

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

NATIONAL CONSTITUTIONAL CONFERENCE

Verbatim Report of

**PLENARY PROCEEDINGS, PRESENTATION OF RULES AND
REGULATIONS TO THE CONFERENCE**

AND

**PRESENTATION OF CONFERENCE DOCUMENTS,
HELD AT THE BOMAS OF KENYA**

ON

6th May 2003

**VERBATIM REPORT OF PLENARY PROCEEDINGS, PRESENTATION OF RULES
AND REGULATIONS TO THE CONFERENCE & PRESENTATION OF
CONFERENCE DOCUMENTS, HELD AT BOMAS OF KENYA ON 6TH MAY, 2003**

Present

- | | | | |
|----|-----------------------|---|------------|
| 1. | Com. Dr. Githu Muigai | - | Chairman |
| 2. | Com. Isaac Lenaola | - | Discussant |

The meeting started at 9.50 a.m. with Com. Dr. Githu Muigai in the Chair.

Prof. Yash Pal Ghai: I would like to call on Zacchaeus Okoth to say the prayers:

Hon. Delegate Zacchaeus Okoth: In the name of the Father and of the Son and of the Holy Spirit Amen. Can you stand for prayers please?

God our Father and Creator, you sent us your Son Jesus Christ who is the way, the life and the truth. Send us your spirit to guide us, to give us the wisdom, the knowledge and the understanding as we Delegates making a history of this country, deliberating on the Constitution. Give us the courage to do what is right, give us the wisdom and the knowledge to understand what is right and give us the courage to change what can be changed and give us the wisdom to endure even our differences that we may come out with the truth that will last forever a Constitution that will be the background and the source of knowledge, peace and love and unity of this country. We ask all this through Christ our Lord Amen. In the name of the Father and the Son and the Holy Spirit Amen.

Prof. Yash Pal Ghai: Thank you very much. I have couple of announcement to make before I administer the Oath to those Delegates who have not yet taken the Oath.

The first announcement is at the request of Mrs. Pamela Mboya. This to say that all Delegates interested on Aging issues which are covered in Article 36 of the Draft Constitution should meet at Tent No. 11 to look at possible amendments and other issues. The meeting will take place at 1.30 p.m. Tent No. 11 for the Aging issues.

The second announcement that I want to make is that when the Motion about the allowances of the Delegates was made, Dr. Godana who was then presiding had said the matter would be referred to the Steering Committee. The Steering Committee did meet this morning but we could not reach that item on the Agenda and we will take up tomorrow morning. So we will let you know the report of the Steering Committee tomorrow. Thank you.

I would now like to invite those Delegates who have not taken the Oath, if they would please assemble, here except I think for gentlemen who will take the Oath from there because he is on a Wheel Chair.

So are there any Delegates who? Yes please come forward.

Do I take it that you want to take an Oath as for affirmation? You are all taking the Oath, is that right? Yes Okay. Well we will do that in the usual way. I will ask you to say I and then to mention your names and then repeat after me as I read from the Oath. So please say I and then your names. And raise your hands please. Being appointed a Delegate to the National Constitution Conference, under the Constitution of the Kenya Review Act do solemnly swear that I will faithfully and fully, impartially and to the best of my ability discharge the trust and perform the function and exercise the part devolving upon me by virtue of this appointment without fear, favour, bias, perfection ill will or prejudice the end that in the exercise of the functions and powers as affect Delegates, I shall at all times be guided by the National Interest, so help me God.

Prof. Yash Pal Ghai. You will now please sign the Oath. If you do not have the paper we will provide one and then you will have been admitted as full members of this honourable family.

Prof. Yash Pal Ghai: Do you have a point of Order Sheikh Shee

Hon. Delegate Sheikh Ali Shee: Yes

Prof. Yash Pal Ghai: Okay

Hon. Delegate Sheikh Ali Shee: Waheshimiwa wote wa mkutano huu, ningependa kutaja jambo ambalo linatuhusu sisi sote katitka huu mkutano. Jambo lenyewe ni kuona kuwa kuna baadhi ya watu ambao wataka kuharibu muelekeo mwema wa huu mkutano wa kutengeza Katiba ya nchi yetu.

Ikiwa sisi hatu rekebishani hatuambiani yale makosa yetu, ndipo pale makosa inapoendelea baadaye ikatokea matokeo ambayo hatuyapendi sote.

Tuna wenzetu wengine mmoja ni Bw. Rev. Mutava Musyimi ambaye ana group lake la watu wa Dini fulani. Wanaanza kutuletea vurugo na mambo ambao hii nchi inaweza ikabadilika ikiwa na mvutano wa ki-dini ambao nchi hii haijawa nao. The religious conflict was not there in this country. Jambo hili limeanza na Mahakama ya Kadhi, ambapo Bw. Musyimi amekuwa akiongoza na kuchocheza watu wenzake mpaka limekuwa ni issue la lazungumzwa, limekuwa ni hot issue kwa sababu ya uongozi wa aina hiyo. Haikutosha hivo, bwana huyu amekuwa sasa katika uchaguzi wetu sisi wa viongozi wa dini tulikuwa nao ambapo dini tatu zilikaa pamoja Islamu, Wahindi wa Wakristo kuchaguawa wajumbe watatu ambao wata wakilisha katika Steering Committee. Wajumbe hawa baada ya mkutano, baadaye tukakubaliana kuwa nani, Waislamu wawe na mmoja, Wakristo wawe na mmoja na Wahindi wawe na mmoja. Baadaye, baada ya muda ilipokuja majina kuja hapa, tukamuona (interruption)

Prof. Yash Pal Ghai: Excuse me, there is a point of order

Hon. Delegate Sheikh Ali Shee: Baadaye ilipokuja majina kutajwa

Prof. Yash Pal Ghai: Excuse me there is a point of order

Hon. Delegate Sheikh Ali Shee: Tukamuona Muhindi

Prof. Yash Pal Ghai: Excuse me there is a point of order I must take

Hon. Delegate Sheikh Ali Shee: Niache nimalize Mheshimiwa, tafadhali, I am in the point of order, let me finish, then he continues.

Prof. Yash Pal Ghai: Rules require me, I was reminded the other day then I don't follow the rules, so please let me follow the rules

Hon. Delegate Gachara Muchiri: Mr. Chairman I think it is important that, when somebody raises on a point of order it is a point of order. What Sheikh is saying, he is discussing somebody without a notice of motion to that effect. I think it is wrong. A point of order must be a point of order. My name is Gachara Muchiri – Member of Parliament Ndaragwa. A point of order Mr. Chairman is a point of order as we know it in the rules. It must not be a discussion for anything or for anybody. Thank you very much.

Prof. Yash Pal Ghai: I would like--

Hon. Delegate Sheikh Ali Shee: Katika swala hili

Prof. Yash Pal Ghai: I would like to say Sheikh Shee you are really not making a point of order, you are making serious allegations against another member and under the rules of procedure you have to give me Notice of this Motion. If you give me a written notice of this motion in accordance with the rules and then I will refer it to the Steering Committee. Thank you. Thank you please.

Hon. Delegate Sheikh Ali Shee: Sasa katika swala.

Prof. Yash Pal Ghai: Please take your seat Mr. Shee. I am sorry to say--

Hon. Delegate Sheikh Ali Shee: I have not finished

Prof. Yash Pal Ghai: You are not following the rules of procedure. Please sit down. I beseech you. The Programme this morning is that Mr. Lenaola who is a Commissioner will present the Regulations which govern the conduct of the Conference and my other colleague Dr. Githu Muigai who chairs that particular session. So I now hand over the Chair to Dr. Githu Muigai, who will introduce the presenter for the purpose of introducing you to the rules of procedure.

Com. Githu Muigai: Good morning honourable Delegates. It is my pleasure to welcome you to this session in which an attempt will be made to explain the rules and the regulations governing the conduct of business in this Conference, as the Chair has said, my name is Githu Muigai. I am a Commissioner in the Constitution of Kenya Review Commission. On my left is Isaac Lenaola, he is a Commissioner as well in the Commission and has been involved in the drafting of the regulations and the amendments to this regulations. I will give Mr. Lenaola thirty minutes maximum, so that he may summarise for you the most pertinent aspects of the regulations, then I will open the floor to you honourable Delegates, so that you may seek such clarifications as are necessary. Mr. Lenaola.

Com. Isaac Lenaola: Thank you very much, Commissioner Muigai. Before I go to the substance of the regulations. Can you hear me? And can you see me I am told I am very tiny, so they don't see me from very far. Let me proceed.

The first thing I want to say is that, if you have lost any money this morning, that has nothing to do with regulations about money, if you have lost any money see Mr. Koitamet Ole Kina after this session or you may also see me. Going to the terms of the regulation, I am sure you all have the green document called the Information hand book for Delegates and that is where we shall find our regulations. So before we go in the substance of it, would you please retrieve from your green bag the handbook for delegates which is the documents that contains the regulation. If you don't have it, please ask for an usher to collect one for you. Thank you very much.

While you are doing that, I propose not to go through each regulation, but I propose to just pick out a few, which I think are of importance to you Hon. Delegates. Let me start very quickly by saying that, the power to make regulation is contained in section 34 of the of the Act and this power is given to the Commission by that legislation and that is the reason why these regulations were drafted and Gazetted by the Commission. But at some point I shall indicate to you as Delegates what role you can play in terms of the amendments or revision or further amendments to the regulations.

If you are now with me and you now have the handbook, let me very quickly start with the matters of conduct of Delegates. And I will refer you to page No. 24 of the hand book. Page No. 24 contains regulation No. 39. That regulation is headed General Conduct of Delegates. And it says during a sitting of the Conference all Delegates shall dress in a dignified manner. I am happy to say that, that rule has been totally complied with so far.

The second rule in that regulation is that we shall enter and leave the Conference with decorum, and therefore haphazard movement in the conference is prohibited as the regulations.

No. 3 you shall not read Newspapers, books letters or other documents, except Conference documents, so that you can concentrate in the work of the Conference.

No. E, while a Delegate is speaking all other Delegates shall be silent and not make un seemly interruption. While a Delegate is speaking no other Delegate should speak. I presume when I am speaking therefore I should not be interrupted.

No. F. Applause is permitted, if done with dignity and No. G. No Delegate may leave his mobile telephone on and therefore if you mobile telephone is on now. Please comply with that regulation and turn it off.

Having so done about that as conduct as Delegates, let me now take you right back to page No. 13 of the regulations. Now that Mobile telephones are off, we are all quite, we are reading the regulations only, let us now go to the substance of the regulations.

No. 3 is the Committee on accreditation, and that has done its work so far and that is why you as Delegates are here with us.

Regulation No. 5 on next page, page no. 14 what happens if the office of a Delegates falls vacant. And if you look at regulation No. 5 (ii) the Commission will fill the vacancy from the Organization or the body that sent you as a Delegate. Therefore if you came from NGO, the Commission will fill your post from the NGO's, if you came from Women Organization we shall do likewise. And if you are a Member of Parliament you cease to be a Member of Parliament by

petition by whatever manner, we shall replace you by whoever comes from your constituency. Let me very quickly then, and forgive me I have to be in a rush because I have been given a very short time to go through the regulations and I presume you also read the regulations therefore I will only pick on salient points.

Page No. 15 have regulation 10. Now if you look at that regulation, there are two issues that come out of that, one there is something called a sitting of the Conference. And a sitting is a whole day of the Conference. Then within the sitting we have sessions, therefore we have a sitting and a session of the Conference. And therefore we are saying that a sitting may be divided into two or more sessions and that is what we are doing the last two or more days, where we have a session within a sitting and we are doing that a little later.

Look at article No. 12 what languages shall be used in the Conference. We have said that both English and Kiswahili shall be used and as you can see at the front there we are also having sign language translators for our brothers Delegates who cannot speak. And also we are saying at the end of the Conference all documents of the Conference shall be in Braille, for our friends who cannot.

On the next page, and later I will explain that there are certain amendments which have been made to the regulations since they are published, and I will highlight them as we go along.

Regulation 13, if you remember we said that we now have not one Vice Chair Person in the Conference but 3 Vice Chair Persons. So may have to amend your regulation 13 to indicate that there are 3 Vice Chair Persons in the Conference in view of our own decision at the Plenary.

Regulation 14 talks about who Chairs the Conference. By Law under the Act the Chair Person of the Conference is also the Chair Person of the Commission and therefore Prof. Ghai is the Chair person of the Conference. But we have said that certain sittings of the Conference will have other people assisting him. The 3 Vice Chair Persons and in their absence a member of the Steering Committee and that is what Regulation 14 says. Regulation 15 talks about who is the spokes person of the Conference. Again under the Act the spokes person of the conference is the chair Person of the conference. And therefore when you speak to the press in your capacity as a Delegate, you don't speak for the conference. You speak for yourself and for your Constituency.

But for the Conference the Chair Person of the conference is the spokes person of the Conference.

What is the quorum for this Conference? Article 16, if you look at Section 27 Sub-Section 4 of the Act, it says that the quorum of the Conference is half the members of the Conference present and voting. Half the members of the conference present and voting. And that is why at Article 16 we are putting provisions where in the event where there is no quorum, then a bell is rang to confirm that there is no quorum. Then if there is no quorum, that will accord the Chairman to adjourn the Conference to the next sitting. But of course, I presume in this Conference we shall never fall victim to a lack of quorum (inaudible)

Who can adjourn the Conference? Article 17, we are saying that the Chairman or the Chair person of any sitting may adjourn the Conference for a day or a Delegate such as you and I by Motion may move that the Conference adjourn for a day and the Conference will then vote for that adjournment. But if the adjournment exceeds 3 days, then the Steering Committee must rectify that decision by naming then the Conference itself must approve adjournment beyond 3 days. The reason is that we want to give the Conference Delegates the opportunity to manage the Conference in terms of when it can proceed, when it can adjourn and so on.

Now let me very quickly take you to the Structure of the Business of the Conference. This is part 3 of the Regulation. If you look at article No. 18, we are saying that the Commission shall lay before the Conference the following documents, now under the Act the Commission has certain documents that it must lay before you as Hon. Delegates. Those documents if you again at your regulations, if I may please take you right slowly back. Let me take you with your permission to page No. 6 of the handbook. But please note that we are going back to 17 after we come back from page No. 6. Page 6 has what are called Statutory Documents, and those documents are if you noticed are in green. All the documents in green are statutory documents.

Then you have another set of documents called working documents for the Conference to assist you as delegates to understand how the Commission reached a conclusion both in the report and in the Draft Bill, and those documents were given to you and these are the documents which are in red and orange. The big bundle of documents in red and orange and am informed that 70

Delegates have not collected these working documents. Please do so after this session at the back there. Those who have not collected the working document we give them at the back. Now these working documents will assist you in both understanding scenes the behind draft and also why we reach certain conclusion in the Draft and also in the National Report. I am not going to go into details about what they contain and therefore that will be your obligation.

How do we debate this National Report and the Draft Bill? We shall have a section called the general debate where delegates will speak on the merits and demerits of the report and the Draft Bill. And at the general debate level, each delegate will get a matter of ten minutes to express their views on the draft on the National Report and that is the section I go into immediately the Chairman lay the document before you Hon. Delegates. Then you can speak on the Merits and demerits of document as you may wish, but remember you have only ten minutes by the regulation and therefore assist the Chairman of whatever session, when you get 10 minutes and you have talked, understand it by Law and not by discretion of the Chair.

The second stage is what is called the consideration stage. Now the consideration stage is where we shall break in Technical Working groups. Later sometime we may break in technical working group, you will know where you are going to fall. That is the point where you will sit and debate article by article, the particular technical group issue you have been given. If you are on Legislature you will debate that chapter article by article. Make amendments or make additions or make revisions.

Let take you back and remind you that your role as delegates in this Conference is to discuss, to amend and adopt the Report and the Draft Bill. And now the place for you to do that firstly is at the consideration stage, where you sit and debate word by word the contents of the draft, including where a comma is placed, and where a full stop should be placed. That is the stage where your input will be mostly felt.

To assist you to understand how we shall debate the draft Bill we have, rules for consideration of provisions of the Draft Bill at page No. 35 of the handbook.

Let me take you there very briefly, before I take you back to page No. 17. Page No. 35, I would encourage you at your own time to read that second schedule very carefully. But just to guide you, the first rule says the following order shall be observed in considering the Draft Bill.

- A) Articles are printed and new articles in their numerical order.
- B) Postponed articles
- C) Schedules as printed and new schedules in their numerical order and
- D) The preamble and
- E) The title.

So you will start to discuss the articles by article and then you come back later to discuss the Preamble and the Title. And the reasoning is that when you want to get the substance of the document, then that will lead you to know what must guide the Preamble and therefore what the contents of the Preamble might be. Therefore what title to give the document.

Let me kindly take you back to page No. 17. Now Article No. 21 remember that after you sit as technical working groups you will bring back your report to the Plenary, speaking as now and keeping as a Committee of the whole. This is not easy for Members of Parliament I am sure. But the conference sits as the Committee of the whole. So the report of the Technical Groups are brought back to the Plenary for you to discuss and debate the entire document from article 1 to article 295 or whatever article we shall have and that is the last stage of consideration.

The next stage will be adoption of the Report and Draft Bill, that is Article no. 21 on page No. 18 of the regulation. Now what will happen is that, you will consider the entire Draft Bill, make such amendments as you wish and then you send it to the Drafting Team, we shall have experts sitting with us to assist the Conference in Drafting this Document in the language of a consensus am there to remind that one of the principle that we set up from the beginning of process is a big document, will be so simple to read, it should be be reader friendly. Not like the present Constitution which as you are aware is a jumbled up document, it is very difficult English and very long wordy statements. The idea is that come from you should be simple and very easy to understand and to read and the is the work of the drafting team as you have seen in article No. 21.

Let me take you to article No. 22 which is part 4 of the Draft which gives you the conduct of business. Firstly, you remember that in the last one week you have been receiving the Order Paper, and the Order Paper states the business of the day and that is what we said in the Article No. 22 that as much as possible. The Secretariat to provide to you members an Order Paper detailing out business of a particular date. But remember in a process of this nature, it may be difficult to do everything on the order paper, and therefore it must be revised by the Steering Committee as we go along.

I will come back later and discuss the Steering Committee.

Article no. 23 is very important page No. 19. With permission of the Chair person a delegate may make a statement on any matter of urgent public important on the Conference's functions or explain a matter of personal nature at the time appointed but no debate may arise on a personal explanation. If you recall that a week ago, some members of these Conference stood up to say that they were mis-quoted by the Press and the things that were said about them they didn't say. Remember there was no debate on those statements because they were personal statement. Now other delegates may comment on any statement other than personal statement for a period not exceeding ten minutes. For example if an issue raised is raised which touches on the rights of the delegates, then of course other delegates may well wish to speak on same issue but not for more than ten minutes for example question of welfare. When a delegate raised that question, of course other members have a right to also raise and support that issue.

Article 24, I think it is very important that we understand Article no. 24 and Article No. 25, 26, 27, 28, 29, 30, 31, 32 up to 32.

Article 24 to Article number 32. These are the Articles relating to motion. I think we are still jumbled up as regards to when a motion is a motion and when a motion is not a motion. We must be clear in our minds when a motion is a motion. In any event Article 24 says that notices, a motion shall be in writing signed by the delegates giving the motion, and that motion must be with the secretary a day before any sitting. Therefore, if you have a motion any sub-stantive issue regarding the conference or the document before us. You must be sure by preparing a written notice of motion.

Having so done you must look at Article 25 to ensure that the motion is seconded by another delegate. A motion which is not seconded is invalid and therefore as you prepare your motions also look for a seconder to the motion.

