

CONSTITUTION OF KENYA REVIEW COMMISSION

CKRC

NATIONAL CONSTITUTIONAL CONFERENCE

Verbatim Report of

**PLENARY PROCEEDINGS – PRESENTATION OF DRAFT BILL –
CHAPTER 17 – CONSTITUTIONAL COMMISSIONS;
CHAPTER 18 – AMMENDMENTS TO THE CONSTITUTION
HELD AT THE BOMAS OF KENYA**

ON

5TH JUNE 2003

**PLENARY PROCEEDINGS, PRESENTATION OF REPORT, CHAPTER 17 –
CONSTITUTIONAL COMMISSIONS AND CHAPTER 18 – AMMENDMENT OF THE
CONSTITUTION, HELD AT THE BOMAS OF KENYA ON 5TH JUNE 2003**

**PRESENTATION OF REPORT ON: CHAPTER 17 - CONSTITUTIONAL
COMMISSIONS**

**CHAPTER 18 – AMMENDMENT OF THE
CONSTITUTION**

Chair: Prof. Yash Pal Ghai

**Session Chairs: Sultana Fadhil
Kennedy Kiliku**

**Presenters: Com. Riunga Raiji
Com. Keriako Tobiko
Com. Salome Muigai**

The meeting convened at 9.15 a.m.

Prof. Yash Pal Ghai: I would like to call the meeting to order and as usual, we will begin with prayers which will be read for us by Mrs. Neera Kapila and the Rt. Rev. Archbishop John Njue. I will first call upon Mrs. Kapila and then the Archbishop. Can we all stand up please?

Hon. Delegate Kapila Neera Kent: *Ommm.* Oh merciful, omnipresent and creator of the universe, your ethereal presence is manifest in all nature, creation and the universe. We thank you for giving us a beautiful diverse country and people. Bless us with your bountiful grace so that we can care for all its people, animals, flora and fauna and the land itself as is best for our nation. In the last five weeks, we the 42 communities have bonded. We have also come to know our people-chosen Parliamentarians. Shower us with the choosiest of heaven's blessing as we conclude this session tomorrow. When we leave to reconvene with enthusiasm, committed to do the best for our nation and land in August. *Ommm Shanti, i Shanti Ommm.*

Hon. Delegate Rev. John Njue: In the name of the Father and of the Son and of the Holy Spirit, Amen. God of all creation bless this our land and nation. God our Father, as you very well know, we have come from far. We ask you Father, and we have a long way to go, during this long journey, so many wonderful things have occurred in our country and at the same time so many failures have occurred. We thank you for what good we have been able to achieve and we ask you for forgiveness for the failures that we have made to occur. As we gather here in this Conference, we still ask you Lord to be in our midst. Guide us with the light of your Holy Spirit that we may be able to contribute meaningfully and at the end be able to come up with a meaningful Constitution, that basic law that will guide all of us equally. As we come to the end of this first session, we thank you once again for what we have been able to achieve. We ask you to touch the hearts of each one of us and that we may be able to have that spirit of reconciliation and consequently be able to walk together in love and unity. As we go to reflect during this recess, help us to come back once again with enthusiasm and see this formation of our Constitution to the end. We ask you this through your Son our Lord Jesus Christ who lives and reigns with you in the unity of the Holy Spirit, one God forever and ever, Amen.

Prof. Yash Pal Ghai: Thank you very much. We have two or three announcements to make before I hand over the floor to the two co-chairs for today. First of all, I would like to say that our Secretary has contacted the clinic where our colleague the Honourable Shikuku is now and we are told that he is making very good progress and perhaps he might join us before we adjourn. It is likely that he will be with us tomorrow but he is recovering very well. On behalf of the Conference, I would like to give our condolences to the Honourable Chris Okemo for the loss of his wife a couple of days ago. We also want to give our condolences to Honourable Mwangi Kiunjuri whose mother passed away, I believe yesterday. We therefore give our condolences.

On behalf of the Conference, I would like to congratulate Mrs. Martha Koome, one of our Delegates, who was appointed yesterday to be the Justice of the High Court. It is a great honour for us all to have a Delegate recognized in this way as one of the most distinguished jurists in Kenya. I congratulate her and hope she can continue to contribute to this process.

Finally, I would like to tell the Conference that when the Secretary Lumumba and I visited His Excellency the President, it was our hope that he would come and speak to us before we adjourn and we have been following up with the State House on the timing of the visit. Unfortunately, I got a letter last night from the Comptroller of State House who with great regret said that due to the President's prior commitment he will not be able to visit us before our adjournment. He said, I quote, 'His Excellency the President has however requested me to convey his confirmation through you that the Government is fully committed to the successful conclusion of the process as expeditiously as it is practicable'. I am therefore glad to pass on his assurances to you and to thank him for his letter. Thank you. (*Clapping by Honourable Delegates*).

I now pass the floor to the Co-chair for today, Vice-Chair Sultana Fadhil and Mr. Kennedy Kiliku who will take us through the Chapters which are listed on the order paper. Thank you very much.

Hon. Delegate Kennedy Kiliku: Waheshimiwa Wabunge na Waheshimiwa waliopo wote nawasalimia, *Asalaam Aleikum*. Thank you very much. Today we are going through Constitutional Commissions and Amendment of the Constitution and we are going to have some presentation on the Report and presentation of the Draft Bill in this order. Presentation of the Report will be done by Com. Salome Muigai, Presentation of the Draft Bill, Chapter 17 on Constitutional Commissions by Com. Riunga Raiji and the Presentation of amendments of the Constitution will be done by Com. Keriako Tobiko. Before I continue, I think the Chairman would like to say something.

Hon. Delegate Wangari Maathai: Thank you very much, Mr. Chairman. As you will recall, we announced yesterday that today is World Environment Day and we shall plant trees just before the morning session. We have had to make adjustments. When we break for tea at about 10.30 a.m. we shall go, and we will be led by the Chairman Prof. Ghai, to plant a tree just outside to mark the World Environment Day. Thank you very much.

Hon. Delegate Kennedy Kiliku: May I at this juncture call upon Com. Salome Muigai to make her presentation.

Com. Salome Muigai: Thank you very much Mr. Chairman and Honourable Delegates. I am going to make a presentation on the Report but I have no intention of reading that Report along with you. I am sure most of us have read it but I would like to walk you through the Report. The mandate of the Commission was to examine and make recommendations on the following:

1. Existing Constitutional Commissions, institutions, offices and establishment of:
 - 2 To facilitate Constitutional Governance.
 - 3 Succession to office and a system for the dignified transfer of power after an election or otherwise
 4. Any other matter incidental to the foregoing.

The commission therefore addressed the following specific issues:

1. The Constitution Commission.
2. Constitutional offices
3. Succession
4. Transfer of power.

Functions: The Constitutional Commissions independently seek to protect and enforce the Constitutional provision as laid out in the Constitution and further ensure their implementation.

To perform this cardinal function they need the following:

1. Independence: Such independence is determined by: Mode of establishment, financial autonomy and appointment and dismissal procedures.
2. Definition of powers and functions: This must be clear avoiding overlap while at the same time ensuring the Commission's compliment, rather than compete with each other.
3. Accessibility: It must define persons or groups that may launch a claim to the Commission, establish simple and clear procedures of lodging a claim and thus avoiding unnecessary technicalities. For example, an oral claim, should suffice.
4. Lastly they will need accountability. The Commission should be required to submit regular and timely reports to Parliament and/or the State through the President for consideration. Such reports must be open to public scrutiny to uphold accountability to the same public.

The current Constitution establishes the following Commissions:

1. The Electoral Commission
2. The Parliamentary Service Commission.
3. The Judicial Service Commission
4. The Public Service Commission

Most of these Commissions were said to enjoy little independence from the Executive arm of the Government since the President does the appointments, initiates dismissals and the finances are controlled by what is usually called 'Relevant Government Ministry'. Kenyans said the following concerning Constitutional Commissions:

- Their powers and functions
- Mode of establishment
- Financing.

In general, the Commissions should have their powers and functions clearly set out in the legislation creating or establishing them. They should be independent, they should have the power to enforce their recommendations and where necessary they should be given powers to prosecute. They should be empowered to enforce the law in the different sectors of the Government. They should, in conducting their affairs, follow the laid down procedures. They should be vigilant in protecting citizens' rights. Their role is to bring people together in their respective areas of operation to identify, mobilize and decide on the usage of resources and to share information with communities to enable them to make informed choices. They should have public information and education programmes in their respective areas.

On the existing Commissions, the Kenyans had the following to say: The Public Service Commission should be required to eliminate corruption, discrimination and nepotism in employment. They should also address lack of transparency in recruitment, insincere advertising for job vacancies, unfair promotions and retrenchment without a human face. Educated Kenyans appointed by Parliament, not Executive, should staff the Electoral Service Commission, the Kenyans said.

The Judicial Service Commission should do the following: Have its membership drawn from the Legal fraternity, the Judiciary, Professional bodies, the Clergy and Interest Groups. The appointment to the Commission shall be made by the President with the approval of the Parliament in the form of Parliamentary Judicial Committee. And lastly, the Commission will deal with disciplinary matters.

The establishment of new Commissions: The proposed new Commissions by Kenyans were: The Commission for Human Rights and Administrative Justice, the Ethics and Integrity Commission, the Salaries and Remunerations Commission, the Gender Commission, Disciplined Forces Complaints Commission.

The Commission for Human Rights and Administrative Justice should, among other things, do the following: act as a watch dog against the existing wide spread violation of Human Rights, investigate allegations of Human Rights violation, handle the 1991 to 1997 land clashes, deal with past political assassinations, investigate and redress historical injustices among the pastoralists in North Eastern Province during colonial and post colonial era, deal with social and economic injustice such as ethnicity, corruption and nepotism committed against Kenyans since colonial times, deal with those who have looted public funds since 1993 and ensure restitution.

Gender Commission: Should develop a policy on protection and promotion of women's rights and facilitate the repeal of all laws that have provisions that are discriminative in terms of gender. Two, customary laws and practices that clearly discriminate against women in general and the girl child in particular, be eradicated.

Disciplined Forces Complaint Commission: To ensure that policemen and women who do not follow the process of the law should be sacked. There should be no extra-judicial killing of suspects, as everyone is presumed innocent until proved guilty. There should be a special unit in Police Force to investigate corruption. The police and other members of Disciplined Forces should be politically neutral. The Police Commissioner should be independent and be appointed by the President with approval of Parliament.

The Ethics and Integrity Commission: An Independent Anti-Corruption Commission should be formed and entrenched in the Constitution. The defunct Anti-corruption Authority should be revived, an Ethics Commission should be established. There should be Anti-corruption Committees whose members would be elected and shall have a pre-determined security of tenure. The members should be drawn from Religious Organizations, Administrative and Professional bodies.

The Salaries and Remuneration Commission should, amongst others, determine the salaries of various employees, both in the Civil Service and Public Sector so as to check corruption and the incidences of strike, review the benefits, salaries and working conditions of members of Parliament, review salaries every three years, administer pension for retired workers, look into the terms of workers in the County Councils and Municipalities.

Finally, let me add that people with disabilities and children also demanded for establishment of bodies that would protect the rights that are specific to them.

Recommendations: The CKRC recommends establishment of the Constitutional Commissions using modalities that will be articulated by the next presenter.

Constitutional offices: Apart from the Constitutional offices forming part of the Legislative or Executive Organs of the Government, the Constitution establishes the following other offices: the Chief Justice, Judges of the Court of Appeal, Judges of the High Court, the Chief Kadhi, Kadhis, Attorney General, the Commissioner of Police, the Controller and Auditor General, Permanent Secretaries, Ambassadors, Secretary to the Cabinet and Director of Personnel. Although holders of these offices are expected to perform their duties without interference, the reality on the ground is that the enormous powers held by the President have tended to affect all other organs of the Government.

The current Constitution is silent on the qualifications necessary for the appointment of the Chief Justice. For High Court and Court of Appeal Judges however, one must be or have been a Judge of a court having unlimited jurisdiction in all matters in some parts of the Commonwealth or in the Republic of Ireland or in a court having jurisdiction in a field from such a court or one must

be an advocate of High Court of Kenya of not less than seven years' standing. To be a Chief Kadhi or a Kadhi, one must; a) profess the Muslim faith, and b) be in possession of such knowledge of Muslim law as would satisfy the Judicial Service Commission. And the Attorney General must be a person qualified for appointment as a Judge of the High Court. The Constitution is silent on the qualifications required for the other Constitutional Offices.

What did Kenyans say to CKRC? The majority of the people have mentioned the lack of impartiality and independence in the discharge of functions by holders of Constitutional offices. Members of the Judiciary came up for special censure in this regard. Briefly Kenyans had the following to say: regarding the Judiciary, the Chief Justice should be appointed by the President with approval from Parliament, the Judicial Service Commission should appoint Judges with approval from Parliament. The Chief Justice should be in possession of a University degree in law and at least 10 years' experience as a High Court Judge, real security of tenure should be accorded to Judicial Officers. Judicial Officers should retire between 55 and 65 years of age. Corrupt Judicial Officers should be interdicted, suspended or even demoted during investigations into their cases.

Regarding the Attorney General: that the office should not combine the roles of independent Prosecutor, a Legislator and a member of the Executive. The office is unable to exercise the role of Prosecutor independently while being a member of the Executive. The office could not exercise its independence since the holder is a direct appointee of the President and a member of a cabinet that is collectively bound to implement political decisions passed by the said Cabinet. The office should not interfere with privately instituted prosecution. Should depoliticize prosecution in order to ensure fairness to all people. Should ensure that all prosecution is conducted by qualified lawyers.

As regards the Chief Kadhi, Kadhis and Kadhis' Courts, Kenyans had a lot to say, however, I will briefly summarize the following. Muslims must be consulted in the appointments of Chief Kadhi and other Kadhis. They should either elect them or the members of the appointing authority, i.e. the Judicial Service Commission. Those Muslim organizations such as SUPKEM should be consulted. There should some minimum academic qualifications for the Chief Kadhi and the Kadhis have a degree in general in Islamic Law from a recognized university. Kadhis'

courts should be empowered to effectively deal with their work, in terms of setting up a scheme of service and improvement of their terms of service. Each Kadhi must have a female assistant to handle delicate cases involving women. The powers of the Kadhis' courts should be increased to include, handling civil and commercial cases involving Muslims. Kadhis and the Chief Kadhi should not be involved in matters relating to Idd celebrations and other non- judicial work. Supremacy of Muslim personal law over all other laws for the Muslims in matters of personal law should be affirmed. The recommendation of CKRC would be part of the next presentation.

The last part of this Report addresses succession and transfer of power. When you read this Report you will realize that part of it has already been overtaken by events in that we have already had a transition. But the following still remains relevant. The Constitution provides that a person elected as President shall assume office as soon as he is elected and shall, unless his office becomes vacant by reasons of his death, his resignation or his ceasing to hold office by virtue of any other cause, continue in office until the person elected as President at subsequent presidential election assumes office.

From this provision it is apparent that, there are no express provisions for handling other periods between the out-going and the President-elect. There is, however, no provision in Constitution for the temporary transfer of Presidential powers, other than expressly in writing to the Vice-President. What did the Kenyans have to say about this? As a general rule, a clear line of succession should be established to avoid confusion in case of death or resignation of the President. The Vice President shall take over presidential powers for the remainder of the term and the new President taking over after an election should be sworn in on a specific date. The recommendations of the CKRC again form part of the next presentation. Thank you very much, Mr. Chairman.

Hon. Delegate Kennedy Kiliku: Thank you, Commissioner Salome for the very detailed presentation. Now we are going to the presentation of the Draft Bill by Commissioner Riunga. Welcome.

Com. Riunga Raiji: Thank you very much, Mr. Chairman. I am greatly indebted to my colleague, Commissioner Salome, for laying an excellent background of the views that

informed the material that you are going to find in the Draft Bill which we are going to present. You will note from your Order Paper that we are required to present Chapter 16 of the Report, which Commissioner Salome has so ably done, and then we are also going now to present the Draft Bill. You will also realize that some of the Constitution Commissions which are covered in the Report have already been dealt with, and other Chapters like the Kadhis' Court, Judicial Service Commission and so forth and part of the others like Succession and Transitional arrangements which were the legitimate subject of Chapter 16 of the Report, are going to be presented, I think after we finish with the Commission.

I think it is important for us to note that Commissions are important tools through which the sovereignty of the people may be exercised and safeguarded. If you remember, at the very beginning in Article 1(3), we did provide that, although traditionally sovereign power has been allocated among three arms, that is, the Legislature, Executive, and Judiciary, in this Draft Constitution, it is proposed that Constitutional Commissions and the offices established under Chapter 17 and elsewhere in the Constitution, is the fourth arm of the allocation of the sovereign power of the people. When we talk about the Constitutional Commissions and offices under Chapter 17, we have in mind three categories of Commissions. We have Commissions which are already established under various other Chapters of the Constitution, but which enjoy all attributes of the Constitutional Commissions that we are going to deal with in this Chapter. We have already discussed such Commissions as the Electoral Commission, under the representation of the people, the Land Commission, the Environmental Commission, the Judicial Service Commission, the Economic, and Social Affairs Council and various other Commissions. The provisions that we have proposed in this Chapter apply equally to all the Commissions that are mentioned in the Draft.

The second category are Commissions which we are calling here special Commissions because they have not been provided elsewhere, but nevertheless are also extremely important to ensure that rights, the obligations and duties that we have created in this Draft are going to materialize and these are the ones which we will be discussing shortly.

There is another category of Commissions, which are called Constitutional Offices. These offices are also Commissions in the sense that they are covered under the same provisions, but

they are essentially offices which are manned by one person, but contain officers under them. Constitutional offices that we are talking about as part of the Constitutional Commissions and offices in Chapter 17 are such offices like the Attorney General, the Director of Public Prosecutions, which we proposed in this Draft to be made a Constitutional office; at the moment it is not; the Director of Police Service, who is presently called Commissioner of Police and who is proposed to be made a Constitutional officer, the Public Defender, the Auditor-General and these other offices. Considering this Constitution Commissions, there are various features that we have stipulated under the proposed Draft and I would ask those of you who have carried their Draft, Chapter 17, if you go to Chapter 17, Article 278, there are certain principles which I think have been mention generally when Commissioner Salome was walking you through the Report and we intend to run through the Draft Bill in order to establish whether indeed we have given effect to the recommendation that emanated from the views that you presented to us and which views are contained in the Report which you have just gone through.

The first one is Principle of Independence. We propose that all these Commissions and offices be made independent, and we have already provided for this under Article 278 of our Draft Report. You recall that the main object of these Commissions really is also to ensure maintenance of constitutionality and in order for them to be able to do that, we have proposed that they be independent of the State and participate functionally in the management of their affairs. We have also proposed that in order for these Commissions to be able to carry out they duties effectively, we have streamlined their legal status so that they are going to be body-corporate with perpetual succession, capable of suing and being sued. In other words, they are not, strictly speaking, part of the Government; they are independent Constitutional bodies and offices.

We have also made provisions for their composition, which we hope meets with your expectations which you gave to us when we went round. In composition, we have made a radical departure from the existing Commissions, through the Electoral Commission, Teachers' Commission, even the CKRC, these are Commissions with almost up to 30 people. We are proposing in Article 281, that no Commission shall have more than ten members; there is a minimum of 3 to 10, that is Article 281, and because you remember we have already accepted as a principle that we are going to have in all public offices one third women representation, we

have proposed in this Article (281), that one third of members of each and every Commission created under this Draft Constitution shall be women.

We have also proposed that members of these Commissions will hold office for a period of five years and that such period may be renewed only once. You can read the other details yourselves; we have made a retirement age of 65, which will not run through all the Constitutional offices, including judges, Attorney General and so forth.

I think the only other issue I want to mention to you, you will read the rest, is Article 282, the functions of these Commissions. One of the important functions that we have proposed for these Commissions is the education of the public on its role, purpose and mandate. It is important that people understand why these officers are created, in order to take advantage of the benefit that they purport to give to these people.

We have also given the power to conduct their own investigations and, in order to ensure that their not caught up by procedural technicalities, we have made accessibility very easy. Those of you who have attempted to enforce provisions relating to human rights through the court system, which at the moment is more less the only avenue for enforcement of constitutional rights, have noted that most of these are blocked by financial and technical constraints, and so forth. We have proposed that in these new Commissions, one can even make an oral report and the Commission concerned will then desist of the matter and write down the complaint itself. We have also proposed that even if a person who is aggrieved is not in a position to complain or raise the matter, it is possible for a third party, an NGO, or even a neighbour, to raise such complaints.

We have also given these commissions the power to award compensation to a wronged person. The next important power that we propose to give these Commissions is to promote reconciliation and amicable settlement of the complaints. We repeat that this is not going to operate as the code. It is going to be a quick, efficient and effective body that can give remedy to any aggrieved Kenyan whose rights have been interfered with or violated.

Again, in order to enhance the principle that Commissioner Salome mentioned about independence of these Commissions, we have made provisions under Article 284 for the holders

of these office to enjoy security of tenure. So that if there is going to be a removal of any member of the Commission duly appointed-and you remember that appointment has to be by the President with approval of Parliament-that person can only be removed for specified mis-conduct and only after a competent and duly-constituted tribunal has investigated and made a recommendation to the President. In order to cure certain problems that we have had in the past, we have made a provision that if the tribunal recommends that a member of the Commission be removed then that person must be removed; there is no discretion. We have also provided for suspension of that person, while investigations are pending, if a recommendation to that effect is made.

