

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

**NATIONAL CONSTITUTIONAL CONFERENCE  
(NCC)**

**Verbatim Report of**

**PLENARY PROCEEDINGS, REPORT OF TASK FORCE ON  
DEVOLUTION OF POWER, CHAPTER 10, &  
MOTION BY HON. DELEGATE ENG. KARUE MURIUKI,  
DELEGATE NO. 121 ON AFFIRMATIVE ACTION; (PAGE  
60) HELD AT BOMAS OF KENYA**

**ON**

**22<sup>ND</sup> AUGUST 2003**

**CONSTITUTION OF KENYA REVIEW COMMISSION**  
**NCC – PRESENTATION OF REPORT ON CHAPTER 10 – DEVOLUTION OF**  
**POWER HELD AT THE PLENARY HALL, BOMAS OF KENYA ON**  
**22<sup>ND</sup> AUGUST 2003**

*Agikuyu dance by Bomas of Kenya Dance Troupe.*

**Meeting was called to order at 9.30 a.m. with Hon. Delegate Bonaya Godana in the Chair.**

**Hon. Delegate Bonaya Godana:** *Asante.* Order! Order! Order! May I call Honourable Delegates to order!

**Prof. Yash Pal Ghai:** Good morning Delegates. The prayers this morning will be said by Father James Gatiti, Milkah Oyugwa and Sheikh Badawi. After the prayers we shall have the National Anthem. So, I would like to ask you to stand now and remain standing until the National Anthem.

**Fr. James Gatiti:** Oh God, our peace loving Father, we thank You for this noble and rare opportunity and historical moment that You have given us Kenyans, to rewrite our new Constitution. We thank You for taking care and protecting the Delegates and Observers during the time of recess. A time during which we have reflected and internalized on the issues that really matter in our Constitutional Review. We thank You for the week that is ending today and for the new insights that we have had on Culture and Devolution.

Almighty Father, let it not be lost to Kenyans where we have come from, the difficult times that we passed through in our anticipation for the review of the Constitution. We pray for peace and understanding to prevail among the Delegates here. Help them to remember that the decisions that we reach here during this Conference will affect Kenyans of all walks of life for many generations to come. Inspire the Delegates with Your Holy Spirit, to de-link the Constitutional issues from narrow sectarian interests that go against the will of Kenyans and promote the national good.

May you enable them, our heavenly Father, to negotiate with an open mind and build consensus in order that we may come up with a good Constitution, acceptable by all Kenyans. A Constitution that will shape our destiny, our nation and contribute to our prosperity. We make our prayer through Jesus Christ, our Lord, Amen.

**Hon. Delegate Sheikh Badawi:** *Bismillahi Rahmani Rahim.* In the name of *Allah*, the Beneficent, the Merciful, praise be to *Allah*, Lord of the world. The Beneficent, the Merciful. Thee alone we worship, and thee alone we ask for help. Show us the straight path.

*Kwa jina la Mola, mwenye rehema nyingi na mwenye kuteremsha baraka nyingi, na neema nyingi juu ya waja wake, muumba mbingu na nchi, muumba uhai, na wanaadamu. Twakuomba Mola utie umoja ndani ya nyoyo zetu, utie mapenzi ndani ya nyoyo zetu, na utie ushirikiano ndani ya nyoyo zetu, wananchi wote wa nchi hii tukufu ya Kenya.*

*Utie mahaba baina ya hawa waliokusanyika hapa, wajumbe wenye kuandika Katiba. Iwe Katiba ambayo kwamba itamridhi kila mwananchi wa Kenya. Katiba ambayo kwamba itampa haki kila mwananchi wa Kenya. Hakuna anayeweza kufanya hayo, ila ni wewe kutuasifia waja wako. Twakuomba utuasifie Yarabi, Amin.*

**Hon. Delegate Milkah Oyugwa:** Gracious Lord, the Father of our Lord Jesus Christ, we come before thee this morning with thanksgiving in our hearts. You are a loving Father, You are a caring God. We once again thank You for giving us the opportunity to participate in the re-writing of our Constitution of this beloved country. You have given us a forum for negotiation Lord, wisdom and knowledge is hidden in thee.

Our Father, at this particular time, we seriously need wisdom. How we pray that You will help us deliberate and come out with a Constitution which will be able to take care of us all. Dear Lord, at this particular moment, how we pray that we may be just and fairness will prevail in everything that we do, so that at the end of the day, Your name

will be glorified. I thank You, I honour Your name because You are everything. For I pray in Jesus name, Amen.

### *National Anthem*

**Hon. Delegate Bonaya Godana:** May I ask Honourable Njonjo and Honourable Karaba, to join the Welfare Committee meeting at 1.00 p.m. in the Steering Committee tent. Thank you.

Honourable Delegates, we are reassembled again this morning to continue from where we broke off yesterday afternoon with the comments on the new presentation on Devolution, which was done yesterday. I want to emphasize, given that this is a new presentation following an earlier presentation. And given that the discussions, the negotiations will be going on in the Technical Committees, in this case the Technical Committee on Devolution. Delegates who take the floor, please be understanding and try to limit your comments to what is absolutely necessary.

I think I will pick up now from where we left yesterday and I think I am back at that block, where I see-- What is a point of procedure? What is your point of procedure? Is it a point of order? What is it?

**Hon. Delegate Levi Ahindikha:** Mr. Chairman, my name is Levi Ahindikha, District Delegate number 379, from Kakamega District. Mr. Chairman, this is a very important Chapter we are discussing. Owing to its importance, Mr. Chairman, I would request the Chair to give sufficient time to this Chapter so that every Honourable Delegate who has something to contribute does so. Thank you, Mr. Chairman.

**Hon. Delegate Orié Rogo Manduli:** Point of order, Mr. Chairman. Thank you very much. I am Delegate number 594, Orié Rogo Manduli. I am very, very keen to contribute this morning and I noticed my number is not here, which effectively gets me out of the race. I hope this is not deliberate; I would like to know who is keeping or

holding my number, number 594. I intend to use it to speak this morning. Thank you, very much, *Bwana* Chairman. (*Noise and laughter*)

**Hon. Delegate Bonaya Godana:** Honourable Delegates! (*Noise and murmuring*) Honourable Delegates! I have heard the sentiments expressed by the previous two speakers; Honourable Manduli, who gave herself the opportunity to raise a point of order before even the Chair recognized her. (*Laughter*) But I want to assure you, certainly the High Table has no business in holding your number and I hope you will get your number back.

We would of course like to give everybody an opportunity to speak but I think we also have to plead for an understanding. We have to go to the Technical Committees on Monday. This is Friday and normally we break off early for lunch because our Muslim brethren have to go for prayers this is their prayer day. And you will see on the Order Paper we also have a Motion, by Engineer Karue Muriuki, Delegate number 121, on Affirmative Action. We will have to give some time to this Motion also, and that I think will have to be in the afternoon. That means therefore, really, it will not be possible for all the six hundred plus Delegates to take the floor on the subject, important as it is.

We will have to come to an understanding; we will try to be as fair in picking random speakers. But I think we will have to end the session by the time we break for lunch so that in the afternoon we pick up on the important subject of the Motion on Affirmative Action. I plead for your understanding.

Now, with that, I think I will call on somebody from that block. Religious groups among other categories yesterday complained they had not been recognized. Do I see anybody from that category in that block? Number 596 are you from religious groups?

**Hon. Delegate Hezron Manonda:** I am from Political Parties.

**Hon. Delegate Bonaya Godana:** No, please. Please bear with me. I think Political Parties had the biggest share yesterday afternoon--

**Hon. Delegate Hezron Manonda:** I have taken--

**Hon. Delegate Bonaya Godana:** --one after the other. No, please.

**Hon. Delegate Hezron Manonda:** I have a short contribution, Mr. Chairman.

**Hon. Delegate Bonaya Godana:** You will contribute later. I will take note of your number. Who is from Religious Groups in that category? 252, you are not from the Religious Groups? Okay. Everybody belongs to some place, I think in this case I may have to allow the guy. 538, are you from Religious Groups? Okay, religious people should not complain next time. If I am looking around and none of them wants to take to the floor, I will call on 320.

**Hon. Delegate Samuel arap Nge'ny:** Mr. Chairman--

**Hon. Delegate Bonaya Godana:** 320, what is your category?

**Hon. Delegate Kiriro wa Ngugi:** District.

**Hon. Delegate Samuel arap Nge'ny:** I thought you said 538?

**Hon. Delegate Bonaya Godana:** District, okay.

**Hon. Delegate Samuel arap Nge'ny:** Mr. Chairman, you called 538, and I am here! On religious category.

**Hon. Delegate Bonaya Godana:** Ooh, but you did not indicate that you were from the religious category. In that case--

**Hon. Delegate Samuel arap Nge'ny:** I did! That is why you called me.

**Hon. Delegate Bonaya Godana:** 320! 320! Please bear with me. Yes, yes, if you are from the religious category, 538, take the floor.

**Hon. Delegate Samuel arap Nge'ny:** Thank you.

**Hon. Delegate Bonaya Godana:** 538.

**Hon. Delegate Samuel arap Nge'ny:** Thank you, Mr. Chairman.

**Hon. Delegate:** Point of order, Mr. Chairman! **(Inaudible)** then skip to the other?

**Hon. Delegate Bonaya Godana:** I will come back to the other two columns.

**Hon. Delegate:** **(Inaudible)**.

**Hon. Delegate Bonaya Godana:** I will definitely come back.

**Hon. Delegate:** **(inaudible)**.

**Hon. Delegate Samuel arap Nge'ny:** Thank you, Mr. Chairman. As you have called, my number is 528, Samuel arap Nge'ny. Mr. Chairman, first let me congratulate the Commissioner presenters on this very important issue that is dealing with Devolution of Power to the people of Kenya.

The presentation was exhilarating and to a very large extent, I want to start in support of what they have recommended here. And in so doing, Mr. Chairman, I want to raise one very glaring omission that seems to have been done, both in the previous and in the

current paper. Mr. Chairman, you notice when it reaches the District Local Government, the municipalities and the town councils, whatever they will be called, there is no proper definition that has been and the relationship between those authorities or those units and the district council.

Now, Mr. Chairman, the problem is, we like it or we do not like it, in a hundred years' time, the number of people in this country living in urban areas will far surpass those who will be living in the rural areas. That is of course on the understanding; we want to continue feeding ourselves. Urban areas have to be developed. And I think the reports that we have heard and the Draft Constitution have glossed over this very important issue. We must have a clear definition of what constitutes a municipality, or a town council. It is not envisaged that Kenya will continue to have three cities for time immemorial.

So, what constitutes a city? I think the Constitution should make room for a definition, for a clear indication of what a city is, its role, and how a municipality will eventually rise to city status.

Why am I saying this Mr. Chairman? The whole idea of urbanism is that the nature of work there is completely different from what happens in the rural areas. Therefore, unless there are proper linkages, there are clear lines of communication, unlike what it is now, what I see; it simply says the district councils will have municipalities as some of its units and then it leaves it there. So I am suggesting very strongly and recommending to the Technical Working Committee on Devolution, that they should look at this particular section because I feel if it is left out, we are going to end in a quagmire. Mr. Chairman, what is going to happen if it is just left in that kind of situation is that you are going to have rural areas converting themselves into urban centers?

Another thing, Mr. Chairman, that has been raised here, there are these three options that the report has recommended on the sub-national units. I think we need some traditional names to be given here. The colonialists came and they gave us names calling another



unit province, another one a district, another one a county, another one a location and all those. And I think these names still bear and connote colonialism. I think it is time we moved out of it in order to give ourselves proper and authentic descriptions of our units of government below the national level. So that when you describe an area, I am sure we have indigenous names; if we go to the Mount Kenya region, if we go to Rift Valley, if we go to Nyanza there are traditional names to describe these areas.

I know historically, in Nandi, we had descriptions, which would tell you. When you mentioned a name like Aldai for example, in my mind, I see a lot of things happening in that particular area, and I have no doubt in my mind where that particular area is and what activities are going on there. Now, because of time constraint, Mr. Chairman and other people have to speak, thank you very much for the time you have given me.

**Hon. Delegate Bonaya Godana:** Thank you for your understanding. Back to this row of District Delegates. District Delegate 320.

**Hon. Delegate Kiriro wa Ngugi:** Thank you, Mr. Chairman. My name is Kiriro wa Ngugi, District Delegate 320. I am a very happy man that I believe I lived to see this day. I have done every work on Devolution. I would suggest very strongly that the first article on the Devolution Chapter should say “That Kenyans have the right to live and work anywhere within the Republic.” That would disabuse a lot of misgivings that are usually associated with Devolution.

On design, the number of devolved units; I congratulate Commissioner Kangu, when they are too many we were assured that we have to be very careful. I would therefore opt for the second option. However, I would like to draw the attention of my fellow Delegates that we must first decide on the rationale, which was very ably articulated. What is the criterion for deciding where to place boundaries?

Principle 9 on your page 5 you should read it very carefully sets out what that criteria should be and once you have decided on that criteria it becomes very easy but one

general caveat I would like to draw is that the final design that we shall finally agree on as a Conference is not cast in stone. We agree on some option, then we agree that there be a Boundaries Commission that will constantly across time review. So let us not be too passionate as to the final, it is not cast in stone.

On Public Finance, it is extremely important that we define and list those taxes that government may levy on its citizenry. The key advantages are you are then able to apportion to the various levels of government; you are also able to state the formula for raising, distributing and disposing. It is also very important that you contain taxation/government. This is the point at which we citizens are negotiating with future Governments and it is extremely important that we tell government there is some limit, and we also have to encourage government to have a self interest in personal revenue to the individual; it is only when I prosper that government prospers. They have an interest in creating an environment where I am prospering.

Once we have a list of which taxes, we can then ably decide which tax will be levied by which level of Government and there is an example on page 7. I am really rushed for time, that is why I am not reading them; I can for example read to you on some work I did, an Article, that says on the exclusivity of taxation: “What the national registration subjects to Value Added Tax or to Special Consumption Tax stamp duty or to withholding tax or declares the exemption from such taxes may not be taxed by Counties or Lower Government levels with the taxes of the same or of a similar kind. It is only after you have identified that you are able then to say such a thing”.

Mr. Chairman, on the issue of what do you transfer, you must transfer the four elements that we were very ably told. You must transfer representation, Executive powers, you must transfer the physical capacity, the money, and you must, with respect, transfer judicial capacity. Without some dispute resolution mechanisms the Executive arm of the Lower Government will not be able to function properly.

Finally, please allow me to say about the Financial or Fiscal Commission, because again that is an extremely important element in this Chapter. It is supposed to grant financial aid on three conditions: there is a non-conditional grant that is to say something like projects. If Ijara District requires headquarters or a railway line that goes to Mandera there are conditional grants that is for one shilling you raise for this project we give you two.

There is also the long-term address to the economic disparities that are happening in our country. This is extremely important so that we are assuring each other of mutual support but at the same time we are laying some conditions. Thank you very much.

**Hon. Delegate Bonaya Godana:** Thank you very much. I am going to the next block. 411.

**Hon. Delegate Mary Teresa Usunga:** At least I thank the Commissioners for having presented a very good paper on Devolution.

**An Hon. Delegate:** (?)

**Hon. Delegate Bonaya Godana:** Your name please?

**Hon. Delegate Ogutu Teresa Usunga:** My name is Mary Teresa Usunga from Homa Bay, Ogade Girls' High School, number 411, Honorable Delegate. I was just going on to say that it is good work that has been done because if we had not had this work done then it would have been incomplete and Devolution is very important and we should not have incomplete knowledge in it. Yesterday there was a question that was asked concerning whether the courts should also be devolved; I feel that they should also be devolved because even Jesus Christ had first to go to the Kangaroo courts of the Sanhedrin and then they took him to Pilate and to crucifixion after-- That one can be a point of consideration.

I also realized that Devolution is something that is really realistic because when we look at even some places the way they have been placed and the preferences for these places, the developmental programmes in these places can only be managed in a better way with Devolution. So when the Technical Committees shall be meeting let them try and see how best to do it in such a manner that it can be a design that is very, very important.

Another thing that I also felt was very important in this was that, we talked about sharing and there are so many people who do not want sharing. So as long as the people who are supposed to share can be made to feel like sharing it shall be right. Thank you.

**Hon. Delegate Bonaya Godana:** Thank you very much. Delegate Number 100.

**Hon. Delegate Boniface Mganga:** Thank very much Mr. Chairman for giving me this opportunity. My name is Boniface Mganga, Member of Parliament for Voi. First, a very strong word of commendation for this very well articulated chapter on Devolution. However, Mr. Chairman I still strongly feel that we should rename this chapter and the system of government and the structures therein, because Devolution is just an aspect of decentralization and taking power from the centre to the periphery. The main reason I want to believe that Kenyans have said across the country that is too much power concentrated on the President and therefore taken away is because they would like to be involved in the governance. They would like to benefit from economic and national resources like other people have been benefiting and therefore we are there to try and correct disparities that have been there because of the system in the past. However, Mr. Chairman, in trying to do so, I think we need to be very careful as we create or devolve the governance down the line, we put in place measures that will ensure we strive for unity within the great diversity that we have in this country as manifested with the more than forty one different ethnic entities.