Now, how do we determine which motion come up? Article 27 the Steering Committee shall determine the order in which motions shall be moved. And therefore, once you give your motions to the Secretariat it goes to the Steering Committee to say the following motion shall be heard today and the following motion shall be heard tomorrow. This is purely a question of management of questions before the conference. Article 28 very clearly says you can withdraw your motion at any time.

Article 29 of course we are trying to stop repeating motions. If a motions has been made previous and determined we don't read it again.

Article 30 you can amend you motion and 31 you can withdraw amendments. The amendments to the motion.

Article 32 please understand which motions that don't require a notice of motion. Yesterday Mr. Sang from Bomet quoted that article correctly, that if you want to move a motion relating privilege you don't need to prepare a notice of motion you can read it from the floor, and that is what article 32 is all about.

Let me indicate to you at Article 33 that the way to speak in the conference is by raising you hand. I am sure you noticed in first four days people were not raising their hands they were grabbing the microphone. So wherever you find a microphone you grabbed it and spoke. I think by that time you could be forgiven because you were all green in the conference, but now we are no longer green. If you wish to speak please raise your hand to the chair, and you shall be given the opportunity to speak.

Article 33 (2) we don't refer to another delegate as that woman, or that man, or that Kikuyu or that Samburu or that guy. We refer to the delegates as "the honourable delegate." Now this

gives the dignity they deserve. So lets not throw words in reverence to each other and that is clear Article 33 (2).

In Article 34 during debate let restrict our arguments and debate to the draft bill or the draft report so we should not have extraneous matters being brought into the conference.

I wish to take you to Article 34, we shall be out of order to use offensive and insulting language in reference to any other delegate or official of the delegate and sub-article 4, no delegate shall impute any improper motive to any other delegate, but of course you have a right under the rules to bring in a sub-stantive motion to discuss the conduct of any delegate.

Article 35, 36 and 37 are really guidelines to chairpersons of sessions and chairpersons of the conference. Therefore, those are not matter that we can go into at this moment.

Let me take you very first into Article 41 on page 24. Article 41 is a duplication of section 26 of the Act where at some point you require simple majority, you don't have to take account you can actually take a voice vote in a matter which is so clear you don't have to go to voting from the conference it is clear it a anonymous point, but sometime it may require division and that is what Article 41, 42 and 43 refers to. Where it is not clear that a matter has been to taken anonymously you may require then the chairperson to call that division, and if you noticed when you come into the conference there is a place called the "NOES" and "AYES" so at some point we may have to divide ourselves into to those who are saying 'noes' and those who are saying 'ayes' and then the rules for the divisions are regulations number 43 and that is very clear if you care to read.

Article 44, I think it is very, very important for you. This is a contention issue of committees. Article 44 refers generally to committee but specifically to ad hoc committees. Committees which are formed for a particular purpose by the conference to further it's functions. Now, we have given sub-article 2 the number of people who may form a committee. Remember these are not the standing committee, these are ad hoc committee which have a particular purpose for the conference. I shall come to the standing committee in a short while, but just to say this. On page 26 sub-article (2b) each committee shall have a convener elected by the conference on the advice

on the Steering Committee from among its members, and I think therefore, later on we shall make the committee you will realize then Steering Committee will determine from a given experience of people who can convene, but that issue has to be taken you in the plenary then the names are brought back to you for approval.

Let me just take you to Article number 45 specifically sub-article (6) on page 27. Each committee shall have a clerk and also two Commissioners who shall be rapporteurs. Rapporteurs are people who just write the report of the Commission. As you are aware that the Commissioners do not vote both in the committees or in the plenary their role is to sit there and merely participate in the deliberation but cannot vote on any issue in the conference but they shall do the final report which shall come to you to approve.

Sub-article 8 the rapporteurs shall prepare the report of the committee and sub-article 12 there shall be a Rapporteur General of the Conference who shall be the overall overseer of all the rapporteurs in all committees.

Let me take you very fast to Article number 46 on the Steering Committee and I am sure during the discussions last week and early this week you are aware now that the composition of the Steering Committee has changed and just to indicate to you that the additions made to the Steering Committee are as follows.

Article 46 (1C) instead on not more than 10 other delegates, it must read not more than 21 other delegates. So please cancel 10 and write 21. Sub- article (1A) the chairperson and the Vice-Chairperson, please write the Chairperson and the three Vice-Chairpersons. Then, after the Secretary of the Commission over the page (g) the Speaker of the National Assembly is now a member of the Steering Committee as *ex-officio*. The Minister of Justice and Constitutional Affairs as *ex-officio*, the Chairperson of the Parliamentary Select Committee as *ex-officio*. The First Vice-Chairperson of the Commission as *ex-officio*.

I did indicate that I will now take you to the functions of the Steering Committee because that is an important issue.

1. Consider and approve the workplan of the conference and this is what they have doing since that time.
2. Revise the outline as necessary.
3. Monitor progress of Committee and regulations of the Conference.
4. Co-ordinate work of the Committee.
5. Review regulations and make recommendations to you and to the Commission.
6. Adopt alterations.
7. Carry out such functions as the conference may assign.

So, really it is a management committee of the conference and as you are aware now they are busy working.

Article 47 of the Drafting Team which I referred to in Article 21 I don't want to go back to it.

Article 48 refers to the Committees on Privileges, discipline and welfare and I think that is a very key Article I don't have to deliberate.

Article 49 is very, very important page 31. These are the technical working groups. If you notice, I am sure you have read it. The working groups are framed in a manner that is connected to the draft bill and therefore, they fall within the chapters of the draft bill. Each of you as you are aware will belong to a technical working group, but we can also sit in any other, without having the right to vote, and that if there is an interesting technical group you can visit, contribute but you can't vote and that is what Article 49 is all about.

In terms of the procedure and the manner of conduct of these groups page 32 sub-article 5 have the purpose of these regulations, each technical working group shall be deemed to their committee of the conference and therefore, to refer to the rule of the technical groups you must go back through number 44 on General Committee in terms of procedure, rapporteurs, clerks, convenors, reports and so on. You must go to rule 44 to understand how technical working groups shall operate. I am coming very near to a close.

Regulation number 50 is the Secretariat and that is so clear I don't to deliberate the issues about the Secretariat. This must be a happy point for you Article 51 I am not saying that you cannot be sued but I am saying in 51 a delegate shall not be liable to any civil action or suit for or on any matter or thing done or omitted in good faith as delegate. Therefore, your conduct as delegate shall not be liable to any civil proceedings. Also no delegate shall be liable to arrest while proceeding to, participating in or returning from any meeting of the Conference or any of its committee. I think the word is in good faith.

Article 52 is about persons unqualified to sit in the conference I think that is very clearly. An important aspect for the media Article 53 there shall be Standing Committee in the conference to advice on media. Please amend Article 53 (1). We shall consist of three Commissioners and six delegates instead of four delegates, please rub four and indicate six delegates.

Then, sub- article three instead of the Media Advisory Committee being the one to exclude the media houses we are saying the Steering Committee on the advise of the Media Advisory Committee may exclude any media house from the conference. So the Steering Committee on the advice on the Media Advisory Committee.

Article 54 although you know that the Commission is the one mandated to make and amend these regulations, they thought that Article 54 is important so that if you as delegates think at some point that these regulations are wanting then you can by two-third resolution recommend to the Commission amendments to any part of the regulation, and the Commission of course in good faith again must refer to the wisdom of the conference and amend the regulation as you so wish. Ladies and gentlemen I thank you very much for listening to me.

Com. Dr. Githu Muigai: Thank you very much Commissioner Lenaola. You kept to time and that is very useful. I will now open the discussion to the floor honourable delegates. Anybody who has a question or seeks a clarification or in any other way would like to hear further on these regulations. I will also request Prof. Okoth Yash Pal Ghai, Prof. Okoth Ogendo and Mr. Ndoria Gicheru all of whom are very, very conversant with these rules to support Commissioner Lenaola in responding to your questions. Yes, we will start on my left the lady up there.

Hon. Delegate Caroline Chemosoi : Hounarable Chairperson, I am Chemosoi Caroline from Keiyo district. I want bring to your attention regulation 33, a delegate wishing to contribute to the debate shall indicate so by raising his hand. It should be his or her hand. Thank you.

Laughter.

Com. Dr. Githu Muigai: Well, I think that is a clarification that is considered. Thank you every much. Yes, out there honourable Sasura. For the record if you could please state your name into the microphone.

Hon. Abdi Sasura: Mr. Chairman, I am delegate number 185 honourable Abdi Sasura from Marsabit. I would like to seek a clarification with regard to regulation number 54 which is the last regulation on recommendation for amendment of these regulations. It clearly says that it is the mandate of these honourable delegate in this conference to amend these rule by vote of two-thirds majority, but over the week we have seen cases where the Steering Committee or the Chairman has amended these rules by way of adding to the Constituencies. For example the political parties and other interest groups. All I want to ask is with regard to rule number 54 is the Steering Committee or the Chairman exempted in amending these rule and just bring it to the conference for a general endorsement with “AYES.”

Com. Dr. Githu Muigai: Thank you. I would like to ask Commissioner Lenaola to respond to that particular question because it is very, very fundamental to an understanding of how these regulations where supposed to operate and then we will move on to other questions. Could you Sir.

Com. Isaac Lenaola: Thank you very much honourable Sasura. First of all let me explain the section 34 of the Act gives the Commission the mandate to make and unmake these regulations at any time. So that mandate lies squarely with the Commission. However, we thought that we need to give the conference the opportunity to also have an input with the regulations by putting Article 54. The amendment which have been made since last week, were amendments made on the authority of the Commission by the Commission but we also got inputs from the conference itself. Therefore the buck regarding the amendments made in the last one week lies

squarely with the Commission not with the Chairperson of the conference or the Steering Committee and therefore the amendments which I have just read out are read out on the authority of the Commission but the conference still retains its authority under 54 to make other recommendations which the Commission will take into consideration. That is the position.

Sorry, so there are two ways to amend the regulation.

1. By the Commission on its own volitions
2. By the conference under Article 54

Com. Dr. Githu Muigai: I will ask Prof. Okoth Ogendo to make a clarification.

Com. Prof. Okoth Ogendo: There is a third way of suggesting amendment to the regulations and that is found in regulation 46 (3F & 3G). The Steering Committee can also recommend amendment to regulations.

Com. Dr. Githu Muigai: Thank you very much. Any other queries? The honourable delegate from Kisumu town.

Hon. Delegate Shakeel Shabbir: My name is Shakeel Shabbir delegate number 406 representing Kisumu district. The Chairman and honourable delegates I would like to get a clarification on rule number 51 (1) a delegate shall not be liable to any civil action or suit for or on any matter or thing omitted in good faith. So last week one of my colleagues a delegate was arrested in this conference. She was arrested and she was covered on the national media. We wondered whether that was the best way of doing it and whether that particular aspect is covered under this particular point, and if so. Could you please clarify on what is and what is not?

On the other side with due humility, with all humility Sirs, will be possible if the main table could come down here so that we can relate to you on a level that we can. Because we are finding it difficult to seeing you up there. It's just humility and this is just a suggestion. Thank you Sir.

Com. Dr. Githu Muigai: Yes Mr. Njiraini delegate from ICPAK. I remind the delegate the rule that was read to us about the mobile phone and request each one of us to make sure that we have switched off our phones. Yes Sir.

Hon. Delegate John Njiraini: Thank you Chairman. My name is John Njiraini I am a Certified Public Accountant representing the professional bodies. I have two questions. One is on the recording of the proceedings of the conference, because I do believe that the record of the proceedings of the conference will form the basis for future decisions, and I have noticed that we are not confirming the record of the proceedings. I think it is extremely important that we find a way by which we confirm the proceedings of this conference. I noticed that for example the record we got of the proceedings that took place on 30th of April were not correct in certain respects, and when attempts were made to raise those issues the opportunity was not provided. So think we need to agree a way by which we are going to confirm the record of the proceedings.

The other question is on the issue of discipline. The success of this conference will depend on how well we conduct ourselves. We have already gotten a very bad record out there in the public that we are making decision via Commission, we are shouting each other down and so on and so forth. So people are bound to lose faith in what we are doing here unless we maintain discipline. I think you have come up with a very good sort of regulations but one thing you did not say is what will happen to those who will not observe these regulations. I think we need to agree on that.

Com. Dr. Githu Muigai: I will allow the delegate up there mzee and then come back to you Sir.

Hon. Delegate Dubat Amey: Thank you very much. I want to raise an issue which is of a little bit of concern. I am very sorry Mr. Chairman you know some of us are members of the disabled community and at times we are very much disadvantaged. If it is raining it is so happens that the metrological department is not predicting the weather patterns properly. Mr. Chairman as a Muslim I know rains lies with God but they are technocrats very highly paid people. They must give us proper focus of the rain so that we can prepare ourselves with umbrellas, pullovers and jackets. Above that Mr. Chairman weather prediction is very important in development. This

information is supposed to be disseminated to the farmers and pastoralists. I think it is high time that this issue is addressed. If these people are not able to predict perfectly let them employ for traditional weather forecasters who are better than them. Thank you very much.

Com. Dr. Githu Muigai: Thank you very much. I concede that those are very legitimate issues but I would like to request delegates that since this session is dedicated to a discussion of the regulations. Please let us confine ourselves to the regulations and we will deal with those other issues at another forum Kathurima M'Inoti and then the right honourable gentleman here and then we come back that way.

Hon. Delegate Kathurima M'Inoti: Thank you Mr. Chairman. I am seeking some clarification about rule 8 as well as rule 52. Rule 8 says subdues proceedings shall be open to the public and rule 52 says no person who is not a delegate shall sit or vote in the conference. I did not see any kind of further public gallery here and my understanding is that everybody who is here is either an accredited delegate or an observer. Outside there actually members of public are not able to get in because they do not have badges. Where is the public?

Com. Dr. Githu Muigai: Thank you Sir and then Prof. Kibwana will follow and I will recognize down here Sahabi and we move back that way and the honourable Nicholas Biwott will follow.

Hon. Delegate Cllr. Maalim Ali: Thank you Mr. Chair and honourable delegates. I wish to refer you to page 8. My name is Councillor Maalim Ali delegate number 259 for Mandera. Page 8 on an issue touching on first aid. I am asking what happens to a delegate since here it is saying that there is a first aid tent at the Bomas of Kenya premises. Such a delegate requires service not available at the first aid unit, he/she will be taken to hospital/doctor of his or her choice within Nairobi and the delegate will meet the medical expenses. The CKRC has a general medical cover for in-patient purposes, however this does not cover for the pre-existing medical conditions. Now what happens if a delegate in a city hotel falls sick at midnight? What provisions are there that he gets medical attention immediately?

Com. Dr. Githu Muigai: Noted, Profesor Yash Ghai will answer later on that one. I ask professor Kivutha Kibwana and...(Inaudible) so you have two questions while we are setting up,.....

Hon. Prof. Kibutha Kibwana: Thank you the chairman, my name is Professor Kivutha Kibwana, delegate 56. I think because of our having amended regulation 46, there are also other provisions which will need to be amended; for example, regulation 13 which says the first vice chairperson of the commission shall serve as the vice chair person of the conference. I think one needs to look at a lot of the provisions to ensure that they are amended in line with our amendment of 46.

I recall during the discussion of 46, the Attorney General was also going to be an ex-officio member. I remember that some of argument was eventually when we are done here the draft bill will be passed to the Attorney General for onward transmission to Parliament, so maybe that needs to be taken care of. Of course the regulations are quite technical to some extent, and they are like parliamentary regulation standing orders. So, I hope there will be flexibility so that us delegates can debate with more ease than it is usually is in Parliament so that the delegates are not alienated very much. Thank you very much.

Com. Dr. Githu Muigai: Thank you very much..... Honorable Nicholas Biwott, and then I will stop further comments until Mr. Lenaola has responded and then I will start with Honorable Mutula Kilonzo. Then I will come to where you are sir don't worry at all. Yes sir

Hon. Delegate George Mwaura Mburu: My name is George Mwaura Mburu, delegate number 586. I am asking the Honorable chair to consider even those delegates we don't now by name. Thank you. (*clapping from the Delegates*).

Com. Isaac Lenaola: Thank you very much your suggestion is taken on board. Please state your full name when you get the microphone so that everybody else is able to tell who you are.

Hon. Delegate Gervase Akhwabi: Mr.chairman, my name is Gervase A.Akhwabi delegate number 593 representing one of the political parties to this conference. Mr.Chairman and

honorable delegates in this country we have had a number of task committees constituted by the Government in the past. These committees have undertaken or task forces, have undertaken various tasks in various areas pertaining to the law and other matters in our governance. I will request that among the documents that be made available to these conference be reports by these commissions. I am happy that the Attorney General is an ex-officio member of the Steering Committee.

I will urge the steering committee to ask the Attorney General to make available these recommendations. For example; we have a report I believe by the Njonjo Commission on land and land reforms. There is no reason why the technical committee dealing with land in the draft should not have that report.

Mr. Chairman, secondly, while considering and participating in the proceedings of this conference, I would request that, serious consideration be made to follow what the Act says. For example section 27 of the Act sub-section two is very clear on who constitutes the conference. There has been a deliberate attempt to exclude political parties from certain committees of this conference. I think that goes against the intent of the Act and that should not be the case. Because if you exclude political parties on the basis that the political parties are represented by Members of Parliament you miss the point, because, Parliament in its wisdom has Members of Parliament as a different constituency from political parties. That is why I am here representing Ford Kenya, as a part of the constituency.

Com. Isaac Lenaola: That Point is well made sir.

Hon. Delegate Garvase Akhwabi: Thank you

Com. Dr. Githu Muigai: Thank you very Much. Honorable Biwott

Hon. Nicholas Biwott: Thank you Mr. Chairman. My name is Honorable Nicholas, delegate number 16. My question relates to Article 46 1(d). By the convenor because here it states that the members of the steering committee will supply the convenor to the technical working group or to the committee. How flexible is the steering committee or the management of those who are

management the conference, to allow these convenors to come from the technical committee themselves? They are supposed to be (inaudible) with the chairman?

Com. Dr. Githu Muigai: Thank you I will allow the commissioner to respond but I recognize Mutula Kilonzo, Atsango and Chesoni and Muheshimiwa Ali, and that is where I will start.

Com. Isaac Lenaola: Thank you very much. Mr. Shabir on the delegate who is arrested within the premise of the conference where we do not now the circumstance under which he was arrested but, rule 51 is only clear, that it is only civil, we are not limiting you from being arrested from criminal offences which you have committed else where or even here, so that difference must be made very very clear.

Bwana Njiraine on the recording of the proceedings, I wish Lumumba was here to answer that but let me say this. Right behind us as you can see, are people who are recording these proceedings verbatim. The lady at the corner is doing verbatim recording and those are the reporters who are doing it by hand, so the proceedings ought to be recorded word by word. At least that is the much I can say about the recording.

On discipline, how do we enforce discipline? Please look at page number 24 of the regulations, of the handbook. Regulation number 40 says "the chairperson shall be responsible for the observance of order". Therefore if you look at sub-section 2 and 3 there is even sub four which says, "three, is that you may order someone to cause the person to be thrown out of the conference, and four you are even referred to the Committee on Privileges, Discipline and Welfare to deal with person. So, regulation 40 is enforcement of orders so that is what you asking, that how do we enforce if you become miscreants in the conference how do we handle it. That is under Regulation 40 and it is very clear how the chairperson can enforce order in the conference.

M'Inoti on regulation 8, our thinking which may not be clear on from Article 8 is that, if you look at the marginal lines of Regulation 8, its observers and other invitees, so perhaps it is not very clear that the persons who are referred to in Article 8 are the observers and all those who we invite from time to time, not really the public as in the public at large. a Therefore if you read

that Article 52 then you will understand the strangers are not allowed. There are those who come to the conference these are only those who are invited under rule 8. I think that is (inaudible) into that.

