

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

NATIONAL CONSTITUTIONAL CONFERENCE

Verbatim Report of

**PLENARY PROCEEDINGS – HON. DELEGATE APPOLLO
NJONJO'S MOTION**

**PRESENTATION OF DRAFT BILL –
CHAPTER 19: INTERPRETATION
CHAPTER 20: TRANSITIONAL AND CONSEQUENTIAL
PROVISIONS
HELD AT BOMAS OF KENYA**

ON

06TH JUNE 2003

**PLENARY PROCEEDINGS, PRESENTATION OF DRAFT BILL, CHAPTER 19 –
INTERPRETATION; CHAPTER 20 – TRANSITIONAL & CONSEQUENTIAL
TRANSITIONS, HELD AT THE BOMAS OF KENYA, ON 6TH JUNE 2003**

HON. DELEGATE NJONJO'S MOTION:

**PRESENTATION OF DRAFT BILL: CHAPTER 19 - INTERPRETATION
 CHAPTER 20 – TRANSITIONAL &
 CONSEQUENTIAL TRANSITIONS**

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

Session Chair: **Prof. Yash Pal Ghai
Co-chair:** **Hon. Delegate Kennedy Kiliku
Co-chair:** **Hon. Delegate Sultana Fadhil**

The meeting commenced at 9.35 am.

Prof. Yash Pal Ghai: Please take your seats so that we can begin with prayers. I am going to ask 3 persons to say prayers for us today. Rev. Muchuga, Mrs. Kamla Sikand and Farrah Ade in that order. So I will now call upon Rev. Muchuga to say prayers and I ask you all to stand up for prayers.

Hon. Delegate Rev. Muchuga: Let us stand for prayers.

Our God and our Father we are before you this beautiful morning because you have made it possible for us to be here. It is not because of our own efforts that we are here, but we are here because of your power. We stand here God to thank you so much. When we came, we asked your permission to continue with this Conference and that permission you granted us and we thank you so much. So much has been done here, so many issues have been raised and discussed

and now we are coming to the end of this Conference, the first phase of it and we are going back to our homes. Like Jesus did when he worked so hard, he retreated for prayers. Now we are going to retreat back to our homes Father to evaluate what has gone on, to consider and to meditate. Help us Lord as we meditate upon our own concerns that we may also consider other people's concerns. Help us to think and consider why they are concerned on certain issues. Because it is through that, that we can come closer to one another and find a common ground for all of us as Kenyans. We need one another. We have no alternative God but close ranks because this is the only country that you have given us and we don not have another one. We need you to help us God so that we may find the right way to go. You are our God and you promised us that when we call you, you will hear us. Hear us God, we need you so much, each one of us, not only for those who are here, but also those who we have left home.

Father we have got so much that we need to do for this Constitution and sometimes it looks insurmountable but we know with you there is nothing difficult, we will overcome. So we ask you God to continue to intervene. We have been here in this wilderness for forty days and now we know that we have won the battle and we are going back home. When we come back God, let us work together so that we can find and come up with that document that is required for our children and our children's children. Our God and our Father, there are those who have lost their loved ones when we were here, we remember them this moment. We even remember our brother Shikuku who had an accident and we ask you our Lord to console him as you did console those you met when you were in this world. Thank you for giving us one another and making us to have more friends. Let us leave this place as friends and when we come back let us continue to be friends for we have got a common home, Kenya. As we go home, grant us traveling mercies so that we can reach our homes safely. For all this, we pray in that Precious Name of our Lord and Saviour Jesus Christ. Amen.

Prof. Yash Pal Ghai: Mrs. Sikand.

Hon. Delegate Kamla Sikand: Honourable Delegates and friends. The prayer just said has thanked God for everything. I thank God for all. What I would like you to do today is just have a couple of minutes of meditation. Highest form of Hindu prayers is meditation. Let us all see within ourselves and let us see that the Almighty resides within ourselves. Let us all go into

meditation, be quiet for a couple of minutes and look within ourselves. We know God resides in all of us and if He resides in all of us, that means we are all one. There is no difference between you and me or anybody else. So let us have a few minutes quiet meditation and be with spirit world. Thank you Almighty God, be with all of us. Thank you.

Hon. Delegate Farah Ade: Let us pray. Audhu billahi minal sheytani rajim, Bismillahi Rahmani Rahim, Ewe Mola tunakuomba uturehemeshe baraka za wema wako katika siku ya leo ya kumaliza sehemu ya kwanza kuandika Katiba yetu. Bismillahi Rahmani Rahim, Alhamdhullilahi Rabbil - Allamin, Arahmani Rahim Maliki yomidhin, iyyakana-budhu wa iyakkanastaiin, ihhidhina sirratal mustakiym, siratalladhina anaamta alayhim ghairil maghhubi Aleyhim walladhuwallin Amin.

Prof. Yash Pal Ghai: We have a couple of announcements before we go to the Motion that is to be introduced by Mr. Njonjo. I am going to ask the Secretary for announcements about some administrative matters. I will be grateful if you please pay attention, I notice a very restless Conference today. I know this is the last day of this round. We need to finish a lot of important work before we can disperse. I beg for your cooperation so that we can conclude all that needs to be done today before we disperse. The Secretary.

PLO Lumumba: Thank you very much, Mr. Chairman. Three housekeeping announcements:

1. The checkout time out of the hotels is tomorrow noon.
2. In the afternoon, we will distribute evaluation forms. The purpose of those forms is for you to objectively assess our performance so that where there was weakness; strength will be created in the next session. Please be objective and hand over the completed form to our Secretariat or deposit them in the suggestion box when you leave in the afternoon.
3. Our administration will commence at 4.30. Thank you very much, Ladies and Gentlemen.

Prof. Yash Pal Ghai: Thank you very much. Now I invite Mr. Njonjo to introduce his Motion.

Hon. Delegate Apollo Njonjo: Mr. Chairman, fellow Delegates, it is my great pleasure to be able to move this Motion. Before. As I do so, I need to explain a couple of things. One of them

is that under the Act, we at this Conference have been mandated to come discuss the report and the Draft Bill prepared by the Commission. We are supposed to discuss it, to debate it, to amend it and to adopt. No other organ of the Review has been provided with those powers. Only we the Conference. (*Clapping from the Honourable Delegates*).

One of the reasons why I am moving this Motion is to ensure the integrity of this Conference is maintained even when we have gone on recess. Mr. Chairman, I am referring to the organs of the Conference. I am not referring to the organs of the Review. The Commission is excluded from being an organ of the Conference; it is to participate in the Conference. But the Commission is an organ of the Review just like the Conference is an organ of the Review. So this Motion that I will move in a short while does not in any way constrain the continuation of the work of the Commission. The Commission can continue doing its work. This is referring specifically to the organs of the Conference. And what are these organs? These organs are the Steering Committee, these organs are the various committees that we have created like the Welfare and the Media Committee. These organs are like the Vice Chairperson that we have elected. These organs are like the Technical Committees that we have created. Those are the organs that I am asking that they also go on recess and not the Commission.

We have no powers over the Commission. It is appointed under the Act and it will continue executing its work. Mr. Chairman, I have given that explanation because when I raised a point of order, there was a misunderstanding that I would be constraining the work of the Commission. The Commission is not going to be constrained by my Motion. It will continue to operate as a Commission for the Review during the recess. In fact, I would request that while we are away on recess, that the Commission does an important job for us: it prepares the Hansard reports for all the work we have been discussing during Plenary. That it prepares the Rapporteurs report and that it also organizes that work in relationship to the various Technical Committees that we created. I think there are twelve or thirteen Technical Committees.

I would in fact urge the Commission that while we are away, when it has prepared those documents, it sends those documents to us before we come back here so that we will have the time to study them before we come here. With that, Mr. Chairman, I think I have given the explanation for this Motion. What I am asking, and I think we should be very grateful, is we

have come through a very difficult road and every time we always find some movement of some people who come and try to hijack the Review process. The Chairman and CKRC have gone through a very difficult time in the past. When thinking that everything was okay, one would then find some people were trying to hijack the Review process and take it their own way. I am asking by this Motion that we shall find the work we have done exactly where we have left and nobody shall do the work of this Conference during the time that we are away.

Clapping from the Honourable Delegates.

Mr. Chairman, this Motion is moved under Rules no. 24 of the rules and regulations and it reads as follows fellow Delegates:

“Noting that the adoption of the Resolution proposed by Honourable Delegate 053, that is Honourable Khamisi that the Conference adjourns on the 6th of June and reconvenes on the 17th of August 2003, this Conference resolves that the organs of the Conference, safe for the CKRC” safe for the Commission and I have only included the Commission there for technical reasons, “do similarly adjourn to the 17th day of August 2003.”.

Clapping from the Honourable Delegates.

When discussing this Motion Honourable Delegates please also bear in mind to remain here right up to the end of prayers this afternoon when we will be going home at the point of adjournment. Please remain, all kinds of things are done when some of us may not be there, remain to defend the integrity of this Conference and this Committee. Thank you very much. I would like to ask a person to second this Motion, there are persons who have volunteered, Mr. Rakamba; there are quite a number who have volunteered to second me, please stand up the person who wants to second this Motion.

Prof. Yash Pal Ghai: Please be quiet, it does not help to shout.

Hon. Delegate Nafutali Kemboi Chelegat: I, Nafutali Kemboi Chelegat, do hereby second this Motion.

Hon. Delegate Orio Rogo Manduli: I, Orio Rogo Manduli, from Political Parties Delegate number 594, wholeheartedly and with all my energy second this Motion, because we are here for the people of Kenya. We are representatives of the thirty million Kenyans and we are here to ensure that their wishes are documented, not anybody's wishes and seeing what has happened in the past and going by the past records, there could be people who are poised to carry on while we are away for the two months. To add, subtract, organize this document and on behalf of the Kenyans we say we shall object most vehemently to any such attempts and it is because of that that we want to ensure that this Motion goes through. This is the Motion that we precisely want and let Kenyans know that we are vigilant even when we are away for two months, completely vigilant. Nothing will be added to this Motion that we have not discussed here and agreed upon and anybody trying to do that will do it at their own peril. Thank you very much.

Prof. Yash Pal Ghai: Thank you very much. The Motion having been seconded, I now propose a question of the Motion that noting the adoption of the resolution proposed by Honourable Delegate number 053 that the Conference adjourns on the 6th of June and reconvenes on the 17th of August, 2003, this Conference resolves that the organs of the Conference save the CKRC to similarly adjourn to the 17th day of August, 2003. Delegate number 083. Please proceed.

Hon. Delegate Prof. Wangari Maathai: Mr. Chairman, I would like to remind the Honourable Delegates that at a certain stage we did decide that we should have an Ad Hoc Committee on Culture. That Ad Hoc Committee was henceforth constituted and we have met about two times and it will be necessary for this Committee to do some work during the recess if we are--

Honourable Delegates: No.

Hon. Delegate Wangari Maathai: Let me finish and then you--

Hon. Delegates: No.

Prof. Yash Pal Ghai: Please, you must let the Speaker speak, we are not going to be able to conduct our meeting if you keep on heckling and shouting, this is not the way to proceed. You

are a disgrace to this country if you do not discharge your obligations in the spirit of the regulations. Let the speaker finish her statement. Please go on.

Hon. Delegate Prof. Wangari Maathai: Honourable Delegates, you will still make your decision but it is important to inform you that because we are working on your behalf and it is not as if we constituted it ourselves, it would be improper and failure in our duties if we did not inform you that this Committee has only met twice and therefore would have to go through the document and try to prepare and audit the document in order to be able to share the sentiments about Culture to the Technical Committee when we resume in August. Thank you, Mr. Chairman. Therefore, I want to propose that this Committee be exempted as a Committee that should continue working during the recess.

Prof. Yash Pal Ghai: Professor, can I ask you to read your proposed amendment so we have it written here. Number 314.

Hon. Delegate Karengi wa Gacuru: On a point of order. Mr. Chairman, you have the proposed amendment by the former speaker and all it is saying is--

Prof. Yash Pal Ghai: Why don't you let her present that, just have a point of order. Please Professor, can you give us the wording of your proposed amendment.

Hon. Delegate Wangari Maathai: I would say that the adoption all the way down, to "save for the CKRC" and the Ad Hoc Committee on Culture do similarly adjourn.

Prof. Yash Pal Ghai: Has the proposed amendment been seconded? Delegate number 392.

Hon. Delegate Eliud Paul Nakitare: Honourable Chair and Honourable Delegates, I would like to second this amendment wholeheartedly and may I add Honourable Chair-- My name is Paul Nakitare, Delegate number 392 from Bungoma. I would like to add that we should not seem to marginalize the subject of culture and I am sure that when we come back, all the Honourable Delegates would like to be involved in the idea of entrenching culture from a point

of knowledge. I therefore wish to kindly request the indulgence of the Honourable Delegates to accept this amendment. Thank you very much.

Prof. Yash Pal Ghai: Under the rules, we have now to deal with this proposed amendment before we can return to the original Motion. Who had point of order? Delegate number 424.

Hon. Delegate Thomas Nyabote Aburi: Point or order. Thank you, Mr. Chairman, Honourable Delegates. I would like to suggest the following, that the *Ad Hoc* Committee on Culture is not special from the other Technical Committees, that the Conference is being requested to exempt it from adjourning. If we accept or we allow the *Ad Hoc* Committee on Culture to continue working, we shall be opening the Pandora's Box for other Committees. What the mover of the original Motion intends to do and is requesting us to do is to close all the gates or loopholes for anybody who is having a sinister motive as we have seen here before either to scuttle the process completely or sneak in the so called experts who would like to come on. I therefore oppose the request or the amendment that is being moved by the Chairperson of the Culture Ad Hoc Committee. Thank you very much.

Prof. Yash Pal Ghai: Delegate number 433.

Hon. Delegate David Marcos Rakamba: Thank you, Mr. Chairman. First, the composition of this Conference under the Act 3(a) 27, is well stipulated that it should have the members mentioned and this Conference if adjourned by the admissive Motion. Mr. Chairman, it could not be valid for any of the members mentioned in the Act to remain behind and continue doing any other thing. That means we are undoing the adjournment Motion that is where the amendment could have been placed. If a Conference has been adjourned, the whole composition of the Conference is adjourned. Therefore, it could be illegal against the Act to continue with these other Ad Hoc Committees, and I would also propose that, because the Commission still remains they can do the work of the culture and when we come back we will find they have done such work that is expected to be done by the Ad Hoc Committee. It is the responsibility therefore of the Commission, because it was the one that was supposed to have collected the views, to continue to ensure that they collect the views so that when we meet here the Ad Hoc Committee will be given those views to try and harmonize them in the position of a Technical Committee. Thank you, Mr. Chairman.

Prof. Yash Pal Ghai: Number 487.