When we talk about the service commissions in the various devolved governments it is important that the ultimate in terms of hiring, promoting, managing and organizing the exits of the civil servants, the national Public Service must be given the right to ensure

that there is parity of treatment of all public servants irrespective of the districts or the provinces they are in.

In deciding how we ought to put these districts together I feel that we should not be tied too much by the historical boundaries that we have been having that were created during the colonial times. For instance it is not always that you must put Taita with Kwale and Kilifi; we could also consider putting Taita, Makueni and Kajiado and making it even much more convenient and develop a place like Mtito as a regional headquarters. While I agree it is good to go out and cite examples of other countries the way they have managed their devolved Governments, it is important to know that Kenya, we are unique, and we need to encourage our own homegrown structure and system of government peculiar to our situation. In any case Mr. Chairman, when did these neighboring countries become an example for Kenya?

Finally I think you have given me only three minutes the issue of our natural resources has been mentioned but very much in passing What we are saying is that the natural resources, wherever they are, must benefit the people. Otherwise, it will make no sense for people for instance, who live in areas that are really ravaged by wildlife to die and be killed and have their crops destroyed. Therefore the sufferers, out of this menace, should also be given some benefit of all that comes in terms of revenue. Mr. Chairman, thank you very much.

**Hon. Delegate Bonaya Godana:** I am going to the next block, number 609. Please say your name and category.

**Hon. Delegate Kenneth Njiru:** Thank you. Mr. Kenneth Njiru, Delegate 609, Political Parties. A lot has been said about Devolution. My contribution is one, I do not want to repeat myself. I think as we are structured devolution structure, we must also address the question of how we make sure that all these devolved units are focused towards production. There is a lot of talking about sharing resources. But I think at the end of the day what will determine or what will guarantee the existence of these devolved units will

be how well we organize ourselves in these devolved units that we may be able to achieve the full production capacity of our people.

I think there is a lot of energy in this country. There are people today in this country who have resources they are not using yet they expect to be given from other people. In this regard, I would quote Nelson Mandela who says that our greatest fear is not that we are inadequate. He says that our greatest fear is that we are powerful beyond measure. He says that this is not our light but our toughness *(inaudible)* He says, “who am I to be brilliant, courageous, talented or popular?” Then he goes on to ask, actually who are you not to be? You are a child of God. There is nothing enlighten about playing small so that other wouldn’t feel insecure around you.

We were born to manifest the glory of God. It is not being just some of us in some devolved units, it is in every one of us, and as we let our light shine we unconsciously give other people permission to do the same. He goes on to say that as we liberate ourselves of our fears, we automatically liberate others.

What I am trying to say is that, we have a duty as we are designing this Constitution, to make sure that one of the key things that we will be shooting for within this devolved unit is to achieve the full productive capacities of our people. If we do that then I am sure that there will be no problem. Whereas I do appreciate that we need to give those people who may not have ability to take off, we should also focus on being able to tap into the total creative capacities of this nation. Asante.

**Hon. Delegate Bonaya Godana:** Thank you very much. Number 364?

**Hon. Delegate Daniel Osoi Kamwende:** I am number 364, Osoi from Kajiado, District Delegate. Mr. Chairman, I would add my voice in congratulating the Commissioners for a very good presentation on Devolution. I would like to note and go straight to very few points that I noted. One thing, the issue of the village government as it is in the present Draft is not indicated here and some sub locations in some disadvantaged areas like

where I come from, a sub location is more than 50 kilometers square, as big as a constituency in some areas. Therefore, if we do away with the sub location, we are actually not devolving power but still taking it away from the people, and I believe with the sub location government management and effective administration is going to be felt effectively.

Mr. Chairman. In some districts, the immigrants have outnumbered the locals and in case of an election of may be a District Administrator or a District Governor or whatever you are going to call it, two things are going to happen. One is complete extermination of the indigenous people.

Two, bloodshed neither of which is the desirable and therefore the members that selecting District Governors or District Administrators have to be by delegates from all the locations rather than man to man vote. This is because these immigrants have come to these areas concentrated in the towns and they don't go into the reserves and therefore, one sub-location in a town for example like Ngong is having about forty thousand people while another sub-location, Eseweso is having about three thousand people. Therefore, the methods of electing the District Administrators and the District Governors has to be represented right from the sub-location of every location in the district.

Another point is that, the smaller the units the more manageable it is. As much as I believe what my brother, Hon. Delegate Kiriru has said, every Kenyan has a freedom to say and live anywhere in the republic." It is also as much as important to note that those people who are outnumbered by the immigrants have equal rights like the multitude of the people who have come there so that they also have a share of the leadership of this country. This is why actually why the Motion that is going to come later on Affirmative Action has to be extended to cover even the marginalized communities. I therefore, I support the third option because of two things; one ethnic identification is very very important, and this is even going to add more value to culture, and therefore, , the naming one Honourable Delegate has just said, is very important, that we name by those local

and indigenous names which have historical meanings of the communities living in that particular place. Thanks you Mr. Chairman.

**Hon. Delegate Bonaya Godana:** Thank you. Number 541?

**Hon. Delegate Archbishop Zachaeus Okoth:** My name is Archbishop Okoth, Kenya Episcopal Conference Religious Organization. Devolution is what we have been waiting for and devolution is what we must have. As regards personnel, fear was expressed here. We have enough Kenyans who have education and the technical know how to build these units and government units according to what is required.

Finance was expressed that it might be expensive. The amount of resources Kenya has, and what we have been hearing of, that there are these questions. We have enough resources through taxation to achieve what devolution needs at all the units that we may accept.

When it comes to which name we call it. The vertical and horizontal power must be made visible and shared so that every part of this Republic feels that they have a share in the governing power even at the grassroots. The names can be chosen, reflecting federalism. But what is to emphasize is that the name we choose must be able to answer the people's coherence so that they are units that will promote culture as well as development of these areas. I see that in that choice of those units, the country can grow and will have a right to express that we need development at all sections. In this section we see that it will also promote the development of each area, which we have been crying about.

Indeed, I see devolution as the path through which the development of the region will be achieved. We can have factories at various corners of the Republic. The time has come that development must not be seen inside the cities. Development of factories can be even in the remotest areas. We need fish factories around the lakeshores. We also need other bottle factories in the drier areas. We even need some more machineries and



Kenyans can now start to produce even the cars that we need. I think Kenya has enough resources for this.

Finally, devolution will enable us also to have our security put in place. Every region will have to provide its security; every region should have their own police and even a share of the defence forces. There is no reason why we cannot have Navy Camps also along the lake shore to protect us from any other attacks from other countries. So, I feel that devolution is going to bring us development, security and even the financial viability to run these areas and sustainability of all these areas. Thank you very much, Bwana Chairman.

**Hon. Delegate Bonaya Godana:** Thank you very much. Number 259?

**Hon. Delegate Salah Maalim Ali:** My names are Salah Maalim Ali, District Delegate 259, Mandera. I wish to congratulate the Commissioner for his eloquent presentation and for recognizing the role of Local Government in devolved units in article 4.3, 4.3 on page 9 of the Task Force report.

Secondly, he captured the principle of the Inter-generational equity, the distribution of functions, the provision of financial powers of the state, inter-governmental relations and linkage with other chapters of the Draft Bill. But the task force is one very important constituency in that they failed to recognize (inaudible). What happens to the Maasais who may be moved because of pasture, who may be move from Kajiado to come and graze their cattle in Nairobi? Would the devolved governments in Nairobi be charging those cattle movement fees or taxation for that matter, because they are not bringing them to the market?

Secondly, because of the unique life-style, I think the Commission should capture the establishment of a mobile government unit for the pastoral and nomadic communities. Lastly, I am asking the Commission that to try and copy the South African Experience of the devolved unit. Thank you.

**Hon. Delegate Bonaya Godana:** This time I will go for a Member of Parliament, number 015.

**Hon. Delegate Billow Kerow:** Thank you Mr. Chair, I m delegate number 015, Billow Kerow. Mr. Chairman, I wish to give or lend my support to the concept of devolution in principle. Mr. chairman, we are one of the few countries in this region today that continue to have centralized power, a power that we have seen in the last 40 years has been responsible for the scale of abuse, for the scale of sufferings that Kenyans have seen. Mr. Chairman, devolution of power which is meant to essentially decentralize power down to the regions so that citizens can be empowered to make decisions, to make decisions that affects their lives. Decisions that will help them to exploit their resources to benefit themselves. Decisions that will ensure that Legislative power, Executive power is given to the people and not let to an individual in Nairobi to exercise.

Mr. Chairman, we thought this year when the new government came to power things would be different, but we have seen in the last six months, because of the Presidential system we still have, because of the centralized we still have, nothing much has changed in terms of the freedom Kenyans have been looking for, in terms of exercising the power or empowering Kenyans. One of the pledges that have been made is that Kenyans would be empowered to the extent that they will be able to exercise their freedom and make their decisions when NARC came to power, nothing has changed.

My argument therefore is that devolution of power is a necessary thing and we cannot do justice for this country if we do not at this Conference; conclude conclusively that power should be devolved to the regions. I wish to support the option number 3, which creates 18 regions. (*Applause*) Mr. Chairman, the reason why I am supporting option number three is that in addition to density or population, one important factor, two important factors which must be mentioned here are; one the level of underdevelopments. Different regions have different levels of developments. The people on our borders are Ormas.

Disparities in allocation of resources that we have seen even today in countries like Uganda and Tanzania which for a long time have appeared to many Kenyans as countries that are under-developed are advanced in terms of resource allocation, because of the devolved power that they have. So you have budgets being prepared on the basis of districts, money is allocated on the basis of districts and therefore the level of disparity between the districts, between regions is much less pronounced than it is in this country.

Mr. Chairman, I would want to insist that the third option gives us an opportunity to create smaller regions, which would make it easier for development to go down to the people instead of having the provinces that are there today. I think if we devolved them into regions that we have seen, the 18, it will make it easier. For instance in Northern Kenya, distance can be another important factor. To imagine that Garissa and Mandera can be added together to become one region because of the distances Mr. Chairman, it will not be justice and I wish to recommend the third option which breaks it up into two and I wish to emphasize to all my colleagues that we should not lose this opportunity. We must seize it and make sure that we have devolved power down if we want to be free and if we want to be developed in this country. Thank you very much.

**Hon. Delegate Bonaya Godana:** 517.

**Hon. Delegate Abdulghafur El-Busaidy:** Thank you, Mr. Chairman. I think this is the most important--

**Hon. Delegate Bonaya Godana:** Please identify yourself.

**Hon. Delegate Abdulghafur El-Busaidy:** Sorry, my name is El-Busaidy from Religious groups. In fact this is the most important Chapter as far as I am concerned, more important than any other because this is the basis of the restructuring of governance in our country. As it has been said before, I support the option three (*clapping*) which gives powers to the local people because there is no question of some are under developed or others are developed. Others will depend upon other groups. This should be a challenge

for all Kenyans to be able to progress themselves. As was said yesterday by the able Commissioner that what we have been doing, Sessional Paper No.10 was to produce people but not to develop the areas and these people go to the urban areas to develop those areas and leave their areas where they come as backwards as they were.

For example in my case, I have never worked in my home area Lamu because there are no facilities there for me to work. Now apart from that there are some other points, which I would like to make. If we go to Page 6 there is the Constitution powers point No.10 – Constitution Powers and Functions of the lower level of Government, including local authorities and village governments shall be established by the Devolution Act. I feel that is wrong, it should not be left to the Act. The powers of the units should be decided, at least the principles should be decided here in this Conference and be part of the Constitution.

The other thing is on the Mobilization Allocation and Fiscal Commission. How is this Commission going to be formed? It has to be stated here and the whole country, all regions have to have members otherwise you will have a Commission where the members are coming from a certain area. If you look at that, that is Section 322, it is a Commission, which has a lot of powers. In fact it is the one, which will decide the finances of the country. Therefore, I feel that even that commission has to be decided by us, by this Conference and not to be left to somebody to choose members from a certain area.

Thirdly, I feel this is a challenge to all of us and we must take this, if not anything else. This is the one, which will really change the Constitution. Therefore, I feel that we support Option 3 that we have the 18 units and I am sure we will develop (*clapping*). It will be a challenge to everybody. Thank you Mr. Chairman.

**Hon. Delegate Bonaya Godana:** Next block. 407.

**Hon. Delegate James Omolo Kayila:** Thank you, Mr. Chairman. My name is Omolo Kayila, District Delegate number 407. Mr. Chairman, just to add my voice to those who have spoken, I agree that this is the most important Chapter. It is the Chapter that is going to bring Kenyans to participate in the governance of this country. I am in support of Devolution and I would like to suggest that we add in the provisions that have been given the principle that will allow some units to have joint activities where this is desirable. This has not been spelt out very well, although in the previous Chapter it was mentioned. I would like that to be added so that some two or three units can come together where they have some common areas where they can act together and operate.

The other proposal I have to make Mr. Chairman is that we should not bother very much about this rearrangement that it is going to cost us a lot of money. Indeed what we are doing is just rearranging who is going to do what. Agriculture is already provided for, there is money for agriculture. Education is already provided for and there is always an annual budget for education. So if we are going to give the localities the powers to run these activities, the budgets that they have been using must also go with them and they are not going to remain at the center. (*Clapping*).

Therefore, to suggest that they are going to have a very expensive structure, I think this has got to be looked into. The other thing is that it is not only the money, there are other resources that are available that have been used by the head of this. You cannot transfer health services to the localities and leave the money that health services was consuming in Nairobi. The health services that are going to be taken to the districts must go with the budget that was being used.

On the structure Mr. Chairman, I do agree with those who are proposing that we go for Option 3. I would like to suggest something that Option 3 is good but we should have some principle whereby we put a limit to the size of the population that is going to be taken care of. So that we have a ceiling of say 3 million people. When we have more than 3 million there should be a provision that will allow for the revision, to look how to split that unit because it may become too large. By accepting Option 3, Mr. Chairman, I

also suggest that we split Unit No.12 into North and South Nyanza, so that the Northern part has 1.5m people and South has 1.2m people.

I also suggest that on capital projects and other development programmes like in health, water, electricity and industrial establishments, that if the units contribute one shilling the centre should be able to also contribute one shilling to support them in that development area. Thank you very much.

**Hon. Delegate Bonaya Godana:** Next block I am looking for 057, Member of Parliament (*Murmurs*).

**An Hon. Delegate:** Point of information.

**Hon. Delegate Bonaya Godana:** Who are you informing, me or the person on the floor? (*Murmurs*) Okay I will honour my promise in due course. 596 I have noted. Yes. I know I had called on you and asked you to sit down earlier so--

**Hon. Delegate Kibutha Kibwana:** I also, like my other Honourable colleagues, wish to congratulate the Commission for--

**Hon. Delegate Bonaya Godana:** Identify yourself.

**Hon. Delegate Kibutha Kibwana:** My name is as you have said Kibutha Kibwana, 57.

**Hon. Delegate Bonaya Godana:** 57, I did not say Kibutha Kibwana.

**Hon. Delegate Kibutha Kibwana:** Okay (*laughter*). He takes liberties with me because we went to school together. Thank you. I want to say that the concept as expounded by the Commission on Devolution has a lot of merit and I am feeling that the sub-national level Option 3 is something worth considering except that I would not at this juncture be very rigid in terms of the number of units because we are also told they can

be up to 27, they have that kind of option. I think it is important that people are asked whom they want to be with, so that there is an element of self-determination. We do not put people together and then they start saying who said we wanted to be together. So, a Boundaries Commission can actually enable us to determine who wants to be together so that the devolved system is received in a positive way.

Chair, I think we need to reconsider not having too many levels so that this devolved government is effective, it can give us participation, it is not bulky and it is not very costly so that we have sustainable devolved governments. I would urge the Delegates to explore the possibility of the sub-national level and the district councils being made one unit, so that from the wards you can elect people up to the sub-national level so that what was local government before and now the sub-national are handled together.

I want also to persuade the Honourable Delegates that there is one level of devolved government, which is already working, this is the constituency. As you know HIV/AIDS work is being done through constituencies, also education funds, bursaries are being disbursed through constituencies. We also have a development fund which is coming and roads as well. So at that level we have several things that are happening now and therefore it could actually be a very useful level of devolved government, because as a matter of practice it is already beginning to happen and I think it is important to have councils at that level so that the MPs are also controlled by councils. It is not enough to limit the President; we also need to limit MPs so that they are helped to do their work by councils. Like all that money now, that is involved in those levels. I would like to ask that you consider that.

Also in terms of the Chief Executive of a devolved government, the elected person of course who is the political head is elected but in terms of the Chief Executive Officer of any level, these could be nominated by the Central Government and then vetted by the council so that the council itself has the last word on who is to be the Chief Executive and all other employees of the councils should be employed by the council itself. It will of

course be necessary to co-ordinate all departmental heads and therefore this is why I am suggesting this route for the Chief Executive Officer.

