

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

NATIONAL CONSTITUTIONAL CONFERENCE

VERBATIM REPORT OF

**PLENARY PROCEEDINGS, PRESENTATION OF DRAFT BILL,
CHAPTERS ONE - SUPREMACY OF THE CONSTITUTION; TWO –
THE REPUBLIC; THREE – NATIONAL GOALS, VALUES AND
PRINCIPLES AND FOUR - CITIZENSHIP
HELD AT BOMAS OF KENYA**

ON

7TH May 2003

**PLENARY PROCEEDINGS, PRESENTATION OF DRAFT BILL, CHAPTERS ONE, TWO,
THREE AND FOUR, HELD AT BOMAS OF KENYA ON 7TH MAY, 2003.**

Presentation Of Report: **Chapters one – Supremacy of the Constitution;
Two – The Republic; Three – National Goals, Values
and Principles & Four – Citizenship.**

Presenters: **Com. Dr. Githu Muigai.
Com. Kavetsa Adagala.**

Session Chair: **Hon. Otieno Kajwang’.**

The meeting started at 9.45 a.m.

Prof. Yash Pal Ghai: I will be grateful if Reverend Timothy Njoya will say the prayers for us this morning. Will you please be silent so that the prayers can be said.

Hon. Delegate Rev. Timothy Njoya: Let us all rise and pray. Oh God the creator and sustainer of all things, we pray for the sobriety of this Conference; we pray for the delegates to be selfless. Above all God, we pray for the Sovereignty of the people, that the sovereign will of all Kenyan people may prevail over our differences. We pray that it may please you oh God, to break caucuses and walls that divide the Commissioners, delegates and everyone with an input to put to this Conference. So that all constitutional makers may be sisters and brothers of one another, and that it may be genuinely representative of your people. Let all adhere to the gospel, which is that the people are sovereign and that the real incarnation of your sovereignty here on earth is among the people. Let your will be done here at the Bomas of Kenya, as it is done in heaven; in Jesus’ name we command that all sickness and anger may disappear from this venue. For this we pray in the name of God the Father, Son and the Holy Spirit, Amen.

Prof. Yash Pal Ghai: Thank you very much. I will now administer the oath to those delegates who have not yet made and subscribed to the oath. So, could I please ask those delegates who have not yet

made the oath to come in the front here as we were doing in the last few days, and then I will administer the oath. That's fine, so I can see you there. Are there any other delegates who ... I see. Excuse me; are there no further delegates who need to make the oath? In that case I will swear in the two members; you have as you know, the choice of taking an oath, or making an affirmation. You both want to make the oath? Okay, so the procedure is that I will ask you to repeat after me the oath. I will ask you to say I, and then state your name, and then repeat after me as I read from the oath.

Please raise your hand and say I and then state your names, being appointed a delegate to the National Constitutional Conference, under the Constitution of Kenya Review Act, do solemnly swear that I will faithfully and fully, impartially and to the best of my ability discharge the trust and perform the function, and exercise the powers devolving upon me, by virtue of this appointment, without fear, favor, bias, affection, ill will or prejudice, and to the end; that in the exercise of the functions and powers as such delegates, I shall, at all times, be guided by the national interest. So help me God.

Now, will you please sign the oath you have and give it to me and I will witness it. Thank you very much indeed, and welcome to the Conference. We now commence the debate on the motion and the question, which was proposed yesterday, and the order this morning is that we will start with the presentation of the Chapter seven of the Report and the Chapters in the Draft Bill, which respond to that Chapter of the Report. The session will be chaired by the Honorable Otieno Kajwang'; and so I will ask him to please come to the podium. The presentations will be made by Dr. Githu Muigai, and Commissioner Kavetsa Adagala, who are now sitting up the table with me. I invite the Honorable Otieno Kajwang' please to come here, take my chair and conduct this session today. Thank you.

Hon. Delegate Otieno Kajwang': Thank you very much dear delegates; my name is Honorable Otieno Kajwang' MP for Mbita. I'm privileged to chair this session. The chairman of the Conference has already told you the Chapters that we want to consider. If you have your Draft Bill, you look at Chapter one, the Preamble, Sovereignty of the people, and the Supremacy of the Constitution.

Chapter two, the Republic; Chapter three, National goals, values and Principles, and Chapter four, Citizenship. We are privileged to have with us Dr. Githu Muigai, one of our Commissioners as one of the presenters; and Commissioner Kavetsa Adagala who is on my right, who will be the second

presenter. My job will be simple, to give them opportunity to speak, and when they are through, give you the opportunity to participate as I listen. So it is a very easy job. Dr. Githu Muigai ... I see, just before we start on the presentation, I have been informed there will be a brief performance by Bomas of Kenya; maybe as they perform, a few more delegates will be coming in and preparing themselves for this presentation. If they are around, I will now call upon Bomas of Kenya.

Hon. Delegate Otieno Kajwang’: Give him the microphone.

Hon. Delegate Maalim Malio: Thank you Honorable Chair. My names are councillor Maalim Malio, delegate number 259 from Mandera. I want to draw the attention of the Chair towards the irresponsible reporting done by the media, especially the East African Standard, and it flashed on the front page, “Bomas delegates intensify fight for more pay.” And on page 12 of the Editorial, and I quote, “Tell delegates what the NCC is all about,” and then it has continued to say, “The dignity of the National Constitutional Conference is being compromised by people who do not understand the enormous responsibilities the country has vested on them.” And it continues to say that “Some of these delegates are behaving as if they came on holiday tour of the Capital, and they want the public to finance their wishes and ideas of the NCC.” End of quote.

I’m asking the Chair, previously, the Chairman of the CKRC, Professor Yash Pal Ghai, to caution the media to make responsible reporting of the proceedings of this Conference. And it looks like there’s an onslaught war on the delegates. I’m asking the Chair to take action against those responsible for this kind of reporting, because they are compromising the integrity and the dignity and the work done by the Honorable delegates in this house. Thank you.

Hon. Delegate Otieno Kajwang’: I can see that from the cheers you have got, it seems like you have a lot of support. But I have been informed that the Steering Committee this morning dealt with this item as an item of agenda, and they are putting together the Media Advisory Committee, which should be functional this afternoon. I will ask you to present your complaints, which seem to be the complaints of the majority of the delegates here to that Advisory Committee to deal with it. Thank you. Do we have the Bomas of Kenya? Let us have the performance, then we might take one or two points of order. Okay, I will come to you after this.

(Performance by Bomas of Kenya).

Hon. Delegate Otieno Kajwang’: Thank you Bomas of Kenya, give them a big hand. We are celebrating our cultures, I think it was hard to stop you. But we’ll ask Dr. Githu Muigai to start; I will give him not more than 15 minutes, although we have ‘eaten’ some of his time. I think we will hold on the point of orders. Let’s get these presentations, and then immediately after the presentations I will take the point of orders before we go into discussions. Thank you.

Com. Githu Muigai: Thank you very much Mr. Chairman; I will try to be very brief. I would like – with your permission Mr. Chairman, if I may proceed – I would like to refer Honorable delegates ...

Interjection. Noise from the delegates.

Hon. Delegate Otieno Kajwang’: I will give you the point of orders when I grant it. I already notice you have them, unless it is infringing, unless we are doing something against the rules which infringe on this discussion; please let us listen to the presentation. Thank you.

Com. Githu Muigai: Thank you Mr. Chairman; I hope I now have the floor. I want Honorable delegates to look at three documents; one is the main Report of the Commission, that the learned Chairman of the Commission made reference to yesterday. That is the first document; do you have it? That is the one that I’m holding. Could you please look at that. That’s an important document; please I want you to look at page 107 to page 129. This is the report of the Commission that summarizes the process that went into preparing the Draft. The issues we put before the public, how the public responded to those issues, how we appreciated that presentation and what we finally considered material.

I would also like you to look at the main Draft Bill itself, and I want you to look at page four of the Draft Bill, page 4 to page 6, sorry, page 1 to page 6 of the Draft Bill; and finally I want you to look at this red document that we described as document number three, which is an annotated version of the Draft Bill, volume two of the Commission’s report.

This document is important because since we drafted the bill, some thinking and clarification has gone into re-examining the bill. So, before you ask any question relating to how the bill is presented in the green book, I would encourage you to look at any alterations or annotations that are contained in the red book; because you may very well find that some of your concerns have since been addressed. We prepared the red book from the representations we got from the public after the Draft Bill had been published. On that very happy note Mr. Chairman, I will now move very quickly to the bill itself. At page 4 Honorable delegates, you will find at the top, the heading of 'The Sovereignty of the people and the Supremacy of the Constitution.' What we attempted to do in this section was to capture a principle that was presented to us in virtually every place where we received views. And the people of Kenya were concerned that the Constitution should recognize in very clear terms, that the Sovereignty that constitutes the republic is the Sovereignty of the people, and not of the leadership of the people. And we tried to deal with that in that section, and I think broadly, it is clear.

The second idea there which is equally important, is the idea of the Supremacy of the Constitution over all other institutions of the Republic, be those institutions the Executive, the Judiciary, the Legislature, or all laws and any other aspect of our national life; and again, I believe that, that is clear. One of the things we added there, which wasn't in the old Constitution, but which we felt was very critical, was the manner of the interpretation of the Constitution. We received various representations from members of the public that suggested that the Judiciary in Kenya has interpreted the Constitution in a manner that has violated the very Constitution that it was supposed to interpret. And many people felt that probably the problem lay in the fact that the Constitution itself did not provide cannons for its own interpretation. And we have tried to do that; if you look at the sub-provision 5, article 5.

Then we dealt with the question of the enforcement of the Constitution, and the defense of the Constitution and again I believe that most of these are very straightforward and there ought not to be any difficulty with them.

I move very quickly now to the portion on the laws of Kenya. Again here, our wish was to capture in very clear terms, the sources of the law of Kenya. Lawyers know that there usually is a lot of controversy as to what constitutes the body of law that is recognized for enforcement within the legal

system. And we were advised by the experts that it would be useful to have this body of law properly set out in the Constitution to remove any doubt or ambiguity. And you can see the sources of law there.

One of the concerns that has been expressed by the members of the Public relates to the question of customary international law. And an argument has been made, that by recognizing Customary International law in the Constitution, we are opening the door for the enforcement of the laws of other countries in Kenya. That is not really the position. As a matter of fact, today Kenya is subject to Customary International law. It is a recognition of that fact that has gone into the Constitution. Not an addition of a new body of law.

If you move to Chapter 2, we declare the Republic there; and we declare the values upon which our Republic is built, that is, we are a multiparty democracy that shall be governed in a participatory manner, with transparency, accountability, separation of power, respect for human rights, and the enforcement of the rule of law.

We then go to the question of 'Territory,' which is, as many of you know, it is a very very controversial question, because the Republic of Kenya is surrounded by several States with whom our borders may not be very clear. All I would like to say here is to mention that the fact that a country cannot settle its international boundaries by reference to itself. I hope that makes sense. A country can only settle its international boundaries by negotiating with its neighbors. So even if we wrote into the Constitution that half of Uganda belongs to Kenya, it doesn't make it part of Kenya. So again here, what we want to capture is that the Republic of Kenya through the appropriate organs, the Legislature and the Executive will negotiate and settle international agreements that will resolve any international disputes relating to our boundaries.

I would ask you to turn over the page very quickly, the Capital city of the Republic is Nairobi, and again I think that there is no issue that arises, except that we were informed by the people of Kenya that they would like to see a decentralization of the institutions of the National Government.

The other question is the question of language, and again we have affirmed that Kiswahili and English are the official languages, and all the official documents of the Republic should be in those two languages.

Very quickly, State and Religion; the idea we are trying to capture here Honorable delegates, is that Kenya is a secular Republic. That is to say, there is no State religion in Kenya. That is to say there is no religion that is superior to any other that is recognized by the State, to the exclusion of other religions. So, we are a plural society, you can have any religion of your choice as a matter of fact, and I hope this is not controversial; we defend the rights of any person not to have any religion if they so wish, and that is part of what we have done there.

Then there is the issue of National symbols, and National oaths and affirmation; nothing arises from there. I would like to say something about National days; the people of Kenya told us that we were a nation permanently on holiday, and that there were too many holidays, set up. They said the holidays should be put in the Constitution, and they should be specific holidays; Madaraka day, Jamuhuri day and we thought there would be a Katiba day, the people of Kenya have since suggested that we should have a 'Heroes' day, and that is an issue that lies in your hands, and not in ours.

Finally, Chapter three, this is one of the innovative parts of our Draft. If you look at the Independent Constitution, a copy of which you have been provided with, there never was at independence, an attempt to set out our national goals and values, our shared aspirations as the people of this country. And what we have tried to do here in Chapter 3, is to summarize what we believe are the shared values of the people of Kenya, which should inform our national efforts including legislation, including interpretation of the Constitution, including setting up National institutions.

The most important is our national unity, the unity of the Kenyan people in their common Nationhood; the second one is our cultural diversity and unity in that diversity, our democracy, our ... (inaudible), to democracy, the transparency in our governance, our fight against corruption, the fight against injustice by creating impartial and independent tribunals, the requirement for political parties to have their own internal democracy, the support of Government to civil society, and to facilitate a strong and vibrant civil society, our respect for Human Rights, our protection of minorities, our respect of women, - and

here is an important provision of our Draft. We have isolated the principle that a third of all national institutions should have representations from women. I am looking at Article 12; are you there? 14, Sub-article 12; are you there? Yes. We say there that the State shall implement the principle of one-third members of all elective and appointive bodies shall be women. Our reasoning was that there can be no progress in our country if a large section of our populace remain outside the decision-making processes that the Constitution would set up.

We said something about our children as well for obvious reasons, because we are making this Constitution for ourselves, but particularly for them; we talk about social justice, the equitable distribution of natural resources; and now I'm at page six. We talk about Kenya being a good citizen of the world, supporting the region, supporting Africa and supporting the international community. And if you look at Sub-article 18 there, I'm told I have to finish and indeed I have, we talk about the necessity for the President of the Republic to make a report annually to the National Assembly on measures that have been taken and progress that has been achieved in the realization of these principles. Mr. Chairman I thank you. My colleague Kavetsa Adagala will talk about the provisions on Citizenship.

Hon. Delegate Otieno Kajwang': Thank you very much Dr. Muigai. Commissioner Adagala will take the preamble and citizenship.

Com. Kavetsa Adagala: Thank you very much. If you open page 1 of the draft bill there in a square you will see the preamble. When we went around the people of Kenya told us that we must have a preamble in our Constitution, our present Constitution does not have a preamble and it was like a persistent song all over the republic. Therefore, we crafted a preamble and it was quite difficult, the Committee that worked on it found it quite difficult because we had nothing to work from but we were able to bring out there encapsulated in the preamble is the entire Constitution. The entire Constitution comes from the preamble.

When we went around again disseminating, we were told that we need to have two major things in the preamble. One of the things that people said during the presentation of views, there are some people who said what the preamble should say so they assisted us a lot in making the preamble and they also said there must be God in the preamble, thousands of people said that. In the green book, in the draft

bill we have a God bless Kenya there but people said we need much more than this. They also told us that we must recognize our historical struggle throughout the century for independence and also after the post independence struggle for human rights. So, if you look in the red book on page 11 there is the preamble, you have your red book?

Hon. Delegates: Yes.

Com. Kavetsa Adagala: The one that says document three, an annotated version of the draft bill. There you will see that there is a difference and I would like to request delegates to please study these two very short passages carefully and make sure that they contain what you need. So here we are acknowledging the supremacy of God and invoking his blessings upon our land, we the people of Kenya. We have moved that particular desire of the people at the top and everything that is in bold is what has been added, okay. We celebrate our historic and unremitting struggle to remain free from all forms of oppression and recalling the gallant struggle to regain our independence. Then we have also added our aspirations, recognizing our aspirations for a government based on the essential values of freedom, democracy, social justice and the rule of law. Then further down we have deleted as you can see, it is not a mistake just a deletion. You will get used to this in the red book, that particular aspect because we have already included it up there. So, I think probably we have reflected what Kenyans told us in this but you are here to study those passages and make sure that they are as you would want them to be in the preamble, a very crucial but brief part of the Constitution.

Then if we move on to page 6 in the green book, we have citizenship and citizenship really defines who is a Kenyan and all these duties of a citizen and all the bill of rights all hinge on this, who is to benefit and who has the duty, who has the right. So here again we have what Kenyans told us, it is in the main report on page 118. On page 118 you will find what Kenyans told us in the big report, main report and among these was equality for all citizens. It was also taking care of Kenyans who are working, living and even studying in foreign countries, who have difficulties with their citizenship that they have to give up Kenyan citizenship against their own desire and will and also the ones on the border.

The Turkanas told us they are the barbed wire of Kenya and the people along the border, the Somali border, the Sudan border, the Uganda border, Tanzania border, and Ethiopian border told us that they have difficulties especially in families and marriages and then the other category were people who get married to foreigners had a problem. So, there you can read it, it is very simple but I would like to point out here that as you can see there at the beginning of citizenship we have that there must be that equality of entitlement to rights, privileges and benefits of citizens, equally subjected to duties and responsibilities and equally entitled to a Kenyan passport and to any document of identification issued by the State to citizens. There we have in the first sub heading there, retention of citizenship.

As we did in 1963 we all have to become citizens in the new Constitution, so those of us who are citizens will remain citizens and then there is the acquisition of citizenship, how does it get acquired? By birth, registration and naturalization. Then the next sub heading, citizenship by birth is there and very clear, (*I am moving against time*) The other issue that come up is the one where women who are married, that is article 20. Women who are married to Kenyans, (*no that is a different one*) but the equality of citizenship for all Kenyans male or female and then their spouses is also there. Then sub article 20 says that marriage for 3 years and in the red book there is a revision, which says it, should be by,.... The Kenyans said that three years of marriage was too brief, so they were saying that a person who has been married, that is on page 23 of the red book. A person who has been married to a citizen of Kenya for a period of not less than 7 years is entitled on application to be registered as a citizen. That is a revision we made after dissemination. Then also after dissemination people were saying that this dual citizenship needed also to come up and we have corrected there, you can see on page 24 that dual citizenship in a country that does not permit dual citizenship. There are some countries which permits dual citizenship others don't. For instance, if you are in Germany you cannot have Kenyan citizenship or even in Zimbabwe. So there is dual citizenship and the other point here is the Citizen Registration Board which we put there so that all Kenyan citizens will be registered.

I think this is a matter you can discuss, some people were saying that we should not cheapen our Kenyan citizenship. Some people were saying that there should be some investments, people who have investments can become citizen, like on page 118 and 119, you can get all those views. It is an important category that needs to be discussed because it determines who we are. Thank you very much.

Hon. Delegate Otieno Kajwang’: I want to thank our presenters for the good job well done within time. We are going to allow some discussion, I think we will give you about 10 minutes. (*A moment, I am doing some consultations*). I think we have finished in good time, those who may want to raise certain issues so that we are properly focused can do so in some little note, so that when we come back from tea we can call them from here straight away. You give us your name and your delegate number and you write something small so that I call you from here quickly so that we don’t have to strain to see you.

We will go for tea, we must be here by 11.00 am you will hear the bell. Unless there is a point of order now just before we break? Yes, there was one there.

Hon. Delegate Odhiambo Mbai: Number 412.

Hon. Delegate Otieno Kajwang’: Number 412.

Hon. Delegate Odhiambo Mbai: Mr. Chairman, my name is Odhiambo Mbai, I am delegate number 412 representing Homabay District. I wanted to raise a point of order before the dancing started but of course you overruled me and I respected your Chair but again now I have another point of order, so I have two points of order which I want to raise.

The first is that when we arrived here we were supplied with the programme at the entrance, that programme I read it very carefully there was nowhere indicated that we shall be entertained before the Conference started. We are wasting a lot of time, we need to run this Conference in a business like manner because somewhere in that Act it is stated that the Conference shall only adjourn or be disbanded once the Constitution is adopted and so we could even be here for the next two years. So you must run this Conference in a business like manner first and foremost and therefore it is important that if you had allowed me to raise this point of order before the dancing started perhaps the dances could not have even come in to the hall.

Hon. Delegate Otieno Kajwang’: Okay.

Hon. Delegate Odhiambo Mbai: The second thing is that Mr. Chairman I think that we have started the presentation of the draft Chapter one to four in a manner that in my view is contravening the Act. Particularly when Commissioner Adagala was making the presentation he kept on referring us to the green book, the red book and so on and so forth. What is the draft that is mentioned in Act section 26? You should present to us the draft bill, you should not be confusing us with more than one document, the draft bill is the green book that you prepared and you published. The working document is for anybody who wishes to read it, it is not a mandatory document that everybody should be referred to. Those are some of the things that are coming secondarily outside the draft bill and the delegates of the Conference have the duty to first and foremost discuss the draft bill. If you have anything you are calling a working document as far as we are concerned it is not part of the draft bill.

Hon. Delegate Otieno Kajwang': Daktari I think you have made you point and I think we have consulted and we have agreed that your comments are valid and we will be improving. We thought that we could dance a bit so that you come in but it seems like you don't like the culture. It is also civic education and highlighting issues.

If there is any other point of order let me explain. A point of order is a matter which you raise when you think that something is contravening the rules and not when you want to comment or when you want to just interrupt. You know you can also make a point of order just to interrupt a speaker, so make sure that when you raise it you show us the rule which you think is being contravened. Otherwise the comments made by Dr. Odhiambo are taken, any other before we break for tea? I can see 5 or 4 and number seven next to me here, and 364 in that order. You have just raised, okay.

Hon. Delegate Orie Rogo Manduli: In that order did you say? Yes. This is Orie Rogo Manduli, delegate number 594, political parties. Dancing is like breathing, it was cold here and when they danced we all warmed up, that was an interlude it was not an interruption and right now we are taking an interlude to go and have a bit of coffee and I think that dancing was wonderful we should have more of it as interlude to inspire us. (*Applause*) To make us appreciate our culture here, to get our minds together, we are here on very serious issues here.

Hon. Delegate Otieno Kajwang’: I think we have got your point, the next one? No, I had given the numbers which were following each other. Number 7.

Hon. Delegate Jimmy Angwenyi: Thank you Mr. Chairman, my name is Honourable Jimmy Angwenyi, Delegate number 007 representing Nyanza Province. Mr. Chairman I just want to add my voice to Honourable Manduli. Dancing our culture should be spicing our discussions here as we continue with out deliberations. (*Applause*)

Hon. Delegate Otieno Kajwang’: Thank you Professor. I call him Professor because at one time he was a teacher at the University, he has not forgotten culture at the University. Yes, I think he has got the microphone, can you continue? The microphone is not working there?

