu ya mia moja na tisaini na moja. Kutakuwa pia na high court ambayo iko sasa ambayo itakuwa chini ya principle Judge na Ma-Judge wengine wasiopungua hamsinie. Ma- Judge ambao watahikilia nyadhifa katika korti hizi watateuliwa na Rais na kuidhinishwa na Bunge lazima watimize masharti kama haya yanayofuata. Masharti haya yako katika sehemu ya mia moja tisaini na tano. Lazima

wawe na ujuzi wa miaka kumi na tano kama Judge ama kama afisa wa mahakama. Au kama wakili au Mwalimu wa sheria katika chuo kikuu.

Ma-Judge watashikilia nyadhifa zao watakapofikisha miaka sitini na tano. Lakini wale ambao wako sasa wanaweza staafu kwa hiali. Wale ambao wamefikisha miaka sitini. Kunayo mapendekezo ya transitional ambayo yanasema kwamba Ma-Judge ambao wako sasa wanaweza kustaafu kwa hiali. Iwapo hawataki kustaafu kwa hiali, wale ambao hawastaafu watachunguzwa hasa maswala ya ufisadi na wanaweza ondolewa ikiwa watapatikana na hatia za ufisadi baina ya zingine. Kwa wandugu wetu Waislamu pia kumbuniwa mahakama ya Kadhi ambayo itakuwa chini ya Chief Kadhi. Mamlaka ya korti hizi za Kadhi ni kusikiliza maswala ya Waislamu haswa maswala ya ndoa, maswala ya uridhi. Maswala yanayohusu biashara baina ya maswala mengine.

Makadhi watateuliwa na tume ya mahakama, Judicial Service Commission na masharti ambayo watu hao watayatimiza yako katika kifungu cha mia moja na mbili. Lazima wawe na elimu ya sheria. Elimu ya sheria ya kawaida na pia wawe na elimu ya sheria ya kiislamu. Afisi ya Attorney General ama Mkuu wa Sheria iko katika kifungu cha mia mbili na nane lakini mamlaka ya mkuu wa sheria imepunguza kidogo. Atakuwa tu mshauri wa Serikali. Mamlaka ya kuwa mkuu wa mashtaka imepunguzwa. Kumbuniwa afisi ya mkurugenzi wa mashtaka ambayo iko katika sehemu ya mia mbili na tisa. Afisi hii ndio itashughulika na maswala ya mashtaka.

Pia kumbuniwa afisi ya public defender ambayo iko katika kifungu cha mia mbili na kumi. Afisi hii ndio itakuwa na wajibu wa kusikiliza malalamiko ya wananchi ambao hawawezi kujimudu, kulipia huduma za kisheria ama huduma za mawakili. Mamlaka ya Rais ni ya kusamehe waliopatikana na hatia na mahakama ama prerogative of mercy pia yako katika Katiba. Yako katika sehemu ya mia mbili na kumi na moja. Taaluma ya sheria ama legal profession pia imetambaliwa katika Katiba. Wako na wajibu wa kupigania na kulinda Katiba. Kukuza haki za binadamu ama kuangalia kwamba haki za kibinadamu zinatimizwa baina ya wajibu nyingine. Labda nitawapatia fursa ya kutoa mapendekezo yenu.

**Pastor Joseph Shamalla:** Naitwa Pastor Joseph Shamalla. Mapendekezo yangu ni kuhusu hayo mambo ya appointments. Tumeona hapo awali appointments zikiwa kulingana na vile mtu. When somebody appoints somebody anakuwa kama anakuwa servant yake. Sisi tunataka tuwe na servants wa watu. Kwa hivyo napendekeza ya kwamba, the President will appoint the fifteen ministers. Mapendekezo yangu ni kwamba watu ambao wanataka kuwa Ministers, watoe majina yao kama applications. Then those applications can be vetted by Parliament. Then it can be taken to the President.

**Vincent Watako:** Nilisahau kuwaambia kwamba Mawaziri hawatahitajika kuwa wabunge. Mawaziri na manaibu wa waziri hawatakuwa wabunge. Bali watakuwa watu wenye taaluma na ujuzi fulani katika wizara wanaoteuliwa. Kama labda ni wizara ya afya atakuwa daktari na vitu kama hivo.

**Pastor Joseph Shamalla:** Ndio na-propose waadimishe the application. Then the application is taken to Parliament. Then Parliament can select from those few and have a list, shortlist. Then the President can speak from what has come from the Parliament. Not the President appointing. That's my proposal.

**Andabwa Richard:** My name is Andabwa Richard again. I also have a proposal infact on the same. My proposal is, because Parliament has a supervisory role over this appointment, I believe in my view that Ministers should still be Members of Parliament. Because this is one of those major motivation for one to be an MP. Then, since the Parliament also will continue to vet the P.S.C. and so on. Then the main expertees should be left with the P.S.s. Infact in my view Ministers and assistant ministers will still be vetted among the MPs and they will be seen to have the right qualification. I think that one will still keep our pockets as a country better.

