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(CKRC)**

NATIONAL CONSTITUTIONAL CONFERENCE

Verbatim Report of

**PLENARY PROCEEDINGS, PRESENTATION OF DRAFT BILL,
CHAPTER EIGHT - THE EXECUTIVE
HELD AT THE BOMAS OF KENYA**

ON

15TH, 16TH & 19th MAY 2003

**PLENARY PROCEEDINGS, PRESENTATION OF DRAFT BILL, CHAPTER EIGHT,
THE EXECUTIVE, HELD AT THE BOMAS OF KENYA ON 15TH MAY 2003**

PRESENTATION OF DRAFT BILL: CHAPTER EIGHT – THE EXECUTIVE

**Presenters: - Com. Dr. Andronico Adede
 Com. Dr. Charles Maranga**

**Session Chair: Prof. Yash Pal Ghai
Co-chair: Samuel K. Arap Nge'ny
Co-chair: Wilfred Koitamet Ole Kina Nchoshi**

The meeting started at 10.00 a.m.

Prof. Yash Pal Ghai: I would like to start the meeting and I will ask Mrs. Kamla Siband to say the prayers today and I will ask you all to stand up please for the prayers.

Hon. Delegate Mrs. Kamla Siband: Good morning everybody.

Prayers

Dear God, we thank you for bringing us all together today. We pray to you, guide us and be with us as we deliberate various issues today. God, we ask you to give us all the humility and the tolerance to understand each other and to make us realize that we should have the tolerance to listen to everybody. God, give us the courage and the wisdom to understand that this Constitution is being made for 30 Million Kenyans for generations to come. Let us get beyond the issues of self-centeredness. God we pray to you again, guide us and take care of us. Thank you.

Prof. Yash Pal Ghai: Thank you. Are there any delegates who have not taken the Oath? If so, would they please come here in the usual way and I will administer the Oath. Mr. Konchellah

you have the Oath in your hands. So, will you please read the Oath and then sign the Oath and I will come to sign it. Thank you very much. Please sign the Oath and leave it with the staff. Thank you, you are welcome to the Conference and we look forward to your contribution.

Honorable delegates, I would like to make a short statement before I turn the Chair to our two Co-chairs today -- the Vice Chair, Ole Kina and the Hon. S. Arap Nge'ny who will chair the discussion on the Executive. I would just like to say that I am a little disturbed as is the Steering Committee at what seems to be considerable tension between different categories of members. I was unfortunately not able to spend much time in the Plenary yesterday because I had a series of committee meetings. But I gather that there was sharp exchange words and I would like to plead with all the delegates to be polite to each other and not to impute personal motives when a statement is made by a delegate. We are all committed to the same cause which is to produce the best Constitution we can for our country.

In doing so, we have to balance many different interests, geographical and other interests and it is extremely important that we all work to achieve this balance in a way that serves the national good. I expect of course in a Conference like this, that there are different points to be canvassed and lobbied for but I think we also have to remember that in this Chamber we are delegates and we should not take positions as members of a particular group. In particular we should listen to all the delegates in silence and with respect and I hope that the animosities that are seeming to be emerging can be replaced by amicable relations between us, because one of the functions that we have here is to set an example to very diverse nations of how to work together and how to respect each other. So please, I would urge you all to be restrained in the language you use and let us all work together in the spirit of common pursuit.

I have also been asked by some delegates to explain the point which I believe a Member of Parliament made yesterday which was the fact that, when the Draft goes to Parliament, Parliament may reject it if their wishes are not met. I don't want to comment on the debate but I have been asked to clarify what the position is after this Conference has adopted the Constitution. The Review Act says that once the Draft has been adopted by this Conference and assuming that there are no issues, which need to be referred to a referendum, then that Bill will be transmitted to Parliament through the Attorney General. The Draft that will go to Parliament

is the one that you will have approved here and the role of Parliament then is to give legal effect to that document. The Review Act says that Parliament must within one week of receiving the document proceed with the enactment of the document. Section 47 of the Constitution itself says, 'that when Constitutional Bill is presented to the National Assembly, the National Assembly has a choice of either rejecting it or adopting it. National Assembly cannot amend their Bill and **(Clapping from the Honourable Delegates)** I am sure that it was the assumption of Parliament, when Parliament enacted the Review Act, that the function of Parliament will be a formal one; that the real decisions will be made in this Chambers. All Members of Parliament are members of this Conference and as you know have taken an active part in our discussions and I assume that when the Draft goes to Parliament, they will speedily approve that document because they will have participated in its deliberations over it as well as the approval of it. They require as you know the votes of 2/3 of the members to adopt the Draft Constitution, that means a very high degree of consensus and it is politically assumed Parliament would honour that commitment to their decision.

I do remember one Member of Parliament saying in this Chambers that if Parliamentarians were to reject the Bill passed by this House, they will be committing political suicide. That may be a thematic way to put it but the legal position is that once the Draft is approved by this Conference, it will be taken to Parliament for formal enactment and Parliament cannot at that stage amend the Bill that goes to it.

The final point I want to make is about the time management of the Conference. The Steering Committee has on several occasions discussed the question of speed: are we rushing delegates or are we being too slow. We have as you know until the 6th of June for at least this round of meetings and it now looks somewhat unlikely that we shall be able to conclude all our business. The expectation and the hope of the Steering Committee is that we can at least go into Committee sessions before we adjourned for August. We think that about five days should be allowed for committee work. So we must try to conclude the general debate at least by the 28th or so of May. I think that gives us ample time to examine and debate the remaining Chapters of the report and of the Draft Constitution.

Our instructions to the Co-chairs is, not to rush you but not to allow too much repetition as the regulations, Regulation 40 actually gives the Chair the authority to stop a speaker whose words are tedious and repetitive. So be interesting and not tedious and be original and not repetitive. We have to strike a balance between giving a delegate sufficient time because this is an extremely important forum, the Plenary, and it will provide guidance to the technical committees when they begin the detailed work. But I would like to make one plea and this is, if the delegates would confine themselves to points of principle. When we adopted the rules of procedure, we had assumed that the debate at this stage of the process in the plenary would be focusing on essential principles and not into matters of detail. So if you feel that a particular Article needs to be amended in a particular way, like changing the words, the grammar, the commas and so on, please keep that point for the committee work. That is what committees are for.

So, confine yourself to general principles and try to be as brief as you can. In this way, I think we can give most delegates an opportunity and we can ensure that all points of view have been articulated in this Chambers. So, I will plead with you to do so and to give your fullest cooperation to the Co-chairs. I can assure you that chairing and co-chairing these sessions are quite difficult with an audience of this size and everybody very well prepared and very keen to make the contribution, which is why you are here. But I think great cooperation with these Co-chairs will facilitate our work and enable more contribution to be made. With that I wish you a good discussion and I hope to be able to spend a fair bit of time today with you. I now invite my Honorable Vice-chair, Ole Kina, to commence the discussion of the Chapter on the Executive. **(Clapping from the Honourable Delegates).**

Hon. Delegate Ole Kina: Thank you very much Mr. Chairman. I would like first of all to thank the entire Conference or the delegates for the co-operation that they gave us yesterday and to say that we are looking forward for the same kind of co-operation today because it will enable us to have more of our delegates contribute. I will also want to remind Honourable Delegates, rule 39 (g), which requires that no delegate may leave his or her mobile on within the Conference. We can see that there are so many of them who are responding even to calls and speaking as the deliberations are going on and I don't think that is fair. On that note, there is a mobile phone that was lost yesterday by a delegate sitting on one of these sides. So, later on you can come along and pick it. Without further ado, I would like to invite...yes, point of order.

Hon. Delegate Ezekiel Kesendany: Thank you Mr. Chairman. My name is Ezekiel Kesendany, a delegate from Nakuru and more so a delegate representing the Ogiek community. Mr. Chairman, I have been following the proceedings of this House with a lot of concern. I strongly appreciate various constituencies represented here. For example when we talk about political parties, we have 46 representatives. The same thing with the women, people with disabilities and all others. Mr. Chairman, there is a very important constituency called the minorities and that is where I belong. This Conference has deliberately refused to identify these people in the House. I have been raising my hand for the three weeks we have been here. I fall in the category of district delegates and I have been raising my hand throughout and I have not been able to get a chance, Mr. Chairman. I am requesting that, I either be given a chair in the middle of this hall...

Interjection

Hon. Delegate Wilfred Koitamet Ole Kina: Honourable delegate, that is not a point of order.

Hon. Delegate Ezekiel Kesendany: ...or you give me a red card so that I can be visible.

Hon. Delegate Wilfred Koitamet Ole Kina: May I assure you that the Chair is not deliberately alienating anybody from the proceedings and if you belong to a category, you will have a chance like everybody else. When we talk of minorities here, we have a lot of them, so let us please give us each other space to be able to go on with the deliberations. So let me ask Honourable Noah Ngeny' to invite the presenters of today. Thank you.

Hon. Delegate Samuel K. Arap Nge'ny: Thank you my Co-chair. Before I invite the presenters for this very important section of our Conference, I just want to say, I thank the Steering Committee for accepting my name to Co-chair this very important session on the Executive. Secondly is just to introduce the presenters to the Conference and to say on my part that this is the second Arm of Government --- and a very important one that deals with the execution of all the legislations and other activities of Government, including orders from courts and other sections. Therefore, this is a very important Arm of our Government in this Draft Constitution that will require that we follow this very carefully.

Therefore, I would like to reiterate what my Co-chair has mentioned about the mobile phones because yesterday we had a lot of interruptions and I think it is only fair that when you as delegates are listening, we should not be unnecessarily interrupted. So, let us find other ways of how the mobiles can be used so that delegates are not unduly interrupted. I will now invite the presenter, Com. Dr. Andronico Adede, to start it off.

Com. Dr. Andronico Adede: Thank you Mr. Chairman, and thank you indeed for having characterized the work we are continuing to do this morning dealing with the Executive, the second organ of the Government, having concluded our discussions on the Legislature yesterday. It will soon begin to get together, distinguished delegates, when you think that yesterday and the day before as we were discussing the Legislature, we already saw the need to distribute and disperse powers in various directions. We saw already when we were talking about the Legislature yesterday, the power of the Parliament to make appointments, which is linked to the power of the Executive Arm, which we are taking up today. That distribution was also horizontal in the way I have explained: linking the powers of the Parliament with those of the Executive.

It was also vertical because this is where there was an attempt to discuss how that power is going to be distributed vertically from the central Government to the local level, and where the question of the 2nd Chamber became very important, being the link between the National Government in the Upper Chamber passing legislations that are indeed going to be managed, enforced and implemented locally and where the same members are also the leaders. So this question of distribution of power is very important in the structure of Government as we begin to discuss the area of Executive. I would like to go back to my thesis the last time, that this is where Constitution works; where we constitute, we define and in a way we make limitations as to which functions we are going to assign to which part of the Government and how are we going to cooperate in performing their functions in a way that introduces the system of checks and balances.

The Executive is now on the table and it is not a waste of time to just remind ourselves about what you people said about this question. As you see, the Act mandated the Commission to

examine the various systems of Government all over the world and to make recommendations beyond the views that were expressed by the people.

Let me remind you to begin with that, on this very subject, the people said a lot of things but I am going to pick just a few that are going to pick just a central in the way the Commission develop the Chapter which we will be discussing with you this morning. Remember that you said that, the Commission should adopt a Parliamentary system of Government with the Prime Minister as the head of Government and a largely ceremonial President as a head of State. That's what you said. The President would play the role of an elder statesman serving as a symbol of national unity and identity. You also said that the power of the President should be curtailed. Kenyans felt that the President should not have the exclusive power to appoint senior Government officers. Indeed, it was suggested for many of the appointments to be vetted by the Parliament. That, you already saw a glimpse of when we were talking in the Legislature, Article 103 gave you the list of appointments which the Parliament would have to approve when appointments are made by the President. (c), you said that the power of the President and the Prime Minister need to be elaborated in the Constitution itself. Again you said the President should be elected directly and suggested how. Again, you said the Vice President should be elected directly by the people as a President's running mate. Then you said both the President and Vice President should not be Members of Parliament.

Lastly, you recommended Ministers should be appropriately qualified to match their ministerial responsibilities. The views went on to both ways, whether the members of the Government should be part of or outside the Parliament. Those are the few ones, which I wanted to state first to start us on the question of the Executive. As you know the Commission was doing its work on the basis of the views expressed and had the daunting task to try to translate some of these views in the language that would come into the Constitution.

After collecting the views and relying on the provision of the Act that requires it to do a study to inform itself as to how it is going to go about making the Draft Constitution, the Commission did in fact make a study and it found that there are indeed two types of Executive systems in the world. There is the so-called purely Presidential Executive and purely Parliamentary Executive. In the former, the purely Presidential Executive, all the power of the Executive is invested upon

the President who is not a member of the Legislature and is directly elected. He has a fixed term which cannot be altered by the Legislature except through procedures such as impeachment. He works by a Cabinet chosen by him from individuals fully qualified and from outside the Parliament. So both the President and his Cabinet are from outside the Parliament, they are not members of the Legislature. The purely Parliamentary Executive means that all the members of the Government are also members of Parliament. Legislature; it is headed by a person who enjoys the confidence of the Parliament. The distribution of the power; the Cabinet performs the Executive's functions collectively and they are subject to the Parliament.

Taking these two extremes, we have examples and their consequences. The purely Presidential Executive system tends to have the power concentrated on one person the President. Although he is supposed to be helped by a Cabinet, that Cabinet is also from outside.

The disadvantage of this is that it tends to prevent the people who directly elected the President to have control over the affairs of the Government because the President will go on and manage the day to day affairs of the Government with his team who are not elected. That is the U.S. model, for example. The purely parliamentary system tends also to produce purely ceremonial Presidents where the Prime Minister who is made head of the Government is a parliamentarian. But the President himself is given ceremonial duties. This is found for example in Australia, Canada, U.K., Germany --- you can name a few --- where there is a parliamentary executive headed by the Prime Minister with his Ministers, Members of Parliament and running day to day affairs of the Government. This also has its limitations and as you will be informed later on in details, you will find that the Commission did not want to go either with the purely Presidential Executive or the purely Parliamentary system and suggests a mix of Parliamentary and Presidential. These mixed systems also exists in a number of countries.

In this context, you will see that the model which the Commission has used in presenting the Chapter on the Executive is that one of France. Not exactly but France and Shri Lanka where the Executive power is being shared between the President - who is directly elected and the Prime Minister.

In each of these situations, there are differences that are peculiar to each country. Certainly, you have somebody called the President of the United States. But you also have somebody called the President of France. What these two Presidents can do according to their Constitutional structure is quite different in that: while the President of France can dissolve the Parliament because of the powers he is given in the Constitution, the President of the United States cannot send the Congress a-packing.

So, the power to dissolve the Parliament is a very important ingredient that explains the extent of the power of the President vis-à-vis the powers of the other Executives or Arms with which they are sharing the power – the Prime Minister. You remember De-Gaulle used that power to dissolve the Parliament twice. President Mitterand did it also because the Constitution gives you that power.

In our case as you will be told in details, Article by Article. Our President has the power to dissolve the Parliament but in very limited situations as described, I think in Article 42. This will become clear.

The conditions under which the proposed President can dissolve the Parliament are quite different from the conditions under which he or she dissolves the Parliament in France. But the model of sharing Executive power with the Prime Minister is the same. Our suggestion in the Draft - is that there should be, as you said in your views, a mixed system where Executive power is shared between the President and the Prime Minister. The Prime Minister as the head of Government and the President as the head of State with their functions properly defined in the Constitution.

I must say here that the Draft before you is not intended to create a purely ceremonial President. So, it is not a Parliamentary pure system. The reason why this is the case will become clear when Com. Dr. Maranga will be giving you the specific functions of the President under the Draft - which will begin to convince you that, however much you want to believe, those functions cannot, put together, leaves the conclusion that the President created under the Constitution is ceremonial. Let me point out one or two just to illustrate to you - as you know and which actually illustrates the problem of distribution of powers horizontally. There is one

form of power given to the President under this Act, which will cease the three branches all together at the same time. Namely: when he receives a Bill passed by the Legislature, he looks at it, if he likes it, he signs it. If he doesn't like it, he or she may return it to the Legislature for further action. That is what the Act says or the President may refer it to the Court for determination as to Constitutionality. So, in this single incident you will see that we have a Legislature that has done its part by proposing legislation, sending it to the President for his assent. Presumably, he studies it, he doesn't like it or he wants to raise questions about it and he sends it to the Court. Here we have the three branches of the Government operating in one single transaction.

A President that does that cannot be called ceremonial - who has such powers for example. Again, the Constitution Draft before you gives the President the responsibility of ensuring that all the international obligations of our country are fulfilled and he is supposed to make a report to the Parliament annually on that. Just imagine what programmes and what activities he will be undertaking to make sure that the international obligations of our Government are being fulfilled to make that report. I don't want to go into details of the other examples, as I have repeatedly said that will be done by Com. Dr. Maranga. My point is that it is not fair to say that the Draft before us creates a ceremonial President.

On the Prime Minister, there is no other way to describe, it as a head of the Government that deals with the daily work of running the Government - his appointment is already indicated in the Constitution, you will be told. His being removed is also described in the Constitution. The suggestion contained in the Draft that although the Prime Minister is elected, a Member of Parliament and becomes appointed by the President, if he heads a Party that commands a majority in the Parliament or a Coalition therefore, but his Cabinet made of fifteen or so should come from outside. These are the suggestions that the Commission put forth in context of the Executive. A mixed Executive indeed where the power is to be shared between the President and the Prime Minister, the French model.

Of course, you could have the Tanzanian model or the Ugandan model where there is a Prime Minister who is the Chief Assistant of the President appointed by the President. But, why not the Kenyan model where that power is shared in a manner delineated in the Constitution itself -

whose duty it is to constitute and to define and to limit the functions of each of the Executive power holder, the President and the Prime Minister.

Any effort to go back to the system where all the power were to be given to the Executive reminded Kenyans of the system they were trying to get away from. The system that led them to suggest, as I read out, that there should be a Parliamentary system of Executive so that the power should be distributed and not to be held by one person. And this is why efforts have been made to balance it: giving the old power of appointment of major Government departmental heads but having those vetted by the Parliament.

Distinguished Delegates, as you begin now considering this part of the Executive Article by Article, keep in mind that even if the Constitution says it, we still have personalities that perform these duties. Therefore you can have a lot of imaginary fiction between the President and the Prime Minister when they are given a chance to share powers. Those may be real or imaginary but they are the things that Governments all over the world who have these systems have lived with. It is not full proof. Even if you have a system where the appointments are being vetted and on merit, there are still complaints that are registered by the populace. For example I remember when J.F.Kennedy became the President of the United States, he appointed his brother as Attorney General, and he also appointed his brother-in-law to be the Ambassador to France. People complained saying that that was not fair. But these appointments went through the vetting system and perhaps they were the best. Who knows? Jim Callaghan also I think had appointed his son-in-law to an important post in England and there were complaints that his son-in-law was being appointed to an important post. He went to the Parliament and said that, he has received all the complaints and that they only saying that he is his son-in-law. Nobody said that he was not competent.

So, we are suggesting a system in this Draft where the Prime Minister will have his powers clearly defined to perform his role as the Head of Government, sharing the Executive power with the President whose powers are also clearly delineated. Can we work on the mixed system? The Kenyan model - a little different from that of France except the fact that they share the concept of shared Executive power between the President and the Prime Minister. I thank you.

Clapping from the Honourable Delegates

Hon. Delegate Wilfred Koitamet Ole Kina Nchoshi: Dr. Charles Maranga.

Com. Dr. Charles Maranga: Thank you Honourable Delegates. Thank you Chair. I want now to take up from where my brother has left but let me also start by saying that wherever we went in this country, Kenyans said one thing, 'reduce the Presidential powers'. The question the Commissioners had, "where do we take the powers, which have been reduced or taken away from the Office of the President?" This question was a bit difficult but we were able to go through and we were able to recommend the system, which is before you today.

Mr. Chairman, the issue of the various Articles, which I am going to take the Honourable Delegates through, from Articles 148 to 183, will be able to attest to the fact that we did actually take into account the views of Kenyans.

Mr. Chairman, my colleague has said, we have not recommended a purely French system of Government. The system we have recommended is uniquely Kenyan and that should be seen from that point of view. If Kenyans want this system to work, I think it will be able to work. If Kenyans don't want it to work, it will not be able to work. So, I think the task is on Kenyans to decide whether that system is going to work or not.

Mr. Chairman, the system which we have recommended also, we need to note that the President will not be a Member of Parliament. If the President is not going to be a Member of Parliament, the current system we have in this Country of even the President, is that the President is a Member of Parliament and at the same time the President of the Republic of Kenya. But what we are recommending in this Draft is that the President will completely be delinked from Parliament. The question of separation of powers and functions between the three organs of Government is a major principle where we want the Executive to operate independently. The Legislature to operate independently. The Judiciary to operate independently. But there must be a linkage and the linkage is through the Prime Minister and the two Deputy Prime Ministers who link the other Executive to Parliament or to the Legislature for that matter. That is the basis of recommending such a system for this country.

Mr. Chairman, I now want to proceed Article by Article and I now want to start with Article 148. Article 148 does give the principles of the Executive authority. Mr. Chairman, the powers of the Executive should be exercised for the well-being and the benefit of the people of Kenya and the Republic of Kenya.

Mr. Chairman, this power is supposed to serve the people of Kenya. It is not power which is supposed to serve the interest of an individual or a person. Mr. Chairman, absolute powers can corrupt and Mr. Chairman, it is on that basis that we said, let us de-personalize some of these executive powers. The offices which we have created will try to reduce the powers from one office to another Mr. Chairman, the office which had all the powers or which has the powers of State and Government is the Office of the President.

Mr. Chairman, Article 148 does give where the powers are vested and Mr. Chairman, the first one we are saying is in Article 148 (2) which gives that the office bearer to serve the people rather than the power to rule. Mr. Chairman, my brother did indicate that this power if you give it to an individual corrupts. Mr. Chairman we have examples since independence to-date, we have known whether those powers, whether corrupted or not corrupted, whether those powers have been misused or used properly. So, I think Mr. Chairman, it is on that basis that the Commission recommended this structure.

The Article 149, the structure of the national Executive. The essence of the provision is that Executive power is to be shared among three Constitutional offices. The first office is the President. The second office is the Vice-President who will also be the principal assistant to the President. Mr. Chairman, there is also the other Constitutional office which is the Prime Minister who will also be the Head of the Cabinet or the Head of Government for that matter.

The functions, which we have tried to divide here, the functions will be divided between the Office of the President and the Office of the Prime Minister. That is exactly what we have done and we have clearly stated the functions which the President will perform and the functions which the Prime Minister will perform Mr. Chairman, if you want to see the various functions, we are going to see them in a minute when we go Article by Article.

Mr. Chairman, Article 150 gives the authority of the President and we have said the President will be the Head of State and the President will be the Chair of the National Security Council and the Defence Council. We have also said, the President is going to perform a number of functions and those functions have been listed on Article 150 and if you check through all those functions are clearly stated.

But Mr. Chairman, I want to draw your attention to Article 150 (2) where it says; “the powers of the President shall be exercised in accordance with the Constitution and the laws”. Mr. Chairman, what we are trying to propose in this Draft is that, it is not going to be possible anymore for any President now, if this Draft passes, to be able to have extra powers, which are not derived from the Constitution. We are saying, the President and most Kenyans did say, that the President should not be above the law. The President should not be above them. Therefore, if you are going to have a President, the President must act within the law. Mr. Chairman, Article 151 gives the various functions which the President is supposed to perform and all these functions, every action the President has to have must have a Constitutional basis. And Mr. Chairman, 151 all the way through are giving some of the functions the President is going to perform.

In 151 (1), for example, the President will have an opportunity to address the opening of a newly elected Parliament. The President will also be able to make an address in Parliament at any other time he so wishes Mr. Chairman, Article 151 (1) (d), gives circumstances under which the President can dissolve Parliament and it has been given only in circumstances, which are contemplated in Article 142.

Mr. Chairman, Article 142, if I want to remind the Honourable delegates, is an Article, which is found under the Legislature where it deals with the dissolution and prorogation of Parliament. The Article, which I think we are interested in, that is Article 142 (3), (where is that?) 143, sorry, it is Article 143 (3). Sorry, it is not Article 142; it is Article 143 (3). That is if the National Assembly fails to approve the appointment of a Prime Minister within twenty-one days of the date the vacancy arises, the President shall dissolve the National Assembly. That is a very clear case when the President has the authority to dissolve Parliament.

Mr. Chairman, Article 152 (2) gives the President power to appoint in accordance --. One of the functions the President will have to perform is to appoint a Prime Minister and the Prime Minister who shall be the leader of the Political Party that enjoys majority in Parliament. Mr. Chairman, the procedure of appointing the Prime Minister is provided in Article 171 of the Draft Bill.

Mr. Chairman, the two Deputy Prime Ministers are also nominated by the Prime Minister as provided for in Article 175. All those functions which the President is supposed to perform are provided for in there.

Mr. Chairman, this also clearly shows that the President has a number of important functions, which he will be able to perform. So, the office which we have created of the President is not ceremonial. Mr. Chairman, the President may also appoint Commissions of Enquiry i.e. 151 (3), the President will also sign instruments of consent by Kenya to be bound by International Agreements. All those are provided for under the 151 (3) and then (4). After consultation with the Cabinet and the National Defence Council, the President may declare a state of emergency subject to Article 71 and also declare war. All those are functions the President is supposed to perform.

Mr. Chairman, the other function, the President is supposed to perform is appointment of senior persons to represent the Republic for example, High Commissioners, Ambassadors and so on. All those are provided for under Article 151 (5).

Mr. Chairman, the other function which the President performs is where the President can seek an advisory opinion from the Supreme Court of Kenya, that has been touched on by my colleague and that is provided for under 151.

Mr. Chairman, there are other functions which are exclusively for the President and one of them is Article 151 (6). Mr. Chairman, Article 151 (6) says, "the President shall ensure that (a) the international obligations to the Republic are fulfilled and submit a progress report to Parliament.

The other function which he performs which he does not share with anybody else is that: the Courts and Constitutional Commissions and Officers are able to secure their independence impartiality, dignity, accessibility and effectiveness as contemplated in this Constitution. What we are simply saying is that, that is a function which must be performed by the President and not the Prime Minister nor anybody else.

Mr. Chairman, the President has also a major function in terms of legislative functions. My brother did touch on but I want maybe to say that the President has also authority to initiate legislation and that has been provided for under Article 152 and is clearly indicated. For example, he can refer whatever he wants to put before Parliament through the Cabinet or through a Committee of Parliament and Mr. Chairman that is provided for.

Mr. Chairman, it has also been provided under the same Article 152: when presented with a Bill enacted by Parliament, what the President will do or can do in case the Bill is not properly done or is not in his opinion a good Bill. Therefore Mr. Chairman, he can take it back to Parliament for reconsideration and at the same time, he can also refer the same to the Supreme Court for interpretation. So, Mr. Chairman, that is a function the President does apart from assenting and signing Bills also.

Mr. Chairman, the other Article I want to draw your attention to is Article 153. A decision by the President, under the authority of the Constitution or any law, shall be in writing and shall bear the signature of the President. Mr. Chairman we are trying to cure a mischief where a President gives a directive and maybe is not bound by that directive not in writing, not in any other way. Mr. Chairman, this will also apply even to the Cabinet. But the truth here is that we wanted to cure that mischief where people give directives and they don't want to be held accountable to whatever they have done.

Mr. Chairman, we have also said in Article 154, we have proposed that during a period commensurate with the first vote in Presidential elections and ending when the newly elected President assumes office: during this time where somebody is supposed to act or do anything, Mr. Chairman it has been provided for especially under what is contemplated in Article 167.

Mr. Chairman, I want to draw the attention of the Members to Article 151 relating to the appointment or dismissal of persons to represent the Republic of Kenya as High Commissioners. Mr. Chairman, if you read the Article 154, is to curtail the powers of anybody who is holding the Office of the President or who is authorized in terms of the Constitution to exercise the powers of the President. Mr. Chairman, what we are saying for example, is that if somebody is acting as a President, he might not perform certain functions. If somebody is not the substantive President, then Mr. Chairman he is bound by the Constitution not to perform certain functions which are critical to the State and the Government of the day.

Mr. Chairman, for example, we have given even under what circumstances somebody might not be able to act. For example, under Article 154 sub-Section Two - reads, 'any power of the President referred to in the following Articles'. Mr. Chairman, it has given circumstances under which somebody who is acting as a President or President cannot be able to do anything which will be injurious.