Hon. Delegate Baldip Singh Rihal: Thank you, Honourable Chair, Honourable Delegates. I want to speak as the Chairman of the Privileges, Discipline and Welfare Committee. While I am not opposed to this Motion, either the original or the amended one, I want to draw the attention of the Honourable Delegates to one other fact. This is because two days ago my Committee met, we made a recommendation to the Commission that in order to make better arrangements on the welfare of the delegates when we reassemble in August, we as the Committee together with the Commission need at least a few days before the Conference resumes. It was agreed by the Commission representatives in the meeting that it may not be practical to call all members of the Committee but we will have a smaller sub-committee of two or three representatives to--

Hon. Delegates: No.

Hon. Delegate Baldip Singh Rihal: May I finish my point please.

Prof. Yash Pal Ghai: Please, Order.

Hon. Delegate Baldip Singh Rihal: That we will sit with the Commission a few days prior to the resumption and in the light of what the Secretary announced earlier that there is going to be a form which you Delegates will be filling this afternoon, you may have some comments on what sort of arrangements you want to have made for you when you come back in the hotels and this sub-committee was going to sit with the Commission representatives and streamline all those arrangements. I have no objection if you feel that we should not do it but please, when we resume and if some of the arrangements are not in place as you would have liked to see, then please do not blame my Committee. Thank you.

Prof. Yash Pal Ghai: 114. Order please, order.

Hon. Delegate Paul Muite: Mr. Chairman, I am Delegate 114, Paul Muite. Mr. Chairman, I understand the fear and the sentiments behind the Motion by Delegate Apollo Njonjo. I also

understand the sentiments of Professor Wangari Maathai and Rihal. Mr. Chairman, I express no views in one way or the other, but I have the following plea to make: if we are going to be successful in giving this country a new Constitution and that is what we are all committed to, we need to build confidence in each other, we need to lessen suspicions. I can say it positively that Parliament as an institution will continue to be committed to bringing it back to ensure that we get a new Constitution. There appears to be too many suspicions Mr. Chairman, and I understand why those suspicions are there. What I am saying is that we built consensus, each constituency is important, we all represent the Kenyan people, you have been elected by the Kenyan people to come and delegate. Members of Parliament the same, the Civil Society, other stakeholders, the religious sector, we need to build consensus among all of us so that we can have a good Constitution, because we are not going to have a new good Constitution if too much suspicion is permitted to continue.

So my special plea is that even as we pass Honourable Apollo Njonjo's Motion, can we individually and collectively make an effort to start having confidence in each other in different constituencies so that by the time we come back we shall come back with confidence in ourselves with each other without the current level of suspicions? Thank you.

Prof. Yash Pal Ghai: 538 please.

Hon. Delegate William Ole Ntimama: I have a point of order. Mr. Chairman, my name is Honourable William Ole Ntimama, Delegate number 147.

Prof. Yash Pal Ghai: You don't have the floor I am sorry. I gave the floor to--

Hon. Delegate William Ole Ntimama: But this is a Point of Order, Mr. Chairman.

Prof. Yash Pal Ghai: All right.

Hon. Delegate William Ole Ntimama: I want to say very clearly, Bwana Chairman, that I have never started to complain or bulldoze my way into speaking in this Conference. I have spoken only once on the matters of land, which I thought was very important. But what I see here Mr.

Chairman, with all humility, is that you are giving a select group of people to talk about this Motion. And I see it is unfair because we were all to contribute in this Motion. Thank you, Mr. Chairman.

Prof. Yash Pal Ghai: Thank you. Please.

Hon. Delegate Samuel Arap Nge'ny: Thank you, Mr. Chairman my number is 538, Samuel Arap Nge'ny, religious organizations. Mr. Chairman, can I assist the Conference, first of all, as to the procedure of handling this particular Motion. This is a procedural Motion, a Member is calling on how we move forward and that Motion has been moved and seconded. Another member, in keeping with regulations, has given us an amendment to that Motion. The right thing to do for the Delegates now, is to discuss the merits and demerits of that amendment so that the Chairman can dispose of this, so that this Conference can move forward. If we inject other extraneous issues into that Motion we shall miss the way.

So my plea is do not talk on the merits and demerits of that, I think they are all legitimate, but the Conference should now discuss the amendment brought by Honourable Wangari Maathai whether that plea is acceptable or not and then we dispose of it and go back to the original Motion whether amended or in its original format. That is my contribution.

Prof. Yash Pal Ghai: Thank you very much. That is exactly what I have proposed we do. I call 147.

Hon. Delegate William Ole Ntimama: Thank you, Bwana Chairman. First of all, I would say that the murmurs, the suspicion of the Delegates actually arose out of the fact that there was a Motion that was presented two, three days ago, which was later withdrawn and which was going to suggest that certain peoples, certain groups, certain committees are left behind to continue in fact trying to construct the work of the Constitution. This, Mr. Chairman, is exactly what most of the Delegates object to. We have all agreed that we must work together; we have all agreed that if we adjourn we adjourn together except the Commission and its Secretariat, Mr. Chairman. Because if anything has to be done about the hotels, the Commission has got a Secretariat to do that. Mr. Chairman, it will not do to have the special Committee doing all the welfare of the

Delegates because it was not there before, it was formed by the Commission. Why can't the Commission Secretariat continue to deal with the welfare and the accommodation of the Delegates as they did before? (*Clapping by Honourable Delegates*)

Mr. Chairman, some of our communities are the preservers of culture. I don't even know who are these members of the Committee who are doing the Ad hoc Committee on Culture. Mr. Chairman, we should not have any Committee with any pretence at all that they are going to construct anything to do with the Constitution of this country. We came here together and I supported the Members of Parliament the other day when they said we had to work together, we have to go and come together on the 17th, all of us and deal with this thing as a whole assembly. The little Committees that are being protected will probably scuttle the Commission. Let me say, Mr. Chairman, there has been a lot of suspicion here because what we have seen almost every other day when we have been here for the whole month are dozens of groups of people trying to poison the movement and the progress of this assembly. This is why we are mostly suspicious.

What I suggest is that definitely this amendment should be thrown out and we support Mr. Njonjo's Motion to say that if we have to adjourn, that all of us have to adjourn. I think I will support my friend Honourable Muite. It is true that we have to build more trust because it has been lacking in most areas. It has been lacking somewhere and people have been suspicious of one or two other groups trying to scuttle this assembly here.

Lastly, Mr. Chairman, I am one of the people who are going to make a comment to say that this assembly, this congregation, is one that has succeeded for the last hundred years in this country. We don't want to spoil it, we want to give it the way until we conclude this Conference without any other little amendments or any other little groups being imposed on us. Thank you.

Prof. Yash Pal Ghai: I would like to invite those Delegates who wish to speak to the proposed amendments. So I think we should focus on the specific amendment, dispose of that before we proceed further. So please, those who want to speak on the proposed amendments. 599.

Hon. Delegate Leslie Betawa Mwachiro: Thank you, Chair. I am Leslie Betawa Mwachiro, 599. Mr. Chair, the amendment is actually discussing the *Ad hoc* Committee on Culture, which

was created by this Conference and the Committee was actually necessary because of the omission by the Commission not to have dealt on culture during the representation. So we found it fit to basically fill in the gap by having the *Ad hoc* Committee. But now that we are going on recess, I think the entire Commission should actually address itself to this issue of culture and give us the document.

As the mood of the Conference is, there have been attempts to basically do away with this Conference and therefore it is important that we actually don't allow any room whatsoever for anyone with ulterior motives. It is not only the issue of suspicion, it is the issue of ulterior motives which this Motion 36, which was basically killed or withdrawn, was trying to do, to replace the entire Conference with a special Committee made up of so-called experts or Palacina experts. Now, we have come away from the experts, we are now at the Conference and it is basically the Conference to chart out its goals in trying to finalise the Constitution. It is stated in the last sentence on that Motion that we were going to be given a completely new Draft Bill to approve and it was going to do away with the working groups, Steering Committee and any other group, even the Culture Committee had been done away with.

So what we are saying, let the Commission deliberate on these two issues even what the

(Inaudible) has brought about is something which the Commission had actually omitted. Now you have two months to sort it out. I was also going to suggest something but I don't think it can come in the form of an amendment. That the Rapportuer General, Professor Okoth Ogendo, should of course compile the *Hansard* for this Conference and analyse its content for early dispatch to all Honourable Delegates on or before July 17th 2003, so that we will have at least another one month to digest the contents of the *Hansard*. Mr. Chair, you told us that we can belong to all the working Committees, even the one on culture.

(Inaudible) six or seven people, so that we also have input to that Culture Committee. If they meet behind our backs, how will they get our feelings and contributions on culture?

Mr. Chairman, we want all of us as Delegates of this Conference to participate in any matter whatsoever, whether substantives members or just co-opted members. With those few remarks, Mr. Chairman, I beg that we actually take a vote on this amendment Motion.

Prof. Yash Pal Ghai: I will now put the question of the amendment that the word proposed to be inserted be inserted. So those of you who support the amendment say “Aye”.

Prof. Yash Pal Ghai: The amendment that we are discussing proposed by Professor Wangari that we put in the words after CKRC “and the Motion on the Committee on Culture”.

Those who support these amendments say “Aye”.

Hon. Delegates: AYE.

Prof. Yash Pal Ghai: Those who oppose this proposed amendment say “Nay”.

Honourable Delegates: NAY!

Prof. Yash Pal Ghai: I think the “NAYS’ have it. (*Clapping from Honourable Delegates*)

So we now go back to the original Motion and I will take one or two more contributions and then I will put that to question. Okay I will invite two contributions. 015.

Hon. Delegate Billow Adan Kerow: Thank you, Mr. Chairman. Mr. Chairman, I stand to support the Motion by Honourable Apollo Njonjo for the following reasons.

One, I think we did say at the outset that this Conference-- My name is Honourable Billow Kerow Delegate number 015. We all agreed two years ago that this process of drafting the new Constitution must be a people-driven process. This is why we have over six hundred Delegates from all over the country in this Conference and I think it is that inclusiveness, that participatory approach which we must keep throughout this process.

Mr. Chairman, it also clear that there have been attempts in the past before this Conference was convened and even subsequently by certain members of this country’s leadership to derail this process. I think to keep this process free from corruption, it is proper that we do not allow any of the organs of the Conference, the relevant Technical Committees, to proceed. Mr. Chairman it is important to give chance to all of us as we go home to reflect on the views that have been

given to allow also those who are in various technical groups to dig up more data and think, so that when resume we are all fresh and we have input what we can give into this process. Mr. Chairman, it also important to note that there is a Drafting Committee and there is a *Hansard* report. The Drafting Committee, to my understanding, is part of the CKRC Secretariat. So they can continue compiling the *Hansard* report and I suggest each of the Technical groups should have a copy of *Hansard* that is relevant to that group.

Finally, Mr. Chairman, in my view, the concern by the members, is not a figment of imagination. We have seen that there was an attempt to even derail work of the Commissioners before this Conference was convened and we all remember groups such as the Palacina Group, a group of experts that was set up by you as the Chairman in a hotel somewhere that almost attempted to take over the whole process. If it wasn't for the commitment by these Commissioners, today most of us would not have been here. I think therefore it is important that we do not allow any experts or any groups or anyone to continue in this process. Please allow all the Kenyans to go through this process through this representative Conference. We all represent the rest of Kenyans and it is important therefore that we are allowed to do so.

Finally, it will also attract one man by its concern that if we allow this groups to continue with the night meetings, all funny things will happen. So please I support the Motion by Apollo Njonjo that we suspend the activities of all organs except the CKRC Secretariat. Thank you very much. (*Clapping by Honourable Delegates*)

Prof. Yash Pal Ghai: I call 539.

Hon. Delegate John Njue Njenga: I am Archbishop John Njue, number 539 representing the Religious Groups.

Mr. Chairman, hebu nirudie tena nilivyo sema hapo mbeleni. Tumetoka mbali, bado tuko mbali na tunaelekea mbali, and there is a saying in English that says "once bitten, twice shy". Our experience in the past has been that, even when things were proceeding properly, there came some kind of beautiful expressions to keep us away or to derail this process. We have come now to where we are and we cannot lose sight of our history., that history which has made us feel

maybe so much wounded. But at the same time we must not bury ourselves in that history. We must wake up and look forward with hope. Dear Delegates, I am aware of the various wounds, the various communities have experienced. But it is my prayer and hope also that where we have come up to now, with an effort to work together we must not allow that process to be interfered with. (*Clapping by the Honourable Delegates*).

This is why I am appealing very sincerely and honestly that let the adjournment be the way it was agreed yesterday and let us all go on recess. When we come back, if there is anything to be handled, it will be faced that time. But as of now, let the Motion of Mr. Apollo Njonjo stay and we move on with the voting for it. Thank you.

Prof. Yash Pal Ghai: I will now put the question of the Motion that the adoption of the resolution proposed by Honourable Delegate Numbers 053 that the Conference adjourns on the 6th June and reconvenes on the 17th August, 2003, this Conference resolves that the organs of the Conference, save for the CKRC, do similarly adjourn to the 17th Day of August, 2003. (*Clapping by the Honourable Delegates*).

As many of us are of that opinion, say “Aye”,

Honourable Delegates: AYE!

Prof. Yash Pal Ghai: As many of us are of the contrary opinion, say “NAY”.

Honourable Delegates: No response.

Prof. Yash Pal Ghai: So, there the “Ayes” have it--

Clapping by the Honourable Delegates

Prof. Yash Pal Ghai: --and thank you for your cooperation.

More Clapping by the Honourable Delegates.

Prof. Yash Pal Ghai: I would now like us to debate the Chapters of the Draft that were presented yesterday. I am grateful that Mr. Apollo Njonjo reminded us all that we should stay here till the prayer time, which is the closing time today, so that we can conclude our necessary business. With that, I pass the floor to the Co-Chair, to conclude the discussion on the Chapters that were being discussed yesterday.

Hon. Delegate Kennedy Kiliku: Honourable Delegates, I now call upon the Presenters to respond to the remarks made yesterday and I start with Commissioner Salome Wairimu Muigai .

Com. Salome Wairimu Muigai: Thank you very much, Mr. Chairman, Honourable Delegates. I would like to start by thanking all the Delegates that have responded to our presentation and then I have a few observations to make.

Mr. Chairman, it is apparent that many Delegates feel that we have too many commissions. What we would like maybe the Delegates to think through is points of merger. What do we need to merge with what in order to come up with fewer commissions?

On the other hand we have had good arguments as to why we should also increase the commissions. So, this is some of the homework that you will be reflecting on and give your views to the relevant committees when we come back.

Mr. Chairman, a strong case has been made for keeping the Teachers Service Commission as an independent Commission, and a suggestion has also been made from the floor that the Teachers Service Commission undertakes to deal with the employment, promotion and training and all that pertains to pre-school teachers. This was spoken from the floor and a lot of Delegates felt that this should be an expanded mandate of the Teachers Service Commission.

A case was also adequately put for the inclusion of the Gender Commission and many Delegates felt that the Gender Commission should be an independent commission.

Inclusion of people with disabilities and the elderly in the composition of the commission was also a general feeling of yesterday's response from the floor.

Lastly, the floor felt that we should take up issues of the youth and children and find a way of dealing with them as a specific issue. Thank you Mr. Chairman.

Hon. Delegate Kennedy Kiliku: Thank you very much Commissioner Salome. Can we clap for her for the good remarks?

