

CONSTITUTION OF KENYA REVIEW COMMISSION

CKRC

NATIONAL CONSTITUTIONAL CONFERENCE

Verbatim Report of

**PLENARY PROCEEDINGS - PRESENTATION OF REPORT -
CHAPTER FOURTEEN - PUBLIC SERVICE, HELD AT THE
BOMAS OF KENYA**

ON

4TH JUNE 2003

PLENARY PROCEEDINGS, PRESENTATION OF REPORT, CHAPTER 14 – PUBLIC SERVICE, HELD AT THE BOMAS OF KENYA ON 4TH JUNE 2003

PRESENTATION OF DRAFTR BILL: CHAPTER 14 - PUBLIC SERVICE

Session Chair: Wilfred Ole Kina

Presenters: Com. Abida Ali Aroni
Com. Pastor Zablon Ayonga.

Meeting commenced at 8: 10 am.

Hon. Delegate Wilfred Ole Kina: May we rise for prayers please.

Hon. Delegate Gitu Wa Kahengeri: Tuombe. Ewe Mungu aliyeumba dunia, Mungu ambaye anaangalia maslahi ya wananchi wa Kenya, tunakushukuru kwa kwamka vyema, tunakushukuru kwa yote ambaye umetutendea wakati huu. Tuko katika kongomano ya kutafuta suluhisho la mambo ambayo yanatuhusu katika nchi yetu. Tungependa utoe baraka zako. Cho chote ambacho tutazungumza katika mkutano huu na cho chote ambacho tutakayotenda tukitoka katika mkutano huu yawe yakutushikanisha pamoja tukiwa wana wako katika nchi ya Kenya. Tunawaomba wale ambao wamepatwa na ajali na wale wanaolala katika hospitali, wapate nafuu kwa haraka kisha waungane na wenzao katika kazi ya ujenzi wa taifa letu. Twakuomba na haya machache na tunajua mengi ya taabu zetu unayajua na utatutimizia. Kwa jina la Baba na la Mwana na la Roho Mtakatifu. Amen.

Hon. Delegate Sheikh Ali Shee: Bismillahi Rahmani Rahim. Kwa jina lako Mwenyezi Mungu, mwenye kurehemu, mwenye subiri kwa waja wake, mwenye nguvu zote. Tunakuomba utubariki sisi zote, ubariki mkutano huu na wenye kukutana wote uwape busara na nguvu ya kuweza kufanya kazi hii ngumu ambayo wamepewa na raia wako na watu wako. Twakuomba ewe Mwenyezi Mungu tukiondoka hapa, tuondoke na busara nyingi zaidi kuenda kufanya mengi zaidi, ili kuleta faida nyingi. Tunawaomba wale ambao tumekuwa nao waliopata ajali hasa mzee wetu, ndugu yetu Mheshimiwa Bwana Shikuku. Mola mpe kheri na baraka zako, mpe Uzima aweze kufanya kazi hii ngumu ambao walifanya kabla ya uhuru huu wetu wa Kenya.

Tunakuomba ya Raabi utupe nguzu zako, tuungane mikono tuweze kufanya kazi hii. Ubariki nchi hii yetu yote, wabariki watu wetu na maafa ambayo yametokea Mathare na penginepo. Mauwaji ambayo yaliofanywa ni ya kinyama na kishetani. Twakuomba ya Raabi uwatulize wale ambao walipata msiba huu na uwape akili wale ambao walifanya maovu kama haya wasiregelee tena. Pia wale wengine ambao wako kwenye fikra za maovu kama haya wasifanye maovu haya ya kuleta maafa katika nchi hii yetu. Tunakuomba, hatuna mtu mwingine wakumuomba isipokua ni wewe, tubariki. Amin.

Prof. Yash Pal Ghai: Honourable Delegates, I would like to make a very brief statement and this concerns the question of the quorum. Over the last several days we have not been able to stick to our timetable because at around 4 pm this room is empty. The empty room is captured by the camera and conveyed to the entire nation. I made a special plea yesterday that for the remaining part of this Conference, we work hard and complete the discussion of the Draft. Our President talked on Madaraka Day about a working nation, I fear we do not have a working Conference here. I will urge you all please to ensure that we have quorum throughout the day. It is very unfair to people who stay until the end of the day to find that when their turn comes to speak, there is no quorum. Your function here is not just to make speeches and be photographed, but it is to contribute and to listen. I would plead with you all to make sure that we have a continuous quorum so that we can work until the time we have allocated for our discussions. I will ask the Provincial Coordinator, the NGO Council, the Religious Leaders and Professionals to please tell their members that when they agreed to be Delegates, they undertook certain obligations given to them by the nation and they have to discharge that obligation. This means that they have to attend as much of the proceeding as is possible. Sometimes one has to be away for a while but some people are away 90% of the day and this is just not acceptable. We will come under very heavy criticism if we do not improve our working method.

So I will urge you please to stay here till the end of the time we have allocated for our discussions so that in future we do not have any premature termination of our proceedings. Please let us try to complete the discussion of the Draft Constitution. We are now in the sixth or seventh week, we were supposed to have finished the general discussion in about three weeks. So let us follow the President's injunction; let us work hard and let us show Kenyans what we are capable of. Thank you.

The second announcement I want to make is that Honourable Joseph Khamisi's motion which concerns the adjournment and the reconvening of this Conference will be presented this afternoon after lunch.

Hon. Delegate Wilfred Ole Kina: Thank you. I will now ask the Chairman of Privileges Committee to make a statement.

Hon. Delegate Baldip Singh Rihal: Thank you, Honourable Chairman and Honourable Delegates. As Chairman of the Welfare Committee I visited Honourable Shikuku in the hospital last evening. I wished him all the best on behalf of the Conference and all the Delegates. He is in good spirits and did not sustain any sort of physical injury except that there is some pain in his chest as a result of the impact of the car when he swerved off the road and landed in a ditch. Otherwise he is in very good shape. The doctors have made extensive checks on him because of his heart condition and he told me that he is in good spirits and as soon as he is discharged - it might be today after the doctors have checked on him again - the first thing he is going to do is to come here to the Conference and participate in the deliberations. So I would like to inform all the Delegates that we are taking care of his welfare and he is in good health. He also sent you all his regards and best wishes for the rest of the days of this Conference. Thank you, Mr. Chairman.

Hon. Delegate Wilfred Ole Kina: I will now ask Pastor Zablon Ayonga and Abida Ali-Aroni, Presenters for today to lead us through the presentations of Chapter 14. Point of Order 304.

Hon. Delegate Hezekiah Waithanje: Mr. Chairman, my name is Hezekiah Waithanje Minjire, Delegate from Nyeri number 304. Yesterday the Chairman of the Conference talked about working and we did agree we were going to go up to 6:30 pm. Unfortunately he is blaming us. 99% of the District Delegates are here. In fact if you ask for a count, there are not more than five Members of Parliament as of this hour. I have only seen the Chairman of Public Service Committee. The timing of yesterday's meeting, Bwana Chairman, was led by the Co-Chair who gave Members of Parliament time to speak early and they left. Delegates again started moving out because the way she conducted the proceedings was not really fair. There was a lot of noise, so we would say the timing and the knowledge of Co-Chairs matters. In fact the Co-Chair

yesterday and the day before yesterday were the worst we have had since we started. So can it be noted?

Hon. Delegate Wilfred Ole Kina: Thank you very much. I would also like to be fair to those Members of Parliament who sit here persistently. We can recognize quite a number of them who sit here and they are few. Honourable Wangari Mathaai is always here; she was here even yesterday (*Noise by Honourable Delegates*). They are quite a number, even Nyachae was here. Anyway what I am saying is that I do not want to generalize and say that all the Members of Parliament are not here, because it will not be fair to those who are as committed to this process as we are. So much as we recognize that a lot of them are absent, we should be fair to those who are always here with us. So let us go on (*Noise by Honourable Delegates*). Pastor Ayonga, please. Order, order. We would like to proceed with today's deliberations please.

Com. Abida Ali Aroni: Chairman of the Conference, the Vice Chairs, Honourable Delegates, ladies and gentlemen, my colleague, Pastor Ayonga and I will address you on the topic of Public Service. In our presentation this morning we will look at the mandate of the Commission in accordance with the Review Act Chapter 3A of the Laws of Kenya. We will look at the general principles that we considered in preparations of the Draft Bill. We will compare those principles with other Constitutions. We will have a glimpse of the provisions of the 1963 Constitution. We will briefly look at the provisions of the current Constitution. We will then look at what you and other Kenyans told us. And lastly we will make reference to the Draft Constitution.

Now the Constitution of Kenya Review Act Chapter 3A of the Laws of Kenya in Section 3 on objects and purpose of review required the Review Commission to examine and make recommendation on the establishment of mechanisms that would enhance good governance and democracy. A quick look at section 3 indicates that section 3B made reference to the establishment of a free and democratic system of Government that enshrines good Governance. Section 3C and D made reference to checks and balances, 3C made reference to accountability. 3F made reference to strengthening of National Unity, 3F basic needs. And to us as a Commission the mandate as a matter of necessity required that we examine the Public Service. As you all aware the Public Service carries the burden of Public Administration, it is an important component of the Executive organ of the Government. Therefore in the mind of the

Commission we felt that Public Service is crucial for the National cohesiveness and therefore there was need to revitalize and improve the same while embarking on this exercise of reviewing the Constitution. It is obvious that an efficient and balanced Public Service that is free from Political interference and patronage is important for effective delivery of service to the Wananchi.

What are the general principles? The Public Service as we all know has two main functions; implementation of Government policies, laws and provision of manpower. The Public Service provides labour to discharge vital function and to deliver service to the people. Our Civil Service is made up of the following major offices and departments:-

- ◆ The Permanent Secretaries.
- ◆ Staffs of various ministries.
- ◆ Staff of the Office of the President.
- ◆ Provincial Administration.
- ◆ Discipline forces.
- ◆ The police.
- ◆ Government security services.
- ◆ Local Government officials.
- ◆ Officers in Parastatals and State Corporations.
- ◆ Officers in Constitutional Commissions and other Constitutional offices.

The Service Commission Act Chapter 185 of the Laws of Kenya provides the composition and mode of the Public Service Commission. Now what have other Constitutions done in regard to Public Service?

A study by the Commission revealed that most Constitutions define the principles governing the appointment and discipline of Public Servants by establishing an independent institution to recruit and discipline them. Those provisions usually cover Central and Local Government and Parastatal offices. The above position is clear in the Constitutions that we made reference to, for instance, the Constitutions of Ghana, Singapore, India and Uganda. There are countries that have set up a single Public Commission with a responsibility over the entire service whereas others have set up sector specific Commissions. Ghana for example has one single Public Service

Commission, Uganda our neighbour has setup a sector specific commission, such that in Uganda, other than the Public Service Commission, they have setup for example an Educational Service Commission, a Health Service Commission and a District Service Commission.

Now the 1963 Constitution famously known as the Independence Constitution provided for a Public Service Commission of the Republic and one for each of the regions that were created by the independent Commission. It consisted of the Chairperson, the Vice- Chairperson and five other members. The mandate of the commission that was created by the Independence Constitution included appointment of persons to hold or act in public offices, to discipline and control such persons and to remove such persons from office. The mandate also included advising the Governor General on the appointment of the Auditor General, the Attorney General, the Permanent Secretary and the Secretary to the Cabinet, the Liwalis and the Mudils of the Coast region.

Our Constitution presently provides for a Public Service Commission that comprises of the Chairman and 16 other members who are appointed by the President. In law the Commission appears independent. The mandate of that service is to appoint, discipline and remove civil servants and also includes appointing, disciplining and removing those in the local government and other institutions save those specifically left to the discretion of the President or other authorities. Their mandate also includes consenting to reducing, withholding or suspending pension and benefits of civil servants.

While traversing the country, people had lots of things to tell us about the Civil Service and the Public Service Commission. We received various submissions and we also did research and referred to different materials that were available. What was obvious is that we as a country have a problem with the Civil Service and the Public Service Commission. It is full of problems and shortcomings and some of the problems that we heard were that the Civil Service has problems within itself and more prominently political interference. Studies that we made reference to, indicated that more than sixty percent of Kenyans have been victims of corruption within the Civil Service and that fifty percent of Kenyans have had to bribe to obtain public service. Good examples were given in the Immigration Department that was rated as highly corrupt. Poor hospital services were also one of the complaints where people have to bribe their

way to gain service, or where service was unavailable for this and that reason. Water provisions, roads, etcetera, were also part of the complaints that we received; lack of facilities in schools due to corruption and laxity, collapse of Parastatals due to corruption and laxity, problems in the appointments of people in the public service, poor pay and retrenchment were a few of the problems that we received as we went round the country.

Kenyans also told us their expectations of a public service apart from the problems that they have encountered in the last forty years. The expectations of our people are that the Civil Service should be neutral, impartial, transparent and accountable, non corruptible, a service that is capable of guarding the public wealth and resources of this nation, a public service that is non political where persons are able to exercise their duties and obligations independent of political pressure. Kenyans were concerned and raised the following issues as well:

- They wanted to have a Public Service Commission that is independent;
- They wanted to see the terms of service of Civil Servants improved;
- They wanted to see Civil Servants and our leaders declare their wealth before taking up public service;
- They wanted to see a code of ethics administered by people in the Civil Service;
- They wanted a disciplined and an efficient public Service;
- They wanted to see Public Servants excluded from engaging in private businesses so that they could concentrate on the jobs given to them;
- They wanted to see regional representation in the Public Service; and
- They were concerned about the retirement and pension benefits of the civil service.

Those are but a summary of the main concerns and issues that were raised as we spoke to different people in different parts of this country.

Now, in the Draft Bill we have made reference to the issues and recommendations that were given to us and in Chapter 14 of the Draft Bill, and more specifically Articles 258 to 270, we have made those recommendations. Articles 258 to 263 deal with the issue of Public Administration; Articles 264 to 266 deal with the Kenya Public Service Commission, Articles 267 to 269 deal with the Security Forces and Article 270 refers to interpretation. Now if you

consider Article 268 of the Draft Bill, the same sets out the guiding values and principles of Public Administration and in brief, those include high professional standards by those in Public Service, promotion of efficient, effective and economic use of resources by those in the Public Service, impartial fair and equitable provisions of services. We have made reference to efficiency in the services provided; we have made reference to accountability and transparency by those engaged in the public service, promotion of public servants is on merit, adequate and equal opportunities for training and advancement and reflection of national representation in employment in the Public Service.

In brief, I will also make reference to Article 259 and 260 on the Public Service Commission. The Draft establishes an independent Service Commission that would investigate, monitor and evaluate the organization and administration of Public Service. They will have the mandate to appoint, provide and exercise disciplinary control of public servants. They will review the terms and conditions of service and training of public servants; they will guide and coordinate district services amongst other duties.

We have proposed that the Commission should consist of between eight to ten Commissioners, to serve for five years, a term that will be renewable subject to the decision of the Parliament and that the Commission should reflect the diversity of the Kenyan people. I will kindly ask my colleague now to make reference to the section of the Draft Bill dealing with Security forces. Thank you.

Com. Zablon Ayonga: Thank you Commissioner Mrs. Abida Ali-Aroni, for the enlightenment that you have given on the public service. I am given a section of the public service entitled 'The Police Force' and it is a short Chapter dealing with three Articles and I have divided it into three sections. I am going to talk about what the people told us about the Police Force and what we were told elsewhere and also what the Police themselves told us..

First, the Police Force as we know is there to maintain peace, to keep law and order, to curb crime, to be seen to be non-partisan by giving 'Utumishi Kwa Wote' and assurance of security to all wananchi, just to mention a few. Kenya Police is said to be one of the best Forces in Africa, but reports we got out there in the countryside when we visited to collect views from the people,

did not wholly subscribe to this. Among the submissions that we heard, the one which was persistent and which we heard everywhere we went throughout the country, was that the Police were brutal, 'kali kabisa'. They want to be seen to be kali and not friendly.