Mr. Chairman, the other Article I want to draw your attention to is Article 155. The election of the President shall be by direct universal suffrage through a secret ballot. Mr. Chairman that has been provided for. The Chairman, in this Draft Bill for the first time, we have given the date when Presidential elections will take place. We have said on the second Tuesday, in August and thereafter on the 2nd Tuesday in August every fifth year. Mr. Chairman, that has been provided for unless varied as provided for under Article 164 I want to draw your attention to Article 164.

Article 164 is when a vacancy occurs in the Office of the President. Mr. Chairman, if there is vacancy in the Office of the President, by reason of the President's death, resignation or ceasing to be holder of his office by virtue of Article 162 and 163, Mr. Chairman, that Article then does apply.

Mr. Chairman, under Article 156 we have provided for the qualifications for election as President. Mr Chairman, we have said, somebody who is supposed to be elected as a President of Kenya must be a citizen by birth. He or she must have attained the age of at least thirty-five years and above. He or she must be of high moral integrity and impeccable character. Mr. Chairman, we have also recommended that he or she should be able have a university degree

from a recognized university. Mr. Chairman, he or she must be nominated by a registered Political Party or is nominated as an independent candidate by at least one thousand registered voters. Mr. Chairman, those are the conditions we have given or qualifications for a Presidential candidate.

Mr. Chairman, we have also given disqualifications for a Presidential candidate Mr. Chairman, the one maybe I want to draw your attention to is that now, if one is a Member of Parliament will be disqualified to run for the Office of the President and that is provided for under Article 162 (d). Mr. Chairman, we have also said, we have provided all that and I don't think that I want to go through all those Article by Article, let the Honourable Delegates read through.

Mr. Chairman, the other issue that I want to draw your attention to is the procedure at Presidential elections, Article 157. Mr. Chairman, we have said that if more than one candidate for Presidency is nominated, a poll shall be taken in each Constituency for the election of a President. Mr. Chairman, in a Presidential election, we are saying all persons who are registered, as voters should be able to vote.

Mr. Chairman, we have also said that the candidate for President - who receives more than fifty percent of all votes cast in the election and who in addition receives a minimum of at least twenty percent in more than a half of the provinces of Kenya he or she becomes President. Mr. Chairman, Kenyans did indicate to us that they wanted a President who is acceptable to all Kenyans, a President who commands at least one half of the population or one half of Kenya and at least having a fifty percent vote. Mr. Chairman, we have also provided that in case there is no winner: the elections should be held within three weeks and that should be a run-off between the first and second contestants - the people according to the Electoral Commission, who are numbers one and two. Mr. Chairman, we have also provided for the questions of how the results are going to be announced. Mr. Chairman, we have also said, the Chairperson of the Electoral Commission, that is 157 (7), the Chairperson of the Electoral Commission shall deliver a written declaration of the results of a Presidential election to the incumbent President and the Chief Justice within seven days of the election. Mr. Chairman, we are saying, after all the votes have been counted, then it will be of necessity that the Chair of the Electoral Commission does an

undertaking of declaring the results and also giving the incumbent President the same within seven days.

Mr. Chairman, if there is any question as to the validity of Presidential elections, then that matter should be referred to the Supreme Court. Mr. Chairman, we have also provided in Article 159 on how the President will take office. Under Article 160, we have provided for the term of office for the President, and we have said that the President shall hold office for a term not exceeding five years. Five years will be one term. Mr. Chairman, we have also said that Article 160(2) 'that a person shall not hold office as the President for more than two terms'. There was overwhelming support from Kenyans that we need to limit the period. We need a fixed period for the term of Presidency.

Mr. Chairman, Article 161 gives protection of President in respect of legal proceedings during office. We have provided that there will be no criminal proceedings against the President during his tenure of office and also no civil proceedings, that is under Article 161. We have also said that under the same, we are also talking of at least 30 days notice of the proceedings have been served to the President or the person performing the functions. What we have said under Article 161 that, "no civil proceedings may be instituted in any Court against the President or the person performing the functions of that office, in respect of anything done or not done in the excess of their power under the Constitution". Unless such proceedings are only of a private nature, and Mr. Chairman, if those civil proceedings are of a private nature, then we have provided for the procedure that should be followed.

Mr. Chairman, we have also provide for the removal of President on grounds of incapacity and we have said under Article 162, "that if it is resolved by one half of all the Members of the National Assembly that the question of the physical or mental capacity of the President to discharge the functions in the office or to be investigated, they will inform the Chief Justice and the Chief Justice shall within seven days of the resolution appoint a tribunal consisting of five persons, qualified as medical practitioners under the laws of Kenya to investigate that matter". Mr. Chairman, that was the concern of Kenyans and we did give that provision. The procedure of how finally the President if going to be removed is provide for in Sub-Article 2,3,4 and 5.

Mr. Chairman, the other Article I want to draw your attention to is the impeachment and removal of President and it proposes that, "if two thirds of the Members of the National Assembly, approve a motion for the impeachment of the President, for violation of the Constitution or gross misconduct, the speaker of the National Council shall convene a meeting of the national council to hear charges against the President". Mr. Chairman, we are now seeing the role of the second Chamber in this particular Article, a topic which we dealt with yesterday. The Speaker of the National Council shall summon the National Council for consideration of this kind of motion within seven days. And if the National Council is not sitting then, summon it to meet within 21 days.

Mr. Chairman, the reason as to why we have given specific time frame in the Draft Bill, is to ensure that if anybody is accused of any misconduct in the person of the President, then he should be having anxiety for how long it is going to take. We wanted to give a clear procedure, which can be followed so that nobody short-circuits the system. Under Sub-Article 3, it is giving the details of the composition of that Special Committee which of course comprises of the Chief Justice and 13 other Members of the National Council. We have also indicated that the Special Committee shall investigate the matter, and then report to the National Council within 10 days. The President shall then have the right to appear and be represented before the Special Committee during its investigations. Mr. Chairman, we have said that those reports will have to be discussed at the National Council. A vote will be taken and if the charges will be proved positive then, the National Council will vote on impeachment charges and the President shall be removed, if two thirds of the members vote to uphold the impeachment charges. We have therefore provided a very clear procedure of how the President will have to be removed.

We have said that the National Assembly shall initiate that Motion of removal. The Motion will then be discussed by the National Council and the other Special Committee which has been provided for in detail.

Mr. Chairman, we have also given under Article 164, that when a vacancy occurs in the Office of the President, we have a provision that if a vacancy does occur, then the Vice President assumes office and completes the remaining term. If for example, a vacancy occurred and there was a remaining period of two and a half years, if the Vice President assumes office then, it will mean

that he has served a full term. In case there is a vacancy in the office of the President and that of the Vice President, then we have suggested that the Speaker of the National Assembly takes over. If there is no Speaker of the National Assembly, the Speaker of the National Council shall assume the functions of the Office of the President and the Electoral Commission shall conduct an election for President and Vice President within 30 days of the vacancy in the Office of the Vice President. So all those have been provided for.

Mr. Chairman, Article 165, that discusses the Office of Vice President, we have created that there shall be a Vice President of Kenya, and each of this of course will have to have similar qualifications as those ones of the President. We have given a procedure on how the Vice President is going to be elected and the term of the Vice President is closely tied up together with the term of the President. Article 166 says that if there is a vacancy in the Office of the Vice President, the President shall nominate a candidate qualified in terms of Article 165 of the Draft Bill. Mr. Chairman, a nomination under clause 1, shall be in writing and shall be submitted to the Speaker of Parliament, within 14 days of the vacancy. We have also said that Parliament will approve through a resolution, and that person who has been approved will assume Office of the Vice President within 14 days.

Mr. Chairman, we have also provided for, under Article 167, the functions of the Vice President. Where we have said that the Vice President will be the principle assistant of the President in the execution of His or Her functions. Mr. Chairman, that has been provided for under that Article and where necessary, under 167(4), the Vice President shall act on behalf of the President. When the President is incapacitated or absent from the republic, the Vice President assumes the Office of the President in an Acting capacity.

Mr. Chairman, we have also provided just in case, if the President dies before assuming office what happens. We have said the Vice President shall assume the Office of President. And Mr. Chairman, if that is the situation upon assuming the Office of the President under that; then the office of the Vice President shall fall vacant. We have provided for details and under 168 (4), if both the President and Vice President die before assuming office, the Speaker of the National Assembly shall act as President and the Electoral Commission shall conduct a fresh election within 30 days. Mr. Chairman that is what we have provided for in the Draft Bill.

The issue of salaries and allowances of the President and Vice President, we have recommended that all those be undertaken by the Salaries and Remuneration Commission.

Mr. Chairman, I want to move on to Article 170, the Prime Minister. The Prime Minister is the leader of the Cabinet and presides at the meetings of the Cabinet. The Prime Minister and other Members of the Cabinet will exercise executive authority within the Republic of Kenya. The functions of the Prime Minister will be:

- Developing and implementing national budgets and policy.
- Preparing and initiating government registration for introduction in Parliament.
- Implementing and administering Acts of Parliament.
- Coordinating the functions of Ministries and departments.
- Performing any other executive function provided for by the Constitution, or an Act of Parliament, except those functions assigned to the President.

Mr. Chairman, we have clearly stated the functions, which the Prime Minister will perform. Article 171 does give how the appointment of the Prime Minister will take place. We have said within seven days, the President shall propose to the Speaker of the National Assembly, the appointment as Prime Minister. We have given categories of people where a Prime Minister will come from. The first lot is the leader of the majority political party, or coalition of parties represented in the National Assembly. If that category fails to provide a person who can be appointed to be a Prime Minister, then Mr. Chairman, the other alternative is the leader of the minority political party, or coalition of political parties represented in the National Assembly. And if the leader of the majority party or coalition has been unable to command or retain the confidence of the National Assembly, if neither persons of the two above which we have already indicated, then any other member of the National Assembly who in the President's opinion may be able to command or retain the confidence of the National Assembly.

Mr. Chairman, you can get a Prime Minister from the majority party or the minority party in Parliament, or a Member of Parliament who can be able to command the respect of the National Assembly. We have even a procedure of how the Prime Minister is supposed to be appointed.

We have given a procedure, which follows from sub-article 2, 3, 4, 5 and 6. Upon receiving the proposal from the President in terms of the Article, the Speaker shall summon the National Assembly and introduce the proposal from the President. Clause 3 gives the number of days of the Speaker receiving a proposal, within 7 days of the Speaker receiving that proposal from the President. The Speaker shall call a vote in the National Assembly to confirm the appointment of the person proposed.

In clause 4, that if 50% of the members of the National Assembly support that proposal. And in 5, if the National Assembly fails to confirm the appointment of a person proposed by the President, the President shall propose another person within one week after the vote in the National Assembly. If it does not take place within 30 days, of the President's first proposing a person to be appointed Prime Minister and no person has been confirmed by the National Assembly, the President shall dissolve Parliament and require the Electoral Commission to conduct a fresh general election.

The time of office for the Prime Minister is unlimited so long as he commands the respect of the National Assembly. It will last from the time the National Assembly sits until it dissolves. So, the person who is appointed as Prime Minister and confirmed by the National Assembly assumes that and will be able to have the term of office, unless he resigns, dies or whatever.

Article 173 provides for the resignation of Prime Minister. Article 174 is the dismissal of Prime Minister. If more than 50% of its Members of the National Assembly passes a vote of no confidence to the Prime Minister, the President shall dismiss the Prime Minister and the other members of the Cabinet. The President may not dismiss the Prime Minister in any circumstances other than those which have been provided for under 174(1).

The Cabinet: The President shall appoint the remaining Members of the Cabinet in accordance with the recommendations of the Prime Minister, and with approval of the majority of the Members of Parliament. Mr. Chairman, 175(2) if the National Assembly by votes supported by more than 50%, a person with a motion of no confidence in a member of the Cabinet other than the Prime Minister, the President shall remove that member. So there is also a provision that its not the entire government which can be dismissed, you can dismiss a member of the Cabinet.

We have also provided under 175(3) that the President shall not appoint a Member of Parliament to the office of Minister or Deputy Minister. There was an overwhelming support from Kenyans saying that they wanted Ministers to be from outside Parliament. This is because they wanted Ministers to concentrate on the day to day activities of government so that they do not have a conflict of interest between their Constituency responsibilities and also the day to day business of government.

We have also provided that a person other than a Member of Parliament shall be approved to the office of Deputy Prime Minister. So we are saying that any person appointed as a Deputy Prime Minister, Minister or Deputy Minister, must assume that office after the approval of Parliament.

Article 176, a decision by the Cabinet shall be in writing and Members of the Cabinet are accountable collectively and individually to Parliament. Members of the public did complain about decisions, which are verbal, which are not binding that are made by senior government officials. So they said, for this, let the Cabinet, whatever decision they want to take, let it be in writing. The Ministers shall attend before Parliament or a Committee of Parliament when required. That is also provided for under Article 176.

The other Article that I want to draw your attention to Article 177, where the Prime Minister shall keep the President fully informed concerning the general conduct of the government and shall furnish the President with any information that the President may request in respect to any matter relating to the government.

Article 177 (2), The Prime Minister, by order of Cabinet, shall assign responsibility for the implementation and administration of an Act of Parliament to a Deputy Prime Minister or to a Minister and Deputy Minister jointly. (3) The Prime Minister, by order of Cabinet, may permanently transfer responsibility for the implementation and administration of any Act of Parliament from one Member of Cabinet to another. So the responsibility is purely to the Prime Minister and the Cabinet. And the person supposed to assign functions to the Cabinet will be basically the Prime Minister, who will assign the Cabinet Members various functions, which they may have to perform.

Article 178 does provide for the conduct for members of the Cabinet, and there are very clear proposals, that a Member of Cabinet shall avoid any situation involving a risk of conflict between the Member's private interests, and official responsibilities. They should not act in a way that is inconsistent with the Member's official responsibilities and also not to use the members' authority of that office or information entrusted the Member, to enrich the Member or improperly benefit another person. So that is a Clause, which tries to ensure that the Members of the Cabinet conduct themselves in a dignified manner.

The issue of salaries and allowances for the Prime Minister, the Deputy Prime Minister, Ministers and Deputy Ministers, that will be determined by the Salaries and Remuneration Commission. And if the Vice President, Prime Minister or Deputy Prime Minister want to be away from the republic of Kenya, then they must seek leave from the President.

A Minister or a Deputy Minister shall not be absent from Kenya, except with the leave of the Prime Minister. So we have categorized the ones who will report directly to the President and those who will report directly to the Prime Minister for absence. We have provided for, in Article 181, for Permanent Secretaries who will play a role in terms of Ministries and we have provided it under Article 182, the offices of the republic and so on.

Mr. Chairman, I want to briefly give a small and very quick summary of what we have gone through. First, I think I want to talk about the President. The President we have said should be between 35 to 75 years of age. We have also said that he should be a graduate from a recognized University, we have said that he should be a person of high moral integrity. The President shall also serve a maximum of two five-year terms and shall not be a Member of Parliament. We have also said that the Presidential candidates be elected directly by the people through universal suffrage, and that the Presidential aspirants be nominated by registered political parties, or run as independent candidates. We have said that the Presidential candidate should obtain 20% of the votes cast in at least one half of the Provinces. We have also given the various functions the President will be able to perform. One of them course is to safe guard the Constitution and uphold the rule of law.

We have also said that the Vice President will be the principle assistant to the President. The Cabinet will comprise of the Prime Minister who shall be the Chief Executive, Head of Government and leader of the Cabinet. The Prime Minister shall be responsible to Parliament and should be the leader of the largest political party in Parliament or a coalition of parties represented in Parliament. The Prime Minister shall chair all Cabinet meetings and keep the President informed of Government Business.

We have also said that Parliament may dismiss the Prime Minister by passing a vote of no confidence in him or her. The Ministers should not be Members of Parliament but must attend Parliamentary proceedings as ex-officio members. We have also said a Minister should be appointed by the President as nominated by the Prime Minister and confirmed by Parliament.

Ladies and Gentlemen, Honourable Delegates, I don't want to go any further, I want to say thank you very much and you are now free to comment. Thank you.

Clapping by the Honourable Delegates

Hon. Delegate Samuel Arap Ng'eny: Thank you very much presenters for your very lucid explanation of the provisions related to the Executive. Honourable Delegates, I would like at this juncture to adjourn the sitting for a 20 minutes break for you to have tea, and we'll come back and start the general debate. But, I would like to give this guidance, hold on Honourable Delegates, there has been an intimidation to the Chair by some people that when the presenters were discussing the various sections of the Draft Bill, they should address Delegates directly.

Now, I want to say this, it is normal in Conferences, not just this one. That the Control of the Conference is in the hands of the Chair with the consent of the Conference participants. That is why it has become ethical all over that whenever anybody is addressing the Conference, they address the Conference through the Chair. We intend to retain that.

Clapping by the Honourable Delegates

Hon. Delegate Samuel Arap Ng'eny: I now adjourn the meeting for 20 minutes tea break.

TEA BREAK.

Hon. Delegate S. Arap Ng'eny: May I have your attention, please. Can we sit down so that we can start the debate on the Executive. Please, Honourable, Delegates can you take your seats?

Hon. Delegate Wilfred Ole Kina: Order! I ask my Co-Chair to invite the constituency that will begin presenting their views. Thank you.

Hon. Delegate Samuel Arap Ng'eny: Thank you my Co-Chair. Can we have silence, please: I want to start the debate so that you can have the chance to say what you want to say about this very important Chapter. Can I say this at the outset please, Honourable Delegates, that this we will try here from the Chair to be as fair as is humanly possible in the circumstance in which we are operating, and therefore, I wanted to explain to you what we will be doing when we start the debate. First, let me say this; let us realize that all of us here are here in a representative capacity. We have come on behalf of all the Kenyans, and all Kenya is now here through us, and I would like to plead with you that when we call the various categories of people, they also will be speaking in a representative capacity although we know the person is speaking from personal experience, so that we can see that some of the things that our colleagues in the same categories have spoken or have indicated, we do not come back to repeat the same. So that the Conference can really be proper and issues are ventilated in their totality.

Now, what I intend to do is that as we started previously, we will go through our various categories; Members of Parliament, districts, the NGO, in their individual sort of category, and what I will be doing is, I am keeping a register here so that we do not skip any group to ensure that we cover all the categories that we have already identified. So when I call column I will expect people in that category to lift their numbers signs and, as we requested previously, those who have spoken might wish to retain themselves so that those who have not had a chance can do so not deleted the people who have spoken up to now, since we started are 155 hundred and fifty five, and we are over 600, 629. So there is that problem and it is going to take some time for us that for all of us to get through.

Finally, of course, I would like to remind Honourable Delegates that the action is going to be in our Technical Committees so that some of proposals we would wish to make are really of a general nature here in the plenary the actual action of changing is going to be in the Committees. So I will be going like this, so that we do not say only district Delegates or Members of Parliament are talking: I will interlock them, but will keep a register so that I can spread over all those categories. If I call the districts at one stage, I will call any Delegate from the district who has not spoken, and then move on to Parliament, NGOs and we will be interlocking like that so that we can benefit from the various groups as the debate goes on. I hope that will give some fairness so that we can hear one another, because I noticed previously that when one group of people are only talking, they tend to concentrate on one theme and leave others out, so it might be better if this is spread out so that all of us can hear the different voices in our midst. So I will now move ahead, and I am starting from the right side there, by calling a district Delegate. Yes, point of order, which number? Where? 185? I have given 185.

Hon. Delegate Abdi Sasura Tari: Mr. Chairman I stand on a point of order from the onset to bring to your attention the issue of time here. In view of the fact that this is a very important Chapter to the people of this country and to these Delegate in particular. Mr. Chairman, I would like to propose to the Steering Committee to reconsider the time limit that has been set for the discussion of this Chapter for each and every Delegate who wishes to speak, even if it will take us two or three days to discuss this particular Chapter on the Executive exhaustively.

Clapping by the Honourable Delegates

Hon. Delegate Samuel arap Ng'eny: I think you have made a point and the Steering Committee will take up that in their meeting, which is going to be I think, later today.

An Hon. Delegate: Point of order!

Hon. Delegate Samuel arap Ng'eny: I think, I will have no point of order. Can I have a district Delegate please? 433 No more points of order, please.

Uproar from the floor

Hon. Delegate Ole Kina: Order! Order! We have to agree to proceed. So I will give one point of order, 599.

Hon. Delegate Gitau Mwachiro: Thank you Chair. My number is 599, Leslie Gitau Mwachiro, Political Parties EMM. I am standing on a point of order. I want to move a Motion under section 32 (e) of the rule and regulations of this Conference. My Motion reads like this, “I am moving to postpone debate of this Chapter eight, and refer the Chapter back to the Commission for re-writing and polishing up so that they can delete and ----- conflicts and contradictions because as it stands now, we will actually be talking about contradictions and not moving forward to get a proper Executive, so I move Mr. Chair, that we hold debate for now and refer this Chapter back to the Commission and come back to it at a later date.

Hon. Delegate Samuel arap Ng’eny: Any Seconder? I am giving this opportunity to any Delegate who is seconding that proposition. Okay. Now let me say that that Motion dies, so we go on. We had 433. Please go on.

Clapping by the Honourable Delegates

Hon. Delegate David Marcos Rakamba: Mr. Chairman my names are David Marcos Rakamba, Delegate 433, from Gucha. Mr. Chairman, looking at the whole of this Chapter, I have the following to comment. First looking at the Affirmative Action that has been carried all along in the rest of the Chapters, I propose under 171 that the President shall propose to the Speaker of the National Assembly the appointment of a Prime Minister a person of the opposite sex from the majority party of the Coalition of Political Parties represented in the National Chamber. If for instance the President is a man, then Prime Minister should be a lady so that Affirmative Action can be realized.

Laughter from the Delegates

Mr. Chairman, there has been set an age limit for the President but this has not been done for the Prime Minister. So I propose that there should not necessarily be upper age limit of the President

because we have talked of the provision for two terms and the minimum age lower age, and then we have talked over it hi becoming senile. So the issue of the upper age limit should not apply. I feel it should be left out because there is an electoral process and the people are sovereign and if they find somebody is strong enough, they can elect him to lead the country.

Still the same, I do not see why we should actually talk of having Cabinet Ministers coming from outside Parliament, because political preference, Constitutional Process. So what emerges here is that, looking at our tradition and the rest, the Cabinet should be picked from Members of Parliament so that, if these are the people's representatives in the Lower House, the Permanent Secretaries that will be appointed from outside as the technocrats, will serve that purpose as the Secretariat to be served by the Cabinet Ministers. So it makes no sense have two civil servants appointed from outside Parliament serving as advisors to the government when it is a political process. There is also no rationale in actually setting a minimum educational qualification for a President being a university graduate, whereas the a Prime Minister is not mentioned, the later can actually be a form four, and, you see, you are transferring Executive powers from the President to the Prime Minister. There is not rationale behind that. If the Prime Minister is going to serve that very strong function that he is supposed to serve then he should be the person to have a university degree.

We also have captured the principle of Sovereignty from the beginning in the Preamble, I do not understand how Sovereignty of the people can be transferred if they have elected their president through democratic process, to a person appointed. That means people will not have that. So I see that kind of contradiction. Mr. Chairman, with those remarks, and with a few other Delegates wanting to talk that is my proposal. Thank you.

Hon. Delegate Samuel. arap Ng'eny: Thank you very much. Now I move to row number two and call on somebody from the professionals. Row Number two, anybody professional? 484, I have gone to row number three, there is no professional on this row.

Hon. Delegate Sylvester C. M. Wafula: Mr. Chairman, Honourable Delegates, my name is Sylvester Wafula, member number 484, representing professionals. Before I make my contributions to this debate, I would wish to put it to these honorable members that our

contributions to this noble process should not be construed or taken to be targeting individuals occupying positions in current national institutions, but for the much needed good governance by Kenyans. That is why we are here. Mr. Chairman, my contribution.

Article 156 1 (e) where it says that President is to be nominated by a registered political party. My view is this, this will mean that he or she will have a bias towards other political parties and will owe a duty of allegiance to that to that party, and therefore, I suggest that article 156 1 (f) should be the right option.

Parliament: Parliament to approve appointment of a Prime Minister, my problem is that I find that we have a person whose party has secured the majority of seats in Parliament wants to be taken as a Prime Minister. Why should the same person again be subjected to this process of approval by Parliament? Should it not be obvious then, that in line with Article 149 2. (a) i, this person is rightfully that one to be nominated as the Prime Minister.

Election: There is one section, which gives Speaker to take over in case of the two, the President and the Prime Minister, are dead. I would suggest that within the thirty days when the Speaker will be in power, Electoral Commission should be empowered to call for an election to, which should be completed within ninety days. Thirty days is very short. That is my contribution. Thank you.

Hon. Delegate Samuel arap Ng'eny: Thank you. I am on row number four, and I am looking for a Parliamentarian. Row number four, I recognize 107. He has spoken, excuse me, Maalim, you have spoken; 99.

Hon. Delegate Mohamed Hussein Maalim: Mr. chairman, it is true I spoke yesterday but I spoke on a different subject not this one, and I think this section is very very important to us.

Hon. Delegate Ole Kina: Honourable Delegate, please sit down. Let us have 99. When we have time you will speak after he has spoken.

Hon. Delegate Boniface Mganga: Thank you very much Mr. Chairman. My name is Boniface Mganga...

Uproar

Hon. Delegate Ole Kina: Yes, 26, point of order. What is the problem?

Hon. Galgalo Gurrach Boru: Mr. Chairman, with due respect, even if somebody contributed yesterday, and if it is on a different topic, you cannot deny him a chance to contribute to this topic. We will contribute to every topic that we want! There is no way you can stop somebody from contributing on anything.

Hon. Delegate Samuel Arap Ng'eny: Honourable Delegate, in response to that, in or record here, I do not see Mheshimiwa Boniface Mganga having spoken

Hon. Delegate: Boniface Mganga: Mr. Chairman, I did open my mouth on a point of order, but I never spoke in the meaning of speaking in this Conference. The last time I spoke was probably last week. Thank you, Mr. Chairman.

Hon. Delegate Ole Kina: I would like to overrule the point of order and have the Honourable Member contribute.

Hon. Delegate Boniface Mganga: Mr. Chairman, as we are discussing the Executive.....

Hon. Delegate Ole Kina: Overruled 209, please sit down!

Uproar from the floor

Hon. Delegate Ole Kina: I have given the Honourable Delegate the floor. When he finishes, I will consider your point of order

Uproar

Hon. Delegate Ole Kina: 99 you have the floor.

Hon: Delegate: Boniface Mganga: Thank you Mr. Chairman. Mr. Chairman.....

Hon. Delegate Ole Kina: I would like to invoke rule 32 (g). I can ask a Delegate to withdraw from the Chamber if he continue causing nuisance. Please let us conduct our business the way it is supposed to be conducted.

Clapping by the Honourable Delegates

Hon. Delegate Boniface Mganga: Thank you, Mr. Chairman, as we are discussing this Chapter of the Executive, I would like to look at this particular Chapter together with another Chapter that will be coming later as the heart and the heart-beat of the Constitution, and therefore the heart and the heart beat of the nation. If anything goes wrong with the heat beat or the heart then the whole body is rendered functionless.

You have told us from the beginning that you have put on the Draft Constitution are the views of Kenyans that you collected. I have carefully gone through the report that is circulated to us and there is nowhere I see that Kenyans did recommend a dual sitting where you have two centers of Executive authority.

In my view, Mr. Chairman, a Constitution has to be made in context. It is really one that curves out the political part of a nation, and therefore it has to take into consideration the political life of the peoples in which that particular document is meant to operate. Having an executive Prime Minister, where you have a President who has spent resources and time to go round the country to be elected, only for him to come and hand over power to a Prime Minister, is a against the tenets and the principles of the Republican State which we have talked of at the beginning. We have said we have a Republic and indeed we have said we have two holidays in a year, one is on 1st June, Madaraka day, and the second is Republic day, Jamhuri day. That means we have said

we are a Republic where the supreme power comes from the people and those who exercise it do so on the authority of the people as the elected representatives. The Prime Minister and his Ministers, who are supposed to come from outside Parliament, are not elected. We cannot have this kind of a situation, Mr. Chairman. I therefore suggest we have to have a situation where whoever is exercising authority in the whole nation must be accountable to the whole nation.