Then we would require to ask ourselves whether the devolved governments will be passing laws or will be passing by-laws and regulations so that we do not also have conflicts of laws and so on. I want to say that we need to very carefully structure this devolved government because as has been said, this is really the level of government, which is going to take government to our people. To conclude, because the bell has gone, as the Chairman of the Conference also want to tell you that we have to be careful because even devolved governments can be abused. They can be authoritarian. You know what has happened to LATF funds, so in constructing them we must also be careful to insulate them from being abused, so that we do not also have dictators at that level. Thank you very much for listening.

**Hon. Delegate Bonaya Godana:** 355.

**Hon. Delegate Michael Githu:** Thank you very much Mr. Chairman. Honourable Delegates my names are Michael Githu delegate number 355 and I also want to join those who think this is a good document, the latest that we have got, compared to the one we had last time. I want to say that the misgivings we had last time on Devolution have been addressed and we want to commend the Commissioners who worked on that one, and particularly we want to commend Dr. Mutaka Kangu who I think was a 'Mr.' last time and now he is a Doctor. I think his input in this work, has a bearing to his elevation to that other status. Thank you very much.

Now, I wonder after this presentation whether we should not re-write this Chapter on Devolution because last time let us admit it, *ilikuwa mbaya. Kama ni mbaya ilikuwa mbaya, sasa ni nzuri*, why can't we re-write it in line with what has now been presented. There are some aspects of devolution, which I would like to look at: the place and role of the local authorities. In my view the local authorities are already practicing some form of devolution through their programmes. These are is the local authorities, service delivery



and all that. I think even according to this summary, they are saying that, the districts should be the principle levels of devolution. In my view we should not be shy to say that the agent to implement this Devolution should be the local authorities, because the structures are already there and there is no need to create other structures to rival what the local authorities are already doing. We already have the staff and all that. I think the best thing is to come out and say, the agents to accomplish this Devolution would be local authorities and we just stand by that.

What was said yesterday should not be an issue here. The law of diminishing returns should not arise because we have the Provincial Administration, which we are scrapping off hopefully, and the buildings are already there. We are only removing the officers to put some other officers there. The local authorities are already there and they have their workers. So we only need to re-train them and implement this Devolution. We should not worry about cost at this stage, because we all need to support devolution if we have to develop the country evenly, otherwise we shall have regions, which will never develop if we do not implement this Devolution. Thank you very much, Mr. Chair.

**Hon. Delegate Godana Bonaya:** Thank you. 485.

**Hon. Delegate Raphael Mwai:** Thank you, Mr. Chairman, my name is Raphael Mwai from the Professional Associations. I am delighted to have this opportunity to make a contribution on Devolution.

**Hon. Delegate Godana Bonaya:** Honourable Delegate 381, what is your point of order?

**Hon. Delegate Katamu Rita:** Mr. Chairman, Sir, may I know why ladies are not given a chance? From the time you started it has been all men. Is Devolution for men or for men and women?

**Hon. Delegate Godana Bonaya:** Okay, point taken.

**Hon. Delegate Raphael Mwai:** Thank you very much Mr. Chairman.

**Hon. Delegate Godana Bonaya:** I will make sure I look out for women especially in the next block. I think I have tried to do that, but for some of the block, ladies have not been putting up their hands.

**Hon. Delegate Raphael Mwai:** Thank you, Mr. Chairman, as I was saying Devolution is a key to participatory democracy and therefore to human development and I would like to commend the Commission for what was clearly an excellent paper. I would also like to say that governments are a necessary evil. Governments are new creations and governments are necessary because we as individuals cannot do those things that require government. Governments are expensive and governments are intrusive. Those who do business in town know, before you start the City Commission is there, before you settle the Income Tax people are there, before you settle the Public Health is there, so the less the government you have the better.

We talked about 200 billion shillings collected against a demand of 350 billion, a short fall of about 150 and therefore we have to borrow that money and we have to pay the money that we borrow and that is a centralized government. We are doing Devolution and we support Devolution, but we have to be realistic in terms of our ability to manage Devolution and this point was underscored by the Chairman of the Commission. This is because we have seen local authorities that have not done what they are supposed to do, and we cannot ignore that, and hope that there is something that will change and that we have all the resources we want to do the type of things we want. Therefore, Mr. Chairman let us limit the levels of devolution to three levels let us not (inaudible) institutions at the local level we can design a consultative mechanism where people can express themselves and input it to development.

To think we can design up to four layers is to be unrealistic in terms of our ability to effectively manage that devolution. As it was said yesterday, even as we agree on the type of unit we want, let us also do some simulation and see exactly what we are talking

about. Let us not create things that we cannot sustain; so let us limit ourselves to three levels. In relation to the number of units we want, let us discuss the terms of cost that we want to spend on these. We have spent time talking about distribution of resources, equitable distribution of resources but we have not given attention to our ability to invest and create wealth in resources. Let us put those principles as the work of government. That is a primary purpose of government, is to create the environment that will enable people to create wealth for themselves. Thank you very much indeed.

**Hon. Delegate Godana Bonaya:** Next block I see there is only one board up, that is 303. (*Murmurs*) You cannot blame me.

**Hon. Delegate Margaret Nyathogora:** Thank you, Mr. Chairman, for remembering ladies, (*laughter*), and I am very happy because of you. I would like to congratulate Commissioner Mutakha Kangu and Commissioner Wanjiku Kabira for the good work they have done. In fact if there is a chapter which has cared for women, it is this one because whatever they have been demanding--

**Hon Delegate Gonaya Bodana:** Please identify yourself for the record.

**Hon. Delegate Margaret Nyathogora:** My names are Margaret Nyathogora from Nyeri, a District Delegate. If there is a chapter which has cared for women it is this one. Whatever they have been demanding, in fact it is coming automatically. Power is owned by people and the Devolution Chapter has made it to go right at the ground to the people. There is one thing I would like to suggest. There are elders right at the village. There are cases whereby a certain person steals a cow and he is taken to the district headquarters. Let us create a council of elders whereby they will be listening to such cases.

The other thing, I am for option three whereby the representation of women is taken care of and that is very good. Otherwise thank you very much.

**Hon. Delegate Godana Bonaya:** Thank you. Given that today-- Would you want to go for tea break now or do we do away with the tea break? (*Murmurs*) We continue? (*Murmurs*) 399.

**Hon. Delegate Grace Ogot:** Mr. Chairman, I thank you for giving me this opportunity since yesterday and the day before. Mr. Chairman, we want to thank Mama Kabira and Commissioner Kangu for yesterday together with the lady who presented yesterday, they were very explicit. I have three points, one, option three gives community a slightly bigger unit to cover several big areas. Number two, Mr. Chairman as you see us here, many people who retired five years or six years ago have not received their benefits because they have to travel to Nairobi every time they need that money and officers involved are not there. Devolving power to the districts or provinces or to the units will give older people an opportunity to get their retirement benefits as soon as they retire.

Number two, in the area of development let us say Nyanza, we have fish, but we have no factory so all our fish comes to Nairobi having been paid three bob and they are sold back to us for a hundred bob. The devolved power will give us an opportunity to run our own business.

Three, it will be the same also for the area of sugar growers as well as rice and tea growers to get an opportunity to have those programmes in our areas. As far as units of devolution are concerned, local authorities would be the best as opposed to districts because already they have got units which only need to be expanded where as at the district headquarters, the opportunity will be very small as time will be wasted when we have to build new units. I am looking forward also Mr. Chairman that in devolved powers women and men will get equal opportunities. This is because Mr. Chairman as you remember, we go to school together from primary to universities and some of the women are very bright but when it comes to job opportunities they do not get that. I therefore do hope that the committee will make sure that they assure equal opportunity for their men and their women. Thank you, Mr. Chairman.

**Hon. Delegate Godana Bonaya:** Thank you very much, I think may be it is fair that I allow ten minutes for tea break. Only ten minutes, because I have seen a lot of people walking out. Only ten minutes and we re-assemble here in exactly ten minutes. Technical Working Committee C or Representation of the People who have not collected their files are advised to do so over tea and lunch breaks at tent number 3. Allow them just ten minutes.

## **After Tea Break**

**Meeting reconvened at 11.45 with Prof. Yash Pal Ghai in the Chair.**

**Prof. Yash Pal Ghai:** Take you seats. Dr. Godana had told me that he had to leave us and that the next speaker ought to come from this block here. So, could we have a district representative from this floor. Do we have one?

**Com. Mutakha Kangu:** We are supposed to start from this line.

**Prof. Yash Pal Ghai:** I am sorry I am supposed to start from this one and I call upon Delegate number 471. Will you please take your seat we are commencing now.

**Hon. Delegate Rose Lukalo-Owino:** Thank you, Mr. Chairman. My name is Rose Lukalo-Owino, Delegate number 471 from civil society.

**Prof. Yash Pal Ghai:** Excuse me, will you please be quiet. Please go on.

**Hon. Delegate Rose Lukalo-Owino:** Thank you. I would like to join in commending and acknowledging the great job done by the Commissioners on this chapter. I would like to speak specifically about implementation. According to me, it was one of the weaknesses of the previous draft and I do not see a lot of progress in terms of what was presented to us. I think in terms of implementation that will be the stumbling blocks and we are revolutionizing the decision making structures and it has very, very wide

implications for implementing structure, which is essentially the civil service and their tentative institutions. I think this presents real dilemmas, when we create a new house and we have our traditional Parliament which takes priority in terms of decision making and if some of these decisions in terms of implementations feed through the civil service as we see today because the local authority structure as it is today feed into the civil service. I don't know what structures we would be creating going forward. I would like to request the presenters to perhaps speak a little bit in this regard and I would also just like to point out the need for very close collaboration between the Technical Committees that are going to address Devolution and the public service. Thank you.

**Prof. Yash Pal Ghai:** Thank you very much. We turn to honorable number 595.

**Hon. Delegate Martin Shikuku:** *Asante sana Bwana Chairman kwa kunipa nafasi hii. Jambo la kwanza ninashukuru wale waliotengeneza haya mambo tunayozungumzia juu yake, yaani kugawanywa kwa madaraka kutoka juu hadi chini, wamefanya kazi nzuri sana na Mungu awasaidie.*

*Pili Bwana Chairman, ukweli ni kitu ambacho hakiwezi kufichwa. Sisi wengine ambao tulibarikiwa kuwoko wakati huo, tuliona haya haya ambayo sasa mnazungumzia juu yake. Kwa hivyo ukweli ni Mungu na Mungu ni ukweli, na kwa vile mumpeta taabu kwa miaka arubaini kama Waisraeli walivyotangatanga katika jangwa, baadaye walifika Canaan, watu wa Kenya sasa mmefika Canaan.*

*Bwana Chairman, ningependa kuwakumbusha wananchi walio hapa kwamba, lile jambo ambalo mmoja wa waheshimiwa walio hapa alisema kuhusiana na pesa, pengine hapa tukiwa na pesa tutaweza kuwagawanya madaraka haya. Hayo ni maneno ambayo sio kweli. Wale waliotoa hii hoja Bwana Kangu alisema, kutokana na vifungu vinne vya kutoa kodi vilitoa billion mia mbili, vine tu lakini ile kodi ingine ilikuwa haijaongezwa. Ukiongeza zile kodi zingine ambazo uibiwa hatutakuwa na shida ya kuendesha haya madaraka ambayo sasa tunayataka yafike kwa mwananchi.*

*Jambo lingine Bwana Chairman, ni kuhusu habari ya decentralization. Tunataka kwa mfano kama ni upande wa agriculture, hio Ministry ya agriculture ipelekwe mahali kilimo ni nyingi kama vile Bonde la Ufa. Kama ni habari ya tourism iende Mombasa. Watu wagawane haya madaraka, wizara sehemu ambako zinaitajika sana ili tugawane hizi pesa ambao zote huja Nairobi. Hata Mturkana akitafuta pesa zitoshe, huja hapa Nairobi anatumia hizo pesa hapa na zikiisha anaenda Turkana mkono mtupu. Kama ni habari ya fishery, Waturkana wapewe huko Lake Turkana.*

*Jambo lingine ni kuhusu kuajiriwa kwa Public Service Commission. Hili ni jambo ambalo hatuwezi kulifanya kutoka katikati na ikiwa ni Public Service Commission, iwe kila Jimbo liwe linawakilishwa katika hio Public Service Commission ili tusipate watu wa kabila moja au sehemu moja wanachukua madaraka katika hizi kazi.*

*Jambo la mwisho Bwana Chairman, kwa sababu saa zinaenda, ni level ya madaraka haya. Mimi ningeunga level nne, National, Regional, District na Village. Kwa sababu haya ndio madaraka ambayo yakianza kupelekwa mpaka yamfikie mwananchi aweze kujua au akate shauri ni kitu gani anataka kufanya. Anataka barabara hii itoke hapa kwenda pale na maoni ya wale wa village au ya district au ya regional yawe yakijingatiwa. Bwana Chairman, tunapotoa haya madaraka lazima pia tutoe fedha za kuweza kuendesha hiyo kazi. Kitu kilichofanyika zamani tulikuwa na regional assemblies, the Central Government ilikataa na fedha na kwa hivyo regionals zikafa. Hatutaki mchezo huo safari hii, tunataka kuwe na Senate kama Central Government inakalia fedha ambazo zingeweza kuendeleza haya madaraka, Senate can impeach the President. Senate can impeach the Prime Minister, to make sure things go well. Thank you very much.*

**Prof. Yash Pal Ghai:** *Asante.* This final block, I have an MP from here, number178.

**Hon. Delegate Philip Ruto:** Thank you very much Mr. Chairman for giving the opportunity to contribute on this very important--

**Prof. Yash Pal Ghai:** Can you identify yourself, please?

**Hon. Delegate Philip Ruto:** My number is 178, Member of Parliament Philip Rotino. Mr. Chairman, I want to say that this is a very important topic, because people we represent are from the rural communities, and Mr. Chairman rural community suffer so much because of centralized power, I want to strongly oppose those who say that, it is very expensive to devolve power. When you devolve power, you also devolve taxation. Mr. Chairman, taxes are also raised from the rural areas and those taxes are going to be scrutinized from the rural areas, the areas are going to improve when you devolve power, because centralized power is evil to the society.

Mr. Chairman, I want to support the third option and say that we have more than eighteen units, because there are some districts, which have been merged with other districts that are not going to work together. Mr. Chairman, I want to support what one of the Honourable Members has said, that we should be able to have a Commission going to the rural areas and asking people from those districts, whom do they want to be merged with? Whom do they want to work with *etc.* Because we want power to be decentralized right to the villages Mr. Chairman, I want to support the Judiciary going right to the rural areas, the African courts. Because as I said, we represent rural communities and you know in the rural communities Magistrate courts are very far, districts are very far. If we decentralize these courts we are going to have small cases within the communities, or villages, being worked out in those villages.

Mr. Chairman, I want to say that riches in this country is decentralized as the mover says. The 67% of 70% of the riches of this country are within Nairobi and central province because of the proximity to the markets within the centre. So, if we decentralize seats to the rural areas money are voted, budgets are made within the villages, budgets are made within the local government, the people in the rural areas are going to be rich. So that money is not centralized within the centre.



Mr. Chairman, I want to say that they have proposed four levels, but I want to propose three levels so that we don't have a lot of bureaucracy in this. So that we have the National level, have the Local Government and the Sub-location. Let us deal with sub-location not the location. With those few remarks, I want to say thank you very much.

