

**CONSTITUTION OF KENYA REVIEW COMMISSION  
(CKRC)**

**NATIONAL CONSTITUTIONAL CONFERENCE  
(NCC)**

**VERBATIM REPORT OF**

**PLENARY PROCEEDINGS,  
PRESENTATION AND DEBATE ON THE DRAFT PROVISION  
ON CULTURE, AFFIRMATIVE ACTION & DEVOLUTION,  
HELD AT BOMAS OF KENYA**

**ON**

**16.09.03**

**VERBATIM REPORT OF PLENARY PROCEEDINGS, PRESENTATION AND  
DEBATE ON THE DRAFT PROVISIONS ON CULTURE, AFFIRMATIVE ACTION &  
DEVOLUTION, HELD AT BOMAS OF KENYA ON 16<sup>TH</sup> SEPTEMBER 2003**

**The meeting was called to order at 9.35 with Prof. Yash Pal Ghai in Chair.**

**Prof. Yash Pal Ghai:** We will begin in about a minute. Please take your seats. The prayers this morning will be said by Sheikh Ali Shee, Archbishop David Gitari and Mrs. Neera Kapila and I will now ask you all to stand and I will request Sheikh Ali to please begin with the prayers. Thank you.

**Hon. Delegate Sheikh Ali Shee:** Bismilahi Rahmani Rahim. Kwa jina la muumbaji wa Mbingu na ardhi na viumbe vyote vinginevyo, tumesimama mbele yako ee muumbaji tukiwa wanyonge, madhalili mbele yako, tukitafuta msaada wako. Baba twatoa shukrani zetu kwako kwa kutupa mema ya uhai na kutuweka katika hali hii. Tunauliza, tunapoomba kwa unyeyekevu ukarimu wako na baraka zako. Utubariki sisi wananchi wa nchi hii. Utupe hekima, utupe uwezo wa kuvumilia na kusubiri na kuendelea na kazi hii ngumu ambayo tuko nayo. Mola tubariki na ubariki nchi yetu. Wabariki wananchi wote na wale ambao wako kwenye uongozi, wape busara na hekima ya kuweza kuongoza taifa hili katika hali iliyo bora, hali iliyo nzuri zaidi. Ee Mola tunakutegemea wewe katika kazi zetu zote ambazo tunazifanya. Tubariki na ubariki watu wetu wote. Nakuomba kwa jina lako, hakuna mwingine wa kumuomba isipokuwa ni wewe. Tubariki. Amen.

**Hon. Delegate Bishop Gitari:** Heavenly Father, we thank you for this new day, we thank you for giving us the responsibility of reviewing the Constitution of this Nation. Now Lord we pray that you may bless our work this day, that we may perform our duties by being diligent in what we do, by speaking the truth in love, the willingness to listen to others, so that we can undertake our responsibilities for our benefit and the benefit of the Nation and posterity. We pray that you may bless the people of this Nation. We pray for the President and all those who are working together with him in running the affairs of this Nation. At this time, we pray for the police as they search for the killers of our brother, that you may lead them in a way that those who have committed this crime will be found and prosecuted and punished accordingly. We pray that you may restrain the hands of evil men who do such things, as we sing in our National Anthem,

Justice be our Shield and Defender. We pray that justice will be shielding and defending every citizen in this Nation. Now we pray for the Chairman of our Proceedings today and all those who are going to speak, that this may be another day we can say “we have made progress” and as we go to our various tents, we pray that all those who are going to speak are going to make the progress of our task brighter so that we may fulfill the task that we have been given. So be with us this day and bless us and help us to make progress, in Jesus name we pray. Amen.

**Hon. Delegate Kapila Neera Kent:** Oom. Oh Omni present, Heavenly Energy. We stand together grieved, praying, trying to find answers to the heinous crime that so cruelly and savagely cut short the life of one of us. One.....Dr. Mbai. All knower of all men’s hearts and actions, give us the strength and the resolve to complete this very crucial task for our people. Oh giver and sustainer of our life, give comfort to the family of Dr. Mbai and re-energise our resolve to live towards a strong Nation and to complete very efficiently, this assignment for Kenya’s prosperity. Oom Shanti, Shanti, Shanti, Oom.

**Prof. Yash Pal Ghai:** Thank you. I believe we have one Delegate who needs to be sworn in today. Would he please come in front of me here and I can administer the Oath. Will you please repeat after me. After “I”, say your name and then repeat after me. “I”

**Hon. Gichira Kibara:** I Gichira Kibara--

**Prof Yash Pal Ghai:** Being appointed a Delegate to the National Constitutional Conference--

**Hon. Gichira Kibara:** Being appointed a Delegate to the National Constitutional Conference--

**Prof. Yash Pal Ghai:** Under the Constitution Of Kenya Review Commission Act--

**Hon. Gichira Kibara:** Under the Constitution of Kenya Review Commission Act--

**Prof. Yash Pal Ghai:** Do solemnly swear that I will faithfully and fully--

**Hon. Gichira Kibara:** Do solemnly swear that I will faithfully and fully--

**Prof. Yash Pal Ghai:** Impartially and to the best of my ability--

**Hon. Gichira Kibara:** Impartially and to the best of my ability—

**Prof. Yash Pal Ghai:** Discharge the task and perform the functions--

**Hon. Gichira Kibara:** Discharge the task and perform the functions--

**Prof. Yash Pal Ghai:** And exercise the powers devolving upon me by virtue of this appointment--

**Hon. Gichira Kibara:** And exercise the powers devolving upon me by virtue of this appointment--

**Prof. Yash Pal Ghai:** Without fear, favour, bias affection ill will or prejudice--

**Hon. Gichira Kibara:** Without fear, favour, bias affection ill will or prejudice--

**Prof. Yash Pal Ghai:** And to the end of the exercise of the functions and powers as such Delegate--

**Hon. Gichira Kibara:** And to the end of the exercise of the functions and powers as such Delegate--

**Prof. Yash Pal Ghai:** I shall at all times be guided by the National interest--

**Hon. Gichira Kibara:** I shall at all times be guided by the National interest--

**Prof. Yash pal Ghai:** So help me God.

**Hon. Gichira Kibara:** So help me God.

## COMMUNICATION FROM THE CHAIR

**Prof. Yash Pal Ghai:** I welcome you to the Conference and look forward to your contributions. Honourable Delegates the Steering Committee met this morning and among the items of business was the question of the Commission of the Conference contributing to part of the expenses of the funeral arrangements for the late Honourable Delegate Dr. Mbai. We will be passing a list and if you wish to make monetary contribution, please indicate on that form and we will deduct that amount from your payment this week. This was the wish of the Steering Committee, a recommendation that we all make some contribution towards the expenses. Thank you very much.

The programme this morning is the Presentation of the Draft Articles on three topics: Culture, Devolution and Affirmative Action. You will remember that the Delegates had asked us to do an audit of the Constitution from the point of view of Culture and Affirmative Action. On both these matters, the Conference passed resolutions to strengthen the provisions dealing with these two topics. The Commission has met several times through its Task Forces and in the Plenary sessions and has now agreed on the Draft Articles to be presented to this Conference. The Conference also in Bomas 1 asked us to revisit a Chapter on Devolution. We had an interesting and lengthy debate on Devolution and based on the views expressed by the Delegates, a Task Force of the Commission met over several meetings and has now prepared a Draft Chapter.

We have already earlier in this round of Bomas, presented the Report of the Commission on Culture and Devolution. What we are going to present to you today, are the actual Articles which are based on this Report plus your comments, when we debated our Reports on these two topics. We have also met to discuss Affirmative Action and we have both the report which will be available shortly as well as Draft Articles which I am sure you picked up as you entered this room. We should begin with Culture and then go to Affirmative Action and then thirdly we will take Devolution. Devolution of course is very important but the documents are still being printed and may not be available till about 10.30.

So if we can start with Culture and go on to Affirmative Action, by that time the documents will be available. So I want to call upon Commissioner Kavetsa Adagala to present the Draft on Culture. Thank you.

## REPORT ON AD HOC COMMITTEE ON CULTURE

- Session Chair:** - Prof. Yash Pal Ghai
- Presenters:** - Com. Kavetsa Adagala
- Prof. Wangari Maathai

**Com. Kavetsa Adagala:** Thank you very much Chairman, fellow Delegates, you will recall that we presented the Report of the Task Force on Culture and today we are presenting the Draft Articles on Culture. I am happy that you have copies, it means we can go a bit faster but just as a reminder, I would like to say that essentially the Draft Report on Culture had several recommendations, if we put them together. It recommended a recognition of Culture in the Draft, preferably in a Chapter. It also recommended that the Bill of Rights be seen together with the Cultural Rights or peoples Rights. It recommended also the main streaming of Culture in all the Chapters which has been done partially in the main Draft but people felt there needed to be more enhancement and more articulation of this mainstreaming of Culture.

Lastly, the last two recommendations were on Approaches to Globalization and a Multicultural Vision of our Constitution and our society. So in that sense, we are really now just going to look at the Draft Articles in order to see whether they reflect what-- you will discuss and decide if this is what you want to see, whether less or more and let us know. There is an Ad hoc Committee on Culture which has been very anxious to work, unfortunately we had to wait--well not unfortunately, but we had to wait for the other Drafts to be ready so that they are presented together and I want to express my sympathy to them, because they really have been anxious and a bit frustrated over not being able to start their work.

If you look at your Draft there, you will see “to appear as part of Chapter 3”. Chapter 3 is National Goals Values and Principles and here Chapter 1, Chapter 2, Chapter 3 is the Constitutive process, so if we are recommending here as a Commission that the Articles on Culture appear as part of Chapter 3, we are recommending that they be part of the Constitutive process. That is as we are Constituting Kenya, as we are deciding what Kenya would be and what direction it would take, the Culture Articles would be there. Chapter 3, ends at Article 14, so the Cultural part begins with Article 15. Then we have there, “it will be sub titled Cultural

Values and Principles”. When we went around, people told us probably the most universal recommendation, was that there should a promotion, protection, reclaiming, preservation and development of Culture and this is what we have in this particular section. So, you will hear a lot of ‘promote, protect, develop and preserve’ and this is what we were asked. I think in this case we are really living up to the views of Kenyans, because when we went back to our database, we found a lot as we told you in the Report--we found a lot of views on Culture and they were just about these. When I am presenting this, when we are talking about preserving and protecting and promoting, please remember that this goes in tandem, it goes hand in hand with the Bill of Rights, so that we are doing away--the proposal is to do away--already it is been done in Bill of Rights to do away with the harmful, the negative and the discriminative aspects of Culture. So I hope that we shall not be going into that in our discussion but instead as we leave with the Draft Report, move forward. Okay.

Article 15(1) says that all organs of the Republic and the People of Kenya shall, work towards the promotion of National Unity peace and stability to develop the spirit of Nationhood. This idea of unity was very strong and that is why we have put it there at the top and we see that is something which is achievable particularly if we look at it in terms of multicultural interaction between the various peoples of Kenya – the diverse people of Kenya.

15(B) recognizes that diversity of the people of Kenya, their culture, custom, traditions, beliefs, languages and religion, again minus the retrogressive aspects and the negative discriminative and harmful. Here we have a realization--we have itemized some of the aspects, which got to make Culture. If we started defining Culture and enumerating, it will be a very, very long list but these is are the major components which make Culture as a way of life.

15 (C) we see this again as part of that multicultural vision so that they see cooperation, understanding, appreciation, tolerance and respect for each other’s Culture. Again, customs, traditions, beliefs, languages and religions. Again here what we are really seeing is promoting a forward looking kind of Culture.

15 (D) we have the protect, preserve, revitalize and I think revitalize is important because many people feel that quite a bit of our Culture has been left to lie dormant, from what developed and



incorporate into aspects of life, again enumerated there. Those aspects which enhance the dignity and well being of the people of Kenya. This goes hand in hand with the dignity and well being. Well being is in the Review Act that we are to do-- all that we do in this Constitutional Review Process is supposed to be for the well being of Kenyans and dignity definitely there, so that all Kenyans can live a dignified life.

15(E) we have emphasized the development, preservation, promote and enrichment and transmission of languages of Kenya, all the languages of Kenya. So, there it is that whether in Legislation or in a programme, there will be steps which will be taken to achieve this particular Article.

15 (F) respect, preserve, protect and promote:- Article (1) Cultural, historical, religious, sacred, and archeological and other sites of importance. This protection and preservation of physical sites – particularly physical sites is crucial to Cultural preservation and comes up many times in international instruments, especially those of UNESCO. Archeological, particularly for us, we need to do this because we are really - at least for the time being the pride of human kind and it seems as if people come and go as they please and we are not really protecting these sites. There are many Cultural sites which need protection. Many of you every where you go, you have Cultural sites which need protection. We were in Laikipia and we were shown a Cultural site which - a very big field which had been sold and sub divided and title deeds given out and only that the people who took the title deeds were a bit afraid to come and take it up but those kinds of sites need to be protected, particularly from privatization and destruction. Then generally the other Cultural heritage of Kenya and you know as we said we can go enumerating on and on but all this happens. I would like to say that many people are saying it is impossible to preserve the Culture of Kenya, because how do you preserve the Culture of every person. But as you can see, in 1 (E) for instance if we talk about the languages, then it is all the languages and people preserve their own languages and as we see the young generation nowadays know two or three different Kenyan languages, so again that is the multi-cultural aspect coming out, so it is not really in a purist kind of way or in a separatist kind of way but as we live and develop these languages and as we interact, we develop them.

Article (2) This is for the organs of the Republic which shall safeguard, respect Cultural linguistic and religious associations, organization or institutions, the objects of which are not inconsistent with this Constitution. All the time there has to be that limitation, because we cannot go back again to the 19<sup>th</sup> Century and some other Century for those aspects of Culture which no longer really apply or support our present level of development or future level of development. We appreciate B, a Cultural and religious day celebrated by various communities. A lot of communities said they wanted each community to have a Cultural day and also there are other Cultural days which they observe and that one needs to come up. So you see, here is a two way street where the community has to state their days but the State shall appreciate those Cultural days.

Also from 2(c) Promote and expand cultural exchange programmes and corporation within and outside the Country in order to enhance and publicize the Cultural heritage of Kenya. For instance, Kenyan Missions abroad I think now we do not have a Cultural attaché, we do not have a press attaché and we need these so that we can promote our Culture abroad, so that we bring to the Global Culture also our own Culture. Also there needs to be the exchange programme but a little bit of reciprocation also, because we find ourselves taking on other peoples' culture and they do not take on ours and therefore it is unequal. And this principle of equality of all Cultures applies not only Nationally and locally but also Internationally. The Cultures should be equal.

Then the formation-- involve the people--again we get this is participation of the population in the formation and implementation of Cultural or linguistic development plans to ensure Cultural sustainability. Such a development was what people asked for, District Cultural centers and also kinds of linguistic developments and cultural developments but they need to be some where. We shall talk about that a little bit later.

Then (E) is to ensure that the relevant communities enjoy and wear personal benefits from their historical, religious, sacred and archeological sites as well as other Cultural heritage. Now that is the major part and I think in this Drafts we have fulfilled and taken on board the views of Kenyans to promote, protect and develop.

If we go to 16, there is one on educational values and principles. Education as you all know, is a transmitter of values and cultural values. So, here we are seeing that in education, there should be that development of the people in the communication, transmission and development of their Culture. Some other Articles usually add patriotism but we did not put that it has its own problems - so that we can maintain an educational policy that enhances Culture and Cultural values.

16(2) The State-- again the State here, because some of these things can only be done by the State, like if you are saying District Cultural Centers, you can only do them really with the State. Because if anybody sets up their own, it is still an NGO or a personal one or not at the level of the State and since there is the proposal on Devolution, you can imagine that this would be very important.

2 (a) Take appropriate measures to afford every Kenyan equal opportunity to attain the highest education standard as possible, that was already there, it is a little bit enhanced there, It is already in the Draft. Take necessary measures to design and develop an educational system that will nurture and emphasize creativity, acquisition of knowledge, talent, development, innovations, cultural values through formal and informal means and this could also easily take into consideration our Cultural experts who are in the villages and in the Districts and even at the national level, who can also participate in this Cultural Programme. I think this was tried out with music and with oral literature but again funding became a problem.

17 is that we recognize the scientific, technological and intellectual inventions and here we are talking not only about modern science and technology but also there as you can see in (1), indigenous knowledge and the intellectual creativity in the Development of the Nation. We have had problems here that indigenous knowledge is not usually taken on but here we have put it and when we say indigenous knowledge, it is a traditional knowledge and also local modern knowledge. So, that covers that particular sphere. Intellectual creativity needs a lot of enhancing, in fact in education it has been said that the educational system has left out that creativity is the missing dimension. So here we have included it.

17 (2) The State shall support, promote and protect Kenya's appropriate and self reliance scientific and technological inventions as well as intellectual innovations and their application to the development of the people of Kenya. That appropriate and self reliance is very important especially in terms of Globalization. We need to see what it is we can take from the Global Culture or the dominant global cultures but also look at our own for self-reliance and appropriateness.

(B) Give priority, support and protection to research, invention, innovation and their utilization. Again there the promotion of research - very important, inventions I think you will remember there is even some one who invented an aero plane somewhere in Nyeri, I think and all kinds of inventions which take place and including the famous story of the 'kiondo' which has been patented, I think in Japan or Thailand and being factory manufactured and yet we do not do any protection of this. So we need to support our own inventions

17 (C) This formulates and implements a national policy on science and technology, so as to endeavor to develop modern science and technology and other various branches of science and scientific technological theories to support the formation of policies. These kinds of policies are very important but they are more important and they are more enforceable when it says so in the Constitution. And lastly there on science support, promote, develop and protect indigenous intellectual scientific and technological inventions and innovations. So there is the support and protect, to combine modern and traditional practices. To create viable conditions of living for the people, it is not for it's own sake but for the well being of the people.

Article 18 talks about the protection of indigenous and intellectual rights and there is the support, promote and protect indigenous literature, art, oral traditions, performing arts and other intangible Cultural heritage as well as the intellectual property rights for the people of Kenya. That word intangible there, is used a lot especially in UNESCO documents. That is the material Culture which we have talked about and there is--so there is tangible and intangible, the words you speak or the songs you sing, that is intangible. That it can change, unless you preserve it in a way and it becomes something that may not be so permanent.

Then 19 talks of establishment of the National Council--it should be the National Council for the promotion and protection of Culture, as it is there in 19 (1) That is the full title of Culture and art. So, that Council is established, is proposed to be established and it goes along the same lines as the Commissions and in fact it says there in Sub-Article 4, the provision dealing with the Constitutional Commission shall apply to the Council as if it were a Commission.

Then 5 are the functions of the Council. Again you will see a lot of promote, develop, identify, preserve, protect, I think you can read for yourselves there now and we have about seven Articles, all on Cultural values, on historical monuments and Cultural sites, on identifying--well developing the cultural identity of Kenya and then promotes the investment in Kenya's Cultural industry. This is particularly important because, in other parts of the world and in fact globally, cultural industry makes up one third of the income of the world and in some countries it is even more, because they have preserved their monuments, they have put them on sites, like Lamu now is protected by UNESCO. So, you need that kind of industry to develop, so that we can develop even factories that make our work of cottage industries that develop our cultural and material culture and the intangible one also. The languages are there to be promoted and developed. Kiswahili, other indigenous languages, Sign language and Braille. I think many people ask for indigenous languages to be developed, because we have kind of put them by the wayside. So there is that we promote.

Then again the technological and scientific studies, which enhance cultural values, these also have to be promoted and then carry out other activities, of course other activities is very large. Cultural inventions and innovations or Cultural activities, which are of social and economic value, should be added there, which are social and economic values. So that is really that section which goes into that Chapter on National Values, Goals and Principles.

Other Provisions are in the Laws of Kenya and it has a new Clause, if you remember the Laws of Kenya is where the Constitution comes first and then there is added a new Clause: "Parliament shall within two years of coming into force of the Constitution by an Act of Parliament, enact a law for the codification and systematic development of customary laws". We need to come out with a common law--we just do not talk of common law and then it means British or English common law but here if we can start working on our own, it would be most useful.

Article 14: This is now the Article 14, of the National Goals, Values and principles, Clause 2 and 3 are to be deleted and will be included in the Article dealing with Culture.

Article 15 is amended to read as follows;- “The Republic shall 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”. Again it is for the welfare of the people and again here the Regional element has come in, the different sectors in society, the different population groups, that is really what it means and perhaps that relates to Devolution also.

National days which is Article 13 in the main Draft has a new Clause too; “Parliament shall enact a law providing for the declaration of National days and of other Public holidays”.

Article 38 on the family, we have amended to allow marriages between opposite sex only, because(*laughter and clapping*) this is what we were asked for and I think in the amendment it reads marriage between woman and man.

3 (A). “There is the right to marry a person of the opposite sex based on the free consent of the parties” and it goes on ..... “to found a family”. So, that correction has been put there in line with our cultural values.

Article 63 (a); Culture and language. We have here the rights of everyone as you know this is the Bill of Rights, so we have the rights of everyone to culture and to use language. They have a right to their Culture or to Culture in general and use of the language and participate in a cultural life of their own choice. Again the matter of choice is here, this is the Bill of Rights, choice is very much there but no one exercising their rights may do so in a manner inconsistent with any provision of the Bill of Rights. So that we have put there, although still the question of peoples’ rights comes up in the sense that even if it is out for debate perhaps, if you have a right to that culture, that culture must be developed on a larger scale than the individual choice. A new clause 5 in Article 63 (a) reads “for the purposes of this Article and subject to other Articles of the Constitution, a right to culture includes the right to practice, maintain, develop, preserve,

protect, reconstitute and to hold and have access to cultural property and generally enjoy the culture to which that person belongs”. That is a case there but as you know also particularly the young generation belongs to two cultures, sometimes even four Cultures or three Cultures, so that also brings in the element of multiculturalism as we are discussing these.