Clapping by the Honourable Delegates

Hon. Delegate Kennedy Kiliku: I am now going to call upon Commissioner Riunga Raiji to respond to the remarks made on the Draft Bill on Constitutional Commissions.

Com. Riunga Raiji: Thank you Mr. Chairman and thank you Honourable Delegates. You had some very useful contributions that we received emanating from the Draft that we prepared.

I think one of the main issues that has cut across the board was the purposes and objects of the commissions. If you look at the report that was presented yesterday, the object of the Constitution Commission is independently seek to protect and enforce a Constitutional provision and further ensure their implementation. In other words, the whole object is to supervise the internalisation of constitutionality within the Republic of Kenya.

An important issue was raised by a number of Delegates, on whether or not the proposed commissions will not conflict with the traditional role of Government Ministries or other public institutions. But as I have explained, the objects are different. The commissions deal specifically with constitutional provisions whereas there are very many other things that the Government and the general legislation deals with and as we all know, once the new Constitution is promulgated, if any other regulations or policies are at variance with the Constitution, those policies or those statutes will become unconstitutional and therefore void. So, there is not going to be any conflict between the Constitution and other Government institutions.

I think it is important to look at the theory of the Government in a multi-party democracy like this, a Government is elected on the basis of certain policies, whereas a Constitution deals with provisions that are intended to apply irrespective of the Government in power. In fact, the very

reason why these commissions are being proposed was to ensure that irrespective of which Government comes into power, the policy that it endorses will not infringe on the rights that are guaranteed under this Draft Constitution.

Now, issues were raised about the basis of setting the commissions and why we recommended some and not others. On the outset we must say that one of our mandates as we were told yesterday, was also to inquire on the constitutional commissions and propose which ones are to be set. So, the basis really were the views that you people gave to us and we have attempted to give effect to them by proposing the commissions that we have done.

It emerged yesterday that there are many people who think that there should be virtually a commission for everything. However, I think that may be the basis upon which we made the Draft was that we only proposed the commissions that we thought were fundamental in the protection of the constitutional provisions. There are very many other commissions that can be set and which are in fact in existence but are not constitutional commissions and it is necessary I think at this stage to make a distinction between the various commissions that are set up by the President and the commissions of enquiry Act.

These are in the nature of *ad hoc* committees that are set by the President to deal with a particular issue and be wound up as soon as that issue has been resolved, like the Ouko Commission and others. Parliament has also powers to set up select committees and again that is clearly within the mandate of those ones and they do not interfere with the constitutional commissions. Once the commissions have been approved and become part of the Constitution, these will be permanent oversight bodies with a sole mandate set out in the Constitution.

Now, an issue was also raised with regard to the Bills that were passed recently with regard to matters that are covered by the Constitution. Now, the Constitutional Commissions and the principals stated therein, govern every other statute including the one setting these bodies. What we said here is the basic minimum. If for example, we look at the new Anti-Corruption commission or Ethics Commission which are being set up by Parliament and find out that they do not make provisions that comply with the minimum standards that we have set up, then those Acts will have to be amended in order to include that and it is for that reason that we have set up

a Constitutional Commission to scrutinize all these other Acts and ensure that they fully comply with the requirements set out under the new Constitution.

An issue was also raised with regard to the powers to investigate – I think it was pointed out that these commissions maybe met with the same fate as the former Anti-Corruption Authority, which I think the Courts ruled that the power to investigate offences was exclusively vested in the Attorney General's Office. Now this one has been actually taken off in a different section relating to the powers of the Director of Public Prosecution.

If you look at Article 209 (6), express power has now been given by this Draft Constitution for Parliament to confer powers of prosecution on other authorities including this independent commission. You notice that it was put and it was pointed out, we deliberately did not give the Human Rights Commission for example powers of prosecution and all that. The traditional way of dealing with it is that, once it is established that an offence has been committed, then it is left to the normal Courts to prosecute and all that. But, if at any time it is felt that, that power is not sufficient, it is now open within the Constitution for Parliament to empower, to give more teeth to these commissions to be authorized to prosecute and I think an important issue was raised whether or not this power should actually be given expressly and I think that will be left to Committee K to decide at the committee stage whether or not we need to have that power.

I think the last point that Delegates raised and again it is an important one, was the question of educating people on the Constitution. Now, as we said yesterday, one of the general requirements with regard to the commissions is that, they have been expressly mandated to educate the people on their roles and on their rights confined by the various statutes, principally the Bill of Rights. But I think the issue that was raised is the cross-cutting issue that was presented to us during the public hearings, was the need to ensure that we teach in our schools the Constitution, that the teaching of the Constitution is incorporated into our school syllabus. I think that is an issue that strictly speaking does not require a constitutional commission but I think it is an important issue to be followed and probably to be incorporated in Chapter two or so values of the Constitution to ensure that every Kenyan understands his or her rights and obligations under the new Constitution and I think it is good that it was brought up so that the relevant committee can visit and hopefully when it comes to the committee stage, it will be

captured within the relevant Chapter. Thank you very much, Honourable Delegates and Mr. Chairman.

Hon. Delegate Kennedy Kiliku: Thank you very much, Commissioners. Can we clap for Commissioner Riunga for the nice presentation? I am now calling upon Commissioner Keriako Tobiko to respond to the remarks made on the amendments of the Constitution.

Com. Keriako Tobiko: Thank you Mr. Chairman. Honourable Delegates. A total of fourteen Delegates had spoken on Chapter 18, on the amendment of the Constitution and a number of issues were raised as to whether Parliament should have powers to amend the Constitution and what should be the threshold, whether all amendments to the Constitution should be ratified by the people at referenda? What provisions should be entrenched? Whether Parliament or the people should have the final say as regards the Draft Bill? Whether we need the ninety-day period between the second and the third reading? And whether the President should be obligated to ascend to bills?

Now, all these comments are valid comments and are comments that definitely would be ventilated and will be addressed at the relevant committee stage and also at the committees of the Conference? So, I do not want to express my opinion on either of those views. However I would like to comment or clarify two issues raised by two Delegates.

Delegate No. 532, Mr. Lumatete Muchai, did raise the issue of Certificate of Compliance under Article 296. In his view, it should be the Constitution Commission to issue the Certificate of Compliance and not the committee on Good Governance and Public Participation. I think there is some misunderstanding of the provisions of the Draft because in the Draft, it is not the committee that issues the certificate. It is the Speaker in respect of non-entrenched provision and the Electoral Commission in respect of entrenched provisions. The reason it is the Speaker in the relevant case, is because the Speaker who presides over the proceedings in parliament and therefore knows that the requirement of Chapter 18 have been complied with or not and in respect of entrenched provision, it is the Electoral Commission that conducts the referendum and therefore has the capacity then to certify that the proposed amendments have been approved by the people at the referendum.

Now, Delegate Number 493, Ms. Soud H. Amina, raised two issues. Firstly, a question actually, what happens to an amendment if passed by Parliament but fails at the referendum? The answer to that is that, if that happens, then that amendment fails because the Electoral Commission will not then issue a Certificate to the compliant and if the Electoral Commission will not issue a Certificate of compliance, then the President is required not to sign, to assent to the Bill and that's when the Bill fails.

The Delegate also asked, what is the time frame for holding a referendum in respect of amendments to entrench provision? There is no express provision in the Draft in that regard and there are two ways that it can be done. Either specifically put it there, in the Chapter or defer it to consequential legislation. A lot of legislation will have to be amended, existing legislation. New legislation will have to be enacted to implement or be consistent with the new Constitution. So, that aspect of the period within which a referendum will be held or should be held, is a matter that you, the Delegates, will decide whether it should be specifically provided in the Draft or be deferred to consequential legislation. Thank you.

Hon. Delegate Kennedy Kiliku: Thank you Commissioner Tobiko. Can we clap for the presenter please?

Clapping by the Honourable Delegates

On behalf of the Chairperson and on behalf of the Presenters and my own behalf, I must thank you for your cooperation. It was my wish to see every one of you but time could not allow me to do that. Otherwise thank you very much. We are now breaking for tea and after fifteen minutes, we will reconvene.

Hon. Delegate Fr. Joachim Gitonga: On a point of information.

Hon. Delegate Kennedy Kiliku: Whom are you intending to inform please?

Hon. Delegate Fr. Joachim Gitonga: Mr. Chairman--

Hon. Delegate Kennedy Kiliku: Could you please state to whom your point of information is directed?

Hon. Delegate Fr. Joachim Gitonga: I am informing the Commissioners, Mr. Chairman. Yesterday, Mr. Chairman—

Hon. Delegate Sultana Fadhil: Just a minute. Do you want to inform the Commissioners?

Ho. Delegate Fr. Joachim Gitonga: I want to inform the Commissioners –

Hon. Delegate Sultana Fadhil: Honourable Delegate 311, please do you want to inform the Commissioners? They are not here and the few who are here, do you want to be informed?

Hon. Delegate Fr. Joachim Gitonga: The Conference as well as the Commissioners, Mr. Chairman, those who are there. Mr. Chairman, yesterday several speakers –

Hon. Delegate Sultan Fadhil: Delegate Number 311, the Commissioners do not want to be informed. We have adjourned and you can raise your point of information after the break. Thank you.

Hon. Delegate Fr. Joachim Gitonga: Then, Mr. Chairman, let me inform the Conference.

Hon. Delegate Kennedy Kiliku: This session is adjourned. Maybe you can try your luck later after the tea break.

Ater Tea Break

PRESENTATION OF THE DRAFT BILL

CHAPTER 20 – TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

- | | | |
|----------------------|---|--|
| Presenters: | - | Com. Prof. Okoth-Ogendo. |
| | - | Com. Dr. Githu Muigai |
| Session Chair | - | Hon. Delegate Dr. Bonaya Godana |
| Co-Chair | - | Hon. Delegate Leslie Mwachiro |

Meeting started at 11.40 a.m.

Hon. Delegate Bonaya Godana: Delegates please take up your seats. Honourable Delegates, please take up your seats, we are one hour behind schedule. We should have assembled here at exactly 11.00 O'clock, it is unbelievable. We are now trying to assemble 40 minutes behind schedule. Delegates, please take your seats. Those Delegates crowding around the entrance please move and take up your seats. Honourable Delegates, please take up your seats quickly. Order! order! order! Delegates.

Order, Honourable Delegates, may I call the meeting to order. We will now start with our final presentation and discussion on the real final provisions of the Constitution, Transitional and Consequential Provisions. At the centre we have two Commissioners, Com. Professor Okoth Ogendo and Com. Githu Muigai. In the Chair are Mr. Leslie Mwachiro from the Political Parties category who is seated on my left and myself, Bonaya Adhi Godana, and of course the Chairman of the Commission, Professor Ghai, is here on my right. You will realize that this is the last topic and that this afternoon, being a Friday, and indeed the last Friday before we adjourn, since we adjourn this evening, most of this afternoon will be taken up by the administrative affairs. I think the topic is fairly short, the Chapter has only two articles, I have no doubt that the presenters will give us an excellent presentation and without curtailing the

rights and freedom of members to contribute, I will want to say, I hope and really wish we can end this session at about 1.30 p.m. That is if we have your cooperation, so that in the afternoon we attend to the 'zero' hour needs and administrative affairs. I see Delegate number 311, Father, what is your point of order?

Hon. Delegate Fr. Joachim Gitonga: Thank you, Mr. Chairman. My point of order, I said from point of information because I was given knowledge by a Member of Parliament. My point of order, Mr. Chairman is that yesterday several Honourable Delegates suggested affirmation of Agricultural Commission and unfortunately it was not mentioned during the summary. To end that, Mr. Chairman, Agriculture as we all know is a very important item in this country. While discussing here, deliberating on the welfare of this country, we know that people are dying of hunger.

Hon. Delegate Bonaya Godana: Mr. Gitonga--

Hon. Delegate Fr. Joachim Gitonga: Mr. Chairman, I just want to end that, just wait. They are dying of hunger because the bodies which were created by the Government to promote agriculture have failed.

Hon. Delegate Bonaya Godana: Honourable Delegate, please respect the Chair. It is not a point of order, it is a point of argument and I think you will be perfectly in order still to bring it up, under the Chapter of Agriculture when we go to the Technical Committees.

Hon. Delegate Fr. Joachim Gitonga: It is on Commission, Mr. Chairman.

Hon. Delegate Bonaya Godana: Fine, you can still bring it up at that stage. We are now on Transitional and Consequential Provisions.

Hon. Delegate Fr. Joachim Gitonga: But together with the Commission, Mr. Chairman.

Hon. Delegate Bonaya Godana: No, I am afraid you will not take us back to debate a matter which we have debated on already and moved away from! (*Clapping by Honourable Delegates*).

Hon. Delegate Fr. Joachim Gitonga: Why do you fear to discuss agriculture here, which is very important in this country?

Hon. Delegate Leslie Mwachiro: Father, please respect the ruling of the Chair.

Hon. Delegate Fr. Joachim Gitonga: I accept the ruling but let us remember that the bodies which were created by the Government to promote agriculture have failed.

Hon. Delegate Bonaya Godana : Fine.

Hon. Delegate Fr. Joachim Gitonga: Therefore, we want one body, which can supervise Agriculture in this country.

Hon. Delegate Bonaya Gonada: You have made your point, Father. Without further ado, I think I want to give the microphone to my Co-Chairperson to call on the Presenters.

Hon. Delegate Leslie Mwachiro: Honourable Delegates, it is with great honour that we are now moving into the last session, whereby we are going to have two Presenters giving us the final juice, ama *nyama ya mwisho*. Kwa hivyo, I would like to invite Professor Okoth Ogendo, to lead us in the presentation.

Prof. Okoth Ogendo: Thank you, Chairperson, fellow Delegates. I am back again, Delegate number 551. What we are going to do, I will lead the Delegates into the issue of transitional principles upon which the transitional arrangements which we have recommended are based. Dr. Githu Muigai will take us through those arrangements. Let me start with a story about a chameleon. I was told in Butere Mumias when I went there that the way the chameleon delivers, is to explode and die. As the chameleon gives life, so does the chameleon die. As a country, we are committed to enacting a new Constitution in accordance with the provision of the current Constitution and that is a very fundamental matter which Delegates should remember. We will not have been the first country to do that, South Africa did that, but it is important therefore that we should remember that, that particular position has its dangers and pitfalls.

Section 47(1) of the current Constitution, provides that Parliament may alter the Constitution. The term alteration is defined to include an amendment, a modification, re-enactment, suspension, repeal or the making of a different provision in place of any provisions of the Constitution. Delegates will remember the motion which was raised by Honourable Mirugi Kariuki which was based on section 47. The argument then was that there is a Constitutional problem regarding what it is we are going to do with this document once it is completed. All Constitutions which were given by the British to their ex-colonies had a provision similar to our section 47.

