

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

**NATIONAL CONSTITUTIONAL CONFERENCE  
(NCC)**

**VERBATIM REPORT OF**

**PLENARY PROCEEDINGS  
DECISIONS ON DRAFT BILL BY THE COMMITTEE  
OF THE WHOLE CONFERENCE  
HELD AT THE PLENARY HALL, BOMAS OF KENYA**

**ON**

12.03.04

# CONSTITUTION OF KENYA REVIEW COMMISSION

## CKRC

### NCC – PLENARY PROCEEDINGS ON DISCUSSION OF THE ZERO DRAFT HELD AT THE PLENARY HALL AT BOMAS OF KENYA ON 12<sup>TH</sup> MARCH 2004

#### Present:

<b>Chair</b>	-	Prof. Yash Pal Ghai
<b>Co-Chair</b>	-	Hon. Delegate Koitamet Ole Kina (Vice Chair NCC)
<b>Secretary</b>	-	PLO Lumumba

#### Secretariat Staff In Attendance:

<b>Clerk (National Assembly)</b>	-	Andrew Mwendwa
<b>Clerk</b>	-	Kipkemboi Kirui
<b>Verbatim Reporter</b>	-	Susan Mutile
<b>Verbatim Reporter</b>	-	Nancy Kariuki

**The meeting was called to order at 9.20 a.m. with Koitamet Ole Kina in the Chair.**

**Hon. Delegate Koitamet Ole Kina:** *Haya tuombe.*

**Hon. Delegate Gitu wa Kahengeri:** *Na tuombe. Ewe Mwenyezi Mungu aliyeumba viumbe vyote katika dunia na mbingu, tumekuja hapa leo asubuhi wakati wa majadiliano ya hali ya nchi yetu ya Kenya, ambayo Wewe mwenyewe uliunda kwa manufaa yetu. Tumekaa hapa kwa miezi mingi tukijaribu kuweka matayarisho ambayo itawafaidi sisi tulioko leo, wataokuja kesho na watakaokuja miaka mingi ijayo ambayo umeibariki watu wa Kenya wawe wanakaa katika nchi hii. Tunajua Baba wetu kwa kila kitendekacho katika nchi kinaweza kuwa na tofauti tofauti kwa watu mbali mbali. Tofauti zinapotokea katika mambo yoyote, tunalilia Wewe. Na katika kukamilisha Katiba hii, vile vile, tunakuja kwako kukuuliza. Tumefanya yote ambayo tungeweza sisi kama wanadamu na tuna mapenzi ya kwamba nchi yetu iwe moja kutoka mpaka wetu wa Tanzania, Wilayani Kajiado na kufika Moyale, na pia kutoka katika bahari ya Hindi na kufika Busia mahali ambapo tunapakana na watu wengine. Walioko katika nchi hii, ndio wanakuuliza leo utubariki kusikizana na kuona tofauti zetu tukiwa wanadamu, haifai kuangamiza nchi kama ulivyotupa tukae.*

*Tungependauguze kila roho ya kila mtu alioko katika mkutano huu na wale pia wako nje ya mkutano huu, waone ya kwamba ni sisi tu uliyeumba na ukatuweka katika nchi hii ya Kenya ambao tunaweza kuleta umoja, masikizano na mwishowe watoto watakaozaliwa watafahamu ya kwamba, walizaliwa katika nchi iliokuwa na watu waliopenda kupendana na kuweka masilahi ya binadamu mbele ya masilahi ya mwanadamu mmoja.*

*Kwa hivyo, Muumba wetu na vitu vyote vilioko duniani, tunakuuliza leo asubuhi kwa unyenyekevu mwingi utukubalie tuwe na Katiba. Na hiyo ni Wewe tu unaweza kusema kuwa tutatoka katika Bomas of Kenya na Katiba iliyo safi ambayo inaangalia maslahi ya kila mtu uliyeumba na ambayo itatosheleza walioko hapa leo, wale walioko nje ya mkutano huu, wale waliozaliwa jana na wale watakaozaliwa kesho. Kwa hayo machache nakuuliza utoe baraka yako kwa wale wote watakozungumza katika mkutano wa leo, wazungumze wakiwa na roho ya kupatanisha watu wa Kenya kwa sababu ni nchi yako uliowapa wakae, wakae na raha na wakae na masikizano. Naomba hayo kwa jina la Baba na la Mwana na Roho Mtakatifu. Amen.*

**Hon. Delegate Irene Magut:** In the name of the Father and of the Son and of the Holy Spirit. Father we thank You Lord for being with us this morning. We glorify Your name dear Father, we lift You so that you can be what You mean to us. You know us Lord, You know our sincerity, You know our faith and You know the weakness we have in our lives. Father we surrender to You this morning, we want You to be part of our lives this morning. Lord You are a lover of all people, deliver us Lord from fear of making sacrifices, deliver us Lord from all that is bringing walls between us, our friends and our neighbours. Make us Lord aware of the needs of our neighbours, make us Lord be able to humble ourselves before our friends and our neighbours. We come to You as we are dear Father, You are our Father and we believe that you give us all what we ask of You. We ask You to come down to us, dear Lord, we ask You to become one of Delegates in this building this day dear Father. Father we call Your name because we have confidence in You, we call Your name because we believe that You have the power to do all what is good for us Lord. Let Your will be done Lord in this country, let Your will be done Lord in this Hall. We are here for the good of this country dear Father.

Remove all the selfishness which is in our hearts dear Father, break the pride which is in our lives and which blinds us not to see the wishes of other people, dear Lord. We come to You humbly as we are, we have all the failures we have in our lives, but we know you can lift us and

make us whole. Build our souls dear Father, build our bodies, dear Father and fill our minds this morning, be the mouthpiece of this Conference dear Father. We believe that Your will and Your goodwill will be done this morning. I pray this believing in the powerful name of our Lord Jesus Christ. Amen.

**Hon. Delegate Dubat Amey:** *Bismillahi Rahmani Rahim. Ya Allah! Mfalme wa Wafalme wote, mwenye kumiliki dunia na yaliomo ndani, Mfalme ambaye hukumu zake haziwezi kubadilishwa na mtu yeyote, Mfalme ambaye afanya kila atakalo. Tunakuuliza wewe leo utupatie baraka na heri. Ya Allah! Umetuuliza tukuombe, umetuamrisha tukuombe, tunakuomba vile umetuamrisha na tunataraji utakubali maombi yetu vile umetuahidi. Ya Allah! Wewe ndiye umetuleta katika hii nchi pamoja, tukiwa jamii tofauti tofauti, wenye mila tofauti tofauti, wenye uso tofauti tofauti, ukatuweka sisi wengine katika sehemu za jangwa, wengine ukawapeleka ufuo wa bahari, wengine ukawaweka mahali ya mvua na rutuba mingi na hakuna mtu aliyekushawishi.*

*Ya Allah! Sisi tunataka kukaa kama jamii moja katika nchi hii. Ya Allah! Katiba ya haki, sheria ya haki ni ile ambayo umeandika katika vitabu vyako, lakini sisi kama jamii lazima tuwe na desturi ambaye inatuweka pamoja. Hatukukuja hapa kukuasi na kufanya kitu kinyume na vitabu vyako, lakini kwa maendeleo ya dunia, lazima tuwe na desturi ambaye inatuweka pamoja. Ya Allah! tumefika sehemu ile ya mwisho, Wewe ndiye Mfalme, Wewe ndiye unajua kila tunachofichua na kila tunachoficha ndani ya mioyo yetu. Tunakuuliza uregeshe roho zetu, hasa wale wanatutawala, maana amri ya mwisho iko kwa yule mtu anayetawala. Hata katika nyumba, Mzee ndio anakuwa na uwezo wa kuharibu hiyo nyumba au kutengeneza hiyo nyumba. Ya Allah! tunakuuliza utulete pamoja, sisi tumetuma Wazee wakongwe kama yule ambaye anakuomba sasa. Mimi nimeambiwa yeye na baba yake walifungwa detention Lamu miaka kumi kwa ajili ya hii uhuru. Hatutaki watu ambao wanachezea hii uhuru. Ya Allah! tunakuuliza uteremshe rehema zako, utupe muelekeo, Ya Allah, hii Katiba ni bridge ambayo inaleta sisi pamoja, hatutaki watu wabomoe hiyo bridge. Tunakuuliza kwa sifa zako nzuri, kwa uwezo wako, kwa Ufalme wako, Ya Allah! tumefika mahala ambapo tunakuhitaji siku zote na siku ya leo, tunakuhitaji zaidi. Ya Allah! sikiza maombi yetu, sikiza kilio chetu, sikiza unyonge wetu, Ya Allah, Ya Allah, Ya Allah sikiza amri yetu. Amin, Yarabil-Alamin.*

**(The National Anthem).**

*(Consultation at the “high” table).*

**Prof. Yash Pal Ghai:** The program today is that--

*(Consultation at the “high” table).*

**Prof. Yash Pal Ghai:** The program today is that the Consensus Committee and Bishop Sulumeti will continue with its work this morning and I invite all the members of that Committee to go to the Tent. The rest of you will complete the work you were doing yesterday and as soon as your work is concluded excluding the Chapters on the Executive and Devolution, the Consensus Committee will have its report ready and present it here to you.

We shall break for lunch at 12.30 p.m. and resume at 2.00 p.m. sharp and will continue working till 5.00 p.m. or 6.00 p.m. today.

Facilitation will take place here at 5.00 p.m. today not the usual time on Friday. 5.00 o'clock so we have the opportunity to continue our work until then. I will be proceeding to the Committee on Consensus and Mr. Ole Kina will chair this session. I now ask him to take over the chairpersonship of this Committee. Thank you.

**Hon. Delegate Koitamet Ole Kina:** Thank you, Mr. Chairman. I would like Honourable Delegates to settle down so that we proceed from where we left yesterday. Please just one minute, settle down please so that we proceed.

Those who are moving around, please settle down.

**PLO Lumumba:** Can we have the bell rung outside?

*(Bell rings).*

**Hon. Delegate Koitamet Ole Kina:** 425.

**Hon. Delegate Sylvanus Ogari:** Thank you, Mr. Chairman. Sylvanus Onyambu Ogari, 425. I have an observation that I would like to make and I will be very brief.

One, I have a feeling that to get a chance to speak in this Hall has been like getting a lucky opportunity which I think is not good. What I wanted, Sir, is that we follow the procedure that we took in Bomas (I), where this Hall was divided into columns and those that had spoken their numbers were recorded by you. On this note, some Motions have been defeated because they do not get actually the speakers who support it, only those that are against it spoke. For instance, I have an example where actually we put what we call boundaries. If I may, Sir, refer you to--

**Hon. Delegate Koitamet Ole Kina:** Please do not go to--

**Hon. Delegate Sylvanus Ogari:** I am not opening it.

**Hon. Delegate Koitamet Ole Kina:** Please, please.

**Hon. Delegate Sylvanus Ogari:** I am not opening--

**Hon. Delegate Koitamet Ole Kina:** Please, please, just make your point.

**Hon. Delegate Sylvanus Ogari:** I am not opening it, but I am bringing a note to you for the--

**Hon. Delegate Koitamet Ole Kina:** Please do not go to issues that we have already resolved.

**Hon. Delegate Sylvanus Ogari:** Okay, I would bring the note to you. Thank you, Mr. Chairman.

**Hon. Delegate Koitamet Ole Kina:** 102.

**Hon. Delegate Jakoyo Midiwo:** Thank you, Mr. Chairman. I was just wondering, I am seeking some information or clarification because yesterday morning we were told that the Consensus Committee would read their report to us on the Executive at 2.00 p.m. It passed, today the Chairman is telling us that we continue doing our work from where we left yesterday. I think

this issues which you said they were contentious and if they had reached the consensus, we would like to know, because it is raising unnecessary anxiety and we would like to confront those issues now. Thank you.

**Hon. Delegate Koitamet Ole Kina:** 525.

**Hon. Delegate Ibrahim Yusuf:** Thank you, Chair. Ibrahim Mohammed Yusuf, Delegate 525. Chair, I just wanted to respond to the Honourable Delegate who has just spoken. What we want, we know that there is a Consensus Building Committee that is suppose to come and give us a report. However, what I think the majority of us said and I think I speak for the majority, is that we want to finish all the Chapters and then, let the Consensus Building Committee come with its report and we discuss it in its entirety. Thank you very much. *(Clapping)*.

**Hon. Delegate Koitamet Ole Kina:** I can see consensus on that, so I would like us to turn back to where we left yesterday, finish up the Article that we were dealing with on Chapter 19 and then take a vote on the two Chapters and then proceed from there.

The Honourable Delegate who moved a Motion yesterday – 367.

*(Consultation at the “high” table).*

**Hon. Delegate Alexander Chepkwony:** Thank you, Chair. 367, Alexander Chepkwony. Yesterday I had moved a Motion on Article 346 Sub-Article (1) and Chair, I think after re-reading that Sub-Article and further consultations with most of these Delegates, I now wish to rise and say that I do not intend to raise the Motion again. I withdraw my Motion. Thank you, Chairman. *(Clapping)*.

**Hon. Delegate Koitamet Ole Kina:** In that view I will need the permission of the Conference because it had already been laid on the Conference. So, I will need us to confirm that we allow him to withdraw the Motion. So, those who allow him to withdraw the Motion, please raise your placards.

*(Delegates raise their placards).*

**An Hon. Delegate:** It is okay.

**Hon. Delegate Koitamet Ole Kina:** It is okay, we have allowed.

**PLO Lumumba:** He has also withdrawn.

**Hon. Delegate Koitamet Ole Kina:** One Kaara Abdul Kadir Gulied has also withdrawn his Motions. So, in this regard then, we are through with Chapter 19, Amendments of the Constitution.

*(Consultations at the “high” table).*

**Hon. Delegate Koitamet Ole Kina:** We are confirming quorum status so that we can take votes on the two Chapters, Chapter 18 and Chapter 19 before we proceed to Chapter 20. So, meanwhile we can proceed on General Provisions as the tellers inform us whether we have quorum to take the vote.

**PLO Lumumba:** Honourable Delegates, with the Chairman’s permission, may I refer you to page 220, Chapter 20 of the constitute of the Draft Bill, General Provisions.

Article 347, Construing the Constitution.

Article 348, Definitions, there is a Motion by Sammy K. Ruto.

**Hon. Delegate Koitamet Ole Kina:** Sammy K. Ruto. We can proceed.

**PLO Lumumba:** That is a two Article Chapter. So, that is the end of that Chapter.

**Hon. Delegate Koitamet Ole Kina:** We go to Legislature?

**PLO Lumumba:** No, we cannot go to Legislature, we can do the counts now.

**Hon. Delegate Koitamet Ole Kina:** Have we done the counts yet?



*(Silence as counting takes place).*

*(Consultations at the “high” table).*

**PLO Lumumba:** Tell them we will ring the bell for two minutes.

**Hon. Delegate Koitamet Ole Kina:** We will ring the bell again for two minutes to confirm--  
*(The bell rings).* Maybe the rain in the morning has delayed a few of our Delegates. *(The bell rings).*

*(Chairman confirms the quorum).*

**Hon. Delegate Koitamet ole Kina:** We would like to take a vote on Chapter 18. We went through all the Articles, now we want to take a vote for the entire Chapter. So, those who support the Motion that Chapter 18 be part of our Draft Bill please raise your placards.

*(Hon. Delegates raise their placards).*

*(Noise on the floor as counting of votes is going on).*

**Hon. Delegate Koitamet ole Kina:** Those who oppose the Motion that Chapter 18 should be part of our Draft Bill, please raise your placards.

*(No placards were raised).*

**Hon. Delegate Koitamet ole Kina:** Those opposing.

*(No placards were raised).*

**Hon. Delegate Koitamet ole Kina:** Those abstaining?

*(No placards were raised).*

**Hon. Delegate Koitamet ole Kina:** Are the Tellers ready for the other vote?

*(Consultation at the “high” table and inaudible discussions on the floor).*

**Hon. Delegate Koitamet ole Kina:** I would like to take a vote on Chapter 19, as the Tellers work on the results of the previous vote. So, those who support the Motion that Chapter 19, Amendments of the Constitution, be part of our Draft Bill, please raise your placards.

*(Hon. Delegates raise their placards)*

*(Noise on the floor as counting of votes is going on).*

**PLO Lumumba:** Tellers may we pick out the next vote? Raise your hands if you are ready. Tellers raise your hands to-- Teller booth number 9, booth 1, are we ready Booth 1? Booth 2? Booth 2 are we ready?

**Tellers – Booth 1:** No.

**PLO Lumumba:** Not yet. Booth 3 are we ready?

**Tellers-booth 3:** No.

**PLO Lumumba:** Booth 4 are we ready? Booth 5?, booth 6?,

**Tellers-booth 6:** Yes.

**PLO Lumumba:** Booth 7?

**Tellers-booth 7:** Yes.

**PLO Lumumba:** We will go to the next count. Booth--

**Hon. Delegate Koitamet arap Kina:** Booth 1 is not ready.

**PLO Lumumba:** Booth 1 is not ready, just a minute--

*(Consultation at the "high" table).*

**PLO Lumumba:** Booth 1 are you now ready? *(Noise)*. Is booth 1 ready? Let us call the next vote.

*(Consultation at the "high" table).*

**Hon. Delegate Koitamet ole Kina:** Those who oppose that Chapter 19, Amendments of the Constitution be part-- Those who oppose that the Amendments of the Constitution should be part of our Draft Bill--.

**Hon. Delegates:** Should not!!

**Hon. Delegate Koitamet ole Kina:** Should not be part of our Constitution, please raise your placards.

*(No placards raised).*

*(Inaudible consultation at the "high" table).*

**Hon. Delegate Koitamet ole Kina:** Those who abstain?

*(No placards raised).*

**Hon. Delegate Koitamet ole Kina:** Okay. We will go to the next vote. Those who support the Motion that Chapter 20, General Provisions, be part of our Draft Bill, please raise your placards.

*(Hon. Delegates raise their placards).*

*(Noise on the floor as counting of votes goes on).*

**Hon. Delegate Koitamet Ole Kina:** I would like to appeal to Delegates please, to stop moving out. Those who are moving up and down, can we please settle, we have serious business that we are attending to. We may have quorum one minute, and lose quorum the next minute, so please settle down.

*(Consultation at the “high” table).*

**Hon. Delegate Koitamet Ole Kina:** Have we finished?

*(Inaudible responses on the floor).*

*(Consultation at the “high” table).*

**Hon. Delegate Koitamet Ole Kina:** We are waiting for the results of the votes that we have taken, so please be patient. *(Noise)*. I will once again appeal to Delegates moving out to please settle. In the event that we have to retake a vote, we may have a problem, so please settle down.