The third measure that we have taken as a Commission in this Draft in order to enhance the independence and the autonomy of these institutions, is the financial autonomy. We have proposed that these bodies will prepare their budget, which would be approved by Parliament and be paid out of the consolidated funds. So it will not be possible for anybody to block the functioning of these Commissions once funds have been approved and voted by Parliament.

There is another feature, which we have introduced that was not there in the few existing Constitutional Commissions, and that is, accountability. There are two levels of accountability that we have proposed in this Draft. One, there is, of course, the financial accountability, to ensure that they do not become instruments of graft, and that is provided for under Article 285. All the funds of the Commissions which may be paid by any other party, donors and well-wishers together with money voted to this commission by Parliament, shall be audited by the Controller and Auditor- General and presented to Parliament.

The second item of accountability is that we proposed that every constitutional Commission shall prepare an annual report and present it to Parliament and to the President, detailing the activities that they have conducted during that particular year. We have also proposed that, in their report they must include the audited report of the Auditor-General, so that Kenyans may be able to know exactly whether the Commissions have been functioning or not. We are all aware of numerous Commissions that are never heard of and whose work nobody knows. So we are proposing to cure these defects by making these two provisions of financial accountability and the accountability with respect to their work.

I mentioned that we have proposed the establishment of special commissions apart from the ones that already exist. The first one you find on Article 288, we are calling it the Commission on Human Rights and Administrative Justice. I must say something about this, as you learnt from the report that has been so eloquently represented by my colleague here, we received a lot of proposals on the number of commissions that everybody wants to be formed. Even at this juncture as the rapporteurs of the Chapter dealing with Commissions, we have continued to receive proposals for more commissions. Obviously, taking into account the limitation of funds, we decided to combine some of those, like the commissions that deal with Human Rights and these are the commissions *(Microphone failure)* I think we need a Commission to investigate matters relating to the supply of electricity. *(Laughter)*

I did mention that we have Commissions that relate to aspects of human rights, we had very strong representation that we have a commission on human rights per se. We had similar recommendation on the commission dealing with gender issues, we also had recommendation on the commissions dealing with disability, children, basic needs, and so many other commissions, which recommendations are important and they bring to the surface, the problems of various sectors of our society. But we have proposed to combine all these in one giant commission called the Commission on Human Rights and Administrative Justice. If you look at Article 288 you will note that the Human Rights Commission will have the following as the persons dealing with specific aspects within that body.

Human Rights Commissioner, we have the people's protector or what is commonly known in other jurisdictions as ombudsman; then we have a gender commission. Then we have, if you look down there, we will have people within that commission, the Commissioners, somebody dealing with matters relating to the children, another dealing with matters relating to disability, and another one dealing with matters relating to basic needs. And therefore you note that this Commission combines all those, so that as you contribute please note that we have taken into account all that, but we thought that it will be a good usage of resources both human and financial to have all of them under one umbrella.

I think their duties are very clear when it comes to Human Rights, we all know that we need to continuously protect the Human Rights. We have already discussed the very widely accepted Bill of Rights which will obviously require to be enforced and we have entrusted that mandate to this Commission. Then of course the issues of gender, I think this has been a crosscutting theme virtually in every chapter that we have discussed, we have made provisions for them. This is all in 288, you find the details there, children, disabilities and so forth.

One of the issues I would want to refer you to, because this is innovative on the part of the Commission in this Draft, is that we have also proposed a wide mandate to this Commission to evaluate Acts of Parliament, systems of personal law, our own customary laws, in order to ensure that they comply with gender provisions. In other words, instead of doing a postmortem whenever a violation has occurred, we have proposed a proactive provision that will empower this Commission to investigate and advise and take remedial measures, in order to ensure that violations of people's constitutional rights are prevented before they occur. I think that is straight forward reading, I don't want to say more about that one, except also to mention that we are also requiring this commission to be the Government arm or the public arm of complying with reporting provisions which we assume as a republic under certain international treaties that Kenya is party to, particularly on conventions on human rights. It will be the responsibility of this commission to ensure that timely reports are prepared and that we are up to date with our reporting obligations.

The next commission under this special commission is the Ethics and Integrity Commission. I think yesterday we dealt with the leadership code, and we have seen that there are very far reaching provisions that are being made in the manner in which public officers conduct both their public and personal lives. We have imposed very strict ethical standards and it is important that a body be set up in order to ensure that they are complied with. This is the body that we have proposed to create under Article 289, the Ethics and Integrity Commission. One of the two functions is that it will receive the declarations that we shall all sign in accordance with the leadership code and it will be the custodian of that code, it will provide accessibility to those who are authorized to the information in that code, it will act as some form of prefect to ensure that not only is there compliance but that we have accurate compliance.

We have also proposed that this commission will investigate whether persons who have offered themselves for appointments as officers are actually free of corruption and that they are fit and proper persons. And that brings us to the second function, we have seen the first function is basically to enforce and be the custodians of the declarations that are made in accordance with the leadership code.

The second function is that this will be the anticorruption arm of the republic. You remember that we had the Kenya Anti-Corruption Authority which was thrown out by the courts on the basis that it was not a constitutional body. If you approve this Draft, that is the equivalent of KACA which is the integrity commission, will now become a constitutional organ and hopefully no court will attempt to remove it. Apart from the normal functions of investigating corruption, as I have said just a little earlier, it will also ensure that it will scrutinize all persons who are proposed for public office. I remind you Honourable Delegates, I think you have gone through the various requirements that certain categories of public officers will be approved by Parliament before they can assume those offices. This is the body really that is going to check and confirm that they have the necessary integrity to enable them to become members of such important offices of the republic. Again like we mentioned like all commissions, we do not only propose that they just punish people who are corrupt, we have also given them mandate to go and educate the public and the society in general on the means of eradicating and preventing corruption. They will also be able to scrutinize various bureaucratic procedures and advise where they think that these procedures create an enabling environment for corruption to thrive.

The other special commission that we are proposing is the Salaries and Remuneration Commission. I think this is very clear, first of all this is provided in Article 290. You heard what everybody said, the first reason of course is that nobody should ideally have power to announce how much he/she wishes to earn. This must be done by an independent body which is this one. Now the important thing to note in this provision is that it's going to apply to every person who is paid out of public funds, from the President down to the lowest civil servant in job group A or B I think.

Number two, it will also apply to people who are working in parastatals or other public bodies. We did receive a lot of recommendations and complaints that a clerk working in a Government

Ministry may earn a tenth of the pay of a similar clerk with similar qualifications working in another statutory organ say like Central Bank. Part of it will be to harmonize the salaries of all persons who are paid out of public funds. With due respect to our MPs, the public did make a lot of complaints regarding the present procedure that Members of Parliament have the mandate to fix their remuneration. As a result of this we did state that every person including MPs and everybody will have to have their salaries submitted and determined by an independent constitutional body which is this one.

I think the next of the special commissions is the Teachers Service Commission, Article 291. I think we all know what the Commission does at the moment, it is basically an employment bureau, it hires, fires, promotes and so forth, but we have proposed to give it a few more teeth. If you look at Article 291 Sub-article (2), you will see that the Commission is now required to act more or less as a professional body for teachers. It will review the standards of education, the training, and fitness to teach appropriate to persons who are entering this profession. It will also act as a resource center of the Government where it can give the Government advice on matters relating to the teaching profession.

The last but one important special commission that we have set up is under 292, is called the Constitution Commission. You will note, Honourable Delegates, that throughout the Constitution, we have such provisions like Parliament shall enact a law to ensure a smooth compliance of blah, blah, blah. Now this Constitution Commission, is the prefect of this Constitution that we are going to make. It will be the mandate of this Commission, to ensure that where, in order for the people of Kenya to enjoy the rights that are enforced, or that are given to them by this Constitution, Parliament does indeed make that law, it will also ensure that all the laws that are necessary to bring into force this Constitution of various provisions are done. And the reason why the people of Kenya made that recommendation is obvious; some of you may not be aware, but until very recently, it was not possible for people in this country to enforce provisions relating to their fundamental rights, because the Chief Justice, had not for all these decades, put in place rules to allow for accessibility of these rights. So with this one, we hope that it will be possible that once the Constitution is passed by this body and go through Parliament, then it will be actually implemented and respected. If you like, it is the policeman or watchman of the Constitution.

Finally, we go to the Constitution offices, which I think Commissioner Salome mentioned in great details; and all we can say on this is that, all practical purposes are deemed as Constitutional Commissions, all the provisions that I have discussed, apply to them. And finally before I end, my colleague today deal with Chapter 18, on the amendment of the Constitution, I noticed that in the Technical Committees dealing with this matter, committee K, very few people were interested in joining because it was assumed that the issue of Constitution Commission, is not as important as that Prime Minister, Kadhi or Transitional. But I wish to inform you that, this is the Commission that will ensure whether in fact, the Constitution we are making comes into effect. And if so, when? Thank you very much.

Hon. Delegate Kennedy Kiliku: Thank you very much Commissioner Riunga for the excellent presentation. Now, I am calling upon Commissioner Tobiko to get us through Constitutional Amendments. Welcome.

Com. Keriako Tobiko: Thank you, Chair, Honourable Delegates, I will take you through Chapter 18 of the Draft, which also must be read along with Chapter 7 and Chapter 3 of the main Report that deals with amendment of the Constitution.

Chapter 18, is one of the smallest Chapters in the Draft Bill. It has only three Articles: Article 294, 295 and 296. Although it is one of the smallest Chapters, in my submission, it is one of the most important Chapters. Why do I say so? I say so for two reasons. The first reason is this: there is a direct correlation between amendment of the Constitution and Supremacy of the Constitution. So that you must read amendment of the Constitution along with the Chapter dealing with Supremacy of the Constitution. The reasoning is this, that a Constitution embodies the will, aspirations of the people. And the people are supreme. It is the people that creates organs of Government in the Constitution, give them and delimit their powers, and define their scope of operation.

So because we need to represent the will of that superior body called the people, then a Constitution of necessity must be a Supreme law. It must be a Supreme law. It cannot then be dealt with in the same way that an ordinary legislation is dealt with. Article 2 of the Draft, makes

that very clear. It is this Supreme law of the land and any law that is inconsistent with it is null and void to that extent. Constitution then, must be treated specially in the way it is amended, in the way it is interpreted and in the way it is enforced. So that is the first reason why this Chapter is important.

The second reason is this: the lesson we have learned in this country from the history and experience in Constitutional amendment, in my view, is a painful lesson, again for this reason: in 1963 we started with an Independence Constitution, which was a massive document running into 247 Articles and 11 Schedules. It was so detailed, that it actually even described locations of public toilets. That is how detailed the Independence Constitution was.

In terms of amendment of the Constitution, the Independence Constitution was entrenched. And there were two categories or provisions under the Independence Constitution. There were what were called specially entrenched provisions and those specially entrenched provisions are those that dealt with regions, the Senate, citizenship, fundamental rights, Judiciary and so on and so forth. Then we had ordinary provisions.

To amend the specially entrenched provisions, you required a vote of 75% of the Lower House and 90% of the Upper House, that is the Senate. That is the way specially entrenched provisions were amended. 75% of the Lower House representatives and 90% of the Senate.

For ordinary provisions, you required only 75% of both Houses, the Lower House and the Senate. But there was also provision for a referendum; in the event that an ordinary provision does not get the requisite majority of 75% in each House, then it could be referred to a referendum. And if it is supported by 60% of those who voted at the referendum, then that amendment is re-introduced, and then it will be passed, if supported by simple majority of members present and voting in the House. So, that is how the Independence Constitution treated this issue of amendment.

Indeed, I forgot, that in the specially entrenched provision, was the amendment procedure itself. Hardly eight months into the new Constitution, and the Government of the day felt that “No, this Constitution was unworkable.” And that therefore, there was urgent need for constitutional

amendment. And the first thing then to was, to amend the amendment procedures was the provision relating to amendment procedures, so as to make it easier, to amend the Constitution henceforth. And that actually was attained. In 1965, the amendment procedures were amended, removing the distinction between specially entrenched provisions and ordinary provisions, and now requiring simply 65% vote instead of 75% and 90% and so on and so forth.

Similarly, the Senate was abolished in 1966, the Regions were abolished in 1968, and then the stage was therefore set for a series of amendments. A series of indiscriminate amendments; self serving amendments. And between 1964 and 1990, there were over 37 amendments to the Independence Constitution. The effect was therefore to cannibalize the Independence Constitution, to what we now have as our current Constitution. Our current Constitution is only 126 sections. From 247 and 11 schedules, to 126 and no schedule. That is the current Constitution we have, which in my submission is a pale shadow of its original self.

In all these amendments I must say, there was no participation or involvement of the people. When we went out to collect views of the people, obviously that was a major concern. And the people wanted to know, in view of our history, in view of the fact that the Independence Constitution was easily, quickly and fundamentally amended, what mechanisms should be put in place to ensure that the new Constitution does not suffer the same fate? For a good reason the public was concerned, apprehensive that the Commission might come up with a beautiful document, a comprehensive document, but then if it is not secured, then in the next few years, we will be back to where we began.

So, what did the people then propose? What did they propose? Firstly, they proposed again that there should be a distinction between entrenched provisions and ordinary provisions. So, let us go back to the independence Commission and distinguish between ordinary and entrenched provisions. The entrenched provisions should include Chapters on Supremacy of the Constitution, the Bill of Rights, land, Judiciary, Security, Finance and Systems of Government.

In the views that we collected, those were the provisions that the people wanted entrenched. And they went further to say that stringent mechanisms must be put in place for the amendment of these entrenched provisions; and what was that mechanism? They said, it would require 75%

vote of each House, and in addition must be referred to the people through a referendum. So 75% plus a referendum.

As regards the non-entrenched provisions, the views of the people was this: That it was sufficient just to require 75% votes in each House. As regards who would conduct the referendum in the case of entrenched provisions, there was variety of proposals. Some preferred the Judiciary, others preferred the Electoral Commission, and others suggested NGOs, while others talked of Religious Organizations. The people also proposed that hence forth, they must be involved in amendment of the Constitution, not just through referendum, but also through discussions, debates and awareness creation. That is a sample of the views that were given by the people on this issue.

How did the Commission treat these proposals? The approach was this. While we appreciated that the Constitution needed to be protected from indiscriminate amendment and therefore, the need to make it difficult to be amended, we also appreciated if you made it too difficult to amend the Constitution then there are dangers in it also. If you made the threshold for amending a Constitution too rigid then you might also land in problems because now we are making a new Constitution, if you implement it in the next few months, you will realize that certain provisions are unworkable, others are contradictory, defective and so on and so forth and you need a simple expeditious mechanism to address. You don't have to bother with an addendum as a way of again constituting another Commission to correct the situation. So then what the Commission did was to try and strike a balance between making it too rigid and making it too flexible and that compromise formula is what you find in Chapter 18 of the draft, which I will now take you through.

In the draft we did the following: Firstly, a distinction is created between entrenched provisions and non-entrenched provisions, just exactly as the people wanted. What are the entrenched provisions? Those provisions are found in Article 294, Sub Article (iii) and they relate to the territory of Kenya, sovereignty of the people, national goals and values, bill of rights, devolution, citizenship and the amendment procedure itself. So in the draft, those are entrenched provisions.

To amend an entrenched provision, we propose that the Bill must get support of at least 65% at the second and third reading in each House. So 65% in each House and in addition to the 65% it must be sent to the people for ratification through a referendum. That referendum is to be conducted by the Electoral Commission, that is Article 296, Sub Article 2 (b). As regards the non-entrenched provisions, Article 295, Sub Article (i), it only requires a 65% vote in each House and there is no need for ratification, so we created that distinction.

Secondly, Article 294, Sub Article (i) creates expressly what is called the constituent power of Parliament. That Article gives Parliament constituent power to amend the Constitution. In Constitutional law a distinction is made between constituent power and amending power of Parliament. Constituent power is the power of Parliament to make a Constitution or change the basic structure of the Constitution. It can make a new Constitution or it can change the basic structure of the Constitution in exercise of the constituent power. The amending power is simply the power of Parliament to alter or amend a provision in the Constitution and there is a wide-ranging debate among Constitutional Experts and Jurists to this effect. Whether Parliament in exercise of its amending power can make a new Constitution or change the basic structure of the Constitution that is a raging debate. Indeed, that debate was brought right before this House through the motion by Honourable Mirugi Kariuki and the argument is this.

In the current Constitution, the power of Parliament to amend the Constitution is found in Section 47 and it talks only about altering a provision of the Constitution. An argument then has been put that you cannot be in exercise of the power under Section 47, you cannot make a new Constitution or change the basic structure of the Constitution. There are those who agree with that argument, there are those who don't and I don't want to jump into the express band wagon. Suffice it to say, that we felt that, that argument had such water that expressly the Draft deals with it in Article 294, Sub Article (i). Parliament is expressly given the constituent power.

Thirdly, the Draft provides for participation of the people, Article 295, Sub Article (ii) requires the committee on good governance and public participation, which is a committee of Parliament to publicize and facilitate public discussion on any Bill. So that has been taken care of.

Number four, Article 296 Sub Article (i) provides for a 90-day period between the second reading and the third reading. The rationale here is this, it is to correct the previous habit where Bills were rushed through Parliament in a day or half day limiting debate and so on and so forth and that had happened. In 1966, a Bill was rushed in a day to require those who resigned from their political parties to subject themselves to a by-election and that was to deal with the Oginga Odinga's KPU. In 1982, a Bill was rushed through in the afternoon and passed to make Kenya a de-jure one party State. So that provision that requires 90-day period between second and third reading is precisely to allow debate and prevent abuse of that legislative process.

Number five, Article 296, Sub Article (ii) requires compliance certificate. Where a Bill is presented to the President for ascent it must be accompanied by a certificate. In this case if it is a non-entrenched provision the certificate is signed by the Speaker confirming that the provisions of the Chapter had been complied with or if it deals with entrenched provision then a certificate signed by the Electoral Commission confirming that the proposed amendment had been confirmed by the people in a referendum, so that is the feeling.

Lastly, Article 294, Sub Article (ii) and Article 296, Sub Article (iii) obligates the President to ascent to Bills. The current position is this, Parliament might pass a Bill through the requisite majority, submit it to the President and the President might decline to ascent to it and return it back to Parliament. And then either the Bill fails or that can be overridden by a 60% vote of members. It was felt that, that was unnecessary and therefore under those particular Articles, 294 (ii), 296 (iii), the President shall ascent to Bills once presented to him or her and if he or she refuses to sign or fails to ascent within 30 days then the Bill is deemed automatically to have been assented and becomes law upon the Speaker laying a copy thereof before Parliament. Thank you. (*Clapping by Honourable Delegates*). Thank you very much. Can we clap for the presenters please?

Clapping by Honourable Delegates.

Hon. Delegate Kennedy Kiliku: Honourable Delegates, we are now going to break for tea and we come back at 11.00 am, please.

An Honourable Delegate: Not 11.00 am.

Hon. Delegate Kennedy Kiliku: Ten minutes past 11.00 am.

After Tea.

Hon. Delegate Kennedy Kiliku: I request you to get seated. Honourable Delegates we are going to start. I will start on my left. 532.

Hon. Delegate Lumatete Muchai: Thank you, Chair. My point of order is this. My name is Lumatete Muchai, Delegate number 532. I appreciate that the Honourable Commissioners have taken us through the contents of the Chapters that we are just about to discuss. My worry is, it is apparent that we are being rushed through these discussions and yet these are the most important parts of this Constitution. It is apparent that the Steering Committee is intent on ensuring that this debate ends tomorrow. In my reading of these Chapters, I find that there are many omissions and some of us may not have an opportunity to contribute here on the floor so that these suggestions may go on record and a proper document prepared for the working committees. So, my worry is that you are hurrying us but may I know from the Chair how much time you are going to give these Chapters. Thank you.

Hon. Delegate Sultana Fadhil: Honourable Delegate, kama ujuavyo siku zote tukianza kuongea hapa, hii programme mnayopata mnaambiwa kila siku ni guideline na mara nyingi tulikuwa tumeandika, tukamaliza mazungumzo wakati maalum. Lakini ikiwa bado watu wanataka kuzungumza, huwa tunaongeza. Kwa hivyo hivi sasa hatuwezi kukuambia tutamaliza leo, kesho ama August Chapter hii. Yategemea watu wakiweko ku-contribute, tutaendelea. Kwa hivyo siwezi kukujulisha sasa hivi. Lakini tutajaribu kuwapatia watu nafasi ya kutosha kuzungumza Chapter hii. Mmetosheka?

Hon. Delegate Kennedy Kiliku: Point of order? 435.

Hon. Delegate John Katumanga: Thank you, Mr. Chairman, mine was not a point of order, I wanted to contribute to the debate.

Hon. Delegate Kennedy Kiliku: Please wait for your time.

Hon. Delegate John Katumanga: Thank you.

Hon. Delegate Kennedy Kiliku: I will start from my left, a Member of Parliament. A Member of Parliament in section one on my left. If there is no Member of Parliament, then a District Delegate. 316, and the next section will go to a Member of Parliament and also a District Delegate.