**Prof. Yash Pal Ghai:** Thank you. Now I am going to turn to block one, religious 515.

**Hon. Delegate Sheikh Ali Shee:** *Asante Bwana Chair. Jina langu ni Sheikh Ali Shee kutoka group ya watu wa dini, number yangu ni 515. Ningependa kuunga mkono mngawanyo wa madaraka au kupunguza nguvu kwa serikali kuu. Tukisoma historia tunaona wale watawala wazamani kutoka ulaya mpaka bara letu la Africa na area nyinginezo. Tumeona kulikuwa na vita vikubwa kwa sababu ya kutoweko kwa Devolution of power au kutokuweco kwa mngawanyiko wa madaraka. Katika karne ya kumi na tatu (thirteen century), kulikuwa na vita vikubwa katika Europe kwa sababu ya kupigania Devolution of power na mnajua historia hiyo, ili damu ilipomwangika wafalme walilazimika kufuata utaratibu wa kupunguza madaraka.*

*Kwangu mimi ninaona huu ni ukombozi, Devolution of power is a really a liberation for the people of this country. Kwa hivyo kuna umuhimu wa wananchi wa nchi hii ikiwa wanataka wawe huru katika nchi yao, waunge mkono fikira ya kupunguza madaraka kwa hawa watawala. Wananchi wa Kenya wanakumbuka vizuri miaka arubaini iliyopita ni vile tulivyokuwa katika unyanyasaji kwa sababu ya ukosofu wa ugawanyaji wa madaraka. Kukosekana kwa Devolution of power itakuwa sababu ya kunyanyaswa kwa wananchi wa nchi hii, na sababu hii, ndiyo ilileta udhalimu ambao tumekuwa nao katika historia yetu bofu kwa miaka arubaini iliyopita. Vile vile watoe wachukuliwe maoni yao, katika hii Devolution of power ni muhimu sana. Kwa sababu hizi units ambazo ziliwekwa isiwe kama hio sampuli ya wakoloni. Waliwachukua watu wa kabila moja wakawagawanya, wengine wakaenda unit hii, wengine wakaenda district hii, wengine district ile.*

*Ni muhimu sana kuweco maoni ya watu wanataka wakisema waende wapi. Na zile units ambazo ziko karibu ni jambo la maana ziwewe pamoja, kama Lamu yetu na Ijara, hizi ni area ziko karibu, kilomita ishirini baina ya Lamu na Ijara, ambapo Garissa na Ijara ni zaidi ya maili mia moja. Kwa hivyo ni lazima watu wa Lamu na watu wa Ijara watoe maoni, yao, ilituweze kuangalia kama wataungana katika unit kama hizo au kama hawataki.*

*Jambo lingine ambalo ningependa kulitaja, ni kuwa katika swala la watu kuwa huru kuenda katika kila pahali pa kukaa au kumiliki ardhi, lazima liangaliwe katika Katiba. Iweko protection ya wale ambao ni indigenous, wananchi wa area zile. Kama si hivyo watahama wengine waende kule, wale watu wa area ile wakose ile haki katika area yao, watawaliwe na wageni wa kutoka sehemu nyinginezo. Ili ni jambo ambalo wakoloni wamelifanya na hatutaki tena katika Devolution of power, iweko ukoloni huo huo ambao ulikuweco wakati wa Kenyatta na wakati wa Moi, watu maalum kuenda kutawala katika area nyinginezo na halafu wanajifanya wenye haki – indigenous people to be under domination of non indigenous. Kwa hivyo hii ni swala ambalo ni muhimu ili kuweza kuleta masikilizano na maelewano katika nchi hii yetu.*

*Ningependa kuwapongeza wanatume - Commissioners, I really want to commend them on the good job they have done, kazi nzuri ambayo Commissioners waliifanya katika chapter hii, ninaamini kama walikuwa wamepeva nafasi bora zaidi mbeleni kutoka wakati hule tulipokutana mwezi wa pili, wangelikuwa wamefanya kazi bora zaidi na wangelikuwa wametuletea sura ya Devolution of power katika hali iliyo bora zaidi kuliko vile walivyotupatia wakati huu. Lakini tunawapa pongezi kwa kazi nzuri ambayo walifanya, na tunataka tuone mambo haya yote waliyozungumzia jana kwa maandishi ili tuweze kufaidika zaidi. Mungu awabariki Commissioners wote waliofanya kazi hii njema. Kenya ibarikiwe tuweze kuwa na mwokozi wetu hivi sasa, Mungu atuongeze tunapotengeneza Katiba yetu. Wasaalamu Aleykum Warahmatulahi Wabarakatu.*

**Chairman Prof. Yash Pal Ghai:** *Asante. A professional from this group 488*

**Hon. Delegate James Foster:** Thank you very much, Chairman. My name is James Foster from the Professional Organizations I think Chairman that if we want to consider of the cost that this is likely to be and if we look at the list of the proposed units and we think for a moment about the Towns that might be the center of the various units, as we look at the first list we might agree that the Towns should be Mombasa, Nakuru, Isiolo, Garissa, Eldoret, Kisumu. But then when we look at the last list we find that there are a whole lot of new places, which probably don't have the infrastructure in order to provide the necessary administrative phases for the units Headquarters.

One would find new names like Malindi, Nkubu, Garissa, Wajir, Kitale, Kericho, Narok, Kisii, Thika, Nyeri, Bungoma, and Kakamega. I think we should pause Chairman to consider quit how we are going to organize these units and where a logical, sensible, economic center would be for each unit. So that we don't end up as it happened after independence with every Township spending a lot of money (*inaudible*) Municipal town office whatever it was. When there was an urgent need for more beds in the hospitals, more classrooms in the schools. Thank you sir. (*Clapping*)

**Prof. Yash Pal Ghai:** Okay, next I will take Member of Parliament 209 please.

**Hon. Delegate Watangula Moses Masika:** Thank you, Mr. Chairman. I support the process of Devolution, am 209, Moses Watangula Member of Parliament, Sirisia. Mr. Chairman, it is only through Devolution that this country may realize an equitable distribution and allocation of resources. But as you rightly cautioned we have to tread carefully. We don't want the process of Devolution to create narrow and parochial thinking in terms of tribalism and sectionalism that might end up hurting some Kenyans. We want Devolution to make Kenya easier to govern and to make Kenyans truly involved in the governance of their country. We must in the process avoid mistakes that have been witnessed elsewhere in Africa and more particularly, when it comes to sharing national resources both the known and the unknown that we may discover in future. We need strict Clauses that will not generate feelings of secession in the event enormous valuable resources are discovered in certain areas. We must also Mr. Chairman, in the

process of Devolution not create units that may be a burden to the other units within the Republic.

I suggest Mr. Chairman that we have three levels of Devolution namely the Central Government, the District as suggested and then the third and last one should be a creation of Constituency Councils, that will be assisting the Constituencies in the management of their resources. I say this Mr. Chairman because currently resources are being allocated to Constituencies. You have AIDS funds, roads funds, we have a Bill pending before Parliament for the Constituency Development Fund that will be allocating an average of 20 M to 25 M to Constituencies and if we had a council at the Constituency level it may help in managing those resources.

The Chairman, I suggest that in the process of dividing up the Districts we do the following:- We divide Western into two, Rift Valley into three, Nyanza into two, Eastern into three, Central into two, Coast into two. In the process of division I don't think we have sufficient competence here to draw the boundaries. We should have a Boundaries Commission that will take views from people on the grassroots, that will decide which area or which District they want to belong to.

Mr. Chairman I also suggest and I think it was indicated by Professor Kabira that we have a Local Government Service Commission that will deal with the standardization of the management and administration of these Districts. This Commission will deal with issues like audits, will deal with issues like harmony and uniformity in the services being provided, will also be able to develop the manpower capacity of each District so that some don't develop while others are lagging behind.

Lastly Mr. Chairman, we also need to carefully look at the manner in which the taxes are collected and how they are distributed. I think Mr. Kangu went at a great length to explain how we should equalize the distribution of resources. But ultimately Mr. Chairman, if we have valuable resources in this country they must belong to all the people of Kenya and not to any section simply because they are based there. And

wherever we have those resources, if we got oil in Turkana, the oil belongs to Kenya, if we have oil in Lamu it belongs to Kenya. Those resources must go to develop the whole country and not any section at the expense of the other.

Finally, we must learn from the experience in countries like Nigeria let us not create units that tomorrow will be a headache and not a pleasure to the country. Thank you

**Chairman Prof. Yash Pal Ghai:** Thank you very much. I would like to give preference to a representative of Women's Organization. Do you have one? Numbers 489 to 512 am talking to this block. Special Interest Group representative from that block, then let us have District representative, 371 please.

**Hon. Delegate James Kosgei:** Thank you very much Mr. Chairman. My name is James Kosgei, District Delegate from Kericho

### **Interjection**

**Speaker:** Point of order. In the morning I was not given a chance to speak. I have been passed four times, what is happening?

**Chairman Prof. Yash Pal Ghai:** Well, it was a different Chairman but you are next on my list. Let this gentleman finish his remarks, you will get your chance.

**An Hon. Delegate:** I have spent all my time here I have not-- (*Noise*).

**Prof. Yash Pal Ghai:** Please sit down I will give you an opportunity next. Thank you. Please continue.

**Hon. Delegate James Kosgei:** Thank you very much, Mr. Chairman. I would like to first join my fellow delegates in congratulating the presenters of this chapter that they have now sort of figured out how Devolution of Power can be presented in our country. The earlier proposal as you note in your presentation was said to be ambiguous, it was

said to be expensive, it was said to be difficult to implement and surely there was no linkage with the National Government. Your new proposal Mr. Chairman does not seem to spell out how it is in particular a greatest improvement over the previous proposal except for some restructuring and suggestions of the inconclusive groups or alternatives.

You have given us three alternatives and I suppose at some stage you will ask us to vote for this. I would have expected you to sort of clearly give us a definite proposal so that we could discuss this fully. I strongly agree with the principles set out on page five of your proposal despite the use of the phrases such as those deciphered from what the Delegates said. What the Delegates say here and always say are clear and straight forward, I don't think it requires a lot of deciphering. However I have some questions on the criteria used to arrive at the suggestions of the devolved units. You have indeed spelt out on page 22 of your Draft some factors taken into account when you are creating the above units. However I think you are too general in suggesting criteria that do not necessarily involve objectivity. For example when you talk about historical, cultural ties, you are not promoting national unity culturally. When you combine people who probably have similar cultural ties then we may need to question whether the Kenyan culture is really being encouraged

You have used comparable population sizes we know that certain groups are sexually prolific and therefore may have at some stage produced more of their population and therefore having an advantage at this stage in probably being given priority.

You have also used biodiversity at this stage; biodiversity cannot be a term that can be used to create sections within Kenya. Biodiversity means, I suppose, the number of species within our country, and this may not necessarily be useful in creating devolved units. You have also talked about efficiency and effectiveness – I don't know what you used to determine what is efficient and what is effective. You could only probably measure this efficiency or effectiveness by looking at the social economic status of people, the way services are being delivered and so on. Otherwise I would probably suggest that we may need to go back to ask the people whom they would like to have as

neighbours and probably from this we can draw what people want. For example if you went to ask my mother who is a Kipsigis whom she would probably relate to culturally she would probably talk about the Nandi and probably not Maasai. If you ask my child whom she would like to relate to she would probably talk about her or his desk-mate who probably may not necessarily be a Maasai or a Nandi. So I think we may at this stage Mr. Chairman require to go back to ask people whom they would like to stay with. Thank you very much.

**Prof. Yash Pal Ghai:** I would like to ask this block if there is a representative from the Women's Organization? Yes 511

**Hon. Delegate Ruth N. Kibiti:** Thank you very much, Mr. Chairman I think you are beginning to apply an affirmative action in appointing speakers. Mr. Chairman I want to add my voice on those who have congratulated the Commissioners who worked on this revised Chapter on Devolution. Actually it is beginning to settle in my heart that we are moving towards a proper system of governing ourselves. Mr. Chairman I want to support all those who have proposed that option three should be adopted as a model for devolution and am looking at the section, which talks about how the women would be represented. On page 24, 22 of 24 which says except for unit 3 and unit 11 which shall have at least two women.

Mr. Chairman, I want to propose that for purposes of moving towards equality if we are supposed to be thinking in terms of women representatives per unit, lets go for two rather than coming up with a mixed figure of one or two. Mr. Chairman I want to propose that we should retain the figure of two rather than having some units being represented by two women and others being represented by one.

Mr. Chairman I also want to comment on the issue of allocation of resources. Mr. Chairman when we go back to the reasons why we are supporting the devolution of power is because we want the people to benefit from the reallocation of resources. If we move the units beyond what we are seeing here Mr. Chairman, it will not be possible to

reach the people who have been disadvantaged for a long time and these are women Mr. Chairman.

Mr. Chairman I also want to propose that when we are creating units it will also be viable to consider the proximity of some of the Districts, which have been neighboring each other. So that Mr. Chairman we don't create a situation where we create units where people are not happy to be living together or even to be having the same kind of power sharing activities.

Mr. Chairman, I also want to propose that when we devolve these units, I think for purposes of benefiting women we want to promote the position of having four layers, that is the National, sub-national and the Districts and then the Location. Mr. Chairman for many years women have been disadvantaged by the mere fact that the power sharing flowed from the National District and that was it. But when we come to the four layers, at the locational level women will have access to power. Women will be able to participate effectively in power. So Mr. Chairman, I want to propose that the four-layer level should be adopted in this process of Devolution. Thank you very much, Mr. Chairman.

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

**Hon. Delegate Ruth N. Kibiti:** Mr. Chairman, I also want to propose that when we are creating units, it will also be variable to consider the proximity of some of the districts which have been neighboring each other, so that Mr. Chairman we don't create a situation where we create units where people are not happy to be leaving together or even to be sharing the same kind of power and sharing activities.

Mr. Chairman I also want to propose that when we devolve these units, I think for the purposes of benefiting women we want to promote the position of having four layers, that is the national, sub-national, the district and then the location. Mr. Chairman for many years women have been disadvantaged by the mere fact that the power sharing flowed from the national to the district and that was it. But when we come to the four layers at the



locational level, women will have access to power; women will be able to participate effectively in power. So Mr. Chairman, I want to propose that the four-layer level should be adopted in this process of devolution. Thank you very much Mr. Chairman.

**Prof. Yash Pal Ghai:** Thank. I overlooked Delegate, I think your number is 0596, yes please, you have been patient, I thank you for that.

**Hon. Delegate Hezron Miserere:** *Asante sana. Jina langu ni Hezron Nyerere mimi nana-represent Chama cha Kisiasa. Nimeshukuru Commissioner ambaye alileta hii chapter ya devolution ambayo ingekuwa kwa nafasi ya kwanza, na kwa vile iko kwenye nafasi hii tutashughulikia kuichangia.*

*Maoni yangu ni haya, nina tashwishi na yule Delegate aliyesema Kenya haiwezi kuwa na ushuru ambao unaweza kuiwezesha hii nchi iendeleo kuwa na Katiba mpya, kwa vile nchi hii ina ushuru mwingi. Wakenya hata hawajaelewa ya kwamba vidole vyao, finger prints, vinalipiwa ushuru. Kila kidole kimoja cha kila mwananchi wa nchi hii kinalipwa shilingi hamsini, ambapo vidole kumi vinalipwa shilingi mia tano Certificate of Good Conduct kutoka kwa police stations zote za nchi hii. Tukijumlisha na milioni ishirini ya Wakenya ambao wako over 18 years, utakuta hizo pesa ni milioni nyingi sana na hiyo inaweza kuchangia kwenye ushuru wa kujenga nchi.*

*Viwanja vya ndege vinatoa ushuru, wildlife sanctuaries zinatoa, ports zinatoa ushuru, commercial na micro-sector zinatoa ushuru. Ushuru wa nchi hii uko mwingi na mingi ambayo uko huku na huku. Kwa hivyo ninapongeza Bwana Commissioner, kwa upande wa taxation Kenya haiwezi kukosa tax.*

*Na upande wa province, kuna province ambayo ni kubwa sana kama province kama kasikazini. kutoka Mandera mpaka Lokichogio na Lodwar. Province kama hiyo inaweza kugawanywa zikawa province mbili. Na province kama Rift Valley, inatoka kule inakuja mpaka Namanga, province kama hiyo inaweza kugawanywa zikawa provinces mbili.*

*Province inatoka Machakos inaenda mpaka Malindi, North Eastern, province kama hiyo inaweza kugawanywa kama provinces mbili.*

*Namalizia kwa upande wa cities, Nairobi ni capital na commercial city. Ina headquarters za majeshi kama nne. Eastleigh Airport base, Kahawa, Langata, DOD, Karen na Memorial. Hizo base kila province ikigawanywa, ipewe city na armed forces' center ambayo itashughulikia Wakenya kama wale Wturkana wanaosumbuliwa na.... Wapokoti wanasumbuliwa na Wakaramojong', Wasomali wetu wako northern wanasumbuliwa na Wasomali na kugawanyika kivita . Waturkana wanasumbuliwa na hawa watu wanaoitwa Oromo Liberation group. Vitu kama hii vikigawanywa na kuwe na centers kama za majeshi. Polisi wetu hawawezi kuwa na hiyo kazi nyingi ya kuuwawa huko na ma-gangs na majeshi wetu wanakaa tu kwa kambi na kulala. Kwa hivyo mchango wangu ni huo, kuwe na centers, every province should have one center. Na every province should have armed forces ambao watalinda hawa watu from conflicts, destruction and invasion. Yangu ni hayo mafupi. Asanteni.*

**Prof Yash Pal Ghai:** Thank you. Before we go further I would like to make a couple of announcements.

**Hon. Delegate:** (inaudible).

**Prof Yash Pal Ghai:** Please let me make my announcements then will come back to you. There are going to be several meetings over lunchtime and I would just like to remind the different committee members about those meetings. The Steering Committee agreed that the district coordinators will meet with their Delegations in your prescribed tents so that we can finalise the list of members of the Technical working Committees. We still have a few problems to sort out. The provincial coordinators know about these problems and if you assemble, I think the time suggested was just before lunch and resolve that outstanding issue so that we can finalise the list of members of Technical Committees by the close of the day today.