I will ask the chairman later to answer the medical cover question, but for Professor Kibwana perhaps you missed the point when I was saying that we must amend Regulation 13. I even read out the amendments of regulations 13 in line to what you have just said. So the amendments to clause 46 could have affected 13 and also 10, so that is all covered.

The other point is that the Attorney General, he will come to the Steering Committee as Attorney General. Infact of the twenty-nine commissioners, out of 629 delegates, the 29th commissioner is the Attorney General. So he comes to the conference not as Attorney General but as a commissioner, and therefore he sits at the Steering Committee as a commissioner like other rapporteurs so he is sitting there as a commissioner, so we didn't put him there as Attorney General.

Rules I think how they are flexible depends on who chairs any session. I think if a person sees that there is a bit of flexibility as you chair, that is a question of management from this podium. I was going to ask the chairman to say on the working documents by GBK but I am aware that the Attorney General has given us all the task force reports on all the various issues, and I think they can be available in the library for members to peruse. That is all I can say Mr.chairman.

Thank you Mr. Chairman please maybe you should say something, and then professor Okoth Ogendo.

Pro. Okoth Ogendo: Two very quick points: -

1. There is a fully-equipped library that is available for reference for reference by delegates and all the documents that you will require will be available there.
2. On Hon.Biwott's points, in the amendments of regulations, if you look at the regulation 44 2(b), we are going to have to delete the words "from among its members". So that

regulation simply will “shall to have a convenor elected by the conference on the advice of the Steering Committee. Because when those words were there, because the confiners came from the Steering Committee, now the convenors will come from the working groups, and then join the Steering Committee. Thank you.

Pro. Yash Pal Ghai: The two issues that have been referred to me by our chair; one is why are we sitting here and not down on the floor? The reason is that, it is much easier for the chair and the speakers to be able to interact with the honorable delegates from this point. We have once or twice had the speakers and the chairs down there, and we did that on the afternoon of the formal opening. It is exceedingly difficult to see who the delegates are, it is hard to see one section of the delegates because there isn't enough visibility if one is sitting down there. It was indeed the recommendation of the delegates on that afternoon who suggested that it would be better if we moved here. So, it is really more from efficient our point of view to be here. I know that it is not the ideal arrangement but I do believe it is the best we can do in this hall.

I am not able to answer the second question, which is about the insurance cover Mr. Lumumba will get the answer to you in due course, but I believe that we have facilities for the in-patient treatment which we cover just like all other medical policies, what I call pre-existing illnesses are not covered. But I don't really want to give you any definitive answer, and I would suggest that we wait until Mr. Lumumba is back and he can give us an authoritative answer. Sorry there was question.” Where is the public?” Well this conferences is supposed to be opened to the public in the sense that the proceedings of this conference are televised, they are covered in the media. The difficulty that we have as you can see is that we have a large number of delegates, we have certain persons who have been given observer status, and it is not really possible to accommodate very many more. We also derive that there might be security problems if people would come and walk in and out as they wished.

We are not able as in Parliament to separate the members from the general public, and so we hope that the general public is able to observe the proceedings from the coverage in the media, but we don't really have facilities for them to come physically here. We have accommodated a number of institutions and persons who any special interest in observing the proceedings, and

they are called call as you now know observers, but we really can't accommodate any more than that limited number.

Thank you very much.

Male speaker: Yes point of order.

Hon. Delegate Mwai Gakuya: I could like to thank the chair and fellow delegates; my name is Mwai Gakuya delegate. I am asking is it possible to have a live and direct coverage of this conference? Because, of the importance of the proceedings that are going on, for the whole nation and a Wanjiku wherever she is, she can know what is going on. Thank you.

Com. Dr. Githu Muigai: I will then return to the three people on my list, Hon.Mutula Kilonzo, Mrs.Atsango Chesoni, and Muheshimiwa Ali, I could then recognize people out there in the middle, shall we start with way up there? There? Is there a point of order? Please ensure it is a point of order, who has it? Could you be up there standing please so that the man with the microphone will see you? Okay there, I can see you sir don't worry he is coming there now.

Speaker Unidentified: Why is it that you are discriminative, you are only mentioning people whom you know by names? Why not other delegates?

Com. Dr. Githu Muigai: Very well sir, I don't know you sir but I have recognized you so don't worry I will get there in a minute. Shall we start then with Honorable Mutula Kilonzo. I promise you sir you will be next.

Another point of order?

Interjection: I think they are getting restless now.

Hon. Delegate Mkawerweren B.Chebii: Honorable chairman, I would like to request you one important thing,

Com. Dr. Githu Muigai: Could you please tell us your name sir?

Hon. Delegate Mkawerweren B.Chebii: My name is Mkawerweren B. Chebii from Marakwet number 336. I could like to make a very very good argument for a point of order. One thing is that you have been on other side so much so that I feel humiliated, that you have been citing people's names because you know them. I could like to know why do you call names and why do you not call names from other delegates? Thank you.

Com. Dr. Githu Muigai: With all due respects we have already sorted that matter out, we have said that the next set of speakers will come from that section and then we move to that side. So please lets move on. Is there another point of order? Yes, lets hear the gentleman.

Hon. Delegate Peter Kang'ethe Nkoroi: Thank you Mr. Chairman, Honorable delegates, I think .. my name is Peter Kang'ethe Nkoroi delegate number 278 from Meru south. I think it is inorder to refer to the delegates as honorable delegates and let the delegates gives us the names. Thank you Mr.chairman.

Com. Dr. Githu Muigai: Thank you very much. Now we will go to Honorable Mutula Kilonzo.

(Laughter)

Hon. Mutula Kilonzo: Thank you Mr.Chairman, I could like to say that it is not my fault that you know my name so I sincerely apologize to the other delegates for this but I have known you for many years. My chairman my question regards the question of flexibility on the business of the committees. I noticed that under regulation 44 2(c), you have said that the quorum of the committee will be half of the members. I feel myself and with the utmost respect that the committees should be allowed at least a quorum of say 1/3.

I have in mind a situation where you might find that the business to the committee does not start merely because members have not arrived. I don't think it will cause a lot of hardship to this

conference to consider retaining 50% numbers for quorum of the plenary itself but reducing it to 1/3 for committees.

The other issue is, regulation 44 (6). It is the question of co-option. I also noticed an element of rigidity, because the regulation says that a committee may co-opt not more than two delegates.

Personally I felt that we should allow head harding by committees, so that if they the convenor of a committee feels that he or she can get useful contribution from as many members of the conference as possible, then he can surely arrange for co-option. I also suggest that the steering committee considers that.

The final question I wish to raise Mr.Chairman and again only for clarification, is regulation 49 sub regulation 3, where you say, technical working groups shall consist not more that 60 delegates but other delegates, who shall have no right to vote may attend their sittings. I could like to know whether “attend” here also includes contribute, because I don’t want delegates to merely attend and then they are told you cannot contribute to the proceedings. Thank you Mr. Chairman.

Com. Dr. Githu Muigai: Thank you very much. The lady delegate up there.

Hon. Delegate Atsango Chesoni: Thank you Mr. Chairperson, Honourable delegates, my name is Atsango Chesoni. I am delegate number 510. I would like to request (inaudible) the provision regarding the official documents that are circulated within the conference. I say so because during the course of the past few days that we have been meeting here, I have on occasion received communication or I have witnessed other delegates receive communication that does not necessarily pertain to the matters of the conference, and yet they are being circulated by fellow delegates. So I think we do need some probational regulations regarding communications and whom communication originates from. Thank you.

Com. Dr. Githu Muigai: Thank you. The delegate right down here, Mzee

Hon Delegate Asitaluko Adungo: My name is Asitaluko Adungo number 394 from Teso District. I could like to make an observation on regulation 46. One of the functions of the Steering Committee ought to determine the order in which motions are moved, that is not listed under sub- regulation three and yet it is a very important function.

Another observation on the same on the same regulation 46, is sub-regulation 4, the last words under ‘h’ should have laid under sub regulations 1 (c) instead of 1 (b) since 1 (b) has no relevance where it is now.

Com. Dr. Githu Muigai: Thank you. The last comment from this corner of the meeting. Now we will head to that particular section.

Hon. Delegate Dr.Ali: Mine is just some comment Mr. Chairman. My name is Dr. Ali delegate number 006. When we are talking of the committees, the number of people who will form the quorum, we are taking of half the committees members, but when we are talking of regulation number 54 we are talking of $2/3^{\text{rds}}$ of the delegates present and voting. So, if you are only 30 in this conference room and with $2/3^{\text{rds}}$ decided to amend the rules then that will be in order. So could you or the Steering Committee or the membership look in to that to see what can be done on that? Thank you.

Com. Dr. Githu Muigai: Thank very much. I will start with those who are down here, Yes sir that is you, and then we will go up that way and move to the right. Please try and keep your comment short, so that we can accommodate as many people as possible.

Hon. Delegate Charles Lwanga: Thank you chairperson my names are Charles Lwanga delegate 380 from Kakamega I want to refer to Article 38, which talks about interruptions, which can be allowed on point of order, point of information and procedure. Please tell us what all this means so that we cannot confuse them, and if there are any further points please tell us what they are.

I also want to refer to you to section 43 part 2 which talks about the “AYES” will move to the lobby and “ NOES” to another lobby, I don’t know what those lobbies mean. Then, also further

down, three says that the chairperson shall direct that doors or any other access to the plenary hall be closed. Again you have to tell us where those doors are, because I have seen only one. Thank you Chairperson.

Com. Dr. Githu Muigai: May I make a request first of all. Please hold on, could I please get an indication as to the number of people who have questions about the regulations so that we may make estimation on how much time we need. Could you be so kind as to lift up your hand? Could you please stand up? Maybe it is easier that way. I think that in the circumstances I could like to exercise the powers vested in me to declare a tea break, so that we do not seem to be hurrying to conclude a matter that is really substantial. So I have declared a tea break for the next 30 minutes and we shall start quarter to mid-day.

Thank you.

Com. Dr. Githu Muigai: Continue with the discussion on the rules and regulations. If honourable members would be seated. Please take your seats, so that we may continue with the final part of our discussion of the regulations. I will now accept questions. We are now taking questions from those delegates seated right in front of the podium. Any questions there? No, not quite. Maybe then we should move on to another section. Any delegate with any question or clarification? Yes Sir... and then the delegate behind you, we will come to you Sir.

Hon. Delegate Paul Nakitare: Thank you honourable Chair. My name is Paul Nakitare, delegate 392 from Bungoma. My first question or comment is relating to regulation 24 which is related to submission of notices. Honourable Chair, I would like to have a clarification with regard to available facilities to the delegates especially in terms of typing. Because this motion requires to be in writing and accordingly signed. What facilities are there?

And may I add that my attempt to seek for this particular facility have been fruitless because it is being said that we will have to meet some of these costs including typing and photocopying. I thought honourable Chair that these are facilities, which should be made available to the honourable delegates.

Secondly, in relation to rule 24 and also closely related to regulation 49, about Technical Committees. If a delegate wishes to move a substantive motion that will affect the structure of the draft Bill that calls for substantial, new subject matters which should be discussed by the Technical Committees. I would like to find out honourable Chair, when such a motion should be tabled. I have a particular motion that I would like to submit that may require the introduction of a Chapter and that may require or affect the reorganization of the whole Conference. So may I please have clarification on this matter. Thank you honourable Chair.

Com. Dr. Githu Muigai: Thank you very much. The honourable delegate next.

Hon. Kilemi Mwiria: Thank you the Chairperson. I am honourable Kilemi Mwiria, delegate number 137 from Tigania West, Meru North. I would like to seek clarification on Article 51, sub-section 2. “No delegate shall be liable to arrest under a civil process while proceeding to, participating in, or returning from any meeting of the Conference or of any of its committees”. At what point shall an honourable delegate be deemed to have started proceeding to the Conference or a Conference meeting?

Com. Dr. Githu Muigai: Thank you very much. The delegate behind you there... yes Sir.

Hon. Delegate Isa Ireri Ngunia: Thank you Mr. Chairman. My name is Isa Ireri Ngunia. I am delegate number 286 from Mbeere District. I am referring to page seven of the booklet on regulations, the issue on accommodation. Where it says that the delegates will be accommodated in hotels. And where it continues to say that the CKRC will not meet the expenses of any person accompanying a delegate. Due to these regulations, some of us actually are unable to stay in those hotels. I have not been staying in a hotel and I have reasons for that. There are also some other delegates who are unable to stay there. It continues in page 8, somewhere where it says that the Commission will not pay any other type of allowance or privately arrange accommodation. I am seeking clarification because; say like we have a lady who is an honourable delegate who has a maid and a small baby. We also have delegates with other problems who need to come with somebody accompanying them. And when it is said that the Commission will not pay any other allowances and it then seems like some of us may not be able

to stay in those hotels. I wonder what happens to the allowance, to the expenses that of course the delegate was supposed to incur in those hotels. Thank you Mr. Chairman.

Com. Dr. Githu Muigai: Point made, thank you very much. We will now move back to the center, yes Sir.

Hon. Delegater Saipstone Ngelaatu Musau: Thank you very much Mr. Chairman. My names are Saipstone Ngelaatu Musau, delegate number 295 from Machakos. I will take you to Article number 5, vacancy in office. It is indicated that “Where a vacancy occurs in the office of a delegate, referred to in Section 27(2)(c)-(e) of the Act, another delegate shall be appointed or elected in such a manner as the Commission may prescribe to represent the organization or body who was represented by the delegate who vacated office.” If you check in the Act you realize that (a) and (b) concerns Commissioners and Members of Parliament. And Mr. Chairman I think, Members of Parliament are people who represent so many people and if that delegate happens to die, you will find that there is a constituency which has more than 100,000 people and this is a Conference which is taking place only once. I feel those people would not be well represented here.

Secondly, there is no time framework for a delegate to be elected. For example let us say, one delegate here unfortunately happens to die there is no time framework to say that after two weeks or after one week another delegate will be elected. Thank you.

Com. Dr. Githu Muigai: Thank you very much. The gentleman up there, I think that is Mheshimiwa... no, no, the gentleman to your right, honourable Maalim.

Hon. Delegate Maalim Mohammed: Thank you Mr. Chairman. My name is Hussein Maalim Mohammed, delegate 107, Member of Parliament for Dujis, Garissa District. Mr. Chairman, I would like to get clarification on Article 49.

My understanding when we were coming to the Conference was that the Conference will deliberate on the Chapters for example the Preamble, citizenry, representation of the people etcetera, etcetera. But I can see here we are going to break as a Committee because all of us

have interests in these Chapters. What will happen to my interests when I am not in this committee? Because I was thinking we were going to start one, finish then continue to the other one. That was my question, thank you very much.

Com. Dr. Githu Muigai: Thank you very much. I think we should pass it to the gentleman at the back. Yeah, there are two gentlemen there, both of you will speak, obviously sequentially. Let us start with the one on the left.

Hon. Delegate Kiriro Wa Ngugi: Thank you Mr. Chairman. My name is Kiriro Wa Ngugi, delegate number 320 from Kiambu. I am concerned about the time management that we are going to adhere to here. One week after we came here, it is in my very humble opinion that we should have made more ground. And again very humbly, this problem may in fact lie under regulation 46, where we have a Steering Committee when is finally constituted of 53. With the greatest possible respect, a group of 53 people out of 629, that is not a Steering Committee, it is a sub-Conference.

This sub-Conference of 53 may in fact be a hindrance to how much progress we are likely to make in any given time. My guess is that in that kind of situation, out of 53 people, the way the human nature is, that a smaller caucus within that 53 will emerge, inevitably if this thing is to move forward. So in the interest of transparency, is it possible under the rules that we know and acknowledge a smaller group within the Steering Committee that may in fact meet outside of the working hours, instead of wasting one hour, one and a half hours of our time everyday. So that it directs the sub-Conference of 53, which then directs the full Conference of 629. Thank you very much.

Com. Dr. Githu Muigai: Thank you. Yes Sir, that is you

Hon. Delegate Gacuru Wa Karengi: Thank you Mr. Chairman. My name is Gacuru Wa Karengi, delegate number 314 representing Maragua District. Now, there was an issue that was made just before we went for tea by another honourable delegate on the recording and the accuracy of the documents particularly on the votes and proceedings. This being a historical event Mr. Chairman, I think it is important that we ensure that the records that are kept here are

correct. I was not sure how that issue was responded to and I think it is a very important issue that we should make sure that all the records that are kept including some editorial things like the names of the delegates and so on. I think it is important that we have an opportunity probably to look at them so that we are sure the records are right. Thank you.

Com. Dr. Githu Muigai: Thank you that point is well taken. The lady at the far back.

Hon. Delegate Mary Teresa Osunga: Mr. Chairman, I have some questions to address here as regards to regulations in this booklet...

Com. Dr. Githu Muigai: Could you please state your name.

Hon. Delegate Mary Teresa Osunga: My names are Mary Teresa Osunga, delegate from HomaBay, Nyanza. As regards the clothes that we are supposed to wear. I realized that most of us are wearing clothes that make us to be dignified indeed. But to make permanent that dignity can clothes be sold around here so that if I wanted to add some I can buy. That is one question.

Then the other one, is the issue on the types of motions. There is the motion that is given to withdraw strangers. I wonder how you will know the strangers you are withdrawing. Generally, what types of dresses should be worn? Because some people may want to wear '*longies*' and they are ladies.

Com. Dr. Githu Muigai: Thank you very much Madam. We will now... yes, the gentleman at the back there, Chair has recognized you. Yes Sir, that is you.

Hon. Delagate Boniface Muganga: Thank you Mr. Chairman. I want to make reference to regulation 14 and regulation 15(b). My name is Boniface Muganga, delegate number 99 Member of Parliament for Voi. I want to believe that these regulations 14 and 15, also have been downloaded from Section 27 of the Review Act. What I am raising Mr. Chairman is that, the Commission led by Professor Ghai has prepared a report and draft Bill that you are going to present before these honourable delegates of the National Conference.

What I am saying, how will it be, when professor Ghai, leading the Commission, you are presenting the draft Bill then you run to the other side of the table and receive the same report that you have prepared? Is it possible that you can lead this Conference? To audit, to debate, to interrogate your own work that you have done for the Commission? I am submitting Mr. Chairman, in this very important exercise in the interest of natural justice, fair play, accountability and transparency, you owe it to the nation and indeed you have a moral obligation. When you are going through that exercise of interrogating, these work that you have done, you should disqualify yourself from being the Conference Chairman. Thank you.

Applause from the delegates

Com. Dr. Githu Muigai: Yes, the gentleman to your right.

Hon. Delegate Waithanje Minjire: Mr. Chairman, mine is that I have heard you say we have... Ooh, sorry, my name is Waithanje Minjire. I did hear you say that we have what you call Personal Accident Cover.

Com. Dr. Githu Muigai: Could you Sir tell us your name?

Hon. Delegate Waithanje Minjire: I said Waithanje Minjire.

Com. Dr. Githu Muigai: Thank you.

Hon. Delegate Waithanje Minjire: Number 304. I understand you have an insurance cover for all the delegates. I would like to know on behalf of the delegates, what are the benefits in case of death, permanent or temporal disability, medical and maybe loss of income. The other one is, is it a 24 hr cover and where does it cover? Does it cover us from the hotels to Bomas of Kenya and return or does it cover from the date we entered here on the 28th until we finish?

Com. Dr. Githu Muigai: I have understood your question Sir. I will ask the Secretary to be here in a short while to answer that. Yes, gentleman up there please and then we will come to you Mr. Speaker Sir.