Hon. Delegate Gitu Wa Kahengeri: Mr. Chairman, jina langu ni Gitu Wa Kahengeri na number yangu ni mia tatu na kumi na sita na nimetoka Thika. Jambo la kwanza ningependa ya kwamba katika Article 292, ningependa ku-propose ya kwamba tuweke Article 292 (a). Nayo jina lake liitwe the National Heroes Commission. National Heroes Commission will consist of the Chairman, the Vice-chairman, two to be nominated from the senior-most public Universities, three from freedom fighters and two journalists to be appointed by the Journalist Union. The Commission will have working Secretariat. The funds to run the Commission shall be paid from the Consolidated Funds.

Duties of the Commission:

- I. To establish who the heroes of Kenya are.
- II. To find ways and means of honouring these heroes.
- III. To build memorials and statues.
- IV. To find funds for writing books and films in honour of the Kenyan heroes.
- V. To establish and maintain Kenya Heroes Cemeteries.
- VI. To establish Heroes Centers.
- VII. To take care of known graves of the Kenyan heroes.
- VIII. To do everything that will enhance the heroism in Kenya.

Mr. Chairman, previously I spoke here and I said I was a freedom fighter. Maybe today I will change that to be a lecturer. The reason is that I want to tell the Conference here today that we are sitting besides a national flag. That national flag contains four colours and I want to tell you why we have the four colours in our national flag. There are those who know and I just want to remind them. I here say the interpretation of the colours:

1. Black colour signifies black people of Kenya.
2. White colour as you see signifies peace in Kenya.
3. Red colour signifies the blood that was shed to liberate the country of Kenya.
4. The green colour denotes the fertile land of Kenya.
5. Shield and spears in the Coat of Arms signify Kenya's armed capacity to defend their soil.

Mr. Speaker, people who brought that flag started many years ago. I will give an example that when the colonialists wanted to enter Kenya to colonize us, there was a war of resistance. From Coast we had Mekatilili, Mepoho who were the heroines of Kenya who tried to prevent colonialism in Kenya. We ought to honour them. Further on in the country, we had Waiyaki Wa Hinga. He also fought a battle to prevent colonialism. We ought to honour him. Go further to Rift Valley where you will find Olokoyoit Koitalel Somoyei who also fought a great battle to prevent colonialism. We ought to honour them. Go further to Karachuonyo - I am only mentioning a few because the heroes are scattered all over Kenya - you will find Ong'wen. Ong'wen at the Karachuonyo hills was fighting to prevent colonialism. Therefore, Mr. Chairman, when I say that there should be a Commission for heroes, I mean to say that if you forget, if you don't recognize your heroes, when the *vita* comes you will have no heroes to fight. *(Clapping from the Honourable Delegates).*

Mr. Chairman, I know my time is over but I would like to urge the Conference to accept that Article which will establish a Heroes Commission. Thank you, Mr. Chairman.

Hon. Delegate Kennedy Kiliku: 388 please.

Hon. Delegate Sammy Naibei Chemwey: Thank you, Mr. Chairman, my names are Sammy Naibei Chemwey from Mount Elgon. I want to start by appreciating the work of the Commission particularly in bringing out the issues of the Constitutional Commissions in these particular Chapters. But I first want to register something that I would like to ask as a clarification. In bringing out these Constitutional Commissions, one sees that ever since we started discussing the Draft Constitution there have been requests for many Commissions to be entrenched in the Constitution. When you look at some of the details given and functions of the various Constitutional Commissions and various Commissions to be entrenched in the Constitution, it becomes apparent that some of the functions of the various ministries and departments of Government will appear to be easily taken by the Commissions. It looks to me like we will leave a Government that will have various ministries without much to do. You look at some of the issues that are raised in this Commissions like; evaluate Acts of Parliament in Article 288(8) it gives like evaluate Acts of Parliament, any system of personal and family law, customary laws and other laws. What one wonders is the ability and various capacities for these Constitutions to implement some of the functions they are being given to do. You will see that they will be able to carry out investigative functions and be able to take complaints and be able to create some kinds of punishment. And you wonder, how do you relate it between the investigative arms of government and that of the Commission? How are they going to function?

Essentially one finds that a number of Commissions are being recommended which means that we are going to create too many Commissions for the good of the Draft Constitution. I appreciate the problems that we have encountered and that in the past there has been misuse of power and we now want to move into a new dispensation. Does a new dispensation in the Draft Constitution mean that we cannot create a Constitution that can be able to have sufficient self-guard checks and balances that will enable a government *per se*, departmental and ministerial, to function without necessarily creating too many Commissions? How do you harmonise them? For example, we were talking about the Public Service Commission, we now have the Teachers Service Commission and many others, how will it be across the board that you can maintain harmonization all through? Because what has happened now is that various departments and various other institutions that have been created have been able to attract personnel from the Government, from other institutions because there has not been parity on meritocracy on some educational standards and harmonisation has not been there.

I would like to propose that we should be able to have one particular Commission like we have the Public Service Commission for example and under it create various boards. Because it would appear to me that there is a difficulty in creating independence in decision making and creating independence in status. So what we really want to do is that these people would have been able to make decisions in the past if they were properly safeguarded as an institution on its own or if they were safeguarded in the making of decisions independently. I would like to suggest, Mr. Chairman that we re-look at this Chapter so that we do not create so many Commissions that will become a burden in this draft and become very expensive. Thank you, Mr. Chairman.

Hon. Delegate Kennedy Kiliku: We go to a Member of Parliament or NGO, next section. There is no Member of Parliament; we go to NGO or Trade Unions. 435.

Hon. Delegate John Katumanga: Thank you very much, Mr. Chairman. The Commission in its wisdom decided that we should have various Commissions because of certain reasons. The Public Service Commission did not have the capacity to function efficiently; there was even a time Mr. Chairman one Minister was referring to some areas like a corridor of chaos. I do not like to agree with the former speaker, we are devolving power so that services can be given to Kenyans adequately.

If, for example, you take the Teachers Service Commission vis-à-vis the Public Service Commission. The Public Service Commission handles less than one third of what the Teachers Service Commission handles. The Teachers Service Commission hires and fires, recruits and promotes as you have adequately put here and I was going to request the Delegates that TSC be left autonomous because it has special problems. It has special problems Mr. Chairman, teachers retire at the rate of 4000 a year and we loose about 1000 teachers a year, a total of 5000. Then there are discipline cases that need to be handled very, very quickly and even the number of the Commissioners should be increased. Because they have been all divided into various sections of the Commission to hear all cases related to the teachers. If therefore, we reduce them to a board Mr. Chairman, we would be going backwards instead of going forward.

Mr. Chairman, I want to request you kindly and through you to the Delegates here, that Section 291 of our Constitution that talks about the Teachers Service Commission, there is something like consultation or in consultation with the Public Service Commission. I think it is going to bring a lot of confusion. When you look at the functionality of the Teachers Service Commission like they are in schedule two, they are completely divorced from the Public Service Commissions. And because of the magnitude of responsibilities of the Teachers Services Commission and I know Mr. Chairman you now know the Teachers Service Commission has 24 Commissioners. If you reduce them for example to six, that work will be impaired, and therefore we are creating many Commissions to be able to do the work the Kenyans want efficiently. So it is not the question of how many they should be, it is the question of what service do they render? And if they are going to render service Mr. Chairman, conflicting them or submerging them into fewer Commissions and we heard yesterday even from the Police and Prison, there are specialized agencies that deal with specialized work.

So I beg that for example the Teachers Service Commission was created because of the confusion there was in colonial days when teachers were under different management and teachers had to go on strike for a long time to be able to get one employer. And we are happy we have one employer, he is not excellent but there is a lot of improvement now and that is why there is quite a bit in the teaching profession, the profession that is the backbone of development in this country. We cannot afford to reduce the services nor those officers, if anything we should increase them. Mr. Chairman, I beg to move. Thank you.

Hon. Delegate Kennedy Kiliku: 309. Point of Information, whom do you want to inform? You want to inform everybody. Do you want to be informed? (*Noise by Honourable Delegates*)
Okay 309. 309 continue.

Hon. Delegate Jane Kirangari Kamwaga: Thank you, Mr. Chairman. My names are Jane Kirangari Kamwaga a district Delegate from Murang'a. Mr. Chairman, in Chapter 17, there is a set of Commissions that have been created and proposed. I support the creation of the Commissions but, Mr. Chairman, I am of the feeling that we should add another Commission which should be called Gender Commission. Mr. Chairman, we should also add the functions specifically related to these Commissions. Why I am saying this Mr. Chairman, is because

women so far have made very important contributions in the Draft so far and further gender concerns are key issues in the current Government agenda. With gender equality and equity as guiding principles to help promote the advancement of women, nevertheless, there is no mandated constitutional structure or lead agency responsible for gender issues and yet women represent over 52% of the population of this country. I therefore think that Gender Commission is warranted and may be I will give a reason. Kenya currently lacks a National Gender policy and there is no state institution currently responsible for promoting and protecting women's human rights and monitoring Government actions with regards to women's rights.

Mr. Chairman, there is no State machinery with authority to either enforce and measure or influence policies at ministerial, judicial or local government level. Mr. Chairman, if I may ask what is a Gender Commission? A Gender Commission is a Constitutionally mandated strong independent autonomous institution that is responsive to all in ensuring gender equality and gender responsive governance. The Gender Commission has several responsibilities and duties, I will mention a few:

- It will examine human rights complaints that are gender specific and are submitted by women, men and even other state actors.
- To make recommendations to the Government on women's rights issue.
- Mr. Chairman, it will be also an advisory body. It has the responsibility of being an advisory body to the Government on policies and programs which are promoting the entire gender.

Mr. Chairman, on Article 288, currently there is no separate Gender Commission created in the Draft, but I have proposed one. And I would propose that we remove the functions from under Article 288 (3C) and place them under a separate Article on Gender Commission whereby we should add that the Commission shall consist of a Chairperson and six other members of which half shall be men and half shall be women.

The function of the Commission will be to ensure organs of Government, authorities, public-owned bodies and their office holders are responsive to needs of women and provide remedies

and receive complaints of unfair treatment, manifest injustices, oppression and unfair treatment.
Thank you, Mr. Chairman.

Hon. Delegate Kennedy Kiliku: Anybody from Special Interest? District Delegate 341.

Hon. Delegate Jane Mwikali Mutunga: Thank you, Mr. Chairman. I would like my fellow Delegate to talk on my behalf. Thank you.

Hon. Delegate Eric Mutua: Thank you, Mr. Chairman. We come from the same district with the Honourable Delegate and we have not spoken. My names are Eric Mutua and –

Hon. Delegate Kennedy Kiliku: Okay. We are going to allow you but that is rigging and *(Laughter from the Honourable Delegates)*. Anyway, since both of you have not talked and are from the same district, continue.

Hon. Delegate Eric Mutua: Thank you. Mr. Chairman, I wish to first comment that the basic principles in this Chapter are well crafted. However, we have small problems with some of the commissions and in particular, I would like to look at Article 282, Sub-Article (1) (d), where part of the functions of the commission is to award compensations. My looking at that Chapter Mr. Chairman, it looks like there is a possibility of the commission usurping the powers of the High Court or the Judiciary and I am saying this Mr. Chairman, because if one looks at the functions of this Commission, it appears that Mr. Chairman, there is an attempt to create autonomous bodies which are not subject to the High Court and at the same time, there is an attempt to create quasi-judicial bodies.

Mr. Chairman, I urge that the relevant committee looks at a clear distinction between these bodies being autonomous and independent of the High Court and them being quasi- judicial bodies.

Again, when you look at Article 289 (3), this is the Ethics and Integrity Commission, Mr. Chairman you will note that part of the functions of this body is to monitor or to investigate whether a person is fit to hold a public office. Going back to the entire Draft, Mr. Chairman, it

appears very well that there are bodies which have been given this function, like for example, any appointment of a person of the rank above a Permanent Secretary, Parliament is given the powers to vet that kind of a person before the President appoints them. When it comes to any other person beyond the rank of a Permanent Secretary, the Public Service Commission is invested with the powers to investigate those kinds of appointments. Again, there is a likely conflict of duties in respect of that Article.

Lastly, Mr. Chairman, I would like to look at the Salaries Commission. It has the powers to advise and investigate the salaries of public servants but there is no provision as to who will investigate their own salaries. Mr. Chairman, thank you very much.

Hon. Delegate Kennedy Kiliku: Point of information? Yes?

Hon. Delegate Winston Adhiambo Ogola: Thank you Mr. Chairman I have got just a short point of information. It is in relation to Article 288. Mr. Chairman, in reference to Article 288 on the composition of the Commission on Human Rights and Administrative Justice, I wish to propose that--

Hon. Delegate Kennedy Kiliku: That is contribution--

Hon. Delegate Winston Adhiambo Ogola: --among the six Commissions, one of them--

Hon. Delegate Kennedy Kiliku: --no, no.

Hon. Delegate Winston Adhiambo Ogola: --should be an older person to safeguard their interests as per Article 36.

Hon. Delegate Kennedy Kiliku: --no, no. You can sit down. That is not a point of order--

Hon. Delegate Winston Adhiambo Ogola: --The elderly form thirty-eight per cent of the population. They are among the poorest. The elders are suffering –

Hon. Delegate Kennedy Kiliku: -- please.

Hon. Delegate Winston Adhiambo Ogola: --they have no energy. They suffer human rights—

Hon. Delegate Kennedy Kiliku: --no, sit down.

Hon. Delegate Winston Adhiambo Ogola: -- because they lack someone to help them.

Noise and uproar from the Honourable Delegates

Hon. Kennedy Kiliku: Okay, 281. He has never spoken. It is your time now.

Hon. Delegate Julius Magao Mungania: Thank you Mr. Chairman for giving me this opportunity. I support the Constitutional Commission as entrenched in the Draft Bill and-- My name is Julius Mungania, a District Delegate from Tharaka and I am number 281.

I want to add something to that. There are several Commissions that have been operating in the current Constitution without serving the duties of the Ministry like the Public Service Commission, the Teachers' Service Commission, but have been quite effective in their duties. So, I fully support this but would also support my colleagues who talked of Gender Commission and I want to add another provision which should be considered and I make a request to this conference.

We should have a Children and Youth Commission. This is my recommendation. Mr. Chairman, when you look at the status of this country, we have so many families in the streets and the Ministry has tried to do their best yet when you go to the urban centres and rural towns, you find children, innocent Kenyans sleeping in the streets. They have nobody to take care of them. We have children who cannot go to school and benefit from the free primary education simply because they cannot get uniforms and school books.

They have nobody to take care of them and you find that some districts are so vast that even the District Children's Officer-in-Charge does not know whether these families and children exist.

The innocent Kenyan children sleeping in the streets have a right like any other Kenyan. They have a right to live, a right to education, a right for a decent shelter and a right to food. When you look at the status, we need a commission which will be devolved right to the districts and even, if possible, to the location so that they will be able to address the problems of these children.

We have many problems in this country especially on the youth. Previously, you may have seen and noted that we have been having so many rampages and strikes in the schools. The Commission that I suggest would take care of the youth by giving guidance and counselling and be able to take collective actions so that our children in schools do not resort to rampages that are creating a lot of problems. When the children go on rampage, they destroy school property. The cost of repairing is borne by the parents, the same parents who have been burdened by other economic problems. So, my suggestion and request to this Conference, Mr. Chairman, is that if that is considered, I do not see any problem of the Commissions doing their jobs because the policies will guide them on their functions and there is not going to be a conflict of interest. Thank you, Mr. Chairman.

Hon. Delegate Kennedy Kiliku: 532, in the next section, please.

Hon. Delegate Rogers Limatete Muchai: Thank you very much, Mr. Chairman. My name is Limatete Muchai, Delegate number 532, from Religious Organizations.

I wish to read Article 289 as read together with Article 151 (5) (a), that is, the granting of national honours. I can see that one of the things that has been abused in this country is the granting of national honours. Now, Article 151 (5) (a), talks of the President awarding national honours on advice of the Prime Minister. Now, when you come to Article 289 (4) (d), you find that the Integrity Commission is forbidden to inquire whether the persons who have been given national honours are properly qualified for those honours. In my submission, I think that is wrong because if one is to be given national honours, he must be a man or woman of integrity.

The second thing I want to talk about is that when you see the Constitutional offices, which have been listed under Article 293, you find that the offices of the Chief Justice and the other judges are not named as Constitutional offices. I wonder whether these are not Constitutional offices,

which have been established under the Draft Constitution. You will also see that the office of the Chairman of the Electoral Commission is not mentioned there at all. Is this not a constitutional office which has been established by this Draft Constitution?

The other anomaly that I see is in relation to when those entrenched provisions of the Constitution will be amended. After a referendum, one of the certificates is supposed to come from the Committee on Good Governance and Public Participation. I wonder why this should be case when we have established under this Draft, a Constitution Commission under Article 295 as read with Article 292 (4) (b). So, I think that the correct thing is that if we have established a Constitution Commission, it should be the one to give a certificate as to whether there has been sufficient education and whether Kenyans have fully participated in the amendments of this Constitution. Thank you very much.

Hon. Delegate Kennedy Kiliku: A Member of Parliament from that side. A Member of Parliament? 195.

Hon. Delegate Zaddock Madiri Syongoh: Thank you, Mr. Chairman.

An Honourable Delegate: Point of information.

Hon. Delegate Kennedy Kiliku: Point of information to whom? Whom do you want to inform please?

An Honourable Delegate: Honourable Chair, I kindly beg your indulgence and I am rising on the basis of regulation 23 sub-section 2. The reason why I am doing that, Honourable Chair, is that this Honourable Conference has recently accepted an *Ad Hoc* Committee on Culture and as I can see, if you do not permit me to say something on culture under Chapter 17, it may be too late, Honourable Chair. When that *Ad Hoc* Committee comes up with the recommendation, which I am hoping it will, and we have not recommended the issue of a commission, then our work in fact may become nugatory. So, for that reason, I would like under Chapter 17 to ask Delegates kindly to accede to the proposal on a Commission on cultural heritage and cultural preservation whose major function number one will be to monitor and deal issues pertaining to –

Hon. Delegate Kennedy Kiliku: Thank you very much.

Hon. Delegate: Just a moment, Honourable Chair. You know the reason why I am talking about this, is culture is so marginalized –

Hon. Delegate Kennedy Kiliku: No, no. You will get your time. Your time is coming and you are going to contribute.

An Honourable Delegate: No, no. Why don't yo--

Hon. Delegate Kennedy Kiliku: Because you are contributing now and that is not correct. 195 please.

Hon. Delegate Zaddock Madiri Syongoh: Thank you Mr. Chairman. Mr. Chairman, in discussing this Chapter I would like to confine myself to the Service Commissions.

As a starting point Mr. Chairman, I would like to suggest that under this Chapter we should have a comprehensive list of all our Service Commissions, those that exist now as well as those that are envisaged. Thank you Mr. Chairman. I am reminded that I should say my name. My name is Syongoh Zaddock Madiri, a Member of Parliament for Gwasi, Suba District, Delegate number 195. Thank you, Mr. Chairman.

Mr. Chairman, we need to have a comprehensive list of all the commissions so that we can deal with them comprehensively and in a systematic manner. The Service Commissions that we already have are well known, that is, the Public Service Commission, I believe you have the Judicial Service Commission. The Parliamentary Service Commission, Mr. Chairman, is omitted from the list and it is our view also Mr. Chairman, that in addition to the Teachers Service Commission, we should have a University Service Commission because that is specialized area and we need to create a home for members of the university community. *(Clapping from the Honourable Delegates,* Mr. Chairman having said so, I would like to say this. That the Service Commission should be guided by three principles.

First of all their roles are essentially recruitment, training and promotion of officers as well as disciplinary control of the same. In managing our officers, I would like to emphasize that centrality of the human resource as a major driver of economic development and transformation of our society should be emphasized when dealing with the Service Commissions.

Thirdly, Mr. Chairman, I would like to say that in managing the human resource there should be a clear separation of the roles of political leaders as well as members of the Service Commissions. In the past Mr. Chairman, we know we have had situations where politicians have interfered with and intervened in the set roles of the Service Commissions. We should have a situation where having to listen to 1.00 o'clock news and sacking officers by the roadside becoming a thing of the past. Our officers must feel protected so that they can do their jobs in terms of service delivery to our people.

Mr. Chairman, as far as recruitment is concerned, I would like to suggest that all our Service Commissions should adhere to the principles of objectivity so that while recruiting, posts should be advertised and selection carried out on pre-set selection criteria which should be objective.

The second issue was a question of equity: there has to be as a standard rule, the necessity to observe equity, a fair distribution of positions or employment or appointment, through all communities, because even the small communities, Mr. Chairman, do have – trained people and also need to have their personnel involved in the management of our various sectors or in the public sector.

Mr. Chairman, on the issue of training, I would like to draw the attention of the Conference to the fact that many of our training institutions have been plundered, land that they had have been taken away from them and in some cases, even building that belong to our training institutions have been taken away and privatised or taken away by private developers.

The role of KIA as a major principal trainer of our public service officers should be emphasized as well as the GTI, which used to train the various cadres of the middle and lower officers in our public service as well as the teacher training colleges.

Mr. Chairman, I would like to suggest that we must recognize training as a major component of the roles of our various service commissions for without training we cannot have competent people to drive our country towards a developed nation status.