**Stephen Lipeyah:** My names are Stephen Lipeyah. I would like to propose on this 156, this is under Article 1 clause B. That is on the age of the President. It is fine with the thirty five years but when it comes to below the age of seventy, I think that one is locking out some of the best Presidents that we would have in Kenya. That can offer the services of President. So, I would say the upper limit should be removed and it remains thirty five years. So that the other eventualities could be taken care of by the impeachment and all the checks and balance that have been introduced in our Constitution. There is also the issue of the degree holder. When it comes to categorizing this particular position as a preserve for the degree holders, then it means also that we are going to lock out some of the best resources in the Presidency. We should just leave it so that it remains that this person should be someone of sound mind and somebody knowledgeable. It is taken of by sound mind and knowledgeable. Because of course you don't have an illiterate who is knowledgeable. I am trying to say that actually we should not have.....(interjection)

**Vincent Watako:** How do you determine the knowledge? Somebody is knowledgeable.

**Stephen Lipeyah:** At least should be form four leaver and above. So that it is not going to be a professional kind of thing. Just a preserve of the degree holders. We have so many other people who have notgone to that level but they can serve the nation. Thank you very much.

**Charles Lwanga:** My name is Charles Lwanga. I am looking on Section 171, appointment of Prime Minister, clause 6, which says that within thirty days if the President is unable to have proposed somebody acceptable to the national assembly should dissolve Parliament. I think instead of dissolving Parliament that should be treated as a vote of no confidence to that President and he should be the person to go for elections. Not the whole national assembly. Then when you send away the national assembly, then you are also sending away the national council which has no business in appointing, in confirming the Prime Minister or something like that. So, the national council should have no reason to go home.



Then another one is that in the whole of this you have stated the qualifications of all other people, except there are no qualifications for ministers and deputy ministers. So I don't know how it should be done. Then when we come to the Judicial system, in section 188, I mean in the independence of the Judiciary, Section 186 in which we have clause six. It says the salaries and remuneration commission shall ensure that the emoluments of these people are encouraged and integrity and whatever, I think that clause should be removed because everybody in this country deserves a good salary for the integrity to serve the nation. So, when you express by put it that way; it will encourage the Judges to be corrupt. They are said to be corrupt. I think they should do their work because of love of vocation and not for love of money.

**Ajange Okwe:** Thank you. I have an issue on Article 125 (3) where it says; 'if the supreme supervisory opinion commission.' It is their opinion that the Bill is constitutional in all respects, the President shall assent'. My fear is; what if this President does not assent. So that provision should be extended to say, in case the President does not assent, then the relevant committee of the Parliament and that supervisory committee and whatever is concerned with, this Constitution should give the Speaker of the national assembly a go ahead to sign to the same. Thank you.

The second one is on this judicial issue. I have read it from Article 184 through to 207 and even beyond that. Mr. Commissioner I need some guidelines. What exactly was the contention issue of these judges who went to the court. I really don't get apart from the age of sixty-five which is reducing from seventy four. I really don't get the issue meriting. Judges of high court to be challenging this Commission. Thank you.

**Majanja:** Perhaps I can help to answer that. If you have to look at the transitional and the consequential consequences. That is what led to the Judges to go to courts. One, I think the position where we are saying that they have to go again through a process. Those who want to stay have to go through a process of re-examination. To put it generally like the lawyers, that is what they don't want. It is like saying they are not qualified or whatever. That's what they are disagreeing with. So really up here you will not see the transition and the consequences. That's where it is and that is what they don't want. They would want to be assumed to be competent and just to be allowed to proceed to continue upto the supreme court and to continue with their work. I think that's what the problem is.

**Mathews Shitiji:** Majina ni Mathews Shitiji. Mimi napendekeza ya kwamba hapa mahali pa Rais kuchagua ministers. Kazi ya Waziri Mkuu itakuwa nini? Afadhali waachie Waziri Mkuu hiyo kazi. Halafu hapa mahali pa Judges, ningependekeza wa retire tu kama watu wengine. Wasipewe miaka kwenda zaidi mbele. Kwa sababu Kenya hii kuna watu wanasoma zaidi na wanahitaji hiyo kazi ili nao wafanye. Asante.

**Francis Ambani:** I am Francis Ambani Nyatambale by names and may be before I come to the issue we are just discussing right now about the Presidency, Prime Minister and the Parliament. May be I would like to make a proposal about the whole issue of constitutional review just slightly before I embark on the presidency issue. I am of the view that the distribution of this

draft and even the final document that is the Kenya Constitution, the new one be given supreme importance.

By this I propose that; let it be the duty of the Government or may be the Constitutional of Kenya Review Commission to distribute it free of charge to every conceivable citizen of Kenya. Anybody that qualifies that to be a citizen of Kenya, may be who is able to read and write. It should become the duty of the Government or may be the Constitutional of Kenya Review Commission to ensure that such a person gets accessible to the new Constitution of Kenya. The copy should be given to each. I think most of us are in darkness. I have been in darkness all along and even today as we attend to this particular forum, we are not having easy time even contributing here logically. Because some of us are having.....have seen this paper for the first time in our lives may be. I do appreciate that it was published or distributed through the nation on 2<sup>nd</sup> October but how many of us were able to read it. So that's my proposal.