Hon. Delegate Ali Wario: Thank you very much Mr. Chairman. My name is Ali Wario, delegate number 206, M.P. for Bura. Mr. Chairman, I want to refer you to Article 51(2). “No delegate shall be liable to arrest under civil process while proceeding to, participating in, or returning from.” Now, I want a point of proceeding, is it from our home areas or from a Nairobi hotel?

Two, Mr. Chairman, I am so perturbed by the welfare of the delegates. As somebody moved the motion yesterday Mr. Chairman, with all the due respect for the Steering Committee which is to consider that, why cant we reconsider the issue of paying hotels this big amount of money and instead give this money to delegates to spend in the hotels of their wish then come in the morning freely.

Applause from the delegates

Com. Dr. Githu Muigai: Very well, we have heard you. Yes Sir, it is your turn now Sir and we are coming back to this side now. After you is the gentleman behind you.

Hon. Delegate Arap Ngeny: My names are Samuel Arap Ng’eny, religious organizations. I would like to refer you to page 12 of the regulations. Now, you will see there honourable Chair, you have legal notice and there is no number. And the other day I heard you saying, or somebody in the... (inaudible) there that these regulations had already been gazetted. I will be interested to know that gazette notice.

Secondly, subsequent to that, if that is the case, what will be the status of any amendment either by the Commission or by this Conference when you carry out amendments like we did in respect to 46? Three Mr. Chairman is on the procedure particularly the relationship between the procedure of the Articles and so on in respect of the draft Constitution, when the Conference is in full session and when the Technical Committees are working.

On page 35, you have indicated under (1) that is the second schedule Rules for Consideration. The consideration of the various sections of the draft Constitution will be done in these

Technical Committees. And I notice that you have put there the full brief on the procedure as if the whole Conference was missing which includes adoption and so on. Can I get clarification on that because I think the Committees will be working on specific Articles and therefore the rules of procedure for conducting those should be slightly different from the ones when those Committees are reporting back to the whole Conference for adoption? Thank you very much.

Com. Dr. Githu Muigai: Thank you, the gentleman at the back, right behind this.

Hon. Delegate Edward Charles Ohare: Thank you honourable Chairperson. My names are Edward Charles Ohare, delegate number 386, Vihiga District. Mine is a humble suggestion. I have seen from the start up to today that the Steering Committee meets in the morning and so takes away the time that you should have been here for serious deliberations. I wish to suggest that the Conference should be starting in the morning at the right time which is 9 o'clock and we go on up to say 3.30 or 4 p.m. and then it ends there. The Steering Committee then can go and meet, because we the delegates would also like to have time to consult, lobby and do other things. Then we shall also be having time to do that if the Steering Committee meets at that time. The Conference should always end at say 3.30 p.m. Mr. Chairman.

Com. Dr. Githu Muigai: Thank you, point well taken. I will allow the gentleman right behind you and then after that, I will allow the Speaker to answer those questions so that we may take other questions from my left here.

Hon. Delegate Ole Yiaile: Mr. Chairman, I am delegate 361 from Narok. Ole Yiaile is my name. I am referring to Article 54. The question raised this morning by honourable Sasura, which I don't think was answered to my satisfaction. If you read that Article, it clearly stipulates that when there is an amendment or a resolution to be passed, it must be approved by the full house, by the floor here. The amendments that have already been passed have not been brought to the attention of the delegates here. I would not like us to start on the wrong footing where someone later on could come and say the whole Constitutional process was based on illegal grounds, some people were brought without the approval of the delegates and that kind of thing.

Article 46, which was referred to us by one of the Chairmen who answered, empowers the Standing Committees and not the Commission alone. So I still think and plead that whatever amendment so far that has been done, be brought to this floor for approval and discussion by the delegates. Thank you very much.

Com. Dr. Githu Muigai: Thank you, I will allow commissioner Lenaola to respond to those questions then we will take some more.

Com. Isaac Lenaola: Thank you Mr. Chairman. This is a bunch of questions and my colleagues will assist as I go along. Honourable Mutula Kilonzo, we had said that *ad hoc* committees will have a maximum of fifteen members. In my thinking, fifteen members, half the quorum is seven, at the most eight. I do not think we should really make it so flexible in committees that the quorum is $\frac{1}{3}$ rd so that people can very easily miss out on committee meetings because of low quorum. I think half the quorum of fifteen is attainable in a meeting such as this. So that really is a matter for debate. But of course the question of co-option may well be a valid point that co-opting two, out of fifteen may be a very low number. As regards Article 49, when you attend as a member of a committee from another committee, you are attending and you can contribute to the deliberations but you cannot vote. I think I said that very clearly during my earlier presentation. You attend and deliberate but you cannot vote as an outsider.

Asango's question on documents I think is valid and I think we should limit what... but I think again that is a point that is taken. Dr. Ali, we must understand that, the Act in Section 27 says that the quorum of this Conference is half the members present and voting. So the words 'present' and 'voting' are not borrowed from anywhere else but from the Act itself. And therefore when we use it throughout this regulations that is not the entire Conference but members present and voting, they are borrowing from the Statute. And we are limited by the Statute in that regard. So we could not go outside the Statute as regards members present and voting, so we borrowed it directly from the Statute.

Com. Isaac Lenaola: Charles Lwanga asked... I was trying to avoid having to go through the whole question of division. But let me just say this, when you say at Article number 38 that a

delegate shall not interrupt another delegate. All we are saying is that at Article number 13, you only interrupt another delegate Article 38 (a) by raising a point of order. And I think we have done it here during the sessions. When you are at a point of order, you interrupt the person speaking and the Chairperson of the session can give you a point of order and as at here we have done that very clearly.

The second point, is to elucidate some matters raised by another delegate in the course of the speech. So that if for example I am speaking and you wish to add to what I am saying, then you can ask me to sit down and I concede the speech so you can continue from my point. That is what Article 38(b) talking about. I concede my time for you to elucidate what I was going to say. But really, interruptions are limited to those two aspects.

Regarding the decision, I think I did say that at Article number 43(2), the Chairman will declare a division by saying, the ayes will go to the right of the lobby. And as you come into the hall, you will see that there is a notice saying that the *ayes* on that side and the *nays* to this side. So if a division was to arise, all those who are voting no, would come to this left and all those who are voting yes will to that right. And the lobbies for voting are at the spaces behind you. And that is how we shall take the decision. That is the much I can say about this. Regarding doors, really there is only one door the rest have been closed. So if we close that main door, no stranger can enter during a division. That is the point about division and that would answer Mr. Lwanga.

About typing facilities and photocopying facilities, I will leave the Secretary of the Conference to brief you. Honourable Miriti, Article 51, if you are arrested for a civil matter outside Bomas of Kenya and you are coming to Bomas, obviously you are coming, proceeding into Bomas. If you are in the Conference and somebody arrests you outside the hall, you are participating in the Conference. If you are returning from the tents into the plenary and you are arrested because of a civil case, yes you are returning to meeting of the Conference. So, I thought this really should not be made as if it is an extremely difficult thing to attain. If you are coming from, Honourable Wario also, if you are coming from your home and you are carrying your green bag to the Conference and you are arrested for a civil case obviously you are returning from the Conference. So I think really let us not make it as if it is a grand issue, which can make the Conference stall because of arrest for civil matters.

Accommodation again, I will leave to Lumumba. Mr. Musao, we have regulations regarding election of members of this Conference. And again, let me leave that to Lumumba to say about the period for notice between a vacancy arising and elections being done. There is a particular procedure, which the Secretary is well versed in and I think he would like to answer that himself.

Honourable Maalim Mohammed, Article 49 I think I did say very clearly, that we have three stages of debate. One the General Debate, two consideration stages at Technical Committee level and three Consideration at the Plenary of the Conference sitting as a Committee of the whole. So we have those three stages. Now, at the General Debate, you participate right in this hall. At the Technical Stage, you participate in the Technical Stage. But those Committee reports from Technical groups will come back to the Conference. And again you have an opportunity to now give contribution on every Article, every Chapter at the Conference. Therefore you are not limited by your Technical Group alone. You have two opportunities to speak both at the consideration stage under the General Debate. So you are not limited to your Technical Group.

Mr. Ngugi, I think the Chairman of the Steering Committee may well answer the size of the Steering Committee. I think he is best versed to reply to the size and whether or not it is feasible to have a smaller group within the Steering Committee. Suffice it to say this, Article 45(1) at page 26 allows committees to adopt the same procedure as the Conference itself. And since the Conference can make committees, even committees of the Conference can have sub committees to manage their affairs. So we are not limited really in terms of size and so on.

The recording of proceedings, I think we should go back to the issue. We said that the proceedings are being recorded as verbatim; the best we can say is that the Secretariat can then attempt to ensure that they are accurate in terms of their recording. Mary Asunga, there is a procedure for...You see that when you come in you are vetted in terms of what badge you are wearing and therefore where you are going to sit. So, strangers cannot walk in without them being vetted. So there is a mechanism to ensure that people who are not delegates, or are not observers, or are not invitees cannot come to the Conference.

Dr. Mghanga, on the role of the chairperson, can I speak for him on this one? The Act is very clear. The chairperson of the Conference shall be the chairperson of the Commission and that chairperson of the Commission is Yash Pal Ghai. If you want to change that, please go back to Parliament and change the Act. But until we do that, we have the mandate and I think we have the obligation to follow the law to the letter and therefore to say that the Commission should disqualify itself is as good as saying let Parliament go back to Parliament tomorrow and amend the Act and disqualify the Commission. If they do that we shall follow the law to the letter.

Waithanje, about the insurance cover; again Lumumba has taken notes on that and he will answer the question on insurance cover. Hon. Ng'eny, you were asking about the legal notice publishing the regulations. The legal notice is number 412, Kenya Gazette Supplement number 37 of 22nd of April 2003. So we have that legal notice and some of you have it in your files. So, they were gazetted and all amendments which we shall make subsequent will also be likewise gazetted in the same manner. So, they are not illegal regulations as you are trying to allude.

Procedure for groups; again I will refer you to article 45. The procedure for groups and committees is similar to the procedure for the Conference. Therefore, if you want to move a motion within the committee you follow much the same procedure as in the Conference itself because we have transferred the procedure of the Conference to the Technical Working Groups and also to the committees. So that again will guide you as you go along.

Let me, lastly, before I give my colleagues an opportunity, readdress this question of article number 54. Like I said earlier, only the Commission can make and unmake these regulations. However, the nature of the Conference is such that we cannot as a Commission close ourselves within the confines of the law and say whatever recommendations you make at the Conference have no meaning and therefore we shall not amend the regulations the way you want. What we are saying is that you as the Conference can actually recommend to the Commission by this vote a certain amendment to the regulations and the Commission of course will defer to the authority of the Conference.

Look at what we are saying about the Steering Committee. Article number 56 of article 3F, to review this regulation from time to time and make such recommendation. Again the operative word is recommendation. We are not giving the Steering Committee power to make regulation.

They too as much as the Conference can recommend to the Commission amendments of the regulation. So, we are not taking away the power from the Commission neither are we closing the door or the Steering Committee and the Conference to recommend amendments for revision to these regulations. So, let's make that point very clear. Thank you Mr. Chairman.

Com. Dr. Githu Muigai: Thank you. I will ask Prof. Ghai to speak to the issue of the Steering Committee and then I will ask the Secretary to respond to the questions on the insurance cover.

Prof. Yash Pal Ghai: It does seem to me, if I can speak frankly that the Steering Committee has become very large. I had assumed a Steering Committee of about 15-20 would be as large as a Steering Committee should be. But as you remember there was a lot of pressure from different groups to have their representatives on the Steering Committee and so we ended up with what is really a very large committee. I had assumed that with a smaller committee, we could meet at eight and by nine we could have finished the business of the day and the Plenary could begin at nine. But with the size that we have, it is very difficult to transact business with any speed.

Today we had about six items on the agenda and we only managed two before we reached 9.30 am and had to come to Plenary. I had intended to discuss with the Vice Chairss of the Conference the possibility of some smaller group drawn form the Steering Committee which might be able to meet periodically when an urgent meeting is necessary. Another difficulty with this large size is that it is often difficult to find a convenient time when everyone can assemble. So I should be, after discussion with the Vice Chairs, perhaps be bringing a motion to the Steering Committee itself to consider ways in which we can expedite the work of the Steering Committee. Thank you.

Com. Dr. Githu Muigai: I will now ask our Secretary to answer this very important question of the insurance cover.

P.L.O Lumumba: Thank you very much Chair. First, let me point out that we have a session on Friday that will be devoted to finance and benefits. But for the moment, let me indicate that these are the covers which you enjoy as delegates. Number one relates to medical cover. The medical cover you enjoy is with AAR and this cover entitles you to inpatient treatment at the

private wing of the Kenyatta National Hospital to a maximum of Kshs. 500,000. Note however that those with pre-existing medical conditions which are ordinarily excluded should notify us in the forms that were issued to you in which you set out your personal details.

In addition to the inpatient, we are running jointly with the Ministry of Health an outpatient clinic which is in the same area as the dining hall. It is manned by three doctors and that is available to you and medication is available to a limited extent. Further details will also be given to you at the Friday session devoted to it.

The second question is the personal accident cover. We have taken a personal accident cover with the Insurance Company of East Africa which entitles you in the event of death, of course not yourself, but those who will live after you are dead, God forbid, to a sum of Kshs. 500,000. In the event that you loose any member of your body, you will also be entitled to certain benefits and these will be made known to you at the session dedicated to matters of finance and administration.

We also want to revert to the question of typing facilities. There is available a room next to the site where tea is served with six computers. We assume that most delegates are computer literate and that therefore you will use these facilities. In the event that you are not computer literate, you will be guided from that room on how to be served in terms of typing benefits.

On the question of accommodation, you will want to note that we have negotiated rates with a number of hotels. These hotels are the Six Eighty Hotel, The Hotel Boulevard, The Meridian Hotel and The Bounty Hotel. We are in the process of determining and stabilizing the list of delegates who are residents in these hotels and then we will begin to deal with individual complains of the inadequacy and/or inappropriacy of these hotels and this will be dealt with again on Friday in a more focused fashion at the session devoted to it.

The proceedings of this Conference are being recorded at the following levels: Number one; the Commission has its own verbatim record, the Commission has solicited the support of Parliament which is also recording verbatim. In addition, the Commission has young men and women who are taking notes. In addition, the Commission has solicited and obtain the help of Parliament in taking notes. We have four different methods of taking the proceedings of this

Conference and one serves as a counter check upon another and I believe you cannot do any better if not to over kill the process.

The other question is in the event of a vacancy arising in the membership of this body, if it does, there are several levels. If one is a Member of Parliament, it is the Act of election that introduces a new member and therefore that is defined by law. If, however, a vacancy were to arise by reason of resignation or by any other reason, we are obligated to cause to be issued a 21-day notice to the panel that is charged with the task of electing the member who may have resigned and/or lost his seat otherwise and an appropriate election will be conducted and the vacancy will be filled in that way.

Ladies and gentlemen, I beg that in matters of finance no questions of clarification be paused to me because on Friday you will have the occasion to speak to all these issues and I rest my case Mr. Chairman.

Com. Dr. Githu Muigai: Thank you very much Mr. Patrick Lumumba our Secretary. I believe honourable delegates are satisfied with those clarifications and if not please bear with the Secretary as he has requested until Friday and then you will have an opportunity to put those questions again.

An Hon. Delegate: Point of order.

Com. Dr. Githu Muigai: There is a point of order. I would beg you sir to ensure that it is a point of order and not a contribution on a substance, please.

Hon. Delegate Stanislaus Wambua: My names Stanislaus Wambua Kasoka a delegate from Machakos number 296. I will take issue with the Secretary. I think there has been a lot of quarrels and dissatisfaction from the delegates about their own welfare in the hotels, their welfare here and the question of finance. Talking of Friday, that is too far. He can allocate or rather I ask the Conference to allocate tomorrow or this evening to discuss these things because the delegates have been actually complaining.

Com. Dr. Githu Muigai: Well I am afraid you may have very legitimate concerns there but that is not a point of order. The Secretary has requested time to put his house in order and I think it is reasonable that he has heard your sentiments and he will do everything in his power to deal with those matters expeditiously. I hope that yours is a point of order. I fear if it isn't I will have to over rule you. Could you sir? The man behind.

Hon. Delegate Caleb Mujumba: Bwana Chairman and honourable delegates, this morning on the transport we had a problem and we had to alight out of the bus at the City Mortuary there. So I would like the Chair to look into the transport because the bus we are using is too old and that is why we were stranded on the way this morning. I am Caleb Mujumba from Vihiga.

Com. Dr. Githu Muigai: Mr. Caleb, I would again wish to inform you sir, at this point I will only accept points of order. Yours is not one of them. Again I concede, the Chair concedes the legitimacy of the issues you are raising. Ladies and gentlemen, honourable delegates, we must structure our deliberations such that we are able to make some progress. The Secretary has a complains desk, there are avenues of reaching the Secretary so that some of those issues are addressed. I must remind you that we are widely covered by the Media and we would not wish to give the wrong impression that these deliberations are about delegates benefits only and I beg you therefore that we move on to the next phase of our deliberations on the regulations. Any burning issue about our specific circumstances here, I have requested our Secretary to avail himself over the lunch hour to hear your views. On that happy note ladies and gentlemen, I must inform you that I was wrong to suggest we would be coming back to the left. As a matter of fact the gentlemen and ladies to the right have not yet spoken on this matters. Mr. Rihal and Mr. Rasugu and then we will take that cover and we will end up here I assure you that.

Hon. Delegate Rihal Baldip Singh: Hallo. Thank you Mr. Chairman, honourable delegates, my name is Baldip Singh Rihal, delegate number 487 from the Professional Organizations. I would like to seek some clarification Mr. Chairman particularly in relation to what the Secretary of the Commission has just stated about the welfare of the delegates. Under regulation number 48, the Conference is supposed to appoint a committee on privileges, discipline and welfare. We haven't done that so far Mr. Chairman. We have concentrated on forming the Steering Committee and when you look at the functions of these two committees, it appears to me that the Steering

Committee is trying to usurp the powers and the functions of the welfare committee which is not fair. So, in the light of the discussion that will come on Friday, I would like to propose to the Conference Mr. Chairman, that we appoint this committee on privileges, discipline and welfare so that it can become operational and it starts liaising with the Commission and it starts looking into all the different questions that had been raised by the delegates on the welfare issues. It appears that the Commission wants to work on its own. I think this is not right, we should have the delegates on this committee so that the whole thing can be inclusive. Thank you Mr. Chairman.

Com. Dr. Githu Muigai: Thank you Mr. Rihal. Mr. Rasugu is your immediate neighbour there sir, in the other direction.

Hon. Delegate Daniel Rasugu: Thank you Mr. Chair and my fellow honourable delegates. My name is Daniel Rasugu, number 579, representing the constituency of Political Parties. May I take you to page 34; regulation 54 as we relate to regulation 49. I read; 'Without prejudice to the Commission's power to amend these regulations the Conference may, by resolutions supported by two thirds of the delegates present and voting, recommend to the Commission an amend to these regulations. Allow me to relate this to regulation 49 on page 31. I would request or rather recommend to the Commission that you persuade regulation 49 to be generous enough and accommodate more Technical Working Groups to accommodate subject matters of the draft bill which are not included. I would propose that we have another Technical Working Group under 'M' to handle matters related to labour, education, industrialization and globalization. Thank you.

Com. Dr. Githu Muigai: Thank you very much. Still on the same, up there sir and then we will come down to the people in front.

Hon. Delegate Nyang'au Onwonga: My name is Nyang'au Onwonga, my number is 457. I have an issue...

Com. Dr. Githu Muigai: Could I request you to speak a little louder?