Mr. Chairman, the other point I would like to discuss here is the need for political leaders - political leaders, Mr. Chairman, are supposed to rule but the Civil Service or the officers of the public service must be allowed to do their job objectively and that is, to carry out the various roles that they are given. In this respect, Mr. Chairman, we have recently witnessed a situation where our political leaders do not work in harmony with the Civil Service. I suggest that all politicians, once elected at all levels, should go through compulsory induction programmes so that they understand the basic rules governing the management of the human resource in the public sector. (*Clapping from the Honourable Delegates*).

Finally, Mr. Chairman, on disciplinary control, which is one of the roles of the Service Commission, that Mr. Chairman must be left to the Service Commissions. We would not like a situation where we can sack our officers as I have said before but even more so, Mr. Chairman, it should be known that, that is a Constitutional role of a Service Commission which should not be interfered with by any politician as clearly envisaged in this Draft Constitution. Thank you, Mr. Chairman.

Hon. Delegate Kennedy Kiliku: Political Parties on this section. 614. Point of order.

Hon. Delegate Frederick Rukwaro Nderitu: Mr. Chairman, my point of order is simple. Many people are refusing to raise points of order because if they raise points of order, they may not be allowed to speak. From that row, you jumped our row to that row, so we want you to correct that. *Laughter from Honourable Delegates.*

Hon. Delegate Kennedy Kiliku: I think 532 from your row talked. 614, Political Parties. On the other side please, a Member of Parliament should be preparing.

Hon. Delegate Dalmas Otieno: Thank you Mr. Chairman. My name is Dalmas Otieno, number 614, Political Parties, Kanu. Mr. Chairman I only have three points on this section. First is on the security of tenure on Commission members, and the other Constitutional offices, for which there is need for a security of tenure. We have noticed through history, that when it comes to the exercise of the dismissal process, it has always been a politically motivated process. It means to pretend that it is the President who will constitute the tribunals and then the same President receives back that report with the recommendation of yes or no.

Mr. Chairman, you remember the cases, where this has been done, some of the officers have had to run away, because they expect that once the President appoints the tribunal and he will be the one receiving the reports, the tribunal will be turning in 'dismiss please' verdict. I would recommend, that this being substantially a political process, that tribunal report should be passed to the relevant committee of Parliament, whether it is the Lower or Upper House, who would by resolution give their concurrence to the recommendation, before such officers are dismissed. This would act as some form of appeal process for the officers who would be subjected to this tribunal, so that they are not tried and given a final judgement, such that there is no way out. It would also remove the kind of intimidation likely, to be weighed on the members of this tribunal, that they must comply with the expectation of the President who has appointed them. If they know what they must recommend, must stand the judicial sanction of Parliament after it is so recommended.

Mr. Chairman, my second point is on Constitutionalism. This Constitution is very distinct that more than ever previously, it is including principles, objectives, goals and values within its clauses, which means these things have to be developed over time, so that Kenyans begin to feel and act in, and within the Constitution which we are making now. There is need therefore, for one of the Commissions, to be in charge of supervising and monitoring the process of Constitutionalism. My suggestion is that the Constitution Commission, should be renamed to be called the Constitution and Law Reform Commission. Right now we already a Law Reform Commission, but if we name this Constitution Commission, Constitution and Law Reform Commission, we shall distinguish first the role it has to play, in completing the Constitutional implementation process that we are doing. That means in assisting in drafting, the new legislation recommended under the current Draft, so that within three, four years, we shall really

have completed the Constitutional reform process. But even thereafter, we need one of the Commissions, to monitor and supervise Constitutionalism to promote the kind of values and goals and more so to make sure that the Executive, which is likely to ignore some of the requirements under the new Constitution by just flouting the Constitution, there will be a report to Parliament, that that kind of Act has taken place and needs to be addressed.

My third point, Mr. Chairman, is in the adoption of this Constitution. Right now we are debating the Draft Bill of the Constitution of Kenya Review Commission. Then we shall have a Draft Bill of the Constitution of Kenya Review Conference, which will now be our own Draft Bill, after the Committees. And then we will come back for another plenary and we will be preparing the final Draft Bill of the Constitution of Kenya Review Conference, which is the one which is going to go to Parliament. Finally, Parliament will have an Act of Parliament, which then goes to the President for assent. You have drawn our attention in this very Draft that Parliament is acting on the sovereign authority granted to them by the people of Kenya.

I want to visit the requirement, that we should let Kenyans take the responsibility for adopting this document that is going to make far reaching recommendations in their way of life, in the way they govern themselves, and in the way they behave both in private and in public. So, we should be able to recommend as a Conference, that Parliament accepts and recognizes this sovereignty of the people of Kenya that was given to them under the current Constitution and that they should entrench this process at some appropriate stage, so that we have a referendum to adopt this Constitution and 'junk' the old one and hold all Kenyans responsible for its implementation here, thereafter. Thank you Sir.

Hon. Delegate Kennedy Kiliku: Any Women Organization this time? If no, a Member of Parliament, and then we go to Women Organizations. 031, and then we go to Women Organization, or a District Delegate.

Hon. Delegate Yussuf Haji Mohamed: Thank you very much, Mr. Chairman. I share the same views expressed by the Delegates from Mount Elgon, that we are creating too many Commissions which may lead to Constitutional crisis when there is a tug of war on who is to do what. However Mr. Chairman, I feel that the Public Service Commission should be strengthened

because although it would appear that they are being blamed, I will shift the blame to the Accounting Officers who promote and sometimes initiate appointments to the Public Service. My names are Mohamed Yussuf Haji, Delegate number 031, I am sorry. (*Laughter from Honourable Delegates*).

Mr. Chairman, one section of the Public Service Commission Act states that when two officers are employed in the Service and their personalities are good and there is an opportunity for promotion, then the promotion will go to the eldest. The question here is, has this been happening? The truth is, it has not been happening. The Accounting Officers have been biased, they have people in mind and normally they will recommend those they want to be appointed to appear before the Public Service Commission. The Public Service Commission, will only have an encounter with this particular officer, on the day of interview. Normally Mr. Chairman, it would be very difficult really, for the Public Service Commission to reach at a desirable decision within an encounter of one or two hours. So it is my feeling that the Public Service Commission should be strengthened and they should be allowed to recall any body that they want or the officer. Mr. Chairman, I feel nine Commissioners are too few, there should be eleven Commissioners, I have no quarrel on five years term.

On the TSC, as the last Honourable Delegate on this side was saying, I think they have a lot of work to do, Mr. Chairman. They are supposed to look after 250,000 teachers. They look after their promotions and disciplinary measures, and to expect them to perform their job efficiently. I think the number of six, is really not helping the situation at all. If anything, they should be increased from twenty-four to thirty. (*Clapping by Honourable Delegates*).

Mr. Chairman, I have also something to say about the National Security Council. I think it is too large and that confidentiality will be compromised. When you have over ten to fifteen people discussing matters of security, it should be left to the President, or if there is a Prime Minister, the Chief of General Staff, the Inspector General and the man in charge of intelligence. I think those are enough to deal with our security situation in the country. When you have over twenty people, some of them will be drunkards, some of them will have some pecuniary embarrassment, and they are likely to disclose the secret of the country. But if you have two, three, four people, you will know whom to follow. If anything is disclosed, you will look among the four of them,

who is the drunkard, who is the homo-sexual, who is being embarrassed (*Laughter from Honourable Delegates*) and has been made to disclose some secrets and with those few remarks, thank you very much.

Hon. Delegate Kennedy Kiliku: Delegate number 341.

Hon. Delegate Ernest Kaitany: Thank you very much, Mr. Chairman. My name is Ernest Kaitany, Delegate 341 from Keiyo. Mr. Chairman, I wish to contribute to the question--

Hon. Delegate Kennedy Kiliku: There is a point of order please.

Hon. Delegate Amina Hussein Soud: *Aslaam Aleikum.*

Chorus from Hon. Delegates: *Wa Aleikum Salaam.*

Hon. Delegate Amina Hussein Soud: Nawaambia Bwana Chairman, jina langu naitwa Hamina Hussein 493. Leo nina point of order na mimi naona wapita wanawake kila saa. This is the second round. Thank you.

Hon. Delegate Kennedy Kiliku: You will be next please, I assure you. 341.

Hon. Delegate Ernest Kaitany: My predecessors are of the opinion that there should be no more Commissions. There is one sector which is very, very important and has been forgotten all the years round. First and foremost sports have played a very major role in this country. It has promoted tourism. It has brought in a lot of foreign exchange. It has in that context encouraged and also promoted international relationship and unity. In fact in that context again, the athletes, sports men and sports women have been our best ambassadors in this country. They have represented us effectively. They have put Kenya into the world map where by everybody has been proud of them. In that context, sports also has promoted physical and healthy purposes for all of us. We actually need to encourage it. It has particularly enhanced our economic development in the country. It has educated many of our boys and girls and in this respect, there is nowhere in the Constitution of Kenya whereby sports is mentioned. I would like therefore to say that sports needs to be recognized and have a place in our Constitution and economics.

Secondly, sports also need to promote and protect the field of sports through Constitution. We need to accept this as sports policy and as such, a Commission for sports is necessary. My dear Delegates, you know all of us, even when you mention right from the beginning, you encourage the children to play football. As such football, even other games, they have known that whenever, for example, last year in the World Cup, everybody in Kenya was glued on the TV to watch Senegal. Then we have known how important sports is in this country. I would urge you to support that this Sports Commission be formed. I had already submitted a Motion to the Steering Committee whereby we need to form a Sports Commission. It will take us very far because there would be other details that can be brought in, in as far as this one is concerned. I will urge my fellow Delegates to support me.

As far as Teachers Service Commission is concerned, there is no way, I support my fellow colleagues who have already spoken before about supporting Teachers' Commission. We have to enhance it. Thank you very much Mr. Chairman.

Hon. Delegate Kennedy Kiliku: Our next is Women Organization. 510.

Hon. Delegate Atsango Chesoni: Thank you, Mr. Chairperson. I would like to state that given that the women are a third of this Conference, I really appreciate you having asked me specifically since we had had thirteen persons before of whom only one was a woman and women constitute over half the population of Kenya. So I would like to thank you for having recognized the fact that we need to allow some female voices to speak in this Conference particularly on this area.

The first issue I would like to raise is the issue-- I am sorry. My name is Atsango Chesoni, Delegate number 510, representing Women's Organizations. The first issue I would like to raise is the issue of the Gender Commission for the exact reasons that I had just raised that women and girls form the majority of the population of Kenya. If we look at our rural areas, again, the majority of the population of the rural areas are girls and women and yet when you look at areas such as agriculture in which most of the work that is done, especially small scale farming is done by women. We do not have programmes and policies that ensure that we support and ensure that

we provide the kind of skills necessary to ensure that this country is able to maximize one of the most important parts of its economy. We might ask ourselves why this happens. This happens because our government, as one of the earlier speakers has said, lacks a national policy on Gender. How can we as a country move forward into to the next century, and into the next millennium when the majority of our people are not planned for, when we do not plan for systems and mechanisms that ensure that we are able to use and tap all our economic resources?

The other thing I want to say is that a Gender Commission does not only deal with women. Gender Commission is for both women and men. So in actuality a Gender Commission deals with all of us. It is intended to address the issue of gender equity. Today women and girls are the ones who are marginalized and discriminated against. If we do not have a provision that ensure that we have Gender equality, may be tomorrow it will be the men and the boys of this country. What we want is to be able to utilize all our citizens.

The other issue that I wanted to raise is regarding the issue of Section 284. I think Honourable Delegate Dalmas Otieno had raised one of the concerns on that, which is to do with the President having the power to remove the Constitutional Commissioners. I am a bit concerned about that. That the President appoints the entire body that is going to conduct a check on Constitutional Commissioners. I do think that it is important to have that process adjusted in some way that ensures that this power is not vested in one individual. Because as we have seen in the past, these powers have been abused and in fact I think it is one of the biggest problems of our current Constitution.

The other section I would like to address myself to is in regard to the issue of Constitutional amendment and I would like to just raise the issue of entrenching a provision that pertain to separation of powers. As we have been told eloquently by the Commissioner regarding this particular Chapter, we had over thirty Constitutional amendments between now and 1992. However, I think the other important thing to note is that the majority of those amendments, over twenty of them, were to amalgamate excess powers to executive and erode the doctrine of separation of powers. So I think it is important that we ensure that all the Articles pertaining to accountability and the doctrine of separation of powers are entrenched in the Constitution and require a referendum to the people of Kenya. I have not gone through the document to isolate

each one of them individually, however I think it is important for us to just look at all provisions.
Thank you.

Hon. Delegate Kennedy Kiliku: I am in for anybody from NGO or Member of Parliament in that section? 084? There is no woman there in that section?

Hon. Delegate Wilfred Gisuka Machage: Thank you, Mr. Chairman. My name is Doctor Gisuka Machage, Member of Parliament for Kuria Constituency. Whereas everybody has been discussing Chapter 17, I would want to discuss on Chapter 18.

Hon. Delegate Kennedy Kiliku: There is a oint of order.

Hon. Delegate Luseno Liyai: Mr. Chairman, I am Luseno Liyai. You have skipped this row.

(Uproar & -laughter from Hon. Delegates)

Hon. Delegate Wilfred Gisuka Machage: Mr. Chairman, I beg to continue. I would like to draw the attention of everybody to Chapter 18, Amendment of the Constitution, Article number 296. If Parliament would want to amend the Constitution being a voice of the people, to amend a Constitution that has been worked on for many years, many days, there should be no urgency. I find it rather difficult to accept that the second and third readings referred to in Article 295 shall be separated by 90 days. I find those days a bit too excessive. I suggest that 30 days be adequate enough.

In the same context, the President of the Republic of Kenya is usually chosen by the people. I find it difficult to accept that if he refuses to sign a consent to an amended Bill after 30 days, the Bill is considered to be law. That is rather dictatorial to the President. I suggest that the President is given 90 days and within those 90, if he decides that he does not support the Bill, he should constitutionally be forced to address Parliament and the nation and give reasons why he thinks that Bill is not good for the country. It therefore calls for a referendum if the President persistently refuses to sign that Bill and Parliament thinks it is necessary.

I think those two Articles need very close observation by all the members in this hall. We are going to put this country into a crisis that will last most of us may be our lifetime. Thank you.

An Hon. Delegate: Point of information.

Hon. Delegate Wilfred Gisuka Machage: Yes, point of information.

A Hon. Delegate: Thank you, Mr. Chairman for giving me the opportunity to inform the Chairperson. I have just observed, Mr. Chairman, in this Chapter, what should have been the first Commission, in fact the Electoral Commission of Kenya has been referred to in the Chapter under Legislature. It is not there, no reference is made to it under the Constitutional Commissions. I thought, Mr. Chairman, that is the first Constitutional Commission we should have because it deals with the Legislature and Electoral Process.

Hon. Delegate Wilfred Gisuka Machage: Thank you for your information. A person with disability. 455.

Hon. Delegate Lawrence Murugu Mute: Thank you very much, Chair. My name is Lawrence Mute, Delegate number 455. First Chair, I am just seeking clarification from the Commissioners who made the presentation this morning. I think recently we have seen either actual or potential tug of war between the Ministry of Justice and some of the constitutional offices including the Electoral Commission. I think it is important for the Commissioners to confirm to us the basis upon which they were able to determine that certain offices should be Constitutional Offices and that other activities could be managed under what then you might call administrative or political offices in the various ministries. I think it would be very important for that to be clarified so that the Delegates are able to make reasonable recommendations.

Chair, in terms of my substantive contributions in relation to the issue of appointment of Commissioners, I notice that the recommendation here is that the President appoints and Parliament approves the appointments. Now if we take for example the Public Service Commission, where quite a number of Commissioners are being appointed, I am thinking that perhaps we could go for a more noble way of doing things. In relation, let us say to the Chief Justice, because that is just one appointment. I think the procedure of the President making an

appointment and then Parliament approving is fine. But in the case of the Public service Commission, a few years ago the procedure which was suggested in the Kenya National Human Rights Commission Act was that actually Parliament itself would be the one which would prepare a short list of the appointees and then the President to look at the short list and from that list then appoint. I think it would make better sense because Parliament is drawn from a wider range of population of this country. Instead of simply telling the President to give Parliament à fait accompli by suggesting names or a name which Parliament just refuses or accept.

Now, in relation to the issue of the Commissioners, I think for us people with disability it is very important that even as you are talking about representation on the basis of Gender but we should also make sure that in the various Commissions people who are disabled are represented. Chair I can assure you it becomes very difficult to try to cut through the red tape of bureaucracy, to try to explain to people why our subjective realities as people with disability is important are to be put on the map in the various issues of policies and laws that we are to deal with on a day-to-day basis. So it is very, very important.

Now, on the question of either centralizing or decentralizing the various Commissions, there were various recommendations earlier this week and also last week. For example in relation to the Commission on land, the National Land Commission, that we should not have a National Commission, we should have Regional Commissions. I think we must recall that the purpose of Constitutional offices, their purpose if they are properly entrenched, then we should worry that they are going to be compromised. If we simply say, let us have Regional Commissions I don't think that we are serving this country. What we should be doing, we should be saying that let us have National Commissions which are have proper mechanisms for decentralization and which are also entrenched properly. Chair, we must not decentralize in the sense where we might create regional elites of Commissions at the various levels in the regions. We must be careful Chair to make sure that we have strong national institutions which have regional basis.

Chair, here I wish if you allow me just thirty seconds. I wish to recall a few years ago, actually two years ago, when this neighbour of mine who is in a wheel chair sent me to Nairobi because, of course, he could not come to Nairobi. He sent me to go to the National Fund for the disabled so that I could find certain information for him. When I went to the National Fund for the

disabled, they told me, “Yes, we should be able to help, but we can’t actually talk to you just now. You have to apply.” They also told me that the application forms were not there just then. So even just in terms of getting application forms so that I could take them to this friend of mine, they were not there. Let us make sure that any decentralization we make is effective. Thank you very much.

Hon. Delegate Kennedy Kiliku: 233.

Hon. Delegate George Mwaura Mburu: Point of order.

Hon. Delegate Kennedy Kiliku: Point of order?

An Hon. Delegate: Point of order kwa nini?

Hon. Delegate Kennedy Kiliku: After this please.

Hon. Delegate George Mwaura Mburu: Okay, thank you. My name is George Mwaura Mburu representing Political Parties, number 586. My point of order is that this particular debate is very crucial. I am requesting the Chair to let us move throughout the day, so that some of us can also get a chance. Thank you.

Hon. Delegate Kennedy Kiliku: Okay, noted. 233.

Hon. Delegate Beatrice Mwaka Mwaringa: Thank you, Mr. Chairman. My names are Beatrice Mwaka Mwaringa, Delegate 233 from Kilifi. I just want to comment on the Teachers Service Commission. I know the points have already been talked about, but I want to come to this particular Commission which is right here in Nairobi. What I am suggesting actually is, even if all other Commissions are not going to be decentralized, Teachers Service Commission should be decentralized. This is because when it is in Nairobi here, it has become very, very difficult for teachers to travel from let us say Lamu or Tana River, to come here. I know where it is, it is in Bazaar, but instead of the teachers calling it Teachers Service Commission, it is now known as Teachers Suffering Center, (*laughter from Honourable Delegates*) because you will

find teachers lining outside that building and they are really harassed. I want to bring to your notice that, if you do not know that teachers are just like Policemen, I want to tell you today and I feel they should be treated with respect.

You know, these teachers work like Police because, if you do not know that they are working 24 hours, I want you to know (*clapping from Honourable Delegates*) they work like nobody's business; there is marking of those exercise books. You people here do not know that Teachers mark. They mark compositions and mark the exercise books, (*clapping from Honourable Delegates*) they want to keep records and they want to keep everything and in the end, the salary that they are getting is peanuts. They are demoralized, while they are doing a noble job for this country.

I would like this Commission to have functional branches, not branches that are just there and are not functional. They should be original branches which are functional. Right now, they are not functioning. You find that they have staff who are known as Personnel Officers, but these Personnel Officers have no power to do anything. Anything to be done must come to Nairobi. This should stop, because these teachers are really suffering. They are really suffering and nobody bothers about them. How many times have they gone on strike and you feel that they are just playing around as if they are dolls? These people are doing a good job and they should be respected. (*Clapping from Honourable Delegates*). You people here as Delegates, when you find the teachers have gone on strike, some of you are saying, "What about our children?" In fact some parents abuse these teachers so much that you will find them saying, "After all----" Let me tell you the secret of teachers. They do not teach well if you just dishonour them. They say "*dau laenda mrama, ni nini chako umetia hapa?*" It means your children are not going to be taught well. Therefore, respect these teachers and give them effective services especially at the Regional level, not here. (*Clapping from Honourable Delegates*). This one should be done with immediate effect, it should not wait because it is a Commission that is already existing, so that we avert having teachers from Tana River coming here and they have no place to sleep, and they are just at the corridor. Respect these teachers. Thank you very much.

Clapping from Honourable Delegates.

Hon. Delegate Kennedy Kiliku: An Honourable Delegate who has not had a chance to talk from Political Parties? 604?

Hon. Delegate Samuel Mwaura: Thank you, Mr. Chairman, for giving me this chance.

Hon. Delegates: Point of order.