Coming to the present issue we are just discussing in the draft right now, about the Presidency. I wish to disagree very seriously with the idea of somebody holding a degree to become the President of Kenya or may be to contest. Practically speaking or may be based on experience, leadership is a God given thing or a God given talent. You do not need to go to any University to become a leader or a quality leader. Experience has shown us worldwide that infact the most productive leaders name them, may be I will talk of Wilson Churchill of Britain, John F. Kennedy of the U.S.A. The list is endless. Most of you know them. They were the best leaders of the world and they never saw the inside of a University lecture hall. That's why I emphasize here that the issue of the degree should be done away with.

One should be knowledgeable with integrity and so on. May be if we must go for academic qualifications, then let it be stated that he should have at least attained a pass at form four level. The pass could be D+ in the 8-4-4 classification or Division III in the previous system or any other. As per for the age of the President, I do agree with the proposal that there should be an upper limit of seventy and even the lower limit of thirty five I do agree with. My names are Francis Ambani. Thank you.

**Vincent Watako:** Majanja if you might allow me to comment on that, I think the Commission is trying to determine identifiable criteria and that's part of the transparency I think. I think if it is putting down these marks like the University degree, it is an identifiable quantum. I kind of sympathize with them because when we talk about knowledgeable, one foot rule is to see how much somebody has been exposed to knowledge. So, I think that's where the issue comes from. If we just leave it knowledgeable and of integrity, as you all realize it is very fluid.

It is very difficult to do. Somebody could easily say, how did you know that I am not knowledgeable? How did you know? That's my reaction to that. I happened to have some experience in what we call right jobs specifications and so on. Perhaps could we say something like a University degree or equivalent qualification. That would then allow somebody who is not with a degree, we could use other measures to show that he has attained the same level of analytical understanding and appreciation of the national issues may be. That's the equivalent qualification. So that the honours then will go on to the candidate to prove that, yes I do not have a degree but I have this equal understanding, appreciation, breadth and depth of understanding of the issues.

That is what I wanted to say.

**Majanja:** I think we are all getting tired. Let's speed up. Quickly go through it. Make a note and then we can conclude by remarks and comments and so on. However hard we work the day is against us.

**Vincent Watako:** Tutaendelea na sura ya kumi ambayo inaongea juu ya devolution of powers ama kuleta mamlaka mashinani. Kuna maadili muhimu ambayo yako katika sehemu hii. Kwanza sura hii inaleta wajibu. Sura hii iko kwa sababu ya kutaka kuleta self governance, kuleta umoja wa kitaifa na kuimarisha demokrasia baina ya maadili mengine. Equitable sharing ama kugawanya mali ya nchi kwa usawa baadhi ya maadili mengine. Lakini muhimu katika sura hii, yafaa tuelewe kwamba tutakuwa na Serikali tofauti. Tutakuwa na sela ya Serikali za vijiji ama village governments ambayo itakuwa na waakilishi wasiopita sita. Watu hawa ndio watakaa katika vijiji kuangalia maswala ya kijiji. Kutakuwa pia na Serikali ya kata ambayo itakuwa na waakilishi wawili kutoka kwa kila kijiji na pia kutakuwa na locational administrator. Labda mtu ambaye atashikilia wadhifa unaoshikiliwa na Chifu sasa. Ambaye atachaguliwa na wananchi waliojisajili katika eneo hilo.

Kutakuwa pia na Serikali ya wilaya ama district government ambayo itakuwa na wanachama wasiozidi thelathini na wasiopungua ishirini. Kutakuwa na district administrator ambaye atachaguliwa na wananchi. Kutakuwa pia na provision ama Serikali ya mkoa ambayo itakuwa na waakilishi wawili kutoka kwa kila wilaya. Waakilishi hawa mmoja atakuwa mwanamke. Waakilishi hawa watachagua provincial administrator ama atakayekuwa tawala wa mkoa. Mamlaka ya Serikali hizi yako katika schedules ama schedules seven. Kifungu hiki kimegawanya mamlaka kati ya Serikali kuu na Serikali za mashinani. Lakini kwa mukhtasari tu, Serikali hizi zitakuwa na uwezo wa kutoza ushuru.

Pia watakuwa na mamlaka ya kupitisha sheria fulani fulani kuhusu maswala yanayowakabidhi watu hao wanaishi katika maeneo hayo. Serikali hizi pia zitakuwa na uwezo wa kuwaajili watu ama kuajili maafisa watacao hudumu katika Serikali hizi. Serikali kuu ama Central Government pia imehimizwa iwasaidie Serikali hizi za mashinani kwa kuwaajili watu ambao watahudumu katika Serikali hizi. Kijiji kimefanuliwa katika sehemu ya mwisho ya sura hii kumaanisha sublocation. Tukisema village hapa katika mswada huu, unamaanisha sub-location.

Pia kwa haraka tutaenda kwa sura ya kumi na moja ambayo inaongea juu ya mali na shamba. Maneno ya ardhi na mali. Sura hii imegawanya umiliki wa ardhi kwa vikundi vinne. Kwanza ardhi ya Kenya itakuwa ya watu wote wa Kenya na ardhi hii itamilikiwa na mtu binafsi, itakuwa ardhi ya familia, ardhi ya jamaa na ardhi ya umma. Katika sura hii watu ambao si Wakenya ama wageni wananyang'anywa haki ya kumiliki shamba. Lakini wanaweza kukodisha shamba. Shamba ya umma sasa itashikiliwa na tume ambayo imebuniwa katika sehemu ya mia mbili na thelathini na saba.