Hon. Delegate Nyang'au Onwonga: I have an issue on number 53, the committee about media and I was wondering if the delegates will agree with me that we raise the members of delegates to this committee to eight so that we can have regional representation. I have an issue on article 46. On the material day when the Commission was changing this article 46, it was on the same day that we were doing the elections of the members to represent us in the Steering Committee and unfortunately, the rules came a bit too late when decisions had been made and I am wondering whether we can be allowed to revisit our decisions regarding the members to the Steering Committee.

Com. Dr. Githu Muigai: Your point is well made sir. We will now come to the gentlemen down here.

Hon. Delegate Suba Churchill Meshack: Thank you Chair. My names are Suba Churchill Meshack, delegate number 463 representing the NGO sector. I will go back to the much quoted article 54 of the Rules and Regulations and I will read it again for the benefit of all delegates; 'That without prejudice to the Commission's power to amend these regulations, the Conference may, by resolution supported by two-thirds of the delegates present and voting, recommend to the Commission an amendment to these regulations. Mr. Chairman, with all due respect to the Commission, this provision raises a very fundamental issue that attaches on the very important role of this Conference. As a delegate from the NGO sector, this Conference has come to make two fundamental decisions; the supremacy of the Constitution and the sovereignty of the people of Kenya that we represent. Mr. Chairman, this highly contested article creates the impression that the Conference and the extension the Steering Committee are subordinate to the Commission. I do agree Mr. Chairman that the Commission is a creation of an Act of Parliament but I was going to plead with this Conference that since the Steering Committee is the committee of this Conference, that it be given the mandate in amending the regulations as stated here. That is one.

Secondly Mr. Chairman, I want to raise an issue that has also been raised with particular regard to those accompanying delegates. I have in mind Mr. Chairman, that in this very Conference we have people who are visually impaired and that they must be accompanied by others if they are to find their way to this place. Mr. Chairman, I have in mind accredited observers to this

Conference who have been duly accredited by the Commission. In other countries of the world where people have gone through similar processes accredited observers and people with disabilities have been given additional support because we must recognize that they are not equal to those who are able bodied. It is therefore my recommendation Mr. Chairman, that those who are accompanying delegates who have certain inabilities and disabilities be recognized and accredited as observers.

Thirdly Mr. Chairman, still on that issue, that in South Africa, in Uganda where observers were accredited to such processes and therefore touching on the credibility of the outcome of this Conference, that this Conference, that the Commission, that the Steering Committee duly consider giving some additional support to what they are already giving to accredited observers. Thank you Mr. Chairman.

Com. Dr. Githu Muigai: Thank you. I would like to suggest that this question about the power to make the regulations has been dealt with several times this morning. The position in law as was explained by Com. Lenaola is that Parliament in its wisdom gave the power to make regulations to the Commission. If there is any requirement that that power be located elsewhere, it would require an amendment of the Act. So the spirit of the discussion has been the Commission will take into account the sentiments of delegates and take them very seriously. So far, we have no reason to worry, that has not happened. I think we should let that matter rest there for the time being. I will now ask, we have ten minutes to go, I will ask two more people to speak there and then I will take two more from here who haven't spoken and I am afraid I think it will be very difficult to ignore Hon. Kajwang. You will be the last person to speak before we close and then may be we will deal with other issues in the afternoon.

Hon. Delegate Sing'oe Korir: Mr. Chairman, my name is Sing'oe Korir, delegate number 464 representing Non Governmental Organizations. I do seek Mr. Chairman, a point of clarification with regard to article 49 of the rules of this Conference particularly rule 3 thereof Mr. Chairman, which relates to the numbers of delegates who make up the Technical Working Groups. Mr. Chairman this provision says that the Technical Working Groups shall consist of not more than sixty delegates. Mr. Chairman, there is nothing in this regulation which provides exactly the manner in which these persons will be chosen or will be elected. The directions that we have

received from the chair with regard to this provision is that each Province shall nominate seven members to each of these committees. Mr. Chairman, I submit that that already creates a difficulty with regard to some Provinces because if each Province is going to come up with seven members, that means that in order to have twelve Technical Working Groups, at least a Province must have about eighty-four delegates. I submit Mr. Chairman that Provinces like North Eastern Province do not have eighty-four delegates. So, we need direction from the chair on where this Province is going to get more delegates.

Secondly, in so far as the directions we have received is concerned it appears other categories of delegates are not going to participate in these Technical Working Groups. I have in mind Political Parties, Non Governmental Organizations, I have in mind Trade Unions and other recognized categories and we need direction from the chair in so far as the participation of these other categories in the technical working committees is concerned. Thank you very much Mr. Chair.

Com. Dr. Githu Muigai: Thank you very much. There is a lady... yes madam and then we will come to this corner and we will start with Mzee here. Yes madam.

Hon. Delegate Rose Otieno: Thank you Chair and Honourable delegates. I am Rose Otieno from Bondo. I will refer you to part eight of the regulations which says, clause two; 'The Commission may invite any person or group; that is observers and guests'. Then when we go to clause four it continues to say that the Conference may, by a resolution, decide that at a particular sitting or session unauthorized persons may be requested not to enter. Who are those unauthorized people after the invitation?

Com. Dr. Githu Muigai: Thank you very much. I will now turn this way and we will start with the gentleman here and then Mr. Emukule.

Interjection: (Inaudible).

Com. Dr. Githu Muigai: I think it is okay sir. Could you please give him. I apologize to you sir. There was no offence intended, please go ahead.

Hon. Delegate Dr. Lihanda Savai: Thank you Chairman. I am Dr. Lihanda Savai a political representative in this Conference and I think I am looking at article four, the participation and the people participating in this Conference. I am referring to the old men who went to Lancaster House. When they went they went as African people to represent African sketch of Kenya which was to be and this was the one. This time, I don't know how the delegates have been selected to come here. Are they only people of Kenya who were colonized by the British or have you included paper citizens here? If so, I would not appreciate what we are writing. We are not writing the welfare society Constitution but a National Constitution of African people in Kenya and we leave out the paper citizen because the document we have has a lot of confusion. In the previous Constitution, the British wrote for their persons here and I want to refer to a recent copy of the 'Daily Nation'. It said the British people who are here... (interjection)

Com. Dr. Githu Muigai: Your point is taken.

Hon. Delegate Dr. Lihanda Savai: ...have to fill the forms at the British Embassy and Hindu Council and leave them there. They are the people who have been confusing our Constitution that is meant for the nation. Continue making the noise but I am telling you. Therefore, I wish the African people would write this Constitution and not foreigners who are paper citizens. Thank you.

Com. Dr. Githu Muigai: Alright. Thank you very much, your point is well taken. Please take your seat. Yes sir, we will have this man followed by the lady, then Mr. Emukule. What happened to... Yes Sir, two minutes, two minutes. Order please, order.

Hon. Delegate Winston Odhiambo: Hallo. Mr. Chairman, I just had a humble point to make here. My name is Winston Ogola Odhiambo, chairman of Federal Party of Kenya. I was asking, one, on communication after the Conference so that we may be in a position to contact other delegates or other people. I noticed on page 40... I was requesting if it possible for the Commission to include or to give two other columns so that one may be with postal address and then the other one where possible they put in their telephone numbers.

Com. Dr. Githu Muigai: Very well. Excellent suggestion.

Hon. Delegate Winston Odhiambo: So that we could communicate with each other. The other small one, it is not controversial, it is just a small one. I was also requesting that the communication between the delegates should be free because there are some other people who say a person should not say what he wants. I am just requesting that it should be left free so that we could communicate among ourselves freely for the benefit of Kenya. Thank you Mr. Chairman.

Com. Dr. Githu Muigai: Very well sir. The lady behind you. Two minutes each now please so that we take a few.

Hon. Delegate Happy Gloria Wabwire: Thank you Mr. chairman. I am delegate number 396, Happy Gloria Wabwire from Western. Mine is in pursuance to what was said by honourable delegate Rihal. This is according to regulation number 48. Mr. Chairman, I am sad to record that the image of the honourable delegates has been badly dented, that is by the Media to the public. The way it is being put, the image out there or the conclusion is that the honourable delegates are only here for personal benefits which is very bad. And it is so simply because we over looked the institution of Committee on Privileges, Discipline and Welfare. To me, Mr. Chairman, this is what we should have started with and this would have prevented bringing unnecessary issues on the floor because it would have been discussed internally and we would have gotten a solution internally without it going out there. Therefore Mr. Chairman, if I would be supported by the rest of the honourable delegates, I am proposing that before we break for lunch, we constitute that Welfare Committee now so that they start holding consultative meetings with the Secretary to the Commission so that on Friday if we have other issues on the Conference, we continue so that we don't waste a lot of time discussing welfare. Thank you.

Com. Dr. Githu Muigai: Your point is well made madam, thank you. Mr. Emukule.

Hon. Delegate Emukule: Thank you Chair. Mine is a very small and minor comment. First of all I want to observe that the regulations we were discussing the green book were actually published as somebody noted, on the 22nd of April 2003. My second comment relates to

regulation 20. There is a curious reference, editorial merely, to the working groups having been established under regulation 50 of the regulations, infact it is regulation 49. Thank you Chair.

Com. Dr. Githu Muigai: Thank you. Could you pass the mic to the gentleman in front of you and please keep it short as you can sir.

Hon. Delegate Mustafa Ali Yusuf: Thank you Chair and honourable delegates. My question is on...

Com. Dr. Githu Muigai: Your name sir?

Hon. Delegate Mustafa Yusuf Ali: I am Mustafa Yusuf Ali, delegate number 531, representing Religious Organizations. We are advised that we must reach a consensus as much as we can and whereby a consensus is not arrived at, we are going to vote. I would like to bring your attention to the Constitution of Kenya Review Act section 5 subsection D. If people are going to vote and the rights of minorities are going to be voted out, what redress do they have to ensure that their wishes as minorities are going to be included in the final Constitution? Thank you.

Com. Dr. Githu Muigai: Thank you. Pass the mic to the gentleman behind you. And then Hon. Kajwang you are the last speaker now and then I am sorry I will have to declare a lunch break.

Hon. Billow Kerow: Thank you Mr. chairman. My name is Hon. Billow Kerow, Member of Parliament for Mandera Central. Mine is a concern on an answer given by Hon. Yash Pal Ghai about the size of the Steering Committee and his response that he prefers to or he is trying to propose a smaller team within the Steering Committee be set up. Mr. Chairman, I am concerned obviously about the... We appreciate the slow pace inherent in a large committee but this is a National Constitutional Conference that is meeting for the first time to decide and come up with a Constitution that will have to stand the vulgaries of political life for many years and I think, therefore, the need for a wider input in the whole process of this Conference. I therefore think that there overriding factor really is the need for inclusiveness and participation and really consultation even in the process of guiding the Conference. So I would like to really suggest that

given again the sensitivities on many of the topics that have been raised in the media and even the concern by some that there are indeed people, delegates who have indicated that they would prefer to have even this Conference delayed or deferred or adjourned, I would like to suggest that we maintain the Steering Committee the way it has been constituted and that a smaller size would be susceptible to those who might wish to circumvent the whole process and therefore, I would like to suggest that we maintain the Steering Committee as constituted. Thank you.

Com. Dr. Githu Muigai: Thank you. Hon. Kajwang’.

Hon. Kajwang’: Thank you Chairman. Mr. Chairman first of all I want to sympathize with you. You are sitting so far and you are able to identify people by faces and by names which is very difficult. Let me come back to that rule 33 because sooner or later we will be discussing very substantive issues and committees at committee stage and at Plenary and some of these discussions you will find that certain regions of this country will have certain interests in certain matters. Some communities and they are already calling themselves marginalized groups, will want to say something and you may not be able to see people and give fairness all across. Why don’t I suggest that when we come to serious business you will be able to get some written request sent to you because there are so many other ushers here and then you can look at them and make sure that there is representation throughout the country so that the voice of the country is heard. Because some people are more known than others and they are likely to be seen twice or three times. Some are more vocal and noisier, so you will notice them more than others. We can amend that rule to suggest that in addition to raising hands you may request that a written notice may be sent to you so that you can cover the entire process.

Secondly, on the question of convenors to the technical committees, I notice that you want to use the same rule which is used on adhoc committees, that is that the Steering Committee will identify the chairmen or convenors. I suggest that we change that rule a bit so that immediately you get the membership of those committees, those committees would look among themselves and nominate whom they think can be their convenor so that the Steering Committee will be informed by that committee that we have looked among ourselves and we think so and so should be our convenor. If of course you find that he does not have the technical qualification according to the rules, then you might advice them to look for somebody else. But to hope that you as the

Steering Committee will know who is in that committee and nominate for them a chairman, I think it is a lot more work than you can do and will cause a lot of trouble. On co-option in regulation 44, I suggest that the number of two is fine. If there is anybody else who wants to go to any committee to give his ideas like I think I have many ideas, I want to give to several committees, I can write and attend and submit without being a member of that committee. I don't need to be co-opted to participate in the committee.

Lastly, on the question of time allocation, I think the Steering Committee must be quite clear that for this motion we are giving this amount of time and for this speaker we are giving this amount of time so that we know how long we will be here because the way I am seeing it we can be here for one year and some of us have other things to do elsewhere. So we must know that when we come this morning, we will be doing this for so long and there will be an adjournment whether there are people to talk or not, the people who will have been seen is enough and we make a decision and we will proceed. Otherwise we will be here for a year or two and most likely we might enjoy it, some of us want these allowances.

Lastly is the question of privileges. Yesterday some members...

Hon. Delegate Martin Shikuku: Point of order Mr. Chairman.

Hon. Delegate Otieno Kajwang: Those points of order should also be written so that we know whether they are points of order.

Com. Dr. Githu Muigai: Hon. Shikuku, please make it a point of order and make it very short.

Hon. Delegate Martin Shikuku: Mr. Chairman, the Honourable member has cast aspersions on the delegation or delegates that may be wanting to stay here to get allowances. That is an insinuation that cannot be accepted and as far as the point of order is concerned, I think I can give the Honourable member a lecture on point of order.

Com. Dr. Githu Muigai: Hon. Kajwang' could you please conclude your remarks.

Hon. Delegate Otieno Kajwang’: Thank you again Mr. Chairman. I did not say that members... I think I said that if it is going to be like this then I suspected it can go on for a year, I would rather stay because it is very good – this allowance. On privileges...

Com. Dr. Githu Muigai: You are on your last point?

Hon. Delegate Otieno Kajwang: Yeah. On privilege Mr. Chairman, some members came out of here; I don’t know whether they were from inside or from outside; but they suggested that all of us should resign because we don’t know what we are doing here, because we have voted out some people who are heroes of constitutionalism – whatever that means – and we have voted in some people who don’t know what they are going to do with the Steering Committee and they suggested that we might not come out with a good Constitution because we are not technicians. I think as a matter of privilege to protect the image of this, we are delegates; it does not matter whether you are a Professor of law or whether you are a farmer. I think the technical people are the Commissioners; the rest are delegates and we want to give our ideas and we also have a right to choose whom we want ...Thank you very much.

Com. Dr. Githu Muigai: Thank you. I will allow a gentleman whose hand has been up for a long time, you have only one minute. Please don’t exceed one minute because we must now go for lunch.

Hon. Delegate Jilo Onotto: Thank you Mr. Chairman. My names are Onotto Jilo, delegate number 237 from Malindi. I would like to refer you, Hon. Chairman, to regulation 28 which reads; ‘Nothing in these regulations or in the rules contained in the second schedule to these regulations shall affect the discretion of the chairperson to alter the order paper as he may deem necessary or to authorize debate on the report and draft bill in a manner that appears most expedient to him. I feel that this has given a lot of power to the Chairman. May you please clarify on this? Then, regulation 20 section 8, and then conduct of business, regulation 22 (4) which states, ‘So far as is practicable, a copy of the order paper for each sitting of the Conference shall be provided to each delegate prior to commencing the sitting. How prior is the word ‘prior’? Clarification please because all along, the whole of last week and part of this week, we

have been receiving the order papers on arrival. I think 'prior' should mean may be before the deliberations of the day begin or a day earlier. Thank you very much.

Com. Dr. Githu Muigai: Thank you very much. I am afraid I cannot allow any other comment because we have run so far behind time. I will ask Com. Lenaola in two minutes to respond to the substantive issues and Prof. Ghai will have a minute, Prof. Okoth-Ogendo half a minute and then we will make announcements.

Com. Isaac Lenaola: Thank you very much Chair. Regulation 53; this is from Bwana Onwonga. I did indicate that we have expanded the Media Advisory Committee to have three Commissioners and six delegates. That makes the number nine, so we have exceeded your eight by one. Regulation 46 about Steering Committee, I think that issue is really over spent. Korir, I will ask Prof. Ogendo to answer the question about working committees and how membership or the working committees will be detailed out. The last point from me is on discretion of the Chair by Jillo. Regulation 20, really in all fairness to a person chairing a Conference of this nature if you overshoot time on a particular session, you should be given discretion to choose that a particular order paper be altered to give more time for debate. In fact this does not give discretion to the chair, it gives time to the Conference so that the Conference can have time to debate a particular issue as it is. Regulation 22(3), really 'prior' would mean as far as is practicable and the idea is that at least before the session starts on any one day, you have the order paper to indicate the order of business for the day. That is all that 'prior' means at regulation 22;3. Thank you chair.

Com. Dr. Githu Muigai: Thank you. Prof. Yash Ghai.

Prof. Yash Pal Ghai: Just one point to make and this is that these regulations are drawn to facilitate the work of this Conference. The Commission and the Steering Committee, I am sure as well will constantly be reviewing how these regulations are working. If changes are desirable I am sure the Commission will take the necessary action and gazette the changes. The Commission will then of course listen to what the delegates say and what the Steering Committee advices and even the legal power vested in the Commission, the Commission's interest is to facilitate, this workshop to enable the delegates to contribute as best as they can and

The meeting started at 2.30 p.m. with Prof. Okoth Ogendo in the chair.

Prof. Okoth Ogendo: Shall we call the Conference to order please. We would like to call the Conference to order. My name is Professor Okoth Ogendo, I am a Commissioner and Vice Chair of the Commission. Before we start this afternoon's proceedings, I have the honour and privilege to recognize the presence with us this afternoon of Eliud Ngala Mwendwa, another veteran of the Lancaster House Conference who was not able to be with us before. Mr. Ngala Mwendwa, please wave to the crowd, he is right there. Thank you very much.

Now, I think we should start with our proceedings this afternoon. We are here to start the formal part of the business of this Conference; that is not to say that what we have been doing was not important. Under Section 26 sub section 7 of the Constitution of Kenya Review Act, the Commission is required to compile a report, a summary of its recommendations and a Draft Bill. The Commission is then required by Section 27 sub section (1b), to convene a National Constitutional Conference for discussion, debate, amendments and adoption of the Report and the Draft Bill. Regulation 18 of the Conference Regulations requires the Commission to lay before the delegates the documents that form part of the Report and the Draft Bill, prepared by the Commission. That same regulation provides that the Chairman will formally present those documents and in the process of presenting them, the Chairman may deliver a communication from the Podium. After he has delivered that communication, the Chairman will move under Regulation 19(1) that the delegates should propose that the Conference Debates those documents. It is now my greatest pleasure and honour to request the Chairman of the Commission, Professor Yash Ghai, to comply with those statutory requirements. Professor Ghai.

Prof. Yash Ghai: Thank you very much Professor Okoth Ogendo. Honourable delegates, in accordance with Section 26 sub section (7) of the Constitution of Kenya Review Act, I now lay before this distinguished Assembly the main Report of the Constitution of Kenya Review Commission, the CKRC as well as the Draft Constitution. I am also laying before this house several other documents of the Commission which have been prepared to assist the delegates in the debate and discussion of the Report and the Draft Bill. These documents are identified in page 6 of this green handbook and they were mentioned this morning by my colleagues when we introduced the Regulations.