In recent studies by Transparent International, Kenya Police topped the national bribery league. That is a very sad thing. People making submissions to the Commission told us of instances in which the Police would arrest individuals on Friday for no good reason apparently in the expectation that the prospect of a whole weekend in the cells would produce a more generous bribe. This also was persistent everywhere we went, we heard of similar allegations. There is an impression that the Police will stand by when citizens are under threat. A recent example being the failure of the GSU to come out promptly to the support of the people being killed by Mungiki in Kariobangi, only a short distance from the GSU headquarters.

There are accounts of Police Officers being actually engaged in criminal enterprises, such as carjacking and violent robbery. People did suggest that it had become more frequent that whenever cases of robbery happened, that there is Police involvement in the robberies. The Police particularly in administration are made use of by politicians for party political purposes such that the Police are seen not to be impartial in rendering their services and giving 'utumishi kwa wote' equally. In the Eastern Province, we heard of one case which shocked us. A school girl in one of the secondary schools who came to give her own views, she was about 18 years old, told us this. "Whenever I see a Policeman--", she did not say a Policewoman, but said, "whenever I see a Policeman, I see a rapist, a murderer and a robber with violence." This was a shocking revelation particularly to those of us who heard of it first hand, that such a young girl, 18 years old in a secondary school, had built her views with fear, a phobia against the police service. Whereas she could be seeing a police person as a friend, as a peace-maintaining officer, as a person who would come to her rescue, she would avoid running to a Policeman for help.

Elsewhere, we were told that Police should be politically neutral, in other words, they should give their services regardless be fair to everyone. Police should have civilian control, it should be seen that civilians are controlled. They should respect rule of law and democracy and always hold that they are accountable and they are transparent in all their activities. But then Kenyans being what they were, they were sympathetic with the police service, they could see the other

side of the coin by also trying to find out why our Policemen, Policewomen behave the way they do. They also revealed to us that the police force is not well remunerated. They said Police will need a better remuneration in order to work well. They said the Police housing is pathetic, that they have seen their brothers, their sisters whenever they visit them in their houses at their police stations, that two-three families could live in a small cubicle divided only by a sheet. That these Police people work long hours, sometimes they are hungry and that their performance perhaps is such that they cannot be expected to do a good job. The Kenyans observed and recommended that the Police should be paid well and that they should be treated in such a way that, when others are having good salaries, Police should also be considered along with others.

Now, we had also to see the Police themselves and here is what the Police said. The Police said that their work is risky and we know it, it is risky. They are on duty 24 hrs when other people work for 8 hrs or less and still get good salaries. Police people, men and women, work under hostile and stressful situations. They work in the rain, sea, deserts and mountains because they have a duty to provide security. They are exposed to environmental hazards which include health-threatening fumes and dust, particularly the traffic police while they are controlling traffic. They deal with hostile people, hard-core criminals and mentally sick persons. They deal with dead bodies, some of which are decomposed. They patrol criminal-infested places. They put their lives on the line while chasing armed robbers and bandits. They expose themselves, while handling accident cases, to dangers of contracting diseases like HIV/ AIDS. They escort large sums of money, which makes them targets of criminals. They are not paid well; what they get is peanuts. They revealed, for instance, that a police officer gets a salary of 4,600/= shillings per month, that is, before deductions are made. This makes them envy anybody who passes by and would always find an excuse to get *kitu kidogo*, which sometimes rises to *kitu kikubwa*, and so on and so forth. They said their living conditions, their housing, are pathetic just as much as people know about them. They also said they need to have a Police Service Commission, which perhaps would take their interests at heart. Presently, they fall under the Public Service, which shifts some of the responsibility to the Police Commissioner to look into. It becomes a long and difficult job to meet the police needs and improve their services.

Having said that, Honourable Delegates, I would now like to take you to the Draft Constitution so that we can see why the Commission had to write what they wrote in Articles 264, 265 and 266. The Kenya Police Service principles and objects:

1. The primary object of the Kenya Police Service is to work with, and for the people to ensure a peaceful and safe environment.
2. The protection of rights and freedoms; the security of the people; the prevention and detection of crime; the support of victims of crime and disorder; and the protection of property.

In furtherance of these objects, the Service will:

1. Strive for the highest standard of professionalism;
2. Work to eliminate and avoid corruption of all sorts;
3. Avoid bias/or discrimination with regard to Political groups or other sections of society;
4. Observe human rights standards;
5. Train staff to the highest possible standards of competence, integrity and respect for human rights and dignity;
6. Recognize the duty of accountability to society and democratic institutions;
7. Build up relationships with the broader society;
8. Train its members, including members of any para-military, armed, or riot police units to the highest possible standards of competence;
9. Minimal use of force, integrity and respect for human rights and fundamental freedom and dignity; and
10. To recognize the duty of accountability to society.

In Article 265, we are talking about establishment of Police Service. There is established a service to be known as the Kenya Police Service. Subject to this Constitution, the Police Service shall be organized and administered in such a manner and shall have such functions as Parliament may prescribe. The Police Service shall be professional and disciplined. The Police Service shall remain a national police force and the division of each function shall be organized

to take into account the structure of devolution. The Police service shall work closely with the communities to ensure security and service for all citizens through community policing.

In section 266, we talk about the appointment of the Commissioner of the Kenya Police Service. There shall be a Police Commissioner of Kenya Police Service appointed by the President with approval of Parliament for one term of 10 years. No person may be appointed Commissioner unless that person has a degree from a recognized university and has served in police service for at least 10 years. The Kenya Police Service shall be under the command of the Commissioner who shall be assisted by two deputy Commissioners. The Commissioner shall be subject to, and act in accordance with, the Constitution and the laws of Kenya, except that, on matters of policy, the President, acting on the advice of the Prime Minister, may give direction to the Commissioner.

The Commissioner of Police may be removed from office by the President for good cause with the approval of Parliament.

Ladies and Gentlemen, Honourable Delegates, I now would like to turn the microphone to my colleague, Commissioner Abida Aroni, who will take us through what was known as Prisons but which has been christened a Correctional Service.

Clapping by Honourable Delegates.

Com. Abida Ali-Aroni: Thank you, Pastor Ayonga. I will briefly take you through Article 267 to 269 and, as my colleague mentioned, we will be dealing with the Prisons or as we have now baptised it, Kenya Correctional Services. Now, we received presentations from people outside the prisons and also those who are guests of the prisons and those who work within the prisons. It is common knowledge to all of us that there is need to improve services rendered by this sector of our society and as such, as a Commission, we looked at the objects and values that need to be considered while serving the nation in this sector.

We received several problems in regard to the prisons. The major problem, as we have all heard before, is about the inhuman treatment that is accorded to those who are unfortunate enough to

be guests of police cells and the prisons generally. There is violation of basic human rights, e.g. lack of proper clothing, if at all; more often than not, inmates walk almost bare; lack of basic food and medical treatment, if any; and brutal treatment of those who are in prison. In a nutshell, one would say that the Kenyan prisons are really hell on earth. While talking to those who were serving sentence and those who work within the prisons, it was quite obvious that there is lack of training of those who man the prisons and like all civil servants, they are poorly paid and do not receive adequate or any incentives that would boost their morale in serving that difficult sector of the Civil Service.

With that in mind, the Commission has recommended provisions in Article 267 and we have looked at the principles and objects that should guide the Kenya Correctional Services.

In 267 (i), we recommend that the primary objects of this service ought to be to rehabilitate persons convicted of crimes and to facilitate the return of this people to useful lives in the community.

267 (ii), to protect the well being of Kenya, the service should

- a) be structured in such a way as to achieve the highest standards and professionalism amongst, and by its members in the exercise of their respective powers and avoiding corruption of any kind among its members. While collecting views, it was quite obvious that the Prisons are also a problem in as far as corruption is involved. Inmates have got to buy their way around to be able to sleep in a good corner, to be able to receive basic necessities of life;
- b) Observe human rights standards in the exercise of its power;
- b) Train its members to the highest possible standards of competence; minimal use of force, integrity and the respect for human rights and fundamental freedoms and dignity; and to recognize the duty of accountability to society.

Article 268 (2), subject to this Constitution, the Kenya Correctional Services shall be organized and administered in such a manner and shall such functions as may by law prescribed.

The Correctional Services shall be professional and disciplined. In Article 269, we recommend the appointment of Director of Kenya Correctional Services and it reads, ‘The President on the advise of the Prime Minister and upon approval by Parliament shall appoint the Director of the Kenya Correctional Services’.

Article 269 (2), Parliament shall enact legislation establishing adequate mechanisms for accountability and governance of the Kenya Correctional Services, (b), providing for the organization administration and the functions of the Correctional Services and regulating, generally, the Kenya Correctional Services.

Article 270 gives the interpretation of who a Public Officer is as far as the Constitution is concerned and it states that a Public Officer means any person holding or acting in an office in the Public service. It also defines what Public Service means and it states Public Service means service in any civil capacity of the Government including the Police, the Prison Services, the emoluments for which are payable directly from the Consolidated Fund or directly out of monies provided by Parliament.

Ladies and gentleman, Honourable Delegates that is the end of our presentation. Thank you very much

(Clapping by Honourable Delegates).

Hon. Delegate Wilfred Ole Kina: Thank you very much Honourable Commissioners. We shall now commence our debate and this is how I intend to conduct the debate. I will begin from my extreme right and I will call members from one constituency, and I intend to ensure that members from all the constituencies represented here contribute to this debate. So if I do not call upon your constituency where you are seated I will definitely be able to call it elsewhere, probably when I come back to where you are I will be calling your constituency. So please just

bear with me so that we proceed. So I will begin here with Special Interests, anybody from Special Interests? 625, and then I will be looking for a District Delegate next.

Hon. Delegate Gilbert M. Omondi: Thank you, Mr. Chairman, Sir, my name is Gilbert Omondi, from Kenya Prisons. Sir, I take this opportunity first of all to thank and salute the Chairman of the Constitution of Kenya Review Commission, the Commissioners, people of Kenya and my fellow Delegates for realising that time is ripe for Kenya Prisons to change. I thank the presenters but I can say that I think very little has been written about the prisons. My dear Delegates, people have been talking about the issue of marginalization. As a Prison Officer who has worked for over 25 years and has a good experience, the Prison Department is really marginalised and I will not talk much because within the system some of those who have been my clients will be contributing.

I think time is ripe for the Kenya Prisons to change. We have said that it has been baptized; I think that is not enough, much more should just be done. I think the system, Kenya Prisons, started in 1995 and very little has changed. We are having about 90 Prisons, our present population is 45, but actually the institutions are supposed to be 15. I agree with the Commissioners, the situation is not that good, but my point is very clear. We only act as managers on behalf of the Kenyan populations and being their representatives as Delegates, I ask you kindly, we have gone so far let us use this opportunity, 40 years after independence, to change the system. One of the great politicians said the other day life starts at 40, and I am sure Prison life can start after 40 years.

A lot of things have been said and I agree, let us move Prison from the punitive to the correctional and this is the time. Kenyans can be changed by the Prison Department. Madam presenter, you talked a lot, and the Reverend talked a lot, about the Police. We talked just a lot about who is to be the Director General, we have not even touched the type of qualifications and the type of the personnel. I think these are the areas we should now try to analyse deeply. We have taken Prisons for granted and I think it is time for the Department to change and I am sure with the support from the Delegates and from what Kenyans have said, let us give Prisons a new look. Let us give Kenya Correctional Services a new look, not only to baptize them but also let it change.

I think I will contribute more another time. Thank you very much.

Hon. Delegate Wilfred Ole Kina: Thank you very much. 343 and then I will be looking for a woman representative.

Hon. Delegate Saina Augustine Kibet: My name is A. Kibet Saina from Nandi. I want to contribute on Article 259 that says the Commission shall consist of the Chairperson, a Deputy Chair person and seven other Members appointed by the President with the approval of the National Council. I request it should be amended to read as follows: The Commission shall consist of the Chairperson, Deputy Chairperson and seven other members including one member from each and every devolved County or region appointed by the President and be approved by the National and devolved regions.

I go again to Article 260 that says the powers and the functions of the Commission are to give directions so as to ensure the procedures related to personnel, recruitment, transfers, promotions, and dismissals comply with the values and principles set in the Articles 14 and 258. According to my understanding, the personnel are still under the chain of command from above whereby senior officers transfer junior officers using the so-called orders from the senior-most officers. It is also not good for security when there is an attack by the cattle rustlers in parts like Turkana, North Eastern provinces, officers wait for orders from the Command in Nairobi. So it is good to devolve the Commanders to the nearest Regional headquarters with at least two helicopters to assist because Officers wait for the command from above and people are being killed anyhow and the Officers are very active but the command itself is too slow. So we devolve the Seniors to the Regions so as to save our people. Thank you Mr. Chairman.

Hon. Delegate Wilfred Ole Kina: Thank you very much, I will take an MP from the other side 151.

Hon. Delegate: Point of order. I am a man. (*Laughter from the Honourable Delegates*).

Hon. Delegate Wilfred Ole Kina: I realised there was no representative of the women organization there so I will take it elsewhere.

Hon. Delegate Raila Odinga: Mr. Chairman, they did not ask for an MP from this side yet.

Hon. Delegate Wilfred Ole Kina: Yes, I know, I will come back to ask for an MP, we already have somebody else there. So please--

Hon. Delegate Raila Odinga: Mr. Chairman, it will be too late. *(Laughter from the Honourable Delegates).*

Hon. Delgate Joseph Nyaga: Thank you Mr. Chairman, as you know I sit here everyday for the last six weeks and this is the second time I am now actually speaking substantially. Mr. Chairman. I want to thank the Commissioners for a job well done. I was Minister in charge of personnel for 14 months. As you know, I was in charge of security for one hour. The civil service is a very important part of a successful operation. Therefore, I fully agree on the need to strengthen the Public Service Commission. PSC in the past has not been as strong as it was supposed to be at independence. When it was created it was meant to be a very strong organization, very independent, but over the years its independence collapsed. So I am happy to see that the Public Service Commission which employs, recruits, evaluates and keeps you basically until you retire is being recognised as an important institution, one that should be independent and should have a national outlook. That is to say the Membership should have Commissioners representing the cross section of Kenya and should not be controlled by people only from few Provinces or Districts.

As far as Police are concerned, Mr. Chairman, again I like the emphasis being given to the Police Service Commission and the need to become an Independent Institution. It is critical; what all of you need to do, those who have never visited their houses, is to see how they live. Three men with wives live in one little mabati house. The housing is very poor; we must do something for the Police terms and conditions, not only salaries, though it is important. We must equip them with modern guns because the thugs carry the latest equipment, we should also be able to equip

our Police to be able to deal with thugs appropriately. At the moment, the G3, trying to deal with AK 47 you can understand the situation they have.

We must buy for them modern vehicles, Mahindra should never, never again be seen as a mode of transport to our Police because that is how we frustrated them and put them under difficult conditions, but housing is critical. I have a bodyguard so I know how they live. They live under poor and inhuman conditions. You would never believe it, one has to move out to let the other one move in; this is not acceptable.

Security Contract, we must never again, as we were discussing yesterday, allow the Police tenders to be-- I am talking about security equipment, as we were told yesterday it is a very special area, it must be open to Parliamentary Review or Parliamentary Committee to oversee the tender for the so-called Security Equipment for the Police, for the Army; it must be one that we have access to so that it does not eat into our Budget the way it does without control. At the moment there is very little control on the very sensitive item called Security Contracts.

Do we have any graduates, senior people who can become Policemen yet? The Police I think have been slow also in recruitment of graduates. It is time they emphasize recruitment of graduates so that if the Commissioner is to be a graduate, there would be a pool of about 500 who are ready to become Commissioners. I doubt if that is the case and if they are ready, I doubt if there are deputy Commissioners ready to take over. So we must give them transition period to train Policemen who can become Commissioners with qualifications that we are proposing.

Talking about graduates is important, I am not sure why they start as Constables. I think we must start them like the Army does, a little higher so that they can move faster to the top. When you are recruiting the Police-- I would like to thank the Police for the recent recruitment. In the past they have been recruited in a very biased way. There was no way a Mberere could become a Commissioner because they were never given an opportunity to become Commissioners. In future we must ensure proper coverage, proper recruitment so that every corner of Kenya feels they have an opportunity to produce a Commissioner of Police.