*(Consultation at the “high” table).*

**Hon. Delegate Koitamet Ole Kina:** Okay, those who oppose the Motion that Chapter 20 be part of our Constitution.

**Hon. Delegates:** Not--

*(Inaudible).*

**Hon. Delegate Koitamet Ole Kina:** I think I am right, you cannot have two negatives. Those who oppose that Chapter 20 be part of our Constitution, please raise your placards. Thank you.

*(Consultation at the “high” table).*

**Hon. Delegate Koitamet Ole Kina:** Sorry, I have been corrected, I said Chapter 20, which is actually 19, in the last vote. So, I will call again. Those who oppose the Motion, that Chapter 19 should be part of our Constitution, please raise your placards. *(Uproar)*.

**Hon. Delegate Koitamet Ole Kina:** Yes. I know, but I just wanted to correct for record purposes.

*(Inaudible discussions on the floor and consultation at the “high” table).*

**Hon. Delegate Koitamet Ole Kina:** I have been appealing to Delegates to settle down so we take votes, they are moving up and down, coming inside and going out, so in all the Chapters we are below quorum by one vote. So, we have to retake the votes again, and I appeal again that we all settle so that we are able to take the vote. *(Noise)*.

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

**Hon. Delegate Koitamet Ole Kina:** 015.

**Hon. Delegate Billow Kerrow:** Thank you, Mr. Chairman. Mr. Chairman, I agree with you., people have been moving in and out and there is a reason for this. Mr. Chairman, on Tuesday this week, exactly three days ago, we appointed a Consensus Group, and we were promised they will give a report the following morning. Three days later, and the end of the week and only five days to the conclusion of this Conference, we still do not have a report. We still hear borrowed stories. Last night, the Minister of Constitutional Affairs was on T.V, saying the Consensus Group has adopted a Presidential system and that is why people are going out to talk. Can we have the presentation of the Consensus Group report this morning Mr. Chairman. That is the only way you can have a quorum in this place. Thank you very much.

**Hon. Delegate Koitamet ole Kina:** Yes-- *(Uproar)*. I would like us to finish voting and then we will decide what to do next. *(Uproar)*. 510.

**Hon. Delegate Atsango Chesoni:** Thank you Mr. Chairperson, Atsango Chesoni, Delegate number 510, representing Women’s Organizations. Part of the problem is that we do have a large number of people who are not voting, period. They are neither abstaining, nor are they saying no or yes. So, I think if you were to do a count, you will probably find you have a quorum, but people are not voting in any way so they don’t appear. Thank you.

**Hon. Delegate Koitamet ole Kina:** So, in that regard I would like a physical count of every member seated in the hall.

**Hon. Delegates:** Yes!

**Hon. Delegate Koitamet ole Kina:** Can we conduct that now please, and let us have everybody seated. *(Noise)*. Settle please. I am not receiving points of order until I get the figures from the floor. So, please understand, I want the figures first.

*(Counting to confirm quorum).*

**PLO Lumumba:** We have a quorum of 338. Please kindly do not move out. We will retake the vote and even those who abstain must vote, because in the tally, it helps us to determine quorum. We beg you. We now put the question relating to Chapter 18. *(Noise)*.

**Hon. Delegate Koitamet ole Kina:** Order!, Order please. I am taking the vote now. I do not want to take a point of order. So, I am going back to Chapter 18. We are taking the entire vote again. Chapter 18, and then we will go to 19, then we will go to 20. So, please settle down.

Chapter 18, those who support the Motion that Chapter 18, that is Article 329 to 343, be part of our Constitution please raise your placards.

*(Delegates raise their placards).*

**PLO Lumumba:** Teller 1, are we ready? Raise your hand if you are ready. Not ready. Teller 2, are we ready? Teller 2, are we ready? Not yet. Teller 3? Not yet. Teller 4? Not yet. Teller 5? Teller 6, ready? Ready. Teller 7 ready? Ready. Teller 8 ready? Teller 9 ready? Teller 2, are you now ready and once. Next please.

**Hon. Delegate Koitamet Ole Kina:** We are having the next vote please. Honourable Manduli, settle down. Those who oppose that Chapter Eighteen, Article 329 to 343, be part of our Draft Bill, please raise your placards.

*(Honourable Delegates raise placards).*

**Hon. Delegate Koitamet Ole Kina:** Those who abstain.

*(No placards raised).*

**Hon. Delegate Koitamet Ole Kina:** We are moving to Chapter Nineteen.

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

**Hon. Delegate Koitamet Ole Kina:** 006.

**Hon. Delegate Ali Abdullahi:** Bwana Chairman, you have already been informed that there are some members who just sit, they do not vote, yes, no, or abstain. Honourable Maoka Maore and Honourable Kiunjuri, I have talked to them, I have been watching them, they are not voting. *(Clapping)*. Can they tell us the reason why?

*(Uproar from the floor).*

**Hon. Delegate Koitamet Ole Kina:** Order! Order! Order please.

**PLO Lumumba:** This is the solution, our Tellers, any member who does not signify which way he votes should be deemed to have abstained.

**Hon. Delegates:** Yes.

**PLO Lumumba:** And you count accordingly.

**Hon. Delegates:** Yes.

*(Inaudible discussions on the floor).*

**Hon. Delegate Koitamet Ole Kina:** Not voting, of course, is abstaining. So, let us move to Chapter Nineteen. Order! Those who support the Motion that Chapter Nineteen, Articles 344 to 396, be part of our Draft Bill please raise your placards.

*(Honourable Delegates raise placards).*

*(Inaudible discussions on the floor).*

**PLO Lumumba:** Teller number one, are we ready? Not yet. Teller number 2, are we ready? Not yet. Teller number 3, 4, 5? Not yet. Teller one, are you ready now? Teller 2 and 3, ready?

*(Consultations at the “high” table).*

**PLO Lumumba:** Teller 4? 4, not yet. Teller 5? Not yet. Teller 6? Teller 7? Ready. Teller 8? Ready. Teller 9? Ready. Teller one? Not yet?

*(Inaudible discussions on the floor).*

**PLO Lumumba:** Teller one are you ready? Signify by raising your hands. Teller 2. We are ready for the next call.

**Hon. Delegate Koitamet Ole Kina:** Those who oppose the Motion that Chapter Twenty, Article 344 to 396, be part of our Draft Bill, please raise your placards.

*(Inaudible comments on the floor).*

**PLO Lumumba:** Chapter Nineteen.

**Hon. Delegate Koitamet Ole Kina:** We have a long morning. Those who oppose the Motion that Articles 344 to 346, Chapter Nineteen, be part of our Draft Bill, please raise your placards.

*(Honourable Delegates raise placards).*

**Hon. Delegate Koitamet Ole Kina:** Those who abstain.

*(No placards raised).*

**Hon. Delegate Koitamet Ole Kina:** We can move to the next Chapter, that is Chapter Twenty, General Provisions.



## **CHAPTER TWENTY:**

### **GENERAL PROVISIONS:**

*(Inaudible discussions on the floor).*

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

**Hon. Delegate Koitamet Ole Kina:** 395.

**Hon. Delegate Ngalaatu Musau:** My names are Ngalaatu Musau, Delegate number 295, District Delegate. Mr. Chairman, is it wise for an Honourable Delegate and especially a Member of Parliament to sit here and be unable to decide for his people? Mr. Chairman, I think it is better for that member to resign. *(Clapping)*.

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegates, I think I would not want to interfere with a member's constitutional right to vote or not to vote. He has his conscience, so let us leave it to the Kenyans to judge and proceed.

*(Uproar from the floor).*

**Hon. Delegate Koitamet Ole Kina:** I want to proceed to Chapter Twenty, General Provisions. Please, I am not taking a Point of Order. I am in order to call for a vote. Those who support the Motion that Chapter Twenty, Articles 347 to 348, be part of our Draft Bill, please raise your placards.

*(Honourable Delegates raise placards).*

*(Inaudible discussions as counting goes on).*

**PLO Lumumba:** Teller one, are we ready? Teller 2, are we ready? Not yet. Teller 3?

**Hon. Delegate Koitamet Ole Kina:** Not yet.

**PLO Lumumba:** Not yet. Teller 4? Ready. Teller 5? Ready. Teller 6? Not yet. Teller 7? Ready. Teller 8? Ready. 9? Ready. Two, are you now ready? Not yet. Five, are you ready? Yes, ready now. Teller 4? You are ready. So 2, we are waiting for you. Teller 2, are you ready now?

*(Inaudible discussions on the floor).*

**Hon. Delegate Koitamet Ole Kina:** Teller 2, are you ready?

**PLO Lumumba:** So, the next call.

**Hon. Delegate Koitamet Ole Kina:** Those-- Order! Order! Those who oppose the Motion that Chapter Twenty, Articles 347 to 348, be part of our Draft Bill, please raise your placards.

*(Honourable Delegates raise placards).*

**Hon. Delegate Koitamet Ole Kina:** Those who abstain.

*(No placards raised).*

**Hon. Delegate Koitamet Ole Kina:** I would now want to announce the results of Chapter Eighteen and Nineteen.

**Chapter Eighteen** – Those for the Motion – 336.

“NAYS” – zero. Abstention - zero.

So, the Motion is carried. Chapter Eighteen will be part of our Draft Bill. *(Clapping)*.

**Chapter Nineteen** – Those who support the Motion – 331.

*Those who oppose the Motion - zero. Abstention - one.*

Chapter Nineteen is carried. So, Chapter Nineteen is part of our Draft Bill. *(Clapping)*.

*(Consultations at the “high” table).*

**Hon. Delegate Koitamet Ole Kina:** We are just waiting for the results of Chapter Twenty, before we decide the next move.

*(Inaudible discussions on the floor as counting goes on).*

**Hon. Delegate Koitamet Ole Kina:** I now have the results of Chapter Twenty. Those who supported the Motion, 345. *(Clapping)*.

Those who opposed the Motion – zero. Those who abstained – one.

So, Chapter Twenty will be part of our Draft Bill. *(Clapping)*.

*(Consultations at the “high” table).*

**Hon. Delegate Koitamet Ole Kina:** I would like us to have a tea break at the moment. During the break we will have to confirm documentation on the corrigendum and then we will proceed to the other Chapter, that is the Chapter on Representation. So, please let us have only 30 minutes tea break.

**The meeting was adjourned for tea at 10.30 a.m.**

### **TEA BREAK**

**The meeting reconvened at 11.25 a.m.**

**Hon. Delegate Koitamet Ole Kina:** Please settle down. We will adjourn at exactly 12.30 to allow the Muslims to go for their prayers. So, we really have limited time this morning.

*(Inaudible discussions on the floor).*

**Hon. Delegate Koitamet Ole Kina:** Before we proceed-- Order! Order please, Delegates. *Mheshimiwa* G. G. Kariuki and your team please, *Mheshimiwa* G. G. Kariuki and your team. Am I seeing properly?

*(Consultations at the "high" table).*

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegates, over the tea break-- Order please. Order! Honourable Khalwale. Over the tea break, through consultation with a few Delegates, I think they pointed out, they said there was a little problem in the way we conducted business in the morning. So, we are saying we will improve and if you notice any problem as we are going on, please point it out--

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** --so that nobody feels that they are being left behind. Nobody claims to be perfect when we are doing this business. This is our first time to write our Constitution. So, if you have an issue, do not murmur, please just raise it up and we will be able to-- We are humble enough to do the right thing, if we feel there is something wrong that is taking place. Please just point it out. I do not want to sit here chairing and there is somebody feeling that I am not chairing the right way. Please, just raise it up at the appropriate time. 182.

**Hon. Delegate Nick Salat:** Thank you, Chairman. I am 182, Honourable Nick Salat. My concern Chairman goes to the Group that we are expecting to bring us what we expect as the Consensus Building and as I was talking to Delegates, I found out that the people who were supposed to actually be members of that Committee are sitting with us. I point that out, after counting the Motions we have here, one by Mr. George Omari Nyamweya, who is here. He has about 52 Motions and up to now he has been sitting with us here and we do not know. He should actually have been a member of that Consensus Building Committee. So, Nyamweya is sitting with us here, and there is a Consensus Building Committee and Nyamweya is not part of that Committee. So, what consensus are we building?

*(Uproar from the floor).*

**Hon. Delegate Koitamet Ole Kina:** Maybe I would like to respond to that and if I am wrong then Nyamweya can correct me. I believe Nyamweya does not act alone, he is also in a group or maybe in the party, and he has-- Because we have not received the report yet. If we receive the report and he is comfortable – that is my reading – then he may say he is comfortable with the consensus. If he is not, then maybe I would like him to correct and say whether he would like to be part of the consensus. 615.

**Hon. Delegate George Nyamweya:** Thank you, Mr. Chairman. George Omari Nyamweya, 615. I am not so sure what my friend's concern is, because this Committee appointed a Consensus Building Committee. *Nyinyi wenyewe ndiyo mlichagua hawa.* I cannot force myself into something which I have not been invited to, I have my own views. As a Delegate here I represent the Democratic Party of Kenya. I do not believe that we have been asked to provide any particular views. I am all for consensus building and I believe we entrusted those ones to go and come to some sort of middle ground. It is what I have always been saying, that whatever we do, we must come together. We must meet each other half way. If they are doing that on our behalf, I have no problem. We can wait and see that report. If it fits with those concerns that we have, I am sure we will all be able to urge each other to adopt it but I cannot prejudge it. However, I have not been invited to it, so I cannot say anything beyond that, Mr. Chairman. *(Clapping).*

**Hon. Delegate Koitamet Ole Kina:** 392.

**Hon. Delegate Paul Nakitare:** Thank you, Mr. Chairman. My name is Paul Nakitare, 392. I would like your clarification and information Honourable Chair. By now, since we came back, we would have really made a lot of progress. I wonder why we are dilly-dallying. Why can't we get started and continue with work? *(Clapping).*

**Hon. Delegate Koitamet Ole Kina:** Thank you. If you reduce the Point of Orders, then we can proceed immediately to the Chapter on Representation.

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** Then can we move to Representation now?

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** I think there is consensus. Please 131, there is consensus. Please, let us proceed with 131.

*(Inaudible discussions on the floor).*

**PLO Lumumba:** Chairman, do I have the floor?

**Hon. Delegate Koitamet Ole Kina:** 131, I beg for your indulgence. If it is not really pressing, allow us to proceed.

*(Inaudible comments from the floor).*

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

**Hon. Delegate Koitamet Ole Kina:** 052. No, 131 first and then we will hear 052.

**Hon. Delegate Mwandawiro Mghanga:** *Bwana Mwenyekiti, naomba kutumia huu muda kidogo tu, wa hawa Wajumbe walioko hapa, kwa sababu bado kuna hoja kama hamsini na moja ambazo zimewekwa hapo. Mimi ningekuwa pia na hoja ya kusema kwamba, Wajumbe wengi na mimi nikiwepo, tuna hofu kwa sababu tumepatiwa muda - lazima tumalize Ijumaa, wiki ijayo. Nafikiri tungekuwa na maelewano kwamba, kutokana na hii kazi ambayo tumeifanya na inaendelea vizuri ikiwa hatutamaliza tarehe kumi na tisa, ndio akina hawa ndugu zetu wengine akina Nyamweya, wawe na nafasi ya hoja zao, tunaweza kuongeza muda wa hii Kongamano mpaka tumalize hii kazi vizuri na tuwapatie Wakenya Katiba ambayo inafaa. Vile vitisho kwamba lazima tumalize tarehe kumi na tisa, ningeomba haidhuru, tungekuwa na mwelekeo. Tusipomaliza tutafanya bidii twendelee baada ya hapo.*

**Hon. Delegate Koitamet Ole Kina:** Thank you very much. Let me respond to that. Well, we had a programme as a Conference and we targeted 19<sup>th</sup>. As the Conference, we may decide to have more time but I do not control, as the Chair. Right now I cannot control the programme of Parliament. So, let us try and be within our programme. If we do not finish our work, then we

will decide what to do. Since we have time now, other than waste a lot of it on other things, can we utilize the time that we have the best we can and then when we fall short, we address it then? So please allow me to proceed.

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** 052. Please allow me to proceed.

**Hon. Delegate Bonny Khalwale:** Thank you very much Chair. My name is Dr. Khalwale, 052. Chair, the point raised by Honourable Nick Salat deserves a ruling from the Chair for the simple reason that we are worried about time. Unless you confirming from that Chair, that this Conference is going to be extended, then it is important that the Consensus Building Committee be informed by Honourable Nyamweya on his Motions so that when they bring here their report, Honourable Nyamweya does not again restart the Motions to the extent that we do not complete the process. Thank you, Mr. Chair. (*Clapping*).

**Hon. Delegate Koitamet Ole Kina:** Let me then suggest that we put a resolution here, whether we would like him to appear before the Consensus so that we can proceed.

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** Do we want him to appear before the Consensus?

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** So, I think--

**PLO Lumumba:** Just put it to a voice vote.

**Hon. Delegate Koitamet Ole Kina:** I want a voice vote. Those who support the Motion, that he appears before the Consensus, please say “**AYE**”.

**Hon. Delegates:** “**AYE**”.

**An Hon. Delegate:** Let him go now.

**Hon. Delegate Koitamet Ole Kina:** Honourable Nyamweya. Those who say he should not appear, please say “NAY”.

**Hon. Delegates:** “NAY”.

**Hon. Delegate Koitamet Ole Kina:** The “AYES” have it. Honourable Nyamweya, I believe you are a servant of the people. It is a resolution of this Conference that you appear. Please, I beg that you appear before the Consensus Building. I do not think it will be a problem; so that we are able to proceed.

**Hon. Delegates:** Yes.

**PLO Lumumba:** Proceed, proceed.

**Hon. Delegate Koitamet Ole Kina:** And now I would like us to proceed please.

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** Okay, I would want to give the floor to the Secretary.

*(Inaudible discussions on the floor).*

**PLO Lumumba:** Do I have the floor now?

*(Noise on the floor).*

**PLO Lumumba:** Do I have the floor?

**Hon. Delegates:** Yes.

**PLO Lumumba:** If I do, could I be listened to in silence please?



**Hon. Delegates:** Yes.

**PLO Lumumba:** It appears I do not have the floor.

*(Noise on the floor).*

**Hon. Delegate Koitamet Ole Kina:** Okay, let me plead to the Conference.

**Hon. Delegates:** Nyamweya.

**Hon. Delegate Koitamet Ole Kina:** Okay, yes, I would like to allow Nyamweya to speak but as we are doing so, we are complaining that we have no time, yet we are wasting the one that we already have. I plead with you, as Honourable Delegates, to realize that we cannot have our cake and eat it. So, please let us utilize the time that we have. So, Nyamweya, please.