I also remind you that the Welfare Committee is meeting at lunchtime as well in the Steering Committee tent. And the final announcement I have is that the Convenors and Rapporteurs have a meeting at 2.00 pm at Lenana Mount Hotel. The rest of us will reassemble here at 2.00 pm to debate the Motion on Affirmative Action. I intend to adjourn at 12.30 pm so that our Muslim colleagues can have time for prayers and for lunch. So we will adjourn at 12.30 and we will meet at 2.00 sharp so we have ample time for the important issue of Affirmative Action.

So now I come to this block, and I haven't heard anybody from the Trade Union movement today, so is there--

**Hon. Delegate:** Point of order.

**Prof: Yash Pal Ghai:** Yes, what is your point of order?

**Hon. Delegate Wilberforce Kisiero:** My name is Wilberforce Kisiero, delegate 0389. I have detected a very serious anomaly in this document on devolution Chairman, in that it has placed Mt Elgon in the wrong list. Mt Elgon people have always said that they want to belong to the--

**Pro. Yash Pal Ghai:** It is not a point of order I am sorry you will have another opportunity to--

**Hon. Delegate Wilberforce Kisiero:** Please, Mr. Chairman, it is very serious We belong to the East we should be listed along with West Pokot. Trans Nzioa, Marakwet and others (*clapping*) but not where we have been listed. So, Mr. Chairman, it is a very serious anomaly.

**Prof. Yash Pal Ghai:** Okay your point is taken.

**Hon. Delegate Wilberforce Kisiero:** All the four Delegates from Mt Elgon have that instruction, we don't even need any Commission, boundary or what have you. It was decided long ago--

**Prof. Yash Pal Ghai:** Will you please take your seat please? Take your seat!

**Hon. Delegate Wilberforce Kisiero:** And it is also in your document on Mt Elgon. Thank you.

**Prof. Yash Pal Ghai:** Please take your seat! A trade Unionist from here? No Trade Unionist, NGO's, their representatives? (*Murmurs from the delegates*) No. In that case I will take a Member of Parliament, 114.

**Hon. Delegate Paul Muite:** Thank you Mr. Chairman, 114, Honourable Paul Muite. Mr Chairman I have got two points to make.

The first one, Mr. Chairman, is that the otherwise excellent report by the Commissioners on devolution can be improved further if the Commissioners, before we to the Committee stage, can give a schedule of cost analysis in respect of each of the three options, which they have given us. So that when we go forward we know how much each option is going cost.

When we want to give free education in secondary schools, the first thing is to ascertain how many students we have, how many more teachers we want, how many desks, laboratories and what have you, so that we know the cost. Can they do that cost analysis?

The second point I would like to make, Mr. Chairman, is to appeal to you, to request you to clarify to us the Delegates that at this stage we are not being called upon to vote for any of these three options, we are just giving views. Because five minutes is not enough to enable any Delegate to develop and articulate arguments on any particular position. That is going to happen in the committees, you promised and we understand, it is in the

committees where we shall have adequate time for quality in-depth consideration of these issues. So let the three options go forward. In fact you remember that we invited those who will not have any opportunity to contribute to put their views in writing and to forward them to the committees. After due consideration, in-depth analysis in the committee stage Mr. Chairman, we will come back here and vote on the various issues. Thank you.

**Prof. Yash Pal Ghai:** And that is quite correct. Thank you. We turn to this block now and is a Trade Unionist among you? No. NGO representative? 468

**Hon. Delegate Helen Jepkerich Too - Yego:** Thank you, Mr. Chairman. My name is Helen Yego, representing the NGO. I want to add my voice on devolution of power. I want to support the option three, with the recommendation that we need the Districts also to look into the boundaries and also the compatibility of the Districts.

I also want to add my voice to the four levels, because the four levels will support this Constitution. This Constitution is talking about the sovereignty of the people. That cannot be realized without having the four levels, because that is where the participation of the people will be.

Also the chapter three on the national goals, values, and principles that cannot be realized if we do not devolve power. Therefore I would like to say that, I foresee the use and the management of the rich resources of this country better in the devolved government than in the central unit which has been quite difficult for this country to manage.

Also this devolution of power will correct the ills and the lopsided distribution of services in this country. And so I oppose the issue of Constituency. I come from a Constituency, I work in the rural area, I have not seen the effect of the rural infrastructure, the roads, with the funds coming through the Constituency. So I don't support that, I am opposed to it.

Also we need to determine the commissions. The commissions should be at the local government level that would look into this devolution of power.

And lastly Mr. Chairman, I would like to say that devolution would also enhance the re-distribution of industries, without concentrating them in the few cities: whereby the industries would go where the production is. For example people who come from the fisheries production areas, industries on fisheries would be in those areas and not being driven far from that area. Thank you very much Mr. Chairman.

**Prof. Yash Pal Ghai:** Thank you. I turn to this block. Is there a Trade Unionist? It seems to be an endangered species today. So I will call upon 343

**Hon. Delegate Saina Augustine Kibet:** Thank you, Mr. Chairman, Sir. My names are Kibet Saina, Delegate number 343 from Nandi District. I am rushing in support of this devolution especially unit number three. I support it but I am requesting for some few amendments. And I want to add to other units in the largest provinces like the Rift Valley.

I am requesting so Sir, because Rift Valley is a very big area with different types of farming and so forth. So I am requesting Mr. Chairman to go as follows. In unit (1) I want to add Turkana and West Pokot--

**Prof. Yash Pal Ghai:** Under which option are you talking now?

**Hon. Delegate Saina Augustine Kibet:** I am talking on unit number (3) option number (3)

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

**Hon. Delegate Saina Augustine Kibet:** So on option number 3 unit 8, 9, 10, and 11. So I want to add one more and I want to specify as follows, Turkana and West Pokot to be

one unit, Trans-Nzoia, Marakwet, Keiyo, Uasin Gishu, Nandi North, Nandi South and Mt Elgon to be one unit. Kericho, Buret, Bomet to be one unit, Kajiado, Narok, Transmara, one unit, Nakuru, Koibatek and Baringo, to be one unit. So that is my request Mr. Chairman sir, because if you mix Baringo and Uasin Gishu, I think their headquarter might be Eldoret. So somebody from Baringo, right from (inaudible) to Eldoret, is very far, the nearest point is Nakuru. So I am also looking at barriers like rivers and so forth. So Mr. Chairman that is my request.

Mr. Chairman, Sir because if you mix Baringo and Usian Gishu I think the headquarters might be Eldoret. Therefore somebody from Nginyat going to Eldoret would be very far. The nearest place is Nakuru. I am also seeing barriers like rivers and so forth. That is why I am requesting for that Mr. Chairman Sir.

**Prof. Yash Pal Ghai:** Thank you very much. Now any Trade Unionists from here. 449 please.

**Hon. Delegate Benson Okwaro:** Thank you very much, Mr. Chairman. First I would like to add my voice to those who have supported the issue of the Devolution of power. We also want to thank the presenters for having done it very well. I think that is the only area that all of us appear to have understood very well. My names are Benson Okwaro, Delegate No. 449. I belong to the Trade Unions' group.

I also want to add my voice to those who have supported Devolution of power and I particularly want to say that I support the Option 3 as presented to us yesterday. Now, I also want that while discussing the area of Judiciary, I think there is also be need to consider devolving the Judiciary to the Local Government so that particularly we in the Industrial Court, have always advocated for the issue of establishing industrial courts in the Local areas. As you know Mr. Chairman, industrial court is only here in Nairobi and we have only 2 judges and most of our cases have always remained pending for years and this has made workers to suffer quite a deal because most of their cases take two years and some of them often die before the cases are listened to.

I think, I want to disagree with those who think that funds may not be available when we go to the devolved powers. I think there is a lot of taxation in this country. If taxes are properly utilized and the funds controlled well, as some of us have said earlier, there should be enough money for the devolved government to use. So, I would want to strongly appeal to those who will be sitting in this Committee to look at this Draft as given by the presenter yesterday and give it support.

Lastly, I want to say that I support the four levels of the devolved government and if all our colleagues will support this, I think we may end up getting one of the best governments.

**Prof. Yash Pal Ghai:** Thank you very much. I think if we all take the next speakers take two minutes or so each, I can go round the blocks once more. So, I start with this group. Is it NGOs representative? 470 here please?

**Hon. Delegate Sophie Abdi Noor:** Thank you, Mr. Chairman. My names are Sophie Abdi Noor, a representative from NGOs sector. I would like to confirm and reconfirm that the principles, the values and the concepts are very good. According to me, this is the most important Chapter in the whole Draft Bill. For a long time we have been asking for change and empowerment of Kenyan communities and through this process, I believe that we are going to achieve the empowerment that we were asking for. We were agitating for a long time that we needed a change. What kind of a change do we need?

That will empower the community to decide for themselves, to govern themselves, to plan for themselves and to make their own decisions. That will help monitor and audit their own affairs, not affairs that are planned elsewhere, designed elsewhere and implemented by other people whom you do not know and after a short while you hear of the 'white elephant projects'. We do not want to hear that.



For forty years we were hearing about that, but today God has given us this chance and we are here representing the other Kenyans who did not have the chance to come here. Therefore, we are saying that this is the right time that we are supporting this Chapter. I am personally supporting it 100%, and my reasons are those that I have given.

The levels of Government that I would like to support are the 4 levels which were suggested and I just want to suggest a small change in that we should have:

1. The national Level
2. The Regional Level
3. The District level
4. The Locational Level

If you remember, before we went on recess, we discussed this Chapter and in this same Hall, I supported this Chapter and I said we wanted the powers to be devolved at the District level. For that reason, I am supporting those four levels of government. Those who are saying that we do not have financial or budgetary allocation for these, what are we using today? Let us ask ourselves, “What are we using today?” We will use the self same funds which will be managed, handled and planned by Kenyans, not a few people.

For the units, I would like to go for that type of devolution level, the 18 units, but if we can have the other options that we were not told, then I am willing to go for more units too so that we can empower the local person.

On Distribution--

**Prof. Yash Pal Ghai:** I will give you one minute, please.

**Hon. Delegate Sophie Abdi Noor:** One more minute? Thank you, Mr. Chairman.

For Distribution of Functions, I think that was marvelous; it was beautiful and the way the functions of the 3 Arms of Government were distributed. To me that was excellent and I want to buy to that.

Now, let me also go to-- You know if I stand and I don't talk about women's issues, then I have not said all that I wanted to support.

In the paper; somewhere in last two pages, somewhere there was "....except Unit 3 and Unit 11 which shall have 2 representatives. The rest will have one representatives." If we have larger regions, and that is why we are saying 2 representatives, let us give them 4 representatives and we give other regions 2 representatives. Thank you, Mr. Chairman.

**Prof. Yash Pal Ghai:** Thank you. 467 please.

**Hon. Delegate Mary Wambui Kanyi:** Thank you, Mr. Chairperson, for giving me this opportunity. My name is Mary Wambui Kanyi, Delegate No. 467 from the Civil Society. First I congratulate the Committee that drafted this Section on Devolution. Devolution is very important, especially for our communities since it is going to enhance the participation of even the common person at the Community Level to participate in governance and to also give people control of the destiny of their lives. I have a few points to make: One is to support Option 3 with 1 addition. The addition is that since Nairobi is our commercial capital, we should have another capital; the Government or the Administrative. So this means that we will have another unit standing for the Government or Administrative capital, which we, either here at this Conference would agree where that capital would be or Kenyans as a whole should be consulted to agree on the site that is the region where that capital would be.

Secondly, I would like to propose that we adopt the concept of competition and redistribution. In terms of competition, it would be very important among the different units because each unit would be committed to promoting and exploiting the resources in their region. The way I am proposing that the completion should be, is that each region

retains 60% of the revenue collected in the area. This would ensure that for the services in that region, they would get enough resources for promoting the status of life in the region. Then the 40% would be what would be used in redistribution. That 40% of the revenue would go to the Central Government. That is the money that the central Government would use in redistributing or creating equity among the different regions. So, in each region there would be competition but at the same time we would have redistribution in upbringing the status of the different regions together. Thank you.

**Prof. Yash Pal Ghai:** Thank you. Number 216.

**Hon. Delegate Kipkalya Kones:** Thank you, Mr. Chairman. First of all, like all my colleagues have said, I think-- My name is Kipkalya Kones, Delegate No. 216. I like to join my colleagues in congratulating the Commissioners who presented this Chapter. It comes out very clearly now as before, we had a lot of confusion on this Chapter. Mr. Chairman, I think this is a well done job and now we feel like we are getting close to what we have already all along been thinking about.

Mr. Chairman, I support Devolution 100%. Yesterday we learnt and we heard how devolved units would benefit both commercially and administratively. Mr. Chairman, this idea of having only one center in the country like Nairobi, where all the commercial transactions take place leaving out a lot of other centers undeveloped, has been a big anomaly and now that we are going towards this Devolution, we would like to make sure that all the finances that go into those devolved units will actually circulate within those devolved units.

Mr. Chairman, the other thing we would like to know more about is borrowing power. Whether the devolved units will have powers to borrow directly or they will have to go through the Central Government for guarantees. I think the best option will be that they go through the Central Government for guarantee but then they have a right to borrow as and when they feel they have a need.

The other thing, Mr. Chairman, is to think or talk about the existing external debts. How are we going to distribute those external debts to the regions? I think the best way out on this, Mr. Chairman, is to distribute those external debts to the regions depending on what was done in those regions so that we are not going to start servicing debts **(Clapping)** that we did not incur.

Mr. Chairman, I would like to support the Option 3 scenario. Option 3 gives us something very close to what we think the district could have done but now in a much better arrangement. Mr. Chairman, I think it makes a lot of sense that the ethnic groupings that have always worked together are lumped together to be able to work together. This is because that way, they understand one another and they have the same activity. I think this will also create a very healthy competition between or amongst the regions. What I think should be done, because of historical reasons, is that anything that was not put right by the British or the colonialists, we should put it right now. Mr. Chairman, I think what delegates from Mt. Elgon said about Mt. Elgon moving in to be a section of the Rift Valley, I think that is the best arrangement **(Clapping)**.

Mr. Chairman, we know historically that Mt. Elgon is occupied by almost homogenously Kalenjin community but then they have been in the West for all the time. Mr. Chairman, if we don't correct that one now, we will have done a lot of disservice to those people. In any case, it is a district that is moving with its people and they are homogenously Kalenjins. So why don't they come and join their own brothers on the other side?

Mr. Chairman, on the other aspect and on the same vein, we can also have a district like Koibatek teaming up with Nakuru, Kericho and Bomet because they are very close together and so if they move as a district they will not be interfering with anything. Mr. Chairman, with those few remarks I support Devolution and I support Option 3.. Thank you Mr. Chairman.

**Prof. Yash Pal Ghai:** Thank you very much. Delegate Number - 086.

**Hon. Delegate Marsden Herman:** Thank you, Mr. Chairman,

**An Hon. Delegate:** Point of order.

**Hon. Delegate Marsden Madoka:** From the brilliant presentation by the Presenters, there were many questions which were posed. Sorry, my name is Marsden Madoka, number 086, MP Mwatate. There are many questions which were posed by the presenters. It is my hope that those points will be addressed by the people drafting the new Chapter, so that those questions can be carefully looked at by the technical committee. The area of concern was on devolution of the Executive powers, I think we need a proper structure of this devolved Executive powers down to the location. It is also important that we consider the question of these elective posts. Mr. Chairman, I am greatly concerned because most of the positions are elective positions and once you have these positions elective, they become political. We know the stability of the country has very much depended on a strong civil service. So I think we have to be very careful, when we are looking at the various positions, at the various levels. For example, if you are electing an administrator, who is supposed to enforce law and order; I do not think that person can enforce law and order, because he will try and ensure that he favours his people so that he can be re-elected (*clapping*). So I think it is important that we really consider these various positions. Thank you Mr. Chairman.

**Prof. Yash Pal Ghai:** Thank you. Next one, Delegate Number - 284 please.

**Hon. Delegate Gitari Munyi:** Thank you very much. I am Gitari Munyi, Delegate 284 from Embu. The Commission has done a good job on this area of Devolution, but I think Mr. Chairman, it is important if we contribute and talk about this Chapter, not to lose the national unity bit of it. It is important as we devolve that we maintain our nation as a single unit. I believe also that historical and tribal boundaries should not really tie us down, but the viability of the units we set should be the guiding factor.

Mr. Chairman, the units which we create should be units which are viable and can maintain themselves, not necessarily based on tribal or other factors. It is not fair to have a cake and at the same time eat it. What should be left at the national level, should be areas as it was quite likely put, areas like education which are very important, because some of the units, If they are left to push the education sector alone, then education will be in disarray. We are happy that the Commission saw it right that one of the areas as I have said in the educational sector, should be left at the national level.

Some of the areas like buildings and other things could be centralized. But even that, some of the units could have problems and consequently, it is only right that education is left for the central government.

Mr. Chairman, I agree with Honourable Delegate Wetangula, when he said that the boundaries should be left for the Commission, or a Commission should move and consult the people, to find which areas and how they would like their boundaries created. In the units that I have been put or my people have been put into, we may not have a lot of problems. In Embu and Meru, I think it is viable. What we shall need to do, is make sure that the water which we let roll down in Tana River, irrigates Mbere and Tharaka districts.

