

**CONSTITUTION OF KENYA REVIEW COMMISSION**

**(CKRC)**

**Verbatim Report Of**

**DISSEMINATION OF REPORT & DRAFT BILL**

**WESTERN PROVINCE, KAKAMEGA DISTRICT**

**AT SHINYALU MARKET, PEFA CHURCH**

**ON**

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

**DISSEMINATION OF REPORT AND DRAFT BILL**  
**SHINYALU CONSTITUENCY, SHINYALU MARKET, AT PEFA CHURCH**

**Present :**

Com. Mutakha Kangu

**Secretariat Staff in attendance:**

Leah Simekha - Asst. Programme Officer  
Flora Wafula - Verbatim Recorder

**3Cs**

Gerishom L. Majanja - District Co-ordinator  
Handa Asiebela -  
Petronilla Khayesi -  
Mr. Khamasi - Secretary  
Tim Isenye -

**The meeting started at 11.00 a.m with Commissioner Kangu in the Chair.**

**Gerishom Lujitio Majanua :** I hope we are in a position to get started and I would like to take this opportunity first to thank you all, wale ambao mmekuja, for coming to this meeting. We are privileged we have Commissioner Kangu here who is representing Western Province in the Commission *khandi no mwana Muluyia*, so he will tell you if you want Kiluyia, Kiswahili, Kizungu, he will tell you.

I just want to state that I have two Committee members here, the rest, who are members of the 3Cs, have not arrived. We have Mr. Handa Asievela over there and we also have Petronilla Khayesi who is also a member, most of you know her, and the gentleman who is writing, that is Khamasi the others will come as we go along. We have Tim Isenye who is going to help to record. And what I will do, I will hand over to the Commissioner and he will tell you the officers that he has come with and we will just start the Programme straight away. Others will join in as we go along. He will tell you the objective and I will leave that to him.

Kama tuko na watu ambao, tutajaribu kutumia lugha ya kuelewana. Kama tunaongea Kizungu kile kitakuwa too much, mnaweza kusema sasa hiyo inaingia inanisumbua. We are at home, hapa ni kwetu, ninyi ni Bisukha si ndio? Hata wengine kama si Bisukha walikuja kwa Bisukha, lazima ni watu nini? Ni Bisukha. Sasa tuongee, hiki ni kitu cha maana sana, tuongee freely. Kwa hivyo Commissioner, Sir, I take this opportunity to hand over the gathering to you to guide them as you came.

**Com. Kangu :** *Abesukha milembe mwesi, milembe khandi.*

**From the floor :** *Milembe*

**Com. Kangu :** *Isie elira bananganga Mutakha Kangu erulanga Ibutere yiyo, ndi mulala khu Commissioners bamwahesia emilimo mbu bamukasilie Ikatiba.* Leo nimeambatana na officers wawili kutoka Secretariat kusaidia ile kazi tunayo. Hapa kuna huyo msichana anaitwa Leah Simekha ni Programme Officer, ataandikisha some of the comments mtapeana so that zitakuwa reflected. Unajua huwezi kujua wote lakini unajua mmoja na wengine unasahau. Ni vizuri tuanzie na kuomba Mungu, si ndio? Okay.

**Gerishom Majanja :** Enoch tunaona wewe ndio utatufungulia.

**Enoch Lichina :** Ewe Baba, tunakushukuru wakati huu umetuongoza kutoka nyumbani kwetu kufika hapa kwa kusikiliza Katiba yetu ya Kenya. Ee Mungu Baba, wale ambao wamesimamia mkutano huu uwape maarifa na nguvu. Roho mtakatifu atuongoze kwa kuzungumza kwetu na kusikiliza kwetu. Naomba machache kwa Jina la Mkombozi wetu. Amina

**Com. Mutakha Kangu :** So nilikuwa nasema Simekha ni Programme Officer, zile comments mtapeana ataandikisha na huyo mwingine anaitwa Flora Wafula naye ndiye anahusika na hii mtambo kwa sababu mkipeana comments lazima pia tunase kwa

sauti *khulwa khwakhamanya mbu mwabola muriena*. Na kwa sababu tunaweka record mnajua tukianza hii kazi *khwali nende* an Act of Parliament yenye ilitoa utaratibu wa kutumia. Hii Act ilikuwa imesema after taking your views vile mlipiana in August tutengeneze report, tutengeneze Draft Constitution na mpatiwe 60 days za kusoma hayo mambo kujadiliana na kuona mmefurahia ama kuna sehemu mngpendelea zibadilishwe. *Na mwahulila buyoka burulilanga* that we may not have enough time ya kufanya hayo mambo yote tumalize, hata ilikuwa imesemekana baada ya nyinyi kujadiliana tutarudi kwenu at the Provincial level kusikiliza your comments before we finalize the document tuende to the National Constitutional Conference. Hiyo sheria ilikuwa amended sometimes in August wakabadilisha few days that I had myself said earlier it was not going to be possible kumaliza hizo siku zote before election- because at that time people thought may be some of us are just being difficult, but the truth is that we were telling Kenyans the truth and I said unless we amend the Act and change a few things, it was not going to be possible to finalize. So the Act was amended, wakasema instead ya nyinyi kupatiwa 60 days to study the document mpatiwe 30 days within which you should study, discuss, read and send comments. Tena wakasema, they will have to do away with the Provincial hearing at which tulikuwa tunatakikana turudi mtupatie your comments so that once you have read through we go straight to the National Constitutional Conference.

However, in the Commission we have tried, sisi wenyewe – nasema nikichanganya so that tuweze kusikilizana. Tumejaribu kuhakikisha we improvise so that we make use of those 30 days, tukasema when we come out to explain the document ile tumetengeneza, we can also take some comments from the people where they think they are not happy with what we have proposed so that we be able to see how that can be rectified. It is for those reasons that I have come with these two ladies, they ought to take those comments. I will also be hearing you and noting them down but we must record them so that tukifika at the National Conference, we can continue refining this document ndio itokizee what the Kenyans themselves as a people say they want.

Now, when we finish this process many of you must be aware that the next stage, itakuwa the National Constitutional Conference and there must be already appointed or elected delegates for Kakamega District – I don't know whether anyone of them comes from this area – because I am also saying, if we are not going to be able to take all the comments from people here and I know we are not going to because, one muda haitatosha, two some of you have just received this document and you may need to read them, you may need to discuss them before you can make well informed comments. Sehemu zingine, nimekuwa, I have been advising the people that I will take you through the document, the main highlights, to give you the main beacons so that you can when you sit down to read through, be able to visualize and conceptualize what we are doing. Then there after, please kaeni chini as an individual, as a group, as a community muandike your comments, write them down properly, identify the areas zenye hamfurahii, give your reasons and do your proposal, an alternative to what we have proposed, halafu mpeana kwa Bwana Majanja as the District Co-ordinator, atapitisha the copy to us. I would also like that as you give copy to him, those delegates wenye wamechaguliwa from Kakamega District must also get copies of what you people of Kakamega District feel about it. Kwa sababu hao ndio wataenda to debate, discuss, approve or reject this document.

Tukienda National Constitutional Conference, although we the Commissioners are members of the Conference, the law says we shall be allowed to participate in the debate, in the discussion but we shall not be allowed to participate in decision making. When decisions are being made we shall not be allowed to vote, the people who will be allowed are those delegates. So they are the ones who must get down to understand the areas of concern to the people of this area ndio wakifika huko they can be able to raise them and articulate them in a very informed manner, so that they can convince the rest of the members of the Conference to be able to change if you want anything changed. That is their business, those are now very important people (inaudible).

**Councillor Ahindikha :** Now in Kakamega, *khwakhola election on 15<sup>th</sup> Mweli kwabira. Na Shinyalu bachagula Councillor ---- Luchitio naye delegate khurula khu Shinyalu, khurula Ikolomani bachagula mukhayo wundi alwangwa Dorcas Shibia khurula Lurambi (inaudible).* Na watu wa Shinyalu wenu ni Councillor Ahindikha nilimpatia habari ya kuja hapa (inaudible) Lakini wengi mnanijua Councillor Ahindikha sio? Huyo ndio kutoka hapo.

**Com. Mutakha Kangu :** Fine so those are the people who are going to make some of the most important decisions, kwa sababu maneno ikitoka kwa National Constitutional Conference, itaenda Bunge na Bunge ni kupitisha bila kubadilisha. Sababu nasema hivyo ni kwamba the Current Constitution and the Standing Orders say a Bill to amend the Constitution cannot be itself amended on the floor of the House. So that means that the decision that will be taken at the National Constitutional Conference and be reduced into a Bill that will be presented to the Parliament as a Bill to alter the Current Constitution and introduce a completely new Constitution will not be amended on the floor of the House. So apparently, Parliament may be just a rubber stamp, either they pass the whole of it or they reject the whole of it.

In addition to those delegates you also need to know that your members of Parliament, *ababunge benywe bos* are going to be delegates at the Conference, so if you cannot get Ahindikha you know your MP, you must also educate them, they must go to the Conference clearly educated, informed on what the people want because they are going to add these things on your account so you must prepare your servants. They are not going there just because they are going there, they are going there to represent you and they have every duty to listen to you and carry your views and comments to the Conference.

Now mukupatia kazi mlisema, we consult with the people watupatie maoni thereafter we prepare a report that is supposed to reflect the views of the people, we base our report on your views, we base our report on our own research and consultations with other professionals and be able to produce a report that can capture the wishes of the Kenyans.

Na wakati tulimaliza kusikiliza maoni yenu in August in Western Province, which was the last Province ya sisi kutembelea tulienda tukakaa chini. We went to Mombasa we stayed there for a whole month, tukichunguza maneno nyinyi na Wakenya wengine wote walisema, we came up with a report. Our report is about 1000 pages it is still being edited na ikiwa tayari copies will be made available watu waweze kusoma waelewe, unajua hii makaratasi nimepatiwa, they are not enough, ukitoka hapa

nayo get other people who can also read to look at it, *mundu nanyala khutsia khukhola photo copy*, we want these things to go everywhere. By the time we have the Constitution, Wakenya wawe wanaelewa, what kind of Constitution we have in place and the basis for that Constitution, the type of government and so on. So hiyo report ya about 1000 pages when ready it will be made available.

Lakini we extracted a summary from that report na tukai-release, when you read wakati tulikuwa Mombasa, when we said we are releasing the report we were releasing the short version or the summary of that huge document which has a lot of detail na hii ndio tulitoa inaitwa the Report of the Constitution of Kenya Review Commission short version, but popularly referred to as the People's Choice. When we were discussing, we initially wanted to call it the People's Design, vile una-design nyumba yako. The people have designed how they want Kenya to look like na tukasema na iwe hivyo but when we came to our translators, to translate in Swahili, wakasema the People's Design, doesn't come out in Kiswahili properly, so they said the best is the People's Choice kwa sababu in Kiswahili it becomes Chaguo la Watu, la wananchi, so ndio tukabadilisha. So this is the People's Choice na mnajua the people have been put at the center of everything that we are trying to do and I will explain to you.

Now in addition to this short report, the main report, we also have Constituency Report ya kila Constituency watu waweze kusoma just in narration form what they said in that Constituency what are the features of the Constituency geographically, what is the population like, the economy, economic activities, those reports are there Constituency by Constituency na ukitaka kuangalia ile ya Constituency, iko kwa ofisi huko, kuangalia yale mlisema kweli yalichukuliwa ama namna gani. Now hata hii mkitaka, you check with him at the office kama unataka kufanya photo copy, unaweza fanya photo copy, lakini wale walinunua makaratasi, newspapers around the period we released, there is a day almost all the newspapers, zilibeba the entire report, so kama ulinunua unaweza soma uone kweli, na tunasema Wakenya walitumbia nini ndio tukakuja to the conclusion.

Wakenya pia walitupatia mandate ya kusema mkimaliza report tena mtengeneze a draft Constitution a Draft Bill ya kusema, based on the report, what kind of Constitution do the Kenyans want. Sasa tumetengeneza hiyo, hii ndio my copy ya the Draft Constitution na yale makaratasi mko nayo, is the same one. Everything which is here is in those papers that you have been given. The Constitution that we are proposing to the Kenyans. Na mjue kwa kiwango hii ni mapendekezo tu kwa sababu tukisema tupitie various stages ndio tufike kiwango *nikhwakhachunga kabisa khwakhamanya mbu* this is what we want, *khukhubisie khubole* this will be our Constitution. It is a proposal you are free to scrutinize it, to criticize, to make corrections on it kwa sababu we are saying we are not perfect as a people and in any case the Act knew, wakati Parliament ilipitisha walijua we are not perfect, we must propose na watu wenyewe waangalie waseme ndiyo hiyo ndiyo tunataka, ama geuza pale, badilisha pale. So they are proposals, tunataka msome mjue inasema namna gani?

This document iko na mambo kadha, and I will talk to you kuhusu maneno yale yako hapa, on the basis of what a Constitution does. Wakati tulikuwa tunafanya civic education, *nali ndi emwalo yiyo nukhubola na bandu yo* and I told them what the

Constitution is supposed to do, I never came here but the general position which I told people *yali mbu* a Constitution is that law that deal with the management of the common power, public power, watu wakisha kubaliana wakae pamoja, they pass a law that decides on how power is going to be shared out, it is going to be defined, it is going to be exercised, how that exercise is going to be controlled and so on and on whose behalf is that power being exercise being allocated. So before you today, I will talk on the basis of what a Constitution does, and I will go into a number of details that go beyond what I have stated in general terms.

Kwanza we will be saying that you can use a Constitution to constitute a people into a given society. In this case we can say you can use the Constitution to constitute a people into a State, to constitute a State. So a Constitution has a constitutive pattern and in time, to propose a Constitution to you, we are trying to see whether our proposals can actually perform those functions of constituting the Kenyan people in to a particular society, into a particular State and so on. Now in constituting a people or in constituting a State, we again as a State lazima iwe na vitu kadha.

A State must have a territory, *nuli mundu musatsa nelitala, wesi ubolanga uli ne litala paka ube nomukunda kukwo ta? Kumanyinjia kwanje ngwoku, nobola litala liang'ane nuunyala khubola umukunda kwanzilanga yaha makutsia kula yaha. Mundu musiani nashili mwitala lia sa mwana wakhabola lienelo ne lilie litala? Shiabetsa nali mu lia sa mwana?* So a State for it to be a State must have a territory, *amaloba ka ibolanga umupaka kwefwe kwanzilanga yaha makutsia kuri makutsia kuri.*

A State must have a people. *Litala khandi paka libemwo abandu, nibetsa bafwa bosi, nabaluyia bamanyanga babola, likunda liali lia fulani shichila bulano abandu bahumayo, liatong'a likunda, nohomba enywe mmbola muriena Abesukha? Shikali kario?* So a State must have a people who constitute that particular society, who constitute that particular State. A State must have a government that runs that particular State and the affairs of the State that exercises the power ya watu, kwa niaba ya watu.

A State must have some guiding values, *nikhwamenya mwitala mwefwe muno*, these are the values, *yule umukofu ubolanga mungo mwanje muno mwana umwivi mwo shindenyanga ta, imele ya hango hefu yenyanga ibe yiri, nolwohulilanga kata omukhana, umusiani niyakhenya okhuteshia ni khandi babola ta ha wefu hano shikhwenya umukhana urula mu yinzu ye liloko ta.* Because you have a set value, you have some values laid down which run the home. So even a State must have specific values on the basis of which it is organized, it is run and so on.

Now, a State in having a government, it must also define how that government is run. So the Constitution also performs the functions of allocating power, the common power, so we say it becomes a kind of power road map. In states, in this particular State, this is how power is supposed to be exercised, this power is divided in various categories, there is this particular section of the power, there is this one of the power, we allocate this particular one to this particular arm, this is how it will be controlled,

this is how it should be exercised and on whose behalf and for the benefit of who? So those are the important things which we want to use to run, to go through, about these documents and when we go back to the State and the Constitution has its constitutive facts, you will also find, when it is saying this is the government we are going to have, it must also identify the source of power.

Where does the power come from that is going to be used to run that place? Now, we attested in the proposal we are bringing for you to constitute the State of Kenya and we are saying given the historical points in time when we are writing this Constitution, we may not be in a position to constitute Kenya as a State because it is already constituted, we were constituted by the colonialists, they are the ones who came here *nibabola nibateta butswa nibabola Abasebe bano inywe mwitsa khuba mu Kenya, Baluyia nibateta khu balala nibalekha Uganda yeyo nibabola bandi babe yino, nibatsia nibateta khu Abamasai yiyo balala batukha Tanzania yiyo bandi baba yino* namna hiyo and we were together people we didn't know, we had nothing to do with them by the time the colonialists were coming. Baluyia were a nation of their own, *Shikali kario?nende bami babo Bawanga bali nende Abasebe* they had their own way, *Banyolo*, they had their own way. But the colonialists are the first people who constituted us into a State, into a society known as Kenya. *Bakhuteta butswa nibakhura halala, nibabola* now this is Kenya, you are Kenyans and we started off.

So when we said we want to write this Constitution we said we do not want to disintegrate that State, so our Draft is not proposing to constitute Kenya into a State afresh but all we are doing is to recognize that fact that we are a State known as Kenya and when constituting a State and sending out the values that are supposed to govern the State, you must also identify the ideology of that State, it is a State of what kind is it a monarch? Is it a dictatorship? An autocracy? Or is it a Republic?

Now, our current Constitution says Kenya is a Republic and after our long discussions we decided that in recognizing the Kenyan State as it is, we think we must also maintain the Republican ideology and we said we are not going to change that, Kenya will have to remain as a Republic. So if you look at Chapter 2, Article 6 of our proposed Constitution, we are constituting the Kenyan State or recognizing the Kenyan State as constituted by the colonialists and we are saying in Article 6(1) that Kenya is a Sovereign Republic.

We are saying we are going to retain Kenya as it is, we are not going to divide, *khubolele Abaluyia munyala khwiyunga mu Kibuganda yeyo*, we are leaving it as it is and the ideology we are saying we are going to maintain the Republican Ideology. But we are saying the Current Constitution says we are a Republic but it doesn't do much to explain what is meant by a Republic. And many Kenyans if you talk to them they are not able to tell you what it means to be a Republic. They don't know the values that underlie a Republic and so although we say we are a Republic, in reality if you look at the way things are being run, you can say we are an Autocracy, we are a dictatorship and now we are almost moving towards a monarch where power has become a pendulum that will be swinging between two parties.



We are saying this time round we must say, we are a Republic and we should be able to understand what a Republican government means. If this Kenyan people, *abandu be Shinyalu bano*, if you are going to fight to protect our Republican Ideology, you must be able to understand what republicanism is all about and so in this Constitution, we have attempted to do that. The details are in the report but I want to explain that to you, *khumumanye*, when you are reading through the Constitution you will be reading with your mind focused that our ideology or the underlying value in this Constitution is republicanism. We will come to the details at a later stage when I am talking about values, but if you look at Article 6 (2), we have attempted to give a few of the details of a Republican system and we are saying in Article 6 that the Republic of Kenya is founded on republican principles of good governance, through multi-party democracy, participatory governance, transparency and accountability, separation of powers, respect for human rights, fundamental freedom and the rule of law. I will come to that at a later stage, but for the moment we have to move to the second aspect of a State and that is a territory.

That the State must have a Territory. The current Constitution does not at all attempt to define the Kenyan Territory and clearly point out the beacons the boundary, *mukunda paka umanye ulukaka lulwo lulanga habulebe*, so that *umundu natema ukhukusia ulukaka*, you can be able to identify. *Tsikokho tsitsio nitsitsia tsianza khulia makanda kuwashio*, you can be able to know *mbu kweli ingokho ilia iruchile, ing'ombe nuba nubira khunjila khulia nolola nilitsanga matuma, nulola olukaka ulola ni ing'ombe ya wina irumile olukaka lulia ilitsanga amatuma kanje, shikali kario?* So you must know where the boundary begins from, *emanyile abandu be Shinyalu*, to you that is *almost an irrelevant because it doesn't bother you because you don't leave near the border, lakini nutsia nureba bandu Busia yilia* it is a big issue that we have not in our Constitution clearly defined our boundary and as such, they are suffering a lot of insecurity and other problems because of failure of defining the boundary, *nolasira mukunda kukwo bulayi tawe owundi nalime butswa ne tsing'ombe nibakhupa lichoki nibasutia imbako yitsa yitsa, nunyole wundi nalimanga kukwo mukunda noho mba nawe nutsia khulima nubola bu ukwanje kulilanga hano nakhukania warukile mu kwanje mukunda*.

Those are the problems *tsia bandu ba Busia* are facing today. *Nutsia Port Victoria yilia nutsia imwalo yilia*, they are suffering particularly the boundaries on the Lake Victoria are a big problems for those people. *Bandu ba Busia balilanga nibabola efwe bulano Uganda yakhufutia lukaka*, and our government is seated doing nothing about it. We had boundaries that had been drawn by the colonialists, *mana nibara beacons kata mu Nyanza mulia*. They were showing but when Uganda defined its boundaries in their Constitution in 1995, they decided to define their boundaries in the Constitution and in the process, they defined some of the parts that were Kenyan as being Ugandan and our government sat back and did nothing about it. In fact *abandu ba Busia balila babolanga mbu* when this issue arose, Ndolo Ayah who was the Minister for Foreign Affairs at that time went up the Press and said that boundary is correct what Uganda is saying is correct, the Kenyans should not complain but that is part of Uganda *na bandu ba Busia balilanga ma babolanga now khulimanya khuli Baganda nohomba khuli abandu shi?*

They are having a lot of problems, *ndakhabolelwa* this morning *nende wabeleyo* they are still not even happy with the

definition we are giving here because *babolanga* that still leaves certain parts of Kenya in Uganda and I said I want details of them so that we can go back – I hope it is not law yet – we can go back and be able to have the National Conference address the issue - I don't think it is worthy it – to address the issue so that it is rectified, *abandu ba Busia* they are crying, *babolanga imichela chirulanga mu Kenya, it pours into the lake, ne homuchela kutsiranga munyanza* that is where fish breeds, then the fish goes into deeper waters to fatten, now when they want fish they have to go into the deeper waters to get the fattened fish. When they go there, they are told by the Ugandans, you are fishing in Ugandan territory, we cannot allow. And there are a lot of problems going on there, security men from Uganda they harass Kenyan fisher men, they cause them a lot of problems and they don't know what to do. So we are saying this time round we must define the territory in the Constitution clearly so that the Kenyan people can feel safe knowing that it is our boundary.

We have proposed some definitions here they are telling us it is not sufficient and we are saying this is why we are going back to the people. So that they can tell us, we don't like it, we want them to tell us the clear position so that when we finally pass the document it is known. So if you look at Clause 7 in Chapter 2 you will see that it is under that, that we have attempted to define the Kenyan territory and we have done this by annexing two schedules to the Constitution, if you look at schedule (1) the first schedule and the second schedule at the back of your document, that is where we have put the definition. This definition came from the department of survey, it is a very technical document but it has tried to show what is our boundary with Uganda, what is our boundary with Tanzania, what is our boundary with Sudan, what is our boundary with Ethiopia and so on. As I have told you Busia people are disputing these records from the Government and so we must think about it and my position was that this might be a matter on which we need a little more investigations into the history and we will need some negotiations with neighbouring countries particularly where we have disputes so that those boundaries are settled once and for all for the benefit of our people.

Because we are saying when you come into a society to live together you are saying we are going to put resources to make sure that each individual who forms part of the larger society must find security in the larger society, must feel protected by the larger society. So if we sit back here, *bandu be Shinyalu khubolanga mbu inywe muhuma yinu mpaka* and your brothers *balilanga Busia hano* then that will be going against the very idea of coming together so we must think about that. So that is the issue of territories which we have dealt with at Article 7.

And we are saying after you have decided that this is the territory, you must also identify the capital of the State and in this proposal Article 8 we are seeking to identify Nairobi as the Capital City of the Republic known as Kenya and we are saying at Sub Article 2 of Article 8 that Parliament shall enact legislation to provide for the status and government of Nairobi, this will be in terms of the devolution arrangements that we will discuss at a later stage.

And we are saying Nairobi as the National capital will be managed, to be governed in a manner different from the other units of devolution of power. That is what we are saying there, but we are also saying since one of the purposes of government is to

serve the people, our experience shows that the locationing of all government headquarters and departments, and government institutions in Nairobi does not give access to all the Kenyan in an equitable manner. There are many Kenyans who pay more to access government services because they live very far from Nairobi. Some of the services are services that can easily be located in other places. So we are saying in Sub Article 3 of Article 8 that it shall be the policy of the State to decentralize the Headquarters of National government, I don't think that you have anything there, may be we can just ignore it and go on. *Shimumbulila* ama sauti inaenda nje. It is not there yet, there is nothing.