At the beginning, Mr. Chairman, you tried very hard to tell us that you are not creating a ceremonial Presidency. I beg to differ. The President's duties here are simply to appoint, to sign, to approve. After approving, appointing, what else does he do? Executive authority means running the government, and that means if the Prime Minister is the one who is in charge of the Cabinet, administers all various Acts of Parliament, assigns Ministers duties, recommends appointments and dismissals; he is actually the executive authority of the country, contrary to the spirit of the Republican State. He is actually a ceremonial President the way you have proposed here.

When I look through I ask myself, and the Delegates here may ask themselves, if this Draft Constitution is implemented today without any alteration, what would happen? I say this is a prescription for chaos, anarchy and a civil war. When you have two centers of power struggling for the same authority you cannot expect any development, people will spend all the time squabbling and trying to degenerate to their areas of authority.

The Prime Minister may only be removed with approval of Parliament. You can get a Prime Minister who decides to rally all Members of Parliament behind him and act in total defiance of the President. What happens? It is a very serious problem. It is much easier, according to this Draft, to remove the President than it is to remove the Prime Minister. If the prime Ministers can be that kind of person who knows what he is doing because he also wants to become President one day? I suggest, Mr. chairman, we have another look at the whole Draft and ensure that we eliminate any potential sources of conflict so that every Kenyan can feel secure irrespective of his station, status and creed in the country.

To finish, Mr. Chairman, as for the Vice President, I sympathize with him even the most. If the President is that ceremonial, the Vice President is a principal assistant for a ceremony! So he

will never do anything. The poor fellow will just be riding around with nothing to do. Again, he cannot be given a Ministry because the Cabinet is supervised by the Prime Minister, and therefore, he cannot be supervised by his junior. I would request that we revisit this particular clause and create some duties for the Vice President, and proper duties on a day-to-day basis for the President. Thank you very much Mr. Chairman.

Hon Delegate Samuel arap Ng'eny: I move to the next row, women's organizations. Anybody there? Anybody from womens' organizations from there? Can I have a district Delegate from that row? 273.

Hon. Delegate Njoiice Kagendo Muriuki: Thank you, Honourable Chairman. My names are Joyce Kagendo Muriuki, Delegate number 273. I will only react, referring to the reports of my constituents because those are the people who sent me to this Conference. As regards the President, they told me to tell this Conference they want the powers reduced. We have many examples to give, especially as past Presidents had all the powers upon them. They had the powers to decide what they would like to, how they would like to run the country. But if the President's powers are reduced, it is better to have a Prime Minister who has less powers than President so that the latter will not just be a ceremonial President. He/she should have executive powers and Prime Minister's powers be not too much.

Another point, Honourable Chairman, is about the Members of Parliament, the Ministers, I mean. If the President is to appoint Ministers who are not Members of Parliament, how long are they supposed to stay in Parliament, is it the five years we are talking about, or they will be employees of Parliament? I don't understand.

Another thing, Honourable Chairman, is about the President who is an independent candidate. Does it mean constituency is the State? If he is asked which is your constituency? He will say the State. We have to state clearly there because he/he cannot be an independent candidate, whereas he went round the country looking for votes. Let us indicate there that his constituency is the State. Thank you Honourable Chairman.

Hon. Delegate Samuel arap Ng'eny: Thank you. I move to the next row and ask for any special interest, including minorities. At the column, yeah. Nobody? 356 are you -----

Hon. Delegate Ezekiel Kesendany Kosgey: Thank you Mr. Chairman. My name is Ezekiel Kesendany, a Delegate from Nakuru, under minority. Thank you for recognizing me' Mr. Chairman. I would propose that the powers of the President be reduced, this time not to the Prime Minister, but devolved to the provinces. Thank you very much.

Hon. Delegate Samuel arap Ng'eny: Thank you. I move to the next row and ask for a Parliamentarian who has not spoken. Next row, I recognize number 34.

Hon. Delegate Francis Nyamu Kagwima: Thank you, Mr. Chairman, for recognizing me. I have sat here for a long time without this opportunity. My names are Honourable Francis Nyamu Kagwima, MP, Tharaka. Mr. Chairman, I want to start by agreeing with the Delegates who started speaking on this topic that we require a bit of time, we require to be sober to be able to tackle the topic for the benefit of Kenyans. Mr. Chairman, we were lucky I want to say that, last year, we were lucky that the former President dissolved the Conference that had assembled to quickly pass this Constitution for implementation before the last elections. I am sure if the Conference continued, that Conference would have passed the Bill in a hurry so, because it was meant probably to address him. Now that we are lucky and we have time Mr. Chairman, that is why I start by agreeing with the proposal from that Honourable Delegate.

Making my points, Mr. Chairman, of course I realize we also have bad moods. People talking about Presidency and the Office of the Prime Minister are looking at the present leaders. I will request the Delegates to look at it as a matter of the future for this country rather than look at the existing President, of course Kenyans are happy that we have a good President. Now that he is there, people might say that the powers should stay as they are, of course they are looking at other people who were promised the post of the Prime Minister. Can we put these ones aside so that we are able to listen to one another, and so that we can reason and come up with a good Constitution for the future of this Nation?

Mr. Chairman, it is good that we have a President who has a say, and a President that has been trusted by the voters. Let us have a say, let us have the President who has a say, and of course make decisions on our behalf. At the same time Mr. Chairman, let us also allocate some reasonable powers to the Office of the Prime Minister. We need the office of the Prime Minister for sure, what we need to clearly define is to what extent we allocate those powers. So that, Mr. Chairman, even in future when probably the good President has retired, we do not risk the situations we have had in the past. At the same time we shouldn't tie the hands of the President. Mr. Chairman, the Draft proposes to give excess powers to the Prime Minister, and the Prime Minister has not looked for votes. He is just going to get one signature of the President, and of course Parliament you can talk to the Members of the Parliament if you are there and of course you are going to appoint some of them as Ministers or may be give them other favors you can get that easily. We are going to take cognizance of the fact that this is a post you can get quite easily, so that the powers -. Why don't we say that the President assigns duties to the Prime Minister on day-to-day basis so that he works for the President and he has that respect for the President?

Mr. Chairman, I also want to say that devolution of power to those areas like the Provinces and the Districts is very well covered. Mr. Chairman, without going out of topic, I recall yesterday Mheshimiwa Yusuf Haji talking about -- and the District and for the good of this country, let us avoid selfish motives, let avoid malice and let us recognize --, I am happy, Mr. Chairman, looking at the Schedule two of this Draft, this Draft recognizes all the existing Districts to which powers would be devolved. Mr. Chairman, even the Motion that was earlier on moved or proposed by Mheshimiwa Koigi Wamwere, I think it wasn't really relevant. Mr. Chairman --

Hon. Delegate Samuel Arap Ng'eny: Time is up

Hon. Delegate Francis Nyamu Kagwima: Yes, I want to finish quickly by saying that the Ministers, Mr. Chairman - and this is a very important point, others have said, but I want to echo their sentiments the Ministers should be appointed from the elected Members of Parliament. Otherwise, in future you can have a lot of conflict where a Minister comes from my constituency and we do not agree, we fight for 5 years. So, let us have people that are accountable to the

people who have elected them given the post of the Ministers, the Permanent Secretaries can be people who are qualified to do other things.

Hon. Delegate Samuel Arap Ng'eny: Thank you. I will move to the next row and I want to recognize the youth. No. 339.

Hon. Delegate Caroline Chemursoi: Thank you Hon. Chairperson. I am Chemursoi Caroline, District Representative, Delegate number 339, and also a youth. I want to speak on Article 175 on the issue of the Ministers. I support the idea that the Ministers should not be Members of Parliament, with due respect to this Conference, I am sure there are very few Ministers who are present, because they are carrying out their Ministerial duties. I also refer you to Article 166 on the age limit, it should also apply to other Constitutional offices, and 166 (b), the academic qualification of the President, should also apply to the Prime Minister. Thank you.

Hon. Delegate Samuel Arap Ng'eny: Thank you. I come to the last row here and I want to recognize a Member of Parliament. No. 347. Are you a Member of Parliament?

Hon. Delegates: No.

Hon. Delegate Samuel Arap Ng'eny: He is not. No. 12

Hon. Delegate Abdul Bahari Ali: Thank you very much Mr. Chairman. My names are Hon. Abdul Bahari Ali, Member of Parliament for Isiolo South. Mr. Chairman, this subject, like many other speakers have said, is the nerve centre of this country. The issue of power sharing or distribution to Kenyans is very important and how that can be shared is a matter debate. So, that should be our guiding principle, that Kenyans are tired of concentration of power in certain offices, certain few offices only.

Clapping by the Honourable Delegates.

How can we say the President has been very powerful? The streets are named after him or her; the Universities, he is the Vice Chancellor, everything is under the President and then at the same

time we say that he has been given very little powers, how to divide that can be, like I said a matter of debate. Defending the Constitution is not ceremonial. It is a very important function. Declaring war is a very important function national defense is a very important function. Those are not his own functions.

Clapping by the Honourable Delegates.

Hon. Delegate Abdul Bahari Ali: We are here to make a Constitution. Imagine what the whole country has spent, and he is given that responsibility to defend this important document that is going to serve us for the next 100 or 200 years, that is a very, very important function.

Secondly, the powers that have been there have to be reduced and given to the Prime Minister, a position which I strongly support, --

Clapping.

Hon. Delegate Abdul Bahari Ali: --and which is also subjected to Parliament, so that the views of Kenyans, the views of people who have been elected by this country is heard. While I agree that the Prime Minister may not have sought for votes directly, being the leader of the majority party, certainly he has mandate of this country, majority of Kenyans--

Clapping by the Honourable Delegates.

Hon. Delegate Abdul Bahari Ali: --more so, when it is a coalition of parties. But the issue of 50% is the one, which is contentious; I think to remove or to appoint that percentage should be improved to 2/3 so that he is representative, as the Prime Minister of this country. Now, my Hon colleague Kagwima suggested that the Prime Minister should be appointed by the President and may be assigned day-to-day responsibilities. That is unfortunate to say the least. How can a Prime Minister go the office and wait for the President to assign him a duty on Monday? We cannot have that kind of a Prime Minister.

Clapping by the Honourable Delegates.

Hon. Delegate Abdul Bahari Ali: Responsibility is a very basic tenet of any job and responsibilities must be clearly defined and must be protected in the Constitution that he knows this is my limit in terms of power and that authority must be properly exercised. Hon. Chairman, the President, we said, he is a symbol of unity, that is why he has to go across the country and get the votes as is stipulated, so that the President is not partisan. I want to further touch on that, Article 156 1(b), I strongly support the issue of limiting the age of the President, whether it is 70 years on 75 that is a matter of debate. You know in this country that there has been a very common talk that the youth shall be the future leaders, when is this future? It has never come! To control some of these excesses we must put a limit, it is very important and some of the people who are in position or the same people who are in position were the ones who were there from independence and they were given those responsibilities when they were 30 years old and now they still want to continue and continue. The future never comes in this country and it must be limited and these are some of the issues that we have to address.

Mr. Chairman, there is the issue of the President either being appointed by a political party or his/her being an independent candidate. I think that needs to be sorted out because we are looking for a President that represents the entire country. We know that Kenyans have confidence in that President and at the same time we are saying that he can be appointed by a political party. So, that needs to be resolved because he is not supposed to hold an office in a political party. Does that necessary de-link him from the political party because he is not holding an office? With those few remarks, Mr. Chairman, I beg to sit down. Thank you.

Clapping by the Honourable Delegates.

Delegate Samuel Arap Ng'eny: Thank you very much. I move to the beginning and now request that I have somebody from the Political Parties. Political Parties, 154.

An Honourable Delegate: I am not from the Political Parties.

Delegate Samuel Arap Ng'eny: We will come round. I am trying to get somebody from the Political Parties. 590 the floor is yours.

An Honourable Delegate: He is not from the Political Parties.

Hon. Delegate Patrick Onyango: Thank you very much, Mr. Chairperson. My names are Patrick Onyango and I am representing a Political Party - Kenyan National Democratic Alliance. First of all, I wish to inform my fellow Hon. Delegates that the matter that we are discussing here today is not the first time it has been recorded as being the wish of the people. Those of you whose memories are good, will remember that in 1990, KANU which was then, the only party in this country established a committee headed by Hon. Saitoti and among the members of that committee was the current President. If you look at page 27 of the report of that committee, you will find that what is recommended here is not any different from what the people recommended in 1990.

Clapping by the Honourable Delegates

Hon. Delegate Patrick Onyango: Therefore, I am saying that for the first time Kenyans have been given an opportunity to reconstitute the governance system with their own sovereignty. Mr. Chairman, I stand here as a living testimony of what the lack of separation of powers in this country has been. I was a victim of Sec. 25 of the current Constitution, which says that any person who holds office, shall hold that office during the pleasure of the President. I had just come from University, I worked for 24 days, on the 25th day, a letter came from the Chief Secretary, then Jeremiah Kiereini, telling me that my appointment as Executive Officer II had been terminated in accordance with Sec. 25. Nobody told my why, but I could guess, I was being sacked under that Section because I was a student leader at the University of Nairobi just before the coup of 1982. Then, Mr. Chairman, in 1986, I was yet again a victim of the pleasure of the President because I was taken to Nyayo House, which was constructed for purposes of defending the Presidency. I was tortured there for 74 days and subsequently detained at the pleasure of the President.

Clapping by the Honourable Delegates.

An Honourable Delegate: Congratulations.

Hon. Delegate Patrick Onyango: Thank you very much. For that reason, Mr. Chairman and Hon. Delegates, I made a personal covenant with myself, that I will travel and fight for the separation of powers, so that no one --

Clapping by the Honourable Delegates.

Hon. Delegate Patrick Onyango: --none my children, my children's children shall be subjected to the same. So, I am supporting the separation of powers, I agree with the Motion, the statement as placed in this Section that indeed, it balances the powers between the Prime Minister and the President. Therefore, I support this position, I support this position, Mr. Chairman, because the concentration of power in the presidency is what has caused pain and suffering in this country. People have been viciously competing in ethnic communities to control the presidency and so in the process, also control the resources of this country to the exclusion of the majority of our people. For this reason, I can say without apologies, that even the economic decay that we suffer today is because of the concentration of power in one office.

Clapping by the Honourable Delegates.

Hon. Delegate Patrick Onyango: Finally Mr. Chairperson, and because I consider the rights of others to speak, I just want to make one last principle observation. Looking at the process of appointing the Prime Minister and the process of signing of Bills, I am worried that there may be a conspiracy between the three arms of government against the sovereignty of the people. When the President refuses to sign a Bill and sends it to court, that is some kind of conspiracy because then, the sovereignty of the people will be undermined. Thank you very much Mr. Chairperson, I leave the floor.

Clapping by the Honourable Delegates.

Delegate Samuel Arap Ng'eny: Thank you. Now, in the first round when I was calling out delegates, that particular row did not have the category of people I called. So, I will give them another chance for a District Delegate. The same row, I recognize 344.

Hon. Delegate: Point of order, Mr. Speaker. Point of order, Mr. Chairman.

Delegate Samuel Arap Ng'eny: Yes, point of order.

Hon. Delegate Henry Obwocha: Mr. Chairman, my name is Obwocha, Delegate No. 154. As you are going on, Mr. Chairman, you can notice that the categories you are calling are not here. So I think in your wisdom, you should give somebody from this section who is present, and as I can see, those categories you are calling are not here. Since you had given me the chance and I have the floor, Mr. Chairman –

Laughter from the Honourable Delegates..

Delegate Samuel Arap Ng'eny: No, Hon. Obwocha. 344.

Hon. Delegate Henry Obwocha: Do I have your permission, Mr. Chairman?

Delegate Samuel Arap Ng'eny: You do not have my permission because I have already called another Delegate. Please wait for your turn when it comes.

Hon. Delegate Henry Obwocha: Thank you, I will wait for my turn.

Hon. Delegate K.K. Arap Sego: Mr. Chairperson, my name is K.K. Arap Sego, District Delegate number 344 from Nandi District. Mr. Chairman Sir, my observation right from the outset is that I support the idea of having a Prime Minister. It has been stated, Mr. Chairman, Sir, that the Prime Minister is a person who has not been elected as the President was. I would like to say, Mr. Chairperson, Sir, that the President enjoys the majority of the electorate as much as the Prime Minister for this reason. The reason is that, the Prime Minister enjoys the support of the majority of the Members of Parliament who have been elected by the electorate. So, if he gets 50% of the support of the Members of Parliament, if we translate that into votes, we can say he also enjoys the support of the electorate.

Clapping by the Honourable Delegates..

Secondly, Mr. Chairman Sir, is on the issue of signing of Bills. I would propose, Mr. Chairman Sir, that if the President, for any reason, feels that he cannot sign or assent to the Bills passed by Parliament, the Bills should be returned to Parliament. Parliament if for any reason does not want to go by the directions of the President; the matter should be referred to the National Council. I say so Mr. Chairman, in view of the past experience in the Judiciary. The Judiciary, for one reason or another, unless it is reformed, will definitely be subject to abuse. It can easily be influenced to give an opinion that does not reflect the views of the people. So, for that reason, Mr. Speaker Sir, I still believe that the National Council and the National Assembly will be able to perform that particular function. Those are the only views I wish to strongly express, Mr. Chairperson. Thank you.

Clapping by the Honourable Delegates..

Delegate Samuel Arap Ng'eny: I will -- who is to be informed?

An Honourable Delegate: --(inaudible)

Delegate Samuel Arap Ng'eny: Are you on a point of information?

An Honourable Delegate: Yes

Delegate Samuel Arap Ng'eny: Yes, 581.

Hon. Delegate Yusuf Aboubakar: Thank you Mr. Chairman. You requested for a member of Political Party from this section and I raised my hand. Mr. Chairman, I humbly request that I should be given an opportunity from this section, that I present my views from that category of Political Parties, Mr. Chairman.

Delegate Samuel Arap Ng'eny: I have not called Political Parties in that particular section.

Hon. Delegate Yusuf Aboubakar: You did.

Hon. Delegates: --(inaudible noise)

Hon. Delegate Yusuf Aboubakar: You did, Mr. Chairman, and I come from this section.

Delegate Samuel Arap Ng'eny: We already had somebody from Political Parties and it was from this side.

Hon. Delegate Yusuf Aboubakar: No, it was from the other section, Mr. Chairman.

Delegate Samuel Arap Ng'eny: Let's not argue about it, you will get a chance. I move to the next row and I would like to recognize a representative from the Religious Organizations, 532.

Hon. Delegate Lumatete Muchai: Thank you. Hon. Chairman, my name is Lumatete Muchai, representing Religious Organizations. My time has finally come. I wish to say this, Hon. Delegates, the Constitution we are writing now is not for tomorrow, it is not for next month, it is for generations to come. One thing I am sure about is that this Constitution, at the end of the day when it is finally passed by Parliament, is not going to take effect during the life of the current Parliament, it is not practical. Therefore, any worries that you have, that any person who is holding office today, whom you love or whom you want to continue holding office will be interfered with, those worries you should put aside. The point I want to make, Hon. Chairman is that the issue of the President referring Bills, if in his view there are unconstitutional, to the Supreme Court for interpretation ought to be supported. This, in my view, will do away with situations whereby unconstitutional Bill go through either of the Houses and they become law only for a citizen to go to court and challenge it. If this can be arrested at the stage of legislation, then, let it be so. Therefore, I support that Article which gives the President power to refer a Bill which in his considered opinion is likely be unconstitutional with the Supreme Court. In that effect, I am a great supporter of the establishment of a Supreme Court.

The next point I wish to make is that I totally agree with a system of having a Prime Minister. I do not understand why we should worry about taking power away from a President. A President

is a creature of the Constitution, he is an employee of the people of Kenya and it is our responsibility to assign him duties and tell him these are the duties we are giving you to perform and the other duties we are giving to a Prime Minister. The only thing that I wish to say is that we have to ensure that in assigning those duties, we should as much as possible avoid a situation whereby, there is a power struggle between the President and the Prime Minister, so that the government functions without any impediments. Thank you very much.

Delegate Samuel Arap Ng'eny: Thank you. I move to the next row and I would like to recognize somebody from the Women's Organization. Alright, since it is in the next row, I will come back to your row, 511.

Hon. Delegate Ruth Kibiti: Thank you very much, Hon. Chairperson. My names are Ruth Kibiti, from the Women's Organization. I am standing to contribute on the position of Vice President. Mr. Chairman, as it is now, the position of Vice President has been put in place without specified responsibilities. As it reads now, he/she is like an errand boy for the President or an errand girl for the President. Mr. Chairman, my proposal is that we should put more place, give the Vice President more responsibility for his or her position to be able to contribute effectively to the development of the nation and proper management of governance. Mr. Chairman, I also want to refer to Article No. 151, sub-section 2. 2 Deputy Prime Ministers nominated, one of whom must be from the opposite gender. Mr. Chairman that will be mainstreaming gender and also leading to the true spirit of Affirmative Action, which we have already agreed to.

Mr. Chairman, I also want to contribute to Article No. 157, sub-section 4 the candidate for presidency who receives more than 50%. Mr. Chairman my concern is with 50%, I wish to propose that because we are creating a long-lasting Constitution, in a case where we are dealing with percentages we should avoid things like half of the population and move closer to a higher percentage and my proposal is that the person who receives more than 65% of all the votes cast in the election and who, in addition, receives a minimum of 25%. Mr. Chairman, I am moving to a position where we should avoid a case where candidates tie because we are just looking for 50%.

Mr. Chairman, I also want to contribute towards the position of Prime Minister. Mr. Chairman, the whole question of sharing power means that we are encouraging more efficient development and we are also encouraging proper management of governance. Mr. Chairman, if we overload the office of the President with a lot of power, then, Mr. Chairman, power is likely to be misused. Therefore, Mr. Chairman, I propose that the position of the Prime Minister should be put in place with powers, which can enable that office to function effectively. Thank you very much.

Delegate Samuel Arap Ng'eny: Thank you, I will give the last before I adjourn for lunch break and I will now go to No. 1 where they didn't have the category that I called, and offer it to a Parliamentary candidate from that end – 154. We will have more time after lunch.

Hon. Delegate Henry Obwocha: Mr. Chairman, I wish to thank you because for two weeks I have been trying to catch your eye, --

An Honourable Delegate: Point of order.

Hon. Delegate Henry Obwocha: --has not been possible, I want to thank you. Mr. Chairman I want to make a general comment, that –

Hon. Delegate Saipstone Musau: Mr. Chairman, my names are Saipstone Ngalaatu Musau, delegate No. 295 from Machakos Dsitric. There is a system, Mr. Chairman, which we were using yesterday and it worked very well. For example, now you have come to our column and there was no person from the Women Organization and now you have left this side, could we please go back to that system which we were using yesterday, please?

Hon. Delegates: Inaudible noise.

Hon. Delegate Samuel Arap Ng'eny: Order Delegates, order, if I may enlighten you, I told you I was going to keep a register so that I can be as fair as is humanly possibly. As we are now, I can read to you from the District Delegates, I have given four Delegates, from the

Parliamentarians, this is the fourth Delegate, from the other category of NGOs covering about 10 different sections, I have given five Delegates. Surely, I think we should move on.

Hon. Delegate Henry Obwocha: Thank you, Mr. Chairman. My name is Henry Obwocha, MP, West Mugirango. I want to make a general comment Mr. Chairman and join my colleague that this is an important exercise. We should put our emotions aside. We will be judged by what we do here. There are provisions that exist in the current Constitution, I hope and believe that when we finally come up with a document, we will consider some of these provisions that have worked well in the 40 years that this Constitution has existed. On the issue we are on, Mr. Chairman, I want to say one, Article 168 (4) provides that in the event of the current President and the Vice President dying in office, the Speaker takes over and calls an election within 30 days. Mr. Chairman, it is not possible to hold an election, which is free and fair within 30 days of those 2 going out of the scene. So, I am proposing that, that particular Article be looked into by the Delegates.

Article 162 3(b) talks of nominees of political parties to impeach the President. Mr. Chairman, how can appointees of political parties be impartial in impeaching the President? I thought in this particular Article, we would look for eminent Kenyans of unquestionable integrity to be in this Commission which is headed by the Chief Justice, not appointees of political parties. I propose that that Section, that particular Section also be looked at by the Committee that would be looking at the Executive.

Article 162 (1), Mr. Chairman, in the event of physical impairment of the President, how is Parliament supposed to inform the Chief Justice? There should be a proper mechanism of how Parliament can inform the Chief Justice, either by providing that the Speaker does write or some other communication, but as it is now, it is a general comment that the Parliament shall inform the Chief Justice. Article 155 (2) that the date the election shall be 2nd Tuesday of August. Mr. Chairman, why August? Just because you thought that August House means the month of August?

Laughter from the Honourable Delegates.

Hon. Delegate Henry Obwocha: It doesn't, because August has got a different meaning. I will propose Mr. Chairman, that this date be looked at considering circumstances of weather, and what activities are done in the nation during that month, so that an election is done when we do not have a lot of activity, when schools are even closed, that kind of thing. So, I propose that that date be looked into, but I am happy that we are fixing the day. Where you have provided for the actual handing over of power from a President to another, in Article 159, the provisions are not sufficient, Mr. Chairman, because you need to make it very specific. When an election has been done, when the results have been announced, how does that President hand over to another? The provisions must be very precise.

Finally, not finally, the second last, Mr. Chairman, you are insisting on a degree holder as a President. What is the justification that people give in that document you have presented to us? Is it just because Moi did not have a degree or what was the justification that a person who becomes President must have or must be a holder of a University degree? It is a good idea, but we need to ventilate. You can have a very good Kenyan with a lot of experience, who does not have a University degree, but can be President.

Clapping by the Honourable Delegates.

Hon. Delegate Henry Obwocha: Finally, the issue of Ministers being from outside Parliament, two issues arise here, Mr. Chairman. What mandate are these Ministers going to carry? As a Minister now, there are certain things he cannot do against the electorate, he will be told to retrench those fellows, but when he thinks about going back to the elections, he cannot do it. A person who is not elected will just clear all those fellows and say, "Go home". Mr. Chairman, Ministers are people who are supposed to carry out certain government responsibilities and I believe, Members of Parliament, when they become MPs they must aspire to something bigger. They cannot aspire to be just mere MPs; they must aspire to be something else. Mr. Chairman, thank you for giving me the opportunity, I believe—

Hon. Delegate Samuel Arap Ng'eny: Thank you. There is a point order, I will give you the chance but let it be a point of order.

Hon. Delegate Daniel Ichan'gi: Thank you Mr. Chairman. I stand on a point of order because of the comments of the last Speaker. Mr. name is Daniel Ichang'i, Delegate No. 481. I am not here to defend the former President, but he was the Chancellor of our Universities and he had degree and for the record, I think that should be corrected.

Clapping by the Honourable Delegates.

Thank you, the contributor is hearing. Now Delegates, order, order, I am adjourning the seating until 2.15 p.m. The seating is now adjourned.

AFTERNOON SESSION

The meeting started at 2:45 pm

Hon. Delegate S. arap Ngeny: I want to get the proceedings moving. Please be seated and let us keep silent so that we can follow the proceedings and contributions of other Honourable Delegates. We have not begun please, hold yourself. Order Delegates, can we please be seated and be silent? Under Standing Order No. 21 (1), I want to recognize the Speaker of the National Assembly who has a statement, Hon. Kaparo?

Hon. Delegate Francis ole Kaparo: Mr. Chairman, fellow Delegates, I am Delegate 223 Francis ole Kaparo but I wish to make this statements as the Speaker of the House. Mr. Chairman, I wish to make this statement on behalf of the National Assembly on a matter of grave public interest and importance.

Since the opening of this National Constitutional Conference on the 30th of April 2003, Delegates from National Assembly have dutifully attended and participated in the proceedings of this Conference. In fact, Parliament suspended its seating to pave full attention to this Conference. In a Conference of this Magnitude, one does not expect participants and Delegates to have a commonality of views and approach on all issues.

Indeed, there is a divergence of opinions being ventilated in this Conference that will shape the quality of the end product that will in the long run, be the National consensus. It has been unfortunately witnessed, observed and commented on that Delegates from the National Assembly have attempted or are attempting to constitute themselves as a special category above the rest of Delegates.

Mr. Chairman, nothing can be further from the truth. The members of the National Assembly are here as Delegates in their own rights and are also fortified by the Electoral mandate given to them by Kenyans during the last general election. It should not be lost to anybody that Delegates from the National Assembly constitute at least one third of the Conference representing the single largest constituency. This, in itself, means, that under the rules of national justice and fair play, there will be more Delegates from Parliament speaking or attempting to speak at any time than any other Delegate.