Finally on the prisons, I have never been imprisoned and I hope I will never be. But they have my great sympathies; I think we need to assist them. The housing - I hope you saw Moody Awori recently visiting them - is very poor. We must give them opportunity but I am not also sure why the head of Prisons is being appointed by the Prime Minister and the Commissioner of Police is being appointed by the President. I think we need to ensure that there is harmony in who appoints who.

With those few words, I want to give the opportunity to somebody else and I thank you for giving me this opportunity to speak for the second time.

Hon. Delegate Wilfred Ole Kina: Thank you very much, I will first of all recognise the representative of women organization here again. If there is none I will take a District Delegate who has never spoken. 369.

Hon. Delegate Christina Cherono Nge'no: Thank you, Mr. Chairman, my name is Christine Nge'no from Kericho number 369. Mr. Chairman, my fellow Delegates for sure will all know the Constitution that we are now making is for benefit to all sectors of the economy of our country. It is going to be the Supreme Law to cover this country and should not be subject to amendments every now and then.

Mr. Chairman, Article 265 (5) currently reads the "Police Service shall work closely with communities to ensure security and safety for all citizens through community policing." Mr. Chairman, I propose for it to read "the Police Service shall closely work with communities to ensure security and safety for all citizens through community policing as well as develop policies and be able to attend to domestic violence and protection of children". Mr. Chairman, although this addition does not fit with the rest of this Article, the idea is to include a provision that the service, besides policing, is able to deal with issues often faced by women and children but often neglected by the Police. Thank you, Mr. Chairman.

Hon. Delegate: Wilfred Koitamet Ole Kina: Thank you very much for using your time well. I will still want to recognize a representative of the Women here. If I do not get one there then I will take somebody from the Police: 624, Special Interest Group.

Hon. Delegate Kingo’ri Mwangi: Thank you, Mr. Chairman. This is the first time I am having a chance to speak and may be this is the only chance. So I would request you to give me extra time. My name is Kingo’ri Mwangi, Delegate 624, representing Kenya Police. When I talk here, I talk on Kenya Police I do not talk on behalf of the Administration Police, because I do not know what they do.

Mr. Chairman, my first statement will appear scaring to my fellow Delegates. I would like to start by asking, if Policemen are not safe, how can the rest of Kenyans hope to be safe? Right now Policemen are not safe and by extension that is why the rest of the Delegates and the rest of Kenyans are not safe. It is very surprising that everybody who comes to get matters of Police all come with a very prescriptive attitude, telling us what they want us to do, but nobody ever comes to the Police to ask us what is the problem. We are also members of the society, we do hear what everybody says, however, majority of Kenyans do not hear what we have to say. For example, the previous Delegate was talking of the need of having Deputy Commissioners who are graduates. I would like to tell him that we do not only have graduates, we have some Phd holders; for example the Deputy Commandant and the PPO have got more than Masters Degrees. But Police work is not about talking about our qualifications, it is more a matter of delivery. The question is not that we are not qualified academically, it is that we do not have the tools of trade.

The Police Department and Police Officers countrywide are hoping and expecting the Delegates in this Conference to make a difference for them. Policemen feel like a young girl who has been defiled and then stabbed. Everybody in Kenya is talking about security, but nobody is giving us the tools of trade. In fact as Policemen, we are not so much asking for emoluments, we are asking for equipment and we are asking to be given an enabling environment.

At the time of Independence the Kenya Police had independent Police Service Commission, which was soon taken away because the political elite then could not have caused the mess they have caused in this country if there was an independent Police Service Commission. There would not have been clashes in the Rift Valley or in Coast Province if the Police were independent (*Clapping by Hon. Delegates*). I request Delegates to enshrine in the Constitution

security of tenure for the Commissioner of Police, so that he stops listening to the one o'clock and seven o'clock news so that he can give instructions.

We know what we need to do. For example here in Nairobi, we know the Commissioner of Police, given a chance can bring crime to very manageable levels within a very short while. But what do we need? We need vehicles, we need communication equipment, we need housing for our Officers because if you do not have Officers nearby, you cannot be able to have effective command and control. People and everybody should listen to this, you can sack as many Commissioners as possible, you can transfer as many senior officers as possible, but you will not achieve what you want, because what you want is effective security. Now the Policemen should be asked, "what do you need?" For example, in Eastlands, we need to be visibly present, but we are not able to be visibly present. If you look outside, you see the four wheel drives and other expensive vehicles which I am supposed to take care of them in the evening. What will I be using? My old dilapidated Mahindra. How would I be able to take care of the other vehicles?
(Clapping by Hon. Delegates)

Now on this security procurement, if you ask the Commissioner of Police about it, he does not know; we are only given vehicles and told, "this is what you use". I would like to stand here and say the Commissioner of Police was never involved in the procurement of Mahindras or the Hyundais. They were only delivered to us and that is why we are saying we want to be in charge of our destiny of the Kenya Police. *(Clapping by the Hon. Delegates)*

We want the Commissioner of Police to have independence and security of tenure and do not want even the President to decide together with Parliament to sack him. We know in the past politicians sometimes have run wild. So we are requesting that the Police Service Commission should be proposing the person to be appointed as the head of the Police, the President should be appointing and the Parliament should be confirming his removal, like all Constitutional Offices. We would like the Commissioner, the head of the Police, to be subject to senior staff terms other than that the President, with the approval of Parliament, can remove the Commissioner of Police. Do not forget some of our politicians have also been guilty of a lot of misdeeds and these are the same people we may have to target. What is very bad, for example -Parliamentarians are here - when the Parliamentary Service Commission want us to attach our officers to Parliament they

come with a memorandum of understanding, requesting to be paying a Constable 22,000/- Shillings. It means that our policy makers know that a Constable should at least have 22,000/- and at the end of it all, this interferes with our chain of command. How do you expect a Constable to earn 22,000/- when his OCPD is earning 15,000/- shillings? Look at the Anti-Corruption Police Unit, how much do they pay them? Hefty amount of money, why are they then not bribing us? Parliament has even been entrenching some of the functions of the Kenya Police in the Constitution and giving them security of tenure. The Anti Corruption Police Unit working with Central Bank, those ones who are attached to Railways and many other areas are always paid better. It means Kenyans and our policy makers know the terms of service and conditions of Police Officers are very pathetic.

In fact, I say there are very many graduates, for example, the Delegates who was a Minister for security for one hour, but they have been coming and leaving. We have had very prominent Kenyans, someone like S.M.Otieno, he was an Inspector of Police, just to name one but there are very many others. We have very many Prominent Journalists who are former Police Officers, but the terms under which we work were so severe that they felt the best thing was to leave. There are some Parliamentarians who are her some of whom I taught in the Police College, they were not more qualified than me. I hold a Post Graduate degree (*Clapping by Hon. Delegates*). So the question is why do they earn so much more than me? For example I have got Constables in my Department and they are Graduates and they are happy to be Constables because they are working up the ladder. But the question is, what is the hope for us? In the sixties many people were leaving the banks and other professions to join the Police. Now the trend has reversed they are all leaving. For example, in my class there were 25 graduates, we are only 4 remaining, majority have left; I do not know whether it is because the 4 of us are sick, but we are sacrificing for Kenyans (*Clapping by the Hon. Delegates*)

I have worked as an Inspector, as an OCS, as an OCPD and worked in the province and I can tell you, Mr. Chairman, we need to be saved from some of the interference including some of my fellow Delegates who are here. Where I was working some of them were interfering with us, and very negative interference. So what we are asking - and maybe we shall discuss this under the Technical Committee - we are requesting that on certain aspects, the Commissioner of Police

should not be under directives, because many people who want to feel powerful are those who want to show they are controlling the Police.

For the Delegates, I am requesting that we be shifted from Chapter 14 to Chapter 15. For example there are very many Delegates who wanted to be under the Technical Committee dealing with security, unfortunately they ended up enrolling in the Technical Committee on the other side. We are saying, we have no quarrel with the Public Service the way it is constituted right now, but we feel we are not Civil Servants. For example - and I would like to ask you gentlemen - when you talk of justice, when does justice start? It starts from detection of an offence, investigation and then prosecution. 95% of all the prosecution done in this country is done by Policemen, in spite of our being perceived not having good brains. Yet if you look at the Judicial Service Commission it has been taken care of, we are not taken care of.

Our Intelligence had to leave us so that they could be well remunerated. Our Intelligence counterparts had to leave us so that they can be remunerated. Then at the end of the day, under the Disciplined Service, the Public Service Commission, we are equated with the national Youth Service; we are not the same. A Senior Superintendent, for example, in the regular Police is very different functionally and even the way we operate from Administration Police, although I said I do not talk on their behalf. We would wish not be carried under the same budget. We would like the Commissioner of Police to be given the mandate to manage but we are also subjecting ourselves to civilian control, including what people have been asking the Civil Society as a civilian opposing mechanism; the Head of the Police will only be an ex-officio. So we shall be under the control of the civilians and we wish to be given premium. And I am asking Kenyans, if they want their security to be proper, they have to take care of the Policemen. Just as a simple illustration, those of you who know where Police Headquarters is, you can look at the front, there is KICC, behind us there is Times Tower. Our building was put up in 1958, KICC came later, Times Tower came the other day, the two buildings have completely ignored the need for the Police Headquarters to communicate and then we are squeezing up Police Headquarters whereas in Times Tower some of the offices are still empty. It means Kenyans have been emphasizing on other matters and ignoring security. So at the end of the day you ask yourself, how will investors come to invest in Kenya while they are not secure? *(Clapping by Hon. Delegates)*

At the Coast, security is very, very expensive; at the Coast we need to have speedboats, we need to be able to patrol that area and the cattle rustling prone areas. An OCPD in Turkana for example does not need a Hyundai to go patrolling, he needs a Helicopter. So what happens is that every time there is a cattle raid and we say we take more Police Officers to the area, we are blamed. But how am I expected to go running there in the bush, going after these people, they have a personal interest to make sure that their mission succeeds, but I am not enabled.

Here in Nairobi in the early 70's we used to do Traffic Checks using helicopters. One of the Delegates here was in charge of Traffic in Nairobi Area, so he can comment on that. But today we are not able to move with the congestion and poor planning in Nairobi; how are we supposed to go about it. And at the same time when it comes to planning, there should be proper planning other than blaming the Police. An example is, there is an Estate which has come up in Embakasi, it is so huge; by itself it requires a whole Police Station, but nobody bothered about it until people started being robbed and killed, that is when you start blaming the Commissioner of Police. Then Umoja, the City hall allows a good Estate to turn into a slum, even if somebody calls me and tells, "I am in M19 I am being killed", I cannot trace that building. On the Outering Road even if I try to move faster - since the Police vehicle can never convert itself into a temporary helicopter - I have to wait in the line merely because of the poor roads (*Clapping by Hon. Delegates*) Many people have been writing in the press asking about the security kiosks, which were put up in Nairobi. I want to show you, Delegates, how much we are disregarded; I always Policemen are not chicken, they have to urinate, they have to go for a long call, they need some water. In those Kiosks here in town, where is the Policeman supposed to get that. We are also supposed to go patrolling in the Korogocho and other places and we are very poorly equipped.

In South Africa right now, I read an Article whereby there are now asking for their Police dogs to be given bullet proof vests because of the casualty rates. In Kenya you hardly find any one with it.

Amnesty International would like write and say how many numbers of civilians have been killed as much as they ignore the number of Policemen who have been injured and many who have been killed. So what I am saying is this, give us an institution that will help us and which is a

Police Service Commission that will address our unique needs and we do not want to be grouped with other civil servants, because we are not civil servants. *(Clapping by Hon. Delegates)*
Thank you , Mr. Chairman.

Hon. Delegate Wilfred Ole Kina: Thank you very much for your revelation. *(Clapping by the Honourable Delegates)*. On the next row, I would want a representative from the women's organization, and in lieu of that, I will take a person with disability. 252.

Hon. Delegate Dubat Ali Amey: Thank you very much, Mr. Chairman. I would like to comment on the Public Service Commission, I must commend the Commissioners. I think the the Public Service Commission as it is today is so much politicized and it should be independent as much as possible.

Coming to the police, Mr. Chairman. The police brutality has only been witnessed in North Eastern Province. The police in North Eastern Province are not only brutal but barbaric, trigger-happy people who go on killing of civilians. As much as they want to paste themselves with good colour, the police in this country, if God has a worse place than hell where he will take the most defiant people, he will take police officers there *(Clapping by the Honourable Delegates)*
To us, the Kenya Police do not consider members of my tribe as citizens with rights, they have been looting our property, they have been raping our ladies, intimidating us and killing us at will. So, I would even ask that the police force be declared redundant and the Army be given the entire running of this country. The police have failed us despite the fact that they have problems. They have failed this country. I am even surprised that in the Constitution there is no provision for the APCs, the people who are doing wonderful job.

So, Mr. Chairman, I think the police as much as they have problems, as much as they have housing problems, poor salaries, they don't have the sympathy of the community in North Eastern Province. We will never sympathize with them until they change their attitude.

Mr. Chairman, some of our children when they see a Police Officer with uniform they come running back home, they don't feel comfortable. Mr. Chairman, I am telling you we have been subjected to ethnical man hunting by the police. When I move to Garissa from Nairobi, as old as

I am, I am always asked for my ID card but, if there is another Kenyan from other Provinces, he is never asked for ID card. A small girl of 16 years was asked to produce an ID card just last week when I was travelling from Garissa. She said “I am a schoolgirl” and somebody said “wewe una matiti kubwa” (*Laughter from the Honourable Delegates*). Some communities in this country have been subjected to a lot of injustice we must say that, we must say that. We want to know if we are citizens of this country?

Mr. Chairman, leaving that one aside, I really sympathize with the prisoners, I have never been in prison but I have been visiting them, I think the prison service needs to be improved. Thank you very much.

Hon. Delegate Ole Kina: Thank you very much. I will take a representative of the Political Parties. 582.

Hon. Delegate Njuguna M. Kung’u: Thank you, Chairman. My names are Njuguna Kung’u from Political Parties from the National Patriotic Party of Kenya.

My I, Mr. Chairman start by thanking the Commissioners for this report and in this respect, I would like to appreciate the work they have done on the Public Service in the Draft Bill. However, Mr. Chairman, we find it very difficult to restructure the Public Service without reference to the history of this country. Public Service structures and institutions were used in the past as instruments of colonial oppression. If you look at the Police, Mr. Chairman, they are instruments to oppress the people of this country, you look at the Provincial Administration, you look at the Prisons; and to those who say that the police are brutal, Mr. Chairman, they do not know brutality if they have not been guests of those in the Prison Service. It is worse in the Prisons.

The Judiciary, Mr. Chairman, equally has also been used as an instrument to oppress Kenyans. In the Drafting of the Bill, therefore, we must restructure the Public Service such that the objectives are the same as set in the principles and for the good of the public of this country. It is important therefore, to relate the structuring of the service to the proposed structures of devolution. Mr. Chairman, if you look at the way the Public Service Commission is set up, I think it is important

to note that it will be very difficult to harmonize the various Service Commissions we have; Teachers Service Commission, Judicial Service Commission, the Police Service Commission whatever Service Commission. It is important Mr. Chairman, to have one umbrella Service Commission with the other Sector Service Commissions being subordinate to the main Public Service Commission, that is very important for harmony.

I think the case of the police for instance-- I appreciate the reports given by the spokesman from the Police Force. The police require the Police Service to be entrenched and the position of the Inspector or the Commissioner, to be entrenched in the Commission, I think that is a very important position to give security to Kenyans. Hitherto, what has happened is, when Kenya was under colony, the Postcolonial Government, the government of Kenyatta, the government of Moi, they equally used the instruments of colonial oppression to oppress the Kenyans. We need to have a change of the system and the freedom and liberation when they come by to provide a Public Service, which is independent, which is free and which will give security to Kenyans.

In conclusion Mr. Chairman, I would want to refer to the spokesman of the prisons who spoke of the structure, the institution, the housing and the prisons; we have not had new prisons or prison houses built since Independence. We have been concerned with other activities, Mr. Chairman. It is important to change prisons from being punitive institutions to rehabilitative institutions.

Hon. Delegate Ole Kina: Thank you very much. I will recognize a District Delegate who has never spoken. 331.