So we are saying that it is the policy of the State to decentralize the Headquarters of National Government Departments and National Public Institutions to all the Provinces equitted. *Emenyire* many of you don't understand the Economic ramifications or implications of having Nairobi as the Capital. Many of you don't know that but the truth of the matter is that when you put the Capital and everything in Nairobi, you give Nairobi an opportunity to suck resources from all other corners of the country to itself starting with human resources, *enywe musominjia abana muno nimwakhamala mana omwene ubolela omwana, mwana wanje tsiakhu Nairobi neyo wonyala khunyola omulimu* and this is a human resource you have to spend twenty or more years to prepare *numuruma Nairobi yilia tsiokholele abandi, nenina omutoka shikhaya ne milimo chia batsitsa Nairobi yilia some of them nechinyala okhurebwa butswa hano, nibakholela Kakamega hano ta? Lakini mukorungwa nibakhola Nairobi yilia nibatukha nibakholayo chiene emilimo balanyola kweli balakhola ne khandi nashili khutsia khandi khurebe ne bulano kata nikhubolela umwana atsie Nairobi, ni mwikho shina uliyo wunutsie khwingisia omwana akhole nashimenya ninaye nakhaba emilimu*, You start looking for a relative, isn't it, *mana lutsitsanga nutsia Nairobi yilia nonyola Umuluyia noho Umonyolo the relative wayamenya ninaye* is a third, fourth, fifth person. *Mana nuwakana nubile nuchenda numurafiki wuwo musebe numbolela* this is my cousin. *Mukamba namwakane khandi umubolela*, this is my cousin, *khataru, khane nabasebe bandu babola na hii Baluyia na Jaluo kwani* the whole village are cousins? But they don't understand the economic dynamics that force you to go and stay with that person. **(end of side A)**

*Utsiekho Nairobi nunyola shibarwa, ukhole nishihuma ne khandi uchelele munzu. Nawe* you cannot do that *paka ukhabe omwikho, shikali kario?* This is caused by putting everything in Nairobi, *milimo chiosi khwachinga khwara yiyo mana abana benabo batukha bakhola yiyo milimo akhola, mang'ondo tsana akanyolayo lakini khandi arumishilanga kosi ibwenila katong'ayo.*

There is nothing that they repatriate back to this place, not because *baloba*, But because they don't have enough. You live all in Nairobi than to pass something down. *Mana enywe menye mulindanga lwatukha muhika kwahawa yenya khutsia bulano yengo atsie alolekhushie mu-Christmas, naba niyakulile khatoka nayila kalaha mu reverse mana atsie yinia ha Uchumi mana yenjilimu natukha narulamu na makaratasi achinjile ari, mikate nitsisukari nara mbuti amang'ondo alekhayo amulerelanga consumables. Isn't it? Nalakhachinga amang'ondo yitsi khukulakhu hano narwo khorung'ondo rwanze khusaculatakho mukari muno* from the shopkeeper in the local village.

There are serious economic implications coming from this issue of putting everything in Nairobi and it is something I have talked about very strongly in other places I have given civic education. *Nayitsakhu Shinyalu hano kabisa tawe lakini nalikhu imwalo yiyo.* I have spoken about it very strongly and I am happy that it is now rearing its head in this document because I managed to persuade even my colleagues and there are a few clauses here which are now saying and like I am telling you Article 8 (3) we have said clearly it shall be the policy of the government to decentralize the Central Government Departments and National Public institutions to all the provinces equitably. So that *nimubakhu nende bindu bindi hanu the National Headquarter of certain things bibe Kakamega hanu, mulanyola* all the workers in those departments will be based in Kakamega. The money, the salary they earn, they will be spending around Kakamega. *Nabenye sikuli, nabenye tsinzu, nabenye tsifwa,* then the farmers around can have a market to sell their vegetables isn't it? *nindio ndabolela abandu,* most of our people have never come to understand the value of decentralized government, *babolelwangwa butswa no yesho neshibi, mana* they have made decentralized government look very ugly by giving it a name Majimbo *abandu babolatsa* but they have not understood the dynamics that go with it.

If you go to other countries, developed countries you will be surprised there are many big cities across the country. It is not only the Capital that is the city, they have many other cities. You simply need to go to Germany and you will find there Munich, there is Cologne, and so on, several of them, some of them housing very important National Government Institutions. If you go there you will find the Constitutional Court in Germany is located in a city called Kalsroy. There are certain things that are in Berlin, kwanza where the Wall collapsed, *bulano* they are moving the capital from Cologne, but they are leaving certain things in Cologne so that they don't want Cologne to collapse. *Nutsiayo,* they manufacture motor vehicles - BMW, they manufacture Mercedes Benz. You will find Mercedes Benz is headquartered in one city. BMW is in another city. They are not all in one big city and many people there, they also manufacture a lot of medical equipment, they are again distributed across the country.

So you find, it becomes very easy for one to choose where he wants to live because almost all the cities have all the facilities for good living. Good life, *lakini mu Kenya abandu bahenganga Nairobi nachachile business hanu,* this is just a stepping stone, when he has tried *nabola bulano* he wants to relocate to Nairobi which is denying the local people the services of some of those people even professional *enywe musominja abana* all the good doctors are in Nairobi *nanywe hano mubula, nutsia ebunyolo* yiyo you find one village that has produced five doctors. They are all practicing in Nairobi or other towns. Their mothers are being seen by village quacks, *bakhalangwe* when their mothers have died in the hands of village quacks and these are the mothers who have trained these doctors they have toiled and toiled to train them but the point is that the reason these people choose to go there is that, that is where the economy around can sustain their profession, they don't do it willingly. If you make the economy around Kakamega here to sustain their profession and put some of the facilities of good living here they will see no reason to go to Nairobi, isn't it? *Bakholela butswa emilimu hambu hanu.*

There are very many things associated with that, if you have opportunity to go to South Africa *nunyola* the Executive capital is

in Pretoria. The Legislative Capital, Parliament is in Cape town. Before 1994 the Judicial capital was Bloemfontaine the Supreme Court *yali* Bloemfontaine, *bulano* after 1994, when they introduced the Constitutional Court *nayo nibachira* Johannesburg. The reason is because they want to distribute the resources in the country equitably in all the regions of the country so that every region has some activities, good economic activities around it. So that when the Ambassadors who are stationed in Pretoria want to attend Parliament to see what is happening in Parliament, they will be forced to carry money and go and live in hotel in Cape Town attending Parliament to see what is going on, so they are carrying money from which they earned in Pretoria they go and pour it in Cape town. *Naye mundu* wa Cape town when they want to follow things in the Ministry or they want to see some ambassadors, they will have to carry money from Cape town and come and pour it in a hotel in Pretoria. Now if you are in Pretoria you want to go to the Supreme court you will carry money and go and pour it in Bloemfontaine, *naye mundu* wa Bloemfontaine *ninyenya khutsia* in the Constitutional Court he will carry money and go and pour it in Johannesburg. So money is flowing in the country in all directions *lakini hawefu hanu* money flows through all the other corners of the country to Nairobi *nabo ba Nairobi balia* they have nothing that will make them carry money and come and pour here because there is nothing they are coming to follow here, that is why we are saying we must, it shall be the policy of the government to decentralize not even the government, the State to decentralize the Headquarters of National Government departments and National Public Institutions to all provinces.

Go to Canada, go to America those are the arrangements you see so many cities across the country, across Tanzania *hano bali ninde capital Dar-es-Salaam nibabola batsitsa Dodoma ta?* But most of the international activities are in Arusha. How many meetings have you had of Heads of States being held in Arusha and you can tell me go to Arusha now Arusha is now growing into a big city because of these activities that are taking place around Arusha. Kakamega will never grow unless we bring some economic activities here. If we are saying, you could even say we distribute the Ministries, take two Ministries and say the Headquarter will be in Kakamega, put everybody from the Minister through the Permanent Secretary, all the Headquarter staff tell them *tsie mumenye Kakamega*.

The first thing will be *emishara chia banyolanga* will be spent around here. Because they start looking for facilities around here they start looking for plots around here, they start looking for houses around here. The value of land will start rising around this place. Right now the value of land in Kenya is strange *nutsia umondu uli nende* half an acre in Runda, in Gigiri, in Whispers in wherever, in Nairobi is talking about 3 million shillings, undeveloped, *amaloba butswa makhaya kahumakhwo* anything three million shillings, a half an acre. *Iwe mbolelakhwa nende half an acre mu-town Milimani Kakamega*, how much can you get? *Mana notsia mzee ubukuli iloni ubole wenya khumbakha inzu yiyo Kakamega Mlimani mulia nasi mbukule nenyanya ukhumbakha Muthaiga nohomba Runda yilia, Nairobi yilia* your cost will be higher than mine because most of your materials are coming from Nairobi *lakini nikhumala* I will get rent of 80,000/= you will be lucky if you get 20,000/= isn't it?

So we are saying, there are very important things I want you go get very seriously so that you understand the philosophy behind

some of the clauses we are proposing to you. So that is why we are saying here and there are several others which are emphasizing that issue of decentralizing the Headquarters of the National Government we are saying in Article 8 it shall be the policy of the government. We are not saying it will be overnight but we want it progressive, we must focus, *khumanye* this is where we are heading and with this clause in the Constitution you can start demanding saying why is this?

Now, we are proposing the establishment of a bi-cameral system, another House of Parliament and the question may arise should all of them be located in Nairobi? That is the question so we need to start defining which things that belong to the National government that can be taken to others. Now that is as much as, I have taken a lot of time on that but you will speak for a bit long *isie nichachile okhubola*, I hope you will bear with me, we will have to stay here for about 4 hours before I finish but you will be happy at the end of the day that it makes sense for you to link up what we are talking about.

Now, if a State has territory we are saying it must have a people and we are saying if it has a people we must know who those people are. You must define them, who are the people that can be called Kenyans? Who can become entitled to being a Kenyan, so if you look at Chapter 4 of your Draft we are trying to define the Kenyan people under the title Citizenship. Under the title citizenship we are seeking to define the Kenyan people, we are trying to show who is entitled when we say there is a Kenya and it has a people, who are they? We are putting this here, this runs from Article 16 up to Article 28. It is dealing with the definition of the Kenyan people, citizenship and under this we have addressed a number of issues that were raised by the Kenyan people. We have decided to show how Kenyan citizenship can be acquired, we have expanded that acquisition process.

And we have said women complained that there is some discrimination under the current Constitution when it comes to acquisition of citizenship because when a Kenyan man marries a foreign girl, that foreign girl becomes a Kenyan but when a Kenyan woman marries a foreign man, that foreign man does not become a Kenyan. In our proposal we are saying that is now going to be equal, even a Kenyan woman can bring her husband here and that husband can become a Kenyan citizen and we are saying when that happens, there must be a certain process because even under the current law, the law of marriage and divorce, under the Christian marriage and divorce Act as under the Marriage Act, it is stated that you cannot divorce your spouse until you have been married for at least three years. Now the reasoning *yili mbu abana banu haundi mbula bashili okhumanyana* so they are still adjusting owing to their quarreling, may be they are just adjustment quarrels. We don't want to rush them into divorce, when after sometime they may come to understand each other and they live very well, but *nichihwa emihika chitaru* and they are still quarreling *ne munyala khubola mbu* I think they have been incompatible, they can part ways, so the law says that.

And we are saying, when we say citizenship can be conferred through marriage, we are saying there will be a process, *shikali mbu ulatola butswa mukhana hanjila yaha ne bushia mukamba nahebwa* citizenship. We are saying he will have to wait for at least three years before we can say now they are husband and wife, we trust it was not just a joke, they were serious now

the spouse can be given citizenship. That we have provided.

We are also saying you can now be allowed to have dual citizenship. *Unyala khuba citizen wa Kenya khandi ube citizen wa German* if German also accepts dual citizenship, so that you can be here and there and you are enjoying the rights of a citizen in both countries. We are providing for that and we are saying under the current Constitution that was not there and the position *yali mbu* if you become of another country then you lose the citizenship of Kenya and we are saying that since we have now changed, we are providing an opportunity for all those Kenyans who may have lost their citizenship because of that to recover it if they want. So if you became a German and in the process you lost the Kenyan citizenship, if you want you shall be allowed to recover your Kenyan citizenship because you lost it on the basis of the Constitution we had at that time.

We have also provided for citizenship of foundlings - *abana bakora* - lost children. We are saying if you look at Article 22, if a child of a certain Age is found in Kenya less than 8 years, a child of less than 8 years is found in Kenya, *nakorelwekhu nyina niwina sa mwana niwina, yarula hena akorulwe*, we are saying we shall be hospitable and say let us presume him or her a Kenyan because we don't know. There is citizenship through finding of a lost child and so on.

We have also provided for citizenship through adoption, if a Kenyan parent were to adopt a Ugandan child of less than a certain age, that child should be given citizenship on the basis of adoption.

We have also provided for how to cease to be a Kenyan, you can look at Article 24 and see what it says.

We have also addressed the question of citizenship of a child whose parent dies before it is born. *Bandu banyala khureba kafwana kariena*, but the point is that *musatsa* you could be the Kenyan *umukhana* from another place who cannot pass Kenyan citizenship to the child, *anyola inda yiyo. Na ibe ufwa nashili okhwibula omwano huno niyebulwa* can he come to Kenya *abole baba wanje* was a Kenyan, I therefore must be a Kenyan, we are providing for that, *umwana shinga umwenyu anyala khubola* - it is like succession to property – Is there any Muslim here? If you ask Muslims why they pay *umukhasi nafwililwe amale emiesi chine, niyefunjila munzu, nalakanakhu nu mundu tawe*, It is because *benyanga kupima bu niyakhetsukhana yebula omwana*, we want to be sure *mbu ni womundu wafwa*, not *wo mundu wundi*. So that *niyetsa mufamili to say siesi ndi omwana wa fulani engabilekhwo mukunda*, they are sure *nu womusiani wafwa*. So we are proving for that *mundu mukhasi niyakhalekhwa nali inda na mwene inda yiyo* was a Kenyan that child can also claim Kenyan citizenship.

Then we are providing for residence, you can want to be just a resident in Kenya without becoming a Kenyan citizen, you can look at Article 26.

And then finally we have given Parliament powers to make law to deal with certain aspects. For example if you look at Article

27, we are saying Parliament may enact legislation prescribing conditions upon which a person may become a citizen in terms of this Constitution providing for acquisition of citizenship of Kenya by persons who are not eligible or who are no longer eligible to become citizens under the Chapter relating to the making of applications for citizenship, registration, or naturalization providing for the renunciation by a person of that person's citizenship of Kenya, providing for the deprivation of citizenship and generally giving effect to the provisions of this chapter. So we are saying if Parliament is to make law because this Constitution is supreme law, Parliament can only make laws that touch on these issues we are making here, we are not saying Parliament *nayo ipushe butswa, efwe khwakhabola* in this Constitution that you can have dual citizenship *nabo batsia* in an Act of Parliament *nibabola mbu* we will not have dual citizenship, the Constitution will then not be strict, so we are saying where Parliament is given power to make legislation, it must be in terms of this Constitution and as such we are identifying the specific issues on which Parliament can give detailed legislation so that they don't go beyond the authority conferred on them.

They operate within the Constitution. *Nelwo lwemubolele mbu* the Constitution can be a power road map. *Ni imap*, which you can follow when you are exercising the power to know that *omuhanda kuno ikona ibetsanga yaha. Omuhanda kuno khadaraja halia khabetsangakhwo khabola utsitsanga kala hula ho wikha mbeli utsie ucheka khakwile nohomba khashiliho* before you attempt to cross you don't just come rushing. So we are saying the Constitution must point out when it confers power on a particular institution for example Parliament, it confers limited power. Limited certainties, so that Parliament cannot go beyond it must operate within the Constitution.

And finally in Article 28, we are providing the establishment of a Citizenship Registration Board, which will be charged with responsibilities of registering people who want to become Kenyan citizens and so on. It must operate in a particular manner so that the people feel that things are being done properly not what we have today. There is a lot of secrecy and corruption involved, *Bahindi betsa butswa muno, bakharunga 300,000/=* and tomorrow he has papers, he doesn't know the mother tongue, the Kenya languages and so on. And so you find when we talk about the power of Parliament here, when Parliament is making that they will have to address some of those things. If you go to other countries you cannot just become a citizen before you fulfill certain conditions. *Mana kata iwe mukari muno mwamanyanga mbu, nindakharula iweru imarama yiyo nditsa khukula umukunda khumenya ni nenyu mumatala muno shimalinje nende tsinjila tsio khwinjisia umundu uruli ebulabu* before he becomes part of you? You assimilate him you perform certain ceremonies *shikali kario?* So even at citizenship level, when people and countries are granting citizenship to people from other countries there are certain conditions that must be fulfilled.

If you go to America you just don't walk in, for them to give you even the green card or whatever you must fulfill certain conditions for them one thing is that you must be able to speak English because they want you to come in and be able to communicate with the people there, you don't just walk in and you don't know their language and you are causing confusion around. *Awefu hano nutsia mukari muno unyolatsa umuhindi kata Lwaswahili shiamanyilekhwo ta, Lusungu shiamanyilekhu ta*, he or she cannot speak any of our local languages *nabolanga* he is a Kenyan *yahebwa makaratasi*



*achendanga ni nako.* We said we cannot allow that, and Parliament will have to deal with some of those things so that things are streamlined. If you go to America they even put the age they say they can only welcome people below a certain age, *niwakhola emihika chindi babola omwenyu bulano yakofule yitsa khukhulerela tsa yino tsi-bills* we don't want a lot of bills on sick men and so on. We want people who are coming in who are still strong, we want labour. So they give citizenship on the basis of bringing in more labour to work not bringing in people who are coming to retire there *okhufwilayo* because that will add a budget on their social welfare, so we must also have conditions and Parliament will set some of those conditions on citizenship.

Now, if we go back, we are saying a State when it has a people, those people must speak a language. So we must also identify the language of the people, the language of the Nation. In many countries you find most of the States are constituted by one Nation, that is a people who come from one ethnic community, so they speak one language across the board. But in Kenya and several other countries, *khubolele* we were put together people from different communities, we speak different languages, we follow different cultures. So we are a mixture and we must identify, if we are coming together, such a different people as Kenyans, then what are we going to say is the Kenyan language? We don't want someone to come from one community and they start running government affairs in the language of that community and that is something I fear is going to happen.

*Moi yakhurukile emehika 24 ali namakoso keke amanji,* but one thing I always congratulate him about is that he has never gone to a public meeting and turned to Kalenjin and started talking Kalenjin ignoring people from other communities who are seated there. That one I have watched and watched, I have never seen him do that, or if he does at least they cut off they never show. *Lakini omusakhulu wali wembeli yilia yitsanga butswa mumukutano mana abola ni yola ebisa bindi nashukhana mu lwabo yulo nachaka khubolele abasebe kama wengine bado wanalala nyakuwa, shiyabolanga ario basakhulu? Nu mwana wamwahelwe wuwe ulia ndahenjelekhwo khandi yesi --- nimbola khu khandi khukalukhanga hakhwarula? Emuhulilekhwo khabili, jusi yabele makanisa iwabo yilia, Murang'a yilia lwabamubolelenje bu* disassociate from Mungiki. *Abahenga tsitivi shimwamulolele nabola ati wengine wanasema Uhuru ni Muthongolia wa Mungiki, shiyabola ario?* He forgot that he was supposed to present himself as a National leader he started talking his mother tongue. *Jusi khandi omukofu tsana yabele natsile khomohonia Meru yilia, nindola khandi Njenga Karume wikhale, nindola umukofu nang'ng'ala butswa khandi, Njenga Karume nashukhana butswa mulusebe nachaka ukhurandula butswa Lusebe nimbola lukhali nibe omwene walerile.*

So we are saying at Article 9 we must be able to identify what we shall call the National language of Kenya. And we are saying at Article 9 (2) the National language of Kenya is Kiswahili hiyo ndio lugha ya Kenya, but we are saying in addition to a National language we must have an official language ama languages, ile ya kutumika in official government business, so that if you go *wenyanga iform youkhujaza, yukhuaplaya or the shipande,* you can be given the form in those languages. Here we are saying in Article 9 (1) that those official languages shall be Kiswahili and English and I want to tell you on this issue I argued with my colleague very strongly *ndali ndenyele mbu* at the devolved level of the Government we should add there the

local language. So that *abashiele mukari muno nibatsia mutsiofisi yitsi banyalatsa khubola butswa Luluyia*, because the Government is supposed to serve the people, now on that issue I have kept saying I argued but I lost the argument. *Nimbolanga mbu* people are going back to their roots.

If you read the happenings in the world – there is a book that is entitled ‘A Clash of Cultures’. They are arguing after the collapse of the cold war, the wars in the world now are on the basis of culture and religion. The world has now been divided into cultural camps. People are going back to those people who are closer to them in terms of culture, in terms of language and so on. So that now you have a fight between the Western world led by the Americans and the Arabs who are supposed to be the Islamic, isn’t it? So that is a clash of cultures, you have the Chinese the culture which is developing its one way, the Japanese *babolanga* when the Americans defeated them and helped them to make a Constitution in 1941, *bamanya babola* we shall borrow their technology, but not their culture. That is why you find the Japanese have gone very far in technology but they are still very far on their culture, even language. They still hold technical things schooling and everything in their mother tongue, the Chinese language, the Japanese language and so on. So there is a clash of culture and people are going back and trying to re-identify with their lost cultures.

Africa has suffered a lot due to this. When the British came here, they chose to assimilate into their English way of doing things they made us believe our African ways are bad, they are inferior. So people started becoming embarrassed of that, *khwatsitsanga musikuli idisc yalinjimu nunyolekha uhelwe idisc mbu ubolele Luluyia* several times *nukhupwa, khukhupwa khwa makana*. It was meant to look like something very dirty. In the process we have lost our culture, we have lost our languages, many Kenyans *nubareba*, they can not speak English properly, they cannot speak Kiswahili properly, neither can they speak their mother tongue properly. To sustain a conversation from the beginning to the end in their mother tongue, *rebakhu kata fwe basomele banu unyolekhu bekhale habundu banywetsanga amalwa ubabolele lelo mubolekhu butswa Luluyia* from the beginning to the end. After *dakika mbili utasikia* they have switched in. We have lost and I was arguing we must recover these languages and protect them and promote them. If you go to Uganda they are now teaching them local languages in Universities. Maseno University has started a department now that teaches local languages. In South Africa, they teach them at the Universities and in South African in fact they have 11 official languages and one interesting thing about them *yili mbu* one person speaks his mother tongue, you can come and speak Kizutu and the Tswana answers in Letswana and the Zulu answers in Zulu and they are understanding each other.

My argument was we must also develop the local languages so that many Kenyans are encouraged to learn some of the other local languages so that we can avoid a situation where Mutongolia can go on the plat form and start plotting with his tribesmen *against us ni khwikhaleho, bakhumonya butswa nikhwikhale, shikali kario? Umusungu lwa yetsa hano* they were eager to sell their goods and they thought the easiest way to get us selling, to create a market, let us make this people believe all their things are bad so that they can start admiring ours and to get ours, they will have to buy. So they used the schools the churches and language then we were forced to speak English and at that time *bakalanga* they were benefiting they didn’t know they

were also losing one very important thing, known as linguistic privacy. In those colonial days, the newspapers you will find them with very racist statements because a few people understood English. So these Wazungus would say anything about us, they would plot anything about us we will not understand today they cannot do that because they have lost linguistic privacy. English is now being talked all over, they cannot plot against anybody because they have no any other language they can use to plot the rest of the people will understand and I was arguing that if we develop our local languages and we encourage people to learn a few more local languages, we will also be making people lose linguistic privacy and unifying Kenyans, so that *abandu bariakhwo nuwanza khubamonya khukorelwe omuluyia wekhale hano walukorwa noho tawe*. People start becoming a bit embarrassed to do some very dirty things and in that way, help us.

So under Article 9(3) we are providing for the protection and development of local languages. We are saying the state shall respect and protect the diversity of the languages of the people of Kenya and shall promote the development and use of Kiswahili, indigenous languages, sign language and Braille. So that even those who are deaf, we want to develop the sign language so that they can also be able to communicate with more people in society without being left out of the activities, so that is what we have provided about the language of the Kenyan people.

And we are saying in terms of values, the first thing is religion. A people must have a culture, they must have some religion, some believes and so on. And because our people are diverse, they come from different cultures, we decided that we cannot identify any specific religion and treat it as the State religion. We said everybody shall have the freedom of religion as well as the freedom of worship but there shall be no State religion. If you choose to go to this one, you are free so long as you are operating within the Constitution, but government must work as secular, it should not run as a religious society because then that will discriminate against those who do not belong to that particular State religion. So Article 10 is the one addressing the question of religion and we are saying that the State and Religion shall be separate, there shall be no State religion and the State shall treat all religions equally. So that the questions of the SDAs and so on when we are structuring certain legislations to build on this, we should be able to take into account their complaints, we say a lot of things are done on the Sabbath they are not able to attend to them and so on. So we are saying that there should be no discrimination in the way we run our thing on the basis of religion so details shall be put in the legislation.

Then we have provided for national symbols and national oaths and finally we say as a State which brings us together, there must be some things that we will regard as National and therefore we are identifying at Article 13 what we call the National Days, not partisan things. We want National Days and we are saying here there shall be only three National Days. We are saying days on which we are remembering activities that affect the whole nation not just *Abaluyia bonyene* or *Abasebe bonyene*, or whatever, the whole nation. And we are saying that we shall have 3 National Days, the first one shall be 1<sup>st</sup> June, which is Madaraka Day, as a National Day. The second shall be 12<sup>th</sup> December which shall be Jamhuri Day. And then the third one shall be the day on which this Constitution shall be passed which we have decided to call Katiba Day. Three national days. The rest can be treated as holidays but not as National Days, so that when we have a National day we can have activities

taking place, activities countrywide but if you come to those other holidays you can decide to say they can only be for those who are affected. If Christians are celebrating Christmas, why should Muslims be bothered? And when Muslims are celebrating their Idd-UI-Fitr, why should the Christians be bothered? And when we talk about Kenyatta Day and Moi Day, why should we bother people? These are not National Days, these are individual Days and we can forget about them. So we are saying three National Days, they have been identified here which reflect us as a people, the whole of us not just a small section of the society.