Hon. Delegate Daniel ole Osoi: Thank you Mr. Chairman, I am Daniel ole Osoi, delegate number 364 from Kajiado. I have noted two things I don’t know whether it is only me or my fellow delegates have also noted. One, there is a lot of laxity in forming the working or constituting the working Committees of this Conference. Two, there is a deliberate move as I observe to delay the whole process as from the day go, once we enter this hall everyday we get three order papers changing business from morning, mid morning, afternoon until we depart without concentrating on any serious business. Can we be directed by the Chair, what is really happening? Thank you.

Hon. Delegate Otieno Kajwang’: Thank you I am not so sure that, that is a point of order we can deal with just now but you have said it, I think the Commission is in no way delaying the work in fact we are trying to really the work speedily. What we will do, we will cut off the tea so that we continue with the work but we can assure you that the Commission is not in anyway delaying the work but we will add more hours to your time here. Because we want to break and be back at 11.00 am let me give delegate number 31 a chance because he comes from very far. He will give you his name and his number.

Hon. Delegate Mohammed Yusuf Haji: Mr. Chairman Sir, I am delegate number 1, Mohammed Yusuf Haji. I am just thinking loudly and wondering what has happened to our National Anthem in a

Constitution making because it rallies behind the whole nation, when the National Anthem is sang if you are going to war you know you are going for your country, where has it been left.

Hon. Delegate Otieno Kajwang’: Thank you, I think you are getting into the discussion. We shall do that immediately we come back, I will give you the time to comment. If you want to comment on what has already been presented here please wait we for the break, put your questions and your comments in order we shall call you. I think we break for tea. 11.00 o’clock you will hear the bell.

TEA BREAK

Hon. Delegate Otieno Kajwang’: If you want to comment, I will call you and if you are still taking tea, we will skip you, may be you will come at the tail. I just want to tell you how I will proceed. So far we have many many comments, but we will give you two minutes. Therefore, make sure you hit the nail on the head within two minutes and give another person a chance. This is not the debate, the debate will be opened later where you will have ten minutes. But we want your comments and questions so that they can be addressed by the presenters.

In the next one-minute or so, I will be calling Gitu wa Kahengeri, delegate number 316. Then I will go to delegate number 094 Hon. Kenneth Marende who wants to speak on enactment by Parliament and enforcements of Constitutional provisions. Then I will go to Honorable Kennedy Kiliku, delegate number 447. Then I will go to Professor Oniango, delegate number 221. Then I will go to Honorable Ntimama, delegate number 147. Then I will go to S.K. Torerei delegate number 462. After which we will move to delegate Lawrence Mute as we go on.

Everybody who brought his /her name or number, I will read the rest later, they are all here. Anybody who still wants to comment on something, just make a small note, give to one of our messengers around to bring it up here so that we don’t bypass anybody. Alright, I will now want your attention. I am waiting for one of the Commissioners to come who was one of the presenters and then we will be on. One of our Vice-chairmen wishes to make certain announcements at this time, just before we start. Thank you.

Hon. Delegate Kointanet Ole Kina: Thank you very much Mr. Chairman, may I first of all take this opportunity to thank you all, distinguished delegates for your support of the process. I would like to make the following announcements:

1. The steering committee will continue to receive the names proposed for various technical committees. So that this will provide for the immediate constitution of the media and the privilege, discipline and welfare committees. These committees will be able to address the various issues that are arising up like the questions of welfare, the questions of media will be catered well by these committees. At the same time, I would like to remind the delegates that there is some money that we picked yesterday and we are still waiting for somebody to come and claim it. There is also a delegate who has left his keys in the car and there is someone who has the keys. So, if you left your car keys in the car, (interruption).

Hon. Delegate Kointanet Ole Kina: We will give you the registration number of the car thereafter. Thank you Mr. Kajw'ang.

Hon. Delegate Otieno Kajwang': Alright, we can now proceed. Mzee Gitu wa Kahengeri, delegate number 316 wants to comment on national days and national values. I recognize him, he is just there. One of the veterans. Two minutes. Can you put the mic. on.

Hon. Delegate Gitu wa Kahengeri: My name is Gitu Wa Kahengeri, delegate number 316 from Thika district. Ni shukrani Bwana Mwenyekiti kwa sababu kazi ambayo ilisomwa hapa leo ilinifaa sana. Na mimi ninataka kusema habari ya Preamble. Nimeona ni vizuri sana kwa sababu Commissioners walikubaliana na maoni ya wananchi juu ya struggle for independence ambayo iliwezesha sisi kupata uhuru wetu kutoka kwa wabeberu. Lakini vita hivi vya kukomboa nchi hii, havikuanzia juzi tu. Kulikuwako na war of resistance, mbele kabisa, wengi wetu hatukuwa tumezaliwa. Watu wa nchi hii kutoka Wagiriana, kutoka Wakamba, kuendelea mpaka Wakikuyu, Wanandi Wajaluo wakikataa kabisa Mubeberu kuingia katika nchi yetu. Halafu baadaye tulikuja katika Mau Mau struggle for independence na kutokea hapo tena, tukafikia democratization struggle. Hii ndiyo sababu yake nimesema, nimefurahishwa na hiyo sana na mimi ningeona ya kwamba wakati tutakapokwenda katika working committee tungeweza kuweka mambo hayo sahihi kwa sababu ya

watoto wetu watakaokuja baada yetu. Hiyo nitamaliza hapo kwa sababu ni dakika kidogo na mimi nafikiri nitapata wakati kuzungumza.

Ya pili ni habari ya national days. Tunafahamu tarehe moja June ndio wakati ambao bendera ya Mbeberu ilishuka na tukapandisha yetu. Hii ni siku nzuri ambayo vile vile mmesema iendelee. Halafu Madaraka day, lakini ningependa sana kwa sababu tumekwisha tambua struggle for independence, ingefaa sana kama tungekuwa na 'heroes day.' Wakati mimi nasema heroes day, mimi ninamaanisha ya kwamba ukikosa kumtambua shujaa, basi yamkini wakati mwingine vita vikija, huwezi kupata shujaa wa kupigana. Nitamaliza hapo kwa sababu mimi najua dakika zangu zimekwisha. Lakini natumaini nitaendelea na mazungumzo kama tukienda mahali ya mazungumzo hasa. Shukrani Mwenyekiti.

Hon. Delegate Otieno Kajwang': Mzee, thank you for being specific. We are taking comments, you will have time for debate which will be ten minutes but we will now restrict you to two. But if you extend by two minutes, I will ring a bell. So, I want to ask Hon. Kenneth Marende number 094 to make his comments on enactment and enforcement. Where is Marende? Give him a microphone so that we don't take too long.

Hon. Kenneth Marende: Thank you Chairman, my comments are on enactment generally and it is my view that Draft Constitution as prepared by the Commission is most wanting. In the sense that, in not less than thirty instances, the Commission says that Parliament shall enact a law to bring into force the provisions of various sections. As far as I am concerned, the drafting of the Constitution ought to have been such that it is clear and conclusive as to when various provisions will take effect. Instead of leaving it hanging. For instance, this morning, we have three situations, where the Draft says Parliament shall enact a law and these are in Article 4 (3). Article (5) 2 and Article (8) 2. That comes in just four Chapters. What is worse for example, in Article 4 (3), it says, Parliament may enact legislation to give effect to this Article, 'may.' That means it is in the discretion of Parliament whether or not to enact a law to bring into force the provisions of that Article. In my view, that leaves it too loose. We have a situation for example in this country, where the Independence Constitution said, Parliament shall enact a law to say at what age the Attorney General shall retire. Up until today, no

such law has been enacted. It is my proposal that this ought to be avoided, that the provisions of the Constitution ought to be clear, expressive and conclusive. Thank you.

Clapping from the audience.

Hon. Delegate Otieno Kajwang’: Thank you. You have done so within time, so I didn’t even have to ring the bell. Kennedy Kiliku, Defence of the Constitution, International Agreements and Capital City.

Hon. Delegate Kennedy Kiliku: Mr. Chairman, I am sure this Conference will come up with a very good Constitution. So long as Parliament is at liberty to make amendments at committee stage, the Constitution which we will come up with can be diluted by the Parliament. Why should we have a provision that this Constitution with which we are going to come up with, no institution including Parliament will be at liberty to make any amendments and should there be any amendments, it should be done by majority wishes of the people of the Republic of Kenya. International agreement, there is an omission because we have international conventions by the National Labour Organization, which have been ratified by the Kenyan Government but have not been given legislation by Parliament. Therefore, we need to have a provision that these international conventions which have been ratified, be legislated after this Constitution so that the trade unionists can have legal authority when they are negotiating for a fair practice in the Labour movement. Thank you Mr. Chairman.

Hon. Delegate Otieno Kajwang’: Thank you very much; I will go to Hon. Haji number 31 on Anthem, Capital and I think on various books.

Hon. Delegate Yussuf Mohammed Haji: Mr. Chairman, last time I raised the question of National Anthem. I think National Anthems are always very important instruments in any nation and I don’t know whether it can find a place in the Constitution. That is one. The second thing Mr. Chairman, to restrict the capital alone, what about if a time comes when Kenya as a country will decide to relocate the capital to another place. It has happened in Tanzania. Will it entail changing the Constitution again? Something, which we are tired of. So, this is something that should be considered. The other thing Mr. Chairman, if the presenters are referring us to many books and sometimes it becomes cumbersome carrying all these books. Will they be kind enough, when they are circulating the agenda

for the meeting, and they know what they are going to discuss, to just write that you come with these books so that we don't have to carry loads and loads of books to come up with them here. Thank you very much.

Clapping from the audience.

Hon. Delegate Otieno Kajwang': I think at his age, he doesn't want to carry so many books. I think we will move to Professor Oniango on national days and citizenship. You carry your number so that they see you quickly.

Hon. Delegate Ruth Oniango: Thank you Mr. Chairman, I do realize that this point is just a small comment and I would like to comment on the general state of the document. It seems like we are writing for today or for the next ten years. We have to be writing for posterity. So one should go through that document and make sure that we do that. Actually, so that it can outlive us, this particular document can outlive us. Having said that, there are specific aspects that I want to comment on. National days for example, I believe that one can have National days without necessarily observing them as public holidays. This is for history's sake. We have to observe certain events and we can't really specify them because there will be other events coming that we need to be recognized and we don't have to put them in the Constitution.

Then national symbols, I was thinking of national symbols, currency, dress code. National symbols give us identity but they should also be able to instill a sense of patriotism. I don't see that in the document Mr. Chairman. Then gender issue, I am a woman and we must address the issues of women at the moment. But what will happen when it will be men that are marginalized. So we need to put it in such a way that it captures the future as we move ahead. Then we have the issue of citizenship. What about children who are born to parents who are Non-Kenyan. Some of us have children who were born elsewhere and they are citizens of that country and they enjoy the rights of that country. I don't see it here.

Finally, the issue of capital, increasingly many countries are having a commercial capital and a seat of Government. Then the whole issue of decentralization means also Mr. Chairman that Nairobi may be

the capital. But we need to decentralize, not just Governors but also economic resources as well. I take the issue of sub-capitals as we go down to Provinces. Thank you.

Hon. Delegate Otieno Kajwang’: Thank you so much Professor. We are taking notes of the comments you are making. If you have a proposal to make, don’t be shy to make it, then we take notes as we respond. I think my Commissioners or presenters can still take some more comments before they respond. I want to ask Mr. S.K. Tororei (462). He wants to make a comment on Chapters (1- 4).

Hon. Delegate S.K. Tororei: Honorable Chairman, Asante sana and I would encourage your eyes to be coming this way also, there is a lot of comments from here that your eyes don’t reach here. At least they have reached now. Honorable Chairman, when we look at values, look at the national values that we want to espouse. One of them is the value of dignity. Our human dignity and I just want to underline the importance of these set of values. For instance, just two, three weeks ago and all of you kept quiet. Disabled children and their children, were being kicked on to lorries for the crime of trying to see the President they just elected the other day. The only crime they committed was to go to State House which is built by the tax payers, I mean by tax money and to try and see the Head of State and then it is criminalized. I think that is a situation this Constitution is trying to guard against. So that is a positive note, that we need to espouse a set of values so that even our askaris will know that, you don’t throw somebody on top of a lorry for wanting to see his or her President.

Mr. Chairman, the other thing if you look at Article 14 (12), Affirmative action seems to beand I beg the indulgence of my honorable sisters in the sisterhood of a man, seems to be overbearingly emphatic on Affirmative action for our sisters. I would like to propose that they extend their heart of generosity and also embrace other groups that also need Affirmative action. Even within themselves within that constituency, embrace Affirmative action inside themselves or inside that sector. So that Article 14 (12) then if we succeed in our negotiation, will then be broadened. So that instead of just saying, one third of everything shall be women, we find a way that they can embrace the other chicks and broods everything else.

Finally Chair, on the issue of the National Anthem, I don’t know why we are shy, I Thought Honorable Haji was trying to tell us that when we come here, we sing the National Anthem. Thank you Chair.

Hon. Delegate Otieno Kajwang’: Thank you very much, you have finished on time. I didn’t have to ring that. But we are doing very well. I will go to Hon. Ole Ntimama, number 147, Preamble, and Supremacy of the Constitution and Sovereignty of the people.

Hon. Delegate Ole Ntimama: Thank you Mr. Chairman, I want to state very briefly on the Supremacy of the Constitution and the Preamble. Mr. Chairman, the Constitution is a sacred instrument, which establishes and regulates affairs of Government and its operations. Mr. Chairman, the Constitution is a fundamental of the land. It is the principle on which all other laws gravitate around. It is like the sun where all known planets in the permanent, orbit around. The Constitution is supposed to provide for economic growth, political stability, individual freedom and social progress. Mr. Chairman, the Constitution of this land is supposed to be owned by the people of this country. Infact the preamble Mr. Chairman, should start by saying, ‘We the People of Kenya, congregated in the Bomas of Kenya do hereby...’ and then we continue. Mr. Chairman, it is our Constitution. The people of Kenya have given us the mandate to construct this Constitution for the benefit of our children and our children’s children. It is our document, this is why Mr. Chairman, some of us get annoyed and seriously irritated by people who suggest that this Assembly should be dissolved.

Clapping from the audience.

Because the person of their own choice was not elected as Chairman of such and such a committee.

Clapping from the audience.

They also say Mr. Speaker that some of us are not experienced. How could have the people of Kenya sent us here to construct this sacred document if they knew we were not experienced. We are experienced Mr. Speaker and all the people who are here have been sent by their own people to deliberate on construction of this Constitution Mr. Speaker. Some say, ‘some people come from small districts.’ We don’t have in the current Constitution, a small or a big district. They are all districts of this country and Mr. Speaker they are all equal. I don’t want to

Clapping from the audience.

And these are the people Mr. Speaker whose heads should be examined by specialists to make sure that.....

Clapping from the audience.

Because definitely Mr. Speaker they are not doing the right thing. I was very impressed Mr. Chairman for the comments that were made by our brothers who went to Lancaster House in 1962 and brought in a Constitution. Mr. Chairman but before I sit down, I am sure you know what happened to this Constitution, it was killed. It was murdered. It was abrogated so that the rule of one man will prevail. So that authoritarianism, despotism will remain in this country. That is where we are now Mr. Speaker. Unless we change this Constitution and we hope and we have a lot of hope in the NARC Government that they will help us get rid of despotism, corruption and dictatorship. Thank you Mr. Chairman.

Hon. Delegate Otieno Kajwang’: Thank you very much. We are taking note and I can assure you we are going to comment. But I want to give two more people before I ask my presenters to comment. Lawrence Mute. I am overwhelmed by the number of people who want to comment but we will give chance as you came. So Lawrence Mute. Where are you? You didn’t give your number.

Hon. Delegate Lawrence Mute: Thank you Mr. Chairman, I am Lawrence Mute, my number is 455. Honorable Chairman, as we proceed in this process of making a Constitution, I hope and I would urge all Honorable delegates to realize that Constitution making is about building a consensus. Consensus arise only because in the first place we come in perhaps as a country but at the same time as people with diversities. So that either we come from different cultural backgrounds, we come from different religions yet ultimately we must continue living as one country, as one united country. In that regard, I am fairly happy that the kind of objectives and principles which are set out in Article 14 are a basis which we can be able to use to help this country proceed. I should say that because I have had many arguments which for example say that we should be concerned about how much it cost when we make a new Constitution. I agree with the gentlemen who went to Lancaster. Our concern must not be purely in the basis of cost. Our concern must be for fairness. Fairness does not mean that all of us must have

the same. Fairness is not about formal equality in terms of the law. That the law prepares a position where we are formally equal. Fairness is about substantive equality and I would hope, I would want that even in the national goal, that principle of fairness at a substantive level is included.

At the same time Honorable Chairman, I do notice that we should not only be talking about tribes, we should also be talking about duties. Yet I don't see it here, we have a duty to pay taxes. So that is something we need to look at, so that we include in the draft Constitution or in a new Constitution. Thank you very much Mr. Chairman.

Hon. Delegate Otieno Kajwang': Thank you so much, I agree with you. I have also been wondering where is the duty to pay taxes. Honorable.....no no...this is Daniel, but we are all Honorable delegates. Honorable Daniel Rasugu 579, Political Parties. I don't know whether it comes in to what we are just discussing. I will give you the chance, let's see how it comes on.

Hon. Delegate Daniel Rasugu: As you have heard from the Chair, my name is Daniel Rasugu, delegate number 579 and my contribution concerns the order of papers. I will persuade this Conference to agree with me that the time accorded to the delegates to go through the contents of the order papers of the day, is not sufficient enough to give them time to study and to prepare for effective and efficient contributions from the floor. I therefore request the Chair that the steering committee should consider and seriously so, to prepare order papers for the following day ahead of time so that before we break for our various areas of residence, we are in receipt of those order papers so that we can prepare adequately before we face the challenges of the next day. Thank you Mr. Chairman.

Hon. Delegate Otieno Kajwang': Thank you very much. I want to move quickly to Lawrence Mute. Is it the same person I had called earlier? I am sorry. Dr. Odhiambo Mbae on the Elderly and National Goals.

Hon. Delegate Odhiambo Mbai: Thank you very much Mr. Chairman, it is just a small thing. I realize that the national goals, values and principles under 14 (12) and also 14 (13), we have actually recognized and very appropriately did so that, the Republic or the State should try to promote the interests or the welfare of groups. But Mr. Chairman, just to be consistent with the Bill of rights, I

think that the elderly should also be equally identified and recognized as a group that the State or the Republic should endeavor to promote its welfare in society. Because if we do that under the National Goals and Values, then even the youth and the middle aged will know that it is their responsibility to care for the elderly and the State will also ensure that there are certain obligations that it has, to cater for the elderly.

Secondly Mr. Chairman, under 14 (12), I think this is a very small technical thing. I think what you meant or what the Draft has meant there is that a minimum of 1/3 and not just 1/3. Because, to say that 1/3 would mean that infact if they are more than 1/3 then that is again a breach on the Constitution.

Hon. Delegate Otieno Kajwang’: Thank you very much Dr. Mbae. I am moving quickly. Dr. Khalwale number 052. You didn’t say what you wanted to speak about, but just proceed.

Hon. Dr. Bonny Khalwale: Thank you very much Mr. Chairman, I am Dr. Bonny Khalwale, the MP for Ikolomani. Ladies and Gentlemen, I am a firm believer in African culture and this brings me quickly to the section in this draft concerning language. I am proposing that it is wrong for our Constitution to give the impression that our languages have to assume a second position. For that reason, the position of 91 I suggest it remains that Kiswahili and English be the official languages. However, we should do away with 93 completely and amend 92 to read, ‘all indigenious languages to be national and to be developed as national languages.’

Secondly, Mr. Chairman, on the issue of national days, I suggest that 13 (A) and (B) be merged so that it becomes A and B to make the independence day. Then C, should instead become the national heroes day. Ladies and gentlemen, you have been carefully selected from your communities and therefore you are the best from where you have come from. I believe therefore that you are heroes. May be if we expand this, it will give you a chance for this special role we are playing here today. To also have your name inscribed on a special stone build somewhere in Nairobi, around Parliament as a hero. Ladies and gentlemen, there is a very contentious issue of Article 12. I suggest that to put there the limit of 1/3 of elective and adoptive positions is to assume that our women don’t deserve more. I am therefore saying that it should change to read, ‘The State shall implement the principle that women be supported to compete equally with men for all elective and appointive bodies. Lastly Chair...

Hon. Delegate Otieno Kajwang’: Daktari you are out of time but lastly...

Dr. Halwale: Lastly Chairman, there is a lot of mischief when it comes to matters of court, I am not a lawyer but sometimes I am told. If you look at section 22 (1), we are told that a child found in Kenya who appears; that word ‘appear’ can be misused Mr. Chairman. I am therefore suggesting that it should read, ‘A child found in Kenya who is certified’ rather than ‘appears’. Then lastly, it is wrong to assume that eight years should be the cutoff mark. It is better for us to accept the international standard which is any child below the age of thirteen is a child and therefore should be the one who should be certified as a child. Thank you very much.

Hon. Delegate Otieno Kajwang’: Thank you very much, those were very focused comments. I want to take one last one before we... this is the very last one before I give the presenters. Koigi wa Wamwere, number 204 ‘haraka haraka haina baraka’, that’s what he wants to talk about on chapters three and four.

Hon. Koigi wa Wamwere: Mheshimiwa mwenye kiti, nadhani umeninukuu kimakosa kidogo lakini si hoja. Haraka haraka haina baraka ninayotaka kuongea juu yake ni kuhusu speed nadhani iliyotumika wakati wa kuelezewa yaliyomo katika sura tulizozipitia mpaka hapo. Nilikuwa nataka kupendekeza ya kwamba kama Katiba tunayoiandika itakuwa Katiba ya kudumu makarne na makarne ya miaka na wala sio Katiba ya kubadilishwa au kuandikwa tena baada ya miaka arobaine kama tunavyofanya sasa, ni muhimu kabisa makamishena wapate muda wa kutosha kutuelezea kila kifungu pasipo ya kuharakishwa. Nilikuwa nadhania labda sielewi vizuri lakini mbio walizokwenda nazo, mambo mengi mimi sikushika. Kwa hivyo ningetaka wapewe muda zaidi wa kutuelezea kila kifungu ili tuelewe maana ndio tukifanya uamuzi, uwe ni uamuzi unaotokana na kuelewa vizuri.