I must say that it was not an easy task to Draft these Articles and I want to thank our Drafts Person Miss. Ndaula from Uganda and particularly on the aspects of promoting, she has done very well promoting and protecting but I must say that, although sometimes I sensed a resistance or we sensed – the Task Force sensed a resistance to more exposition of Culture or expansion of Culture in the Draft, we might be pioneers in this way, that we do have a Draft that deals with Culture in a comprehensive way, both in this Articles of promoting and protection and developing and also in mainstreaming. Now, if I can comment on the mainstreaming Culture, all the way from the Preamble, I suppose this will be the work of the Technical Committee that will be dealing with Culture. Like we have done with other Constitutive issues here, we will mainstream them across, so that all the way from the Preamble, every Technical Committee where we are there, we should be able to infuse Culture. But I think the Ad hoc Committee also can work on this so that we have Culture all across the Draft Constitution. For instance on the elderly, we have a very good provision but I think also it is important when we were discussing that we preserve our way of taking care of the elderly. So that as many people have said, we do not want the elderly to be in homes, so it is up to the family, the extended family, the clan which is called in the Nigerian Constitution “Traditional Associations” and the State to take care of the elderly, not as a burden but as people who have made a contribution and also as people who have invaluable knowledge to pass on what we call “intergenerational knowledge and skills”. In the case of children, there were quite a bit of complains that we were not doing this very well and it came out that what was needed there is that, there should be guidance from parents or guardians. So that one can be easily worked into to reflect what we need. As a guide, the African Union of charter of Human and Peoples’ rights can lead on several levels and we can also add ourselves as we see and so long as it is not inconsistent with the Bill of rights and inconsistent with other aspects of culture. As you know part of the law is African Customary Law, Islamic and Hindu. This is our backbone in the law so we need to work on that and make sure that it is reflected through out. So even in the Judiciary it is there, in land it is there, and throughout. It is the responsibility of every Delegate to make sure that our Constitution is home

grown by including our culture in it. I think this is what is going to give it a distinctive Kenyan identity this cultural aspect. Then the Constitution will be ours, it will be home grown and indigenous. Thank you very much. (*Clapping*).

**Prof. Yash Pal Ghai:** Thank you very much indeed. I do not know how we should conduct the debate. This gap actually reflects the recommendation if I can use the term that the Delegates made in our general debate on Culture. I do not believe there will be that much value in us debating it again, because what we have tried to do is to capture your views. May be we could spend a few minutes to see if we have left something out that you would like to see reflected but I do not think we should have a very wide range in debate because this is really responding to what we have already said. Delegate 484?

**Hon. Delegate Wangari Maathai:** Thank you very much Mr. Chairman. I want to first thank the Secretariat, the Commissioners, and the Drafters for having provided us with both the report and the Draft so that we can start our work of this Committee. I would like to remind the Honourable Delegates of the history of this effort of trying to entrench our culture in to the constitution. And the fact that we were trying to bring in into our Constitution a subject that was left out in 1963 as our Veterans such Hon. Martin Shikuku has reminded us that, there was no time, but, I am glad that we have made time at this Conference. Mr. Chairman, the most important thing and I wanted to speak at the onset so that the Delegates can express this as they contribute, is that, we are an Ad Hoc Committee and we have been trying to say that we should be a full Pledged Technical Committee and during the last time our discussion when we were making our major contribution towards the subject my recollection tells me that this Conference did actually recommend that we become a Technical Committee. We need to have that endorsed at this Forum, so that we know whether we know we continue working as a Technical Committee, as an Ad Hoc Committee or a full pledged Committee. As it is here recommended the Commissioner mentioned that, it is being recommended that this subject be incorporated in Chapter 3. Chapter 3 is part of Technical Committee A, so when this is incorporate there, do we therefore dissolve ourselves as a Ad Hoc Committee and join the members of the first Technical Committee or do we take Chapter 3 and withdraw it from first Technical Committee and change the title of that Chapter into National Culture so that, we now work with that Chapter as the 13<sup>th</sup> Technical Committee but addressing ourselves to the Culture. Mr. Chairman I think is very



important it is a decision that this Conference must make and I would like to encourage the Delegates as you speak please give us guidance give the Conference guidance so that, we can resolve that issue. I personally have my own preferences; I do think that in order for us to be able to make a good contribution, we need to work full pledged in the Technical Committee. At the moment we are all distributed in the other Committees, I am in the Committee on Land Rights and the Environment if it is incorporated in to another Technical Committee, I have to make that decision and since we do not have much time and there is a lot of work to be done we do need to start this work seriously on the Culture. That is what I wanted to say Mr. Chairman, I do thank you Delegates for giving us guidance. Thank you very much.

**Prof. Yash Pal Ghai:** 296 and then 242 then I will move this way.

**Hon. Delegate Stanilow Kasoka:** Mr. Chairman I am Stanslows Wambua Kasoka, a district Delegate. On my feeling Mr. Chairman I say, since Culture is a very important Chapter and aspect in our society, I do recommend that we pledge the Ad Hoc Committee on Culture as a full pledged Committee to deal and dig out on our Cultures. If we have it as part of Chapter 3, they will have no time to dig out and come out with what actually Kenya is and what we wanted to talk on about Culture. Because, there are a lot to things left here, there are quite a lot cultural debates to dig in all our tribes, because, actually Kenya is composed of more than 40 tribes, so I recommend that we have a 13<sup>th</sup> Committee on Culture.

**Prof. Yash Pal Ghai:** Thank you, Delegate 242 have the flow please. Take the mic.

**Hon. Delegate Abdulrahman Badawy:** Thank you Mr. Chairman. My name is Abdulrahman Badawy and I have tried to use the number of my neighbour because I have left my number at home. My number is 238. First of all, I wish to point out here that we have to understand that everybody in every district has to preserve his own Culture as a result and because we are devolving everything so we have got to devolve the Culture as well and it has to be district council for promotion and protection of Culture. Otherwise, if we shall have national council for promotion and protection of Culture, so many cultures will have to be left behind and we shall have a lot of problems.

Secondly, we mentioned when we made contributions last time about Culture that when the Delegation went to Britain Lancaster House for independence, a lot was left behind about Culture. It has been proven that we are having 42 tribes in Kenya but, truly speaking we are having a lot of tribes that have not been shown in the Constitution, so, we will request that the tribes should also be recognized and we should present the list of tribes that are to be inserted in the appendix of the Constitution. Thank you Mr. Chairman.

**Prof. Yash Pal Ghai:** Thank you. 522?

**Hon. Delegate David Gitari:** My name is David Gitari, No. 522. Mr. Chairman I want to thank the work which has been done by this group and I think they captured well what we said during the debate but, I am still concerned about the words; Protect, Preserve, Promote. Especially in view of those aspects of our Culture which are dehumanizing. Though this has been captured in 1(d), I think there should be a very clear Clause admitting that some of our Cultures are bad and they cannot be preserved, promoted or protected, examples are; Female Genital Mutilation, wife inheritance, and so on and I understand that the Maasai with apologies incase I make a mistake say that all the cows in the world belong to Maasai. And therefore rustling is not theft, surely you cannot protect and preserve that kind of feeling. Again we have seen during the past week a bit of Culture of the Bukusu some of it was very good but when the clan gathered to share the estate of the late, I think it was something that ought to be abandoned in favour of widows. And so I think we need a Clause, very clear Clause condemning some of our Cultures, because, we are created in God's image, most of our Culture is full of beauty because your foreign some of it is demonic. And I would like to see a very clear statement saying that we condemn or we cannot protect certain aspects of Culture. Thank you Mr. Chairman.*(Clapping)*

**Prof. Yash Pal Ghai:** Thank you. 605.

**Hon. Delegate Ngorongo Makanga:** Mr. Chairman, when I look at this Chapter, I think it is a very very important Chapter, na waswahili wanasema”mkosa mila ni mtumwa”. If we cannot create a Technical Committee on Culture, then we as Delegates we shall not have helped this Country, to help this Country we must create a Technical Committee on Culture, and we must see Culture from the village up to the national level. That is why myself I recommended we

must have a house of national wisdom where every Community in this Country no matter how small or how big will be represented. The Problem is, even when I found that we were going to make a national council on Culture, I do not see how every single community is going to be represented in that preparation. If we are going to manage to put people may from one or two communities, every single community is important and we also must make sure that, in Parliament every single community will be represented, it is very important. When I look at house of national wisdom, I look at it as an area where all communities are represented, as a library of our cultural values as a continuation of our culture from the village to the region and then to the central government. I look at it also extending outside the boundaries, where we have cultural attaché where their reference point will be coming from the house of national wisdom, where the communities will be represented. I look at it also as setting the pace in terms of education, because we must start educating our people from the primary level up to the highest level. I do believe that, Culture is dynamic it is only in the national house of wisdom, that while dynamism of Culture where probably we shall continue embracing the good culture and probably leaving the bad culture. Not unless probably we emphasized the need that upper house to have that, then our creativity of development will always be a slave's creativity where we shall always imitate the western world rather imitating our own Cultural creativity. Thank you very much,

**Prof. Yash Pal Ghai:** 594?

**Hon. Delegate Orie Rogo-Manduli:** Thank you very much Chairman. Thank you Delegates. I am Delegate No. 594 from Political Parties. I am absolutely delighted that we have come now-- first of all I am Delegate No.594 from the Political Parties--to face this subject squarely is something that delights me a lot. As my brother just said here a country, a nation without Culture, a people without a Culture are an empty lot for all they have, for all they esteem at the end of the day they are empty in the soul. I particularly want to support the fact that the Culture here must be given a Committee on its own right. It is our duty here as Delegates to recognize that this is a very important subject which must be discussed solely on its own. As my sister, honourable Delegates says, they are all now scattered in to various different Committees, doing different things. She is in Lands her other colleagues are in different areas, how and when will they go together to discuss this very important subject?. I am a product to deprivation of Culture to some extent. I went to Foreign government and managed schools where I was taught how to

dance, how to do the Scottish Jike and Irish dance (*Laughter*) and up to this day I am an expert in fact I got to be able to dance it better than the owners of the dance(**More Laughter**) but I do not know how dance Nyatiti (Kamba nane). (**Laughter**). I have been trying all my life thereafter to learn how to do Nyatiti but I cannot master it, Kamba nane and all the other cultural dances that we do. I cannot do the dance that they do at the Coast with feathers on their shoulders, I would love to do that. What do you call that one? You call it what? “Sengenyā?” I cannot do “Sengenyā” but I am doing Scottish and Irish dance, can’t you see something is very wrong here? I want you to know what my colleague Honourable Delegate Reverend talked about just now about the bad habits in a Bukusu sitting and deciding on the wealth of the late Honourable Delegate No. 2. Now those are not bad habits, they are not, Honourable Members we Luos also have that kind of thing where we sit together and decide. It is not to deprive the widow, you may have a selfish widow who does not give a damn about all the other dependants of her husband; what will happen to those? She may not give a damn it is human nature and in Africa the definition of dependant is very different from the foreign definition. Here in African the definition of a dependant is not Husband, Wife and Children fullstop, it is not like that. You have the cousins, you have the brothers, you have all. Chairman I am winding off. What happens to me if I die now? And Manduli decides he does not give a damn about my mother, my brothers, my sisters, my nephews, my nieces whom I was supporting because he is now the natural inheritor of all that the Hon. Orie Rogo-Manduli owns? What happens to every dependant that he does not recognize or like? (*Laughter*). Culture is very important and we must maintain it and we must give it a Committee.

**Prof. Yash Pal Ghai:** Please take your seat, please take your seat, thank you very much.

**Hon. Delegate Orie Rogo-Manduli:** --And we must be given a Committee, Mr. Chairman. We must be given a Committee. Thank you, Chairman, Asante Chairman(*Laughter*).

**Prof. Yash Pal Ghai:** I have noticed that many of you are carrying cards which do not belong to you, it is very confusing, so do not raise a number that is not yours, please. I need to be able to call on different categories and that does not help me. If you are 300 you are not using the right card; please respect the Chair. 436?

**Hon. Delegate Francis Ng'ang'a:** Mr. Chair, my name is Francis Ng'ang'a Delegate 436 and I rise to support that, this be made a Technical Committee. Culture is very important, I speak on behalf of teachers of this republic and I know the pain we have gone through when the Colonialist and all those people who thought to be cultured is only to talk in the languages of the foreigners; we have been killing our own little children in baby class, nursery schools by initiating to teach them in English, in French, purporting that they can only be molded if they start knowing English or French not knowing Luo, Kikuyu or Kikamba. So we need to really come back to our minds and instill culture in our people. I have seen what these people have tried to do and in issues like developing monuments it is time, as a country, we started respecting our heroes. It can only be debated in the Culture as a Technical Committee, so, I think the job on our hands now is to approve this Committee to be made a Technical Committee then we can go into the details of what it is called. To be put into the Constitution, is a lot of agony Mr. Chairman, when we walk around some of us go to Washington you go to Paris and see monuments of people like Abraham Lincoln and other great heroes of those nations when you cannot see a hero, a traditional hero in the Luo land. You cannot see a national Hero like Dedan Kimathi monument made and now we are 40 years since Independence. What are we talking as a country, we can not see a monument of one of the greatest teachers in this land, we cannot see. I would like to propose even as a house doing the Constitution, one time as the Constitution takes place, we must develop a little monument and engrave it in the soil of this Bomas of Kenya to say that is Dr. Prof. Odhiambo monument who died heroically writing a Constitution of this Country(*Clapping*).

These are some of the things that remind a country of her history and movement towards development and growth, but we can not ignore heroes, some of whom have died in action. A man like this one, we were with him here as a teacher. I am talking on his behalf although dead, he died while on duty. So a monument to be placed somewhere strategically within the Bomas of Kenya to remind children of this country 200 years to come, that a great teacher who was a political scientist and who taught in a University, died while struggling to write the Constitution of this country. What are we talking about without remembering our Heroes? I saw the other day--Sorry, I want to oblige. Thank you.

**Prof. Yash Pal Ghai:** Thank you. Maybe we should decide, there seems to be considerable support for establishing a Technical Committee(*Applause*) so, the applause I think is sufficient indication of the support for this idea. So I would propose therefore that we do set up a Technical Committee and remit the Draft and the report on culture that the Commission has prepared and let this Technical Committee begin its work. Is that your general wish?

**Hon. Delegates:** Yes!

**Prof. Yash Pal Ghai:** So in that case, I think we will conclude our deliberation here and in the first instance the Ad Hoc Committee could be converted into a Technical Committee and we can discuss the question of further membership in the Steering Committee tomorrow and we will let you have our recommendations. Thank you. Yes, Yes, Please.

**Hon. Delegate R. O. Kwach:** I am sorry, Mr. Chairman; it is not my habit to cut you. Now I agree with all that has been said about setting up a Technical Committee on Culture. I am a great believer in Culture myself.

**An Honourable Delegate:** Who are you?

**Hon. Delegate R. O. Kwach:** My name is Kwach, I am Luo(*Laughter*).

**An Honourable Delegate:** Do you have a number?

**Prof. Yash Pal Ghai:** Order! Order!

**Hon. Delegate R. O. Kwach:** Yes, my number is 618. Now, what I was saying Mr. Chairman before I was rudely interrupted is that, Culture is very important and I think we are going the right way by agreeing here to set up a Technical Committee. I just want to add that, in doing so, we should bear in mind the fact that, in the early 60s the administration of President Jomo Kenyatta made an attempt to codify customary law but it was so difficult that in the end we ended up with a Restatement of African Customary Law by Eugene Conran. Now, I think what

we need to consider when--are setting up a Technical Committee, you must bear in mind that there are 42 tribes in Kenya –

**Hon. Delegates:** 44!

**Hon. Delegate R. O. Kwach:** --And if you take the sub tribes among the Abaluhya there are 16 sub tribes so, in choosing who are going to go into that Committee I think you will have to go tribal and represent everybody. Thank you. **(Clapping)**.

**Prof. Yash Pal Ghai:** Thank you. I am sure the Committee will take that into account.

**An Honourable Delegate:** Point of order! Point of order!

**Prof. Yash Pal Ghai:** It has to be a point of order otherwise, I am not going to entertain that. Yes 131?

**Hon. Delegate Mwandawiro Mghanga:** Mwenyekiti naomba kueleza kwamba wakati--jina langu naitwa Mwandawiro Mghanga, mimi ni Mjumbe namba 131 na kitu ambacho nataka kusema tusiwe na hofu eti makabila 40 ama 50 ya Kenya hayatawakilishwa, kile mimi natarajia kitakachofanyika katika hiyo Technical Committee ya utamaduni ni kuweka misingi ya kuongoza na kutambua wingi wetu kwa makabila yetu mengi na kuweka misingi ya kuhakikisha kwamba kila tamaduni katika nchi yetu inakuwa hiyo ni misingi. Si kuingilia kwa undani kusungumza utamaduni wa Wataita ama Wabaluhya ama Wakikuyu. Ni kuweka misingi tu ya kutuongoza and kutambua kwamba nchi yetu ya Kenya inatambua umuhimu was utamaduni na vile vile tuko wengi katika utamaduni wetu na kila utamaduni unafaa kuendelezwa kwa manufaa ya Taifa yetu kwa jumla. Asante.

**Prof. Yash Pal Ghai:** Thank you. We shall appoint the Committee in the normal way to make sure that it is fully representative. Thank you. With that, I want to conclude this session and we move on to Affirmative Action. Thank you.

**Com. Kavetsa Adagala:** Nataka kumshukuru wote kwa kutusaidia sana kwa mawaidha yenu na tutaendelea tukiwa na hii Kamati nafikiri kazi nyingi itatendeka huko. Nataka kumshukuru Mghanga kwa vile ameeleza ni misingi tunaweka, hata codification inafaa tuwe na ile ambayo iko common hata kama ingine haipo hapo. Na pia, ningependa kusema hiyo point ya Ori Manduli inafaa watu wa Scotland wajifunze Isikuti, kwa sababu tumejifunza Nyatiti. Kwa sababu hiyo ndiyo kuonekana tunaambatana vizuri. Na hii mambo ya bukusu sijui imeenea sana. It is not good to bully other people's culture especially when it is erroneously presented. What we had at Wamalwa home is an African Court, the people who were there were witnesses and I can assure you that there is not even one needle or spoon that went to those people. All that there is in that home went to the wife and children of the late Wamalwa(*Clapping*). It is really wrong to take other people's culture and particularly the young reporters who reported do not understand what is going on, then they put it through the mass media and it besotted. I think that, it is very, very important to realize that people are rational, people know how to plan to their lives and the negative aspects will be weeded out by Bill of Rights, that is assured. I think that is all I have to say all the other comments are taken on. I am grateful for this Technical Working Committee on Culture and we shall give them all the support we have including the International Instruments especially from UNESCO so that they can see can how other organizations work out Culture.

Thank you very much, I would like to recognize my fellow Commissioners, Zein Abubakar and Salome Muigai who worked very hard and also the other people; Asiyu, Ratanya, Ayonga and Njoroge. I hope I have not left anyone out and offices lead by Mr. Oyaya. Thank you very much.

**Prof. Yash Pal Ghai:** Thank you very much indeed, Commissioner Adagala. I would now like to propose that we move to the presentation of the Draft on Affirmative Action. Some of us will have to leave at 12.00 O'clock, because we have a meeting in town with Parliament and so let us begin this and then see if we can conclude this by 12.00 O'clock. If not we will continue after 2.00 O'clock. The presentation will be made by my Colleague Isaac Lenaola who was on the Task Force dealing with this issue.



## REPORT ON AFFIRMATIVE ACTION

**Session Chair** - Prof. Yash pal Ghai

**Presenters:** - Com. Isaac Lenaola

**Com. Isaac Lenaola:** Thank you very much Mr. Chairman. Honourable Delegates, subsequent to your resolution that the Commission do address the question of Affirmative Action, the Commission did set up a Task Force which sat down, looked at the Draft Bill, considered other aspects of Affirmative Action and came up with proposals which we circulated this morning which will form the basis for further analysis and re drafting of issues of Affirmative Action. When the Task Force met, it asked itself a number of questions and these are those questions.

1. Was there enough recognition of the issues of historical injustices in the Draft Bill?
2. Was a distinction drawn between equality and equity?
3. Is it possible to create justice where there was injustice without creating fresh injustices?
4. Is it possible to define concepts such as marginalized communities and concepts such as minorities?
5. How can the private sector be required to play its part in addressing disadvantage?
6. What sort of things might a programme of Affirmative Action involve?
7. Was it possible to avoid the risk that programmes would go on and on without ever achieving their objective?
8. It is forceful enough to talk in the Draft of obligations, as resources would permit?

When the Task Force, therefore looked at the Draft Bill, it was found that in fact the Draft Bill does address a few issues of Affirmative Action for example Article 35, provides a framework for gender policies in that, it gives equal opportunities on men and women in Political, Economic and Social activities. It also says that, 30% of all Legislative bodies must women. It also says that Customary Law must conform to the principles of the Constitution and that includes right given to women. The Draft Bill also in Article No. 37 gives specific rights to children commencing with those given to adults. Regarding the youth it says that, Political Parties must include the youth in the top up list that we shall present election. On the people

with disabilities, the Draft Bill has extensive provisions in Article No. 39. Article 36, has provisions relating to older people and people we call senior citizens of a society. Regarding poverty, there are rights of housing, freedom from hunger, the right to food, right to clean water, sanitation and protection for consumers.

Regarding Minorities and Communities, Article No. 213 says that, Devolution must protect and promote the rights and interests of the minorities and other groups that have been disadvantaged. But also the working of Article of 258 where the public services must grant adequate and equal training opportunities for the advancement of all ethnic groups in Kenya.