Coming back to the values we said when it comes to values we must state how we want to be governed, how our lives should be conducted and so on. And you go to the Preamble and we are saying in the Preamble the first and most important thing we are identifying are the people, the people of Kenya, the whole people. But because we know that the people of Kenya are diverse in terms of ethnicity, in terms of culture and in terms of religion, when we talk about the people of Kenya we don't just mean one section of one ethnic community, we don't just mean one cultural organization, we don't just mean one religious organization. We mean all the Kenyan people, so we are saying we start with recognizing the people as the center of everything and we say, 'We the people of Kenya'. Then we say, as the people of Kenya we are aware of this diversities so we go to the 1st paragraph of the Preamble we are saying, aware of our ethnic cultural and religious diversity and determined to live in peace and unity as one indivisible sovereign nation. So we are saying when we say we are people of Kenya, we are aware that we are different in various ways but we are willing to stay together with those differences in unity. We are not ready to have this nation divided on the basis of those divisions or on the basis of those differences, we are saying we are aware of the differences but we are determined to live together in peace and unity as one people, as one sovereign nation and we are saying when we are living together as one sovereign nation, it is only for one purpose. One and most important purpose and I said this in the other place, when people come together to live in a society, it is when they are using that as a tool to serve some other important thing and the thing they seek to serve is the survival of each individual member of that society, it is the self preservation of each member of that society. We are saying as Kenyans having come together with all these differences, we have come together for a purpose and that purpose is the welfare of the Kenyan people.

So at paragraph 2 of the Preamble we are saying: 'Committed to nurturing and protection of the well being of the individual, the family and the community within our nation'. So we are coming together as a Kenyan people or we are accepting to continue together as a Kenyan people for one reason to serve the welfare of all the Kenyan people starting with the individual going to the family and then finally to the community. The welfare of the Kenyan people and we are saying when one member of a family is sick the others are not happy, isn't it? So when we talk about the welfare and the well being of the Kenyan people we mean the whole people, each and every individual of that society and that is why if you run through you will find we are emphasizing the management of our resources in a manner that will ensure that there is equitable distribution of those resources. When we were talking about capital the driving factor was, when we put everything in Nairobi one community or two communities that are near Nairobi are benefiting while the rest of the society is suffering. So we are saying decentralize Headquarters so that everybody every individual, every single tribe, every single community in this country can feel they are also

having their fair share of the cake.

So we are saying we are committed to nurturing and protecting the well being of the Kenyan people. And we are saying in doing that we also recognize the aspiration of the Kenyan people, whether they are women or men for a government based on the essential values of freedom, democracy, sense of justice and the rule of law. The aspirations of the Kenyan people, we recognize them, they want good government and my argument is that good government is that government that serves the welfare of the people. **(end of Side B)**

The will of the people and I have defined this, if you read through the report when I was dealing the ideology that should run through this Constitution, I defined the will of the people at two levels, I said the first will of the people is the desire to survive and preserve oneself, everybody and at that level it is for everybody. There are no differences regardless of your age, regardless of your gender, regardless of your tribe, regardless of your race, regardless of your religion everybody has some instinctive will in him to survive and preserve himself and anything that comes into his way and threatens his survival and welfare he will react. That is why when a baby is born, *kata ashili khumanya ukhubola, lakini numutsunakhu butswa yahulila bululu nalira, shikali kario? Mana bashiele muno bamanya abebusinjia bakhana bana, bashiele shimumanyile, omwana nakwa elwany yabula khupa Omwoyo yalila na bashiele* they become worried. *Mwana mwenuyu mana ali ha bwene nohomba* there is a problem? And there diagnosis *imanyanga aba mbu tsunakhwo, uhulile nalira nohomba tawe, batsune litere nakhupa Omwoyo nibabola* he is okay. *Lakini nibatsuna yalinya*, things must be terribly wrong. Something is wrong. *Notsuna yahuma khwikosa, nibarulayo nibabola mukhana wa fulani wibuli mwana lakini watsana ishida iliho, shikabetsa kario?* So the first will of the people and all the people is to survive and preserve themselves and feel secure and so on. *Khuli unyola kata baby ashili kata khubola lakini inzala yamuluma munda nakhupa Omwoyo, lwo mushiele aratsa khulubele nomwana alinya. Nali wamakana natsilila butswa khulira nako nikakholomokha, lano niyakhekura ne tsindolo tsitira butswa.* The first level of the will of the people.

The second level of the will of the people is that level at which those very resources that are essential to the survival and self preservation of each individual are managed and protected and developed and manufactured so that the people can have them to preserve themselves. My argument is that, that particular level is representative in nature, because not everybody can do those things for himself. So few in the society are allowed to do them on behalf of the others. *Mushiele numwana nashili a certain age umushiele* is the one to do everything for the baby *paka lwayola* a certain level *khunaye abe unyala khwikholela omwene, shikali kario?* So the second level of the will of the people is the one that concerns the management and development of the resources that are extremely essential and central to the very exercise of the will at the first level survival. So government when being introduced as an institution was introduced as institution for the expression of the will of the people at the second level for the management of the resources and distribution of those resources so that the people can exercise their will at the first level and all the people can survive. So here we are saying in doing this we recognize the aspirations of the Kenyan people and in my view the first and most important aspiration of every Kenyan is the will of the people at the first level,

isn't it? Everybody wants to survive and government must exercise the will of the people at the second level to provide them with the necessary resources that can enable them to survive. So we are recognizing that.

And then we go further *embolele mapema mbu* a State must hold a Constitution that also identifies the source of power in a given society. When it has constituted the people, it has defined territories, it has set the values, it has also identified the source of power and we are saying at paragraph 4 that that source of power are the Kenyan people. So we are saying exercising our sovereign and inalienable right to determine the form of governance of our country and having fully participated in the Constitution making process do adopt and give ourselves and our future generation this Constitution. And you need to note at this point that when we talk of the will of the people at the second level, that will is generational. It is not just in generation, it also involves the future generation, they also want to get these resources and survive. So a duty is imposed on the representative will of the people at the second level to manage and utilize the resources that we have today in a manner that preserves something for the future generation so that they can also, when they come on the stage be able to exercise the will of the people at the first level. Are we together? So we are saying we are giving this Constitution to ourselves, those of us who are there this generation and to our future generations. So we are hoping that we are designing a Constitution that will serve not only this generation but also our future generation *abana befu banyole nikhwalekhakhwo eshiabalia kho butsulilenje mbu khwalikhu nende abebusi* but if we just blunder the way we do, then we give nothing to them.

And at paragraph 4 *embolele mbu* the sovereign power comes from the people and the people have the right to determine the form of government they want. The people have the right to determine the form of government so when we run through the rest of the Constitution you should be running through knowing that we have said in the Preamble that we are the ones to determine the form of government that we want. So, some of the clauses you will be seeing which provide mechanism for participation by the people, they are simply complying with this requirement that people must themselves determine the form of governance. So we must create a Constitution that can provide mechanism through which the people can determine the form of governance and we have attempted that by creating a number of mechanism for participation by the people in governance. So the people are said to be the source of authority and we conclude by asking God to bless Kenya, because we are saying that although we do not have a State religion we are religious, isn't it? We are religious so after we have made our prayer as a Kenyan people in the Preamble we are asking God to bless Kenya.

Now if you go to Chapter 1 Article 1 we are also clearly elaborating there that the source of all authority in any given State are the people themselves, not an individual, you are the source of authority. So in Article 1 we are saying which is the chapter that deals with sovereignty of the people and supremacy of the Constitution, we are saying on sovereignty of the people that all sovereign authority belongs to the people of Kenya and may be exercised only in accordance with this Constitution. Two, the people shall exercise their sovereign power either directly or through their democratically elected representatives, so the people are put at the center and that is clause one you move from the Preamble.

The first Article in this Constitution we are identifying the source of authority so that the rest of Articles will be saying they have been put there by the people themselves, we are the source of authority, so we determine the rest. The Preamble says the people determine the form of government and they do so through a Constitution. So Article one starts by saying the source of authority are the people themselves. Then they proceed to determine the form of government they want through the rest of the Constitution. *Enywe bene* not an individual, you are supposed to determine everything, *nebulano owundi wakwiri butswa mbu* he wants to determine for you, *nemulondekhu?* When we are saying the people should determine in this age of Constitution making, we may be the first people to make a new Constitution in this century, *numundu wundi atsitsanga khukhubolela mbu* he can determine for us, he can design for us what is good for us. We don't know he knows better than us, we cannot do that and he goes around proudly saying, *ndamuhengela mana nihenga ma niitukhana yiyi, netukhana yiyi. Kwani aparanga nefwe shikhuhenga tawe.* So we are saying that we were talking about the values, having said there are people called Kenyans, they are the source of authority. Those people set the values that they want to be governed by, we have already touched on some of them in the Preamble.

And the first and most important value is to serve the welfare of the people. So if you go to Chapter 3 which is dealing with the National Goal values and principles we are now trying to set out, some of the values by which the Kenyan people want to live, the values by which they want to live, the values they want to aspire to and we are talking in terms of aspirational values because we are saying, the Constitution must allow us to dream, the Constitution must allow us to sleep *mana khutsiekho mumaloro* your exact mind to imagine what type of tomorrow do we want. You set goals for yourself in a dream home and then start working toward realizing your dream. Isn't it? So we are saying in this Chapter we are setting National goals and values and principles we want to aspire to and we want to want to work, we want to have our society conducting itself and all its activities channeled in a certain direction.

*Khwenyanga kutile nimbulele* a road map. *Nuwula habundu hi mihanda chiawukhane mana usoma isaini, Lundi mbele nenyha khutsia shiamakhokho yiyi enzia huku noho yuku, nubele nuli niwe utsitsangaho ubukule taxi man wekhale inyuma yiyi.* You are the one who is getting where you want to. And the people are the passengers, the taxi man is the government, isn't it? *Nuwakhamala khwinjila mu taxi mulia umbolele ndenyanga etsie hamakhokho yaha bulano mutoka kufwana nga ukukwo, niyola yaha wamuboolela ta khuvelenje khutsile khayeka yiyi lakini ndenyele chekekhu likhuwa lindi Lirhanda yaha* you can tell him turn this way because *utsia khumurunga.* And you pay, it is not his business to tell you no, you have hired the car, so the people *nibo bene mutoka bulano bias yibo,* they may not know how to drive but they know where they want to go. So they will tell you I want to go there I don't know how to drive, drive me there. *Emanyire injili iwe nukorelwe injila* I know, I will be showing you where I want to go.

That is what I told *abandi ba judiciary nibanzile khukhupa buyoka,* it is like your brother *ukhwitsile munzu wuwo ukhokonyi mwana wenyu mana umanyinye* your visitors bedroom *mwana wefu kona yaho lwawitsile khungonya. Umala tsinyanga tsibili ni nyakhufiala wo yenjila lano khandi khembanje bulayi, mwana wefu iwe bulano utsia*

*khusheya ibedroom yindi yilia na baana banje mama akone muno. Umwana wenyu yakhashukhana abole shirula muno tawe, inzu shili yiyo? He has to move this is your house nalenyele tawe let him pack and go, ali ni wuwe yitsile khukhukonya na lwanyakhufiala yetsile. It is your house you decide. Malanga mbolelaku bana befu bandi mundakaku khumwitse bias bindi mbetsa nindachile nasi uwanja mucheni, witsile ali mubedroom lano niwinjila butswa endi wanikhuye niwi? So that is how things ought to be done. So I was telling people the Judiciary ali tsa nga numwana watsile khukonya umusiani wabo mana yamanyi mana yamanyibwe ibedroom yukhukonamu nabutswa some while abolelwangwa vulano move from this utsie yiye because I am changing plan. Who are they to resist? The owners of the home are saying they want to change. Mwitata mumwo nuhamuha vulano shilibwa wenyu khuchenjia nishiali shiahenga yeyo ushiukhane shihenge yinu wina wundi witsa khukhureba shiukana?*

So the National values, we are trying to set some values and goals which we must work towards achieving and if you look at Article 14 sub Article 4 we are saying the Republic is based on principles of democracy and shall promote the participation of the people in public affairs and facilitate the sharing and devolution of power. I have already said it is the people to determine the form of Government. So one of the values we are beginning with is the value that requires the people to be allowed to participate in the affairs of the State and the running of their lives and so on. Sub Article 5 we are saying the Republic shall ensure open and transparent government and the accountability of State official and public authorities.

And Article 6 we are saying the Republic shall take effective measure to eradicate all forms of corruption. So we are saying that the State is supposed to exercise the will of the people at the second level which concerns the management of our resources and the sharing of those resources and we are saying as a Kenyan people corruption has interfered with that management and that sharing and we are saying, it shall be our goal to eradicate corruption completely and the State must work in that direction. That is one of our values. We are also saying that the Republic shall ensure access of the people to independent, impartial and competent institutions of justice. This is touching on the Judiciary which deals with justice. Now, if we have saved this as a value, then when we come to the Judiciary we must be able to reflect if the Judiciary we have today the way it is structured today, is it having this value or not? If it is not, how do we restructure it and get it to serve those values? We are saying that even the political parties at Sub Article 8, political parties shall observe democratic principles in their internal organizations and procedures, respect the rights of others to participate in the political process and avoid bias and bribery. It is like we chose to write, we are writing a Constitution to move away from these stupid things, *nabo abandi bashilita mubio*, in political parties. They want to run political parties as dictatorship where people do not come in to form government but in fact and individual is coming. *Shiumakalushe?*

We go to Article 14 (11) the Republic shall ensure the fullest participation of women, the disabled and the marginalized communities and sectors of society in the political, social and economic life of the country. We are emphasizing that we are aware that amongst us there are some weaker members of society who must be facilitated to be able to also participate. So here we are identifying women, we are identifying the disabled, we are identifying the marginalized communities and sectors.



Sub Article 12 we are saying the State shall implement the principle that one third of the members of all elective and appointive bodies shall be women. So we are saying in trying to lift the women we should work towards getting at least one third of every institution comprised of women.

If you go to Article 13 we are saying that the Republic shall, that is Article 14, 13, the Republic shall recognize the special responsibilities that the State, society and parents owe to our children and shall ensure their material and moral well being. So we are also identifying children as a vulnerable group that ought to be protected properly and developed into future people who can understand. Article 14 we are saying that the Republic shall be committed to social justice and through appropriate policies and measures to providing for all Kenyans, the basic needs of food, shelter, clean water, sanitation, education, health a clean environment and security so that they live a life of dignity and comfort and can fulfill their potential. So the basic needs that people have cried about, we are arguing it must be our policy to provide these things and we must run our government in a manner that can enable us to get the economy growing so that people can have this to preserve.

I have argued time and again that it is not enough to say in the Constitution that you have a right to food because that will not put food on your table, but it is important that the rest of the Constitution and the running of the affairs of the country must be structured in a manner that can get the economy to grow so that you can be able to put food on your table. If you read through this short version of the report we are saying there that we went across the country and we were told about marginalized groups. But when we went across the country we found the entire nation was marginalized, the whole country is marginalized by a few people in government. So it is not just a question of groups or community, the whole nation is marginalized and we are saying here, we found Kenyan people who were not telling us that they want handouts from the government, we found a people who are crying for the means through which they can themselves take their children to school. That can only be through running the economy in a manner that can make the economy grow, in a manner that can create employment so that *nimuyila abana mu sikuli nibamala nibanyola emilimu*. They start catering for themselves they will reduce the load from your shoulder. Today I know *musominjia ma mukusia rukombe rwosi ruwe nusominjia nukalanga namale yanza khukhukhonyakhu, niyakhamala*, he still looks at you because there is no employment. Those are the things we are emphasizing.

Sub Article 15 we are saying the Republic shall promote equitable development, recognize and enhance the role of science and technology, eliminate disparities in development between regions of the country and sectors of society and manage National resources fairly and efficiently for the welfare of the people, This takes us back to what we said when we were talking about the Capital and decentralization. We are saying *khwenyanga* development *ibe* given, infrastructure *ihanwe* on an even basis not a situation where you find *omusebe naliyo ebindu biosi bichomibwa ebusebe. Omukalenjin natsiayo ebindu biosi bichiomibwa ebukalenjin na bandi barulayo shikhaya*. We want equitably development which will ensure all the regions are growing and they have some things around them. These are some of our goals and aspirations we must work towards. And you need to know so that you can be able to push things to get them moving in that direction.

Article 16 we are saying, the Republic shall recognize its responsibility to future generations of Kenyans by pursuing policies for the sustainable management of the environment and I wanted to add there and resource, the environment and resources so that we pass over something to our children. I said people include the future generation when we are talking at the first level of the will of the people. So those are the values that we are expecting for our people and see how they go on. And we have gone further and we have said for these values to take effect, there must be someone taking responsibility.

And we are saying it is not only the government that should bear the responsibility or carry the obligation, even the citizens themselves have an obligation to carry, they must perform their duties. So Article 15 deals with the duties of the citizen and we are saying that the first duty of the citizen is to acquaint himself with this Constitution. When this Constitution is passed, the citizens must know it they must understand it so that they can lead their life to reflect these values that we are talking about. *Nutsia mushialo shindi* you cannot be admitted as a citizen there until you have taken courses on their Constitution and America is one of them. You must take certain courses on their Constitution and understand it so that they know that you are going to live by the values they have set for themselves and we have said, we want Kenyans to do the same, they must understand the Constitution. So Walimu, they might have to restructure their curriculum to start teaching the Constitution in school *abana bakhule nibamanyire mbu* these are the values our society wants us to live by. They must understand the Constitution.

We are saying that people must vote. If you look at Article 15 (1) c, we are saying that you have an obligation to exercise your voting right by electing the people and participating in political parties and so on. Voting shall now not only be a right but a duty which you must perform because many people *balilinga nibalila* but *ikura yakhola*, they never participate. *Bulano bandu balilinga omwana wo musakhulu ahoninja huyu na bandi babola* kama ni huyo hata hatutaenda kupiga kura. You will not be solving the problem, go there and vote him out, vote him from taking over, you will be exercising your authority. *Batsile Kasarani yilia babisiye* but power lies with you. *Lwa ikura nayitse nenywe banamutsi khwahula* and you will have to make up your mind, *nuwahule mbu wenyanga wina*, it is not the question of someone *khwitsa khukhubolela nu huno numutsia butswa, nohomba murumba mbola bulano kali kario kats shinakhupi ikura tawe, ukhurumba shyukhukhonyanga tawe. Norumba ne bindu bitsililila butswa* you have to go, it is your duty you must participate. *Lwandali Busia yiyo makhuwa kano nikachachile, bandu babukhanga mana banze khukhupa matebe nibakhupa obuyoka, nibabola eshieno shitsie munyanza shikali kario? Nohomba shimukhola murio inu tawe. Nakalinje mbu ha wuwo nuholela, ne shishieno shitsia khwinjila. Nashire wenyu. Shimwali mwarakhu makani lelo nu weru? Lakini ndulutsi lwabele yulu nimwarulile nimubola, nabo nibesundukha nibabola bahuka na khali abaluyia banu shibali butswa bubola hii nitachukua na korokoro moja. Shimwakholele bulayi? Lelo bamuhulikhwo. Lakini lelo bamanyire* you don't play around with them.

Power comes from the people, you have to decide, *nimbolelanga bandu* you go round, you cannot continue cheating people for ever. *Na bandu bali* patient you know they are very bad people when they lose patience they become very bad and I think

what happened in Kakamega shows *mbu abaluyia bali bandu* patience but they have now lost their patience, *shikali kario?* The patience has run out and a patient person, *mundu mulayi butswa yaholela ibe umukholela makuwa ma holela nukala numusilu, inyanga yaliribukha nukwa butswa yilia, ehulira omusakhulu yabirila mungaka niyenyokhanga.* You need to know these things, *mulwani ma nimbolela bandu musiani ukholanga ario mukhana, mukhana mulala abetsa muchesi niyenjila hango nayila tsisahani muchikoni ma monyanakho nu mushiele, namutsilakho muchela nomushiele amanya wuno niyouhelele hango hanje hano, nyanga yindi lwalitsa nende wundi bu wakhashukhana wibala wuno nomushiele akhukania akhubolele tawe mwana wanje sie mukhana uhelele awanje hanu huyu, waunderela huyu kwanza ndakholi investigation ndamanyile arula mwitala lie liloko, shiatekhakho awanje hano tawe. Ne nina musiani yamalile khubola arula mwitala lie liloko, nulwane shiatekhakho awuwe ta. Kata nutsia khwenda banakhusenje, ni mao ababolelatsa nimbamwenya khutsia khumumbashila iwenyu wamwatsia yiyo mutsie lakini awanje hanu tawe. Shimwahulile banyakhusenje, banyina nibakanile Eldoret yiya. Khu ninywe banyakhusenje banamutsie khufila mukhana we liloko? Nikali nyina musiani yakanile nenywe butswa banakhusenje?*

I had said, we will go back when we are talking about values about the Republic and the Republican principle. We want to see whether republicanism has any values that can be associated with some of these things we are proposing, *nikhubola mbu* the current Constitution talks of Kenya as a Republic but does not explain what is a Republic, *nekhubolanga* we need this time round to understand what is meant by a Republic. And in doing that, I normally like referring to the American system. When the Americans chose to come together, they were independent States about 13 of them, today they are 50 but *lwabanza* they were 13. They said that they work out what they called the Articles of confederation. After a short while, they realized those Articles were not working they called for a convention at a place called Philadelphia, invited, I think about 42 delegates 39 turned up, they sat there between May and September of the same year and drafted American Constitution but *nibabola* when we came here we did not have a mandate from the American people to draft a Constitution, our mandate was to look at the Articles of confederation but we decided to do a Constitution. In that event, this draft constitution cannot just be imposed on the American, they must be allowed to discuss it and ratify it. When it was taken to the American people to ratify, it generated a lot of debate a lot of people rejected it *nibabolanga* they didn't like it, the way you have seen our document is being rejected.

But Mr. James Madison who was one of the drafters of the Constitution and Alexander Hamilton decided we must persuade the Americans through logic to see why we are proposing a Constitution of this nature to them and why they should adopt it. To show them how good it is so they started writing papers which were later called the Federalists Paper up to 85 paper and Madison in one of the papers responded to those who were criticizing *nabolanga* the Americans are like a patient, *omulwale akhutsanga, yatsile khu daktari*, the doctors have examined have diagnosed the disease they have prescribed the medicine, *nawe witsanga ubolanga ubolanga* this diagnosis is wrong this medicine is wrong and you are not doing your own diagnosis, you are not giving your own medicine, the patient is dying, we cannot continue arguing on how this treatment is wrong without providing alternative treatment. If you think this is wrong tell us, we are not perfect we may be wrong. Tell us this is what could

be right, because the patient must be treated somehow. He argues that in one paper, but in another paper federal Paper number 39 he went on to the issue of a Republic and tried to define a Republic and republican principle *ni nabola* a Republic is that system of government in which all authority derives from people. All power comes from the people directly or indirectly.

So when you look at our Article 1, when we are saying power belongs to the people we are effectively reflecting one of the important republican principles that were identified by James Madison. Power comes from the people. He went further and said when that power has come from the people it is exercised by a few members in the society but those who exercise that power on behalf of the society are required to exercise that power for a limited period of time. *Apana khutsia khumenya butswa mu ofise obulenje mbu wenya khubamu for life* no, that will not be republican, that will be a monarch. You are supposed to exercise power for a limited period of time republicanism requires that and so if you look at most of the systems you find the idea of periodic elections of leaders was designed or invented to effect this republican principle of a limited period of time. That is why *mutsia mwahula ababunge for 5 years, mwahula* the Executive for 5 years and whatever.

The Judiciary is the only organ that is not elected directly but then the world is working towards a system under which they ensure even the Judiciary is made to hold office for a limited of time. If you go so some countries you will find the Judges of certain courts they serve for a term say of 5 years or ten years. Like in Germany the Judges of the Constitutional court serve for a specific period. When it ends they go, others are appointed or they renew that term again for a limited period. When it ends, no further renewal. Republicanism requires that those who exercise power exercise that power for a limited period of time. So we must work towards creating a Constitution that can limit the period of time officers can be in office so that after that period we try others. James Madison went further *nabola* those people hold office for a limited period of time but they also hold office at the pleasure of the people not at the pleasure of an individual but at the pleasure of the people.

The current Kenyan Constitution on the other hand *nayo ibolanga* all public officers hold office at the pleasure of the President. And that clearly shows, although our Constitution says we are a Republic, those are some indicators that we are not a Republic, isn't it? Because people don't hold office at the pleasure of the people, they hold office at the pleasure of an individual. *Kata kabolungwa ka mumanyinyibwa munzu yako*, it is like you are being told this man will hold office during my pleasure not your pleasure. So the concept of election for a limited period of time is supposed to ensure the Republican principle of limiting time is given effect. The Republican principle of people holding office during the pleasure the people is effected, because election *ibetsanga* period during which the people can express their pleasure or displeasure with those in office. Are we together? When election comes, that is the time you decide we are now displeased with this one, we want to put another one.