Indeed, the British thought that the Constitutions they were giving should not be replaced, only amended. Eric Williams of Trinidad, was actually the first to question that notion. He told the people of Trinidad that, the British had given us a Constitution that was a British Constitution and not a Constitution of Trinidad. Therefore, they went ahead to interpret the word alteration to include total replacement of the Constitution. I believe that what we are doing is that we must follow that precedence, we must therefore read Alteration in section 47, to include total replacement. What I expect the Attorney General to do once this process is over, is to publish a Bill to alter the Constitution of Kenya. That Bill basically will say that all sections of the current Constitution will be repealed and replaced with a schedule, and that schedule will be the new Constitution. As a lawyer and somebody who has studied this particular process, I do not see any Constitutional impediment to the passing of a totally new Constitution once we are through. That is the first point that I want to make.

The second point I want to make, is that the new Constitution must clearly assist this country to transit if you like from the old to the new. The transitional principles that we must operate with must indicate firstly, that the new Constitution will come into effect, legally only if it complies with the provisions of the present Constitution. Among those provisions are, that when the Bill goes to Parliament, Parliament cannot amend it, but Parliament can either reject it in total or must enact it in total. We are hoping that Parliament, will not reject it in total.

Once Parliament passes it, it goes to the President. Under the current Constitution, the President is not obligated to sign that Bill. He might decide that there certain provisions of the Bill that we

wants to send back to Parliament, we are hoping that the President will not do that. Once the President signs it, it becomes law, it will have complied with the provisions of the current Constitution. The chameleon, that is the current Constitution, will have produced the new Constitution and therefore the effect of passing the new Constitution and this is the first and most important transitional principle, that the enactment of the new constitution will operate to repeal the old Constitution. For that reason, there must never be an interregnum between the old and the new, meaning that there must never be any hitters, any space between the old and the new. There must never be a situation in which Kenya is operating without a Constitution even for one minute.

Secondly, there must never be any duplicity. We must never be in a situation where we are operating on the basis of two Constitutions. Let me remind Delegates that, there is an African country called Cameroon, in which they are actually operating on the basis of two Constitutions. President Biya ordered a Constitutional Review, the Commission that was set up took views by fax, phone and e-mail. They drafted the new Constitution which was enacted, without repealing the old Constitution. I am told that when the President of that country likes the old Constitution, he relies on the old Constitution and when he likes the new one, he relies on the new Constitution. There must never be any duplicity in the application of Constitutions and therefore once the new Constitution passes, the old Constitution must truly and properly be dead.

Thirdly, it is important that the new Constitution should deal with all matters for which transitional arrangements are necessary. In other words, we must enact a Constitution that is self-implementing, if there are matters that require transitional arrangements, those matters must be in the new Constitution. Consequently, where the transitional arrangements do not provide for any matter, it means if there are matters that require transitional arrangements, those matters must be in the new Constitution. Consequently, where the transitional arrangements do not provide for any matter, it means that that matter must come into effect in accordance with the new Constitution. As you read the transitional provisions that we have drafted, anything that is not expressly stated in those transitional provisions are issues that must come into effect immediately. Transitional arrangements should to the best extent possible, be based on the need for continuity, unless of course the new Constitution has mixed radical changes in which case this continuity will not be possible.

As a Commission we thought that all aspects of the Constitution including those aspects for which transitional arrangements are made, must be fully operational by 2007 when the next general election under the current Constitution would have been due. Let me explain that a little further. We are saying that even where there are transitional arrangements, those transitional arrangements should not go beyond 2007. In other words, when the new Constitution come into effect, all provisions of that Constitution except those for which the transitional provisions have been made come into effect immediately, but even those transitional provisions must be completed and operationalized by 2007. I will now then hand over to my colleague Doctor Muigai, to walk us through the actual transitional arrangements that we have provided for in the Draft bill. Thank you.

Com. Githu Muigai: Thank you very much. I will ask Honourable Delegates if you have your copy of the red book, number three - the Annotated Version of the Draft Bill - to turn to that document. Honourable delegates will have realized by now that the assumptions that informed our original thinking on transition have been overtaken by events. If you look at the original green book the transitional provisions came under schedule 8, between page 74 and page 77. The underlying assumption was that the elections we held in the year 2002 would have been held under this new Constitution. That did not happen. The Commission has therefore revised its thinking on what the transitional provisions should provide and it now appears between page 218 and page 225 of the red book. I will be very brief.

The provisions substantially remain the same with modifications. First you will note that at the end of the first Article there, we preserve Kenya's obligations both domestic and international. That is straightforward and needs no explanation. Secondly, we preserve existing law. All laws that are in force are reserved. Thirdly we deal with the question relating to the office of the President and the office of the Vice President. The position being as Honourable Delegates already know, that the Presidency as created under the new Constitution and the Vice Presidency are fairly different from those that are existing under our old Constitution. In this transitional provisions, we propose that the Presidency and the Vice Presidency be deemed to have been created under the new Constitution. There are implications to that of course and we will probably take that up during the discussions.

As regards the Legislature, we propose that the current Members of Parliament 210 of them be deemed to have been elected under our current Constitution. I must add that at some point we debated the possibility of holding a new general election and we thought that probably it was not in the national interest and at any rate for sure not in the interest of our Members of Parliament.

We also propose that the twelve nominated MPs under the previous Constitution be deemed to be part of the ninety people who come to the House under the Party list which is proposed in Article 107. We propose that the 78 others, the balance of the party list be allocated on the basis of the 2002 Electoral results, not Presidential candidates, but the Electoral results of the Political Parties.

Further we propose that the Local Authorities currently in place be dissolved immediately upon the coming into force of this new Constitution, but our existing Councillors will become Councillors in the devolved units. We thought of the possibility of holding Councillorship elections but we thought that, that would be treating them any more differently than we are treating MPs. We have therefore, proposed that they should be deemed to be elected to the devolved units.

Finally as regards the Legislature, we propose that elections of representatives of the devolved units to the National Council should be held immediately after the coming into force of the Constitution.

Next, we dealt with the question of Political Parties. We under the new Constitution require them to register with the Electoral Commission within 12 months. If they do not register within 12 months, they will be deemed to have dissolved themselves by law. Those MPs who sit in Parliament but their Parties refuse to comply with the law will be deemed to be independent candidates.

Now, next we dealt with the question of an interim administration in respect of the devolved units. We proposed that until the devolved units have been fully established and are operational, the National Government will run the affairs of the devolved units. Secondly we propose that

the assets of the National Government that are held in the devolved units will automatically become public property held as such. Further we propose that property now held by Local authorities will become public property held on behalf of the devolved units by the National Government.

Finally we proposed that the transfer of assets in the Provinces and the Districts be frozen until such a time as the devolved governments are in place.

Again in respect to the Executive, we propose that the President and the Vice President shall continue in office in accordance with the Present Constitution. Cabinet Ministers and others appointed to positions under the old Constitution will be deemed to be properly appointed under the new Constitution. The point there being, Honourable Delegates, that as you are aware in the new Constitution we proposed that the Cabinet be constituted from outside Parliament. We were saying that that may be suspended until 2007 elections.

On the Provincial administration, we propose that it will be dissolved immediately the new Constitution is in place because it is incompatible with the devolved government. On existing offices, we propose that every holder of a Constitutional office under the old Constitution will continue in an interim capacity.

As far as parastatal appointments are concerned, we have proposed that those may remain in office subject to the law in force in that respect. Further we propose that the power to create and abolish offices currently enjoyed by the President will not be affected by the transitional provisions.

In respect of the Judiciary, we have set up a scheme that will allow the Judiciary to be restructured and reformed and we hope re-energized. First and foremost, we have provided for Judges to take optional retirement. Those who have attained the age of 55 may opt to retire and in our transitional provision, we allow that to happen without any loss of benefits whatsoever. Secondly, we propose the compulsory retirement of judges at the age of 65, and our thinking here was that we must create a uniform retirement age for persons serving in Constitutional capacity.

In respect of allegations of impropriety in the Judiciary, we have proposed that Judges who do not take early retirement and want to continue in office must satisfy the Ethics and Integrity Commission as provided by law. Secondly for those judges, magistrates and other judicial officers against whom criminal investigations may be pending with the Police or disciplinary proceedings may be pending with the Law Society of Kenya or Ethical and other investigations may be pending with the Anti Corruption Commission, we have proposed that they should proceed immediately on leave pending the Judicial Service commission making appropriate recommendations.

Further as relates to the judicial proceedings we have recommended that judicial proceedings will continue in as much as possible as if they had been commenced under the new Constitution and Courts referred to under the old Constitution will be deemed to be Courts set up under the new Constitution.

In respect of the death penalty and corporal punishment, we have recommended that this shall cease forthwith on the date of the enactment of the new Constitution. Further we have recommended that where any complaints are pending before any Commission previously established under the old Constitution, those proceedings will continue under the Commissions now set up under the new Constitution.

In respect of Human Rights abuses, we have proposed that the Commission on Human Rights and Administrative Justice should, within 24 months of coming into force of the new Constitution, carry out an exhaustive investigation of those claims and to deal with them in accordance with the law.

On the question of land we have proposed that where land is held for interests longer than 99 years by non-citizens of the Republic of Kenya, then they should be converted immediately the new Constitution comes into force.

On the question of the documents, we have suggested that in the English document, the document prepared in the English language will be the valid document for purposes of

interpretation, and the documents proposed under this Constitution to be in Kiswahili, would be deemed to be a compulsory requirement in the year 2007. However, we propose that all documents prepared by the Republic after the coming into force of this Constitution, must be both in Kiswahili and English.

Mr. Chairman, I hope I am within time. Finally, we have prepared a legislative timetable for Parliament to adhere to in respect of the enactment of new legislation, the amendment or revision of old legislation, and the repeal of existing legislation. I would like to refer Honourable Delegates to schedule six as originally published in the green book. The reason we thought we needed to set out time for Parliament, is because as most Honourable Delegates are aware, in our old Constitution, we have numerous provisions where the Drafters of that Constitution, entrusted Parliament with the power to make legislation, that Parliament never used, or Parliament never enacted, and therefore that is why we have done that.

Mr. Chairman, I hope I have kept the time, thank you very much.

Hon. Delegate Leslie Mwachiro: Let us clap (*clapping gby Honourable Delegates*) for the Commissioners, for a presentation well made. Fellow Honourable Delegates, let me just remind you that this Chapter was meant to be discussed one and a half days, but it has now been reduced to only 50 minutes. So much as we would have enjoyed ourselves, feeling good and making final eight because, had we gone on schedule, we would actually be concluding or welcoming the new Constitution because this consequential would arise after the Constitution has been adopted. Like now, we are only just finishing phase 1, but I think it is just good that we also talk about what would happen in the event of the new Constitution being approved.

I am 599, I really I am sitting on very unfamiliar ground, I belong to the Plenary, but I am assuring you all Honourable Delegates that we will make this session, a session to remember so that we all leave here happy people and happy Delegates. I have gone through the list of those who have not contributed and I have found that there are more who have contributed than those who have not contributed and I can see some of those who have not contributed have chosen not to speak. I have seen people who have been here but have not been raising their hands, or their cards, but what we are basically going to guard against are those who are likely to emerge as the

highest speakers or those who have been talking more than the others. But the one who is leading for now is Honourable Yusuf Haji, I have seen he has spoken about six times.

So, I will start from my right, from my right that will be No. 1, 2, 3, 4, 5,6, 7, 8, 9. So, on the right, I will recognize the Delegates who would like to speak but if there is none, I will move on to the next column. On my right, 443. We will restrict our contributions to 3 or 4 minutes, so that at least we can basically move faster.

Hon. Delegate David Marcos Rakamba: Thank you Mr. Chairman. My names are David Marcos Rakamba, number 433. First I should commend the Commission for the good work done, but I would also wish to say that as much as the transitional bills are being said, there is also the question of the financial implications, because some of them have a lot of finance obligations and I feel therefore, that there should have been a Commission that could be set to ensure this transitional and consequential provisions are catered for. However I could see on the elections and on the registration, that we have not mentioned the position of the Prime Minister, I do not know how it could have been catered for, I do not know whether it is me who is not seeing it properly, on the Executive, that is in the red book. I also would like to say that some of these provisions could have helped if we had agreed on the mode of devolution and the system or the structure of government. That is when one could have discussed it in length because we have the local governments, we have the other sides, so we cannot be arbitrarily right to discuss it in depth because we have not agreed first on the structure and the system of government. You know, it becomes a bit difficult.

Finally, the Upper House also has that same implication; that if we talk now of the parties that have majority in Parliament, they could have been given that the 12 and excess, then there are those parties who do not have the majority in Parliament but had people who had sought some votes on the grassroot but do not have Members of Parliament. Therefore, still we could not have achieved the MM P and in that case could not have applied. On the same point, if the list was not even prepared, it could also be that people might try to prepare a new list and in this one, with the problem of our political procession and ethnicity, we could not be able to achieve.

But all in all, the period set is okay, if the funds could be availed, but at most the provincial administration it can be done away with. That one I accept because it is long overdue.

Also I would like to comment on the issue of the Judiciary. On Judiciary also we have to look at the financial implications because half of these people are retiring and receiving their packages; we need to know the financial implications.

Transition has been prepared well, if only we hope we could get access to funds. The funds would actually determine how this transition field could be implemented. Also, the will of the Government to come, and that is why I feel as we talk about this transitional period, we wish to have a referendum because some of the things are touchy. If there is no referendum some people may not even want this transitional implementation to be carried on. I would wish that the new Government coming in force, which is democratic and which we think would cater for the values of all Kenyans, would implement this transitional period.

Otherwise, with these few remarks, I thank the Conference and the Chairman for having allowed me to share with you a lot in this Conference. And finally I kindly request you as you go, to remember the youths. Thank you.

Hon. Delegate Leslie Mwachiro: Thank you Delegate 433. Now we move on to the next column and I wish to recognize Political Parties, 613.

Hon. Delegate Mike Orio: Thank you very much, Mr. Chairman. My name is Mike Orio Delegate number 613 representing Political Parties. I am very grateful to the Commission for having come up with this Draft Bill, but I want to talk regarding the 5th Schedule, which appears on page 209 of this red book. It begins by saying, “On the coming into operation of the Constitution, Parliament shall pass legislation relating to the matters provided for under the 1st column of this Schedule as envisaged in the Articles listed in the 2nd column within the period specified in the 3rd column.”.

Mr. Chairman when you go through this Schedule, you realize that Parliament has a lot of work to do. Currently we have a Constitution and we have a Parliament. This Parliament already has

its business to do. I have gone through the Draft Bill and I can see that there is a vacuum. The transitional arrangement and provisions have no space that will allow Parliament to work together including what it is currently doing, plus what is provided for in the 5th Schedule. My suggestion here is that as we are proceeding on recess, the Commission together with the office of the Speaker of the National Assembly, should come up with a clear working framework that will enable the legislation we are talking about, the consequential legislation, to be achieved immediately because the Constitution is a reflection of the social will of the people. If we pass a new constitution, and the legislation in our country is not in tandem with the Constitution, the Constitution shall be incongruent with the society that it is meant to serve.