Hon. Delegate Bungei Isaac Kipkoskei: Thank you, Mr. Chairman, Honourable Delegates. My name is Isaac Kipkoskei Bungei, Delegate number 331 from Rift Valley. Mr. Chairman, I would wish to thank the presenter from the police for the good representation that he has given us although most of his opinion shows that the police are having several problems.

Mr. Chairman, I would first wish to comment on Article 266, sub-Article 2, whereby the Commissioner is given a term of ten years. I would wish to think of a situation where a police officer is employed at the age of twenty and after ten years, according to his job competence, he gets promotion as a Commissioner. Later, at the age of forty, which is the end of his tenure in service, the gentleman is supposed to go where?

Mr. Chairman, I propose that there should be no age limit, just like there should be no security of tenure, he should be just like any other Civil Servants so that while the retirement for Public Servants is at 55, also the Police Commissioner should retire at 55 if he has not retired before this for other reasons. I would also comment on Sub-Section 5, where the Commissioner is supposed to act in accordance with the Constitution and Laws and there is an exception, where it says, “except on the matters of policy, the President acting on advice of the Prime Minister”. I mean, if the Constitution is supreme we cannot give the President again extra powers to supersede the Constitution. So, if the Commissioner is acting within the laws and the Constitution of this country, that should be sufficient and there should be no provision that go above the Constitution.

I would also agree with the presenter from the police that there should be a Commission, because some appointments if not monitored by the Commission will be abused. Some of us have experienced misuse of power in the previous regime and we should not in this Conference give another chance for politicians and people who do not have the interest of Kenyans at heart to manipulate the police. We know the problems the police are facing and it is my proposal that the police and even the Prison Service have a Commission to address the issue. We should also put in this Constitution specific provisions to show the boundary between the Police, the Game Warden and Diligent Service. What will happen to these fellows?

We should also be told whether any of those sectors, for example administration police, are supposed to go for retraining or will they join the police force? So, Mr. Chairman, my proposal is that we should in the Technical Committees provide for the provision on the Administration Police. Thank you , Mr. Chairman.

Hon. Delegate Wilfred Ole Kina: Yes. I have been postponing Women’s Organization. Do we have one here? Okay, then I will take an MP. Okay since we have no MP, I will just take District Delegate. 424. (*Murmur from the Honourable Delegate*).

Hon. Delegates: Point of order.

Hon. Delegate: I am saying you have no MP--

Hon. Delegate Wilfred Ole Kina: Yes. I have recognized somebody from your row I will come back and recognize the MP there. Thank you.

Hon. Delegate Thomas Nyabote Aburi: Thank you very much, Mr. Chairman, for recognizing me. I would like to talk on Article 259. The Public Service Commission of Kenya is the most politicized, tribalised organization in our country. Most of--

Hon. Delegate Wilfred Ole Kina: You have a Point of Order, 397.

Hon. Delegates David Awillie Erulu: My names are David Awillie Erulu from Busia. I have been raising my card and I have never spoken and other Delegates, who have spoken before, are speaking before me.

Hon. Delegate Wilfred Ole Kina: Point taken. I did not have enough time to check that because I had expected to get a representative from women, so please proceed.

Hon. Delegate Thomas Nyabote Aburi: I was saying that the Public Service Commission is the most politicized and tribalised organization in Kenya. It is my proposal that the Commission should be professionally led. We should have a Chairman who is totally a professional person, who has the highest norm of integrity, who can actually conduct the recruitment of the DCs and Permanent Secretaries on professionalism and qualification, unlike the current situation where most of the appointments are done on tribal lines.

I would also like to talk on Article 264. The Kenya Police Act should be reviewed in such a way that most of the Police Officers are re-trained. They should be demystified, they should be made community-friendly, they should know how to handle victims and they should know how to handle other people. At the moment, they become unfriendly even to get information from the victims becomes totally difficult. I appreciate what the police spokesman was saying but also much as they want us to recognize them, they should also be friendly to us, what I mean by us is to the victims and to other people. I have been to other countries and I have never been stopped

by a Police Officer to either introduce myself or show my identification. But in my country in Nairobi here, you will be told please can you introduce yourself? Can we see your ID and you wonder whether you are in foreign country, you become a refugee in your own country.

The Police Force has been actually trained and that is why we had the Nyayo Torture Chambers. This Chambers were actually being used to extract certain information either political or not during the years of 1981 to 1990. We lost most of the brilliant brains of young Kenyans because they were totally tortured on grounds that they were agitating the public while they were exercising their fundamental, democratic, constitutional rights of association and expression but because the Police Force was totally politicized, we lost our friends.

I would also propose that the Police Force should be properly equipped. We have also recognized that we have lost police officers at the cross fire between the Police and the robbers. For sure, I agree with him that most of the police force or personnel are not equipped properly in terms of equipments and ammunition. They don't have bulletproof vests whereas the robbers or the thugs have got very sophisticated weapons; they have got bulletproof vests and therefore, the police officers are in danger when they confront these guys. That is why it takes too long for a police officer to react to a course of an alarm.

I wish also to talk on the Prisons' Act. The most recent and disappointing act we saw recently was when we read that a prisoner who went to prison without being pregnant came to the Courtroom when she was eight months pregnant. We would like to know how this one happened? Because the next day it will be you, how do you become pregnant when you went in prison without being pregnant? That is dehumanizing. (*Laughter from the Honourable Delegates*) The Police Force who were trained to torture people should be re-trained so that they became community-friendly, we don't have to support them. We should be able to conduct ourselves in a civilized manner.

I am very sure that the Commissioners who collected these views did not have enough time to have the police and the prison personnel give their views; even the police spokesman who spoke here today has come to speak today because there is change of regime. Otherwise if we were doing it in the past regime, I am very sure, they couldn't have come. So, we are requesting that

with this new Political climate, the police also will change their hearts and Kenyans have also changed their hearts. Thank you very much.

Hon. Delegate Wilfred Ole Kina: Thank you very much. I will at this juncture call for an adjournment for a cup of tea. We will be back at exactly 11.20 a.m. when I will recognize the first person here. Thank you.

After Tea Break

Meeting started at 11.00 a.m.

Hon. Delegate Wilfred Ole Kina: May I call the meeting to order. I would like to recognize a District Delegate from this side. All of you have spoken, the District Delegates, but one of you has spoken only once, 406.

Hon. Delegate Shakeel Shabir: Chairman, Honourable Delegates, my name is Shakeel Shabir, I am a Delegate from Kisumu District, number 406. Chairman, I would like to address the issue of the police force. Chairman, it is very important to recognize that the police forces are like anybody else. They are good and bad. The police force has been used as an instrument since the colonial times and the two previous regimes. They have been misused, they have been mistreated. What we need under the new system is a police force that is efficient, that is effective and that is professional. And I will tell you there are people who are unfairly criticising the police force. There are only forty-five thousand officers in this whole country and they are trying to hold this thing together.

My problem is this. I have been to many countries in the world and those people who think our police force is the most brutal and the devil that they are making them out to be, I wish they would see these other police forces. I don't want to talk too much on those issues of how they are, but I think there are a number of issues we need to sort out. If you have a guard dog, and not for one minute might I equate the police force to a guard dog, but if you have a guard dog and it is a trained dog and you don't feed that guard dog it will soon become an outcast, a dog who will just go round eating from outside. Now, the situation in the police force is that they have been

used as instruments of oppression. They have been oppressed. There perennial insecurity in this country; you cannot expect to be looked after and be given security if you don't pay for it. I think motivation is important, professionalism is important.

Transport of the police of course; I don't want to touch on those issues that have been talked about already.

On the issue of the Police Service Commission, you need the Police Service Commission to be independent of the Public Service Commission. We have a Police Service Commission in Uganda, we have one in Tanzania, all over the world with changing emphasis on polices. The changing requirement of the police from that of straight forward policing to that of service provision is very important.

The Head of Police is presently called the Commissioner; it is suggested that to be in line with the rest of the police forces in the world, this gentleman or lady be called Inspector General. They have a security of tenure for a maximum of four years for one term and there may be a second term of four years. The Inspector General should also be an accounting officer. He should be responsible for the administration and financial controls and management of the police force. Let us not hear of Mahindras and jeeps being brought and run down the throat of our police officers. It is sad that I hear today that our police officers don't even have bulletproof vests. We have those in South Africa where we have been, even the police dogs are getting bulletproof vests. We are treating our police officers very badly.

The other issue is, I think that we should have an environmental police as well. The Administrative police should be merged together with the normal police force. This was all covered in sections 157 to 170 of the 1963 Constitution that was repealed in 1964 and the section 108 was brought in. That I am afraid has been the beginning of our problems. Let us go back now, this is the time to rectify it. Let us go back and rectify these problems.

On the issue of regional police forcing, we need a regional police force, we need regional Commissioners as we are devolving. Citizens' Oversight Boards: we need very firm Citizens' Oversight Board, either the oversight board or a board to which reports of excessive power

misuse are forwarded. In respect of the prisons, I feel for these gentlemen, you cannot expect a person who is hungry, who has not had his lunch, who has not had his food, whose children are hungry, to do service for 24 hours a day. Some of these police officers, prison officers, APs are working 24 hours a day. When they go home their children are hungry, they can't live in a small room. Let me tell you on record today that if my children were starving and I felt that the people were going to die in my family, I would be forced to take some other employment. Thank you very much.

Hon. Delegate Wilfred Ole Kina: Thank you very much. The next row, I recognize a representative of political parties, who has never spoken. 613.

Hon. Delegate Mike Oliewo: Thank you very much, Mr. Chairman. My name is Michael Oliewo, Delegate number 613, representing political parties. I want to contribute specifically on the police force as it is currently constituted in Kenya. I think the major problem that the police force has had in this country is political. The political establishment in this country ever since independence adopted a deliberate approach to demoralize the police force so that they can turn vicious against the citizens of this country. We all acknowledge that our past in this country was very dictatorial and the dictators in this country wanted an effective machine that they could use against the people. One of them was through underpaying them, through giving them unsuitable housing conditions and generally demoralizing them so that they can be bitter and be filled with vendetta.

Kenya is undergoing change now, we have a new face of Kenya. Let the change come full circle. Let the police service be given the effective change that it needs to help Kenya in the task of enforcement of law and order. Mr. Chairman, it is very clear that all police officers go to one college in Kiganjo. They attend the same courses and when they come out they earn different salaries. Those who get attached to the Central Bank earn a different pay package. Those who go to the ports earn a different pay package. Those who are in Nairobi or in Wajir their pay is different. Nobody can really explain why the same officers, who attended the same courses end up earning different pay packages. This has been very unfair to police officers and I think this nation should confront that problem. Let policemen be treated decently so that they cannot even be bitter with their counterparts serving in different sectors of our society.

They are an integral part of our society and we need to encourage them to feel part of us so that we do not condemn them all the time. I agree with Mr. King'ori Mwangi, when we blame the police so much for brutality against us, when they confront robbers and their lives are directly exposed to risks, when they get killed or they get injured we don't spare a thought for them. Many police officers are lying at the forces Memorial Hospital. Many police officers are lying in mortuaries, and yet the police do not enjoy, any special insurance cover and when something happens their families are abandoned like that. Probably the only thing they are assured of is a burial, a casket and a lorry to transport the body and the belongings home. I think this country needs to be very responsible and accept that the police force has been shoddily treated and the police force needs to be treated decently so that we can expect results. We cannot expect them to protect us and yet we do not protect them that would be expecting too much. We live in a society today where we place our lives at great risk because we have refused to face the realities of this country. Thank you very much.

Hon. Delegate Wilfred Ole Kina: Thank you very much. In the next row I recognize someone from the religious organizations. 532.

Hon. Delegate Rogers Lumatete Muchai: Thank you Chairman for allowing me to have a chance to say something about the police force and the public service. My name is Lumatete Muchai, Delegate number 532 from the religious organizations. First and foremost, I notice that we are talking about the establishment of the Public Service Commission under this draft. But what I notice is that there are no qualifications for the Chairman of the service and there is also no provision for the qualifications of the persons who will be sitting on that Commission. If this is the Commission which will be charged with the responsibility of ensuring that we employ people in the public service who are highly educated and qualified, then we must specifically provide in the Constitution the qualifications of not only the Chairman but also members of that Commission.

Secondly, about the police force: I agree with the fellow Delegate who has just contributed and what he has said - that the problem with our police force has to do with politics. The moment we started using our police force to carry out political assassinations soon after independence that is

the time we ruined our police force. Therefore the police force was taken over by the government of the day and they were misused, they were not independent, they were carrying out instructions from the government. You know that out of the assassinations that were carried out which still remain mysteries to date, but which we hear the person who were involved came from the police force. You remember the years 1976/1997 during the Chepkube time when coffee was being ferried from across the boarder, from Uganda to Kenya. Whenever that coffee belonged to people who were in power at the time, the police would arrest the people and they would be ordered to release the coffee immediately. That continued and the people who were involved in corruption at the time continued to enjoy while the police officers who had arrested them were either demoted or they were transferred to very remote areas. The places which were very popular for the transfers are the North Eastern Province or Turkana which are considered to be hardship areas.

That was the beginning of demoralization of police force. With that, after watching corruption going on, the police also decided that “if our superiors, if the people who are working with the civil service can order us around and when we arrest people they are released even before they reach court, then we also benefit by getting involved in corruption.” Therefore corruption started going growing right from the Constable to the Police Commissioner, and the Permanent Secretaries and right up to State House. So we should not just blame the police force, the police force is only a mirror of our rotting society. The brutality that you see in the police force is the mirror of our society. What happened yesterday in Mathare North, that is a mirror,- when people kill each other, butcher each other without caring about human lives. These are not police officers, what the police officers are doing, what happened in Mathare North yesterday, what you see with Mungiki, that is the rot of the Kenyan society. So, the only way we can correct our police force is to make sure that we correct every facet of our society beginning with Parliament, the Executive down to the Judiciary, and that is the only time you will have our police force and any other functionary department of our society working well.

The prisons department: this is one department that has been completely neglected. That is actually the place that houses AIDS. People go there, prisoners go there, they sleep in very small rooms, they have no access to sexual partners and they have to turn against each other and start performing unnatural acts. In this way, you have the spread of all manner of diseases and yet we

were told here yesterday that the Office of the President takes 14 billion under the defense portfolio and that money does not go anywhere, when we have such departments that are rotting. Thank you very much, Mr. Chairman.

Hon. Delegate Wilfred Ole Kina: Thank you very much. In this section I will recognize a District Delegate who has spoken I think only once. 250.

Hon. Delegate Abdullahi Haji: Thank you Bwana Chair. I am Abdullahi Haji, Delegate number 250 from Garissa. My contribution is on the Police Force. I think the police have a bad history in this country, either being exploited by the politicians or themselves having a colonial hangover. I happen to have a privileged friend from Canada with whom I had discussions and he told me the only secure and permanent job in Canada is the Police Force because the police are well paid, they are well housed, their lives are insured and they also have medical cover and everything. The police can therefore be able to execute their duties more efficiently and confidently.

Police have got a lot of problems and I think my fellow Delegates from the police have articulated that well, that they require actually to be equipped properly. Actually in my area, North Eastern or Northern Kenya, I think the trend must change, because it has become an area where people are taken on disciplinary grounds, so we do not expect anything good from a person who has been transferred on disciplinary grounds to our area. Furthermore, he must be very bitter and he will do nasty things when he is down there. So I think the police force should be reformed and retrained and not take our area to be disciplinary ground or a detention camp. They should consider it just like any other part of the country and post officers there.

Concerning the prisons, I also think it is high time the prisons department is changed to be a corrective centre and also be equipped and officers be trained well so that they can reform the convicts. I think for those who have happened to be guests there will articulate more on the hardships in that area, because I have never happened to be there myself.

The other thing is about the public service. I think the public service should be well paid because a Commission that will oversee an independent civil service and their discipline and also

their selection should be well catered for, have secure tenure of office and freedom from political interference.

I would also like to contribute on another aspect of police. I think the police, prisons and the administration police should have their own Service Commission separate from the Public Service Commission and it should have its own independence. The Police Commissioner should also have tenure of office, a Constitutional office, whereby nobody can just sack him, so that he can command and be in charge of the internal security of the country without fear or bias. Thank you Mr. Chairman.