Now, when we were taking views, Kenyans were very emphatic *nibabolanga ababunge banu khubahulanga ma bakorela Nairobi yilia*, we want a power to remove them even before the limited period of 5 years, the power to recall. They are saying they want a mechanism through which they can exercise their pleasure or displeasure in their leaders and remove them from office even before the fixed time of 5 years ends; during a limit, for a limited time and during the pleasure of the people. So we

must and we have provided here that you now have that power, you can remove them this time. *Bakoyana butswa*, you can remove them, members of Parliament, there are subject to the power of recall, and we are hoping being aware of that, they will be getting into office *bulano nibarenganga nibamanyire* if you misbehave the people can remove you. So we are talking in terms of a Republican citizen.

James Madison went further *nabola*, they hold office for a limited period of time during the pleasure of the people and during their good behaviour, so that if after two years you think the behaviour of your MP is not pleasing you can express your displeasure and recall him isn't it? Those are the four Republican Principles that Madison identified. He started by saying power, all authority comes from the people. So the first principles of republicanism is the principle of the people as the source of power and the people as the subject of governance. When we talked of the will of the people at the first level we said government is about the management of the resources that are important for the survival of each individual so that the individual can access them and survive. Government was introduced for that purpose. So the subject of governance are the people, their welfare, government is supposed to serve their welfare. Two, the people themselves are the source of authority that is the first principle in the republicanism, the people are the center of governance, they produce authority. Government is also run to benefit them not to benefit a few individuals.

Principle number two by Madison: power, when it comes from the people it goes directly or indirectly to representatives who exercise that power on behalf of the people during a limited period of time. So one principle of republicanism is about representative government. Representative government must be for a limited period of time.

Three, representative government must be government that will maintain in office during the pleasure of the people only for as long as the people are pleased. But if the people become dissatisfied as the source of authority, they should be able to change that government and say we don't want. And we said in the Preamble, they are the ones who determine the form of government they want so they express their pleasure and three, he says during their good behaviour, leaders must behave on a certain standard. Their behaviour must meet a certain standard that is accepted in society and we have already laid the values that our society wants, the goals that our society wants. So in measuring the good behaviour of a leader we may go back to these values and goals and aspirations that we have set. Is his behaviour consistent with these values? We will know, and if not then he is not holding office during his good behaviour.

We have also provided in this Constitution something to do with leadership and integrity. If you look at chapter 16, starting at Article 276, we are talking about leadership and integrity. If we are saying Republican government is based on good behaviour then we must know what constitutes good behaviour and so in Chapter 16 Article 276 running through to 277 we are setting out something that we call leadership and integrity and we are saying at Article 276 that this Chapter applies to the President, the Prime Minister the deputy Prime Ministers the Ministers and the deputy Ministers all members of Parliament, all members of local councils, all constitution office holders..... **(end of side A of Tape 2)**

.....who is subject to leadership and integrity code of conduct. We must, if we are going to have leaders hold office during their good behaviour, we can in fact start sifting them before they get to office, by identifying the perimeters for the behaviour that constitutes good behaviour that can enable us to say this is a leader who is befitting that office, put him there. If at their appointment level we can see that he is not of leadership and integrity qualities that we are looking for. For that good behaviour we can even say do not, even in the first place, get to that office. And we are saying leaders mentioned under this will be subject to the leadership code of conduct. They must behave in a certain manner because we are saying we are a Republic, they must behave in a manner acceptable to the society. The responsibilities of the leaders under this category are stated under Article 277 where we are saying a person to whom these chapter applies has a duty to conduct himself or herself in such a way, both in public or official life, and in private life and in his or her association with other persons, as not to place himself or herself in a position in which they have or could have a conflict of interest, or might be compromised when discharging their public or official duties or in a manner as not to demean his or her office or position or allow his or her public or official integrity or personal integrity to be called into question or endanger or diminish respect for and confidence in the integrity of the Government of Kenya. These are responsibilities of leaders under this category.

And if you look under Sub Article 2, we are saying in particular a person to whom this chapter apply shall not use his or her office for personal gain. Or enter into any transactions or engage in any enterprise or activity that might be expected to give right to doubt in the public mind as to whether they are carrying out or having carried out the duty imposed by clause two. *Basakhulu bano bamanya, Shikuku yabola*, corruption in Kenya was started by the Ndegwa Commission. *Shiyabolangario*. The Ndegwa Commission was there in 1970 or 1971 it is the one that reported, it was appointed to investigate and see whether public servant, civil servant can be allowed to engage in private business even as they continue serving the government. And the Ndegwa Commission reported that they can be able to do so, the reason being the Kikuyu elites in power at the time, they wanted both money and government, so they couldn't see how they were going to divide themselves.

On the one hand they are in the government so they are stopped from engaging in business on the other hand they want to be in business so they decide the best way *ya kunyakuwa na kunyanyaza* belong in both worlds, isn't it? You are a Government officer, you are also a business man, so that you give a tender, you advertise as a government officer a tender, then you apply as a business man then the application comes, you sit on the Board, the Tender Board then you give the tender to your company then the company delivers the goods that are sub standard you are the one who is supposed to inspect the goods and report that they are good or bad or reject them, so you accept them even though you know they are of a poor quality. Then your company raises an invoice, it brings to the Government department you are the one who is supposed to see whether they have overcharged or not so that you can reject the invoice and say this is too high, you will find that they have over-invoiced you approve and write a cheque for them, that is what Kikuyus used to say.

*Lwa Ndegwa yafuchilila mbu* government officials can also do business, that is when corruption started destroying this country. *Mang'ondo karula ibulafu yiyo mbu kumbashe muhanda*, six layers, *na bandu banu*, they collude they put two

layers they pocket four layers. After a short while *omuhanda kuli* in a mess because of wizi and we are saying, we are proposing a Constitution that is saying if we are going to be a republic and people are going to hold office during their good behaviour, this is the standard of behaviour we are going to expect from people, you will be in the government but you will not be allowed to conduct yourself in a manner that can create a conflict of interest. So if you are in the Tender Board and the company of your wife is the one applying, and you are a sleeping partner in that company, surely this is not what you want and this is what has been happening in Kenya day in day out. A certain standard of behaviour. Ndegwa *hali akonenje namanyile* we have seen, he is the one who destroyed this country by that report. I don't know whether any one of you has read the Ndegwa Report.

Since 1971 *mana nalwo lwa* corruption *yanza butswa* wanachota huku, they are business men. That is how the culture *yokhulekha makoti khubisala* started. *Ulera likoti mu ofisi* because you want to be a civil servant and at the same time you want to be a business man. *So likoti nalio lili muofisi, nalio lili civil servant na iwe mwene ule mu business. Bandu nibetsamu bakala mbu uli* around here, *ne khali uli* Nairobi. We are saying the Kenya we want this time round should not encourage that nonsense. If you accept certain offices you will have to accept that there are certain rights, they are certain freedoms you are going to give up when you accept to serve the people, you will have to give up certain freedom, so that you serve the people, holding office during your good behaviours.

Now, we have gone to three, we are saying it is a further duty of a person to whom this chapter applies to ensure as far as is within his or her lawful power that those persons for whom they are responsible including spouses, children, nominees, practice and agents do not conduct themselves in a way that may be expected to give rise to doubt in the public mind as to their complying with their duties under this section. *Nuba mbu uli mukhongo na bana bulano bakalanga boshi na bakhongo*, we are saying we don't want that, *bindu bia mulilanga mbu minister mbu ali nimitoka chiranu, mulala nu kukwe sijui chibili chiche okundi kwa mukhaye, kundi kwa bana, mana bulano bana nibakhenjila mu GK yeneyo belukha elwanyi yiyo nebenya butswa ukhukhupa abandi tsingumi bomanyile mimi ni mtoto wa nani?* We are saying they must bring up children in a manner that will not compromise their leadership positions and the problems we are having in this country today are because some leaders have brought up their children without this in mind, *mana abana babo bachenda butswa khu bandu bandi nibasasia ebindu ni shialo shinyakhana nohomba abakhaye bulano bakhupa butswa bandu around ne shialo nishinyakhana,*.

We are saying we don't want that and we are further saying, if necessary, to publicly disassociate themselves from any activity or enterprise of any of their associates or of a person referred to in paragraph A that might be expected to give rise to such a doubt. We are saying *bana nibakhukhayire mana khobole, abandu bamanye omwana wanje kakhola yako* deal with him as an individual, *kho waikhaya, mulapara nisie umurumanga ta*. You must declare *nakhukhayire ubole*, I am not party to that, but you know today *bandu bano ni bali mutsiofise tsino*, they register companies in the names of their wives and children *khe bindu bibingwa mu Serikali nifihilwa mu campuni*. These are the things we are saying, we don't want them to

continue they must hold office during their good behaviour, they are supposed to be the servants of the people and so on.

Then Sub Article 4 we are establishing an Ethic and Integrity Commission which will deal with these matter on good behaviour. I will deal with it when I come to the Commissions and so on. And this Commission will be in a position to disqualify anybody from holding those leadership positions if it is of the view that this person is not of the required behaviour.

Now, we are saying again if you look at Article 6 we have established a Leadership Code of Conduct setting the details of the behaviour that is expected of the leaders. If you go to Schedule 6 is the Leadership Code of Conduct which runs from an Article 1 to Article 19. Details are given there. One of them is that if you are a leader, you shall not be allowed to accept gifts from people. If you accept gifts and you are accepting it in your official capacity as a leader that gift does not belong to you it belongs to the institution you lead and manage, declare and hand it over to that institution. Because this contest of gifts is the one that is being used to harass you people, *umanyile mbu DO natsie transfer bukhumumanule*, you see, *mana mwanze khuyasibwa mukari muno rukokho rutilwa, Luseno yayimba yiyi urukokho rutasibwa khwa mang'ondo kahinibwe akatsia khukula imbusi yaniihebwe DO ayile iwuwe*. We are saying that is not going to be accepted. *Nimuchanga mwamuhesia imbusi* it becomes the property of the government because he is receiving it in his official capacity as a DO who is going for transfer and he must play a civic leader. If he doesn't do that the Ethic and Integrity Commission will be there and you people can go and report it will be investigated and he will be dealt with as a person whose behaviour is not befitting being a leader. We are saying all these. You will study the leadership code of conduct and see the other details we have put there.

We are saying leaders mentioned here will be required some of them after assuming office, some before assuming office, to declare their wealth and the sources of that wealth. *Ubole wanyola uri* and they will be required on a periodic basis even after getting into office *khandi omuhika nikutsia khuwa kandi u-declare, khwenya khumanya lwa wetsile muno nuli mumanani umuhika mulala kuno wakhakhola uriena wakhanyola bindu bindi binu*, and when we compare *nukhunyolanga mushara kukwo* compared to what you are now running around with cannot justify how you have got it. So there will be periodic declaration. *Khumumanye bulano* leadership is not going to be an opportunity to make money it is going to a duty to somebody. If you want to make money go into business and forget about office. Those who go into these offices will have to be people who are ready to serve wananchi. *Makhuwa ka Ndegwa bu benya babe ni shilenje shilala yiyi eshindi yiyi khubolatsa no*. You will choose one way to go because Kenyans are tired. We want to get things moving well during good behaviour.

I am explaining the Republican principle *mumanye numubola* and I told you I worked for this, myself personally, the task force that was dealing with the ideology of the State. I was the convenor and I said I want to explain to the people what a republic means *bamanye* what and how we have tried in this document to instill those republican principles in every aspect. *Shimulolanga bulano* we are flowing through *shiulola matsai mumubili*. The Republican principles James Madison set out three, four principles. Now if you look at those principles you will find several other principles that form branches of those



principles that are republican. When you say power comes from the people directly or indirectly, people hold office for a limited period and therefore periodic elections are a mechanism of reflecting republican principle, then you realize that democracy and democratic election is a republican principle, isn't it? If people are going to participate in governance, they must be in a position to participate directly or indirectly, in handing over power. So they must participate in the recruitment of those who are going to exercise power on their behalf. The world over it is said a democratic system of recruitment of leaders is one of the best systems that the world has ever developed, because there are those who have argued that democracy can sometimes be very stupid. Because sometimes the people themselves cannot even know what is good for themselves and they end up electing wrong people or sometimes they participate in election for various factors. In many occasions because money has been poured, so they don't care about the welfare of the people, they care about the little money they have been given. But the idea is democracy is a republican principle, it is a mechanism of recruiting leaders and if you look through the Act which establishes us, one of the responsibilities you are supposed to address is to create a Constitution that can provide for a democratic free and fair election because that is a republican method of recruiting leaders. So democracy is a republican principle and we have tried throughout here to encourage democratic principles of recruiting leaders.

Participatory governance is also an aspect of this republican principle and throughout starting from the Preamble I told you the people are the ones who determine the form of government, so participatory governance is very important in a republic. The people must participate in making decisions that directly affect them. If you go to devolution which we are going to come to at a later stage, if you look at Chapter 10 which is dealing with devolution, we are also trying to reflect this republican principle Article 213 and Article 214 are laying down the principles on the basis of which devolution is being done and if you look at 213 (1) we are saying that the principles and objects of devolution are: we are asking, why do we want to devolve power in the first place if we are a republic and we are saying :

- A. Give powers of self governance to the people at all levels and enhance the participation of people and communities in the exercise of powers of the State. We are devolving power to enhance participation and we are saying participation is one of the republican principles
- B. Strengthen national unity by recognizing diversity in ways that promote the sense among all citizens that they belong to Kenya and share in its government, an inclusive process. We are talking of a participation that is inclusive. We don't want some people to feel excluded, we involve everybody so that they feel they are part of it.
- C. Ensure democratic and accountable exercise of power.
- D. Increase checks and balances and the separation of powers.
- E. Promote social and economic development throughout Kenya

- F. Ensure equitable sharing of national and local resources throughout Kenya with special provision for marginalized areas
- G. Facilitate the decentralization of Central Government powers and the location of Central Government Institutions and Departments away from the Capital territory to ensure equitable distribution of resources in all the Provinces. You remember we were talking about the Capital and the decentralization and I told you, I said I want this language to run through the Constitution so that nobody can say there is a doubt. For the avoidance of doubt you can refer to various sections which are saying, decentralize things from Nairobi, take some to other cities so that all communities feel they are participating in the affairs of this country, they are benefiting on an equal or fair basis and so on.
- H. Provide the essential services to the people effectively and economically and,
- I. Protect and promote the interest and rights of minorities and disadvantaged group and finally;
- J. Facilitate co-operation between national and devolved authority. Now if you look at 2, we are saying that the devolved authorities are entitled to equitable share of revenue raised nationally to enable them to provide basic service and discharge their other responsibilities.

Now, all these are mechanisms through which we are trying to say we want to enhance republican principle of participatory governance. *Abandu abene badiside*. If you look at Article 214, we have again discussed there the principles of devolution of government and we are saying the structure of devolved authorities is based on the democratic principles and separation of power. Legislative or policy making or supervisory councils and executive authorities are elected by the people themselves not appointed. *Nemwakhubolela mwenyanga* if we retain the institution of chief they should be elected by the people or they should be transferable, *shimwabola murio?* Now we are saying even at lower level we want elected people. Devolution is supposed to enable people to elect people who will lead them and by participating in election, they are participating in the running of their own affairs. So participatory governance is one of the principles of Republican government and we have tried to structure a Constitution that actually is effect to that structure.

If you look at ( C ), you see we are saying that executive authorities are accountable to elected council, members of councils and executives can be recalled by registered voters (the power to recall) then at least one third of the members of the councils are women. Those are some of the clauses that we have put which are supposed to enhance the principle of participatory government, people participating themselves and when we come to the details of devolution, I will again be telling you the principle or the doctrine of subsidiarity in form of sharing of powers, *khubolanga mbu*, what can be done by the people at the lower level themselves, must be done by themselves not by someone else, *shiamunyala khukhola abene* why should someone else come and do for you or pretend to be doing for you and in the process gets up exploiting you. The people must

participate.

Now when we restructured Parliament we also said we must increase the channels of participation by the people in legislative processes and we have said Parliament shall be required to have a committee system and one of the committees must be what we have called the committee of good governance and public participation. We are saying when laws are being passed, the committee on good governance and public participation is required to facilitate the participation by the people in the debating of the Bill. Parliament *nishile okhubisia abandu babekho* able to read it, to discuss it, to see what Parliament is trying to pass is a good law for them or a bad law. The Committee on good governance and public participation. We are saying when it comes to the amendment to the Constitution, the committee on good governance and public participation must also create or facilitate the participation of the people after the Bill to amend the Constitution has gone through the second reading. We are saying in this Constitution that the people must be allowed 90 days before it goes to the third reading. *Shinababushe butswa lelo shinga lwababushilenje namuhulila* an amendment has been passed in a few hours on one day, we are saying there must be 90 days between the first reading and the second reading of a bill to amend the Constitution and during those 90 days the committee on good governance and public participation is under a duty to publicize the proposed amendment and to facilitate the discussion of those amendments by the public, *khubamanye*, this is what the Parliament is planning to do. The principle of republicanism. When we say we are a Republic, *mumanyenje* what it means. We are not a monarch we are something distinct and people must participate in the matters that affect them.

And we are also saying that another element of these principles of James Madison of republicanism is the question of transparency and accountability. We are saying if leaders are going to hold office during the pleasure of the people, then they must not hold office in secret but in the open. They must run their affairs in an open manner so that people can have an opportunity to evaluate what they are doing to see whether it pleases them. So the doctrine of transparency is an aspect of republican government. Those in office must be transparent, *hakuna siri siri watu wajue mambo yote ndio waweze kujua* you are performing to their satisfaction or not. The question of accountability, you are accountable to the people while you are in office. You must be open, you must serve the people, so that the people feel you are actually behaving the way that is required. So when elections come, it is a period of rendering accounts, republican government requires leaders to be accountable so at election time it is a period of rendering accounts. The people look at your reports *nibakhubolela iwe khwakhuhele mihika chiranu wakhukholele bulano* don't come and bother us, because you have not been accountable to us. *Wayibisirenje butswa Nairobi yila bulano wakhalinda tsikura tsiakhola khuchelelanga*.

The people should be able to tell you that isn't it. It is a period of rendering accounts. And if your accounts are not properly rendered the people should be able to say you have not held office during your good behaviour and they exercise their displeasure. We are saying we must put in place mechanisms that can enable us to remove some of these people from office

even before the election time comes. Because we are saying they have not been accountable to us, they should be removed we replace them mid term. So that comes in on the powers to recall that I talked about. Those who hold office indirectly, those who are not elected directly by the people we must also put in place mechanism of ensuring that they behave well, particularly the Judiciary, and the people must have mechanism through which they can express their displeasure in some of them and have them removed from office on the basis of their not being accountable, on the basis of their behaving badly, on the basis of a limited period of time and we have attempted to do a number of things on accountability.

We have restructured the office of the Controller and Auditor General because we are saying that office today has not been a proper vehicle for rendering accounts by the public servant and we want to improve the system of rendering accounts to the people. *Mwesi mwamanya* right now the Public Accounts Committee in Parliament normally files its reports belated, sometimes 3, 4, 5 years later. The Controller and Auditor General represents his report too late when the horse has vaulted, *mang'ondo nikamala okhwibwa nikalibwa mana kata katsia* you cannot trace it and find it. We are seeking in this Constitution to restructure the Office of Controller and Auditor General to ensure that that Controller and Auditor General performs his functions in a manner that improves the accounting system so that wananchi can be able to follow up and see. The control aspect of that office has not been operational, that office only audits expenditure but control ideally is supposed to follow up expenditure. Sometimes you can direct, *nimulola mang'ondo kakharumishilwa bibu* you can correct before all the money has been used. So we are saying we have a separate office of Controller of budgets and another office of Auditor General who can be able to control expenditure *lelo nakhweminyekho obibi bulala nibushili khutsia* very far we save some money. We are enhancing the republican principle of accountability.

The budgetary system of Parliament we are also seeking to have it improved so that Parliament can play a major role in the budget system to increase their accountability mechanism and ability of Parliament to bring government to account. Transparency and Accountability is an aspect of republican government.

We are also saying another aspect of republican government is the doctrine of separation of powers. Good governance abhors concentration of power in the hands of one person. Good governance does not like all power being put in the hands of one person. So in government you define public power and compartmentalize it. The general approach has been to define executive power and allocate it to someone called the executive to exercise it on behalf of the people. You also define another aspect of public power as legislative power and assign it to a legislative institution known as Parliament. Then you define another aspect of public power as Judicial power and allocate it to another institution called the Judiciary, so that there is separation of power. You do not take one person acting as Executive, the Judiciary and the Legislature. Because then power will be abused. Only monarchical systems operate like that and even modern monarchs these days are trying to respond to some of these principles of separation of powers. So separation of powers is a mechanism or is an aspect of Republican government. And for separation of powers to work properly, it must go hand in hand with checks and Parliament. The reason we separate power is because you want one organ to check on the other dispersal of power and we have tried in this Constitution to do that

because the concept of separation of powers is to avoid concentration of power. And when we are reconstructing, and I will come to that, when we reconstruct Parliament we are seeking to disperse legislative power so that even what we have to find as legislative power must not be exercised by just one institution and I will be talking about that. We have therefore proposed a bi-cameral system, two Houses. *Shinga lwakhali at independence*, the House of Representatives and a Senate *bulano* we are proposing a National Assembly and a National Guard so that we avoid concentration of power.

When it comes to the Executive we, are proposing a President, Vice President, a Prime Minister and two deputy Prime Ministers, a Cabinet and Deputy Ministers and we are saying by doing that we are further trying to disperse power to avoid concentration of Executive power. Kenyans cry the President is too powerful, reduce his powers and we said we cannot not just reduce them by cutting across the way, we must put them to other centers of power. We want an Executive government but we don't want it concentrated in the hands of one person. So there are a lot of things we have done here to enhance the concept of separation of powers and checks and balances so that our republican ideology can be able to take root and people feel that they are getting what they want. So separation of powers and checks and balances are aspects of republican government.

The welfare of the people is the central aspect of republican government, serving the welfare of the people and we said when we were looking at the Preamble that when we talk of the people, we start with the individual and then move with the family and then the community. So effectively we are saying human right is an aspect of Republican government because it is human right. The Bill of Rights in a Constitution seeks to address the individual and protect him as an individual and protect his welfare as an individual. So the Bill of Rights, if you look at our Chapter 5 which is supposed to be the Bill of Rights, we have provided for a very elaborate Bill of Rights seeking to protect the individual in whatever form, we have human rights generally for the individual, then we have rights for children, we have rights for women, we have rights for the disabled, we have rights for elderly and so on. The individual must be protected. So the contents of the Bill of Rights, in a Constitution, is a republican principle. Because government is supposed to protect each and every individual. The individual is the focus because you move from the individual before you can get to the society and the reason is people moved out of the individual into the society life was because they realized that certain individuals were having their welfare threatened. They could not rely on their personal strength and power to survive so they needed the assistance of society to survive. So the individual is central and therefore human rights is central to the concept of republican government.

Now, we are also of the view that freedom and the rule of law are aspects of the republican government. We must work towards that and the Bill Rights is enhancing those aspects. That is my understanding of Republican government and I want you to also go home understanding it and appreciating it *mana nimwikhale* as the passengers who have hired the vehicle to go to Khayeka you can be able to read the map for the driver who doesn't know where Khayeka is. *Nolola nakoranga niyakhachoma injili yitsia iwundi yiyi* **(End of Side B of Tape 2)**

*Kho namulole nibakosanga* you can be able to point out and express your displeasure and remove them from office or guide

them to lead you in a particular direction. That is how far we have gone with the republican principle and so far I want to say we have now finished with the constitutive aspect of the Constitutional functions of a Constitution. We have finished with the functions that declare the values of a people, we have finished with the issue of identifying the people as the source of authority.

Now we want to go the other issue of the road map and show you what we have done in the road map. The people are the ones who determine the form of government so they draw the map that is supposed to be used to take them to where they want and I want to show you what we have done or what we are proposing about the road we should follow to arrive at those national goals and values that we have identified as our theme. Are we together?

We want to see how are we proposing that we want to get to those set values and goals, how do we travel to reach there? The road map is extremely important for you to know. And in going to the road map, I want to emphasize the people and their welfare. This Constitution is being made against the background of the welfare of the people, it is supposed to be a tool to serve the welfare of the people and we have reflected that centrality of the people throughout. If you look at Chapter 7 which deals with the Legislature: when providing for the Legislature, we have tried again to highlight the centrality of the people. Article 101 and 102, it begins at Article 101, let us look at Article 102 which says that;

(1) Parliament represents the cultural diversity of the people, symbolizes the unity of the nation and determines the policy of the republic,

(2) In order to ensure that the State functions according to the will of the people Parliament has authority to exercise the sovereignty of the people. Now, I had explained to you the two levels of the will of the people and we are saying here Parliament is established to ensure that the State functions according to the will of the people and I told you the first will of the people is the desire in them to survive and to preserve themselves. They cannot survive and preserve themselves unless they access certain resources. So government is established to manage those resources and distribute those resources to enable them to survive and preserve themselves and that is the only way they will be able to say the government is being run according to the will of the people.

Now, if you go to the Executive we have also emphasized the people, we open again with Executive. If you look at Article 148 where the Executive begins from, we are again emphasizing the people and we are saying Article 148 :

(1) that the powers of the Executive are to be exercised for the well being and benefit of the people and the Republic of Kenya. The Executive is put in office to exercise his powers to serve the well being of the people and to serve the benefit of the people and the republic, nothing else, their business is to ensure your welfare.