I have prepared a statement which may be too long for me to be able to read and may be too long for you to have to sit and listen to. We will try to distribute copies of this document but I would like to point to some of the highlights in this statement. I first want to refer to a statement made by an honorable delegate this morning questioning the suitability or rather the appropriateness of the Chair of the Commission also being Chair of the Conference and submitting this Report especially to ourselves. As Mr. Lenaola explained, this result about as a consequence of the Review Act and not any decision of the Commission itself. I am aware of some conflict that can arise when the Chair of the Commission which produced the document should also Chair the body which has been charged with the task of scrutinizing those documents. And I can assure you that I will and other persons who Chair the sessions will maintain absolute impartiality and neutrality and will do all that they can do to facilitate a free exchange of ideas.

However, today I am going to speak in support of the documents that have been laid to explain the thinking of the Commission behind the recommendations we are making and I will not use this position for advocacy purposes.

I had intended to start with a brief background to the Review Process, appraising the developments to the time when the Commission was formally constituted. I will not say much about that because several speakers yesterday, spoke about the background to the Review Process when they traced the Constitutional history of the Country. I will only say that the Review arises in part, because of the perception that after a series of amendments to the Independence Constitution, power had been centralized excessively at the centre and in particular in the hands of the President. But there was no effective separation of powers. Parliament had become ineffective. There were few institutions for accountability, such as an ombudsman and such institutions as existed like the Auditor General were rendered toothless.

There was no easy access to public service or other state agencies. Merit as a criteria for appointment or promotion was replaced by political or ethnic connection, or monetary payment. There was a sharp decline in the economy and breakdown of the infrastructure. Decreasing levels of production and export. Illegal acquisition of large tracks of land without their productive use. Massive unemployment, people increasing below access to the most basic

necessities of life. Their lives scourged by poverty, while a few lived in unimaginable affluence. Guarantees of the security of persons or business disappeared. Consequently, there was a massive retreat from public life and inward lookingness and lack of openness, trust and progressive fears which drove many into exile.

The movement for reform or the response to this total collapse of constitutionalism. By constitutionalism I mean in this context, or the access of constitutionalism, the arbitrariness of the exercise of state power, the refusal of the government to respect limits on its power or authority, the disregard of the rights of people, the absence of checks and balances and the consequent lack of the separation of powers. The movement for reform took the form of constitutional reform because the problems the Country faced was seen to arise from bad and oppressive governance and the lack of respect for constitutionalism.

The reform agenda found its way through a series of national conferences starting in Bomas ending in Safari Park, into the Constitution of Kenya Review Act which has been the framework for the conduct of this process. This Act among other things provides the vision of Kenya as a guide to the new Constitution, and I want to say a few words about that vision which is expressed in the Review Act. The Constitution is many things. One of these is the vision of the Country and the statement of its values. This indeed has to be the starting point for designing the Constitution. What is the vision of Kenya on which the CKRC operated. The Review Act was a starting point. The Act envisages a republic which is at peace with itself and its neighbours. The welfare of the people is its primary goal. This goal is to be a turn to national unity and the consequential bases of authority and decision making. But the concept of the welfare of the people does not mean that people are excessive, recipients of State largesse. Kenyans are no longer subordinated to external authority. They are citizens who control their destiny and organize state and society to the values and procedures of democracy. Democracy through which Kenyans decide their destiny is not a majoritarianism, that is to say rule by the majority without regard to the interest of others. Democracy arises from, and protects the rights of the individuals and communities.

Rights constitute the fundamentals of our democracy because they protect the legitimate face of autonomy of the individuals and communities and compel the state to respect rights and

procedures. Not that it is the democracy envisaged in the Act merely representative, in which people vote every 5 years and then become passive and powerless. Instead the Act envisages a citizenry actively engaged in public affairs. The citizens participate continuously in the governance of the country through the devolution and exercise of power. They keep a constant vigil over those who claim to act on their behalf; politicians and government. It is the democracy in which the free exchange of ideas is actively promoted particularly by giving people information and resources.

There is also the vision of Kenya as a nation of great diversity, of ethnic origin, religion, culture, traditions and geography; living in peace and harmony. The Act says that we must respect and cherish this diversity, for we are the richer as a result of this diversity. The accommodation of diversity is not easy. Total official recognition of diversity and all its manifestation will make us a patchwork of communities. Not a nation with little to hold us together and no values or procedures to mediate relations between communities. Yet on the other hand to force us all in a common mould is to deny individuals and communities the deepest impulses that define their identity and to lay the foundation to conflict. A balance has to be struck assisted by a code set of national values and aspirations without unnecessarily jeopardizing the legitimate interests of minorities within minorities. It was evident to the Commission as they toured the country and met people in all provinces, that they do subscribe to a common code of values and that the differences between the various communities pose no threat to our unity or common purpose, especially when the differences can be accommodated in the private of the family sphere. It is within this framework, that we should resolve the controversy about the Kadhis Courts and the limited application of the Sharia to Muslims.

Another component of the vision of Kenya is that of a caring society in which the basic needs of all its members are provided for. There is no reason why any Kenyan should be without shelter or go hungry or be deprived of opportunities of education and employment. Society based social responsibilities for the welfare of the vulnerable members, the aged, the children, the disabled and women. Through the Review Act, Kenya submitted themselves to an equitable framework for economic growth and equitable access to national resources in which the basic needs of Kenyans will be made. I believe this formula captures very well the nature of our obligation to the disadvantaged. It is not charity but eccentric part of us to declare policies and opportunities.

The enormous disparities that graft in our societies between the rich and the poor, the privileged and the disadvantaged are not the natural order of things. They are man made by the blunder of state and communal resources and by policies that favour particular groups and classes. Kenyans want a proper and honest management of our national resources and they want equal opportunities for all. They want a caring, humane and just society. No country can be proud of itself if over 60% of its people suffer in extreme poverty, while 10% live in great affluence.

We also have a vision of Kenya through the Act. Every responsible member of Africa and the international community. We want to play a proper role in the emerging global politics and institutions. We want to promote and facilitate regional and international co-operation to ensure economic development, peace and stability and to support democracy and human rights. To translate this vision into a constitutional instrument for the mandate of the Commission and it is now that of the Conference. But the Act also says that we have to reflect the wishes of the people. There is a great deal that unites Kenyans, in the views, where the nation is now, what went wrong in the past and what the future should be like. In the new (inaudible) submissions individuals, communities and organizations broadly endorsed the vision of Kenya that I have described above. In part by emphatically rejecting its opposite, which is a reality as is perceived in Kenya today; corrupt, uncaring, exclusionary, groups large and small held in contempt and marred in poverty.

People want a Kenya which respects human dignity and show social justice, provide for the disadvantaged, does not marginalize communities or minorities, has a proper respect for the cultural groups who want to preserve their traditional life styles and treat nature with greater reconsideration than we do now for present and future generations. People want more control over decisions which affect their lives and bring government closer to them. They want leaders who are honest, responsive and accountable. It is the responsibility of the Conference to lay the foundation for this vision.

Let me now turn briefly to the process which is laid down in the Review Act and which we in the Commission have tried to follow faithfully. The dominant objectives in the process is to use common expression of people driven process. This objective was achieved in several ways. The most important rule is that the final outcome of the Review and I quote here : should faithfully

reflect the wishes of the people of Kenya. The process must be inclusive, it should accommodate the diversity of the Kenyan people including socio-economic status, race, ethnicity, gender, religious faith, age, occupation, learning, persons with disability and the disadvantaged. Thirdly people must play an active role in the process. They must be given opportunities to actively, freely and meaningfully participate in generating and debating proposals to alter the Constitution, by providing them with civic education on constitutional issues and then listening to the views and recommendations.

There is also the principle of accountability. The process must be conducted in an open manner and be guided by respect for the universal principles of human rights, gender equity and democracy. The organs of Review of which this organization, this Conference is one, the organs of Review are accountable to the people. The emphasis on the participation of the people is not mainly rhetorical. It expresses the determination both to re-assert the sovereignty of the people and to make the constitution truly a compact among the people.

The Commission has taken this injunction more seriously in partnership with civil society, media houses and government agencies, we disseminated widely information on the process and provided civic education on constitutional issues. We engaged as many institutions, groups, communities as we set up offices in all districts to provide documentation on the process and set up facilities for people to meet and discuss the proposed proposals for reform among themselves before they met with the Commission. We spent months travelling to the country, receiving the views of the people and then analyze their recommendations carefully as the basis of our Report and the Draft Constitution.

We have prepared reports on hearings in each constituency which we can reciprocate to the constituency and which along with other analysis of people's views are summarized in our reports, copies of which you have and the full text of which are placed on a website and in a library set up here in Bomas for the use of the delegates. The Consequences of this degree of the engagement of the people has been entirely beneficial.

The process gave individuals, organized groups and communities the incentive to study the ways in which public power can be organized and exercised. It increased their awareness of the

structures of state. It gave them a sense of their own worth and importance. It considerably brought them the agenda of reform especially on social issues. It enabled them to connect the local to the national and produce the consciousness that they were part of a wider community engaged in similar pursuits of defining their identity in future. The Process, I hope has laid the foundations of, and the preparation for a truly participatory democracy; the Process of inclusive, participatory, reflective and deliberative. There were tolerance of opposing views and a willingness to search for a consensus. This certainly marked the work of the Commission. I believe that, thanks to the process, Kenya is now more united than before. I am sure that this Conference can learn a great deal from the people they came to lead, their virtues of tolerance, respect for difference looking for the common ground.

Public consultations also helped the Commission. They increased the Commissioners knowledge of the country and its people. They introduced them vividly and sometimes painfully to the circumstances of large majorities of our people; living on the margins, eating out of precarious existence and extraordinarily vulnerable. Consultations highlighted the vulnerability of minorities, women, the disabled, children and the elderly. It also enabled the Commission to focus more on local governance and self government issue than they would have without the benefits of what they heard as they travelled from one part of the country to another.

The Commission prepared for a task by holding 14 workshops on key issues, assisted by local and foreign experts and often with the participation of the public. In this way, Commissioners acquired knowledge of how other countries were tackling problems that were also of concern to us in Kenya.

I should like to take this opportunity to give my very warm thanks to the Commissioners, our tireless Secretary, Patrick Lumumba and our staff who have worked so diligently to ensure the success of the Process. The Process is by no means concluded. I should say something about the remaining stages and particularly the role of the Conference towards the end of my remarks.

Let me now turn to the principles and substance of our Report and Draft Constitution, which we were required to produce as Professor Okoth Ogendo has told you for public debate and later for consideration by the Conference.

It is necessary to have a holistic view of the Constitution, the various parts of the Constitution work together. I hesitate to compare it with a machine, because a machine is a product of engineering and it is not something in which human value are necessarily, intimately involved. But there are also manalgies, the bits of a machine have to fit together and work with each other, with the necessary amount of friction to achieve the purposes of the machine but without so much friction the things fuses up and burst into flames and also work without consuming excessive fuel. If you remove part of a machine, it may cease to function completely or may produce results very different from those which were intended. And if you alter one part of a machine, you may have to change some other part to offset or to complement the effect of the first change. No change in a machine should be made without understanding the likely effects and consisting changes that may be necessitated elsewhere, so is with the Constitution. In fact some of the problems of Constitution government which we face in Kenya has resulted precisely from inadequately fault of changes to parts of it.

The second phase is in which the draft Constitution was prepared meant that the whole aspect of it had to be conceived at the same time. In response to a coherent set of values as I have mentioned, and in response to the expressed wishes of the people and prepared in a relatively short period of time. I believe that the final package is coherent and that its parts will work well together. I do not say this in any spirit of protectiveness nor to discourage you, any of you from proposing changes or indeed from criticizing the Draft. All I want to urge is that you endeavor to understand the document as a whole, not concentrating only on those parts which you think are important or interesting or relevant to your own concern, but the concerns of those people that whose support you have come here.

Every aspect of the Constitution matters to every Kenyan. And when you discuss a particular part, please reflect on what it was intended to achieve and how it links with other parts so that if you propose any change, you all understand what the impact could be not only on the part you propose to change but on the other parts as well.

What are the values of the Draft Constitution? The overwhelming value of this Draft is the sovereignty of the people. It parades the entire document and means far more than a mere slogan

which you could find in most modern constitutions. That is the incarnation at the beginning of a Preamble – ‘we the people of’ or the statement that sovereignty flows from the people. The later statement is found in many constitutions where the reality the people are the paste that one even hesitates to repeat it. But in the Kenyan draft people sovereignty is no slogan. It is operationalized throughout the document. The people and all the people, not just factions of communities are the source of power in the Constitution. They are the continuing holders and employers of the power and (inaudible) exercise of power by the servants of the people: government, legislators, public servants, is to be accountable to the people and for the benefit of the people.

This Draft trusts the people. It does not accept the cynicism currently in some quarters that democracy means not as little meaning, ruled by people but instead abused by a rebel. The Draft derives for the masses and genuine participation of the political process. Democracy means, not just people choose the government, but they are the structure of the government as closely as possible, reflect the people choice. It means that the people’s participation is continuing and really involvement in decision making. It means that the decision making is therefore possible not a matter of confrontation but of consensus building. It means the decision making is accountable to the people and it means that the government is conducted on a basis of integrity.

Some say that the Constitutions are about power and that any other emphasis is somehow naïve. But the Constitution is too long, power cannot be ignored that is true. Too many people seem to desire it and its corrupting effects of those who have it, are too well known to be ignored. Power holds the country together in some ways, but it must be legitimate power, based on the mandate of the people. It is the responsibility of the Constitution to ensure that the power is abused and not used for the benefit of the people, it shrivels and it is lost. It is the responsibility of the Constitution to ensure that power, whether it is a power to make a decision that will affect the lives of people or the power to make an arrest, or even the power to wield a gun, is used only for the purpose for which it was conferred. The decision must be to the benefit of the public not to enrich the decision-maker. That allows me to control time and not to intimidate, and the gun must be held in support of the legitimate authorities and not to lord over them or to lend them to lawbreakers. Power in a constitution context, should not be brute strength but principles. It

should be dispersed rather than concentrated on the hands of a few. Its exercise should be monitored and controlled.

The Draft Bill in a number of ways will be sharing and distributing power at the level of national government. The principle of the separation of powers is adopted but not in a doctrinaire and mechanical way. The government governs, it is accountable to Parliament and to special institutions, to the people and to standards of ethics and integrity.

The legislature makes laws but it plays an important part in holding government and other institutions accountable. The courts decide, it must consult, recognize standards of ethics and accountability. It must be endorsed by the people. Executive and Parliament, and its disputes can be usefully decided by everybody. That too should be possible. As the factors that affect the lives of people, whether these factors were related to economic, technology, international politics, or globalization hence these factors become more complex and more interlinked. The institutions that influence these factors become the focus of new sorts of power. Governments and other national and international bodies take new powers to benefit from and to control and can correct these influences. Accountability, mechanisms and concepts must be able to adapt and develop to ensure that ultimately the citizens of individual countries are the beneficiaries of powers and counter powers. Institutions of accountability must have the capacity to understand what they regulate. They must have the independence to avoid being captured by what they regulate and the motivation to regulate for the benefit not of themselves but of the people. The Draft tries to achieve these aims that the system of accountability institutions which are flexible, expert, responses, and ultimately themselves answerable to the approval of the sovereignty.

Government structures seem to be visualized as pyramids with the focus of power being at the apex. The people do not live in pyramids, what matters to them at least as much in their own village or in the next village happens in Nairobi.

The constitution Draft tries to set up a system which does not have a constant full of resources of powers and ambitions towards the apex. Power is to be distributed at the level of the village, the district and the province. Government is to be as close to the people as it is possible to be. Closely connected to people's sovereignty in democracy which is another center and cross

cutting theme of the Draft constitution. There are perhaps two main apparent dangers in democracy. The first is that it may mean an abdication of moral values and national interests to crudely conceive and expressed views of some apparent popular majority. And the other is that democracy means no more than a periodic expression of an informed choice at election times, interspersed with periods of apathetic acceptance of what is done in the people's name. To our mind, either of these is a betrayal of the people and of the whole concept of democracy, and both stem from an inadequately informed and involved public. In a large number of ways, the Draft Constitution tries to enhance the democratic process in the confidence that the fuller involvement of the people is something to be embraced and not avoided.

The most (inaudible) manifestation of democracy is the electoral process. The December elections last year were a triumph of electoral democracy, but everyone is conscious that even still there is room for improvement. The Draft contains provisions designed to enhance every stage of the electoral process, it would affect who votes, how they vote, what the outcome of the voting is. An electoral system is imperfect if everyone who is constitutionally entitled to vote is not registered to do so, is able to vote and is willing to do so. The Draft does not propose compulsory voting, but it does propose reforms designed to expand the pool of voters, even to cover prisoners convicted of less serious crimes for example, and to mandate continuous registration of voters; it will reform the electoral commission to make it a more effective and accountable body.

An electoral system is also imperfect if the range of candidates does not enable the voters to choose representatives they really want. The Draft would provide for regulation of political parties who very often determine who the candidates are; the parties would themselves have to be more democratic and would also have to put forward women candidates and candidates who in other ways reflect the full structure of the Kenyan society. An electoral system is also imperfect if the bodies which are elected do not reflect the wishes of their people. I do not refer to rigging and corruption but to structural issues which distort the translation of votes into institutions. In Kenya in the past, as in many countries with similar electoral systems, the fact that perhaps 60% of the electorate have voted for party A is not translated into 60% of the seats in the assembly, may be party A will get 70% of the seats with only 60% of the votes, or perhaps it will only get 58%. A party for which 20% of the people have voted may get 30% of the seats

or it may get 10% or it may get none at all. A system like that in Israel or Namibia where the whole country is one constituency means that the correlation between party support and party seats is as near perfect as possible. But this is done at a price of abandoning the system of constituencies and the close ties of regions, the entry and the locality.

Our Draft proposals a compromise designed to marry the best of both these systems. This proposal of ours has generated a remarkable amount of misunderstanding in the Press, partly because it is confused with the existing and much abused system of nominated MPs. In thinking about this, I would urge you to try to forget about the nominated MP system. The mixed member system which we propose would involve constituencies as now with the difference that parties would have to put up about one third women candidates. The make up of Parliament would then be looked at to see how far the seats held by parties reflect the electoral support of the country. A certain number of seats not tied to constituencies would then be allocated to parties in such a way as to correct the imbalance. The extra MPs should be taken from lists put forward by the parties in advance of the election. The list would be known to the electors and the lists would also have to be composed in a specific way to ensure a national character including geographical distribution and the representation of people with disabilities but more strikingly would have to consist of one third women, men and women appearing at all levels of the list, not women at the bottom. (*clapping*). How these extra MPs fitted into the role would depend partly on their own interests and partly on how parties chose to make use of their interests and expertise.

An electoral system with a high degree of genuine interest and involvement of electors would not occur if the public did not feel that politics make a difference to their lives. And voters in such a system would not be prepared to go to sleep politically between elections nor should go.

The Draft also seeks to make politics not just a spectator sport between elections, but a matter of active people participation. Those of you who are MPs need not worry that this is simply a device to downgrade Parliament. On the contrary, this is a design to uphold the role of Parliament. More would be expected of you as MPs, more active involvement of your own in the functions of the legislature, and more responsiveness to the concerns of the electorate. Parliament would have a position of greater centrality in the life of the nation because it would

make certain decisions which are not at present given to Parliament, for example on certain appointments. It would be less at the whim of the government than it has in theory been because the solution would be based on more predictable grounds; it would have a more structured role in supervising the performance of government. This role would extend to important areas of national life that have previously gone without much regulation such as the defence forces.