Hon. Delegate Wilfred Ole Kina: Thank you. In this section I will recognize an MP. There is one who has never spoken, 120.

Hon. Delegate Ashepete Barasa Roseline: Point of order.

Hon. Delegate Peter Muriithi: Thank you Mr. Chairman for giving me--

Hon. Delegate Wilfred Ole Kina: Yes, what's your point of order?

Hon. Delegate Peter Muriithi: My name is Peter Gichohi Muriithi--

Hon. Delegate Wilfred Ole Kina: Just a minute.

Hon. Delegate Peter Muriithi: Delegate number 120--

Hon. Delegate Wilfred Ole Kina: A minute.

Hon. Delegate Peter Muriithi: Member of Parliament, Nyeri Town Constituency.

Hon. Delegate Wilfred Ole Kina: Just one minute for this point of order and let us hope you are not going to ask me to recognize somebody from the Women's Organization.

Hon. Delegate Ashepete Barasa Roseline: Honourable Chair.

Hon. Delegate Wilfred Ole Kina: Yes.

Hon. Delegate Ashepete Barasa Roseline: With all due respect, my name is Ashepete Barasa Roseline from Teso. I realize that you have become so gender insensitive. The other round you went round (*Clapping by Honourable Delegates*) all the people who spoke were men, now you have started the same routine.

Hon. Delegate Wilfred Ole Kina: I would like to be protected by this House. From that point I have been asking for a representative from the Women Organizations, until this point (*Noise from Honourable Delegates*) and at the same time I recognize women. So I am not insensitive. So, let us get the MP 120.

Noise from Honourable Delegates

An Hon. Delegate: Thank you Mr. Chair, you are at our protection.

Hon. Delegate Wilfred Ole Kina: Overruled, please let us get that representation.

Hon. Delegate Peter Muriithi: My name is Peter Gichohi Muriithi, Delegate number 120, Member of Parliament, Nyeri Town Constituency in Mount Kenya region. I want to contribute towards this section but I want to dwell mainly on Police and Prisons. Mr. Chairman, my friend, a classmate of mine, joined the Police Force when we left school and when I went to meet him or to see him, he told me that the first question posed to him in his first lesson was “Adui yako ni nani?” He mentioned a friend of ours whom he could not see eye to eye with na akachapwa sana and he was told, “binadamu”, and that is why you see the brutal use of bayonets and the butt of a gun by police to harass the innocent wananchi. I hope that philosophy no longer lingers in Kiganjo Police Training College.

Mr. Chairman, we know that Police have been used by politicians to harass innocent Kenyans. When they want the truth, when they want the right, they are always harassed and beaten

senselessly by the Police. The Police should be delinked from the Executive. We need a Commission, we need a Chairman, and the Police Commissioner should have tenure of office so that he can truly be left to the service of the Kenyan nation. It is a mockery to say “*utumishi kwa wote*” when a policeman or the Commissioner of Police is only interested to serve his masters in musical chairs and the Kenyans are languishing in problems.

Mr. Chairman Sir, there is no point of setting up these beautiful world of standards for police officers. What are they for? You cannot please a hungry police officer earning 4,000/= with these standards. There is no way he can serve the nation truly, because it is common sense to know that if you do not feed the soldier, he will definitely sell the gun and this is what has been happening to our policemen. They put water on the “*sageri*” or the cooker and they run very fast to the road and they start stopping *matatus* so that they can get a packet of unga. This should not happen again, they are human beings and they are entitled to all the benefits from the Kenyans - we are the taxpayers and should not be beggars - so that they can protect and they can truly live as friends of Kenyans. We should have a police force, which is truly helpful and truly friendly to the Kenyans. In other countries, particularly in England, when you see a policeman, you see a friend. In Kenya, you see a policeman, you run away. Even if he was your own brother the neighbour will start finding out what wrong you did because a policeman came to your house. They can never see that the policeman came to say hello or even to find out whether you have a problem.

On the dismissal of the Commissioner of Police, I do not see how this Prime Minister’s position is involved; for advice it should be the Commission. The Prime Minister is involved in all positions; even yesterday he was involved in the Budget. This should be delinked because there is no way he can perform all the duties of all the ministers.

The Police Reservists: these should be done away with because they kill at will. Why can’t we recruit direct officers into our Force instead of having volunteers who are merciless and keep on killing our people?

On prisons, Mr. Chairman, the same goes as with the Police. There should be a Commission to regularize the services and improve the standards of living of the prison officers. Thank you Mr. Chairman.

Hon. Delegate Wilfred Ole Kina: Thank you very much. On this row I will recognize 512.

An Hon. Delegate: Wacha niongee.

Hon. Delegate Florence Machayo: Asante sana, thank you very much. We are dwelling on police, give them a chance. I am Florence Machayo, I am Delegate number 512 representing Women from Lugari. Public Service means people who work in Government and public service and who should serve everybody. In this country you will now find offices where you do not find public service or served by the people, we call in public service. This is because they have no discipline and therefore the offices are empty. They leave their jackets and go away, not the way we started this public service. Therefore when you are blaming police, we should blame also a public servant because he is required to serve the people but he is not doing so. They too have laxed.

On the issue of salaries, you find the PS is earning more than the office messenger, yet the former does very little while the latter or the people in the middle are the servants of other people but they don't get enough salary and that is why they are not performing their duties, they go and look for more money outside. I have been in public service and I had a little shop which maintained my children because at the end of the month when Pay- As-You-Earn goes and you have your loan for the car, you end up with zero salary and therefore you will have to do business. So when you say that a public servant should not do business, I think something should be done so that they get enough salary to concentrate on their work.

Declaration of wealth: we should look at those who should declare because a small person will not be able to declare wealth. So we should put a grade of those people who will have to declare their wealth.

Public Service should be independent as you said. I have lived in Italy and those people are very, very honest. Whether the Prime Minister is there or the President is there, or if the President is out of his office, the Public Service continues to work because they are paid very well.

Protection of Public Servants: sackings have been there, people being sacked everyday. This is very unfortunate because it has made many Civil Servants to die before they reach their age. The sacking of people should stop and I can see it is going on frustrating people, sacking them at any time. Somebody should be given time to be sacked, so that he can prepare his family. We are not thinking of human.

Police: with due respect to the police, I have also been hard on them because I am a Human Rights protector and it is true the police have been brutal. Their salary has been bad and you have been told here now that we are in danger; there is no security and everybody has heard that. Therefore, when you talk about police, you know you are in danger; you are not protected because they are not protected also. So we have to know that they are human beings, they should be protected so that they can protect us. If we rub them too much, then we will have nobody to protect us.

Hon. Delegate Wilfred Ole Kina: Thank you very much.

Hon. Delegate Florence Machayo: With prisons, I think we should have an education for those prisoners who are going to be in prison, so that when they come out they are corrected and are able to come out as people who can work on other jobs. Thank you very much.

Hon. Delegate Wilfred Ole kina: Okay, thank you. On this row I will recognize a Member of Parliament. 209?

Hon. Delegate Moses Wetangula: Thank you Mr. Chairman. My name is Wetangula, MP for Sirisia. I want to make a few comments on this chapter. One, Mr. Chairman, I agree with Mr. King'ori that the police Chapter should be moved on to the next chapter where we are dealing with defense mechanisms. Mr. Chairman, the Public Service Commission should be truly

independent. We should specify the qualifications of both the Chairperson and the members and it should have security of tenure clearly stated. It should have a national character and if we are going to devolve power to the regions, then each devolved region must have a representative to the Public Service Commission, for equity and proper running of public affairs.

Mr. Chairman, on the issue of prisons, I don't see why the Commissioners are giving prisons a colourful name. A prison is a prison, what we want is to have prisons doing what they ought to do: correctional services, rehabilitation and punishment. Let us just call them prisons and let them have a Commissioner. Mr. Chairman, the police force is what everybody is talking about on this Chapter and I want to suggest the following.

One, I suggest that all units of the police in this country should come under one command. You had Mr. King'ori disowning the APs. We all know that they are all police and I suggest that the police, the GSU, the APs and the National Youth Service be under one command. I also suggest that the Head of the police be called the Inspector General and not a Commissioner. Mr. Chairman, there is in Schedule 7 (8) a, and 6, a reference in devolved authorities of being in charge of police for district police services. I would want the Commissioners to find some nexus between the national police force and those police units in the devolved regions so that we have a national cohesion in our police force. Mr. Chairman, I also suggest like everybody else has done that the Inspector General in charge of the police should have security of office, he should be independent, he should be non-partisan and he should be properly trained and I suggest that it is not enough to say that he should have a degree because if he has a degree for example, in nutrition it is unlikely to help him in discharging his police duties. I would suggest that they should be trained in either criminology, law, sociology or psychology so that he can be able to understand the issues of crime and crime prevention.

Mr. Chairman, I expected Mr. King'ori to mention - or if he did I didn't hear - that one of our biggest problems is the ratio of police to the population. We are told that the ratio of police to population in this country is less than half of the UN recommended and expected. I would urge that once we go through all this, we have to radically increase the number of the police force that we have in this country so that we can have police cover for everybody, everywhere and to guard people as they should.

Mr. Chairman, last but not least, I want to urge all Kenyans that when we go through all this, my fellow politicians please, leave the police alone and let them do their work (*clapping by Honourable Delegates*) because one of the biggest problems is the abuse of the police by the people in power who manipulate them for their selfish ends. Thank you Mr. Chairman.

Hon. Delegate Wilfred Ole kina: On this row I will recognize someone who has never spoken, District Delegate 432.

Hon. Delegate Rhoda Kamanda: Thank you, Mr. Chairman. My name is Rhoda Kamanda, Delegate number 432 representing Gucha District. I would like to comment on Article 264, Kenya Police. I would like to comment on the principles and objectives of the Kenya Police Service. The primary objectives of the Kenya Police Service are to create a peaceful atmosphere by keeping law and order, which they don't really do. Some of them are notorious, they ask for kick backs (*kitu kidogo*) in order to offer services. In this case, we need our new Constitution to consider these people for the following things. My proposal is that the police force should be giving reasonable salaries to stop them from asking for *kitu kidogo*. Let the Constitution consider them and give them reasonable salaries so that they stop asking for *kitu kidogo* wherever we meet them, including women in rural areas, the ones who make *busaa*, to enable them to sustain their kids.

Another point is, I propose that the Kenya Service Commission should be independent and be accountable only to the public. Let it be independent and only for the public. Last but not least, on Article 259, I propose Affirmative Action. Thank you and consider me again.

Hon. Delegate Wilfred Ole kina: Thank you very much. On this row I will call upon 397, who has never spoken.

Hon. Delegate David Awillie: Thank you, Chairman, for recognizing me for my maiden speech. My name is David Awillie Erulu, Delegate number 397 representing Busia District on the border. It was with a lot of sorrow that we listened to the police spokesman telling us about his woes in the police department and I think we are going to give it the attention that it deserves.

However, I will first go to the Public Service. The Public Service has been the most misused in the government of the day. There has been no fair distribution of provision of services to the people. In Article number 258 (f), there has also been no accountability for their administrative acts of omission or commission by the officers. The worst that can happen to an officer is a transfer. Maybe he could be transferred to the head office, yet wananchi are left suffering due to his errors of omission and commission. These people must be prosecuted to deter any other would be offenders.

In Article number 258 (h), we hope now that merit will be the guiding factor in the gauging of various categories of officers, not simply because they are good buddies or as it was then, it is now a time to eat. If this country must be different, then we must take on board the young dynamic uncorrupt blood, so that that they can, because they are not yet corrupt, they can put this country on its footing.

Clapping by Honourable Delegates

Let us also give the Public Service enough mandate over public servants. They should not only be used to appoint DO's and DCs from the right tribes, especially we who are from the marginalized tribes.

In Article number 259, "a member of the Commission shall hold office for a term of four years, eligible for re-appointment for a further term so long as he is not over 65 years", we should also add specific qualifications.

I will go to Article number 264. The Police service should be removed from the Public Service Commission and taken to where it was in 1963. I think the spokesman put his case very clearly. Their matters were satisfactorily dealt with then, because the facilities that policemen used to have failed miserably; sometimes they have a vehicle, it has no fuel, sometimes they have no uniforms and they have no salaries. What these guys do therefore is just to stop by the road and collect something for the family. Let us also give them better working conditions. They live in squalid conditions and as we were told even for the married couples, a difference between one

house and the other is a curtain. I think their conjugal rights are infringed upon. We recommend that they should work like other civil servants and only in a case of emergency should they work additional hours but otherwise they should work normal hours like all other civil servants. This is because they are also exposed to various hazards especially when handling accident victims, in this era of HIV/AIDS, dead bodies as we were told and all manner of hardcore criminals.

Article number 266, just very quickly, the Inspector General. The office of the Inspector General must be established. He may not have a degree but let him have qualifications in law as it was said earlier and let him also be appointed by the President and approved by Parliament for a maximum of two terms with the security of tenure and an age limit of 55.

Hon. Delegate Wilfred Ole kina: Okay, thank you very much, ah--

Hon. Delegate David Awillie: Just a moment, as pertains to the administration police, they are everywhere. They are in our villages but they are not well represented here. It is my humble request that the Administration Police be addressed at this function. Thank you very much Mr. Chairman.

Hon. Delegate Wilfred Ole kina: Thank you very much. On this row, I will recognize 500.

Hon. Delegate Kamla Sikand: Thank you, Mr. Chairman. I am Delegate number 500, Kamla Sikand. I say thank you because you have been asking for women organizations but we were not ready to talk. Thank you.

Mr. Chairman, with all due respect to our police force, with all the hardships and all the difficult conditions they have, it does not mean that they can act the way they are acting, you see. There are a lot of people in Kenya who are unemployed and do not have even a square meal. Does it mean that all those poor people should go on a rampage, start stealing and do all the wrong things? The police do get a basic salary, but unfortunately, they are so demoralized that we have a large extent of insecurity in this country. Do we get to bed in peace at night? There is always the fear of "are we safe in our homes?". I have had an instance of robbery in my home and I can tell you that I did recognize a policeman who was involved. Is that the sense of

security we have? No. This country needs security but often I am told by my friends abroad that I am too scared of a gun. Until we throw the culture of the gun out of this country, we are not going to be secure and we are not going to instill the sense of security to the people who want to come and invest in this country.

Mr. Chairman, as we are all saying, the Judiciary has to have a complete overhaul. We are saying that they are corrupt. Why doesn't the police force also have some overhaul? We do need it. We are worried about our young girls who are on the road. Are they safe on the road? Will they come home safely from school? Shall I tell you, last week there was an incident in some school, a well-known school, where the headmaster sent circulars to all the parents saying, 'we are sorry but one of the cars at the school gate was taken away at gun point' and there was a child in that car. Where is our security? We need it.

Mr. Chairman, I would also request that we have a special police force for women because women have specific problems. A woman who has been raped or sexually harassed in different forms can only go and speak in confidence to a woman. So, we do need to have women employed in the police force to look after us. We also need special areas for women in the prison. We do not want to have instances-- I also I feel that if a woman has committed a crime, she has to go through the punishment. However on the other hand, a child has to be taken care of. If a mother goes to prison, maybe special areas have to be kept so that the child is not deprived because the mother has committed an offence, but we cannot punish the child. We have to take care of the child. Thank you.

Hon. Delegate Wilfred Ole Kina: Thank you very much. On the next row, I recognize Delegate 546. Number 546, please you have the floor.

Hon. Delegate Philip Sulumeti: Mr. Chairman, my name is Bishop Philip Sulumeti, Delegate 546. Concerning the public—

Hon. Delegate Fibie Atieno Ochola: On a point of order.

Hon. Delegate Wilfred Ole Kina: Point of order from 405.

Hon. Delegate Philip Sulumeti: Do I carry on?

Hon. Delegate Wilfred Ole Kina: Let us get her point of order.

Hon. Delegate Fibie Atieno Ochola: Thank you, Mr. Chairman. With due respect, I feel marginalized.

Hon. Delegate Wilfred Ole Kina: Your name?