(2) We are saying Executive authority assigned to an office bearer by or in terms of this Constitution vests in that office bearer

the power to serve the people rather than the power to rule. You are not put there to rule the people, you are put there to serve the people and that power can be exercised in a manner consistent with the purpose and object of this Constitution and we are saying the main purpose and object of this Constitution is the welfare of the people. That power is to serve the people because we say power belongs to the people *nanu ndamanya mwamenya nimubolelwangwa mundu nabukhatsa na chaka khubola bu selikali* yangu hii, wewe uko na Serikali wapi Serikali is the property of the people. The government belongs to the Kenyans it is a tool invented by the Kenyans to serve them, you cannot start talking about your government, it is the people's government *mundu wundi yayimbolele khwisero yiyo mbu* he would like us if we are saying we are putting the people at the center of everything, we should be able to refer to Kenya as the People's Republic of Kenya, that is what he said and I was impressed I think we need to pursue him, don't you think so? We should call Kenya, The People's Republic of Kenya. Instead of just saying the republic of Kenya, it will be the People's Republic of Kenya. That is *kakhwbolelwe Isero yiya*. And you can see it was a good contribution, isn't it?

Now if you go to the Judiciary, we again begin by putting the people at the very center of everything. Look at the Judiciary which starts at Chapter 9 Article 184. We are saying :

(1) That Judicial power is derived from the people and shall be exercised by courts in the name of the people in conformity with the Constitution and the norms and in conformity with values, Norms and aspirations of the people so *kata tsikorti* they must know the power they exercise to adjudicate over issues is the power that comes from the people and the people want fairness. So they must exercise that power in a fair way and in accordance with the aspirations of the people and the highest aspiration of every individual fairness; to feel secure to survive. And therefore fairness in the sharing of the resources that are central to our survival. *Tsikesi tsiamwamenya muhila mukoti yitsi, kata ifwana irie, ifwana irie* the main cause of the dispute is property isn't it? *Bandu bafaitanga* over property, nothing else *kata tsikesi tsirulile muno bu* burial case *unyalanga* what is at the back of the mind *bahenganga* on how the property will be inherited. Most of the disputes are about the management and sharing of the resources which are central to the survival of the people. So the main aggression of the people is to accept those resources so that they can be able to survive. So the Judiciary must put the people at the centre of everything that they do.

Now, if you look at the chapter dealing with land Chapter 11 Article 232, we are again emphasizing the centrality of the people and in our Land Policy and framework, under the Land Policy and framework we are saying:

(1) that land being Kenyan's primary resource and the basis of livelihood for the people shall be held, used and managed in a manner which is equitable, efficient, reproductive and sustainable. We are saying it is the basis of livelihood for the people, it is the basis of the survival of the people. It must therefore be managed in a manner that can enable it to serve the welfare of the people and to make them survive and preserve themselves, preserve their livelihood. So the people again are at the very centre of policy of land that we are talking about now. And if you go to Article 233 which deals with ownership of

land we are again putting the people at the centre and we are saying all land in Kenya belongs to the people of Kenya collectively as communities and as individuals. Subject to this Constitution, no person other than a citizen of Kenya shall have the right to acquire any interest or right in land in Kenya. Non citizens of Kenya may hold or use land on the basis of leasehold tenure only and such leases however granted shall not exceed 99 years. Kenya and land *amaloba* it belongs to the Kenyan people and we cannot allow foreigners to own land in Kenya. If we do, we only allow them to own on the basis of a lease and the longest lease they can be allowed is 99 years after which the land is returned back to the Kenyan people. The people are at the centre of everything.

Now, if you look at Chapter 13 which is dealing with Public and Revenue Management and we are saying the principles and objects of public finance and revenue management Article 243, we are saying that the primary object of public finance and revenue management system of the Republic of Kenya is to ensure efficient and effective generation of revenue for the purposes of promoting and safeguarding the well being of the people of Kenya. So public finance, when we raise revenue, when we tax people, we don't just tax them and then we let the leaders pocket everything and leave the people suffering. We must raise revenue for the purpose of safeguarding the welfare of the people which means that the policy for revenue raising must be dictated by the needs of the people. We are not going to increase taxes so that the government officials can live better while Kenyans are suffering.

When we are managing our finances, when we are budgeting, we must be able to give priority to those things that are very basic to the survival of Kenyan people. We don't allocate a lot of money to Ministers and their families when hospitals do not have drugs. This problem of teachers, it is because we don't know the priorities of this country. We are forgetting about the future of this country we are saying we must run, we are adopting this Constitution for ourselves and our future generation and if we are not ready to prepare our children properly for the task ahead, are we caring about the future generation? *Bulano bana bali mutsinzu yitsi lwa batsilenje musikuli bahonjelekhuyo, mugorogoro kukonakhu khabili lelo kukonanga.* Because they are idle at home, they are playing a lot *nibakhilukha mulwanyi nibaratsa uluya batukha bikhala benya tsa khulia bufukanga khumukoloba kha nabwo bufuka khandi at lunch time. Nabutwa hanyuma yaho nibetsa nibaliakhu butswa lipwoni nibakalukha musikuli, na shitelu ulafuka jioni lelo shimufuka butswa shitelu lunch time and evening.* Because the teachers are at home, the children are not there and in our priorities, we can increase the salaries of MPs but we cannot increase those of teachers. So are we caring about the welfare of the children and yet we single out children in the Bill of Rights as a delicate sector of our society that must be treated in a special way and be protected in a special way.

If you go to Japan *muhulila butswa* they have developed, I was reading some article by Jesse Jackson who was writing about the economy of what, and he was saying the Japanese have been able to develop in technology and a lot of things, they now have the train industry, transport *uruka butswa mwikare bise bino na* within an hour you are in Nairobi. Speed train, they are serving them well because they have put education at the centre of everything. He urges in Japan, the profession that is the highest paid is the teaching profession. *Babolanga* these are the people who prepare the future leaders, people who prepare



our children they must be paid well, *babola* they are even paid better than doctors and any other profession. They are the highest paid profession in Japan. And he said there is all the time to do a lot of things, there is no shortage of time, *lakini hawefu hanu* we behave as if there is a lot of time to waste. That paper was saying in Japan the children go to school for 11 months in a year and rest for one month. *Lakini hawefu hanu mwamanya* they rest for about 5 months and go to school for seven months. The holidays, they are those which are run over almost two months.

We have never known the importance of education. We instead over glorify money so that *obwibi bulano bandu bandi bali muno bachenda nibabola nenywe mwikhola bu mwasoma khu bulano ali nendeshi? Shibabola bario?* The reason is because *enywe nenyu mwene huno niyakhetsa kabola ali nako kano yeba nimulola* bu why do we listen to *fulani wasoma huyu akhuhesieshi*. So you over glorify thieves, you over glorify money and you encourage thieves, that is why we are saying we want declaration of wealth and how you got it. We are seeking to put a value on education. We want people to respect the values of education, so that *balole mbu* it also can earn you money. That is why when we come to qualifications you will find that we are now trying to raise qualification for leadership. In certain positions we demand certain qualifications so that *abandu bamanye* you cannot just go and steal money *nuwitsa na mapesa* because you have money people will let you lead. We say no, there must be standards. So under this we are saying these public finances must be managed in a manner that focuses on the safeguarding of the well being of the Kenyan people.

So people are at the very centre of everything that we have proposed in this Constitution. So now going back to the power map. We have attempted in drawing the power map to construct and reconstruct a number of institutions that are supposed to exercise public power. Certain aspects of public power on behalf of the public and for the benefits of the public, on behalf of the people and for the benefit of the people.

Now, in doing that, we have come up with institutions of two types. One type is a set of institutions that themselves exercise certain aspects of public power, performed certain aspects of public power. These are the traditional or orthodox institutions: the three organs of State - The Legislature which is allocated the legislative public power of the State; The Judiciary which is allocated the judicial public power of the State; The Executive which is allocated the Executive public power of the State. Now, that is one type of institution we are seeking to construct and reconstruct. On the other hand, there is another set of institutions whose functions are not to perform some of these things we have said but whose function is to supervise these other institutions in the course of performance of their duties.

Now, these ones are in the nature of Commissions, we have proposed a number of Commissions, their work will be to supervise and this is supposed to enhance the republican principle of holding office during the pleasure of the people and during good behaviour, so that we supervise those people who are given this other power to exercise to ensure that they are exercising it in a good manner, they are behaving in a good manner. And in doing that, we will be saying the supervision mechanism be clean at the very stage of recruitment. That you will not be recruited to serve in a certain office unless you are of good

behaviour, unless you are of certain qualification that can expectively discern the welfare of the people at service. So these Commissions, some of them participate in the recruitment of people to some of these offices, other participate in other aspect, some after participating in the recruitment they participate in the discipline of those offices if they go wrong and so on. Those are the two types of institutions we are creating in terms of the road mark of power that we want to create. Now, those institutions can also be addressed at two different levels. One, they are those institutions that they can be distinguished from the others on the basis that they exist even under the current Constitution. Therefore, we are not constructing them afresh or for a start but we are reconstructing them to ensure that they are structured in a manner that is more republican and in a manner that can enable them to perform without a lot of problems. Then there are those that do not exist under the current Constitution but which we are seeking to introduce so that they add value to our republican principle.

Now starting with the Orthodox, 3 Organs of State. I will be saying those are institutions that already exist so all we have done with them is to seek to reconstruct them, to make them abit acceptable and fairer and more republican. Now in that reconstruction, the institution we have sought to start with is the one that directly represents the people, the Legislator. We have sought to reconstruct it to enhance republican governance. In the first step in reconstructing, it has been to disburse power to enhance the concept of separation of powers, or power sharing and the concept of checks and balances and we have said to concentrate all the legislative power in one institution is dangerous, it can lead to abuse and you people have had to complain about our Parliamentarians the way they behave. And we are saying that we want to divide that into two following what other countries have done and we are proposing a two chamber Parliament. A bi-cameral system where we have an Upper House and a Lower House and this is something we had at independence. This is something that is in a number of democracies, you go to Britain they have a House of Lords and a House of Commons. You go to America they have a House of Representatives and a Senate which when sitting together they constitute what is called the Congress. If you go to Canada they have a House of Representatives and a Senate. The same to Australia. If you go to Germany they have what they call a Bundestrat and a Bundestag an Upper House and a Lower House. So we are proposing for purposes of checks and balances, to ensure that legislative power is exercised in an acceptable manner we must also separate these so that one House acts as a check on the other.

So we are proposing a Parliament constituted by two Houses a Lower House known as a National Assembly. This National Assembly should be comprised of 300 hundred members of Parliament, 210 coming in on the basis of the Constituencies we have today and 90 members coming in on the basis of proportional representation. I will come to that when talking about the representation of the people. And under that you have people telling us that we have provided for 90 nominated members of Parliament, that is not true. Those people will be elected, we have in fact abolished the concept of nominated members to Parliament. Now, the other House the Upper House which we have styled the National Council will have 100 members of Parliament and we are saying these 100 members should be elected in the District and in the Provinces. So we are proposing 70 members out of these 100 to represent the Districts. Each district shall elect one person to go to the National Council. Like Kakamega District will elect one person *naba nalirula eshinyalu yino nohomba narula Lurambi yiyo*, one person. 69

Districts in Kenya plus Nairobi as a district. We get 70. Now the remaining 30, we have already said that the general principle, one of the values we must work towards as our aspirations is to get at least one third of women in some of these institutions. So we are saying those 30 seats will be reserved for women and we are saying share them out. We shall go province by province. 7 provinces, each province shall produce 4 women elected by the people of the province. That will give us 28 and then the remaining two can go to Nairobi as a province, then we get a total of 100 members of the National Council.

Now, in terms of functions, we are saying any legislation will have to go through both Houses. If the National Assembly begins a Bill and passes it, it cannot become law until it has also been presented to the National Council and the National Council will pass it. And we are saying this to enable us to increase the mechanism of checks and balances. If National Assembly just rushes through a Bill the National Council may be a bit hesitant *tsinyanga tsindi ubukhatsa ne uhulila* it has passed when it was debated you don't know. So you start making noise after it has been passed. But now we are saying this will give people an opportunity to hear of some of these things before they are finalized. So that if the National Assembly has passed, you may hear of it and if you are not happy with it, it will now be the National Council to reject it. In the Committee of public participation, they will also be required that in trying to encourage and facilitate the participation of the people in some of these things, they should be making sure that when one House has passed, when this thing is still going to the other House, they let the public know and start debating so that they are aware of the participation.

Now, in reconstructing the Legislature and its functions, we are seeking to improve the republican principle of participation by the people, of serving the welfare of the people and we are saying under the Parliament, we are proposing there will have to be facilities through which the members of public can themselves petition Parliament to have legislation passed in certain areas. *Nimwakhekhala mwanyola likhuwa nilimunyasinja* and Parliament is not doing anything you don't have to wait until the Attorney General's office will decide that there is need to legislate here and propose a Bill. You can petition Parliament and Parliament should be able to have facilities that can be used to prepare your ideas into a Bill and introduced in Parliament and debated. The Committee on good governance and public participation is supposed to facilitate all these. So that is the Parliament we have reconstructed and we would like to have.

Now, in terms of the recruitment of this Parliament, election, we have proposed that in this Parliament we use an election system that is called mixed member proportional representation particularly for the National Assembly. There are about three systems of election. The first one is the one called the first past the posts system of election, it reflects on people majority. The winner is the one who has the highest votes as compared to the second person, so that you could be a winner even if you have majority one vote. *Niyombele tsa mzee huno nende ikura ndala* I am the winner. That system is based on single member constituencies, it is based on geographic unit called constituency which a member represents. *Mwahule bu mubunge we Shinyalu mwahule bu nuweshinyalu shiali wa Lurambi ta.* That system has some advantages and some disadvantages.

On the advantages side one of the best aspect of it is that it gives you a specific person *wamunyala khu-approach shinga na bandu be Shinyalu mbolanga huyu niye mubunge wefu*. But on the other side he is denied minority group representation. Sometimes it produces minority MP. *Unyola babunge befu abanji mubunge*, they don't represent the majority in their constituency. Why? Because *nimutsia mukura bandu ikhumi. Nesie nyola tsikura 10,000, nunondelekhlu ali nende 9,000, wakhataru ali nende 8,000, wakhane ali nende 6,000, wakharanu ali nende 5,000*, you will find that if you make the total of all those people that have lost to me, *nunyola mbu* they have far more votes as compared to my 10,000. So effectively, I am elected by just a small group in my constituency not the majority. And many Kenyan MPs are in that Parliament on that basis. They just scratched through narrowly. Now people complain about that, people complain about the system of demarcating constituencies because if you are going to have specific geographic units that are called constituencies you would design them.

Then the problem we get into is that our country is not populated in the same way. The geographic features as terrain are not the same, so that whereas in Western Province the population is high in other places the population is very low. Whereas *Shinyalu yino Khamasi anyala khwilukha butswa hanu bwangu bwangu* in a few hours he has reached 20,000 people, he has persuaded 20,000 voters in other places, someone has to travel 300 kilometres to move from one manyata that has 1,000 people to go to another manyata that has 500. 300 kilometers on a very bad road. So the question *imala irula* if you have to define the geographic (inaudible) how do you go about dispensing justice and fairness to give equal representation? The simplistic approach which will be received from many of the populated places was to say, "We want equal votes, so constituencies should have equal population, we don't want people who represent trees and wild animals". And we were telling some of them that is very simplistic, because you haven't gone to some of these places to see what they go through. You know when you represent a people, you represent them while they are in a certain circumstance. Some live in easier and better circumstances, so representing them can be come easy. Others live in very difficult circumstances and representing them becomes very difficult.

So in defining constituencies you find you cannot just say equal population for equal MPs or equal constituencies. That would be very simplistic. I went to Moyale, travelling from Isiolo to Moyale was 800 kilometers of rough road. That road *lekha ukwenyu kuno*, very bad road through Marsabit. When you go through the (inaudible) desert, *majina ukala butswa omundu yapanganga* and those people have their special problem, very few people but they have to be represented. We said at the beginning we recognize our diversity, isn't it? And we want to come together and make sure each one of us gets his share. Now in Marsabit district which in size may be Western Province, Nyanza Province and Central Provinces put together it constitutes three constituencies. The largest constituency in that district which is represented by Minister Godana Bonaya to travel from one corner to the other corner from Lake Turkana Ileret to the deep end down this way, you are talking about 900 kilometers so can you talk of equal population?

So those are some of the problems of that system of election that goes by unit. Determining and defining those units

becomes a problem, the factors that have to be taken into account become a problem. You will need to look at not only the population but also the demography to get things in order, and also the terrain in which they live and so on.

The second system of election is the one they call proportional representation system of election. That system is based on proportionality and you don't vote for a person in a defined geographic unit called a constituency you will instead vote for a party. So parties provide lists, before you go to election they publish names *babola efwe* if there are 210 constituencies, these are the people from our party if we win 100% of the votes we become entitled to the 210 constituencies all of them and these are the people. Starting with priority up going down. Another party does that another one does that. So that when you go to vote you have looked at the list *wumanyile* so you say I am voting for this particular party.

Now this system has its advantages and disadvantages. On the advantages side, it helps to give representation to minority groups, marginalized. It helps to do away with tribal political parties, because when a party presents an individual, *bole sisi kwa sisi party* because there is one called that. *Khubole ni ya baluyia ni muhila igifuti yenyu ya baluyia, khandi ebisa bindi ni be Shinyalu bonenye* and you are expecting the rest of the country to vote for your party you will lose. Now to persuade them to vote for your party you must show them that you have also put people from their areas, *urekhomwo abanyolo, urekhomwo abakalenjin abakamba, abasebe namna hiyo*, if you want to get votes from them. But if they come and look at your list *banyola butswa nenywe bonyene babola basi hiyo ni ya Waluya wachia wenyewe tuone kama watafika mbali*, using their own vote.

Marginalized groups; Women if women were to look at your parties *babola oh kanu*, Kanu does not like women, there is no woman on the list. These women may gang up and say in that event we are not going to vote for it as a party and they do. So to persuade them, *nabakhaye winjilanga isisi* You should demand you want to see more women on your list before we can vote for your party. The disabled can be put on the list. The reason marginalized groups like women, the disabled and other smaller groups are unable to win seats is because sometimes the system of campaign is very difficult. *Ikura yakhola muno ma bulano bandu belukhana butswa shilo ne shitere abakhasi* cannot do that. Our culture has been that in most places its men who own property in the home, so you find these women cannot have money to campaign because they have to consult their husbands and so on. These men when they go to campaign then they turn to obscenities and abusive language which embarrasses women so they say they would rather keep away. So in the final analysis we don't get more women elected. But if we go by the list, once the list is prepared it will be the business of the party to campaign. You don't have to come out of your kitchen you can remain at home cooking for your children but they will be out campaigning. If the party wins your name goes, isn't it? The disabled who cannot do the same *kata natong'a ingo amanyanga elira lia lerwayo*. If they win he gets a seat. So those are some of the advantages of proportional representation.

But on the other hand it also has problems, because it is a system that does not have geographics unit called Constituencies. So it disconnects the people from the representatives *shinambe nu mundu wa mubola mbu huno niye mubunge wefu tawe*,

*mbu khamasi niy mubunge wefu tawe.* You have nobody but because the list is prepared elsewhere and once someone is elected he may be able to fulfill all his allegencies to the party officials and not to you in Shinyalu. So there no close relationship between the representative and the people who are represented. They are disconnected. That is a disadvantage. On the other hand it encourages dictatorship in political parties by leaders. It also creates very powerful political parties. Political parties become very powerful instruments in politics, because they are the ones who prepare the list. To get yourself elected to any position, you must behave well to a party for them to put your name on the list. That happens and when it happens the leaders of political parties sometimes become very powerful and dictatorial so that *inywe munyala khuba Shinyalu yinu mumanyire fulani huno niye mundu mulayi* but if you have no mechanism of persuading the party to put his name on the list, you will never have him as a member of Parliament. So those disadvantages are there and they affect.

Now, the third one which we have picked on is called mixed member proportional representation system. This system borrows from the other two. It borrows from the first past the post, it borrows from proportional representation and comes up with a hybrid. So the effort, if you want to come up with a good one, is to try and maximize on the advantage of both and minimize the disadvantages, so *ubukula ebilayi vilino nende bilayi vilino nora halala* you come up with a good system. We are proposing that for the National Assembly in our country we are saying from the 'First Past the Post' System we shall retain the geographical unit called constituencies so that people can have someone they call their MP *Shinyalu khumwahule* but at the same time we are saying we want to help the weaker members **(End of Side A Tape 3)**

So 210 MPs belonging to the National Assembly will be elected to the constituencies by the people. But 90 will be elected through political parties on the basis of the Proportional Representation. So *notsia khukhupa ikura* you will vote twice. You cast one vote for the MP in your constituency then you cast another one for the party *notemanga mbu* this party *ibekhwo inyala khunyola* additional seats from the list of 90. Now at the end of the election, you count the votes of the MPs *nobola* in the constituencies Kanu has won 100 seats then you go to the party list, *nonyola* although Kanu has 100 seats in the constituencies on the basis of the party it has been rejected, people don't want it, another party has won may be 80% of the party seats, of the 90 seats. So it becomes entitled to 80%. You may find one party has managed through these votes for the party to win say 70 seats. *Na nibabele nibanyolile yino say 40 ni Kanu ibolanga khubayombele nometakhu 70 tsino nibanyola bali nende 110 hahundi bakhabira* Kanu. We balance and you people know here *ikura yakhola mundu bias bindi mundu abola mwana musiani huno nomulayi khwakhawwenyele lakini ali mu shiama shitinyu.* Now we are saying you can look at him in the eye and say *mwana wefu ingawaje nuli mu shiama shibi* we think you can lead *us Shinyalu yinu khulakhuhesia.*

Lakini when it comes to the party we are going to vote for this other party not your party. So you have an opportunity to do that. That is the system we are proposing. You have had people accusing us that we are proposing 90 nominated members of Parliament, that is not true, these people will be elected through your electing the party and when we go to election these parties will be required to present a list with 90 names and those lists will be publicized *bandu bamanye eshiama fulani* these are the

people who have been presented, and it is at that point that people will want to see which parties are tribal or which ones are seeking to be national. Which parties don't want to address women but for women we are saying because we have provided for the general principle of one third and we are saying Parliament shall pass legislation to make sure that they achieve that one third, before Parliament does that we should do something through the Constitution. So we are saying in the list of 90, 50% will have to be women 45 women 45 men so every political party will present 45, a list that has 45 women and 45 men and we are also saying if we don't watch out, these parties will put *abakhasi* at the end tail of the list so we are saying that we are not going to allow that.

We are proposing when you prepare your list we will have the alternative, the alternate arrangement, the zip system. So that if number one is a man number two is a woman, three is a man, four is a woman. And you have to run that way to the end. That will mean that when we finish, *nikanyolekha* your party has won 20 seats, we shall take the first 20 on the list and we shall know with that zip system we shall be having 20 comprised of 10 men and 10 women. Another party that has won 10 seats we shall take the first 10 in the list and we shall know 5 of them are women 5 of them are men. If another party has won 30 seats, we shall take the first 30 on the list and we shall know in them there are 15 men and 15 women. At the end of the day women will be able to get 45 women in the house. That is what we are proposing. But we are saying that still does not bring them to the one third because in a Parliament of 300 people 45 is not even one third, one third is 100. So we are saying in the constituencies, the political parties can be expected to nominate at least one third women to contest for the 210 constituencies and we are also saying *nibabolelwe* in the parties to nominate women. They might just do so to please us *bakhubolele mbu* we are nominating but they nominate where they know women cannot win, *unyola Kanu yitsia Othaya yilia habamanyile ibweneyo* Kibaki *niye wanuyombe nebatsia khunominata yo mukhasi*, and they know she is going to fail. *Nohomba DP irule nebatsia khunominata mukhasi Baringo Central nebamanyire Moi niye ubiranga yibwenila* and they know that woman will not even make it. *Bakhubolele mbu* they have nominated a woman. We are saying, we must get a way to get these people to nominate women who can make it and in places they can make it.

So when it comes to political parties, we have said political parties will be funded by the state and in sharing the money, there is a portion that will take into account which party has brought more women to Parliament. If your party has brought more women to Parliament. *Numunyakhu mangondo kayombebele yaka* It is just to sweeten them, it is a sweetener *nukhubola* if men don't want to bring women to Parliament, at least they want the money. And they might close their eyes and say okay *kata bakhasi nibatsia lakini khunyolelekhu amapesa* we don't care, so we are proposing that.

Now in those elections to the National Assembly and National Council qualifications, we are saying we want anybody seeking to go to the National Assembly or the National Council must be at least of Form Four level. For the National Assembly, we are saying that person must be 21 years and above. For the National Council, because you are representing a whole district we are saying that person must be 35 years and above. Then the other qualification of integrity and so on. We are saying Parliament, the National Assembly shall be for a fixed term of 5 years. The National Council shall be for a fixed term of four years.

Elections must be held 45 days before the end of the term. The reason is because we are saying in the past we have been dissolving Parliament before we go to the elections and so we create a legislative vacuum. *Likhuwa niliakharulila liakhwenya libe* legislated urgently. You find you have no Parliament during election time you have an Executive, you have a Judiciary but you have no Legislature. And we are saying that is an anomalous situation that we must remedy.