It is unfortunate that the enthusiastic interest and gusto from this category of Delegates should be misconstrued as exhibition of a desire to dominate other Delegates. Any view, ventilated here from the individual Members of Parliament, is not necessarily representative of the institution of Parliament.

Delegates from the National Assembly will remain objective and open minded throughout this Conference. In any event, the whole Nation expects, nothing less, from the Delegates of the National Assembly. We have a duty to provide leadership and this duty we must perform at all cost.

It is important to send out a universal appeal to all participants in this Conference, that no Delegate has come here with pre-conceived or fixed views on any issue. Indeed it has been a bit disturbing to hear some Commissioners of Constitution of Kenya Review Commission, conducting proceedings in a manner that indicates their intention to defend certain positions, elucidated in the Draft.

Delegates from Parliament, have no agenda hidden or otherwise. They are not and will not engage in a test of wills with any Delegate or category of Delegates. They are not and will not

wage war against any category of Delegates. We are part and parcel of this Conference and we have no doubt that our participation, intervention and debate will only serve one purpose, which is to enrich the prime document and this we intend to do to the fullest of our ability.

Finally, I wish to make an appeal to all participants to this Conference, that we must approach each and every issue with an open mind taking into account the whole baggage, that you have a right to speak carries with it, a responsibility to listen to others. I thank you Mr. Chairman.

Hon. Delegate S. arap Ngeny: Thank you. I will now proceed with debate and I am here and I would like a Delegate representing any NGO? I recognize 460.

Hon. Delegate Patrick Kiage: Mr. Chairman, my names are Patrick Kiage, Delegate Number 460. Mr. Chairman, I wish to contribute to the Debate on this matter by stating quite categorically Mr. Chairman, that it is my believe, that the post of Prime Minister ought to be created as proposed in the Draft.

Mr. Chairman, I must quickly confess that at first I had my misgivings regarding this post of Prime Minister and in particular on the question of whether or not, the creation of a parallel seat of Executive authority will create disharmony or instability in Government. I have since Mr. Chairman, with the careful consideration of what is contained in the Draft Bill, changed my mind for this reasons;

Mr. Chairman, the post of Prime Minister as proposed in the Bill, seems to anticipate to my mind, a future time when political parties in this country would be mature enough to be able to get into Parliament, create coalition and it would be possible therefore, for the leader of a party to immediately become head of the Cabinet as Prime Minister. So, therefore, Mr. Chairman, the question of whether or not the Prime Minister has the authority of the people of Kenya can very easily be answered in this manner, that the people having elected a certain party as the majority party in Parliament, will therefore have had sufficient confidence in the leader of that particular party.

Further Mr. Chairman, you will see from the Draft that the Prime Minister is a man or woman who enjoys a broad based majority and respect within the House and that is the kind of statesmanship that is required Mr. Chairman.

Mr. Chairman further, I wish to state quite clearly, that under the definition of Executive authority that is provided under Article 149 of the Draft Bill, Mr. Chairman, the Executive authority is not going to be exercised by the Prime Minister alone but rather the Prime Minister together with the Cabinet.

Further Mr. Chairman, we are not talking about a Prime Minister's post, which creates someone whose powers are totally un-limited, why because Mr. Chairman, you will see under Article 177 of the Draft, it is the duty of the Prime Minister to keep the President fully informed on all matters. Further Mr. Chairman, he must supply the President with such information as the President may require at any time.

Mr. Chairman, it seems to me, that the Prime Minister contemplated under this Bill, is one who will be answerable to the President. He is not going to be above the President, neither is he going to rival to the President.

Further Mr. Chairman, you will see under the same Article 177, that he Acts always by order of the Cabinet and that he must at all times, if he wants to travel out of the country, seek the leave of the President.

Mr. Chairman, how can that person be seen to be a rival to the President and how can that create instability? Mr. Chairman as a party before I sit, we must remember Mr. Chairman, that scout that this country has suffered for so many years has been the over concentration of power in one person.

Mr. Chairman, the people of Kenya are saying, now and for always, that never again shall it be that any one person shall exercise so much power as to become really a dictator as has been seen in this country in the past.

Mr. Chairman, I wish to sit by saying lastly, that the problem has been the past Constitution that we had. It is the late President of Tanzania, the late Mwalimu Nyerere who said, that Mr. Chairman, the powers concentrated in the Presidency in the kind of Constitution we have had so far, are such that Mr. Chairman, the mere exercising of them would convert any angel into a dictator. Mr. Chairman we are here, to put a stop to that. Thank you Mr. Chairman.

Hon. Delegate S. arap Ngeny: Next row and I want to recognize a Member of Parliament. Delegate 85.

Hon. Delegate Marsden Madoka: Thank you Mr. Chairman. I am Marsden Madoka, Delegate number 85, MP for Mwatate Constituency.

Mr. Chairman, this is one of the most important Chapters in this document and yet in my view, it is one of the Chapters which is most un-tidy, academic and confused. Mr. Chairman, when we are talking about the powers of the President, which powers are we talking about? And if we are to curtail those powers of the President, is the appointment of a Prime Minister the only way to curtail those powers of the President or is there any other method through which we can curtail those powers of the President?

Mr. Chairman, I went round my Constituency after they had given their views and I am asking them, what are these powers that the people are talking about and none of them could really tell me, these powers which have been abused by the President. Is our Constitution the cause or is it the abuse of office by the incumbent?

I think it is important that we take note and decide, is it the incumbent who abuses the office or is it the Constitution, which gave the President power that led to these dictatorial tendencies?

Mr. Chairman, I cannot see how Kenyans will elect a President whom they are saying, we are giving you the responsibility to run this country but go and appoint somebody else and delegate those responsibilities to him. To me that is not even delegation, it is abdication. You cannot have a President who is elected by the people, then you tell him to appoint somebody who then, appoints his Cabinet and then you are saying that this President can set legislation through the

Cabinet where he does not seat and he has no control over. You are saying that this President at the end of the year, he has to go to Parliament and explain what his government has done and yet he has no control over the most important organ of the Executive, which is the Cabinet.

Mr. Chairman, you are saying the Cabinet Ministers should not be Members of Parliament. The only Member of Parliament in that Cabinet will be the Prime Minister, are you saying that it is this Prime Minister who has to go to Parliament and move all the Bills in Parliament, is he going to be able to do that? It is not possible, you will be overloading him and you will be making him totally ineffective and inefficient.

Mr. Chairman, it is my view that we need to give this very careful consideration. You can create the position, call it of a chief Minister or whatever, call him a Prime Minister or whatever but I think the powers and the authority of this so called Prime Minister needs to be re-defined because the way it is today, you cannot share powers. It has been tried, you will find even recently when President Yasser Arafat was trying to get the Prime Minister, they had a conflict over who should decide, who the Cabinet is. In sharing power, there is bound to be an overlap and once there is this overlap, you will create conflict and this conflict can lead to chaos.

Mr. Chairman, I wish to plead with the Delegates that when you do get down to the committees, look at this Chapter very carefully. Whereas I did not support one of the Delegates who said we should go back and get this Chapter re-written ultimately I believe this Chapter need to be re-written so that we avoid confusion and contradictions in that particular Chapter. I thank you.

Hon. Delegate S. arap Ngeny: Thank you. Just the part of our procedure it was intimated earlier that, if you have a point that you wish to submit in writing, you may do so and I wanted to say, we have already received one from Delegate number 243, which will be dealt with because it is in form of question.

I move now to the next row and I want to recognize the District Delegate, 346? Right at the back?

Hon. Delegate Isaiah Cheruiyot: Thank you Mr. Chairman. I am Isaiah Cheruiyot, Delegate number 346 from Baringo. I would like to talk on Article 158 concerning the Age of a

contestant of the Presidency. I support fully the age of 35 and also the maximum age of 70, plus all the other requirements because it is worthwhile.

Secondly, I would also like to talk on Article 151, which indicates that the Cabinet should have 15 Ministries. I think this is so much of a limiting factor because Kenya is developing, tomorrow it maybe a developed country. We may need to increase other Ministries for example, in developed countries; we have certain Ministers concerning African affairs and so forth. So I think we should leave to Legislation maybe in Parliament but for now I don't think we should limit it like that because we want a Constitution that will serve us for the next hundred years. So we may need to re-change later on which is not possible, we can leave it to Parliament.

Thirdly, I would like to talk on the point of the Prime Minister. I support the issue of the Prime Minister fully. If you remember, since the previous years, people have been clamoring for change in this country. People have been talking of reduction of powers of the President, we are here today because of the previous Constitution which people say, it gave one man a lot of powers to dictate the way he wants. Because of that, we have come here to seat and discuss and it is the views of the people that we need to devolve powers or reduce powers.

It is my view that the issue of the Prime Minister will reduce all those powers, if given the Prime Minister to only manage the government. He has not finished the other part, it will be handled by the President and of course he is answerable in consultation with the President, when he is appointing these Ministers.

It is my view that, this one will be supported in regard to other developed powers which we are looking at. It is very important but if we don't do it, some people say, it was done because there was a dictatorial government the other day, if today it is good, how do you know of tomorrow? Are we going to say again, we constitute another Conference to change the Constitution when things become worse tomorrow? Can we be very careful and design this Constitution properly not for individuals but for the future of this country, thank you very much.

Hon. Delegate S. arap Ngeny: Thank you. I move to the next column and I recognize category of Religious Organizations, 516?

Hon. Delegate Peter Bwana: Thank you very much Honourable Chairperson. First of all I want to speak on Article 155, which deals with the timing of the Presidential Election.

Hon. Delegate S. arap Ngeny: Can you introduce yourself first please?

Hon. Delegate Peter Bwana: Thank you Chairman. I am Peter Bwana from the Religious Organization. Mr. Chairman, I want to commend on the Electoral Commission for putting the Elections to be done on Tuesday and Chairman it can be any month. The reason of saying so Mr. Chairman, is that in the past, in particular the Seventh Day Adventist members have been marginalized in as far as the Election is concerned. They and in particular the by-elections, the by-elections in most case have been put on Saturday and you find that the Seventh Day Adventist church members cannot participate effectively and at one time Chairman, we had even to take the Electoral Commission to court but we lost the case because the rights of voting is not well protected in the present Constitution. I am glad that that one now is protected as far as the Presidential election is concerned. I appeal that the same be done in the general election.

Mr. Chairman, when I move to the powers of the President, Chairman what motivated the Kenyans to want the Constitutional Review, is because the powers were centered in an individual. Mr. Chairman, if we do not limit those powers, then our purpose of reviewing this Constitution becomes a futile exercise.

So Mr. Chairman, we indeed must limit those powers and what we need to say is that there is proper balance in sharing those powers. Chairman, it has been said that if we elect the President and then limit the powers, then that is not proper, we are electing Mr. Chairman the President and assigning him, telling him what to do and it is up to him to see whether that individual who is aspiring for the Presidency to see whether he is willing to do the assignment that we have described in the Constitution or not.

When it comes to age limit of the President Mr. Chairman, I support that we should set an age limit for the President because it is a natural fact of life that we grow and get old. Mr. Chairman,

if there is reason for us to set a lower age limit, there is a reason for us to set an upper age limit, because we do also grow old and we should not forget that fact.

Mr. Chairman, the other point which I want to say is that in as far as the Deputy Prime Minister are concerned, I do not see the point of having two. Chairman I think it is proper for us to have one and if one gender is the Prime Minister, let the other one be the other gender instead of having two.

Mr. Chairman, when it comes to the number of the Ministers, I feel Mr. Chairman 15 is too limiting we could say, a maximum and say not more than 20. Chairman because if we put too much departments or activities in one Ministry, the Minister maybe ineffective in carrying all those responsibilities. So Mr. Chairman, I think it will be better if we can expand them and say, not more than 20.

Mr. Chairman, again I support also that Ministers be appointed from non-parliamentarians. Mr. Chairman, I am in support of that because when you put a Minister from one Constituency, there seem to be a concentration or that constituency being favoured and the constituents feel since that person is a Minister, why cant he do a little more in that constituency. So if he is not a Member of Parliament, then he will be objectively thinking for the entire country rather than thinking in a narrow area. Thank you Mr. Chairman.

Hon. Delegate S. arap Ngeny: Thank you very much. This row here, I want to have Trade Unionists if there are any? There is not. Anybody with disability? Then I will give a lady delegate from a District, 248

Hon. Delegate Asli Ibrahim Ali: Mr. Chairman, my name is Asli Ibrahim Ali from Garissa District Delegate. My idea of the President, I said the powers of the President should be limited because President's have got a lot of advisers and these advisers might lead him to bad things like Kenya for the past years, corruption has been rampant and a lot of funds have been misused. I am saying that the powers of the President should be limited.

In Article 168, I say the President should be impeached if he misused the public funds. The appointment of the Ministers, the Ministers who is appointed, should be elected Ministers not nominated. Those are my views.

The other one is about the two Deputy Prime Ministers; one should be a woman that is Affirmative Action. The appointments of Ministers, Ambassadors, PC's Should be done by the Prime Minister. That is my view so I am supporting the appointment of a Prime Minister. Thank you.

Hon. Delegate S. Arap Ngeny: Thank you. I now move to the first place, Any Trade Unionist? Is there any Trade Unionist in the Conference? 165. He is not? Alright, since there are all here, I will give them a chance 445.

Hon. Delegate Esther Lelei: Thank you Mr. Chairman. My name is Esther Lelei from the Trade Unions. Mr. Chairman, if we look at the Article 150 which is talking about the functions of the President, I do not think the President is ceremonial because if you have somebody who is the Head of State, and is the Commander-in-Chief of the Armed Forces, I do not see why people should say he is ceremonial because he has all the powers to command the Defense Forces, National Security and is also the Chair Person of the Defense Council.

On Article 156, we should have the age limit for the President. The limit should be 35 years and I suggest maximum age, to be 75 years. At 75, somebody is still productive and he can still do better.

On Article 170, on Prime Minister. This is high time Honourable Delegates that we recall the powers that have been misused before. It is the high time that these powers should be shared. and I fully support the position of a Prime Minister. The Prime Minister should also have an age limit and should also hold a degree like the President.

On the Cabinet Mr. Chairman, I support the issue that the Cabinet should not be MPs so that we can have Professionals. If you look at the Ministry of Health we have a qualified Doctor leading

the Ministry. If we go to the Ministry of Education we have a Minister who is a Professor in Education and then the MP will just be looking at their constituencies. Their work is strictly to look at their constituencies. What is the point Mr. Chairman of having a Minister from constituency A and B being a Member of Parliament? Mr. Chairman, I think that is what I had to say this afternoon. Thank you.

Hon. Delegate S. Arap Ngeny: Thank you very much, I go back and ask for Special Interests. Anybody there? 165 a you a Special Interest?

Hon. Delegates: No--.

Hon. Delegate S. Arap Ngeny: 403? People of Special Interests is there anybody here? 603? You do not belong to Special Interest?

Hon. Delegate Winston Adhiambo: Thank you Mr. Chairman for giving me this chance to contribute a little. My names are Winston Ogle Adhiambo, patriot the founder of Federal Party of Kenya.

Hon. Delegates: *Laughter.*

Hon. Delegate S. Arap Ngeny: Order order. You are not Special Interest please. I am sorry. I called that we will need people from the Special Interests and you are Political Parties.

Hon. Delegate Winston Adhiambo: I am also older --.

Hon. Delegate S. Arap Ngeny: 626?

Hon. Delegate Mamo Abundo Qonchoro: Thank you Mr. Chair. My names are Mamo Abundo I represent Special Interests Group. Just to confirm to you we are only 15 Special Interests Group from 617 to 629. So please check on that. Mr. Chairman, I have two points here to mention. Article 153, sorry to take you back, the Article talks about the decision made by the President in the Constitution shall be in writing and shall bare the signature of the President. I

am proposing that you also add the names for verification and confirmation of all things. So they will bare names and signature of the President.

Secondly I will also support the issue of Prime Minister for one, we all know the ambition for our MPs to be an MP and also to be in Cabinet since that is the only political reward they will have. MP should realize that they already have a double role to go back to their constituencies and do their job. So the issue of the Cabinet being MPs, I am opposing. I am proposing that the MPs should be from outside so that they can deliver to their electorates. They are closer to the people as much as possible. I have only those to comment. Thank you very much.

Hon. Delegate S. Arap Ngeny: Thank you I will go back to the role and ask for a Parliamentarian. 165?

Hon. Delegate Omamba Herman Odhiambo: Thank you Chair person. I am happy because for the last three weeks I have raised my hand and I have never had a chance. Today this afternoon I have a chance. Thank you very much. My names are Herman Odhiambo Mamba. Number 165 Uriri MP.

Now in the first place being a Member in the area, having travelled to very many parts of Kenya during the campaigns time. The ideas were from mwananchi, the monopoly of one-man tired off the whole Kenya and that was the reasons for getting the Commissioners to go out and justifies for themselves what wananchi want. I have listened carefully to the Draft given to us, it certify so well that there is no conflict of this power given to President and Prime Minister and if there is any doubt I would only confirm and refer the Draft Bill to certify very clearly because what I know is, the public wanted that.

Article 161, has seen the President appointing the senior official on various capacities Ambassadors and so forth. Number five, it says approval by National Assembly but when you look down in Article 163, it does not mention the approval of National Assembly. I think they should stick to one point and state clearly that both dismissals and appointments, be approved by National Assembly.

As regards to the MP picked to become Minister, I think Parliament seems to be in service course, to me people should check responsible people who can make the office of the Prime Minister or President, but picking somebody you can even pick a terrorist to become a Minister in Kenya. So please we would not like this to take place.

Now lastly Mr. Speaker Sir, excuse me for checking my glasses. I will give the President more powers as well because we have got a President who is so fit we should expand the role of the President to International affairs to make the President the spokesman of Kenya when it come to International matters. Thank you Mr. Chairman.

Hon. Delegate. S. Arap Ngeny: Thank you. The next row I will recognize anybody representing women. Anybody representing women over here?

Hon. Delegates: Murmuring.

Hon. Delegate S. Arap Ngeny: I am recognizing Women's Organization and I do not see any here.

Hon. Delegates: Shouts, Here.

Hon. Delegate S. Arap Ngeny: Where? 509.

Hon. Delegate. Martha Rop: Honourable Chair. I appreciate hii nafasi umenipea tafadhali natoa shukurani na ninafikiri Wajumbe wenzangu mutanimpa nafasi ile nionge. Kwa Majina naitwa Martha Rop nambari yangu 509 kutoka Women Organizations. Na tumia Kiswahili ili mnielewe kuwa mimi ni woman villager.

I want to talk about the powers of the President. Hizi powers should be reduced. Nataka hizi powers nikiongea kwa kinaga naga ya kuwa President lazima awe na uwezo kadili kwa sababu tukimwachilia aenda na hiyo uwezo yote kama vile ilivyokuwa, mimi kama mama wa machinane nimekuwa nikioana ama nikisikia wale Ma-President wengine, wale wako na powers ata wananyaganya wanaume wenzao mabibi.

Hon. Delegates: *Laughter and Clapping:*

Hon. Delegate: Martha Rop: Basi nikiendelea Bwana Chairman. Nafikiri.--munisikilize.

Hon. Delegate S. Arap Ngeny: Order, Order Delegates.

Hon. Delegate. Martha Rop: Hiyo imefanyika na ni lazima tukubaleane. Basi upande wa Prime Minister, ningependa apewe uwezo kadiri pia na ningeponelea hii uwezo kuwe na Kamati fulani ambao iko independent kati ya President na Prime Minister kwa sababu hii. Uwenda kuwa na President akiwa na uwezo kubwa kidogo naye Prime Minister ako hapa akiwa na uwezo watakua kila mtu anataka kujiona ya kwamba yeye ni mkubwa na hapa mambo itakuwa ikigongana.. Wakati mambo fulani inapitishwa, utakuta yeyote anatoka yeye ndiyo anasikika kawaida ya binadamu. Munajua ya kwamba ndume wawili wakipigana nyasi ndiyo umia na nyasi itakuwa sasa ni wananchi. Kwa hivyo tungeonelea tuwe na kamati fulani ambayo itakuwa ikisikiliza mambo yeyote kati ya hawa wawili kama kuna malalamiko kabla haijafikia wananchi.

Katika sura ya 161, inaongea juu ya uwezo. If I read in English inasema je? Inasema protection of President in respect of legal proceedings during his tenure in office. Ukisikia katika hiyo sura mustari wa kwanza, wa pili kuendelea mpaka pale tatu inasema subject to clause of this Article no criminal proceedings may be instituted or continued in any court against the President or a personal performing the functions of that office during that time of his tenure. Kwa nini? Ninasema kuwe tu ni President ndio amepewa hiyo mamlaka lakini siyo ma-DC, na ma-PC, mpaka Wazee wa Mitaa wanakalia wananchi. Tafadhali iwe tu ni President ambaye amekubaliwa kupata hiyo mamlaka. Na asante sana na Mungu awabariki.

Hon. Delegate S. Arap Ngeny: Next role and I would want to recognize somebody from NGO. 466.

Hon. Delegate. Joyce Umbima: Thank you Mr. Chairman, my name is Joyce Umbima. I am Delegate 466 representing NGOs. Mr. Chairman, may I start by saying absolute power corrupt. We are coming from decades where we have seen absolute power corrupting. I want to

say this in relationship to various senior positions. As a country, we have been abused; we know there was time where we did not have a Vice President. This country went for many days and months without a Vice President. This was because the power was vested on one person. He fired at will and appointed at will. This Draft, intend to stop this mischief. Indeed, we have come from also the past when you become a Cabinet Minister, you are not sure of that post. How long it will last?

Indeed this is an example of absolute powers, which we intend to cure by instituting a second Chamber House, the National Council. The National Council will be able to look into all these matters and be able to give us a Cabinet that we can trust, a Cabinet that we can remember that so and so is, our Minister for Health and not tomorrow on a radio so and so, has been fired and so and so is now the new Minister without any concrete reason given.

We have come from a past where because of the way of appointments, the Vice President is not a running mate of the President. Therefore, he must sing to the tune of the President. This has to be cut.

I want also to support the idea of having a fixed date for election this has been a secret weapon and you all know it. We have all been held at ransom, because we do not know when the elections will be held. By fixing it in our Constitution, we begin to see a process of planning and reasoning together as a nation. We know when we shall do what and when we shall not do what? I want to support that idea of having it fixed in the Constitution so that we shall no longer have secrets weapon of a date of election and whole country being held at ransom.

I want to support the idea of a Prime Minister but with one proviso. If the Prime Minister is of the male gender, then the Deputy must be of the female gender. I also want to support the idea that if the President is of the female gender then the Vice-President, who is a running mate, shall be of the opposite gender.

Laughter from the Honourable Delegates.

I also want to make this clarification, when we are referring to the issue of the Parliament; there are two things that come to my mind. That Parliament we are saying shall have two Chambers. The Upper Chamber and the Lower Chamber, therefore to reason that actually the National Assembly which is composed of our Honourable Members here are Members of the National Assembly. The only addition we are putting on is that the National Council or the Upper Chamber and I want to support the idea that the Cabinet be appointed from the Upper Chamber.

Reasons. The duties of our Members of the National Assembly are very many. They have responsibilities undertaken in various constituencies. We also want them to be neutral so that when they are our MPs, they be neutral and look at total development within our constituencies. The Ministers from the Cabinet will also be neutral who will be appointed from the Upper House. They will be neutral and responsible for the whole nation. Thank you Mr. Chair, for this and I hope that those are my contributions.

Hon. Delegate S. Arap Ngeny: Thank you. I move to the next row. Now earlier on, may I ask you there was somebody there I was informed wanted to contribute on behalf of the people with disabilities. 455.

Hon. Delegate Lawrence Murugu Mute: Thank you very much Mr. Chairman. My name is Lawrence Mute number 455 from NGO sector and also Caucus for person with disability.

Mr. Chairman, despite my quite crusade for the causes for the people with disabilities, there is one thing, which I am not going to ask Honourable Delegates to do. I am not going to ask Honourable Delegates to include in the Constitution any provision respecting the President and disability. I am not going to do that because, obviously as has been shown in this year. We do not have to put it in the Constitution that somebody should be disabled. Our main concentration of the disability is in order for someone to be President. This is because, Honourable Delegates as you see, people who are disabled can also be very effective Presidents. I think we have been able to see that during the last couple of months.

Hon. Delegates: *Laughter and clapping.*

Hon. Delegate. Lawrence Murugu Mute: Now. Honourable Delegates I am very concerned that we should not put in the Constitution all the things which actually can be done in practice without being put in the Constitution. I am thinking about the requirement that a Presidential Candidate must be of a certain age from 35, someone who is over 70, can no longer be a President. Also the question of having a degree I am thinking that what usually happen is that a politician persuades the peers that they are good enough to be President. So if I can persuade my peers at 30 or 32, that I can be an effective President when my peers decides yes be the candidate so surely why do we need to legislate for age? Why do we need to say that someone must have a degree? This is because if my peers are so stupid that they say I should be a President when actually I am not good enough to be a President. So, whether I have a degree or not is irrelevant. So, I really would think that we should not have that provision.

At the same time ladies and gentleman, Honourable Delegates, I would urge you to recall and to look at places like Ivory Coast. We must remember the kind of problems, which Cote D'Ivoire is suffering from right now, arise originally, because people were said not to be from Ivory Coast and so they could not become President. If you recall Anason Acharagi was told that he was not an Ivorian by birth. I am very skeptical because here, we should be building the country.

If you look at our colleagues from North Eastern Province, people from the Masai country, people who are on the border, I can assure you, if you say that in order for you to be a Presidential candidate, you must be a Kenyan by birth, very soon next year, we will be looking at all the prominent people in this country and we will be saying that this people who come from the border perhaps in fact they are not Kenyans. Even if their mothers are Kenyans, their fathers are not Kenyans and we will be making a lot of noise about that. So, I would also urge although I know people won't be very patriotic I would that we do not have to include the requirement that in order for one to be a President they must be Kenyan by birth.

Again what I would say is that your peers are going to be able to determine that yes, you are a Kenyan and at in any case whether you are a Kenyan by birth or not--, unless you are telling me you people that you get bored all the time or Kenyans get bored but surely I think again our peers can be able to resolve that. So Honourable Delegates, on those three issues, the issue of age,

issue of past, and education, I think we need to be very careful in terms of what is provided in the Draft Constitution. Thank you very much.

Hon. Delegate. S. Arap Ngeny: Thank you. I will go back to the previous row for Parliamentarians.

An Honourable Delegate: Point of order.

Hon. Delegate S. Arap Ngeny: What is your point of order?

An Hon. Delegate: Thank you Mr. Chairman, I happen to belong to a column during the last six rounds neither an MP nor a District Delegate has spoken. The three major categories are 223 MPs, 210 District Delegates and the rest 195. If we go by the formula you have adopted unless there are two or three of the major categories that is the MPs and District Delegates, those who come from the smaller constituencies have a great advantage predominantly with us

Clapping from the Honourable Delegates..

So please reverse, because if you pass through here and then you say something else which I do not belong to and so on until--. When am I going to have a chance as District Delegate when I belong to this column?

Hon. Delegate. S. Arap Ngeny: Point taken and we will take that consideration. Parliamentarian in this row. 122.

Hon. Delegate Muriungi Raphael: Thank you very much Mr. Chairman. My name is Raphael Muriungi. MP for Igembe Constituency Nyambene District. I am Delegate Number 122. I wish to make a point on the appointment of the powers of the President and wish to state that a President should have powers which commensurate with his or her mandate and because this mandate comes from millions of Kenyans who elected the President. It is of the necessity that the President should have the highest Executive powers on the land because of this popular mandate.

Mr. Chairman, I also turned by the point that the President during election, should have a running mate who will be a Vice President and with whom they will share the power which will be clearly defined by this Constitution that we are writing.

I also propose that the Vice President, should not only be seen but should also be heard, and I am glad that the President now has given such powers to the present Vice President. I go further to propose that the position of Vice President should be elevated to that of a Deputy President like the case in South Africa.

Mr. Chairman, there should be the position of a Prime Minister I also support that one but a Prime Minister because of his limited mandate should be third in Executive Powers, so that when we are defining the Executive Powers in the country, the first top powers go to the President, second to the Deputy President and then the Prime Minister should be third in Command. The Prime Minister Mr. Chairman, should be the leader of Government business and should be available in Parliament to account for the day to day running of the Government. This has been done in many places because the President should be off loaded of some of the responsibilities that he have today.