The greater significance would have its own price. Quite apart from requiring MPs to work harder, they would be required to have attained a minimum level of education and most worryingly from their point of view would be subject to the responsibility of the call. No MP who is committed to the performance of his or her role in a wholehearted fashion both at the national and the constituency level should fear this. This is because the proposal reflects a very widespread demand from the public. It is based on the Ugandan system and is designed to be difficult but not impossible to implement. It is obviously not desirable that MPs should be recalled for no good reason. It is equally undesirable that they should be able to eat during the period for 5 years in return for no discernible benefit to the nation.

The dignity of individuals and communities is pervasive in the Draft. The Bill of Rights is comprehensive and innovative. It greatly strengthens civil and political rights that we have currently in the Constitution, it reduces the grounds on which the rights can be suspended or restricted and establishes new institutions for their enforcement, including easier access to courts through a new institution, the Public Defender, which would assist with legal services for those who cannot afford to pay for them. The Bill of Rights seeks to recognize and implement Kenya's international obligations in respect of (?) rights especially important for human dignity, for basic needs, are specifically protected, including access to health, water, sanitation and housing, and not as mere aspirations but as entitlements. This has worried some people who think that these basic rights will impose an impossible burden on the State, but as I have already mentioned, these rights do not necessarily mean that the State must provide handouts. More fundamentally, it means that state policies and practices must be directed to enabling people to access these resources through their own efforts.

The absence of roads means that people cannot send their products to markets and so the opportunities for livelihood are diminished. The lack of a proper research infrastructure or

restrictive trade practices mean that relevant medicines are not produced or cannot easily be purchased. Predatory land policies deny many people access to security of title to housing, and so on. In this area of rights, as in others, the priority that we give to rights entails that rights become the framework of state and corporate policies and practices.

A fundamental value in the Bill of Rights is equality, particularly gender equality and equity. There are several ways in which the Draft seeks to fulfill this aim in politics, economics, land policies and to some extent, in the family. The Draft also protects the special interests of other vulnerable groups like children, the disabled and the elderly. The Draft, in line with the above approach, places a special emphasis on social justice, reflecting for example, the concern with basic needs, which I just mentioned. Special Affirmative Action must be taken where this may be the only way disadvantaged groups can overcome historical or contemporary social handicaps.

Rights are perceived as a way to enable people to fulfill their personalities and develop their potential. At the same time all citizens, including the young and the old, are recognized as having duties towards their nation and the community. Special recognition is given to sustainable development, including the need to protect the interests of future generations. The Draft recognizes respect for communities and minorities, acknowledges our ethnic, cultural and religious diversity, requiring that decision making bodies include a fair representation of all communities; that the public service reflects all ethnic groups by especially recognizing community rights in land; by giving special recognition to the value of traditions in environmental management; by recognizing marriages under different traditions and customary law in other areas of personal life, and by setting up a gender system of devolved government to recognize the diversity of the country.

One of the proposals in the Draft to recognize social and religious diversity, namely Kadhi courts and the application of Islamic Law to Muslims has generated considerable controversy. We hope that the controversy can be settled in ways that are sensitive to the needs and concerns of Muslims and do not harm the amicable relations that exist among our religious communities and that they do not threaten national unity. Once it is realized that all communities have their own personal laws, whether ethnically or religiously based, that personal laws are restricted to family

matters in that all of us have access to courts for adjudication of these matters; and confident that we shall find a way to settle this particular controversy.

Human rights are essential to democracy and the accountability of state institutions as they are to constitutionalism in general. They open up spaces for individuals and communities at the same time as they limit the power of the state and compel state organs to follow fair procedures in dealing with the people. Transparency and accountability of public institutions and efficiency are to be achieved through a leadership and integrity code which introduces high ethical standards of public conduct, setting out the duties of public officers not to allow their interests to conflict with their duties and requiring various forms of behaviours which create a risk of such conflict; or would bring public office into disrepute and would be a good cause for disciplinary measures. The Code specifies that many officers must periodically make a declaration of their assets. The Draft commits the nation to fight corruption by specifying rules against corruption and by setting up strong machinery for investigation and prosecution. The power to prosecute is to be taken away from the Attorney General and vested in an independent officer, the Director of Public Prosecutions. I have already mentioned our proposals to strengthen Parliamentary control over finance and other national resources for their prudent management.

The Draft proposes a Commission on Human Rights and Administrative Justice to strengthen the framework of accountability by providing facilities for people to make complaints against abuse of powers or violation of rights. In this way, people will have essential responsibility for ensuring fairness and honesty in state institutions.

An independent, impartial and competent judiciary is critical to maintaining high standards in public life as indeed it is for maintaining democracy, sustaining the economy, promoting law and order, and ensuring social justice. Our approach to the reform of the judiciary has been widely debated in the country has led to a series of court actions. The Draft contains provisions both for dealing with corrupt judges who now sit on the bench and for ensuring competent and honest judges in the future.

Let me now say a few words about the structure of national government, another area which has become controversial. The proposals in the Draft provide for an Executive which combines a

President, Prime Minister and the Cabinet. In essence it provides for a Parliamentary system in which the principal powers are vested in the Prime Minister and his or her Cabinet. The President proposes a Prime Minister, a member of the National Assembly, who enjoys the support of the majority of the assembly. The proposal is put to the National Assembly and, if approved by the support of more than 50% of the members, the person becomes Prime Minister. The tenure of the Prime Minister depends on his or her retaining the support of the majority of the assembly, being dismissed only on a vote of no confidence. In no other instance can the President dismiss the Prime Minister. The other members of the Cabinet are appointed or dismissed by the President on the recommendations of the Prime Minister.

Most powers of the Executive are vested in the Cabinet which operates on the principle of collective responsibility. In essence, this establishes a Parliamentary system in which the Prime Minister is the head of the government and the President is the Head of the State. In such a system the President's role is largely ceremonial, although he or she plays an important role in the formation and dismissal of government.

However, in the CKRC Draft proposals, the President plays a slightly greater role than in the traditional Parliamentary system. For example, the President is directly elected by the people and is indeed the only official directly elected. The President can propose legislation either through the Cabinet or directly to a Parliamentary committee. The President can address Parliament at any time and say what he or she wants to in a discussion. The President makes appointments to a number of senior positions although on the nomination of other bodies or after consultation with them. The President may refer a legislative Bill to the Supreme Court for an opinion on constitutionality before signing the Bill. The President has to ensure that the international obligations of the Republic are fulfilled and submit an annual report to Parliament on the question. The President has to ensure that courts and Constitutional commissions and offices are able to secure their independence, impartiality, dignity, accessibility and effectiveness. The President may dissolve Parliament when it becomes impossible to appoint a Prime Minister; declare a state of emergency after consultation with but not necessarily with the approval of, the Cabinet and the national security council. The President is also the head of the National Security Council and the National Defence Council.

It is clear thus that President has some substantive responsibilities, especially for democracy, justice, and accountability. The President holds the balance between the Prime Minister and the National Assembly unlike other Parliamentary heads who have to follow the advice of the Prime Minister on the dissolution of the assembly. The President has a broad responsibility to protect the Constitution. The President, therefore, is more than merely ceremonial. The President has, as I have mentioned, more authority than in the pure Parliamentary system. We have proposed these powers of the presidency because we see the President as the custodian of national democratic and ethical values and a check on government.

The CKRC proposals on the Executive, particularly the division of powers between the President and the Prime Minister and the relationship between them, were carefully designed. On the one hand, the vast majority of people wanted to curtail the powers of the President. Most of this majority also wanted a Parliamentary system. On the other hand, the major political parties wanted a Prime Minister either on the French model, where specified executive powers are vested in the President and others in the Prime Minister. The Prime Minister is appointed by the President, but is responsible to Parliament or some parties recommended the Tanzanian and Ugandan model where the Prime Minister is the chief assistant to the President and leader of government business in the National Assembly. Although proposing more powers to the President than is common in the Parliamentary system, the CKRC rejected the French model which was proposed at that time by the Democratic Party because of the conflict between the President and the Prime Minister. We also rejected the Tanzanian model because we saw that it would retain many of the present features of the Kenyan system, a strong executive Presidential system which the people have rejected.

The Commission's approach therefore was a Parliamentary system in which the President would act as an umpire over the relationship between the Executive and the legislature, and has a real possibility to uphold constitutionality and the rights of the people. In part, as far as the latter was concerned, this would be done through his or her moral and political authority not only to formal provisions, but it is for this reason that direct elections were provided for the President. If the country was to move away from authoritarian rule which had been rooted in Presidential powers, it was, in our view, necessary to remove the executive Presidential system and adopt a more democratic and participatory system.

People have commented on the alleged absurdity of direct elections for the President when his or her powers are so limited and of a Prime Minister with considerably more powers who is not elected by the people. There are presidents in other countries who have less powers than the one we are proposing but who were directly elected, one obvious example is Ireland. In a Parliamentary system, the Prime Minister is not elected directly except in one of the countries where it is the source of difficulties. But the Prime Minister is elected by, and constantly responsible to, people-elected representatives across the country. Empirically, Parliamentary systems have been more prosperous and successful than Presidential but it must also be admitted that the success of a governmental system depends on contextual situations and, it may be, the same form of Presidentialism has a role in Kenya.

A specific justification for a Parliamentary system in a society marked by diversity is its ability, better than the Presidential, to accommodate diversity. In a Presidential system, power is concentrated in one person even though the President can appoint his or her Cabinet from diverse sectors; but he or she retains the ultimate control and the rules of elections can indeed create incentives for inter-or trans-ethnic peace; but the Parliamentary system provides a more collegiate, a more collective form of government in which a diversity of ethnic groups and geographical entities can be brought into government. A proliferation of political and administrative offices which to some extent our proposals have done, is not without merit in a multi-ethnic and multi-racial societies which can bring together people across the country into parties and coalitions.

Indeed the fundamental challenge to constitution-making in Kenya, as indeed in many other states today, is the accommodation of diversity, how to acknowledge specific identities without impeding the unity of the people and we believe that we have enough proposals tied to provide a system which will combine the liberalism, access on individuals and the communitarians' emphasis on the community. A mixture of the two seems to be special in our circumstances. Capitalism has little place in multi-ethnic societies. Well I'm running out of time. I want to therefore very quickly go through the remaining part of my presentation, I want to say something a little bit about devolution, since that too has become a matter of controversy. The proposals that you have in the original Draft Constitution were reviewed by the Commission afterwards

and we have a new version of Chapter Ten which we shall distribute to you and which we hope you will use as a basis of your debate. I want to say that there was a very strong demand throughout the country for a massive de-centralization of power, resentment at the centralization which operates today. People wanted more control of their lives.

They wanted the provision of services, health, education to be managed by authorities closer to them and we also found a great deal of criticism of provincial administration and demand for its abolition. We were convinced after listening to the people, after examining the goals of Review set out in the Review Act, which I have outlined at the start of my presentation, that a significant devolution would be necessary to meet these Constitutional requirements. So, we supported this idea of devolution and indeed most people who spoke to us, including political parties, supported devolution. We had lesser persistence in terms of the actual details for devolution. Some people preferred majimbo type of devolution. Others wanted a Local Government-based devolution with the districts as the principle unit of devolution. In our new proposals and indeed in our original proposals, we rejected both federalism and unitary State. We chose something in between. We rejected federalism because it can be rigid, expensive, divisive, hard to operate. We rejected unitary because it will not give enough protection to devolved units.

The second principle or second approach we have is that, the Constitution should only contain the principles and the broad framework of arrangements and the details should be left to be worked out in a Devolution Act. We envisage the establishment of a special taskforce which will take the Constitution as a guide, develop the principles and the mechanisms of devolution which would in time lead to the enactment of a Devolution Act. This will provide further opportunities for consideration of details and recommendations of different point of views, which are beginning to emerge.

We have also provided for considerable flexibility in the operation and the gradual establishment of the system for the powers will be devolved to units and units to the ability to handle those powers. We see the relation between the National Government and the Devolved Government as one of cooperation rather than one of conflict. There are mechanisms for consultation between the two provisions for the delegation of powers from one level to another and so on. We see the resort to court only as the last measure if other methods of consultation and reconciliation have

not achieved their purpose. We believe that institutions at the devolved levels should themselves be democratic and responsible to the people.

We have suggested that as far as revenue is concerned, most of the principle sources of revenue should remain with the national Government. But that the allocation of State revenue as between the center and the devolved authority should be determined or recommended on by an independent fiscal Commission which should be able to make recommendations on different kinds of grants, programmes and equalization grants to help the less developed districts.

We have also envisaged a situation where the principle law making functions will be discharged at the center, so the implementation of increasingly large areas of the law will be the responsibility of devolved authorities. But, because many of these laws will be implemented in the districts, the districts would participate in the making of laws, which apply to them, and this will be done through a second chamber which is the National Council.

However, we have reduced the scope and functions of the Second Chamber as they appeared in the original draft. Now the functions of the Second Chamber are very much directed to the protection of the system of devolution. Our proposals now will not involve any extra expenditure, for the Chairs of the District Councils, would be the members of the Upper House and therefore would not receive a second remuneration and merely the expenses of the meetings. I don't have time to go into all the details of devolution proposals but I would like to suggest that you have a careful look at the proposals and our attempt to make the system flexible, at the same time make it effective and responsive to the people.

I want to say a word or two about transitional provisions. The transitional provisions that are contained in the Eighth Schedule of the Draft is obviously based on the assumption that the elections would follow the adoption of the Constitution. If that had happened, the elections would have been to the offices established in the Constitution and the transitional provisions would have been relatively easy to manage. Now that we have a Government elected under the old Constitution and the offices to which they were elected and the structure of Parliament and the Presidency, are those that were under the existing Constitution, the task of transitional provisions is very much more complicated and more difficult.

You will see from our programme that we have established a special technical committee on the transitional issue and I won't say more about it now. Expect to say that even in these circumstances, there are many provisions of our Eighth Schedule about the new institutions and so on, which could be implemented in the timeframe that we have suggested in that schedule. I was going to say something, but I will not...about how we see this Constitution taking root. It is easy to make good Constitution. It is extrovertly hard to implement them and to make them part of the reality over lives.

We have used many devices for this, apart from the Judiciary which has been the standard method, role for civil society, the role of education, independent Commissions, principles of State policy which are stated throughout the Constitution. I also wanted to say something about the style of drafting. Some of those points were made this morning. I want to comment on the criticism that the Constitution is too long. We certainly see the need and possibility of some contraction. But the Constitution is dealing as most Constitutions do with very complex set of issues requiring a large number of institutions including independent authorities and one consequence inevitably is those complexities and the length.

Now, let me take five minutes to conclude and to come back to the point I said I would which is, where are we in this Review Process now? We are at the point where the primary documents have been produced and much supplementary analyses, which the Commission has done to access to this Conference. This Conference is in a sense the culmination of the process. This Conference that presents the full of diversity of the people. It is the most representative gathering of the nation we have had and it has fallen on us to make the final Constitution.

Perhaps, previously mentioned on occasions are the difficulties that the decision-makers find themselves in when they have an oath to uphold the national interests and at the same time, they have personal, sectional or communal interests in the outcome of the process. All of us are going to find ourselves in that kind of conflict and I want to remind you of the oath whereby we all said that, we would have regard to the national interest as the only criteria. I would urge you to keep that in mind. I want to say that Constitution making is not only about adopting a Constitution but it is also about developing the national consensus. Strengthening, refining our identity, making us one people. Working ways for the future for consensus, consultation and these powers of

Constitution making will not be achieved unless we are open, unless we respect difference, unless we don't do so much coaxing in small rooms or large rooms. But we bring the debate to the forum of this body and have an open debate and an open exchange. I often think and often say that the Constitution making is the most sacred of secular tasks. I say that because I believe as with many religions that are represented here, that God's sovereignty over the earth is delegated to and manifested to the people.

The task of making a Constitution is to give reality to their sovereignty, which has been delegated to the people. This task can only be accomplished properly if you pay attention to the concerns of the totality of the people. For various practical purposes, the delegates to this Conference are appointed or elected to represent specified interest groups, religion, professions, genders and regions. The intention of this mode of representation was to get as representative a body as possible. The intention was not that the Conference should be segmented into so many constituencies, each pursuing its narrow specific interest. A nation is more than the sum of its components. Every delegate is obliged and not only by the oath we have taken, but by other moral considerations as well to concern herself or himself with the interests and welfare of every Kenyan regardless of ethnicity, religions, sex or region. Too much horse-trading or excessive amount of lobbying is inconsistent with the spirit and responsibility that has been bestowed on us. The Review Act enjoins us, as does other organs of Review to seek consensus and to proceed to voting only if a consensus cannot be achieved. Unfortunately, already in a short existence, we have resorted to voting.

I would remind you therefore, please let us search for consensus when we have differences so that we can strengthen our unity and give the public, the Kenyans, a document that can truly claim to have the endorsement of every delegate of the Conference. I thank you for your attention, you have been very patient and I am partly a Professor, therefore I am prone to long lectures and you have been very patient and I thank you for it. Thank you very much.

Clapping by the Delegates.

Prof. Ghai: I was reminded by Professor Okoth Ogendo at the beginning that at the end of my remarks, I had to ask the delegates to move a motion and I now hereby invite or request Hon.

Grace Ogot to move a motion that this Conference debates the report and the draft Bill of the Constitution of Kenya Review Commission.

Hon. Delegate Grace Ogot: Mr. Chairman, on behalf of fellow delegates, I beg to request you to move a motion that this Conference debates now the report and the draft bill of Constitution of Kenya Review Commission. Thank you Mr. Chairman.

Prof. Ghai: Thank you very much. May I have a Secunder for that motion please? I see many hands. Thank you very much indeed. Thank you. Now I should like to propose the question to the House that we open the debate on the merits and principles contained in the Commission report and the draft Bill in accordance with regulation 9, sub-section 2, of the regulations of this Conference.

Com. Prof. Ogendo: Thank you very much ladies and gentlemen. The Chairman has formally laid before you the report and the draft Bill of the Constitution of Kenya Review Commission and you have agreed that we should commence debate. At this point, it is appropriate for us to break for tea so that the steering committee can quickly consider the next program of action. There is an announcement to the effect that religious organizations, all prospective delegates of religious organizations are required to attend a meeting in tent number three immediately after this adjournment. Could we please ask the steering committee to stay behind briefly? Thank you.

AFTER TEA.

The meeting was called to order at 5.05 pm. with Hon. Delegate Bonaya Godana in the chair.

Hon. Delegate Bonaya Godana: Honourable delegates, may I call the meeting to order. I take it by now, every delegate has picked a copy of the new guidelines for the Constitution of the technical working groups. The copies are at the gate, every delegate should be picking one as he or she comes in. I presume that is what is being distributed. Those of you who do not have any you can share with those who have, but I am sure there are enough copies to go around. Take these ones.

Order! Order! Delegates, I am sure the majority of you already have them and the rest will have them. It is a two-page or one and half page document, which is straight forward. These are guidelines for you to go and constitute or nominate members of your special categories to the specific Technical Working Groups. You know that they are 12 Technical Working Groups, whose specific names are listed on the document which is going round. Each Working Group shall in accordance with the rules consist of no more than 60 delegates.

I want to make it clear that the Technical Working Groups are Open-ended, that means if you are a member of the Technical Working Group, say on the Executive, and you have some burning issue, or points you consider important for the Committee or Technical Working Group on the Devolution of Powers, you are free, although you are not a member of the committee on the Devolution of Powers, you are free to walk there, present your views and argue but not to vote. And we hope indeed no Committee will arrive at its decision by a vote. We do hope that Committees will manage to work out a consensus on all issues.