In Zimbabwe they remedied it by saying to the constituencies, in the absence of Parliament, when Parliament is not there, the legislative functions have to be exercised by the President. And Mugabe has really abused that rule when he wants to pass legislation on the land matters, *kukhuhinia basungu*, a-dissolver Parliament, *batsie ingo mbeli naye akalukha munzu nende* his advisors, they legislate, they pass all sorts of Acts *nibakasia nalera na fila*, by the time they come back there are many laws in place. *Nibenya khucomplaina na boola* but the Constitution allows me, *nimulaliho tawe*, I am allowed to pass legislation. That is what he has done, and we are saying that because of that abuse, that Zimbabwean approach may not be the best approach.

What we need therefore is to have a Parliament throughout, there should never be a time when we do not have a Parliament, so we are saying Parliament shall not be dissolved for us to go to election, instead we must go to election at least 45 days before the end of the term. If it is National Assembly, before the end of 5 years, if it is the National Council before the end of 4 years. So that Parliamentarians serve for a full term of 5 year or 4 years. So by the time they are out here campaigning, they still will be members of Parliament and they can be summoned to Parliament to debate issues and pass them. We could even finish the elections before the end of those days and so they remain in office until the last day. The day they are quitting is the day the new Parliament is being sworn in and it takes over so that *bindu binu binjilana butswa biri* we do not have any lacuna, a period of a vacuum in which someone can do something weird or we can get ourselves in problems.

We want Parliament to do something and there is no Parliament and one reason we are saying this is because we now have said most of the appointments must be vetted by either the National Council or the National Assembly and we don't want to get into a situation where we want to appoint judges to the Supreme Court and because the National Council has been dissolved they have gone for election, there is no National Council to vet the names of the people being proposed, so that we are forced to sit for a month or two or three waiting for a National Council to be elected before we can have a Supreme Court and you know it can happen. What we are saying is Judges must retire at 65, we can find a time when several of the Judges are retiring at the same time and there are so many vacancies to be filled. So we are saying there must be a Parliament throughout to perform Parliamentary functions as we elect a new one.

Now, I said earlier Members of Parliament can be recalled and be removed if they are not performing. We have set out the ground on the basis of which they can be recalled and removed and the procedures that are supposed to be followed. Now that is the reconstructed legislature.



Let us now look at the reconstructed Executive. Again, the principle in forming the reconstruction of Executive is the dispersal of power Article 148. Starting from Article 148 running through to... There are many Articles ahead you will see. Now we are seeking to enhance checks and balances and many Kenyans complained about the President having a lot of powers and wanting them reduced and so we have reconstructed the Executive to make sure that we retain a strong and effective government but we don't concentrate that government in the hands of one person. We create more institutions as centers of Executive power which can act as checks and balances on each other to ensure that power is not abused. So we are proposing an executive that comprises the President, a Vice President, a Prime Minister, two deputy Prime Ministers, 15 Ministers and 15 deputy Ministers, but we are saying they must be 15. We don't want a situation we are having today we are told you have 15 ministries but 30 ministers and 60 assistant ministers. We are saying we fix that.

Now, we have shared out power between the President and the Prime Minister. We have already been accused of creating a ceremonial President and we are saying those who are accusing us either have not studied this document or if they have, they are being dishonest with themselves. The Presidency we are proposing is not ceremonial. The Prime Minister we are proposing is not ceremonial like the Tanzanian one. You know the Tanzanian one, you know Tanzania has a Prime Minister but nobody hears of him because he is ceremonial. Now, other countries have Presidents, you don't hear of them because all power is in the Prime Minister so you don't hear of the President. Like Germany you know, they have that separated system that has Executive power divided between two people : One, the Head of State and another one, the Head of Government. They have a Chancellor as the Head of State and the President who is ceremonial. No, no, the Chancellor is the head of government and the President is the head of State. The British also have a Prime Minister as the Head of Government and a Queen as the Head of State. And several other countries of that kind. Canada and Australia, they have a Governor General as a ceremonial head of State and a Prime Minister as Head of Government. Now, what we are proposing, those other countries I am referring to are countries that draw a clear distinction between the Head of State and the Head of Government.

The System we are proposing does not do that because under this system the powers of the Head of Government are shared between the two. In those other systems, all the powers of Head of Government are vested in the Head of Government and the Head of State only retains those that are for the Head of State which are purely ceremonial. So ours is different, we are actually sharing out the Head of Government because those are the ones the Kenya people complain are being abused because they have been concentrated in the hands of one person. So we are trying to create a situation where the Prime Minister acts as a check and balance of the President and the President acts as a check and balance of the Prime Minister, we are trying to move away from a powerful Presidential system without creating a ceremonial President. We are trying to move closer to Parliamentary system without creating a powerful Prime Minister and a ceremonial President. We are trying to create checks and balances between the two.

So the President has certain functions allocated to him. If you look at Article 50, it sets out the authority of the President then the State functions of the President are listed under 151, then the legislative functions of the President are listed under 152, the

decisions of the President are under 153 and then the curtailment of the Presidential powers are under 154 if someone is acting as President. Now for the Prime Minister, before we move to that, the President, we are saying one of his important functions is that he is the protector of this Constitution and constitutionality. Now, for that reason, the other institution that I am coming to which we say are supervisory, those that supervise these other ones and are under the President, they are appointed or nominated by the President. And approved by Parliament. This Commission, they are supposed to make annual reports to the President and Parliament and the President and Parliament can act on those reports. If the reports are accusing the Executive or the Prime Minister of not performing certain functions, the President and Parliament can take action to get the Prime Minister performing them or if he doesn't want, Parliament has power to pass a vote of no confidence in the Prime Minister. And he can be removed from the Office and the President can appoint another person to become Prime Minister. So the President is fairly powerful, is the Commander in Chief of the Armed Forces, he is a member of the National Security Council, he is a member of the National Defence Council and so on and several other things.

Now, the Prime Minister on the other hand and he is supposed to have certain functions, some of which he has to do in consultation with the Cabinet others in consultation with the President and subject to Parliament and so on. Now, he is appointed by the President. If you look at Article, the Prime Minister starts at Article 170. If appointed by the President and he is supposed to come from the majority party in Parliament and Parliament must approve the appointment. The President proposes, Parliament approves. Parliament has power to reject the person the President has proposed and we are saying if Parliament rejects, the President is under duty to propose another person and if this continues, 30 days from the day he started proposing the first person lapses before he has secured the consent of the Parliament on a particular person, then effectively, we shall be saying the President has been unable to form Parliament and therefore both the President and Parliament will go back home for re-election. So that clearly shows, *omusakhulu huyu niyelukhana butswa numwana wuwe wabolanga huyu mbu ndamuhenjela, mana barige abure, naba bandu bandi banu batsie mu vyama vindi*, the end result is going to be Kanu may have the President but may not have the MPs in Parliament and if we will have adopted this Constitution, and we have this arrangement that President of his may not be able to form a Cabinet. Parliament can force them to go back to election. *Nashio shichila nimuhulila nayungubale bu yenyanga mbu khutsie mukura nende ikatiba yindi yiliho hino shichila umanyile yino khumutetanga emisi*. So those are the checks and balances we are putting in place.

The Prime Minister can be removed from office through a vote of no confidence in him. The President can be removed from office through impeachment. If the President plays around *yesi anyala khuyinibwa* and the proceeding of impeachment are started by the National Assembly it files them and if it votes by two thirds that this man should be impeached the charges will be referred to the National Council. First, they will go to a Committee of Parliament which will look through and if they find that actually they make sense, then the National Council can sit under the Chairmanship of the Chief Justice to try the President and remove him from office if they find that he is guilty on those impeachment charges.

So we are saying although the President can appoint the Prime Minister from Parliament, Parliament can control that process,

Parliament can reject the proposed person. Parliament can remove this person from office. We are also saying although the President is elected by the people, impeachment can also be brought against him and have him removed before the end of his term. Because we said people must hold office during their good behaviour. And the people, the public can express their pleasure or displeasure either directly or indirectly through these institutions we are proposing. So Parliament, in getting this action, we are hoping it will be sensible and take them in the interest of the people to remove the Prime Minister or to remove the President. Now all that is put in place.

We are also saying that in terms of election, the Vice President shall be elected with the President when we go to elections *newe nawe wisialanga mbu wenyanga khuba President nukhukhubolela* can you nominate the person who is your Vice President. So that when we go to elections *khumanyile*, when you win *fulani niye wanube* Vice President. *Makhuwa ko mundu huyu akhola yaka niyakhetsa yinu amukatia munzaula butswa bu lelo wenyu nunube vice President, niyakhilukha natsia ebukamba yiyo abakata, natsia Mombasa yiyo abakata, nimutukha mwakhamala ikura* Under the current Constitution, the power is with the President, he can pick on anybody and *nimutong 'a nimung 'ang 'ali mana baluyia bachaka khukatibwa nende Mwangale, niye waranga nabolanga bu inywe mwikhole butswa bulayi mbu nimbe Vice President, mwarulakho, lero mwakatibwe nende Mudavadi khandi khwakharulakho butswa bulano babele Kasarani bachaka nibabolanga bu Jirongo, mushikatungwa*, and you will come to tell me and that is one of the reasons why they don't want us to go to the elections with the new Constitution because they know this time we are saying you will not be able to cheat anybody, you will be required to name that person before we go to the election *bandu bamanye ni fulani. Na isa yino manyile mbu benya batsie mukatibwe mbu ninywe nu mwana huyu nabira butswa natsia khandi naye mwana hu musakhulu huyu naye unube* Vice President. *Ni mutong 'e shikhaya.* So we are saying that person must be a running mate.

And we are saying if he is a running mate and he becomes Vice President, you cannot just remove him from office anyhow. You must seek the approval of Parliament before you can remove him from office.

We are also saying if the President were to cease to hold office, either because *hufwile nohomba* he has been removed through impeachment, the Vice President shall take over the remainder of the term of office as President because he was also elected with the President. So he will not just act for 90 days and then we go to elections, he will actually take over as President the remaining period of that term, *chiba chitonyele mihika chitaru* he will become President for those years and at that time we are saying if that happens then he will be allowed himself to select or appoint a Vice President. At the elections we say, you elect the Vice President with the President. But if a vacancy occurs or if the Vice President ceases to be a Vice President because *yesi anyala khuhinwa* through impeachment. If he ceases to be a Vice President because he has been removed through impeachment or because he had succeeded the President, then he will be allowed to appoint the Vice President but Parliament must approve the person he has appointed and once he has appointed him the removal goes back to the original approach. He cannot remove him without the approval of Parliament. That is what we are imposing on the Executive and we believe it should be able to remove these massive powers which the President has been using left and right *na bandu balila*.

Now for a person to be elected President, we are saying that person must be above 35 years and below 70 years. We are saying we do not want at any given time to have someone who is 75 and above as our President. So that by the time you go to elections if you are 70 we know that your 5 year term will end when you are just 75, isn't it? Because we are saying we don't want anybody beyond 75 in the office *nabolanga ni* President. The highest is 75 and that means, although we are saying the President will have a term of office of 10 years, 5 years then you can be re-elected another 5 years, what we are saying is that if you become President when you are 70 that means you will serve for only one term of 5 years, and pack your things and go. You will not be eligible for re-election. We are also saying that, that person must have a University degree from a recognized University. He must be a person of high integrity and so on. Those things of integrity and leadership will apply to him and so on. Now this person, the election will be again the way we have said for Parliament, 45 days before the end of the term so that after another person has been elected you remain in office until your term ends, and the day your term is ending is the day the new President is being sworn in and during that period *hahundi* you will have been doing handing over to the new President *amanye achachila hena*. That is what we are providing for the President.

For the President, the members of Parliament and even the local councils which we have proposed when it comes to devolution, we are saying that we want to exempt... Even in the local councils we are saying to be in the devolved councils we are saying you must be Form Four level. We are exempting certain people from those rules. We are saying if elections are held under the new Constitution anybody who would have qualified to be nominated as a candidate for Presidency will be qualified regardless of this Constitution. That way we are trying to save people who are already 70 and above and we are trying to save people who do not have University degrees and we know they are there. Kibaki is now, is it 71 or 72? Nyachae does not have a University degree. I know you will wonder, why are you selling them? Now the reason is that we are just being tactical, these people will be part of the National Constitutional Conference that is going to pass this document. They have large constituencies we know that, they have an influence. There are a number of members of Parliament who do not have those qualifications. There are some Councillors who are going to attend the National Conference who do not have those qualifications and we are saying because we are baby sitting this document we want it to go through we must have some sweeteners.

We don't want to go to the National Conference and then some of these people turn around and reject the document because of that. So we are exempting only for this election, if they are going to be held under this Constitution. Those who do not have those academic qualification, those who are seeking to be President and the age. Then for Parliament, those who do not have the Four Four but they have been members of Parliament before. For devolved Councils, those who have been councillors before they can be allowed without those qualifications. We want them to pass this document, we don't want to create many enemies from amongst the delegates at the Conference. That is what we are saying, let me be very honest with you, but we are saying, it is only for this election and we will be saying we have given them five years notice to remedy the situation. *Nobanowenya khutsia musikuli, ukalushe musikuli ukalushe niba niwenya khutitia mihika chichio* if it is possible *utitiye*.

Of course we know there are many who are going to do all sorts of things *Ibuganda yilia bachaka babola mbu* Form 6, people forged certificates *bandu batukhanga bola mu bunge khukadiscobwa khale nubilelwa* your seat has gone because you forged the certificate. *Kabolwa Ibuganda omwana wabo Museveni*, Salim, he pleaded you excuse me you know we were in the bush when other people were going to school. Museveni said the Ugandans have passed a Constitution, it is saying you must have 'A' Level before you can become an MP. You may be my brother, I cannot change that. Just go back to school, *yamala natsia kweli* he went through some British system, he did his 'A' Level *na natsia* Kampala now most of their evening programmes at the Universities you will find so many of the members of Parliament studying now for degrees. The Parallel Programme. Now somehow they have now started encouraging people to take education seriously *kata bakofu nabola nyala khukalukhakhu musikuli esome*. So we are saying we are giving that exemption for this election but we will demand those standards after that and people must meet them and so on. So that is what we are saying about the Executive.

That Executive, we are saying the Prime Minister shall appoint a cabinet of 15 Ministers, he will also appoint the Assistant Ministers, but we are saying he must do so in consultation with the President and Parliament must approve those appointments. And we are saying those Ministers must not be made part of Parliament, they should be professionals from outside Parliament. We are saying *makhuwa ka Ndegwa bu uli ne shilenje shilala yino*, you are in the public service, *shindi yimo* you are a business man, we don't want. So we are saying to improve separation of powers, we want the Legislature clearly distinguished from the Executive. *Ebisa bino* you all know Parliament cannot check the Government because almost a half of Parliament are members of the Cabinet, some are ministers some are Assistant Ministers. So Parliament is not able when the Government goes wrong to vote to remove the Government or to censure the Government. We are saying we want that separation. Legislature separate from the Executive, Ministers should come from outside Parliament, possibly professionals with knowledge in the relevant Ministry. They will be vetted by Parliament and Parliament approves.

Once they are appointed, the ministers and the assistant ministers they become ex-officio members of Parliament. They can attend Parliament to answer questions from Parliamentarians, to listen to the debate, to understand the policies and the logic, behind the legislation Parliament is passing so that when it comes to implementation, they know what Parliament had in mind when it passed certain legislation. But they cannot be allowed to participate in legislation, when Parliament starts voting for Bills, the Ministers will not be allowed to vote. So when you are talking about majorities in Parliament, they are majorities of the elected members of Parliament but not including the Ministers as ex-officio members of Parliament. Another reason we want this separation, it is because *abandu balilanga muno* when someone has become a Minister what is supposed to be property of the State, a National property, they convert it to be the property of their constituency. A Ministry *bulano ikwa bu ni ya bandu behuwe, natsia* in the corridors *unyola bandu be wuwe nobo betsulamu*. Nobody from another tribe. *Yakwa* their property *mana kata mukofu mwene abolanga* si mimi napatia nyinyi hii, that is not his property he is dishing around.

Those are national offices he is only identifying people to run them on behalf of the country. And these Ministers are supposed to serve the entire country not to use the Ministry to serve themselves. But you see they do that today *ne khandi mwesi mwamanya narebwaho Minister mana natukha nakalukha ikura ne mwanza khumureba bu lwawabere Minister wakhukholeleku shi? Mwesi* you encourage that feeling *mukala* the Ministry was your property, isn't it? So we are saying we don't want this. We want separation, he cannot start using the Ministry as a property *ya bandu be Shinyalu*. It is a national asset to be used for all Kenyans. *Abandi niyakharebwaho bulano mumatala niyetsa Kakamega yino nakwa bulano neye* the prefect of all the other MPS. Other MPs have to go to him, beg him. We are saying we don't want that. You are an MP, you have your constituency. He is an MP he has his constituency regardless of the fact that you are a Minister. You cannot start bossing him around. But it has been happening you find someone in a Province, he is bossing over the other MPs because he is a Minister. We are saying we don't want that.

We are also saying *abandi bulano* they don't find time to serve their constituents, *baboola* they are busy with National Ministerial responsibilities, sometimes even when they are not busy, *nibalenyele khukalukha yinu khumukholela milimu tawe, betsanga numulanga harambee, omunyile shinga na Ministers, nimbe habundu hundi fulani. Ne khane kata shihalikhu habundu handi tawe yebisanga*, he is using the Ministry to run away from you. We are saying these excuses should be taken away. We want it separate.

We also want to give an opportunity, in the event we go to election *nikhunyola* Parliament that does not have people fitting to be Ministers. There should be an opportunity to look outside Parliament and get people who can perform. Professionals and other people of integrity who can run their affairs and so on . And that is what we are proposing about the Ministers and their removal. So that is the Cabinet we are proposing and how it is supposed to be elected.

Now, before I go to the Judiciary, let me finalise with the question of elections which I have already talked about. Elections, we have already addressed the issue of the system of election but you must also address the process of election which runs from preparation for elections and the voting itself and finally the institutions that manage elections or administer elections. Now the process, we have addressed a number of things that are preparatory ... **(End of B of Tape 3)**

We are saying transparent ballot boxes, we are saying counting of votes at the polling station and so on and we are also saying secret ballot in all the elections whether they are National or they are party. It should be secret ballot so that *abandu babe* able to vote clearly without being intimidated. We are saying nomination of candidates, whether you are a sitting President or any other level you can be nominated by political party or you can be an independent candidate nominated by at least 1000 people if you are seeking to be President, to contest presidency. The reason we are doing that is because, one, we have too many political parties and Kenyans said reduce the political parties. We said we don't want to state in the Constitution that there shall be two or three parties, that will be wrong but we said we must create circumstances that can reduce the number of political parties and we are saying that one of the circumstances is to allow people to contest as independent candidates then people will

not keep running around looking for parties. Then people will realize that running political parties is an expensive exercise, you don't need them, you can contest as an independent candidate. These many parties you see people form them because *bamanyile* they need some parties to nominate them and they are saying that can help us reduce the political parties.

Secondly, we are saying political parties must meet certain conditions before they are registered and we are saying they will be registered by the Electoral Commission. Now once registered they can also be de-registered for certain wrongs or when they cease to meet those conditions and we are saying one condition is that, if you go to two consecutive elections and your party has been unable to win seats, even one seat in Parliament or in the Council, then your party will be de-registered. It is a nuisance party that has no business around. They will be de-registered. Now we are also saying, the Electoral Commission deregisters you, you can lodge a case in the court for determination if they think there is something wrong. So there is a right of appeal to the High Court.

Now, parties will be funded by the State, 0.3% of the National budget will go into what is called a political parties fund which will be run by the Electoral Commission. But for a political party to share in that money, it must win at least 5% of the national votes in the national elections. So those parties that they just come around *ne kata* they can't win 1% of the votes, they are not entitled to share in that money. You must get at least 5% and we are saying that will help what we are saying parties campaigning for their candidate and so on because they want to get the percentages that can enable them to get money 5%. Now 50% of the money that comes from the budget will be shared amongst the qualifying parties on the basis that 5% vote on an equal basis. But the remaining 50% will be shared on the basis of the percentage of your votes. If your party received 50% of the National votes then you will be entitled to 50% of the remaining money but we are also saying in doing that we will also consider those parties that have brought more women in Parliament. You may not have won many votes but you may have brought more women in Parliament, so you will get more money. So that is how the additional money is shared. That money is supposed to be used for specified functions not just anything.

If you look at Article, political parties start at Article 84. Now you will see, we talk about political parties generally the right to form political parties, 88 we are talking about the roles and functions of political parties and 89 we are talking about registration of political parties, 90 we are talking about qualifications for registration. Now Article 91 is the corporate status of political parties, 92 is cancellation of registration, that is being deregistered, and 93 is political parties fund. Now 94 we are saying the sources of the fund will be the consolidated fund and then of course the donations and contributions. So contributions from donors come here and we are also saying not anybody can contribute to that fund, we are not going to allow foreigners to run political parties here. Foreigners will not be allowed to contribute money to political parties and foreign companies and so on. Because we want to control, we don't want to get foreigners buying parties here and starting to run the affairs of our country through political parties.

Now, purposes of that money, you look at Article 95, we are saying how that money is going to be used and if you don't use it

in the manner specified, that can be a ground for the deregistration of your political party. So you need to know that. And parties are supposed to submit their statements of accounts to the Auditor General and the Electoral Commission and Parliament at certain times to make sure that they account for the money. So, there are other sources of money 96 and then the supervision of political parties shall be done by the Electoral Commission which can deregister them and so on. Then the internal discipline of political parties is 98 and so on. Now that is what we are saying about political parties. And we are saying at Article 100 that the President and public official of and above the rank of deputy secretary shall not hold office in a political party. So we are not going to have the situation we have today. You are the President of the Republic you are also the Chairman of the ruling party so when you are talking people don't know you are talking as a party chairman or as the Head of State. We want that separation. If you become President you shall not even be the chairman of your own party. You shall not be an official of a political party because you must be above partisan party politics if you are going to serve the entire nation. You have seen what has been happening in our country and it is not good. So we are proposing in Article 100 the President or any other public official shall not be an official of any political party. May be the question that may arise is whether public official shall include the Prime Minister and that therefore will mean even if you may have been elected to Parliament on the basis of a party. The moment you are appointed the Prime Minister you shall cease to be an official of that party, those are the issues we are saying. So nominations by political parties or as an independent candidate.

Now the Judiciary is another institution we have sought to reconstruct. You have heard the members of the Judiciary complaining that we have been hard on them, but I am saying the surgeon's knife has been cutting everywhere, there is nobody that has gone untouched. We have touched on the Executive, we have touched on the Legislature, we have touched on Provincial Administration and everything and they have no business telling us that we leave the Judiciary intact. We must also reconstruct it. I told you earlier your brother cannot come into your house *omumanyinya tsiokone yaho nemukamba* your mother in law *yetsa rulakhwo ukalushe wabana yiyi omushiele akone yaha, naye khandi yesi alobanga*, that is your house isn't it? *Shianyala ukhuloba tawe*. He is in your house, *nomubolela tsia yiyo uleshelele* my mother in law *akone hano* he will have to move. He can't refuse. The country therefore belongs to the Kenyans people they are saying they want to restructure it and if they decide they want to reconstruct the Judiciary, the Judiciary has no business saying, we are not ready to be reconstructed. Power stems from the people and the people are the ones who are supposed to determine the form of government we are going to have. So we are reconstructing the Judiciary inspite of their protestation because we are saying the powers given to review this Constitution came from the people and not from the Judiciary.

Now we have decided in the reconstruction of the Judiciary we introduce what we are calling a Supreme Court as the highest court in the land. Unlike the current Court of Appeal which has only appellate jurisdiction, the Supreme Court we are proposing is supposed to have both appellate jurisdiction and original jurisdiction in certain matters. You can appeal from the High court or from the Court of Appeal or any other court specified by either the Constitution to the Supreme court but you can also go to the Supreme court on certain matters at first instance without having to go through other courts. In one instance, we are saying when you look at the legislative functions of the President he is supposed to assent to Bills after they have been



passed by the Parliament. And our proposal is that in the event that the President is of the opinion that the Bill that has been passed by Parliament is inconsistent or may be inconsistent with this Constitution, the President may refer that Bill to the Supreme court for an advisory opinion for the Supreme Court to advise him does it also think that the Bill is consistent or inconsistent? And if the Supreme Court advises him that it is inconsistent, then the President shall have a right to refuse to assent to that Bill and probably instruct Parliament to rectify the Bill.

We are also saying when we go to elections and you want to petition the election of a President you have to file your case in the Supreme Court. You don't have to go to other courts so that appeals flow all the way to the Supreme Court because we are saying we must determine these matters within the shortest time possible so that the elected leaders can start performing their functions. But if we allow one to go through all the stages you can complete the 5 year term when the President is in courts contesting appeals and so on and you will end up not serving the people. So to conclude this quickly, any petition against the election of the President shall be filed in the Supreme Court and the decision of the Supreme Court shall be final and things continue so that life can go on. We are saying that the Supreme Court shall have 7 Judges, one of them can be the Chief Justice.