Jambo lingine ni kuhusu maadili, malengo na kanuni za taifa. Bwana Mwenyekiti mimi naamini ya kwamba kuna jambo moja ambalo limeachwa nje ya maadili, malengo na kanuni za taifa letu na hili ni jambo linalohusu... au niseme ni ukabila na ubaguzi wa rangi. Nimejaribu kusoma kikamilifu iwezekanavyo lakini sioni pahali ambapo tunasema jamhuri itafanya kila iwezalo kuhakikisha ya kwamba hatutakuwa na ukabila na ubaguzi wa rangi katika nchi hii. Ni maoni yangu ya kwamba

hakuna tatizo kubwa katika nchi hii yetu na katika Afrika hasa tukikumbuka yaliyotendeka hapa Rwanda mahali ambapo palikuwa na genocide. Hakuna tatizo kubwa la kitaifa linaloshinda ukabila. Kwa hivyo, ningetaka kupendekeza labda namba saba kwa hiyo sura iwe 'jamhuri itachukua hatua za kufaa za kuondoa aina zozote za ukabila na ubaguzi wa rangi'. Hii ni kwa sababu sioni ni namna gani tunaweza kuacha taabu kama hii nje na tuseme ya kwamba tunaandika Katiba ambayo itatusaidia kesho. Ukabila utararua kila kitu. Umerarua Makatiba mengi na si vigumu kurarua hata hii.

La mwisho na nitafanya haraka sana ni kuhusu uraia. Nilikuwa nataka kupendekeza ya kwamba mahali paandikwe kwamba uraia hautauzwa tena kwa pesa kwa sababu tunajua watu wamekuwa wakinunua uraia wetu. Jambo lingine ni kuwa kila raia awe na uhuru wa kuishi pahala popote nchini mwetu kwa sababu tumekuwa na tatizo kubwa la mtu kuitwa raia wa nchi hii lakini ukienda kuishi pahala fulani unaitwa mgeni. Ningetaka kupendekeza Mkenya asiwe mgeni tena nchini mwake. Pahala popote pale nikitaka kuenda kuishi Marsabit niruhusiwe. Yule anakaa Marsabit akitaka kuja kuishi Nakuru, ajisikie nyumbani. Kwa hivyo ningependelea sana pawe na kifungu cha aina hiyo. Asante sana Bwana Mwenyekiti.

Hon. Delegate Otieno Kajwang': Thank you very much. Comments should be specific so that when we give you the time to debate you will have a little more time, nobody will hurry you because this is your Conference. I now want to give Dr. Muigai to deal with a bit of the questions and my sister here says that any question which was raised relating to gender and affirmative action she will deal with, you can take the rest.

Com. Githu Muigai: Mr. Chairman, I want to clarify something that delegates have raised and that is about the red book. The red book is intended to assist delegates to appreciate the thinking of the Commission after receiving views from the public when the draft was published. I want to confirm that the official document of the Conference, the document under discussion is the green book. This is the draft and it is what we shall alter, amend, re-work or reward in the manner that you gentlemen and ladies here will decide. We prepared this document to help you understand how we treated the comments that the public made and over and above all else, we prepared the red document because even by our own assessment there were glaring editorial and other technical problems in the original

draft. I do not want to go into the circumstances under which the original draft was released but most delegates are aware there was a very serious time constraint.

Now to your comments, Mzee Gitu Kahengeri, I think we are in agreement about heroes day and independence day. Hon. Kenneth Marende, I would like to draw the Honourable members' attention to Schedule 6 of the draft on page 73 which creates a legislative time table for Parliament with very specific time Schedule and therefore it would be inaccurate to suggest that the Commission has left Parliament free to make or not to make law. As a matter of fact, we have given Parliament a statutory limit and in principle, a citizen of Kenya can bring an action to demand that Parliament should enact law in accordance with the promise of the Constitution.

Honourable Kiliku, on the question of the amendment of the Constitution, this is a matter that the Commission was very concerned about. If you look at the draft on chapter 18 on page 294 and maybe one of my colleagues will be talking about this later, we tried to put certain amendments beyond the reach of Parliament itself. Here, we stated that Parliament cannot amend certain sections of the Constitution without invoking a referendum. In our view, and we have set out some of those aspects there, we thought that there are aspects of the Constitution that are so fundamental that before Parliament amends them, the people should be involved in a referendum. You may feel that we did not go far enough and maybe proposals will be forthcoming in that respect.

Again Hon. Yusuf Haji raised the question of our National Anthem and I would have thought that that is one of the issues that would have been addressed by my colleague who comes later. The other issue Mr. Chairman moving very quickly, I think that Prof. Oniango has a valid point that as a matter of drafting we should probably deal with the gender question in a more neutral way because one of these days men may be the minority and they may be the ones needing special protection and I suppose we could reward that so that men also when the time comes they will also have their 1/3.

But now that I am not on that principle of 1/3, the thinking of the Commission is that we wanted to create a baseline below which representation should not fall. We did not mean that women should only be a third. We meant that women should not fall below a third. They can be half, three quarters,

they can be more but one would hope that they will not be the whole assembly because again then men will be left out and we probably will take care of that.

I did not understand Prof. Oniango's question relating to children born to non-Kenyans. Our concern with citizenship is the concern of the children of Kenyans and my colleague Kavetsa Adagala probably will respond to that. Hon. William Ole Ntimama raised the issue of the Preamble and how we can re-work it and I think that probably we will go into that later. My friend Lawrence Mute talked about duties of citizens. As a matter of fact, this is one of the innovations of our Constitution. We do have, and one of my colleagues will be talking about it later. The duties of a citizen if you look at page 6 of the draft, Article 15, there is a whole section there on the duties of a citizen including to acquaint themselves with the Constitution, to uphold and defend it, to exercise democracy, to engage in work because this Constitution is against lazy people. It says that our citizens should engage in work and contribute to the advancement of the society. So I believe we have tried to deal with that but maybe we should add a few more things.

Dr. Mbai talked about including the elderly in the national goals. I think we are agreed that that is an omission and ought to be addressed. Dr. Halwale's talked about children found in Kenya. I think I should make a clarification here. In this draft we were trying to address the question also of international law on the treatment of women. If a child below the age of seven years is found in Kenya, there can be no certification because it is a child who has no support or has no ways of as it were of speaking for himself. So, whereas the honourable delegate's formulation would probably be better, certification, we will not achieve what we want if we insist on certification. All we are saying is that, maybe I should give a little bit of the background. If you look at street children for example, we have street children in Kenya who are never able to acquire a Kenyan identification card because they are asked, can you produce your father? 'No'. Can you produce your mother? 'No' and that is part of the problem.

We are saying that the law should assume that any child found in Kenya under the age of seven is a Kenyan. It is a small price to pay, we thought, in order to cure this problem that we have had in this country.

Honourable Koigi Wamwere says we need time to make explanations and I probably would agree with that save to add this, what we in the Commission would like to do is not to sell the draft to delegates. It is to explain to delegates the thinking that went into writing specific provisions. You honourable delegates may after listening to us still decide that we were wrong and that that thinking is inappropriate and you will of course be at liberty at that point to formulate a better provision. So, I am for my part in favour of more time being spent explaining the logic. And if I may say this with your permission Mr. Chairman, the draft represents three different processes that went into it. First and foremost were the opinions of Kenyans and they told us many things some of which we considered to be very important but not to be Constitutional questions. That is why you will find a red bundle of legislation that we have proposed.

The other thing that went into the Constitution were the opinions of experts. We spoke to thousands upon thousands of local experts, international experts and regional experts and finally, and for this we must take responsibility, we put in our own technical component as experts in our own rights in the various areas that we worked on. And therefore as we explain the draft to you I believe in my view it is important that we should explain why we received views which we did not incorporate and why we received specific views that we incorporated and so on and so forth.

Finally, I agree with Hon. Koigi wa Wamwere that probably the problem of racism and tribalism and all other negatives prisms ought to be addressed in the national objectives. I thank you Mr. Chairman.

Hon. Delegate Otieno Kajwang’: Thank you very much. The next.....

Com. Kavetsa Adagala: Thank you very much for the comments honourable delegates. On the National Anthem, I would like to say that in a number of other world Constitutions the whole anthem is put in a Schedule. So, Hon Haji probably it is not just a matter of mentioning the National Anthem but the whole National Anthem, perhaps you could propose that.

The other issue which we didn’t mention but when we say the ‘peoples of Kenya’ we always talk of 42 ethnic groups. I don’t want to say tribes because it has other connotations. But there were very many people of Kenya who told us we are not ‘other’. The Malakot told us we are not ‘other, the Elmolo, all

these people told us we are not 'other', we are people. Perhaps there can be a Schedule created also for the people of Kenya. Who are these people of Kenya?

On gender, affirmative action on gender has a limited time Schedule. Probably that's what we need to put there, ten years or whatever. When there is a level playing ground, then it is okay. We did not put it there and it is an oversight because affirmative action on gender always has a time Schedule but as you can see the elderly and youth will always be with us. We all grow into those categories, are born into those categories and grow out of them. You cannot also put a time Schedule on people with disabilities for affirmative action nor minorities unless they are going to populate very quickly.

Also, at least 1/3 is really, we were rushing through and that got left out in this particular instance but it comes out later in the Bill of Rights. It is at least 1/3 but as you know Parliament now is at least 1/3 male. They are nearly 90% and that is at least 1/3 men. So we want the women also and we hope that we will catch it if we put the time Schedule so that it will not pass that time where we have another imbalance. The proposal was made by experts that we say of the opposite gender and so perhaps we need to do that so that we don't have to unravel the whole Constitution just to change it again.

Children born not of Kenyans, I understand Dr. Ruth Oniango means on Kenyan soil. I think she means on Kenyan soil and that has been taken on board and we shall discuss in the About children again, the age of eight in addition to what Com. Githu Muigai has said, the age of eight by that time, by our Bill of Rights which will come later, that child should be in school if we have free and compulsory education. So waiting until thirteen although it is a logical way it was presented here would be disadvantaging some child. That age is taken that by that time the child should be well into school. Then at least 1/3 came up. I think that is all that I can comment on.

Hon. Delegate Otieno Kajwang': Thank you very much. I must tell you that we are overwhelmed that we have more than seventy delegates who want to comment. We have done very well we have already had almost fifteen but because they may repeat themselves, you might find that what you wanted to raise on the Preamble has already been raised or has already been answered, you may when called upon decline, so that we move faster. There are also some people who have written to me

saying 'what happened to mine'. They didn't know that we are progressing very well, that all of you will have a chance. Now, Hon. Mirugi Kairuki, 043.

Hon. Delegate Mirugi Kariuki: Thank you Chairman. My name is Mirugi Kariuki Member of Parliament for Nakuru town. First I would to just add a footnote to what my colleague Hon. Halwale has said about language. That is an issue of concern. The use of the word 'official' and 'national' seems not to be very clear to me and in my view while official language may be very clear that Kiswahili and English would be used, my understanding of the national languages is that all Kenyan languages are indeed national languages. When we talk about national values we are talking about values that we carry through our languages and cultures and it is important that we don't play down this issue of language because we know that the African communities did not have the ability to write and record their history. The history is to be found in their song, in their languages, in their proverbs and these are very essential parts of our value system that we have to carry forward. So, I would agree that in fact we should elevate all Kenyan languages to be national languages and be given necessary Constitutional recognition.

Article 3 on the enforcement of the Constitution, it is important to understand the background from which we are coming, that we have been unable to access courts because of the role of locus standi. Each time you go to court to defend a public light you are shut out to say it is not your business, it is the business of the Attorney General. I think that the language of Article 3(1) should be made absolutely clear so that any person who witnesses a violation of this Constitution whether he is not the victim of that violation, that person should be able to access courts. I say so because we have children, we have people who are really voiceless so to speak, we have marginalized communities who may not be aware about their Constitutional rights and if you are aware of their rights you should be given access to go to court to make sure that the Constitution is upheld. Thank you.

Hon. Delegate Otieno Kajwang': Thank you very much honourable. What I didn't ask you to do which I should have was to ask you to indicate the organization from which you are coming so that I don't have MPs repeating themselves. But we will go on since some people have indicated like the one I am just about to read, Rev. Maina Patrick Musungu 529, Religious Organizations.

Hon. Delegate Rev. Patrick Maina Musungu: Thank you Mr. Chairperson. My names are Rev. Patrick Maina Musungu from Religious Organizations. I would like to draw the attention of the Chair to the speech made yesterday by the Chairperson of the Conference and in particular in his paragraph one, the second sentence which I quote, 'The Commission replaced chapter 10 of the Draft Constitution which is now being tabled and we would wish the Conference to debate this version as part of the Draft Constitution'. Where is this version?

Hon. Delegate Otieno Kajwang': Alright. Peter Bwana, 516 on goal number 15.

Hon. Delegate Peter Bwana: Thank you very much Mr. Chairman. I have a small but I think important comment to make on goal 15. Mr. Chairman, I am Peter Bwana from the Seventh Day Adventist Church, representing the Religious Organizations. Mr. Chairman, that talk that the republic shall promote equitable development. Chairman I feel that that can be strengthened by including equitable and sustainable development. Mr. Chairman the concept of sustainability is very important. If we sustained what we had developed in the past Mr. Chairman, Kenya could be very far but instead we did not really sustain it but allowed it to collapse and regress. So Mr. Chairman I feel that is very important if we can include the idea of sustainability to strengthen that goal. Thank you.

Hon. Delegate Otieno Kajwang': Thank you Mr. Bwana. Moving quickly to Teresa Osunga Ogutu number 411.

Interjection: (inaudible)

Hon. Delegate Otieno Kajwang': A point of order, yes we will take that.

Orie Rogo Manduli: (inaudible)

Hon. Delegate Otieno Kajwang': Honourable delegate I take you. Thank you for correcting. Honourable delegate Teresa.

Orie Rogo Manduli: The writing title here is honourable for everybody. Some of us are here with titles which are even heavier than honourable but we put them down for the word honourable. So use honourable for everybody. I don't want to hear professor this, reverend so and so, Mrs. so and so, it is honourable for everybody because you seem to selectively call only Members of Parliament honourables. Take note of that and everybody here is honourable, full stop. Thank you.

Hon. Delegate Otieno Kajwang': In fact she is reminding me of the rules because when we were taught the rules we were told everybody is an honourable delegate. Honourable delegate Teresa Osunga Ogutu, 411.

Hon. Delegate Teresa Osunga Ogutu: Honourable delegates, fellow delegates, Mr. Chairman, I thank you for having observed that because I also wanted to say that we are all people and we need to be honoured in the way we should. Thank you. I have this to talk about; first, we need to begin with God and end with God everyday for this thing to be successful. Did we pray today? Okay, thank you.

The other point is that we need to continue to consolidate our views and that means I thank the Commissioners for having given us hotels to go to after this so that we can always consolidate our views. There should be nothing like threatening this because there are people who like asking when people have remained alone the way the devil acted on Eve and made her eat the fruit and to give to Adam and it makes us die upto this day. So let us take precautions.

Hon. Delegate Otieno Kajwang': Thank you.

Hon. Delegate Teresa Osunga Ogutu: I want to comment concerning at least some of these chapters we talked about in the morning. In chapter one, we know that the people are the ones who have centers and that they need to know what democracy is and that we need to be practical by doing what is called affirmative action in all that we say. Then, I also wanted to comment concerning the laws and where they emanate. I believe that the laws also emanate from the Decalogue, from the Ten Commandments. So that should also be put into your minds. I also want to comment concerning other things that have been said concerning citizens and marriage, that is Article 20. Actually we should

know that at times marriage breaks in such a manner that people cannot return; it breaks to a point of no return. So, how will these people be treated? We should think about that. Thank you.

Hon. Delegate Otieno Kajwang’: Thank you very much. We are moving quickly and I am giving the next position to honourable delegate Aswani Sami 382, followed by honourable delegate Joyce Umbima, followed by honourable delegate Oduor Ong’wen. Be prepared in that order.

Hon. Delegate Aswani Sami: Honourable Chairperson and delegates, partly mine has been dealt with by Hon. Com. Muigai. It was concerning the Draft Bill. Apart from what he has not mentioned is the main report. My understanding is that the Constitution of Kenya Review is people-driven, that is Wanjiku, but we cannot be able to know what our people gave when the Commissioners were going round in the constituencies. This is when we were creating checks and balances. The Commission has already given us the main report and ours is to go through the main report to see whether they have incorporated the views from the people before we arrive to the Draft Bill. If we don’t do that, honourable Mr. Chairman I am afraid we might come up with our own views and we run away from the views of the people who have sent us here which may create some misunderstanding. Thank you.

Hon. Delegate Otieno Kajwang’: That is a very good point made by, I will get your name again, but in that order as I read them. Aswani has just spoken, honourable delegate Joyce Umbima.

Hon. Delegate Joyce Umbima: Thank you honourable Chair. My name is Joyce Umbima, delegate 466. I want to start by thanking the Commission for having for the first time recognized children in the whole of this document. For the first time I think we see them visibly and as we see them visibly, I want also to talk to you dear Delegates to look at the edition the Preamble, which freely sets up the edition for ourselves and our future. The Preamble recognizes us men and women as people of aspirations, but it has missed out one very important factor that is our children boys and girls. I want you as Honourable Delegates to reconsider this preamble and give a recognition to the aspiration of our children whom this Constitution must be**(Inaudible)**. That is a humble request that I’m making to you.

I also want just to make a reference to the citizenship; I want to commend the Gender Commission for having recognize women in terms of the ability to bestow citizenship to their husbands or spouses. I think this is a progressive way of looking at us all and giving us all equal opportunity. On the issue of children who are found on the soils of Kenya and are lost, I think this has been responded to but I wanted to assure to the Delegates that, we have very many children who are found on our soils they are lost, they are stateless. Perhaps for the first time in our history, we will be considering them as our own nationals by giving this recognition. Thank you Honorable Delegates.

Hon. Delegate Otieno Kajwang’: Thank you very Honorable Delegate Joyce Ombima. We will proceed to Oduor Ong’wen and then Honorable Delegate Professor Wangari Mathai to prepare after that and Honorable Delegate Fatuma Ibrahim to follow after them.

Hon. Delegate Oduor Ong’wen: Thank you Chair. Mr. Chairman my comment is on the issue of citizenship, Mr. Chairman I want to commend the Commission for comprehensively addressing the issue of citizenship and I think that the proposals here are quite progressive. However Mr. Chairman I have a small problem with the issue of dual citizenship, Mr. Chairman I would like to know the thing that went behind the issue of dual citizenship. Because if you look at article 16 Mr. Chairman, all citizenship of Kenya will get equal entitlement. Know Mr. Chairman lets take a person who is an Ethiopian and at the same is a Kenyan, and Mr. Chairman, God forbid, this person exercising that you make him a commander of a section of our Armed Forces and Ethiopia and Kenya go to war. Where is the loyalty of this person going to be?

Mr. Chairman, we are living in an age of International crime and drug trafficking and Mr. Chairman, I get a feeling that the issue of dual citizenship could easily be abused for the purposes of international crime, drug trafficking, money laundering and all these. So I think Mr. Chairman as we do discuss these, it is important that we give few consideration to this kind of circumstances. Thank you.

Hon. Delegate Otieno Kajwang’: Thank you in that order. Honourable Delegate Professor Wangari Maathai.

Hon. Delegate Wangari Maathai: Thank you very much Honourable Chair. I have several points so I want to go very quickly and say that in the interpretations probably comes much later but since we are starting with the people of Kenya, I thought that I might I might myself mention it here. I think fellow Delegates when we interpret the word Kenya what is Kenya? We the people of Kenya, what is Kenya? We need to define what is Kenya and when we define what is Kenya I think we need to remember that we are not the only inhabitants of this land we also have other forms of life that inhabit and they are also part of that Kenya. So I think we need go deeper into what is Kenya.

The other thing Honourable Delegates; I would like to join those who are concerned about culture, where we said on paragraph 9 article 9 where we say, languages I actually think that we should put culture rather than languages. Because culture encompasses much more, culture encompasses the language, religion, value, history, literature, creative works such as architecture and art, songs and dances, our technology, our accumulated knowledge and wisdom that we have carried with us for all the thousands of generations during which we have been leaving here. So when we say just language, we restricted too much which should say culture and I do believe that there are several delegates here who are very concerned about the fact that we have given culture very very little space in our Constitution. And it is partly because of the colonial history that we have experienced during which our cultures our African cultures were destroyed by the colonial system, which every colonial government must destroy culture and because so much of it was destroyed, most of us have almost forgotten and so we give it very little space. So I think that those of us who are concerned can probably meet and expound more.

I want to also comment on these concept of separating religion and the state. Somehow we may have just copied that statement, because we really cannot the way we are we never really separate church and state. We even have the word God bless Kenya in the preamble and yet we are saying these shall be a state without religion. We also pray , we pray every morning, so how do we separate religion from state? Then when we say in C, that we shall treat all religions equally are we saying that any religion that comes into this country any occult even devil worship is also recognized in this country and will be treated equally with other religions? I think we need to be specific perhaps we should say every registered religion, because then you streamline unless religion is registered by our registrar it is not recognized. Cannot be tolerated otherwise.

I want to say something about citizenship in a minute, I am also very concerned about dual citizenship. I think we are being over influenced by the fact that we have a few of our people outside and they would like to retain the Kenyan citizenship even while they try to get citizenship in those countries where they are. We are a people in many ways people of this region the African region are people who are not welcomed in other areas and I think it will be very dangerous for us to open our borders for anybody who wants to come into this country, when in fact we ourselves are having borders closed in front of our very eyes.

I want to say Mr. Chairman that in the preamble that , we should be committed there is in the preamble the second statement says: committed to nurturing and protecting developing of the individual etc. We should also say: committed to nurturing and protecting the well being of other members of community of the living in keeping with the fact that as I said earlier there are other aspects of Kenya. When a person takes a tree from here or a plant or an animal, are they not taking a part of Kenya? Should they not also being protected by the Constitution? Thank you.

Hon. Delegate Otieno Kajwang’: Thank you very much. Honourable Delegate Fatuma Ibrahim.

Hon. Delegate Fatuma Ibrahim: Thank you Mr. Chairman. My name is Fatuma Ibrahim Ali Delegate number 506 from Wajir, representing Womens Organizations. Mr. Chairman I want to bring to your attention on the article on citizenship. And I was wondering on with that article on giving citizenship to people. I come from an area where we have almost many identity cards as compared to Kenyans and these article says: equally entitled to a Kenyan passport and to any document of identification. My point is that the Kenyan Somalis were exposed, tortured and traumatized by issuing 2 identity cards called screening cards, and if you want to get a passport you have to present that and for you to travel, you have to verify your passport that you are genuine Kenyan. And I don’t see anywhere the right of citizen is addressing to rectify such as discrimination in this article.

My other question is, residence. In residence you have identified that few people will be able to reside in Kenya and asylum seeker and refugees are not recognized and Kenya is hosting several of those people and they are tortured by the security every day. I think we should handle that.