On land, environment and natural resources, it is said that, land must be held and used in a manner that is fair and just and the land policy must allow equitable access to resources as fitted with land. It also says, there must be security of land rights for all land holders users and occupiers in good fair. Otherwise mechanism in the Draft Constitution include the enforcement of Bill of Rights through the courts, through the Commission of human rights and administration justice and also that the President must report annually to parliament and the nation on measures to implement national values and principles this is in Article 14 and 15 of the Draft Bill.

The economic and social council in Article 257 also enjoined to monitor progress towards achievement of the rights of Kenyans affecting the living standards including the standards of living and advice the government on the formulation, implementations, monitoring an evaluation of economic and social policies to ensure that these rights are attained. Basically, those are some of the aspects which come out of the draft bill that are associated with Affirmative Action, but, more specifically the Task Force and the Commission therefore, has come up with provisions in the paper circulated this morning which would indicate what proposals are towards defining and entrenching Affirmative Action in this constitution and therefore, let me now take you to that document on page No.1 where we are proposing as follows:-

1. That, Article 297 in Chapter 19 be amended to include the words “historically” disadvantaged person or group means a group of persons described in one or more of the following categories:-

- a) Persons who as a result of laws or practices before this constitution took effect were systematically disadvantaged by an unfair discrimination on one or more grounds set out in Article 34. This Article prohibits all forms of discrimination under Article 34.
  - b) Communities which by reason of small populations have been unable to fully develop their own internal structures or resources sufficient to participate in the integrated social and economic life of the republic as a whole and these target minority communities a number of who are represented in this Conference.
  - c) Traditional communities which out of a need or desire to preserve their unique and identify from assimilation has remained outside the integrated social and economic life of the republic as a whole and this targets communities traditionally call the conservative communities.
  - d) Indigenous Communities who have retained and maintained a life style a livelihood on hunter gatherer economy and this targets are calling the 'sengwere,' the 'ogiek' and other forest based communities.
  - e) Pastoral nomadic persons and communities.
  - f) Pastoral communities which because of their geographical isolation has experienced only margin of participation in the integrated social and economic life of the republic as a whole.
- That is our attempt at defining the groups or persons who have been historically disadvantaged.

2. Point number two, we are seeking that Article 14 on National Goals and Principles be restructured and in doing so, it must include a declaration that, equity, equality and Affirmative Actions are goals of the people and the republic and to impose obligations on the State to take steps to achieve these goals. In most Constitutions, that is the way the Affirmative Action is addressed to ensure that the republic and the people are enjoined to operationalise Affirmative Action. Over the page we are proposing that also in sub Article 2 of Article 14 there is a need to promote and develop the customs, traditional and cultural values and practices of communities and this was addressed in the previous presentation. Along side the at presentation of culture there must be an encouragement of the preservation and use of the languages of the people of each community.

3. A third addition point No. D that “the State must promote social justice, equality and equity and must eliminate all forms of discrimination and disadvantage amongst the people of Kenya”. Below that we propose point No. H where it states “must promote all forms of education and national expression including Literature, art science technology and intellectual innovation and this flows again from the presentation made by colleagues on the culture Committee”. Over the page, Article No. 14 point No. 2 , while enjoying the State to take measures to eliminate discrimination and in particular discriminations against and the marginalization of historically disadvantaged persons and that flows again from my definition of this persons.

Over the page, the State “is enjoined to recognize, promote and treat all cultural linguistic or religious communities with equal respect and dignity” and below that we are asking the State to promote the unity of the republic and enhance peace and stability among Kenyans by recognizing the diversity of the customs, traditions, cultural beliefs languages and religions of people within Kenya. Without going into details again under G, the State must promote the development of republic by taking appropriate measures to accord every Kenyan equal opportunity to attain the highest standard of education, support, research, invention and innovation in all fields of endeavor, support, promote scientific and intellectual innovation and application and support and promote the development of medical technology preventive medicine and the popular application of modern and traditional medical practices and improve the accessibility of medical care for all Kenyans. And over the page, we also under point No. 6 expound the qualification of Kenyans in international exchange and corporation.

Below that, if you look at article No. 34 on Discrimination, it does not require the State to take Affirmative Action measures and so we are proposing that article 30 should enjoin the State to actually take legislative measures to ensure that Affirmative Action is propagated and enacted within the law and therefore, over the page we are saying the State must take reasonable legislative policy and other measures to achieve the progressive realization of the right guaranteed in part 3 of the Bill of Rights. By so doing, we enjoin the State to take action or to pressurize Affirmative Action. We are also saying that the Commission of Human Rights and Administrative Justice must through

Parliament, enact legislation to do a few things including all those measures contemplated to achieve equity, equality and freedom from discrimination and to take reasonable measures to ensure that organs of State and public officers fulfill the obligations of the State under the Bill of Rights. And now regarding private persons, that they too must fulfill their obligations under the Bill of Rights to the extent that it is binding on them. We are also saying that any measures taken as I have outlined may include the provision of benefits, funding or other incentives to private persons corporations association to ensure these measures are affected through legislation and also that those measures must certify the requirements of this article and also article 33.

Over the page we are proposing that article 34 be amended to include a clause that it is unfair discrimination for the State or any person to fail to take reasonable action designed to benefit presently disadvantaged persons or groups to the extent required to achieve equity within those persons or groups and other persons or groups.

Article 38 was covered by my colleague Kavetsa Adagala but we are proposing over the page as new sub-article which says that Parliament must enact legislation in a manner consistent to article 34 to ensure that rights of women to adequate maternity leave from employment.

Article 39 on the Persons with Disabilities, we have expanded the present Article 39 to include access to public places and transport to education and institution facilities and also that those issues must be addressed and that they cannot be, in addressing people with disability, we must not refer to them in a manner that they may be derogatory to their condition.

One last statement which I wish to make in regard to those people is that it may well be necessary that the language, the tone of the entire Draft Bill will have to change so that the language used throughout must ensure that the values of equity are reflected in the language of the text and that all the Commissions and institutions set up in the Draft Bill, must have language that is consistent to give it text to the principle of inclusiveness and participation by previously disadvantaged groups. So what we have done in this Draft Bill in effect, is to attempt to entrench

Affirmative Action within the Constitution. A question will arise later whether knowing that Affirmative Action is a temporary measure to bring equalization whether we need as a transitional stage of this Constitution to put a period through which the State must effect Affirmative Action.

Mr. Chairman, thank you very much. Hon. Delegates, thank you for listening to me.

**Prof. Yash Pal Ghai:** Thank you very much indeed. May be I could just make a comment on the last point which has got the time factor. Very late last night we agreed that we might have a provision that after maybe 15 years this provision for Affirmative Action will be reviewed by some Commission to be set up to see whether there is need for continuation of this special measures or others by that time or disadvantaged groups and that includes women has sufficiently been resisted to overcome the disadvantaged, and that there may be no need after that for special provisions. We had a debate whether we should have a ten-year or a fifteen-year or whether we should have no particular time limit but then see whether after some years there is a need for review.

The third position is to specify a time but say that whether it continues or ends, will depends on investigation of the impact of Affirmative Action, some statistical information to see whether women and the disabled, etc, are still left behind and so on because some people have resisted Affirmative Action because they see this becoming part of the Constitution for ever and they feel that at some moment they must decide whether they need to continue these provisions. So that particular recommendation was made late at night and could not be captured in this document.

If I could just repeat some of the points that my Colleague has made as he is also Member of the Task Force is to say that when we looked very carefully actual request at the Draft Constitution, we decided or our conclusion was that we certainly do not know of any Constitution in the world which is so oriented towards social justice and Affirmative Action. And we are very proud of it social justice, helping those who have historic disadvantaged has been one major concern of the people and of the commission and we are trying to capture that. We have recommended certain proposals to strengthen the general skim of Affirmative Action. We have defined more carefully the categories. We have specified more clearly the obligations on the State as Lenaola said. Not

just permitting the Affirmative Action but requiring Affirmative Action we have indicated the ways in which Affirmative Action could be implemented, could be structured and we believe that we have strengthened it in these ways and perhaps nothing very much further is required. We looked at the first step of debate we had on the Motion to strengthen Affirmative Action and we have tried to take into account almost all the points that we made there.

We could have a general debate and then I would like to have some proposal on how we proceed further. We could distribute these recommendations to all the Committees, particularly the Committee on Human Rights where significant amendments are made but all Committees will have these and they can see how their particular Chapter could be strengthened in view of these recommendations. So could I invite some comments and then we decide on how to proceed after that. 532.

**Hon. Delegate Lumatete Muchai:** Thank you very much, Chairman. My name is Lumatete Muchai, Delegate No. 532. I appreciate what Mr. Chairman has just said about giving a time limit as to how far the Affirmative Action will take because it can go on forever. However, appreciating what this Committee has done, I think that there is one aspect that has been left out. You realize that we need in this country Affirmative Action to correct economic imbalances and this is something we cannot runaway from. You find that the people of this country.

And we are not just talking about minority communities, we are talking about the majority of the people of this country having been left out, of the economic activities of the nation and this is something that ought to be addressed and you cannot talk about Affirmative Action without addressing the issue of economic Affirmative Action-- So that is something that we have to address and as much as we may try to discard that issue, one time or other, we have to address it and ensure that the people of this country are economically equal or as much as possible and the citizens of this country participate in the economic activities of their nation whether it is manufacturing, whether it is agriculture and any other activity that takes care of the economic growth of our nation. Thank you very much.

**Prof. Yash Pal Ghai:** Thank you. You will notice that the Constitution of course and the Bill of Rights talks of the access of all Kenyans to the basic needs and necessities of life. So we have

a general emphasis on kind of empty poverty measures you might say and then we will focus later on more specifically on the really extraordinary (?) rules which includes, women, disabled and the ethnic groups that we have identified. Thank you. 353.

**Hon. Delegate Sheul Joseph:** Thank you, Chair. My name is Joseph Sheul, District Delegate no. 353. As has been said by the Delegate who has spoken before me, I stand to say that I thank the Commission and particularly those who have worked on this section because they have taken into cognizance the fact that we are not at par as a country, that in the regions we had a lot of economical disparities and stuff like that and I think it is good and has been very well brought out. And so I commend the people who have done this part. They have done really a superb job.

However, I have a few improvements. I am going to refer to what the Com. Lenaola was taking us through in Article 34. I think it is very clear that the fact that it is pointed out here that it is unfair for the State or any other person not to take cognizance of these marginalized groups. We also need to put an obligation on companies and the private bodies and even the civil society because as much as the State is commanding these resources, I also believe and I think that most of us concur that even the civil society in the private sector command a lot of resources and this is where a lot of imbalances are even very much spelt out in the appointment policies. Like now some companies that are working with indigenous people, I imagine for example, in Kwale where people are harvesting titanium, are they going employ people there? Is there a policy that leads them towards looking at the indigenous people of Kwale to bring them up to be at par with other people of this country. And this cuts across all other parts of this nation. So it is imperative and it is important that as much as we obligate also the State, we also tend to put into the policy because this is the only time we have. It is only by putting and recognizing the policy level that this people can be brought to par and if we avoid the aspect of talking too much and not really putting into things that can lead us towards this equity and equality because, so long as equity and equality is not in this country, we will continue seeing what we are seeing. Thank you so much Mr. Chairman.

**Prof. Yash Pal Ghai:** Thank you. 311. Yes, I will come round, thank you. I will make sure every group has an opportunity.



**Hon. Delegate Gitonga Joachim:** Thank you, Mr. Chairman. My name is Fr Gitonga Joachim, Delegate number 311. My question is Mr. Chairman, in Article 37, a child is defined as a person who is under 18. According to our culture, Mr. Chairman, and in our societies, we have people who are married at the age of 17, 16, even 15 and they have children at home. Do they still fall under this definition as children? I think this needs to be answered so that we can define the child according to our African way of life. According to our culture. Thank you Mr. Chairman.

**Prof. Yash Pal Ghai:** Thank you. 463.

**Hon. Delegate Suba Churchill:** Thank you Chair. I am Suba Churchill Delegate No. 463. Chairman I want to thank the group that did this work and to say that the purpose of the Motion that was moved just before we went into the morning were twofold. That at one level we are recognizing that there are some certain communities and sections of this society that have in the past been discriminated by certain provisions in our Constitution and traditional structures. Secondly, was to put in place measures that would ensure that that situation does not continue. And therefore Mr. Chairman, I want to describe Affirmative Action as a pain killer. A temporary measure that is meant to address certain inequalities that have occurred in the past. But the longevity of this Constitution will come to test when 15 years after its enactment and coming into force, we will still be talking of Affirmative Action. Because we must not only kill the pain but must also kill the cause of that pain. The fact that you have killed the pain does not mean that there is no pain it is only that you are not feeling it.

Mr. Chairman, I want to say that in certain provisions and recommendations particularly as defined in the definition of historically disadvantaged persons may not require time limits. I want to submit Mr. Chairman, that this Conference cannot tell when certain communities will stop their personal ways of life. We cannot really say that after 15 years the Maasai, for instance, will become masons and stop keeping livestock. And therefore we cannot say in this that Affirmative Action will stop after 15 years. We cannot therefore also Mr. Chairman, in the same breath say that after 15 years, we will not have youth in this country. These are lifelong phenomena and we must have provisions that will constantly address the injustices that occur to this society or sections of the community. (*clapping*)

Mr. Chairman, in fact recent scientific discoveries indicate that by a certain period of time in future, there will be no men. What I am trying to say Mr. Chairman, is that when it comes to addressing the inequalities that have been visited on the womenfolk, you cannot set time limits. Women will always be there and are in fact constantly increasing day by day and will at one time be the dominant human race. So while I appreciate the work that has been done, I want to also say that these provisions and recommendations on Affirmative Action go beyond the Chapters that have been pointed out here, whereas Article 34 says one cannot be discriminated against on the basis of age, provisions in the legislature and unrepresentation say that certain people cannot contest for seats because they are 18 years or because they can only contest only when they are 21, or they can only be voted for when they are 35. These are contradictory provisions and my opinion, Mr. Chairman, is that some little more work needs to be done on this Affirmative Action and we need to come up with specific provisions that will address the inequalities that we are seeking to sought out through this provision.

Therefore I want to say that whereas in certain areas we may want to put fixed time limit, it will be extremely difficult if not impossible to do the same in certain sections. My submission Mr. Chairman is that we proceed on the spirit of the Motion that was moved here, set up an ad hoc Committee or expand the Task Force that was working on this, to look and do some little more work on what has been done and use this as a working document and a guiding document so that we do a thorough job not only to kill the pain but to address the cause of the pain. Thank you, Mr. Chairman.

**Prof. Yash Pal Ghai:** I should mention that in addition to the document we have distributed, there are two background on papers that we shall be making available. One of them in fact will be available before lunch. There is a longer one which we have not copied but we will glad to make that available. 609.

**Hon. Delegate Kenneth Njiru:** Thank you Mr. Chairman. Let me start by thanking the Task Force for this job they have done but as the previous speaker said my name is Kenneth Njiru, Delegate No. 609. Sorry about that. In the spirit of the Motion that was moved here, in my mind there is one critical issue that has not sufficiently been reflected here and this is the principle of inter-generational equity. And indeed there is one problem I would like to draw the attention of

the Delegates to. This is the problem of the youth in this country. When I look at what has been cited here when they are talking about youth, it has simply talked about political parties and if I may read, "political parties must include amongst the least for top up representation of various groups including youth" and then it has basically just touched on youth in terms of being the bulk of the working population.

One thing that is increasingly happening in this country is that the youth are feeling marginalized and going by what is happening and going by what the youth are saying. You should not be surprised one day if the youth in this country wake up like happened in India and literally just sweep everybody, the older generation out of power as it were. And the youth will result to that because as they try to speak, as they try to say what they think, nobody is listening to them. Traditionally, even from the cultural perspective, these people had been taken care of. And I think what we are talking about the question of inter-generational equity; all that the youth are asking is that this Conference recognizes them as the major category and indeed they are the biggest population in this country in terms of even inter-generational equity. The question of how much-- if the present generations can borrow,-- the future generation should pay should be addressed in places like the finance Committee.

Traditionally again in terms of youth, there was the question of socializing young people into the question of leadership. What are we doing about that? Generally, I appreciate the fact that a lot has been done and some good stuff has been put up in terms of children and the older members of the society but again the question that was raised by the Commissioner when she was presenting on culture falls squarely the question of inter-generational equity. How we address the question of how we take care of the older members of our generation. I think we should work towards refusing the type of generational war that is in this country today. Otherwise if we do not do that I think there will be a big problem. So my asking is that as we look at this issue further and as the previous speaker said the spirit of the Motion as had been moved must be captured and I want to add one more thing, that I feel dogged by the question of constantly referring to what other people have done and in other Constitutions. I keep saying that what happened in places like Philadelphia, whereas of course there is the question of generally accepted constitutional principles was unique to the circumstances of the American people at that

particular point in time. We must not shy away as we create a Constitution that is Kenyan in all aspects of our basic needs. Thank you Mr. Chairman.

**Prof. Yash Pal Ghai:** 540.

**Hon. Delegate Nthamburi Zablon:** Thank you very much Mr. Chairman. My name is Nthamburi, 540. I would like to thank the Committee that worked on this document and so want to appreciate what they have done. I also want to appreciate what the last speaker has said about the youth. I think we need to see the youth as a group sometimes that has been marginalized and needs to be given more focus probably in our document but also there is another group I find very much marginalized in the society and that is the elderly. I do not mean that when we talk about the elderly people you only have to put them as take care of their physical needs but they need to be integrated because what happens is that many times the elderly people are put in a kind of a cell and we feel that they have outlived their usefulness and so they can be looked after but not heard and we need to see that the whole community or people is included and I would like to see something cited on about the elderly people.

**Prof. Yash Pal Ghai:** There is a very long section article on the elderly in the Bill of Rights. It is the most comprehensive article on elderly people anywhere in the world. Please read that.

**Hon. Delegate Nthamburi Zablon:** Thank you very much for that information. What I would like to say is that this document should be permitted in every Committee so that we see Affirmative Action in every aspect although it is being highlighted here but I think each Committee and team needs to go through this document and see that in all their deliberations, they affirm Affirmative Action in every aspect of their work. Thank you very much Mr. Chairman.

**Prof. Yash Pal Ghai:** Thank you. 222.

**Hon. Delegate Betty Tett:** Thank you Mr. Chairman. My number is 222, my name is Betty Tett. I am a bit worried when we say that we respect, preserve, protect and promote all religious

sectors. In due respect Mr. Chairman, there are some religions that go against the Human Rights. For example, there are some sects that forbid the use of medicines. I think this is a double standard when we are saying that we have to protect the Human Right and especially the children. So many times we have heard some children die because their parents have refused to take them to the Hospitals because their religion does not believe in hospitals. I think that Mr. Chairman, we cannot treat all religions equally.

Number two, are we also going to protect the devil worshipers, Mr. Chairman. Those were my two points.

**Prof. Yash Pal Ghai:** Thank you. 252.

**Hon. Delegate Dubat Ali:** Thank you very much, Mr. Chairman. I would like to thank those who have drafted this paper but Mr. Chairman, it is very unfortunate that representation for disabled has not been mentioned. I am wondering how we will have Affirmative Action if there is no proper representation for the disabled. Mr. Chairman, there are countries like Uganda which have specified the number of people with disability that is going to be in the Local Authorities and in Parliament, and even in South Africa, I think for us to have Affirmative Action, there must be specified number of people with disability representing in the local authority, in the lower house and there is the upper house. Otherwise Affirmative Action would be just like a song to us.

The other thing which I wanted to speak about Mr. Chairman, is we are told that the Constitution is to address injustice, social justice, to do better for the people. We are told it is to protect the right of minorities. Now Mr. Chairman, look at what has been written in yesterday's paper. Some people want the Kadhi Court to be thrown out. This is a cultural institution. It is an institution that protects people with certain faith. If this Kadhi's Court is going to be thrown out, then there is no essence of having the Constitution reviewed. The meaning of the act will not be there. So I think for this country to remain together, we must accommodate one another culturally, religiously so that we have one unified nation of Kenya. Mr. Chairman, I think we have to come out with our senses. We have heard some bishop saying, Oh God, prevail upon the voice of reasoning. Why don't they want to reason? You are asking God, "Oh God prevail upon

the voices of reasoning” and you do not want to reason with those brothers of yours at the next door. Thank you Mr. Chairman.

**Prof. Yash Pal Ghai:** 454 please.

**Hon. Delegate Kathurima M’noti:** Thank you Mr. Chairman. Kathurima M’noti, 454. I also want to join others in thanking the Committee for coming up with this Draft. I really do not have any quarrel the principles as they are captured here. Mine is one small issue of detail in terms of definition of historically disadvantaged person or group. In definition (e), that is on the second page, it is taken that all pastoral nomadic persons and communities are historically disadvantaged persons or groups and yet we still have (f) which talks about pastoral communities which because of their relative geographical isolation have experienced only marginal participation in the (?) great of social and economic life of the Republic as a whole. If we take it that all pastoral nomadic persons and communities are disadvantaged then I do not see why we need to include (f). (f) is a clear sub-section of (e) and to me (f) if only concerned with the reasons of the marginalization so it appears to be just only a sub-sector of (e) and we could very conveniently do away with (f). Thank you Mr. Chairman.