On the appointment of Ministers Mr. Chairman, I advocate that the Minister should be from the elected Members of Parliament and as much as possible, they should be people who are professional and it would be possible even in the present Parliament and the coming Parliament to have professional in every field even right now as we speak, most of the Ministers and Assistant Ministers in the present Government are professionals. Therefore, even in the future, it would be possible to have if it is the Minister of Roads and Housing, it would be possible to have enough Engineers from whom we can appoint as such. If it is Health, we shall have enough doctors from whom we can appoint a Minister for Health.

The Permanent Secretaries, Mr. Chairman are the only people who should be people appointed from the Public Service and because they are professionals they will advise their political counterparts.

On Article 156, (1) B, this is the age of the President I should have addressed earlier I think there is no reason to limit the age of the President and that the electorates should be left to consider the track record, integrity the charisma, and dispensation of the persons that they wish to vote for President. In fact, if South Africans were limited to that rule, they will never have had the privilege and the advantage of electing Mandela as their President.

The last one, Mr. Chairman, I would like to say that the President is not required to be a member of Bunge F.C. Therefore, even if he is over 70 and is acceptable, that is very much in order. Thank you Mr. Chairman.

Hon. Delegate Wilfred Koitamet Ole Kina Nchoshi : Thank you, we are moving to the next row. District Delegate 336.

Hon. Delegate Mkawerwen B. Chebii : Hon. Chairperson, thank you for giving me this opportunity. Mine is mostly on the Ministers. Ministers as you know when you are age 25 you are not going to vie for the Presidential seat. I actually request that, let the Ministers come from those who are not elected. I also propose the Ministers to be increased to 15, why? This country is divided into regions with eight provinces so equity is very important. In addition to that I would like us to have also to propose an increase to 17, why? Because there are pastoralists in this country and I would like us to have a Minister who is going to be in charge of pastoralists in Kenya, so that he covers the interests of those who are being marginalized. Secondly when you look at the report from your constituency, it says power must be shared and if power must be shared, then we need to have a President with limited powers. Previously even other countries in this world including some parts of Kenya have never even tested a tarmac road because somebody has actually concentrated powers to himself and tarmacked his own home.

Mwisho is this Hon. Chairperson: Mganga hajigangi, na kama hajui kujiganga basi twataka mganga mwingine. A Prime Minister is very worthy, why? The previous Governments that have been in Kenya have also created hostilities among other communities. I want to say that next time, when a President of this Republic becomes a President I am not worried; if another one is a Prime Minister, somebody has said that somebody who has not been elected having executive powers, remember somebody who has been chosen by the President, he has seen that

he has some determination in this Government and there is trust in it. I request these Delegates that a Prime Minister is very important. When it comes to age, when you are fifty-five when you are in the civil service you are told you need to retire. The President also needs to retire by age limit, because we need other Kenyans who are better to lead. So power is very sweet and we need to devolve power. Thank you very much.

Hon. Delegate Wilfred Koitamet Ole Kina Nchoshi: Than you Hon. Delegate. In this column can I have a Parliamentarian a lady preferably. 76, who is rising on a point of order?

Hon. Delegate Gideon Moi: Thank you very much Mr. Chairman, I beg to really complain, since all people that have been chosen in this row have been Members of Parliament and the political parties have actually been put out of this. Mr. Chair recognize that.

Hon. Delegate Wilfred Koitamet Ole Kina Nchoshi: Thank you very much but the previous one was a district delegate. I called 76.

Hon. Delegate Henry Kosgey: Thank you very much Mr. Chairman. My names are Hnery Kosgey, Member of Parliament of Tinderet Constituency, Nandi South District. Mr. Chairman I want to comment on the system that is proposed. This dual system Mr. Chairman will lead to a lot of conflicts. We either choose to have a Presidential system or a Parliamentary system. We cannot have both. We cannot have a President who is elected by popular vote and then comes in to give power to another Parliamentarian who becomes the Prime Minister. I want to propose Mr. Chairman that we have a purely Parliamentary system with a Prime Minister and a ceremonial President, as I know the people of Kenya wanted it that way. Sharing of power cannot work, sharing of power will lead to conflict, will lead to total confusion. We want a Parliamentary system. We also want to propose that the Cabinet be chosen from Members of Parliament, and in order to cater for various ethnic groups, the number should be not less than twenty and not more than thirty so that everybody is taken care of and they have enough power.

Mr. Chairman, I want to touch on the question of a Bill being referred to the Supreme Court. When the President refuses to sign a Bill, he should refer that Bill to Members of Parliament, and there is a procedure according to Standing Orders that that Bill can be dealt with. Referring it to

the Supreme Court is to confuse the Judiciary and Parliament. The Judiciary should deal with what has become law, what has been enacted by Parliament and signed by the President. They should not deal with Bills; Bills belong to Parliament.

Mr. Chairman, the question of sharing of power. Let me refer back to the topic on Devolution of Power. We wanted power to be devolved to the Prime Minister and then to provinces, which I think we will deal with when we come to devolution. I hope I will get an opportunity to say how those powers can go there. Otherwise we have a strong Prime Minister with a ceremonial President and the Ministers to be Members of Parliament and they should be between twenty and thirty. Thank you Mr. Chairman.

Hon. Delegate Wilfred Koitamet Ole Kina Nchoshi: Thank you. I move to the next row and will want to recognize a district delegate. 381. (inaudible complaint from the row). Yes? No I think we better not because, I am coming round. I am being fair. Carry on. 381.

Hon. Delegate Rita Katamu: Thank you Chairman. My names are Rita Katamu delegate 381 from Butere-Mumias. I want to support that the Ministers be gotten out of the Parliament because sometimes these Ministers have tried to please their own people who elected them so as to retain them in the next elections. So we want these Ministers not be biased. We want them to be out of politics to do their job well. Most likely we want them to be professionals. We are talking about the Prime Minister and I support that we have a Prime Minister to reduce the powers of the President and also to make sure that things are working well, at least then there would be somebody who can check on the other one when work is being performed.

We as women, I would say that all we need is that if we have a President who is a lady, let us have a Vice who is a man, and the same to the Prime Minister and the two Deputy Prime Ministers, we should actually balance the gender so that we are represented in every part. We want to support the Prime Minister issue. I support the Prime Minister issue, we are not pinning it to anybody, but we are preparing that position so that whoever qualifies can take up the position. Thank you very much.

Hon. Delegate Wilfred Koitamet Ole Kina Nchoshi: Thank you. We move to the next row. I want to recognize Parliamentarian No. 35

Hon. Delegate Peter Kyalo Kaindi: I think I want to thank the Chair for taking recognition of the front row, we thought we had been forgotten. Mr. Chairman, I want to say that the genesis of constitution-making in these....sorry, I am Delegate No. 35, Hon. Kyalo Kaindi, I represent Kathiani Constituency. Mr. Chairman, I want to say that the genesis of Constitution-making was as a result of inadequacies of the existing Constitution to address the plight of Kenyans, but more because of the manner in which that Constitution was being implemented. Mr. Chairman, I want to join my colleagues, Delegates, who have echoed their sentiments towards the issue of the creation of the position of Prime Minister. I think Mr. Chairman it is important that we devolve power. As I watched Paddy Onyango on the other side, one of the Delegates, explaining to this House the woes that afflicted him in the early eighties when he was a University member, I remember I used to stay in the same floor with him, and I do know that he was actually a victim because he used to associate with the rugby players, he was not a resident. But because of the pleasure of the President and the power therein, he became a victim and I think up to today he has been a victim.

I want to look at Section 171. I want to recall what the Chair said initially, the power will rest on the people. If you look at 171 (6) and with the Chair continue telling us the people, the people, the people. It will be the people-centered. It says in (6): “within 30 days of the President first proposing a person to be appointed, Prime Minister and if no person has been confirmed by the National Assembly, the President will dissolve Parliament.” Where are the people then? That the President will dissolve Parliament because Parliament cannot agree on his choice of Prime Minister. Supposing the President does not appoint a person to whom Members of Parliament want to ascribe. Supposing he appoints a sycophant are we being forced as Members of Parliament to approve? If he dissolves Parliament because we are unable to approve, you are saying, therefore, that the Electoral Commission again, just after one election, will be forced again to order us to go for another election What sin will have the people committed? We are saying we want to devolve person from one person and we are again being told, either we listen to that person’s choice or he dissolves that Parliament. I think, Mr. Chairman, there is something wrong here. Look at 171 and 174, *(Clapping)*

You are saying on 6th that he will dissolve Parliament within 30 days. Look at what you have said in 174, that if Parliament by vote of not more than 50% of its members, if it passes the motion of no confidence, the President shall dismiss the Prime Minister that is okay –with his cabinet. You have not said what happens to Parliament, and yet you are saying it very clearly in 171 that he will dissolve the entire Parliament. I think we need to look at these contradictions and ask ourselves whether that Section was properly drafted and whether we do not need actually to redefine it. You are saying again, the Prime Minister will appoint the cabinet; this time not the President. What is the criteria? Are we saying that criteria will be set in the subsidiary legislation? If so, why don't we say so?

The question, Mr. Chairman, of Bills being sent, I think we must differentiate what is Law and the Bills. Each of these has its place in its right position. Bills belong to Parliament, but the Law belongs to the Courts. There has been a very serious debate on separation of powers under the current Constitution, where Members of Parliament were being told that the Executive is interfering with the Legislature, the Executive is interfering with the Judiciary and then we found conflict of interest, particularly with the levy on Roads Board where Members of Parliament were barred by the Courts from chairing because of the conflict, and because there was no clear definition of separation of powers. We are saying therefore now, that if a Bill goes to the President, it is now to be referred to the Supreme Court I think there is something wrong there.

There are colleagues who have said very clearly that need professionalism when we are appointing Ministers. I believe firmly, maybe I am wrong, but I believe firmly that the Ministers should come from elected Members of Parliament, not because of anything; I am born of experience; it is the manner in which the President elects those Ministers. Why do you want to elect a non-doctor to be the Minister for Health, for example, when you have a doctor next door? I think the President can exercise his wisdom, to be able to elect the right people. Thank you Mr. Chairman.

Hon. Delegate Wilfred Koitamet Ole Kina: Thank you for your contribution, I now come to the last column here and look for a District Delegate. District Delegate please, 330.

Hon. Delegate Nancy Iyadi: Thank you Hon. Chair, my name is Nancy Iyadi, from Trans Nzoia district, district delegate. Now, as we have been told we are preparing a unique Kenyan Constitution and that is very true. When it comes to power, power is very sweet. You can imagine when you are preparing a birthday cake for your kid, all of them would want to get a share. So, I think it is important that we devolve power and that is what people from my district want and as far as my caucusing is concerned, I think we have all felt it is wise to have power devolved. Therefore, I want to congratulate the Commission for having included this Section that is 149 Sub-section 2 where it reads: “the power of the President shall be exercised in accordance with the Constitution and the law”. This is great because we have always been told in the current Constitution that the President is above law. Therefore that is a compliment to the Commissioners.

Secondly, I will talk about the age limit of the President. It is important that we also include the age limit for the President because if other categories, say civil servants, are told to retire at 55, then we should not discriminate. We should also let him retire at the age of 75, that is my proposal.

I also would like to refer you to Article 151 Sub-section 3, that is on appointment of Commissions of Inquiry. Here I would suggest that when Commissions of Inquiry are appointed, I propose that they should extend the time limit and the report of that inquiry be made within 30 days. That is they should submit the report to the President within 30 days to avoid stones unturned like what we have been having for example, the Ouko Commission and these other inquiries like the Land or Njonjo Inquiry. They took too long for those stones to be turned; in fact by now we are hoping that the stones will be turned.

I also feel that when it comes to qualifications, it should just come naturally because we will be discriminating other Kenyans, if we put a degree and looking at the statistics of Kenya it is a very small fraction that has attained those degrees yet we have been talking about wisdom and all that. Let it be natural, we will obviously look for somebody who has a degree or a PhD or something, but we should not put it in the Constitution.

I would also want to take you to Article 177, Assignment of functions. This is to the Prime Minister and it reads: “the Prime Minister shall keep the President fully informed concerning the general conduct of the government...”. Then it goes further to a section I feel should be delete: “...and shall furnish the President with any information that the President may request with respect to any matter relating to the Government”. I feel this section is not necessary; it is ambiguous, and will therefore subject the Prime Minister to witch-hunting. I propose that section be deleted.

When it comes to Permanent Secretary, I feel this one should be left to be taken care of by the Parliamentary Act; it should not be put in the Constitution. Above all, I fully support Premiership; I feel we should have a Prime Minister and a Deputy Prime Minister, President and Vice President of which if the President is a woman, the vice should be a man. If the Prime Minister is a woman the deputy should be a man. Affirmative Action. *(Clapping)*

Hon. Delegate Wilfred Koitamet Ole Kina Thank you very much. I am calling on Delegate No.80 who is both a Parliamentarian and also has a disability.

Hon. Delegate Sammy Leshore: Thank you very much Mr. Chairman. Mr. Chairman I would like to thank you for recognizing me as a Parliamentarian and as a person with disability. First I would like to thank all Kenyans for having elected Hon. Kibaki as President when he was on a wheelchair during the last election, and my constituents for electing me on a wheelchair. I would like to thank everybody and thank God for all that.

Mr. Chairman, I would like to go straight to the issue of Presidency. As Kenyans we should want somebody who would be there to unite Kenyans; who would be a symbol of this country? Who would be treating Kenyans not on political lines? I would suggest that the President and Vice President should not belong to any party and should be elected directly by the people of Kenya.

On the Prime Ministership, I would suggest that let the majority party in the House, in Parliament, have the Prime Minister’s slot. He will be appointed by the President but ratified by Parliament. Let the Prime Minister run the day to day business of the government. The

President should be the Commander-in-Chief of the Armed Forces, he should be the symbol of this country. He should be the head of state. He should be in liaison with the Prime Minister. He should be leading the International Relations or Foreign Affairs. Mr. Chairman, on the Prime Minister, let us not tie the Prime Minister with the President. The President must be above the Prime Minister, he will be liaising the day to day business of the Nation with the Prime Minister and the President. The President must be above party issues.

On the appointment of the Cabinet, let the Prime Minister do his job, let him appoint the Cabinet liaison with the President and will be approved by the House. Let us give the President powers; some veto powers; if he appoints a Prime Minister then the Parliament does not like him, let us give him one or two chances, then he can use his veto powers or he uses the Standing Orders as he uses them on the Bills and whatever. The President must be the unifying person of this Nation.

On the education qualifications of the President, we have seen and history has taught us, that Winston Churchill, who was the best Prime Minister in the United Kingdom during the War, did not have a university degree, but because of his wisdom and charisma he became one of the best Prime Ministers in the history of the United Kingdom.

On disability, we should also know that Roosevelt who was the President of the United States during the War was on a wheelchair. So you Kenyans should recognize that disability is not inability. Mr. Chairman, I think with those few remarks, I thank you very much.

Hon. Delegate Koitamet Ole Kina Nchosoi: Thank you very much Leshore. Now we start from here again. I want to recognize anybody from Professionals. Professional 525

Hon. Delegate: Information.

Hon. Delegate: Wilfred Koitamet ole Kina Nchosoi: Yes information. What is the information?

Hon. Delegate: Mr. Chairman I thank you very much. May I inform the speaker who spoke but one, just before this other speaker spoke, that there is no need for deleting that other part because for you to be given something, you also need to give something. Thank you.

Hon. Delegate Wilfred Koitamet Ole Kina Nchoshi: That was not information.

Hon. Delegate Ibrahim Ahmed Yusuf: Delegate No. 525. Mr. Chairman I stand here today to support the proposal in the Draft Bill that, we should create a post of a Prime Minister.

Hon. Delegate: ...President of the United Kingdom. On disability, we should also know that Roosevelt who was the President of United States during the war was on a wheel chair. So, Kenyans, we should recognize that disability is not inability.

Clapping from the Honorable Delegates.

Mr. Chairman, I think with those few remarks, thank you very much.

Hon. Delegate S.K Ng'eny: Thank you very much Honorable Leshore. Now we will start from here again, I want to recognize anybody from Professional Organizations? Delegate number 525.

Hon. Delegate. Ibrahim Ahmed Yusuf: Thank you, Mr. Chairman. My name is Ibrahim Ahmed Yusuf, delegate number 525. Mr. Chairman, I stand here today to support the proposal in the Draft Bill that we should create a post of a Prime Minister, an Executive Prime Minister, and also have some powers given to the President. Mr. Chairman, the late President of Tanzania, Mwalimu Julius Nyerere, called Kenya a "man-eat-man society". In a rejoinder, the former Attorney General of this country, Sir Charles Njonjo, called Tanzania " a man eat nothing society". Mr. Chairman, all this came about, and it has been evident later on that the people who occupied the position of the presidency in this country, have ended up being the wealthiest people in this country. That one comes from what the late Mwalimu said " Man-eat-man society" their wealth come from the people whom they were governing. We have heard questions from my fellow Delegates here who are asking why we should give a lot of powers to somebody who has not been elected directly by the people. I remember last year in the General

Elections, for the better part of the campaigns, our current President was not in a position to campaign. But we all rallied to the cry of one person who told us that the Captain had been injured, but the match would go on, and it went on to him.

Mr. Chairman the MPs collectively have more votes than the President, and we give them the powers to appoint the Prime Minister. So, the worries of us not directly electing the Prime Minister should not be there. We have elected the MPs, they are the people who will go on and elect the Prime Minister.

Mr. Chairman, when the Lancaster group was here giving us their proposals on what Constitution they came up with, it was a perfect Constitution for this country. But, after it came in here, we know that whatever was there was destroyed and the powers vested in one man. It has lead us to rewrite the Constitution at this juncture. If it wasn't for us concentrating powers in one man, we will not have this opportunity of re-writing the Constitution that was a perfect Constitution. But, the people who went on to become Presidents abused it We have had a second opportunity of rewriting it, we don't want to be forced to be here sometimes after forty years telling our future generation that this is what we did in Bomas, and this is what the power be did. We want this Constitution to be there for posterity.

Mr. Chairman, on the issue of a President having a degree, I concur with that, but I will also like to add that a person with honorary degrees should not be President.

Clapping from the Honorable Delegates.

Purely in their positions as Chancellors, we have known former Presidents of amassing honorary degrees. This Draft Bill qualifies them to be the Presidents of this country.

On the issue of the Cabinet, I propose that we increase the number from 15 to 24. We are a Nation of vast diversity and I don't think 15 Cabinet Ministers will be enough to take care of our interest in totality. Mr. Chairman, there will always be grumbling people, we believe the 24 will go a long way in ensuring that majority of the people get what they want and I propose that, 10 of those 24 be female Cabinet Ministers.

On the issue of the qualification of a President, that is Article 156 (1), I support the proposal of 35 years being the minimum and 70 being the maximum. But I would like to add that, if a contender knows that during the term of his presidency, were he to get elected, he will exceed the maximum 70 years, then that should be a disqualification.

Mr. Chairman, on Article 157(4), I will propose that 20% from half the provinces is not enough. That one is ambiguous in its description; we should have 25% in a maximum of five provinces, as it is in the current Constitution. Thank you, Chairman.

Hon. Delegate S.K Ng'eny: Thank you, I move on to the next row and I am trying to look at people who are seated at the back there, I want a Parliamentarian. 196.

Hon. Delegate Stephen Kipkiyeny Tarus: Thank you Mr. Chairman. My contribution ...Sorry, my names are Honorable Stephen Kipkiyeny Tarus, Member of Parliament for Emgwen Constituency, Nandi District. My concern basically is on why we are gathered here. We are here to address the problems that this country has experienced for many years, and majority of the problems that we have heard had have emanated from the Executive. We would like to address the issue of democracy; we would like to address the issue of transparency. We know what happened to the Constitution of 1963, and we do not want to see that kind of scenario again. Power was devolved, power was recongested later on and what we want to see is the decongestion of that power. We would like to see National Unity emerge in this country again and that is why I propose that this Conference do approve that we have the position of the Prime Minister.

Clapping from the Honorable Delegates.

Recognizing the diversity of our Nation and the need to address various interests of our country, Mr.Chairman, I propose that when creating the office of the Prime Minister, we also realize that we need to have a deputy of the President and not a Vice President who is simply a personal assistant to the President. We say he is the principle assistant, but with a President who wields immense power, many of those who have been Vice Presidents before, as I hear from them, they have never known what it is to be a real Vice President.

There is a proposal in Article 175 that the President shall not appoint a Minister from the Members of Parliament. Mr. Chairman, I wonder aloud, we have been talking about democratizing this country and in these Constitutional proposals, we had said very well that we want the basis of governance to emanate from the people, we want those who make decisions to have that power from the people. If you get Ministers outside the elected representatives, what are you telling us? You are telling us that you are sneaking in some people from the back door to come and exercise authority, shall they too be representatives? Shall they properly hear the cries of this Nation?

Clapping from the Honorable Delegates.

Mr. Chairman, I propose and insist that Minister be appointed from Members of Parliament.

Clapping from the Honorable Delegates.

We have talked about the position of the President, the position of the Deputy President, the position of the Prime Minister, but it is important, as I finish, to have a structure because what we have known is that some positions are created for political reasons but not for their functioning. The positions of Assistant Ministers for example, have been positions just in name but not in practice. For reading newspapers, somebody is saying. I propose that we have a structure, which shows the roles of all these positions, which we create. Thank you.

Hon. Delegate S.K Arap Ng'eny: Thank you. I move to a district Delegate from the next row. District Delegates? 314.

Hon. Delegate Kareng Gacuru: Thank you Mr. Chairman, my names are Gacuru Kareng, Delegate 314, representing Maragua District. I would like to give my views, which in some way represent the views of the Central Province Delegates, am their co-coordinator. We would like to tell the Conference that we support the creation of the position of the Prime Minister.

Clapping from the honorable Delegates.

I am saying that because we have heard a lot of murmurs outside the Conference that probably we are opposed to that, we support that. While saying that, I would like to give my views that I believe the power emanates from the people. In section 148, I would like to suggest that we should add a sub-section saying that the Executive powers rest with the people, and these executive powers are exercised by any office whether it is the President or the Prime Minister, on behalf of the people.

If we agree on principle that the power rests on people, then it means that the office that is going to be involved with the day today activities that directly affect the people, then the people should have the power to hire and fire the occupier of that office. Some of the issues that directly affect the people includes for instance food, shelter, hospital, roads and so forth. If those activities are going to rest on the office of the Prime Minister, my proposal then is that, that Prime Minister should be elected by the people themselves, so that if the people are not satisfied with the delivery of the services, then they have the opportunity to fire that person at the end of five years or whichever period they agree on.

The other one, in Article 15 Section 3(b), we appear to contradict some of the sections we have talked about in 102(j) and in 102 (f). We are saying the President should be the person to sign international agreements and he should do so with the consent of the Cabinet, yet we are saying in 102(f) that it is the Parliament that should veto that. In another words, if it is not the Cabinet that is vetoing or giving the authority for the signature of the international assignments then I think we should reconcile those two.

The other one, in Article 172(2), we are talking about the terms of the Prime Minister. If we are saying that the President should not go for more than two terms of five years each, I think it should also be fair that the Prime Minister should also not go beyond two terms of five years each. I think if that office is going to serve the people as we are saying, I think it will be fair if the President is going to retire after ten years then the Vice President and even the Prime Minister should have an opportunity to retire after ten years.

I support those who are saying that the Cabinet Ministers should come from the Members of Parliament. Why I am saying that is because the Members of Parliament have been given the mandate by the people to run the activities of the government. Therefore, I do not see how somebody who has not had the mandate from the people to run their activities can be a member of the Cabinet. I support the proposal that the Cabinet Members should come from among elected representatives. Thank you.

Hon. Delegate Wilfred Ole Kina: Thank you very much. At this juncture, I would like to ask the Chairman to the Commission to read a statement from the Commission after which we shall adjourn for tea and then carry on. Thank you.

Prof. Yas Pal Ghai: Thank you very much, Mr. Chairman I wish to make a statement on behalf of the Commission and the statement is as follows:-

The Constitution of Kenya Review Commissioners have listened very attentively to the statement read by the Speaker of the National Assembly, Honorable Francis Ole Kaparo on a matter of urgent public importance. The Commissioners wish to stress the importance of the right of each and every Delegate to be allowed to express his or her views on any Article or Articles in the Draft Bill without any interruption or hostile reception. While it is appreciated that there are different stakeholders within this community of Delegates, we should all remember at all times that we are all Kenyans and must work towards achieving a Constitution that will guarantee the common will of our people. We entirely agree with the Honorable Speaker that no category of Delegates should be seen to be waging war on another. We are on our part as commissioners wish to assure all groups of Delegates and individual Delegates that we are here only to facilitate free debate and thorough discussion of the Draft Bill, as we are required to do under the Review Act.

We therefore wish to reassure the Honorable Members of the National Assembly and other Delegates that no Commissioner has the intention to defend any position or any Articles in the Draft Bill. Our task is to present the Draft Bill and explain its contents, no more and no less.

The final product will be the one that the Delegates will agree upon at the end of this Conference. We, therefore, wish to appeal to all Delegates to debate issues with an open mind and respect the views of fellow Delegates even if they do not agree with them. It is our earnest hope that at the end of the day consensus will be achieved on a Draft Bill that will bring maximum benefits to our country and its people. Thank you.

Clapping from the Honorable Delegates

Hon. Delegate Wilfred Ole Kina: Let us now adjourn for tea, we expect to come back at exactly 5.00 p.m.

The meeting resumed after tea at 5.15 p.m.

Hon. Delegate Ole Kina: Let us please sit down for the debate to continue.

Hon. Delegate S.K Arap Ng'eny: Order please, Delegates please sit down. I am moving ahead and I am on this row here, and I am looking for a Parliamentarian.

Murmurs from the Honorable Delegates.

Hon. Delegate S. K. Arap Ng'eny: I am on this row here, any Parliamentarian? 295.

Murmur from the Delegates.

Hon. Delegate S.K Arap Ng'eny: You cannot be a parliamentarian?

Hon. Delegate: I am not a Member of Parliament

Hon. Delegate S.K Arap Ng'eny: Order, 149.

Hon. Delegate Simeon Nyachae: Thank you, I am not going to be very long. First, I would like to commend the Commission for the recommendations they have made to us. I think.... Mr. Chairman, I am 149, my name is Honourable Simeon Nyachae MP, Nyaribari Chache.

Clapping from the Delegates.

Hon. Delegate Simeon Nyachae: Mr. Chairman, having thanked the Commission, let me say this, and I am talking from experience, it is very dangerous to give powers to one person all the way. Therefore, the recommendation of a Prime Minister is absolutely necessary.

Let me mention to the Conference here that having worked under the two Presidents, I do know of one President who, out of his management style and administration, 61% of his directives were actually unconstitutional.

Clapping from the Honorable Delegates.

Hon. Delegate Simeon Nyachae: He operated on what we can call in military language, decrees. Only 39 were Constitutional directives. Mr. Chairman, while I support the position of the Prime Minister, we need to be very careful about the role of the Prime Minister as well. The way the description has been given under Section 170, you are also giving blanket powers to the Prime Minister. When you look at 2(a) Developing and Implementing National Budgets and Policy, and yet we are going to have a Minister for Finance. So, what is going to be the role of the Minister of Finance if the budget is being developed by the Prime Minister? He can tell the Minister for Finance, "it is me to develop it." So, you need to give clarification of what that means I think what you mean here should be co-ordinating the budget but leave the job to be done by the Minister for Finance.

There is also another Clause, which I think is a bit dangerous, that is 2(c), implementing and Administering Acts of Parliament. Mr. Chairman, every Act of Parliament has been very specific, for instance I can give you the case of the Agriculture Act. The actions that have to be taken under the Agricultural Act are specified and they are given to the Minister for Agriculture. Now, suppose the Prime Minister takes his decision and the Act itself mentions the Minister,

how is that going to work? All Acts of Parliament, if they are going to be under one person, then it is that one person who is going to interpret those Acts and implement them. So, here again we need to amplify, what does this administering mean? I think it should be “co-ordinating the implementation” because he is going to be the head of government, then let him coordinate but not implementing the administration of Acts.

Then, on (e), “performing any other executive function provided for by the Constitution or an Act of Parliament except the functions assigned to the President”. Here again, I think we need to amplify what this means, it is a bit vague because the Prime Minister can say the President does not have these powers, and therefore it is me to exercise them. He can also spread his wings left and right. Therefore, here, I would like to say even for the Prime Minister we give him the role of being the head of government in charge of coordinating government affairs. But he should also be controlled by certain provisions. For instance, certain actions should not be taken by the Prime Minister without consulting and getting approval of a specific committee of Parliament. Even the President should be required that in specific appointments approval to be given by a certain committee of Parliament or by the full Parliament.