Hon. Delegate Fibie Atieno Ochola: I am Fibie Atieno Ochola from Kisumu District. In your report, it is indicated that I have contributed here twice. Could you please produce for me that Hansard which says that? I only contributed in the representation, which is Chapter 6. I feel marginalized, Mr. Chairman, and I would like to contribute on this chapter. Thank you.

Hon. Delegate Wilfred Ole Kina: Thank you.

Hon. Delegate Philip Sulumeti: I hope Mr. Chairman that you will give me my time.

Hon. Delegate Wilfred Ole Kina: Yes.

Hon. Delegate Philip Sulumeti: Thank you. About public servants, I would like to propose one man, one job; one woman, one job. So, there should be no polygamy in jobs for public servants. For example, doctors in public hospitals, in the evening they have private practice and thus the patients suffer. So, one man should have one job and one woman one job. Thank you.

In regard to prisons, I am very concerned about minors. I have been visiting the prisons and I have heard the plight of the young girls and boys who have committed petty crimes and are put together in the same cell with hardened criminals. So, this boy who is 12, 16 or 17 is put in the same cell with a murderer and thus that young boy or girl will not be corrected. So, please let us have prisons for minors and prisons for adults.

Number two; you know we have this scourge of HIV/AIDS. Please, I am not advocating for something new, if a spouse has been taken to jail, I am proposing that there should be arrangements in that prison that the spouse who is at home can come and visit the spouse in jail. In other words, I am addressing conjugal rights and in that way we can stop the spread of Aids that is going on in prisons. Thank you very much.

Hon. Delegate Wilfred Ole Kina: Thank you very much. On the next row I recognize number 297 who has never spoken.

Hon. Delegate Praxedes Nzisa Wambua: Thank you very much Mr. Chairman for giving me this chance. My names are Praxedes Nzisa Wambua, Delegate number 297 representing Makueni District. I will speak on Article 262, on the appointment of Public Officers. It says that the Public Service Commission should appoint persons to hold offices. Mr. Chairman, the appointment of such officers should be advertised to be applied for, the applicants short-listed and interviewed. This should be done to avoid cases where persons are given work which they cannot do or are not capable of doing. It will also discourage political appointments which are given just to reward party supporters as it has been done in many cases.

Point number two, Mr. Chairman, I want to say something on Article 264. It says that the Kenya Police Service is to work with and for the people to ensure a peaceful and safe environment etc., etc. Mr. Chairman, police officers are our sons and daughters. Therefore, as the citizens of the country, we shall have ourselves and the government to blame for anything inhuman by our police brothers and sisters. Mr. Chairman, I am saying this because these officers are working in very humiliating conditions. They risk their lives when executing their duties and they are underpaid. So, any corruption done by a police officer is because we take them as our 'mbwa kali' who are tied with a cord for barking and caring for its master when he is asleep. Mr. Chairman, if the police were well paid and given good conditions at their jobs, they could not be corrupt and with unbecoming behaviour. We should not expect somebody to serve us well when you are only slapping him or her as a vote of thanks. Obviously, this has to be a tit for tat. Let the government improve the working conditions of these officers to mandate them to talk of their behaviour.

Finally, Mr. Chairman, on Article 265 (3), you cannot expect a commendable discipline from a person who is humiliated. Thank you, Mr. Chairman.

Hon. Delegate Wilfred Ole Kina: Thank you very much. On this row, I will recognize an MP, number 110 who has never spoken.

Hon. Delegate Samuel Moroto Chumel: Asante sana Mwenyekiti. I am Delegate number 110 from Kapenguria. Bwana Mwenyekiti, kwanza ningependa kushukuru sana wale ambao waliamka na kushughulika na kutunga mambo ambayo tunajadiliana hapa. Pia ----, my name is Samuel Moroto. Tena, Bwana Mwenyekiti, tunazungumza juu ya idara ambayo ni muhimu sana. Jinsi yule ambaye alisema kwa niaba ya polisi, mimi niliguzwa na nikaona kwamba ikiwa tutawaachia hao nafasi kufanya kazi yao bila kuhusisha sehemu zingine, nchi hii itaenda vizuri sana.

Bwana Mwenyekiti, wengi walikuwa wamegusia na kusema kwamba ile serikali iliyokuweco hapo awali iliharibu mambo na ndipo wakavuruga. Nataka kusema kwamba hata ile tunayo sasa ndiyo mbaya zaidi. Bwana Mwenyekiti, nasema hivi kwa sababu kumekuwa na kitu kama competition, where, because they were out for a long time, now that they are elected and are now running the government, they are taking this one year as a grudge. If you go to Kapenguria--

Hon. Delegate Wilfred Ole Kina: Point of order 295.

Hon. Delegate Saipstone Ngalaatu Musau: My names are Saipstone Ngalaatu Musau, Chairman Masau County Council, Delegate number 295. Mr. Chairman, is it in order for the Honourable Delegate who is speaking now to start preaching to us about good governance? We are talking about the police here.

Hon. Delegate Samuel Moroto Chumel: Police, Bwana Chairman, is within governance and we are looking for ways on how we can run our government successfully. We are looking for ways on how Mr. Chairman, we have known where we have come from out of experiences, but where we are going is what we want to smoothen from the experience of what we have got. Mr. Chairman, if you now go to Kapenguria, there is a place called Turkwell which is a very

important project where you get the electricity. However, the people from that area are not benefiting from that and when they complain, especially at the moment as I am standing here, the police were told to stop anybody, any Pokot from going there or any person from West Pokot from visiting that project. Yet, the project has a medical facility, there are some shops there, but they are now protected and told that since these people are coming here to complain, just keep them out of that place. Na hii serikali tunaambiwa ni nzuri, ni nzuri kwa njia gani?

Bwana Mwenyekiti, ndio sababu ninasema kwamba, let us give this police force an independent area so that any political party-- This is just a contract. Narc is there for five years and you never know which party will come thereafter. Kanu was there and it is now gone, but it might come back after sometime. So, Bwana Mwenyekiti, I just want to say that this is our time.

On the side of the Police Commissioner Mr. Chairman, I want to contribute on the Police Commissioner where it is said that he/she can be there for two terms, that is ten years. I think it should not be restricted if the officer is good, he can just go on until his retirement and that will be better. This is because for the first five years, he will just be running and then the next five years he is now experienced and he wants to go down to the ground and work and then he is told now go and at the same time Mr. Chairman, when this money is there for ten years others will be following him saying now that you are going, I will come. Other people start going round na kuanza kufanya campaign, kusema munipatie niende pale, munipatie niende pale. Kwa hivyo nasema kwamba kama President ame-appoint mtu huyo mtu akae mpaka wakati ataondolewa na kifo ama retirement yake ya 55 years. Thank you very much.

Hon. Delegate Wilfred Ole Kina: Thank you very much. On the next row I recognize 289, he has never spoken.

Hon. Delegate Robert Maluki: Thank you very much Mr. Chairman, my names are Robert Maluki, a District Delegate from Mwingi. I want to start on the establishment of the Commission.

Hon. Delegate Wilfred Ole Kina: Please use your microphone well.

Hon. Delegate Robert Maluki: Do what?

Hon. Delegate Wilfred Ole Kina: Use your microphone well, you are not audible. Okay?

Hon. Delegate Robert Maluki: Yah, I said I wanted to start by talking on the establishment of Commissions. My feeling is that we should have Sector Specific Commissions to pave way for professionalism in these Commissions. Currently we have Commissions which are established and they have been doing very well, however I feel, if we have Sector Specific Commissions they will serve better than these particular Commissions. Good example is that Commission of Police, personnel have said that they needed to have an independent Commission for better services.

The other thing on the Police, I get to understand the Police Force are better than before, from our brother, the Honourable Delegate who has spoken on that issue, I would say, if the Police Force stop brutality and other evils they will end up doing a better job for this country. On the rights of the Police I feel that their grievances should be listened and adhered to by our Government so that we will have better services from the Police Force at the end.

On the side of the prisons, I want to propose that prisoners should be treated better than before. Human Rights are abused in our prisons and I feel that this should change and prisoners should have better services than before. Thank you very much.

Hon. Delegate Wilfred Ole Kina: Thank you very much. On the next row, I recognize 429.

Hon. Delegate Judith Magundho: Thank you Mr. Chairman, my names are Judith Magundho from Bondo District of Nyanza Province. I thank you very much for recognizing me. Mr. Chairman, I wish to address the issue of Police and the Prison Forces. While we appreciate the fact that the Police are poorly paid and that their work is risky, it is not a certificate Mr. Chairman for them to behave in a brutal manner and to perform such ugly scenes. *(Clapping)* Police Officers need to cultivate a friendly atmosphere within the communities that they serve which will make them very effective.

Now regarding their terms and conditions of service, they should not be bitter with anybody but address their grievances through their Commissioners. In any case several categories of people in this country are poorly paid, the civil servants and teachers who have constantly shouted on top of their voices to tell the country that they are poorly paid, why can't the police officers do the same, they will be heard.

Mr. Chairman, the brutality of the Police towards students is appalling. Strikes by students is something that is known all over the world and it is not anything that can make the police officers be so brutal to the students of this country. (*Clapping*) The way they hit the students, Mr. Chairman, is so brutal that you wonder whether these police officers have children. It is not fair and this must stop immediately.

An Hon. Delegate: Point of information.

Hon. Delegate Wilfred Ole Kina: Does the Honourable Delegate want to be informed? There is a point of information, do you want to be informed?

Hon. Delegate Judith Magundho: I do not want to be informed, I want to continue Mr. Chairman.

Hon. Delegate Wilfred Ole Kina: Thank you very much, proceed.

Hon. Delegate Judith Magundho: Mr. Chairman, what I want to say is that the police still have that colonial mentality of training and if this is the case, I think their trainer should adopt a new trend to help us be friendly with the police and not for them to be brutal towards us.

Now If I go to the prisons, I would like to recommend a few things. Okay like the police officers their standard of living is pathetic and it is inhuman to place three or four families together in one round 'mabati' hut. The unmarried and the married are lumped together and it is not right even in the eyes of God.

I would like to recommend that mothers with children who have been convicted should be allowed to stay with their kids up to a certain age in the prison and then a separate facility should be provided for such mothers to protect their children from contamination. Young boys and girls should also be accommodated separately currently they are lumped together with others and this is not save for the younger ones. Now to avoid over congestion in the prison, petty offenders should be allowed to perform community work from outside without having to confine them in prison. In Article 269, Mr. Chairman, if the director is a man, I propose that the deputy be a woman to take care of gender balance. Thank you very much.

Hon. Delegate Wilfred Ole Kina: Thank you very much. On the next row I would like to recognize a Member of Parliament, 038.

Hon. Delegate Asman Kamama: Thank you Mr. Chairman for giving me this opportunity to contribute on this very, very important Chapter. My names are Honourable Kamama Asman, MP Baringo East, Delegate number 038. Mr. Chairman, as you have been told and most of you must have read last year that the Urban Bribery Index report rated the Police Force as being number one in terms of corruption, other ministries followed like Lands, Public Works, Prison and what have you.

Mr. Chairman, if you want to reduce or rather eliminate corruption in the Force the best way forward is to improve the terms and conditions of service of the Police Force. That is the only way forward. But at the same time Mr. Chairman if you are doing this, I want to point out that the Police since independence have harassed Kenyans left, right and center, when I am talking about this I want to talk about the activities of the Police in the North Rift and North Eastern Province and some parts of the Coast Province. Wananchi have suffered under the Police Force and I want to point out that some Forces like the Administration Police are equally policemen but they are not as brutal as the Kenya Police. So this must change.

I want to recommend that issues like housing the Police, must be addressed because if you go to places like North Eastern and some places like Kibish in Turkana, the Police Force are living under very pathetic conditions, especially the GSU. The GSU sometimes stay in their camps for over six months without seeing their families. So one way or the other, we must address this

problem. Again Mr. Chairman, one way of improving this, is to overhaul the whole curriculum at Kiganjo Police Training College, because corruption begins from Kiganjo. These people are taught that there is no way they can succeed in life unless they are corrupt. So we must overhaul the whole curriculum and teach them, you know--

Hon. Delegate Wilfred Ole Kina: A point of order from 624.

Hon. Delegate King'ori Mwangi: Thank you Mr. Chairman. I think, I feel obliged-- I am Delegate number 624, representing Special Interest. I feel obliged because I think Kenyans are seeing through the media. Some of these things should not be taken loud like that. I know the Delegate talking is a former DO, I know he was in-charge of the Administration Police and I do not think this venue is good for us Kenyans to come exchanging this and he has never been an instructor in Kiganjo. I would also like the Delegate to know that we are having gentlemen there who are very highly qualified and we can even go there and report here tomorrow. They are human like other people, so let us stick to the point and let us not tarnish Kiganjo. I was an instructor there and I have never taught corruption. Thank you. (*Noise from Hon. Delegates*)

Hon. Delegate Asman Kamama: Thank you Mr. Chairman, I think it is up to the Delegates and Wananchi to judge for themselves. Mr. Chairman, when we are talking about rationalization of salaries, I want us to address the problem of all the uniformed officers not only one section because all of them are subjected to the same conditions.

Now Mr. Chairman in terms of exposure to bad situations, I also want in this case to support the sentiments expressed by the gentleman, the Honourable Delegate who has just raised a point of order that actually the police are exposed to worse conditions especially in banditry prone areas and also exposed to criminals. I was to recommend that they be given the best of facilities so that they can handle these problems.

Hon. Delegate Wilfred Ole Kina: Thank you very much.

Hon. Delegate Asman Kamama: Talking about prisons, because my time was taken by--

Hon. Delegate Wilfred Ole Kina: I have already taken care of that. I have to consider that. Thank you very much.

Hon. Delegate Asman Kamama: Thank you Mr. Chairman.

Hon. Delegate Wilfred Ole Kina: On the next row, I will recognize a Delegate who has never spoken 280.

Hon. Delegate Bruno Kaimba: My number is 280, District Delegate from Tharaka, my names are Bruno Kaimba. I would like to hap on a point that has been mooted over by my fellow Delegates, it has to do away with the police. I am of the well considered opinion that a police force devoid of robbers, rapists, inadequate remuneration, long hours on duty, poor housing, mischief, hostility, stressful situations while at work would be a dream if the following is not achieved.

Firstly, the Kenya Police Service needs as of right to have its own Police Commission outside the Public Service Commission. This is for obvious reasons like I have just outlined before. Only a police commission shall ensure that police officers are secure and a lot more affirmative. Once police officers are secure, everyone in Kenya will be secure, you cannot dish out something unless you have that something to dish out to people. So, shout of a secure police officer would mean trouble for all the Kenyan citizens because one cannot lose a coin unless it's his habit in the first place; so unless the police is secure, there is no security for me and for you. The President and now the Prime Minister should appoint Chairman or the Chairman of the Commission through of course approval by Parliament. He may appoint members nominated by the Commission to the Administration Police force-- (*Noise from Honourable Delegates*)

Hon. Delegate Wilfred Ole Kina: Order, 361

Hon. Delegate William Salaon Ole Yiaile: Thank you. My number is 361, Ole Yiaile from Narok. My point of order is this, why is the Honourable Delegate speaking like a Negro?

(Laughter from Honourable Delegates) He should speak the English that everybody understands! *(Laughter from Honourable Delegates)*

Hon. Delegate Wilfred Ole Kina: Well, I think I cannot control how a member speaks, if that is the way he was taught to speak English, let's just give him his time to finish.

Hon. Delegate Bruno Kaimba Kibaara: Thank you Mr. Chairman *(Noise from Honourable Delegates)* I have to be my own man *(Noise & laughter from Honourable Delegates)* and if I may be allowed to go on, the Administration Police which may have no place in the devolved government in my opinion, should be adjoined to the police force just as a unit, just as we do have the General Service Unit and the security of tenure of the Police Commissioner can be guarantee *(Noise from Honourable Delegates)*. No, interference--

Hon. Delegate Wilfred Ole Kina: Thank you very much, thank you very much.

Hon. Delegate Bruno Kaimba Kibaara: --with the force, then all Delegates *(Noise from Honourable Delegates)* should back the idea. Thank you.