Pia tutaenda kwa sura ya kumi na mbili ambayo inaongea juu ya mazingira. Kila Mkenya...nimesema ya kwamba ni wajibu wa

kila Mkenya kuyalinda mazingira yake. Sehemu hii inampatia Mkenya haki ya kulinda mazingira na hata haki ya kupeleka Serikali mahakamani iwapo utaratibu ama maswala ya mazingira yanapogeukwa. Haswa maswala kama ya misitu, mali ya asili na maswala mengine yanayohusiana. Kumbuniwa tume ambayo itaangalia maswala ya mazingira ama National Environmental Commission. Iko katika sehemu ya mia mbili na arobaini.

Katika sura ya kumi na tatu ni sura ya public finance na public management. Ama maswala ya fedha za umma. Sura hii iko na masharti fulani. Bunge imepewa uwezo wa kukagua na kupitisha maswala yanayohusiana na matumizi ya pesa za Serikali. Serikali pia imepewa uwezo wa kuomba mikopo nje ya Kenya na ndani ya Kenya. Benki kuu ya taifa pia imebuniwa katika kifungu hiki, kifungu cha mia mbili na hamsini na moja. Maafisa kama governor wa Central Bank, maafisa wengine kama Attorney General, Controller of budget. Afisi hizi pia zimebuniwa katika sura hii. Cha muhimu katika sura hii ni kwamba fedha za umma itapaswa vitumiwe katika miradi iliyonuiwa.

Kwa mukhtasari pia nitapitia sura ya kumi na nne ambayo inaongea juu ya utumishi wa umma. Kumbuniwa tume ya utumishi wa umma ambayo itaangalia maswala ya wafanyi kazi wa umma. Uteuzi wa wafanyi kazi wa umma utatekelezwa na tume hii. Katika sehemu hii, sehemu ya pili ya sura hii, kumbuniwa huduma ya polisi. Sasa hakutakuwa na police force bali itakuwa police service. Hao watu watatoa huduma kwa wananchi lakini sio kutumia nguvu.

Huduma hii itaongozwa na Commissioner ambaye pia atahitajika awe anashikilia shahada ya degree. Pia kumbuniwa kikosi cha correctional services ambacho kwa sasa ni huduma ama idara ya jela prisons. Sasa haitakuwa inaitwa idara ya prisons ama prisons department, bali itakuwa correctional services. Idara hii itakuwa na jukumu la kugeza mienendo ama kurekebisha mienendo ya wahalifu. Pia nitapitia tu kwa mukhtasari sura ya kumi na tano ambayo inaongea juu ya National Defence and National Security. Sura hii inaongea juu ya maswala ya ulinzi. Ulinzi wa kitaifa. Kumbuniwa national security council ama baraza la ulinzi ambalo ndilo litashughulikia maswala ya ulinzi. Watu ambao wanashikilia nyadhifa mbalimbali katika Serikali kama Rais, Makamu, Wakuu wa vikosi mbali mbali vya jeshi watakuwa wanachama wa tume hii.

Ofisi mbalimbali za idara ya ulinzi pia zimebuniwa na kuna masharti fulani fulani watu hawa itabidi watimize kabla ya kuchukua nyadhifa katika ofisi zile. Kuhusu mambo ya ufisadi na maswala yanayohusiana, kuna sura ya kumi na sita ambayo inaongea juu ya national leadership and integrity. Sura hii inaongea juu ya maswala ya uhakiki. Katika sura hii inahimiza ama inalazimisha watu ambao wanashikilia nyadhifa kubwa katika Serikali sasa itabidi kabla ya kuchukua uongozi, itabidi wa-declare their wealth. Pia kuna code ama utaratibu fulani ambao watafuata. Maswala ya ufisadi pia yatashughulikiwa na tume ambayo imebuniwa katika Katiba hii.

Katika sura ya kumi na saba, kuna tume mbalimbali ambazo zimebuniwa katika Katiba hii. Masharti ya watu ambao watakuwa commissioners katika tume hizi na watu ambao watashikilia nyadhifa mbalimbali pia yamebuniwa. Baadhi tu ya tume hizi ni kama tume ya haki za kibinadamu. Tume ya integrity ama tume itakayoshughulikia maswala ya ufisadi na maswala ya ufanyikazi

wa umma. Kutakuwa na tume ya mishahara, tume ya Katiba, tume ya waalimu na pia kutakuwa na afisi fulani. Afisi ya public protector ambayo kwa lugha ingine watu wataiita ombudsman, iko katika sehemu hii. Lakini sasa afisi hii iko na jina tofauti katika sura hii.

Katika sura ya kumi na nane, inashughulikia maswala ya ugeuzi wa Katiba ama amendment of the Constitution. Kabla ya Katiba kugeuzwa itabidi mswada upitishwe katika nyumba mbili za Bunge. National council na national assembly. Lakini kuna sehemu fulani za Katiba ambazo hazitapitishwa na Bunge bila ya wananchi wenyewe kupitia national referendum. Sehemu hizi ni kama sehemu zinazotoa mipaka ya Kenya. Sehemu ya haki za binadamu, sehemu za uraia, sehemu za Serikali za mashinani baadhi ya sehemu zingine.