Mr. Chairman, you know the President of the United States has all the powers on earth, but that President with all the powers he has, he is controlled by the Congress, by the provisions that are made in the arrangement of the Acts and their Constitution. The President cannot go to war without the Congress approving. He cannot approve any budget or spend any single cent without the Congress approving. Therefore, nobody, not even the President nor the Prime Minister, should be given the blanket powers the way you are doing in this recommendation.

Clapping from the honorable Delegates.

Therefore, the Committee that is going to deal with this should go into details to divide the powers and precautions on how these people we are giving powers to are going to be controlled. Thank you.

Hon. Delegate Ole S.K Ng’eny: In the next row, I want to recognize District Delegates. Yes, these are very many. 355.

Hon. Delegate Michael Githu Mwangi: Thank you very much Chair and Honorable Delegates. My name is Michael Githu, Delegate number 355. I want to comment as follows: I think since we came here we have been warned almost on daily basis that we put aside our emotional considerations. We have been kept in the mood, from day one, with some kind of music - which sets the mood of the day- from different backgrounds. That changed today, we came in and were treated to music which was glorifying some personalities. Now, that set the mood of our discussions today and the first presenter, if I am not very wrong, he repeatedly talked about the ceremonial President. I must say here, I don't think it is proper for the Presenters to appear to be defending what is in the Draft, I think that should be left to the Delegates. Honorable Delegates, I wanted to comment merely on one or two issues here.

Now, we are saying we want to inject some professionalism into the Ministries. We have over 200 MPs and in the spirit of what we discussed yesterday that MPs hold just one office, that was what we discussed. In that spirit, therefore, I am proposing that the MPs should remain MPs, then let us put professionals to manage the Ministries as is proposed in the Draft. That way, we shall be following this Draft as it is written. Otherwise, if we now allow the MPs to occupy these other positions, then we should have all the MPs occupying certain Ministries. Otherwise, let them have that status of MPs and nothing else that is enough work for them.

Honorable Delegates, I must say I have no quarrel with the position of the Prime Minister. Let him be there, there is no problem.

Clapping from the Delegates.

But then we should define his executive powers. Both the President and the Prime Minister should have their powers defined to avoid any conflicts.

On the term limitation, I think the two-year term limits the President enough and we should not worry about the age. Let the people decide whether this man is too old or too young to lead us. Ladies and gentlemen, I think the age factor should not come in. If a person is capable let him be given a chance by the electorate to lead or not to lead. Thank you very much.

Hon. Delegate S.K Arap Ng'eny: We move on and I want to recognize anybody from Trade Unions from that section. No, what about those who wish to speak from there. 601.

Hon. Delegate Luseno Liyai: Thank you very much, Mr. Chairman. At last, after three weeks of raising my hand, a chance has arisen. I am Luseno Liyai, representing a political party called the Peoples' Solidarity Union of Kenya whose actual name is the PSU and slogan 'voice of the voiceless millions in Kenya.' Actually, those are the people I represent.

Let me go to views regarding the Executive. Actually, the Presidency being the senior-most seat in this Republic, then its occupants should not be allowed, as expressed in Article 153, I didn't agree. The President is on picnic and is giving directives or giving directing things to happen. Actually, it should be written and he should be settled in his house or State House.

Commenting on the qualifications for election as President on Article 156, I wish that this thinking of 70 years should be removed so that all Kenyans can aspire to the top.

Regarding MPs not being Ministers, that is Article 156 (2) B and E, a person is not qualified for nomination as a Presidential candidate if the person is a Member of Parliament. I am sure this will really bring conflicts because most of the people who actually aspire to become the President of Kenya are normally MPs. I don't know how you will replace that with people who are not experienced in politics from the bush to run for the Presidency. Clause E says that a person who is not qualified for nomination as President if the person is a candidate for election as a Member of Parliament. I think this is in order, the Members of Parliament must choose. Whether they want to become President or remain MPs. As I go on, in Article 157, procedure of Presidential elections, sub-article 4, you are giving the Presidential candidates only half of the Provinces, that means four and only 20% of the national votes. I think you are too lenient to that man. He must move around the country and make friends all over. I wish that remains by promises and a little higher - 25% as it has been.

I wish also to comment on the removal of the President on grounds of incapacitation. Actually, we are borrowing a leaf from one of the veterans of Lancaster House, Mheshimiwa Taita Arap

Towett, who cautioned us 'When we give power we should also know how to retrieve when we want it back.' So I would support Article 162 so that you can impeach the President or we can remove him when we want. That goes along also as Chapter 162 and 174 for the President and Prime Minister. I think this Draft achieving something towards that goal.

The appointment of the Prime Minister: Somebody commented that one can be a Prime Minister or President and also be like a hyena by wanting to change to become either President when he is a Prime Minister or Prime Minister when he is the President. I think a ceiling/curtain should be put on it that once President, you cannot also run to become Prime Minister or once Prime Minister that is enough you rest and say 'thank you Kenyans you gave me a good job to do.' Let me reach there for the time being. Thank you very much, Mr. Chairman.

Hon. Delegate S. Arap Ngeny: Thank you. We move on to the next row. I want to recognize a Member of Parliament and I recognize number 51.

Hon. Delegate Bonny Khalwale: Mr. Chairman, Sir, thank you very much for this chance. My name is Dr. Khalwale. I am the MP for Ikolomani. I would like to contribute on 151 (ii) where it is proposed that in the event we have the office of the Prime Minister then there should be two deputies. It is wasteful; I suggest we only have one deputy.

Two, on Article 156, on the qualification for election of President. While I agree with what has been stated there, I would like to add that if the President must be a non-Member of Parliament, there should also be a proviso that requires that he must have served at least one term during his lifetime in Parliament so that we avoid a situation whereby since we know that in future majority of the voters are going to be young people, we avoid a situation where by a popular musician with good music can stand for President and win.

Mr. Chairman, still on Article 156, I would like to talk something about the age. When I have sat in the last Parliament for the last four months, I am a fresher in Parliament, I have had an opportunity to listen to the voices of old men who are Members of Parliament, like Simeon Nyachae and Ole Ntimama and Minister Moody Awori. I find them to be very eloquent and still

very clear in their minds and therefore if these men should one day want to be Heads of State they should be given a chance, they should not be limited.

Mr. Chairman, I would like to talk on Article 162 about invalidating a sitting President on health grounds. You know in the history of this country that professional doctors have been used to abet crime. I have in mind situations where some doctors have rushed to the Press to pronounce prominent politicians dead even without the courtesy of doing a postmortem, Mr. Chairman. For that reason, if we want to invalidate a President on medical grounds we should be clear that the medical tribunal should not just have five doctors because anybody can pose to be a doctor these days, even mortuary attendants call themselves doctors. We should specifically say that they must be five people and the first one must be surgical specialist, the second a physician specialized, the third one should be a medical psychiatrist, the fourth one should be a medical psychologist and the last one should be the government director of medical services to avoid that disaster.

Lastly, I would like to speak on Articles 170 and 171, but before I speak about this, I want to talk about emotion. The two extremes of emotion is love and hate. If we are going to be carried away by our love to a certain individuals in this country or hatred for others, we are going to make a defective Constitution that will boomerang against us. I recall that the most respected Parliament in this country was the first Parliament and in that Parliament a senior Minister proposed that they introduce legislation that would provide for detention without trial. Mr. Martin Shikuku was the sole voice who opposed that. Mr. Chairman, Mr. Martin Shikuku was the same person that told the same Minister after he had been the first person to be detained that "I told you." For this reason Mr. Chairman, I would like to say that I, the MP for Ikolomani, am against devolving power, removing power from one individual and putting it in the hands of another, for the following reasons.

If two people are different because one was elected and another one caused him to be elected by a Parliamentarian, there is nothing in this country that is going to stop them from sitting in a room and agreeing to hold the whole country at ransom. If we must remove, review some of the powers of President; we must give them to an institution but not an individual. The institution that we should give these powers to Mr. Chairman should be Parliament because the President

and his/her running mate, the Vice-President, will be non-Parliamentarians. That Parliament should be lead by a Chief Minister who will then be leader of government business and this man should not be allowed to compete with the President for a second source of power.

Lastly, Mr. Chairman, allow me one minute. We are talking serious business. The Commissioners, who have forgotten that their role was to serve as draftsmen, have gone round this globe and borrowed from certain Constitutions, specifically the one that they have admitted that one of German and they want to cause a Constitutional crisis in this country, Mr. Chairman. What you are trying is that in Uganda the same effort was made, mention Obote, (interruption)

Hon. Delegate S. Arap Ngeny: Please wind up, your time is up Mheshimiwa. Thank you.

Hon. Delegate Bonny Khalwale: Thank you very much. I think I will have time to (inaudible)

Hon. Delegate S. Arap Ngeny: Fine. On the next row I want to recognize a district Delegate. So the other to drop their --388.

Hon. Delegate Sammy Naibei Chemwey: Chairperson, my names are Sammy Naibei Chemwey from Mt. Elgon in Western Province. The Chairperson, I want to submit that this Chapter on the Executive cannot be discussed in isolation. It has to be looked at in the context of devolution of power and the Legislative such that when you are discussing it you have in mind what is happening in the Legislature and what kind of power we want devolved also.

I am here to explain that we are here not just to express our personal views, but of the people who sent us here. When the people sent us here they were very clear about what they wanted to do, and those of us who sat in the Constituency Constitutional Forums heard our mothers, brothers, sisters and old men say a lot about the need to be decongest powers from the centre, to reduce the control, to ensure that there is accountability and preserve national unity. In the same breath, they asked us not to forget the advice of our sages, the wise elders of Lancaster whom we had the priviledge to hear. Being here therefore, Honourable Chair, we are not here to espouse our own views but to fine-tune what the people said. It is in this respect that I want to give the

Commissioners a word of commendation for the innovation and for the good work they have done.

Mr. Chairman, I want to say that Article 150, which explains that not only will the President be a symbol of unity but will promote among other things the respectability and diversity of the people and protect their human rights and fundamental freedoms, is the more reason why in that diversity in promoting those fundamental freedoms, we need a second House. It is so important that everybody must be represented there so that they will be able to advise the President on the need for diversity and be able to help achieve the fundamental freedoms across the board.

Mr. Chairman, I want to refer also to the fact that we are here and I am listening to people who are exposing their views. I urge Honourable Delegates not to forget what we were in for last year. We have just come over one bridge and we should not forget and burn the bridges overnight. So we don't want to go back to Egypt. In this process therefore, I support the creation of the post of Prime Minister, not just because it is me but I am the voice of the people who are behind me. I want to say this in echoing and affirming that I don't know why we are worried about the issue of age because we have said a President can occupy office at the age of 35 as the minimum. Why are we worried of the upper limit? Let us control the age of the President by the term of office and we have said two terms, full stop. If he goes there when he is 35, he has the opportunity of getting out at 45 and never again. So let's not think of talking about 75 or the rest. I am thinking of former American President, Ronald Reagan, who was well past age but performed so well. I want to discount what another member said that an artist cannot perform as a President. Ronald Reagan came from Hollywood.

I want to say on the basis of health, that we have talked that the President can be removed on account of ill health, but we have not said that anybody aspiring to the office of the President must also be required to produce a certificate of clean bill of health. I have not seen it there and if it is there the Commissioners will show me, but I have not seen them demanding that he must produce a certificate of clean bill of health so that we are presenting a President who is healthy to lead this nation so that should anything happens to change we know that he has changed.

I know my time is over but I want to say something in closing, Mr. Chairman that we need to have Members of the Cabinet from outside Parliament Ministers. So that the MPs can do legislative work, be remunerated properly and therefore even people like me from small communities can also become Cabinet Ministers. We seem not to get it when we go through universal suffrage but, if I am professionally qualified, I can be given. We need to be very clear regarding the basis on which we choose the Cabinet Ministers so there is diversity and their own areas of the society are represented. Thank you, Mr. Chairman.

Hon. Delegate S. Arap Ngeny: I will continue with the next row with the district Delegates. 225.

Hon. Delegate Salim Ibrahim: Thank you very much, Mr. Chairman. My names are Salim Ibrahim, representing Nairobi District. First, I want to start by saying that it really pains me that Kenyans have forgotten the fact that just a few years ago, we had the infamous phrase of 'President for life.' Why do we want to go back to that? When we are talking about President who will exceed seventy years, aren't we trying to go back to those yester years when we had this President for life?

On Article 157, I wanted to bring to the attention of the Chair that in this country we have had some communities who have always tried to play the politics of numbers. When we talk about the President enjoying a 50% majority we ought to be very careful about this communities that have always played these politics of numbers, lest they get to overwhelm the minorities.

On Article 171, we have to be very careful. Here we are creating a scenario whereby some people in Parliament or the MPs in Parliament can get to close ranks from the whole country in terms of the election of the Prime Minister. We are talking about the Prime Minister being suggested by the President to Parliament and we know if we can even take the scenario that we have in the current Parliament it will not be possible to choose a Prime Minister under such circumstances. So we need to come a bit clear on this one.

I wish to oppose the issue of MPs being appointed Ministers. I wish to oppose that, in that in this country we had a system whereby ministerial posts are being dished out as a reward system, that

has to stop. Professionalism has to creep into our system of governance so that we can have proper governance. Thank you, Mr. Chairman.

Hon. Delegate S. Arap Ngeny: Thank you. I will now begin from my right again and would like to recognize Delegate number 160.

Hon. Delegate Joshua Ojode: Thank you, Mr. Chairman. I want to give my observations. My names are Joshua Ojode, Delegate number 160, Member of Parliament for Ndhiwa. Mr. Chairman, I have some observations to make on page 29, Article 175 (iii), where it is suggested that we should have not more than 15 Ministers. Mr. Chairman, you are aware that because of our cultural diversity, it is not possible for this country to have only 15 Ministers and there is not need of putting it in the Constitution. I would suggest that we amend that section by saying that ‘as may be established by Parliament.’

When we go to the creation of the position of the Prime Minister. Let me first of all commend the Commissioners for having separated the powers of both the President and that of the Prime Minister. The reason why I am saying this is because there has been a word of speculation going on that the President is left with no powers at all. I would want to say that the only thing which needs to be done on that particular Article is just to fine-tune some of the clauses in order to fit in what Kenyans need. In any case, Mr. Chairman, you can remember that last year and to be specific just four months ago, there are respected religious leader and respected leaders of this country who were saying that the President had a lot powers. Then four months ago, how do we forget and come out now and say that, oh, we don’t need the position of a Prime Minister.

Clapping by the Honourable Delegates.

What is happening? That is double standards, Mr. Chairman. It is the same people who were saying that we should trim the powers of the President who are now saying that we should not have the position of Prime Minister.

Mr. Chairman, if we go to Article number 161, which says in fact that no legal proceedings may be instituted in any court against the President or the person. It goes all the way up to the

Constitution during their tenure of office. I would propose that we put a full stop there. Let us have a period there because if you say that, unless such proceedings are wholly of a private nature, that section will be abused and the President will be taken to court. This is an African country. If we are talking of Germany, it has got different cultures. We cannot bring the German kind of model and compare it with Kenya's.

Secondly, I am glad that I was told that ours is mixed one. So it is going to be a unique kind of model which if we are going to practice. So I am suggesting that in order for this particular Article not to be subjected to abuse, it has to be re-written.

There is also Article 159, which goes on up to the date when the term of office of the incumbent President ends. Why don't we have a date? Let us put a date on assuming the office, just like in America. We know very well that after elections, on such and such a date we will have the new President in office. Let us also have a date there.

Article 164 (2), where the President and Vice-President within 30 days of the vacancy in the office of the President, will call for elections. Mr. Chairman, 30 days is nothing. Imagine we almost taking 30 days. Where are we? Not even half way. So what will happen with 30 days. We should either amend the section to read 90 or 120 days or more. Let me go on, Mr. Chairman, quickly.

Article 170 on page 34; there was a Honourable Delegate who said that the Prime Minister cannot be given powers alone without sharing, and that was said by a colleague of mine, my good friend, Honourable Simeon Nyachae. I can refer him to page 34, where it says, in fact that the Prime Minister and the other Members of the cabinet exercise Executive authority. It is not only the Prime Minister it is the Prime Minister and other Cabinet Ministers.

Mr. Chairman, just to rush on one more. There is one, Article 175 according to which the President is not supposed to appoint Ministers from amongst Members of Parliament. You know very well that if we have Ministers from outside Members of Parliament, it will be tantamount to abuse. You remember, when we were having this retrenchment scenario where Richard Leakey came up with a very crude, Precambrian idea of retrenching people without due consideration of

the plight of wananchi, where people were being retrenched and the Kshs. 30,000 which was supposed to be given to them has not been paid to some of the retrenchees up to now. (*interruption*) you are taking us back to the same kind of Precambrian ideology. I beg to support, Mr. Chairman.

Hon. Delegate S. Arap Ngeny: Your time is up. Thank you. Honourable Delegates, I must apologise to the row here because I saw a gap and I thought it was the row but unfortunately Honourable Ojode belongs to the next row. So I will come back to this row and recognize a district Delegate, 337.

Hon. Delegate Martin Shikuku: Thank you, Mr. Chairman Sir. It seems like we lack quorum in the House, sir.

Noise from the Honourable Delegates.

Hon. Delegate S. Arap Ngeny: Order! Please sit down. Delegate 337, please continue with your contribution.

Clapping by the Honourable Delegates

Hon. Delegate Michael Sengech: Thank you, Honourable Chairperson. My name is Michael Sengech from Marakwet. Honourable Chairperson, I would like to contribute on Article 153.

Hon. Delegare S. Arap Ngeny: Point of order. 595

Speaker: Thank you very much, Mr. Chairman. It is completely out of order for somebody who has spoken to try and interrupt, could you tell the Honourable Delegates that is not in order. You cannot move a closure or interrupt the speaker after you have spoken. It is very sad.

Hon. Delegate S. Arap Ngeny: That is exactly why I took no notice of that point of order. Please, Honourable Delegates, may I draw your attention to one fact; when a Delegate is

contributing courtesy demands you do not cross over in their front because you disturb their contribution. Please bear that in mind, continue.

Hon. Delegate Michael Sengech: Thank you, Bwana Chairman. I am reacting to Article 153 on the President's decisions. Bwana Chairman, this is one issue that has to be protected in this Draft Constitution. The President has to be accountable for whatever decision he or she makes and that is why it is important that he signs against whatever decision. Bwana Chairman, over time you have heard of junior officers saying some powers have 'come from above,' an 'above' that is not defined. Some of these decisions affect people in many ways, it affects individuals, it affects decisions. You know of the Goldenberg scandal it becomes very difficult to trace because some powers came from above but was not accompanied by signatures.

Secondly, the issue of age of the President I think should not be a bother to this Conference because for one, when somebody is above 18 years and is assumed capable of making decisions, he should also be eligible. So we should not place a minimum or a maximum age for a President or whatever holder of any office as long as he/she is above 18 years. If, for example, a President in his seventies, can perform to the satisfaction of Kenyans do we have any grudge to return him or her?

Honourable Chairperson, another issue is about Members of Parliament becoming Ministers. My position and the position of the people I represent, is that let a Member of Parliament become a Member of Parliament changed with the responsibility of making laws a in the Legislature. You cannot make law and, as a Minister, you execute the same. There is bound to be conflict of interest that, while in the floor of Parliament I make a law as a Member of Parliament and then because I am a Minister or an Assistant Minister I go and execute the same. I am bound to abuse that privilege. So it is my humble request that Ministers be appointed from outside Parliament.

Bwana Chairman, I don't claim to come from among the minority because this term is not definitive, but let me pose a very simple question when in this country will the El Molo produce a President for this country? It is not possible, Mr. Chairman, unless we recognize the rights of the minorities and also take them as able to become President of this country and they are entitled to rights like any other.

Clapping by the Honourable Delegates

To conclude honourable Chairperson, Many a speaker after speaker have been talking of the Affirmative Action for the minorities, for the women and other interested parties, but let me say this Draft has a lot in store for the minorities. It has a lot in store for the women and so as not be seen to be demanding too much, let them be satisfied and deal with the proposals. The gains that are there become protected, because water it down by demanding so much. Thank you, Honourable Chairperson.

Hon. Delegate S. Arap Ngeny: Thank you. I will now go to this row and last time we had a district Delegate. Now I have a Parliamentarian, 111.

Hon. Delegate Gachara Muchiri: Thank you, Mr. Chairman. My name is Gachara Muchiri, a Member of Parliament from ... in Nyandarua district. First of all, I appreciate the spirit of this debate on the Executive and I want to comment on the issue of the President. I think we must understand, first of all, that the Executive is actually the corner stone of the government. The Executive is the one that executes everything else when all the other arms of government are also kind of partaking into the government.

As far as the qualification of the President is concerned, I think the age of the President should not be an issue here, but I would wish to raise the minimum age of somebody becoming a President to 40 and kind put a ceiling. It is also important to put a ceiling because if we don't we might find the President going on and on and on. I think a limit of 76 years to me will be reasonable.

The other think I would like to mention also is that although the Draft is saying that a President should not be a Member of Parliament, I would like to suggest that let him stand for elections as a Member of Parliament while he is elected as a President, then he vacates the Member of Parliament seat, because you will discourage people from becoming President. We have known people who have become President after they have tried even three time and we are happy. We are also happy to see people who have tried Presidency and are in Parliament. Simeon Nyachae

is with us and he is very productive, Uhuru Kenyatta is very productive. It means that such people will be shut away from being in Parliament just because they went for the post of Presidency. So I would wish that when somebody becomes President he/she relinquishes his/her seat in Parliament.

I also want to turn to the Vice-President. I think the Vice –President has been given a very raw deal in the Draft Constitution. He is just kind of an errand boy for the President I would wish that he is called the Deputy President, not Vice-President because you know from our experience Vice-Presidents have been people who have not been given any job to do. I think it is not right for us to say that the President is going to assign him duties. Let us assign him duties; let us also give him a Ministry so that he feels he is occupying an office. Let us not just say he is heartbeat away from the President. I think that is not enough. We have ridiculed that position from the time Kenyatta was the President including Moi’s tenure. It is only now, Mr. Chairman, we find the Vice-President can breathing and talking. It is because perhaps we have a better President than those we have had before.

I want to turn to the issue of the Prime Minister. I have no problem to the post of the Prime Minister despite my coming from the slopes. The reason is this, we want to devolve power to two institutions. I want to believe that the powers of the Prime Minister per se is an institution on its own but I find a lot of deficiency in this draft in that that we have not ensured that the Prime Minister will be a Member of Parliament. We are only saying that he shall be the leader of the majority party in Parliament. I would ---- to see that the Prime Minister is elected from the Party with the majority members in Parliament, but he must also be a Member of Parliament because in this Draft, I don’t read anywhere where it issued that the Prime Minister should be a Member of Parliament. I think that should be corrected.

I want also to mention to the Delegates let us not fear this so-called the Prime Minister position. A lot of people had a lot of this and the other. The Prime Minister is going to nominate Ministers but the person to approve and appoint is the President. So that I think is a good scenario as it were.

Mr. Chairman, I want to turn to Permanent Secretaries. I would want to see Permanent Secretaries more permanent than they have been. I want Permanent Secretaries to be professionals in their own areas. If it is a professional say, a PS in the Ministry of Lands, he should be educated in that area, a PS in the Ministry of Health should be qualified in that area so that at least we can bring professionalism into government. (*interruption*) one minute, Mr. Chairman.

I do not support those who are saying Ministers should come from outside Parliament. They should be elected and appointed from among the Members of Parliament. The vigours of elections is too much and we should not give people seats on a silver platter. Thank you.

Hon. Delegate S. Arap Ngeny: Your time is up please. Thank you.

Hon. Delegate Gachara Muchiri: I apologize, Mr. Chairman.

Hon. Delegate S. Arap Ngeny: I am coming to this row and I want to recognize any one from the Special Interest Groups. Do we have anybody there? Anybody from Special Interests? 619. Order! Order! Delegates order! Somebody is contributing. 619.

Hon. Delegate Wilfred Kiboro: Mr. Chairman, I am not sure that we can conduct any business when there is too much commotion around. My name is Wilfred Kiboro, Delegate 619 representing Special Interest. Mr. Chairman, I know it is very late in the day and the Delegate are very tired, so I would like to be very, very brief with my remarks and in my contribution. Mr. Chairman I think, perhaps if it be better if I --.

Hon. Delegate S. Arap Ngeny: At this juncture may I please stop you and give you your opportunity tomorrow morning.

Hon. Delegate Wilfred Kiboro: Thank you, Mr. Chairman.

Hon. Delegate S. Arap Ngeny: ... so that we adjourn. So, thank you very much. See you tomorrow morning. Thank you.

**PLENARY PROCEEDINGS, PRESENTATION OF DRAFT BILL, CONTINUATION OF
CHAPTER EIGHT, THE EXECUTIVE, HELD AT THE BOMAS OF KENYA ON 16TH
MAY 2003**

PRESENTATION OF DRAFT BILL: CHAPTER EIGHT - THE EXECUTIVE

Presenters : Com. Dr. Charles Maranga
Com. Dr. Andronico O. Adede

Session Chair : Mr. Wilfred K. Ole Kina
Co-Chair : Mr. Joel Sang

The meeting stated at 9.45 am.

Prof. Yash Pal Ghai: Let us start our proceedings. Honourable Delegates, I am calling the meeting to order. I am requesting Sheikh Ali Sheikh to say prayers for us and I will ask all of you to stand up for the prayers.

Sheikh Ali Sheikh: Tuombeni. Bismillahi, kwa jina la Mwenyezi Mungu tunakuomba wewe Mola wetu muumbaji wa Mbingu na ardhi, mwenye uwezo wa kila jambo. Tunakuomba utupe nguvu, utubariki sisi zote tulioko hapa. Utupatie hekima na uwezo, na subira na uvumilivu wa kuweza kufanya kazi hii ngumu tuliyonayo, kazi ambayo itatumikia nchi hii na taifa hili, kwa vizazi walioko sasa and vizazi vitakavyo kuja. Mola wetu, tupe nguvu za aina hiyo ili tuwe na busara njema na uvumilivu wa kila aina. Tunatoa shukurani zetu kwako wewe Mola wetu muumbaji. Kwa uwezo uliyotupa katika wiki zote hizi zilizopita na umetulinda katika hali iliyo bora na umetuweka katika hali ya usalama ambao tumefurahikia sisi zote katika nchi hii. Tunakuomba ya radhi uzidi kutuongezea baraka hizo ili tuweze kufanya kazi hii nzuri, njema. Tunakuomba wewe hatuna mtu mwingine, utubariki na ubariki nchi yetu yote na wananchi wa nchi hii, tunakuomba. Amin.

Prof. Yash Pal Ghai: Thank you very much. I have a few announcements to make before we resume our discussion of the Executive. The Steering Committee has now drawn up a list of

members of the Technical Working Committees. As you may remember, we requested all the groups to give us their nominations for the twelve Technical Committees. These names have been received and we have now drawn up a list which will be put up on the notices around the surroundings. I would request every Delegate to check the list to make sure that her or his name is on one or the other Committees. Once we have that information, we will release the final list on Monday and that will constitute the Technical Working Committees. So please look out for the list and make sure that your name appears on one, or, the other of the Committees.

The second announcement I have to make is that, if there are any delegates who have not taken the oath or affirmation, please do so now. I understand that perhaps some of you may have participated in the discussions of the Conference without having taken an oath. As you know, you have to take the oath before you can take part in the official work of the Conference. So, if there are any delegates who haven't taken the oath, can you please come forward now so that we can administer the oath.

I take it that all the other delegates sitting here have taken the oath of office or affirmation. Okay. Well, I will let you have the oath, yes, I will ask you to say "I" and then mention your names and then will you please repeat after me the oath and then sign the oath afterwards.

"I" and mention your names ... "being appointed a Delegate to the National Constitutional Conference, under the Constitution of Kenya Review Commission Act, do solemnly swear that I will faithfully and fully, impartially and to the best of my ability, discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice", and to the end that "in the exercise of the functions and powers as such delegate, I shall at all times be guided by the national interest. So help me God". Welcome to the Conference.

Clapping

Prof. Yash Pal Ghai: I would now like the Chairperson of the Media Advisory Committee to come to the floor and to introduce the members of her Committee and perhaps to give us a very brief account of how they intend to proceed with the work and to talk about a little bit about the terms of reference. Thank you.