Secondly, I want to talk about the Draft Bill in total again. You can see that this Draft Bill is very, very much obsessed with the idea of tribunals. When a public service officer is supposed to be removed from office, this Draft Bill recommends that a tribunal shall be appointed to kick him out. From the history of this country, we know how tribunals operate. Tribunals are appointed and they already know that whoever has appointed them wants to kick somebody out of office. There is no tribunal in this country that has never returned a “not guilty” verdict. I think this country needs to understand now that we do not need these tribunals. By their very constitution, tribunals are constituted and they know that their brief is to recommend that the fellow should be kicked out. So they do not serve any purpose. Those are my only two comments. Thank you, Mr. Chairman.

Hon. Delegate Leslie Mwachiro: Thank you Delegate. We move on to the next column, I wanted a Member of Parliament but there is none, so I will give 583.

Hon. Delegate Apollo Njonjo: Thank you very much, Mr. Chairman. I am very glad that this is the first time I am talking, without talking on a point of order. Thank you very much. Mr. Chairman, I think this is a very important Chapter for this whole exercise. This Chapter can carry the life or the death of this country, and what I see is that much as the Commission thought through this Chapter, I think they did not take a very serious matter into consideration, an aspect which I think should have been taken into consideration by both the Commission and the Parliament, and that is to decide on the operational date of the new Constitution. What date does it become operational? To implementing some parts at one time and other parts become

operational at other times, I think will only create the situation we have been given of the two Constitutions in the Cameroons. I think Mr. Chairman, that it is vital, it is important for this country to decide on what particular date this new Constitution will become operational. Rather than try to mix two parallel Constitutional aspects operating at the same time. In my view, Mr. Chairman, it is wrong to assume that last year's elections were carried out under this new Constitution, they obviously were not. For us to sit here as Delegates and decide that we shall deem them to have been carried out under this new Constitution, I think it is to cheat ourselves, to cheat our country and to cheat God. We did not carry them out under the new Constitution.

Mr. Chairman, my suggestion is very simple on this matter, that the new Constitution we give it a date on which it comes operational, and my proposal is that it becomes operational before the next general election. In between now and that time, will be the time we shall begin implementing. We, as a country have to sit down and decide, over devolved governments, what would be their boundaries? How large shall they be? It will require, in my view, not just simply this Conference, but may be even a Boundaries Commission to make that decision as it was done in 1962, to decide that here because we have passed the devolved governments but we have not given them their boundaries, that we go on to transition, I think will be a mistake. I think in my view, Mr. Chairman, and with all respect for the work done by the Commission and for this Conference, I think I will try to pursue this Conference, or ask it to sit down-- This Chapter should not even be discussed, we should wait until we have done our technical work in the various committees, we have come with the Draft and that Draft is the one that will tell us, this will be required now (*clapping by Honourable Delegates*) and that will be the one that will decide this will be implemented at a particular time. But to even imagine that we can talk about transition, how we are going to implement it, even before we have agreed on the unit of the devolution for instance, on the units or the organs of the legislature, I think it is premature. This Chapter is certainly premature. Thank you very much.

Clapping from Honourable Delegates.

Hon. Delegate Leslie Mwachiro: Thank you, Delegates. I am looking for a lady because we are going to take a break almost immediately. I am looking for a lady in the next column.

Hon. Delegates: Why? Why?

Hon. Delegate Leslie Mwachiro: Gender sensitivity and affirmative action. I am looking for a lady in column 4, that is 298.

Hon. Delegates Rhoda Maende: Thank you, Mr. Chairman. I am Delegate number 298, Rhoda Ndumi Maende representing Makueni. My comments are two and I want to concur with the Honourable member who has sat down; the way you have heard and how you want this transition to take off, sincerely we have seen it is premature. Because now I understand that we are not talking about Prime Minister being in place, you are not talking of MPs languishing in the seats of Ministers, they are to stay until 2002-2007. You are talking of Councillors to go back to the elections and mark you, I am a Councillor, and there are other things which would come immediately like provincial administration. We were expecting provincial administration to be abolished immediately and see how we can now go beyond there and you are not talking about these people and you know the whole of this issue is about provincial administration. They are the people whom we are thinking about, how we can do away with them immediately. So Mr. Chair, we are saying if you are not talking about provincial administration, may be the transition is not taking place immediately, if you are not talking about that.

The other one is about, we have heard about churches, you are talking about 65, I do not know if we have come to an agreement, and we were saying if it is for a need-- (*noise by Honourable Delegates*)-- We talked--

Hon. Delegate Leslie Mwachiro: Let her finish, I will come back to you 361.

Hon. Delegate Rhoda Maende: --about public service, we said it is important to have a unique or uniform provision on how these people should go for their retirement. So, I think Chair, you should clarify that because I did not get you well, when you said they can go at their own time after 55, I did not get it clearly. Thank you.

Hon. Delegate Leslie Mwachiro: Thank you Delegate. I hand you over to the Vice Chairperson of the Conference and eventually to the Chairman, himself.

Hon. Delegate William ole Yiaile: Point of order

Hon. Delegate Bonaya Godana: 361, will you insist on this point of order before we adjourn?

Hon. Delegate William ole Yiaile: Yes

Hon. Delegate Bonaya Godana: What is it?

Hon. Delegate William ole Yiaile: Thank you, Mr. Chairman. My point of order is you have decided to allocate the talking order by the way we sat. When you reached this place, you said that you want a lady to talk. Instead of allocating us, you went back again to another row that has already spoken. What I am trying to say, Mr. Chairman, is that that was not in order, even if you wanted a lady to speak, we have Honourable ladies in this bench and you would have given them a chance. Let us be fair. I also support Mr. Njonjo that this thing is premature.

Hon. Delegate Bonaya Godana: Order, order.

Uproar from Hon. Delegates

Hon. Delegate Bonaya Godana: You have made your point. Honourable Delegates, I had earlier intended that we shoot up to 1.30 but have since been reminded that this is Friday, and Muslim brethren, that includes our Muslims sisters at the Conference, will have to go for prayers. That means therefore, we will have to adjourn at this point and re-assemble at 2.30 sharp and we intend to give between 30 and 50 minutes then before we wind up this session. I think it is clear from what Honourable Njonjo said and the cheering that accompanied his point that indeed we are discussing a Chapter which should not pre-occupy us too much at this stage before we decide to adopt the Constitution. (*Uproar from Honourable Delegates*) So I hope I can rely on your understanding for us to complete one round, to really wind up this session. Thank you very much. Happy lunch.

After Lunch - Afternoon Session

Session started at 2.35 p.m.

Hon. Delegate Bonaya Godana: May I call the meeting to order. We said we reassemble here at 2.30 pm and it is now 2.35 pm. We broke off for lunch at 12.30 pm, we have spent two hours and 5 minutes on lunch break and there is no excuse to wait for anybody who is not yet back from lunch. We are starting the afternoon with part of the deliberations on the Transitional and Consequential Provisions of the Draft Bill and we are continuing with the speakers from where we left and I call on the next speaker from the row directly opposite the podium, I believe, column five from my right. I will pass the microphone to my co-Chairman to pick on a speaker from that column, if there is anybody from that column who wants to speak.

Hon. Delegate Lesile Mwachiro: Honourable Delegates, as it was stated before we went for lunch, this will be a very short session because the transition proper should really be debated after the Constitution has been agreed and almost on the verge of being adopted. So we are going to basically pacify the Delegates pre-empting a lot of points of order so that we are going to just continue from column 6,7,8 and 9 and then we will probably have to wind up and move on into the zero hour. So I think it was the consensus that we actually do not have a lot to contribute on this Chapter on this session and if the orderlies or the Secretariat at the door can please hasten up and allow the Delegates in, they can pick the documents after we close; they do not have to pick them now.

If you can just allow them to walk in freely and occupy their seats then we will continue. Column six is where we are now and I am not seeing any cards up. Column six, there are only about 7 people in column six. So I will go to column 7 and I will come back to column 6. I recognize an MP, number 060.

Hon. Delegate James Kimathi Viscount: Thank you, Mr. Chairman, my name is Viscount Kimathi, MP Lari, Delegate number 060. I want to make a suggestion Mr. Chairman. I want to suggest that because we have very many brainy leaders from the 8 Provinces of our country, I would want to modify something that was done by IPPG, which involved only elected Members

of Parliament and did not involve the Honourable Delegates who are here now. These Delegates are drawn from all over the country, IPPG was negotiated by a few Members of Parliament and I would think things passed here are more honourable, more collective and people-driven. Mr. Chairman, I am proposing after Kibaki's term we have very many leaders from Ukambani, from Nyanza, Western, North Eastern, and I am suggesting one term for the President, not two terms, and next term we take President from the other Province rotationally. The President has to be elected for one term from one Province. That is what I am suggesting so that we can have more brainy men and women to lead our country and in order that we may be concerned about ladies who have been oppressed.

We know the African society has been known to oppress women. When we have the President, the Vice President, the Prime Minister and the Deputy Prime Minister, one of them mandatorily must be a lady. (*Clapping by the honourable Delegates*). This is because we have a very bad culture of thinking that women's place is only in the kitchen. Women today are doing well in every sector of our lives and we should recognize them and value their worth.

Hon. Delegate Leslie Mwachiro: Order Delegate speaker. We are actually on a very specific Chapter. We are just tolerating you because we are almost closing this discussion.

Hon. Delegate James Kimathi Viscount: Okay, Mr. Chairman, I am just finishing. Finally, Mr. Chairman as I finish, I want to wish all the Delegates safe journey and I request you Mr. Chairman to think of them as they go home and I want to assure the Delegates, as an MP, that we have to discuss these views properly. I will ask the Minister for Finance to provide more funds so that you can come back in August and without harassment you can be able to discuss many views. Others are not very clear and if we can discuss them without harassment we will finish and go home.

Mr. Chairman, we are very grateful for your hospitality, you have accommodated us and we would like these Delegates to come back in August so that we can continue from where we have left. So be blessed Honourable Delegates, muende vizuri na mbarikiwe sana.

Hon. Delegate Lesile Mwachio: Thank you Delegate, although you have jumped the queue you've almost been talking on the zero hour, we are not yet on the zero hour, we are still on the session, the final session of the Conference which was presented to us by our two Honourable Commissioners here. Now I was in column six and column six is where I sit. I am Delegate 599. So where I sit is column six, if there is anybody ready to contribute I will recognize column six. I am seeing 308.

Hon. Delegate James Matenge Stanley: Mr. Chairman, my name is James Matenge, Delegate 308 from Kirinyaga. Mr. Chairman this is column five from either side and not column six. Mr. Chairman, thank you very much for recognizing me. One or two points on this subject, Mr. Chairman. One is just to agree with what the Delegates said in the morning that this Chapter would be better dealt with when we deal with Technical Committees but I think it was very good to bring it at this time because sometimes it is good to look at what you expect. When people go on recess they will give more thought to some of these because we have been able to look at it.

At this place there is so much in terms of decisions to be made, to be able to discuss a subject of this nature in an orderly manner. So, Mr. Chairman, we can cut short discussion of this subject until we come to it. However, allow me to say that looking at every Chapter from Chapter one to Chapter 20 where we are, every time I came to a Chapter I thought it was the most important. I thought Chapter one was the most important, same to 2,3 up to 19. I ended up with Chapter 20 and I found every Chapter in this Draft is really very important and I hope every Chapter will therefore be given the serious consideration it deserves.

Chapter 20 is very, very important just as the Presenter has said because to avoid creating a gap or to avoid duplicity and to ensure a very smooth transition from the far past to the future, this Chapter, Mr. Chairman, will have to be given a lot of consideration and a lot of patience. Mr. Chairman, as I sit down I am very convinced now more than ever before that Kenya has got everything that goes into making a great nation. Listen to the quality of the speeches here, listen to the Delegates' deliberations. Looking at the resources of our land we have everything that is required to make a great nation but the transition, if you make an error in the transition, you can spoil everything you have done.

I have been very impressed by the new blood in this Constitution, new initiative and integrity. In fact Mr. Chairman, if the question of integrity is put properly by Kenyans and embodied by both private and public sectors we shall have the look of a great nation. Since I may not get another chance to talk, let me wish all the Delegates a very good recess and come back in August really fresh to give Kenyans what they expect: a very good Constitution. Thank you very much Mr. Chairman.

Hon. Delegate Leslie Mwachiro: Thank you Delegate. Now I go on to column 7. Column 7 is the one next to the staircase as you come into the Plenary. I am seeing speakers who have spoken before, I will give 438.

Hon. Delegate John Cheruiyot: Thank you very much, Chairman, for recognizing me. I pray that you will continue when we resume in August. Chairman my name is John Cheruiyot from the Trade Union, Delegate Number 438. Chairman I begin by thanking Commissioner Prof. Okoth-Ogendo for leading us in this Chapter, which actually, Delegates, is very vital in this Constitution. Because after making this Constitution so seriously, so painstakingly - you have done so well, led by the Commissioners - if it gets to the transitional stage, if it is not implemented the way the Commissioners have anticipated, we can see a very big Constitutional crisis. And therefore Commissioners I would like to thank you for every presentation and leading us into technical stages of transition I have only got one or two points Chairman. One of them is the fact that Commissioners told us of the possibility of Members of Parliament, or the Parliament being able to amend and as you may know they may not do in total. But we all know the powers of Parliament, that they are able to amend the Constitution, for example, the area where you recall MPs and we are mindful of the time an Hon. Member here, Mr. Maoka Maore, was saying we are waiting for it to come to Parliament.

Chairman, where is the authority of this Conference to make sure that what goes to Parliament will not be amended to suit the Members of Parliament. I have been a Member of Parliament and I know, even if I was there this time, I was going to be the first to put a motion to debate very strongly that this Constitution is dropped. I am therefore asking Mr. Chairman, where is the authority of this powerful Conference, so that the entire document is only adopted or if it is not

possible, it is rejected. Please guide us when you respond in that regard, because I can see a situation where a lot of areas will be amended before enactment.

The second area which I am seeing, Chairman, is on Judges, where you are saying Judges at 55 may wish to have an option of retirement. I think Chairman, this is a bit punitive, we know that the current Constitution allows the Judges to retire at age 74, now it was even said when they get to age 60, they can go for optional retirement. At 55 they are very young, even the new ones who had just been appointed by the President are still young, and I appeal that this is really a punitive, if we can change it to age 60 and then they can opt to retire when the new Constitutions is enacted, it will be highly appreciable.

With that regard, I also join my colleagues in praying that you Delegates, you should continue to pray for this Constitution, it is a historic document and we have been lucky to take part in this Conference and may the God Almighty take charge of everybody until we meet again in August. Thank you, Chairman.

Hon. Delegate Leslie Betawa Mwachiro: Thank you very much Hon. Delegate. Column 8, I wish to recognize No. 027

Hon. Delegate William Kabongo Gitau: Asante sana, Mwenyekiti. First and foremost, I would like to state here on record that Parliamentarians are not strangers, that they are representatives of the people and they do what they do for the people of this country. We have received a lot of barking here, being told we will go and change this, will go and change that, who do we represent? We represent the people of this country, period.