Hon. Delegate Wilfred Ole Kina: Okay thank you very much. On this row I will recognize 238. *(Noise from Honourable Delegates)*

Hon. Delegate Wilfred Ole Kina: Order, Order,

Hon. Delegate Abdulrahman Ahmed Badawy: My names are Abdulrahman Ahmed Badawy, Delegate number 238. Thank you Mr. Chairman and Honourable Delegates. Article 265 (4) says 'the police service shall remain a national police force and the division of its functions shall be organized to take into account the structure of devolution'. Number (5), 'The Police Service shall work closely with communities to ensure security and safety for all citizens through community policing'. I support the establishment of Police Service Commission, two, the improvement of police terms and condition of service, three, award of a good salary scale and four, good accommodation.

Bwana Mwenyekiti, kuna mambo mengi sana ni wajibu wetu sisi tuyazungumzie juu ya police service, lakini wakati ni mchache wa kuweza kutosheleza kuyazungumzia yote. Now how do we stop corruption? Hilo ni jambo ambalo kwamba zote twalijua kutokea kila wakati na kila pahali, vichochoroni, barabarani na afisini na sehemu mbali mbali. Kwa sababu ya hali mbaya ya kazi ambazo kwamba wanazo police, kwa sababu ya hali mbaya ya mshahara, na kwa sababu ya hali mbaya ya maskani ambayo kwamba police wanayo, na uhaba wa malipo wanaopata, inawaletea matatizo makubwa sana. Lakini tumesema upande mmoja tu, ni makosa kabisa ikiwa sisi tutasema upande mmoja bila kujali wa pili. Ikiwa wewe waendesha matatu yako na magrudumu kipara na police amekukamata na hutaki kuingia gari, kama wewe ni polisi unafanya nini? Unamhonga. Kwa hivyo umeshaanza kumzoeza, leo umemhonga, kesho ikiwa wewe umefanya makosa mengine sio hayo na hutaki kwenda ndani, na hutaki kulala cell kwa sababu wajua shida zake, na hutaki kwenda jela, unamhonga. Kwa hivyo unakuwa umemzoeza na kwa hivyo ni lazima pande mbili tuzitazame, wao hali zao wajirekebishe na sisi vile vile tukomeshe kabisa katika hali kama hiyo ili hali hii ipate kurekebika.

Pili, sisi tunaweza kuondosha tatizo la identification katika miji, ni rahisi kabisa kuondosha identification katika miji ikiwa yule police anajaribu kuku-identify ni mtu anayejuana na watu. Pengine inaweza kuwa ni taabu kwa mji kama Nairobi lakini si taabu kwa mji ambao uko ni mdogo kwa mfano kama Malindi au kama Lamu au kama kwingineko ambao kwamba watu wote pale wanaofahamiana. Sasa tatizo ni moja, unamchukua police kutoka Migori ambaye kwamba hajui mji ule, hawajui watu wale, na anaanza kuwasumbua na kutaka identification. Kama ingelikuwa police ni wa pale pale kwa kuweza kuwatambua watu isingelikuwa ni taabu sana kusumbua watu na kutaka kuzunguka kuwataka watu watoe vitambulisho na identification kila wakati. Kwa hivyo hayo yote ni mambo ambayo kwamba ni muhimu sana tunapokuwa tunataka kuwaleta police katika community and collaborate kazi zao na cooperation basi ni lazima iwe twafahamiana nao kwa njia nzuri na kwa njia ambayo kwamba hii corruption tutaiondosha pande zote mbili. Asante Bwana Chairman.

Hon. Delegate Wilfred Ole Kina: Thank you very much. If the Conference will allow me, I would like to ask the presenters of today to be brief and to the point so that in the afternoon we get to the other. (*Clapping from Honourable Delegates*) Thank you very much for your understanding.

Commissioner Abida Ali-Aroni: Thank you Chair and Honourable Delegates. On behalf of my colleagues I wish to thank you very much for your valuable contribution on this Chapter, you have no doubt added a lot of values to the recommendations that we prepared as a Commission and we want to believe that all the issues that you raised, will be dealt with at the consideration stage, that is the committee stage and we have very few response to a number of issues that were raised.

Mr. Chairman, in response to issues that were raised we would like to draw the attention of the Honourable Delegates to the fact that this Draft Constitution like all other Constitutions really set out principles and ordinary legislation and government policy would be able to tackle the issue of details that some of the Delegates would like to see in the Draft Bill. And we wish to draw your attention for example to Article 269(2), 268(3) that empower Parliament to create legislation that would take care of some of the issues that we have raised.

You also raised your concerns on harmonization of some of the sections, for example on the appointments of the Commissioner of Police, on the appointment of the Commissioner of Correctional Services, indeed we are here now as Delegates in this assembly to be able to polish up the Draft Constitution and it is our hope that we will be able to tidy up and make the document more elegant and acceptable at the level of Committee.

To the Special Interest representative, the representative from the police and prisons, from the angle of the Commission we would like to mention to you that we did try very hard to reach you and to listen to your concerns and we did do that in a way but we are hoping that the valuable contributions that you have brought in this morning will be taken into account again at the level of the Committee.

On the issue of Chapter 14 and 15, moving the police force from Chapter 14 of the Draft to Chapter 15 of the Draft, this is a matter that was considered at length by the Commission and in our wisdom or lack of it, we felt that we needed to put the police service under Chapter 14 especially due to the new or the recommended objects and principles that should govern the police service. We felt that the police service serves the people in the same way that the other

officers in the public service do as opposed to those strictly in the national defence, but again this is an issue that can be considered at the consideration stage.

I think with that I wish to thank you very much, I wish to thank you once again for the considerable support that you have given us as a Commission. Thank you Chairman. (*Clapping from Honourable Delegates*)

Hon. Delegate Wilfred Ole Kina: Thank you very much for the good session that we had this morning. We would like now to adjourn for lunch and be back at 2.30 pm for the motion and other Chapters. Thank you. *Delegates disperse for Lunch*

Afternoon Session

Session was called to order at 2.40 pm.

Hon. Delegate Raphael Mwai: I am privileged to chair this particular session. My name is Raphael Mwai, from the Professional Organizations. We want to make some progress, and therefore, straightaway I will call upon Prof. Ahmed Idha Salim to present on the Chapter on Defence and National Security. Thereafter, I will call upon Com. Domiziano Ratanya to present the session on Leadership and Integrity. Without much ado, Prof. Salim. *Uproar from the Honourable Delegates.* 430, what do you have to say? Albert, very fast.

Hon. Delegate Albert Mitere: Thank you very much, Mr. Chairman. Mr. Chairman, this morning, when we assembled here, the Chairman of the Conference, Prof Ghai, did of course promise us that the Motion of Hon. Joe Khamisi was going to come up first thing this afternoon. Mr. Chairman, before us is the Motion. Can we be told as to whether the Motion is going to come this time or not? Mr. Chairman, we are here to receive the Motion, discuss it and dispose of it. Thank you.

Prof. Yash Pal Ghai: Yes, it was the intention to take the Motion this afternoon, and we have thought we might have this introduction. (*Uproar from the Honourable Delegate*). Okay, we can take the Motion now if that is what you want, but I will do that on one condition, that you

stay and we continue our work till 6.00 o'clock today. On that basis, I will invite Honourable Khamisi to introduce his Motion. (*Applause by the Honourable Delegates*)

Hon. Delegate Joseph Khamisi: Mr. Chairman, under regulation 17 of the National Constitutional Conference, Procedure Regulations 2003, I wish to move the following Motion:

“That noting the Conference has made very good progress and has reached a most critical stage in its deliberations, appreciating that the time allocated to the Conference for the current session is due to expire on 6th June 2003, this Conference now resolves that the Conference adjourns on the 6th of June 2003, and reconvenes on 17th August 2003 until the conclusion of its deliberations”.

Mr. Chairman, this Motion is straightforward and simple. It provides a realistic timetable for the way forward and puts to an end speculations and rumours about the future of this Conference. The motion states the date of adjournment, which is the 6th June 2003, and spells out clearly the date of resumption, which is 17th August 2003. Mr. Chairman, the Motion before you is a product of consensus between the Constitution of Kenya Review Commission, the Parliamentary Select Committee and myself. It is indeed an amended version of my earlier Motion, which sought to extend the sittings of this Conference and to define a date for resumption. In my earlier Motion, I had set August 4th as the date to reconvene. Mr. Chairman, constitution-making is about consensus building and arriving at this date required a lot of patience and horse-trading, all scenarios and views had to be taken into consideration, including the Parliamentary calendar, the poor financial position of the CKRC and the support staff which the Commission sourced from the National Assembly. I want to thank the Assembly Speaker, Honourable Kaparo, for his valuable insights that contributed a great deal to the realization of this consensus, and the CKRC Chairman, Prof. Yash Pal Ghai, and PSC Chairman, Paul Muite for their understanding.

Mr. Chairman, since the beginning of this Conference, fears have been expressed both inside and outside these chambers that certain forces were bent on derailing the Conference. Those fears were reinforced by what some people came to describe as “night meetings” and subsequent media reports that tended to cast doubts about the intentions of the Government. Delegates were

therefore worried and wanted a firm guarantee from the Government through the Steering Committee that the process would continue undisturbed and that it will not be scuttled unnecessarily or unnecessarily delayed.

I am glad to say that during the course of our negotiations leading to this motion, the Government gave assurances that everything would be done to ensure successful completion of this process and that adequate human and financial resources would be provided at the disposal of the Commission. In fact, in his Madaraka Day speech this past weekend, none other than Delegate number one, His Excellency the President, re-affirmed the Government's commitment to the review process. (*Applause from the Honourable Delegates*)

I would therefore like to urge my fellow Honourable Delegates to support this Motion so that when we adjourn on Friday, we leave Bomas of Kenya as one united family. Mr. Chairman, Kenyans have entrusted us with the humble task of making a Constitution and we must not let them down, we must endeavor to come up with a Constitution that will stand the test of time. Mr. Chairman that I am sure we will do. With those few words, I wish to move.

Prof. Yash Pal Ghai: Thank you very much. Do you have a Secunder for your Motion? Is your Motion seconded?

Hon. Delegates: Yes.

Prof. Yash Pal Ghai: Yes, okay, thank you. I propose the Motion now that noting that the Conference has made very good progress, (*uproar from the Honourable Delegates*)-- Excuse me, I have to put it to the Motion before we can have a further discussion of it. Who is the seconder? I have so many names. 380.

Hon. Delegate Charles Lwanga: I, Charles Lwanga, Delegate 380, do stand here to second the motion.

Prof. Yash Pal Ghai: Thank you. Shall I propose the Motion now that, 'noting the Conference has made very good progress and has reached a most critical stage in its deliberations,

appreciating that the time allocated to the Conference for the current session is due to expire on 6th June 2003, this Conference now resolves that Conference adjourns on 6th June 2003 and reconvenes on 17th August 2003 until the conclusion of its deliberations'. Those who support say 'aye'

Honourable Delegates: *(In chorus)* Aye!

Prof. Yash Pal Ghai: Those who oppose say 'Nay'.

No response from the Honourable Delegates. (Calpping).

Prof. Yash Pal Ghai: So the motion is carried, and I think what we probably need to do on Friday is to adjourn in terms of this resolution. Thank you.

Hon. Delegate Raphael Mwai: Thank you, Honourable Delegates.

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

Hon. Delegate Raphael Mwai: 583, what is your point of order?

Hon. Delegate Apollo Njonjo: Thank you very much, Mr. Chairman. My Delegate number is 583 and my name is Apollo Njonjo, representing Political Parties. Thank you very much, Mr. Chairman, and thank you very much, Delegates, for passing this Motion, but I would like us to put a rider, at least a statement. I would like to add 'that during that period of our being on recess, no organ of the Conference should operate, that all organs of the Conference should await our return'. Otherwise, we shall have a Constitution written by the so-called Technical Committees that you do not see when you are away. Point of order, I am asking that we resolve that, during that period the Technical Committees - they are the only other organs of the Conference - do not operate, Mr. Chairman.

Hon. Delegate William Ole Yiaile: Point of order.

Hon. Delegate Raphael Mwai: 361.

Hon. Delegate William Ole Yiaile: Thank you, Mr. Chairman. My number is 361, my name is William Ole Yiaile. I want to add an additional rider to what my learned friend Delegate has just said. 'That, in addition to that, no alteration shall be made on the present list of Delegates, either in subtraction or in addition'. Thank you very much.

(Applause from the Honourable Delegates)

Hon. Delegate Raphael Mwai: 259.

Hon. Delegate Salah Maalim: My names are Salah Maalim Ali, Delegate number 259. I refer my matter with the point raised by Honourable Delegate Apollo Njonjo, saying that all activities of this Conference should be halted. I am saying it cannot halt because the Commission has to continue doing some of its work until we resume. The Secretariat has to do its work until we come back, so for that matter we cannot put the whole issue to rest; we have to give the Secretariat time to continue with their work until we resume on the 17th August 2003. Thank you.

Prof. Yash Pal Ghai: I would like to respond to those points. I think-- *(Uproar from Honourable Delegates)*. Can I just make my statement please? *(Uproar from Honourable Delegates)*. What I was going to say is that we are operating under the Constitution of Kenya Review Act. I do not think it is possible by a resolution of this Conference to override the terms of the Review Act. I do not think it is possible to say that the Commission and the Secretariat cannot function, because under the Act they have certain responsibilities.

I would like to suggest that maybe the two Motions can be given to me in written form, I will bring it to the Steering Committee tomorrow and we will bring it to Conference for a proper discussion. *(Uproar from Honourable Delegates)*.

Hon. Delegate Jimmy Angwenyi: Point of order.

Hon. Delegate Raphael Mwai: Thank you very much Honourable Delegates.

Hon. Delegate Jimmy Angwenyi: Mr. Chairman, you are receiving many of points of order, because you did not follow the procedure of discussing a Motion. Mr. Chairman, (*Clapping by Honourable Delegates*) we want a motion to moved and seconded. It should be open for discussion before we can get the views of the Members of this Conference.

Mr. Chairman, you cannot bulldoze us the way you bulldoze your Commission. (*Clapping by Honourable Delegates*).

Prof. Yash Pal Ghai: I note that there is lack of consensus, so I put it to--

Hon. Delegate Jimmy Angwenyi: What we are saying is that we need to air our views. That is why you are receiving all these points of order. They could have been included in the discussion of the motion. It seems that it is assumed that we had said the matter is completed by the time the motion was moved and that is unprocedural, Mr. Chairman. I would like you to desist from following unprocedural methods.

Prof. Yash Pal Ghai: Delegate number 072.

Hon. Delegate Musikari Kombo: Mr. Chairman, we cannot debate a Motion that we have put to a vote, unless you rescind that position. I therefore think it is proper that you rescind so that Delegates are given an opportunity to air their views on the motion. (*Clapping by Honourable Delegates*).

Prof. Yash Pal Ghai: All right, I am guided by you, so we can have a debate, I hope it will not be a very long one as we will want to get on with the discussion of the draft. Now, who wishes to contribute to the debate? (*Uproar from Honourable Delegates*). Well, I am told the procedure we should follow is that somebody should move the Motion to rescind and then-- Okay we have.

Hon. Delegate Musikari Kombo: Mr. Chairman, inviting my contribution I did say unless you do rescind, so I beg to move that you do rescind.

Prof. Yash Pal Ghai: Yes, okay, all right. It has been seconded, yes, so I put the question that the early Motion be rescinded those who support say “Aye”

Hon. Delegates: *AYE.*

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

Hon. Delegates *NAY.*

Prof. Yash Pal Ghai: I think “Aye” is highest so we now have a debate on the Motion introduced by the Honourable Khamisi. (*Clapping by Honourable Delegates*). Delegate number 056.

Hon. Delegate Kivutha Kibwana: Thank you , Chair, for this opportunity to contribute on this important Motion.

An Hon. Delegate: (inaudible).

Prof. Yash Pal Ghai: It is okay, it is understood.

Hon. Delegate Kivutha Kibwana: Okay, so I have the floor. Thank you very much. I was saying that this is an important Motion because its intention is to ensure continuity of the Conference as well as the Constitution making process. Obviously, because we have started this process about ten years ago, it is a process that must be concluded.