Hon. Delegate Kennedy Kiliku: Yes, after that please, I am going to take it. Yes.

Hon. Delegate Samuel Mwaura: Thank you very much, Mr. Chairman, for protecting me. My name is Samuel Mwaura, Delegate number 604, Political parties. Mr. Chairman, I have something to say here regarding Article 290. While we appreciate that there are Trade Unions and the President has always given a little bait to the workers, I think we should have a Commission to look into the welfare of workers in this country. (*Clapping from Honourable Delegates*) There are so many workers and when the workers are there and they go on strike, they are exposed to the Police brutality and they are oppressed. We therefore need to have a Commission to look into the welfare of workers in this country.

Mr. Chairman, we do not have to wait until the time the President announces the increment because I remember some years back, the workers were waiting to get an increment and instead the President announced the release of Prisoners and when they came in back to the villages, the problem increased. Thank you, Mr. Chairman.

The other point is, we should also have a Commission as our towns grow. We also need to have a Commission to look into the welfare of the tenants, and at the same time, to look into the welfare of the landlords. This would have eased the problem we had the other day in Mathare North. We are losing a lot of lives and some landlords are going without pay and some tenants are exposed to a lot of harassment, so we need to have a Commission to look into this, because the Tribunal in this country is not doing a good job. This also happened previously. Thank you very much, Mr. Chairman.

Hon. Delegate Kennedy Kiliku: This side, Religious Organization, 539.

Hon. Delegate Isa Ireri Ngunia: Point of order.

Hon. Delegate Kennedy Kiliku: Yes, point of order. 286, what is the point of order?

Hon. Delegate Isa Ireri Ngunia: My name is Isa Ireri Ngunia a Delegate from Mbeere District. I am rising on a point of order Mr. Chairman, after feeling that something worse than marginalization is happening to me. I have been here and even when the quorum is quite low, I have not been able to steal your eye. I think you had better mark my number and possibly even look at that list you have there to see whether I have spoken a hundred times because it looks like I am being sidelined.

Hon. Delegate Kennedy Kiliku: Okay, noted. You have spoken only once, thank you.

Hon. Delegate John Njue: Thank you Chairman, my name is Archbishop John Njue, number 539, representing the Religious Organizations. I would like to make my comments on Chapter 18. Chairman, Honourable Delegates, we have come from very far, we are still far, and we are going far. We started this process many years back, and thanks be to God, we are at this stage. Now I hope that at the end of all this, we are going to get a really good Constitution. Now, I am somewhat afraid when we begin talking of the amendments. I would like that if ever, there is going to be need of any amendments that it be sent back to the people to whom it belongs. *(Clapping from Honourable Delegates)*. I would like to see a Constitution which is fully watertight and should there be anything that the Parliamentarians tomorrow feel that they would like to be adjusted or amended, then let them come back to the people, because this Constitution belongs to the people. Why should it be so necessary to think of this immediate in the Parliament? We have also other countries, where we have never heard of amendments, because they are watertight and if there is anything, let it be done through the consensus of the people through referendum. Thank you Chairman.

Clapping from Honourable Delegates

Hon. Delegate Kennedy Kiliku: Honourable Delegate from Professional Organization I can see 478, please.

Hon. Delegate Sabenzia Wekesa: Thank you, Honourable Chairperson. My name is Sabenzia Wekesa from the Professional Organizations, delegate number 478. Honourable Chair, we have been singing all around, and all along, that agriculture is the mainstay of our economy and it is a major contributor to our GDP. But nowhere in the Constitution and even among the Commissions have I seen anything that is talking about agriculture. I have gone through all the lists of Commissions and their functions, but I cannot see anywhere where we are talking about agriculture, pastoralism, and livestock industry. We know that pastoralism is one of the main contributors to our livestock population, about 70% and even slightly more of our livestock is found in the ASAL areas where the pastoralists live. Look at the products of our livestock, the meat we are eating here, many, many chunks of kilos everyday, the milk, the eggs and the fish, there is nowhere where we are looking into factors that relate to the marketing and protection of this type of industry.

Honourable Chair, I feel that there is an urgent need for a Commission that will look into agriculture, matters relating to the farmers' welfare, --*clapping from Honourable Delegates*-- livestock and import and export of agricultural inputs and products. Look at our industries, mostly dominated and owned by foreigners and foreign investors where most of our young Kenyan men and women are working in very poor and very difficult conditions with very poor salaries. Nowhere in the Commissions here are we enlisting anything to do with their working conditions and their remunerations.

Honourable Chair, I also wish to have a Commission to look into such matters. Look at our culture. We know our culture is deteriorating day in day out. I will not talk so much about culture, I will leave it to the Honourable Delegate number 392 who wanted to talk about a Commission to look into our culture. Thank you.

Clapping from Honourable Delegates

Hon. Delegate Kennedy Kiliku: On my left, a Member of Parliament or a District Delegate who must be a lady. 493.

Hon. Delegate John Gitari Munyi: Point of order.

Hon. Delegate Kennedy Kiliku: Point of order.

Hon. Delegate John Gitari Munyi: Mr. Chairman, I am Delegate 284. It has come to my notice that I have been marked there severally and I have only spoken once. I waited until 'Executive', to contribute in this area and I have been here from 9.00 to 6.00 everyday. Please take note of that.

Hon. Delegate Kennedy Kiliku: Okay, I have taken note.

Hon. Delegate Amina Soud: Namba yangu ni 493, jina langu ni Amina Soud kutoka Lamu. Mnajua wanawake tuko wachache kwa hivyo tukipewa nafasi zaidi msikasirike. Mimi nilikuwa nataka ku-contribute kitu kidodo tu. Nilikuwa nataka clarification kuhusu,-- wacha nizugumze kwa kiingereza. I do not see why the Draft should specify the number of Members of the Commissions, or list them in the Draft. This Constitution is supposed kuishi miaka mingi, lakini if we do that, it will mean hata tukitaka more numbers in the CKRC, we cannot because it is already Constitutionalised. Hata tukita Commissions ziwe nyingi pia tutakuwa hatuwezi tena mpaka twende kwa amendment, nini, na itakuwa ni mambo marefu.

Kiti kingine ni ku-support Gender Commission. Nafikiri watu wengi wafikiria Gender Commission ita-deal na wanawake peke yake. Hata iki-deal na wanawake peke yake, kwa nini mna uoga? Lakini zaidi ita-deal na anybody who is, ambao amepata shida. Kwa hivyo msilogope.

Kitu kingine ni, the Amendments Bill 292. The mechanism is not clear, kwa sababu what happens is that a Bill has to be amended and accepted in the Parliament; if 65% of the members accept it then it goes to the referendum and it is rejected, whose advice will you choose to take?

The referendum's advice or the House advice? What period of time will you give from the voting of the Parliament to the referendum time? Nafikiri yametosha. Asanteni.

Clapping from Honourable Delegates.

Hon. Delegate Kennedy Kiliku: A Member of Parliament number 36. Point of Order, yes?

Hon. Delegate Benjamin Gitoi: Hon. Chair, my name is Benjamin Gitoi, representing Political Parties. I am standing on a Point of Order to inform the Chair, that young men have been marginalized in this Conference (*Laughter and Clapping by Hon. Delegates*). You have been talking of a third young women. We are here a third young men in this Conference and we want to be heard. And on that end I want to propose that a third of the Commissioners be young men also.

Hon. Delegate Kennedy Kiliku: Okay thank you. Okay noted. 36

Hon. Delegate Seif Ramadhan Kajembe: Thank you Mr. Chairman.. Mr. Chairman.

Hon. Delegate William Kabogo Gitau :Point of Order.

Hon. Delegate Kennedy Kiliku: After this please, forgive me, yes continue..

Hon. Delegate Seif Ramadhan Kajembe: Mr. Chairman, most of us Delegates are very much—

Hon. Delegate William Kabogo Gitau: Point of Order.

Hon. Delegate Kennedy Kiliku: Yes, after he has spoken, I am going to give you, let him finish, I will give you (*shouting and murmuring--*) Okay, Point of Order.

Hon. Delegate William Kabogo Gitau: Thank you, Mr. Chairman. With all due respect Mr. Chairman, my Point of Order is simple and a fact. You are only seeing members who are walking in now and you are avoiding members who have been here the whole day.

Hon. Delegate Kennedy Kiliku: Okay that is noted.

Hon. Delegate Seif Ramadhan Kajembe: Thank you Mr. Chairman, that is very democratic, but I have got my own right as a Delegate. I do attend the deliberations of this Conference and I have every right to be given time to speak as well (*noise and murmuring by Hon. Delegates*) Mr. Chairman, let me say that Commissions in this country have been very many. Mr. Chairman, the former President-- (*Noise and shouting by Hon. Delegates*)

Hon. Delegate Kennedy Kiliku: Order please.

Hon. Delegate Ramadhan Seif Kajembe: Thank you very much. My names are Ramadhan Seif Kajembe, Delegate No. 36 (*noises by the Hon. Delegates*) Mr. Chairman with due respect to you (*laughter by Hon. Delegates*)

Hon. Delegate Kennedy Kiliku: Yes, continue.

Hon. Delegate Ramadhan Seif Kajembe: Thank you very much, Mr. Chairman some Delegates want to take my time (*laughter by Hon. Delegates*) Mr. Chairman what I am trying to say is that the number of Commissions should be minimized. I am saying this, there are Commissions which are very meaningful, like the Teachers Service Commission, like what has been proposed by another Delegate here, the Agriculture and some others. But in the past Mr. Chairman, the President was empowered to appoint Commissions anytime. We had the Njonjo Commission, Ouko Commission and a lot of Inquests. So what I am suggesting Mr. Chairman, is that in this Constitution we should entrench a few Commissions which are very meaningful to the people of Kenya. Mr. Chairman, what I am trying to say is that the powers of the President to appoint Commissions should be shelved.

All the Commissions should be entrenched in the Constitution, approved by Parliament and by this Conference. Mr. Chairman I am saying this because there has been a tendency for Members of Parliament to make amendments to something which is in the Constitution like a Commission all the time some of these Constitutional amendments are against the wills of Kenyans. So what I am proposing Mr. Chairman, is that in future, after taking all this time to do what we have done, after we have concluded the Constitution making, Parliament should not be allowed to do any Constitutional amendment till they come back to this Conference. (*Clapping by Hon. Delegates*).

What I am trying to say in short Mr. Chairman is that we must have a Constitutional Commission. When we conclude this the Constitution making process, this Commission should not die, it should be allowed to continue. Whenever necessary, they should convene meetings to consider other parts of the Constitution thought to be unnecessary. What I am saying is that Parliament should not be allowed to amend the Constitution. The Constitution should be amended by a Conference like this one where all the Kenyans are represented. That is all I wanted to say Mr. Chairman. Thank you very much.

Hon. Delegate Kennedy Kiliku: Point of Order with 509 please.

Hon. Delegate Martha Rop: Asante sana Mwenyekiti. Mimi nafikiria nina shida kidogo, nisipoongea niko na ugonjwa wa ulcer, kutoka Chapter 12 mpaka sasa sikuongea, nahisi nitaweza kuwa mgonjwa zaidi. (*Laughter by Hon. Delegates*)

Hon. Delegate Kennedy Kiliku: Thank you very much we have got a right to food. It is the time now to exercise our rights, it is now lunchtime and we are coming back at 2.30 p.m. Please enjoy your lunch.

After Lunch,

The Meeting started at 2.45 pm.

Hon. Delegate Kennedy Kiliku: Good afternoon Honourable Delegates, we are going to start and I will start with section three. People under Special Interests or a Member of Parliament section three, 041.

Hon. Delegate Daniel Karaba Dickson: Thank you very much, Mr. Chairman, for this chance. My names are Daniel Karaba, MP Kerugoya Kutus. I would wish to dwell on Chapter 17, Constitutional Commission and particularly the TSC, Teachers Service Commission. I would like to take this chance to say that the TSC is one of the largest Commissions in this Republic. It employs 265 thousands teachers and in the national budget 31 millions goes to the Ministry of Education. 81% of budget for the Ministry of Education goes to the teachers' payment. So if you compare the TSC and the Public Service Commission you see that there is a very great difference where the Public Service takes only 0.07% of the national budget. That tells you Sir, that the TSC is a very important Commission yet it is given a very small portion even in the Constitution.

I am therefore recommending to this Conference that the TSC be entrenched in the Constitution and be taken as one of the major Commissions in this Republic. (*Clapping from the Honourable Delegates*). Thank you very much for that applause. Secondly, Chairman, the work of the Commission is such that it cannot end with a day's talk compared to what I heard people talk about yesterday about the Police. The TSC employs so many of those teachers I have told you and it has other roles besides just employing. It is responsible for registration of all the teachers, it also maintains the teachers register, it also recruits, it transfers and also promotes very many teachers so compared to what happens in the Public Service you realize that TSC has more roles it plays than the PSC.

In 1967 upon its formation it was de-linked from the Public Service because the TSC was thought to be a very important Commission and I am therefore wondering why you want to take it back again to PSC. Through the Act of Parliament Cap 212 it was de-linked from the Public Service and since that time it has been functioning very well. I therefore recommend to this Conference that we retain and maintain the TSC as it has been.

I am also shocked that from 1984 the TSC Commissioners were 14 and in year 2002 to date the Commissioners were increased to 24. According to the Constitution it is noted that you are recommending that the Commissioners be increased from 3 to 10. That is retrogressive and when that happens it means that we are not going to provide the Service that the teachers need. Teachers are very useful people in this country and without Teachers we could not even be here. I am talking as having taught for over 30 years and I know what it means to be a teacher. A teacher should be given all the support and we need not to compare the Police like the way I heard yesterday with the teachers.

A teacher takes 3 to 4 years to train while a Policeman goes to Kiganjo for only 6 months and what I note is that you are giving a very raw deal when it comes to the teaching professional. Through teachers I am sure this country will be enviable and for that matter I recommend that the Teachers Service Commission be entrenched in the Constitution and be maintained and the teaching profession be supported. Thank you.

Hon. Delegate Kennedy Kiliku: District Delegate 390.

Honourable Delegate David Kimaiywa Kegen: Point of order. Thank you , Mr. Chairman I can see there is a lot of rigging here because the District Delegate 390 is not supposed to be seated here. So she should go to where she is seated and you can give to a District Delegate like me, 349. We have not spoken for two weeks and she has come to rig, can you transfer her to where she belongs.

Hon. Delegate Kellan Khaoma Wavomba: Mr. Chairman I beg to reply. Looking at the types of seats we have, they were fitted by our Commission Secretary and I cannot fit in my chair that is why I am here.*(Laughter by the Honourable Delegates).*

Mr. Chairman I wish to start by supporting the creation of the Gender Commission, secondly Mr. Chairman I wish to confirm that the Electoral Commission is missing. My names are Kellan Wavomba Delegate Number 390. Mr. Chairman I wish to confirm that the Commission that is missing here, the Electoral Commission is a very important Commission Mr. Chairman and that it be included. This is because the work of this Commission is very important and Mr. Chairman

when we include this Commission I request that it stands on its own because Mr. Chairman you know very well it has been married to the Public Service Commission and this one has given Public Service Commission power to employ retirees as District Coordinators in the Electoral Commission and denying youths, the educated youths the opportunity of having a job.

Mr. Chairman, I now wish to refer to Chapter 291 clause 3 that the Commission shall keep under review the standard of education, training and so forth. Mr. Chairman, I wish to say that there is an ingredient missing in this whole thing. Mr. Chairman if we look at the roots of education we cannot forget the pre-primary teachers and it is pathetic that they are not included in the employment of the Teachers Service Commission. I wish to propose that this pre-primary teacher be under these teachers Service Commission because they are the roots and backbone of education. Mr. Chairman as a teacher I feel very nice when I get those well-fetched material from the pre-primary unit to the primary sector and therefore this pre-primary schoolteachers be included and be employed by the Teachers Service Commission.

Mr. Chairman, I also wish to propose that at least three quarters of the Teachers Service Commission employees be trained teachers. I want to concur with one Delegate who talked about the Teachers Service Commission and how the teachers suffer in this Commission. Mr. Chairman you realize that as a teacher you will visit the Teachers Service Commission, be there for 3 - 4 days and as a mother may be with my child and nothing is done. This is because the boys there are not trained they were handicapped and they were employed and do not know how teachers suffer and with our little salary Mr. Chairman we have a problem of surviving here in Nairobi.

I would also therefore support that the Teachers Service Commission be De-centralized so that most of our problems are sorted out at the grass roots level. Mr. Chairman still on the Teachers Service Commission as a teacher I receive a pay roll, which is written on "Die honourably, do not die of Aids". Mr. Chairman I wish to tell this Conference that we have a problem in the Teachers Service Commission and this is because the spouses are separated from each other you find that the woman is in Lamu the man is in Malaba or Bungoma and this one Mr. Chairman either you die honourably or you do not die honourably or you become number one in family planning. Mr. Chairman, with those few remarks I beg to sit.

Hon. Delegate Kennedy Kiliku: Persons from political parties from this side 601.

Hon. Delegate Luseno Hudson Liyai: Mr. Chairman, I am Delegate number 601 Luseno Liyai from political parties representing the Peoples Solidarity Union of Kenya, PSU in short. I am glad that I have only spoken once and this is the second time and the last I would like to talk about Article 291 very emphatically that if you take the Teacher Service Commission back to the Public Service you will have drawn the Teachers Organization back to 1967 about 20 - 30 years behind so we are emphasizing that the Teachers Service Commission remains independent and with more strength, in fact you should increase the number of Commissioners. So far that Article should be repealed now. Article 291 sub-sections 1 it has been overtaken by events.

Sub-section 2 (A), it is not fair to control the Public Service Commission it will make it lag behind and as you heard, the teachers are so many that the services will actually slump. Let me also go back to Article 293. According to that Article, sub-section 1(F), it means you are creating the post of a Director of the Kenya Police Service which is contrary to Article 266, where we are creating the post of Police Commissioner.

I wish to go to Article 287, that Article 287 sub-article A to E, those are the Commissions that you have identified and there are others which are missing because previously in the old Government we used to have of the Presidential Commission of Music or afforestation and what I think this Constitution is making is null and void and I do not know if this is the right position to take.

I would also like to comment on Article 279, sub-section A and B. Sub-section (A), the objective of Constitutional Commission established by this Constitution is to protect the sovereignty of the people. I am happy because there is one Delegate who wanted to talk about the Cultural Commission and he was actually over-ruled by the Chair. So I am wondering how can you protect the sovereignty of the people without culture, without tradition, without considering the ways of lives as also echoed in the preamble in the Article 1 (D), and Article 2 sub-section, 5 (B) and (C). I think the question of the Cultural Commission is very important if you actually want to maintain the people's sovereignty.

There was another Delegate who talked about the backbone of our economy, which is agriculture. Nothing has been mentioned about agriculture in the whole Constitution. Another thing that has not been mentioned about in the Constitution is the poor people in Kenya. May be it has only been implied but the word poor is not anywhere in this whole book and basically 90% of Kenyans are poor leaving on less than a dollar per day. Thank you very much Mr. Chairman.

Hon. Delegate Kiriro Wa Ngugi: Point of order.

Hon. Delegate Kennedy Kiliku: Yes, point of order

Hon. Delegate Kiriro Wa Ngugi: Thank you, Mr. Chairman. The Honourable 390 has now finally returned to her column and if you notice Mr. Chairman, she used your seat; you normally sit in this column. The net effect of what has happened is that this column has been denied a chance to speak. *Clapping by the Honourable Delegates.*

Secondly, you have set a very bad precedence. We might start having a stampede of delegates going across like a Mexican wave sweep across. We demand that this column should get another opportunity and you name the delegate 390.

Hon. Delegate Kennedy Kiliku: Okay, okay. Thank you. That was an accident anyway, it will not be repeated, I am very sorry for that. 586.

Hon. Delegate George Mwaura Mburu: Thank you Chair, my name is George Mwaura Mburu delegate number 586.

One, the point I want to raise is that you are creating too many Commissions, like this Commission of Human Rights and Administrating of Justice, which is doubling work of the Judiciary, another work of Parliament and another belonging to the Executive. For example, if you go to Article 288 3 (b), Part (v) it talks about reforming legislation, that is unfair or inconsistent with the Constitution, and (vi) reforming practices of organs of State that are unfair or inconsistent with the Constitution. That is the work of the Supreme Court.

When you go to (c), the jurisdiction of the Gender Commissioner is to: promote gender equality and equity, coordinate and facilitate mainstreaming in national development and to advise the government on any of those matters. That is the work of the political party manifesto that comes to power.

When you go to (c) number (viii), “to evaluate Acts of Parliament, any system or personal and family law--- What will be the role of Parliament? And then you move to the Ethics and Integrity Commission, you go to 289 2 (e) – “investigate whether persons who have availed themselves for appointment as public officers or who avail themselves or are prepared to stand for public elections for public offices are free of corruption and therefore fit and proper persons for those offices”. If you give a tiny clique of a Commission to determine who is going to become a Member of Parliament, what will be the role of the people? People are supposed to be mature, we are talking of the sovereignty of the people, and they are supposed to elect people who are really responsible.