Mr. Chairman, it is important also, as we talk about the indigenous or other people, that the voting and other issues which have been raised, we consider them rightly, that the people who stay in a place, are considered on an area's viability but not on the tribe or any other basis which are not viable. Thank you.

**Prof. Yash Pal Ghai:** Thank you very much. Delegate Number 540 please.

**Hon. Delegate Zablun Nthamburi:** Thank you very much Mr. Chairman, I want to...

**Prof. Yash Pal Ghai:** Please identify yourself.

**Hon. Delegate Zablon Nthamburi:** My name is Zablon Nthamburi, from Religious Sector. I would like to support what has been said about the Devolution. I only want to say that we have to be careful not to seem to support ethnicity in the whole issue of Devolution, because we must be one nation and we must be seen to walk together whatever the cost, because our major problem in this country is ethnicity. It could be a danger if we begin to say that this must be here, because we belong to the same ethnic group, I think this is a dangerous trend, which we need to avoid, because we are one nation.

The other aspect I would like to touch on, is the issue of taxation. I belong to Nairobi and so I can say this very strongly that, there was a time that we used to have service charge and I believe it was in most of the local authorities and many of us refused to pay service charge, not because we did not want to pay for the services, but because, there were no services delivered. So, taxation must go with representation. Taxation that does not match with the representation should not be imposed and so there must be a body to look and say, whether the taxes that are being levied are actually being used for the benefit of the people, or whether they are just being levied so that they can be misappropriated. This is important and there must be somebody responsible and having supervisory role to see that these are being used properly.

The Commission proposes that there would be Revenue of Mobilization, Allocation and Fiscal Commission, which actually would do well to look at the whole area of taxation, the whole area of remuneration and salaries so that those levels that are devolved, can be treated equally. We don't want to see a district council for example, that pays workers poorly, while another is paying well. We want to have a nation whose structure is properly mobilized. Thank you very much, Mr. Chairman.

**Prof. Yash Pal Ghai:** Thank you Delegate Number - 222.

**Hon. Delegate Betty Tett:** Thank you, Mr. Chairman, my name is Betty Tett. My number is 222. Mr. Chairman, I support option number two, because:

1. It seems to be the same as it is now.
2. It looks as if it is a merger of the two, the current and what we have put in place.
3. It seems and looks as if it is going too low and it is going to the level of the village.

This to me is going to divide people into tribes and ethnicity. If you look at page 10, Mr. Chairman, it says Nairobi as a local authority is divided into four local authorities. In the Omamo report, it was recommended that the local authority in Nairobi should be five, which we recommended in the Ministry because of the economic factor.

The first one was the CBD area, which will benefit the people from Mathare area. They will benefit from the upper class. The second one was Langata. The people from Kibera will also benefit financially from that particular area. Embakasi, people from Kayole, Rwai and that area will benefit from industrial areas. Westlands, the lower group, Kangemi Karura and the Deep Sea will benefit from the Westlands upper class people, Kasarani the same.

If you look at page 23 Mr. Chairman, where it says, there is something missing between the two paragraphs. The Metropolitan Police is missing there, because there is a need for a Metropolitan city, which will be extended to the periphery, like Mavoko, Ngong and so forth.

We are missing, the Metropolitan Police which will be very, very important if we are going to take care of all the five, which I was talking about. In Devolution also, we should have the Metropolitan Police in that area.

As far as the Affirmative Action is concerned, we should have Affirmative Action at every level and gender should be taken care off, because that one I did not say in this paper. Thank you.

**Prof. Yash Pal Ghai:** Delegate Number - 368.



**Hon. Delegate Joel Kipyegon:** I am Delegate number 368, Joel Kipyegon Sang, from Bomet. Thank you, Mr. Chairman. I also wish to thank the Committee that went back and looked into the Devolution issue. I remember, I am one of those people who are dissatisfied with the first design, because it created a very un-wielding number of devolved units, which would have forced us to go back to the Kenyatta problem, whereby a Constitution is made and a government decides to disregard it. We would have had a situation of returning to unitarism, which in my view is a parasitic system that is used to attain conquest without displaying any outward conflict.

Therefore, I tend to think that, this is the greatest day and we are the most blessed generation in this country, because we are coming to a situation where even the Honourable Martin Shikuku who was at Lancaster has admitted that had the Federalists and the unitarists led by Kenyatta on the other side compromised, they would have arrived at the model we are looking for here today. So we are correcting a historical wrong. At the same time we are removing an anomaly where in our country, we are living like communists and we are desirous of freedom. We want to create a system where our people at their lowest cultural level can enjoy their culture, they have a sense of belonging in this country. There are very many people who fear that this kind of model can encourage ethnicity. I think God himself must have been a tribalist because he created tribes (*clapping*). And if he created tribes, the problem with Africa today is to attempt to deny ethnicity. It is only that when Africa recognizes and totally channels ethnicity correctly, that we will live in peace. We belong to different tribes that are for a fact. What we only need to emphasize is that we are not against each other. We are not the enemies of each other.

I want to say only two things, Mr. Chairman, before I sit. One of the merits of the models that have been given to us is that we are going to have to disburse power from Nairobi. We will have employment, we will reduce even house rent in Nairobi where some people have become permanent landlords and others have become permanent tenants, so that the price of houses in Nairobi is actually determined by a small cartel to

the detriment of the majority of the people of this country. We are disbursing the economy so that people will invest in those rural areas. This is the greatest day in the history of this country (*clapping*). Listen, people say it is very costly; I want to dispute the idea of cost. The thing is, even today as we are, we hear that exempting relatives and big people in government of revenue has cost this country fourteen billion shillings. That is enough to run a government ministry for one year, come to think of it. So we want, actually to devolve and generate more revenue, make this country good for us, make every tribe and every person, have a sense of belonging. Thank you very much. There is shortage of time.

**Prof. Yash Pal Ghai:** Number 487.

**Honourable Delegate Baldip Singh Rihal:** Thank you, Mr. Chairman, Honorable Delegates my number is 487 and my name is Baldip Singh Rihal from the Professional Organizations. I would like too to join in commenting with the Commissioners for coming out with some very clear principles on the devolution, but I do have a small concern Mr. Chairman about the status of Municipalities, it seems that following the previous discussions the Commissioners are now proposing that municipalities be lumped as districts and be treated in the rural category. Frankly municipalities and cities have very similar functions, the revenue basis are based on the same forms of property taxation in other words rates and they also have similar functions like the municipalities.

So, if we are going to have the country with only three cities as classified as urban category areas and forty three municipalities classified as rural category areas, I think that this might create problems in the future. My view is that municipalities---- we have to grade them as districts but they should be treated as urban categories because, they their overall functions are very similar to the cities and they are on the verge of moving upwards rather than moving downwards. So depending upon their viability and their financial ability to sustain themselves, they should work more in the urban category rather than the rural category. And therefore there is a small correction I would like to point out Mr. Chairman. The last sentence starting on page two I believe what the

Commissioners meant to say was ‘With the respect to local government the translation of not terms, that should be towns isn’t it? Towns and municipalities in the state of districts was opposed. I know this was the facts in our first round of discussion, but from what I have emerged this morning and the discussion we had since yesterday afternoon. I would strongly like to urge that municipalities be graded in the urban category and not in the rural category. Thank you very much.

**Pro. Yash Pal Ghai:** Thank you very much indeed. That brings us to the end of this particular round of discussion. The Secretary has just told me of slight amendments to the programme during the lunch break. I had said that you will meet your provincial Coordinators for lunch but now he says that the meetings in these provincial tents will take place from 2.00 p.m to 2.30 p.m. Central Provincial should meet in tent A, Rift Valley in tent B, Nyanza in C, Coast in D, North Eastern in E, Nairobi in F, Western in G, and Eastern in H. The coordinators now have a complete list of Delegations to the different Committees from their Provinces and we want by the end of the meeting that list to be confirmed or to be amended. So, please make sure that you go there after lunch and please come back at 2.30 sharp, when your meeting ends, because we are proposing to end around 4.00 p.m and we do need time for the motion on Affirmative Action. I thank you very much for your contribution and your attention, and I want to thank my colleagues very much indeed for the excellent, paper and the excellent presentation, we have all remarked on that and I want to join you in thanking my colleagues. Thank you.

**Meeting adjourned at 1.05 p.m.**

**After Lunch:**

**Meeting reconvened at 2.30 p.m.**

**Prof. Yash Pal Ghai:** Delegate 121 is here, Delegate 121, okay, thank you. I am about to swear in Delegates so please take your seats so that we can begin our meetings.

Maybe you could just go down there. Could you repeat this, when I say ‘I’ you say ‘I’ and then you say your name. So please raise your hands.

*( Honorable Delegate Amos Kimunya is sworn in).*

**Hon. Delegate Amos Kimunya:** I, Amos Kimunya, being appointed a Delegate at the National Constitutional Conference. Under the Constitution of Kenya Review Act, do solemnly swear that I will faithfully and fully, impartially and to the best of my ability discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment, without fear, favour, bias, affection ill will or prejudice and to the end and the exercise functions and powers as such a Delegate. I shall at all times be guided by the national interest. So help me God.

**Prof. Yash Pal Ghai:** Please sign the oath and I welcome you to the Conference to make your contribution. Welcome back.

The next item on the agenda is a motion, a notice of interest given by Delegate 121. The Motion is,

*“THAT, having observed with concern that some groups in our social-economic set-up do suffer and feel disadvantaged due to discrimination and prejudice on the basis of gender, illiteracy, disability, age, geographical area and other unjustified grounds; this Conference resolves that a Chapter be included in the new Constitution devoted to AFFIRMATIVE ACTION and requiring Parliament to enact a law that will adequately address the root causes of such unfair imbalances”.*

I will now invite Delegate 121 to move the motion. I will give you up to ten minutes to introduce the Motion.

**Hon. Delegate Eng. Karue Muriuki:** Thank you, Mr.Chairman. The Motion as read by yourself is on a Affirmative Action. I do not have a precise definition of affirmative action, however what we mean is that we want positive intervention where necessary in situations where individuals or groups of persons who do not otherwise take care of themselves. By way of introduction, my name is Engineer Karue Muriuki, Delegate number 121 otherwise the Member of Parliament for Karau in Nyandarua District, Central Province. I am an Engineer by profession, hence the word ‘Engineer.’

Mr. Chairman, every child is supposed to have a mother and a father but our society has reached a stage where you find lots of children in our cities who do not know where their fathers and mothers are and somewhere along the way the new Government of NARC did say if you cannot see your father and mother, the Government will be that mother and father”. That is the foremost fundamental aspect of affirmative action that one can think of for taking care of children. Mr. Chairman, I have had instances in my Constituency where gender prejudice, especially on women, have sometimes reached extreme extents. I have heard cases of women who have been disinherited by their fathers and in some instances by their own mothers Mr. Chairman. I have had occasion to refer some of these cases to the federation of women lawyers and I must recommend that body for doing a good job. My observation is that most of these disinheritances are done by people who are using cultural practices as their excuse.

Mr. Chairman, the cultural practices which we borrowed from so that we can bring in the injustice belong to an age which is long time gone. Some of these cultural practices are quite repugnant now. However, Mr. Chairman I would wish to bring to the attention of the Conference that some of those tendencies were quite appropriate some time back. If you were here two centuries back when there was no country Kenya as we know it therefore there was no National Army to take care of our overall security, you needed some people to form that army to protect the community. There were no policemen or watchmen so if you needed to protect your house, the head of the house had to do that. If a woman gave birth to a baby, there was no maid or somebody to baby sit. So the woman had do all those jobs and Mr. Chairman, some of these cultural tendencies, came out of

those extreme situations and when I look at it closely, I find myself if I were in a panel I would locate duties two hundred years back maybe I would have given the fighting work to the man, I would have given the work to look after the baby to the woman, I think I would have done the same.

Mr. Chairman, that time was a time when it was very difficult everybody belonged to a *boma* and whether you are a man, woman or child you were in one *boma*. A woman left her father's *boma* to go to her husbands' *boma* there were no other plans or things in between. Mr. Chairman, all that has changed. The work we do now, most of it is knowledge based and therefore, to say a man would do this or that by and by large we may be come irrelevant and that is why knowledge is very important and literacy is also important.

I have had to deal with a few cases land cases again, Mr. Chairman, where people are denied their right to ownership of land simply because one cannot read and write. I seem to have very little time to move my Motion Mr. Chairman, but allow me to mention that I have had a case where somebody goes to pay for land for example, for his piece of land which he has been duly allotted to by the Government but because he cannot read and write he pays the fee which is needed and he is told bring your identity card, bring your allotment letter and so on and he does not know that when he is doing that, he is in fact signing it away. I have had one such case where in fact the person who was doing that is a land officer whom this person is giving and one of these mornings the officer shows up and asks the old man to go away the land is now his. We tried to go to the Court, to the tribunals. I am the Member of Parliament for that particular individual and I failed and I am saying, we need affirmative action where such people can get some assistance.

Our good Government has brought free education for which we are all very happy but Mr. Chairman, I am still struggling with 10 in fact 12 now disabled children in my constituency with whom I do not know what to do. Every child is getting kshs.633 for which we are very thankful for but this particular group of 12 disabled children require 10 times that because the kind of school they must go to requires special facilities, special

teachers and so on. Recently in Parliament, Mr. Chairman, one of the Members of Parliament from the nomadic areas of this country brought an issue into Parliament and said, "Thank you for free education but where I come from, if you intend to give free education, you must build boarding schools first because we move from place to place". That child, Mr. Chairman, will require maybe 20 times what a normal child in Ol Kalou will require, that is the kind of affirmative action I am talking about, Mr. Chairman.

Mr. Chairman, let me mention a little bit on democratic representation. The work we are doing in representation has very little relevance whether one is a man or a woman, a man can be a Member of Parliament just the way a woman can be and I think it is fair for those people who suggested that at least one third of the representatives should be women. The only thing which I think should be done is to be careful not to write women in our Constitution because times might change. We have the case of Philippines where at the moment they simply cannot seem to get men anywhere. Only men are being elected as President, Members of Parliament and even councilors and they are trying to introduce a law where they say a portion will be reserved for men. Mr. Chairman, we also require to be clear because if we say one third and we are not saying how you will achieve that one third, I think we shall also be bringing a problem to our dear Kenyans. Mr. Chairman my concept of affirmative action is quite wide and broad.

There are some people who find themselves in a very unfortunate geographical situation where they require relief food year in year out. Are we as a nation telling these people we shall give you relief food forever or are we ready as a nation to do something so that those people are able to take care of themselves? Mr. Chairman when we are answering that question, we must not forget that when we are looking for votes for President or somebody, you need the votes of that person who is so seriously disadvantaged just the same as another in a better part of the country Mr. Chairman. Even the rural-urban migration which we talk about, personally I feel personally that we talk about it in high places like here yet you find three quarters of our investment is going into the city be it water, be it electricity and all you are saying Mr. Chairman, is to tell the people in the rural areas, leave the rural areas go to the urban center, that is where the Government

knows they can take the resources. Mr. Chairman, we are also required to accept reality when we are doing all these so that we can also get the correct nature of the affirmative action we require to institute.

I have in mind the last general elections. Out of 210 elected Members of Parliament, only 8 were women which I think is really a shame in the 21<sup>st</sup> century. However, if you look at the statistics, you must rethink what kind of affirmative action you are doing. Out of the total number of cabinets in the general elections, which was 1,024 for 210 seats, 1,002 were men. The end result being 10% of all the men who wanted to be Members of Parliament succeeded. On the contrary, only 22 women forwarded their names, so if eight were elected out of 22 the success rate is 36% which is more than three times the men's success rate. Mr. Chairman, this may be national and one may say that was general elections and perhaps the story was different at the nomination level.

I do not have the statistics for the whole nation but where I come from in Ol kalau Constituency, first of all we were all male candidates for Parliament and we had 10 civic seats, out of those 10 civic seats, only 1 woman was elected which is a bad show. But when you look at the candidates, out of 47 candidates there were 45 men. So the success rate was 20%, nine out of forty-five. But for the women, only 2 stood for the elections. 1 succeeded out of 2, so in my view that is 50% success for the women. So, what I am saying Mr. Chairman is that we have to go to the root cause. If perhaps they fear competition, we must go back to where that fear came from and we correct it. If perhaps it is intimidation which is possible, we focus on it and be able to undo it. What I am saying Mr. Chairman whereas it may be okay now to say one third, a quarter or whatever, if you do not address the root cause of the problem, you may still be having the problem three, four decades from now. Mr. Chairman therefore I am proposing a diagnosis to the problem so that we can get to the root cause and we can get the appropriate remedy.