Then the other issue is about cession of citizenship and the Somalis suffered in this article seriously that many Kenyans were deported to other countries because of the influence of some powerful Kenyans who wanted to get rid of some people. I think we should be very clear on the board of registration, to decentralize people who have a say on that and who understand and know that so and so is a genuine Kenyan. Thank you.

On article 14, it says that the Republic is based on principles and democracy and shall promote the cultures of its people. I would like the lifestyle of the people to be included in that article because I think many Kenyans have neglected the role of pastoralism as a way of life, a lifestyle for a large population of communities and is that article should be included the lifestyle of people. Thank you.

Hon. Delegate Otieno Kajwang’: Thank you very much. Honourable Delegate Shakeel Shabir 406. Thank you, can I take that final procedure?

Hon. Delegate Daniel Irungu: Thank you. My name is Daniel Irungu 627. While appreciating the responses and incite that the Commission is giving us, I think there are very important contributions that are coming from the floor and I’m requesting the agency of the Chair if could agree here that we pull out substantive contributions that are being given by Honourable members and they can be sent back to the working Committees so that we assure that they are processed and discussed further until we are all satisfied so that we don’t repeat ourselves later in the course of this Conference. Thank you.

Hon. Delegate Otieno Kajwang’: Thank you very much. I said earlier that there are matters which have already been raised by some other Delegates, you can decline so that from here, we will go to the committees then from committees, in fact from here we will do a thorough debate now, 10 minute speech. You just raise the matter you want to raise if somebody has already raised it don’t bother to repeat it so that we move faster. I have right now 82 people who want to say something and we only have up to 1 o’clock. So if you don’t here your name don’t blame me. I will go to Honourable Delegate Julia Odthambo, then Honourable Delegate Raila Odinga in that order.

Hon. Delegate Shakeel Shabir: Thank you. I’m on the floor, I am not Sir?

Hon. Delegate Otieno Kajwang’: Yes Shakeel.

Hon. Delegate Shakeel Shabir: Honourable Chairman, Honourable fellow Delegates, the other items are already covered and I will not repeat them. I would like to bring to your attention on the section 10 perhaps we should be very clear on currency, and how, being one of the symbols of this country. The currency should perhaps only have the founder President and Heroes of this country. Going out to flags, to promote national pride I suggest that citizens may have the right to fly the national flag with dignity at their homes of the residence and offices if necessary.

On the issues of heroes, may I with humility submit that I think our veterans from Lancaster House suggested that all these Delegates should sign at the end of the Constitution and append their names too. May I suggest an appendix to the Constitution for the next hundred years or more, in case people forget who our heroes were starting from the very first hero up to perhaps the national heroes we are speaking about. And I don’t think for one minute I am a national hero or some of our candidates, but am talking about the National Heroes recognized perhaps we should have it on an appendix.

Finally Sir, there was a copy of the Constitution of Lancaster House that was mentioned that we may get copy of , I would really be pleased if we could get that copy and we could refer to that.

With humility, I would like to suggest that if we are short of time we be allowed to sit on Saturdays. It is only a suggestion. And finally Sir, talking about Heroes of Kenya and Africa we would like to recognize that a hero of Africa died yesterday or a day before Walter Sisulu passed away on Monday evening. I just though I let the Delegates know if they can know him in any way. Thank you.

Hon. Delegate Otieno Kajwang’: Thank you very much. Honourable Delegate Julie Odhiambo and Honourable Raila Odinga in that order and please there will be time to debate 10 minutes to each in the general debate if you have a comment make the comment specifically and if you have a question just raise the question.

Hon. Delegate Julie Odhiambo: Thank you Mr. Chairman mine is a very specific comment, I want to comment on the area of citizenship by marriage. And refer to the time given for a married person to

become a citizen. I wanted to say as we discuss this area Mr. Chairman, that we think about our young people who are marrying outside this country and bringing in young people to live with here and then themselves are not endowed with well. And therefore they require that whether it is a young man coming in or a young girl being married here to work. Currently we have the work permit system and this makes it very difficult for these people to work, whether this period of 3 to 7 years has been suggested both in the draft document and in the report that we recently collected, will not hinder our people from work and if it does, increase poverty. And therefore we want also to consider the area of work permit whether these is going to be applicable to these people while they are waiting their citizenship to be cleared.

Secondly, Mr. Chairman I just wanted to put my support on inclusion of the people of Kenya and also say that this Conference should really suggest firmly that the people of Kenya by tribes which are more than 42 by now be included in the schedule as part of the schedule. Thank you Mr. Chairman.

Hon. Delegate Otieno Kajwang’: Thank you so much, in that order Honourable Raila Odinga.

Hon. Delegate Raila Odinga : Thank you Mr. Chairman. The Chairman I want to say that am very very impressed by the quality of contribution of all the delegates gathered here in this Conference. I know Mr. Chairman that was going to be opportunity to make some general remarks. I am therefore going to confine myself to very specific remarks here.

1. The issue of dual citizenship: Mr. Chairman I know out of experience because I travel a lot around the world and I met many Kenyans outside there, who are working in different countries, who are denied opportunities in those countries because they cannot take citizenship of those countries without losing their own citizenship. Mr. Chairman this article you will be seen against the reality of globalization, that the world is becoming global. In Europe you can know with one ID card travel through out most of Europe without card problem they are working toward one common citizenship for Europe. Mr. Chairman I didn’t think that we should deny our Kenyans who work out of this country opportunity of acquiring citizenship there, while retaining their own Kenyan citizenship.
2. About the National goals, values and principles particularly article 14/12 this is what deals with Affirmative action, I’m a very strong believer in Affirmative Action. But Mr. Chairman I

do not think that 14/12 captures the principle when we talking about Gender mainstreaming that the state shall implement the principle at one third of the members of all elective and appointive bodies shall be women does not guarantee that those appointed by those bodies shall be women. I think this should be written more specifically.

3. On the language Mr. Chairman, Honourable Dennis Akumu was very emphatic when he spoke to this audience here about trying to promote our languages and our culture. In South Africa, before the end of apartheid there were only two official languages African and English, during the last Constitutional Review when they were up with the new Constitution, they increased them to 11 languages including Soto, Tswana, Xhosa, Zulu, Swazi and so on and so forth. And they are all recognized. In South African Parliament you can speak in any of those 11 languages and it is instantaneously translated in that Parliament. While I'm not proposing that we follow the South African routes Mr. Chairman, it does not make any sense to me, that Councilors gathered in Mwingi who are not Kamba's or in Kisii or Gucha or in Samburu have to be forced to speak English or Swahili and denied the right to use the local language, when they are actually local leaders. So I'm proposing that we elevate of all these languages to be become national languages and then we have official languages English and Swahili. Thank you.

Hon. Delegate Otieno Kajwang': Thank you very much. Honourable Delegate Dr. Willy Mutunga.

Hon. Delegate Willy Mutunga: Mr. Chairman I did not expect to speak because I was number 83, so since you have rigged me it is okay I will speak. What I was going to say has probably been said by other people but I will repeat it none the less. I want to remind the Delegates that we can make history if the Constitution we come up with is the first Constitution in the world, to be Gender sensitive. So I think when we talk about the goals and the issue of the rights of women and men the principles of equality, equity, parity, social justice we should bear that in mind, so that we can make that history. Thank you very much.

Hon. Delegate Otieno Kajwang': Delegate number 253 he didn't give his name, state and religion.

Hon. Delegate Salah Arte: Thank you Mr. Chairman, I'm Delegate number 253 Salah Arte. I would like to talk on chapter 2 the republic, state and religion. Mr. Chairman we have mentioned that Kenya is secular state, yet there are religions which normally enjoy more privileges than the other religions. We have a lot of unnecessary holidays in Kenya, especially the holidays that I have in mind are Easter holidays which normally take 2,3 to 4 days, which our children normally stay at home when they are supposed to be in schools. I would like to suggest that, if these holidays were to stay they should not affect those children who are supposed to be learning and that the factory workers who are supposed to be producing some items for us.

Mr. Chairman, the second point that I would like to talk is chapter 18 on the amendment of the Constitution, as Honourable Kiliku was saying that we normally give the Parliament to amend some part of the Constitution, we might come with a very beautiful document here and later on as one of the veterans was saying that you may make a different document when you go to Parliament in the later years. I would have suggested that, only referendum should be amended in the Constitution. In chapter 18 it says that, there are some parts of the Constitutions which can be amended without the referendum. I would have suggested that the whole Constitution should not be amended unless it is Wanjiku driven Constitution. Thank you very much.

Hon. Delegate Otieno Kajwang': Thank you very much. Honourable delegate Kenneth Njiru 609 on national days and Honourable delegate Z.M. Syongo on article 4,8 and 13. And we have 10 minutes.

Hon. Delegate Kenneth Njiru: Thank you Mr. Chairman. Honourable Delegates Kenya is said to be a God fearing Nation, indeed we are partaking in this process on an oath taken in the name of God. And in my mind when we talk about national days I believe we should reserve one day collectively when this nation can stop and give thanks to God for all that he has done for us. God is the one who is guiding this Conference, God is the one who will determine what will come out of these Conference and indeed God is the one who will continue blessing this country in so many ways our harvest, our production na mambo hayo yote.

So I would like to propose that we have set a side one day, more so in support of that delegate who said that we should combine those two days that are given there. Because those two days are on the

same subject, that is independence. And may be we should give one day when all religions can come together in a national day and we give thanks to God. Asante.

Hon. Delegate Otieno Kajwang’: Thank you very much. Honourable Syongoh. No Kenneth Njiru had just spoken.

Hon. Delegate Zaddock Syongoh: Thank you Mr. Chairman. My name is Zaddock Madiri Syongoh Delegate number 195 from Suba district. Mr. Chairman I want to be very specific, my first comment is on article 4 regarding the defence of the Constitution. Mr. Chairman I would like to recommend that in very much the same way as article 74, provides that every citizen has the right and duty to defend the sovereignty of the republic. You should also include under article 4 that every citizen has the right and duty to defend the Constitution against any person who threatens the supremacy of our Constitution.

The second point Mr. Chairman is on article 8, I agree with an earlier comment made by Honourable Delegate, that the issue of capital city of Kenya should not be a Constitutional imperative and should therefore be deleted or if necessary dealt with a specific act of Parliament.

The third point Mr. Chairman, I agree with my fellow Delegates who have mentioned the necessity to acknowledge and recognize our heroes. And in this respect Mr. Chairman I would like to propose that the events of 20th of October 1952, although specific to certain individual heroes of this country were in fact representative of many others. And that in addition to those the first 2 national days which are recognized in that Constitution, the 20th October should be acknowledged as one of our national days but made into a Heroe’s day.

Mr. Chairman, the final point is on article 14, it lists the various duties of the citizen but one that is conspicuous by its absence is the duty of every citizen to protect him/herself, family and fellow citizens. Mr. Chairman in the community where I come from Suba, the first thing your father does for you if your boy, is when you reach teenage he gives you a spear for self defense of your family and fellow citizens. I believe Mr. Chairman, that it should be the duty and the responsibility of every citizen to protect themselves and for that purpose we should include without any fear Mr. Chairman, the need or the right of every individual citizen to bear arms. Mr. Chairman we may be sacred of these

but let us face the reality, today in Nairobi many of our citizens are killed by people or thugs who are bearing modern arms. In the traditional situation as I said we always had a right or the duty to bear arms in the form of our crude weapons of spears and arrows. Mr. Chairman it will be a mockery of the need for security and the protection of citizens if we continue to lead citizens to be killed by thugs helplessly because they cannot defend themselves against modern weapons. Thank you Mr. Chairman.

Hon. Delegate Otieno Kajwang’: Thank you. I have 5 minutes I’m going to split it between the two Delegates Im going to give chance to speak and the comment I’m going to receive from here we close for lunch and come back in the afternoon. If you have not found time to speak it was because there were so many of us, but we still have the open debate you can raise that matter. There is Eliud Paul Nakitare and Honourable Delegate Agnes Abwong 513.

Hon. Delegate Eliud P. Nakitare: Honourable Chair I thank you very much. I would like to join those who considered the work of the Commission to have been very good to bring us where we are now, and particularly emphasize that they have done very, well to consolidate views about development and very largely about regulatory contribution to the Constitution. But Honourable Chair, for fear of repetition I would like to echo the significance of including culture in the Constitution. I would like to suggest like what Honourable Wangare Mathai said, that instead of giving our culture cursory recognition in the Constitution, we should devote a whole chapter to our Constitution. And Honourable chair we are going to provide the details about that, I would like to suggest that under these particular article, we include specifically what we shall call cultural heritage, national pride and national identity. Because this represents the mirror of our nation, we should not be afraid yes we have brought out values and goals very well. But I am suggesting that coming immediately after the goals and values we should include our culture because culture is our mirror we should not be afraid. I remember that one of the Honourable Delegate was not quite happy when the music and dance was performed here, but this is what we are we should not be afraid. Every time somebody talks about culture, people think of only about negative things, but I think culture is more important to our nation than anything else. It is the melting pot all the different ethnic groups, different traditions we will bring them together into the melting pot, remembering particularly our invention, traditional medicine or medical practices and many other things that are found in everyone of our communities. And even languages as many people have said these are part and personal of our culture. The problem

Honourable chair is that we have not been able to concretize the presentation in culture, if Honourable delegates would have agree with me, we are going to be able to synthesize and concretize culture that will be able to be understood. I thank you Honourable Chair.

Hon. Delegate Otieno Kajwang’: Thank you very much. We have been consulting here it seems like we have around 50 Delegates who wanted to speak on various issues and we are cutting them out because lack of time. We think that we could amend our order paper to allow some of the people who are remaining to comment in the afternoon, so that we beat the lunch deadline. So we may continue after lunch with the comments, I gave one last chance to Honourable Delegates Agnes Abwuom.

Hon. Delegate Agnes Abuom: Thank you Honourable Chair, my name is Agnes Abuom number 513 representing the religious organizations. I would like to speak on three issues.

- 1) Is to thank the Commission for the able work they have done. On the issue of state and religion, I think that it is fairly well articulated, except that I would wish that the Honourable Delegates in affirming the separation of state and religion, we do as Kenyans who believe in God, recognize and include the sovereignty of God in our Constitution.
- 2) The second point Honourable Chairman, is on the issue of values and gold. Our government in the past has signed ratified international conventions that are many and different, but never before have they really reported back and even implemented some of those international conventions. It is important that we find space on that chapter for our government to respect first and to adhere to all international conventions and agreements that we have signed and ratified.
- 3) Finally, Mr. Chairman I would to speak on the issue article 9, which is the role of the civil society. For the first time I think we are recognizing the role of civil society and indeed it has been an important role in our nation. But I would like to say that in addition to promoting the role of civil society, in watch dogging the state. It also important that the civil society is strengthened so that itself becomes a viable sector in our society. The civil society needs strengthening to also subscribe to, adhere to and implement the values and principles of democracy, in order that it can be credible and have integrity to perform its role in society. Thank you very much.

Hon. Delegate Otieno Kajwang’: Now I will come back to the table here and get comments from, Daktari do you have something to comment on? No. I think you will take it in the afternoon. Thank you.

Com. Kavetsa Adagala: I will make some comments just a quick one. There was chapter 10, I think we will leave it till the presentation of chapter 10, which is on devolutions there is a minor Mzungu who was asking about that. Then the people’s views are in the Constituency report which are available to all delegates and they can be seen in their role later. Then Honourable Ombima we will consider boys and girls, yes I think we should consider it in this Conference. But one of the most important principles on the citizenship section there, is that the Kenyan woman can confer her citizenship on her children, so please take that on board for the children it is there. Dual citizenship from when it is true that there are these difficult situation of a defense and also criminality I think we should discuss it in the committee. Honourable Wangari Maathai other forms of life, we should take this on board I think also. Then the names who comments on culture, I think has been supported by Nakitare and it is true it should appear here at the beginning.

There was a point of order about taking aboard and taking these in a sequence, taking the comments which are being made when you see two Commissioners here at least one of them will be a rappoteur it is not both of them in the Committee on which they are presenting. So Commissioner Githu Mwigai and myself will be there in the Committee on Constitutive...on these first four chapter , so we shall be there and we are taking notes. I think Lancaster House document, Shakeel has been requested I think it is in the process of being produced. The work permit aspect Dr. Ojiambo, I think that can also be taken aboard. Honourable Raila all his points there on Affirmative Action and dual citizenship and languages. One of the fortunate thing which we probably need to do is that South Africa has taken the principles of language which has been establish by a Kenyan and they have taken it on board and we don’t seem to take it on board, so probably we could at that, these were the views of Prof. Ngugi Wathiongo South Africa has taken them and we are not able to take them. It is very important Honourable Delegates to know that the order of languages in the Draft Bill is Kiswahili national language, Kiswahili and English in that order and it is very important that you take it in that order Kiswahili and English official languages, but there are comments which have been made and we will take them on board.

Defence of Constitutional, Hon. Syongo that is also there. Now lastly I want to comment on the dance that was here. Honourable Odhiambo was not saying that dance should not be done, she was saying it should be put on the program and it is not just dance and affirmation of our culture but there was a message only that it was muffled in the microphones. They were talking about “peleka Katiba pole pole, uraia pole pole, zungumzeni pole pole, that they are to be taken in that way. So it is part of our program we discussed it in the Commission and it is important that we know he was not opposing, it he was actually giving it a legitimacy. These document 3 is a working document, we were just pointing out that you should look at it so that we improve much more. The President said that we have given the best but even the best can be made better and this is what we are doing now and for three months we worked on these document January, February, March we worked on these document amongst other thing very very hard work. So please take it don't put it aside, I think I speak for the Commission when I say that is a document you should refer to. Thank you very much.

Hon. Delegate Otieno Kajwang’: Thank you very much. Just before we leave I think I will give this to Commissioner Ogoth Oendo, Professor to say something, some clarifications.

Com. Prof. Okoth Oendo: Mr. Chairman what I wanted to do was to clarify the question of documentation. Delegates have been in an undated by document in three colours green, orange and red. The green documents were the original documents, which we published last year they were very badly edited. There were no cross references. The orange documents are meant to replace the green document they do not change the substance of green document but they read better, they are better edited, they are better cross referenced. And therefore the advice from the Commission is that you should use the orange document.

The red documents are working documents, the idea is for you to benefit from public comments that were received by the Commission, from the Commissions own re-thinking in certain respects and from the Commissions anticipation of what will happen if the New Constitution become law. For example we have taken the trouble to re-work the transitional provisions of the Constitution because the circumstances under which the transitional provisions were written have changed fundamentally. And therefore look at the red document are further thinking after the green documents were published, but

for statutory purposes you look at the document as has been published and we have edited it in the orange publications. But look at everything at this point now you as the delegates the issue is with you and therefore you can use all information that is available to you. What the Commission have done is to provide you with formal documents representing our thinking since the publication last year in the form of the red document. Thank you very much Mr. Chairman.

Hon. Delegate Otieno Kajwang’: Thank you very much Professor Ogendo. We will be beginning at 2:30 and continue.

LUNCH BREAK

PLENARY DISCUSSIONS ON: The Constitutive Process

Hon. Delegate Otieno Kajwang’: I think we want to start, and I am going to ask the presenters who were with me here this morning to return, so that we may proceed with our debate. I want to make a few announcements.

One: Is a procedural announcement. We shall continue only for one hour on this topic. That is Chapters One, Two, Three and Four from Preamble to Citizenship. We will have only one more hour and we will then proceed to the Bill of Rights, the Chairman of which will be announced to you later. We will continue to give you only two minutes to contribute. I notice that we are repetitive. A few people, only one or two people have asked me to withdraw their names because they think what they wanted to discuss has already been discussed and they will raise other matters on other issues.

I have been informed that if you have a serious matter, which you think you want to discuss on this Chapter, this is the time to discuss it within those two minutes. You will not have a separate time to discuss for ten minutes as earlier indicated to you from here.

We were thinking that we would discuss the entire document and give you ten minutes, but the Committee has decided that we discuss thematically and in every sub-heading. We give you two minutes so that every Member will have an opportunity to speak. Therefore do not repeat yourself. If

you have spoken once on this issue, we might not give you another chance. If you also know that there is something you like and you want to speak on wait until you get that opportunity when it comes,so that we don't tell you that you have already spoken.

Interruption: (Inaudible): Yours is which one?

Response: (Inaudible)

Hon. Delegate Otieno Kajwang': Okay. I have just been informed by another Member that he withdraws his names but even when I call your name out and you think you want to withdraw, just mention so that we don't have to take a lot of time.

Another announcement now that the Members are here. You are all aware that at the beginning of this Conference we lost one of our delegates. We lost Hon. J.P. Mutiso, MP, and I have an announcement to you all as fellow delegates of the deceased.

“To all Honourable Members of Parliament and delegates, pre-funeral arrangements for the late Hon. J.P. Mutiso, MP. On Thursday, May 8th 2003, there will be a fund raising meeting at KICC, Room No.7 beginning at 7.00 p.m. On Friday, May 9th there will be a funeral service at AIC Milimani, Nairobi beginning at noon. On Saturday, May 10th, there will be a funeral at Ikombe village beginning at 12.00 noon”. I thank you for listening to the announcement.

I am still waiting for Dr. Githu Muigai. He is about to reach here. He has already arrived. I have a notice of one or two points of Orders. I will give them one minute each, then we start. Archbishop Okoth has a point of order on Order and Observation. Archbishop, I don't know where you are sitting. Your number is 541.

Hon. Delegate Archbishop Okoth: I am at this corner here, Hon. Members. My observation and a point of order also, first is that we are at the second week and if it was true what was stated, that over three hundred million is being spent for this Conference, then by Friday this week, we are clearing one hundred and fifty million. If we have one month, we only have two weeks to go in this process. We

are just at Chapter Three. I would like therefore that there be a procedural way of making some amendments if possible Hon. Members. By that I mean that we should be, this Conference is delegates driven -. Therefore let us be driven through these Chapters, maybe up to Chapter Fifteen or so or half way, and then we go into groups and let us discuss the things that are burning in those Chapters and we come back and report as groups so that we can move faster. Otherwise the way we are moving, we shall be here for three and a half months, which I don't think will give us very much. We want to make sure our work is complete.

We had studied this thing in groups before we came here. This meeting was already on last year and I feel that Members who are sufficiently informed have done their homework and we are ready to comment on the burning issues as soon as possible. Let us be driven through the Constitution. Let us give ourselves chances to meet in the various work groups. Let us state our points however burning they are, and let us come back and report and you the Steering Committee to take the highlights and get ready for the composition of the final Draft. Thank you very much Honourable Members.