**(Inaudible discussions on the floor).**

**Hon. Delegate George Nyamweya:** Thank you, Mr. Chairman.

**Hon. Delegate Koitamet Ole Kina:** Order please. Let us listen to Honourable Nyamweya.

**Hon. Delegate George Nyamweya:** George Omari Nyamweya, 615. Mr. Chairman, it is a great concern to me that the Conference can decide to discuss me without moving a substantive Motion. Now, Mr. Chairman, I am a servant of the people of Kenya, I have no problem about appearing before anyone at any time. However, it cannot be taken that my freedom to exercise my right as a Delegate would be pre-empted by my being asked to go somewhere else. I am quite, quite willing to attend any meeting to build consensus but it cannot be dictated that if I therefore attend it, I am denied a right to participate here thereafter. However, in order to move the Conference forward, most of the Motions I have, Mr. Chairman, to allay the fears of the Delegates, are purely a matter of tidying up the legal framework and I speak so as an Advocate of the High Court of Kenya.

The substantive Motions which may well be addressed by the Consensus Group, are not actually very many. So, nobody should be afraid or apprehensive that I will take the whole year discussing anything here. I think we will be able to move forward. Thank you.

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

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegates, let us have a way forward. I think-- Please, we did not discuss the Honourable Delegate, it was a suggestion from the floor and he feels that his concerns are well catered for or he is well represented. So, I do not know how you would like us to proceed because he also has the right to vote for the other decisions that we are making here but again we do not want to go against rulings that we make or resolutions of the Conference. So, I would like to request Honourable Nyamweya just to present your Motions again before the Consensus Committee and come and proceed with us so that at least we are able to proceed.

*(Noise on the floor).*

**An Hon. Delegates:** Point of Order.

**Hon. Delegate Koitamet Ole Kina:** Please. I will now want to proceed please.

*(Inaudible discussions on the floor).*

**An Hon. Delegate:** Rule out of order.

**Hon. Delegate Koitamet Ole Kina:** Please allow us to proceed.

**(Noise on the floor).**

**Hon. Delegate Koitamet Ole Kina:** 594, please allow us to proceed. I know you are very dedicated to see this country have a Constitution, please allow us to proceed.

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** Yes, thank you very much.

*(Inaudible discussions on the floor).*

**Hon. Delegate Koitamet Ole Kina:** The Secretary, please proceed.

**PLO Lumumba:** Do I now have the floor, Mr. Chairman?

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** Yes.

**PLO Lumumba:** May I now read the Chapter on Representation?

**Hon. Delegates:** Yes.

**PLO Lumumba:** If so, permit me to do so.

**Hon. Delegates:** Yes.

**PLO Lumumba:** Chapter number Ten.

*(Inaudible discussions on the floor).*

**Hon. Delegate Koitamet Ole Kina:** I would like to plead with 057, 057 please, you have-- Please, please, please listen. Order! Order! Order! I am pleading with 057. I know his commitment to see this Country have a new Constitution, so I am pleading to that commitment. But because I think he insists, let me give his rights.

**Hon. Delegates:** No.

**Hon. Delegate Koitamet Ole Kina:** So, that we proceed. Please.

**Hon. Delegates:** No! No!

**Hon. Delegate Koitamet Ole Kina:** So that we proceed.

**Hon. Delegates:** No! No! No!

**Hon. Delegate Koitamet Ole Kina:** Okay, okay. Okay, I rule out all Point of Orders. Let us proceed.

**Hon. Delegates:** Yes.

**PLO Lumumba:** I will now proceed.

**Hon. Delegates:** Yes.

**PLO Lumumba:** The Chapter I am reading is Chapter number Ten, Representation of the people.

## **CHAPTER TEN**

### **REPRESENTATION OF THE PEOPLE**

**PLO Lumumba:** Part I – The Electoral System and Process, Article number 109, General principles.

**Hon. Delegates:** Yes.

**PLO Lumumba:** Article number-- There is a Motion--

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

**PLO Lumumba:** --by Mohammed Juma Abdi, Delegate number 240.

**Hon. Delegate Koitamet Ole Kina:** Mohammed Juma Abdi, 240.

*(Inaudible discussions on the floor).*

**PLO Lumumba:** It was discussed?

**Hon. Delegates:** Yes.

**PLO Lumumba:** Article number 110 – Elections.

**Hon. Delegates:** Yes.

**PLO Lumumba:** Article number 111 – Registration. There is a Motion?

*(Inaudible discussions on the floor).*

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

**Hon. Delegate Koitamet Ole Kina:** There is a Motion, who wants the Motion?

**PLO Lumumba:** There is a Motion by several Delegates, one is Honourable Habi Hussein Al Haji, there is Honourable Atsango Chesoni, there is Honourable Mary Wambui--

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

**PLO Lumumba:** --and Honourable Nancy Lung'ahi.

*(Inaudible discussions on the floor).*

**Hon. Delegate Atsango Chesoni:** Thank you, Mr. Chairperson.

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegates, please listen to the Honourable Delegate moving her Motion.

**Hon. Delegate Atsango Chesoni:** Thank you, Mr. Chairperson, Atsango Chesoni, Delegate number 510 representing Women's Organizations. I am speaking on Article 110, Clause 2

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

**Hon. Delegate Atsango Chesoni:** In respect of which we had moved a Motion earlier. Chair, could you please protect me? Chair, could you please protect me?

*(Inaudible comments on the floor).*

**Hon. Delegate Atsango Chesoni:** The Motion that we had on the floor was in respect of Article-

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*(Noise).*

*(Consultation at the "high" table).*

**Hon. Delegate Koitamet Ole Kina:** Hallo? Go and sit down. Please go and sit down. Honourable Delegates, do you have the corrigendums on representation?

**Hon. Delegates:** No/Yes!

**Hon. Delegate Koitamet Ole Kina:** I am asking; I am not getting a clear answer. Do you have the corrigendums?

**Hon. Delegates:** No!

**Hon. Delegate Koitamet Ole Kina:** Can I see those who have the corrigendums up please? Can I see the hands or the placards of those who have the corrigendums up? Where are they?

*(Consultation at the "high" table).*

**Hon. Delegate Koitamet Ole Kina:** I am informed the corrigendums have been distributed. So, what is the problem?

*(Consultation at the “high” table).*

**Hon. Delegate Koitamet Ole Kina:** 510, please, you have the floor.

**Hon. Delegate Atsango Chesoni:** Thank you, Mr. Chairperson. The issue that I wanted to raise was in respect of Article 110, Clause 2 on which Nancy Lung’ahi and I both had a Motion. The Motion was in respect of whether or not Senators can be members of political parties. We find that even with the corrigendum, that particular Clause remains the same. It is not representative of what the Committee had put forward and so our Motion still stands because the interpretation of this particular Article is that Senators would not have the right to be members of political parties. So, we would like this Clause either deleted or put in a format in which it allows people to be able to stand either as members of political parties or as independent candidates, but not to deny Senators that right. Thank you. I beg to move.

**Hon. Delegate Koitamet Ole Kina:** Then, I would like you to move the Motion and read it so that the Honorable Delegates know what you are moving.

**Hon. Delegate Atsango Chesoni:** Okay. Currently, Article 110--

**Hon. Delegate Koitamet Ole Kina:** Information? Information, 587 just before?

**Hon. Delegate Caroline Ng’ang’a:** I am informing the Whole Conference because I happened to be the Convenor and I keep on saying this. I am going to speak slowly and clearly. I do not understand and I hope the Rapporteur General is listening there because he listens all the time. That it is very, very unfortunate that some issues can be taken for granted. Last time, when we started talking about Representation, I raised an issue that I have written two letters to the Rapporteur General telling him our positions. I am sure each and every Delegate has a template which is signed by the Convenor on Representation showing our positions on each issue. Well, I understand some people say that Representation is one of the contentious issues. However, whether it is or it is not, why are we being forced to take issues which did not come from the Committee? For example, yesterday, I talked to the Rapporteur General and this is what he told me. That Sub-Article 2 which says nomination by candidates was decided by the Drafters that it

remains there. I do not think the work of the Drafters is to tell us what is going to remain there because the Committee deliberated on these issues and removed it.

If we want progress because you are saying we want to move fast and even facing the fear of being told I am scuttling, Chair, you should have even found out. This is because the corrigendum that you are talking about that we have here did not address the issues that I put across. Instead, it dealt on the last Articles which were perfectly put in the Draft but the problematic areas have not been addressed. We need to be told what is happening. For ease of reference, to cut a long story short, can I be allowed to put that Sub-Article 2, so that they can deliberate from the point of knowledge?

*(Consultation at the “high” table).*

**Hon. Delegate Caroline Ng’ang’a:** In any other Article where a Motion has been raised, at least let me put our positions clearly.

**Hon. Delegate Koitamet Ole Kina:** Thank you. Just hold on, we will address that. I would like the Secretary to speak on that.

**PLO Lumumba:** The Rapporteur General, you are listening to us. Please make arrangements to come to the auditorium. Thank you.

*(Clapping).*

**Hon. Delegate Caroline Ng’ang’a:** Yes, can he come?

**Hon. Delegate Koitamet Ole Kina:** In the meanwhile, I will allow Delegate 510 to move her Motion.

**Hon. Delegates:** No!

**Hon. Delegate Caroline Ng’ang’a:** On what?



*(Noise).*

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

**Hon. Delegate Koitamet Ole Kina:** 510 was moving a Motion. Is it not? Okay, I will take a few Points of Order in the meantime. 37. 37, you have the floor.

**Hon. Delegate Otieno Kajwang':** Just to remind the Chair, I think when we read 109, we had dealt with 109(7) and we had removed it before we suspended our earlier debate. Mr. Chairman, am I getting your ears? We had removed (7). Is it already reflected in your Minutes that (7) has already been removed or should we invite the person who moved the Motion to delete it, to move it again? Can you confirm?

**Hon. Delegate Koitamet Ole Kina:** Please come again.

**Hon. Delegate Otieno Kajwang':** Yes, that is why I was asking for your attention.

**Hon. Delegate Koitamet Ole Kina:** Yes, please.

**Hon. Delegate Otieno Kajwang':** 109(7) had been removed before we suspended the debate on this issue.

**Hon. Delegates:** Yes.

**Hon. Delegate Otieno Kajwang':** So, can we confirm that it has been removed so that we do not bother you anymore?

*(Consultation at the "high" table).*

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegates, just before I respond to that, I would like to inform the Conference that we are honored by the presence of our Delegate number 002. He is coming to be in our midst so, he is moving out. I would just like you to know that His Excellency the Vice-President, Moody Awori is walking in (*Applause*).

**PLO Lumumba:** With the Chair's permission, just as a way forward, it appears that the Convenor of this particular Technical Group has the correct versions.

**Hon. Delegate Caroline Ng'ang'a:** Yes.

**PLO Lumumba:** As a means of moving forward, when we get to a place where the Zero Daft does not reflect the position, why does she not stand up at that point and read it and it forms the basis of our discussions?

**Hon. Delegates** Yes!

**Hon. Delegate Caroline Ng'ang'a:** Thank you, Chair.

**Hon. Delegate Koitamet Ole Kina:** 296.

**Hon. Delegate Wambua Kasoka:** Mr. Chairman, I am number 296, Stanislaus Wambua Kasoka. Mr. Chairman, there is no time when we started dividing these Chapters, we depended-- There is no time when we started dividing these Chapters when we depended on Convenors. Can you please give us a correct Chapter as you promised the other time?

**Hon. Delegate Koitamet Ole Kina:** I think what we said-- Let us be together. We said we had invited the Rapporteur General to come here, but in the meantime we proceed and if we get to an Article that according to the Convenor of that Committee was not presented in the manner that they agreed upon, then she/he will inform us and then the Conference will discuss that particular Article in accordance to the way it has been corrected by her and we vote on it that way.

**Hon. Delegates:** Yes/No!

**Hon. Delegate Koitamet Ole Kina:** You see, you still have the right to take it that way or take it in a different manner.

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

**Hon. Delegate Koitamet Ole Kina:** 379. Order! 379.

**Hon. Delegate Levi Ahindikha:** My number is 379, Ahindikha, Kakamega District. Mr. Chairman, it will appear that this Chapter is not clear even from the Convenor. How can we proceed when there is controversy on this particular Chapter, Mr. Chairman?.

*(Noise).*

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

**Hon. Delegate Koitamet Ole Kina:** 224.

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

**Hon. Delegate Nancy Lung'ahi:** Thank you very much, Mr. Chairman. Nancy Lung'ahi, 224. I would like to inform the Delegates that it is this Motion; 110, that prompted the Chair to defer this Chapter until when the Convenor intervened. What the Chair is trying to say is that there are some certain Articles within that Chapter which were corrected. I do not think he means that the Convenor will have to read the entire Chapter but on 110 (2), which Atsango and I wanted to move that Motion, she could read what is the correct position now then we would know whether we can be able to move on with the Motion or not. If there is no any other Motion on whatever Article that there is a Motion on that Chapter, if we do not have the right copy, then she can inform us and then we go on, instead of wasting time. I think that is what we had agreed. So, like on 110(2), I would like to know, do we still move this Motion or is your position going to take care of our concern? We will then know whether we are going to withdraw or go on with the Motion. I think that is how we should proceed. Thank you.

**Hon. Delegate Koitamet Ole Kina:** Please, let us follow that up first of all. Let us get the response of the Convenor. I will take another Point of Order but I would like her to respond to that question because it will give us a direction.

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

**Hon. Delegate Caroline Ng'ang'a:** Okay. Thank you, Chair. I think what I said even when I stood at the - I was at the table – was that these corrections will be made. However, I want to read the position so that they can deliberate. Honourable Delegates, I am not saying that you have to agree with us. I want to give you our position. The position for that Sub-Article 2 was as follows: “A person wishing to stand as a Candidate for election to the Senate shall apply directly to the Electoral and Boundaries Commission for nomination to stand in the relevant electoral unit”. That is the way it is.

*(Murmurs on the floor).*

**Hon. Delegate Caroline Ng'ang'a:** Chair, I will speak on the others as they come.

**Hon. Delegate Koitamet Ole Kina:** Yes, that is the position of the Committee. So, let us look at that Article.

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

**Hon. Delegate Koitamet Ole Kina:** Let us deal with that Article first the way it has been presented and then I will take another Point of Order but I want somebody to speak only to that particular Article the way it has been presented. 224.

**Hon. Delegate Nancy Lung'ahi:** Thank you very much, Honourable Chair. Nancy Lung'ahi, 224. I would like to just-- I think we are going to proceed with our Motion because I feel even the correct position does not take care of our concern. I still think that we should still move the Motion on the basis that whatever she has read still refers back to Article 110(2) the way it is but in a different language. So, I think we should just proceed to deleting that Article so that we take care of our concern of making sure that election to the Senate shall not be based on political parties. That particular phrase is erased to give independence to both political parties participation and independent candidates. So, that was our concern and that is what we wanted to address. Thank you.

**Hon. Delegate Koitamet Ole Kina:** So, she is moving the Motion but-- 068.

**Hon. Delegate Mwangi Kiunjuri:** Chairman Sir, my Point of Order is really, you have the right to rule on Points of Order and you can really overrule somebody. However are you also in order to overrule a person two times and you have already moved to another subject without knowing whether he is raising another Point of Order on a particular issue? Professor Kibwana has been rising on a Point of Order, you have now moved big steps-- *(Noise)* You have to listen! You will not--

*(Noise).*

**Hon. Delegate Koitamet Ole Kina:** What is your Point of Order?

**Hon. Delegate Mwangi Kiunjuri:** My Point or Order is, are you in order to completely ignore a person rising on Point of Order without even knowing whether he is reverting to the original Point of Order or if he has now got a fresh Point of Order?

**Hon. Delegate Koitamet Ole Kina:** I think I said I wanted to clear that matter first before I take any other Point of Order. You did not know whose Point of Order I was going to take next. So, please-- 057. You have the floor, 057.

**Hon. Delegate Kivutha Kibwana:** I do not know whether to say, "Thank you very much" or to begin by complaining, but maybe let me say, "Thank you". The Chair, I am raising a substantial Point of Order. This Chapter on Representation is part and parcel of the work of the Consensus Building Committee. This is because within it, we have elections to the devolved units like Senate. There is also how administrative units will be delineated and so on and so forth. My Point of Order was when now we deal with matters that are also before the Consensus Building Committee, is that not pre-emptive of the work of that Committee? Would it not be in order for us to ask them if we have to start now debating this, for them to come and present to us what they have done so that we discuss Representation, Legislature, Devolution, Executive and Transition with the knowledge of what they are doing? Otherwise, their work will be useless. Thank you.

**Hon. Delegate Koitamet Ole Kina:** 518

**Hon. Delegate Sultana Fadhil:** 518, Sultana. I think the records will prove me right. We deferred this Chapter because it was not correct. It had nothing to do with the Consensus – Building Committee (*Clapping*) and we have a specific mandate. We are in a phase here where we are doing our work as per The Review Act. The Consensus had promised to bring its reports yesterday morning. The Chapters which are left right now are four Chapters. If all these Chapters are to be referred to the Consensus, is our work going to come to a standstill while we are waiting for instructions from the Consensus? They either send us their reports or recommendations piecemeal and we go on with our work or if they have no report, we continue with our work (*Clapping*).

**Hon. Delegate Koitamet Ole Kina:** 194.

**Hon. Delegate Gor Sunguh:** Thank you, Chair. Mr. Chairman, I am really concerned because if we were to actually listen to all the things that are being said now, we will never move forward. We must realize there are people who do not want this thing to go on. If we wait too long then we will never get anywhere. Mr. Chairman, I plead with you, let us proceed. If there is anything that is contentious; a Section or an Article, we can leave that and come back to it but let us move on so that we can finish this work in time (*Clapping*). Thank you.

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegates, I will like to make a ruling on this. I like us to proceed. If during the debate on Devolution and others, an Article that we have already approved arises, I think we still have the possibility as an entire Conference if we agree with that position, to reopen that particular Article and make it conform to the entire Chapter. So, please let us proceed because as we are saying, the Chapter itself was not contentious. So, I am not going to take any other Points of Order as relating to that. I would like Honourable Lung’ahi to move her Motion now.

**An Hon. Delegate:** She already moved it.

**Hon. Delegate Koitamet Ole Kina:** Yes, she moved the Motion but it is not clear. We have had a lot of interruptions. I want her to remind us so that we proceed. Please move your Motion now.

**Hon. Delegate Nancy Lung’ahi:** Thank you, Honourable Chair. Nancy Lung’ahi, 224.

*(Murmurs on the floor).*

**Hon. Delegate Nancy Lung'ahi:** Okay. My Motion--

**Hon. Delegate Koitamet Ole Kina:** You have the floor, Nancy Lung'ahi.

**Hon. Delegate Nancy Lung'ahi:** Thank you. My Motion was on 110(2) which says that the nomination of candidates for election to the Senate shall not be based on political parties and I want this Clause deleted in its entirety because I felt that it bars the freedom of candidates wanting to participate freely in election either as political party representatives or independent candidates. I think in trying to build political party structure in this country, we need to make sure that we are creating room for people to be able to participate the way they want. So, the fact that the election to the Senate shall not be based on political parties, I do not think is a good position and I beg that you support me on this. I beg to move that that particular Clause be deleted in its entirety. Thank you.