Hon. Delegate Rose Lukalo Owino: Thank you, Mr. Chairman. My name is Rose Lukalo Owino, Delegate number 471 and I am the Chairperson of the Media Advisory Committee. We are very privileged to have this opportunity to speak with you. Since we were constituted one week ago, we have not had that opportunity, which I think, is critical. Delegates have on several occasions been told to contact us with any issues they have, with regard to media and you may not know us. So it is really important that we are here. I would like to take this opportunity to introduce the members and I will ask them to stand up wherever they are in the room. Silvester Wafula – member, David Rakamba, Awili David Elulu, Nkoroi Kang’ethe, Michael Oliewo, Mustafa Ali, Member of Parliament Mutahi Kagwe has apologized for not being here today. Kavetsa Adagala is an ex-officio member from the Commission as is Salome Muigai and Abubakar Zein Abubakar. So if you have any issues regarding media, we are the team to see and we’ll do our best to support you. Thank you.

Clapping

Hon. Delegate Rose Lukalo Owino: Recognizing that the coverage of the Conference has not always been positive, the Media Advisory Committee remains committed to this room to build understanding with the media, we have held several meetings with our colleagues in the media fraternity and they assure us they are as committed as we are to ensuring that Kenya has a Constitution that we can all be proud of. But as delegates, I think it is also important that we recognize that we are public figures. Everything we do, everything we say, wherever we do it and at whatever time, is open to public scrutiny.

So delegates are free to speak to the media, if they wish but be accountable for what you say. And understand that everything you say reflects on how this Conference will be perceived. It reflects on the document that will come out of this process.

With regard to the actions that we have been taking, the Media Advisory is in close consultation with Media Houses regarding complaints which were brought forward last week, and this is been followed up using diplomatic channels. I would also like to mention that we are seeking opportunities for delegates to use the media more proactively. We know that you all represent constituencies and concerns, and the media have set aside a lot of programme in time to let the

public know what we are discussing and what your perspectives are. So if you get in touch with us we can put you in touch with them. And lastly, I would also like to remind delegates that we have created space at the back of the hall, where there is a notice board.

There is a lot of caucusing and meetings going on, and sometimes I see people running around with pieces of paper trying to get communication to everybody. If you would like to put a notice on that board and there is also space being created at the front of the hall, you can contact the CEPIC office, which is to the left as you leave the hall and any member of staff, they will authorize and place it on the notice board up there. Thank you and enjoy your deliberations today.

Clapping

Prof. Yash Pal Ghai: Thank you very much indeed. We can now resume our discussion and debate on the proposal for the Executive and I am going to pass the Chair to my colleague, Mr. Ole Kina and we have now a new Co-chair, who he will introduce to you and we will continue with our deliberations.

Hon. Delegate Wilfred K. Ole Kina: Thank you very much, Mr. Chairman. There is somebody with a point of procedure.

Honourable Delegate: Honourable Chair, Honourable Delegates, thank you for this opportunity, I am rising on point of procedure relating to regulations 24, about Motions. Particularly, subsection three which reads, “a Motion of which notice has been received at least one day before sitting, shall unless the Chairperson rules the Motion out of order be placed upon the order paper”. And also under regulation 25(2) says, “the Chairperson may disallow notice of Motion, which in his opinion contains unbecoming expressions, infringes the rules of debate or is otherwise irregular. But any such a notice may be amended by the Chairperson, with the consent of the delegate who gave the notice and may there upon appear on the order paper”.

I am raising this Honourable Chair for guidance, because some of us who have moved the Motions, first we are not getting any communication from the Chair and even some of our efforts

to get this particular clarification has been futile. Honourable Chair, I moved a motion on Monday expecting it to come on Tuesday, and upto now I have not heard any clarification. The motion is on culture and Honourable Chair, I consider the subject of culture to be very important to the Kenyan-Africans. And I think it should be given due consideration. I would like to suggest Honourable Chair, that may be the Chair should have a Committee to look into these particular motions, instead of unilaterally discounting them.

Clapping

Secondly, I would like to suggest that on account of diversity of our nation, which everyone talks about. I would like to be guided, how come we are not trying to exemplify these diversification or diversity through out cultural expressions. We have here at the Bomas culture that can be exemplified from all corners of this country. I would like to suggest that every time not to eat on the regular time of the Conference, that during break time and lunch-time we should if possible have the cultural dancers here coming to entertain us. Than you very much, Honourable Chair.

Hon. Delegate Wilfred K. Ole Kina: Thank you very much. Your sentiments have been noted and I am sure the Chair will communicate to you. I would now like to begin the session and before I introduce my Co-Chair, I would like to keep my promise. Yesterday as we adjourned, I promised a Honourable Delegate Kiboro, I don't know whether he is in, that he will... I still have my promise so you will be the first. I now have to introduce Mr. Joel Sang who is stepping in for my Co-Chair yesterday, Mr. Ng'eny who had some urgent business to attend to. So, as we move, on may we have our first contribution from Honourabe Delegate, Mr. Kiboro.

Hon. Delegate Joel Sang: Thank you, my Co-Chair. Honourable Delegates, I hope the spirit we have, I mean we had yesterday, will continue today. I think yesterday's session was quite nice and I hope we will maintain that good spirit. Thank you.

Clapping

Honourable Delegate Wilfred David Kiboro: Thank you, Mr. Chairman. I would like to start by introducing myself, my names are Wilfred David Kiboro, Delegate Number 619, representing

Special Interests. I would like to take this opportunity to congratulate the Commission for the very good work they have done on this particular draft on a subject that is very very important and on issues that are clearly emerging as extremely complex. I would also like to congratulate the Honourable Delegates for the manner in which we conducted ourselves yesterday in a very very sober manner and also for the first time since I started participating in this Conference, I felt truly proud to be Kenyan and I think we hope that we can contribute, we can continue in this spirit.

In debating chapter eight Mr. Chairman, on the Executive, I believe that we are trying to address a number of issues.

One, I think we are trying to provide a Constitutional framework that will curb abuse of power by those in authority.

Secondly, Mr. Chairman, I think we are also trying to ensure that when Executive power is exercised, the power will be exercised for the common good of the people and for the good of the country.

Thirdly, I think we are also trying to ensure that when people are elected, nominated or appointed to various public offices, such persons shall have the ability, the qualifications, the competency to carry out the jobs that they have been given to do.

Fourthly, Mr. Chairman, I think we are also trying to provide an institutional framework that will ensure the proper functioning of the various Arms of Government, in order to provide the services to our people. Mr. Chairman, here I am talking about the structure of the Government.

Finally, Mr. Chairman, I think we are also trying to ensure that as we move forward, we have good governance, accountability and also to provide checks and balances for the people on whom authority is being exercised on our behalf. Mr. Chairman, my remarks therefore in commenting on chapter eight will be based on those broad parameters. If I may now go specifically to the various specific chapter or Articles. On Article 1(53), I would like to see a section expanded to ensure that the President will devote a hundred percent of his time on State

matters. Mr. Chairman, I think it is not equitable to have a President who spends 90 percent of his time cutting deals with his cronies or political supporters at State House and only ten percent of his time in matters of State. So, I would like to see where we make sure that our President is going to devote all his time being our President and nothing more.

On Article 151(3), while there is merit in having a very lean Cabinet, I don't see any point in limiting ourselves to only fifteen ministries. I think we should leave ourselves flexible to have as many ministries as the job desires. But, I am not quite sure Mr. Chairman and this we can leave to the Delegates, may be at the Committee stages, on how we determine the optimum number of ministries.

On Article 156(1)b, Mr. Chairman, on the qualifications of election of the President, I think 35 years old, is okay for me. I think what we are saying here is that we do not want to have a "manyanga" as the Head of State who is going to spend most of his time at the Carnivore or night clubs because he has not matured up sufficiently.

Laughter from the Honourable Delegates

Honourable Delegate Wilfred David Kiboro: I think, I am not sure if (inaudible) but I am quite willing to go with that. We want to have a President who is going to reflect our nationhood, who is a mature person. I think there is something very reassuring in having a mature person as our Head of State, Mr. Chairman. But equally on that particular section, I see no need to limit the age to 70 of a Head of State. I do not think ageing is disability, I think we have very many sharp people who are 70+ and history is full of such examples *clapping* of great leaders, who have done great things for their countries when they are passed 70s. So I don't think we need to restrict ourselves to this.

Mr. Chairman, I would also like to suggest that when we are defining the qualifications, because are trying to merge competences with the jobs. If we are going to define the qualifications for the President, why don't we do the same for the Prime Minister, the Deputy Prime Ministers, the Ministers and Permanent Secretaries. Because they all exercise very important responsibilities.

On Article 157(7), declaration of the resource of the Presidential elections, Mr. Chairman, and I am trying to go very very quickly, I think giving the Electoral Commission seven days within which to announce the results of our Presidential election. I think it is too long, I feel uncomfortable that this could provide avenues for cheating and meandering and all kinds of things. So, I would like to see this period reduced.

On Article 163, on the impeachment of the President, Mr. Chairman, I support the provision fully, I think we should as a country be able to have a provision to be able to impeach our President, if he does not leave upto the job and the oaths that he takes.

On Article 164(2), the section is not clear, I think the last part should read within thirty days of the vacancy of the Office of the President and Vice President, because the Article itself is talking both the President and the Vice President, so I think it's a question of drafting.

On Article 166(5), the last line refers to Article 119(5), in my green book here, there is no such a section, because it ends up in section 3 Article 3, Article 119 sub-section 3, so I think again there is drafting work that needs to be done there. On the appointment of the Prime Minister, Mr. Chairman, I fully support the creation of the office of the Prime Minister. I think if we expect one Head of State to do each and everything and run a Government, I think we are asking too much. There is a need to share the responsibility, there is a need to be able to share out the jobs, so that ... and let us not look at this in the context of who is losing power or giving power to who. I think we need somebody to manage the Government on a day-to-day basis and I think that office properly belongs to the Prime Minister.

Mr. Chairman, regarding the concerns that have been expressed by the various delegates, regarding the sharing and the potential conflict of interest between the powers of the Prime Minister and those of the President. I am not too worried about that, because I think whoever exercises powers is going to abuse it, whether he be Prime Minister or the President. What we need to concern ourselves to, is to create checks and balances to ensure whoever is exercising those authorities, whether he is a sub-chief or the President, there are checks and balances to ensure that he lives to the job he has been given.

Mr. Chairman, I am sorry that my time is over, but I would also like to endorse very quickly that I believe that Members of the Cabinet, particularly the Ministers should not be from the Parliament. I think we should, if we want to attract the very best brains in this particular country, let us go away from the political elites and I also think that this creates the possibilities of being able to distinguish between the Parliamentarians, who should confine themselves to legislation and the Executive who should concentrate on managing the Government. Thank you very much, Mr. Chairman.

Clapping

Hon. Delegate Wilfred K. Ole Kina: We will come to the next row, and the next chance will go to the political parties. Number 591.

Interjections: There is a point of order.

Hon. Delegate Wilfred K. Ole Kina: Oh, one minute, there is a point of order. 433 please.

Hon. Delegate David Marcos Rakamba: Thank you, Mr. Chairman. Honourable Delegates, Mr. Chairman, I am surprised that it is believed that somebody below 35 years may be seen as a “manyanga” who goes out dancing and this calibre Mr. Chairman, you realize there are young people who are inside here. That in other words is like touching on our kind of incapability. So, Mr. Chairman ...

Hon. Delegate Wilfred K. Ole Kina: ... to rectify that. Thank you. That is not a point of order actually, it is not a point of order. Can you continue?

Hon. Delegate Ogembo Masese: Thank you, Mr. Chairman. My name is Ogembo Masese number 591, Political Parties Representative. Mine is going to be, I think I would say a maiden speech. So, I think you will have to give me a few more minutes, because there is a maiden speech which should not be interrupted, then I will comment on whatever there is to say about the Executive. Thank you.

My maiden speech, in 1966, we had an attempt to change the Constitution of Kenya. That was with sinister motives. When whoever that was targeted resigned, that was the end of it. That was the first attempt to change the Constitution of this country, which was shelved after the target resigned. In 1976, we also had an attempt to change the Constitution of the country targeting an individual but it never worked out also.

Now, after that, we have had tremendous changes through Parliament and that is how we have ended up being where we are. 2002 has been a struggle to overhaul, change and bringing sanity to the Constitution of Kenya, we have managed. What has been lacking is goodwill, there has been a lot of suspicion amongst the crusaders. I remember one champion, one crusader who said that “no complete overhaul of the Constitution, no elections”. I think that was a very principled stand and to date I think we have kind of forgotten that.

Last year Mr. Chairman, there was this clamor of changing the Constitution. We were all agreed that we must have the Constitution changed before elections. Unfortunately, there was a very stubborn establishment, which said no. Here we are. We went to the elections without change of Constitution. When we came here Mr. Chairman, there was a lot of suspicion amongst Delegates, some for the status quo and some for the change of the Constitutional Review.

Hon. Delegate Shakeel Shabbir: Point of order Mr. Chairman.

Hon. Delegate Joel Sang: Can we have a point of order from 406 please?

Hon. Delegate Shakeel Shabbir: Sirs, it is irrelevant when... I request the Honourable Delegate to address the particular chapter. We are pleased to have his maiden speech but not today Sir.

Hon. Delegate Ogembo Masese: Thank you, Mr. Chairman, I said it was a maiden speech, it has been for two weeks I have not spoken, now my maiden speech is almost finished, I am going to address now the chapter in question. Thank you.

The Executive: (time we said ten minutes). I am for the devolution, I am for the shared powers between the President and the Prime Minister.

Clapping from the Honourable Delegates

I am opposing one Article here 160, which states, “that the President will hold office for a period not exceeding five years from the time of assumption of office”. In the past, we have had some kind of confusing clauses not exceeding or up to. Maybe this one should be a bit specific to say it is five years because somebody may midstream say, “it is up to five years, so get out”. Unless, there is a specific reason for not completing five years, I am for a better writing of this 160. It should be five-year term. Thank you, Mr. Chairman.

Hon. Delegate Ole Kina: Thank you, contributor. Before I invite somebody from the next row, I should request the Honourable Delegates to actually use the points of order very sparing and genuinely, so that we don’t waste a lot of time. Can we have a District representative from the next row please, a District representative from the next row.

Hon. Delegate Atsango Chesoni: Point of order please?

Hon. Delegate Ole Kina: What is your point of order Madam 510?

Hon. Delegate Atsango Chesoni: Point of Order under regulation 34, subsection 2. Thank you. I am bringing my point of order under regulation 34, subsection 2, which says “It shall be act of order to use offences or insulting language in reference to any other Delegate or Official of the Conference. My point of order Sir, is that the phrase “manyanga” is insulting to those who are 35 years and under. Thank you, and we request that we Honourable Delegates who used it withdraw the phrase and apologise to us.

Hon. Delegate Joel Sang: I am afraid the Delegate is ---

Hon. Delegate Ole Kina: Thank you very much. I think it is in order for the Delegate who used that language to withdraw so that we can go on.

Clapping from Honourable Delegates

Hon. Delegate Wilfred Kiboro: Mr. Chairman, I am extremely sorry if I offended anyone. I didn't think that that, word was offensive and in any event I was not addressing the Honourable Delegates, I was talking about those people who should qualify for the Presidency but I don't want this to be acrimonious. If I have offended anybody, my very sincere apologies.

Clapping from Honourable Delegates

Hon. Delegate Joel Sang: Thank you very much. Thank you for your apology. Let's be careful also with our language because we don't have to offend anybody. Can we have a District Delegate from the next row please? Number 324.

Hon. Delegate Hellen Koringura: Thank you, Mr. Chairperson. I wish to make my comments on Chapter 8, as regards Article 148. I am Delegate 324, Hellen Koringura from West Pokot. As I said, I wish to comment on Article 148, Subsection 2(a) which says that "the Executive authority vested in that office bearer power to serve people rather than power to rule". I quite support this particular Article because for a long time we have known people who have been in the office who misuse their powers. If I can remember the comments made by veterans of the Lancaster House, they warned us on how power can ruin and how power can be disastrous when concentrated in some few hands. Therefore, I really support that particular that they should re-use their powers for the benefit of the people and not to rule.

Coming to Article 150, Subsection 1(c), that "the President shall uphold, safeguard and respect the Constitution in Rule of Law." I quite support that and I think that particular Article has been well drafted. On Subsection 2 also, "that the President shall exercise powers according to the Constitution and the Rule of Law". Coming to Article 150, Subsection 3, "that the President shall not hold any other office, public office including elected or appointed". I want to appeal to my fellow Delegates that, we have experienced in this country in the previous regimes that when the President holds more than one office, like even becoming MPs in their parties, they misuse, sometimes they expel people and Kenyans have no alternative. So I quite agree with that and

given that employment in this country is a problem, why should one person hold more than one office or more than one job. It is one man, one job, one-woman one job.

Laughter from Honourable Delegates

Again, that should give our President enough time to be busy with the State affairs than being busy with political affairs of his own party and secondly to stop misuse of power. Commenting on Article 152, on legislative functions of the President, I want to also remind Delegates and I appeal to you to support me in this, that the powers of the President should be checked. As we were told of a very serious incident that in the previous regime, the first regime, we were told by the veterans that after the Parliament had passed a Bill and enacted it, the President with all his powers refused to assent to it and I am very happy that the Commissioners were very sensitive to take the views of Kenyans into consideration, to give another alternative of institutions. Should the President feel that it is not in order, he can refer the Bill to the Supreme Court or to Parliament. So, I quite agree and support that particular Article of 152 (c).

To finish Mr. Chairman, I want to comment on Article 175 Section 3. I do not quite agree why the cabinet should come out of Members of Parliament. I feel that Kenya is a dynamic society and we are developing and since we are looking into the future where we will have many Members of Parliament being very highly qualified like engineers, doctors, professors etc. I don't see why they should not serve us effectively in their profession as Members of Cabinet. So, I really don't quite agree why they should be ---Cabinet Ministers should come out of outside the Members of Parliament. Thank you Mr. Chairman.

Hon. Delegate Joel Sang: Okay, thank you Madam. The next chance would go to Parliament and I will invite number 42.

Hon. Delegate G. G. Kariuki: Thank you, Mr. Chairman, for giving this opportunity to me to say a few words on this matter. My name is G. G. Kariuki, a Member of Parliament, Laikipia West. Mr. Chairman, we are gathered here to discuss the monster called power and how to share it among the few institutions that are given authority by Kenyans. Now, power as far as I am concerned is all that sustains the existence of the state, not the President, not the Prime Minister,

not even Parliament but God and the people of Kenya. This is where I believe power rests in the people of Kenya. We are therefore, in this gathering expected by that power to allocate to some recognized institutions of Kenya, for the general good of this country. That is why we are here, to allocate that power to specific people but later on they are not going to be having power. They will have the authority given by the people and therefore when we think of particular individuals that we want to share this power by giving to a certain individual, we must give a leeway to the people of this country that no individual will have power, unless there an international war like the one we had during the cold war. Because there is not Constitution in Africa which could stand the test of the cold war and that it is my belief, even if we had a Constitution. The mess we have gone through in this country, it is not because we did not have a Constitution, it is because people were overwhelmed by illiteracy, especially those who held those powers and that is why they maneuvered and manipulated everybody to think that power belonged to them.

Now, President is elected to enhance that existence on behalf of the people of Kenya and he is required to appoint his agents, who will help him to sustain the unity and the prosperity that Kenyans expect from that gentleman or that gracious lady called the President. No power to appoint Parliament. The President will have power or the Prime Minister to appoint other officials but will have no power and I urge these Delegates, that no person will have power beyond the Parliament of Kenya. That is my personal Appeal to you, that we should have this power exercised by the people of Kenya, through Parliament. We are here, just now on behalf of the Kenyans to do exactly that. Think very very seriously how to divide this power among the gentlemen and ladies who are going to be lucky to be given that opportunity because power needs to come from the location to the President, to the Prime Minister and down to the people's house, that is Parliament.

The Parliament is the only body that this Conference should empower to manage the unity of this nation, but cannot be left to an individual. When the President and the Prime Minister disagree, it is most unfortunate that it is suggested that the President will dissolve the Parliament by rejecting what he wants. I think we are becoming very-- I don't know what we are. But let me not say what I think we are if we behave that way. The President, if he cannot, if the Parliament rejects his appointee three times, the President must resign, because the Parliament does not have

confidence in that organization. Therefore, Parliament should remain supreme as this will conduct the character of the President in a more honourable manner than what it is today.

You all know that the Kenyans decided or accepted that the previous regime and even the first regime, I am lucky to have served both regimes. I did not suffer in Kenyatta's regime for reasons, which are known. But for Moi's regime, we had a very good time and then we had a very sour time towards the end.

Laughter from Honourable Delegates

Ladies and Gentlemen, there is nothing to say or to do. We are here to make sure that will not happen again. That whenever you have the new President, he will be expected by the Kenyans to conduct himself according to the mannerism expected for a Head of State, than not to lead the country to be kleptocratic.

Laughter from Honourable Delegates

The system that is governed by thieves, that is what I am trying to say Mr. Chairman, that we should avoid, that we should never never again have a government led by thieves. Government of the thieves, and by the thieves. Thank you.

Hon. Delegate Joel Sang: As I come to the last row, I wish to give an assurance to the people seated at the lowest point to the podium, that that Chairman would rise to his soon height to make sure that they are also given due consideration. So, somebody will have to come from the NGO. So, I will give that chance to our District Delegate.

Noise from the Honourable Delegates

Hon. Delegate Joel Sang: Please, number 253.

Hon. Delegate Salah Arte Ahmed: Thank you, Mr. Chairman. My names are Salah Arte Ahmed, a District Delegate and I would like to go straight to the point on Article 150, Clause 3.

I don't agree with my fellow Delegates who have said that the President should not hold any other office. This is to me denying the Freedom of Choice and Association, because the President is a public figure, he can be able also to delegate other duties. So, I would have requested, my humble request to the fellow Delegates that the Freedom of Association and the Freedom of Choice should not be taken away from the President and he should be given the power to rule and to get other office, if they would be any chances.

The other point I want to say is--- thank you, to serve not to rule. The other Article is Article 53. This is the decision by the President under the authority of the Constitution of any law shall be in writing and shall bear the signature of the President. I would like to request, because this is avoiding making the roadside decision which we normally see. This signing should also include the Prime Minister, the Ministers and the Vice President, because there are some people who normally make roadside decisions and later on, they eat their words. This will also avoid for people who are in offices not to have loose tongues.

Thirdly, I would like to say the vacancy in the office of the Vice President; it has been said that nominations are never good. I would have requested that the Parliament to elect the Vice President from the majority party. Appointing of Ministers from technocrats is something very important, I would also support it. In summary, I would have said that the Presidential age should only be sixty plus two terms, that will make him seventy. Beyond that, he should not be able to be given chance again.

The issue of power sharing is something very good and I concur with my fellow Delegates that the office of the Executive Prime Minister should be instituted as quickly as possible. Thank you, Mr. Chairman.

Hon. Delegate Joel Sang: Thank you. We will go to the other side and I will give that chance to the Non Governmental Organizations, because nobody has been talking from that group. NGOs, number 453.

Hon. Delegate Elkanah Odembo: Thank you very much, Mr. Chairman, for the opportunity. My names are Elkanah Odembo, Delegate number 453 representing the NGO sector. A few general comments and then 203 very specific ones.

First of all Honourable Delegates, I want to urge us all to, as we are addressing this particular Chapter, to keep in mind what it is that the people were trying to say to us and remember that there were more that 430, 000 who actually their submissions to the Commission. So, let us keep in mind what they were trying to say and why they were they saying it. Secondly, also keep in mind the spirit of the rest of this Draft Bill and it is very much a people oriented Draft Constitution and I was particularly impressed by the Commissioners when they presented it to us yesterday and informed us that what we have drafted here is uniquely Kenyan and I would like very much 20 years from now God willing, to be associated with the Constitution that other nations around the world can now be referring to and using as an example as they go through similar processes. We have goals and values and principles and even a preamble that are very progressive, that are very unique and we all, I think need to be very proud of it.

In terms of the sections in this particular Chapter, the issues of enhanced governance, we all know what bad governance has caused us in this country for the many years. I would urge us to keep that in mind particularly when we go to the groups, the checks and balances that are being suggested, the vertically and horizontally, the sharing of power, the separation of power, the distribution of power and functions. These are things that are critical and at whatever cost dear Delegates, we need to make sure that these are now enshrined in our Constitution and I would also like to remind those who are apprehensive about us not having clear demarcations between the roles and the responsibilities of a President and the Prime Minister, dear Delegates, we have a nation here of 30 million people and we badly need good managers. I do not see any reason why there would an issue in terms of clearly defining the roles and the functions and the responsibilities of the various positions and offices that we badly need to work together, to share powers and to manage this nation of 30 million people effectively.

In terms of specific Articles, within this section, we have done well that the decisions of the President and even those of the Cabinet should be put in writing. I want to suggest Honourable Chairman, that in addition to having these decisions put in writing, can they also be made public?

That, I think would also be in the spirit of accountability, badly needed. We don't want a situation where we have memos and circulars, circulating between the Minister, the Prime Minister and the President. Let decisions that are taken by these different offices, be they the Presidency, be they the Prime Minister, be they the Cabinet, be also made public.

Let us also be very specific when we talk about the responsibility of a Prime Minister and the accountability of the Prime Minister of the President, it says in Section 177, Subsection (i), "The Prime minister will keep the President informed". That is rather vague. I think that is giving the Prime Minister a lot of leeway. Let us be specific about how often we want a Prime to report to the President and let's also be very clear in terms of, particularly when we go into the working groups, can the working groups spend time looking at the Potential areas of conflict, deadlock between the offices of the Prime Minister and those of the President and let us start thinking about how those can be minimized by having very clear terms of reference, job description, whatever you want to call them for this position.

Mr. Chairman, finally, the issue of ministries, I don't know what is the magic about 15 ministries. I think we should determine the number of ministries by some kind of rationalization that the ministries are meant to provide services and effective and efficient service delivery is what Kenyans need. So, let's determine the number of ministries that we need, not on the basis of how many regions we want to occupy particular ministries but rather what services do we want to provide to Kenyans and how many ministries will therefore be adequate to effectively and efficiently provide those services.

Finally, Mr. Chairman, the issue of age limit, I have no difficulty with a President who is 70 years old and above since some of our best friends are in their 80's. However, I want to remind the Delegates that the life expectancy of Kenyans as we sit here is 47 years for men and 49 years for women. So, let's keep that in mind as well, that in terms of representation...

Honourable Delegate Joel Sang': Your time is up please.

Hon. Delegate Elkana Odembo: ... we have a head of State who also represents, in terms of the age the majority of the population's age groups. Thank you very much Mr. Chairman.

Hon. Delegate Joel Sang: Thank you. Honourable Delegates please let us respect time because everybody wants to speak and we want to give them time. The next person will come from the Professional Organizations, please, next row. Anybody? Anybody from the Women's Organizations in that row? 502.

Hon. Delegate Rose A. Olende: Thank you Mr. Chairman. I am happy to have the floor because this is the first time I am speaking here and I just have one or two points to make. My name is Rose Arungo Olende number 502, Women's Organizations. Mr. Chairman, I was very happy to hear one of my sister Honourable Delegate talk of one person one job because I am a believer in one person one job. I don't know how some people can do ten jobs at once and that's the reason why I support the proposal that Ministers should not be Members of Parliament. I think it is very important to be a Member of Parliament and it is a heavy duty and if our Members of Parliament could focus on just representing the constituencies, there is a lot of development that can go on around the country. If there is any reason why we are fixed on this issue of Ministers, then we could even change that title and call it somebody else.

In some countries they talk of secretary of this, secretary of that and we could do the same because I don't see how a Minister can represent a constituency and do the particular work we have assigned to them. Maybe that is why in Kenya we have not developed so much. In another sense it makes other Members of Parliament not to consider their duty as important as that of the Minister. Everybody will be scrambling to become a Minister. So, I am supporting the fact that a Minister should not be Member of Parliament and in any case there are very qualified people who could do the duties of the Minister and the Ministers do the job of representing our constituencies.

As for the post of a Prime Minister, I fully support the post of a Prime Minister and in fact I don't see that it is spelt that clearly in the document. The duties of the President have been very well spelt out but not those of the Prime Minister. In fact, the Presidency in this draft is a very powerful post and for that reason I don't see why we should think that a President can be ceremonial with all these duties that he has to do. So, I very strongly support the post of a Prime Minister and we will have to redefine those duties.