Mr. Chairman the current Draft as it is, did make an attempt to address the issue of equality especially on the women's side. However, I believe and I stand by my position that it is inadequate. If you look at Article 107©, it says, that we shall take care of



disabled, youth, minority you are making it such a small issue and you have not given the way forward. Mr. Chairman you also say that we want one-third in both Houses of Parliament but you are not giving the formula through which you will be able to achieve that one third. By passing this Motion, it will have far reaching effects because first of all it will be our duty to form an Ad hoc committee in this Conference in order to address all these various problems. Maybe at the National level we shall end up with a Commission, perhaps those Committees and the Commission do not have to be new ones; perhaps an existing one will be able to do the job. Even when you are allocating our national resources it means we have to take care of affirmative action where it is called for and if we say we want a percent of people who are disabled or who are women in this or that House of Parliament, for a Constitution we must go further because it takes more than those elective positions. We also have co-operatives and other social aspects where people get their positions through elections. We must also go to that extent and be able to give guidance.

Mr. Chairman, allow me to complete my last sentence and that is, whatever Affirmative Action we put up in our Constitution, we may realize that it has a time dimension. Whereas that is such a big issue now that may not be a big issue in future because most of our people are under subsistence. If you go to industrialized world, agriculture is only 2% of the economy and therefore these things might change in future and our Legislation must be adapted. Therefore I am calling for a Committee and an Act of Parliament which will address these issues in details. With those few words, Mr. Chairman, I beg to move.

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

**Hon. Delegate Eng. Karue Muriuki:** I would want to call upon Delegate No. 510, Atsango Chesoni to second the motion. Thank you.

**Prof. Yash Pal Ghai:** Yes (inaudible).

**Hon. Delegate Atsango Chesoni:** Thank you, Mr. Chairperson. I stand to second the motion to entrench the principle of Affirmative Action in our Constitution. Affirmative action is a temporary measure that is taken to correct and provide redress to victims of a historic or systemic wrongs. It is actually not as many of us have come to think but it is peculiar to any particular group of people. Affirmative Action actually originates Acts of civil rights movements in the United States where African American people have been discriminated against and it was one of the ways in which they were provided with redress and support. In our context it has actually been used to bring African people into public office, commercial sectors and other sectors. Kenyan men are actually beneficiaries of Affirmative Action. It is what we call “Africanization”. So there is actually nothing new about other principles and through out the history of our nation, we have found different people who have faced discrimination from time to time. There were those of us who are facing discrimination today because we come from parts of the country whereby, we don’t have access to education or because of the geographical conditions we have not had access throughout; we use facilities that other people have, and so you find that the people who come from marginalized communities, may be the pastoralists communities, may be the community is not in Kenya for instance, cannot have the same opportunity to education. Affirmative Action is a major debate if we will be able to have the opportunities.

And we also have people, as had been pointed out by the earlier speakers who have been discriminated against because of the fact that they have physical disabilities. As a measure we therefore would like it recognized as a principle to all Kenyans at wherever point they can, who may find themselves in a situation where they are facing discrimination because of historical reasons, are able to take advantage of all the mechanism.

I would like to support the Motion because I do not believe there is some interests of any nation to proceed, nor do I believe that, as a nation we can grow or develop in a situation where we have back sided forms of development and which also we are unable to follow a link of our population.

Affirmative Action operates in various ways. One, the mechanisms through what is known as porter. The reason why the porter of a minimum of one third has been suggested is that you need a minimum number of persons in all seats to make a difference on the impact. It will be a mistake, because in the case of Kenya we have such groups, which historically if we look at them as a total, actually constitute the majority of the population but they are left out of decision-making. The use or one such group, they are over eighty percent of our population under the age of 35 yet given the constitution making process they have been left out of this Conference (*clapping*) and if we look at women again they are 50.1 percent yet if you look at the statistics for poverty in this country, the majority of the poorer people, whether you are looking at urban or rural poor, are women and girls.

If we look at the issue of urban and rural, you find that it is the rural population that is poorer and yet the rural population is the majority of our people. If you look at the statistics, the poverty reduction paper identify being a pastoralist as being one of the conditions that is one of the reasons for being a poor person in this country today. Why? Because our development policies has not taken on board the needs and the perspectives of pastoralists people and so we do not recognize that they were tortured, are unique, and the third is to have social economic approach to life itself as well and so what we are saying is that there is need for us to have a ministry where the state is able to intervene and ensure that all its citizens have equitable access. We are not saying that this will be the permanent situation as we had earlier situations continue, may be at times the future, where we find that women are the majority in leadership; if that is the case, what an Affirmative Action, that principle that is entrenched in the Constitution.

There is also gender neutrality, the men will also be able to rely on that principle and say - 'look, we are also half the population and which we will also be represented in office' but hopefully that should not even arise if we have the right Checks and Balances in place. Thank you. (*clapping*)

**Prof. Yash Pal Ghai:** Thank you very much. I will now put across the question that, “having observed with concern that some groups in our social economic set-up do suffer and feel disadvantaged due to discrimination and prejudice on the basis of gender, illiteracy, disability, age, geographical area and other unjustified grounds, this Conference resolves that a Chapter be included in the new Constitution devoted to affirmative action and requiring Parliament to make a law that will adequately address the root causes of such unfair (inaudible). I have received the notice of the amendment of this motion and I now call upon Delegate number 463 to introduce the amendments.

**Hon. Delegate Suba Churchill:** Thank you, Chair. I am Suba Churchill, Delegate number 463 and Mr. Chair before I read the amendments as they should appear in the motion that we are going to discuss, allow me to make the following remarks:

That the mover of the motion must recognize that it is time we embrace Affirmative Action as a temporary measure to address some of the inequalities that we have in society. But I want to concur with him, that twenty years after, this new Constitution that we are seated here to make will have been enacted. We should not be talking about Affirmative Action, but Affirmative Action is like Panadol to somebody who is suffering from malaria. It is a temporary action and we must therefore seek a long term solution to this problem and as a society that is serious about addressing this inequality, I want to say that if we are serious as a society and as a Conference debating this Motion, we should look at the root causes of the inequalities that exist. In my view Mr. Chairman, these inequalities arise from the entire Draft of the Constitution, that including a chapter alone, we will not address the inequalities. A chapter alone on Affirmative Action will not affect the dispensation in the Preamble, the arrangement in the Executive, the arrangement in the Legislative Council, and therefore, my approach would be, that of looking at the entire Draft with a fine toothcomb to find the very root causes for which we are describing Affirmative Action today. It is that regard Mr. Chairman that I seek to amend this Motion and also to provide a mechanism because the motion as it is does not even demonstrate how that chapter will be developed.

I am therefore seeking to have the Motion read as follows:-

“Having observed with consent that in our existing social, economic and political set up, lose up and fair disadvantage due to discrimination of prejudice on the basis of gender, age, disability, geographical location and other forms of social setbacks and aware that the National Constitutional Conference is a deliberate effort by the Kenyan people, to create a social order complete with a social security system that takes care of the less fortunate and vulnerable members of the society so as to take our rightful place among the community of nations that are caring, responsible, compassionate, and appreciating that the Draft Bill of the Constitution of Kenya Review Commission has recognized to a new limited extent, some of these are inequalities.

This National Constitutional Conference, sitting at the Bomas of Kenya, do hereby resolve to establish an Ad Hoc Technical Committee on Affirmative Action, inter-generational equity and social equity, are provided for under Regulation 44(1) of the Constitution of Kenya Review Commission,

1. To critically examine the entire Draft Bill of the Constitution of Kenya Review Commission with a view to determining whether and extent to which provisions of section 3(b) and (f) of the Review Act have been adequately addressed and to specifically do the following: to consider inclusion of a chapter on Affirmative Action with particularly interest to girls and to all groups in the Kenyan society that have featured to have been discriminated against on the basis of gender, disability, age, geographical situation and other forms of social affliction.
2. That this *Ad hoc committee* propose ways and means of maintaining inter-generational equity as a principle in the entire Draft Bill, so as to be able to make a Constitution for all ages and generations of Kenyans as a long term solution to these forms of discrimination.

3. To identify and make recommendations on relevant chapters of the Draft Bill of the Constitution of Kenya Review Commission with a view to incorporating social equity as a fundamental principle in the entire Draft Bill.
4. To propose where necessary amendments to and aspects of the Draft Bill with a view to entrenching the principles of inter-generational and social equity, and also to prepare a report for consideration by the relevant technical committees of the Conference to which the recommendations may apply.

And finally, Mr. Chairman, this *Ad hoc committee* that I propose here should explore and recommend possible legislative and institutional frameworks for the realization of inter-generational equity and social equity after the enactment of the Draft Bill into law. That is how my amendment should alter the Motion. Thank you.

**Prof. Yash Pal Ghai:** Do you have someone to second your amendment please? Just wait. Just a minute please, do you have someone to second your amendment please?

**Hon. Delegate Muriuki Karue:** Yes, I have several people to second the amendment.

**Prof. Yash Pal Ghai:** Could one of them please do so now?

**Hon. Delegate Muriuki Karue:** I would call on Pamela Mboya to second it. 473.

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

**Hon. Delegate Pamela Mboya:** Thank you, Mr. Chairman, my name is Pamela Mboya Delegate number 473. Mr. Chairman. I would like to commend the Commission in its Draft Bill and even the report that the issue of the marginalized in our community and the issues of the disadvantaged and discriminated have been addressed fairly. The issue of Affirmative Action has been addressed. Mr. Chairman, the issue that has not come out

very clearly and the reason why I would like to support an Ad hoc committee to look into it, is the fact that there does not seem to be enough mechanism in the Draft Bill on how we are going to address this issue of marginalisation which has been running through our life since independence. I would like to support that an Ad hoc committee to be set up to bring up the machinery, mechanism, institution and to study the best way that we can address permanent problem that has been bothering Kenyans. We live in a society which should be a society for all ages, children, adults, women, the aged all have suffered the people with disability all have suffered a great deal of marginalisation. I would like to support that an *Ad hoc committee* be set up to see how specific mechanism and institution can address this problem on a longer time basis. This does not also the fact that Affirmative Action nevertheless is rampant with us and we do want to address it as a matter of priority. Thank you.

**Prof. Yash Pal Ghai:** Yes, 194.

**Hon. Delegate Sungu Eric Gor:** Thank you, Mr. Chairman. With much respect to the amender the person who has moved the amendment, it was my opinion that is in fact an amendment should not substantially change the original motion and I believe I should be correcting that. What the amender had said in fact amounts to a new motion altogether, which is substantially different from what was originally proposed by my Honourable friend Muriuki Karue. So I move that Mr. Chairman that you do accept that amendment so that we can proceed with the regional discussion on Affirmative Action. Thank you.

**Prof. Yash Pal Ghai:** It seems to me that the amendment is within the terms of the motion, but I understand the motion proposed by Delegate 121 requires a Chapter to be replaced in the Constitution to vote it on Affirmative Action. What the amendment does it is to assure that action that may be taken may not take the form of a separate Chapter, that will require the view of the entire Constitution to include provisions on Affirmative Action. So I pleaded as basically supporting the motion but amending the mechanisms for which same objectives will be achieved. So what I would like to do I sensed that there is general support, so what I would like to do is to put the amendment as question we then

have a short debate at a suitable time and put the amendment to vote and if the amendment is carried then the amendment will replace the motion, if the amendment is rejected then I will put the motion to question.

I am not an expert in Parliament procedure and my adviser on procedure with me here today, so I think the intention would be get some sense of the Conference on this very important question and then we can decide on precise amendment to be made and the mechanism to be used to give effectiveness. So with your permission I will raise the possible questions as follows to critically examine the entire Draft Bill of the Constitution of any on review commission, with a view to determine whether and the extent to which provisions of sections 3b and F of the review Act, have been adequately addressed and specifically to consider improving of the Chapter on Affirmative Action with particular regard to all groups in the Kenyan society that have hitherto been discriminated against on the basis of gender, disability, age, geographical situation and other forms of social equity; to propose ways and means of mainstreaming into generational equity as a principle in the entire Draft Bill, so as to be able to make a Constitution for all ages and generation as long conclusion to these forms of discriminations; to identify and make recommendation on relevant Chapters of the Draft Bill of the Constitution of Kenya Review Commission, with the view to in-cooperating social equity as a fundamental principle in the entire Bill; proposed where necessary amendments to and aspects of the Draft Bill with a view to entrenching the principles of inter-generations and social equity; Prepare the report for consideration by relevant Technical Committees of the Conference to make the recommendations in the plan. Explore and recommend possible legislated in institutional frame works for realization of inter-generations and social equity after the enactment of the Draft Bill into law. Now I invite comments. 085 please.

**Hon. Delegate Machage Wilfred Gisuka:** Thank you, Mr. Chairman. My name is Doctor Machage a Member of Parliament for Kuria constituency. You only need to deform a marginalized community to really understand what--. I hope this was not part of marginalisation. We have suffered, a few communities in this country since independence even pre-colonial. The Ogiek, the Kuria community, the Elgon Maasai, communities



from North Eastern Province of Kenya we are also citizens in this country. You cannot understand when no teachers are posted to these places, no schools that are built and you expect children to be taken at the same level and marks at our state universities and colleges. The infant mortality rates in these places is so high, in my own community for every thousand children born, 280 will die before the first years of life. Compare that to Nairobi where only 80 or less will die. Then you will always distribute your resources according to the population of areas, what injustice? We die before we are even born. It is therefore important to distribute resources to cater for these differences. The development of infrastructure has been intentionally designed in these communities, such that they cannot even sell their produce. The Maasai, the North Eastern Province Somalis, the Kuria cannot sell their animals being pastoralists at a market price, because they cannot transport these animals to the centers where they can sell them. (*Clapping*). This is all intentional so that some communities in Kenya are left to be servants, servants.

The women are another group that are marginalized, a mother is employed and is only given one month of maternity leave and is expected to work and be as efficient as the male co-worker. In the long run she gives up and goes back to tender for the children they should be given six months, six months of paid leave plus other allowances, because they have brought to Kenya a citizen, an extra one. (*Clapping*). It is just fair, it is just fair. It is very wrong when the market of employment force, discriminates these people you peg employment to a certain level of education so you eliminate them, so the amount of money that circulates in these areas is always kept low. And therefore a V shape circle, these people have children who suffer kwashiorkor they cannot afford proper food and you know the brain development of a child is in the first five years of age. So we have people being produced from these communities that cannot even compete with others from the rest of Kenya even if they are given the same institutionalization in terms of education. This is injustice we need to have more money set aside for development of the road networks, telephone systems today in these areas, because they were totally forgotten when other areas were being developed for reasons we have never understood up to now. We have no technology today we just survive. This survival must be supported at least to a certain level so that we can catch up with the rest of Kenya and

contribute equally to our development. This is not asking for too much, it is just a little, please include it in this Chapter of Affirmative Action in our Constitution. Thank you.

**Prof. Yash Pal Ghai:** The number of representatives of the disabled and I am going to give them an opportunity to speak now. Yes, what is your Point of Order?

**Hon. Delegate Muriuki Karue:** Thank you Mr. Chairman. Again this is Delegate 121 Muriuku Karue being move of the motion. With all due respect Mr. Chairman, I think the contributor who has just spoken and also what is being called an amendment well these two are far apart Mr. Chairman. My Point of Order is a motion is supposed to be a reasonable precise the statement of the objective. What was being read by the so-called amendment, most of it is what is in visit as what the Ad hoc committee which will be charged to look after this Chapter will do? So Mr. Chairman we must be clear, if we are debating an amendment which is details of what I have already said, as opposed to the principles, we are supposed to be debating the principles. If we now go with that which is detailed, we shall have changed substantially what I was moving, which is to have Affirmative Action as a matter of principle in the Constitution. I do wish you could intervene as the first part of Affirmative Action, so that we can get a direction so that we do not debate generally without knowing precisely what we are going for. This is a serious matter. Thank you.

**Prof. Yash Pal Ghai:** There are a number of representatives of the Disabled and I am going to give them an opportunity to speak now.

**Hon. Delegate Karue Muriuki :** Point of order!

**Prof. Yash Pal Ghai:** Yes, what is the point of order?

**Hon. Delegate Karue Muriuki:** Thank you, Mr. Chairman. Again, this is Delegate 121, Engineer Karue Muriuki, who is the mover of the Motion. With all due respect Mr. Chairman, I think the contributor who has just spoken and also what is being called an

amendment-- These two are far apart. My point of order is this: a Motion is supposed to be a reasonably precise statement of the objective. Most of what was being read by the so-called Amenders, Mr. Chairman, is what is envisaged as what the *ad hoc committee* which will be charged to look after this chapter will do.

So Mr. Chairman, we must be clear if we are debating an amendment which is detailed, what I have already said, as opposed to the principle. We are supposed to be debating the principle. If we now go with that which is details, Mr. Chairman, we shall have changed substantially what I was moving, which is to have Affirmative Action as a matter of principle in the Constitution. I do wish Mr. Chairman, you could intervene at the first part of Affirmative Action, so that we can get a direction, so that we do not debate generally without knowing precisely what we are going for. This is serious a matter. Thank You.

**Prof. Yash Pal Ghai:** Well, it was my intention that we were debating your Motion. I wanted to allow a few delegates to express their views before I put the question to vote.

I would like to call upon 462. Okay, 194.