**Prof. Yash Pal Ghai:** Thank you very much. 389.

**Hon. Delegate Wilberforce Kisiero:** Thank you very much, Mr. Chairman. I wish to thank the Committee that dealt with this question of historically disadvantaged groups or people. My name is Wilberforce Kisiero No. 389. I feel Mr. Chairman that there is one group that has not been included and these are those communities in Kenya who the colonialists removed from their own ancestral lands and refused to compensate those groups. I am particularly thinking about the Elgonyi which is a sub-tribe of the Sabaot tribe and the Ogiek and other similar groups. In the case of the Elgonyi, Mr. Chairman Sir, the colonial government admitted that the Elgonyi being a dying tribe had no business remaining in Transzoia and that gave them one of the reasons to dislocate them and remove them from their own ancestral land. As a matter of fact Mr. Chairman Sir, most of these people were removed totally out of the country into the neighbouring country where they have become stateless. They are neither Ugandans nor Kenyans. Some of these Elgonyi were also thrown into the forest into the caves and into North

what was then called North Kavirondo to live under a different tribe. So these groups of people were totally marginalized and they are still suffering to this day. It is my believe that the Constitution should consider those communities as some of the deserved to be considered and as among those who were disadvantaged and whose rights should be restituted. Mr. Chairman Sir, the Article on colonial mistreatment of the Elgonyi in fact is very clearly recorded in the Kenya Land Commission of 1932 where it is located and admitted that the Elgonyi no longer have land they can call their own. If I may quote Mr. Chairman Sir, from paragraph 1086 of the Land Commission which says with the possible exception of the elevated firms in the Kitale District, it does not appear that the Elgonyi have been dispossessed of any land to which are inequity and justice entitled but they have no country which they can call their own unless the survey country comes within that category. Some are squatters on firms, some are forest squatters on

*(inaudible)* lands of Elgon and so on. So Mr. Chairman Sir, I request that that aspect be included in the Draft. Thank you.

**Prof. Yash Pal Ghai:** It is indeed included but my colleague will respond to that. 195.

**Hon. Delegate Zaddock Madiir:** Mr. Chairman, the number of points of observations that I had wanted to make have been adequately addressed by previous speakers. I would like therefore to confine myself to the issue of definition of historically disadvantaged persons. Mr. Chairman, if we accept that (e) adequately embraces the pastoral communities, I would like to amend (f) by replacing the word 'pastoral' with the word 'fishermen' communities. Mr. Chairman, fishermen communities in this country are a very unique community. First of all you will find that most of them live on remote islands either on Lake Victoria or of the Indian Ocean. They also dwell along the coastline on Lake Victoria as well as along the coastline of the Indian Ocean. Mr. Chairman, if you investigate a little, you will find that they are unique in a number of ways; number one, they actually have small communities who speak different languages from the mainland groups and over the years Mr. Chairman, their cultures and languages have been virtually killed in many cases. If you take a community like the Suba community on the islands and along the shorelines of lake Victoria, Mr. Chairman in spite of the fact that they do produce and supply high value and big volumes of fish for exports, none of that money is ploughed back to develop those communities in any meaningful manner because of their minority status and you

will find therefore as a result the infrastructure, the schools, hospitals, roads, electricity are virtually lacking in those areas.

Mr. Chairman, I would like to propose that these communities, the fishermen communities, be included under the definition so that the historical mistakes that have taken place over the years are addressed under this provision. Thank you very much, Mr. Chairman.

**Prof. Yash Pal Ghai:** Thank you. We will take two or three more and then I will ask my Colleague to comment on these points that have been made--Yes, 259.

**Hon. Delegate Salah Maalim Alio:** Thank you, Mr. Chairman. My names are Maalim Alio, Delegate Number 259 from Mandra District. First and foremost, I wish to add my voice like the other Delegates who congratulated the Task Force on the Affirmative Action and further wish to disagree with the last speaker, who proposed for the deletion of the pastoral communities and replacing them with other marginalized groups like the fishermen. I think he should argue out his case but should not call the deletion of the pastoral communities. Number two, following the Motion that was moved that led to the creation of the Affirmative Action Task Force, the principle of intergenerational equity is completely missing. So I will ask the Task Force again to look back into that and come up with proposals. Lastly, the prints out on Affirmative Action that were given to us at the door are not visible, so I will ask the Secretariat to repeat it again and give us clear copies of that. Thank you.

**Prof. Yash Pal Ghai:** Thank you. 510.

**Hon. Delegate Atsango Chesoni:** Thank you, Mr. Chairperson. I am Atsango Chesoni, Delegate Number 510, representing Women's Organizations. I would like to thank the Task Force for having done an immense amount of work. However, the Conference had resolved that we have an *Ad-hoc* Committee on Intergenerational Equity and Affirmative Action and to examine the issue of social equity and it is my feeling that we still require that *Ad-hoc* Committee and request that we go through with respect to the resolution that was moved by the Conference. I say so because of the complexity of some of the issues that have arisen and I understand that a great deal of work was done but this is a cross-cutting issue, and if I was to just



look at the example of the Affirmative Action alone, one of the things that we are asking for is for the principle itself to be entrenched not necessarily Affirmative Action in respect to a particular group but the right to Affirmative Action itself. That is just one of the issues alone that we are thinking of. As my colleague Delegate Number 463 had pointed out earlier there will always be groups of people that face inequity. I think that this matter does need and requires an *Ad-hoc* Committee and I would like to request that we follow through with the request that had been made and had been agreed to by the Conference. Thank you. **(clapping)**

**Prof. Yash Pal Ghai:** 601.

**Hon. Delegate Luseno H. Liyai:** Thank you, Mr. Chairman, Honourable Delegates, I am Luseno Liyai, 601 from Political Parties. Thank you Chair for recognizing Political Parties so that they can also contribute. One, since we are now defining or attempting to define what marginalized groups are or historically disadvantaged groups are, and we have talking been about women, I think they also lead on that queue.

Two, I should also congratulate this team for having taken a very courageous step and actually propose that there will be education for everybody. Actually, education is the one that leads Kenyans out of the mess in which we are and especially poverty. Meanwhile, we are avoiding a very major group in Kenya actually they are the majority, but so far we don't talk about them. Despite all the recommendations from them we are only given power to vote. We only cast it that day and that is the end of it. We are actually the poor, marginalized by the way of our poverty and our economic weakness. I think this should be properly captured as we define our historically disadvantaged group of people. To qualify that, in Kenya as much as we are 42 or more tribes, we can actually break that down into two major groups economically. We have the haves on one side and have-nots on the other I am sure the haves are only about ten percent of this nation and are controlling all the political power this nation has ever had since Independence. This have-nots, called the poor people or the under privileged or sometimes they are called the unfortunate I don't know how their misfortune came about-have completely been excluded from political power except voting. Thank you, Mr. Chairman. I wish the Conference would do something about that.

**Hon. Delegate Michuki John:** Thank you, Mr. Chairman. I want to make my observation on this Chapter on the issue of rights. As I understand it myself--My name is John Michuki, Minister for Transport and Communication. Mr. Chairman, first of all, I want to congratulate you for what you said yesterday that everyone in this hall must be heard otherwise people will speak outside there. Therefore, Mr. Chairman, I am saying in so far as this Chapter is concerned, my understanding is that there are the fundamental rights which are noted in the Constitution for the purposes of making it quite clear that no one whether in Government or elsewhere will be allowed by any means to interfere with those rights, for example, the right to worship. There are also as I understand it in this Draft rights which are to be conferred by the Constitution. Some of these concern for example what is now called here, access to adequate amount of food as and when it is required. Others are rights that confer benefits of housing and so forth and so on. I do think that this Constitution must also provide how those rights are to be implemented, in other words, the means with which to provide them. Also, looking at the issue of access to food, it creates the impression as drafted in this Draft here, that we are about to legalize theft, because for example we are now going for lunch, there are people around here in Langata who have no food to eat. Supposing they invaded this place as we sit down to eat. Under this Constitution, they have that right to do so and therefore, Mr. Chairman, I am trying to say that as good as it sounds, we must safeguard certain aspects of the consequences of what we decide here.

Finally Mr. Chairman, for equalization of wealth, one way of course, is to tax the rich in order to provide services to the poor which is what we are doing today. That is one way of equalization. The other of course is to provide certain services which are critical through public funds. But these funds have a limit and as you may remember Mr. Chairman, I have on this floor suggested that this Commission of yours and this Conference here ought to have a Committee that would cost all the proposals that we have so that we do not frustrate ourselves at the time of implementation because of lack of resources. With those few remarks Mr. Chairman, I thank you.

**Prof. Yash Pal Ghai:** Thank you. I now propose to ask my colleague... please listen to me, my colleague to comment on this, then we should decide how we want to proceed because some of

us have to leave for a meeting in Parliament in a few minutes. So I will first give the floor to my colleague because many of the points that you have made are already included in the Constitution, and so I would like him to clarify that point. Thank you.

**Com. Isaac Lenaola:** Thank you, Mr. Chairman. A lot of the issues that are coming from the floor are addressed in various parts of the Draft. Let me start with the last speaker, Delegate Number 101. There is a presumption that the third generation rights in this Draft Bill will be given as a matter of right without limitation. I beg that you look at Article 72 of the Draft Bill and see how the Bill of Rights is meant to be applied and implemented. Then you will see the connection between the right to housing, access to food and so on vis-à-vis implementation.

Regarding poverty, again the Draft Bill attempts to address the disparity between the haves and have-nots but if Honorable Delegates feel that the Draft is wanting in addressing those questions, again it is your opportunity to input into Article Number 34 and the Articles that relate to access to housing, food, education and so on. On the other question specifically, definition of a child. We have taken the legal interpretation that a child is a person under 18 years and whether or not a child gives birth when she is under 18, does not make her an adult by fact of giving birth, that person is still a child.

On the intergenerational equity question, I think again that this is a question we must continue addressing as we input into this Draft. We thought ourselves we had tried to address it, if it is wanting, then during the debate across the Committees, perhaps our colleagues from the youth lobby will ensure that intergenerational equity is addressed fully in whatever chapter. I agree with Honorable Delegate Suba that there is need to harmonize these proposals on Affirmative Action and the age question vis-à-vis other parts of the Draft Constitution so that we don't say on one hand the youth can participate in all affairs of State, whereas on the other we limit their participation through other provisions. I think in terms of harmonization, that has to be done.

Honourable Betty Tett was asking about the rights of children. I think Article 37 is exceedingly loaded with the rights of children, including the rights to healthcare. And if you look at Article 37, you will see that it is very difficult for one to say that those Articles can allow a parent to

stop a child from going to get education, medication because of their religious beliefs. So again, I think let us look at that Article.

Religious freedom one of the questions we as a Commission found very difficult to address is to say on one hand, you have a right to freedom of religion, on the other hand we are saying, you must worship a particular being. This is because you don't give on one hand and take on the other, but of course once one goes beyond the limits given by the Constitution, then that is the question of law again and the limitation is given by the law. Therefore, devil worshipers and so on are limited in fact by the limitation of rights within this Constitution. Kathurima's question of definition, I think that can be addressed because you will see that point Number E on definition could actually be input into F and therefore it is not an issue, maybe just an oversight. Honorable Kisiero, one, the Elgoni Maasai we thought we covered them under the definition under point number A only in terms of definition.

In terms of the land claims and historical land injustices, this again is covered under Article 235 on land and we are saying all the historical land claims will be reviewed within a framework set up by this Constitution and that includes the Maasai, people of the Coast, the Mazrui 10 mile strip, the Elgoni, the Ogiek and all communities that have historical land claims, whether through the colonial government or subsequent to it. So I think again Article 235 covers the question of the Elgoni.

The other point which I thought I should raise is... now the question of the *Ad-hoc* Committee on Affirmative Action. We may disagree but the Committee took the view that because these questions cut across the entire Draft Bill, it will be best that our proposals and any input from the floor here and from members directly should be taken to each Committee so that each will address its Chapter in the context of this Draft; so that for example the proposals by Suba on the Legislature can actually go in the Legislature in the context of this framework which will be done by the Committee but again that is the question which I am sure the Chairman will rule on but our Committee took the view that we should have this documents circulated right from the committees and then we will make input into each Chapter because the whole thing cross-cuts the entire Draft Bill. Thank you, Mr. Chairman.

**Prof. Yash Pal Ghai:** That would be my recommendation too, that we turn this Draft Bill background report on which this is based, the transcript of this meeting, and ask each Committee to see where they can strengthen the Affirmative Action proposals. I am a little bit concerned if we have too many committees, we fragment the document too much. For example, many of the recommendations we have made are quite central to the way in which the Bill of Rights is to be organized. If we have a totally separate Committee on Affirmative Action and the Bill of Rights has finished its work, it will be very hard to integrate that later on. So I think if you agree I would suggest that we draw to the attention of all the Committees this set of recommendations, the background paper which explains this in great detail and that each Committee see how their particular Chapter can be strengthened from this perspective. Is that alright?

**Hon. Delegates:** (in chorus): Yes.

**Prof. Yash Pal Ghai:** Thank you very much indeed. Now I would like to adjourn because we have to go to Parliament, I will report to you on our discussion with them. One issue I believe which they would wish to raise is the question of timing, the resumption and I shall remind them that this Conference, by overwhelming endorsement said that we should meet in November and I will make sure that no decision is made until the discussion has been reported to you. Then we will meet at 2:00 O'clock at which time we will present our Draft on Devolution. Please try to be back on time because their Draft is very lengthy and we would very much like you to understand our proposals and then to comment on them. So thank you for your patience, please remind your friends outside that they really should be inside, we have had a very poor attendance today and that is not very good for us. Please let us have the full House when we meet in the afternoon. Thank you very much indeed.

**Meeting adjourned at 11:50 am.**

**REPORT ON DEVOLUTION OF POWER.**

**Session Chair** - Com. Mosonik arap Korir  
**Presenters** - Prof. Wanjiku Kabira

**Hon. Delegate Sultana Fadhi:** Honorable Delegates good afternoon. We are ready to proceed with our afternoon session and Dr Wanjiku will take you through the new Chapter on Devolution of Powers. Dr. Wanjiku.

**Hon. Delegate Kabira Wanjiku:** Good afternoon. Dr. Mosonik and I are going to present the Draft Chapter on Devolution. First I am giving you apologies from Commissioner Kangu who is not able to be with us this afternoon. When we will be through, Prof. Ghai is going to make comments on the same Draft and that will be it then we have the discussions. I am hoping that everybody has been able to get the Draft outside. Copies are there and I have just picked mine so I know they are there, just outside the door and you will need it since we just want to go through it section by section this afternoon. This I think is the third time we are presenting on Devolution. So it would be good to have the copy so that, when we are making the comments we are able to deal with specific sections of the Draft.

So if you look at the Draft for those who have copies, those who do not have copies can pick them from outside, we are talking about forms of government and we are in Article 215 establishing the four levels of government as follows: the national government, the Zone level, the county level and the locational level. These four levels are based on the discussion we had during the first week of Bomas (II). It is in the report we presented to you and I think the details of the levels appear later, so we will just establish the levels on this Article.

Then we move on to 216 which are the revised objects of Devolution of government and we have them as follows but we want to ensure the democratic and accountable exercise of sovereign power. We want to foster a national unity by recognizing diversities. We want to give powers of self-governance to the people at all levels and then enhance participation of the people in the exercise of the powers of the State. We want to protect and promote the interests and rights of minorities and disadvantaged groups. We want to promote social and economic development and provision of proximate easy access to services throughout Kenya. We want to ensure

equitable sharing of national and local resources throughout Kenya with special provision for marginalized areas and we want to facilitate the decentralization of government agencies away from the capital's territory.

We are also saying that all persons and bodies exercising and performing functions and powers in accordance to this Chapter must take account of the object as set out in this Article. In other words, these are like the principles that are guiding Devolution and we want to make sure that we take all these things into consideration when we talk about the units and the various levels of government.

Article 217 establishes the mechanism for cooperation between government at their different levels and we are saying that the government at every level must be loyal to the Constitution and support the goals, values and principles of the republic whether we are talking about Zone government or sub-national government or whether we are talking about the locational or countries. We are saying that the government at every level must exercise and perform its powers and functions in a manner that does not encroach on geographical, functional or the institutional integrity of government at any other level and must respect the Constitutional status, institutions and rights of government at all levels. I think these are quite clear.

We are also saying that the national government must maintain liaison with the government at other levels for the purpose of exchange of information, coordination of policies and administration and also advancement of capacity. That all government are not at the same level we are talking about the counties, the locational government or the zonal government or sub-national government. We are saying that their capacities will need to be enhanced and it is important for the national government to ensure this. We are also saying that government at different levels may cooperate in the performance of functions and for that purpose may set up joint committees or joint authorities.

We are suggesting also that a government involved in an intergovernmental dispute must make every reasonable effort to settle their disputes by means of procedures provided for, for that purpose and must exhaust all other remedies before it approaches a court to resolve the dispute. Again this is to encourage the process of consultation because it is one of the principles that we

have established, to ensure that the various governments do not use the court as the first place to go to when they have dispute but they are encouraged to deal with consultations and other remedies before going to court. We are also suggesting that when resort to such procedures has failed to resolve a dispute, the dispute may be referred to Supreme Court for resolution and in sub-Article seven, we are saying that if the Supreme Court is not satisfied that the requirements of clause (5) have been met, it may refer a dispute back to the government involved. Again this is to deal with the possible disputes that may arrive either between two zonal/sub-national government or between a zonal government and a district or county government. Just to avoid any confusion when we represented the report we talked about sub-nationals. In this particular Draft we are calling them zonal government meaning the aggregate districts that come together.

Again in our previous Draft we called the districts them district authorities and here we are calling them Counties or Local Authorities. So, when you hear me referring to the County, you know we are talking about District Level. When you read Zonal, you know we are talking about the sub-national. I just wanted to make sure that that clarification is made because in the original report we talked about sub-national, we did not call them zonal. In the last sub-Article, we are suggesting that to facilitate the settlement of Intergovernmental disputes, legislation enacted by Parliament must provide procedures for the settlement of such disputes by negotiation, mediation or arbitration. And now I am now going to ask you Dr Mosonik to explain the Zones and the Zonal governments.

**Com. Mosonik arap Korir:** Thank you. After having discussed the objects of Devolution of government, we will go straight away to what my colleague says last time was the sub-national level. The Delegates will want to pay particular attention to the previous page, there was 215(ii) which said “the governments at each level are distinctive, interdependent and consultant. So although the Zones and Zonal governments are the next item we are discussing, this is not understood as a hierarchical arrangement but rather as being a cooperative government very much in the mould of the South African system. Under 218, we have identified the 18 Zones. Delegates will recall that last time when we were presenting here, we had three option that we were forwarding for consideration. Now we have reduced that to one option, which was called option 3 that time. And on pages 19 – 21 is the listing of those Zones. Zone number one is, Kwale, Mombasa, Taita Taveta, Zone number 2 are Kilifi, Lamu, Tana River and Malindi; Zone



3 consists of Makueni, Machakos, Kitui, Mwingi; number 4 consists of Mbeere, Meru, Central Meru, South Meru, North Nithi, Tharaka, Embu; Zone number 5 is Isiolo, Marsabit, Moyale, Samburu, Laikipia; number six is Garissa, Ijara; number 7 is Mandera, Wajir; number 8 is Turkana, West Pokot, Marakwet, Trans-Nzoia; number 9, Keiyo, UasinGishu, Nandi North, Nandi South,se Baringo and Koibatek; Number 10 Kericho, Bureti, Bomet, Nakuru; number 11, Kajiado, Narok, Trans-Mara and Kuria, number 12 Homa-bay, Kisumu, Migori, Rachuonyo, Siaya, Suba, Bondo and Nyando; number 13 Kisii Central Gucha, Nyamira; number 14 Kiambu, Thika, Muranga, Maragua; number 15 Nyandarua, Nyeri, Kerinyaga; number 16 Bungoma, Teso, Lugari, Mt Elgon; Number 17 Busia, Kakamega, Vihiga, Butere, Mumias; number 18 is Nairobi which it is proposed to be split into 4 Counties; the first, the second, the third and the fourth. I would like to say at this point we settled for Zone but we shall leave it to the Committee to discuss the appropriateness of calling these sub-national units Zones and secondly to propose names, actual names of these Zones just like the way we have now Rift Valley as a province, so we shall say Zone one what should it be called, and we assume either immediately or later but of course we assume that it will be based on the opinion of the people of that area.

Then under number two, 2218(ii), we have said the boundary of a Zone is the boundary of the aggregate territory of the Counties that comprise the Zone as set out in the same schedule which is number 7 as at the date of coming into force of this Constitution. I would like to remind the Delegates that this derives in part from our report what we have called the Yellow book and if you want to see the details regarding these Zones in terms of a map, it is on page 28, and in terms of the statistics under which apply in each case from pages 22 – 28, but you will of course recall that we were told to have some objective criteria in determining these Zones and I think we did that. Please continue.

**Com. Wanjiku Kabira:** Thank you Dr Mosonik. Now on the next page we have the Article 219, where we are saying that a zonal government consists of a Zonal Council and a Zonal Executive and Article 220, I think this is what we are discussing in the report and it also appears in the original Draft Bill. Because we are saying that the Zones will have both the legislative and Executive powers. So on Article 20, we are talking about a Zonal Council which will consist of a number of Zonal Councilors elected from each County within the Zone as determined in

accordance with the following table. I want to explain the table that follows there, so that we are clear that what we are proposing will be the Zonal Council.

If you look at the first line, it says, number of Counties within the Zone. The first line says two and may be let me take the Zone, which has Ijara and Garissa, so those are two Counties that will form a Zone. So the next line says each of those, two Ijara and Garissa will have eight elected representatives from their own Counties and call it districts in your mind. Thus we are saying a council will have a total of 16 members. We are also saying that the minimum number of women for that Zone will be six. Here we are trying to follow the Principle of 1/3 and one third of 16 is about 5 1/3 we rounded it upwards and we are saying that each of the Zones should give us three women and every other line is like that. So I think what happens is that these particular table explains to us how the councils are going to be constituted. Now if you look at three, we are saying that any of the counties or the Zones which are three counties we are saying that it will have a number of the Delegates from each country within the Zone which will be six. The total will be eighteen and the minimum number of women is written and we are saying the minimum number of women from each council will be two. Instead of saying that Affirmative Action will be implemented, we are giving a method through which this can be done so that we do not create confusion in terms of composition and representation. What follows there is a continuation of 220, which is just a description of how the voters are going to elect the councilors and the women themselves within their own counties.