The Chief Justice will be the head of the Supreme Court as well as the head of the entire Judiciary. But because the current Chief Justice is also very powerful because he heads all these Boards, we are saying, we want to restructure that and reduce the powers of the Chief Justice, even as he remains as the head of the entire Judiciary some of the functions, particularly administrative functions are going to be taken away from him and given to other people and we are saying that the Court of Appeal shall be headed by someone referred to as a President of the Court of Appeal. One of the Judges of the Court of Appeal will be designated a President for a certain period and he shall share in this function. He will be the one in charge of the Court of Appeal so administrative functions concerning the Court of Appeal, that will not be the business of the Chief Justice, it will be the business of the President of that court. We are also saying the High Court shall be headed by a Principal Judge who shall also perform the administrative functions concerning the High Court to reduce the load on the Chief Justice and so on. Then we shall have the Magistrate's Court downwards.

We have also proposed to restructure the Kadhi's Court so that we can have Kadhi's courts at the district level at the provincial level and then finally a Kadhi's Court of Appeal presided over by the Chief Kadhi and two senior Kadhis who will sit with him. Then appeals from the Kadhi's Court of Appeal on matters of law and the Constitution shall go to the Supreme Court. That is how we proposed to restructure the Judiciary.

We have also proposed to restructure the Judicial Service Commission which supervises the Judiciary and so on and I will have to deal with that when I come to the other institutions. So that finishes with the three institutions that we have thought to reconstruct which are performing certain functions.

Now I address those institutions that are supposed to supervise these other ones when performing their functions. Now under them we have those that are being reconstructed and those that we are introducing for the first time. Those that are being reconstructed, we start with the Electoral Commission. Currently we have an Electoral Commission that has 22 Commissioners, we are proposing that it be restructured and we reduce that number to about 11 Commissioners. We are proposing that, that Commission should be strictly independent and all other Commissions we are proposing in this Constitution we want them to be strictly independent in the manner they are appointed, in the qualification that the Commissioners will have and in the manner they source their staff and in the manner they source their finances.

They must be strictly independent if they are going to perform to the satisfaction of the people. And we are saying our Commission, the Constitutional Review Commission is the best example that Kenyans can use today in trying to see the value that lies in independent Commissions and institutions. You know how we were appointed. The President played a very minimal role, we applied to Parliament, the Parliamentary Select Committee interviewed us, they took those they took, they submitted the names to the President and the President simply had to formally appoint. He had no say in deciding whether to accept my name or anybody else's name. He was given names by Parliament and he had to accept them. So he played a very minimal role in the appointment of members of this Commission and that is a source of independence. He also has no power, no power at all in the removal of any Commissioner from office.

In the Constitution Review this Act says if you want to remove any Commissioner from office, it is the Commission itself that can remove him. And it must prove certain grounds, we must lay charges, we must try you, you must be given an opportunity to defend yourself and if we have to remove you, we must vote by two thirds majority and you people you remember when we were trying to remove the Secretary, the first Secretary, Okoth Owiyo, it was a very difficult process, isn't it? The President plays no role, he can't remove me from my office as Commissioner, he cannot remove Prof. Ghai and looking at what has been happening, you can be sure that if it was not for that, may be this Commission may not have been in existence. He can't even disband it, because the law is very clear on how we shall stand dissolved and that is upon the enactment of a new Constitution. So *kata nibelukha ne ba disolva* Parliament, *baparanga mbu* by December our time will lapse. Parliament will be forced to extend our time once it is elected if they do that. Because the Act says we shall stand dissolved only after the enactment of the new Constitution. So *nibalanga ikura mbu babolanga khubekalile* this Constitution, they are wasting their time.

After elections Parliament will be required to give us more time to complete what is remaining. *Baluyia babolanga mbu kata notubula amatsi uwo buluhu niyenya okhunywa, alanywa butswa kata katubushile, shikali kario?* So he plays a very minimal role, he plays no role in the removal of a Commissioners, then when it comes to filling the vacancies, he plays a very minimal role. This Act says if there is a vacancy and we have filled vacancies twice, when we removed the Secretary and when Ombaka died. The Commission advertises itself. It interviews people, if there is one vacancy, it takes three people, submits to Parliament, Parliamentary Select Committee. Parliamentary Select Committee *nayo* it vets, it can also call those people for interview, it drops one person and remains with two left and submits to the President. Then the President is required to pick

one of the two whether he likes them or not. So if he is brought two names of people he doesn't like at all he has no choice, he has to pick one of them. That is what this Act says. So that has given a measure of independence.

This Act also says our money, our finances, we get our vote direct from the consolidated fund. When Parliament is giving votes, allocating budgets, they allocate us our specific amount then our Secretary pursues it from the Treasury, it goes into the review fund which we use. And you can be sure if we were depending on some Ministry or some Office of the President, the tax would have been switched over a long time ago *mwakhahulile butswa nikhumubolelenga*, although we are ready to do a Constitution we don't have money to use. So we have that measure of independence and that explains why you have had Commissioners and the Chairman himself speaking quite independently, they don't bother what other people think, we speak independently, freely because we know the people of Kenya have given us a job with a certain measure of independence and we are proposing that the Commissions we establish here must have that measure of independence if they are going to perform and if you look at this Commission, you can be able to see how much we can get from independent Commissions. *Lwakhwali khutsia Mombasa yiyo musakhulu nabola siesi nahanakho maoni, nikhumubolela, fine narumana likhuwa nikhwikhala mu-Commission nabolele mbu*, identify some of the areas you want me to comment on *nikhukasia, khurulayo khurio bukhukhutsitsa Mombasa bu nekhwakane Mombasa bandi batsia bamukatia babola bulano bandu bano bamalile bulano*, and they have never consulted me for the past two years. He said, I am not going to see them.

I want to assure you we became so happy we felt so cleansed because we knew Kenyans, *walikuwa wananung'unika, mana bano* can we trust them? *Shinabakulwe butswa nende* Moi, but when he said that it became public that after all for two years he had never been able to converse with us and so we are independent, isn't? That is what he was telling Kenyans, and I think that is why you people have come up with a lot of enthusiasm supporting our draft, because you can see a measure of independence and when we finished this document in Mombasa we didn't consult the Parliamentary Select Committee, *huri* consult the President before releasing, because this Act said we report back to the people so we called the Press and released the document to the people, *abandu bano basomelangakhu butswa mumakaseti. Kata balala bakhupiranga tsisimu imwalo nibareba mbu ifwana irie khunyala khunyolakhu ikopi*. Long after we had released because we were not supposed to treat them in any special way, we were supposed to report to the people and you know people have been crying, Commissions are formed, they spend money, we never see the results. This Commission now is telling you, this is a new system – *huu ni mtindo mpya* -. If we can follow it we can get somewhere.

So the Electoral Commission and all other Commissions we are proposing are being given a measure of independence to enable them to serve the people of Kenya to act as proper supervisory mechanism of these other institutions. In their nature, they are supposed to be supervisory that is the more reason they cannot be controlled by the very organ they are supposed to supervise, isn't it? If they are going to supervise, they cannot be controlled by the person who is supposed to be supervised. So the Electoral Commission is supposed to be independent.

Commissioners in the Commissions and all other Commissions are supposed to serve for a term of 5 years renewable once, for a total of 10 years but the Commissioners retire at age 65, which means if you are appointed when you are 62, when you reach 65 even if your first term has not lapsed you ought to retire, and someone else takes over. That is what we are proposing that Electoral Commission will have a Chairman, their appointment will be by the President but with approval by the National Council. The National Council must approve the appointment of the Commissioners to that Commission and all other Commissions we are proposing.

On transitional basis, we are saying this Electoral Commission we have today, if we go to elections with the new Constitution, we are proposing that Commission can be allowed to conduct the elections. But after conducting the elections they, will have three months within which to wind up and hand over to the reconstituted Electoral Commission.

Now, the other Commissions we have sought to reconstruct – and before I move further – I have said we have expanded the functions of the Electoral Commission to include the registration of political parties, the supervision of the behaviour of political parties, they can deregister political parties if they don't behave in accordance with this Constitution and so on. So we have expanded the functions of the Electoral Commission.

We have also sought to reconstruct the Judicial Service Commission, the Electoral Commission supervises the process of recruitment of elected representatives and so matters of good behaviour, they are the ones who will see whether the candidates meet the required qualification and so on. So they are a supervisory commission. The Judicial Service Commission supervises the Judiciary. So it participates in recommending the person to be appointed as judges to the High Court, to the Court of Appeal and to the Supreme Court. It supervises through disciplinary measures, it can participate in the removal of magistrates and others who misbehave and so on. So it supervises the Judiciary and how it performs its judicial functions.

It has been reconstituted or reconstructed and in that reconstruction, we are proposing a Judicial Service Commission headed by a chairperson, who must be a person qualified to be a Judge of the Supreme Court, that person can hold office for 5 years renewable once. There will be a Muslim woman on that Commission appointed by National Muslim Organization or the Muslim community to represent the interest of Muslim women because we have been hearing, some of them feel, the Muslim women feel the Muslim men are not representing the interests of the Muslim women effectively.

The Attorney General will be an ex-officio member of that Commission. The Supreme Court shall elect one of its members to become a member of the Judicial Service Commission. The Court of Appeal shall do the same, elect one Judge in the Court of Appeal, the High Court can do the same, elect one judge of the High Court, the Magistrates shall elect two magistrates to represent them on the Judicial Service Commission.

The Law Society shall nominate two advocates or lawyers to represent the Law Society on that Commission and one of their representatives shall be a woman. The Magistrates shall also make sure one of their representatives shall be a woman. The

Chief Kadhi shall be a member of the Judicial Service Commission. Two law teachers or law lecturers, from the two public universities that teach law that is Nairobi University and Moi University, they will nominate two people, one each. Then there will be one representative of the Council for Legal Education then the Chairperson of the Public Service Commission and finally three lay persons one of whom shall be a woman nominated by the civil society. These are the ones who will constitute the Judicial Service Commission charged with very high responsibilities of supervising the performance of Judicial functions, of recommending appointments and so on.

Now for transitional purposes, you have heard the Judiciary complaining, and I want to skip on to transitional arrangements at this point on that issue. We are saying that this Judicial Service Commission, the moment this Constitution comes into force this Commission shall be appointed after the appointment of the Ethics and Integrity Commission and it shall be appointed on an interim basis. Interim in the sense that for a start it shall be constituted excluding the representative of the Supreme Court because the Supreme Court will not have been appointed. The Interim Service Commission itself will have to participate in the recommending of the appointment of the Judges of the Supreme Court. So for a start, we shall not have a representative from the Supreme Court. It shall also be interim because it shall exclude a representative of the Court of Appeal because we are saying the Court of Appeal shall not be allowed to appoint its representatives until it has been reconstituted in terms of this Constitution. It shall also exclude the representative of the High Court which shall not be allowed to appoint that representative until the High Court has been reconstituted in terms of this Constitution.

And we are saying for transitional measures in reconstituting the High Court and the Court of Appeal and in constituting the Supreme Court, the judges of the current Court of Appeal and the High Court shall not have a transitional measure to qualify to be appointed to the Supreme Court. I think now you can understand why they are very unhappy with us because that automatically means that, Bwana Chunga will not even be the Chief Justice because we are saying that the Chief Justice has to be a Judge of the Supreme Court. So he cannot qualify. The reason we are saying that is that we want to set the Supreme Court as a completely new court with people of High integrity so that, that court can start instilling discipline downwards and we are aware that if we finish this Constitution and we do not shake the Judiciary seriously all that we will have done will be a waste of time.

The Judiciary is very important, it can instill discipline in economy, it can instill discipline in politics, it can instill discipline in all other spheres of our life if it is serious. So we are saying that, that is the body that we must start with and we are saying particularly because it is one body that does not exercise public power on the basis of the republican principle that you hold office for a limited period of time. Because you know the Legislature and the Executive we normally elect them after 5 years. So people have an opportunity to change if they are tired but the Judiciary we have no opportunity over a short period of time to change and we are saying we must use this review process to shake it thoroughly so that we can start afresh. That is what we are saying.

Two, we are saying that we are reducing the retirement age of Judges from 74 to 65. Why? Because we are saying republican principle requires holding office for a limited period of time. Now, when we put 74, we are like saying they are holding office for life and that becomes monarchical. We want to find a way to also make the Judiciary respond to some of these republican principles, so we are reducing the age to 65. We are also saying we want to harmonize the retirement age of all the Constitutional office holders. There is no reason why the Judges as Constitutional office holders should retire at 70 while other Constitutional office holders retire at a lower age.

So we are saying all Constitutional office holders particularly members of Commissions and other things they should retire at 65.

So we are reducing that age to 65 as a transitional measure. We are saying once this Constitution comes into force, those who have become 65 or above will automatically have to retire and be paid their retirement benefits. We are also saying if you are not 65 and above but you are at least 55 and above, you shall be offered voluntary early retirement. You will be paid your benefits, if you accept the voluntary retirement and in calculating your benefits, we shall add you five years to your years of service, but you must accept that option within 30 days of coming into force of this Constitution. If 30 days lapse, we shall go to the next stage and we shall be saying: if you are below 65 and you have not accepted voluntary retirement, but unfortunately, there is some complaint filed against you with the Anti-corruption Unit, with the Attorney General's Chambers, with the Law Society Disciplinary Committee, all those complaints will be handed over to the interim Judicial Service Commission and you are aware, you read in papers how the Attorney General is supposed to bring criminal charges against one of the Judges but he has kept quiet. Those are pending complaints, they will be handed over to the interim Judicial Service Commission which shall go through them.

If they are satisfied that those complaints seem to have substance, you shall be sent on compulsory leave pending the investigation of those complaints and if they are proved guilty, you shall be removed from office. We are also saying if you are not 65 and, if you do not accept the voluntary retirement and there is no complaint against you, your remaining in the Judiciary, you shall be required to report to the Ethics and Integrity Commission and declare your wealth and its sources and we know for a fact if many of our Judges were to be asked to declare their wealth and sources, they will not be able to rationalize their wealth and their salary or their sources. And if the Judicial Service Commission reports back or if the Integrity Commission Reports back to the Judicial Service Commission that they are not satisfied with your declarations or with your behaviour, you shall be removed from office and vacancies shall be announced. It is our belief that those measures should offload quite a large number of the current Judges in the High Court and in the Court of Appeal and the vacancies created shall be advertised by the Judicial Service Commission and other people shall apply.

We want transparency. You all know, nobody seems to know how Judges are appointed in Kenya *mubukhatsa nimunyola* so and so is being sworn in. When the vacancies occurred, you didn't know, whether they were advertised you don't know. We are saying this time round the JSC must advertise the vacancies. If they are Magistrates who are aspiring, let them apply if they are advocates who are aspiring, let them apply, let them be interviewed. Let us see what we have. We cannot just chose

from a few who have been lobbying because they have people to lobby through. There are a lot of other people who have nobody to lobby through but who can perform the functions well. Let them have an opportunity to present themselves, so that the Kenyans get high quality Judicial officers. That is what we are proposing and that is mainly why you have heard them complaining. We are saying once those vacancies occur and they have been filled it is only after that the High Court and the Court of Appeal shall be allowed to appoint their representatives to the Judicial Service Commission after they have been reconstituted after all these process. Then the Supreme Court shall also appoint its representatives after it has been appointed. So that is the reconstructed Judicial Service Commission.

Now, we have also reconstructed the Public Service Commission as a Commission that should be used to supervise the public service and the recruitment to the public service. If you look at your document Chapter 14 Article 258 it is dealing with principles of the Public Service and we are setting there the behaviour. We are saying that you hold office during your good behaviour so we are setting there the minimum standards that are expected from public servants and when the Public Service Commission is recruiting, the guidelines it should follow. So that is reconstructed.

We have also retained the Teachers Service Commission so that it can address the problems of teachers. But there are other Commissions we have sought, introduced. The first one is what we are calling Constitutional Commissions, they start at Article 278 and there are general principles there and composition and so on. So the first Commission of that nature we are introducing is the Commission on Human Rights and Administrative Justice. A broad based Commission encompassing several sectors, some of which will have been independent Commissions but we didn't want to create very many Commissions. So under this we shall have a Chairperson, then we shall have a division on Human Rights headed by a Human Rights Commissioner, then we shall have a division on People's Protection headed by the People's Protector which is supposed to be the equivalent of the Ombudsman. We have called him the People's Protector, because we want to give centrality to the people. It will deal with mal-administration and other things. Then we have the gender division headed by a Gender Commissioner and it deals with matters of gender, we shall have a division on basic needs to deal with basic needs of the people. We shall have a division on children's rights and affairs and another one on the disabled to address their affairs. All of them working under one umbrella called a Commission on Human Rights and Administrative Justice.

Now, we are also proposing the Ethics and Integrity Commission. I have already referred to the issue of holding office during good behaviour and therefore we must set the standards of behaviour and we talked about leadership and integrity, we talked about the leadership code of conduct and we are saying, it is the Ethics and Integrity Commission that shall be custodian of the leadership code of conduct. And it is to this Commission that leaders shall be required to make their declaration of wealth and the sources of that wealth. And also of their liabilities, a very important Commission. It will also deal with matters of corruption, the Ethics and Integrity Commission. We must start bringing up an ethical community, society a society that has some standards that are required of leaders. Today I can assure you we have no standards, all you need to do is to have money whether you have stolen it or not. If you will just come and pour here, these people will elect you and make you a

leader even if you are a fool. They don't seem to care **(End of Side A of Tape 4)**

If you go into the Western world they can choose to be very immoral they can do anything but one thing they insist on is that their leaders must be upright. So that they can dig into your past to bring out something *shiwakhola, babole* because of that you do not qualify. That is why they harassed Clinton for a long time that he had some girlfriend in some hidden corner somewhere and they are saying Americans can have girlfriends all over even if they are married but not our leader. You see the point? Leadership must have some qualities, it is not just anybody who should be a leader and so the Ethics and Integrity Commission is supposed to develop the concepts of quality leadership and set out the standards to be followed, corruption has to be fought I said under the leadership code of conduct you are not supposed to receive gifts, if you receive them you must hand them over to the institution and so on to reduce corruption na mambo kama hayo.

Now, we have also proposed a Salaries and Remuneration Commission. This is supposed to review salaries, harmonize the same and it will be determining the salaries of so many public servants so that we do not have a situation such as we have today, members of Parliament going to decide their own salaries. I hear, *bulano khandi* they are in hurry to pass another increment before the Parliament is dissolved and so on. But we are saying that once this Constitution comes into effect, the Salaries and Remuneration Commission shall have power to review salaries and it shall become necessary for it to reduce the salaries of members of Parliament it shall do so. So it matters nothing that they want to do it now. This Commission shall have power to deal with that.

Then we have proposed what we call the Constitution Commission. Another very important Commission which we conceived as the Constitution implementation Commission. We were arguing the Independence Constitution collapsed because there was no mechanism for follow up to ensure that what is proposed in the Constitution is implemented. And to make matters worse we ended up with a government that was not committed to that Constitution so that they just hurried to dismantle it, the structures under it and forget. We are now proposing to have a Constitution Commission that will have the responsibility to follow up to ensure that all the things that we are proposing here are implemented. We don't want to say we have a Commission appointed, the Ethics and Integrity Commission appointed by the President and approved by the National Council *nukhubela* the President hasn't bothered to read the Constitution *ne mbukha butswa inyanga indala munyola* he has appointed a Commission. We want a Commission that will be able to tell him look you are supposed to pass this for the approval of the National Council to advise you. There are so many clauses in this draft which cannot be fully implemented of given effect unless Parliament passes other legislation to support and we are saying, it will be the duty of this Commission to follow up and tell Parliament look you haven't enacted legislation on this you haven't enacted legislation on this and they will have to do research and assist Parliament and the office of the Attorney General to prepare some of these. They will be required to go through our report to see what we had in mind when we were proposing some of these clauses so that they can draft legislation that can actually reflect what we had in mind when we proposed some of these things. The Constitution Implementation Commission. Now that finishes with that.



We go now to devolution which I referred to earlier and I said where we are talking about republican principles that we want people to be involved in governance, to be involved in running their own affairs that we went to disbursement of power, separation of power and I normally argue you can disburse power both horizontally and vertically, you can disburse power by creating the three organs of State and say this Judicial, this is Executive and this is Legislative. But you can also create disbursement of power or separation of powers by creating different levels of government. The Central or National level of government and other lower levels of government. So devolution is dealing with separation of power or disbursement of power by creating different levels of government and in terms of levels we are saying this Constitution is proposing five levels of government. The first level at the top is the National or Central level of government, followed by the Provincial level of government, then the district level, then the locational level and then finally the village level and in our proposal it is the sublocation and as it exists today that we are defining as the village. Now we are saying although there are 5 levels of government there are only 4 levels of devolving power, because it is the Centre, the first level of government that is devolving power now. We are taking power from it to these other levels. So it is not counted as one of the levels of devolving power it is the other levels to which power is devolved that we are counting that is why we say there are 4 levels of devolving government. The government that is devolved, we are saying at this level the Central level we can have the three Organs of State but these other devolved levels we shall have only two organs of State. That is the Legislature and the Executive. We don't want the devolved levels to run Judicial affairs we run from the Centre right to the village level controlled by the Central government. That is the devolution we are talking about.

Now in devolving that power we are saying leadership at those levels must be elected. People shall elect their District Councils, their Locational Councils and their Village Councils. They will elect them, then we shall have the Executive Arm of this levels particularly the district which shall be headed by a District Administrator who shall be elected by the people and then we shall have a small cabinet comprised of professionals in the department of the district to run the affairs of the district. People must elect but this District Administrator can be removed from office through a vote by the District Council and if the District Council vote to remove him, then the matter goes to the referendum in the district, if people approve in the referendum then he is removed, if they reject then he continues in office, strengthening the participation of the people in the running of their own affairs.

Elected leaders: related to this is the fact that we have proposed the abolition of Provincial government because we are saying people must elect their leaders. So these devolved levels should be elected by the people. You will have a District Administrator and not a District Commissioner appointed by the President. A District Administrator elected by yourselves running the affairs of the district in consultation with the elected District Council. Planning and doing everything. The Provincial Administration, we have said they will all have to report back to the Public Service Commission for redeployment for those who can be redeployed. That is what we are proposing. Now in devolution the focus is sharing power, sharing responsibilities and in dividing those responsibilities the doctrine that involved our decision was the doctrine I mentioned earlier that is called the doctrine of subsidiarity. The doctrine of subsidiarity says functions or responsibilities must be performed or discharged by the

lowest level of government that can appropriately perform or discharge them. So that what the district can do must be left to the district there is no reason why the Centre should want to do certain things if those things can be done by the district itself. If the district can perform certain functions, if it can discharge certain responsibilities then those responsibilities must be re-assigned to the the district. And for your information power is devolving direct from the Centre to the district, and not to the province. It follows from the Centre to the district and then from the district to the location and then from the location to the village, the province gets its powers from below. Once you have devolved the district, then the district in a given province then form a Provincial Council for purposes of co-ordinating the affairs in the province and running those projects that needs to be done at the provincial level rather than at the district level. And there are many, you know we have Provincial hospital, District hospitals isn't it? We have Provincial schools, District schools and we are saying that those facilities on the basis of the doctrine of subsidiarity for a Provincial school to be properly run, it must be run by the Province and not by the district because it is serving the entire province, subsidiarity. Let something be done where it can be properly done. So we cannot ask the district to do what they cannot appropriately do but if the Province is the one that can appropriately run provincial hospital the Centre has has no business nosig around to want to run Provincial hospital. That is what we are saying. So power is shared on that basis and if you look at the Schedule, in your papers if you look at Schedule 7, we have tried to divide those powers taking into account the doctrine of subsidiarity and in doing that there are those functions and responsibilities that we are saying are purely for the Central government, the National government must be the one to perform them. Then there are those that we are saying are purely for the district and must be performed by the district then there are those we are saying are of a concurrent nature. They can be performed by both the district and the Centre they overlap. So that you may find on such a matters the Centre and the district can agree and say let the Centre pass the policy which is supposed to be used across the entire country on such a matters in all the districts but when it comes to implementing the center then delegates to the district to implement taking into account the peculiarities of each district concurrent matter and matters that are purely separate. That is how we are dividing responsibilities. We are still refining that, I am currently supposed to be chairing a task force on devolution, in fact when I finish with you people here and tomorrow I will be proceeding to Nairobi for meetings that are supposed to be developing this idea of devolution so that we refine it properly to get it fit in our circumstances and get our people understand it. Now the next stage isthat once you have distributed responsibilities. *Nuwakhakaba emilimio iwe nukhole kuno* the next thing is to provide the means that are necessary for performing those acts. So you must share out the power to raise revenue because those are the means to perform the function. How do we share out the power to raise revenue between the Centre and the --- levels. Now the ideal situation is to follow the need principle, the need principle nayo ibolanga you must give according to the need, there are people who say we give according to our ability but we receive according to our needs isn't it. It will be same saying we first must look at the allocation of responsibilities to know, who has more responsibility and therefore requires higher means to discharge those responsibilities than the other. That is the ideal situation reviding the power to raise revenue. The power to tax and collect taxes and the power to borrow money either locally or internally. How much power can we allow the district to exercise? In terms of borrowing. How much power can we allow them in terms of levying taxes and collecting them? That has to be looked at the ideal situation will be done but in most case you will find the arrangements are that it is better particularly where you have differences in development and endowment with resources that you rather have more power to raise revenue at

the Centre then you distribute what has been collected at the Centre to the Region in accordance with the needs. So if the Centre has more power to collect money to raise revenue, it follows that if the district have higher responsibilities to discharge then the Centre has a higher responsibility to give higher grant of money to the district to enable them to perform to the ---. That has implications for the budget arrangements in our country when we are doing our budget how do we go about it? Because the budget this time round will not be making allocation to the Ministries, it will be making allocations back to the District how do we share between the Centre and the district and once you have shared then the Centre then goes to allocate in terms of ministries what has remained. Then the districts once they have also received then they can now go in terms of ministries how do we allocate to the departments and so on. So that has to be there in taking to account the need principle one and most important thing will be what is called Equalization Financing. Those who are not equal must receive higher sum. We are aware that you are starting off at a point where some districts are better endorsed with resources than others, some are better developed than others and so how do we lead those that are behind to bring them to the same tax withholding, *babolanga, ndutsi likazeti libolanga bulano Moi hakahanda over relay nibelukhanga tsimbiro mushikuri. Iquestion ibetsanga mbu* they don't start at the same point they will finish, they are expected to finish at the same point but they are allowed to start at different points isn't it? Because the one who is in the inner lane is running a shorter distance than the one who is in the outer lane. So *nobatsilia halali* then that will not be fair competition. They will be running different distances. And we are saying if we start off with devolution knowing that some districts will be running longer distances, it will be unfair for us to say they should get equal resources they must be given a little more to reduce their distance. *Nashio shichilanga mutsimbiro tsino uwuli in the outer lane niye watsilanga imbeli. Naye uli in the inner lane naye uwanzilanga inyuma.* So that you make their distances equal. *Nupima distance ya ino ha hulia yanzile ni bulano nunyola* they are running equal distance. Equalization must be a guiding factor because we have said we want equitable development of all the regions. Nairobi already *lano* has too many things located there, we are saying we want some of these things distributed. So in allocating finances equalization must be taken into account *etsiatong'a inyima bahebwekho* some money to lift them. We will even have problems of having to wind up Provincial Administration *lano* Western Province *yino the Headquarters yili Kakamega henyu hano.* Are we going to say *bulano* those properties have to those properties have to remain as the properties of Kakamega district. How about people from other districts who have been under Western Province. So how do we equalize if we leave those properties for Kakamega District, how do we equalize so that Lugari, Malaba District they don't feel they have a row deal. We will have to address that. Are we together? That is the devolution we are talking about.