Sehemu ya kumi na tisa inaongea juu ya interpretation ama ufafanuzi wa Katiba. Katiba hii itafafanuliwa na mahakama ambazo zimebuniwa katika Katiba hii. Mahakama zenyewe, maswala ya Katiba yataanzia katika mahakama ya high court. Labda yapitishwe kwa court of appeal na yafike kwa supreme court. Lakini pia hizi korti zingine za chini, haya mahakama ambayo inashikiliwa na mahakimu, pia yatapewa uwezo na sheria ya Bunge itakayopitishwa na Bunge chini ya sura hii.

Mwisho kuna sura ya ishirini ambayo inaongea juu ya transitional and consequential provisions. Maswala ya daraja. Commissioner ameongea juu ya daraja. Maswala ambayo yanahusika na kuingia kwa Katiba mpya na kutoka kwa Katiba ya yule mzee. Labda maswala ya provincial administration, maswala ya Judges na maswala mengine yako katika transitional na consequential provisions. Labda nitawapatia furusa. Hatukuwa na wakati wa kupitia kwa sehemu hizi kwa kindani lakini hata hivyo tutawapatia furusa ya kuuliza maswali.

**Richard Andabwa:** I am Richard Andabwa again. What I wanted to find out. Like now you have baptized certain institutions new names and we actually have the old staff still sitting there. For example, the police service, correction service that kind of a thing. Will there be a means enforced to kind of change attitude and approaches to how they will actually operate under the new baptismal names? Ofcourse even this same Constitution has the prison service which has also been changed. So probably you may need to amend that one too. Thank you. Section 270 refers to prison service so you need to amend that one.

**Majanja:** If you look there is this constitutional commissions and the powers of the constitutional commission is really to ensure this transition through ensuring appropriate legislation and oral training. I think that is taken care of in the constitutional commission which must oversee this transition.

**Michael Odido:** My name is Michael Odido. My observation in this one is that, when we say administration has been transferred or the name has changed or those people are going back to the Public Service Commission. You have not said the administrative police officers where are they going. You have not mentioned anything like that it is just blank. Another one, we have said about village, locational, district and provincial. Also this place here we gave got Parliament, we have got Councillors

here. You have not also said where the Councillors are going. Because there is nothing mentioned anywhere but they are just saying that they are going to form legislations. Laws are going to be generated from down at the locational village. But where are the Councillors? Where are they? How are they going to be elected? What are the qualifications? There is nowhere mentioned. Another one these police officers, my suggestion is that, if APs have to go back, they should go to police service. So that they can be retrained to come back as police officers. Councillors they have to have education. Actually minimum should be Form four because laws if they are going to be made or starts from down, we must have people who are qualified to sanction that. Thank you.

**Vincent Watako:** Mzee umetoa maoni ambayo tumeandika chini lakini nataka tu kukufahamisha ya kwamba katika utaratibu wa Serikali ya sasa ama katika utaratibu ambao uko katika mswada huu, hakutakuwa na Councillors. Tumechukua mamlaka ambayo ilikuwa inashikiliwa na Councillors na mamlaka ambayo ilikuwa imeshikiliwa na Chief tukaweka pamoja. Sasa labda wataitwa majina mengine. Watakuwa kama wanachama wa labda kijiji ama wanachama wa kata, wanachama wa wilaya serikali ya wilaya hivo.

**Dunston Mtumbi:** I am Dunston Mtumbi. I wanted to propose on paragraph 293, the various constitutional offices. I would propose that minimum qualifications for these offices be specifically mentioned in this Constitution. Some are mentioned, some are not. If you look at these offices, they are very important offices whose occupants we are not going to remove at will. So they should have minimum qualifications for all of them. Thank you.

**Edwin Awino:** My names are Edwin Awino. Let me take this opportunity to congratulate the Commission for doing a commendable job. The Constitution is out in good time so that we can debate about it. We will talk about clause 266, talking about Kenya police service. I can see here that a police commissioner is supposed to have a degree. Some others....so what I am proposing is that; can this term be reduced to five years. For a police commissioner to serve atleast five years. This term of ten years is just but abuse of power. The second item goes to 268 where there is the director of correctional services. The director of correctional services, they have not indicated how many years this man will serve in that office. So I am requesting that, that term should be indicated here so that we can know how many years he will serve. Same goes to 275 Chief of general staff. It has not been indicated how many terms they will serve for five years or ten years or life time. Thank you.

**Charles Lwanga:** My names are Charles Lwanga. Chapter ten, devolution of powers, Section 216 clause one, the village decides whether the village council is constituted by village elders or through elections. That's an ambiguity we must just have one and I think it should be constituted through elections. On Chapter eleven, when I read through this I found something interesting about land. I propose that the Government should set aside specific land for production of food. Let us say it sets aside about one thousand acres. The reason why I came to that was because we are sub-dividing our land because of inheritance and it is becoming very small. That land can only be leased to persons who can produce food and sell to the community. It should not be subject to inheritance when those people die. If they have put any properties there, then those

properties should be valued and that money can now be distributed to the persons who could have inherited it.