I think I will move on to the next page. You can look at the method that has been given there. It is quite detailed. I'll go into the next page of sub-Article five where we are saying that in order to ensure compliance with the principles of Affirmative Action, representations are set out in the previous Article. The result of an election for representative of a county under this Article must comply with the following procedure and the procedures are listed there, you can read them later. And I want you to look at the next sub-Article which is sub-Article (6) and we are again talking about the election within the Zone. We are saying that in any elections under this Article if two or more candidates have same number of votes and no other candidate has more votes and if (a) the number of councilors remaining to be elected equal to or more than the number of tied candidate each of those side candidates must be provisionally declared elected and so on. So these are the details of the elections for the Zone councils and we can look at them in details then

we can make any comment. Now I want to go to 221 where we look at the functions and legislative authority of zonal government and Dr Mosonik will present.

**Com. Mosonik arap Korir:** We have said that first we are dealing with the functions of zonal government and the zonal councils in the first instance, and I would like to say that one, we have set the zonal councilors functions specified in the eighth schedule so set rule as far as they are appropriate to be performed at that level. The 8th schedule please, let us look at that briefly and at the back of the document, page 22 lists many functions, which we have said are functions of zonal, and county councils. We are talking about functions of devolved government minus the location councils whose functions will be specified in the text. Now these functions have been identified from various sources. Some of them come from the first Draft and other places. The thing is that we decided as the Commission not to try and sort out what should be the functions of these two levels of the Zone and the county council but we listed them as comprehensively as possible and then we shall recommend that once it is approved it goes to the Committee to sort out these functions. At the end of it, we shall have something similar to the one on taxation which is on pages 26 to 28 so that in other words, there will be the powers and functions of national government as one category. Secondly, powers and functions of the Zone, then powers and functions of the counties and wherever necessary we shall have exclusive powers, concurrent powers and so on.

A zonal council must also; you will recall from the first Draft that we had what was called the provincial council. We have said that zonal council will play (a) the role of an enhancing capacity in the county council in the discharge of their functions and promote cooperation between them and (b) formulate plans and policies for the exploitation of the Zones resources and development of the Zones infrastructure and finally manage zonal institutions. This has to be read in relation to the eighth schedule and then finally, we said a zonal council that has power to make laws for the purposes of or for purposes incidental for the performance of its functions. Now ;

In 222, we have talked of the procedures of the zonal council and we have said the provisions of the Articles, those ones we have mentioned 135-137, relating to Parliament as it is the zonal legislature we are talking about *motatis motandis* or with necessary modifications shall apply to a

zonal council and then we were saying there in the brackets that these provision may be moved later to where those Articles are, which means the Chapter on the Legislature.

Then 223 on the zonal Executive Committee, we accept the Executive authority over zonal government is exercised by a zonal Executive Committee consisting of the zonal chief executive and so far we have not been able determine other members appointed by the zonal chief executive with the approval of the zonal council in the same manner as the members of the cabinet of the national level are approved by Parliament. The zonal chief executive is elected by registered voters who satisfy the prescribed qualifications relating to residency within the Zone.

An eligible voter who satisfies the qualifications for membership of the National Assembly and who meets the prescribed requirements relating to residency in the Zone, is eligible to be a member of a zonal council. In other words, the qualifications for being a member of the zonal council are the same as those for a member of the National Assembly because we are proposing that the membership from the Zone in the National Council will come from the zonal council so the qualifications have to be the same.

Now a member of the zonal executive council holds office for a term of four years and can be re-elected or re-appointed if otherwise qualified and finally, a member of the zonal executive Committee other than the zonal chief executive may be dismissed from office by resolution of the zonal council meaning therefore that their removal just as their appointment is subject to approval by the zonal assembly.

**Com. Wanjiku Kabira:** Okay. We are looking at the functions of the Executive Committee and I think they are listed there. So we will not go through all of them but basically, the Executive Committee implements the decisions of the council and if you go to the County Government and Counties, so we are through with the zonal government for the time being until later on when we talk about finances.

We are also saying that we are establishing 75 Counties arranged within the 18 Zones described in the 7<sup>th</sup> schedule. In other words all those Districts which we have listed there including the division of Nairobi into four, makes the 75 Counties so the 71 Districts plus the four areas in

Nairobi. Nairobi is divided into four. These are the ones which form the 75 counties and we are saying that the Boundaries, sub-Article two, the boundary of a county is at first instant the boundary of the district of the same name as at present. So in other words, the current district Boundaries remain the Constitutional boundary if we adopt this. That is what we are suggesting and therefore the whole of that area covered by that district is the county we are talking about except for Nairobi, which forms four counties. Now let us look at the county government 226 and we are saying that a county government consisting of a county council and a county executive is established for each of the counties. Again we are talking about legislative and executive powers both at the county levels and we see that in 227, the county council consists of not more than-- -we have left a blank there. We would like the Committees to discuss and these people are elected as it is in Article 228, by registered voters who satisfy the prescribed qualifications relating to residency within the county. We are saying that minus sub Article (2), an eligible voter who satisfies the qualifications for membership of the National Assembly and who meets the prescribed requirements relating to residency in the county is eligible to be a member of the county council. I think in the National Assembly, we have actually given O-Levels as their academic level of education. We have suggested that the counties, their term is four years and then we go to the method of election of the county councilors which is indicated there, and we are saying that 21 members are to be elected on the basis of single member constituency to be known as wards or by such other name as may be prescribed with Boundaries determined by the Electoral Commission where this is the current ward where the councilors come from.

We are saying that in (b), nine members are to be elected on the basis of list of candidates submitted by political parties, contesting the election and number 3, such number of special seat members, all of whom must be women as may be required to constitute at least one third women membership of the council are to be elected after members have been declared elected under paragraph a and b.

What we have done is bring to the council the same principal we have for the election of the 210 constituency members and the 90 MMP members, which is the Chapter on Legislature. So, it is a similar method that we have carried to the county councils and they have also tried to show how

the 1/3 level representation can be done. I want us to go to the next, the lists again are details of the appointments and I would like Mosonik to deal with the functions of the county council.

**Com. Mosonik arap Korir:** So we want to say we look at the 8<sup>th</sup> schedule again which contains the functions and powers of the zonal and county councils and say are the powers/functions of the county council shall be derived from that list once the Committee has deliberated.

Secondly, to note that a county council has power to make such other laws as may be relevant to the performance of its functions. The procedures, we have said are on the next page, 230, that is subject to any procedures prescribed by Parliament a county council shall be free to regulate its own procedures.

231, about the County Executive, we have set just in an analogous manner to the zonal executive and there has to be a County chief Executive and a number of other members to be determined and appointed by the county Chief Executive with the approval of the council.

The chief executive being elected number two, by registered voters, bearing according to consideration the issue of residency in the county and the qualification is that you have to satisfy the same requirements as those for membership in the National Assembly.

Members of the county executive Committee shall hold office for a term of four years and can be re-elected or re-appointed. They can only be dismissed, other than the Chief Executive, by resolution of the county council. The chief executive, number six, may be dismissed by a vote of an absolute majority of the members of the council, that is supported in a referendum by a majority of the persons voting.

The County Executive Committee, we have said, that they are responsible for the functions, which are assigned to them by the county chief executive. They are accountable collectively and individually to the county council for the exercise of their powers and performance of their functions but these functions that they will be assigned as we have said in number three at the top of page 11, must be in accordance with the Constitution and the members must provide the county council with full and regular reports concerning matters under their control. In the interim between elections, when an election of a county council is held, the county executive Committee

and his members remain competent to function when the council is elected. I think we want to say, between elections that county executive Committee continues functioning until the next one is in office.

**Com. Wanjiku Kabira:** Okay and then you look at the locational of government and we have not talked about the numbers 233 of the location, we have suggested that an Act of Parliament must divide each County into locations with prescribed Boundaries. There were issues for instance about some of the locations for example in North Eastern province, Ijara and Garissa and Wajir where the locations are very big and sub locations are very big therefore we are suggesting and later on we will see we have a Boundaries Commission that is taking Geography, population and other variables into consideration. We should get the locations, the Boundaries should be made clear.

We are suggesting that we establish a locational government which consists of a locational council and locational executive and we are saying that for the locational council, it will consist of representatives from prescribed Constituencies within the location but we will also have two representatives, one woman and one man who are to be elected from each Constituency in a manner prescribed by an act of Parliament although we have not described the details about how they will be elected. For the functions of local government, what we have really done is merged the original suggestions for the village council and the locational council, so we are suggesting that they should be coordinating planning matters relating to the location and preparing a coordination plan to the county government. They should also deal with such matters as Parliament may prescribe, being matters that you will be adequately and appropriately handled at the locational level. These matters may include local law and order, land matters, local services such as sanitation and water, cultural and social affairs and even dispute settlement and we are also suggesting that there is any other function conferred by the national, zonal or county government.

We are saying that the locational government executive, page 237, we are saying that we should have an administrator, who is the executive authority of the location and who should also be elected in the prescribed manner, by voters resident in the location.

The Kenyans in most cases said that they do not have a problem for instance, with having a chief but they would like to elect, a chief has been the administrator, but they would like to elect the chief themselves. So, that is how we have translated that principle, that whoever is responsible for the Executive authority at that level should be elected by the voters. We are suggesting that that particular locational executive should be O-Level and some of the term of office of the locational administrator is four years. We want to quickly go to finance and say that in 238, we are suggesting that we have a Commission on government finance and this Commission has the provisions on how it is going to be constituted. I want to go directly to sub Article (3) which talks about the principle function of the Commission which is to make such recommendations as to ensure that the sharing of revenue from Natural resources (a), is equitable as between governments at the several levels and (b), is equitable as between the several units of government at any particular level below the national level.

We are also suggesting that in sub Article (4), that the Commission is to advise and in a report to Parliament make recommendations concerning the distribution of national revenues to several levels of government. Sub Article (5) says that in its recommendation, the Commission must (a) aim at defining and enhancing the revenue sources of Government at the several levels with the object of encouraging fiscal responsibility and moving the Devolved Government over time towards financial self sufficiency and (b) it should take into account the principles of Taxation set out in the schedule 9 which we can quickly just look at. The schedule is on Page 24. On that page these principles suggest that (if you look at Bullet 1) that every effort should be made to ensure that the same institution or individual is not so overburdened with many different taxes. We talked about this when we were giving the Report. Bullet 2: Every effort should be made to promote investment as the most sustainable source of tax revenue. Bullet 3: Every Devolved Government is entitled to an equitable share of revenue raised nationally to enable it provide basic services and to perform the functions allocated to it.

Bullet 4: Additional revenue raised by a devolved Government may not be deducted from its share of revenue raised nationally or from other allocations made for them out of National Government revenue, basically in order to promote and to encourage the various Devolved Governments to be able to raise revenue needs and for their programmes.



Bullet 5: The power of the devolved Government to impose taxes in any form may not be exercised in a way that materially and unreasonably prejudices national economic policies, economic activities across Zone Boundaries, or the national mobility of goods, services, capital or labour and must be regulated in terms of an Act of Parliament. We are also saying that a County Government may impose rates on property and surcharges on fees for services provided by on behalf of the County Government and other taxes, levies and duties appropriate County Government as may be authorized by an Act of Parliament. When two County Governments or more than one level with Devolved Government have the same fiscal powers and functions with regard to the same area, an appropriate division of such powers and functions should be made in accordance with national legislation.

The division may be made only after taking into account at least the following criteria:-

- a) The need to comply with sound principles of taxation.
- b) The powers and functions performed by each County Government.
- c) The fiscal capacity of each County Government.
- d) The effectiveness and efficiency of raising taxes, levies and duties.
- e) Equity.

So those taxation powers can be studied in detail. I want us to go back to Page 13, where we were, and Sub-Article 7 says that “in its recommendation concerning the distribution of national revenue, the Commission must take into account the national interest, any provision that must be made in respect of the national debt and other national obligations, the needs and interests of national Government determined by objective by criteria, the need to ensure that the Zones and the counties are able to provide basic services and perform the functions allocated to them, the fiscal capacity and the efficiency of the Zones and counties, development and (inaudible) of other Zones, county governments and counties economic disparities within and among the Zones; obligations of the Zones and counties in terms of national legislation, the desirability of stable and predictable allocations of revenue shares and also the need for flexibility in responding to emergencies or other temporary needs and other factors based on similar objective criteria.

We are also suggesting that and you can read the rest I want you to look at the taxation powers which is Article 239 and in order to probably look at that and appreciate what is being recommended, I want you to look at the tenth schedule which is on Page 26.

Now, we have made some proposals. We have dwelt on the taxation powers of the National Government and we have listed some. We are saying that the National Government shall have the powers to levy and collect taxes, customs duties and such other dues on import and export goods, that the National Government should be able to levy and collect income sales tax; that National Government should be able to levy and collect taxes from winners of the national rotary and other prizes of a similar nature. We suggest that it should be able to levy and collect taxes from incomes on transportation by air, rail and by sea and should determine the rents of, levy and collect tax from houses and other property owned by the zonal government. They should be able to determine and collect fees from licences issued and services provided by organs of the zonal government and they should also be able to levy and collect national stamp duties. Then we have given taxation some powers to the zonal governments which include the levying and collecting tax on income from its employees and those of other organisations. (Bullet 1).

They should be able to determine and collect land dues fees. They should be able to levy and collect agricultural tax from individual farmers who are not members of an association of farmers. They should be able to levy and collect income and sales tax from individual traders within the Zone. They should be able to levy and collect tax on transport and waterways within the Zone. We have another whole list of other levies that they should be able to collect.

Then they have concurrent taxation powers which are listed there. The county government has power to levy, charge, collect and appropriate fees and taxes in accordance with laws enacted by Parliament. These fees and taxes consists of rent, royalties stamp duties, personal graduated tax, cess, fees on registration, licencing and any other fees and tax that Parliament may prescribe. So we would probably want the Committee to discuss a bit more on the recommendations that we have made on finances.

I want you to move now back to page 14 where we are talking about the Consolidated Fund, Article 240. The revenue to the Government at any level must be paid into a Consolidated Fund

and that payments out of the Consolidated Fund may only be made in accordance with an Act of Parliament or a written law of the Government concerned, meaning whether we are talking about the zonal governments or the Central Government. We have also made a provision for borrowing, which is Article 241, and we are saying that a zonal or county Government may raise loans for capital or recurrent expenditure in accordance with the reasonable conditions determined by an Act of Parliament. We have said something about the loans for recurrent expenditure and we are saying that they only be raised when necessary for bridging purposes during a fiscal year and that they must be repaid within 12 months. Sub-Article 3 proposes that an Act of Parliament referred to in Clause 1 may be enacted only after any recommendation of the Commission on Government finance has been considered.

We have said something about administration of revenue and we have suggested that Parliament must establish a National Revenue Administration Authority and that the authority is the responsible for the collection of revenues due to government at all levels. Then we have something about Other Financial Provisions which you can look at and we move on to Part 5 which, Mosonik will deal with.

**Com. Mosonik arap Korir:** Under Part 6 – General, issue number 1 is the staffing of Devolved Government, and we have said a zonal government or county government may employ its own staff and power to do that or to exercise disciplinary control is to be vested in a Zonal or County Service Commission established by legislation of the zonal government. So in other words we are proposing that there should be service Commissions at the zonal and county level, unlike now where there is just one Public Service Commission. On the next page, I would like to request that you delete what was written there as number 3. We were talking about the role of the public service in relation to these Commissions at the lower level and I think we shall just put a question mark there and say supervisory role, question mark. In other words the Public Service Commission to supervise zonals and county service Commissions in carrying out their functions to ensure standardization and so on. Otherwise, please delete number 3.

Article 245 is simply to say that the legislation made by the zonal council or county council comes into effect only upon publication in the official Gazette, the Kenya Gazette. The

procedures and formalities for law-making at the zonal or county council levels are to be specified in written law of the particular council.

No. 247 is about a Boundaries Commission. You will recall we said we assume for now that the Boundaries for the Zones and counties are the existing ones, the ones in force and at coming into force of this Constitution, the way they are the Schedule, both the Zone and the districts comprising them. We are proposing that thereafter Parliament establish a Boundaries' Commission whose functions will be fixing, reviewing and variation of the Boundaries of the Zones, the counties and locations. In the text we have said, after consultation with the Governments of the Zones and the counties affected and on the recommendation of the Boundaries Commission, Parliament may then vary the Boundaries of a county or Zone and the idea behind consultation being that the Zones and counties affected must devolved before their Boundaries are altered. In brackets we have said this clauses may go afterwards to the section on the Chapter on the Constitutional Commissions.

Then 248, we are saying that a zonal or county government may be suspended in an emergency or in case of war, gross inefficiency or corrupt practices but we are saying that they cannot be suspended even in those circumstances unless an independent Commission of inquiry has investigated the allegations against it the President is satisfied that the allegations are justified and the National Council, which is the custodian of a devolved government interests at national level has authorized suspension. During a suspension under this Article, arrangements must be made for the performance of the functions of the zonal or county council suspended and its executive officers in accordance with an Act of Parliament. In any case, a suspension cannot extend beyond a period of 90 days, during which new elections for the relevant council must be held appropriately.

249 talks about prohibition against holding elective office simultaneously at the national and devolved level, but we have qualified under 2by saying that nothing in this Article precludes a person from being a member of a zonal council and of the National Council as provided for by this Constitution because we are saying it is the members of the zonal council who will ultimately constitute the National Council, that is the proposal we are making. Then we have provided for supplementary legislation by Parliament which must require appropriate

Constitutional Commissions and Constitutional office workers to establish offices in every Zone and county over a specified period, that is, the issue of centralization that we mentioned at the beginning. That Act may also provide that the power to make laws on a matter is with one government and the power to implement it with another government or governments. C, must provide for delegation of powers of one level of government to another and must specify the conditions for the transfer and the recall of the powers Delegated.

D, may specify that legislation passed by Parliament should contain provisions for its adaptation to local circumstances and then it may provide for a phased transfer of powers, functions and resources on the basis of satisfying clearly prescribed criteria showing appropriate capacity to discharge the functions and powers, not simply to impose when the relevant levels are not capable of performing.

Then it may require the costs of salaries of members and officers of devolved governments to be met from revenues raised directly by the devolved governments; may specify special measures for the development of marginalized areas; provide for the establishment of criteria and procedures for classification of citizen townships and for governance of their internal structure. You will recall that we said Nairobi is in a special category as a capital territory or a capital city but the others have to be dealt with under legislation; may institute arrangements for adapting the structure of devolved governance to urban requirements and especially of the county in urban circumstances. And then finally, generally may make provision for carrying out or giving effect to the provisions of these Chapters.

May I request that you look at Page 29 which is an item on Consequential Amendment in relation to the composition of the National Council. We have said under 221 (1), the National Council is composed of Delegates from each zonal council. Are we to name the Delegates and they go there independently or are they a single delegation as in the case of South Africa which goes and has one vote because they represent the Zone and that is where they come from. They come from each zonal council. Secondly, each zonal delegation to the National Council comprises the zonal chief executive or another member of the zonal executive committee of the zonal designated by the chief executive.

There is a question mark on the other Delegates, in terms of the number, appointed by the zonal council for a term of 5 years. Next, in appointing members of its delegation to the National Council, a zonal council must (a), comply with the gender representation goal set out in a relevant Article and (b), ensure that the delegation is broadly representative of the diversity of the population within the Zone. Any person who qualifies for membership in the zonal council may be appointed as a Delegate to the National Council.

No. 5 - If a person who is a member of the zonal council is appointed to be a Delegate to the National Council, that person ceases to be a member of the zonal council.

No.6 – A person ceases to be a Delegate to the National Council if that person ceases to be eligible to be a member of the zonal council, becomes a member of the Cabinet, is absent from the National Council without permission in circumstances for which the rules of the National Council prescribe as loss of membership. That is the body of the text together with the schedules as proposed. There are some items we have mentioned in this text but which we are saying can be transferred to the relevant Chapters in the Draft but they were brought here for purposes of discussion, debate and approval. Thank you. **(clapping by Honorable Delegates)**

**Com. Wanjiku Kabira:** Okay, thank you! We will ask the Chairman to make his comments.

**Prof. Yash Pal Ghai:** Thank you. I think your presentation has been so comprehensive and so clear that I do not really have a great deal to add just to say that where we see the role of the second Chamber is in the nature of a negotiating body. The Upper House and there are proposals, will bring the representatives of the Districts or as you call them here the Zones, I beg your pardon, and the Legislation particularly that which applies and will be implemented in the Zones and in the counties and locations will have to be passed by the second Chamber and at that stage, the National Government would negotiate with the Zones in order to get that legislation through.

We believe that this is an effective way of strengthening the Zones. If you have representation from the Zones to ordinary elections, you will not get such a strong representation of the Zones because then the representation will become largely on the basis of parties. So if you really want

to strengthen the Zones, then our proposal for a Second Chamber I believe is the way to go. It also is a way in which the activities and policies of the National Government will be coordinated with the Zones, and you have noticed that the draft emphasizes the need for a system of Devolution in which governments are co-operating and collaborating.

The other model of Devolution is one in which the Governments are almost fighting, competing. But what we have recommended is a system in which Governments will be co-operating and settling their disputes peacefully and without having to go to court, if possible. Now in order to achieve that system of co-operation, it is quite important to have the kind of Second Chamber that we are recommending. I just wanted to bring that to your attentions. Also, we do envisage a situation where law will be passed by the National Government or by the national Parliament and the responsibility for implementing that could be with the Zones or the Counties. This way we would relieve some pressure from the Counties and Zones to get into elaborate law-making but they would have responsibility for implementing nationally-agreed laws. So we divide Executive from legislative authority in certain instances.

I think what I can say is that we have tried in this Draft to provide considerable flexibility but at the same time we have entrenched what we believe are fundamental principles and rules which are necessary to ensure significant power to the Zones and Counties. So we have tried to marry the principle of secure, guaranteed powers and institutions with a sufficient degree of flexibility so that the system can develop as we go along.