Hon. Delegate Otieno Kajwang': Thank you Bishop. The point you have made is valid but I am advised that you could bring it as a substantive motion so that we discuss it and come up with a resolution. This is because you are suggesting amendments to the manner in which we are running the Conference. Therefore if you can write it down and give notice to the Chair, the Steering Committee will allocate you time probably tomorrow so that you raise it. However, we have taken your point that we are moving a little slowly and we want to go fast. There is another point of order from Hon. Martin Shikuku. He can raise his board so that we can see you and give you ---- yes, 595.

Hon. Delegate Martin Shikuku: Mr. Chairman, thank you for recognizing me. My point of order is that we, Honourable delegates who are here would like to have these things done properly as per our rules and the Act which is our Bible now.

Hon. Delegate Otieno Kajwang': He hasn't said.

Hon. Delegate Martin Shikuku: That is one point. The second point, Mr. Chairman, we being here, if we don't want to be ridiculed by the Press, we must be careful about what we say here and what we

say outside this House. Since you are Honourable Members, if there is anybody who has got any burning issue, let him or let her bring it to the Floor of this House, not to the Press. If you do that in the Press we are going to collide and they will enjoy us when we split. Mr. Chairman, this Conference was opened by His Excellency President Kibaki, which is the highest authority as far as the Executive is concerned. We hear that some people may be moving a motion to ask this Conference to go home.

(Noise and murmurs from the Audience)

Hon. Delegate Martin Shikuku: Let them, Mr. Chairman, (just a minute) Let them, Mr. Chairman, I have confirmed with you and you told me there is a motion to that effect. I welcome it. Let him bring it here. Wanaume wataonana.

Hon. Delegate Otieno Kajwang': I was going to stop you but you have already stopped. You are getting a bit out of order, although you are a professor on points of order. There is one last one. He has not told me what nature of point of order he wants to raise but I will gamble that it is about the rules. Hon. Kimathi, delegate Number 60. Where are you? Please raise your hand. Okay, can you give him the microphone. Have you seen him? Those who have the microphone. Okay. Thank you.

Hon. Delegate James Viscount Kimathi: Thank you Mr. Chairman. My name is Viscount Kimathi, MP for Lari, Delegate Number 60. Mr. Chairman, I don't want to talk something about myself. I want to talk about delegates. I want to say all these delegates who are non-members of Parliament have come from far and they are not prisoners. They should be given their money directly and they choose the hotels that they want to live in.

(Clapping and Noise from the Audience)

Hon. Delegate Kimathi James Viscount: They should not be confined in cells of 680 or anywhere. They are grown-ups. They know their way. They get their money, properly, weekly in advance like the way we pay rents. Each week they get an advance so that they can be able to get their money nicely so that they can clean their clothes and they are human beings. All that they are asking is that some of them have insurance. They don't want unnecessary deductions.

Hon. Delegate Otieno Kajwang’: You have made your point. You have made your point.

Hon. Delegate James Viscount Kimathi: They get it direct. Thank you Mr. Chairman.

Hon Otieno Kajwang’: I think the point is popular but the time is wrong. Can we then proceed straight away to continue with our discussions? Hon. Mungatana and Hon. delegates G.B.K. Ahabi and Hon. Sheikh Aboud, 243 in that order. Two minutes each. Is Hon. Mungatana back from lunch? If he is not, I will move to Ahabi. I think I saw Ahabi somewhere here. Raise your number. He is here and from Hon. Ahabi, Delegates Number 243 to be ready.

Hon. Delegate G.A. Akhwabi: Mr. Chairman, Hon. delegates, I do agree with those who subscribe with the view that the Commission has done a credible job in drafting this Constitution. I think that they deserve praise for the work that they have done. I have carefully read the report, co-related it to the Draft Bill for Constitutional amendment, and I think it is a commendable job.

Mr. Chairman and Hon. delegates, there are though a few matters that I wish to revisit.

One is the Supremacy of the Constitution. I would wish that it be stated clearly in the Constitution that any person in this country, no matter what his status is, who contravenes the Constitution, be treated as a traitor and be punished accordingly.

(Clapping)

That will include the Head of State or the Prime Minister or anybody for that matter.

Secondly, with regard to the enforcement of the Constitution, I would want to suggest that the Constitution specifically states that in matters involving action to enforce any provision of the Constitution, no Court fees be paid.

Thirdly, that in interpreting the Constitution, it be specifically stated that in interpreting the Constitution, the Courts must be guided by the National Goals, Values and Principles because we have

had in the past, a situation in this country where Courts have not even made attempts to interpret the Constitution. They have done so to suit the prevailing circumstances. Now that we are putting in the Constitution the National Goals, Values and Principles, these should be the guiding principle in the interpretation of the Constitution.

Fourth: In Article Four, in relation to the Defence of the Constitution, I would suggest that instead of saying that Parliament may enact legislation to give effect to this Article, I would say no. There is an Article in the current Constitution, which clearly provides that Parliament shall create ministries. It is Parliament and not withstanding the fact that people have gone to Courts to try and get Parliament and the Courts to say that the previous ministries had been unconstitutionally created. The Courts have declined to do so and Parliament has declined to create ministries. I therefore would say that this Constitution itself should state clearly when this constitutional provision should take effect.

Now I think anybody who questions the right of women in this country to have affirmative action in their favour would be a crazy person. Women work very hard. They work harder than men but they have been burdened. They have been marginalized and I would agree that this provision relating to affirmative action for women be enforced for a period of at least fifteen years, then it can be revised.

(Clapping)

Thank you Mr. Chairman.

Hon. Delegate Otieno Kajwang': Thank you. Thank you very much. Those were very focused contributions. 243. Hon. Aboud on the Capital city.

Hon. Delegate Sheikh A. Aboud: My name is Hon. Sheikh A. Aboud, Delegate Number 243. I would like to make comments on Chapter Two, Article Eight, about the capital. I have my comments on this one. Instead it should read that 'Nairobi is the largest capital city of Kenya'; because of the order that for the future Kenya, we can have other cities.

I will then take you to the Preamble whereby I have my suggestions. The Preamble says, ‘the people of Kenya’. Who are these people of Kenya? There should be a definition of these people of Kenya. As we also know that, in the current Constitution we are only forty-two tribes. But I do understand that we are more than forty-two tribes by now. This one should therefore be listed in the Constitution.

I would also like to request the addition of the National Anthem in the Preamble plus the addition of National symbols and national days in the Preamble, as we understand that this Preamble is the face of the Constitution and it is the backbone of this Constitution. Thank you.

Hon. Delegate Otieno Kajwang’: Thank you very much. That was very focused. I want to give this opportunity to Dr. Appolo Njonjo, 583, ‘conduct of presentations. Dr. Njonjo, are you back? Okay.

Hon. Delegate Appolo Njonjo: Mr. Chairman I am --

Hon. Delegate Otieno Kajwang’: Hon. Dr.--

(Laughter)

Hon. Delegate Otieno Kajwang’: Appolo Njonjo.

Hon. Delegate Dr. Appolo Njonjo: Mr. Chairman and fellow delegates. I am privileged to talk to you today I would like to refer you Mr. Chairman, to the Third Schedule of the Kenya Review Act, what Mr. Shikuku calls our Bible for this Conference.

That Schedule talks about the principles for a democratic and secure process for the review of the Constitution. Those of us who were in the Ufungamano initiative know how hard we struggled to have the Third Schedule included at the point at which Ufungamano and the Parliamentary Select Committee were being merged. That schedule bound us. I would like to read the first two paragraphs of it - it reads: “The Government of the Republic of Kenya, the organs of review of the Constitution, Political Parties, Non-Governmental Organizations and all Kenyans shall:

One: Recognize the importance of confidence building, engendering trust and developing a national consensus for the review process.

Mr. Chairman, my contribution in this is that the Government was there when we were writing that Schedule Three, the KANU government was in power. Now we have the NARC government. It is similarly bound by that Schedule, just like every one of us is bound by that schedule to create trust and confidence. I think before this Conference can proceed much further as the President promised us here, that the Government would do every thing possible to ensure that this Conference is facilitated, I think the honour falls on the component parties forming NARC and forming the Government to create trust and unity among themselves, to free us and to enable us to deliberate on a proper Constitution for the future of Kenya. As long as they distrust each other, as long as they are bickering amongst themselves, as long as they do not feel the commitment that they made to themselves before the elections, this conference, Mr. Chairman, I fear will not succeed. I fear that this conference will leave or will work in a shadow with a cloud of unfulfilled promises and with a cloud of mistrust. We have come here not to deduct rights that people have already won, but to add to those values.

Hon. Delegate Appolo Njonjo: We have come to add to the rights that they have they won.

Hon. Delegate Otieno Kajwang’: Mwalimu, I have heard you.

Hon. Delegate Appolo Njonjo: Now, my question is, - I have a problem here, Mr. Chairman - I would ask this Conference to pray to NARC and to urge NARC, to honour their own internal arrangements and their own commitments, to free this commitment to allow this Conference to proceed in peace.

Hon. Otieno Kajwa’ng: Thank you. Well, I want to ----- it was difficult for me to stop my teacher. You know I was taught by Dr. Appolo Njonjo. However, I can assure you that this meeting is not a NARC meeting

(Noise from the audience)

Hon. Delegate Otieno Kajwang’: ----- and we have the power to proceed with or without NARC.

(Laughter)

Hon. Delegate Otieno Kajwang’: So, I think that ----- but your comments are well taken. If there is anybody who has an idea that because they are NARC they can disrupt us, they had rather forget that.

(Laughter)

Hon. Delegate Otieno Kajwang’: We proceed then and I want you to be specific. Yusuf Mohammed Abubakar, delegate 581 on Supremacy of the Constitution. Would you mind if you withdrew because it has been---- or is there a new angle you want to look at? If he is not here then I move quickly.

Hon. Delegate Yusuf Mohammed: Mr. Chairman, I am here. Thank you very much. I wanted to talk on the Supremacy of the Constitution in relation to what the Hon. Com. Dr. Githu Muigai stated that the Constitution we are discussing here is a secular document. Unfortunately there is no article or provision in the Constitution that states, “this Constitution is a secular Constitution” In the report of the Commission, the issue of the secular Constitution is has not been addressed. The virtues and attributes of a secular Constitution have not been given prominence. I think it is on the basis of a secular Constitution that there is that spirit of inclusiveness, that moderation of all the existing Constitutional order --

Hon. Delegate Otieno Kajwang’: (Inaudible)

Hon. Delegate Yusuf Mohammed: - so that no Constitutional order is left out. A secular document or a secular Constitution gives room for divergent views to be incorporated in that Constitution. I therefore propose Mr. Chairman, that there must be or there be an article that provides specifically that the Constitution we are discussing is a secular document.

Hon. Otieno Kajwang’: Thank you.

Hon. Delegate Yusuf Mohammed: On Article 6 (1) considering the tremendous contribution on the devolution of powers and, considering the advise we got from the Lancaster Conference and the spirit of the Draft Bill on devolution of powers, I propose that Article 6 (1) should be specific. We should not shy away. What we are doing is that we are adopting a political ideology that is federal in nature and we should declare our State as the sovereign Federal Republic of Kenya. Thank you.

Hon. Delegate Otieno Kajwang’: I thank you very much. David Marcos Rakamba, Honourable Delegate, 433, National Goals and Values.

Hon. Delegate David Marcos Rakamba: Yes, Mr. Chairman, Honourable. Delegates -; I want to talk about the National Goals, Values and Principles. My comment is that Article Fourteen has talked so much about the affirmative action and has guarded the interest of the affirmative action in terms of gender, and has also actually captured the interest of the children. However, it does not capture a constituency of the youth generation, which is actually making around sixty percent of this Nation, and has actually been left out deliberately. We have recognized the cultures but you know in cultural or in our customs, we have what we call initiation in stages during transitions. Therefore we expect also that the article in line with Article Fourteen, Eleven and Two, the way it has, it should also have an Article that talks on the affirmative action that fifty percent of either the women appointed or the men should be youth so that they can be initiated. Be it women but they should be youth. By youth I mean somebody below thirty-five years, so that he can be initiated. If you look around it is only around ten percent of the youth who are here, and we are making the Constitution for the future. On the same, I want to look at Article 14 (3) that talks of promoting cultures. Some cultures have been overtaken, fine. We should therefore say positive cultures. On Section 15, it has mentioned something on technology. We have things like cloning. If we say technology, we should be very specific and say positive technology. Thank you the Chair.

Hon. Delegate David Marcos Rakamba: Thank you very much. I have received a notice of a point of order from Hon. Delegate Lawrence Mute. Delegate Number 455 on a point of procedure. Can you show your board so that they see you? Thank you.

Hon. Delegate Lawrence Mute: Thank you Chair.

Hon. Delegate Otieno Kajwang’: Welcome.

Hon. Delegate Lawrence Mute: Yesterday, the Chair of the day yesterday pleaded with the delegates that they should not ambush the Chair or the Steering Committee. Chair, I am very concerned that in terms of the procedure which we are following, you earlier had made it clear and in fact even in the regulations it is very clear, that delegates during the debating stage will have a maximum of ten minutes when they can discuss issues and that was made clear so that we got a clear impression that we were going to get input and that later on we were going to have our ten minutes. You have then quietly Chair, slipped in the fact that now we shall not have that ten minutes. Chair, I think that in the same way that we must not ambush you, you should also not ambush us. We must ask that you don’t do that Chair. Thank you.

(Clapping)

Hon. Delegate Otieno Kajwang’: Well, let me put it this way. Earlier on the debate was structured in a different format. We had suggested that the Commission will take us through the entire Draft Constitution and then everybody will have a chance to debate. At that time you will have ten minutes to debate any matter in the Draft. However, it occurred to the Steering Committee that in that way the debate will not be focused and we will not be dealing with subject by subject. They therefore, rearranged it in such a way that we can now debate subject by subject, but reduce your time so that you have five slots. You can debate on this one and when we come to human rights you can also still have two minutes. When we come to land you can still have two minutes. That way, so that in the end you have ten minutes but you have debated in a focused manner. It is not a way of ambush, but it is a way of reorganizing the debates so that we benefit maximumly. If we say we just debate on the entire Draft, some parts will not be debated sufficiently and some people may not have an opportunity to say anything. I didn’t want to open it up to debate because that was something, which was considered at the Steering Committee.

(Noise from the Audience)

Hon. Delegate Otieno Kajwang’: I can see another point of order maybe on the same matter, 538.

Hon. Delegate Samuel arap Ngeny: Thank you Mr. Chairman. I am rising on a point of order exactly on follow-up to what you have just said because ----- . My name is Samuel arap Ngeny, Religious Organizations, 538. Mr. Chairman, what I think is necessary as a procedure is that when the Steering Committee have met and thinks in its wisdom that there is need for some modification, there should be a very clear communication from the Chair before the beginning of the session. The difficulty that is arising is that these things are being done piecemeal, I think it is making it very difficult, and that is why points of order are being raised here and there. Therefore my suggestion is that any modifications that may accrue hereafter in regard to the procedures that we have already been informed, then that should be made very clear and adopted. Thank you.

Hon. Delegate Otieno Kajwang’: Thank you very much. One last one, 453, is it? My eyes are not very good.

Hon. Delegate Elkanah Odembo: Thank you very much Mr. Chairman. Elkanah Odembo, delegate 453, with NGOs. Mr. Chairman, can you kindly, kindly please clarify for us at what point of the Conference are we at this point? I am confused because I had assumed before we went to lunch, that the two minute mark that you are providing for us is for general remarks in response to what was presented in the morning. What I have just heard you saying now is that we have already entered the debate phase of our Conference. Can this please be clarified? Thank you.

Hon. Delegate Otieno Kajwang’: I will pass the microphone to the Chairman of the Conference who is sitting next to me so that he can take the heat. Thank you.

Prof. Yash Pal Ghai: Thank you Mr. Chairman. I think it is unfair to ask me to take the heat when I was not involved in the decision to change the procedure. But let me try to explain where we are now. We are at what is called the general debate stage of the proceedings. The way we had divided the work of this Conference was that after the procedural questions out of the way, we would have about ten or twelve days where we would discuss the general principles of the Draft Constitution and this will be done in Plenary, and after the ten days we would establish twelve technical committees which will

look at one or more chapters of the Constitution. At that stage there will be opportunities for very detailed examination of the Draft, and opportunity for suggesting amendments to the Draft. Then after a period of five days or so, when we hope that the committees will have finished the work, they will come back to the Plenary and report on the discussions and recommendations of the committee.

Now, at that stage, the Plenary at first will make decisions which will result in the final draft of the Constitution. So we are at the first of these three stages, and we are looking in general terms at the principles of the draft Constitution. When the standing orders or the rules were drawn up, we had envisaged the situation which the Chairman had described, whereby this general debate will not be broken into different parts of the Draft Constitution but members will be free to comment on any part of the Constitution, to comment on the approach of the Commission, or to comment on specific recommendations.

At a late stage the Commission decided that it would be better to have the debate, the general debate broken up into different sectors so that, for an hour or two, we are focusing on the Preamble, principles, and then at two, three, four hours, on Human Rights, and so on. Once we adopted that particular approach, the ten minute rule became somewhat dysfunctional, because a members may wish to speak on more than one issue. And so the decision was made this morning, which I have to say I was not privy to, I was not part of that, that each member should have two minutes during each sector of the debate. So those of you who have spoken today will not be able to speak on the same issue, but when we move on to Legislature or whatever it is, you will have another two minutes. This may not be the best possible way to proceed, but give the decision to divide the general debate in sectors rather than roaming all over the document, that seems to be a good way to proceed, because it will give the delegates five opportunities to speak on different parts of the Constitution.

So I would therefore, like to formally propose to you that we adopt this rule, I know it has come after the proceedings have begun but we have about seven, eight, nine days more of this general debate, and if we were to adopt it, it will give the delegates the opportunities to intervene several times before the general debate is over. Thank you.

Hon. Delegate Otieno Kajwang’:I notice that there is one other point order from Aswani Sammy Amunga. I will come to you number 15, later.

Hon Delegate Aswani Sammy Amunga: Honorable Chairperson, I am on a point of order, concerning our regulation of procedures number 48. Mr. Chairman, I am very much getting disappointed because we are talking of Constitutional making, and we are violating our own procedures. Particularly that number 48, we have not agreed by coming up with a committee on privileges and so on, and we are going on. Already we breaking our own rules. What Constitution are we going to come up with, if we cannot follow the rules? Thank you.

Hon. Delegate Kajwang’: Thank you, we will answer it together with the other point of order. Fifteen, and then twenty six and then 615, we will not move at this rate, and 302.

Hon. Delegate Billow Adan Kerow: Mr. Chairman thank you. My name is Honorable Billow Kerow, Mandera, delegate number 015. My point of order Mr. Chairman is with regards to what has just been proposed. I think in all fairness unless you expect us to(inaudible)..... over this document for us to take two minutes to comment informatively really and make decisions on this sections, I think that would not be fair to those who wish to contribute. Number two, I think we came on an understanding, like me I came on an understanding that today, we will merely have a presentation and then probably, when the debate start, where we can have ten minutes I was preparing motions, for example I have a motion that I wanted to bring on this particular chapter, of emolument and so forth if motions are going to be allowed at this general level of debate. So I think for us to be ambushed in this manner, that look, this chapter will be finished if the one before will be finished today, and we have to therefore, take two minutes, I think that is ambushing us and that is not acceptable. We need to discuss these things properly, and you need to tell us that we have today and tomorrow to go through so that we can come with our proposed amendments of whatever. Because initially you told us clearly that don’t debate, just give quick clarifications. So let us stick to the rules please.

Hon. Delegate Otieno Kajwang’: Number twenty six, I saw it somewhere.

Hon. Delegate. Gurrach Galgalo: Thank you Mr. Chairman, my name is Doctor Gurrach Galgalo, Mbunge wa Moyale. I want to seek indulgence of the Chair, Mr. Chairman first and also make an appeal to the Steering Committee, short of making notice of motion here. I would seek indulgence in that if members stand up, delegates stand up, and become irrelevant, like Honorable Doctor Njonjo has just been, I think the Chair should take the initiative and rule the particular delegate out of order. Political squabbles within NARC is really not a business of this Conference. So whenever somebody stands up and becomes irrelevant, you should protect us by stopping them so that we save our time. For all we care NARC can break up along the cracks that we are already seeing, it is not really the business of this Conference.

Number two Mr. Chairman, I want to raise an issue about the manner in which this process is going on. Really this kind of lightening presentations by people who have given us this document will not help us. We have a lot of time. We have 20 chapters in this Draft Constitution. If we take two days per a chapter, it will only take us forty days. We are not in a hurry to come up with a Constitution. We want a Constitution that will help us, we want a Constitution that will be focused and that will do us good as a nation. It does not serve us as a nation to rush through something like this. We are not under any pressure, we are not going anywhere. Parliament is not about to be dissolved, like it was the other time. We have a lot of time; we should have the presenters present to us precisely why they came up with these decisions. It is not really up to us to go looking for this information in these many documents. A presenter should be given enough time to explain to us what they have done so that we can go back and look at those things and we take our time. This kind of lightening presentations will not help and if the Steering Committee will be kind enough to look afresh at the procedures that we follow, it will be in our national interest. Thank you.

Hon. Delegate Otieno Kajwang': Thank you very much. I notice that on point of order, now members are taking more than if they were contributing, I will give you one minute only. There is 302 here, is it 302? Yes, 302 then 392, then 615, then I close. We can't talk about one matter forever. I have refused 599.

Hon. Delegate Fredrick Rukwaro Nderitu: Honorable Chairperson, mine is on eh....

Interjection: Hon. Delegate Kajwang’: Name?

Hon. Delegate Fredrick Rukwaro Nderitu: My name is Fredrick Rukwaro Nderitu a delegate from Nyandarua. I am referring to 1412. I find that...

(Interjection)

Hon. Delegate Otieno Kajwang’:You are supposed..... You are not commenting, we were on a point of order. Or you want to comment, you are not on a point of order? That one I have a list here which I will follow; 392, that must be

Hon. Delegate Paul Nakitare: Honorable Chair, my name is Paul Nakitare, delegate 392, from Bungoma. Honorable Chair, I thought we had started well, but it seems to me that there is a problem that should be corrected. And one of them is that the powers we have conferred to the Steering Committee should be inline with the general agenda of this particular Conference. We were starting from point A to point B. And in the process I think the Steering Committee should not bring about drastic changes. You recall Honorable Chair that yesterday after the presentation of the main report, we should have discussed the Chairman’s Report, but we didn’t. Today, after presenting the Draft Bill, now we have started discussion. But our understanding Honorable Chair, since we came here, was that we were going to talk like people who are mourning a dead person. We were going to generally give comments about the Constitution as we saw it. But now if you limit us to two minutes on the different sections of the Draft Bill, some of us are getting confused. So I suggest Honorable Chair, that we follow the original line of thinking. In fact you have not introduced this piecemeal discussion, you should give us ten minutes for us to thoroughly discuss the points and ideas that we have about the Constitution I thank you Honorable Chair.