I think that the important aspect to consider when we are accepting August 17th as the date of resumption, is the questions of whether by then we will have finances, whether by then the budget process will be concluded, whether there will be allocation of time for Parliamentary Committee work, especially those mandatory Committees such as the Public Accounts

Committee and whether there will be sufficient allocation of time for Constituency work for MPs and other Delegates to do their own business. If we are satisfied that all those factors will be taken care of, then this is the Motion that should be supported unanimously. Thank you. *(Clapping by Honourable Delegates)*.

Prof. Yash Pal Ghai: Delegate number 463.

Hon. Delegate Meshak Suba Churchil: Thank you Chair--

Interjection Prof. Yash Pal Ghai: No, there is a point of order, I am waiting for the point of order, and Delegate number 463 has the floor please.

Hon. Delegate David Marcos Rakamba: Thank you, Mr. Chair. The first issue that I will address on this point of order is under regulation thirty. After you have put the Motion on the floor, you should allow amendments first, then we can start discussing and the amendment I was raising is under regulation 30. I was asked to bring an amendment to the floor under regulation thirty after you have put the Motion on the floor. That is what I am asking, to move the motion on that amendment before it gets out of this floor.

Prof. Yash Pal Ghai: But that is exactly what we are doing now.

Hon. Delegate David Marcos Rakamba: Yes, I was thinking Honourable Chair, this was an amendment to the Motion. "Noting that the Conference has made very good progress and has reached almost a critical stage in this deliberation, appreciating that the time allocated to the Conference for the current session is due to end or to expire....". I was really considering the number of chapters we are left with and that we can discuss and finish these Chapters. I was saying we extend the period of adjournment to 10th June 2003, Tuesday. *(Clapping by Honourable Delegates)*.

On this one also, that this Conference adjourns on 6th June 2003 and we convene on 4th of August. Thank you, Mr. Chair. *(Clapping by Honourable Delegates)*.

Prof. Yash Pal Ghai: Is your Motion amendment seconded? What is your point, are you seconding this or?

Hon. Delegate Joel Kipyegon Sang: Thank you very much, Chair. Mine is to second the amendments taking into consideration the fact that we are remaining with a few more Chapters, we are not going to leave them hanging. On the other hand if we are to assemble, I think it is appropriate that we assemble on the 4th. The reasons earlier explained for our decision on the 17th was that Parliament would be having special Commonwealth Parliamentary meeting, however we do understand that only four members of Parliament are informed and we feel that this date is appropriate, the 4th.

Again in seconding that, there is a point I would like to make regarding this particular Motion that there is a tendency by Government that comes to power through a very large majority to take the citizens for granted. On the matter of this constitution, probably those people who came to power recently think that Kenyans are now happy, they are in Canaan. The reality is as much as (?) was kind of (?) 60 for the Kenyan people. We believe that this process must be left to continue to its logical conclusion. I am saying this because in spite of assurances by His Excellency the President that the Government is fully behind this process the utterances of certain senior Functionaries in the Government raise very serious questions in the minds of Delegates and the people of Kenya. I would therefore like, Mr. Chairman, to tell this Government that as much as they were activists before they came to power, that initiative is now gone forever from them. Others are waiting in the sidelines to seize the opportunity and above all, Kenyans want a new Constitution and I therefore beg to support the Motion. Thank you.
(Clapping by Honourable Delegates).

Prof. Yash Pal Ghai: Delegate number 463 you have the floor now.

Hon. Delegate Meshack Suba Churchill: Thank you, Chair, I am rising to support the original Motion and the amendments that have been raised therein. But Mr. Chairman, I want to say that in my contribution on this Motion, Mr. Chair--

Interjection Prof. Yash Pal Ghai: Could you just hold on for one minute please? Just a minute.

Hon. Delegate Meshack Suba Churchill: Thank you Chair, I still think I have the floor.

Prof. Yash Pal Ghai: Yes.

Hon. Delegate Meshack Suba Churchill: I think that I have the floor and the Chair has not appointed anybody to speak. Chair, I want--

Interjection Prof. Yash Pal Ghai: Excuse me, I am trying to consult experts on the procedure and the procedure seems to be that we first have to dispose of the proposed amendments and then we go to the original Motion.

Hon. Delegate Meshack Suba Churchill: Chair, contributing on the amendments, I want to say that is the procedure--

Prof. Yash Pal Ghai: It has been seconded. I take it that the proposed amendment has been seconded and (?). So now I propose the amendment which I believe is that the Conference in this session continues until the 10th of June and then adjourn to the 4th of August. Is that the way it was proposed?

Hon. Delegates: Yes.

Prof. Yash Pal Ghai: The amendments. Would you please repeat your amendments please.

Hon. Delegate David Marcos Rakamba: The Honourable Chairpersons, Honourable Delegates as I said earlier, my amendments on the motion was that, "noting the Conference has made very good progress and has reached a very critical stage in this deliberations and appreciating the time allocated to the Conference for the current session which is due to expire on 10th, that is from 6th to 10th of June 2003, this Conference now resolves that the Conference adjourns on 10th 2003 and reconvenes on the 4th day of August 2003, when will have concluded on these deliberations".

Mr. Chairman, I said that now we have a number of Chapters that have not been deliberated on and you note from yesterday that I have been raising on a point of order that the Delegates have been given two minutes to contribute against the five minutes that was allowed.

You know that this morning Mr. Chairman, only 36 Delegates contributed to the first two Chapters that have ended. If we rush this Conference to actually deliberate on these remaining two days, we will not have finished the remaining Chapters. I am so much concerned Mr. Chairman on transitional period and I therefore request this Conference to actually accept my amendment, which I have put across. Thank you, Mr. Chairman. My names are David Marcos Rakamba.

Prof. Yash Pal Ghai: It would have helped us if we had written amendments from you because that is what the procedure requires. (*Uproar from Honourable Delegates*). I will read the terms of the amendment: the amendment now says that the Conference adjourns on the 10th June 2003, and reconvenes on the 4th day of August 2003. That's the amendment that we are now debating. So to conform to the regulations I now propose the amendment "that the Conference resolves that the Conference adjourns on the 10th of June 2003 and reconvenes on the fourth day of August 2003 until the conclusion of its deliberations". (*Noise by the Honourable Delegates*).

Hon. Delegate Oloo Aringo: Thank you, Mr. Chairman. My name is Oloo Aringo, Member of Parliament. First of all, this is purely a point of procedure, that indeed if we do not want to degenerate into chaos, let us dispose of the amendment. The first debate therefore should focus on the amendment. And the Proposer of the amendment has suggested that the date should change, that we should now adjourn on the 10th of June and resume on the 4th of August. So if we can dispose of that, I think we shall be on track so that we do not degenerate into chaos.

Then we go to the second phase, and that is, if this amendment is accepted, then this becomes the basis. Let me say this: the full authority is with this Conference, we don't look to any other authority. If this Conference decides that we be adjourned on the 6th of June, that is what the Conference has decided. There is no other authority and, therefore, you should not be shy as Delegates; we have been advised, but we can reject the advice. And I am appealing to the Delegates to reject that advice and insist on this amendment that the Conference adjourns (*Noise*

by the Honourable Delegates) on the 10th of June and we resume on the 4th of August. Let us continue with that one, thank you.

Prof. Yash Pal Ghai: 424, yes please.

Hon. Delegate Thomas Aburi Nyabote: Thank you, Mr. Chairman. My name is Thomas Aburi Nyabote, Delegate 424. Much as I appreciate the amendment beamed by Honourable Delegate David Marcos Rakamba, I would like the Delegates to take into consideration the conscience of the religious faiths who are attending this Conference. If we moved all up to 10th, it means that we shall have to work on Saturday and on Sunday, which are-- (*Noise by the Honourable Delegates*) Just a minute. I am moving my motion. This means that the Delegates who actually observe Saturday as their religious day will have to be here, likewise on Sunday. So, I am of the opinion that-- (*Noise by the Honourable Delegates*).

Prof. Yash Pal Ghai: Order! Order! Please listen.

Hon. Delegate Thomas Nyabote: I am of the opinion that we adjourn on 6th and reconvene on 17th because of the following factors. The Members of Parliament, who form one third of the Delegates of this Conference, need time to do their parliamentary work; two, they would like actually to go up to their Constituencies for certain procedures-- (*Noise by the Honourable Delegates*).

Prof. Yash Pal Ghai: Could you please listen to the Delegate on the floor?

Hon. Delegate Thomas Nyabote: Three, we were informed here by the Speaker that the Kenyan Parliament will be hosting the Commonwealth Parliamentary Association and they need time. With those factors, I propose that we move as per the first Proposer of the first motion.

Prof. Yash Pal Ghai: Is that Point of Order?

Hon. Delegate Jimmy Angwenyi: Thank you, Mr. Chairman. Mr. Chairman, the amendments which have been proposed, tend to go counter our initial agreement. As you know, we are

opening Parliament on 10th and I have been elected and I am being paid to attend that Parliament 10th. I have to see my people over the weekend and on Monday I come back so that I can join Parliament next day.

Mr. Chairman, I think there has been some problem in understanding between the Members of Parliament and a number of our Delegates. And I believe, Mr. Chairman, when we adjourn you must take time to explain to this Conference what contribution was made by Members of Parliament. Some of them suffered very heavily to have this Conference today so they should not suspect our moves. They should not suspect our proposals as Members of Parliament. So Mr. Chairman, as you know, we had agreed with our Speaker - he convinced us - to accept to come back on 17th because we will have to put in abeyance our committee work which we have done in the last two months.

Mr. Chairman, the Delegates must understand that as much as we are committed to this process, we also have got other work to do. I believe some of them also do have some work to do. So, Mr. Chairman, you cannot bulldoze us, you cannot tell us that we stay here until Tuesday. If maybe we leave here on Tuesday afternoon to go and open Parliament I will not have responded to my people, the people who give me the views that I will express in this Conference, that I will express in Parliament, Mr. Chairman.

So, Mr. Chairman I am saying those proposals, those amendments should not be allowed. Let us go with the motion prepared by one of us, who knows why he was proposing 6th and the 17th of this month. Mr. Chairman, I am begging all our Delegates, let us work together. Let us work together, and I am saying this as somebody who has suffered for voting for this Act which brought you here. So you must understand that. If you don't understand that-- (*Noise from Honourable Delegates*). Mr. Chairman, I am not the type who can be cowed by shouts! I am not the type who can be cowed by shouts! So, Mr. Chairman, what I am telling you is this: we must agree to work together and respect each other and--

Prof. Yash Pal Ghai: Order! Order! Order!

Hon. Delegate Jimmy Angwenyi: --respect our decisions. If we don't do that, if they agree to close on 10th, and they agree to start on 4th, we as Members of Parliament will let them do the job. Thank you.

Prof. Yash Pal Ghai: Could I please make a plea? When there is a Delegate on the floor, you must listen to him or her. Please do not shout or heckle, otherwise we will never get anywhere. We have to listen to the speaker who has the floor and others will have their chance afterwards. So could I please plead with you not to heckle, not to shout, let us be allowed to listen to the speaker. Now, I will invite Delegate 132.

Hon. Delegate Mwangi Kihara: Thank you, Chairman. My name is Kihara Mwangi, Member of Parliament for Kigumo. Mr. Chairman, the amended motion cannot hold water. The reason for that is that Members of Parliament have to go, constitutionally, they have got to go back to Parliament. If that motion carries, that would mean the Conference would continue without the Members of Parliament. If that is the feeling of the Delegates, then we can only say "then you continue" because we cannot refuse. But the Members of Parliament will definitely have to go back to Parliament, because the Budget is constitutional and it must be read on 12th, that is by law, and that Members of Parliament must open Parliament on 10th. So when you are considering the amendment, you take that into account. Thank you.

Prof. Yash Pal Ghai: 611

Hon. Delegate John Nyakundi: Ahsante sana Mwenyekiti kwa kunipatia nafasi hii, hata ingawa sikupata nafasi zingine, ni muhimu sana. Wenzangu, namba yangu ni 611, kwa majina najulikana kama John Peter Nyakundi na nawakilisha vyama vya kisiasa na Kenya Social Congress.

Nashukuru sana kwa hii hoja kuletwa hapa; hii ni kazi kubwa ambayo tumefanya, wamefanya hapa wenzangu. Lakini kitu nataka tujadiliane na tusikizane ni kwamba hatutaki kuendelea. Tunataka tusikizane, tunasema tufunge tarehe sita halafu turudi zile zingine, na mimi nimeonelea tufunge tarehe sita turudi tarehe kumi ili Wajumbe wakienda Parliament, wapatiwe siku sita waende nyumbani. Hata sasa sheria inaturuhusu tuendeleo bila Wajumbe, lakini hatuwezi

kufanya hivyo. Tutawaheshimu, tunawaheshimu. Mimi nimeonelea kwamba tufunge tarehe sita halafu turudi tarehe kumi. Tukirudi tarehe kumi tunaendelea. (*Noise by the Honourable Delegates*).

Prof. Yash Pal Ghai: Please listen! Please listen to the speaker.

Hon. Delegate John Nyakundi: Kwa mfano, kuna ile Chapter mpya ambayo inatakikana ya utamaduni. Mimi ni mmoja wao; utamaduni, wakati hawa walienda round, hawakukusanya utamaduni. Wamewacha hiyo nafasi. Hata sisi tunajadiliana na mpaka sasa tumetafuta materials, tunataka tubakishe Chapter tatu ama nne, ili tukirudi tuje kujadiliana kwa sababu mimi naona kama mtaendelea hivi. Kwa sababu hizi hatuwezi kumaliza kufikia tarehe sita. Sasa kama hatuwezi, wacha zibaki hizo, tukirudi hata sisi watu wa utamaduni tuna Chapter ingine ambayo tunataka kuja kulete hapa. Tukileta, tulete pamoja siku ile tutarudi, halafu tuanzie hapo. Ahsante sana Mwenyekiti.

Prof. Yash Pal Ghai: Okay, asante. 519. A woman MP I believe. No, no. I am not going to be sensitive to gender questions, so I am going to call on 519. 519 please I am calling on you; 519.

Hon. Delegate Marie Therese: My name is Sister Marie Therese Gachambi; my number is 519, from Religious Organizations. Mr. Chairman and my fellow Honourable Delegates, I understand when we started here, we all agreed - and I think we had a very noble understanding - that each Member, each Constituency that is represented in this Conference, will really be very respected whether they are few or whether they are big. Mr. Chairman and my Honourable Delegates, at this juncture, one of our members has proposed the motion that supports that principle and according to my understanding, there had been original kind of understanding that we want everyone to be present. The motion presented by the first Honourable Member Delegate 053 had considered that principle, that we have the whole House, the whole constituencies represented.

For that reason, Mr. Chairman and Honourable Delegates, it is my conviction that the amended motion should be put down and we remain with the original motion to postpone. Thank you, Mr. Chairman.

Clapping by the Honourable Delegates.

Prof. Yash Pal Ghai: I would like to put this amendment to vote now; I think we have had different types of views, and I would like to invite a vote on the amendment that has been proposed. The legal way I am told I should put it is that I put the question that the words proposed to be deleted, be deleted. This means that if you vote 'nay', then the amendment is rejected and we go back to the original motion.

So, I am going to put the question now and those of you who support the proposed amendment—*(Noise from the Honourable Delegates)*. I am going to put this amendment to vote now. Please, please--

I put the question that the words proposed to be deleted, be deleted. In other words, those who support the amendment say 'aye' and those who oppose the amendment say 'Nay'.

Honourable Delegates: *(Shouting)* Nay!

Prof. Yash Pal Ghai: I think the NAY is carried and so we go back to the original motion. Thank you, thank you. 209. Order please! Order!

Hon. Delegate Moses Wetangula: Thank you Mr. Chairman. My name is Wetangula, MP Sirisia. Mr. Chairman, I really do not want to spend time contributing to the motion. You do know, like everybody else, that this motion was brought after very wide-ranging consultation. And if we are really arguing about saving time, the valuable time that we want to extend to debate this process, then I want to move that you in fact put a question to the original motion by Honourable Joe Khamisi, we vote on it and we proceed on the business that brought us here.

Clapping by Honourable Delegates.