The last one I have is that in Chapter fourteen which is section 258, clause H which says 'people will be appointed on merit and promotion to be on merit. Then J says this should reflect ethnic composition of the population. It is not possible to reconcile those two. Because if you appoint people on merit, you might get only from a certain section of the community. If you begin to want to reflect ethnic composition you can't do it. So, you either choose merit or you choose to reflect this in composition. But you cannot have the two sections. So you choose which one to delete. Thank you.

**Ajange Okwe:** I am Ajange Okwe once again. I am on Article 266 (2). This term of Commisisoner of police. Surely ten years is on the higher side. My proposal is that a police officer be given half a term of seven years. My reason is to give that transition between the previous government and the next. So he will have two years in to the next Government and then leaves. The last thing is on these schedules, I don't know if I have gone so tired and hungry but I feel schedule number 6 is missing Mr. Commissioner. So, I don't know whether that is how it is arranged. But I am seeing one, two, three, four, five, seven and eight and six is missing. Thank you.

**Mathews Shitiji:** Jina ni Mathews Shitiji. Mimi nazungumzia maneno ya shamba. Maneno ya shamba imekuwa kikwazo kikubwa sana Kenya hii kufuatana na maneno ya land grabbing. Hii Commission inafanya nini kuhusu hili jambo? Watu kugrab shamba la serikali hata kuna watu wananyang'anya watu mashamba. Kwa hivyo ningependekeza, ikiwezekana uchunguzi ufanywe na mtu yeyote akipatikana mwenye amenyakua shamba, au ameuzia watu watatu hapo mbele. Hao watu wanyang'anywe hilo shamba na ikiwezekana warudishiwe pesa zao.

Julius Makatiani: Thank you. I am Julius Makatiani. My first question, not question but actually to find out if this Constitution is passed and acted on. Are we going to have a President elected this time on the new Constitution? Because there is some conflict here where I see the President should be elected in August and continue for five years. So, I am unable to reconcile those two points.

Number two, is the village or the proposed devolution of powers. I can see quite a lot of resistance and serious handicaps within the villages where the situation has changed so much. The populars depend a lot on the headman, the assistant chief, you know getting their problems solved. I don't see that. I would like to see a proper streamlining of these powers so that the action on cases of law enforcement and so on is passed, together with the village elders is properly streamlined. I would propose that. I can see also a problem where you will need a lot of goodwill to have this sort of thing. It is a very good and very well suggested idea. Infact if wananchi understood it, this is the best way to devolve power. But what I fear is the long time of inability, understanding what we can do particularly in the villages. Those are the two issues that need to be streamlined. Thank you.



**Vincent Watako:** Some of these provisions most of them we have taken care of. We have taken care of transitional provisions. Kama hapa tunasema kwamba mtu ambaye atagombea Urais lazima uwe na ....subsequent elections. That is under the transitional provisions in schedule eight.

**Hudson Ludeki:** I am Hudson Mbaliti Ludeki. I am at Article number 12, 249 that is power of Government to borrow. I want to propose that the Government may borrow from any source other than the domestic source. Thank you.

**Vincent Watako:** May I ask you a question. Why any source apart from domestic. You know like borrowing sometimes you are restricted especially when the donors close the doors. Where will the Government have recourse to?

**Hudson Ludeki:** The Government doesnot have to borrow from the domestic source. Because once it does that the rates skyrocket. So an individual person like myself and you cannot borrow.

**Amwai Muchela:** My name is Amwai Muchela. I would like to propose something to do with the inheritance of land. There are cases where you find somebody dies before disposing the land to the next person. It involves a lot of dedication in court where you find the person who is trying to inherit the land goes to court, he has got to pay a lot of money in court, go to advocate and so on. I would like therefore to propose that incase of a person dying before disposing the land to the next person. If it is a man who dies, the burial permit and death certificate if any, and a letter from the chief and marriage certificate if it is a lady, should be enough document for this person to go to land registry for the name to be changed from the deceased to the person taking over the estate. Instead of going to court to file a case.

**Julius Makatiani:** I am Julius Makatiani again. There is this issue of anticorruption where we are told we as individuals should also assist, but quite often we find ourselves in a very weak position. Where you have nowhere to report or you are reporting to a system which is like that. We need to have a mechanism where the anticorruption or the Commission has also representatives close to the people. Thank you.

**Francis Ambani:** I am Francis Ambani once more. I am on land this time. I would wish to propose that land being the most basic of all factors of production be distributed that is in terms of inheritance, both to the sons and daughters. I propose so because mostly in Kenya, most communities land has only been inherited by the sons leaving the daughters without the most basic factors of production. This infact has widened the gender disparity or rather the gender issue. Making it most complicated for ladies or for the women in Kenya to compete favourably with men in almost all aspects of life. Therefore, my proposal is that, land be mandatorily be distributed to both the sons and the daughters. That is in terms of inheritance and not only to the sons.