Hon. Delegate Otieno Kajwang’: I am going to suggest this, I am going to suggest that we continue with our two minutes the way we were going, let the Steering Committee go and discuss this further and see how to redress this issue because we don’t have a lot of time; in fact we should be leaving for the next item on the agenda, and that is Human Rights, Bill of Rights. Can I ... a very burning one? 406. But now you are breaking the rules.

Hon. Delegate Shakeel Shabbir:Chairman I would like to propose

(Interjection) Hon. Delegate Otieno Kajwang': There is already a point of order there.

Hon. Delegate Shakeel Shabbir: Can I have the floor or not?

Hon. Delegate Otieno Kajwang': Yes, proceed.

Hon Delegate Shakeel Shabbir: I would like to propose that the proposal put forward to us, because we were making very very good progress; the proposal put forward to us by the Chairman that we adopt that new method, I would like to propose that we do accept that new method.

Chorus from floor: No. no.

Hon. Delegate Otieno Kajwang': Well, as I said as a way of going forward, let us leave that issue because they have already discussed I think the Steering Committee is amongst you here. They are hearing you; they are taking note of what you are saying. They will be meeting again in the evening. In the meantime, let us proceed the way we were proceeding before we broke for lunch. Sasura 182, is it 182?

Interjection: Delegate George Omari Nyamweya: Mr. Chairman. point of order!

Hon. Delegate Otieno Kajwang': That is also a point of order from Hon. Sasura. Okay, I will see you 615.

Hon. Delegate Niocholas Kiptoo Korir: Mr. Chairman, I am rising on a point of procedure here. Mr. Chairman this is a Conference of the Nation of Kenya that is why it is called the National Constitutional Conference; and Mr. Chairman when I read these rules very extensively I realized that these delegates have a lot of powers over these rules. They are the ones who can unmake these rules. And Mr. Chairman just to quote the Chairman Yash Pal Ghai what he has said, that he now formally

proposes the new methods that we are using, and I thought procedurally if he proposes a motion, it is up to us delegates like Shabbir said, to say yes or no. Now you are dictating further to us by saying that we are going to shelve this, or we continue with this and then the Steering Committee will go back and decide on something else which might not please us. Mr. Chairman, we even have the powers to remove the Steering Committee and change them with others. Could we please just agree on these two minutes or not before we proceed further.

Hon. Delegate Otieno Kajwang':I have already listened to Sasura let me listen to 615.

Hon. Delegate George Omari Nyamweya: Mr. Chairman, my name is George Omari Nyamweya, I have been assigned a number 615, and I can categorically say that I have been disappointed with the approach you are taking, yourself as Chair now, and what we are now being told from the Chairman of the Conference. We came here Mr. Chairman with one thing in common, we wanted to re-unite and reconcile our country. Whatever else we have, we have come from a difficult background. But we do intend to take the spirit of reconciliation and we want to look at the Constitution in a meaningful manner, without ambushing anyone.

First of all Mr. Chairman, you have given us books which took you two three years to put together. You do not tell us the programme of the day, you come here and you start telling us we are now doing this chapter, look at this book, look at the other book, look at the other book. Two minutes, we are finished, then we are suddenly told now we have finished that particular chapter. Some of us, Mr. Chairman have taken plenty of time to go through the whole Constitution, the current one and previous one, and your proposals. We believe, and in this case I speak on behalf of the Democratic Party of Kenya, that in the course of the debate, we would have ten or so minutes in which you will be able to take the delegates, our fellow delegates through the thinking of our party and others how we came to certain types of views. If you now tell us we are going to dissect this Constitution into little segments and we are not going to comment on them, how do you expect us to rationalize why we want a Prime Minister, why we want an Upper Chamber, why we don't want the Provincial Administration. The whole sense of governance must have some theory, some theme. If you now cut it into little pieces, it is like you are going to say, well we heard those delegates, awe will now go and draft a Constitution for you. I don't think I want to subscribe to that sort of approach. I came here, I took an oath of office

to do justice on behalf of Kenyans and we are not going to do justice in the manner you are handling it. So please let us agree on the procedure if we are going to debate, and you tell us we are actually going to debate. Then all of us can prepare for those chapters you want us to comment on then we can give you meaningful comments. But don't ambush us for goodness sake and say, because most of us here, I know, including my brother here Mzee Nyachae, Honorable Nyachae, we have been refraining from commenting because we didn't think this is a time to actually make those contributions.

If that is what you want us to do, for goodness sake, tell us that is what you want us to do. And for goodness sake Honorable Chairman, please respect these Kenyans here; give them their say. That is what we fought for, and Honorable delegates here say we fought the other regime, the other one and the other one, including this one of which I am a member, if we go this way, I will fight it. So please let us be organized. Let us go, build the Kenya we all want. Listen to each other, let us build consensus, and we are not going to have consensus if you rush us through this way.

Hon. Delegate Otieno Kajwang':I think I have heard Honorable Nyamweya very very well. His heart is in this Constitution; I know we have discussed it with him many times. What we are going to do in the meantime if we have to proceed, I think I give the Steering Committee a chance to go and reconsider, they are the ones who brought us to this position. Let them go and reconsider that. In the meantime, let us continue with our two-minute debate and finish this chapter. It does not mean..... (Protest from the floor) We cannot give you ten minutes now, because if we give you ten now, it means that you will be talking for ten minutes on one chapter only. So I think they will revise it so that we go through the entire Constitution without any comment, and then we start debate. I think that is the way I can see it emerging. Fifteen, I had already called you. Twenty five.....

Hon. Delegate James Nderi Gachagua: Mr. Chairman, my name is Honorable Gachagua, MP for Mathira Constituency. Mr. Chairman, let me just, at the risk of repeating what has been said impress upon you about the contribution that is coming from the floor, and I think we are reaching a stage where you are sort of precipitating a crisis in this Conference. Because the views of the members are very clear, that the way we are proceeding is not good enough, and I think you cannot keep on ruling Mr. Chairman that despite the contributions that you are hearing, you keep on urging that we continue

that way. We are now saying that the two minutes that you have allocated is sort of destabilizing the Conference. So we are proposing and I am proposing here, and that is the way it should be, that we adopt the procedures as they were, and you now as the Chairman can only put the matter to vote. I think it is not proper for you to keep on overruling the contributions from the floor, Mr. Chairman.

Hon. Delegate Otieno Kajwang’: Thank you very much. I think if I have heard Hon. Gachagua very well, what you are saying is this, let us go the way we were before. If we go that way, then we will say that we have already done the constitutive process. That is the way it was before. The way it was before is that the Commission will come here, take us through constitutive process and then the next, and the next, and the next and then we will have ten minutes each. Is that how you want us to proceed? Let me have 114 there; 599 I will see you after this.

Hon. Delegate Muite Paul Kibugi: Mr. Chairman, we need a compromise here, and the Chair of the Conference, I am Paul Muite, member for Kabete, delegate 114. I am saying we need a compromise here because the Chair of the Conference is here, and the sentiment of the delegates are very clear, namely that the two minutes you are allocating is not adequate for them to express their views, yet you are saying that ten minutes is a bit too much. Could we have a compromise, and I am suggesting a compromise Mr. Chairman, at this stage of the discussion we give members five minutes each to express themselves.

Hon. Delegate Otieno Kajwang’: That is another proposal on an amendment. How do we proceed? 599, then we put the motion.

Hon. Delegate Leslie Betawa Mwachiro: Thank you Chair for seeing me at last. I wonder whether it is because where I come from or was it just deliberate. My number is 599, Leslie Betawa Mwachiro. The point of order I have is this, it looks as though the Steering Committee we formed is not taking charge of this Conference. I was going to move that we want to see the three Vice-Chairs we elected sitting at podium today with the Chairman of this Conference. As it is now, it looks as though the Commission is still running this delegates Conference and yet we have elected a Steering Committee. Mr. Chairman I beg to move.

Hon. Delegate Otieno Kajwang’: I am not so sure about that. 263 and then 7. Two sixty three and then seven. They are a bit nearer so they are heckling me.

Hon. Delegate Abdulkadir Kaaru Guleid: Thank you Mr. Chairman. I think we are avoiding the rules and regulations of this Conference. I am Abdulkadir Kaaru delegate number 263. We are avoiding the rules and regulations of this Conference. It clearly says that the meeting of this Conference is either chaired by the Chairperson of the Constitution Committee or in his absence, by his Vice Chairman. In that case, I am saying we are not running Conference according to the rules and regulations. Can we put the meeting into procedure please?

Hon. Delegate Otieno Kajwang’: Yes, he is passing a vote of no confidence on me. Number seven please.

Hon. Delegate Angwenyi Jimmy Nuru Ondieki: Thank you Mr. Chairman. Mr. Chairman, for us to come back on course, I am proposing Mr. Chairman, that you give us a programme the Steering Committee gives us a programme for may be the entire week saying today, we are going to discuss such and such a chapter, and we are going to have so much time for it. So that we know in advance what we are going to face on the Conference floor. Mr. Chairman, I would not want to have a vote of no confidence in you because you do provide another avenue for us to express ourselves with the Commission. I would like the Commission to have an upper hand in this process. So I would want to support that we have people like you over there so long as you listen to our views and implement what we say we want to be implemented. Thank you.

Hon. Delegate Otieno Kajwang’: Thank you I will recognize 56, fifty six?

Hon. Delegate Kibwana Kivutha: Thank you very much the Chair. I think the point that is being eloquently expressed by the delegates is we must not rush whether it is the Commission telling us what the Draft is about, whether it is our own discussion on individual chapters, and whether it is eventually the working groups because if we do so, we shall merely be going through motions. We will not

actually substantively be doing the work that Kenyans are expecting us to do. My proposal is, the Commission should actually adequately explain the Draft to us, and we should generally debate the Draft sufficiently before we go into working groups, groups that are actually informed by the general discussion and obviously two minutes, in two minutes you cannot say anything meaningful. My proposal is this, would it be possible to go for a tea break, get the Steering Committee to meet again and consider the things that we have said so that they are now able to advise us on a proper way of doing this work, so that we don't merely go through the motion of debating and we are not debating meaningfully.

Hon. Delegate Otieno Kajwang': I notice we have just come from lunch, you want us to go to tea break again? I am on that side now, 303; 525

Hon Delegate Margaret Nyathogora: Honorable.....

(Interjection)

Hon Delegate Otieno Kajwang': Five hundred wait a moment, I will come to you. Give it to 303.

Hon Delegate Margaret Nyathogora: Honorable Chairperson, there is something I have noted since you took that Chair. You have been favouring that side too much. I am not surprised; it is because you sit around there. Please, from now, consider from there to there so that we may give our views. The only thing I wanted to say is that the way things are, this Conference is becoming again a Commission delivered Conference, because the consultation and the way things are being run there, they are just like before. I remember we put three Vice Chairmen there, yesterday things were so good with the Chairperson we had there, but today things are different. It is a high time the Commission understands that we have a Steering; and you Steering Committee, if you are unable to do the job we are ready to remove you and put others. Thank you.

Hon. Delegate Otieno Kajwang': Thank you very much, number 500 before I go to 525.

Hon. Delegate Kamla Sikand: My name is Kamla Sikand and I represent women organizations here, and I am delegate number 500. Honorable Chairman, to tell you the truth, I am a bit confused. First of all I thought the Steering Committee is the delegates themselves. I cannot understand the position, because we ourselves are the Steering Committee. Secondly I thought from today the Commissioners were going to go through the Draft with us and explain to us chapter by chapter. After that, I thought, even when we come back from our technical committees we will be given full opportunity and full time to touch an out each and every issue. I thought we were going to be given full time so I cannot understand, why cant the Commissioners go through the Draft with us. I personally would like it because I would like the Commissioners to completely to explain the Draft to us before we do go to the technical Committees. Thank you.

Hon. Delegate Otieno Kajwang': Five hundred and twenty five.

Ibrahim Ahmed Yusuf: Thank you very much Chairman. My name is Ibrahim Ahmed Yusuf delegate number 525. Chair I noticed before we went for lunch you had a tendency of going for the names that start with 'O' and 'A's, and after lunch, you went for your colleagues who are in Parliament with you and your political colleagues. Chair, what we are developing here is a culture of 'us and them'. We elected people as Vice-Chair to the Steering Committee that is becoming them and we are becoming 'us'. They come with their rules that they want to impose on us. So what we are saying is, Chair, we might as well take the powers back from you people, remove the Steering Committee and form another one.

Hon. Delegate Otieno Kajwang':That is very very draconian. There is 149 there then I close. We cant run a Conference on points of order.

Hon. Delegate Simeon Nyachae: Thank you Mr. Chairman, I am 149, Simeon Nyachae. Mr. Chairman, I am on the Steering Committee and I was at that meeting from 8.00 o'clock when it started. The issue of two minutes was never discussed. So, Mr. Chairman, here are delegates condemning the Steering Committee when in fact that particular issue never came up. What we agreed is that let the Commissioners take the delegates chapter by chapter before they go to their respective committees. The issue of ten minutes was never discussed or changed, so I think there must be another inner

Steering Committee which some of us don't know. So Mr. Chairman I think if you listened carefully to the Chairman of the Commission, he used a phrase, which seems to be ignored. He also admitted to the Conference here just now that some of these things are not privy to him. In other words, he also never heard of these two minutes. So Mr. Chairman, I think let us correct things.

Hon. Delegate Otieno Kajwang': After listening to Honorable Nyachae now I think I have enough wisdom to make a ruling. Now the ruling is this that we shall break for fifteen minutes and the Steering Committee will come back here and authoritatively restate the rules as they should be and we proceed accordingly.

Presentation of Report: Chapter 8 – Bill of Rights

Hon. Delegate Otieno Kajwang': Order. We took a break of 15 minutes, although we took a little longer than 15 minutes, to give the Steering Committee a chance to consult on the matters which you raised on points of orders, several of them. I am glad to report that the Steering Committee has met, and the Chairman of the Steering Committee who is also the Chairman of the Conference, Prof. Ghai will give you the views of the Steering Committee on the matters which you raised. Thank you.

Prof. Yash Pal Ghai: Thank you very much Chair. The Steering Committee considered seriously the points raised by the delegates. Can you all hear me by the way? Considered your views seriously, we appreciate that delegates want ample time to make their points, and we recognize that sufficient time has to be given. But we also realise that the process cannot go on for ever, so we need to have a balance between the presentation by delegates and concluding in reasonable time.

The proposals that we want to put to you, is that we continue our discussions as we began this morning, that is to say, go through the report and draft constitution chapter by chapter. Then at the end of each presentation by a Commissioner or Commissioners, we have this general debate which can include seeking points of clarification or making comments of your own. Instead of the two minutes that we had proposed, we think that five minutes would be fair. I remember one delegate suggested that five could be compromised. We think that in five minutes, you have an opportunity to make a number of points. We will then allow those delegates who want to make a point, up to five minutes.

At the conclusion of the debate on that particular chapter, we will move to the next chapter and we will repeat the same process. So this will give delegates a number of opportunities to intervene to make their points.

At the end of the presentation of the last chapter, we will then break into committees. In the committees, there will be ofcourse be more time for delegates to make their points, then if possible in a plenary like this, the responsibility of the committees will be to consider one or more chapters, that have been assigned to them and do it in a very detailed way. And then when they have amendments, they can put that in the form of recommendations in the report of the committee which will be presented to the plenary, when the work of the committees has been concluded.

The opportunity for the delegates to make amendments will be when we all meet after the committees have concluded their work and have had an opportunity for a very detailed and careful examination of the chapters. So decision making will take place when we have reassembled after first of general debate, and secondly the consideration in the committees. So we would like to propose that five minutes be given to those delegates who want to make their points, to seek clarification and when the entire document has been discussed in this way, we break into committees.

We have also proposed that each session should be chaired jointly by the chair or the vice chair of the Conference. You know we have three vice chairs, in addition to the chair and they will take turns to chair the session. But we also want to encourage the participation by delegates, and we are proposing that each of the provinces should give us the name of one person from the province who would co-chair a session with one of the regular chair persons. And this way we will have some continuity and we will also be able to have wider participation. The function of the vice chair or the chair of the Conference will be in particular to keep you informed of the decisions or the recommendations of the steering committee where as the other chair will be in charge substantively of the that particular session. But both will be effectively chaired as a joint effort.

We also believe that we need to limit the points of order. Points of order have held up our discussions, we were moving I think quite well today until we had a large number of points of order. We believe that once we had began the debate on a particular chapter, we should focus on that chapter and restrict

interventions to explanation by the Commissioners and then clarification or comments by the delegates. We should not entertain points of order at that stage. This way I think we can make good progress and there is a kind of continuity in the debate that is broken if we have too many points of order. We also had discussed this morning, and I am sorry that this information was not conveyed to you earlier today, that the Steering Committee met and considered your recommendations yesterday that we should move speedily to the formation of the two standing committees, the committee on privileges and welfare and the committee on the media.

What the Steering Committee agreed this morning was that we should seek nominations from our usual groups, that is to say we would seek nominations from each of the provinces, for the names of nominees. Firstly on the committee on welfare, discipline and privilege, so that provinces will give us one name each, then the delegates from other categories will give us one name each. That is to say political parties, parliamentarians, religious organizations, professional organizations, trade unions, non-governmental organizations, special interest groups, and women's organizations. So if you can give us names of your nominees for the two committees, then these will be considered by the Steering Committee, and we will bring them to these Conference a suggested list, which you will prove or give us your comments, if you have problems discerned. So the sooner you can all submit and give us the names, the sooner we can set up the committees. I certainly hope that before the end of the week these committees will be established and functioning. I think those are the decisions of the Steering Committees that I wish to bring to your attention. If the other vice chairs wish to, if I have committed some point they are free now to add to what I have said, but I hope I have captured the spirit of the discussions and the recommendations of the Steering Committee.

May I just ask, so that we can proceed further, may I ask if anybody objects to this proposals? If you don't then I will be very grateful and we can move forward. Yes 524.

Hon. Delegate Neera Kent Kapila: Neera Kent Kapila, 524 Religious Organizations. I would like to propose Mr. Chairman that we start off tomorrow with a two day presentation of the entire draft bill very thoroughly by the Commission, after which we have the week-end, in which to read and study all the documents that have been given to us individually. As we reconvene on Monday, we break up into

our groups in order to complete our discussions. Those groups will further ensure that the Steering Committee will break these groups further into smaller groups, so that we can move further and faster.

Prof. Yash Pal Ghai: Thank you. So are you suggesting that after Monday, we come back as a plenary and have a general debate on the entire document. Our proposal was not to break into smaller groups until the general debate has taken place.

Hon. Delegate Neera Kent Kapila: Well what I gathered from the delegates was that we wanted to look at the full document, study it, break into committees, and then come back but however both the proposals are acceptable to me.

Prof. Yash Pal Ghai: One possibility would be to have what you are proposing, that is two days of presentation of the entire document, as indeed we did in the Pre-Conference meeting last year. Then have the weekend to reflect on the documents and on the presentation by the Commissioners and then on Monday, we can start the general debate.

Audience: Clapping.

Prof. Yash Pal Ghai: Is that right?

Hon. Delegate Neera Kent Kapila: Yes thank you.

Prof. Yash Pal Ghai: Is that proposal acceptable?

Audience: Applaud ...yes....

Prof. Yash Pal Ghai: We can have a little bit of more debate before we put this to question. 258 please.

Hon. Delegate Isaack Derow Ibrahim: Asante Mr. Chairman, Bw. Chairman ningetaka kujua, juzi tuliwachagua vice chairmen watatu, vice chairman watatu tuliwachagua. Na leo tunaona hapa,

somebody was chairing a meeting whom we have not elected. When did you change these rules?
Mlibadilisha lini hizi rules?

Jambo lingine,--

Interjection -Prof. Yash Pal Ghai: We have a---

Hon. Delegate Isaack Derow Ibrahim: Jambo lingine Bw. Chairman, just let me finish. Jambo lingine la provinces representatives, kutoka provinces la ku-chair mkutano, we have three vice chairs. Why should we have every province to chair the meeting.?

Interjection – Prof. Yash Pal Ghai: I thought we had---

Hon. Delegate Isaack Derow Ibrahim: Jambo la tatu, (*mur murs from audience*) mtulie halafu muongee at your time please. Niko na uhuru wa kuongea.

Audience: Uproar.

Hon. Delegate Isaack Derow Ibrahim: Jambo lingine ningetaka kujua Bw. Chairman. Mkutano wa N.C.C. Conference, na mkutano wa committee, which is superior, kwa sababu jambo ambalo linakuwa raised hapa, I can see that it is being referred to the committees, na portion ya committee inaweza ku-refer jambo ambalo linajadiliwa katika committee to full Conference. Na Conference ina-refer Jambo ambalo linajadiliwa hapa katika mkutano. Kwa hivyo ningetaka kujua clarification ya the goal for the full Conference and the committee which is superior. Asante.

Prof. Yash. Pal Ghai: We have on the floor two proposals. One has been made by the Steering Committee and the other one is from the floor. One is that we go through the document, chapter by chapter, have a debate of presentation of each chapter, then move on to the next one.

The other proposal is that we set aside two days or so, when the Commissioners will present the entire document, as we did in October. There won't be interruptions, we will have, hopefully ample time to

go through each chapter of the draft and the report, then when we meet on Monday after you've had time to reflect on that, we will start the general debate, which is envisaged in the standing orders. So we really have now two options, and I would like us to focus for the time being on which option you prefer. So could I put this to vote now or will you have more discussion?

(Murmuring from the audience)

Prof. Yash Pal Ghai: Okay, 406.

Audience: Arguments

Prof. Yash Pal Ghai: Okay he has deferred to 463.

Interjection: 463, 406 has given me his chance.

Hon. Delegate Suba Meshack: Mr. Chair, having considered the merits and de-merits of each of those proposals and recognizing that it is not possible for these Honourable delegates to contribute after the Draft is presented from page one to the last, I want to second the proposal that has been brought forward before this Conference by the Steering Committee and urge this Conference to adopt it. Thank you.

Prof. Yash Pal Ghai: Could I just have some indication through voice so we can decide. Those who favour the proposal that the Steering Committee has made, please say Aye.

Audience: Aye.

Prof. Yash Pal Ghai: Those who support the proposal that we deal with the whole document first before we start the general debate, say Aye.

Audience: Aye.