**Hon. Delegate Eric Gor Sungu:** Thank you Mr. Chairman. I must say that it will be nice and proper to follow the procedures as worded under number 30, which says that, “after a Motion has been proposed as a question by the Chairperson, an amendment may be moved which seeks to alter the question by leaving out certain words and inserting other words in their place or by inserting certain words in a specified place, and an amendment shall be relevant to the question to which it is proposed”.

Now, Mr. Chairman, what is happening here is that people are going to lose sense of direction. We do support Affirmative Action and that is a very wide subject. Now, what the mover of the amendment has done is to completely put up a new argument altogether which is so long it is not in writing, we are not able to follow, and if we do approve it now, we may not know that we are approving something that has been sneaked in here, that we do not know about. We have the Motion here and all we need to do if we want to

do an amendment is to delete a few words or replace them with a few and so on, so that the original Motion stands as it is. I move that in fact the amendment can be brought as a separate Motion so that this honorable Conference can discuss this in totality, but that we go on with the original Motion on Affirmative Action. Thank you. My name is Gor Sungu, MP for Kisumu Town East, 194.

**Prof. Yash Pal Ghai:** Okay thank you. Well, if I look at the two, the Motion and the amendment to it, they are dealing essentially with the same question. The Motion states, as I understand, two basic points: One, that there should be recognition of Affirmative Action and secondly, that this should take the form of a separate chapter. The amendment proposes that Affirmative Action could be a chapter or could be provisions throughout the Constitution. It also proceeds to suggest some methodology for achieving this objective. If members feel that it will facilitate our discussion, if you just focus on the Motion, I would ask Mr. Suba Churchill whether he would withdraw his amendment and then we can just debate the Motion. Yes, 463.

**Hon. Delegate Mr. Suba Churchill:** Chairman, thank you once more. I am Mr. Suba Churchill. I think in all honesty my Motion adds value. My amendments add value to the original Motion, (*clapping*). It is to me not a matter of who takes the credit, because if we are genuinely concerned about Affirmative Action, why do we want to treat the symptoms and leave out the causes. My Motion basically says that it is because of lack of the principle of social equity in our current Constitution that we are where we are today. That it is because we lack the principle of intergenerational equity that we are reviewing our Constitution today. Yet the original Motion actually recognizes what I am adding value to. It says that a chapter be included. What I have done in my amendment is to say how that chapter can be included, because as it is the Motion does not even say how that chapter can be developed. I have only gone ahead to say that can be done by a technical *ad hoc committee*.

Secondly, Mr. Chairman, I do not think in all honesty, I may not have been a Member of Parliament, but I have been involved in debate for some time.... And I know that the

original Motion and the values that I am adding in are not totally opposed to each other and I therefore want to plead with this conference to look at the root causes of the imbalances that we have in society, rather than look at the symptoms and do some palliative action on them and pretend that we will have made a Constitution.

It is my submission, Mr. Chairman, that Affirmative Action must be recognized in the Executive, in the chapter on the representation of the people. It is my submission that it is a principle that must run across including a chapter on Affirmative Action and failing to look at it in the Executive or other arms of government we will not address the problem. Let us firmly put this matter to rest and look at the root causes of the problem. So rather than withdraw Mr. Chairman, I want to submit my case and let us not engage in unnecessary tongue-twisting to confuse all of us. We can engage in all this, we are all capable of doing that, but my plea is that Affirmative Action cuts across the society, cuts across the Draft Bill and I provide the mechanism to address that. Once again, I want the commission to consider those amendments. (*clapping*).

**Prof. Yash Pal Ghai:** What I would like to propose without becoming too technical is that we have to listen to a few more contributions then I put the amendment to vote and if it is carried, that is the conclusion of the matter; if not, then we vote on the Motion. I think it is unfortunate that we have no quorum when basically both the Motion and the amendment are supporting Affirmative Action and looking for ways in which the Constitution can respond more adequately to the needs of the disadvantaged. So I would like to ask 462 to please take no more than three, four minutes.

**Hon. Delegate Samuel Tororei:** Thank you Chair. At a technical level, I think the way we are proceeding is alright; you will either support or reject the amendment and after that we will put it to vote, and that will be it. However, as far as I am concerned, as one of the basic consumers of whatever the outcome of either the amended or original Motion, in fact and you know that I am very averse to technicalities, I would have pleaded to the four movers to agree and let us debate the whole lot of them and just sort out the principle and the mechanics of sorting out or improving that principle.

In the event that that does not happen, then I am firmly in support of the amendment (*clapping*) for a very simple reason. I want you to open your Draft Bill, those articles that provide for how for example the Upper House, whatever we will call it, is going to be composed, you will see that for example in the relevant Article, 70 representatives in the current Draft Bill will be drawn from districts and then the remaining 30 from the women sisterhood. Where among those will people with disabilities come from? Will they come from among the women or will they come from the districts?

The same problem is repeated when you talk about the mixed member representation, in whatever relevant article there is. You will see that 50 per cent is reserved for women, which is good, and zero per cent for people with disabilities and other marginalized groups, unless you want you want to tell them that they must go and take a share of the other people either from the women or from the other (*clapping*) groups.

You will also see in Article 109, a clear statement which recognizes very nicely the position of women and they have devoted a whole article, very good, but other than Section 39, which people with disabilities also share in the same Chapter with Section 35, the same is not done for people with disabilities or the aged or the youth or the marginalized pastoral communities or for the marginalized small communities like the Ogiek and the Njemps.

So the reason why I support the amendment is this, that the statement of Article 14 is not carried through in the Draft. Thereafter, a principle is stated in Article 14 but it is not carried through in the rest of the Chapter. So for me an *ad hoc committee*, I do not think it will be an *ad hoc* technical committee, but I do not know what the phraseology is, but whatever mechanism is being proposed by the amendment will then harmonize first, the desirability of having a chapter which I am in favor of but, secondly, the desirability of ensuring that those principles where they should occur do occur including articles on representation, devolution, public financing, as the original speaker said, and all the other

articles. Even including the articles of Constitutional Commissions which need to recognize this Affirmative Action.

So I support the amendment and by the way those of us who have been marginalized look to this new Constitution as the most likely remedy that we are likely to have in many generations. Thank you, Mr. Chairman. (*Clapping*).

**Prof. Yash Pal Ghai:** Thank you. 511.

**Hon. Delegate Ruth N. Kibiti:** Thank you very much Mr. Chairman. My name is Ruth Kibiti, Women's Organizations, 511. I stand here to make several suggestion and proposals.

In Bomas I, we discussed and agreed on the principle of Affirmative Action. So my understanding is that we are not going back to debate the principle of Affirmative Action, because we already accepted it and the Rapporteur General's report acknowledges the fact that the principle was accepted by this Conference. My understanding and interpretation of the amendment to the Motion which has been tabled on the floor has to do with mechanisms of empowering the underprivileged, disadvantaged, exploited and oppressed communities. That is what I think is the new position which we would wish to consider because once we put in adequate mechanisms for empowering those communities which have been disadvantaged, oppressed, exploited, and are vulnerable; then we will be moving a step forward.

The second understanding is that there is a general call to mainstream Affirmative Action throughout the Constitution. So if we are going to do that then the amendment could be discussed as a valid Motion. Thank you very much, Mr. Chair.

**Prof. Yash Pal Ghai:** 117.

**Hon. Delegate Peter Gitirau Munya:** Thank you, Mr. Chairman. I would also like to add my voice to supporting Affirmative Action and specifically the new Motion and the amendments because the amendment goes very far; it says that we need to look at all the Chapters.

**Prof. Yash Pal Ghai:** Excuse me, could you please just identify yourself for our record purposes.

**Hon. Delegate Peter Gitirau Munya:** Peter Munya, MP Tigania East, Delegate 117. Specifically, Mr. Chairman I would want to emphasize the issue of intergenerational equity. We have been talking about Affirmative Action in relation to gender mainly but we have not been able to dwell with issues of age, generation, geography, and disability, (*clapping*) which are equally important, Mr. Chairman.

That is why I would propose; if we have a President, for example, Mr. Chairman, who is an old man and then we have a Prime Minister who is a young man, or a young woman; or if we have a President who is a man we have a Prime Minister who is a woman for purposes of (*clapping*) making sure that those inequalities that are gender and age based, are also addressed.

Mr. Chairman the young people of this country have had a lot of problems because there are a lot of prejudices against them. A lot of opportunities, Mr. Chairman, are never given to young people, for instance, discrimination of jobs; you see most jobs, important jobs are occupied by older people (*clapping*). Young people are told they do not have experience, they are told they need five years' experience and yet they cannot acquire that experience before they get the job (*clapping*).

Mr. Chairman, when we come to elective politics, we are also again discriminated against. We do not have the resources to run the campaigns, we do not have the vehicles that are required, the culture itself runs against young people because we are told we do not have the experience required to run the government and be in Parliament. Mr.



Chairman, that is why the concept of intergenerational equity that my friend Suba Churchill proposed, is very important. It has to be addressed and be incorporated in the Chapter relating to Affirmative Action.

I must also support the issue of marginalized communities, Mr. Chairman. There are small communities in this country that need to be protected and given opportunities also to develop without of course taking the rights of the other communities. I support that, Mr. Chairman. Therefore, I support the setting up of an *ad hoc* committee to look through the entire Draft Constitution to see how the concept of Affirmative Action can be mainstreamed in the entire Constitution and for a specific Chapter in detail, dealing with the question of Affirmative Action. Thank you Mr. Chairman. (*Clapping*).

**Prof. Yash Pal Ghai:** At this stage because of lack of time, I would like to put the following question to the Conference: To critically examine the entire Draft Bill of the Constitution of Kenya Review Commission with a view to determining whether and the extent to which provisions of Section 3(B) and (F) of the Review Act have been adequately addressed and specifically to consider inclusion of a Chapter on Affirmative Action, with particular regard to all groups in Kenyan society that have hitherto been discriminated against on the basis of gender, disability, age, geographical situation and other forms of social affliction; to propose ways and means of mainstreaming intergenerational equity as a principle in the entire Draft Bill so as to be able to make a Constitution for all ages and generations as a long term solution to these forms of discrimination; to identify and make recommendations on relevant Chapters of the Draft Bill of the Constitution of Kenya Review Commission with a view to incorporating social equity as a fundamental principle in the entire Draft Bill; to propose where necessary amendments to any aspect of the Draft Bill with a view to entrenching the principles of intergenerational and social equity; prepare a report for consideration by relevant technical committees of the Conference to which the recommendations may apply; explore and recommend possible legislative and institutional frameworks for the realization of intergenerational and social equity after the enactment of the Draft Bill into law.

Those that support the amendment, say, “AYE”

**Honourable Delegates:** *AYE.*

**Prof. Yash Pal Ghai:** Those who oppose it say, “Nay”.

**Honourable Delegates:** *(a few) NAY.*

**Prof. Yash Pal Ghai:** So the Motion, the amendment is carried and (*clapping.* ) I would at this stage very much like to thank Delegate 121 and Delegate 463 for their initiative in placing this extremely important issue very firmly on the agenda of the Conference. We will now as a Commission, undertake a review and prepare a report for the consideration of the Conference and its relevant committees.

At this stage I would like to remind Delegates that as from Monday we shall be breaking into the Technical Committees. I believe that the Committees will begin their deliberations at nine on Monday and those of you who have not collected your agenda papers or documentation can do so from the relevant tents. Before we adjourn, I would like to invite Delegate 316 to say a few remarks about our work next week. Please, Delegate 316.

Delegates could you please wait for 316, if you will just wait while I take the Point of Order. 112.

**Hon. Delegate Beth Mugo:** Thank you very much, Chairperson. My names are Beth Mugo, Delegate 112. I want to thank the Delegates for passing this Motion that we set such an important committee because this point has been belabored—

**Prof. Yash Pal Ghai:** It is not a point of order but I will allow you to go on.

**Hon. Delegate Beth Mugo:** It is, Mr. Chairman, Sir, I will explain why. The composition of these committees is very important and Mr. Chair you make sure that there are areas-- We will understand this problem; for instance, those who spoke from those areas that have problems will feel marginalized and we should see that we have the people in that committee who are adequately conversant with the origins of Affirmative Action. That is from geographical, gender and age point of view so that everybody is involved. Thank you.

**Prof. Yash Pal Ghai:** Thank you very much. Please Delegate 316.

**Hon. Delegate Gitu Wa Kahengeri:** Shukrani sana Bwana Chairman. Jina langu ni Gitu Wa Kahengeri wa Kenya. Ukitazama nimebadilisha habari ya kujieleza kwa sababu nina furaha nyingi. Tangu tulipokuja katika mkutano huu, nimekuwa nikichungulia sana mwenendo wetu. Nimetosheka kabisa ya kwamba walioko hapa sasa ni viongozi wa nchi hii (*clapping*). Na nchi hii ya Kenya, wakati ambapo sisi tutakuwa hatupo, itakuwa ikikumbuka wakati wa mkutano huu wa kugeuza katiba.

Mimi naunga kikamilifu *one hundred and fifty one per cent* habari ya Devolution, kwa sababu mimi tangu nilipokuwa kijana nilikuwa nikipigania watu wakiwa wa mji moja, wakiwa wa city moja, wakiwa wa country moja kama Kenya. Kila mtu awe na haki yake. Kwa bahati mbaya, tumekuwa hapo mbeleni na viongozi wengi wao hawakufahamu hivyo. Na binadamu si mtu wa kucheza naye. Binadamu akipata nafasi kujenga mashimo katika kichwa chako, halafu na kujenga nyumba hapo juu uwe ukitembeza yeye anawezakufanya hivyo. Nina shukrani kwa sababu tangu tulipoanza mkutano huu tumeona mbali zaidi. Tukifanya Devolution natumaini karibu kila mtu katika nchi hii atakuwa ametosheka na mahali anapokaa.

Kitu moja mimi nataka kusema, ikiwa tutashinda kuweka katiba hii, na mimi ninatumaiini kabisa katika roho yangu hakuna kile ambacho kitaweza kugeuza sisi kufika mwisho wa haki katika katiba.

Kwa nini mimi naamini hivyo? Siku moja nilikuwa katika vita vya kukomboa nchi hii, na tulikuwa na baba wangu. Tulipelekwa katika Fort Jesus. Tuliwekwa katika mashua iliyoitwa *Rosa Lindi*, haikufunikwa juu. Tulipofika katika bahari, nyangumi wakatoka tuki waona wazi. Tukafikiria labda tumeletwa katika bahari hii tunyakuliwe an nyangumi halifu itamalize maisha yetu.

Kwa sababu hapo mbeleni tulikuwa na historia ya wale watu waliokuwa wakipigania wazungu katika Vita via Pili vya Dunia. Na watu wengi wa Kenya walimwagwa kati bahari ya Hindi. Basi baba yangu akaniambia, “unaona hawa nyangumi? Ndiyo naona baba; usifikirie kuwa watakula sisi, sisi ni watu wa mungu. Na mimi nilikuwa katika vita via 1914, nilikuwa mpagazi tu katika kazi hiyo, nilikuwa nikibeba viombo via wazungu waliokuwa wakipigana na nilitoka Nairobi mpaka Mwadui, mwisho wa nchi ya Tanzania na mimi sikupigwa risasi. Kwa hivyo hata hapa mwanangu tutarudi siku moja nyumbani” na tulirudi. Kwa hiyo sababu mimi nakuwa na uhakika ya kwamba tukitoka katika nyumba hii na roho ambayo nimeona kwa miezi miwili ya watu wa Kenya ambao mimi ninaamini ni viongizi wa nchi ya Kenya, tutatoka na katiba ambayo itawafaidi nyinyi mlioko hapa. Wale ambao hawakuweza kupata nafasi ya kufika hapa, wale wanaozaliwa sasa na wale watakozaliwa wakati ujao. Kwa hiyo, nyinyi mjue mko na nafasi ya kutambuliwa na vizazi vijavyo, na kutambuliwa pia na mwenyezi mungu aliyewaumba, na akauliza nyinyi: Ketini katika nchi nawapa nyinyi ya Kenya, na mfanye huko mazuri kwa kila mtu na mwenziwe. Na mambo haya ndiyo mimi naona hapa. Nyiyi mmejitokeza kuyatimiza.

Mimi nawaombea leo na kesho na wakati mpaka tutakapomaliza, tukiingia katika ile technical committees, tusifikirie habari, tusinung'unike hata kidogo kwa sababu mtu fulani hajapata kazi. Kazi yetu ni kutengeneza kazi ambazo zitawafaidi wote wa nchi hii. Tunajua ya kwamba kama mtu hana kazi ni kweli anaweza kuona ni vibaya kwa sababu hapati mapato. Lakini kazi tunayofanya hapa, tukishikana mkono, na kila mtu aache tofauti zake, mimi naamini tutakuja kuwa na kazi nyingi (*clapping*). Usifikirie tu ile ilitangazwa na serikali ya NARC. Kazi ya inchi hii itapita *five hundred thousand job* kwa mara nyingi. Na hiyo itatokana na juhudi zenu kuweka nchi hii katika mikono ya watu wa