**Hon. Delegate Koitamet Ole Kina:** Thank you. Before I invite anybody to either support or oppose that Motion, I would like to invite the Vice-President. He has a brief Statement.

*(Clapping).*

**Hon. Delegate Moody Awori:** Delegates, it is my pleasure to join you this morning with just a very brief statement to emphasize the fact that there should be no doubt in anybody's mind of the determination of the Kenyan Government, that Bomas has to give Kenyans a new Constitution by June of this year (*Applause*). Also, to make an appeal to everybody, whether a Parliamentarian or whether an aspiring Parliamentarian or whether a former Parliamentarian, that we have to work together because we either succeed or we sink together. That the Constitution that we want is not a Constitution designed for any single person, present or future. This should be a Constitution that will serve (*Clapping*) this country to the very end of the world. So, I just want to wish you success and I want to wish you well that we move smoothly. I know that somebody said that "democracy is the worst form of government" but nobody has brought in a

better one. Let us use democracy, which means that we must be tolerant to each other and give Kenyans a Constitution by June this year. Thank you. Thank you very much (*Clapping*).

**Hon. Delegate Koitamet Ole Kina:** Thank you very much. I now want to invite a person to speak for the Motion moved by Nancy Lung'ahi. 062.

**Hon. Delegate Anthony Kimeto:** Thank you very much, Mr. Chair, for giving me this opportunity to oppose this Motion.

**Hon. Delegate Koitamet Ole Kina:** I asked somebody to speak to it first, then you will oppose it next.

**Hon. Delegate Anthony Kimeto:** Okay, thank you.

**Hon. Delegate Koitamet Ole Kina:** 433.

**Hon. Delegate David Rakamba:** Thank you, Mr. Chairman. I am Delegate number 433, David Marcos. Mr. Chairman, I start by urging the Honourable Delegates to support the Motion because, Mr. Chairman, you know that Kenya is almost being found on the foundation of Multiparty democracy and we need to really support political parties. By saying that a candidate cannot belong to a political party that means that he/she is denied the opportunity. So, Mr. Chairman, I say the question of parties should not actually come in because we have in the Constitution, accepted that we should have parties. Whether a person is going to the Senate *ama* to the Lower House, he/she ought to have a party and have liberty also to be an independent candidate, Mr. Chairman. With those few remarks, Mr. Chairman, I beg to support that Motion.

**Hon. Delegate Koitamet Ole Kina:** Thank you. 198.

**Hon. Delegate Joshua Toro:** Thank you, Mr. Chairman. 198, Honourable Toro, Parliament. I stand to support the Motion, Mr. Chairman, because it is naïve for us to think that there will be people in Kenya who do not belong to any political party. Everybody will be supporting a certain political party whether big or small political party. Those representatives in Senate will have to come from certain political parties. So, we better decide that Senate will be composed of people



from political parties because if we do not, now it means that people will go to court and disqualify somebody because he belongs to a certain political party because of the membership. Those members will have cards belonging to certain political parties, they will be registered by political parties and then we will have to find the authenticity of their being neutral. So, I stand to support the Motion.

**Hon. Delegate Koitamet Ole Kina:** Thank you. 062.

**Hon. Delegate Anthony Kimeto:** Thank you very much, Mr. Chair. I will like to ask these Honorable members to listen to me very carefully because I have been a victim of these political parties. Because we are doing this Constitution for posterity, I want us to realize when membership is being sponsored by any party, it means you are getting into that party because of the sponsorship. However, if there is no sponsorship, there is no need for anybody to seek for any political party and yet they are not supportive. Mr. Chair, I would like this country to be completely democratized in a manner that if anybody comes as an individual member to seek for any election, he is seen as a person. Some of the parties might have been led by some few individuals who might have misplaced or misruled a party. For that reason, some people are said to be bad just because of others. I would like to give the independence so that this country can choose whoever comes up, and apply to those concerned to be elected in any party.

**Hon. Delegate Koitamet Ole Kina:** I think you have made your point. Thank you.

**Hon. Delegate Anthony Kimeto:** I would like-- Let me--

**Hon. Delegate Koitamet Ole Kina:** Please, it is only one minute.

**Hon. Delegate Anthony Kimeto:** Allow me, Mr. Chair, because I want to give these Kenyans-- Allow me, I am requesting you, Chair.

**Hon. Delegate Koitamet Ole Kina:** Just one minute. One minute.

**Hon. Delegate Anthony Kimeto:** Anyway if we want to be democratic let us have a freedom of choice so that Kenyans in future can come up with whomever comes up, when his character, his

ability to represent the people, can be chosen instantly. Thank you very much, Mr. Chair, I want to oppose the Motion.

**Hon. Delegate Koitamet Ole Kina:** 594.

*(Noise on the floor).*

**Hon. Delegate Rogo Manduli:** I

**Hon. Delegate Koitamet Ole Kina:** You have the floor. Please proceed.

**Hon. Delegate Rogo Manduli:** Chair, I am Rogo Manduli, Delegate number 594 from the political parties. I am supporting this Motion and I am supporting it for now, tomorrow and posterity. In a situation where a candidate has to depend on a party for propellment anywhere, normally the causalities and the sufferers are mostly women. You have heard of my brother the Honourable Delegate there calling himself a casualty, I was even a bigger casualty. *(Clapping)* I would like a situation where a candidate or somebody feeling that they are fit for a position can vie for that position and place themselves in a running poll acquiring a position without being completely and helplessly dependent on a political party or political parties.

**Hon. Delegate Koitamet Ole Kina:** Thank you. Thank you--

**Hon. Delegate Rogo Manduli:** I therefore urge all the women in this hall to support that Motion vigorously.

*(Uproar on the floor).*

**Hon. Delegate Rogo Manduli:** I am proposing.

**Hon. Delegate Koitamet Ole Kina:** 594 thank you. 009. Order! Order! Order.

**Hon. Delegate Adhu Awiti:** Thank you, Mr. Chair. My name is Adhu Awiti, 009. Mr. Chair, I think there seems to be a bit of confusion in the meeting. When we are talking about the Senate, I

think we are talking about a different House altogether from what we know of the National Assembly. The Senate is meant to represent the Districts or the regions and in our own case in the Devolution, if you look at the corrigendum, we are suggesting that anyone vying for the position of Senate, one member elected from each District by the district council sitting as Electoral College. This is because we look at Senate not like another National Assembly but a House of the wise men, a House that is going to represent the devolved units, so that the devolved units would also be making national decisions via the Senate. So it beats reason to expect that this also should be based on a political party. Thank you. (*Clapping*).

**Hon. Delegate Koitamet Ole Kina:** Information, 562 then we will take a vote.

**Com Kavetsa Adagala:** I am Kavetsa Adagala, 563. I wanted to follow up on what Honourable Awiti has said and say that, in Culture we had envisaged Senate as a House that represent the population geo-politically. That is, in the geographical layout of the country and that it would be communities. This is not a strange idea although I know that there are some people who have a different view about communities but we have it in other countries, for instance, in Ethiopia even the US Senate represents geo-politically, the different States. Perhaps if you gave a chance to our Convenor he could explain this because our Article on representation in Senate disappeared, we were told that it is appearing in Representation and it is not there, it is a completely different kind of representation so that it merges with the Devolution one in terms of regions and districts and we would like to retrieve that Motion if it were possible. However I cannot move it I think the Convenor can move it.

**Hon. Delegate Koitamet Ole Kina:** 563, just a minute 392 I will—Commissioner Mutakha Kangu.

**Com. Mutakha Kangu:** Mr. Chairman, I am Mutakha Kangu, 562. I want to follow up on what the Convenor on Devolution has said and I want to refer members to Article 7 which you passed early in the week Sub-Article (4) which states that the principle role of the Senate is to provide an institution through which the devolved levels of government share and participate in legislation at the national level. It is not our intention to again bring a lot of party politics at the devolved levels of government. (*Clapping*). It is our intention that the people at the devolved levels of government may choose to organize their affairs without allowing themselves to be sub-

divided or divided along party lines. *(Clapping)*. Therefore, it is my view and indeed the view of most of the members in the Committee on Devolution that the candidates to the Senate need not be tied down by nominations by political parties. *(Clapping)*. They may belong to political parties if they choose but they must not be required to be nominated by political parties. *(Clapping)*. They should be free to apply for nomination but if a party chooses to support them in the campaigns there should be no problem with that. Therefore, the formulation that was given by the Convenor of the Committee on Representation, that the candidates may apply directly to the Electoral Commission to my mind is the correct formulation. Thank you. *(Clapping)*.

**Hon. Delegate Koitamet Ole Kina:** Okay, just before I give 392 I have some information from the Chair so I would the Secretary to inform you from the Draftspersons.

**PLO Lumumba:** With your little patience I refer you to the corrigendum and specifically to Article 136. The Draftspersons point out to us that in fact, that Article settles the composition of the Senate. If you permit me, it does so, in the following manner;

1. That there shall be one member elected from each District by the district council.
2. That there shall be two women elected from each region by the Electoral college
3. Such number of marginalized groups half of whom shall be women as satisfies the requirements of Article 110.

You may want to consider those issues even as you debate.

**Hon. Delegate Koitamet Ole Kina:** 392.

**Hon. Delegate Paul Nakitare:** Thank you, Honourable Chair. We moved a Motion in Culture on representation of the communities of the Republic of Kenya, but we were advised that this matter should be raised in the Representation. Mr. Chairman, the Committee of Culture considers the significance of cohesion, of bringing our people together, of considering marginalized communities and bringing every one on board, particularly in our Parliamentary systems. As a result of which we felt very strongly Honourable Chair, to recommend that the Senate shall be a representative body of the diverse communities and the peoples of Kenya. We

also recommended that the election of the representatives to the Upper House or Senate, shall be conducted on the basis of the First Schedule which we have recommended and which has not yet been discussed. This takes into account the principles of Devolution as set out in Chapter 10 and also the principles of affirmative action. This is to say, Mr. Chairman and Honourable Delegates, that the Senate as the Convenor of Devolution has said, being the House that will bring together all the wisdom and all the peoples of Kenya should come from the communities of this country and therefore, does not respond to the need to belong to any political party.

**Hon. Delegate Koitamet Ole Kina:** Thank you. I think we have enough information now to be able to take a decision. (*Noise*) Yes, I would like us to take a vote on that and the Motion was, to delete (*Noise and uproar*).

**Hon. Delegate Raphael Livu:** Point of Procedure.

**Hon. Delegate Koitamet Ole Kina:** Procedure 228

**Hon. Delegate Raphael Livu:** Thank you, Chair. My name is Raphael Livu, Delegate number 228. Mr. Chairman, Commissioner Kangu has just advised this Conference on an Article, which in my opinion is misleading. (*Noisy uproar*). Mr. Chairman can I be heard?

**Hon. Delegate Koitamet Ole Kina:** Please proceed.

**Hon. Delegate Raphael Livu:** Mr. Chairman, the Commissioner referred us to Sub-Article (4) of Article 7, which in my opinion was adopted by this Conference I think on Monday or Tuesday. However, Mr. Chairman there is a corrigendum which has actually amended that, and in my opinion I would refer to this as Article theorism in that number one. Sub-Article (2) of the adopted Article 7 has actually been deleted without authority of this Conference. We said and we adopted here that, “the district is the principle unit of devolution”. Mr. Chairman, the corrigendum that is here has actually completely deleted that from this and we have not in any way moved a Motion to discuss that. It would therefore, not be in order for us to proceed without correcting the position on the ground. Thank you.

**Hon. Delegate Koitamet Ole Kina:** 562. Wait a minute I would like him to respond to that first before we proceed.

**Com. Mutakha Kangu:** Mr. Chairman, I think this is the third time Honourable Livu is raising this question. Several other members raised the question with me yesterday, and I went to the Rapporteur General and it does appear that there are two different corrigendum that circulated here. In fact, the first day Honourable Livu raised the question, he was raising it from the first corrigendum. That first corrigendum, Sub-Article (2) of 7 states, that “the district is the principle level of devolution”. Yesterday, I think another corrigendum was circulated and members of this Honourable Conference raised issues and when I brought the issues to the attention of the Rapporteur General, I was informed that we would have to go with the first corrigendum, which does not have the deletion that Honourable Livu is referring to. I have been emphasizing quietly to Rapporteur General and the Secretary that, the moment we start discussing the subject relevant to this, that I would want that correction made clear to the members of this Conference before any discussion begins. Now that Mr. Livu has raised it a third time, I find it necessary to make that correction at this particular point. That deletion is not there let us go by the earlier corrigendum that has a Sub (2) that says, “the district is the principle level of devolution”. Thank you very much.

**Hon. Delegate Koitamet Ole Kina:** Thank you very much. In fact, that is the corrigendum that I have myself, it says, “the district is the principle level of devolution” 7(2) and it think that is what we are going on with. So, 067.

*(Noise and uproar on the floor).*

**Hon. Delegate Mukhisa Kituyi:** Thank you very much, Mr. Chairman. My name is-

**Hon. Delegate Koitamet Ole Kina:** Order! Order please.

**Hon. Delegate Mukhisa Kituyi:** -- Kituyi. District Honourable Delegates who want to vote will tell me--

**Hon. Delegate Koitamet Ole Kina:** Please you have the floor 067.

**Hon. Delegate Mukhisa Kituyi:** My first intervention ever. Mr. Chairman, my name is Mukhisa Kituyi. I listened to-- (*Uproar*).

**Hon. Delegate Koitamet Ole Kina:** Please, please you have the floor proceed. (*Clapping*).

**Hon. Delegate Mukhisa Kituyi:** Mr. Chairman, I listened to three arguments that attempted to intellectually justify why we should not allow political parties to be organising or mobilizing organs for representation in the Senate. The Honourable Kavetsa Adagala talking about geo-politics and even using examples of US and Ethiopia, the Honourable Mutakha Kangu and former Director of Culture, all three arguments were flawed. Ethiopia is a sad example of what you should not do, because they used ethnic communities to be recruiting organs for political leadership, they are in a crisis they cannot borrow themselves out of, and that is the indication of where you might go. If a society, which has described organising principles on districts as geographical expression, starts legitimatising non-partisan recruitment on basis of a monolithic description of community, you are setting us up for a conflict of domination by large minorities against minority ethnic politicians in those districts.

Secondly, geo-politics does not reflect ethnic recruitment called community vetting and there is no model of if in US politics contrary to what Kavetsa Adagala said. Geo, yes, but where is the politics in bringing in community? The political parties should recruit within those communities whether it is for the Legislative Assembly or the Senate. (*Clapping*). Lastly, and importantly Mr. Chairman, I would like to say this, what is the most important thing? That we want to run away from dictatorship of monolithic parties like the Honourable Member of Parliament for Sotik said? Which is catered for by provision about discipline in political parties and the right to be independent candidates. Two, that we want, people to be either in parties or outside, which is provided for in the constitutional provision for independent candidates. So, why are we manufacturing an opportunity and excuse to renege on discipline within political parties and democratisation of parties, and to renege from the principle that the most stable organ for political competition should be political parties even with the safety valve that you can step out of them as an independent candidate. I have not listened to any argument Mr. Chairman, which gives any credible reason that that Motion should be defeated. I support the Motion.

**Hon. Delegate Koitamet Ole Kina:** Thank you. Now, Honourable Delegates, I would like us to take a vote because it is 12:30 pm. and we had agreed that the Muslims would move at 12:30 pm. So, please we have had enough discussions on this so I would like us to take a vote now.

*(Noisy uproar on the floor).*

**Hon. Delegate Koitamet Ole Kina:** Please, do I have your permission to take the vote?

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** Okay.

**Hon. Delegate Atsango Chesoni:** Point of Procedure.

**Hon. Delegate Koitamet Ole Kina:** 510 Procedure, but we are taking a vote immediately after that.

**Hon. Delegate Atsango Chesoni:** Thank you, Mr. Chairperson. Before we had the earlier Point of Information from the Convenor, I had moved the same Motion. So, in order for you to take the Motion you do require at least to have me withdraw my Motion.

**Hon. Delegate Koitamet Ole Kina:** Do so.

**Hon. Delegate Atsango Chesoni:** It is the same Motion, but I do need to withdraw technically and so I wanted permission to do so.

**Hon. Delegate Koitamet Ole Kina:** Thank you very much.

**Hon. Delegate Atsango Chesoni:** Thank you.

**Hon. Delegate Koitamet Ole Kina:** Now, we are ready to take a vote on one Motion.

**An Hon. Delegate:** Point of Order, Mr. Chairman.



**PLO Lumumba:** There is Order in the House.

**Hon. Delegate Koitamet Ole Kina:** There is Order for the Chair to ask for a vote. So, please let me ask for a vote. Those in support of the Motion that we delete Article 110(2), please raise your placards.

**Placards raised.**

**Hon. Delegate Koitamet Ole Kina:** I said those in support of the Motion that we delete the Article that says, “the nomination of candidates for election to the Senate shall not be based on political parties”. Please raise your placards.

**Placards raised.**

*(Noisy discussions on the floor and consultations at the “high” table).*

**Hon. Delegate Koitamet Ole Kina:** Order please, just raise your placards.

**(Uproar on the floor).**

**Hon. Delegate Koitamet Ole Kina:** I said those who support the Motion, that- Order! Order! Can we please get it right? Order! Put your placards down. Let us be together. Nancy-- Order! Order please. Nancy Lung’ahi moved a Motion that requires us to delete – Order! Order please. The Motion that we have here is by Nancy Lung’ahi, which requires us to delete Article 10(2)—

*(Noisy comments from the floor).*

**Hon. Delegate Koitamet Ole Kina:** Am I right?

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** Yes, that is it. So, please those in support of that Motion, please raise your placards.

**Placards raised.**

*(Noise on the floor as counting is done).*

**Hon. Delegate Koitamet Ole Kina:** Order please. I do not know, it appears there is some confusion, I do not know what-- Please settle down and let us clear the confusion.

**PLO Lumumba:** There appears to be a confusion, which arises in the following manner. It would appear that what we are voting for had actually been deleted from the Draft and that what is up from the Committee, Caroline Ng'ang'a is this. That those who seek to be members of the Senate shall apply directly to the Electoral and Boundaries Commission. Do I get it right?

**Hon. Delegates:** Yes.

**PLO Lumumba:** So, the Motion that we ought to be putting to the vote is that, or what should we be putting to the vote?