When you move in the same, same place, you go to (j) “investigate instances of corruption----“ what will be the role of the police? Then you move on to (L). Advise the heads of public bodies on the changes necessarily to eliminate the likelihood of corruption. You know, I find this quite ambiguous and I really find it totally wrong, completely. Just because we had an oppressive Government last time and most of the people we were having as Human Rights activists are already absorbed by the Narc Government, we read this and this is to be done as a necessity in the future. In addition to that, because I have to add something to that, this is too NGO-oriented, and clearly here I can request the Commission to give us the facts of how they got these particular comments. Why am I saying this? You cannot imagine a small NGO in Kenya, incorporated here in Kenya, going to advise the German government or the American Government or the British Government on how they are going to re-organize their State.

What I mean is that as much as we like this particular position, we still really need to reinforce the roles of the Executive, the Judiciary, and the Legislature, so that we don't have other busy bodies doubling as Commissioners, eating away from the exchequer in the name of a Commission.

Thirdly and finally, because I don't want to talk any more - I am very tired from raising my placard - ninauliza Honourable Delegates tafadhali mkubali twende katika mambo yale ambayo kabisa kabisa yanawahusu watu wetu kuhusu mambo ya chakula, mambo ya afya na mambo ya maji kuliko kufuata fuatilia mambo ya huko juu juu ambayo wanachi wa kawaida hawaelewi. Na kwa hayo machache wacha nikae chini.

Hon. Delegate Kennedy Kiliku: Delegate from Special Interests or a Member of Parliament from this side.

Hon. Delegate Kiriro Wa Ngugi: Point of order.

Hon. Delegate Orié Rogo Manduli: Point of order.

Hon. Delegate Kennedy Kiliku: Yes, a point of order.

Hon. Delegate Orié Rogo Manduli: Thank you very much Mr. Chairman. I am Orié Rogo Manduli, delegate number 594 from Political Parties.

Mr. Chairman, the Steering Committee is a creation of the Conference, the Conference creates and dissolves that Steering Committee if necessary. Mr. Chairman, matters touching on the Conference deserve to be given priority over and above any other matters. I understand that Honourable Delegate Apolo Njonjo has submitted a motion that is being frustrated. That motion is being frustrated and Mr. Chairman, since the motion touches on privileges I demand that before any other business, the mover be allowed to table the motion under rule 32 (1) (a) of the Conference, which rule allows such a notice of importance to be moved without any notice at all, and that should be before anything else is done. *(lapping by the Honourable Delegate).*

Hon. Delegate Kennedy Kiliku: I think there is a procedure under which you can move or give notice of a motion. I agree with your sentiment but could you please, in writing, give a notice of the motion through the Steering Committee and I hope that that motion will come the first thing tomorrow morning. Thank you. *Murmurs from the Honourable Delegates.*

Yes, a Member of Parliament or a person from Special Interests.. 436.

Hon. Delegate David Marcos Rakamba: Point of order.

Hon. Delegate Kennedy Kiliku: Yes, point of Order.

Hon. Delegate David Macros Rakamba: Mr. Chairman, I am surprised that you are the Chairman and you are mistreating the House. Under regulation 32 (1) the motion brought under Section 32 does not require one to write to the Steering Committee; it is a motion of privilege that does not require a notice. (*Clapping by the Honourable Delegates*).

Hon. Delegate Kennedy Kiliku: I said that there is no way you can debate on a motion which has not been given a notice; you have to give notice of a motion. (*Murmurs from the Honourable Delegates*). And you give it in writing so that we know where we allocate the time for it.

Hon. Delegate David Marcos Rakamba: Mr. Chairman, kindly with humility, you have the regulation with you and this House is still run based on the regulations of this Conference. I therefore urge you kindly to consider the mover to move the motion under Section 32 (1) on privileges and it is stated clearly under that regulation 32, when you move a motion you do not require to give a notice and in that regard, therefore, I request you to allow the motion to be moved.

Hon. Delegate Kennedy Kiliku: Yes, I am in agreement with what you are saying but just give us a few minutes so that we can make consultations with the Chair before we come back. *Murmurs from the Honourable Delegates.*

Hon. Delegate Sultana Fadhil: Order please, Honourable Delegates, who wants to move a motion? Which Honourable delegate wants to move a motion? 583, you want to move your motion under which regulation? Can you specify please?

An Hon. Delegate:

(inaudible).

Hon. Delegate Sultana Fadhil: 583 is on the floor madam, can he continue.

Hon. Delegate Apolo Njonjo: My number is 583, my name is Apolo Njonjo.

Hon. Delegate Sultana Fadhil: Just give me the regulation please.

Hon. Delegate Apolo Njonjo: You want me to give the regulation?

Hon. Delegate Sultana Fadhil: You want to move the motion under which regulation?

Hon. Delegate Apolo Njonjo: You have already called me, you were told it is 32.

Hon. Delegate Sultana Fadhil: No, I asked you, who is the mover of this motion?

Hon. Delegate Apolo Njonjo: It is Apolo Njonjo.

Hon. Delegate Sultana Fadhil: Can you tell me which regulation, please?

Hon. Delegate Apolo Njonjo: 32.

Hon. Delegate Sultana Fadhil: 32 (1), which one? (*Murmurs from the Honourable Delegates*). There are several – 439, 433, please there is someone on his feet. Tafadhali 583 nipatie regulation ambayo unataka kutumia. (*Murmurs from the Honourable Delegates*).

Hon. Delegate Apolo Njonjo: 32 1(a).

Hon. Delegate Sultana Fadhil: 32 1(a)?

Hon. Delegate Apolo Njonjo: Yes.

Hon. Delegate Sultana Fadhil: Do you have a copy of that motion in writing right now?

Hon. Delegate Apolo Njonjo: I do and you also have it.

Hon. Delegate Sultana Fadhil: I don't have it.

Hon. Delegate Apolo Njonjo: Then the chairman of this Conference has it.

Hon. Delegate Sultana Fadhil: The Chairman –

Hon. Delegate Apolo Njonjo: Of the Conference, that is.

Hon. Delegate Sultana Fadhil: Professor Ghai?

Hon. Delegate Apolo Njonjo: Yes. Since yesterday, he has had it since yesterday. (*Clapping by the Honourable Delegates*).

Hon. Delegate Sultana Fadhil: Can you give me a few minutes I look at the motion and see if it complies with this rule? In the meantime we will proceed. (*Murmurs from the Honourable Delegates*). Honourable Delegates, I have just been given a copy of the motion, I have to look at it and see if it complies with regulation 32 1 (a), that is what you said. (*Murmurs from Honourable Delegate*). And in the meantime can we have one person who will continue contributing?

Honourable Delegates: No, no!

Hon. Delegate Sultana Fadhil: We are not taking any more points right now, it is either someone contributes or you give us time we look at this motion. (*Murmurs from the Honourable Delegates*).

Hon. Delegate Kennedy Kiliku: 436, please. (*Murmurs from the Honourable Delegates*). You are going to debate the motion before we wind up anyway, I assure you. (*Murmurs from the Honourable Delegates*).

Hon. Delegate Orië Rogo Manduli: Before any other business, Mr. Chairman.

Hon. Delegate Kennedy Kiliku: You are going to debate on this motion? *Murmurs from the Honourable Delegates.*

Hon. Delegate Orië Rogo Manduli: Before any other business, Mr. Chairman. It is important.

Hon. Delegate Sultana Fadhil: We understand it is important but it is also important that we continue with the session (*Clapping by the Honourable Delegates*) while we are looking at this motion. It is not that we adjourn without looking at this motion.

Hon. Delegate Kennedy Kiliku: 436 take the floor.

Hon. Delegate Francis Nga'nga: Mr. Chairman, while some Honourable Delegates mention that whenever you stand you must mention the teacher, I wish to thank the Commission for making provision for these Commissions. Some of them are additions by the delegates, like that of agriculture and culture, and all those things, I believe, if my English is right, we are dealing with a Draft Constitution, not the concluded Constitution. Therefore, I believe that at the end of this exercise we will be able to synthesize and come up with what we want.

However, my name is Ng'ang'a Francis. I wanted to straight away talk about the Teachers Service Commission and thank the delegates who have contributed to it, some of them very emotionally, we feel touched because they have echoed our sentiment that teachers in this republic have really been molested for so long and I want to say even the bulk of the Teachers Service Commission in 1967 was not just brought in by the Government of the day. It was after a lot of pressure exerted by the Kenya National Union of Teachers that TSC was born. I want to concur with a Delegate who has said and I want to refer you to Article 79 section 2A, which says the functions of Commissions are truly independent and they operate independently without consulting anyone. These Article 291 section 2A makes it that the TSC will operate with consultation with the Public Service Commission that we demand it should be removed and Teachers Service Commission be entrenched in the Constitution as an autonomous body without

any need to consult anybody anywhere. Mr. Chairman, if you quickly look at the growth of the Teachers Service Commission in 1967 - I am sorry I am a bit blind I can't see without glasses.

In 1967, we Teachers Service Commission had only forty thousand teachers and six Commissioners that time at the institution of TSC. Today, the Teachers Service Commission is managing over two hundred and forty thousand teachers with a Commission of twenty-four Commissioners. So, when you say the TSC must again go back to have six Commissioner which it had at the institution of TSC, I think we are moving backward not forwards. We are in total agreement that the services of the Teachers Service Commission should be decentralized to reach the teachers at the districts, but not to surrender the core role of hiring teachers, promoting and all that, but services should be decentralized. So Mr. Chairman, with that we will just pursue but the Teachers Service Commission be left as it is because it has been operating through an Act of Parliament all we require is to entrench it in the Constitution and make it operate and serve the teachers for the good of the children of this country.

We were overwhelmed with the sentiments of the Honourable Delegates this mornings to say, unlike police teachers have been humiliated and I want to declare today, to this Conference that since the colonial days to date, nobody has ever awarded teachers any voluntary award or promotion other than through pressure. We have fought to gain everything that the teachers are enjoying and it is only good to Constitutionally entrench the Teachers Service Commission, expand it, make it provide better services to the teachers and remunerate the teachers properly. So that we can have a good base because if you are afraid of the expenses that education will incur in this country, please try ignorance and you will see you will never discover any bomb, or you will never discover that medicine which should cure AIDS which is now threatening our lives. It is only through proper education that we can do proper research and if you ignore teachers no research will be possible in this country. Therefore, I want to hail those people who have supported us and even those Honourable Delegates like my brother Nyachae who is whispering to me. "We support you, we support you." With that I thank also all those Delegates who have contributed positively in favour of the teachers. Thank you, thank you very much.

Laughter from Honourable Delegates.

Hon. Delegate Kennedy Kiliku: Number 099, a Member of Parliament. 099.

Hon. Delegate Boniface Mganga: Thank you very much. First, I want to make a general comment about the proposed Commissions to be enshrined in the Constitution. I think this is a wonderful idea to have the various Commissions to take care of various interests and indeed enshrine in the Constitution. Mr. Chairman, while in the various areas where we have discussed appointments of people to occupy various offices, we have gone ahead and prescribed the qualifications that are required for people to be appointed. We have been silent as far as the people who are to be Commissioners are concerned.

We would like to recommend that it be put very clearly, that people being appointed as Commissioners should be people with sound educational backgrounds, appropriate experience and relevant training. I want to give a little example Mr. Chairman, the Public Service Commission which has been mentioned here and there. It has been unfortunate over the last ten to fifteen years, that there are people who have been appointed to be Commissioners in the PSC who really do not deserve to be Commissioners. What has resulted, in fact you find Commissioners purporting to interview officers at the level of Heads of Department, or Deputy Secretaries under Secretaries and they themselves have never qualified to be appointed in those positions. Then you wonder who is interviewing who.

Secondly, Mr. Chairman, I will move to Article 289 (1) the Ethics and Integrity Commission and combine it with (E) of the same 289. I want you to fully support the functions of these Commissions to investigate and ensure that people who have offered themselves for positions of appointment or to be elected are free of corruption, and indeed when his Excellency the President opened Parliament did lament and said, unfortunately in the past people have also tried positions of trust and they have been found to be guilty of a lot of corruption. Because of no proper mechanism of ensuring that people who are elected to position of authority are free of corruption, we find ourselves today, not only in Parliament but in this Conference sharing in this facility with big thieves who have stolen before but they continue to pretend to be leaders. Mr. Chairman, I fully support that word.

Finally, why is that Ethic and Integrity Commission be created? Shall I make a plea since we have recently had the Anti-corruption and Economic Crimes Act and the Public Officers Act put into law, we avoid wasteful duplication by overlapping functions and therefore creating sources of potential conflicts. Mr. Chairman, thank you very much.

Hon. Delegate Kennedy Kiliku: Number 473.

Hon. Delegate Pamela Mboya: Thank you, Mr. Chairman. My name is Mboya representing NGOs. Mr. Chairman, I would like to support the creation of a gender Commission but I also want to support the Commission on Human Rights and Administration of Justice. Mr. Chairman, I would also want to try and make an amendment to section 2 of Article 288 which is giving persons who could serve on the Commission. Mr. Chairman, all along we have been talking about marginalized groups and we have identified women, children, people with disabilities and the aged. I think we are all along on that but I noticed that on Article 288 (2), the elderly are not included and I would like to propose some amendments. That section (C) of this should identify or have a representative of older persons. Mr. Chairman, older persons are older persons, they are weak, they cannot walk all the way to Nairobi where the seat of the Commission is, to come and present their problems. So we need someone, we need a person with information on the rights of the older person.

Mr. Chairman, the older persons are suffering a lot of abuse as we have said before. A lot of them are very, very poor. Just like we do not have a child coming to represent children in the Commission, we do not need to have a very old man of eighty to come, but we do need a representative. I would like to appeal to fellow Delegates to support this, I think it was just may be an act of omission but I would like to point this out. That these older people are suffering moreover Mr. Chairman, there is no policy in existence although I do know that there is a Draft policy on aging. There is no policy in existence which really means that we will require someone to represent this particular group.

On women, Mr. Chairman, I would like to say women form 50% of the population of this country and they do very productive work. I really do support the creation of a Gender

Commission to take care of the problems that this particular groups to where I also belong. have been marginalized for such a long time Mr. Chairman. Thank you.

Hon. Delegate Kennedy Kiliku: Number 450.

Hon. Delegate James Ngusi: Thank you, Chairman. I am Delegate number 450 and I am representing the Trade Unions. Thank you for the opportunity so that I can be able to contribute to this Chapter number 17. I have three points to make.

One, I would like to take this opportunity to express sincere gratitude to the Commissioners, I think in the entire Draft Bill, for recognizing that we have a big Constituency in this country and that is the Constituency of the workers. For recognizing their existence and giving them representation under Article 290 (1F) to be members of the Salaries and the Remuneration Commission. Having said that, I would like to propose however that for this Commission to be even fully representatives the Ministry of Labour and Human Resource Development must be made a member of that Commission.

Secondly, I would like to make an observation as regards Article 287 and I would like to make reference to Chapter 13 of the Draft Bill under Article 287 where we have talked about the creation of an Economic and Social Council and under that particular section 5. The Draft Bill talks of creation of an Economic and Social Commission. Now, when you look under the listing of the Commissions that had been created by the Draft Bill, this particular Commission has been omitted. I think listening to other Delegates contributions, there is no doubt in our minds that if we have to be able to fight poverty in this country we have to remunerate our teachers appropriately and on time. If we have to get quality service delivered in this country, if we are to provide quality medical services in this country. There is no way you can do so if we are not paying attention to how our economy is performing.

I therefore, want to propose that the Honourable Delegates here in this Conference do mandate the working Technical Groups that will be working on this particular Chapter, to include as a matter of crucial important the creation of a new Commission called Economic and Social Commission.

Three, I want again to talk as a representative of the workers. We want strictly to remember what has happened at the National Social Security Fund, where you find that workers money has always been taken and for an acre of a piece of land payment of ten million shillings has been made. In fact some of the land has become subject of queries, if not some of it has turned out to be land which is under siege.

I want to propose here that it is important for us to look at all the parastatals and their functioning in this country and the only way we can be able to bring some discipline and constant efficiency in their management. These public parastatals should be brought under a special Commission that must be created and be Constitutionalized, because we want transparency, we want accountability for the public funds, including workers money which we have always been going into the drain in some of these public parastatals such as NSSF, the National Housing Insurance Fund, etcetera

I do want to commend the efforts by the Commissioners in suggesting that these Commissions must operate independently, they must be funded independently from a consolidated fund and the appointments must definitely be the functions of the Parliament. Thank you, Bwana Chairman.

Hon. Delegate Kennedy Kiliku: 463?

Hon. Delegate Mike Oliewo: Point of order.

Hon. Delegate Kennedy Kiliku: Point of order?

Hon. Delegate Mike Oliewo: Thank you, Mr. Chairman. My name is Mike Oliewo, Delegate number 613 representing Political Parties. Mr. Chairman, this afternoon an Honourable Delegate number 099, in his contribution to this Conference made it very clear that he shares this Conference with big thieves who have stolen from this country. Mr. Chairman, I am appealing to you to give the Honourable Delegate an opportunity to substantiate. Thank you.

Hon. Delegate Kennedy Kiliku: Okay, thank you. 463?

Hon. Delegate Churchill Suba: Thank you, Mr. Chairman. I am Suba Churchill representing the Civil Society, Delegate number 463. Mr. Chairman, I want to start my presentation on these Chapters by saying that we should agree as a Conference that there will be certain fundamental principles on which we will be making this new Constitution. Mr. Chairman, listening across the board I hear different sectors complaining. The youth are complaining, the elders are complaining but these complaints would not have arisen had we agreed that we will make a new Constitution on the principle that this Constitution will be a Constitution for an all inclusive society.

Mr. Chairman, I want also to highlight a very fundamental principle of Constitution making. A Constitution making process that will recognize and respect the principle of intergenerational equity because if those principles were adhered to and we highlighted them in our preamble, all these complaints will not be arising. So, let us agree as representatives of the Kenyan society, that we will make this Constitution on the principle of a society for all generations, a society in which intergenerational equity will be respected. That way, our children will grow knowing that they are secure, our youth will not crowd the Embassies to seek visas to go abroad, to wash plates because our country cannot provide for them. Our elders will retire, knowing very well that the society will receive them with open arms and take care of their security. Those principles must be highlighted in our preamble.

Back to the specifics Mr. Chairman, I want to highlight what our old mzee who has been very patient with us, Gitu wa Kahengeri, said. When you read Constitutions of the World, when you read the Constitution of the United States of America, it goes back to the struggle for independence. When you read a Constitution of Germany, they revisit their roles in the World Wars. Why are Kenyans ashamed of our struggle for independence? Could it be because we were hoodwinked by opportunists, who hijacked the principles which we fought for during independence. I would therefore, want us to revisit even our preamble and recognize the role that freedom fighters played in this Constitution making process. (*Clapping by Honourable Delegates*).

That is very important. Of course, in addition I would like to support his motion that we create a Commission that will respect the heroes and heroines of our land. I know we have been made to hate our history, even in our current Constitution, the Preamble starts with a very dry statement that Kenya is a sovereign state. What the writers forgot to add is, '*upende usipende*'.

Having said that, Mr. Chair, I want to go to the issue of the Constitution Commission and I want to revisit what Honourable Dalmas Otieno said. In Belgium Mr. Chair, before the National Constitution is amended, if that amendment is to be carried out by Parliament, Parliament is dissolved and a new election is held. We cannot sit here for a whole month, break for two months, and come back for another two months, to make a Constitution that will be amended by Parliament. I want to say that this process of Constitution making is not so much about the technical legalities at this stage as to the ownership of the process. All these Delegates are spending their precious time so that they can give a sense of ownership to this Constitution. Having underscored that need, I want to add under 292, that before this new Constitution is promulgated, a referendum be held as a mandatory process in making this new Constitution. Therefore, for it to be amended a referendum is necessary to approve any amendments that are proposed. Therefore the role of the Constitution Commission or the Constitution and Law Review Commission should be also to receive petitions seeking to amend the Constitution and that is the role that they should play and also to organize for a referendum that will be necessary to amend the Constitution. We must remove the role of amending the Constitution from Parliament. In my community, Mr. Chairman, there is a saying that "an egg cannot eat the hen that laid it". Parliament is a creation of the Constitution and therefore it cannot teach the hen that laid it which is the people.

Having that Mr. Chairman, we must recognize that the economy of Uganda is improving because they have realized the role that women and youth play in the society. I want to support (***clapping by Honourable Delegates***) the proposal to create a Gender Commission, but also to add that we must broaden the object of Affirmative Action. Affirmative Action, is about sections of society, all of them not just one which have marginalized in the past. The youth in this particular case, are people who are not even represented adequately in this Conference and therefore, I support the idea that we create a Commission to look into the affairs of young people. Thank you Mr. Chairman for giving me the opportunity.

Hon. Delegate Kennedy Kiliku: 229? There is point of order?

Hon. Delegate Danny Irungu: My name is Danny Irungu, Delegate number 627. Now, young people have had very pertinent issues to raise in this Conference but they have not been to do that but I think from what the Honourable Delegate has just said. I want a clarification from the Chair, is it true that young people are meeting tomorrow at Tent nine to discuss how they make this Conference more sensitive to their plight, all the youth Delegates and the observers--

Hon. Delegate Kennedy Kiliku: No, that is not our business today, I don't know, we cannot ambush the Chair that way. 229 please?