**Majanja:** Ambani I think this issue is mentioned in the Act. I think that's taken care of. Now inheritance will not be based on

just boys only. I think it is taken care of. My name is Gesishom Majanja, may I also now make my suggestions also and I am very concerned mainly about the devolution of power. More specifically about the provincial and districts. Reading the Bill, first it is very vague. I propose that the Commission looks at it more seriously because it is something that is going to be new. It must be defined very distinctly very clearly what it is. May I also propose that the powers be vested in the province, not in the district as this is the case. The role of the province should be specified to be legislative and executive. More specifically, the provinces should be given the power of what I call resource aggregation. In other words, raising the taxes and revenue. All of it, not part not local. Let the province raise the revenue for example, if there is any customs duty, accruing in the province, income tax, exercise wherever. Then let the province be the one on an agreed formula remit a portion to the Central government. Then the rest be used in the management of the affairs of that province.

Not the other way round where the Central Government collects all the taxes, particularly the juicy ones and then the province has to go on its bended knees to beg. Rather let a province collect all taxes and remit a portion to the Central Government. In order to do this, I propose that there be a Kenya Revenue Commission which is an independent body which will have branch offices in the provinces. Because of a special skill required and efficiency and independence, it can then be the one collecting that tax. But in the provinces it reports to the legislative body of the province. That is it declares how much tax it is collecting and it is that body which authorizes that portion that must go to the Central Government. I think that way we shall have really devolved power. But as long as we have to depend on somebody in Nairobi to give us money, power is still in Nairobi.

On the issues of the districts, locations and villages, in my scheme of things, they should just be treated as implementing agencies, coordinating at that level. But all the powers be vested in the province. There should be no legislative powers at the district. But there could be some legislative power at the village on very local matters which relate to customs and small quarrels and so on and so on. That's my proposition. Thank you.

**Vincent Watako:** Asante sana Bwana Majanja. Labda kama hakuna mtu na mapendekezo ama maswali, tutafunga kikao hiki na,

**Francis Ambani:** Just a point I think I shouldn't go home with. Ambani Francis. I came in a bit late and you had talked about it and I didn't want to drag you behind over this. It's about the ninety. We are used to calling them nominated members but we have been told they are elected. However, I did feel they are nominated because surely, this is a Constitution we wanted to be wananchi based. Rather the Constitution of the people of Kenya. However when we elect our people and somebody else or a group or a few groups of other people, we shall call them the parties in this case, sit down to nominate on their own. Ninety more to add to ours and given that percentage, the percentage it forms of the total, it tends to remove mamlaka, rather authority from the same wananchi. Therefore my proposal here is that we reduce that number of the nominated ninety members, to a fraction that doesn't become that big. To about thirty. I would propose that we have thirty nominated representatives and not ninety. Ninety is too big.

**Majanja:** With due regards Ambani, you are making a very valid point. But the way things are coming if you follow the arguments all along. In this Country, in the last two elections the group which took over Government, had less than forty percent of the votes. The system as is now, the winner takes all leads to a situation where you are governed by a minority vote. If you look at the data, 1992 and 1997. This idea of ninety, we are trying to elect people so that they represent proportionately the number of votes cast.

The way it is done it will not be like they will be nominated. Before we go into the elections in addition to the Constituency candidates, the party will have already declared who are other people, in a sequence from preference from number one to ninety if you like. And of course they will alternate. If the first one is a woman, the second one will be a man. How that will be allocated will be on the percentage basis of the votes cast. For example, if we have cast a thousand votes and your party let's call it Ambani national party has about twenty percent of the votes cast. Then in addition to getting those candidates who were elected on Constituency basis, we want to compensate you for that 20% by bringing in another group so that we compensate you proportionally. So, it is a complex thing but it is intended to solve a certain problem which we have now. But nevertheless I believe the Commission has taken it. But if you look at it a little more you can see that they are nominated. But thank you very much for that.

**Ojenge Okwe:** Thank you Commissioner. May be my last thing is....my name is Ojenge Okwe once again. When we were here last time in July, my organization which actually deals with corruption is totally anti-corruption called eradication of all forms of corruption in Kenya. We closed by requesting Kenyans to this time round write the Constitution with their hearts and not hands. I tend to believe on behalf of that organization and several people who have read this draft that this Constitution was surely written from the hearts of the people.

Therefore, I would proceed to say that what has been written from the hearts of the people of Kenya should not be taken away or shall not. I am learning to be a good learned brother. Shall not be taken away by the hands of anybody. Be they Judges, Advocates or whatever, I would urge fellow Kenyans that we would rather do without these Judges or advocates but have our Constitution. Thank you for the good work this Commission has done. I want it to go in record that we are going to forgive those nocturnal visitors at Statehouse in the name of Commissioners of this Commission. We shall forgive but not forget. Thank you

**Edwin Owino:** My names are Edwin Owino. I was supposed to refer about Ministers. Commissioners I have suggested that we appoint fifteen ministers and one deputy minister for each ministry. My proposal is this; if the ministries are amalgamated or merged there is a lot of work to be done. So I was proposing that if we can be allowed to have two assistant ministers, to assist the minister in ministerial duties. That's all. Thank you.

**Majanja:** My colleagues I did follow what Mr. Ojenge said. May I also express that I felt uncomfortable when it looked like the Commission and the Judges may be looking for a chance to meet and negotiate. I think I would like it to go on record that I as one of the Kenyan citizens who contributed who made a proposal, made a suggestion in the open and the Commission has carried out its mandate of bringing it together. The Commission should not enter into private negotiations with one group seeking to enhance its position within the Constitution. I think that will be immoral. I think that will be immoral and the Commission should stay clear of that. Thank you. Not knowing what the officers here want to say, personally as the district coordinator, my colleagues from Nairobi, I am really moved by this group.