*(Noisy protests from the floor).*

**Hon. Delegate Koitamet Ole Kina:** Ng'ang'a's?

*(Noisy protests from the floor).*

**PLO Lumumba:** Caroline can you kindly stand up and read the position.

*(Consultations at the "high" table).*

**Hon. Delegate Caroline Ng'ang'a:** Chair--

*(Noise from the floor).*

**Hon. Delegate Koitamet Ole Kina:** Order! Order! Order! Just before you proceed.

**PLO Lumumba:** I think the Chair is right just listen.

**Hon. Delegate Koitamet Ole Kina:** Caroline Ng'ang'a gave us the position of her Committee. Despite that, Nancy Lunga'hi proceeded and said, even with that position that was presented by Caroline Ng'ang'a, she still intended to move her Motion. In that regard I asked us to vote. So that is the correct position as far as I understand and that is why I asked for the Motion.

**Hon. Delegate Caroline Ng'ang'a:** Yes, but procedure Chair, is this, the Mover of the Motion--

*(Noise from the floor).*

**Hon. Delegate Koitamet Ole Kina:** Order! Order! Order!

**Hon. Delegate Caroline Ng'ang'a:** The Mover of the Motion says this, that it does not change the position because either parties are not there, but technically you cannot move a Motion of deletion for something which does not exist. Are we together? So, I agree with her sentiments but we must as a Committee deal with the Motion on the floor. We cannot deal with something, which does not exist Chair.

*(Noise and Uproar on the floor).*

**Hon. Delegate Koitamet Ole Kina:** Order! Order! Order Delegates. Order! Please. Apparently the corrigendum that I have myself – Order – had the Article and that is why I was moving. So, I would like us to adjourn for lunch and get the right corrigendum before we move. Please we resume at exactly 2:00 pm. *(Cheering and applauding).*

**Meeting adjourned for lunch at 12:35 pm.**

Meeting reconvened at 2.30 p.m.

**Hon. Delegate Koitamet ole Kina:** We would like to proceed.

*(Consultations at the “high” table).*

**Hon. Delegate Koitamet ole Kina:** 525.

**Hon. Delegate Mohammed Yusuf:** Thank you, Chair. My names are Ibrahim Mohammed Yusuf, Delegate 525.

**Hon. Delegate Koitamet ole Kina:** Order Delegates, please we would like to proceed.

**Hon. Delegate Mohammed Yusuf:** Chair, this is on a Point of Procedure. Chair, time and time again, you have ruled on the fact that if somebody proposes an amendment one person supports it and two people oppose it and we go to vote. Chairman, you flouted this time and several times. We need to cover the future plans that are remaining and we finish it very quickly, please could you stick to that procedure?

*(Applause).*

**Hon. Delegate Koitamet ole Kina:** Yes. Indeed I will only allow one person to speak for the Motion and two to oppose and I will not take any other, because you yourselves have ruled for that, please

*(Inaudible discussions on the floor).*

**Hon. Delegate Koitamet ole Kina:** During voting, I will not take any Point of Order. So, please settle down, we would like to proceed and before we proceed, I would like the Rapporteur General to clear some issue. So, I want everybody seated because I do not want anybody to try and take us back after he has cleared the issue on the Article we were voting for in the morning. So, can everybody – all Delegates please, can you take your seats.

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

**Hon. Delegate Koitamet ole Kina:** 106.

**Hon. Delegate Mohamed Mahamud:** Mr. Chairman, my name is Mohamed, Parliament. Mr. Chairman, you are supposed to have made a ruling on Article 109 (7) and you have not made a ruling.

*(Consultations at the “high” table).*

**Hon. Delegate Mohamed Mahamud:** Mr. Chairman, we voted on this Article the other day and that Article was completely deleted. Are we repeating it or-- what are we going to do? I think Honourable Kajwang’ asked that question this morning.

**Hon. Delegate Koitamet ole Kina:** Honourable Delegate, I did not want to respond to that because Honourable Delegate Ruth Oniang’o, 221, had a Motion on the same and I thought it would be dealt with at that particular time, so that we do not repeat. So, that is the position. We are going to deal with it right now. So, just before we proceed--

**PLO Lumumba:** Ladies and gentlemen, why don’t you grant us the floor for purposes of progress, kindly?

**Hon. Delegate Koitamet ole Kina:** Right now, I do not want Point of Order, there is communication I would like to pass to the Delegates. This morning during the adoption when we were voting, I have noted that two Delegates – Delegate 390 and Delegate 277 voted twice, that is they were raising two placards. Those two votes are cancelled, but they will not affect the results of the morning’s voting, and I will request all Delegates to use their rights of voting well. You have one vote only, you do not have two votes.

*(Consultations at the “high” table).*

**Hon. Delegate Koitamet ole Kina:** We have it on video, I saw it and please vote as an individual, do not raise even if your friend tells you vote for me, don’t. So, please let us not repeat that, I now want to invite the Rapporteur General, to correct whatever mistakes we had in the morning regarding the Chapter on representation.

**Prof. Okoth Ogendo:** Thank you, Mr. Chairman. I have been issuing a number of corrections to documents which have been read to this conference. The latest one I issued this morning, relating to the Fourth Schedule and you should pick it up and look at it. The reason for issuing corrigenda is that there are cases in which we have not been thorough in making cross references. There have also been cases in which changes have been made after the Zero Draft was issued which may not have been fully incorporated in that Draft. I do want to explain quite clearly that when I do issue those corrigenda, they are based on the Draft as processed by the Draftspeople, and I want to emphasize that the Draftspeople, have not always accepted the formulation that is coming from Committees. Therefore, there will be cases in which you will look at a particular Clause, you might find that the wording that you put in there is not the same as the wording that the Draftspeople have given you, but that is a technical assessment from the Draftspeople.

Now let me address specifically, the re-issue of Chapter 10 on Representation, dated March 10<sup>th</sup>. My document says that, I have been advised by the Drafting team that their typed version of Chapter 10 reflects their assessment of all comments and additions received from Technical Working Committee “C” after the Revised Zero Draft was released. I had indicated that please note that in a number of cases, the team has not adopted the exact wording which was given by the Committee.

In the case of 11 (10) (2), the Committee had indeed deleted what is appearing there, but the Committee had substituted it with a formulation that said that anybody who wants to go to the Senate must apply directly to the Electoral and Boundaries Commission. The Draftspeople took the view that, that latter formulation is a matter of detail that has no business in the Constitution and that is why they did not accept it. But the Draftspeople also realized that what this Committee wanted, was that they did not want to subject people going to Senate to nomination by political parties, because the scheme of the Chapter is that political parties, present candidates and that is why they retained the original formulation, that says “The nomination of candidates for election to the Senate shall not be based on political parties”. And note, it is stated in the negative because it goes against the general principle in the Act. So, these documents which I circulated on the 10<sup>th</sup> is the correct documents that this Conference should be discussing and I think it is extremely dangerous to allow Convenors to now come here and say that they have the correct version for this Conference. Convenors no longer have control over the documents, the

Technical Working Committees have been dissolved and the documentation that you have now, does not come from those Committees.

In the light of what I have just said, it is indeed proper for anybody who wants that particular Clause to be deleted to move a Motion to that effect. That is the first point I want to clarify.

The second point I want to clarify, there are two other corrigenda which I issued; one is dated March 8<sup>th</sup>, on Chapters 1, 2, 11, 14, 15, 16 and the Fifth Schedule and another one on the 10<sup>th</sup>, which was replacing pages. Now, if you look at the one on the 10<sup>th</sup>, on page 4 of that document Clause (7), what appears under Devolution there is not accurate. What is accurate is what appears on my corrigendum dated March 8<sup>th</sup>, and therefore, you should ignore Article (7) as formulated in my document of the 10<sup>th</sup> of March and rely on Article (7) as circulated in my document of March 8<sup>th</sup>.

Finally, I have issued another corrigendum relating to the Fourth Schedule deleting from that Schedule the requirement that legislation should be made to deal with small claims courts, to be dealt with by Kadhis, because the body of the Draft, does not give Kadhis jurisdiction over small claims courts and therefore we cannot require Parliament to pass legislation for it. That is why that particular corrigendum has been issued.

Let me ask for the indulgence of the Delegates in issuing these corrections, mistakes will be made, it is a very painstaking effort, but I hope you will bear with us, unless it is a fundamental mistake that changes the nature of the Draft, I would want Delegates to draw them to my attention before they can raise them on the floor of the House. Thank you very much for listening to me. I am Delegate 551.

*(Clapping).*

**Hon. Delegate Koitamet ole Kina:** In that regard, my position in the morning was right. What I heard is actually the Motion that was moved by Nancy, it was debated, a lot of information was given on that Article and we were actually proceedings to vote when a confusion seems to have arisen, but there is no confusion any more. So, we want to proceed straight and vote for that Article. The Motion simply is that we delete Article 110 (2), some of the corrigendum you have,

may not have that but you have said what was finally issued has that. So, and the formulation of Article 110 (2) is as follows, just in case you do not have, “The nomination of candidates for election to the Senate shall not be based on political parties”. That is the formulation and that is what the Mover of the Motion wants deleted, so let us proceed and vote. Those for the Motion, please raise your placards.

*(Inaudible discussions on the floor).*

**Hon. Delegate Koitamet ole Kina:** The Motion is that we delete Article 110 (2). So, those for the Motion, please raise your placards.

*A few Delegates raise their placards.*

*(Consultations at the “high” table)*

**Hon. Delegate Koitamet ole Kina:** What is the murmuring about? I think it is very clear.

*(Inaudible response from the floor)*

**Hon. Delegate Koitamet ole Kina:** Yes, please. Those against the Motion, please raise your placards.

*Delegates raise placards.*

**Hon. Delegate Koitamet ole Kina:** The “NAYS” have it. Let us proceed. Please proceed.

*(Consultations at the “high” table).*

**PLO Lumumba:** May we proceed please?

*(Inaudible discussions on the floor).*

*(Consultation at the “high” table).*



**Hon. Delegate Koitamet ole Kina:** I have recognized--

**PLO Lumumba:** Article 11--

**Hon. Delegate Koitamet ole Kina:** No, just a minute please. I want to respond to the question that was raised on Article 109 (7). According to the final corrigendum that we have which is the latest, we do not have 109 (7). That Motion was moved here, and it was voted and we deleted 109 (7). So, we proceed.

*(Clapping).*

**PLO Lumumba:** Thank you very much. May I now read Article 111 – Registration as a voter.

**Some Hon. Delegates:** Point of Order!

**PLO Lumumba:** There is a Motion? Article--

**Hon. Delegate Koitamet ole Kina:** There is a Motion.

**Hon. Delegates:** Hubbie.

**Hon. Delegate Koitamet ole Kina:** Hubbie has a Motion. Please let her move her Motion. Please you have the floor, can you please move your Motion?

**Hon. Delegate Hubbie Hussein:** Thank you, Chair. I would like to move an amendment of--

**Hon. Delegate Koitamet ole Kina:** Order please, please listen, you may not have the copy of her Motion, so you would like to hear what she is saying, please.

**Hon. Delegate Hubbie Hussein:** Thank you. My name is Hubbie Hussein, District Delegate number 251. I would like to move a Motion on amendment of Article 110 (f), the Sub Article reads, "Efficient supervision of public election and referenda including, where necessary, voting on the basis of proportional representation".

*(Inaudible discussions on the floor).*

**Hon. Delegate Hubbie Hussein:** 110 Clause (f) my Motion is delete all words after “referenda”. I do this because I feel a system that is not popular in this Conference is being sneaked into this Article, “proportional representation” and I know “proportional representation” is a very good system but it is a system that can be abused. What qualifies a good system is a political goodwill and political positive culture. Do we have really that in Kenya? The system we have in place, we have abused it left and right. It gives us good principles of free and fair election, where the winner takes it all. It has never been like that, I feel in this case, I am deleting the “proportional representation” because I know and I feel that it will marginalize minorities, and it can be abused by communities who already feel that they are under-represented. With the culture of temporary political party merges, or marriages of coalition, anybody intending to have the majority in Parliament, will merge with another political party--

**Hon. Delegate Koitamet ole Kina:** Sorry,

**Hon. Delegate Hubbie Hussein:** Yeah.

**Hon. Delegate Koitamet ole Kina:** I have been informed by the Rapporteur General that MMP was actually struck out, these words should not have been here in the first place. So, in that case, they are out so we do not have a motion in that regard.

**Hon. Delegate Hubbie Hussein:** Thank you. Then I withdraw my Motion.

**Hon. Delegate Koitamet ole Kina:** Please yes. Thank you. So, let us proceed.

**PLO Lumumba:** Thank you very much. May I now read a Motion?

**Hon. Delegate Koitamet ole Kina:** 545 says he has a Motion. Please listen-- Please proceed.

**Hon. Delegate Simeon Shitemi:** Thank you, Mr. Chairman. I am surprised you--

**Hon. Delegate Koitamet ole Kina:** It has to be a Motion please.

**Hon. Delegate Simeon Shitemi:** Okay. I am moving a Motion to request fellow Delegates to ensure a future provision of law in this country would control the expenditure of candidates during Parliamentary elections. I am suggesting that Article 110 (a), would help us minimize - pardon me, the likes of Jirongo buying their ways into Parliament.

**Hon. Delegate Koitamet ole Kina:** Excuse me, Honourable Delegate you have to withdraw. You cannot pass aspersions to people who are not even in the Conference.

**Hon. Delegate Simeon Shitemi:** Mr. Chairman, I do sincerely apologize and withdraw.

**Hon. Delegate Koitamet ole Kina:** Yes.

**Hon. Delegate Simeon Shitemi:** --But the point is made nevertheless

*(Applause in the House)*

*(Consultations at the "high" table).*

**Hon. Delegate Simeon Shitemi:** If I may proceed Mr. Chairman--

**Hon. Delegate Koitamet ole Kina:** Please proceed, yes.

**Hon. Delegate Simeon Shitemi:** We have had elections again and again, and the people with money have succeeded to get elected. I have known occasions when variable politicians have been able to win their seats on the basis of the value of who they are, and I know quite a number who are present with us today. What I am suggesting now, is to introduce a law, and I am suggesting that this be a request we shall ask Parliament to enact to control the expenditure on elections. It used to be there before, it used to 40,000/= . I have suggested 5 million

*(Inaudible discussions on the floor).*

**Hon. Delegate Simeon Shitemi:** Maximum, I have suggested 1 million minimum.

*(Consultations at the “high” table)*

**Hon. Delegate Simeon Shitemi:** I have also suggested using the Swahili say “*Chama chajiuza, kibaya chajitembeza*”. Mr. Chairman, I do move--

**Hon. Delegate Koitamet ole Kina:** Honourable Delegate thee is information please. Maybe your fears have already been taken care of, so please take this information.

**PLO Lumumba:** The information is to be found in Article 127 (4), which reads, “The Electoral and Boundaries Commission shall prescribe the maximum amount of money that a political party may spend on each of its candidates and the amount an independent candidate can spend for election”

*(Clapping)*

**Hon. Delegate Simeon Shitemi:** Mr. Chairman, I am more than satisfied. Thank you very much. I withdraw the Motion.

**Hon. Delegate Koitamet ole Kina:** Please, let us proceed.

**PLO Lumumba:** May I now read Article--

**Hon. Delegate Koitamet ole Kina:** 320, do you have a Motion?

**Hon. Delegate Kiriro wa Ngugi:** Thank you, Mr. Chairman. I have a Point of Clarification, Article 110 (f), where the Delegate has received some information from the Rapporteur General. My understanding of what was removed MMPR does not mean the same thing as “proportional representation”. MMPR means “Mixed Member Proportional Representation” which is a concept quite apart from “proportional representation”. If we delete, that we do not want “proportional representation”, do we mean that we want this “proportional representation” as a fundamental principle of the Constitution? So, I do not understand what the Rapporteur General means when he says that the words after referenda as suggested by the Mover of the previous

Motion shall be deleted. “Proportional representation” of first past the post, which therefore excludes the MMPR is an important part.

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegate the issue that was raised by the Mover of the Motion was addressed by the Drafters and it does not appear the way it is here. The Rapporteur General gave us information that the way it is formulated here is wrong and that we are going to get the right formulation because these words do not appear. That was the concern of the Mover of the Motion and that Motion was disposed of and we proceeded. So, we are proceeding please.

**Hon. Delegate Kiriro wa Ngugi:** What then are we discussing at (f), are we discussing the text here or some text to come in the future? My concern is valid because the Rapporteur General has given us an instance where his correction dated the 8<sup>th</sup> is more correct than his correction dated the 10<sup>th</sup>. So, what is the correct position *vis-a-vis* (f) as we pass (f) and go forward.

**Hon. Delegate Koitamet Ole Kina:** Fine, he will explain for the satisfaction of that member but the Motion was already disposed.

**Com. Okoth Ogendo:** Mr. Chairman, my response is very, very simple. That Clause is dealing with the efficiency provision of public elections and referendum. Whether they are proportional or not, as long as they are public election referendum that should satisfy it. Thank you.

**Hon. Delegate Koitamet Ole Kina:** Please go on.

**PLO Lumumba:** You may now read Article 112, dealing with disqualification from registration as a voter.

**Hon. Delegates:** Yes.

**PLO Lumumba:** I now read Article 113, that deals with voting.

**Hon. Delegates:** Yes.

**PLO Lumumba:** Article 114, that deals with Independent Candidates.

**Hon. Delegates:** Yes.

**PLO Lumumba:** Article 115, deals with Unopposed Candidates.

**Hon. Delegates:** Yes.

**PLO Lumumba:** Part II the Electoral and Boundaries Commission, Article 116, Electoral and Boundaries Commission.

**Hon. Delegates:** Yes.

**PLO Lumumba:** Article 117, deals with Delimitation of Electoral Units.

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** There is a Motion. 015.

**Hon. Delegate Kerrow Billow:** Chairman, I wanted a clarification on 117, Sub-Article 2 (ix) which is talking about in demarcating the boundaries and naming of electoral units. The Electoral and Boundaries Commission shall take account of – it says in 9, “the voters register and the proportional representation of the people to the nearest five thousand registered voters.” What exactly does this mean and has it also been amended in the same way that the other proportional representation things that have been put in here? Thank you.

**Hon. Delegate Koitamet Ole Kina:** According to the latest origin it just says the voters register. 251, you have a Motion? 251, please if you have a Motion can you move it? Please move a lot more briskly. Did you have a Motion, please move it.

**Hon. Delegate Hubbie Hussein:** Thank you. I have a Motion on that. I would Article 117 (2) (ix) deleted completely. I do this because a voters register is valid for five years and it is indicated --

**Hon. Delegate Koitamet Ole Kina:** Point of Order, 388.

**Hon. Delegate Sammy Chemwey:** Sammy Naibei Chemwey, Delegate number 388, a District Delegate from Mt. Elgon. Mr. Chairman, is it order for you having issued a corrigendum that does not have the words that want to be moved, for you to admit that Motion where a corrigendum has clearly rectified the situation, because the corrigendum here has already rectified that situation. Is it in order for you to have it moved?