Hon. Delegate Farouk Mdahoma: Thank you, Mr. Chairman, for giving me this opportunity. I will try to be very brief so that I give other Honourable Delegates time also to make their contributions. Straight away I am going to Teachers Service Commission, Article 291 Clause 9, in consultation with the Public Service Commission to recruit and employ registered teachers. I think the recruitment exercise of teachers should be continuous though there are financial constraints, but teachers have to be recruited as and when funds are available. To promote teachers, Article 229, Clause (c) talks of promotions and transfers of such teachers. It is important as opportunity allows, teachers should be given promotions like any other civil servants and the question of transfer, I think this country is very common, you find that teachers are transferred even during middle of the terms. As much as possible, teachers should be transferred at the end of the term so that he does not interrupt learning process.

Article 291/2., the Commission shall keep under review the standards of education training and fitness to teachers. Our education systems should be improved many times so that we have relevance to educational systems that is going to benefit our young children when they grow up and the standard of education, should be as high as possible and in some districts, there are shortages of teachers. So, those districts that show they have shortage of teachers, they be deployed with enough teachers so that the students can do well. Here most of the time, we find that teachers get their salaries very late. They are workers like any other person, they should be given their salaries on time and as it has been said before, teachers come all the way from Lamu,

Turkana and other places to Teachers Service Commission in Nairobi for disciplinary cases and other matters. I think some of these services should be taken to the district level where they can be sorted out instead of being so far away.

Article 279, Clause 3, “a Constitution Commission shall where appropriate, establish branches in provincial and district level”. I think once this Commissions are in place, it is going to be a good idea if their services are situated in the provincial or district level and as it has been indicated here, it will offer free services.

Article 282, Clause (d) “may award compensation. I think this one is not very clear how this compensation is going to be made; it is only reading may award compensation”. Finally, I will have to respect your bell. In terms of pension, pension doesn’t change in this country, they have been the same figure and cost of living is going high. Also those who are in charge for pensions, they should get the pension as time goes by. Thank you very much.

Hon. Delegate Kennedy Kiliku: Honourable Delegate from Professional Organization 487?

Hon. Delegate Philip Onyango: Point of order?

Hon. Delegate Kennedy Kiliku: Yes, after this please?

Hon. Delegate Philip Onyango: I have kept my own records here and the following Delegates have spoken more than once. 316, 532, 512, 477, 436, 424, 368, 209, and 301. I think is very unfair that some people should be given chances to speak while others have only spoken once. I have only spoken once and every now and then I am being first-- I am Delegate number 419 from Suba District. Thank you.

Hon. Delegate Kennedy Kiliku: Thank you. That is noted. Number 487.

Hon. Delegate Baldip Singh Rihal: Thank you, Honourable Chairman and Honourable Delegates. My name is Baldip Singh Rihal, Delegate number 487 from the Professional Organizations and I will be very brief. I just have a couple of points I want to raise concerning

the Ethics and Integrity Commission. Reading Article 289, it is very well written, but I am beginning to wonder how the existing Anti Corruption Unit, or what was going to be called the 'Kenya Anti Corruption Authority,' will merge and become one within the Ethics Commission.

Honourable Delegates, you will recall that over the last two years, we have had extensive debate in the country and even the previous Government was attempting to entrench KACA in the existing Constitution and the then President was also going to Parliament when this bill was being debated as a Constitutional Bill and it did not go through the House. After that, the unit was created and it was beginning to have some teeth and this new unit was beginning to prosecute people who had committed many economic crimes in the country.

When we read Article 29, we see that this new Commission will have the power to investigate corruption. But to me, it appears very weak on the question of prosecution. We may run into the same arguments we were having a couple of years ago where the then Anti Corruption Authority wanted to prosecute certain people for the economic crimes they had committed, but the power to prosecute rested with the Attorney General. As soon as the then Authority prosecuted these people, the Attorney General came to the court and entered into a nolle prosequi and withdrew the cases.

Mr. Chairman, I am now beginning to wonder whether we need to give this new Commission sufficient authority to investigate and where they think they have sufficient evidence, to also prosecute because in one of the clauses it says that once a matter is under investigation by the director of prosecutions, this Commission will have no say in that matter, so, we might fall in the same trap where this Commission will be kind of having no teeth, it will only do the investigation and leave the prosecution to another authority and we will never get to the bottom of some of the economic crimes that have been committed in this country. So, I would strongly like to urge that this matter be re-examined at the Committee stage and the Commissioners also make a note of this matter.

If I may be permitted, I just want to make one small reference to the Defense Forces because I did not have an opportunity to speak at that time. It appears again, reading between the lines, that the defense forces are not answerable to any particular authority in the country. We know

what happened in 1982 when an attempt was made by one section of the Armed Forces and the president used some power, I don't know which one in the existing Constitution and he dissolved the Air Force. Will in future the President of the country have any power to express to do this or do we give him express power to dissolve any of the three Defense Forces? I think that matter also needs to be considered at the appropriate stage. Thank you very much, Mr. Chairman.

Hon. Delegate Kennedy Kiliku: Before we go to an Honourable member from the Religious Organizations who is 509, Honourable member 583 would like to make a statement to this Conference. Please, it is your time now Delegate 583. After that statement, number 509 you are on the floor.

Hon. Delegate Apolo Njonjo: Thank you very much, Mr. Chairman. Honourable Delegates, after consultations with the Chairman, we have mutually agreed that the Motion I had given notice for be resubmitted under Regulation number 24 and I have been assured that it will be discussed by this plenary tomorrow morning.

Hon. Delegate Kennedy Kiliku: Thank you. Number 509, please.

Hon. Delegate Martha Rop: Thank you Honourable Chair. Nafikiri yangu nitasema kwa ufupi kuhusiana na Chapter kumi na saba (17) section 288 kuhusiana na Commission ama niseme Tume wa Watoto. Ningetaka iwepo kwa sababu ya watoto ambao wanateseka kwa wingi kule mashambani. Wazazi wao wa kiume wanaoa bibi wengine na kuacha watoto au kuwanyang'anya kutoka kwa mama zao na kuwapeleka wawe 'maids' na pia wachungaji wa ng'ombe. Tume hii ikiwekwa itasaidia hawa watoto kwa sababu Children's Department haifanyi kazi yoyote na hata haijui hao watoto wako wapi.

Mimi nikiwa mmoja wa Human Rights Activists nishayaona hayo mambo na yanasumbua sana na hakuna mtu anayeona hayo. Wakati mnazungumzia mambo ya chokora upande wa town, huko mashambani watoto wananyeshewa wakichunga ng'ombe, kusafisha vyombo na kupigwa na wengine. Kwa hivyo, ningepomba Commission ambayo itakuwa na inspectors watakaokuwa wakitembea kwa vijiji ili iangalie hao watoto ambao wanafanya kazi kinyume na sheria ambayo imeandikwa.

Nitazungumzia pia mambo ya Commission ingine na ni kuhusiana na akina mama. Mimi nikiwa kama mama kutoka kule mashambani, ningependa kusema kwamba hao akina mama ambao wanapanda mboga na matunda wanatumia pesa yao kununua mbegu ya matunda na hawana market. Kama upande wa Eldoret kuna airport lakini akina mama hawana nafasi ama hawajui njia ya kuitumia ili wapeleke vyombo vyao ng'ambo. Unapata ni wale wakubwa wa ma-lorry wanaotumia hiyo airport na huku wanakusanya mboga kwa vikundi vya akina mama na kupeleka kuuza kwa bei ghali na kuacha akina mama wakihangaika.

Kwa hivyo, nafikiri hata nyinyi wazee, sio maajabu kwani nimeona wengi wakienda lunch au supper wanakula mboga na machungwa na hawajui ni akina nani wanafanya hiyo kazi. Kwa hivyo, mkitaka kula mboga safi ni lazima tuwe na Commission ambayo inaangalia mifugo ama banki ya akina mama ili iwasaidie wapate kuendelea. Wanaume hata mnajua kuwa mkiombwa pesa sana hata ya mboga mnakasirika; kwa hivyo wainueni hawa akina mama ili waendeleo na Commission lazima iwepo ili iwe ikitembelea akina mama.

Mwisho kabisa, ningesema kuwa ninaunga mkono Mama Wekesa ambaye aliongea juu ya ukulima kwa ujumla. Mnaona mambo ya mbolela inayouzwa na kampuni tofauti tofauti kwa bei ghali na pia maharagwe ilhali yule anayenunua, haya mambo ya soko huru yameleta taabu. Kupalilia na kuvuna kuna kazi lakini yule anayenunua kwa njia ingine hajui hiyo shida. Kwa hivyo Commission iwepo. Nikimalizia, a special commission should be there to monitor all these commissions so that they cannot be corrupt. Thank you.

Hon. Delegate Kennedy Kiliku: Special Interest Groups and a Member of Parliament on this side, I can recognize 627, then after that a Member of Parliament. Number 627 from the Special Interest Groups.

Hon. Delegate: Point of order.

Hon. Delegate Kennedy Kiliku: Number 399, point of order.

Hon. Delegate Grace Ogot: Mr. Chairman, several of us have been asking for permission for the people who are communicating through sign language to get opportunities to say a word or two before we close tomorrow. Permission has been given and I have been asked to get the two names of the sign language people, one from this side and one from the other side. Can those names be given Mr. Chairman so that I can forward them? Thank you, Mr. Chairman.

Hon. Delegate Kennedy Kiliku: We are going to make arrangements for that. Number 627.

Hon. Delegate Danny Irungu: Thank you ,Mr. Chairman. Mine are very brief comments on Chapter 17 and 18. The first one is that on the Commissions, I think it is important to disqualify certain classes of people from being appointed to the Commissions and in mind I have people who may be Members of Parliament or senators, people who may be holding public offices and also to discourage the culture of people who become career commissioners, people who jump from one commission to the other. We prohibit someone from being appointed to a commission if he has held or he has been a member of a commission three years before his appointment and after someone leaves the commission, we say that he should stay for at least three years before he is appointed to another commission. I do not want to belabour the issue of the Police Service Commission.

Secondly, I think we need to give maximum time that a person may stay in a commission. There is this law we call ‘the law of diminishing returns’. There are people who stay in a commission until they vegetate in those commissions and so I think we need to set a time limit.

Thirdly, I think we need to do one or two things. One, have a youth commission, I think issues of young people in this country have been taken to be secondary. They have remained on the periphery for far too long and we have even seen what has been happening in this Conference and I am thinking that we probably need a youth commission or have a quota in each of those commissions where young people will be sitting.

On Chapter 18, I want to propose that we raise the $\frac{2}{3}$ necessary to move a bill or to pass a bill to amend the Constitution to $\frac{3}{4}$. Just a small, I think must have been a typo, on section 295 (2),

instead of just saying 90 days, we say 'at least 90 days'. Otherwise, interpretations can bring problems.

The last point is that we should totally ban any amendment of the Constitution that will fundamentally change the form of Government. It must remain republican. Thank you.

Hon. Delegate Kennedy Kiliku: Number 007.

Hon. Delegate: Point of order.

Hon. Delegate Kennedy Kiliku: Yes, point of order, number 337.

Hon. Delegate Jimmy Angwenyi: Thank you, Mr. Chairman. I would like to make the following comments. First, we are having too many commissions--

Hon. Delegate Michael Sengech Kipkemoi: Mr. Chairman, I thought it was me on the floor on a point of order. Mr. Chairman, subject to regulation 44, sorry, my name is Michael Sengech, District Delegate from Marakwet, number 337. Subject to regulation 44 Mr. Chairman, the Conference may establish an *ad hoc* Standing Committee on any subject it considers appropriate to carry out its functions. I am talking on the platform of the youth. Many speakers have raised youth concerns that they have been sidelined. I would now propose Mr. Chairman, that just like we have a committee---

Hon. Delegate Sultana Fadhil: Honourable Delegate, I think this is the wrong place to bring that proposal. Put it as a notice of Motion and place it before the Steering Committee.

Hon. Delegate Michael Sengech Kipkemoi: I shall be very happy if it will receive due consideration.

Hon. Delegate Kennedy Kiliku: Number 007.

Hon. Delegate Jimmy Angwenyi: Thank you, Mr. Chairman. My name is Honourable Jimmy Angwenyi, MP Kitutu Chache. Mr. Chairman, I would like to make the following comments. First, in this Draft Constitution, there are so many commissions as if we will not continue to have a Government of the people of Kenya or while we will have a Parliament for the people of Kenya. Mr. Chairman, we have established some commissions that will be performing the same work that we elect people to Parliament or councils to do.

Mr. Chairman, I do not know from which country in the world you may have borrowed this example where a government is run by commissions. I would like to know where you drew this example from. Mr. Chairman, I have gone through the report of the Commission and some of the examples you have given there, we have been told that they have been brought from Fiji. By the way, Honourable Delegates, Fiji is a small island in the Mediterranean where one farmer who was annoyed with his Government walked to State House and overturned the Government. That is where we are getting examples from for our Constitution. We have examples from Uganda, but Mr. Chairman, we all know that there is no democracy in Uganda. In fact, there are no parties in Uganda, Mr. Chairman. If you want us to go to a party-less state, then state that clearly that we admire the system in Uganda of a party-less state.

Mr. Chairman, I would like to comment on these other commissions. I believe we should have had the following commissions: Public Service Commission, Judicial Service Commission, Parliamentary Service Commission, Electoral Commission, Teachers Service Commission, Human Rights and Administration instead of Justice Commission, and Labour Commission. If we had a Labour Commission in this country, our people who work in EPZ would not have been enslaved the way we discovered recently. Mr. Chairman, if we had a Labour Commission, they would know that when you create the 500 jobs you promised our Kenyans, they would be spread out throughout the country, they would not be given to one region or to one section of the population of Kenya.

Mr. Chairman, all other commissions could be established by an Act of Parliament. Mr. Chairman, we should also state that all these commissions and appointments must reflect the diversity of Kenyans such that if I am the Minister for a particular ministry, whenever I am making an appointment, I should not always go to my ethnic group to choose the appointment

that I want to make which is now the in-thing in this country. If I am the Minister for Agriculture and I am setting up a task force on agriculture, I always go to my home area. If I am the Minister for Energy, I always go to my home area.

Mr. Chairman, nobody is addressing that issue which brings together all Kenyans or separates them. The Constitutional offices that have been established in this Draft Bill are just too many. We know that we have a Constitutional office called the Attorney General and yet the Attorney General has always performed his work well although he is under a Constitutional office. So, the most important thing Mr. Chairman, is for us to change our attitudes as to how to govern ourselves. The Commission on Integrity, we have recently established an Anti-corruption Commission in our government. I do not know what work it will be doing and what work this Commission will be doing. With those few remarks Mr. Chairman, I want to finish by asking for a commission for university services. We have established a commission for teachers and that is a good thing to be done. We should establish one for university services throughout the country. Thank you.

Hon. Delegate Kennedy Kiliku: Okay, a District Delegate and a Member of Parliament, Delegate number 339? And next one will be a Member of Parliament.

Hon. Delegate Caroline Chemursoi: Thank you. My number is 339, my names are Caroline Chemursoi. I just want to add my voice to what other Honourable Delegates have said, and Honourable Chairperson, I refer you to Article 291 which talks about the Teachers Service Commission. I do support the entrenchment of TSC in the Constitution and I propose that Article 291(2)(a) should be deleted, it should not consult any other Commission.

I also move to 219 on the membership, we do know that TSC has been in existence since 1967 and it has been growing, the number of teachers also has been growing and therefore, they should have a minimum of twenty-four Commissioners which they do have presently.

On the other Commissions Honourable Chairperson, we should just give a minimum membership because some of these Commissions are new and when we give them maximum

number of members, I do not think it is realistic because we should give them time to corporate, so we should give minimum membership.

Honourable Chairperson, Article 219(a) does not specify the qualifications of the members. I do propose that they should have, those members of the TSC should have a teaching profession.

Finally, Honourable Chairperson, I do propose for the creation of Gender Commission which will deal with gender issues specifically and just before I take my seat, I propose that at least a third of all these Commissions should be women and a third should be youths. Honourable Chairperson, when you look at the current existing Commissions, most of the Commissioners are people of upper age, so the youth should also be included. Thank you.

Hon. Delegate Kennedy Kiliku: Number 043?

Hon. Delegate Mirugi Kariuki: Thank you, Chair. My name is Mirugi Kariuki, Delegate number 343, MP for Nakuru Town. First I would like to share the sentiments expressed by my colleague that we are running into the danger of managing a government by too many Commissions. I think the idea of a Constitutional Commission is basically to advance the issue of checks and balances, it is not basically to take care of everything else. We can create other Commissions under the statute and be able to take care of other interests that are not fundamental to the Constitution. In that regard therefore, when we have to create a Constitutional Commission we have to bear in mind that it has to be absolutely independent and when we talk about the independence of a Commission, we are talking about the institutional independence as well as the independence of the individual person in that particular Commission.

The second element that we have to bear in mind is that we have to create job security in these Commissions. Job security means good terms of service and an assurance that you cannot be dismissed without proper cause. I am saying this against the background of what we have seen in our Public Service Commission. Despite very clear provision in the Public Service provision that one cannot lose his job other than for the reasons stipulated, we have had the import of external donors who have imposed conditions of retrenchment in our Public Service. And because they lack absolute independence they have submitted to pressure to retrench our people

in total disregard to the law. Therefore as we look at this Constitutional Commission, let us try to empower them by ensuring their independence and ensuring that those people who serve in them and the persons employed therein enjoy job security.

Having said that Mr. Chairman, let me add that the Salaries Commission will create conflict in this other Commissions. This is because if you look at the Teachers Service Commission, the powers they have, among others is to review the terms of service and to do promotions. If you look at the Judicial Service Commission, they enjoy similar powers. One wonders what a Salaries Commission will do vis-a-vis the Constitutional Commission that we have set up. We shall be creating conflict of powers.

Finally, let me say something about the amendment to the Constitution. We are in a serious danger here of trying to blend two systems of government: a Parliamentary system and a Presidential system. In the Presidential system, the power to rule comes directly from the people to the President and if you look at the provisions through which we went in submissions of the Bill is that the President has to give certain reasons to the Speaker as to why he is rejecting the Bill. Those provisions are lacking when it comes to the amendment of the Constitution. I believe that in a Parliamentary system, the President is a form of check on the excesses of Parliament. So, when he refuses to assent to the Bill, we have to create a third fold and the third fold is the people. So the President can say no to Parliament. I do not like this amendment, it is not in the interest of the public because it is an institution in its own right and the public would be referred to, to decide this matter through a referendum.

Mr. Chairman, Sir, let me finally say that the provisions leading to amendments should only relate to additions not subtractions. We are assuming that the Constitution we are going to come out with here will be the best in the world and the best for Kenyans. Therefore, the provisions relating to amendments, to the extent of subtracting the fundamental rights they have laid in this Constitution, should be avoided and we only have an amendment to make the Constitution better for all of us. Thank you.

Hon. Delegate Kennedy Kiliku: Number 027? 027?

Hon. Delegate William Kabogo: Point of order. Thank you, Mr. Chairman. I want to tell you that I am aware that you refused to see me because of my challenging your authority to give your brother the chance to speak, Honourable Kajembe and my colleague, an MP. I am aware that is why you did not see me. My name is William Kabogo, Member of Parliament, Juja.

Hon. Delegate Kennedy Kiliku: Number 027?

Hon. Delegate Peter Ejore: Mr. Chairman, number 323, Peter Ejore Emase Kutoka Turkana. Nimeshangaa vile namba hii inarukwa kutoka pale, hapa nyuma, huko, sijui nani alinipatia hii namba. Hii namba sio ya kwenda kwa haja, kwenda kwa dining hall na kusikiliza, tafadhali, niko na mchango ambao ninataka kuchangia.

Hon. Delegate Kennedy Kiliku: Okay, 381?

Hon. Delegate Rita Katamu: Thank you, Chair. I am Katamu Rita, number 381, District Delegate, Butere/Mumias District. Actually, I want to thank you for giving me this chance. I do not have much to contribute, I just want to remind the Conference that from Butere/Mumias I came with views from women and they sent me here to say that they need a Gender Commission. They are fed up with the retrogressive cultural activities that have rendered them almost useless in the society. We have very many things that have affected women down there, especially coming from the girl child to the women who are aged. Women have suffered, they have been marginalized and nobody listens to them. Therefore, they feel if a Gender Commission is formed, their issues will be looked into.

Now coming to Teachers Service Commission, I want to add my voice to my dear colleagues who said that we should increase the Commissioners at the TSC. Bearing in mind the current number of teachers and the problems affecting teachers both from classroom and personal problems, I wish to propose that we add the number of Commissioners from 24 to 30. I also wish that the Teachers Service Commission should cater for any teacher, just like my sister says that any teacher from the pre-primary to university. It is after they have taken care of all these teachers that they will be able to adjust and readjust salaries properly. I therefore propose that the ECD or Early Child Development be put under the Teachers Service Commission because

most of the teachers who are teaching in pre-primary are women and I think they have suffered enough. They are handling those children who are still very young, those ones that cannot read and they are bringing them up to be good people. So, let us actually look into their affairs.

Now I wonder who will take care of workers who are working under Indians. We have our brothers and sisters suffering under the Indians. Nobody has taken care of them. These people work under unacceptable conditions. I actually want to bring these people who are employed up here, especially--

Hon. Delegate Kennedy Kiliku: Point of order 524.