Mr. Chairman, I want to add-- My name is Kabogo, William Kabogo Member of Parliament Juja, Thika District. I want to add my voice to Apollo Njonjo who said that we are discussing the transition issue prematurely, we have had so many Chapters that we have discussed, we have left to go to the stage of Committees and we would wish in my opinion, that we discussed these issues exhaustively until we have decided this is the way we want to go then we shall say thereafter, this is what we need to see during the transition period. However, if I need to say anything, it also beats me, how we can start assuming that elections were held in the current

Constitution when they were actually not held. So it is either we go for elections and have a new Constitution after election or wait until 2007 when we shall be holding fresh elections. Thank you Mr. Chairman.

Hon. Delegate Leslie Betawa Mwachiro: Thank you. Now I am going to the last column and I wish to recognize a lady who said a lady 396.

Hon. Delegate Happy Gloria Wabwire Akhayalu: Thank you, Chairman. I will not take long because I only wanted to add my voice to Hon. Delegate 583, Mr. Apollo Njonjo, who said that actually we are discussing this Chapter, Transitional Chapter, prematurely, because we still do not know, we still do not have head or tail to be able to know if we will use the Transition period or use the Chameleon Style the way we were told by Prof. Ogendo or not. Because to me I believe that the Chapter that is going to give us head or tail to know whether we are going to adopt the mixed system the Kenya model, it is the Devolution Chapter. We discuss to know we are going to devolve to what level? to what unit? It is very, very difficult to be able to tell what kind of transition we are going to undertake in this country, and I would like just to say that definitely we should have a transitional tribunal to be put in place, and therefore I would request that we just wind up at this juncture and we go back and meditate over the transition system we would like to undertake. With those few remarks, I beg to end.

Hon. Delegate Leslie Betawa Mwachiro: Thank you very much, Hon. Delegate. We have just completed a round, and it was decided at the Chairs' table that to be fair to all the columns, we basically go round because it had been accepted much earlier that this Chapter is being discussed prematurely. So for that reason, I am aware we have reached the last column, column 9. I would like to invite the Commissioners to just wind up, so that we can move on to the "Zero Hour" whereby we will be talking from the bottoms of our hearts. Thank you, Delegates, for being so patient and being so nice. I hear there is a point of information, we wanted to pre-empt all points of information and points of order, but Hon. MP number 220, if you can wait for us and then we come back to you.

Com. Prof. Okoth-Ogendo: Thank you, Chairman. My notes should be available out there for what they are worth. I agree with those who say that the question of transition is being discussed prematurely, in order to complete the Draft Bill, it was important that we should think through the issue of transition, when the final Bill is approved by these Conference it must also have an agreed set of transitional provisions. But even as we think about that, there are two important things that we must worry about, and the first one is the effective date of commencement of the New Constitution. We took the bill in the Commission that the new Constitution must come into effect immediately, we do not think it would be appropriate to have an overlap, a parallel programme or any form of duplicity. As a principle, I think is something that we can agree on, when you pass a new Constitution, we do not want to look back to the old, even as you consider the new.

Once the Constitution comes into effect immediately, how each particular aspect to that Constitution is operationalized, is a political issue of great significance to this country and I think that one, we should leave to the technical working Committee on Transitional to guide this particular meeting.

A Delegate has asked, what happens if Parliament rejects the Bill? What happens, if the President refuses to sign the Bill? These are the political difficulties that we have to deal with having taken the route that we are making a Constitution in accordance with the rules of the old Constitution. I think as members of the Steering Committee will remember, we believe that Goodwill, political negotiations and a certain amount of give and take should be able to resolve this matter.

I, myself, will be extremely surprised if all Members of Parliament were to sign the Draft Bill at the end of this Conference and then go to Parliament buildings, and what is admittedly legitimate exercise of the Constitutional authority of Parliament were to toss it out of the window. But I did hear, Delegate 060, I think it was or was it 027 saying Parliamentarians represent the people, you also represent the people therefore for the commonality of interest, let us hope that eventuality will not happen.

Hon. Delegate Leslie Betawa Mwanichiro: Thank you very much. Commissioner Githu.

Com Githu Muigai: Thank you, Mr. Chairman. I think Prof. Okoth-Ogendo has answered the two questions but I would like to add my voice to his comments about political goodwill. There is no insurance that the Commission or this Conference can provide as regards what Parliament may choose to do or not to do. All of us can only operate on basis that there is in this country a consensus that this is an important task, it must be completed in the manner that we have agreed upon and that Parliament will honor, its pledge to finalize the process in the manner provided for in the review act.

Can Parliament amend the Draft once we have sent it to Parliament? I do not want to speculate on what Parliament may or may not do, except we are amending this Constitution on the basis of the existing Constitution. We are a Constitutional Conference, we are not a Constitutional Convention. We do not have Legislative power ourselves, and therefore in that regard, the Draft Bill is presented to Parliament as recommendations, some people would say very strong recommendations that in the minds of most rightful thinking members of this community, Parliament ought not to depart from.

The second comment relates to what Dr. Njonjo called the operational day. In my very humble view there are two ways that we could deal with this matter. One way which the Commission did not think was appropriate is to postpone the coming into the force of the entire Constitution until after the 2007 elections. We did not consider that either appropriate in our circumstances nor legally tenable. The other way of course, which is what we have proposed, is to have the Constitution come into force immediately upon enactment and then deal with each set of Articles as will be appropriate in the totality of the circumstances. That is why for example, we thought that it might not be feasible to hold new elections before the year 2007 and therefore the issue that worries Dr. Njonjo about deeming the last elections to have been held under this Constitution is a necessary evil and in our view we thought it would be the correct thing to do so that it would allow all the other aspects of the Draft to be in place.

Somebody raised the question of judges. I think we were misunderstood here. The general tenor of the transitional recommendation is that all constitutional office holders will be deemed to have retired from office on the enactment of this Constitution and will remain in office in an interim

capacity, until either re-appointed or otherwise. In the case of judges, we proposed to deal with judges as a special category arising out of the specific problems Kenyans had raised in respect of the judiciary. That is why we have suggested voluntary retirement for judges because under our current Constitution, judges have security of tenure and cannot be removed unlike any other civil servant except in the special procedure set out in the old Constitution.

We have suggested that we should allow judges, who wish to do so to leave early without any investigations into either their competence to hold office or otherwise. That is the last comment Mr. Chairman. Thank you.

Com. Okoth-Ogendo: Chairman, let me for the avoidance of doubt, comment on the question of judges. The transitional arrangement we have recommended starts by saying, 'subject to the provisions of this section, a judge or any judicial officer who held office immediately before the entry into force of this Constitution shall continue to hold office as if appointed to such office under this Constitution'. So the transitional arrangements are not barring judges, let me make that absolutely clear, but is giving opportunity to restructure the judiciary should it become necessary. Thank you.

Hon. Delegate Leslie Mwachiro: Honourable Delegates, I cannot say we have come to the end of this session because it was unanimously agreed that you basically cannot debate on this transitional and consequential provisions. All the same, we have had wonderful contributions and I would like all of us to clap for ourselves and the Commissioners, please. (*Clapping by Honourable Delegates*). Before I pass the mic to the Chairman, there is a request that one of the Delegates would like to make a personal statement and this is his time now. I invite the Honourable Delegate who has made that request to stand up and make his personal statement, Hon. Gitu Kahengeri.

Hon. Delegate: Point of order, Chairman.

Hon. Delegate Leslie Mwachiro: I think a personal statement should be listened to first before we come to a point of order and I will also ask Delegate 220 whether she still wants to insist on her point of information. Honourable Gitu Kahengeri, please.

Hon. Delegate Gitu Kahengeri: Mr. Chairman, nimesimama hapa leo kusema maneno machache ya furaha ambayo niko nayo. Tangu nilipokuja katika mkutano huu, wengi wao ni wale walio chini ya umri wangu. Jana usiku, nilijaribu kutafuta maneno ya kusema shukrani kwa mkutano huu na nilishindwa kuyaona. Lakini kwa bahati nzuri, nilipata mengine ambayo nataka kuyasoma katika karatasi hii. Honourable Delegates, allow me to congratulate the Commissioners for the good work they have done to produce the Draft Constitution. I further have desire to thank them for the manner in which they took the Delegates through the Chapters which enabled the latter to immensely contribute to the real making of the Constitution.

We have in the past participated in many fora in search of unity for the people of our motherland Kenya. That unity in my belief was achieved on 27th December 2002. That unity was sincerely imported to this Conference hall by Honourable Delegates from all walks of life. From the bottom of my heart, I salute all Delegates and all the other support groups who helped in any way to make the Conference a success. If this unity is cultivated and maintained at the present level, I foresee a future full of happiness and not only for this generation but the generations and generations to come.

I consider the Delegates to be serious leaders of our motherland. Take it upon yourselves to show the people of Kenya wherever you meet that unity is a precious element of a perpetual happiness. The business of a leader is to lead, lead the people to unity. I am an old man now. If people die because of age, I would die before many of you, Honourable Delegates. I will want to see one united Kenya as I finally disappear.

I want to add that you have a responsibility, an enormous responsibility to do. If you fail to do that this time, then you will have no time to do it. We better capture this time, where we have all the congregation in this hall, not a day that a Delegate uttered words against another. Mr. Chairman, I wish that that mood will continue after we have gone in recess and come back in August and throughout our lives with the people of Kenya. Thank you, Mr. Chairman. (*Clapping by the Honourable Delegates*).

Hon. Delegate Leslie Mwachiro: Thank you very much, Honourable Gitu Kahengeri. I will now move quickly to allow one point of information and a point of order. Honourable Delegate 220.

Hon. Delegate Julia Ojiambo: Thank you very much, Mr. Chairman. I appreciate very much that Mzee Kahengeri has given us that fine statement. But there is a point that is very important that we cannot go over it unnoticed even if we are closing and are coming back. That refers to Schedule number 1 in Chapter 20 on boundaries. Mr. Chairman, people of Busia who are under Lake Victoria, know very well that the demarcation of--

Hon. Delegate Leslie Mwachiro: Order! Order! Delegate. I thought you said you had a point of information, but if you are going to make contributions to earlier chapters and we have already closed--

Hon. Delegate Julia Ojiambo: I am really informing them that that is an area that the Technical Committees should look at because it is a concern for the people of that area.

Hon. Delegate Leslie Mwachiro: Honourable Delegate, much as I would have liked you to continue, we are only going on recess and that matter can be re-opened when we reconvene in August 17th, please. Thank you. Can I hear a point of order from 364, and let it be a point of order.

Hon. Delegate Daniel Kamwende Osoi: Thank you, Mr. Chairman. My point of order is in form of a question to the Commission and to the professionals in the law field. I sincerely believe that Parliament is not that building in town but it is the Parliamentarians. What prevents the Speaker of the National Assembly from coming to this hall in his official attire and all Members of Parliament and the mess is brought here, we turn part of this hall into a public gallery and another one to the chambers of the National Assembly and a new Constitution is passed here after completion when we reconvene and we go home very happy men and women of this country having made a new Constitution? *(Clapping by Hon. Delegates)*.

Hon. Delegate Leslie Mwachiro: Thank you, Delegate. It is a popular point of order but I think we are only going on recess so I will let the Vice Chair answer you.

Hon. Delegate Bonaya Godana: Order! order! Delegates. An attempt such as has been proposed to constitute this assembly into the Parliament of Kenya would be completely out of order. It is outright illegal.

Honourable Delegates, we have come to the end of this session and I want to thank you for your cooperation and understanding. I will pass on the microphone to the substantive Chairman of the Conference, Prof. Yash Pal Ghai, but we have been requested by some two ladies or representatives of ladies groups from Western and from Coast that there were two groups who wanted to do short performances for Delegates for five minutes each. We will do that immediately the Chairman has made his farewell statement before the closing prayers, so get ready. Immediately the Chairman has made his statement and before the closing prayers. Thank you very much. On my own behalf and that of my colleagues, thank you very much.

Prof. Yash Pal Ghai: Thank you very much, Dr. Godana. We have now entered the closing stages of this session of the Conference.

The first business I want to raise is the formal constitution of the Technical Working Committees. You remember that we have provided the regulations for twelve Technical Committees, which will consider in detail the provision in the Draft Constitution. I am going to ask the Secretary to read the names of the Conveners of these Committees; the membership of the Committees is stated in the document, which I believe will be delivered to you this afternoon. This is the final list of members but the Secretary tells me that if you have a problem we have our staff just outside and you can leave a note there and we will try to meet your wishes. But now that the Committees are formally constituted and I will ask the Secretary to read the names of the Conveners of these Committees. Thank you very much, Mr. Chairman.

Hon. P.L.O Lumumba: If your name is omitted we are, as the Chair has said, the Secretariat, we are only human, we may have made mistakes. I now proceed to read the names of the Conveners which have also been circulated to you.

Committee Number A that deals with the Preamble, Supremacy of the Constitution, the Republic National Goals, Values and Principles. The Convener is Nyang'au Onwong'a.

Committee Number B that deals with citizenship and the Bill of Rights, the Convener is Martha Koome, Justice Martha Koome. (*clapping*)

Committee Number C that deals with Representation of the People, the Convener is Caroline Ng'ang'a. You will now clap because it is good to do so.

The Committee Number D that deals with the Executive, the Convener is Matthew Anyara Emukule (*clapping*).

The Committee Number E that deals with the Judiciary, the Convener is Professor Kivutha Kibwana. (*clapping*)

The Committee Number F that deals with the Legislature, the Convener is Samuel arap Ng'eny.

Committee Number G that deals with Devolution of Power, the Convener is Dr. Crispin Odhiambo Mbai (*clapping*)

Committee Number H that deals with Public Finance, Public Service, Leadership and Intergrity, the Convener is Honourable Kerr Obilo Adams. (*clapping*)

Committee Number I that deals in Defense and National Security the Convener is Honourable Retired Major Masden Madoka. (*clapping*)

Committee Number J that deals with Land Rights and Environment the Convener is Dr. Saleh Satia (*clapping*)

Committee Number K that deals with Constitutional Commission and Amendments to the Constitution the Convener is Kiriro wa Ngugi. (*clapping*)

Committee Number L that deals with Transitional and Consequential Arrangements, the Convener is Joyce Majiwa. (*clapping*)

And very lastly, The Ad hoc Committee on Culture the Convener is Honourable Professor Wangari Mutha Mathaai. (*clapping*) Thank you Mr. Chairman.

Prof. Yash Pal Ghai: Thank you very much. The next item of business is what we have called 'Zero Hour'. We have a number of Observers who have not been able to participate in our discussions due to the regulation which restrict participation to delegates only. We have been requested to give certain Observers an opportunity to make very short presentation 5 minutes at the most, these are groups who are not represented otherwise in the Conference and the Secretary has the names of the Observers who will be called upon to make very short presentation. I must clarify that Zero Hour was established just for presentation by Observers, from categories which are not represented in the Conference itself. It is not an occasion for Delegates to make further speeches. I will ask the Secretary now to call upon the Observers who have been nominated to make short presentations. And I would ask the Observers to restrict themselves to 5 minutes each please.