Prof. Yash Pal. Ghai: I think the proposal to have debate chapter by chapter has a greater support (clapping).

Prof. Yash Pal Ghai: I suggest you to see the (Inaudible) So I think with those questions out of the way I give the floor back to Honourable Otieno Kajwang' to continue the debate that we began this morning. Thank you.

Hon. Delegate Otieno Kajwang': Thank you very much Mr. Chairman. I think the members will also remember that the Chairman said that we are going to disallow point of orders as much as possible. So I will not listen even if you make a lot of noise. So I can tell you that we have 104 people who wanted to speak; definitely we cannot reach all of them and in fact we have eaten into the time of the other committee which should have come in to present on Bill of Rights and I think I am just about to conclude by giving one or two people. I have a long list here so if you are lucky and I see your name you will give us some comments and we close it. One such person who is lucky is Honourable P.K. Muite.

From background; It was a point of order.

Hon. Delegate Otieno Kajwang': That was a point of order now I want to give him a chance to comment.

Hon. Delegate Paul K. Muite: Mine is not a point of order. I had given my name and I have two concerns to share with fellow delegates here on Chapter One, the sovereignty of the people and supremacy of the Constitution, and I am sharing this concern so that we can jointly and collectively look for a way forward.

Mr. Chairman, when we talk about people being sovereign in making their Constitution we mean that the people have the final say in the making of that Constitution. My concern is this, how is the sovereignty of the Kenyan people through this delegates, going to be realized when it is possible Mr. Chairman that we can approve the Draft at this Conference by a majority of five hundred delegates out of six hundred and that Draft as approved by five hundred people may very well enjoy the support and

approval of 29 million Kenyans out of the 30 million Kenyans. We then submit that Draft Constitution to Parliament, which has got the support of five hundred delegates and 29 million Kenyans; potentially, seventy-four members of Parliament can shoot it down. How is the sovereignty of the people going to be realized?

(Clapping).

The second concern, Mr. Chairman, is that we also talk about the supremacy of the Constitution, not the supremacy of Parliament. How can the Parliament, which is below the Constitution, be the one to give birth to a new Constitution? I know of only two ways in which a new Constitution can come in to be, either through a constituency assembly or through a referendum. The Kenyan people who have got the sovereignty can even abolish Parliament and say from now on they want to govern themselves through village councils. That is what sovereignty is all about. So how can Parliament be superior to the Constitution? Those are the two concerns.

Hon. Delegate Otieno Kajwang': Thank you. Are you through? Thank you very much. We were giving you five minutes because we have changed the rules but you used two minutes, which is better for us. We will proceed and now I give somebody else who is lucky here. All of us are honourable. Ole Osoi, 364. Is he there? He is not there. Then in that case, another person who is lucky here is honourable delegate Mary Wambui. Is she present? Yes, it is 467.

Hon. Delegate Mary Wambui: Thank you Chair. My comment is on the laws of Kenya in regard to the supremacy of the Constitution because in article 5 (1) we have the other laws in Kenya that will be regarded when we have the new Constitution and in which the Constitution is taken to be one of the other laws of Kenya. But considering what we are saying about the Constitution being supreme to the other laws, I think it should be made clear in that article that these other laws are subject to the Constitution and any of the laws which is in contradiction to the Constitution should not be allowed. Like in the African customary laws where we have laws that have been discriminating, for example, women. If at all they are going to be given equal level with the Constitution then I think it is going to be a disadvantage. So I think the proposal it should be that only the laws which are not in the contradiction with the Constitution and the Bill of Rights should be recognized. Thank you.

Hon. Delegate Otieno Kajwang’: Father James Nthiga Gatiti, 520, on dual citizenship. Are you there?

Hon. Delegate Father James Nthiga Gatiti: Yes. Thank you Chair. I am Father James from the religious organizations. I want to contribute on security and citizenship. In Kenya we must never forget the vulnerability of this nation considering that we have experienced three bombings related to International terrorism to add to what has already been said for the subject of dual nationality. Article no. 23 of the Draft. Since the thinking behind this proposal was to assist kenyans abroad who have taken a foreign passport and thereby lost their claim to Kenyan citizenship under the current laws, I wish to suggest to honourable delegates the following solutions.

1. Dual citizenship may be held by those who primarily were of Kenyan nationality.
2. Those who marry a Kenyan citizens may obtain Kenyan nationality after ten years of marriage and such applications should be treated on merit. In that case the applicant must prove fluency in Kiswahili, knowledge of the Kenyan Constitution and have manifested signs of loyalty to the nation of Kenya. This should keep out the undesirable elements mentioned by Honourable Delegate Oduor Ongwen. Thank you.

Hon. Delegate Otieno Kajwang’: Thank you very much. In fact, just next to you there is another Father on citizenship, let us hear him also. Father J. Gitonga, 311. Are you there? Honourable Delegate Father James Gitonga.

Hon. Delegate Father James Gitonga: I am here Mr. Chairman.

Hon. Delegate Otieno Kajwang’: I did not see the---

Hon. Delegate Father James Gitonga: Thank you Mr. Chairman. What I am going to comment on has already been commented by other honourable delegates, but I would like to chip in about dual citizenship. To me, Mr. Chairman, these words are misleading. Dual citizenship. The word dual is a

Latin word which means two and this might mean that somebody in Kenya has two citizenships; one, he is a Kenyan and on the other side he enjoys British citizenship. So according to the explanation featured inside here, I would suggest that instead of the word 'dual' we put the words 'change of citizenship' so that it can be better understood, and if you agree with that, change no. 3 page 24 where it is written "a person who loses citizenship of Kenya as a result of acquiring the citizenship of a country---. Those words following be deleted. That does not permit dual citizenship. Those words, if you agree with my suggestion, should be deleted.

Another thing, Mr. Chairman, which is not mentioned here is what do we do about a person who has Kenyan citizenship and the citizenship of another country, so that today he is a Kenyan if he goes to England he is an Englishman or German? There is nothing written here about that.

Another thing, Mr. Chairman, I would suggest that there be definition of words which are somewhat foreign or rather difficult so that when we read them in the Constitution they are understood. For example, what is the Bill of Rights? There should be a definition. What is the republic? There should be a definition and also citizenship. What is citizenship? So that when we read after the definition we know what we are talking about. Thank you, Mr. Chairman.

Hon. Delegate Otieno Kajwang': Thank you very much. Moving quickly, we are doing very well. Honourable Boniface Mganga.

Hon. Boniface Mghanga: Mr. Chairman. Thank you very much, for at long last looking towards this direction. The first comment I would like to make will be in regard to article 9(1). which says the official languages of Kenya are Kiswahili and English and all official documents shall be made available in both languages. Mr. Chairman, I would want to say that if you put a requirement that all official documents are going to be made available both in English and Kiswahili languages you are putting public servants into a lot of problems. That means people are going to demand intricate and complicated documents such as Cabinet memoranda, international treaties, international agreement, and conventions to be made available in Kiswahili. I would suggest that those who want to have it in Kiswahili it can be made available but the section should simply read that the official languages of Kenya are Kiswahili and English.

When you go to two the National language of Kenya is Kiswahili. What do you miss by omitting that? We just need to leave it silent. People will know that you have two languages, Kiswahili and English.

Secondly, Mr. Chairman I want to comment on article 14(12), which says that the state shall implement the principle that 1/3 of the members of all elective and appropriate bodies shall be women. I would hate to think that my daughter will not believe she does not require to get a particular grade to go into a school of medicine to be a doctor or to go to the School of Law to be a lawyer. After all, when you go to see a doctor there is no question of saying this is a female doctor and she is any less of a doctor than a man male doctor.

What I am saying Mr. Chairman is that this is a good proposal but it is coming too late in the day. We would have benefited greatly if it came twenty, twenty-five years ago but our women have made tremendous achievement and they have proved they can compete with men and achieve. By putting a legislation you are actually telling them 'without helping you cannot excel'. I would therefore be of the opinion as proposed earlier on by Dr. Kolale that opportunities be open for all to compete equally for available resources and jobs in the country. Thank you.

Interjection: Silence.

Hon. Boniface Mghanga: Further Mr. Chairman. I would like to go to 14(14) where it is said that the Republic shall be committed to social justice and through appropriate policies and measures to provide for all Kenyans the basic needs of food, shelter, clean water. Mr. Chairman it means if a Kenyan sleeps without food, if a Kenyan goes without shelter, he can go to Court and sue the Government. This is a very dangerous proposals, if you do not intend to implement it. The Government should only implement this if you are really committed to make sure that every Kenyan will have food on daily basis, every Kenyan will have shelter and there will be no street children, there will be no street families.

I will look at 14 (9) where you say the Republic shall promote the role of the Civil Society in governance and facilitate its role in ensuring the accountability of Government Mr. Chairman, what is

Civil Society. Mr. Chairman can we avoid putting phrases that cannot easily be defined and whose limits and boundaries cannot easily be demarcated. Otherwise we may find ourselves endlessly in Court, because a Women's Organization is a Civil Society, a Church Organization is a Civil Society, Mother's Union is a Civil Society, Kenya Union of Journalists is Civil Society. Where do you start and where do you end. Mr. Chairman remove clauses that have infinitesimal definitions and only send the ones we can easily identify.

We have entered a critical stage and I want to make a comment and maybe some of my colleagues may not like it very much. I have listened to the various channels of Tvs last night, I have read the various Newspapers. We have been told and Hon. Muite has raised a very pertinent point. About the sovereignty of the people. This document after it has gone through here it will go to Parliament. But I am wondering so many of Members of Parliament are not present. I am wondering why Ministers of Government are not here. Since yesterday only today one government Minister was present and when you go to Parliament these are the people who will take us backward commenting on things that have been dealt with here. I think it is important that we know is the Government supporting this process or not? Mr. Chairman, thank you very much I hope you will give me another five minutes tomorrow.

Hon. Delegate Otieno Kajwang': Thank you you took your full five minutes and short by two seconds. That was Mghanga there is another Mghanga called Mwandawiro Mghanga. Is he also here? Point of Order Mr. Chairman.

Hon. Delegate Otieno Kajwang': Not allowed, unless you write it down I read it. Mwandawiro Mghanga.

Hon. Delegate Mwandawiro Mghanga: Asante sana Mwenyekiti na Waheshimiwa Wajumbe. Yangu yalikuwa ni kuchangia juu kwanza, swala la uraia. Na nadhani hilo ni swala nyeti sana, na lazima tufikirie sana kwa makini. Ni kweli limefafanuliwa katika kile kitengele ambacho kinafafanua nani atakuwa Raia, nani ana stahili kua raia na kadhalika. Lakini kwa sababu Katiba inategemea, tulitoka wapi? Ndiyo tujaribu kupiga macho mbele nakuangalia tunaenda wapi. Tukiangalia maana ya uraia, ingawa tumefafanua nani atakuwa raia, lakini vile vile ningepomba kupendekeza kwamba kuna maswala katika hii nchi, tumekuwa na raia ambayo hana hata inchi ya nchi

yetu kabisa. Na ningeomba katika fafanuo itiliwe mkazo hata kama imeongelewa katika kitengele cha Sura ya 14, ningependekeza kwanza kifungu kama hiki kionekane wazi na bayana kwamba, kila raia ana haki yakuishi na kuwa na mali pahali popote anapo chagua nchini. Hiyo itatusaidiya kwa kupambana na tatizo la ukabila ambao limekuwa katika nchi yetu.

Kisha ningetaka pia kupendekeza katika haki za raia. Kila raia ana haki yakufaidi kutokana na rasilimali za kitaifa ama jamhuri na hapo vile vile sikubailiani na Boniface Mghanga Mheshimiwa. Kwa sababu mimi naona zile haki ambaye imefafanuliwa katika Sura ya 14 ni muhimu sana katika uraia. Hasa nilikuwa naongezea katika hiyo Sura yakufafanua uraia, iweze kwamba ni wajibu wa Daula ama Serikali kuhakikisha kuwa kila raia ana ishi maisha ya kiutu na ana faidi kutokana na rasilimali za kitaifa. Kutokana na hapo ndiyo tutakuwa na haki vile vile yakuongezea kitengele kuhusu wajibu wa raia. Yaani kila raia ana haki ana wajibu wakulinda jamhuri na Uhuru wa kitaifa. Sawa lingine nina wapongeza wananchi wa Kenya na vile vile Makamishna kwa kumulika maoni ya wananchi wa Kenya has katika sera ya lugha. Kwa mara ya kwanza tu katika Katiba tumekuwa na sera kamili ya lugha. Na mimi nakubaliana kabisa na kila vile vile yote, vile vile imeandikwa katika hiyo Katiba. Kwa bahati sisi wa-Kenya tuna bahati kubwa kamba kwa kiswahili tumshukuru Mungu, kwamba tuna Kiswahili, lugha ya Ki-Africa ambaye inatuunganisha sisi kama taifa na tukiwa nayo inatusaidiya vile vile kupambana na ule ukabilia vile ulivyo, na nadhani na ninakubaliana kwamba na na hakika kuna utaalamu wakutosha wakutafsiri maandishi yote ya Serikali kwa lugha za Kiswahili. Kwa hivyo haikubaki namna hiyo. Na nikizungumzia hayo ninaomba Wajumbe kwa sababu wakati tuna tengeneza Katiba, lugha ni muhimu sana, maanake vitengele vya lugha ukisoma katika Katiba yote inasema kwamba, katiba sasa baada yakuindika itakuwa inatafsiriwa na wananchi. Itakuwa ina tafsiriwa katika mahakama. Kwa hivyo lazima tujue, kila neno linalotumika, tuliangalie kwa makini sana. Tusikubali neno lakutatanisha. Let us not accept ambiguities because we are going to suffer in the end, if we allow ambiguous languages to be used inside the Constitution. Naomba nitoe mfano.

Hon. Delegate Kajwang’: Asante sana.

Hon. Delegate Mwandawiro Mghanga: Ukiangalia katika Sura ya kwanza, naangalie ile tafsiri kwa Kiswahili. Uhuru wa Katiba kumeandikwa kwamba wakati wanafanunua. Ukuu wa Katiba kuna kifungu kina sema kwamba, Katiba itafafanuliwa kwa njia ya kukuza maadili ya utawala mwema. Una

maana gani kuhusu utawala mwema? kwa sababu hata ule wa Makabaila ukienda katika nchi ambao zinatawaliwe. Makabaila watasema ni utawala mwema. Ufalme utasemekana kwamba ni utawala mwema. Kwa hivyo lazima tufafanue kwa kirefu tuna maana gani na utawala mwema, ndiyo kwa maana mimi nina pendekeza kukuza maadini ya utawala yaki demokrasi na haki za jamii. Kwa Kiingereza, kama tunaangalia pale kunaandikwa Supremacy of the Constitution that is Chapter 1 (5). Inasema the constitution shall be interpreted in the manner that promotes the values of good Governance. What does good governance mean? It is open to ambiguities. Ndiyo nilikuwa na pendekeza kwanza kabisa, tunaweza tafuta maneno mengine lakini ama tufafanue what is good governance, lakini ningependekeza mimi iwe kwamba one that promotes the values of democratic governance and social justice. Kwa ujumla ni kwamba wakati ninaandika Katiba yote tuchunguze maneno kama hayo.

Halafu mwisho, Bwana Chairman ni kwamba kwa sababu hii Katiba tunajadili ina tafsiriwa kwa lugha mbili Kiingereza na Kiswahili tunaomba tafadhali kuwe na wataalamu wakutosha wakutafsiri ili tuhakikishe kwa tafsiri ni muliko kamili, ya tafsiri kama lingekuwa kwa Kiingereza ama kwa Kiswahili asanteni.

Hon. Delegate Otieno Kajwang’: Asante. Thank you very much you have overshoot by a few seconds. There is Hon. Delegate Fatuma Ibrahim followed by Hon. Delegate Fatuma Boru. So can they come in that order. If they are not there.

Hon. Delegate Otieno Kajwang’: Are you sure Fatuma Ibrahim not there. Fatuma Boru not there.

Hon. Delegate Fatuma Boru. I am here

Hon. Delegate Otieno Kajwang’: Okay is 267 is that so. Okay.

Hon. Delegate Fatuma Boru: Hon. Chair, Hon. Delegates. My names are Fatuma Boru Jaldesa, Delegate Isiolo District. I would like to draw your attention to Chapter 3 (12, 14). This is affirmative action for Women. Women are marginalized but among Women there are Women who are marginalized among Women. These are Pastoral Women. I am not saying may be the one third is not

enough, I have a fear that this one third for Women, I am having a fear in it. I have all the reasons to fear because if you see what is really happening at the recent appointment, none of our Women from Pastoral communities, more so to Northern Kenya have got any appointment. So when we are putting one third, as it is I fear we might not get any share. Therefore although I am not a Lawyer. I want this one to be reframed. So that at least a certain percentage is being stated here so that we can be protected. This point has been argued in many forums so that it can come clearly what percentage of the one third can be shared among the Pastoralists who are more marginalized or minority among Women. For example I cannot re-frame because I am not a Lawyer but I can give views. I may say a third of third should be given to Pastoral Women or Northern who have never got any share as compared to the shares that has been given to Women. Thank you.

Hon. Delegate Otieno Kajwang’: A third of a third. Hon Delegate Kajembe on Political Parties. He is there, give him a microphone. Followed by Hon. Ali Wario on Pastoralists Minorities and Historical Injustice.

Hon. Delegate Seif Ramadhan Kajembe: Thank you Mr. Chairman. I want to talk on registration of Political Parties and this is with reference to the Draft Bill.

Hon. Delegate Otieno Kajwang’. Hon. Kajembe, we have not arrived at the Political Parties. I think we will reserve your time until that time comes. Let me go to Ali Wario on Pastoralists Minorities and Historical Injustices. Is Hon. Wario still there?

Hon. Delegates from the floor: Yes he is.

Hon. Delegate Otieno Kajwang’: Okay.

Hon. Delegate Ali Wario: Mheshimiwa Mwenyekiti wa kikao na Waheshimiwa Wajumbe. Mimi kuna jambo sikuelewa ambaye ningependa kukosowa ndiyo niweze kuchangia sehemu yangu. Kuchangiwa kwa Mheshimiwa Muite kwamba ana mshangao na Delegates Wajumbe mia tano, kupitisha sheria hapa. Na mimi nimesikitika kwa sababu yeye alikuwa moja wa wale Wabunge waliopitisha hoja kubuni muongozo tunaye fuata leo. Na ningependa kumfahamisha kwamba, kila

mjumbe aliyo fika hapa, kule kwao amechaguliwa ndiyo akaweza kufika hapa. Hakuna namna Wakenya milioni thelathini watakuja kupitisha sheria hapa, lazima wawakilishwe na ndiposa unapata Delegates mia sita ishirini na tisa kutoka kote nchini. Hiyo ni maoni ya Wakenya milioni thelathini. Kwa hivyo tusibabaishwe na vifungu ambaye haziko. Nikiendelea kuuchangia mheshimiwa mwenye kiti, ukosefu wa usalama, kutojua kusoma na umaskini ulio tanda katika sehemu ya wafugaji ni ka sababu Mheshimiwa Mwenyekiti, hali ya maisha ya Wafugaji haikutambuliwa na Serikali yeyote iliongoza nchi hii.

Mheshimiwa Mwenyekiti, ningependa, mtindo wa maisha ya Wakenya iwekwe katika Katiba ya nchi, ukiwa Mfugaji, Mkulima, Mvuvi, Mfanyi biashara. Ukienda sehemu 53 (1) wameandika kila utaaluma katika nchi hii na wakasahau kuweka, mtindo wa maisha ya Wakenya. Kwa ninge himiza mtindo ya maisha iweko, katika Katiba yetu ya Kenya.

Mheshimiwa Mwenyekiti nikizungumzia usawa, hiyo ni sehemu 34 katika haki ya milik. Usawa Mheshimiwa Mwenyekiti. Mimi nina sikitika tutakuwa sawa namna gani. Nchi ya Kenya wameichukuwa tafsiri ya Wakoloni wakasema Wakenya ni Makabila arobaini na mbili. Mheshimiwa Mwenyekiti, utafiti chache tuliyo fanya inathibitisha kwamba Wakenya ni makabila hamsini na tatu, wamesahauliwa Wata, wakasahauliwa Runalu, wakasahauliwa Rendile, Nubi, Elmolo, Terike, Sengwar, Ilchamps, Ogiek, Malakote na Munyo Yaya Mheshimiwa Mwenyekiti. Leo watakuwa sawa na Wakenya wengine namna gani iwapo wao hawajawekwa, kwa hivyo ningependa ukurasa ifunguliwe makabila yote yea Kenya yajulikaniwe wazi.

Mheshimiwa Mwenyekiti kuna haki, kuna uhuru ya kutembea sehemu unayo taka, kwa nini Wafugaji wanahama kutoka sehemu moja kwenda sehemu nyingine? Wanahama kwa sababu Mheshimiwa Mwenyekiti, wanahama kwa sababu maradhi ya mifugo inamaliza mifugo yao, wanahama kwa sababu wanataka mifugo yao ambao wawo wanategemea kama rasimali, mifugo hiyo ipate chakula Mheshimiwa Mwenyekiti. Iwapo unatoa uhuru kwa mfugaji, toa uhuru ya mfugo yao pia. Katika kifungu inayo elezea uhuru yakutembea iongezwe uhuru yakutembea na mifugo pia. Mheshimiwa mwenyekiti ninaendelea kumaliza Mheshimiwa, na nikiendelea kumaliza, tuna uhuru wa kutonyanyaswa, Mheshimiwa mwenyekiti. Miaka arubaini iliyopita, hata niseme miaka mia moja na kitu nianze na wakoloni, ikaja serikali, ikaja serikali ya Kenyatta, ya Moi, na ya Kibaki leo.

Mheshimiwa, utu na haki ya wafugaji haitambuliwi na wapanga sera wa nchi hii. Na iwapo sisi kama Wakenya, miaka 40 ya uhuru, leo hatuna chochote cha kutambulisha ikiwemo umiliki wa ardhi angalia. Inazungumzia mikao ya miji na mashamba, peke yake. Ufugaji sio mbinu inayotambuliwa katika ugawaji wa mashamba, Mheshimiwa mwenyekiti. Vipi wafugaji tutakuwa na haki sawa na Wakenya wengine, Mheshimiwa Speaker, wakati tunakaa kikao kama hiki tukizungumzia haki na usawa kwa Wakenya wote? Kwa hivyo dhidi ya dhulma hiyo ya miaka arubaini ningependa leo mitindo yetu ya maisha kwa dhulma tuliyofanyiwa miaka arubaini sheria ipitishwe leo ya kuhakikisha utoaji rasilmali katika sehemu hiyo ili iwe sawa na sehemu za Wakenya wengine. Kwa hayo machache napenda kutoa shukrani yangu kwako.