Then there the question of recruiting of staff, training of staff and so on. The Centre will recruit certain staff the district will recruit certain staff but the question arises the Central government does not have its own people that it is ruling or serving different from those that are being served by the people in the district. The function the Centre performs are supposed to be giving services to the very people in the district who are being served by the people in the district. So the focus of all these governments are the people and their welfare and we are saying if the Centre is going to have power to recruit certain staff the question is do we allow them to just pick anybody? *Nibakhurumila* Kakamega yino or what do we do? We are proposing here that the Centre will be under an obligation to consult with the district because some of the functions the Centre is

supposed to be performing will be performed in the provinces, will be performed in the district, it will be performed in the location and so it must post its officers in those districts and locations to perform those functions and we are saying before posting that person we must consult with the division concerned. So that you don't want a situation where *nabayinie omundu yebelenje Kiambu yilia bakhupayo buyoka nibabola, tsiakhu Kakamega yilia ubutsili ibweneyo*. You should have an opportunity to say no, we are not going to accept thieves here. If someone is coming here to just steal your money you can be able to tell the Centre we don't want so and so khwahulile lwayabele Kwale yilia ikasi yeye yabelenje khwiba, khwahulile lwayabelenje Kilifi yilia ikasi yiye ni khwambala likoti muofisi natsia khukhola businesses. We want someone who is going to serve our people and by that we are trying to instill discipline in public servants and make them more accountable to the people because you will know *nuba* rejected in one district a second one, you will become unemployable. The whole country may reject you and you will have no job. You must go there to serve people. those are some of the things we are talking about.

Finally the remaining aspects of transitional arrangement. We are saying if this Constitution were to come into force before we go to elections then elections must be held within 60 days of the coming into force of this Constitution. We are coming from a certain past transiting into a certain future and the question that arises is, are we going to abandon everything that we had in the past and pick up new things? Or are there some new things that we will carry forward from the past into the future? *Baluyia babolanga likhaniafu nilienya okhwibula nohomba besukha mulalanganga likhaniafu shi? Inambu? Inambu niyenya okhwibula abaluyia bamanyanga babola*, I don't know whether it is true but *babolanga limalanga liatikha na bana bakwa yiyo nibachenda batsia naye nyina nakwa yiyo nafwa*. So we are saying we have a Constitution which we are used to, we want to use it to produce a new Constitution now the reality is that there may be some values in the old Constitution which we don't want to reject we want to carry them forward and so on. Now will our own Constitution produce the new one in the manner of *inyambu* instantly *nohomba* will it be gradually or instant and we are saying it can't be like the *likhaniafu* it has to be gradual there are certain things from the past which will be carried forward which cannot be abandoned but there are others which must be abandoned and new ones introduced which were not in the past. So in doing that we have to decide what are we retaining and what are we carrying forward. So one the responsibilities and rights of the duty must be carried forward. Of the State. If the State owes you money it will not say we don't owe you because a new Constitution has come in to place, its responsibilities must be carried forward. The existing laws, we don't want anarchy when this Constitution comes into place because we are saying that we have rejected all the old laws so we must enact new ones we are saying the old laws shall continue to govern the country but modified to be consistent with the Constitution until the new laws have been passed which are consistent with this Constitution. That we have said.

On the elections I said the current Electoral Commission will conduct election and then hand over within 90 days.

On political parties we are saying when the new Constitution comes into place existing political parties shall be allowed to nominate candidates to the election but they shall be given 12 months within which to regularize their position to satisfy the conditions of registration. And if those months end and you have not done that or you have attempted and you have failed.

Your party will stand dissolved. But people who will have been elected on the basis of that party shall retain their offices but they will be converted into independent candidates.

We are saying for the Executive that a person who has held the office of President before for two terms shall not be eligible to hold the office of President to hold the office of Prime Minister, to hold the office of Vice President, to hold the office of deputy Prime Ministers, to hold the office of Ministers to hold the office of deputy Minister, or even to be a member of Parliament. We are saying the office of President is an important office and we do not want to demean his integrity by allowing someone to cease to be a president then become a Councillor, or become an MP. So we must protect the integrity of the office of President. If you have served as President you know that there are certain offices we will not allow you to go and hold because that will demean the integrity and respect of the office of President so we are saying for the avoidance of doubt because in 1992 *mwakhola* an amendment then after sometime *numusakhulu naboola* this law will not operate retrospectively and we are saying this time round for the avoidance of doubt it shall operate retrospectively, on that aspect. So that he will not come and say no I have never been Prime Minister, no, we are saying we cannot allow you to hold that office.

Then we are saying there are accumulated pensions, gratuities and other benefits, people who have been serving in the government and their offices are being abolished or they are being affected in one way or the another they cannot lose the pensions, gratuities and other benefits. They are entitled to retain them.

The judiciary I have already told you about transitional arrangements and proceedings pending in the Court, we are saying they can continue as we reconstitute some of these institutions.

In the main body we have said the death penalty shall be abolished and so in the transitional arrangement we are saying anybody who has been sentenced to death until he dies and this Constitution comes to effect before he dies then that sentence shall automatically be commuted to a life imprisonment. And therefore he shall not be killed.

Then finally, we are saying that for transitional arrangements the commissions that I have stated will be appointed in a certain priority. We go to election 60 days after coming into force immediately Parliament comes into place. They must first appoint the Ethics and Integrity Commission then from there they go to the others in the order of priority starting with the Constitutional Implementation Commission, the Judicial Service Commission running down and ending with the Environment and Management Commission. There is an Environment and Management Commission. It just functions similar to the neighbour that is provided for under the Environment Management Act.

Finally, ownership of land, we said earlier that non-citizens shall not be allowed to own land in Kenya on the basis of a tenure that is more than a 99 year lease. So we are saying when this Constitution comes into force and there are any foreigners non-Kenyan citizens who own land on another basis other than 99 years, we shall be saying they are doing so, they got that by

accident. And we are saying the coming into force of this Constitution shall automatically convert that tenure into a lease of 99 years so that when it lapses the land referred back to the Government and the Kenyan people.

That is all I have to talk to you. That is the proposal we have made you now are free to judge it yourself if it doesn't reflect your views you give us your comment, if you think that is what you would like, I will want you to share these ideas with other people, they understand it, because one thing is that we want to begin running with this Constitution with a people who already understand it thoroughly. So that it may be able to work. We shall set a few questions and comments and then we go but I said the race for detailed comments, I would prefer that you study the document and write them down send to the District Co-ordinator give copies to the delegate who will be at the Conference, you were told each district has three delegates you must also know, all the MPs will also be delegates the Conference, so if you cant reach the delegates who have been elected in the District you can give to your MP and urge him to raise some of these things. If you can organize seminars here with some of them including the MPs you must educate them on how they are going to debate and get some of these things passed on your behalf Thank you.

**Handa Akibela :** My names are Handa Akibela I am a member of the 3Cs representing Shibuye Location and this place where we are at the moment is in Shibuye Location.

We are so grateful and before I give my vote of thanks we are going to invite 6 questions only if in case you have them so let us have from the first person if you can raise a query. Your name?

Lawrence Anyanda.

**Handa Akibela :** Lawrence Anyanda, okay I give you number one. Who else? Ernest Tero number two. Let us have gender also if there is somebody, somewhere. Okay stand up and tell us. Number three Peter Kwesira. Any gender? Any sister or a lady? That is number four, Wilson Ashimosi I have given you number four. Next? Kalsim Shikomere, I have given him number five. Luka Muthami, I have given you number six. You were the last, unless if we have any lady. I know they have left. Okay let me have last somebody was there. **( End of Side B Tape 4)**

Okay, I am giving a chance to Petronilla Khayesi to ask something also. We have given you number seven.

Number one.

**Lawrence Anyanda :** I am Lawrence Anyanda and I am very grateful to what the Commissioner has given us today and I want to add that most of what we said when he came around was picked correctly because when I look at your draft and our draft we seem to have gone together so we must thank you very much. I don't have much to say, continue and make this

country look like we want.

**Ernest Tero Lihanda :** I am Ernest Tero Lihanda, I just want to get a clarification on how Ministers will be distributed over the country. Asante.

**Peter Washila :** My names are Peter Washila. I am very thankful because of the explanation that we have been given in that I can term this as a workshop or a seminar because it was very short time to go through this paper and read out what we can pick out as any irregular form. But if there were some room of course I would say something about the Provincial Administration. On the Provincial Administration I would suggest that the question of scrapping the whole system of the Provincial Administration was not good, would suggest that the Assistant Chiefs, Chiefs and the DC remained. But the DO's office and the Provincial Commissioner's office be scrapped. Thank you.

**Wilson Ashimosi :** My name is Wilson Ashimosi. First of all I would like to commend the Review Commission for a job well done. But I want to make one or two observations.

One is to do with elected members of Parliament. The issue of non-performing MPs has been addressed the issue of a virus in our MPs called a defector has not been addressed I would like to propose that in case wananchi elect a member of Parliament and for one reason or the other he chooses to defect to another party the ECK should prepare a budget for a by-election which should be solely made by the defector.

The second aspect is to do with Judiciary. I am delighted that the issue of our Judges has been addressed that is the bench. I am very uncomfortable with another aspect of our legal officers these are the advocates in fact you will find that that is one area of our Judicial offices where wananchi have a lot of problems. Somebody has case he hires and advocates he pays money to this gentleman to handle his case one or two things happen. One the advocate will not successfully handle this case. Two the advocate will end up consuming the clients of money. No mention is being made in this Draft Constitution regarding our Judicial officers on the bar. We have only addressed the bench not the bar. Finally my quarrel is to do with this issue of citizenship. I fear that as soon as we allow our daughters and sisters to get married to the people who will acquire citizenship on that ground we shall be opening ---- gate to a very dangerous situation. We shall be having foreigners who will cohabiting with our daughters and sisters for three years and they will apply for citizenship what will be the recourse? I would like to end there because I want to give opportunity to other people. Thank you very much.

**Kassim Ndugu Shikomere :** My names are Kassim Ndugu Shikomere. My questions are in the new Draft Constitution in Chapter 5, schedule 4 it states that we have freedom of worship, I agree with this but it has to be limited or it has left some room for maybe the Constitution has avoided a lot to mention the word God. It should state that, maybe, I propose that it should state freedom of worship of only one God in this draft does not clearly show that. Next question is that it has given

women their freedom or equal rights to men, my question is that supposing we elect a woman as a President and then also in the draft, it creates the opportunity a woman to be given maternity leave. So we mean that the country will operate for that period without a President and then my fear. We are intending to go to coming elections with new Constitution and the power still lays in President, supposing he refuses to sign the new constitution. What way or which steps are we going to make sure that he signs so that it becomes a new Constitution. Those are my questions. Thanks.

**Luke Mutsami Mulobi :** My names are Luke Mutsami Mulobi. The question I wanted to ask was about the denomination but I will have to put something in. We are registering so many denominations as you said non- performing parties as you said if you fail you cannot contest for the second time. Now why are you registering so many denominations and they are not performing. What they are creating, they fight, they want to share the money. Second question we support the people, we in Kakamega we thank God we have been given this forest and the money coming from this forest we are not benefiting it is benefiting the other people and the people who are given the forest we are not benefiting so you include at least something. That is all what I wanted to say.

**Petronilla Khayesi :** My names are Petronilla Khayesi, CCC member Shinyalu. My question is to the Commissioner. Please I would like to know what system you are going to use to make sure that civic education is given to all wananchi in the country before general elections because wananchi should know what they are going to do in the new Constitution and if the election is to be done as I heard before April next year or end of March I don't think if the time given in between can be enough for civic education about the Constitution especially on the side of Electoral System or election process. Secondly I would like to be clear, because we want women to participate in this coming election. How are you going to make sure that they are secure because men always disturb them and what measures are you going to take to those who are going to use dirty language against women? And financially how are women going to be assisted? That is enough.

**Com. Mutakha Kangu :** Now I will start with who ever started who said he is happy we are happy so nothing mopre I can say about tht. Lihanda is wondering how we will distribute the Ministries across the country and we emphasized that we want given development of the country as a general view so I think that will be able to involve the appointment of ministers and that is the more reason we want to appoint them from outside Parliament so that you cannot say you see the people from this particular Province do not have anybody good in Parliament. You can identify a better person outside Parliament so that is settled that way.

Now Peter is saying we shouldn't scrab the entire Provincial administration, we should instead be saying the certain cadres of that administration. Now the fact that was driving us is that we are trying to democratize government to improve government by making the people have a say in the recruitment of the people who lead them. Of course I know our people have developed a certain sense of security in the chief in the villages here and sometimes again we get the impression that they are like chicken that has been released, when you tie chicken somewhere for a long time *nohomba nuba nufunishilenje mu shimwelo* for a long



time, *nufunulila itsie*, it does know whether to go or not, it will sit there so I think our people have been so tied down with this system that somehow we have developed own security in them. We believe that the elected leaders should be able to provide the security we are talking about. You go across in Uganda here, they no longer have any provincial administration system. People who are leading even in the villages are elected by the people at the lower level. So we still think that it is important to scab this and the other time, this was a colonial mechanism for ruling the people suppressing them. And I remember when we got independence this thing was not provided for in the Independence Constitution. But around 1966 and we were told this by Prof. Okoth who was in a Commission that was formed by Kenyatta to address the issue of local authority, local government and Okoth told us that before they started their work they went to see the President to give them the terms of reference and he told them two things. One I want you to think about Gatundu can it be a local authority of its own (inaudible). Two do not touch from introduction, this intact and this man tells us they went and did their job they finished they had a Chairman, Mzungu who was in the company of Bellhouse Mwangi Accountants and so on. So they went to Mombasa to report to the President and hand over the report and as they were waiting to go in the waiting room, there was an askari, someone who said something ---- and in the process he was asked to ask them what did they say about Gatundu (inaudible) and the Musungu Chairman became honest and said tell Mzee we have restructured Provincial Administration because he knew they had to propose its abolition and when the man went back he came back and told them Mzee says finish your tea take all your things go back to the Airport and go away and that was the end of the whole thing.

Now Provincial Administration was re-introduced by Kenyatta when he started having problems with the politicians he couldn't control his party Kanu, he couldn't control MPs so he started bringing in things that will help him to control when they started the bringing in he dismantled the mechanism of decentralization and bringing power to one person. And some mzungu advised him and told him what you do to shift, to shift power from Parliament, to shift power from the party and take take it to the public service who are answerable to you directly that is how provincial administration was introduced was even given power and so on.. They continued dismantling these organizations, come 1978 and Moi takes over and he finds that most of the Provincial administration was Kikuyu he decided now what do I do? Power was shifted from Provincial administration, how do I survive and I can't remove these people overnight then another one advised him, don't remove them just shift the power, shift it now to the party, that is how Kanu became so powerful, district Kanu chairmen *nibabolangakhu butswa nukwa butswa yilia*, the days of akini Okiki Amayo and Kariuki Chotara, they would order, I must slept in Nakuru and so on. If they walked to a Police Station and ordered the PCO to arrest you, you are arrested without any question. A question of shifting power.

That is why we say many of our people were debating these things without understanding. When we started multiparty and then our people focused on parties nominating people and going to Parliament so the old man said okay bye they are seeking for multi-party but it looks like they want multi-party in Parliament, they don't know that power is not even in Parliament, power is with the Executive. I can allow them to have multi-party and we have had multi-party for 10 years, we have done nothing. The Executive remained in one party, until recently when he decided himself to pick people from other parties and put them in the Government. So it is a question of shifting and we think that we cannot afford to imagine that we can trust some people

appointed, we are trying to involve the people in the recruitment of those who serve them so we cannot again allow an individual to continue appointing people to serve us that is how we get messed up and manipulated.

Now Ashimosi has raised the question of defections. And how we should deal with them, I think that is the question to be thought over seriously but we think they should refuse, since you cannot be a member of Parliament without belonging to a party, but he needs to think more about it. Then there is the issue of lawyers. That has been addressed if you look at Article 212 under the Judiciary we have a part dealing with the legal profession and we are saying the profession of law Article 212 (1). The privilege of practicing law is a public trust. It is a fundamental duty for every legal practitioner to uphold the Constitution to observe respect protect and promote the rights and freedoms set out in the bill of rights conduct the practice of law with integrity and to be scrupulously honest in all dealing with clients, other legal practitioners the court and any public office or officer. Advocate fearlessly before the court or any tribunals on behalf of and in the interest of and in the interest of of the client, assist the court in the development of the law by presenting well reasoned innovative and challenging arguments such as will advance the objects and purpose of the Constitution and the rule of law and subject to the confidentiality of a client business and communications, draw the attention of the appropriate authority to any actual or apprehended violation of the Constitution or any law.

So the issue of the legal profession is not that we ignored it we are aware that, and Kenyans told us all over as they complained about the Judiciary they also complained about lawyers and we are saying practicing law is a public trust and we want people of high integrity and honesty todo that and that is spelled out. So it is there it can be developed and we see where we can get.

Now, citizenship you are worried about Kenyan women bringing in a lot of foreigners and it is something to think about because it has happened in some countries where commercial marriages are conducted just to give people citizenship and then you go and bring another one and so on. We must in the supportive laws seal all the loopholes to ensure that we do not get into that kind of situation.

Now Kassim says that we need to identify the God that should be worshipped, people told us about devil worship and so on and you know this is a difficult question because you know worship is founded on the right to free conscience. Worship, religion is founded on the right of free conscience. Now if you want to believe that there is no God. We cannot stop you, you are free, you should exercise your free conscience to believe that there is no God and there are those who do that our Chairman says that. He doesn't believe in that truth and we have been working and inspite of that we have had a culture in our Commission we begin all our meetings with prayers, this year many people believe I will also pray. It is a difficult situation who shall define God? Is it the Commission which shall define God? And how do we define the devil? Who should define the devil for the other. It is a tricky question, it was debated at great length and it was not possible for us to define God but of course what we are saying is that the Bill of Rights is subject to certain limitations. If you look at Article, this is Chapter 5, there is an article dealing with the limitations. Article 31 deals with the limitation of rights and it sets on what grounds and under what

circumstances you can limit rights and it says that the rights or freedom set out in the bill of rights may be limited, some are recognizing the fundamental rights are not absolute, they can be limited but what is important for us is to limit the power to limit rights. We cannot grant limitless power to limit rights we should grant limited power to limit rights so that who ever is seeking to limit rights must be actually prove certain thing, but we are saying they can be limited only by a law of general application only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity equality and freedom taking into account all relevant factors including the nature of the right the importance of the purpose of the limitation the nature and extent of the limitation and the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose and then we go on. Now even the right of worship can be limited but subject to this. Now the devil worshippers quite often are relayed to be very secretive people so you can where there is an open and democratic society will not allow people to operate in secret so why do they worship in secret and so on. So it will be your burden to show that actually they are not worshipping God they are worshipping something else and an open and democratic society would not allow that. So that can be dealt with on that basis. A

And you need to note that we have provided for two things freedom of religion and freedom of worship. Two different things. You are free to believe in any religion and you are also free to worship in any manner that can make you, *nubola mbu uhenjenje mumbo nohomba ibukwe* that is your way nobody will bother with you. Free to worship in any manner you like. *Nuwenya okhunyweshwa indumba nuruka mwikulu* nobody bothers but of course *nuchaka khutiaba indumba muno butswa bandu benya khukona nawe ukhupa tsindumba* people can say but we also want to enjoy our silence in our homes, so there must be some limitations. And you must --- how that should be done.

Now maternity leave and women I want to confess I haven't thought about that. But the Constitution provides for the Vice President to act as President in the absence of the President so if our President were to have a baby as recently the British Prime Minister got a baby and you know in some of those places it is not just the woman alone to get the maternity leave, even the men get. We might need to investigate what they did. I don't know how far Kasibwe had gone with getting her babies when she became Vice President, we may need to find out whether she has had any babies. How she dealt with that, but it is something to think about.

Now Luka is saying that there are too many denominations and I agree that is something that needs to be addressed so that we see what can be done. And then that how do we benefit from the resources, Kakamega forest? If you look at devolution and the principles governing devolution you will be able to see that first public finances we have mentioned that Article 243 we are saying the management of public resources as is supposed to benefit the welfare of the Kenyan people to enhance the participation of people, communities and the civil society organization republic finance management, ensure equitable sharing of National and local resources throughout the republic taking into account the special provision for marginalized areas. So we have mentioned local resources. Now we are saying ensure the equitable division of revenue raised nationally among national, provincial and district and local levels to government so again in sharing the revenue we will need some of these things to be

taken into account ensure that in allocation and distribution of national revenue adequate consultation is conducted and recommendations from various levels of government and sectors are reconsidered. That what we say about public finance but I thing we also said something under devolution, if you look at devolution Article 213 we are saying the principles and objects of devolution, one is to ensure equitable sharing of national and local resources throughout Kenya with special provision for marginalized areas, facilitate the decentralization of Central government powers and relocation of Central government institutions and departments away from the capital territory to ensure equitable distribution of resources in all the provinces and then we say under, in distribution of resources under devolution we are saying financial arrangements Article 224 we are saying the National government is responsible in accordance with an Act of Parliament for the collection of the major resources of revenue. Districts may evolve taxes or levies under the authority of an Act of Parliament. The national revenue shall be share equitably between the national and devolved government. And then we go further and say that Article 226 on share of national resources, districts shall be entitled to a substantial share of the national revenue from local resources and for the allocation of a fixed percentage in communities in whose areas the resources are generated. Now the revenue from National resources shall be share equitably between the district and the National government. So all that has been addressed we need just to implement and then you will have all your fears dealt with.

Finally if I am not wrong there was the question on, the last question by Khayesi – Women, I can only pray that we do not go to election under the current Constitution because if we do, I can assure you that we will still produce a Parliament with less than 10 women but if we go under the new Constitution I can assure you myself, if this Draft goes through that you will have at least 45 in the National Assembly. But if we go to election with the current one too bad for women you will have to use other tactics, and you can be sure these elections are going to be very violent and more abusive so survival for women will be very difficult. Thank you very much.

**Handa Akibela :** Mine is very brief if you can be silent for a while, just for a while we finish together with a word of prayer. But before we do that, I have to convey our vote of thanks to the Commissioner Mr. Mutakha Kangu, it has been very much motivating non can speak for more than 6 hours that you have taken here. If it was not a matter of motivation when you are conveying this messages of Draft Constitution, these people would have left early but I want to assure you that they have not taken anything, not any meal because they were very very happy for the way that you have been talking to them. We really appreciate. I cannot even forget to thank your secretarial staff for being also patient. Thank yourselves, you have not even taken water for six hours speaking.

Well Wazee, elders and young men who have been here, I also appreciate for your coming for your coming and being so silent to listen and to here may God bless you. We want to end with a word of prayer and I will ask Mzee Gideon Muyanzi to come and close with a word of prayer. He is from Friends Quaker.

**Gideon Muyanzi :** Tusimama wote na tusikilize : Ewe Mungu Baba tunarudisha asante kwako kwa kutuongoza tukawa hapa