I am moved by them because one of my jobs here is struggling to get people involved and I always wait in the office to see somebody coming and ask and participate and take it along and do something about it. So, to see people coming here and stay the whole day and follow the events and make the comments you have made. I really want to thank you more sincerely and I feel...you know I can't even express my feelings. Because this is something that I have looked for, for the whole year to get people involved and I am so happy that I can see people who are really serious. You have stayed, you have asked questions, you have made contributions. I just want to ask you to urge all Kenyans to be the way you are. We are where we are because we didn't do what you are doing right now. May be we were not given an opportunity but I was reading another book, 'A good society by a number of....and I remember they gave me one definition. That democracy means paying attention. If you are not paying attention, you are not worth democracy and it doesn't mean anything to you. In my local language as I went round, teaching people about civic education, I liken the democracy to chicks that have been hatched that are walking outside in the field. You know what can happen. The hawks or the kites can easily come and pick it up and go away with it. So most of the time when the chicks are out there, they always tell children to be there also. So that if they see something, they make some noise. Right. They make some noise and chase that animal away.

That's what we have to be doing. Democracy has to be guarded. We have to behave like taking care of those chicks so that they are not...vile vifaranga ili visichukuliwe na mwewe. We have to do it everyday. Democracy is the thing on the battlefield. I am very very grateful to those of you who stayed. I spent a lot of time, I had a vehicle going round. I sent letters even to the administration, the Chiefs, the D.Os, the D.C. Infact I gave them priority. To the women groups, I have dispatched all those papers to them. I felt a bit disappointed that they were not here. Including my committee members who knew that we were having this meeting. So, I am very grateful to you all and I thank you very much. I want you to go home and tell others to do the same. Thank you very much.

Before we close of course we have a very important person here. This is Mr. Charles Lwanga Lwore who was specifically elected by Councillors to represent us. We were to elect three people from Kakamega. But Kakamega is reduced to three constituencies and when we sat here the Councillors themselves said now, since we need three people, let's go by constituencies. So Charles Lwore was actually one of them. In spite of the publicity and the whatever. We sent out information. I gave forms to even women, youths and so on. He was the only one who returned them for nomination and he was elected.

The delegate who is virtually, may I say we know who is about from Lurambi in addition to your MP. So let me give him just a few minutes to say a word. Perhaps to get to know him better and he can tell you where he can be found and where you can get him and so on. Charles.

**Charles Lwanga:** Thank you Mr. Majanja, thank you the group from Nairobi and thanks to all of you for coming here today. The Councillors are not here but I thank them I had an opportunity to be elected to go and present your views.

Time again we have had consultations with Mr. Majanja and we resolved that for us to go to Nairobi and fairly represent your views, we must be here and listen to what you say, take every recommendations papers and so on. So, I would simply say if within today which is Wednesday and next week because we should leave next week, you have anything that you have not said here, you can put it down on paper and bring it to the office of Mr. Majanja. I am certainly sure you know where it is unless you don't know. Then, I will be checking there until Monday and I will pick all those and represent you fairly.

You can be sure that I have heard other stories of people being bought. Not me, I am the wrong character. So, if there is anything of buying anybody I will be the last one and I will be an exception. So you can be certain that if you want, like Majanja said, you want your powers to go to the provinces. That's exactly what I am going to say. Many of the things you said here are the ones that I am going to articulate. So that your views are reflected there, not mine or his. Thanks a lot.

**Vincent Watako:** Kwa niaba ya Commissioner na kwa niaba ya mwenzangu Patricia tunawashukuru kwa your patience. Tumekuwa hapa tangu asubuhi na tunaona wengine wenu wamekuwa tangu asubuhi. Tunawashukuru sana. Sisi kwetu ilikuwa wajibu na tunatumai tumetimiza. Labda tutampatia district coordinator afunge kikao hiki na labda tutafunga na maombi.

**Majanja:** I have said all I needed to say. A Muslim helped us to open, can we have a Christian pray for us to close the meeting? Any volunteer Christian?

**Linnet Matuale:** Let's pray.

Our Heavenly Father we thank you this evening for this far that you have brought us. We want to give you all the glory, all the honour because we have seen your Hand. We have seen you Lord, you have helped us. Since we started this meeting, you have been with us upto this end, father we say thank you. I just want to commit every person that has participated in this meeting into thy able Hands. Ya kwamba Bwana unaendelea hata kuinua wale ambao wataendelea Mungu wetu kuwakilisha maoni yetu mbele ya watu wako, Mungu wangu ukazichukua pamoja na hao. Ninawakabidhi hata Commissioners mikononi mwako nikiwaomba Mungu wangu ukaendeleo kuwapa nguvu na kuwapa hata neema ya kuendelea Mungu wetu kusikiza maoni yetu. Ninakabidhi kila mmoja ambaye amekuja mahali hapa ili akapate kutoa yale Bwana anayeona inaweza kumsaidia na kusaidia nchi yetu. Ni katika jina la Yesu Kristu tunasema ni asante, ni kikabidhi kila mmoja mikononi mwako.