Hon. Delegate Neera Kapila: I object very strongly to the very derogative term that I have heard. It is a statement which is untrue when we take it across the board. I am not denying that there are some people who are bad in my community, but there are equally bad people in your community and when we talk of bad people, we call them bad people. They are not Indians, they can be from any other tribe too.

Hon. Delegate Kennedy Kiliku: Okay, to put the record straight, I would like to ask the Honourable Delegate speaking to withdraw and apologize so that-- (*protestations from Hon. Delegates*)

Hon. Delegate Rita Katamu: Actually here, I am free to speak what I know, my people are suffering under companies managed by Indians, (*uproar from Hon. Delegates*) They are being underpaid, they are being given very little money and I have in mind the case of Mumias Sugar Transport Section, where our people are working. They are given KShs. 800/= and nobody is representing them here. Nobody is talking for them and therefore, I do not wish to withdraw, I still say the Indians have marginalized our people especially in private companies. Thank you very much. (*clapping*)

Hon. Delegate Kennedy Kiliku: Okay, 216? (*Uproar from Hon. Delegates*) 453 point of order please.

Hon. Delegate Elkanah Odembo: Point of order. Thank you very much. Mr. Chairman, my names are Elkanah Odembo, I am Delegate number 453. The Delegate who has just sat down was asked by the Chair to withdraw a statement which was a racial statement made in bad taste and that should be honoured. The Honourable Delegate should either withdraw that statement or apologize. We cannot have in this National Conference, people making derogatory statements and remarks about particular communities who are sitting in this Hall. It is not acceptable at all. *(Protestation from Hon. Delegates).*

Hon. Delegate Kennedy Kiliku: Okay, I think the Delegate has withdrawn. *(uproar from Hon. Delegates)* I would like to ask the--

Hon. Delegate Elkanah Odembo: Mr. Chairman, with all due respect, you asked the Honourable Delegate to either withdraw or apologize. She refused categorically.

Hon. Delegate Kennedy Kiliku: Well, to be a good debater, I ask you to sincerely withdraw for you to qualify as a good debator.

Hon. Delegate William Kabogo: Point of procedure, Mr. Chairman, procedure. *(uproar from Hon. Delegates)* Point of procedure, Mr. Chairman. *(uproar from Hon. Delegates)*

Hon. Delegate Kennedy Kiliku: Okay, Delegates, Order, order. Delegate 216 you are on the floor to contribute. If you are not ready, I go to the next one.

Hon. Delegate Kipkalya Kones: I am the next, Mr. Chairman, but I thought I wanted to clear that district issue. If a Delegate has made a derogatory statement which is hurting anybody, she/he has to substantiate or withdraw. In this case I thought the Delegate actually substantiated what she meant *(Clapping from Honourable Delegates)*. Therefore she is not going to be forced to withdraw.

Hon. Delegate Kennedy Kiliku: You are on the floor to contribute. Will you continue or I go to the next Delegate?

Hon. Delegate Kipkalya Kones: : With that, Mr. Chairman, I would like to contribute to this chapter. Mr. Chairman, I would like to contribute by saying that I support the creation of constitutional commissioners and I would like to support and to say that --

Hon. Delegate Sultana Fadhil: There is a point of order 027, what is your point of order?

Hon. Delegate William Kabogo Gitau: Mr. Chairman, my point of order is to ask you whether you know you have authority or you do not have authority? Your decision was final as far as the Conference is concerned. You said she must withdraw, are you withdrawing your order?

Hon. Delegate Kennedy Kiliku: We said she has to withdraw or substantiate, or apologize.
(Clapping from Honourable Delegates)

Hon. Delegate William Kabogo Gitau: Those were not your words.

Hon. Delegate Kennedy Kiliku: If somebody makes an allegation which can be substantiated and he or she substantiates, they do not have to withdraw. *(Clapping from Honourable Delegates)*

An. Hon. Delegate: Thank you Mr. Chairman, that's a clever decision.

Hon. Delegate Sultana Fadhil: 524, just a minute. 524 yes.

Hon. Delegate Neera Kent Kapila: 524, I want to say we want proof that the Mumias Company is owned by Indians or Asians of African origin. Or are all these people employed by locals other than indigenous communities and are they working on instructions? Where is their package of money or their remuneration coming from? Where are the origins? We often do not distinguish between the bad employer who sits in his office and the individual who has to get a certain amount of work or output so as to prove to his employer that he is doing the work that he has been employed to do. And as such I object to gross statements like the ones we keep hearing all the time – “Indians treat their servants badly”. Yet we know it is a little girl child who is the ayah in indigenous homes who often dies and kills herself and the little one she is looking after.

I can make these derogatory statements too, which are equally hurtful and I think it is time we stop doing this kind of thing. We are in the process of building a nation and a nation is what we are moving towards, where all peoples of Kenya are working and moving on a path to create harmony and improvement of everything. If there is a problem we can improve it. (*Noise from Honourable Delegates*).

Hon. Delegate Kennedy Kiliku: 216.

Hon. Delegate Kipkalya Kones: Mr. Chairman, if I may be allowed to continue, I would like to support the autonomy of the Teachers Service Commission. Mr. Chairman we remember when we were young in the early 60s, the teachers went on strike for almost one month and over seeking to have their own Commission and after a long strike and a long discussion with the Government then, the Teachers Service Commission was created. Since then we have been having small problems with the teachers but not as huge as they were in those years. So, Mr. Chairman I would like to say that the Teachers Service Commission becomes an autonomous commission.

Mr. Chairman I would also like to add that there should be an additional commission here. By the way Mr. Chairman I think we should not restrict the creation of these commissions because sometimes there is a need to have them around.

We have a sector, which has been overlooked so much Mr. Chairman. The informal sector in this country is suffering so much yet in fact it's employing almost 30% of our youth today. Mr. Chairman the only sector that is still creating employment today in this country is the informal sector. You can only have an effective informal sector if you have good training. There is currently no training on the informal sector's operations. I have in mind people who are in the Jua Kali industry which is suffering so much because the artisans, the technical experts, who are supposed to be training in this sector are grossly underpaid. They have no terms of service at all. All the technicians in there have suffered so much so that they leave this employment and they actually go and run their businesses, therefore making it impossible for the youth to develop.

Mr. Chairman we have what we call the village polytechnics in this country. You find that the instructors in these village polytechnics have no terms of service, some of them have not earned a salary for the last ten years, and we still expect them to teach. They are not under the Teachers Service Commission, they are under no Commission at all. Mr. Chairman I think if we are going to develop this sector right from village polytechnics to other polytechnics, we need to have a commission that looks into that sector, because currently they have no terms, they have nobody to run to, and we are suffering a lot. If we had this commission we would have a lot of resources from external donors. Today no external donor would want to come and have a discussion with this sector because there is nobody to talk to. They don't. They even tried to talk to the Minister for Labour and he does not have those powers.

Mr. Chairman if you may give me another one second because I was interrupted. If we go to Chapter 18 on the amendment of the Constitution, I think there is no reason why we should ever imagine that we can establish a Constitution that is airtight. There will always be some need to have an amendment. And like our colleague Mr. Kariuki said, we should have a provision for amendments but they should only enrich the Constitution not subtract. So Mr. Chairman let us not imagine otherwise, even if we stayed here for one year, we are still going to have a Constitution that will still need certain amendments and that is the work of Parliamentarians. So I think there should be provision for amendments and as has been proposed here that it is only two thirds, I think two thirds of both Houses should be adequate to amend the Constitution. Thank you, Mr. Chairman.

Hon. Delegate Kennedy Kiliku: 252, a person with disability and then we go to a District Delegate.

Hon. Delegate Ali Amey Dubat: Thank you, Mr. Chairman, I'm going to be very brief like other speakers. I feel that TSC should not be under any other commission. TSC should be very independent from all other commissions, that is why today there are a lot of problems. TSC should be independent and autonomous, that is my feeling.

Bwana Chairman, we are drafting the country's Constitution, but just the way the other people have said, we have not mentioned our heroes, our independence struggle, our people, the beloved

ones who have lost their lives to make this country independent. This is very painful indeed, especially to us the elders, those of us who have seen how our people have been massacred, how our people have been put into villages, into concentration camps, just because they wanted this country to be independent. Mr. Chairman, it is my humble feeling that we must have a policy on independence fighters of this country. We must honour the few who are remaining. We must give them honours that befit them if they die.

I think the Constitution and independence is the product of the freedom fighters, and it would be very ambiguous for us to sit here if we do not mention these people. Mr. Chairman, it is very painful indeed that the successive governments have totally disregarded the struggle of our people. I am told some of their graves have even been destroyed and replaced with houses. Mr. Chairman, it is my humble feeling that we should do something about that.

My last point, Mr. chairman. If you look at the pastoralist life, pastoralism is a very complicated issue. It is my humble feeling that we should have a Pastoral Commission to deal with pastoralists, their economic activities, education, well-being, lifestyle and all the components of life. Mr. Chairman, pastoralism is not only in Kenya, it is a worldwide phenomenon. If you look at some countries, like in Europe, Asia, and Africa - I think we must come up with a Commission that will look after pastoralists, their products, their marketing site, look at their proper education, so that we balance this country and we appear as one nation, with one common goal. Thank you very much.

Hon. Delegate Kennedy Kiliku: 320.

Hon. Delegate Kiriro wa Ngugi: Thank you, Mr. Chairman. My name is Kiriro wa Ngugi, Delegate from Kiambu. I would like to reiterate the point that Honourable Delegate Gitu Kahengeri initiated in this conference. It has to do with the logic of patriotism. We will never form a nation unless it make sense that it is worth for us to die for your country; that there is honour in struggling for your nation. As it has happened, when we got independence there was a quirk of history, under which the former collaborators with the British Colonizers were the very same clique that largely enjoyed the fruits of independence. That was the issues that informed the first regime and it was replicated tenfold by the second regime and the precipitate

consequence is this Conference. We must attempt and must succeed in restoring the logic of patriotism.

Second point, over the last few chapters, it looks like the Commission somehow forgot about devolution and how it informs the rest of the document. That away, I do not have to go back to the other Chapters as the point is still the same, that points have been raised here on the place of devolution vis-a-vis, these national Commissions. For example, on the Land Commission, there was a sentiment that perhaps land is best dealt with at the community level, regional level and at the devolved level. So this question is not properly answered.

Education. If you look at the Schedule Seven, education is talked of as an activity for the devolved units, and yet the Teachers Service Commission is envisaged as a national commission. Lastly, let me mention this very important, the so-called entrenched provisions that require a referendum for change. If that logic be correct and I believe it is correct, then it does mean that even the enactment of the same requires the people's mandate. We cannot as a Conference or a Parliament enact provisions that then consequently require a referendum for change unless even the initial enactment is taken to the referendum. Thank you very much.

Hon. Delegate Kennedy Kiliku: 594.

Hon. Delegate Orié Rogo: Thank you very much, Mr. Chairman, Honourable Delegates. I am Delegate number 594, Political Parties, Orié Rogo Manduli, Ford People. I am hearing conflicting messages here, create more commissions, just keep creating them, Pastoralists Commission, and this Commission. Now, very soon will be asking for Fish Eaters Commission, Githeri Eaters Commission,s and there is no end. We cannot be creating Commissions around communities. We create Commissions around issues. We are so many diverse communities, so you create for one community, the other communities will also want similar Commissions.

So to begin with, that one, in my view, Mr. Chairman is out. We are trying to cut the number of Commissions so that we do not have a government that is run by commissions. These commissions never seem to have any teeth; which Commission recommendations are never really respected, or even acted upon; which commissions are used largely for the powers that be

to place their friends and relatives in plum jobs, so that at least they are sure of earning a good salary, driving good cars and a lot of good never really come out of the commissions.

If there is one commission that must be created, I think it is commission for housing; everybody needs shelter in this country. If you see the problems in Kibera, you look at the problems *huko* Kasarani, *kwangu huko*, you look at the problems, people killing each other, landlords complaining, tenants in turmoil. We are looking for a Commission for Shelter and Housing, that is something of interest to all communities in this country. Housing Commission is going to be important because the tribunal has failed to deliver; the rent tribunal has failed to solve cases in a timely, decisive and satisfactory manner. So that this is a Commission that we must create, but why, Mr. Chairman?

We must comment that some of the existing Commissions like the Teachers Commissions are wonderful. I am only adding my voice to a request for its autonomy from any other group. You may not be aware in this Conference, and we are closing tomorrow, that the Teachers' Commission employs 240,000 teachers. Now, the public Services Commission takes care of 200,000 people, so, which is bigger? The Teachers Commission, isn't? It must have autonomy, but I understand and agree that the number of its Commissioners should increased, but all of them should not squat in Nairobi. It should be made regional so that they are spread out in the regions, so that they can serve people, they can be closer to the people; so that they can really be useful out there in the regions.

It is very important that the Teachers' Commission should not be a talk shop, it should be an organization that can make decisions which are implemented. This salary affair has gone on for too long, and if there is anything they need at this conference to add to their Commission, to add them teeth, to add them ability, so that whatever they decide can be implemented and they are not subject to the whims of governments which change from day to day. Government, which say one thing when they want votes, and another thing when the votes have been given. Like the other day, you know it is teachers who put the present government in power, and as soon as they were in power they have forgotten the teachers, they are busy padding their own pockets. This is something that has to be done. Thank you very much, Mr. Chairman. I hope I would talked longer.

Hon. Delegate Kennedy Kiliku: 116.

Hon. Delegate Danson Mungatana: Thank you, Mr. Chairman, for giving me the opportunity to contribute. My name is Danson Buya Mungatana, the Member of Parliament for Garsen. I am Delegate number 116. Mr. Chairman, Chapters 17 and 18 gives me a lot of hope. I would like to contribute on both Chapters very briefly.

A long time ago when supermarkets we coming into this country and when we were growing up, many of us did not believe that you can actually leave your goods as a shopkeeper for somebody to pick and pay later on. When this concept was coming, a lot of people thought that people were going to lose their money and goods to thieves. A few years down the road, however, we have come to accept the concept of supermarkets and they have become part and parcel of our culture, because that is what we taught ourselves and that is what we accepted.

Now there are some values that we are trying to create in Chapter 17 of the Constitution, the proposed Bill. We are saying that we want the new generation that we are bringing up to have respect for gender and I want to commend the Constitutional Review Commission for this, that we want to bring up children who will look at their mothers and sisters as equals. I want to commend the Constitutional Commission again for the Integrity and Ethics Commission that is proposed, because we are telling our new generation that if you want to be a leader, you are supposed to be honest, you are supposed to be this and that. We are trying to create values for the new generation.

Mr. Chairman, what I find missing though, and I would want to make my contribution at this point, is that it has not been made compulsory and that is my proposition, that in all institutions of learning these values that we are trying to bring up in the generation to come, must be taught. In Garsen constituency, for example, where I come from, none of the schools has a copy of the Constitution; in fact it was when we started campaigning and trying to show them that this Constitution is flawed, that people saw that there was a constitution. As a principle, these things must be put, taught and recited - the way we recite our national anthem - in all institutions of

learning. Then we will have a hope in future we will create a generation that thinks and moves like Kenyans.

Mr. Chairman, the second contribution I would like to make is in respect to Chapter 18, which deals with Amendment of the Constitution - Mr. Chairman, I ask for one minute- Mr. Chairman, the Draft Bill proposes that we should give a chance to Parliament to be able to amend the Constitution. Mr. Chairman, I oppose that particular provision. I think, in my very humble opinion, that if there is going to be any amendment at all, it must be from the people, it should be strictly referendum. Because the Parliament, in as much as it is a representation of the people, none of the MPs has been elected directly by everybody in Kenyan, with the exception, of course, of the President, under our current system, and I think this constitution that we are making here is reflecting the will of the people of Kenya. My proposition is, Mr. Chairman, if we are to amend this constitution at all we must wait for 40 years so that this generation goes. So the next generation, if they want to amend their constitution, let them do it. For us, let us be serious, and I hope people are going to be serious, we make a Constitution and we live with the consequences of that Constitution. I propose, because the history has shown us, the pre-independence generation of Shikuku and so forth and so on, had their chance in 1963, now 40 years down the road, we are having our chance and after we make our changes we should live with them for 40 years and the next generation, if there is going to be any constitutional change, we should only have one input there, that '40 years from today, is when you change this constitution'. Thank you, Mr. Chairman.

Hon. Delegate Kennedy Kiliku: 083.

Hon. Delegate Wangari Maathai: Thank you very much, Mr. Chairman. Mr. Chairman, I would like to say that the limit of 65 years to me in various places has been disturbing me because I feel that if we did not want to set a limit for the President and do not want to set a limit for Members of Parliament, I do not feel that we should limit the judges and the Commissioners at 65 years, at 65 you are still very young and this is when you have a lot of experience and I was hoping that you would have experienced people in this positions, I do not think we should have that limit of 65 years.

I also feel that Article 289, which is talking about Ethics and Integrity should be combined and be called a Commission on Culture because ethics and integrity come from culture. I also think that in Article 288, the Commission for Environment should sit there, it is very important that we have the environmental rights and justice protected. I think that Commissioner for environment should be one of those to sit in that Commission.

Mr. Chairman, I am very concerned about the issue of transfers when we come to the Commission on teachers. The whole culture of transferring people and especially teachers and people serving in the public service is very destabilizing to families and especially at this time of HIV/Aids. I think that we got that culture from the colonial administration which wanted to have people roaming around. I think we must encourage family stabilization by not transferring workers from one place to other. People like teachers and provincial administrators do not see their children growing up because they are forever on the road.

I also want to support the view that we should not change the Constitution arbitrarily. I find that sending a Bill to the President about the Constitution and just asking him to approve is to ask him to rubber stamp. We really do not want to encourage any rubber-stamping in our governance at this time or henceforth. Therefore, I would agree that if the President refuses, then it must go for a referendum rather than take it back to Parliament only to have Parliament enforce it. Yes, Mr. Chairman I think that was it, I think I would agree with those who are suggesting that we must be very careful that we do not make it very easy to change the constitution, but we should also not make it impossible for people to be able to change if they see sense in changing. Thank you very much Mr. Chairman.

Hon. Delegate Kennedy Kiliku: In view of the fact that we have exhausted the debate on this one, but before I-- (*Uproar by Honourable Delegates*). You want to continue?

Hon. Delegates: Yes

Hon. Delegate Kennedy Kiliku: Yes, 273 has a point of order.

Hon. Delegate Joyce Muriuki: Thank you, Mr. Chairman, my names are Joyce Kagendo Muriuki, Delegate number 273. My point of order is, from our row, you have been selecting only Members of Parliament, me and my friend here, we have been left out ever since, until we agreed either or us to be given a chance. So Mr. Chairman take that note.

Hon. Delegate Kennedy Kiliku: Okay, you were next, 273 please.

Hon. Delegate Joyce Muriuki: Thank you very much, Mr. Chairman. Mine is to add my voice on Teachers Service Commission. I want to agree with the other speakers that this Commission is very important because I remember we have trained many, many, many teachers who are at home right now with no employment at all and if this Commission is to strengthen and put in the Constitution, I think they will look at the grievances of teachers as far as employment is concerned.

Another thing Mr. Chairman, I will be very brief is the gender Commission. I totally agree with this Commission if it is put in the Constitution because it has many functions although people may find it not very necessary, it is. There is no Commission which concerns gender, that means men, women, youth and the others because when you talk of gender people tend to think we are talking of women. In this sense, we are not talking of women we are talking of all genders be it men, women, youth and the rest.

I had stood on a point of order I was not very sure if I would talk. I was talking of another Commission, the Ethics and Integrity Commission and I fully agree with that because I have heard of the Truth and Reconciliation Commission. I think this Commissions can take that part and it can even deal with matters concerning the finding out of who has done what. Thank you Mr. Chairman.

Hon. Delegate Kennedy Kiliku: 587.

Hon. Delegate William Gitau: Point of order.

Hon. Delegate Caroline Ng'ang'a: Thank you, Mr. Chairman, for giving me an opportunity to contribute on this. First of all I must say I am very happy about the establishment of the Commissions. My names are Caroline Wambui Ng'ang'a, a representative of the political parties, Labour Party of Kenya.

Hon. Delegate William Gitau: Mr. Chairman, I raised a point of order, rule 16, lack of quorum what do you say?

An Honourable Delegate: There is quorum.

Hon. Delegate William Gitau: That is the position. Those are not my rules they are rules of the Conference, Mr. Chairman. People are taking tea I am told, Mr. Chairman, the Conference is not at the tearoom, it is here in the hall.

Hon. Delegate Caroline Ng'ang'a: Can I continue?

Hon. Delegate Kennedy Kiliku: 587. How have you established there is no quorum, you have not counted? How many numbers do you have? 587, continue.

Hon. Delegate Caroline Ng'ang'a: Thank you, Mr. Chairman. Once again my name is Caroline Wambui Ng'ang'a, Delegate number 587 representing political parties, Labour Party of Kenya. Mr. Chairman, I was just saying that I am happy with the establishment of the Commissions especially the five special ones.

An Honourable Delegate: Point of order, Mr. Chairman.

Hon. Delegate Kennedy Kiliku: Yes, point of order. 132.

Hon. Delegate Onesmus Kihara: Mr. Chairman, I rise on a point of order. My name is Honourable Kihara Mwangi. When a point of order has been raised on the question of quorum Mr. Chairman you cannot continue unless and until you have established that there is a quorum