Hon. P.L.O. Lumumba: With the Chair's permission may I call Peter Wango, the Executive Director of the Kenya National Association for the Deaf. Mr. Peter Wango. If Peter wango is not in may I call on Judith Muhinda, the Women Co-ordinator of KNUT. Judith Muhinda.

Prof. Yash Pal Ghai: If she is there, would you kindly provide the microphone to Judith.

Hon. P.L.O. Lumumba: Is Judith in? Judith is in, just be patient with Judith please.

Hon. Prof. Yash Pal Ghai: Somebody will interpret this and the interpreter will use the microphone.

Hon. Judith Muhinda: Thank you very much, Chairman, with all Honourable Delegates, I am so happy to stand in front of you on behalf of the deaf. This is the first time to speak here for the

deaf people. We were invited in this Conference but we are sorry. Why? we did not have time to talk. Now deaf people were not chosen as delegates, but it is impossible to add more delegates at the moment because of the many activities which are going on. We have many, many problems as deaf people. Now as we continue please on your programme, we are under KNAD – Kenya National Association of the Deaf. We are asking kindly please Honourable Delegates and Chairman to help promote Sign Language in your Constitutional making, to help the deaf communicate in different areas. *(clapping)* Deaf people are suffering in communication because of small sign language which is not being introduced in many institutions, now it is impossible for them to communicate in these areas.

Now as we continue please, we are asking if you can put interpreters also in your institutions like hospitals, prisons, police centres, in schools and in Church to help these disabled people. *(clapping)*. We hope next time - remember there is a time in future - if you possibly include this sign language it will help all of you, because you never know, you can give birth to a deaf child but now if you teach everybody sign language it will help promote this system of communication. Now please Delegates don't ignore us. We are part of you. Please encourage us to communicate with you. Thank you on behalf of the deaf. *(clapping)*

Hon. P.L.O. Lumumba: Thank you very much Mr. Chair for permission. May I now invite Joseph K. Waweru from HelpAge Kenya. Joseph K. Waweru.

Hon. Joseph K. Waweru: Asante sana mwenyekiti na Delegate walio hapa maana nataka kuzungumzia hali ya wazee. Hali ya wazee ni ya maisha magumu zaidi wakati huu na mnaweza kunikubali niyasome maana ninyi ni watu wa nchi hii. Mkijua hatuna usaidizi kama vile nimeandika ni matatizo ya wazee, zaidi kwa jamii. Umasikini, afya inadhoofika na kuachwa pekee yetu. Wazee Waafrika wameteseka na wameendelea kuteseka ikiwa hawatapewa nafasi kama kikundi maalum kushiriki katika mipango ya miradi na maendeleo. Wengi wetu tunateseka siyo kwa sababu tunapendelea kuishi katika umasikini, lakini kwa sababu mbinu za jamii kusaidia zinazidi kudhoofika na tunatumaini utamaduni wa kiafrika. (Ngojeni niweka macho tafadhali) *(clapping)*

Bwana Mwenyekiti, wazee wa umri wa miaka tisini na tano hawaruhusiwi kufaidika na National Hospital Insurance Fund, je nikumaanisha wazee wa miaka hiyo hawaugui? Hawastahili kufa wakifika miaka hiyo. Huku mashambani ambao wazee wengi huishi, huduma katika miji iko chini. Hospitali ziko mbali na gharama ziko juu, na pia wauguzi wanatabia ya kuwabaguwa wazee hospitalini. Ukiweka manani kwamba uzee una matatizo yake, Serikali inahimizwa kuwasaidia wapate kuzeeka kwa heshima. Katika Mswada wa Katiba sura ya 36, inashugulikia haki za wananchi wote kama ilivyo katika sheria ya haki. Lakini inasahau matatizo ya wazee ambao ni ya kipekee kwa wazee. Katika Mswada Katiba hii huwafaidi wazee katika jamii ni lazima mambo haya yatekelezwe.

Kwanza kuwe na akiba ya kusaidia wazee, huduma za hospitali kwa wazee ziwe hazina malipo. Wazee waakilishwe kwa mabaraza na Bunge. Kuwe na chama cha kimataifa cha wazee. Wazee wapewe nafasi ya kuhusishwa katika miradi ya maendeleo.

Nkiongeza yangu mwenyewe, mnikubaliye ninyi nyote, watu wa nchi hii... sisi wazee nikiwaambia tuna shida sana. Maana wakati mwingine unaambiwa na vijana na ni kama matukano uende mashambani ukalime. Mimi sina shamba katika mashambani. Mwingine hana na kule mashambani tena wazee ndiko wana shida sana, wengine hawana la kufanya wamefinyika sana. Lakini kikao hiki ni muhimu sana. Na wazee wakipitwa na kikao hiki, sijui itakuwaje kwa wazee. Sijui watakuwa namna gani. Hayo ndio nawaambia mnaweza kutusaidia tukiwa kwa umri unaozidi miaka sitini na tano, kujua hali yetu itakkuwa vipi na hapo ndipo nawaambia mko hapa nyote na mtakuwa wazee kama vile nilivyo, na haya ndio yatakayowapata nyinyi. (*Clapping from Honourable Delegates*) Shida kama yetu sisi tulio hapa, tungekuwa na mengi ya kuwaambia lakini tungekubaliwa hata Observers wangesema yale wamejionea. Tumejionea mengi, tumejifunza na ni asante sana nasema kwa kikao hiki Bwana Chairman. Tumefurahia vile mmetutunza na tuna furaha sana sana sana; katika nchi hii yetu tumeona hiki ni kikao cha maana sana. Asante.

P.L.O. Lumumba: The Chairman has now directed me to inform the rest that you will have only two minutes. We could have fought to be patient with the deaf and the old but the rest, two minutes. I now call on Jilo of the Watta Tribe. (*Noise from Honourable Delegates*) Order, order please. I know Jilo you will remember you have only two minutes.

Hon. Delegate Joshua Jilo Onotto: Thank you very much. Honourable Chairman of the National Constitutional Conference, the Commissioners, dear Delegates from different sectors covering Religious Organizations, Political Parties, NGOs, Observers, and members of the Mass Media with us in this historical Constitution-making process, I would like to inform this Conference of the following.

I would like to thank the Commissioners for producing a Draft Constitution which has shown an interest in the plight of the minority. I stand here to be counted among the minority, the marginalized and almost forgotten community, but in this historical Conference here I stand to thank you and inform you that I have been accorded the chance through the will of God to be within this Constitution-making Conference. Through this Constitution-making Conference, the Watta community has been known because as I stand here the Watta community has not yet been coded among the tribes of Kenya. We have been put among the other communities and also referred to with so many misnomers.

I would like to take this opportunity also to appeal to the mass media to highlight the plight of this community and other smaller communities so as they be known within Kenya and that the Government in connection with this Constitution take the necessary action to see that these smaller communities reach at least, if not the same status as the other communities a little bit nearer the advanced communities. We as minorities are not in the status we are in by choice; neither are the advanced communities there because it is their choice, but it is because of the will of God. Therefore, it is upon the Government, the mass media and the NGOs to see that these smaller communities are advanced in form of education, in form of presentation, and all other sectors to see that they reach at least nearer to the other communities. With those few remarks I say thank you very much Mr. Chairman, and God bless us all as we adjourn and let our Almighty keep us all healthy and we reconvene here God-willing on 17th of August this year. Thank you very much. *(Clapping from Honourable Delegates)*

P.L.O. Lumumba: As Jilo retires, a representative from the Seng'wer of Kenya for one minute. One minute only, I know you can be brief, we have worked together.

Hon. Delegate Moses Leleu Laima: Thank you very much, Mr. Chairman. (*Noise from Honourable Delegates*)

Prof. Yash Pal Ghai: Order, order please.

Hon. Delegate Moses Leleu Laima: My name is Moses Leleu Laima. I am very thankful for this precious time you have given me, Mr. Chairman. I believe this is one of the best opportunities for this country and I feel that at last our voice may be heard in this nation. Delegates, I would like to inform you that our community, sincerely speaking, is more marginalized than you can really think and I think this is an opportunity, and I would like to ask you most sincerely that when you are going into your Technical Committees, please, please consider us.

Ladies have complained that they want to be given one third. I may also like to say, for these smaller communities they should also be brought up to the same level as the ladies because really, a lady may be given an opportunity but at the same time the husband may be a big person and they are coming from the same community. But then the Seng'wer community or those smaller communities will not have any chance and I think this is the only opportunity for you gentlemen who really have got big numbers to assist us so that we can move together. We may not get a chance for electing anybody but then we are Kenyans, we belong to this nation. Sometimes I tried to complain in my place and I was told 'you stay in our armpits' by some of my friends we were staying together, somebody who is staying in our armpits, I'm not a woman, I cannot forget that. (*Laughter from Honourable Delegates*).

I would also like to put something here about the devolution of power. I would like to say that the National Council should be composed of all communities of Kenya, two men and one lady from all tribes of Kenya whether small or big so that everybody will have a chance of making decisions (*Clapping by Honourable Delegates*). And in the National Assembly those nominated seats should only be for minority communities, not for people who are already represented because if you give those who are already represented, they will be over-represented yet others have nothing, they have no voice whatsoever. So that is my appeal. Thank you Mr. Chairman.

P.L.O. Lumumba: Thank you very much. We may not go through all but may I now invite a representative from the Ogiek of Kenya. Is there anybody from the Ogiek? Is there anybody from the Ogiek? Could he kindly for one minute only, the Ogiek of Kenya. (*Noise from Honourable Delegates*)

Prof. Yash Pal Ghai: Order please, order.

Hon. Delegate Ezekiel Kisedanyi: Thank you, Mr. Chairman. My name is Ezekiel Kisedanyi, I come from the Ogiek community. Mr. Chairman, I am very grateful for this opportunity to say one word from the Ogiek community.

One is that the Ogiek people want to be recognized among the 42 tribes of Kenya. Mr. Chairman, I stopped closing my eyes during prayers when Honourable Kabira talked of the 42 tribes because I know I am not included. So Mr. Chairman we want the Ogiek community to be counted as a tribe in this country.

Secondly, we will not get any representation if we are subjected to elections, so I will concur with my friends of the Seng'wer community that all nominative positions should be reserved for the minorities who are not able to elect people to Parliament. I have contested twice in Kuresoi constituency but you know people vote on tribal lines; I wanted to represent my people in Parliament and it is impossible. So we would require that nominations for Members of Parliament and for councilors be reserved for minority people. (*Clapping from Honourable Delegates*) I don't want to say much Mr. Chairman because I had already had other opportunities. Thank you. And the Ogiek should also be left to stay in the forest, the way they want. (*Laughter from Honourable Delegates*) I want to be guaranteed that I live without clothes like everybody else. Thank you.

P.L.O. Lumumba: And with that, the Ogiek, the Seng'wer, the Watta, speak for the dark tribes and the other minorities. May I now for one minute invite Hilda Agola Orimba for Widows and Orphans Welfare. One minute Hilda, one minute and one minute only.

Hon. Delegate Hilda Agola Orimba: Thank you, Chair, the Secretariat, the Delegates and my fellow servants. My name is Hilda Orimba, the National Executive Chairlady of Widows and Orphans Welfare Society of Kenya.

I stand here before you to create awareness that widows and orphans are dying due to starvation and lack of shelter in the current flood areas yet we are here dealing with matters of the future. As we address for serious Constitutional legal changes, this Conference must quickly address the plight of the flood victims because they are dying, they do not have food, children are dying, they don't even have utensils to eat from. (*Noise from Honourable Delegates*)

Prof. Yash Pal Ghai: Order please, please.

Hon. Delegate Hilda Agola Orimba: I am really appealing to each and everybody, when you leave here you are going back, I am sure each one of you in one way or another has been affected by HIV, the orphans and the widows are in your homes. Please try to think about them because the Delegates did not actually deal with the matters of widows and orphans and we would like that the matters of widows and orphans be given a Chapter just as God did in the Bible and in other Constitutions, like in Bangladesh they had a chapter on widows and orphans. Thank you. Please before you leave think about these people very urgently.

P.L.O Lumumba: Only two more, thank you. The youth don't read a statement, summarize in one minute. Don't read a statement, summarize, one minute.

Observer Kepta Ombati: Mr. Chairman. Thank you very much for the opportunity to address this Honourable Conference, I would only urge you that you consider giving me one more minute, I think one minute is too little.

Prof. Yash Pal Ghai: You are already loosing it.

Observer Kepta Ombati: Mr. Chairman, before I make two or three comments, I would like to say that there are certain things that we will not forget about this Conference. For instance, we all will not forget the sage wisdom of the old man, Gitu Kahengeri, we shall not forget the vivacious

and boisterous nature of our William Ole Yiaile. We shall not forget Martin Shikuku and David Michael Sarakamba with their numerous points of order. We shall not forget Suba Churchill Meshack with his shrill voice of protest, delivered as one Observer noticed, like the voice a 50 year old. Mr. Chairman, I mentioned those to indicate to the Delegates that we were observing very keenly. I would go on with a long list but we only recognized your singular contribution and for that, we commend you.

Permit me, Mr. Chairman, to make the following few comments. First, as a representative of the young Observers here, we want to affirm the following; one, that we recommend the National Constitutional Conference for heeding and expressing the voice of the Kenyan people, by demonstrating that the sovereign will lies with the people. You have spoken for the people and you have spoken well. We also wish to commend you for demonstrating your commitment to delivering to this nation a new Constitutional order and a new beginning, as young people we owe that to you. Thank you very much. We want also to commend the growing voices of those who support a mandatory referendum at the end of this process. We think that would be the best way of you demonstrating your true trust of Kenyan people. Mr. Chairman, we wish to commend all those who supported the cause for Affirmative Action. I think the women of this country will be very proud of you.

Mr. Chairman, we want also to recognize the role of the Commission, you have distinguished yourselves, you fought through thick and thin to make sure that this process remain a people driven process, we commend you.

Finally, we want to also appreciate the role played by the Media. Even though at the very beginning it appeared that the Media was bent on trivializing this Conference, we also recognize that they have been the window to this Conference for majority of the Kenyan people, and they have been very analytical, we commend you for that work. Finally, Mr. Chairman about our concern. First of all, we want to say that the structure of this Conference has occasionally tended to encourage division along ethnic and regional lines. Mr. Chairman, it is our humble submission to you that, that is a very dangerous trend for this country. We want to integrate into the greater Africa; we want to think outward not inwards. The 21st century is not for the narrow minded.

Point number two, Mr. Chairman is on the question of inter-generational equity. We commend those who are not so young biologically, but those who have demonstrated their usefulness in the intellect, we hope that this Conference can bank on you, to ensure that there is justice for all across the generation and across the age line. As young people, we do not say we want to push the old men and women out this country, we only say that we must look back to our traditional societies and see how social harmony was maintained across the age line.

Prof. Yash Pal Ghai: Will you please conclude now, we told you two minutes; you have taken four minutes already.

Observer Kepta Ombati: As I conclude Mr. Chairman, I want to say this country looks to Bomas of Kenya for a new political, economic and social order. That new order must be embodied by this Conference in your individual capacity, as in your collective capacity. I would like this to come out very clearly in the words that you utter, even as you plan to come back here, when you go back we believe that you will be ambassadors of that new order.