Hon. Delegate Otieno Kajwang’: I am going to another lucky man here, Joel Sang, 368, Sovereignty of the People. That is what you indicated.

Hon. Delegate Joel Sang: Thank you Mr. Chairman, I am delegate No. 368, and I would like to refer the Conference to Article No. 1 Sub Article 2 dealing on the Sovereignty of the People. In constituting government in this country we must realize the circumstances that brought us to the point where we are, and that is bad governance brought about by dictatorship and the whole success of this Conference shall be defined by the extent to which we give power to the ordinary people of Kenya. If by the end of this Conference we shall have reinforced the hold of the elite on power, we will have failed. I am therefore suggesting that we should specifically refer to the right of the people to exercise their sovereign power directly and mention that this direct exercise of sovereignty shall be by way of referendum and conventions. I have one thing in mind that in using the referendum, people have a feeling that Parliament or some other authority must introduce a referendum. Today I am suggesting that we create a situation under Sub-Article 2, where a fixed number of Kenyans, be they one tenth (1/10) of the entire 40 population, can sign a petition and give it to the Chief Justice of the Republic. We set a timeframe that the Chief Justice shall give the same to the Chairman of Electoral Commission so that a question shall be put on the same because Government, if not checked by the people, can get drunk and forget who is master and mistress.

Now, this has been applied in one of the most prosperous countries in the world and I see nothing that can prevent Africa from implementing the same. It is to be found in the ..(inaudible) Constitution, it is

known as the popular initiative in applying the referendum. I find it a very good rope for reigning the Government or any institution of the state from getting drunk and usurping the sovereignty of the people. And at the same time, if a Government makes a decision that will injure the public interest, the people of Kenya shall sign a petition, at least half of the devolved units of the country should sign a given number and then we initiate a referendum.

Finally Mr. Chairman, nobody has talked on the issue on the Court of Arms and I would like to talk on it, because it is a very pertinent issue. When I look at the Court of Arms of other countries, they have words that even a child can understand their origin. Our own 'harambee' is a strange word to me. I would, as we re-constitute the Kenyan state, as Prof. Okoth Ogendo told us last year, that this process is a re-constitution of the Kenyan state. We should have a Court of Arms that has a national motto that can be related to all the people of Kenya. We can put a word in a language we all understand, that keeps us, tells us to hearken to something, not a strange word; even our religious leaders in this country are very uneasy with that word in the Court of Arms.

And finally, on our languages Mr. Chairman I was once speaking with an Englishman and I spoke very good English before that person, and I thought he was admiring me, and then he told me, "why are you speaking my language so well, is it that you don't have your own language?"

Delegates: Laughter

Hon. Delegate Joel Sang: I was very ashamed. Therefore, we will fail in reconstituting the Kenyan state, if we will glorify alien languages and relegate ours to nothing. As Hon. Odinga and some other Hon. Delegates said, all Kenyan languages and I believe they are 50-something not 40-something, should those be made national languages and even if need be, we should codify who are the people of Kenya, all the communities of the Republic of Kenya. Thank you Mr. Chairman.

Hon. Delegate Otieno Kajwang': Thank you. Mr. Korir Abraham from the NGO sector 464, are you still there? We are adjourning at 6.30 p.m.

Hon. Delegate Korir Abraham: Thank you very much Mr. Chairman. Mr. Chairman, I wish to make comments with regard to Article 5 relating to the Laws of Kenya as well as article 14 relating to National Goals, Values and Principles. Mr. Chairman, I wish to welcome with gladness the provisions of Article 5 Sub-Article 1(g) which clearly states that Customary International Law and International Agreements is applicable to Kenya, now constitutes part of the Laws of Kenya. I say this, Mr. Chairman, because many are the times when we have stood in the courts of this country and been unable for example to rely on provisions of International instruments which this country has ratified or has acceded to. Mr. Chairman, I wish to say that this is indeed a very important provision and should be retained. However, Mr. Chairman, I wish to say that with regard to Customary International Law, we need to move forward and recognize one the peremptory norms of Customary International Law, namely the right to self-determination, which is recognized internationally, Mr. Chairman, and accepted and we need to recognize this under our Bill of Rights, so that our people can exercise their rights to self-determination. If this may sound controversial, Mr. Chairman, I wish to say that civilized nations such as Ethiopia have within their constitutions the right to self-determination.

Mr. Chairman, I wish to comment also with regards to Article 14 to Article 10, which clearly provides that this country shall respect, protect and promote human rights and fundamental freedoms and enhance the dignity of individuals and communities. Mr. Chairman, I wish to emphasize the fact that this provision recognizes the place of communities and the fact that these communities have fundamental rights and they have fundamental freedoms which ought to be recognized. Many times, Mr. Chairman, in days gone by, communities have been looked down upon and collective rights have been denigrated on the basis of individual rights. I believe strongly Mr. Chairman that there is a place for our collectivity, particularly as this relates to the fact that we are all Africans and no African can be an African without coming from a community, a collectivity an ethnos, a nationality and I say that, Mr. Chairman, this is a very important provision.

With regards, Mr. Chairman, to Sub-Article 11 of Article 14 of the draft, I wish also to thank the drafters for recognizing that marginalized communities should be given fullest participation. However, Mr. Chairman, I wish to request that the issue of marginalized communities should be defined. We need to know who can enjoy the rights enshrined within the facts of being a member of marginalized

communities. And so I wish to join hands with as many delegates as I have said that this draft should define who marginalized communities are. Thank you Mr. Chairman.

Hon. Delegate Otieno Kajwang’: Thank you very much. I am giving this chance to Mr. Kumo and then we allow our presenters to say a word or two before we close. Hon. Prof. Ayiecho, are you still there? (154), and then Hon. Angwenyi, will be the last.

Hon. Delegate Ayiecho: Than you Mr. Chairman, I want to make a few comments. Article 72 about the territories. This country as you know is divided into Provinces and Districts. We have done very well in the constitution that we have a Schedule on the international boundary, is well defined here, the Kenyan boundary with other countries, it is well defined here. But you come into this country, internally, there are no definitions for the Provincial boundary and for that reason we have a lot of problems in certain areas, certain boundaries you find the neighboring community they have left a chunk of land. A number a places surround the so-called boundaries, they are of course undefined because of the hostilities among the communities living along the so-called Provincial boundaries. I would have like to see a schedule on Provincial boundaries, it may be a big one, but it may help because it also confuses the Administration in terms of security, it causes a lot of problems.

Article 20 (1) and also 21, this relates to the citizenship. We are being very generous with our citizenship here, granting it to anybody; you marry a Kenyan for just 3 years then we say, you are now a Kenyan. I think that is just too short, just too lenient, we should make our citizenship a little more expensive than that. I can see Nigerians who are looking for Kenyan citizenship left and right, they can go all their way to steal a Kenyan passport. So we ought to be a little more strict with our citizenship.

As regards No. 21, that any person who has been in Kenya lawfully for 7 years, I will give you a story when I was in school. There was a fellow student with us in the University of Nairobi who decided to stay in Kenya for eight years, he was repeating every year, because he was getting a lot of money from his country, he was a West African. Now this gentleman was in this country for 7 years, I mean for 8 years. Lawfully he was in Kenya because he was a student, he had a permit to be in Kenya for 8 years. There are also in this country today, several people from Pakistan and India who are working in Kenya

but they have no work permit. Young Pakistanis and young Indians, working in this country with permits, they will be here for 7 years or so, then we give them citizenship because they have been working here lawfully in Kenya for 7 years. You would not do that in the United States. I think that is also being too lenient with our citizenship.

So, Mr. Chairman, on the defense of the Constitution, I'll make the last comment on that. Some honourable delegates have made comments in that connection. Now, if we have a Government in place, we have a leader who has actually put in place an unlawful system, what are Kenyans going to do about it? Are we going to put anything in this constitution that can help Kenyans, tell that President or that Prime Minister that your system is unlawful, come down. Do we have a system here in place? Thank Mr. Chairman.

Hon. Delegate Otieno Kajwang': I said that Hon. Agwenyi will be the last, but there is a delegate who did not put his name but gave his number, No. 599 wants to speak about the Capital City, Commercial City, Customary Law, Federal Republic. Who is he? There, 599 I can see there. Has he spoken before?

Hon. Delegates: Yes.

Hon. Delegate Otieno Kajwang': Pole.

Delegate No. 599: It was only on a point or order.

Hon. Delegate Otieno Kajwang': That one was a point of order, okay take 2 minutes.

Hon. Delegate Leslie Mwachiro: Mr. Chairman, I was even packing up my bags to go. Mr. Chairman, I am 599 Leslie Mwachiro. If Kenya is a country of 53 ethnic groups, for any meaningful national identity to take root, it calls for the willingness and cooperation of these people and not the arbitrary slogans imposed on the people like 'Kanu yajenga nchi'. So we have to agree to cooperate, that is how we can make this country Kenya. Now, how do we cooperate 53 groups? We must in that cooperation, we must federate, if we are going to federate, we are basically going to create a federal

system. Now, wherever the work Republic appears in this document we must amend it so that we have Federal Republic of Kenya.

Clapping.

Hon. Delegate Leslie Mwachiro: The other thing, Mr. Chairman, is we actually have stated in the preamble, but then we have not put God first. We have put God last in the preamble. We should actually say 'God bless Kenya at the top in the preamble and not at the bottom, if we really want to be God-fearing.

Clapping.

Hon. Delegate Leslie Mwachiro: How can Nairobi be a capital city and how do we put it in the constitution? It means we can't even move it, the capital, if there has been disaster in Nairobi. We can't move the capital to Voi for example without amending the constitution. So, let us not actually name Nairobi as the capital city in the constitution, of course we know that the capital is in Nairobi. As for the other cities, everywhere in the country whereby there is a port, that port is actually the industrial port for the industrial city or the commercial city. Now we have our port in Mombasa but Mombasa is not the commercial capital of Kenya. We still find the commercial capital of Kenya is in Nairobi. Goods are being imported, they come through Mombasa, they come to Nairobi, we incur transportation expenses, they are re-manufactured and then they are sent back to the Coast, that basically is actually adding the cost of goods in Kenya. So we should at least highlight it in the constitution if we are going to leave Nairobi as the capital city in the constitution, we are actually saying Mombasa will be the commercial city of Kenya, and Kisumu as well.

The other thing, Mr. Chairman, is on the boundaries. We should actually agree to redraw some of our external boundaries. We have ceded some of our country to Ethiopia, Sudan and Uganda. Even in the Lake Victoria now we are having a problem, we have only been allowed twelve (12) miles of Lake Victoria whereas Uganda and Tanzania have taken a lion's share of Lake Victoria. So let us actually have these international boundaries re-drawn so that we also have an equal share of Lake Victoria waters as we have of the Indian Ocean with all other countries.

Mr. Chairman, I want to urge my fellow delegates here that we are actually here to make a constitution for posterity and not for sectional or sectarian or for selfish interests. When we do a Federal Constitution, we are trying to disempower those people who are enjoying excessive powers, and empowering the ethnic groups. The way we are seeing in the current government now, I doubt whether Hon. Kiraitu Murungi would like to disempower us in any way whatsoever. Or whatsoever we see in these ministers of the current government they don't want to be disempowered. But when we do a Federal Government, we want to empower the ethnic groups through a regional system, we are using the word devolution but that is in English, in Swahili there can't be any other word of devolution other than 'majimbo', so we should at least accept that 'majimbo' is actually the equivalent for devolution. Thank you Chairman.

Hon. Delegate Otieno Kajwang': Thank you very much. Hon. Agwenyi will be the last speaker on this subject.

Hon. Delegate Jimmy Angwenyi: Thank you Mr. Chairman, my name is Jimmy Agwenyi MP for Kitutu Chache. Mr. Chairman, my response is mainly to Hon. Muite who questioned the constitutionality of this process, that the constitution will be discussed and decided in this Conference and that then it could be wrong to send it to Parliament for effecting the amendments. Mr. Chairman, I believe what Mr. Muite says was in my view cheap populism. Mr. Muite is the Chairman of the Parliamentary Select Committee, a Committee which is a product of our Parliamentary Act, the Act which has set on this process of making the new constitution. Mr. Chairman, I believe if we are going to inculcate the culture of owning up to what you have done, Mr. Muite should have resigned before he could question the constitutionality of this process ---

Interruption: Clapping.

Hon. Delegate Jimmy Angwenyi: Mr. Chairman, this country is based on a constitution, and we believe on a constitution Mr. Chairman. That is why we are today as delegates of Kenyans to amend and revise our constitution Mr. Chairman. Mr. Chairman, Members of Parliament are a product of the people of Kenya, the delegates here today are a product of the people of Kenya, whatever they are

doing, they are doing on behalf of the 30 million Kenyans Mr. Chairman. So, Mr. Chairman, let us not create seeds of discord, 1/3 of the membership of this Conference are Members of Parliament, so they will be bound by the decisions of this Conference Mr. Chairman and I would not believe that they will go back to Parliament and question that which has bound them in this Conference, Mr. Chairman.

Interruption: Clapping.

Hon. Delegate Jimmy Angwenyi: So, Mr. Chairman, if we do believe that the supremacy of our constitution, the current constitution and the constitution which we will bring out of this Conference, then we should not question the organs created by the same Constitutions. So, Mr. Chairman, what I want to say to my fellow delegates is that we must guard ourselves from cheap populism, from people who may want to create seeds of discord so that we cannot go ahead with our constitution making process. Thank you.

Clapping.

Hon. Delegate Otieno Kajwang': Thank you delegates, I want to pass this microphone to my two presenters ---

Interruption: Murmuring from delegates.

Hon. Delegate Otieno Kajwang': Oh oh, point of order.

Speaker: There is a female voice there.

Hon. Delegate Otieno Kajwang': Let me take the lady's voice.

Interruption: (inaudible)

Hon. Delegate Otieno Kajwang': No, no, I identified you by the voice, you are the first one.

Speaker: Mr. Chairman my point of order is, I know you are going to give up the Chairmanship, the Conference will have another Chairman tomorrow. What will happen to those of us who have submitted our names and how are we going to deliberate on both sides of the rules? Thank you very much.

Hon. Delegate Otieno Kajwang': Okay, what will happen is that we cannot all raise comments. If we gave every one of us 5 minutes and we are 600 of us on one chapter you know how long we can take on one chapter. So those who have been lucky to find time to discuss this I think we should appreciate that. Those who have not spoken, definitely you will be given the first opportunity to speak on the second. And in any event you still have your committees and you still have the plenary after the committees and you will have sufficient time to discuss. Bwana Githu Muigai.

Com. Githu Muigai: I will be very brief, Mr. Chairman, in my answers. First there was a suggestion that the entire constitution when being amended should be subjected to a referendum. I must caution delegates that part of the problem we have today is because there have been efforts in the first 40 years of our independence to create Government outside the Constitution. And where we make amendment very rigid and almost impossible, we encourage Government to conduct business outside the Constitution. We must trust the people we elect to Parliament; in my view the way our democracy works is that the legislature must be allowed to make the law. If we feel that in our history our MPs have not done a very good job, probably the way to solve that problem is to increase their capacity either at the level of probity or exists or otherwise, but it is not to subject a government by referendum. I may say this Mr. Chairman, with your permission, when we went to consult Mr. Kivuitu about the conduct of a possible referendum arising from this Conference, he told us that the minimum budget would be about 4 billion shillings, minimum. Again so we must be careful because all these things cost money, but I agree with those who say that there are things that we should not leave to Parliament because they are so fundamental they affect the national character that we are going to agree upon here.

The other issue, Mr. Chairman, that I would like to mention is again on what Paul Muite, the Chairman of the Parliamentary Committee, stated, which was about the sovereignty of the people and the fact that Parliament has the final determination. Now, we are caught both in a historical problem and a

legal one as well. Kenya is making a Constitution in very unique circumstances. We are neither emerging from civil war nor are we involved in civil strife, therefore the Parliament of the Republic of Kenya is in place. The Constitution of Kenya Review Act, is an Act of the Parliament of Kenya. By that Act the Parliament of Kenya did not divest itself of legislative power; it only donated part of that power by creating the consultative process that we are now undertaking.

The truth therefore is that when we finally submit at the Conference the Bill to amend the Constitution of the Republic of Kenya, it has to go to Parliament, that is the law as it stands today. Unless this Conference is able to persuade Parliament that the current Constitution ought to be amended outside this process, the Constitution of Kenya Review Act ought to be amended and that the power to enact a new Constitution should be vested in this Conference, the truth must be stated that this Conference is debating and presenting to Parliament for enactment, but the final enactment as a matter of law lies with Parliament. Therefore, probably, Hon. Muite's concern is not academic in that he intended to draw our attention to the necessity to create consensus here, such important and abiding consensus, that Parliament would have no difficulty with our proposal. Then in that respect I would imagine that he has a valid point. I think Prof. Okoth-Ogendo would want to say something about that at some point.

Mr. Chairman, the other issue I want to talk about is the issue of the interpretation of the Constitution and Hon. Mwandawiro Mghangha made reference to this. I would also like to caution delegates of the grave danger that exists in trying to write details in the Constitution. We cannot possibly write detail. The minute you try to write details you try to foresee every possible controversy that will arise in 50 years and you try to solve it and provide an answer for it the constitution will die. The constitution must leave in a certain measure, believe it or not over ambiguity of reasonably flexible language to allow those who will interpret the constitution to give it new meaning to every generation.

For example, good governance if we try to define it, in any measure of detail, we shall be embroiled in the political and moral controversies of today but we want good governance to mean to our children something properly more than it means to us today. So we must entrust that if the Speaker of the National Assembly is called upon to interpret the constitution, he will do so with flexibility, with

creativity, and with vision. If the High Court of Kenya is called upon to do the same, we hope that, that is what will happen.

And that is why we must again build the institution; we must have Judges in whom we have confidence about their ability, about their integrity, and about their patriotism. And that is what I want to say.

Com. Githu Muigai: (not clear) By the way of conclusion, I have addressed the question of a referendum, now the question of self-determination. One of the learned delegates, Honourable Korir made this argument about, should we not write into the Constitution the right of self-determination like Ethiopia? Again I could like to caution my fellow delegates the danger of creating Constitutions by reference to other people. Other people have historical problems specific to them, if you look at Ethiopia it has historical problems specific to Ethiopia, and if you look at the cessation of Eritrea it is the Constitution of Ethiopia was addressing their own specific problem.

In Kenya when you read the Review Act, when you the read submissions we receive from the people, the people of Kenya say, “ they want Kenya to remain one indivisible sovereign nation” and we never had submissions to the contrary and therefore we try to be faithful to that. For my part as a lawyer, I have always felt that this right to cessation is in many respect, it is contradictory.

The purpose of the Constitution is to constitute the state, not to balkanize the state, not to divide up the state, and therefore an Act of Cessation is an Act against the Constitution in my very humble view and I would personally caution against that line.

Now finally provincial boundaries Mr. chairman, we in the commission maybe my colleagues would like to say something about that we went through the whole possibility of our determining which are the districts and which are the provinces, and we took the view that this were questions of such enormous political controversy that they could otherwise prejudice the important questions of principle that we were trying to resolve. And this issues of what is the province and what is a District, should belong to another body and properly you are more courageous than we are and you are going to be able to define which are the Provinces and which are the Districts. Thank you.

Hon. Delegate Otieno Kajwang’: Thank you very much. Honourable Kavesta.

Com. Kavesta Adagala: At the brief, I want to thank the Honorable delegates for the really good comments, which have been made, and we will take them on board to the Committee, even if you have heard us you can write and you give the leader to Commissioner Githu or my self. We will take them to the committee, since the convener has not been determined yet. We don’t want you to forget.

Now just Affirmative Action, is going to come up again in the Bill of Rights, in the representation of the people, in devolution. I don’t know because it seems that as if we are at different levels regarding Affirmative Action. Honorable Boniface Mghanga said that women have the same rights, and the same --- yes. For middle class women, and men and upper class, I have squandered more opportunities in my life than most men will ever know because of my family background, and I take advantage of whatever comes because of my background, because of where I stand in the society but, we are thinking of that child who does not have this even playing ground or present background or we can describe the urban slum and so forth. And who is encumbered by culture. We have to think we should not just project our own personal lives onto the whole of Kenya, we have to think objectively and this is what we did. But it will come up again, when we say “ free and compulsory primary education”, we have in that one stroke made it possible for the girl child and the boy child to go to school, but there are many other encumbrances and i hope that I would have a more open mind to this, but we will take it to the board because, on the class nature of our society.

Then the other one, citizenship, dual citizenship, there are very many people who are uncomfortable with it. And they see the pressure on our boarders, the land boarders and the ocean boarder. They see that and also as he said West Africa and all manner of other places, so there was also a suggestion from some other submissions we had that should be a dealer, he should be a reciprocal, those who grant us, dual citizenship, we grant them citizenship. But I don’t know how that goes, but many people are very uncomfortable about all things that you have said about citizenship.

On culture, I am very grateful myself, for all the suggestions which have been made on culture, and I think that they should be developed in the committee. The ethnic number goes to 42 - 53, to 72-80

depending on who you want to leave out. So maybe if you find out how everyone wants to be defined then we find out who Kenyans are, because a new number has come up to 52, and it has not mention of some of the other people who are usually called other, which is a eurocratic way of looking to things for the administrator. But for the constitution everyone has a right, so we really have to look and say who are Kenyans.

I think people have said all that over, so that was just affirming that particular point. But, thank you very very much, for your many contributions.

Hon. Delegate Otieno Kajwang': Yes, I will pass the microphone lastly to the chairman of the conference and the commission to make certain announcements and give certain directions. I want to plead with you once again that if you did not have time to speak, you still have the opportunities to speak on this issues but you could also write your position and attend the committee which will be dealing with this and contribute. I think those are still other openings. So, don't feel like if you didn't speak you have been left out completely.

Thank you once again. Mr. Chairman.

Prof. Yash Pal Ghai: Thank you very much indeed. I just have a couple of announcements the Steering Committee decided this morning that we will put up a special notice board where delegates can put up notices, if there's caucus or groups bring together different categories of delegates and if they want to make any announcements they can use that notice board for this purposes.

Mr. Lumumba will properly tell us tomorrow exactly where the board is located, but please feel free to use that. I want to remind the Steering Committee members that, there will be a meeting at 8.00 o'clock as usual.

The third point I want to make is that we will try to get you a programme for next week's work before we close for this week, we have already have a programme which takes us up to friday and then before you disperse for the weekend, you will have the programme for next week so that you can prepare yourselves for those sections.