In other words, if you feel like belonging to two or three Committees because you have views to give, you will belong to one formally, but you are free to walk into others when there meeting and give your views. That is what we mean by Open-ended Committees. Every delegate is expected to belong to at least one Working Group of their choice. It is therefore proposed that the membership of the Technical Working Groups be constituted as follows:

- All regional, that is provincial, delegates, should meet and assign themselves to each of the Working Groups. It does not matter whether you are assigned three or four or seven or five. Meet as your regional groups or block and assign yourself to each of the 12. Other delegate categories, Political Parties, Parliamentarians, Religious Organisations, Professional Organisations, Trade Unions, Non-Governmental Organisations, Women Organisations, Disabled Groups, Other Special Interest Groups, whatever they may be, are free to either join the provincial groups or to sit as special category groups and again assign themselves to each of the Technical Working Groups. I want to make this very clear because there is somebody late this morning who said the way the guidelines or the old guidelines were worked out it looked like the special interest groups had no place.

All the groups/categories have a place. Every category can meet and assign themselves or its members to each of the 12 Working Groups.

Once the membership of each groups is fully subscribed to, the Steering Committee shall, in accordance with Clause 44 (2b) of the regulations, present the names of convenors for the approval of the Conference. The criteria which the Committee has adopted for the appointment of Convenors include leadership qualities, knowledge of expertise in the systematic area of the group, ability to command the respect of the delegates and the availability to serve on full time basis. Mark the word, 'includes', obviously it will also include an effort to ensure the convenors as a group do reflect the national profile.

So with those few remarks I wish to say I think we will adjourn the meeting now for the various groups and categories to go and focus and we hope we will be able to have the list by the time the Conference starts tomorrow morning at 9.30 am., but I have a point of order, but please if you take the floor say your name and your number because there people who are recording the proceedings of the Conference.

Hon. Delegate Jimmy Agwenyi: Thank you Mr. Chairman. My name is Hon. Jimmy Agwenyi, MP Kitutu Chache, delegate number 7. I would like you to clarify whether there is a ceiling as to how many can be selected from may be a region or a special interest to each of these Committees. Because I can see a situation whereby may be in Nyanza we choose all the 60 for one Committee. Do we have a limit?

Hon. Delegate Bonaya Godana: Let me put it this way, we hope and we indeed require each category, each group to provide members for each and every one of the 12 Technical Working Groups. If you have 30 delegates in your category and you have to provide for each, I do not think you can go beyond 3 per group. If you have 60, may be beyond 5, so we expect every category to be fair as between the 12 Technical Working Groups. We would wish that the categories will themselves provide their own ceilings and not necessitate questions of whether they have not flooded one Committee and left others be raised here on the floor. We hope that will not happen and we are really appealing to the Committees, let us not manage you in detail, really. Yes, Mr. Kilonzo. Then I will come to somebody there.

Hon. Delegate Mutula Kilonzo: My name is Mutula Kilonzo, delegate 215, Mr. Chairman, I wanted to raise a point order before you adjourn these proceedings on the just-concluded session, where the Chairman addressed us, I wish to salute him on that speech, but I wish to point out Mr. Chairman, that honourable delegates are in possession of two Draft Bills. One is green, which is official, the other one is red and annotated. The Chairman did not refer to it in his speech. And I thought that there ought to be a ruling from the Chair, Mr. Chairman, so that delegates understand the ramifications of the red copy and particularly the amendments that have been put there, so that we know before we start debating the document what the document means. Thank you.

Hon. Delegate Bonaya Godana: Commissioner Okoth Ogendo.

Com. Okoth Ogendo: Mr. Chairman, last year, the Commission published a Draft Bill and a Report. Those two are what we call the Statutory Documents. The commission then received a large number of comments from the public and those comments are contained in a document called a Compendium of Commends from the Public so that delegates can see what comments were received by the Commission. The Commission then looked at those commends and prepared an annotated version as a working document for the conference. And basically what that annotated version is saying is that having received comments from members of the public, we think that the following are other possibilities should be looked at.

Then the Commission also looked at what would happen if the Draft Bill becomes the Constitution of this Republic in terms of consequential amendments to existing legislation. So we have also prepared a working document on the possible consequences of enacting the new Constitution. What delegates are being asked to do therefore, is to look at the original Draft and let me add here, that the original Draft that technically amended version which we also have reads better than the original draft. But it has not changed the original draft. Look at the original Draft and then look at the thinking of the Commission subsequent the issue of that Draft in response to public views. As the working document it does not bind you. You can reject it, but we thought it will be useful if we could give you what our response was. So that is how we expected to use the document. Okay, I hope that answers Hon. Kilonzo's question.

Hon. Delegate Bonaya Godana: Yes, there is a delegate here.

Speaker: Honourable, Chairperson, mine is to draw attention to the chair concerning--

Hon. Delegate Bonaya Godana: Your name, please, your name, your district?

Hon. Delegate Sammy Aswani Amunga: My name is Sammy Aswani Amunga, no. 382, Butere Mumias. Mr. Chairman, we have been given programme for tomorrow. When I look at the programme it is somehow misleading. Because they are talking of chapter eight and here they are talking of the Bill of Rights, so I do not know which is which, because to me chapter eight is the Executive and then Bill of Rights is Chapter five. So the delegates would like to go and study, but now they are confused, should they read eight, should they read five, which has not been reflected.

Hon. Delegate Bonaya Godana: In fact as you can see we are already not keeping up to the schedule. I had already said we are adjourning after this, for the groups to go and focus. Which means this programme is been over taken and will have to be re-designed anew and I take it that the Commissioner who is sitting next to me will be in the Committee when they re-design correct errors, typographical errors such as the one you have alluded. I am told (*by Com. Wanjiku Kabira*) it refers to Chapter eight of the report. The Draft Bill is Chapter five, but in any case it is now overtaken, alright? Most probably what was to be discussed this afternoon will now end up being discussed tomorrow morning. Which means everything will move down the Order Paper.

Com.Okoth Ogendo: I think it is useful for delegates to understand that the Draft Bill is based on the Report. It is the report that gives you the reasoning of the Commission based on what the people said. And therefore in order to understand the Draft Bill you must read it together with the Report. Chapters one to six of the report are historical. So Chapter one of the Draft Bill starts with Chapter seven of the Report and that is why the programme will show that when you are discussing Chapter seven of the Report we will also be discussing the Preamble, Sovereignty, the Supremacy of the Constitution and so on. Because that is where the reasoning is. If you

want to know how the Commission arrived at the Preamble that you have you look at Chapter seven of the Report and so on.

Hon. Delegate Bonaya Godana: I think I will go in the order, starting with you and I then there is a point of order I have heard from that side. After him and then I will go to you. Yes.

Hon. Delegare Billow Adan: Mr Chairman, on the last paragraph on the guideline you have issued, it reads that the Steering Committee shall in accordance with the Clause whatever, present names of convenors for the approval of the Conference and the criteria for appointment and then it lists that down. Can you clarify whether the convenors will be elected or will be appointed by the Steering Committee? It is not clear. Thank you.

Com. Okoth Ogendo: Mr. Chairman, I think what is in that guideline is what the regulations say, but I think as an operative principle, it might be useful for each working group to initially decide on who the convenor is going to be before it comes to the Steering Committee.

Hon. Delegate Bonaya Godana: In other words, for each working groups to canvass and consult and forward a name to the Steering Committee, a name or may be two or three names if you like. Thank you. Yes please, your name and number.

Hon. Delegate Bonaya Godana: Yes, please who is that? Your name and number?

Hon. Delegate Lawrence Nginyo Kariuki: Mr. Chairman, my name is Lawrence Nginyo Kariuki I represent a Political Party, National Alliance Party. Just a point of order, this delegate meeting is very important and we experience the problem of Nairobi for water. We ask you through your chair, Mr. Chairman, we do not leave this problem with the Council, because today and I think from tomorrow, most of the hotelians are not going to have water. Can we please take this through Office of the President to use our Army for this time, because if we leave it to the Council, I think we are going to have a problem until we finish this meeting. Thank you very much Mr. Chairman.

Hon. Delegate Bonaya Godana: Thank you, point taken, I am sure the Secretariat of the

Commission will take it up with the relevant department of Government. There was somebody here who had-- I think he is satisfied now. He's put it down. Yes, please.

Hon. Delegate Levy Wangula Ahindikha: Honourable Chairperson, my names are Levy Wangula Ahindikha, delegate number 379 from Kakamega District. I want to find out from the Honourable Chairperson that, you have said very clearly that every delegate will belong to one Working Group and that if you want to present a memorandum to another group you can do so. Suppose these groups are meeting at the same time, what are the arrangements, Mr. Chairman? Thank you.

Hon. Delegate Bonaya Godana: Yes, the Working Groups will be working in parallel. But the Working Groups are not working for one hour on one day only. These meetings will go on for days, maybe weeks, if not months. So it is up to you to organize your time and move from one tent to another. Hopefully there will be no delegate who feels he must present a memorandum at each and everyone of the 12. Surely you can network with some of your friends or with whomsoever you have the same interest and divide up your time between the committees. I think this is the best that we can.

Hon. Delegate Joseph Nyagah: Mr. Chairman, my name is Joseph Nyagah, delegate number 151 from Mbeere. Mr. Chairman, I am wondering if the time you have given us to reorganize the working groups is sufficient. We have done a lot of work in the last couple days and I am wondering if it is convenient to ask us to repeat the job and do it by tomorrow morning. Could you give us up to the end of midday tomorrow, because there is a lot of work?

Two, could you tell us which rooms are these eight groups plus eight Provinces where they are going to meet to avoid confusion out there? Twelve groups are too many, I think somebody needs to tell us, group one you go there, group two you go there, otherwise there is going to be general confusion when we go out there. But we have a problem because in our Province, we had already accommodated people from the various groups as long as you come from Eastern Province. And now since they have to go back to their original groups they need to be given more time for the groups to re-organise themselves.

Hon. Delegate Bonaya Godana: I do not know what the somewhat muted clapping is for, is it about the request for time? Let me put it this way, firstly there 12 tents, and the provincial delegates should be able to meet where they met first time simultaneously. The Secretariat is already working on how to direct the other categories of groups into different tents. I know some could even stay in this hall, take particular corners. I think we have the initiative on some of these issues.

As regards the request for more time, let me give you this evening and tomorrow morning until 9.30 am. when the Conference starts, but as we get to the Steering Committee, depending on what we feel is the progress which has been made, or the time which is still needed, I think those responsible can decide I would rather leave it at that and say you are free until tomorrow midday. I think I will need to have the Chairman and the Committee, which has organized the timetable around, to be able to give that kind of directive. Yes, Mr. Kariuki?

Hon. Delegate J. J. Kariuki: Mr. Chairman, my name is J.J. Kariuki from Laikipia, number 142. Now Mr. Chairman, may be it is not clear to most of us the relationship between the Working Group and the Steering Committee. Because when you were asked a question by one of the honourable delegates you suggested they can bring in one or two or three people who will be proposed as Chairman. Now could you clarify whether the working groups will let their Chairman without necessarily referring to the Steering Committee.

Hon. Delegate Bonaya Godana: The legal position is the Steering Committee appoints the convenor. But we want the process to succeed. And the Steering Committee must work in consultation with groups. There is no point of the steering Committee going into a tent to nominate a convenor for a Committee if that convenor indeed notwithstanding the qualification which he may otherwise have, does not have the qualification of being able to carry the members of the committee. So I think we have to trust each other here. That is why we said the Committee may decide to say look, you can nominate the convenor from among these two or we feel we have come to a consensus that X be our convenor and there is nothing to stop indeed even the Committee is sending representatives to other committees to consult. So that we will end up with a team of convenors in which every one has the qualification in which and on which

every region, every groups has reached some kind of consensus. That is what we will want to have.

Hon. Delegate Bonaya Godana: Prof. Okoth Ogendo?

Com. Okoth Ogendo: Chairman, let me emphasize that the convenors, once nominated or appointed, automatically become members of the Steering Committee.

Hon. Delegate Bonaya Godana: Yes?

Hon. Delegate Daniel Rasugu: Thank you Mr. Chairman and honourable delegates. My names are Daniel Rasugu, delegate number 579 from the constituency of Political Parties. Mr. Chairman, you have with great ability, explained to the conference that the number of the Technical Working Committees was drawn from the Draft Report. I realize, Mr. Chairman, that there some matters of great importance and interest this country which are not included in the 12 technical working committees. How do these matters gain accommodation into the Technical Committees? To that end, Mr. Chairman, I propose to move a motion under rule or regulation 44 As provided for by regulation 44 on page 25 of the information handbook for delegates to this National Constitutional Conference, I move that the Conference so considers to and therefore establishes an ad-hoc and the Standing Committees to determine subject matters of national interest and importance such as labour and industrialization, agriculture, education, globalization etc. and relate such matters to Technical Working Groups which are not provided for by regulation 494 Subject of course to regulation 44 (2) I beg to be seconded on that matter from the floor.

Hon. Delegate Bonaya Godana: Before you get seconded let me say this, I think it is important for harmonious work in this Conference, given that all of us are here in the national interest and in good faith, that when we have to make proposals of new issues we do not ambush each other, but we give notice of motion. I think, I think that will be really proper and this is why we have a Steering Committee which if you like, can refer a proposal, does not mean the Steering Committee will permit you to raise the matter or not permit you. But I think it is really convenient, I would wish that you put down your proposal in writing. It might look very well considered by you and perhaps more minds meeting on it, might in fact find as the matter has

already been well catered for. I wish to plead with you to withdraw the request for the motion at this stage and give us your proposals.

The Steering Committee will meet tomorrow morning and will be able to communicate back to you before the Conference resumes. Otherwise, we will be setting a precedence where at any moment that the Conference convenes, somebody will shoot up with the motion and insists that it will be considered. I plead for your understanding.

(Clapping by the Delegates)

Hon. Delegate Bonaya Godana: Yes. Do I have your understanding?

Hon. Delegates: Yes.

Hon. Delegate Bonaya Godana: Thank you, thank you, yes Mheshimiwa, I also want to plead for understanding on points of orders, everything has to come to an end at some stage.

Hon. Ramadhan Kajembe: Yes Mr. Chairman in this twelve working groups, my name is Hon. Ramadhan Seif Kajembe number 036. In this working twelve groups, you said a membership should not exceed sixty, what will happen if regional committees and in the other categories groups have appointed more than sixty? I am saying this because what criteria are you going to use to reduce the number to sixty?

Hon. Delegate Bonaya Godana: Thank you.

Hon. Delegate Ramadhan Kajembe: So, I think it is important to give a guideline as to how much each group is going to appoint. I am sorry with my throat.

Hon. Delegate Bonaya Godana: Okay, I am sorry for you, I wish you quick recovery of your voice. I think in such an eventuality obviously the Steering Committee will be ceased of the matter. And I believe, I don't want to decide for the Steering Committee in advance but I believe it will be right for us to go back to a category that has abused that freedom to tell them

sorry, I think you will have to reduce your number from being excessive to something which is reasonable, yeah. Yes, may we now then adjourn?

(Noise from the Delegate)

Hon. Delegate Bonaya Godana: Please not yet, not yet, I don't want to, there is somebody who has a burning issue; is it really burning and I hear a lady's voice, I hear a lady's voice.

Hon. Delegates: Burning!

Hon. Delegate Bonaya Godana: Yes, you here and then the lady next, and I hope those two will be the last, the Hon. Lady a little later.

Hon. Delegate Leslie Mwachiro: Thank you, thank you Chairman, my point of order relates to some of the workings which are going on here. We had talked in the morning about... my name is Leslie Betawo Mwachiro number 599 from political parties.

I am asking about what we talked about in the morning regarding--

Hon. Delegate Bonaya Godana: And there are some announcements don't leave please there will be some announcements.

Hon. Delegate Leslie Mwachiro: --the privileges and well fair committee. You have given us guidelines only on the Technical Committees, what about this very important committee? When are we going to form it, Mr. Chairman? And the media as well. We don't have to go back and for tomorrow you tell us again here are the guidelines for Privileged Committee and the media.

Hon. Delegate Bonaya Godana: I think the matter is in the very good hands of the Commission and the Steering Committee. And I know it will be in very good hands, it will be handled there and already received the matter. The gracious lady who has the last point of order and that will be the last point of order. I give it please, before I make some announcement. There was a lady's voice? Hon. Lady's voice, yes.

Hon. Delegate Martha Rob: Hon. Chairman na delegates wote, hamjambo.

Hon. Delegates: Hatujambo.

Hon. Delegate Martha Rob: Mimi jina langu ni Hon. Delegate Martha Rob: kutoka women organization, lakini nimechanganyikiwa kidogo Bwana Chairman kwa sababu unakimbisha mambo kweli kweli. Hapa kuna mambo ya provincial, provincial kuna groups tofauti na political parties, Parliamentarians, women organization and so forth. Na kuna pia wale ambao labda wangependa kuwa waongozi kwa upande wa province na labda wako kwa women organization, ama wako kwa religious, je! Ama Parliamentarians and they belong to a certain province. Je! Wataweza kuja waende wakachaguliwe kwa province kwa sababu wako kwa political party ama la? Na kama ni hivyo, huyu mtu kama hana ujuzi vile wewe umesema hapa chini ya kuwa lazima awe leaders quality, kama yeye yuko kwa province fulani na hana hiyo qualities yenye unataka, je! tapatikana mwingine kutoka province ingine ama ni wapi? Ni hiyo tu.

Hon. Delegate Bonaya Godana: Nasema hivi, every delegate whatever the category he or she comes from, comes from some province. If there is general understanding on that basis we will have no problem. If in fact people from all the categories from one particular province make up a province and divided up their people, that will not be our issue. But we decided to provide for the categories because there were people who came and said, no we don't want to fall under the provincial categories, we want to be considered as a category by ourselves. We said fine, because in the end of the results, will be the same for us in terms of distribution of persons between the committees.

Now I want to make two other important announcements, those who have signed letter. is it really burning? I had said the last one you know, yes one, the very last one, may be I think --

Hon. Delegate Nicholas Biwot: Mr. Chairman what I would like to see from you is a clarification, because if you look at the selection guide lines, we are asking provincial delegates

and so on to meet and assign themselves to each working groups and so on, but we are not saying what guide lines they are going to use.

For example in our case in Rift Valley, we had met and we had followed the guidelines, which were stipulated that we have seven and then may be ask more. We realized that not all the provinces will be able to meet or to fill all the numbers, in which case there will be room for redistribution according to this. If we follow this one I can foresee, I can see confusion.....

Hon. Delegate Bonaya Godana: What is your problem?

Hon. Delegate Nicholas Biwot: Are we going to follow the regulations as laid down or we will just meet and then choose?

Hon. Delegate Bonaya Godana: You follow the regulation as laid down, in your case you have more than seven, even if you distribute seven per committee, you are saying you still have some people without places?

Hon. Delegate Nicholas Biwot: Yeah.

Hon. Delegate Bonaya Godana: Now, I thought therefore you will welcome this proposals we have made, ignore the number just go and divide equally as equally as you can your members between the technical committees.

Hon. Delegate Nicholas Biwot: No, but there, I think you need first of all to have a criteria of having seven and then those who are left will then be re-distributed to other places. In that case will be orderly because you are using a rule which sets.

Com. Okoth Ogendo: Mr. Chairman, Mr. Chairman what we are saying Honorable Biwot is that sit down make sure that all your delegates are in one or other of those twelve committees. If you decide that the Rift Valley will send initially seven, the ones that you are left with redistribute them also. There is nothing to stop you from sending three delegates to a committee or one or four, as long as all delegates from the Rift Valley are in one or other of those committees.