**Hon. Delegate Hubbie Hussein:** Point of Order. Point of Order, please.

**Hon. Delegate Koitamet Ole Kina:** Wait, wait, wait.

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

**Hon. Delegate Koitamet Ole Kina:** Wait, just a minute. I would like to respond to the question that was raised. It is in order for the Delegate to move a Motion if she does not have the latest corrigendum because we will correct the position. May be the Honourable Delegate does not have the Motion but we will inform her, but I would like that position first of all raised by Delegate Hubbie clarified, because I did not even know what Motions she had. She just said I have a Motion.

**Hon. Delegate Hubbie Hussein:** I think the Secretary has taken my Motion this morning.

**PLO Lumumba:** Mr. Chairman, let me inform Hubbie, you Motion is overtaken by events. The corrected version now reads dash as roman number (ix), voters register full stop.

**Hon. Delegate Hubbie Hussein:** Yes, that is what I want to move a Motion.

**PLO Lumumba:** You want it deleted?

**Hon. Delegate Hubbie Hussein:** Yes, that is what I want to move a Motion against voters register please listen to me.

**Hon. Delegate Koitamet Ole Kina:** Please that is the Motion. The Honourable Delegate will like this Article deleted that reads, “ the voters register” that in delimitation of electoral units, please move your Motion so that all the Honourable Delegates understand what you want done.

**Hon. Delegate Hubbie Hussein:** I would like to move a Motion to amend Article 117 (2), which reads, “ in demarcating the boundaries and the naming of the electoral units, the Electoral and Boundaries Commission shall do the following “in account of and then (ix), voters register. I would like that deleted because I do not see the value it is adding to this Article. A voters register is valid for five years, it is not indicated whether it is the former voters register which was about ten or five years ago and in any case in the pastoral communities during the draught season, they do not register because they have difficulties. If we say we are going to base a representation on voters register when the population trend, population density and the latest census is there. It is not going to be fair. That is my Motion, I move the Motion.

**Hon. Delegate Koitamet Ole Kina:** Anybody speaking for the Motion? 252.

**Hon. Delegate Dubat Ali:** Thank you very much, Mr. Chairman. I think it is very unfair to base representation on voters. We want this one be scrapped completely. Mr. Chairman, let us be fair. Ijara District is the smallest district in North Eastern Province, but it is bigger than Central in form of acreage so, it is our feeling that representation should not be based on voters only. Again, Mr. Chairman --

**Hon. Delegate Koitamet Ole Kina:** Okay, fine your one-minute is gone.

**Hon. Delegate Dubat Ali:** Mr. Chairman, we have a problem of our people getting registered. The registration system is not even conducive.

**Hon. Delegate Koitamet Ole Kina:** Thank you. You have made your point, I want two people to speak against that Motion. 529.

**Hon. Delegate Patrick Musungu:** Thank you, Chairman. My number is 529, Reverend Patrick Musungu. I think Mr. Chairman, the Honourable member, the Mover of the Motion, when we understand what delimitation of electoral units needs, then we will not delabour the provision,



because we are talking about electoral units for purpose of representation and a voter because we have qualified who participates in an election on the basis of a voters register. We are not ignoring the fact that other regions or other units might be densely populated and other sparsely populated. That is why all these factors constitute the consideration whether an electoral unit deserves to be delimited or not. So, on that basis, I see no reason for deleting the voters register, because it is a basis for representation. I beg to oppose.

**Hon. Delegate Koitamet Ole Kina:** 333.

*(Noise on the floor).*

**Hon. Delegate Koitamet Ole Kina:** We said two, please let us have the second one. Please move.

**Hon. Delegate Emmy Kipsoi:** Thank you, Mr. Chairman, Emmy Kipsoi. I think the Mover of the Motion has not looked at the Article in totality, because those are some of the things, there are many things to be taken into account by the Boundaries Commission and the last is the voters register. Our concern about certain areas is taken care of in Article 2 (b) (ii), the need to ensure adequate representation for urban and sparsely populated rural area. So, all these factors will be taken into account in determining what constitutes a Constituency.

**Hon. Delegate Koitamet Ole Kina:** Thank you very much. In that regard we would like to vote. Those who support the Motion that we deleted Article 117 (2) (ix) please raise your placards.

*(Hon. Delegates raise their placards).*

**Hon. Delegate Koitamet Ole Kina:** Those who oppose please.

*(Hon. Delegates raise their placards).*

**Hon. Delegate Koitamet Ole Kina:** The “NAYS” have it. So, please let us proceed.

**PLO Lumumba:** Thank you very much. I now read-- Another Motion?

**Hon. Delegate Koitamet Ole Kina:** 062.

**Hon. Delegate Anthony Kimetto:** Thank you, Mr. Chair. I think my Motion is new and I want to put it across. This is what I want to say, in every representation of a constituency, I would have liked it to be put here as one of the Articles in 117. That there should not be any constituency such that will lie within the two devolved units, because I am one of those ones representing a constituency in two districts. There should not happen anything of that nature. I would like --

**Hon. Delegate Koitamet Ole Kina:** You, Honourable Delegate, I do not have your Motion. What Article are you addressing?

**Hon. Delegate Anthony Kimetto:** I am bringing as a new Motion, Mr. Chair.

**Hon. Delegate Koitamet Ole Kina:** No, don't worry, let us deal with the current Articles first.

**Hon. Delegate Anthony Kimetto:** But since we are doing it Mr. Chair--

**Hon. Delegate Koitamet Ole Kina:** When you said you had a Motion, I thought it is related to Article 117 or 118. If it does not relate to that, I would like to--

**Hon. Delegate Anthony Kimetto:** It relates. It relates to 117 because--

*(Noise on the floor).*

**Hon. Delegate Koitamet Ole Kina:** Order! Order! I think since it relates to the units, please let him move his Motion so that we proceed.

**Hon. Delegate Anthony Kimetto:** Yeah, what I just wanted to say is. There should not be any Constituency lying between two administrative units in a devolved units. It may be included there, Mr. Chair. Thank you.

**Hon. Delegate Koitamet Ole Kina:** I would like anybody who supports that Motion?

*(Noise on the floor).*

**Hon. Delegate Koitamet Ole Kina:** Order! Order! Order! Somebody who opposes the Motion?  
006.

**Hon. Delegate Abudullahi Ali:** Bwana Chairman, I think we are not doing the right thing. There is no Motion like that here and when there is no Motion there is nothing to vote upon. If he wants to move a Motion let him write and bring it to the Chair.

**Hon. Delegate Koitamet Ole Kina:** Order! That is not the right position. The right position is actually that a Delegate could move a Motion even on the floor. So, please let us listen. You have the right to vote for that Motion or vote against the Motion. Let us proceed the right way. The Delegate has moved his Motion. I expect all of you to pay attention so that you hear what the Motion is all about, so that you can be able to vote either for or against the Motion.

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

**Hon. Delegate Koitamet Ole Kina:** Order! There is information here, please.

**PLO Lumumba:** Could you kindly, the prospective Mover look at what Article 117, 2 (b) (vii) the factors that must be taken into account and then look at Article 118 and appreciate that the Constitution should not go into too much details and ask that whether you are not satisfied that it cannot be taken care of.

**Hon. Delegate Koitamet Ole Kina:** In my reading your fears have been actually taken care of.

**Hon. Delegate Anthony Kimetto:** Mr. Chair, I have not had time to go through, I must be sincere.

**Hon. Delegate Koitamet Ole Kina:** Yes.

**Hon. Delegate Anthony Kimetto:** So, I must be sincere--

*(Noise on the floor).*

**PLO Lumumba:** Order! Order! Order! Please.

**Hon. Delegate Anthony Kimetto:** I must be sincere, but I wanted to put across for this --

**PLO Lumumba:** Yours is to understand.

**Hon. Delegate Anthony Kimetto:** I must be sincere.

**PLO Lumumba:** I think your fears have been taken--

**Hon. Delegate Anthony Kimetto:** If there will be in future, I am a member for --

**Hon. Delegate Koitamet Ole Kina:** Order! Order! Order! please. Your fears have been taken care of so let us proceed.

**An Hon. Delegate:** Mr. Chairman, a Point of Order please.

**PLO Lumumba:** Do I have the floor? Please let us proceed. Article 118, fixing of Administrative Boundaries. Article 119--

**Hon. Delegate Koitamet Ole Kina:** There is a Motion here.

*(Consultations at the "high" table).*

**PLO Lumumba:** Your Motion is on 121?

**Hon. Delegate Winston Ogola:** There is continuing to that, Sir. Thank you very much, Mr. Chairman.

**Hon. Delegate Koitamet Ole Kina:** Excuse me, excuse me. Your Motion is on 121, we have not yet reached there.

**Hon. Delegate Winston Ogola:** It is connected to 121.

**Hon. Delegate Koitamet Ole Kina:** We have not reached there yet please. You will move it at 121. We have not reached there.

**Hon. Delegate Winston Ogola:** The one I am moving, please just be patient with me. I am moving the one on 116, which was to be transferred also to 121 with the advice of the experts and ideal of the separation--

**Hon. Delegate Koitamet Ole Kina:** Yes that is why we are saying, you will move it at 121.

**Hon. Delegate Winston Ogola:** Thank you.

**Hon. Delegate Koitamet Ole Kina:** 394.

*(Noise on the floor).*

**Hon. Delegate Koitamet Ole Kina:** Order please! Order please.

**Hon. Delegate Asitaluko Adungo:** My name is Asitaluko Adungo.

**Hon. Delegate Koitamet Ole Kina:** Please let us proceed.

**Hon. Delegate Asitaluko Adungo:** Teso district, 394. I am moving a Motion to the effect that under Article 119--

**Hon. Delegate Koitamet Ole Kina:** I am sorry if you are in Article 119, we have already passed.

**Hon. Delegate Asitaluko Adungo:** Not yet. 119?

**Hon. Delegate Koitamet Ole Kina:** 119 yes, I thought you are saying 109.

**Hon. Delegate Asitaluko Adungo:** 119.

**Hon. Delegate Koitamet Ole Kina:** Yes.

**Hon. Delegate Asitaluko Adungo:** To the effect that Political Parties may form coalitions, the running of which shall be regulated by an Act of Parliament. I am moving this Motion because we have had experience in the past, particularly when we came to 2002 elections. We came to discover that under our current Constitution and also under our Acts of Parliament there was no provision whatsoever for parties to form coalitions, but because Kenyans were very ready to disperse with the leadership of KANU. The Electoral Commission, the people of Kenya, political parties submitted to forming coalitions without any legal provision and we enjoyed the government of the day under coalition of political parties.

I am saying now that we are preparing a new Constitution, we would not like to continue operating under M.O.U's. We would like to have provisions in our new Constitution to the effect that Political Parties may form themselves into coalitions clearly spelled out, but then the detailed provisions be made in an Act of Parliament. I beg to move.

**Hon. Delegate Koitamet Ole Kina:** Somebody supporting the Motion? 590.

**Hon. Delegate Patrick Onyango:** Sorry, Mr. Chairman. I would have loved to support that particular Motion if only it was brought under the roles and functions of Political Parties rather than under the funding of the political parties. Mr. Chairman, I would urge Mr. Adungo to agree to transfer that particular Motion to that particular Article, if it pleases. Thank you, Mr. Chairman.

**Hon. Delegate Asitaluko Adungo:** Mr. Chairman, Sir, I had proposed that way, but the Drafting Team placed it where it is now and I think it is rightly placed. I think his side of the matter is to accept the Motion then it can be placed at the right place of the Constitution.

**Hon. Delegate Koitamet Ole Kina:** I think that is okay. Anyone opposing the Motion? 037.

**Hon. Delegate Otieno Kajwang’:** For a good reason, Mr. Chairman, I wish to oppose. Political parties form coalitions not as a matter of law, but as a matter of necessity and convenience. All parties when they go to elections, they go to win they do not go there to lose and so after they have lost both of them. They sit down and decide whether they want to form political coalitions. So, coalitions are not matters in Constitutions. If you go to all Constitutions of the World they rarely refer to how coalitions will be made, because it is an accident that you have lost, then you now mourn together.

**Hon. Delegate Koitamet Ole Kina:** Okay, thank you. I think you have made your point.

**Hon. Delegate Otieno Kajwang’:** Thank you very much.

**Hon. Delegate Koitamet Ole Kina:** Anyone? 320.

**Hon. Delegate Kiriro wa Ngugi:** Thank you, Mr. Chairman. Fellow Delegates it is important as we discuss this document to lift our eyes from the contemporary political situation and look into the future. When we say that we are putting into the Constitution a provision allowing coalition of parties, we seem to be suggesting that somewhere else in this Constitution we have forbidden. The art of forming a coalition is in an attempt to form government. The whole ethos of this Constitution allows the formation of government and how those governments are formed by a single party or by a coalition of parties is already provided for elsewhere. It is not only superfluous it is also a handicap in the future. Nowhere have we said that government may not be formed via a coalition. It is a mistake to then go and say that they may when we have not said that they may not. My view is that we leave it as it. We must always remember as we write this document that we are not trying to eliminate political activity, we must leave space for political activity.

**Hon. Delegate Koitamet Ole Kina:** Thank you. Delegate 551.

**Com. Okoth Ogendero:** Thank you, Mr. Chairman. I know that the Chapter on the Executive allows for coalition of parties to form a government, but the legality of a coalition is not dealt with in that Chapter. I think this is the place where the ability to make binding coalitions ought to be written into the Constitution. I support the Motion.

**Hon. Delegate Koitamet Ole Kina:** So, I would like to put the question. Those who support the Motion, please raise your placards.

*(Hon. Delegates raise their placards).*

**Hon. Delegate Koitamet Ole Kina:** Those who oppose.

*(Hon. Delegates raise their placards).*

**Hon. Delegate Koitamet Ole Kina:** The Motion is carried. Let us proceed.

**PLO Lumumba:** Do I have the floor?

**Hon. Delegate Koitamet Ole Kina:** Yes, please.

**PLO Lumumba:** There is a notice of Motion by Mr. Nyakundi on Article 119.

**Hon. Delegate Peter Nyakundi:** Thank you, Chair.

**Hon. Delegate Koitamet Ole Kina:** Order please. Let us listen to the Delegate.

**Hon. Delegate Peter Nyakundi:** My names are John Peter Nyakundi. I had--

**Hon. Delegate Koitamet Ole Kina:** Delegate 468, Order! Please.

**Hon. Delegate Peter Nyakundi:** Chair, because I have received the statement my Motion has been rectified. So, I beg to withdraw.

**Hon. Delegate Koitamet Ole Kina:** Thank you very much. Let us proceed.

**PLO Lumumba:** Article 120, Basic Principles of a Political Party. Article 129, Role and Functions of Political Parties. Winston Adhiambo has a Motion.



**Hon. Delegate Koitamet Ole Kina:** Please move your Motion.

*(Noise on the floor).*

**Hon. Delegate Winston Ogola:** Thank you --

**Hon. Delegate Koitamet Ole Kina:** Order! Order, please. Listen to the Delegate.

**Hon. Delegate Winston Ogola:** Thank you very much, Honourable Chair. I wish to move the Motion on Article 121. First of all due to expert advice and separation of powers, it was found that Sub-Articles (e) and (f) of the main Article 116, was to be transferred to Article 121 (a) of the Registrar of political parties and that one is moved like that. That, I think it a short one.

The main Motion now was on the registration of Political Parties, which goes like this - I do not think I have to mention everything here. 121 (a), “there is established and independent office of the registrar of Political Parties, consisting of the Registrar of the political parties, one Deputy Registrar of political parties, three Assistant Registrar of political parties, who shall be appointed by the President with the approval of the National Assembly.

(e) The staff of the Registrar of Political Parties will be appointed by the Judicial Service Commission in consultation with the Registrar of Political Parties.

(f) The functions of the Political Parties shall be,

- to register, keep and maintain the Registrar of Political Parties;
- arbitrate in intra and inter Party disputes;
- to maintain a Political Parties library and archives;
- to supervise the elections of officials of the registered Political Parties.

**Hon. Delegate Koitamet Ole Kina:** Order! The Motion is there. The Mover is moving his Motion. Please.

(a) Supervision of Political Parties.

(b) Supervision of Political Parties Fund.

That was the Motion put and Moved.

**Hon. Delegate Koitamet Ole Kina:** There is information. Please.

**Hon. Delegate Winston Ogola Adhiambo:** I beg to move.

**Com. Prof. Okoth Ogendo:** Mr. Chairman, that presentation is typically what ought to go into Legislation and Article 119 (1) anticipates that when Parliament passes that Legislation, everything that Delegate is talking about will be in that Legislation.

**Hon. Delegate Winston Ogola Adhiambo:** I am not withdrawing it. *(Laughter)*

**Hon. Delegate Koitamet Ole Kina:** Thank you.

**Hon. Delegate Winston Ogola Adhiambo:** Whether something is to go into the Constitution or in Legislation, is a decision of the human.

**Hon. Delegate Koitamet Ole Kina:** Thank you. It is okay. The Honourable Delegate--

**Hon. Delegate Winston Ogola Adhiambo:** The Delegates should listen to this--

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegate, you have moved your Motion.

**Hon. Delegate Winston Ogola Adhiambo:** Honourable Delegates should listen to each other and not shout.

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegate, please. You have Moved your Motion and you are not withdrawing. So, I would like to proceed. So, please take your seat. Anybody supporting that Motion? 601.

**Hon. Delegate Luseno Liyai:** Luseno Liyai. Delegate 601, Political Parties. I happen to be in that Committee but deliberated the question of Political parties in connection with the Electoral Commission and even the funding. According to our Committee report, a lot had been omitted because we discussed how Political Parties should be registered which is nothing like this. This Zero Draft is not talking about registration of Political Parties. So, this Motion, sorry, is that sabotage, Mr. Chairman?

**Hon Delegate Koitamet Ole Kina:** Please proceed.

**Hon. Delegate Luseno Liyai:** This Motion is seeking that the Zero Draft which we are discussing now, there should be something to do with the registration of Political Parties.

**Hon. Delegate Koitamet Ole Kina:** Thank you.

**Hon. Delegate Luseno Liyai:** They have not even been created in the first place because they are just saying, Political Parties and then the funding. We have not even created them. So, I am appealing to my Honourable Delegates that we create Political Parties first before funding can be talked about. And we support him, please. Thank you.