We have also stated that the powers can be phased over a period of time and it will be possible for Parliament to say that a County Council or a Location Council can only get the powers which are set out in the Constitution if they demonstrate that they have the ability to discharge those functions. I think one of the problems we have experienced with our local government system at the moment or in the past is that powers were notionally given to Councils when they really had no capacity to perform them and that is why we run into many difficulties. Here there would be a discretion to withhold a power from an authority which clearly cannot demonstrate that it has the capacity, procedures and the regulations in place to carry out those functions.

Let me say, finally, that this document owes a great deal to the comments that were made in Bomas I, when you discussed our Chapter 10 in the Draft. There were several criticisms and we have tried to take into account those criticisms and I want to mention that Dr. Mbai was one of the principal critics of our Chapter 10 and his comments have been very instrumental in the improvements that I hope you will notice in this particular Draft. Thank you. *(Clapping)*

**Hon. Delegate Sultana Fadhili:** We have about half an hour to take general comments from Delegates. You will excuse me if I pick on a number which was picked in the morning because I do not have a list. 487?

**Hon. Delegate Baldip Rihal:** Thank you very much, Honourable Chairperson Honourable Delegates, I have one or two questions and I need to seek clarification on them Madam Chairperson. I agree that whilst this new Chapter 10 reflects the views of the discussions we had on the previous Chapter 10, but the question and the position of the city and the municipal Councils as they exist today is not very clear. It appears to me from this new Chapter that 45 Mayors of our city of Nairobi and the other municipalities are going to be redundant when the new Constitution comes into place. *(laughter)* It is not clear from this new Chapter as to what will be the designation of the elected Head of the new proposed county council. Is he going to be called the Mayor, Chairman or what?

You know “Mayor” has a certain dignity and prestige behind it whereas “Chairman” under the present local government system, is a title given to the second level of our town councils. All the municipalities, and Nairobi is defined as a municipality, are headed by an elected Mayor. We need to clear that very carefully, Madam Chairperson.

The other issue I have Madam Chairperson concerns taxation. Whilst the powers that have been given to the County Councils are quite clear, in my view, one of the most important revenues which our local authorities derive, particularly the city and the municipalities, is from the property taxation known as rates, but when you look at Schedule 10 and the powers given to the County Councils to raise money, property rates is completely omitted. If we omit that, none of these councils will be able to sustain themselves and be able to provide the services and let alone pay their staff. So can we get some clarifications on these issues? Thank you very much.



**Hon. Delegate Sultana Fadhili:** 399?

**Hon. Delegate Grace Ogot:** Chair, being a member of this Committee, I think it is work well down under the late Chairman. May God Bless him. Now, on page 20, although I am a member of the Committee, Chair, we had agreed that Zone 12 consisting of Homa Bay, Kisumu, Migori, Rachuonyo, Siaya, Suba, Bondo and Nyali be split into two Zones as follows: Siaya, Bondo, Kisumu, Nyando under one Zone, Zone one and Suba, Rachuonyo, Homa Bay and Migori, Zone two. Mr. Chairman, looking at the size of the old Nyanza Province, it is so wide. From Bondo in one end of the world and Suba on the other end in South Nyanza. That was the reason, Mr. Chairman, looking at the very large area and difficulty in transport, why the Committee involved in this Zones decided long before we were sub-divided into sub-Committees that we should carry two Zones.

I want also to thank the presenters who have presented the document. It is very explicit and we hope that the Chair will be patient to listen to some of the speakers who will add to the power of this important document. Thank you Chair.

**Hon. Delegate Sultana Fadhili:** 235?

**Hon. Delegate Reuben Tsuma:** Asante sana Mwenyekiti wa mchana huu wa leo. Nataka kuchangia kazi nzuri iliyofanywa na Kamati juu ya *Zones* vile ambavyo ziliwekwa kwa utaratibu mzuri hapa. Lakini nasimama maanake nikirudi hapo nyuma wakati wa Bomas I, nafikiria wengine wetu hatukupata nafasi za kuzungumza na nakumbuka vizuri sana, aliyepata nafasi ya kuzungumzia juu ya *Zones* alikuwa Delegate mmoja tu ambaye kidogo aligusia hasa kulingana na Tarafa ya Pwani. Kwa hivyo kwa kuwa sisi wengine hatukupata nafasi hiyo, nimeangalia vizuri hapa kwamba kazi yenyewe ni nzuri, lakini mimi hapa ningependekeza kwamba, kwa niaba ya watu wa Pwani, waanzilishi wa kupigania Katiba katika nchi hii tangu hapo awali 1960's, nasimama hapa nikisema hivi:

Tungependelea sana, kwamba *Zone 1* na *Zone 2*, ziunganishwe ziwe *Zone* moja, ili kwa jumla, ziwe *Zones 17* na sio 18. Sababu zenyewe, tumesema kwamba tunapeleka ngazi tofauti tofauti

za kiserekali katika wilaya fulani fulani na ni kwa sababu hizo ambayo Zone ya Pwani tutanufaika zaidi ikiwa Zone 1 na Zone 2 zitakuwa pamoja. Ilikipendeza kwa kamati lako, hilo litakuwa jambo la busara sana. La sivyo pia, ninataka kuchangia tena hapo, kama haitawezekana, kwa sababu fulani ambazo pengine zitaeleweka, basi ningependekeza yafuatayo:

Kwamba tukija Mkoa wa Pwani, tunataka Mombasa ibaki peke yake vile ilivyo kama ambavyo kwa hivi sasa ni City kama vile Nairobi ilivyo na halafu tuchukuwe Kilifi, Kwale na Taita Taveta kama Zone moja. Baada ya hapo, ya pili iwe ni Malindi, Tana River na Lamu, iwe Zone jingine. Hayo ndiyo mabadiliko au mapendekezo yangu kwa niaba ya watu wa Pwani kwa Katiba tunayojadilia kwa hivi sasa. Asante sana, Bwana Chairman.

**Hon. Delegate Sultana Fadhili:** Samahani Mjumbe, lakini Kilifi ulikuwa unataka itiwe wapi kwa sababu umesahau kuitaja? Itolewe Pwani?

**Hon. Delegate Reuben Tsuma:** Nafikiria ninarudia hapa, nimesema Kilifi, Kwale na Taita Taveta, iwe kwenye Zone moja. Halafu tuwe na Malindi, Tana River na Lamu, Zone ya pili. Mombasa ibaki vile vile kama ...

**Hon. Delegate Sultana Fadhili:** Nimefahamu

**Hon. Delegate Reuben Tsuma:** Asante.

**Hon. Delegate Sultana Fadhili:** Nitachukua mtu kutoka hapa. 021?

**Hon. Delegate Muriuki Karue:** Thank you Madam Chair. Sorry, my number is actually 121, when I picked it I did not realize that I was given the wrong one. Otherwise my name is Eng. Karue Muriuki, Member of Parliament for Ol Kalou. Madam Chair, I am a strong supporter of Devolution but I think the extent in which we are going, I think we are going to give Kenyans far too much government than they bargained for when they were giving their views. Even when you look at taxation, at the moment, the taxation we are having, we have at the National level and also at the level which we now refer to as Local Authority which is the County and also Urban Local Authority. I am of the view that we are overdoing it. To start of with, if we are

going to put two or three Districts together and they are already having a Country Council as it is now, the Commission has guided this process very well and we are all very happy and very proud of the Constitutional Review Commission of Kenya.

The word review means, you review what is there, so if you have a system which is existing now and you need to change it so drastically, I think there is need for some rationalization so that we can understand why we have to move from where we are and go overboard so much. In my view, I would have thought that we would have kept the government at national level and introduce the senate as a council. From there, in my view, I would go straight to the county and really strengthen it, so that it is able to cater for the people in our District without having to combine them perhaps with others whose rations are very small other than ethnicity. In any case, if that is what we needed to do after I have observed the regions as they are and rationalize them, so that those which are too small, make them (B). The one's which are too large, perhaps cut them, so that they rationalize them. I am also of the same view as another Delegate who has spoken earlier with regard to the Urban Local Authorities, that is the Cities. We now have one. I think there is a proposal to make a few more, the Municipalities which come under the same category will be headed by a Mayor and also the Town Councils.

I am of the very strong opinion, that the problems in urban areas, are peculiar to urban areas where people congregate sometimes from very different sort of backgrounds and I think we should not do away with them, in my view, I think in the process of Devolution, we should try to rationalize them and strengthen where we can.

**Hon. Delegate Sultana Fadhi:** Can you wind up please, Honorable Delegate.

**Hon. Delegate Muriuki Karue:** Yes I am winding up in giving my views. The other one is to harmonize the elections. I am of the view that where we have elections at the different devolved government, they should happen together, otherwise we shall have interference from the ones who had them last year or this year and last, I think I support Affirmative Action in all its modes, but I think if we are going to have one third either gender, be it men or women, who are the minority resulting from an election, we should also have a Clause which says that, that gender should also have been a candidate.. They must offer candidates. We are now offering women

which I think is good, but the statistics are very strong that Kenyan elect women when they stand for elections. Thanks very much.

**Hon. Delegate Sultana Fadhi:** Next section? There is no lady there? 411.

**Hon. Delegate Teresa Usunga:** This is Delegate number 411. Actually I wanted to speak and I thank you very much madam Chairperson. At least ladies think about ladies. Thank you. (*laughter*). Okay. What I wanted to advise, actually I am grateful for all that has been done because, what has been done is just a good thing, only that we need to improve it a bit, but I hope it shall be okay. Now, when we look at any area, we will find that the people who live there really matter, what they do in that place and also how they organize their lives in that place. That one really matters.

So, even as we are looking at Devolution of Power, we see the type of people who are in a given area and then we also find that according to the way the Zones have been presented, there are Zones which shocked me, especially when I was looking at Nyanza. I find that Nyanza has been divided to into about three parts and Kuria, is in TransMara and Narok and then you also find Kisii is alone. That is to say Kisii Central, Gucha and Nyamira. Actually some people may be used to one another such that, it leaves them to be quite used to being different, the way it seems, because we know that Nyanza has got five sons. That is Luo, Kisii and the way we knew it Kuria, Suba and Central Nyanza, that is Nyando and then that other part. So generally, when we are looking at the whole thing, we shall see and have to make the people used to what is happening to them at the time these things are being done and we also find that, there areas which are more fertile than others, or more richer than others. So long as they are able to agree that they need to be inter-dependent and then there is need to help one another in many ways, that one will be alright. Actually I have much more to say but let us also give other people chance. Thank you.

**Hon. Delegate Sultana Fadhi:** 057.

**Hon. Delegate Kivutha Kibwana:** Thank you Chairperson. My neighbor is complaining. Like all the others who have spoken before me, I need to congratulate the Commission as well as the

Drafters for this new Draft. I have a problem with the articulation of 'the Zone' and 'the County', because in many ways, it is not clear why those two levels are different. I am saying this because, in terms of the powers, the powers have not been divided. That has been left for later. To the Zones, also Councilors are supposed to man and woman that level. So both the Zone and the County have Councilors and the Councilors, are from the County level. So, I was thinking that we really need to rationalize those two levels and perhaps think of one level, particularly because we have been told that we should not have so many levels of the Devolution that we cannot afford and given that currently, we are very much taxed and we actually want those factors to become less.

We should not create levels where we will need more money and will not be able to afford it and they will become dysfunctional. So, I think the Committee needs to study whether those two levels can become one level. I have also a problem with the Zones to the extent that several of these Zones, are actually on ethnic basis, so we need to know that we are Constitutionalizing ethnicity and there could be difficulties with that kind of approach. I do not mind becoming the Governor of the Ukambani region, but I think we need to interrogate further whether we want these Zones to be ethnic Zones and I actually think 'Zone' is not a good word, because earlier we had this Zone and that Zone, you know, Kanu Zone, Opposition Zone. So, another name like 'Area' or whatever could be even suitable.

Then I think, the Chair, the way in which women are elected, like, first of all, women who participate, whatever votes they have are elected first even if the votes are less than those of men candidates. This can psychologically create a problem with people saying that the women were elected without the votes than the men had and I think it is important to achieve the same principle of gender equality in the vote but ensure that, for example, there are women candidates and this women candidates now get their votes. They do not have to be men and women and then they get less votes and they are said to be elected first, so that, psychologically we do not have one gender not being properly recognized.

Finally, I still think that we have not addressed the level of the constituency, because this is a level for which already, resources are being committed to, in terms of scholarships, that is bursary from the Ministry of Education. In terms of HIV awareness. In terms of a Constituency

Fund where law in Parliament is pending and so on and so forth. That is perhaps one area, that again in Committee work, we need to revisit, to see how that can be a level of Devolution and indeed also in terms of the laws, we need to be careful so that we do not ask certain levels to make laws and they do not have the capacity for it and we have a problem with the kind of laws that come from there and that is why the Chairman's remarks about the Central Government making certain laws for devolved government, is something that can also be looked at. My appeal to the Honorable Delegates is, let us not create levels of Devolution that cannot be afforded, that can separate the country, but I do believe that going into realistic and pragmatic and cost effective Devolution, is the way forward. Thank you.

**Hon. Delegate Sultana Fadhi:** There is no District Delegate from that section? 407.

**Hon. Delegate James Omolo:** Thank you very much madam Chair. I thought although we are leaving this to the Committee, my name is Kayila from Kisumu. Why do we not become bold enough and call what we call 'Zone' here, 'region', or Province? I mean, what is the name? Why not bring in a new terminology, so that we can understand what we are talking about. When they talk of 'a Zone', they are talking about something that we not very sure about.

Secondly, Madam Chair, the Counties. I thought this, could be simply divided into rural and urban, so that we separate the urban area from the rural type of counties, because their needs and the extent of development is different, so that we can see how resources are going to cater for the urban areas whose needs are different from those of the rural areas. The other issue I wanted to create madam Chair, is that, in these Zones perhaps on page three, they should have had some statistics showing how big we are. When my fellow Delegate Mrs. Ogot spoke about splitting Nyanza, perhaps she would have seen what population we are talking about, if that would justify the split of that Nyanza by giving it an extra County or District, an extra Zone or Province or region, whatever we decide to call it. You will excuse me.

This is because the way we were discussing this, we discuss one page and then circle through the page to look for information elsewhere, but I thought, Madam Chair, that when we are discussing matters relating to because we are looking at these things just now. When we are looking at the joint Committees, joint functions of the Local Authorities, I think we should be very careful.

There are certain areas where the Provinces or Zones or Regions can co-operate and can have some joint say, but I do not think it will be wise to allow the County or District to have joint activities which go beyond the Zone or Boundaries, perhaps except in certain area. So, I think there should be some limitations, on how far they can go with these joint activities.

On matters of functions. I know the law and if we pass this as it is, we are going to restrict Local Authorities to do only those things which the law, the Constitutional law, permits them to do. There may be need to reconsider this, so that they start looking for things that they need locally in their areas that the law has not forbidden them from doing. For example, there maybe an activity that is not being undertaken by the Central Government, or by the Zonal Government, but which they think is required for their people. Why do we not allow them some flexibility, so that they can do those things which the law does not forbid them from doing? I think this is a matter which is open in many countries where they have some intervirace activities they can handle without necessarily requiring that the law gives them, but they will have to ask for permission from the government to allow them to do it and subject to resources being available. Thank you madam Chair, but I think in the Drafting, perhaps it requires a lot of sharpening to give this thing like other Draft where the things are drafted in a more legalistic way. Thank you.

**Hon. Delegate Sultana Fadhii:** 388.

**Hon. Delegate Sammy Naibei:** Thank you Chairperson. My names are Sammy Naibei Chemwey, a Delegate from Mt. Elgon, Western Province. I have three issues to raise and first of all I want to say that the issue of devolving power to economic units was long decided, so this is a well-done job. I do not think it is an issue that we wanted to discuss. When we returned this document back to yourself, we wanted you to fine-tune it and I think we have done it well except for a few things that we want to correct.

Looking at Article 220, clause 2, or whatever you want to call it, you have talked of the Council taking five years, yet in 223, you are talking of four years. I would like you to re-examine that and exactly say what we are talking about.

The second thing that I want to address is, it would appear that this document is a major departure from what we agreed in Legislature about the Senate. There is actually a need to be

harmony. We seem to be going around circles, but what we have actually done, is elevate the position of the person of the County Council, to go to the Senate and with him, to go with some delegations of the Councilors. This to me appears to be a major departure, which will bring a problem when we go back to the Legislature and I think that at this stage, I am personally not agreeable to an arrangement of that order.

I also want to say something here. In drawing this exercise, we seem to be hiding something and I think I am glad with the previous Speaker, that we are hiding something. It is no longer a question of whether it is Rift Valley, or Coast, or Western Province. It is a question of; we have created some Regions and if we have created Regions and named them Zones, then we must go back to their historical aspects and look at them very carefully and re-examine their bids, because the idea here, is to foster national unity whereas recognizing diversity and harmony. There are certain particular area which have been a thorny spot. I do not know whether you want to look at it. For example, there is nothing to hide here, whereas personally, I am friendly with other people, but Mt. Elgon has been a thorny issue with Bungoma. I do not know whether you are creating harmony when you put them in the same region or you are not, because really, issues must be spoken here and therefore, I would like you to re-examine Zone 16 and Zone 8 and go back to the historical records and see whether you need not to re-address that issue. I do want to say that, in looking at these Zones, it is important to that you look back to the historical aspects of those areas.

The third issue is, I want to say that there are particular Districts at the moment, which had been given the status of a District, but their Boundaries were still in dispute. Your document clearly says that you look at the current Boundaries as they are and as when the Act comes into operation, those are the Boundaries that you intend to take into place. What happens to those areas, where there are still disputes even as of now? What are you going to do about them? Are we going to settle them first or not? I think with those few remarks, I want to say the whole document is okay, except those areas must be looked into. Thank you.

**Hon. Delegate Sultana Fadhii: 396.**



**Hon. Delegate Happy Gloria:** Thank you Chair. I have only one point. My name is Happy Gloria, Delegate from Busia. Chair, I want to say something on the same thing vein the previous Speaker has just said. I support the Devolution of Power very much. I support the Units, because we must have Devolution Units, but we need to do something. We need to do a bit of research on historical backgrounds of these Units. I am requesting and I would like it to go on record, that we need to go back as Delegates, because this is something that has just come up, these Units, to seek clarification that, can Mt. Elgon and Bungoma go together or Teso for that matter. Can Teso and Busia go together and then come back, before we really say that, yes, this is okay. We need maybe a Task Force or a Commission to go into this. I would like it go on record. Thank you.

**Hon. Delegate:** Point of Order!

**Hon. Delegate Sultana Fadhi:** Yes 026. What is your Point of Order? 026, you have a Point of Order?

**Hon. Delegate Gurrach Galgallo:** Madam, first of all, you only picked another Delegate from this section. You have not given any Member of Parliament a chance. You have also skipped this section to my right and much more important madam, during the last session and this session up to now, you have not recognized any Delegate from the Northern part of Eastern Province and we are not happy with the arrangement in which we are put with Laikipia and Samburu and I would request that you give a chance for some other Delegates - -

**Hon. Delegate Sultana Fadhi:** Honorable Delegate, just hold on a minute

**Hon. Delegate Gurrach Galgallo:** From that region.

**Hon. Delegate Sultana Fadhi:** You want to speak or you are still on a Point of Order. You want a chance to contribute? Or are you still on a Point of Order?

**Hon. Delegate Gurrach Galgallo:** I would request that you give a chance to somebody from Northern part of Eastern province - -

**Hon. Delegate Sultana Fadhi:** Okay. Are you from Northern Eastern province?

**Hon. Delegate Gurrach Galgalo:** Yes I am.

**Hon. Delegate Sultana Fadhi:** Just say that you want a chance to talk.

**Hon. Delegate Gurrach Galgalo:** I would like to be given a chance to talk but - -

**Hon. Delegate Sultana Fadhi:** Okay. Go ahead.

**Hon. Delegate Gurrach Galgalo:** Okay, thank you - -

**Hon. Delegate Sultana Fadhi:** What is your number?

**Hon. Delegate Gurrach Galgalo:** Delegate number 026, Gurrach Galgalo, Member of Parliament for Moyale. Thank you very much. Madam, first of all, I would like to comment on the Constitution of Zone 5. You realize that Marsabit, Moyale and Isiolo were in Eastern province together with Embu, the Meru region and Ukambani and our Headquarter has been in Embu. Now, under this proposal, we are going to be shifted and grouped with Laikipia and Samburu, meaning, most likely the Headquarter for that Zone will be Nanyuki. The difference between Nanyuki and Embu to us is that they are only on different sides of Mt. Kenya, none is near to us. Nanyuki, is more or less the same distance from Moyale as Embu, so by shifting us from the Eastern side of Mt. Kenya, to be grouped with the Western side, or the leeward side of Mt. Kenya, does not bring government closer to us. We have many, many problems which are unique to us at Marsabit, Moyale and Isiolo and we want to be grouped alone, not with Laikipia and not with Samburu. We want to be grouped as one Zone or one region of Marsabit, Moyale and Isiolo.

Number two, on general terms, what is the rationale of reducing our electioneering period or tenure of Parliament or whichever system we are going to have, from five years to four years. Why are we increasing the burden of electioneering on our people? I want the rationale for that. Number three, on page 16 of this Draft, talked of suspension of zonal government but it dose not

specify who will sustain that government. It also says, in an emergency, what constitutes an emergency? Flooding for example, as going on in Budalang? Would you suspend that government? What exactly would constitute an emergency?