Finally, Mr. Chairman--

Prof. Yash Pal Ghai: Please take your seat now.

Observer Kepta Ombati: I am a good student and I heed your command. Thank you very much Honourable Delegates and fare thee well.

PLO Lumumba: We have noted Aisha Omar's concern for the disabled, Pauline Sogo for safety and emergency, but the last word from the mouth of babes, from the Children's Cabinet, for one minute, Moses Mwangi.

Observer Moses Mwangi: Thank you very much for giving this opportunity to address this Conference. Mine will be brief and to the point. First, I would like to thank you for what you have done. But my concern relates to the children of this country. As we are speaking now children have only representatives as Observers in this Conference. We would like the

Parliamentarians who are sitting here, when they go back to Parliament, the first thing they should do is review our Act and assist our children in getting a Delegate to comprehend in their own unique way.

Second, I would like to appeal to the Delegates who are here, that the Constitution they are making is for posterity. The Constitution they are making today is not for people who are there today. Let the country come first and let the children also be put the issues they choose. Thank you for making the Draft Bill for children, but there many things that you will have to look into to see that our children see their rights, they get what they need as children of this country. I hope that when we come back we will have done a lot of research in children issues and in everything that we do, let the best interest of the child be the paramount to our Constitution. Thank you.

PLO Lumumba: Very finally and only for the sake of history, Denis Akumu for one minute, on behalf of Lancaster we bend history one minute. I hope it is not a statement Dennis. I see you carrying very many papers, please just summarize in a sentence.

Hon. Delegate Dennis Akumu: No, Chairperson I will not make a long statement, I am very proud of these Delegates, in fact I want to tell you ladies and gentlemen, I love you all. Let me tell you, when we came here I was nervous, I thought you did not know each other, you came from different backgrounds and so I was worried that you are going to end up as a quarrel . We are leaving here as friends and you have disappointed everybody, because there were people who were very sure that you will not be able to do it, there are those who predicted Wanjikus could not write a Constitution, now I am leaving here having seen one hundred Wanjikus writing very well, speaking about issues here, speaking about issues everywhere, I am very proud of what you people have done. I want to leave you with one thing to go and consider we tried. I met Shikuku at the hospital today and he wishes you well and he hopes you people can come back and we meet in August.

There is one thing we tried and we did not succeed, which you people must come back and try and do. We tried as young people, 40 years ago, to get a Commission to look into the grievances, to look into land question, to look into the people who were murdered by

colonialists, look at the compensation for Mau Mau, we failed. We were told by Oding “ this is a Conference brought by British and the settlers are Delegates here, wait until we become sovereign”. This is the first sovereign Conference, if you people do not want to do it in August it will never be done. You must do something about giving land back to the people, you must do something about our cultural exploration, you must do something about compensation to the Mau Mau, the Nandis who were killed, the Giriamas and everybody, you must do that so that we become ourselves again. I want to thank you, Chairman, but I also want to thank the Government of Kibaki for shaming the donors, donors had predicted that there was no money, we will not be able to hold this Conference. I worked for Africa for 13 years, I was at the Nigerian Conference, there would have been a lot of British lawyers writing this, there would have been other people, and we have our own lawyers. We have our own people doing this, we are writing our own Constitution and I hope we continue with the dignity of doing this for ourselves without somebody telling us, that this is the British style, this is French style, this is Portuguese style. Chairman, I am grateful, I am proud of this and I think this is an advancement. I hope we will be here in August.

P.L.O. Lumumba: Dennis, your time is over.

Hon. Delegate Denis Akumu: God bless you.

P L O Lumumba: I now hand over to the Chair, thank you very much and may God bless.

Prof. Yash Pal Ghai: Thank you very much. There was a suggestion at the Steering Committee that as we conclude our deliberations for this session perhaps we could give our minute to our spokespersons for different constituencies and different groups. I seek the approval of this assembly to do that, I ask that because we have decided we want to conclude our session by 4.30 pm. and I noticed that there are 16 of these groups. Shall we give them a minute each or should we-- (*uproar from the Honourable Delegates*).

In that case, I will proceed to make my concluding remarks. I do not have a great deal to say, I want to put on record my views that this session of the Conference has been a very successful session. We have had extremely good deliberations, we have been able to cover the entire Draft

Constitution in general debate, we have had a very useful set of comments on the Draft and I have no doubt that as a result of the discussion we have had, the final Constitution will be an improvement on the Draft Constitution. I want to assure the Kenyan public that the money that has been spent for this Conference has been fully worthwhile and many delegates have worked extremely hard with great deal of dedication and we really have carried the review process forward. I am particularly grateful to those Delegates who have stayed behind everyday until somebody reminded us that we had no quorum. I am particularly grateful to them and hope that this spirit that emanates them will be reflected in all the Delegates when we come back.

I should just to say a word or two about what the Commission has proposed to do over the next few weeks. As you know, we had hoped that Prof. Okoth Ogendo as Rapporteur General would have provided a general report summarizing highlights of our discussions so far, because we were running against the deadline to complete this particular general debate, that document is not ready yet, it is substantially ready and we hope that over the next few days it will be ready and we shall make sure that all of you receive a copy of that report in the next few days and that you have an opportunity to read that report before we meet again in August. This will greatly facilitate the work of the Conference, if you are able to take time to study that report. When you come back, we will also have the verbatim reports of this particular session and you already have received a great deal of documentation from us and we hope that you will take the opportunity to study those documents. A lot of work went into those documents and I am sure if you study them you will find that we can conclude our work successfully when we meet again.

When we come back we shall be able to go into Committee work after the formal presentation of the report by Prof. Okoth Ogendo. We have been fortunate in completing general debate on the Draft Bill so that we are now ready to go into Committee stage. As you know, the committees will examine the Chapters in details and make recommendations to the Plenary. The decisions will be made in the Plenary. We have already had an informal meeting with the Convenors of all the Committees and we have discussed the procedure that might be adopted for the work of the Committees. You will no doubt be informed about that when we come back but we hope that the preparatory work that the Commission will do will enable us to make quick progress.

I hope we will be a bit more diligent in attending to the work of the Conference and some Delegates have been this time, I hope I will not look round the room and see a large number of empty chairs. I think we have now to proceed to decision making when we meet again and Kenyans, I think, are expecting us to conclude our work when we meet that time round.

I just like to thank the Delegates for the cooperation and their commitment to work. I would like to thank the Review Commission, my colleagues for the splendid work they have done and their participation in this particular Conference. I want to thank the Steering Committee which has worked extremely well and which has been of great assistance to me as Chair but also I think to the Conference generally. I will also thank other Committees which have worked to promote the progress of this Conference in particular the Media Advisory Committee and the Discipline Privilege Committee which have worked very hard all this period. I want to thank the staff of Parliament which was loaned to us and they have pretty facilitated our proceedings and the record of our proceedings. Of course the Commission staff have also been very active in all this time and I want to thank them. I want to thank the administration and staff of Bomas of Kenya, this has been a wonderful location for the Conference. We spent a great deal to time and discussions before we choose Bomas of Kenya and I believe our choice has been vindicated. The manager and the staff have worked very hard to make us comfortable and they have provided us excellent food even though they were preparing for seven hundred people, I think they have done a wonderful job.

Clapping by the Honourable Delegates.

Prof. Yash Pal Ghai: Finally - and I am sure I have forgotten many people I should thank and I hope they will forgive my omission - I would like to thank Patrick Lumumba for his excellent work. I have worked with Patrick now for nearly two years and I can assure you there is not a Kenyan who is more dedicated to this task than he is. It is the great personal commitment of his apart from his professional duties, and we would not have had such a successful Conference where almost everything has worked to perfection but for his dedication. I want us to clap very warmly for his great dedication.

Clapping by the Honourable Delegates.

Prof. Yash Pal Ghai: Well, that brings me to the end of my own closing remarks, just to say that I wish you all a very pleasant, successful and fruitful recess. I hope you will come back with new amount of energy so that we can continue with our work. We will be in touch with you, we will provide you materials that will facilitate our work and please write to us if you think there is something we can do to prepare you for the next round.

I am going to ask Patrick, if he wishes to make announcements, then we will have dances from the two delegations that were mentioned. Then we will have the closing prayers and the National Anthem and that will conclude our work for this session.

PLO Lumumba: Thank you very much, Mr. Chairman. Just to make a correction on behalf of Dr. Naomi Shaban, the Member of Parliament for Taveta. In your documents we have wrongly referred to the District as Taita, read it as Taita Taveta.

Secondly, we have issued you with the evaluation forms, we humbly request you to deposit it with our staff.

Lastly, we recommend that if you cannot keep your badge safely, we can keep it for you in tent number 2. If you think you can keep it safely well and good, but if you think you may lose it for the next session, deposit it with us and we also remind you to come back with your documents. Thank you very much.

Prof. Yash Pal Ghai: Could we then please invite the two groups, I don't know in what order they are going to appear but I am sure the organizers know that and so could we please clear the space down here. I would urge those groups, please, to take not more than five minutes so we can conclude on time.

First Song

Panga mambo ya Katiba pole pole
Panga mambo ya wamama pole pole

Usije ukasema,

Usije ukasema Katiba yako imekufinya

Panga mambo ya Katiba pole pole

Chorus Panga mambo ya Katiba pole pole

Usije ukasema

Usije ukasema Katiba yako imekufinya

Shukrani kwa Wajumbe kwa kazi yao maridadi

Mumefanya kazi ngumu kuunda Katiba

Asante kwa Wajumbe,

Asante kwa Wajumbe kazi yake ya Mwenyezi Mungu

Asante Bwana Ghai na Commission yako

Kazi yake Mwenyezi Mungu ameumba dunia

Upange mambo yake

Upange mambo yake

Upange mambo ya usalama

Panga mambo ya wazee pole pole

Panga mambo ya mashamba pole pole

Usije ukasema

Usije ukasema Katiba yako imekufinya

Ndani ya Katiba

Ya jana ni ndoto ya kesho siyajui

Haki yangu leo,

Ya Katiba

Na mawazo yangu

Ndani ya Katiba

Mambo ya sheria
Ndani ya Katiba
Mambo ya waalimu
Ndani ya Katiba
Mambo ya polisi
Ndani ya Katiba
Mambo ya mashamba
Ndani ya Katiba
Mambo ya watoto
Ndani ya Katiba
Haki kwa akina mama
Ndani ya Katiba

Ya jana ni ndoto ya kesho siyajui akili zangu zote
Ndani ya Katiba

Mambo ya wazee
Ndani ya Katiba
Mambo ya wajane
Ndani ya Katiba
Wale wasiojiweza
Ndani ya Katiba
Mambo ya watato
Ndani ya Katiba

Mkoa wa Magharibi
Ndani ya Katiba
Mkoa wa Pwani
Ndani ya Katiba
Hata jirani
Ndani ya Katiba.

Mkoa wa Nyanza

Ndani ya Katiba

...

Hata Nairobi

ndani ya Katiba

Mambo ya watoto

Ndani ya Katiba

Hata ya wajane

Ndani ya Katiba

Hata ya wagonjwa

Ndani ya Katiba.

Second song – Taarabu

Wamama tuwe imara

Kina baba tuwe imara

Tusiwe kama popo si ndege

Tusiwe kama popo si ndege si mnyama

Wajumbe twaagana

Madukani tuendao

Majadiliano tumeyafunga

Funguo zetu

...Kuweka

Ahadi yako, umetimiza

Hatuwi kama popo si ndege

Hatuwi kama popo si ndege, si mnyama

Rais wetu mtukufu Kibaki

Twakupongeza

Ahadi yako tunaiona
Katiba kufungiwa
Kamwe isiwepo
Hongera baba, hongera
Katiba mpya kuikubali

Tisiwe kama popo si ndege
Tusiwe kama popo si ndege si mnyama

Nawe Ghai uwe imara
Idha Salim uwe imara
Pia Lumumba uwe imara
Msiwe kama popo, si ndege
Msiwe kama popo si ndege si mnyama.

Tunajivunia nchi hii ya Kenya
Katiba ..
Katiba tuitengeze, Wakenya waingojea
Nyinyi nyote muwe imara
Wajumbe wote tuwe imara
Msiwe kama popo, si ndege
Msiwe kama popo si ndege, si mnyama.
Tujivunie nchi yetu ya Kenya
Tuwe na umoja
Tupendane kana kabila moja

Tusiwe kama popo si ndege
Tusiwe kama popo si ndege, si mnyama

Nchi yetu ni moja
Katiba ni maisha
Tujivunie nchi yetu ya Kenya

Wamama, wazee na watoto

Prof. Yash Pal Ghai: Can we conclude now please? Thank you very much indeed that was wonderful. Thank you. Please give them a loud applause. I am now going to first of all ask Father James to say prayers, then Sheikh Raval and the Sheikh Ali Shee. So please Father James, could you come and say prayers and may be we all stand up please.

Hon. Delegate Father James: Oh God, our loving Father, our Creator and our Protector, we thank we Kenyans of all walks of life and religious diversity. We thank you for the gift of this country Kenya and for this important historical moment that you have provided us to write our new Constitution. Almighty Father, we thank you for the prevailing political goodwill among our political leaders and for supporting this process. Thank you Almighty for the deliberations and the gains that we have achieved for the time we have been here. Thank you for the peace and understanding that has prevailed during the time we have been here. We have issues that we have built consensus on and we also have contentious issues that we are yet to agree on. As we go on recess today we pray that you may enable the Delegates to digest and evaluate all what we have done this month. Help us to come back in August for the second phase of the Conference with renewed enthusiasm, with energy and understanding required to complete this process. May you give each and every Delegate journey mercies as they leave to their homes. Amen.

Hon. Delegate Sheikh Ali Shee: Bismillahi Rahmani Rahim, kwa jina lako Mwenyezi Mungu mwingi wa rehema na imani. Tunakushukuru kwa baraka zako ambazo ulizotupa, hekima ambayo ulitujaza sote Wajumbe wa kongamano hili na busara na hekima na uvumilivu ambao uliwapa wananchi wetu wote wa Kenya. Tunakushuku Mola wetu, Muumbaji wetu, uendeleo kutupa nguvu kama hizo tuweze kuvumilia zaidi katika kipindi cha miezi miwili tutakao pumzika. Busara ziongeze na nguvu utupe vile vile, tuweze kurudi kwenye kazi hii hili tuweze kuikamilisha. Rabi tunakuomba uwalinde Wajumbe wetu wote, warudi manyumbani mwao, warudi kwa jamii zao, warudi kwenye kazi zao wakiwa katika hali ya furaha na mapenzi na moyo mpya, na nguvu mpya na busara uzidi kuziongeza katika kipindi hicho cha mapumziko. Tunakuomba baraka uziongeze katika nchi hii yetu, uwape nguvu wananchi na maafa na balaya utuondolee ee Mola wetu. Hatuna mtu mwingine wa kumuomba isipokuwa ni wewe, shukrani zetu ziko kwako wewe, utubariki. Amen.