**Hon. Delegate Koitamet Ole Kina:** Thank you. Anybody opposing the Motion. 327. Please proceed.

**Hon. Delegate Sophia Lepuchirit:** Thank you very much, Mr. Chairman My name is Sophia Lepuchirit, 327. I happen to be a Member of that Committee also and we argued very much with Honourable Delegate Luseno Liyai and Honourable Delegate Winston Ogola Adhiambo. That is a matter of Legislation and we discussed it at length in our Committee and they agreed that the matter was going to be discussed in Parliament. I do not know why the Honourable Delegates are bringing it here now. Please Honourable Delegates you cannot support it because that is Legislation. And these Honourable Delegates--

**Hon. Delegate Koitamet Ole Kina:** Thank you. You have made your point.

**Hon. Delegate Sophia Lepuchirit:** --have a personal vendetta against the Electoral Commission and I do not know why.

**Hon. Delegate Koitamet Ole Kina:** Thank you. Thank you. You have made your point.

**Hon. Delegate Sophia Lepuchirit:** Thank you very much.

*(Noise and uproar on the floor).*

**Hon. Delegate Koitamet Ole Kina:** Okay. The popular demand is that we vote and so I would like those in support of the Motion, please raise your placards.

*(Hon. Delegates raise their placards as counting goes on).*

**Hon. Delegate Koitamet Ole Kina:** Those against.

*(Hon. Delegates raise their placards as counting goes on).*

**Hon. Delegate Koitamet Ole Kina:** The “NAYS” have it and the Motion is defeated. Let us proceed.

**PLO Lumumba:** Thank you very much. May I now read Article 122 on Political Parties Fund? There is a Motion by Nyakundi.

**Hon. Delegates:** He has withdrawn.

**PLO Lumumba:** He has withdrawn. He says, he has withdrawn it.

**Hon. Delegate Koitamet Ole Kina:** Thank you.

**PLO Lumumba:** Article 123, Sources of the Fund.

Article 124, Purposes of the Fund. Motion?

**Hon. Delegate Koitamet Ole Kina:** There is a Motion. 180.

**Hon. Delegate Sammy Rutto:** I had a Motion on Article 123 (1) (b). 123 (1) (b), Sources of Funds. I actually wanted to add a small but very important statement. (b) says, “contributions and donations to the fund from any other source”. I wanted to add, the words ‘ethically and morally acceptable’ immediately after, ‘any other source’, because this will bar Political Parties from raising funds from drugs and corruption. Thank you. I beg to move.

**Hon. Delegate Kotamet Ole Kina:** Thank you. Anyone supporting the Motion? 424.

**Hon. Delegate Thomas Aburi :** Thank you, Mr. Chairman. I am Thomas Aburi, 424. I stand to support the Motion in that in this era of liberation, most criminals might tend to establish themselves politically by funding Political Parties to entrench themselves in Government. I therefore, support the Motion so that we can curtail money laundering into Political Parties for ill motives.

**Hon. Delegate Koitamet Ole Kina:** Thank you.

**Hon. Delegate Thomas Aburi:** Thank you. I support the Motion.

**Hon. Delegate Koitamet Ole Kina:** Anybody opposing the Motion?

**PLO Lumumba:** 185.

**Hon. Delegate Koitamet Ole Kina:** 185.

**Hon Delegate Abdi Sasura:** Thank you, Mr. Chairman. My name is Sasura. Mr. Chairman, with all due respect to the Mover of the Motion, I tend to believe that if we are going to add those words, after the word, “any other source”, we are going to transform ourselves into judges and I think to some extent in as much as this Constitution is going to give space to democracy

and good moral practices, we should not transform ourselves into judges. For example, we have a Kenya Anti-Corruption Commission in this Country. As a matter of Legislation, that one is empowered to deal with any matters of corruption. So, if a Political Party gets money through corruption, there is an authority dealing with it. If we say any other source, “ethically and morally” acceptable, how do we judge that, Mr. Chairman?

**Hon. Delegate Koitamet Ole Kina:** Thank you.

**Hon. Delegate Abdi Sasura:** I think it is going to victimize other people for nothing and we should not support that Motion.

**Hon. Delegate Koitamet Ole Kina:** Thank you. 525.

*(Consultations at the “High” table).*

**Hon. Delegate Ahmed Ibrahim Yussuf:** Thank you Chair. The names are Ibrahim Ahmed Yussuf. Delegate 525. Chair, I have a problem with the words, ‘morally and ethically’ correct. What we know is that in the early sixties or even before that, mini skirts were morally and ethically wrong. These days it is an acceptable form of clothing. A lot of things are changing in the world. We cannot say, this is moral and this is ethical because in five or ten years time, it is going to change. Unless we define all the things that are morally and ethically correct--

**Hon. Delegate Koitamet Ole Kina:** Thank you.

**Hon Delegate Ahmed Ibrahim Yussuf:** --then we will need to insert it..

**Hon. Delegate Koitamet Ole Kina:** Thank you very much. And I even think, just as the Chair, I think we have the Ethics and Integrity Commission which I believe may deal with this.

*(Uproar from the Honourable Delegates).*

**Hon. Delegate Koitamet Ole Kina:** So, I would like to put a question. Those who support the Motion, please lift your Placards.

**(Honourable Delegates raise their placards).**

*(Honourable Delegates raise their placards as counting going on).*

**Hon. Delegate Koitamet Ole Kina:** Those who oppose?

**(Honourable Delegates raise their placards).**

*(Counting going on).*

**Hon. Delegates Koitamet Ole Kina:** The “NAYS” have it and the Motion is defeated. Please let us proceed. Proceed.

**PLO Lumumba:** May I now read Article--

**Hon. Delegates:** Point of Order.

**Hon. Delegate Koitamet Ole Kina:** Order! 320, we would like to proceed please.

**Hon. Delegate Kiriro wa Ngugi:** Mr. Chairman, I am sorry. I had attempted to amend the Amendment and I believe we have passed--

**Hon. Delegate Koitamet Ole Kina:** Sorry, we have voted against it.

**Hon. Delegate Kiriro wa Ngugi:** Can I finish my point? Instead of ‘ethically’--

**Hon. Delegate Koitamet Ole Kina:** Sorry, we cannot open an Article that we have voted for.

**Hon. Delegate Kiriro wa Ngugi:** But hear me out.

**Hon. Delegate Koitamet Ole Kina:** Please we would like to proceed. I am sorry, I would like to proceed.

**Hon. Delegate Kiriro wa Ngugi:** Hear me out first.

**Hon. Delegates:** No!

**Hon. Delegate Koitamet Ole Kina:** I am sorry--

**Hon. Delegate Kiriro wa Ngugi:** The State--

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegate, please. We have voted on that Article and I would like to proceed.

**Hon. Delegate Kiriro wa Ngugi:** The spirit of the Mover is lost it and is lost because of the words. The spirit of the Mover can be carried by, instead of 'ethically or morally', we say disclosed source. Disclosed source will carry--

*(Uproar from the Honourable Delegates)*

**Hon. Delegate Koitamet Ole Kina:** Order! Order! Delegates-- Just a minute. You see, we voted on the amendments that the Honourable Delegate was Moving. If that amendment was defeated, his amendment was defeated, but not Honourable Kiriro's amendment. So, let us just give him one minute to move his Motion so that we proceed.

**Hon. Delegates:** Point of Order. Point of Order.

**Hon. Delegate Kiriro wa Ngugi:** Yeah. I am Moving a Motion I am Moving a Motion.

*(Uproar from the Honourable Delegates)*

**Hon. Delegate Koitamet Ole Kina:** Order! Order! Please. Order! Please. I am saying, let us understand each other. I am saying that the Delegate who Moved the Motion, Delegate 180, moved the Motion to amend the Article. His amendment was defeated.

**Hon. Delegates:** Yes.



**Hon. Delegate Koitamet Ole Kina:** But Delegate 320 also has a Motion on the same Article which has not been debated. So, please allow him so that we can proceed.

*(Uproar and noises from the Honourable Delegates).*

**Hon. Delegate Kiriro wa Ngugi:** Thank you very much, Mr. Chairman. My amendment is to put the word, 'disclose', at (b) so that it becomes, 'contributions and donations to the fund from any other disclosed source'. It has two effects. It takes the spirit of the Mover and more importantly we get to know where the Political Party funds are coming from. The word, 'disclosure' is of tremendous import to what we want to get here. I beg to move.

**Hon. Delegate Koitamet Ole Kina:** Yes. Anybody in support of that amendment.

**Hon. Delegate Sammy Aswani:** No. It is Point of Order, Mr. Chairman.

**Hon. Delegate Koitamet Ole Kina:** 368.

**Hon. Delegate Sammy Aswani:** I am on my seat, for the part of procedure, Mr. Chairman. You seem to be--

**Hon. Delegate Joel Sang:** Thank you Honourable Chair.

**Hon. Delegate Koitamet Ole Kina:** You have no seat. I have not given you the floor, please.

**Hon. Delegate Sammy Aswani:** But I hope my Point of Order cannot be denied.

**Hon. Delegate Koitamet Ole Kina:** Please take your seat. Please take your seat. I have not recognized you.

**Hon. Delegate Sammy Aswani:** I am asking for procedure. You are misleading us.

**Hon. Delegate Koitamet Ole Kina:** I have not recognized you. You are Out of Order. Please take your seat.

**Hon Delegate Sammy Aswani:** Procedure.

**Hon. Delegate Joel Sang:** Thank you--

**PLO Lumumba:** Let me just disclose information, if you read Article 125. Sub-Article (2), it says, Parliament shall specify the maximum donation that an individual or an institution or body can make to a Political Party and that will deal with disclosures.

*(Uproar from the Honourable Delegates).*

**Hon. Delegate Koitamet Ole Kina:** So, I think in that regard-- Order! Order! Order! Order! Please, we would like to proceed. Please if we raise a lot of Points or Order, we are not going to make progress. So, does that address your issue?

**Hon. Delegae Kiriro wa Ngugi:** It does not, Mr. Chairman. That does not address the issue at all.

**Hon. Delegate Koitamet Ole Kina:** Okay. So-- Order.

**PLO Lumumba:** Information.

**Hon. Delegate Koitamet Ole Kina:** Information. Yes. 012.

**Hon. Delegate Abdul Bahari:** Thank you, Mr. Chairman. My name is Abdul Bahari Ali, Delegate number 012. I would like to draw the attention of the Delegate to Article 125 (3), which says, "a Political Party shall within three months after the end of the Government's financial year publish the source of its funds". So, disclosure will be made in that Article. Thank you.

**Hon. Delegate Kiriro wa Ngugi:** That is better.

**Hon. Delegate Koitamet Ole Kina:** Thank you very much. He is satisfied. So, let us proceed.

*(Consultations at the “High” table).*

**Hon. Delegate Koitamet Ole Kina:** Yeah. Proceed.

**PLO Lumumba:** May I now read Article 124, Purposes of the Fund.

**Hon. Delegates:** Yes.

**PLO Lumumba:** Article 125, other sources of the fund.

**Hon Delegates:** Yes.

**PLO Lumumba:** Article 126, Accounts and Audits. There is a Motion.

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** By?

**PLO Lumumba:** There is a Motion-- Just one minute, by Daniel Njoroge.

**Hon. Delegate Koitamet Ole Kina:** 194?

**PLO Lumumba:** 094.

**Hon. Delegate Daniel Njoroge:** Thank you, Mr. Chairman.

**Hon. Delegate Gor Sungu:** Sorry, Mr. Chairman. With due respect to the Honourable Delegates, I thought that as a matter of necessity, if we have to make any progress, that if you have ruled and your ruling is already on the paper, then nobody should challenge that order. Otherwise we will never proceed.

**Hon Delegate Koitamet Ole Kina:** Yes.

**Hon. Delegate Gor Sungu:** I am only pleading with Honourable Delegates to please respect the Chair's ruling so that we can make progress. Thank you.

**Hon. Delegate Koitamet Ole Kina:** Thank you very much for protecting the Chair.

**Hon. Delegate Daniel Njoroge:** Thank you, Mr. Chairman. I am number--

**Hon. Delegate Koitamet Ole Kina:** Yes. Please move your Motion.

**Hon. Delegate Daniel Njoroge:** --589, Daniel Njoroge. My Motion is that Political Parties are corporate bodies and as such they should have some freedom to source for their professional services and therefore it is not proper to only restrict them to the Auditor General. Again, the Auditor General is a Constitutional office and if you read further at No. 4 (b), they are also required to report to the Electoral and Boundaries Commission. So, I think to remove that conflict, let us give them authority to source their professional services from authorized and people who are qualified to offer such services.

**Hon. Delegate Koitamet Ole Kina:** Thank you. Anybody supporting the Motion? 353.

**Hon. Delegate Joseph Shuel:** Thank you, Chair. My name is Joseph Shuel. I stand to strongly propose this Motion. I am saying this because-- I am not proposing.

**Hon. Delegae Daniel Njoroge:** Supporting.

**Hon. Delegate Joseph Shuel:** Supporting. Yes. And I am supporting because it is like we are creating an office of the Auditor General that does all the work and there could be so many other Auditors who could also give very independent views of the affairs of these Political Parties and can even give a true and fair view of the state of affairs of the Political Parties. So, what the mover of the Motion seeks to entrench is the provision that any certified accountant or auditor for that matter can be appointed by that particular Political Party and audit those accounts and

submit the report to the Electoral and Boundaries Commission. So, I stand to support the Motion.  
Thank you.

**Hon. Delegate Koitamet Ole Kina:** Thank you. There is information from 565.

**PLO Lumumba:** 565 you have been recognized for information.

**Hon. Delegate Koitamet Ole Kina:** Commissioner Zein Abubakar.

**Com. Zein Abubakar:** Thank you, Mr. Chairman. The reason why the Auditor General comes here is because the Political Parties will be given funds from the public. (*Clapping*). That is why the Auditor General is mandated to audit the accounts. Thank you, Mr. Chairman.

**Hon. Delegate Koitamet Ole Kina:** Thank you. In that view, are you still moving that Motion?

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

**Hon. Delegate Koitamet Ole Kina:** I am speaking to the mover of the Motion, please. Order!

**Hon. Delegate Daniel Njoroge:** Mr. Chairman, even for the Government funds, even for the Government Ministries, any qualified auditor can actually do it and issue a good report.

*(Inaudible noise and comments from the Honourable Delegates)*

**Hon. Delegate Koitamet Ole Kina:** So, anyway--

**Hon. Delegate Daniel Njoroge:** Even an Auditor General is a qualified auditor and again it has--

**Hon. Delegate Koitamet Ole Kina:** --thank you. Thank you. 154. Order! I have information from 154.

**Hon. Delegate Henry Obwocha:** Thank you, Chair. 154, Henry Obwocha.

**An Hon. Delegate:**

*(Inaudible)*

**Hon. Delegate Henry Obwocha:** Yes, Auditor also and Chartered Accountant. I wanted to inform the mover of this Motion that the current Act which is the Public Audit Act provides that even if you appoint the Auditor General to audit the books of – for example the Political Parties, he has the leeway in that Act to appoint even private Auditors, who will do it on his behalf. So, basically under Legislation, that is provided for. So, whether you want to appoint him or private Auditors, I think it is taken care of under the Public Audits Act.

**Hon. Koitamet Ole Kina:** Thank you. I would like to put the question. We have enough information. So, those who support the Motion, please raise your placards?

**(Honourable Delegates raise their placards).**

*(Counting going on).*

**Hon. Delegate Koitamet Ole Kina:** Those who oppose?

**(Honourable Delegates raise their placards).**

*(Counting going on).*

**Hon. Delegate Koitamet Ole Kina:** The Motion is defeated and that bring us to the end-- Sorry, proceed. Proceed.

**PLO Lumumba:** Article Number 127, on Supervision.

**Hon. Delegates:** Yes.

**PLO Lumumba:** Article Number 128, on Party Discipline.

**Hon. Delegates:** Yes.

**PLO Lumumba:** Article Number 129, on Restriction of Public Resources.

**Hon. Delegates:** Yes.

**PLO Lumumba:** Article 130, on Restriction on Holding Political Party Office.

**Hon Delegates:** Yes.

**PLO Lumumba:** And Article Number 131, on Representation to International Bodies.

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** Thank you very much. We would like to vote for the entire Chapter.

*(Consultations at the “High” table).*

**Hon. Delegate Koitamet Ole Kina:** Those who support the Motion that Chapter 10 be part of our Draft Bill, please raise your Placards? The Tellers, please speed up.

*(Honourable Delegates raise their placards).*

**Hon. Delegate Koitamet Ole Kina:** Teller 1, have you finished? Teller 1, please raise your hand when you are through. Teller 3, Teller 4, Teller 5, Teller 6, Teller 7, Teller 8, are you-- Teller 9. Okay, we will proceed to the next vote. Those who oppose the Motion that Chapter 10 on Representation be part of our Draft Bill, please raise your placards.

*(Honourable Delegates raise their placards as counting goes on).*

**Hon. Delegate Koitamet Ole Kina:** Those who abstain?

*(Honourable Delegates raise their placards for counting).*

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegates, as we are waiting for the Tellers to give us the counts, I would like to invite Professor Yash Pal Ghai, the Chairman, to invite Bishop Sulumeti so that they give us the report that we have been anxiously waiting for. 525.

**Hon. Delegate Ibrahim Ahmed Yussuf:** Thank you, Chair. The names are Ibrahim Ahmed Yussuf.

**Hon. Delegate Koitamet Ole Kina:** Order! Order! Please let us listen to the Honourable Delegate.

**Hon. Delegate Ibrahim Ahmed Yussuf:** Chair, I think I speak for myself and for some other people here. We do not want to get the report until we finish with the Legislature. (*Clapping*)

**Hon. Delegate Koitamet Ole Kina:** Let me get this correct because I am your servant. In his Point of Order, the Honourable Delegate would like us to proceed first of all with the Legislature before we receive the report.

**Hon. Delegates:** Yes. (*Clapping*).

**Hon. Delegate Koitamet Ole Kina:** Therefore, I think the report will wait and I will want to ask our Secretary to proceed with the Chapter on Legislature. (*Clapping*)

**Hon. Delegate Koitamet Ole Kina:** Before the Secretary, I think the Chairman would like to make a statement then we will know how to proceed. Please, please, Order, order please.

**Professor Yash Pal Ghai:** Honourable Delegates, the Consensus Committee has been, as you know, meeting almost continuously for the last two days. It has now achieved consensus on the system of government as well as on Devolution. I think this will be a right time for them, for the Chair, Bishop Sulumeti, to give you the principles of the consensus--

(*Uproar*).



**Yash Pal Ghai:** Listen to me please. The Chapter that you are about to discuss, the Legislature, has points both on the-- Which relate to Devolution as a system of government. And in those circumstances, it is better to hear the consensus and to see if that might be guidance for your discussions on the Legislature. So I would plead with you to-- I also should say that it is open to us and open to me as a Chair to determine the order of business of this Conference. So I am pleading with you, please let Bishop Sulumeti present the recommendations of the Consensus Committee because they do have a bearing on the Legislature, because both the system of government and Devolution are connected to the form of Legislature. So, please let Bishop Sulumeti present his report. Thank you very much indeed. I call upon Bishop Sulumeti to make presentation of the report.