And finally, 9<sup>th</sup> schedule, on page 24, where it says on the fourth point, equally there is no obligation on the national government to compensate the devolved levels of government that do not raise revenue which commensurate with their fiscal capacity and tax base. Okay, that is fine but I think there should be a way of providing some bailouts incase of emergencies or disasters which may occur, which will necessitate a zonal government to fall short of its budget. It happens in US, it happens in Canada, when there is a special circumstance under which a government is not able to raise its revenue. There should be a way of bailing it out by the Central Government. Thank you madam.

**Hon. Delegate Sultana Fadhii:** Can I have a District Delegate from this section. If possible, a lady. There is no one? I had picked on 388, if I am not mistaken. She is in which section? 396, you are from which section? Were you not from this section? (*inaudible response form the floor*). Okay, 39, now I am getting confused. If I call on 031, are you a Member of Parliament? A Member of Parliament has just spoken. What?

**Hon. Delegates:** (*inaudible response.*)

**Hon. Delegate Fadhii Sultana:** Okay, 031.

**Hon. Delegate Yusuf Haji:** Thank you very much lady Chair. I think before we conclude the question of Zoning, it is good for us to look at the historical background, of each and every area of this country. I am saying this because--My names are Mohamed Yusuf Haji, 031. I was saying that historical background is very important. It will be recalled by many people and those who cannot recall can go to the archives here and see that at one time, Ijara District was being administered at Lamu, by the District Commissioner, Lamu. It was transferred to Northern district in 1937. Similarly, during our independence, it will also be recalled during the Lancaster House Conference, the whole of North Eastern Province, was included into the Coast Province to make Coasterly region, until when people went to Rome after six months of that Constitution

decision, people went to Rome because of the agitation in North Eastern Kenya, then North Eastern Province was created as a separate Province.

Also before independence, the boundary for Garissa District was going up to thirty miles to Kitui district, which is now Mwingi district but because of those political historical facts, now we are told the boundary is between Coast and North Eastern Province is the river. It does not make any logic at all, to separate people on political basis. What I would like to recommend is that, if we agree Devolution should be from National to Sub-National and then we leave to the District, the question of Zoning should be left to a Boundary Commission, which should go round, look at the setup of all regions, because, for example now, Ijara, is 110 miles from Garissa. It is only twenty five miles from Lamu, ten kilometers from Tana river. How would you really say that this is a good arrangement? We do not want Kenyans to be separated on the basis of tribes. We should look how best we can take services to the people and on how best we can unite our people. In this regard, I would like to object to Zone 6, Garissa, Ijara and also object to Zone 7, Wajir under Mandera because that is not logical. If this must be done, then I recommend that Garissa , Ijara, Wajir, and Mandera be left as one region, as it is now. Thank you very much.

**Hon. Delegate Sultana Fadhi:** 509.

**Hon. Delegate Martha Rop:** Asante sana mwenye kiti. Nafikiri yangu nikuunga mkono wale walitengeneza huu mjadala kuhusu mambo ya Zones, and Provincial grouping or whatever. Mimi ningependa - -

**Hon. Delegate Sultana Fadhi:** Can you identify yourself? Your name please.

**Hon. Delegate Martha Rop:** My name is Martha Rop, number 509, from Women Organization, Uasin Gishu District. Okay. What I meant here is that, actually, I agree with my colleague from Mt. Elgon that I support him to move from this group of 16 to group 8, which is Turkana, West Pokot, Marakwet and Mt. Elgon. Hawa watu huwa mara nyingi, mambo yao hata ya kimila wanafanya pamoja, na wasije wakabaki katikati peke yao. Nikirudi upande wa number tisa, ningependa Keiyo, Uasin Gishu, Nandi North, Nandi South, Baringo na Trans Nzoia wawe pamoja. Sababu ni kwamba wako karibu sana, na ukiangalia kama upande wa Cereal Board

ambayo ndio kubwa sana kwa upande huo, na ina serve hii District ya Uasin Gishu na Trans Nzoia, kusiaga mahindi na kuweka mahindi. Kwa hivyo waki gawa, hao wengine watapata shida na nafikiri wakiwa pamoja, litakua jambo la maana na hata hivyo, hamna ukabila. Kuna makabila mengi hapo. Basi, nikielekea, la mwisho ni Zone number kumi, Kericho, Buret, Bomet, Nakuru, iwe pamoja na Koibatek ili watu wa Koibatek wasichoke, all the way from Koibatek ni boundary ya Nakuru, wasikuje upande huu, wakiumia, lazima tuwatete pia, ili wakifanya kazi, wawe karibu kwa mambo ya transport. Ni hayo tuu. Asante.

**Hon. Delegate Sultana Fadhi:** 361.

**Hon. Delegate William Ole Yiaile:** Thank you madam Chair. I was almost despairing. First I will have to say the new Chapter-- My name is Ole Yiaile, Delegate number 361 from Narok. I will start by saying that the new Chapter 10, is truly a devolved Chapter. The work done there was marvelous. We can see that whoever did it this time was very serious, just minus small very little problems. However, I would like to go straight that the distribution of taxation and resources need to be re-examined. This is exactly what killed the first Devolution of 1963. when the center took away all the resources from the devolved County Councils, Regional Assemblies of 1963. Number two. The areas that have been marginalized, those areas that have been left behind, the pastrolist areas have not been given a preferential kind of arrangement to enable them to catch up. When you go through, you will see that those areas have been forgotten. I pray that, that principle be incorporated, so that we too, come up like others. Number three. Nairobi city. I think it has been so much devolved. I will prefer, recommend that there will be two burrows under one Mayor. Let us not degrade the City to low standards of returning the Chairman again. We need to protect the Mayor. Section 2.8 (c), the special seats for women, I have got no problem but women too must face the electorate or special seats that women shall be competing alone and therefore everybody in that Constituency or Ward shall select the best, so that we just do not send a woman to the Council or Parliament, because she is a woman, but we shall be sending her because she is competent and is able to deliver, like it is in Uganda, which is really very fine.

Finally, the joint activities between the national government and the devolved sets should also be properly defined. It will look too odd when the big boy, “anakuja kuplay huko chini mpaka sub-

location". I think the Central National Government shall be in co-ordination with the zonal government and then from there the Zonal Government and the other Councils down the line will be able to sort out their own affairs without too much interference of the National Government because the same forces that stole those powers from the people can use the same principles to usurp power again and we end up another fifty years or a hundred years from today coming to the Bomas of Kenya again, to make a correction of a mistake that we deliberately made. Thank you madam Chair. Thank you.

**Hon. Delegate Sultana Fadhi:** I will now give a chance to the Commissioners to respond to some of the queries you have made and comments. (*discussion from the floor*) Or alternatively, it has been suggested here that the comments should be taken to the Committee. (*heckling from the floor*) You will continue responding but whatever comments you are making, which they are taking down notes for instead of responding to them, they will be handed over to the Committee. (*heckling from the floor*) 382, what is your Point of Order? I hope it is a Point of Order.

**Hon. Delegate Sammy Amunga:** Honorable madam Chairperson, my names are Sammy, Delegate number 382. My Point of Order is, when this debate was opened, we were not told of time limits, that is one. Two, we cannot just be told we wait and go and discuss the issues at the Committee level, yet the document was tabled before the whole House. Let us discuss and exhaust it rather than telling us we go to the Committees. Everybody is with a Committee.

**Hon. Delegate:** Point of Order.

**Hon. Delegate Sultana Fadhi:** 132. You have a Point of Order?

**Hon. Delegate Onesmus Mwangi:** Madam Chair, my Point of Order is actually to express disappointments in the manner the Conference is being managed and this is in respect of the debates here in the Plenary, because I have noticed madam Chair and even the Chair of the Conference, that it looks like when debate starts, you have got a list of speakers that you want to speak. Some of us sit here, we keep on raising our numbers, nobody recognizes us and then all over sudden you shout that the debate is over, we can go to the Committees. We have got submissions and contributions we need to make to the Conference - -

**Hon. Delegate Sultana Fadhi:** Honorable Delegate, is that a Point of Order or an accusation? We are all seated here. We, the Delegates will decide what is to be done. It is not that whatever I have said is final. I have just - -

**Hon. Delegate Onesmus Mwangi:** It is a Point of Order because - -

**Hon. Delegate Sultana Fadhi:** No, no, no. You are talking about a list, I do not have any list here, in fact I have got a tissue paper - -

**Hon. Delegate Onesmus Mwangi:** That those who talked - -

**Hon. Delegate Sultana Fadhi:** Just hold on, Honorable Delegate - -

**Hon. Delegate Onesmus Mwangi:** Are the same people who have kept on speaking today - -

**Hon. Delegate Sultana Fadhi:** Do you mind coming over here and calling up the numbers? I am inviting you to come over here and call the numbers. If you feel you will do a better job, I am inviting you to come and Co-Chair with me, come over.

**Hon. Delegates:** *(inaudible responses)*

**Hon. Delegate Sultana Fadhi:** 132, you can be my Co-Chair, please I am inviting you to come over. *(laughter)*

**Hon. Delegate Onesmus Mwangi:** Madam Chair, I take that as an insult. When I have got a right--

**Hon. Delegate Sultana Fadhi:** It is not an insult. I have always co-chaired with another candidate.

**Hon. Delegate Onesmus Mwangi:** I have got a right to contribute, otherwise this will not then amount to a Constitution made by Kenyans if some cannot be allowed to contribute.

**Hon. Delegate Sultana Fadhii:** Can we move on. All I am trying to tell you is that, it is not that I am enjoying calling numbers, if you want to assist me, anyone who wants to assist me is free to come over here and Co-Chair with me. So, do you still want to continue? (*inaudible response*) Okay. Where had we reached. 539.

**Hon. Delegate John Njenga:** The Chair. First of all I would like to express gratitude for a step forward done compared to what we had before. Now, my understanding of the whole process of Devolution is, to foster unity in diversity. While I have looked at all the theories and reasoning behind it, I personally feel that we must move towards a greater national unity. As our national anthem puts it, “let us leave in unity, peace and liberty and harmony”. Now, when I look at the groupings that are there with regards to the Zones, I am afraid they tend to move more and more towards tribal groupings. I am not sure that this is going really to kind of give us that sense of unity. May be it needs to be looked at again. We may currently be having Provinces, may be the devolution could be done taking into consideration this province,. because I would like to feel that we are one Nation and not segmented.

Then the other point I wanted to bring forward is contained on page four and there, there it is indicated the number of women that have to be elected. Now we all of us know that while the women have been in the frontline fighting for the affirmation right of what do you call it ? Affirmative Action, and I don't blame them for that, but I feel a little bit disappointed that when it comes to the representation, then it focuses only on them, while the Affirmative Action, must take into consideration even those who are disabled or something else. So probably that needs to be looked into. But my greatest prayer let us all work together, let the whole structuring of our country be such that it makes us one and it gives us real unity. Thank you chair.

**Hon. Delegate Fadhii Sultana:** The next section number 111.

**Hon. Delegate Gachara Muchiri:** Thank you Mr. Chairman and Madam Chair, my name is Gachara Muchiri, number 111 from Nyandarwa. I think the units or zones we are trying to create



Honourable Delegates, must be seen to be economical. There is no point of taking power to the people if they cannot put food on the table. I am suggesting that as we look at those zones, we should look at the economic sustenance of those zones if the devolved Government is going to make any sense to the people of this Country.

I am therefore suggesting Madam Chair, that perhaps the four levels of government are too extended. I would have imagined that if we were to make Zones Counties, then we go to the National level, then we have the District level and then the Locational level. Because the way we are trying to bring out the 18 zones, it is fairly tribal, and I agree with the first speakers we should try to move away from the tribal groupings much as we need the tribal groupings, but if we must go this way, History of the peoples that we are talking about here in those Districts must be taken care of. For Example Madam Chair, there is no reason why Laikipia, like the Honourable Delegate there said, it should be grouped with Isiolo and Marisabit. Laikipia would be more happy to be grouped with Nyandarua and Nyeri, that in a way.... we are harmonizing that grouping in to proper effect. I also see Kirinyanga for example, Kirinyanga will be more happier with Embu and Mbere and all that. I think that is the way to go, and again Transzoia would be better with Mt Elgon, Lugari and all that, that is the way it should be. Koibateki would be better with Baringo and Nakuru that way. Those things should be looked into because if we want to harmonize people, if we really don't want to move away from the tribal grouping or qualification then that is the way to go.

The other thing Madam Chair is the issue of towns and the rural areas. I think the economy of this country congregates with the urban areas, and therefore I am of the opinion that we should scrub any urban Government. If we talk of, for example Mombasa, let Mombasa be with other contiguous Districts so that the economy of that town also is going to be felt by the rural people, because we all know that the markets of the rural areas is in the towns, so there is no point of having say for example, Nyahururu Municipal Council, isolated from the rural area. We are the catchments area and I think I will go with the proposition that we scrub any Urban Government and kind of integrate them so that we have an integrated economy. Thank you chair.

**Hon. Delegate Sultana Fadhi:** Honourable Delegate number 254

**Hon. Delegate Fatuma Sheikh Mohammed:** Thank you Madam Chairlady, my names are Fatuma Sheikh Mohammed Delegate number 254 from Wajir District. When we were considering maybe, what we considered when this zones were grouped together, some of the considerations were Historical, Religious, Economic and Cultural aspects. Those are some of the things that we were considering. If we just look at North Eastern, it was grouped into two groups, that is Wajir and Madera and then Garisa and Ijara. I could have considered that as okay. We don't have to put the 4 Districts together because we have a very large area e.g Wajir covers 56,698 square kilometers at least. So that area, we have to divide it into two groups, we cannot be put or grouped in the four Districts together.

And another thing, they could have said that, I support Devolution, it is the answer to our problems, especially we people from the North Eastern because we have suffered a lot in the hands of the Provincial Administrations. Thank you.

**Hon. Delegate Sultana Fadhi:** Next section Delegate number 132, for the sake of peace with you. (*Laughter*)

**Hon. Delegate Kihara Mwangi:** Thank you Madam, and I declare peace.

**Hon. Delegate Sultana Fadhi:** And is that your number? 132?

**Hon. Delegate Kihara Mwangi:** That is my number, I am Honourable Kihara Mwangi, Delegate number 1132. Madam Chair, while we are talking about Devolution and I have no quarrel with Devolution as such. But I have got a quarrel with the manner in which we are doing it. Because devolution should not mean disintegration of this country. I thought the objective of the Review of the Constitution is to make more harmony of this Nation in to one, other than disintergrate because the manner we are doing it now, looks like we are disintergrating and separating our tribal ethnic groups into governing regions and I feel that if we go this way, sooner or latter we are going to have sections of this country seceding and declaring that they are unilateral independent states. Madam Chair, when I look at the manner in which it has been delineated, I think like some Delegates said there, one of our colleagues, is that we are hiding

something, because what we have are portraying is actually Majimbo and we don't want to call it Majimbo, this is strictly Majimbo and we would rather come out and say we actually want a Majimbo Constitution.

Two, I realize and one of my colleagues also mentioned this, that we are tending towards, in our operations, towards the Constituency level but when I look at the devolution, I find that the Constituency has been left out completely. I do not understand, whether we are going to resort to electing Members of Parliament on the basis of locations or the basis of Counties, because what I would have thought was that we are going to devolve from the National Government to the Counties and enlarge those Counties so that they can be economic sustaining units. But now the way we are doing it, we are telling the Counties to remain, the Districts as they are, which we know are created, some on a political expediency and some which cannot support themselves economically and we leave them to go and tax their residents and then we create another level which is also going to tax the same people because when we group five Districts and tell them that they are a zone, a Jimbo and then tell them to go and levy tax and the district is also levying tax, that will be, and the National Government is also levying tax, that will be tri - taxation

The other one Madam Chair is on the Finance, the implementation, because nobody is talking about the implementation of this stratification because it is going to cost this country immensely. If we wanted to talk about the employment of the staff that we are saying the Devolved Governments can employ and we assume maybe we are going to have Senior Officers earning only ten thousand, if you work out the mathematics of the numbers, you will find that we will require more than ten billion, only to employ the Chief Officers of those Devolved Governments. Can this country afford or the counties when we come to the National Council, I am at a loss to understand whether we are talking about a National Council which means the Senate or whether we are establishing another council which is either superior to the Senate or inferior to the Senate, superior to Parliament or where we are. Thank you Madam.

**Hon. Delegate Sultana Fadhi:** Point of information. You are informing who? Number 063, whom are you informing?

**Hon. Delegate Amos Muhinga:** Sorry I thought I was on the floor, I was not informing , I raised m y hand to speak.

**Hon. Delegate Sultana Fadhii:** Okay, Sorry.

**Hon. Delegate Amos Muhinga:** Can I speak now?

**Hon. Delegate Sultana Fadhii:** No, no it is this section now. Whom do you want to give that information to? (*Murmurs.*)

**Hon. Delegate Sultana Fadhii:** Delegate number 277 -- Delegates do you want to be informed by number 277.

**Hon. Delegates:** Yes

**Hon. Delegate Sultana Fadhii:** Okay go ahead.

**Hon. Delegate M'Thigaa Godfrey Mbuba:** Thank you Madam Chair, but I should thank mostly the Delegates (*laughter*), because I have been marginalized. Mine is too simple, there is no District in zone 4 called Nithi. Where they got that one I don't know. It is Meru South. So simple, thank you.

**Hon. Delegate Sultana Fadhii:** Thank you. We have reached this section and it was red Parliament Delegate number 096.

**Hon. Delegate Kenneth Marende:** Thank you Madam Chair, my name is Kenneth Marende, Member of Parliament for Emuhaya, I want to add my voice to support for Devolution and begin by disabusing the notion that Devolution will dismember this country. To the contrary Devolution will make this country stronger (*Clapping.*) On the contrary I want to say this again Devolution will make this stronger. Since independence, we have had a lot disparities We have had a lot of in-equalities and we have had a lot inequity. Devolution will in effect ensure that

there is equity, that there is equality and that there is proper distribution of National Resources (*clapping*). So I support devolution full heartedly.

And I want to proceed coming from the committee on Devolution and say this, that the late Dr. Mbai was very committed to the concept of Devolution, the best tribute that we can give to him, as Conference is to ensure that Devolution of Power is enacted (*Clapping*).

And my third point Madam Chair is to say that it is necessary that the concept of Devolution is captured in all the chapters of the Constitution. We must ensure by the relevant provisions that all the traditional arms of Government, beginning from the Executive, the Legislature, Judiciary and now the forth one, Finance are devolved. As I see it Madam Chair, even from this draft, there is no mention of devolution of the Judiciary. I would want to suggest that the Judiciary is Devolved such that all subordinate Courts are managed in the lower units and that what only, that the upper arms only remain at the National level, so that what will be left at the National Level will be Administration of the Court of Appeal and the Supreme Court if it is created. The rest should be managed from the lower levels of Government.

And Madam Chair I also want to add my voice to the efforts to create a Boundaries Commission. I think this is timely because we have heard a lot of anomalies in boundaries. We have had certain sections of this Country being administered in areas where they do not necessarily recognize authority. I for example represent a Constituency which is inhabited by people known as Banyore, and we have had some of our people administrated from Nyanza when the larger part of them are administered in Western Province and I am therefore suggesting that when the new Zones or Provinces are created, all the people of Bunyore should be in one zone, one unit. After that I think I will leave the rest of my contributions to my Committee. Thank you Madam Chair. *Clappings*.

**Hon. Delegate Sultana Fadhii:** Honourable Delegate number 381.

**Hon. Delegate Katamu Rita Ombito:** Thank you Madam Chair, my names are Rita Katamu, number 381, Delegate from Butere, Mumias District. I want to draw your attention to Article 221, section 6 where we have a person ceases to be a Delegate to the National Council. You have

given us A, B,C, and D. I don't believe that, that list is enough, bearing in mind that there has been a lot corruption in most of our councils. So I suggest that, if one is corrupt and is likely or has done a mistake or is a criminal, and is proved to have been a criminal, then that person should also cease to be a Delegate to the National Council. Actually that list is not enough, there are so many other things that we hope could be added to make one cease being a Delegate to the National Council

The second one here is the word "ZONE" I wish to join my brothers and sisters, Honourable Delegates here that, that word is French, it is not a word we use in our Kenyan languages and vocabulary. If we could go we could go for a word that could actually enact our historical backgrounds and our cultural values, so that we get, it could be a region but related to one of the famous People or Mountains or Rivers within our set up.

I want to also wish that we come up with Boundary Commission because I don't feel that this Conference is actually ready to decide which group could be merged or which group could come up with a Zone, if the Boundary Commission is set up, then they will go back to the grassroots and consult our people, then our people would say where they really wish to be. Otherwise, we could rush with the ideas and our landing back home may not comfortable from Bomas.

Now I also want to look at the Economic stability of every zone. Believing that some of the zones have marginalized and very little has been done as far as development is concerned. This Zones, if left without the real Devolution of their resources, then some Zones after a short time will have a problem. Therefore let us also consider the Economic stability and I wish to propose that, as devolve powers we devolve all the resources, to this zones so that we have equal distribution of resources the industries and any other support that the people need. Thank you very much.

**Hon. Delegate Sultana Fadhii:** Next, there are no green numbers, so I am going back to the Districts. Honourable Delegate number 334.

**Hon. Delegate Moses Kiplangat Keter:** Thank you Madam Chair, mine will be very short but first my name is Moses Kiplangat Keter, Delegate number 334. I think we are all talking of

becoming one country, one unit in Kenya and we all agree to that. But first we must be each other and each Community and then we come together, we are forgetting that. We can't start from being together we have start from our own personal communities and come together and may be that what is giving us a problem in going to the regions.

My point is this, we have to look at the Historical backgrounds as everybody as said, and look at the their economicals and try and merge this two, so that we get really variable regions. Let us not go for so many regions. We can even reduce the regions from 19 to less, as far as they are economical and they are viable and they give our historical backgrounds together. In Rift valley now we have got so many regions that we are getting. Like Koibatek we are bringing to Nakuru, Baringo, we are taking it to Eldoret, and those are the same people who own communal lands, though they don't own them individually, they are still communal, and we are separating them. I think we need a Commission to look into this more seriously, so that we come with something more viable and more economical, Because we might debate here but I will not understand what is the problem in Ijara, I will not understand what is the problem in Teso, I will only understand what is the problem in my place. So I think we need a commission which we can we can give all this or we give them to the Committee so that they can come up with a proper paper and we have the proper regions which our people will be proud of us as members at Bomas.