*(Noise on the floor).*

**An Hon. Delegate:** point of Order, Mr. Chairman.

**Hon. Delegate Bishop Philip Sulumeti:** Honourable Delegates--

**Hon. Delegate Koitamet ole Kina:** Order, please. I would like to announce the results of Chapter 10 before he-- Chapter 10 on Representation. Those who voted for the adoption of the Chapter were 362. Those who voted against - 1.

Abstension - 1.

So, Chapter 10 shall be part of our Draft Bill. Thank you. *(Clapping)*.

**Hon. Delegate Bishop Philip Sulumeti:** Honourable Delegates, please allow me to address you while standing. The first thing I would like to do is that I owe you an apology profoundly from my heart. I was supposed to give you this report yesterday, but due to unforeseen circumstances I was not able to do so. I am only a human being and I cannot move mountains. So, bear with me, forgive me for bringing the report late but this is the earliest moment that I could bring you the report.

I thank you again for having appointed me to be your servant and I carried out the job with my team. It was a difficult job but we listened and obeyed your mandate. We have met on several occasions and the people present were, to remind you again: Honourable Grace Ogot, Honourable Wangari Maathai, Honourable Sofia Noor, Honourable Ruth Kibiti, Honourable Gitu wa Kahengeri, Honourable Kimaiyo arap Segoo, Honourable Marsden Madoka, Honourable Sheikh Ali Shee, and the ones that we had to bring together for consensus, representing the Political Parties in our land, were Honourable Kiraitu Murungi, Honourable Raila Odinga, Honourable J. J. Kamotho, Honourable Uhuru Kenyatta, Honourable Bonaya Godana, Honourable Musikari Kombo, Honourable William Ruto, Honourable Andrew Ligale and Honourable Amos Kimunya.

In attendance were Professor, our Chairman, Yash Pal Ghai, our Rapporteur General, Honourable Professor Okoth Ogeto. For sometime, the Vice-Chairman, Koitamet Ole Kina, attended but today he did not attend, and for some meetings, our Secretary, PLO Lumumba, was in attendance, but today he was not there. Also attending eh meetings was the AG, Attorney General of Kenya, Honourable Amos Wako. I would ask the Members of the Consensus Team if they could come and stand in front here.

*(Uproar).*

**Hon. Delegate Bishop Philip Sulumeti:** Okay, if you know them, fine. No, we are brothers and sisters. So it is okay. You have heard their names. Is that okay?

**Hon. Delegates:** Yes.

**Hon. Delegate Bishop Philip Sulumeti:** Okay then. So, brothers and sisters, the purpose of this consensus building process is to reach a settlement, which is lasting and enjoys wide acceptance. I ask Delegates to recognize that when you expand an idea it is bound to take a different shape in order to accommodate everyone. This should not be seen as taking away from anyone. We know that all the members of the Executive Committee spent many many painstaking hours putting together what we have today in the Revised Zero Draft. I want to pay our tribute to the Honourable Martin Shikuku, the Convenor of that Committee, and all the members of the Committee for their great work. Honourable Shikuku convened a Committee handling a very

difficult subject matter, which goes to the very heart of the Constitution we are making here. He steered this Committee with dignity and with respect, allowing every shade of opinion to have a voice in their meetings.

Members of the Committee on the Executive and the whole Conference must not feel disrespected or ridiculed by the proposals, which are coming out of the Consensus Building Committee. Do not look at these proposals as unraveling your work. Instead, look at this from a wider perspective, which will allow every single Kenyan to own the process of making a new Constitution. Look at this as a time when we might want to meet each other halfway. In order to embrace, you must come closer with open arms, not folded arms. I ask each one to open, I ask each one to be large hearted.

We have been using the analogy of the birth of a baby here. In African culture, once you give birth to that child, the child belongs to the community and not to the individual. Now, the--

*(Noise on the floor).*

**Hon. Delegate Bishop Philip Sulumeti:** Honourable Delegates, now, this is the consensus that was reached, and the consensus was reached, taking into account what the people of Kenya wanted, what the various Technical Working Committees did and finally, what the Zero Draft says, and I am telling you it is a negotiated document.

*(Noise on the floor).*

**Hon. Delegate Bishop Philip Sulumeti:** Yeah. Listen to me first. I will give you time to talk, let me finish. So, now-- If you are not in the mood to accept then I better stop.

*(Noise on the floor).*

**Hon. Delegate Koitamet Ole Kina:** Order, order! I think we are just anxious. So, let us just keep quiet and receive the report, please.

**Hon. Delegate Bishop Philip Sulumeti:** I have worked till late at night for this thing but if you do not want to accept then I sit down.

*(Noise on the floor).*

**Hon. Delegate Koitamet Ole Kina:** Order. Please let us allow the Bishop to present the report, please. Order, please. I understand we are all really, really anxious. So, let us allow him, please.

**Hon. Delegate Bishop Philip Sulumeti:** First, I am reporting on the Executive as reached by consensus and which was unanimous.

- (1) That the Executive authority of the Republic of Kenya will be reposed in the President, the Prime Minister and the Cabinet.
- (2) That the President shall be elected in accordance with rules which require the President to garner majority votes countrywide and certain percentages in specified number of regions.
- (3) That the President is the Head of State, the Head of Government, Commander-in-Chief of the Armed Forces and Chair of the National Security Council.
- (4) That the President shall appoint the Prime Minister from the party or coalition of parties with the majority support in Parliament and shall submit the name of the appointed Prime Minister to the Parliament for approval by at least fifty percent votes of all Members of Parliament.
- (5) If the Parliament does not approve the nominated Prime Minister, the President shall nominate the leader of the second largest party or coalition of parties and if the Parliament rejects the second nominee then the President shall nominate the third nominee, who shall be accepted by the Parliament.
- (6) That Cabinet Ministers shall be Members of Parliament.
- (7) That the number of Cabinet Ministers shall be between seventeen and not more than twenty.
- (8) That most of Government decisions shall be through the Cabinet and in writing.

- (9) That the Prime Minister shall be Leader of Government Business in Parliament, shall coordinate work of Ministries, shall prepare legislation and shall be responsible to the Cabinet and the Parliament.
- (10) That the Prime Minister may be dismissed in one of two ways:
- (i) Through a Motion introduced by the President and supported by fifty percent of Members of Parliament.
  - (ii) Through a vote of no confidence introduced by a Member of Parliament supported by a third of Members of Parliament and voted for by at least fifty percent of the Members of Parliament.
- (11) That the functions of the President, functions of the Prime Minister and the functions of the Cabinet shall remain largely as stated in the Refined Revised Zero Draft.
- (12) That the President shall serve a maximum of two five-year terms.
- (13) That the emphasis is on the President and the Prime Minister working in harmony.
- (14) That the Cabinet should reflect the Kenyan regional and ethnic
- (15) That the President shall appoint Permanent Secretaries and Public Commissions in consultation with the Prime Minister.
- 16) (i) The President shall appoint Ministers of the Cabinet.
- (ii) That the President shall consult the Prime Minister and take into account the advice of the Prime Minister before appointing Ministers of Cabinet under point (16) as mentioned above.

Then finally, since this is a mixed form of Government and since the people of Kenya do not really know which is best, Presidential or Parliamentary system, a Sunset Clause was arrived at and that is point (17). It was agreed that a review of the system of the Executive and a review of a Parliamentary and Presidential system will be undertaken before the General Elections of the year 2012.

*(Uproar).*

**Hon. Delegate Bishop Philip Sulumeti:** So, brothers and sisters, I can now-- Brothers and sisters.

*(Noise on the floor).*

**Hon. Delegate Koitamet ole Kina:** Order, order. We would like to receive the report on Devolution, please. Let us please allow the Bishop to give us his report on Devolution.

**Hon. Delegate Bishop Philip Sulumeti:** Just be patient with me, let me finish my job and then I can sit down. This is the consensus reached on Devolution--

### **The Levels of Government**

1. There shall be three levels of government as follows:
  - (a) National
  - (b) District; and
  - (c) Locational.

*(Clapping).*

*The district as listed in the first schedule of the revised Zero Draft, subject to review by the Boundaries Commission.*

2. Districts may cooperate with other districts for purposes of joint ventures and may set up joint committees for that purpose.
3. There shall a Regional Forum meeting at least twice a year for co-operation and co-ordination of activities of districts within the region--

*(Inaudible comments from the floor).*

**Hon. Delegate Koitamet Ole Kina:** Order! Please listen. Please let us listen to the report.

**Hon. Delegate Bishop Philip Sulumeti:** The regions shall be those which are listed in the First Schedule of the revised Zero Draft, subject to review by a Boundaries Commission.

### **The Principal Unit of Devolution.**

The Consensus arrived at:

4. The district shall be the principle unit of the devolution.

### **Powers and functions of different levels of government**

5. (a) *National Level:* It will deal with -

- (i) Legislative matters.
- (ii) Taxation.
- (iii) Resource allocation and utilization.
- (iv) Administration.

(b) The *District level* will deal with –

- (i) Legislative powers for the district.
- (ii) Taxation
- (iii) Resource allocation and utilization.
- (iv) It will also handle district administrative matters.

(c) The *Location Level* will deal with -

- (i) Resource allocation and utilization.
- (ii) Administration of the location.

Then we have:

### **Capital City and Urban Areas**

6. There shall be special legislation for the governance of our Capital City, Nairobi.

7. Legislation shall provide for the governance of other cities; Mombasa and Kisumu.

The next point is:

**Equitable Distribution of Resources.**

8. (a) The National Government will be responsible for ensuring equitable distribution of resources to all districts.
- (b) The District Government will ensure the equitable distribution of resources to all locations in that district.

The next item to address is:

**Representation.**

9. Representation at the various levels shall be as follows:

(a) *National Level*

(i) There is the National Assembly – one representative elected from each Parliamentary constituency and one woman representative elected from each district. (*Clapping*).

(ii) The senate – three representatives elected from each region, one of whom must be woman.

*(Inaudible discussions on the floor).*

(b) *District Level.*

It looks as if people do not want women.

*(Inaudible comments and laughter from the floor).*

**Hon. Delegate Bishop Philip Sulumeti:** Then District level.



- (i) one councilor elected from each location in the district.
- (ii) special seats for women to ensure one-third representation.

(c) *The Regional Forum.*

Two representatives, one woman and one man from each district government within the region.

Then,

**Style of drafting**

10. Provisions on devolution should, wherever possible, be simplified and matters of detail should be removed and included in legislation.

Brothers and sisters, that is the end of the report. (*Clapping*). Now, just give me one more minute. I beg of you. I just want two people to come forward to confirm that this is what was agreed. I am asking Honourable Grace Ogot, who was present throughout and *Mzee--*

**Hon. Delegate Koitamet Ole Kina:** Gitu wa Kahengeri.

**Hon. Delegate Bishop Philip Sulumeti:** Gitu wa Kahengeri. Please come forward. Yes just talk here--

*(Inaudible comments on the floor).*

**Hon. Delegate Koitamet ole Kina:** Order! Order, please.

**Hon. Delegate Grace Ogot:** Ladies and gentlemen, I want to say two words only. One, that it was a very, very difficult decision, very difficult discussion and all the time in my heart I asked for the presence of the Lord because it was not easy for you to wait, very anxious of what the outcome might be. What the team assured us, Ministers, Members of Parliament and Delegates, was that we are doing this on behalf of our Delegates, on behalf of Kenya and on behalf of East Africa, to which we are very close.

Should be there be parts of the documents that you do not accept, the Committee said and told us to repeat that they would quite willing to accept the views and to reconsider because doing what you are doing now, working on a Constitution after so many years of Kenya's independence is not an easy job that only a few people can discuss and come to a conclusion.

My final word, I know the presence of God is here and because the presence of god is here, He is listening to what you and I think about. Let us be very honest and very sincere, so that you do not withhold any information that can enrich this document, that will change the lives of men, women and children of this country. God bless you. **(Clapping)**.

**Hon. Delegate Koitamet ole Kina:** Thank you. *Mzee* Gitu.

**Hon. Delegate Gitu wa Kahengeri:** *Nnigependa kusimama. Mimi ningependa kuwajulisha wale ambao hatujajuana nao ya kwamba jina langu ni Gitu wa Kahengeri. Mimi nina shukurani kubwa kwa sababu kwa umri wangu, hata nimekuwa nikitaka kukutana na watu wa Kenya yangu na sijapata kukutana nao mpaka tulipokutana hapa Bomas of Kenya. Nina sema hivyo kwa sababu tuna viongozi wengi wanaojua ya kwamba tumekuwa tukitafuta umoja wa nchi hii.*

*Hata wale tulioko nao hapa hatujafika kiwango kuonana na watu wa nchi hiii wakiwa pamoja namna walivyo hapa. Kabla sijasahau, mimi nataka kutoa shukrani nyingi sana kwa sababu upande wangu wa kushoto, ninemkuta Vice President wa nchi hii. **(Clapping)**. Mimi ninataka kusema hivi: Wakati nilipozungumza hapa nilisema kitu kimoja, ya kwamba ukiitwa usikatae kwenda. Unaweza tu kukataa yale unayoambiwa ukiona hayana faida kwako.*

*Mimi natoa shukrani kwa sababu nyinyi mliuliza sisi pamoja na Honourable Delegates wengine tuende katika Consensus. Nyinyi mnajua kabisa ya kwamba tumekuwa na nyinyi hapa na mambo yote ambayo tumekuwa tukizungumza. Lakini ikafikia wakati ya kwamba ni lazima tukubali kuja pamoja kwa njia ya mazungumzo, ndiyo sababu mlituambia sisi twende tusikilize ni shida gani iko katika Devolution, ni shida gani iko katika Executive na tulikubali kufanya hivyo.*

*Kama alivyo zungumza aliyekuwa mbele yangu, Honourable Grace Ogot, nchi hii iko katika mikononi mwenu. Wale wasiojua hivyo, wajue leo. Nchi hii ikishinda kuwa na umoja ambao ni wa maisha, ni nyinyi mtaiwezesha kufika kiwango hicho. Nchi hii ikitengana, ni nyinyi*

*mmeipasua. Ukipasua nchi yako mahali umeambiwa kuitengeneza, basi ni juu yako na utalaaniwa. Ninasema hivyo kwa sababu juzi tuliona uongozi wa serikali yetu wakienda Tanzania kushikana na watu wa Tanzania, kushikana na watu wa Uganda ili tuwe na sehemu kubwa ya matembezi, ya biashara, na kila aina, tukiwa tumepanuka.*

*Ukiwa hauwezi wewe kushikanisha watu wa nchi ya Kenya, basi tunaona ya kwamba utakwenda nyuma, umeshindwa na kushikanisha regions za Kenya, utashindwa na kushikanisha districts za Kenya, utashindwa na kushikanisha divisions za Kenya, utashindwa na kushikanisha locations; utarudisha watu ndani ya nyumba. Na kwa sababu nyinyi mmechaguliwa na watu wa nchi hii, na bila shaka ni lazima kutafuta njia ya kuwaleta pamoja. Njia ya kuleta watu pamoja ni kama ile mlituma sisi kuenda kufanya, ya Consensus.*

*Hata katika nyumba yako wewe mwenyewe, unatafuta consensus na wototo wako. Consensus si kuogopa, consensus si kudharau; consensus ni kutafuta ni wapi mimi na wewe tunaweza kuishi katika maisha ya mapatano. Sitaki kuendelea zaidi ya hiyo, (**clapping**) ni seme ndugu zanguni, tunawauliza tuliyo yafikia, myaangalie kama mlivyo ambiwa na Chairman. Mkiona kizuri ndani yake, mkipokee. (**Clapping**) mkiona pasipo kizuri-- (**Clapping**).*

**Hon. Delegate Koitamet ole Kina:** Thank you very much. At this juncture, I am informed that the Vice president will also like to say something. So let us give the floor to our Delegate number 002. (**Clapping**).

**Hon. Delegate Moody Awori:** Distinguished Delegates, I will add only little of what I mentioned or said this morning to confine myself to the Report from Bishop Sulumeti. As we know in every society there are structures and in this society of Kenya, one of the structures at the moment is Bomas and within Bomas, there are also structures. You have had Committees and you have had the Plenary. Within those structures, you have exchanged a lot of views.

It is always important that in every structure when a decision is taken, it should not be rescinded unless it is by consensus. I do understand that this Plenary mandated a Committee on Consensus and since it is this Plenary that mandated it, it cannot rescind that decision.

**Hon. Delegates:** No!

**Hon. Delegate Moody Awori:** Ladies and gentlemen, it is important that we should always respect one another and accept to be convinced or not. I think this is the most important thing. Ladies and gentlemen, I am not going to deal with the merits or demerits of the consensus. I am only following the point that once you have a decision, it is always better-- We have always been led in decisions by majority, it has never been defined the amount of majority. All of us know, those who submit ourselves every five years to the electorate. Many people go back to the Council or they go to Parliament with only one majority. Others go with the majority of a thousand to ten thousand but when they sit either in the Council or in the Assembly, they are equal, whether you had a majority of one or whether you had a majority of one thousand.

What we need distinguished Delegates, is to have a respect for the structures. I listened very carefully to *Mzee Gitu Kahengeri*. *Alizungumza na hekima na ujasili na ninafikiri sisi sote tungeweza kusikiliza yale Mzee amesema kwamba tunataka nchi ambayo itakuwa na umoja, kwamba tunataka tuwe na chombo ambacho kitatusaidia sisi kuendelea kuunda sheria katika nchi hii, tutakuwa tumefaulu. Tunasema kwamba, "heshima si utumwa". "Kukubali sio kuogopa".*

We need to listen seriously to what Bishop Sulumeti's Consensus Committee has reported to us. I just want to end by asking all of us, all the Delegates, together with our families out there and together with our friends out there that this weekend, let us offer special prayers so that we will be led properly, so that we will have a good Constitution, so that we will always be friends, so that we will always accept to differ but without making enemies. Let us always be adversaries but never enemies. Please, let us have those special prayers this weekend for the success of the new Constitution of Kenya. I thank you all. *(Clapping)*.

**Hon. Delegate Koitamet ole Kina:** Thank you very much. This is the way I would like to proceed; we have a few announcements which I will now allow the Secretary to make.

**PLO Lumumba:** Ladies and Gentlemen, two announcements. Announcement number one, that the decisions as read to you by his Lordship Bishop Philip Sulumeti, have now been photocopied and as you move out, they will be available for you to pick and read and spend the weekend mulling and praying over. *(Clapping)*.