And the other issue I want to raise is that on the questions of electing Women Councillors, I can foresee a situation where a man will get one thousand votes and the first women in that area will get five votes and because she is first in that area she will elected and the man with one thousand votes will be left out. Lets create special seats for women, they want that, and we all vote for those women specialists (*Clapping*). So that we don't create a problem again, how would I feel if I get one thousand votes and the first woman following has five votes and she goes in before me? That I feel is in justice, lets create seats for women and we vote foe them differently.

And the other thing I was thinking about is Nairobi City, we need this city, and we will like it be called Nairobi. I don't see how we can have counties in the city, let a city remain a city. We can have Burroughs or whatever you will call them (*clapping*) within the city but not Counties, let the Counties be for the rural areas. In the Rural areas let the Counties be in charge of the Municipalities there, that one we can agree. Let the Municipalities be under the County but

within the cities as in Mombasa and Kisumu, where we have Cities, let the cities remain cities so that we identify with the rest of the world in having cities and Mayors and what have you.

To finish of, there is the issue of what we call the Chief Executive of a County and the Chief Executive of the Zone. I don't see how we can elect the Chief Executives. I want us to elect a Chairman or Governor or whatever you will call him then when we have the Constitution set up how we will have a Chief Executive who will be the Implementing Officer. Let this person who is elected be the policy maker and then we should have an Implementing Officer so that the work can go on, because now we have a Chief Executive being elected at the Council, he comes to the zone and then he goes to the National Council, who will be implementing what has been done? Who will be in charge of the daily work in the Zones and the Councils? To me, Madam Chair, I think those are my points, the others have been said. I would have said more, but again to finish of, Trans Nzoia and Uasin Gishu, we share the same economics resources, we share facilities, we share a lot of things, I don't see why Trans Nzoia can go with Turukana and Pokot. And when Mr. Mutakha Kangu was talking he said that there are some Districts which need special consideration. To me Turukana I think needs special consideration. How can you give special consideration to Turukana if they are together with Trans Nzoia, which does not need special consideration? We should bring this things into consideration and look at them seriously, I think we mixing a lot issues here and may be the Commissioners were from one side, they don't understand the other side, the way the people of North Eastern were complaining may be we don't understand them, if we could get another Committee, to just seat and look at the boundaries with Historical backgrounds and Economic backgrounds, I think we will come up with a very good document. Thank you.

**Hon. Delegate Sultana Fadhi.** Honourable Delegate number 603

**Hon. Delegate Winston Ogola Adhiambo:** Thank you very much Madam Chair, my name is Winston Ogola Odhiambo, Delegate number 603, Chairman of Federal Party of Kenya. I have about two or three points to raise.

The first point I would like to raise is request that the National Council, I think this is one National for Kenya, that people should be allowed to elect the members may be from the



Districts as it was said or from certain other units. But I think to allow them just to go through the Chief Executive areas and the people they want in the Council, I think that will be diminishing democracy and reducing the ability of the electors or the Wananchi in general. That is the first point I wanted to make.

The second point I wanted to make was on the Units, divisions of the Units, some were saying that they are tribal but let me allay their fears because I worked in that, and I have got several reports on that. You know we started with tribes just as my friends started there. And then if we could improve tribes, even the divisions then when we develop, then we may even later on unite when it is necessary. But I am telling those people who have got the fear, to know that even in Britain, United Kingdom, even in Belgium, between the Welumes and even in India, the present States in India are originally the ethnic kingdoms we had there and are running very nicely, so you should have no fear at all. The lack of development which we have had in Kenya, resulted from concentrating power in the Central Government, which could not help the Local people, so that is why, because the devolution is to distribute power to the local people so that they may not be exploited by the over powerful people or over powerful individuals. So I think that is what we should accept and I wish to raise the other point, it was not a very controversial one, but I was requesting for the unit twelve that if you don't mind you could divide it into two, because it is already divided across by the lake and it is very difficult to travel from one side to the other, you see how the lake kills people when you cross it. So I am just requesting that one we do.

Finally, I have got one point which has been belaboured a lot, that some units are not viable. I think I am requesting to please listen very carefully to this particular one. That some units are so small that they are not viable. In the Pyrenes there are some Hills called like that between Spain and Portugal we have the State of Andora, it is only two square miles, so the questions of smallness or what does not matter and again in Europe, the Kingdom of Monaco and even Switzerland itself the size of Tsavo National Park, has got the highest per capita income in that area and it is a confederation where each is even (*clapping*). Thank you very much Madam Chair, I can remain with that at the moment. (*Murmurs*).

**Hon. Delegate Sultana Fadhi:** Honourable Delegate number 579 .

**Hon. Delegate Daniel Mokaya Rasugu:** Madam chair, my name is Daniel Rasugu, and I am sorry that I am not using a green identification card. My Delegate number is 579 and allow me contribute also by stating that I support the principle of Devolution in this Draft Bill but I have realized after taking time to reason and observe, that we may find difficulties when we are translating this principle to take appropriate dimension with regard to the theory of Governments which we want to follow. I would wish that from the onset, we started with the theory of Government, whether we are going presidential which so calls for total separation of powers from the Executive, Legislature and Judiciary and then we start talking about the Devolution of powers horizontally when we create the Senate and the National Assembly and then we also agree how we want to devolve power vertically. In my view it is not feasible also to start talking about Zones when indeed we don't know which Zones are going to apply because we have not had this permission from the Electorate. That still takes me back to supporting the Delegates who said that there be a Boundary Review Commission from which we are going to find the exact number of Zones and Exact number of Counties.. Without this, we will not know how big our National Budget is going to be to sustain these Zones or Devolved units. So it is important that we don't place the cart before the horse.

I would like us to also realize the importance of addressing those areas which are going to be financed directly by the Central Government. For instance Education, roads, etc. and then we look at the viability as my colleagues have said of the Units we are going to create, so that we don't have a very elaborate unit of devolution, which the National Budget can not sustain.

The other point I am bringing up Madam Chair, is with regard to the County Councils, with regard to the positions or the areas they want to create for our sisters, the ladies. In my view, there are some cultural practices which do not allow that people can be led by a man, for instance, what I am suggesting is that if we have to bring our ladies on board, in our political leadership, then can we create nomination positions so that we can leave politics in a very competitive environment to thrive to grow so that we can have the best people leading people because of the popularity and because of what they are able to deliver. In that regard I beg to oblige and thank you Madam Chair. Thank you.

**Hon. Delegate Sultana Fadhii:** Honourable Delegate number 220.

**Hon. Delegate Julia Ojiambo:** Thank you very much Madam Chair, I have two areas to contribute to. Madam Chair I want to talk on the area of distribution of resources to devolved areas. And I want to say Madam chair, that initially to be able to equalize the iniquity that has existed and continued to exist in areas that have been marginalized, that some index must be worked out to distribute the existing resources before this marginalized areas can take off. I know Madam Chairperson we have said that resources will be equally distributed, but this will continue to marginalize the areas that so far are poor. Because they will remain where they are whereas those who have enjoyed wealth will take off and will continue to grow and the others will remain. So I would want to suggest that factors such as surface area of devolved units, population and more importantly poverty index. Poverty index is going to be very important because that is the only way we can bring out resources to those areas that have nothing up to now. Even if we start to think of industrialization of those areas, this is not going to be achieved until after sometime while others will still be growing. So that is an area I would like the Committee that will be looking at this again to delve into and see how we can resort this back to the areas that are poor and would want to take off at equal level of development speed.

Madam Chair, there is also the area of boundaries that I would like to support and I think this is very important as we talk about this new units that we are creating. I want Madam Chair, to refer to our boundaries particularly in Nyanza and Western, we are talking about our land resources that we have forgotten about water resources as well. And those of us who come from the Lake area do know very well that a lot of our water resources have been left unattended to and little attention has been given to our land and therefore for instance, Busia in Western Province has lost almost fifty kilometers of our land, water land to Uganda and Nyanza I think in some areas, in South Nyanza almost six hundred kilometers have been left to Uganda. We would like the Boundary Commission to work speedily and get this rectified so that we have a definite boundary on lake Victoria between Kenya and Uganda so that we can know where we are heading to.

Lastly Madam Chairlady, I just want to say that we appreciate and very much the focus that has been given to Affirmative Action and I would like the Conference to continue with the same spirit, that as we even talk about getting women on board, we are also considering other areas that need to be given Affirmative Action. I would like to say here that, we are not suggesting

that women who are not worth of being leaders, since women are worth being leaders and they know what leadership is. I even if it is about nomination, this country has capable women. I would like to suggest to the men who are in this Conference that they should regard the women who are out there, as they regard the women who are inside this Conference, who are able to contribute to leadership just as much as the men who we have inside here. So, I appreciate the sentiment that, women should be brought on board. I want finally to support very much on Devolution, because this is what the Kenyans have been wanting for a long time and we are here to support it and to ensure that we take the Devolution back to the people of this land. Thank you Chairlady. (*clapping*)

**Hon Delegate Sultana Fadhii:** Thank you. Next section, there is no one? In the section directly opposite me on this side. No one. Delegate number 286.

**Hon Delegate Isa Ileri Ngunia:** Thank you Madam Chair, My name is Isa Ileri Ngunia, Delegate Number 286. I have taken the floor to support Devolution in all spirit that would be required. I am supporting the creation of units and I do not think people should start being uncomfortable because of being put in the units and we do not need to go back to the people and ask whether we need to put people in units anyway. The people talked about the Provinces when we were giving views to the Commission and if I remember very well in the original Draft on Chapter 10, there was some provision about Provinces, these units only came when we thought that the Provinces were a little bit bigger and we needed to lessen them to manageable number. So, the units should be there and we do not need to go to the people and I support them as they are. I want to say that- 18 is a good number and a manageable one, with some little amendments like the Kirinyaga people talked of coming to Embu, Elgon and going somewhere, but with some few amendments, we need to have those units as they are, the 18 I think that we do not need to create more, we do not need more than 18 anyway, too many of them may become a problem.

The other thing is that I support the countage, this is because we have to take the Government closer to the people that is the District, in my own way I do not think I support the Constituencies. The constituency may remain for the purposes of getting to elect members of Parliament but, I do not think they need to be another level of Government. It is enough to have a Government at the District and to the lowest level at the Location. Having a constituency and

at the same time having a District, is going to be a problem. Quite a number of people here have talked about Economic liability, we can not have the District and the Constituency at the same time, it will be a big burden managing 210 Constituencies and 70 Districts as a level of Government is a big problem and we cannot do that.

The third point that I want to raise, is that, I am opposed to bringing in the idea of proportional representation, in the name of helping women. I think this system is a very new thing and I can see it being introduced in the Local Government level, that we let women in a certain list. Women should have their own Constituencies, only for women even at the local level, *(Clapping)* We can even have them contest on their own at the present divisions, so that they can come to the Council having fought among themselves, so that we can elect the ones we want. Infact, when every other party, and we have around 40 parties when we are going to have a list, I think the Wanainchi are going to be confused when they will be electing some people in some lists. We should have Constituencies created for women, where they will contest on their own and the one who is popular having been elected by men and women comes to the Council or even to Parliament. The same thing should be done at the Parliament level, where we talk of Districts being constituted for women. But, by bringing in this complicated representation, proportional representation-MMP, I think it is a complicated affair that Kenyans did not ask for. I do not know who brought these issues, I think it is the educated ones who might have brought this but, we in the rural areas where I also come from, did not bring this issue. I think it should be done away with both at the National level and even at the Local level, we need women to be helping in some other way but not on the MMP business. Thank you Madam Chairlady.

**Hon. Delegate Sultana Fadhii:** Next is Delegate number 063.

**Hon. Delegate Amos Kimunya:** Thank you Madam Chairlady.

**Hon. Delegate Sultana Fadhii:** Can you identify yourself please.

**Hon. Delegate Amos Kimunya:** My name is Amos Kimunya, Delegate number 063. I am firm believer in principle of Devolution and giving power to the people but as I read through the document and as I listen, I am getting more and more confused because here we are talking about

Decentralization and not Devolution. As a clear distinction between, Devolution and Decentralization. Devolution is taking the decision making processes to the people not just the goods and service to them, which we can do under decentralization. I draw that distinction because, as I look through many zones and various levels of Governance, I am convinced that we are actually talking of how do we hand down the resources, rather than how do we get people involved in decision making. The more levels of decision making we have, the more the inefficiency and cost we are going to create. I would wish to submit that perhaps, we need to consider seriously whether we do not only need two levels of Government, at the National level and the District level, so that we can speed up the decision making processes and also make sure that the decision making is done at a level that makes sense. So, I would like to, in that connection, ask the Committee that will be looking at this, to seriously consider what we really need. If they agree with me, we should have only two levels of Governance, at the National level and at the District level. If we go down lower at a locational level, basically we are talking of implementation of the decision that would have been arrived at the District level. If we go further at the Provincial level, one called the zonal level, we are basically creating another level of bureaucracy that is not necessary. I would like to give you an example, over the last eight months, or nine months I have had the privilege of being in the Government and even as an MP of Kipipiri, I can recall on the times I have had to refer any issue to the Provincial level. Even I had to think of, for example, what does the Provincial Co-operative Officer do? I know what the District Co-operative Officer does and I can relate with that. I think most of us here would probably relate to things at the District level but never at the Provincial level. As we are looking at the future, we can have that into account.

My theory is also based on (a) apart from just reduced bureaucracy by reducing the levels, the efficient decision making should be about the flow of resources and the cutting down of the costs. The other thing I need to also alert you on, is even as we are looking at the two levels, for instance, District level, we need to have a clear link between the units we are going to create and what they represent. How do they take care of the geography and how do they take care of the population distribution. We need to make sure that we have that as a Principle within the Constitution rather than just say that, we have these two or three Districts, let us group them together to form one unit.

In terms of Principles and Constitutional making, I believe you should. be going for the principle and then the Committee of the structure that would be created under Article 247, we will then look at the principles of creating the boundaries along the principles that we agree on They will tell us whether we need 280, 520, 70, or even 100 Districts. But let us not be tied at any one time to the seventy Districts that we have. If you have to create 100 Districts, let us do it, if you have to create 50 Districts, let us do it. But let us agree on a equitable principles because this will also be tied, not just to the distribution of resources which I agree we should have, but also in terms of Power, in terms of contribution to the National votes, contribution to how the power is shared and , at some points we go the finer route even as to how those Districts can contribute to the election of the President. Say we decide that that would be tied to this kind of structure. There is a lot that I would like to contribute, but I am conscious that others would like to say few things. I would like to stop at this point. Thank you.

**Hon Delegate Fadhii Sultana:** Next section, no green numbers. Delegate number 378.

**Hon. Delegate Amo Kiumo:** Thank you Chairlady, though I have borrowed that number for the purposes of facilitating me to talk. (*Honourable Amos Kiumo's Delegate number is 271*) I am in Devolution and I will not need to talk a lot on this subject now because we are still to work on it. But, for me I am thinking that the best levels for Devolution are the four which have been given here, but as it stands, the zonal level and the Government should be composed of a simple Secretariat to serve as just a pivot or a stop over, from the National Council to the principle level of Government which should be the District Local Government I say this because we have seen that the Provincial Government have no place in the present Government because they have proved that they have been useless. If we consider these units as nearer to the Province, than even the District, then it will also prove as time goes on that it will be useless just as the Provincial units have proved to be useless.

They should just serve as a simple secretariat for the units, otherwise the people who have been drawing this document have erred in giving it so many functions with regard to Taxation Levies, the powers of taxation, because you find that these power are just a duplication of what the counties, the District level of Government will be doing. If we agree we are going to undertake

all these things, then it means that the District level has no work at all and it is supposed to be the principle of Devolution.

Just to mention something on the election of, ladies in these councils, I believe we are sort of portraying the women folk as the weakest sex. Why should we give them all these privileges when in the primary schools, the girl child is performing better than the boy child? If naturally the women are becoming many in the primary schools, do we have to make another effort of pushing them up when they are going up naturally? (*Laughter*) We should give them natural call to overtake the man. Thank you very much.

**Hon Delegate Fadhii Sultan:** Delegate Number 342.

**Hon Delegate Irine Magut:** Thank you very much, Madam Chairperson I am happy also to contribute to this Devolution. My number is 342, District Delegate from Nandi. When we talk about Devolution, some of us seem to be very scared about letting other people go. When they are talking about some units not being viable, I do not seem to understand because those same people from the small units or the poor units are also paying taxes in this country. I do not see why you make the people poor at the bottom and then you make them to be beggars of their money which they have contributed to in the National Government. So, I wonder why is it is so hard for people to be left to do their own things, yet they are using their own things from their own income. Some of the units are not really- - I remember, when the county councils were much larger, I belonged to one which was called Sirikwa County Council. This Sirikwa County Council comprised of some Districts which were about five or six and to be sure these are people who nearly speak the same language. They have nearly the same customs, they do the same things and normally they easily agree on issues whether it is on development even or on productions of things from their farms.

I tend to see that some people really want to step more and more on other people. It seems there are some communities who are not given space to breathe and when they want to go and run their own things, people feel “how can we let them go”? Please let the people go, let them go and do their own things(*Clapping*) I want to talk about this issue with all due respect because this is not the first Devolution we have in Kenya. The churches have Devolution, we have Dioceses and they are autonomous and they are not relying on one another. We have Christians



here who belong to different Dioceses, we are not so much different, we are the same religion, but we do run from different Dioceses and we are not to step on one another,

We also have so many things which happen in this country and people have to respect other people. Yes, educationally some people could be more educated than others, but give them space, let them breath and let them get more things, so that they run their things according to their standard of living. I know some people will say, some people cannot run their things because their education is low. This county that even if we have one who is educated and we let that one guide us I do not think that we are really going to be stepped on for a long time in the name of, "let us be united". We can be more united when we are more united at our back ground. Give us our backyards to do our walk well, so that we can unite as Kenyans when we are all the same. Thank you very much Madam Chairlady. (*Clapping*)

**Hon Delegate Fadhii Sultana:** Delegate Number 237, do you still have a point of order? Please I hope it is a point of order.

**Hon Delegate Onotto Joshua Jilo:** Yes, it is a point of order. Thank you very much, Madam Chairlady. As much as I wanted to contribute to this debate which is going on, I cannot because when I look around, I think there is no quorum.(*Cheering*)

**Hon Delegate Fadhii Sultana:** People are just making contributions so that those contributions can go on record and they are taken further for discussions, it is not that we are making any decision here. Delegate Number 267.

**Hon Delegate Fatuma Boru:** Madam Chairlady, my name is Fatuma Boru, District Delegate from Isiolo District. Madam Chair, I would like to visit unit five on the following information, In determining viable principle units of Devolution, the following factors amongst others must be taken into account;

1. The units must not be too large in terms of territorial size, cultural homogeneity, harmony and integration and historical factors. Madam Chair, the total area of unit in size is 126,740 square kilometers, it is equivalent to the total sum of the area twice unit

15, plus the sum of the area of units one, two, four, ten, twelve, thirteen, fourteen, sixteen, seventeen, and eighteen, with a total area of 126,469 sq kilometers in other words covering an area of 18 units, out of 18 units in option three. Therefore unit five has too large territorial size.

- 2 In the third option, of 18 units seems favour majority of Kenyans, the main reason being that it took into account the factor of cultural homogeneity, harmony integration as well as considering ethnicity and historical factors among others, which seems to have taken center stage in formulation of those units in option three. The proposed unit five does not conform with the power mentioned factor. Madam Chair, Isiolo, Marsabit and Moyale, have all the rights, based on the factor mentioned right now to be on a separate unit of its own. Isiolo, Marsabit and Moyale have been in Eastern for 40 years and we have been marginalized, because we have been swallowed by bigger tribes. If I give you an example, we are put with Laikipia which alone has a population of 322,187 persons, as compared to Isiolo, Marsabit and Moyale with only 275,818 persons, thus laikipia alone constitutes 44% of the entire population of unit five. Madam Chair, in terms of proposed levels of government the zone or sub regional becomes a principle level of Devolution. Members of these Devolutions, second chamber, are therefore to be elected through the universal coverage of under population of each unit. In our case from unit five, it has an extra record with 1999 census by sex and single year of ages Isiolo has a total of males- 23,830 female - 23,565 which is a total of 47,395. But if you look at Laikipia, it has got 77,436 – males and 79,566 females. Therefore, Laikipia alone has constituted 44% of under survey of that unit. After examining all above mentioned factors, Isiolo, Marsabit and Moyale will be rightfully in a separate unit of its own for viable Devolution. Thank you.

**Hon Delegate Fadhii Sultana:** Delegate Number 352, what was you point of Order.

**Hon Delegate John Kiniti:** Thank you Madam Chair, is it in order after a Delegate has a raised a point of Order that there is no quorum, to continue with Conference?

**Hon Delegate Fadhii Sultana:** He did not mention that there is no quorum I am supposed to react when someone raises a question concerning quorum I knew where he was heading but the Delegates stopped him. If you want to raise that point of Order get to the point and do so.

*(Murmurs)*

**Hon Delegate Saul Kipkoech:** Yes. My number is 350, Saul Kipkoech. There is no quorum and I think we should adjourn.

**Prof. Yash Pal Ghai:** Since you have raised the question, yes, there is no quorum and there is really no prospect of getting more members in to make a quorum, so I will adjourn the meeting and remind you that we shall go into Committees tomorrow at nine o'clock sharp. Please don't be late. Thank you.

Meeting Was adjourned at 5.40 p.m.