I am very grateful to the Commissioners who presented this Chapter because when you read this Chapter, it really brings us down we Kenyans to a very sobering state because we have so much involved with politics that we have not involved ourselves with development. It is high time we got to this sobering level and started concerning ourselves with issues of development and leave politics to politicians. So Mr. Chairman, we are hoping the drafting group can do just that and I don't know what led the drafters of this text to put some times that the President shall do this, the President shall do that and in some cases they said 'he may'. Maybe they will explain later why he may do some things but he shall do others. Thank you Mr. Chairman.

Hon. Delegate Joel Sang: Thank you Madam. The next row, we are going to have somebody from the Professional Organizations. Number 332.

Interjection: No, I don't think he is. He is not.

Hon. Delegate: Thank you Mr. Chairman. My name is --- (inaudible)

Hon. Delegate Joel Sang: Excuse me, are you sure you are from the Professional Organizations?

Hon. Delegate: I am a professional.

Hon. Delegate Joel Sang: No, please sit down.

Hon. Delegate: Mr. Chairman I have never spoken in this forum. Please.

Hon. Delegate Joel Sang: No, thank you. Can we have somebody from the Religious Organizations there? Number 527 and you have to mention your name and number please so that we check.

Hon. Delegate Njeru Wambugu: Thank you Mr. Chairman. My name is Njeru Wambugu, my number is 527 from the Religious Organizations.

Hon. Delegate Joel Sang: Proceed.

Hon. Delegate Njeru Wambugu: Mr. Chairman I want to make very quickly three points so that I give other people an opportunity. I believe in sharing the power and in that sense I support Delegates who are saying that we have a Cabinet that comes from outside the Parliament. In this country Mr. Chairman, we have had people carrying through many jobs yet at the same time we are saying we have unemployment. How do we have unemployment when two or three people are having twenty jobs at the same time -- chairman of this or chairman of the other? I want therefore to say Mr. Chairman, professionals from outside Parliament should be able to become Cabinet Ministers.

Clapping by Honourable Delegates

Hon. Delegate Njeru Wambugu: This, Mr. Chairman, will leave Members of Parliament to be able to be effective and to be efficient because the question of making a person a Minister and at the same time a Member of Parliament is a recipe for withdrawal because the idea is if he cannot go to his constituency, the constituency will have an opportunity therefore to withdraw him. I don't see why we would support somebody who becomes a Minister only to be withdrawn in a few months. Mr. Chairman, I want to support that we have people from outside.

Number two Mr. Chairman, I also support the idea that we should have a Prime Minister. The only problem I have with that position, Mr. Chairman, is only one. The Prime Minister seems to be reporting to his own Cabinet but I want to propose, Mr. Chairman, that the Prime Minister reports to Parliament and he is answerable to Parliament. That way we shall have the control and the fear that we have that he will be too powerful will be curtailed by the Parliament.

Mr. Chairman, my third point is the qualifications we are putting on leadership. In this country we have very many universities now and we are producing very qualified personnel to a point that we are exporting personnel to other countries. How do we come back and begin to say that we want to lower the standards of the people we want to employ? Mr. Chairman, I want to say that anybody going to a public office or holding a public office should be at least a degree holder. I have support here Mr. Chairman, how many of our young people now in this country

are in the streets with their degrees in the pocket and use the language 'we are tamarcking'? Mr. Chairman, I want to plead with you that up to the locational level and district level we have qualified people who can hold those offices efficiently and run our country properly. Mr. Chairman, thank you very much.

Hon. Delegate Joel Sang: Thank you, you have kept time. The next slot will go to Parliament. It is Parliament, please. I have all the information I need to know here. Actually that slot should go to Parliament, number 147 please.

Hon. Delegate William Ole Ntimama: Thank you very much Honourable Chair.

Hon. Delegate Joel Sang: Please, Honourable Ntimama continue.

Hon. Delegate William Ole Ntimama: Thank you very much Honourable Chair, my name is Honourable William Ole Ntimama, Member for Narok North Constituency. Honourable Chairman, I want to speak very briefly on Article 150 1(b) and (c) and clause 2 of also 150. Honourable Chairman, if you look at (b), the last two or three lines, the President is supposed to protect the Human Rights and fundamental freedoms. In (c) shall uphold, safeguard, respect the Constitution and the rule of law.

Two, the powers of the President shall be exercised in accordance with the Constitution and the laws. Honourable Chair, I am talking of guarding and protecting the Human Rights and the Constitution. We have seen what happened in the last quarter of the century. The Constitution was torn up into tatters. It was amended as many times as twenty six, some of them very frivolous amendments like protecting a thief, Mr. Chairman, and all those amendments went to up to heap a lot of power on to one individual who became the sole ruler and we started having the rule of men as against the rule of law. That is despotism and authoritarianism.

Mr. Chairman, I wanted to find a way where we can guarantee that the Constitution is going to be upheld and the freedom of the people respected. Not that we don't have the laws because Honourable Chair, in our current Constitution Chapter 5 Section 70 to 84 provides all the freedoms, liberties and the rights of people including freedom of speech and so forth. But we

saw, Mr. Chairman, during that time when the torture chambers were developed, we saw when the press was muscled, we saw that time when people had no freedom to speak or to associate but the law was there.

If you look again, Honourable Chair, we have Cap 64 supposed to be prevention of corruption but we did not prevent any corruption. This corruption became an institution because one man took the law into his hands and even in that corruption there is law, even if we had to pass the other one the other day. They are almost similar but it was not used, it was set aside, it was impotent and nobody was using it. Nobody has ever been prosecuted for the last quarter of the century for stealing considering the massive corruption that has been in this country. Nobody has been prosecuted or jailed. Look at the PAC, we have got the names, the amount of money that everybody has stolen but nobody has been prosecuted or jailed. I am saying that we should have the balances in our Constitution. Give every arm of Government a share of the responsibilities to govern and prevent one arm of Government from running amok to control the other arms of Government. We should also maintain our checks and balances as some of our friends have said.

Honourable Chair, I am saying dictatorship is like a thunderbolt. Nobody stops it from striking the ground and it causes a lot of devastation normally. That is what dictatorship is all about. If for those reasons, even if the appointment of creation of the Prime Minister is going to slow those thunderbolts which cause a lot of devastation, then it is wise to do it so that power can be shared, regulated and so forth. We are lucky Honourable Chair because the sitting President, and this is my consideration, is a lawness man, a man with integrity and a man who is incorruptible. But then we are actually constructing this Constitution for other Presidents who are coming after Honourable Mwai Kibaki. The last regime taught us a lot of things and we must make sure that we make safeguards and guarantee that there is no more dictatorship and no more authoritarianism here, Honourable Chair.

I am going to propose that we include an Article in this Draft Bill of a body which I don't know what is going to be said which will compromise all the prominent people from the Legislature, from the Executive, from the Judiciary to sit together to be custodians of the Constitution, people who will guard the Constitution so that never again shall we have individuals like we saw last

time amassing all the powers with arrogance and impunity – the kind of stuff that we have seen in this country for the last quarter of the century. I propose that that body, the name can be done by specialists or the lawyers who are here but I think we need one at least until democracy takes root because democracy is still very fragile and we don't know what is going to happen so that at least the people of Kenya will have a body which will absolutely be a custodian of the Constitution so that it is not messed up again. Thank you.

Hon. Delegate Joel Sang: We have realized that we are not addressing all the categories as frequently as we should and it is our desire that everybody speaks especially those who have never had a chance to speak and I am requesting those who have spoken please be considerate to the other people. From now henceforth we will be picking two categories from every row so that we cover as many categories as possible. So within the same row, can we please have somebody from Professional Organizations?

Interjection: Go for a District Delegate.

Hon. Delegate Joel Sang: Please, are all those who have raised their numbers members of Professional Organizations? Please listen, the only member of Professional Organizations Rihal Singh has already spoken and I will not give that chance to him. So, 485 I think you have already spoken please. Okay, can we have 272 please?

Hon. Delegate Muketha Thimangu: Thank you Honourable Chairman. I am Mr. Muketha Thimangu, District Delegate from Nyambene and a Njuri Ncheke elder from Meru. Mine are just very few points. Mr. Chairman, I stand to say the following: I support the creation of the post of a Prime Minister. Mr. Chairman, many of us were demanding the post of a Prime Minister when we were in the opposition last year. Today that we are in the Government, we are fearing that post and I don't know why.

Clapping from Delegates

Hon. Delegate Muketha Thimangu: We should support the creation of the post of a Prime Minister and whatever we feel we are fearing Mr. Chairman, we should correct the imbalances we are seeing while we are here.

Mr. Chairman, I also want to say something about the qualifications of a President, a Vice President and a Prime Minister. The qualifications I am going to give may seem little to you but people in my Constituency asked for that. They requested that a Prime Minister, a President or a Vice President should be a man who is happily married be it a man or a woman. They don't want to see any other situation; happily married is the situation. People in Thiani do not want to see a situation where there is President, a Prime Minister or a Vice Minister who is not married.

Mr. Chairman, another qualification that is in the constituency report.

Hon. Delegate Joel Sang: There is a point of order here. Number 14 please can you raise your point of order.

Hon. Delegate Muketha Thimangu: Nimalize kwanza basi.

Hon. Delegate Sylvester Bifwoli: Point of order. I want to know what measure we shall use to know whether somebody is happily married.

Hon. Delegate Muketha Thimangu: I will explain to you, the community will know. Mr. Chairman, they also wanted that another qualification for a person to be a President, a Vice President or a Prime Minister he or she should be a Christian or a Muslim who worships the living God. Mr. Chairman, they said that just like the dream group which was headed by a man who did not pray to the living God did not take off and this was because this man valued animals and other things more than human beings. So, Mr. Chairman, we would like to see a President or a Prime Minister who prays to the living God.

Another thing Mr. Chairman is the duties of a Vice President. Mr. Chairman, the Vice President has no duties to do. These powers should be divided between the Vice President and the Prime Minister so that the position also looks colourful. That was my position Mr. Chairman.

Hon. Delegate Joel Sang: Thank you very much Honourable Delegate. May I ask the Honourable Delegates, we shall break at twelve today to allow the Muslims to go and pray. It is time for tea, do we continue or go for tea?

Honourable Delegates: Carry on.

Hon. Delegate Joel Sang: Now that we want to carry on, I just wanted to make sure that I am not infringing on your rights to take tea but now that you have agreed we will carry on. Thank you very much.

Interjection: Point of order.

Hon. Delegate Joel Sang: There is a point of order from 259.

Hon. Delegate Salah Maalim Ali: I am Councillor Salah Maalim Ali a District Delegate from Mandera. With the permission of the Chair, I want to ask whether it is in good faith for the Delegates to be ---- (inaudible) Honourable Richard Leaky who lost both his legs in the service to this country as somebody who did not believe in God and he is a well known atheist but I think it is in bad faith that he mentions him here and that he did not succeed in what he was doing. He has done a recommendable job for this country. Thank you.

Hon. Delegate Wilfred Ole Kina: Order! I would like to beseech Honourable Delegates to stop imputing any improper language. Let us discuss the Constitution without offending any part of this Conference. Let us get in this Section somebody from the Trade Unions.

Hon. Delegates: Point of order.

Hon. Delegate Joel Sang: 304.

Hon. Delegate: Point of order.

Hon. Delegate Wilfred Ole Kina: Overruled.

Hon. Delegate Hezekiah Waithanje Minjire: Honourable Chair, my number is 304 and my names are Hezekiah Waithanje Minjire representing ----- My contribution Bwana Chairman.... I was a Trade Unionist.

Hon. Delegate Wilfred Ole Kina: Honourable Delegate, we said(inaudible), if you are not....

Hon. Delegate Waithanje Minjire: Mr. Chairman I have never talked since I came here. I have been raising my

Hon. Delegate Wilfred Ole Kina: So many people have not talked.....(inaudible). Please sit down. Shall we continue or go for tea?

Honourable Delegate: Tea.

Hon. Delegate Wilfred Ole Kina: Let's adjourn for tea.

The meeting resumed after tea at 12.00 p.m.

Hon. Delegate Wilfred Ole Kina: Let us settle for the other session. Under regulation 23, Hon Delegate Oduor Ong'wen would like to make a statement which would be followed immediately by one from also Hon. Koigi Wamwere under the same Section. So Hon. Ong'wen, please make your statement. Please let's go on.

Hon. Delegate Oduor Ong'wen: Thank you, Hon. Chairman. Hon. Delegates, my name is Oduor Ong'wen, I am going to make this statement for and on behalf of a number of Delegates. This statement is made under Regulation 23 Sub-Regulation (1) of the Constitution of Kenya Review Regulations 203 on a matter of urgent public interest and arising from a personal statement made by the Hon. Delegate Francis ole Kaparo, Speaker of the National Assembly of the Republic of Kenya, on behalf of himself and Delegates who are members of the National

Assembly, on Thursday May the 15th 2003. We do appreciate and support the sentiments of Hon. Kaparo, but we have a few observations to make. In the statements, the Hon. Kaparo averged explicitly and implicitly.

1. That there is a corporate conspiracy on the part of other Delegates to isolate, vilify and ridicule Delegates from the National Assembly.
2. That other categories of Delegates have pre-conceived agenda and positions that are fundamentally at variance with those of National Assembly Delegates, and which leaves other categories of Delegates are hell-bent on forcing down the throats of the Delegates from the National Assembly.
3. That the Commissioner of Kenya Review Commission Members are keen to defend certain proposals elucidated in the report and Draft Bills.

Hon. Chairman, the Speaker of the National Assembly is an Honorable man. We do not wish at any chance to cast aspersions on his integrity. We therefore want to believe that his statement was informed by material facts, as opposed to anecdotal inference and conjecture. Hon. Chairman, our Members of Parliament are part and parcel of us or so we always thought. Mr. Chairman, this is why a number of MPs sitting in various committees, including the Steering Committee and Technical Working Groups, are sitting there as representatives of categories of Delegates other than Parliamentarians. Similarly Mr. Chairman, Members of Parliament have been invited and have actively participated in many informal consultations that various categories of Delegates including those from Districts, Women's Organizations, the Civil Society and Persons of Disabilities have organized.

I want to affirm that we recognize that Members of the National Assembly are here as Delegates in their own rights, so are other Delegates. But we expect too, as people's representatives, given the electoral mandate during the last year's elections, the Members of the National Assembly are in a better position to appreciate that this Conference is not about contest and winning, but rather a unique opportunity for Kenyans of diverse political, social, religious and ideological persuasions to be able to forge a consensus on how we relate with one another as members of

one nation. On how we manage our resources and how we can collectively benefit from the richness of our diversity.

Mr. Chairman, the Hon. Speaker of the National Assembly averged that the Delegates from Parliament have no agenda, hidden or otherwise, we believe him. We wish to state that our understanding is that there is only one agenda, and that agenda is not hidden. It is to range near this country politically and socially for the benefit of posterity. From that agenda Mr. Chairman, we cannot abscond. We therefore invite all categories of Delegates, to embrace this and cease reading conspiracy in healthy divergence of opinion. We only present daily interest of Kenyans in this Conference and our mandate here is not to overrun the proposals the made by Kenyans through personal representations and tens of thousands of memorandums that they did present when the Commission towards the nation.

We are therefore appealing, that we all put behind us our personal and sectional interests and be faithful to the mandate that Kenyans have given us as a Conference and not as compartmentalization of various categories of Delegates. I hasten to add Mr. Chairman, that the various categories in which we are compartmentalized were convenience of making sure that no section of Kenyan is left out in this Conference. It was not supposed to build walls around us and to divide us and to create boundaries of contest. We therefore invite Hon. Delegates from the National Assembly, to join us, work with us, and direct their enthusiasm, interest and gusto towards national good. Thank you Mr. Chairman.

Hon. Delegate Wilfred ole Kina: Thank you very much. Hon. Koigi Wamwere.

Hon. Delegate Koigi Wamwere: My name is Koigi Wamwere, Delegate number 204. Hon. Chair, because a motion I tried to bring to the Conference has been misunderstood and demonized by some Delegates and members of the Press, I wish to make a personal statement to explain its intention and necessity. Nations don't write Constitutions every year, decade, jubilee or century. In the life of any nation, Constitution-writing is the most important pre-occupation of its people. I am therefore very privileged to be part of this Constitutional Conference, that is gathered here to write a new Constitution for Kenya.

As a Delegate however, I must have a voice that I now feel stifled through the Steering Committee's bad refusal to sanction my Motion for debate. Worse, I feel defiled by all manner of allegations as to why I brought that Motion. Chairman Ghai says, my Motion has been rejected because my prayers are beyond what the constitutional Conference is allowed to discuss. I disagree. The Conference may not have the power to solve the problems or solutions my Motion seeks, but its freedom to debate any issue that might help it to write the best possible Constitution for this country, I believe is limitless. There is no way this Conference can be mandated to write a new Constitution and be denied the freedom to discuss any issue. It therefore, makes me wonder how, out of the 13 Motions that have so far been tabled before the Steering Committee, only one that of Hon. Mirugi Kariuki, has come for debate. This, to me, is dictatorship, and especially after President Kibaki, promised to do everything in his regime's power, to assist the process. Thwarting the debate on my Motion, is in my view, an attempt to avoid the issues raised therein, a contradiction of the government's positive in spirit, and putting a gag in my mouth.

The only reason why we are writing a new Constitution, is because since independence, gradually with the current Constitution, we have been subjected to a ruthless dictatorship. Majority of our people have been hauled into a dark pit of poverty, and our ethnic communities have been turned into enemies of one another. Now we need a new Constitution to save us. But only with democracy with the Constitutional Conference and the new Constitution as we write save us from the unholy trinity of dictatorship, poverty and negative ethnicity. Therefore, I pray, that this Conference conforms itself, into the freest possible assembly in the Republic, where all Delegates feel free and are allowed unhindered opportunity, to express themselves on any topic of the new Constitution, however unpalatable, without interruption, with unnecessary points of order, heckling and booing from fellow Delegates.

We are not gathered here to please one another with nice speeches, but to save our country from dictatorship and fear, with the most serious ideas that our minds can think.

- That those who claim there is not enough time for Delegates to express themselves, must remember that if, in America it took from 14th May to 17th September 1797, for 42 Delegates to write a new Constitution, it must take 629 Kenyan Delegates from a more valid

background, more than one month to write a new Constitution for our country. To imagine we can write a truly democratic and people's constitution without enough time and debate, is to cheat ourselves and concoct the best recipe for post the new Constitution disaster.

- That this Conference will not create democracy by turning a blind eye to basic democratic principles and it will not safeguard the rule of just law, by defending passive legalities and condoning those that are going on.
- That since there can be no democracy without the principle of one man, one person-one vote, equal presentation must be entrenched in the new Constitution.
- That it is hypocritical for the constitutional Conference to preach democratic change, in the new Constitution when its composition does not reflect equal representation. If charity begins at home, then the journey to democracy must begin right here, not elsewhere.
- That the imbalance that now exists in this Conference, allowing KANU, a minority party to have a majority of Commissioners and Delegates, occupy all the three Vice Chairs of the Steering Committee and control the tenure direction of the Conference, must be corrected to negate the undesirable results of past and Constitutional and undemocratic jerry mandarin of Districts and Constituencies and reflect the political equation outside or this Conference, will end up writing a Constitution for KANU, rather than a Constitution for Kenya.

Hon. Delegates: *Inaudible noise.*

Hon. Delegate Wilfred ole Kina: Order, order please, we are saying, the Hon. Delegate is issuing his statement under Regulation. Let's give him time please.

Hon. Delegates: *Inaudible noise.*

Hon. Delegate Koigi Wamwere: That to lend legitimacy to the Constitutional Review Process, the inexcusable and intolerable injustice of giving Nairobi a whole Province with three million people and 725,000 registered voters same three Delegates with Districts that have a mere 14,000

registered voters be corrected immediately by allowing the city and other under-represented areas to send more Delegates to this Conference while its deliberations continue.

Hon. Delegates: *Inaudible noise.*

Hon. Delegate Koigi Wamwere: We may ignore this call, but the injustice will remain a permanent and bleeding scar, on the new Constitution.

That the new Constitution, must be written in the spirit and atmosphere of national brotherhood and sisterhood. A new constitution will never be democratic if it is written in the current spirit and atmosphere of ethnic suspicion, caucusing, witch hunting and demonizing, to give Kenyans democracy, freedom, food, unity and peace, we must devise a Constitution for all Kenyans. But to write a Constitution for Kenya, we must stop to think, talk and act exclusively as Kikuyus, Luos, Luhyas and Somalis and others.

Hon. Delegates: *Inaudible noise*

Hon. Delegate Wilfred ole Kina: Order, order.

Here we must think and talk as Kenyans or perish. Any assent, by any group of Delegates to write a Constitution for ethnic minorities or ethnic majorities is bound to fail.

Hon. Delegate Wilfred ole Kina: Order Delegates, order, order.

Hon. Delegate Koigi Wamwere: Kenya will never have a Constitution whose aim is to impose either majority or minority tyranny upon them.

Hon. Delegates: *Inaudible noise.*

Hon. Delegate Wilfred ole Kina: Order, order the Delegate is just finishing his –

Hon. Delegates: *Inaudible noise.*

Hon. Delegate Koigi Wamwere: The new Constitution must free us all by equalizing and uniting our communities under the umbrella of one Kenyan citizenship, guaranteeing all our poor people the right to food, clothing and shelter and creating for us a national culture that will make it possible for us to live, work and die side by side as brothers and sisters.

Finally, Mr. Chairman, when the representatives of the people, gathered in this Constitutional Conference, finish writing the new Constitution, the people themselves must have a love to say in a mandatory referendum through which they will either accept or reject the new Constitution. The Constitutional Conference, cannot be democratic and usurp the right from the people. In this exercise, the people must be the final judge, this is all I meant to say with my Motion. Thank you.

Hon. Delegates: *Inaudible noise.*

Hon. Delegate Wilfred ole Kina: Order, order Hon. Delegates, order, order. Let us respect one another. It is the right of a Delegate to make his statement. Again, it is the right of the Conference, --

Hon. Delegates: *Inaudible noise.*

Hon. Delegate Wilfred ole Kina: Let us listen, order, order, it is the right of the Conference – order, Delegates, we have rules that we are abiding by. I give, point of order number 15.

Hon. Delegates: *Inaudible noise.*

Hon. Delegate Wilfred ole Kina: However, to guide you, we are not going to debate on the statement.

Hon. Delegate Adan Billow: Thank you Mr. Chairman, I rise on a point of order Mr. Chairman --

Hon. Delegate Wilfred ole Kina: Delegate number 42, I may have to withdraw you from the Chamber. Please can you allow the Delegate who is on a point of order to speak?

Hon. Delegate: Yes.

Hon. Delegate Adan Billow: Mr. Chairman, I rise on a point and wish to ask, is it in order for a Member of this Conference, to stand on a point of order and to start a debate to literally move his Motion, regarding the District that was rejected by the Steering Council last week, is that in order?

And is it also in order for the Chairman and he is the Chairman of the National Conference to deny Members of this Conference points of orders when this is validly allowed and it is there in the rules that we can stand at any time and demand a point of order. Why are we allowing a Member, under the pretext of making a statement, to stand there to insult the intelligence of this Conference? Is that in order? May I request that the Chairman of this session since it started yesterday, has failed miserably in his work and he must resign.

Clapping

Hon. Delegate Wilfred ole Kina: Point of procedure, 185.

Hon. Delegate Abdi Sasura: Mr. Chairman, I have always wondered why some previous governments were detaining people, but I think now I am getting to understand why.

Hon. Delegates: Shouting and clapping

Hon. Delegate Abdi Sasura: Mr. Chairman, I am standing to speak an interpretation by the Chair, of rule number 38. Rule number 38, allows Speakers on the floor not to be interrupted except on a – 38(a) it says, “a Speaker can be interrupted by another Delegate by raising a point of order” and Mr. Chairman, we want your interpretation because you are allowing us not to interrupt Speakers who are converting this Conference into a political platform.

Clapping

Hon. Delegate Moses Wetangula: Point of order,

Hon. Delegate Wilfred ole Kina: Point of order.

Hon. Delegate Moses Wetangula: Thank you Mr. Chairman. The Chairman, the rules of this Conference allow any Member to rise on a point of order as long as they have a point to make. I have noticed Mr. Chairman, that you the Chairman of today, since yesterday, has taken on intimidating Delegates. When a Member stands on a point of order, you have absolutely no right, to threaten that you will withdraw him from the Chamber, because it is their rights to ventilate their views, to comment on what is going on and that is what we came here for. Nobody is here to participate passively and watch the proceedings from the periphery. This Conference can decide Mr. Chairman, to move a Motion to pass that vote of no confidence in you if you continue intimidating Members the way you have been doing. Thank you.

Hon. Delegates: *Inaudible noise*

Hon. Delegate Wilfred ole Kina: Thank you very much. I would like to impress upon the Conference to understand that when you are here, that –

Interruption

Hon. Delegate Wilfred ole Kina: Yes, point of order 36.

Hon. Delegate Seif Kajembe: Mr. Chairman, we have come here for these deliberations and right away when we came to this Conference, we thought the deliberations will be democratic. Now, it appears deliberations are not democratic and they are not done as per laid down procedures and this starts right from the Chair. I think that is very bad. This is what we are saying when we talk of balances and checks to the Executive, then we need balances and checks right at that table there. So, Mr. Chairman, Hon. Speaker was not making his own statement, he

was moving a Motion, and you continued allowing him as if you knew what Hon. Wamwere was talking about.

Clapping and laughter

Hon. Delegate Seif Kajembe: So, this Mr. Chairman should not happen in this Conference. Everybody is aware of the deliberations and rules. Thank you very much.

Hon. Delegates: *Inaudible noise*

Hon. Delegate Wilfred ole Kina: Hon. Delegates we have to move on.

Hon. Delegates: No.

Hon. Delegate Wilfred ole Kina: Okay, point of order 424.

Hon. Delegate Thomas Aburi: Mr. Chairman, I rise on a point of order under Section 23(1) and (2). It says, with permission of the Chairperson, a Delegate may, make a statement on any matter of urgent public importance on the Conference, functions or explain a matter of personal nature. That is where I am most concerned, at the time appointed, but no debate may arise on personal statement. What Hon. Koigi is doing, he has aroused a debate.

Number two, as the Delegates make comments, we, the other Delegates may make comments on any statement other than personal – (inaudible) for a period of proceeding 10 minutes, you allowed Koigi more than 10 minutes. What I am saying is this, the Chair must be very frank, we in the Steering Committee, once we have said no, that a Motion is not admissible, it should not be brought to the floor. That is what we stand for. Thank you.

Clapping

Hon. Delegate Wilfred ole Kina: Information.

Hon. Delegate Kellan Wavomba: Hon. Chairman, my names are Kellan Wavomba number 390. I raise on a point of information to let Hon. Koigi know that we are not here on our own, we were sent by the people, we are not here for a time, we are here for Kenyans and that we are not here representing any party and if he has a problem with a single party, he should not tell it to us here. Secondly, Hon. Chairman, we are not here as men and women, I also want to let him know that we are dignified men and women, husbands and wives of people and so, he has to respect us, we are not going to be abused and insulted here by one Member. Thank you.

Hon. Delegate Wilfred ole Kina: Thank you very much. Hon. Delegates, I will now, wait a minute, I would like to allow the Chair of the Conference to make a statement.

Hon. Delegates: *Inaudible noise*

Prof. Yash Pal Ghai: Hon. Delegates, I would like to propose that we proceed with our discussions on the Executive. If some people are trying to waste our time, we should not play into their hands. I think most Delegates want to carry on with the proceedings, and I beseege you let us turn to the task at hand and let us note those who want to distract us succeed in doing so. So please let us resume our discussions.

Clapping

Hon. Delegate Wilfred ole Kina: We will now like to proceed please. I now call upon a District Delegate from this row. That row. 304.

Hon. Delegate Hezekiah Waithanje Minjire: Mr. Chairman, my name is Hezekiah Waithanje Minjire, Delegate number 304. One Bwana Chairman, let me say I am for the Prime Minister's post. I would also like to talk about the powers of the President and I would like to start Bwana Chairman from 1963 to 2003. We are saying we are very happy and I am also happy with the present President but if I were to put you back to those other years, is that when we started in 1963, the President we had was a very good one in the first few years.

Mr. Chairman, I am very happy because Delegates yesterday and today have been very sober, it was expected to be fireworks when it came to the post of the President and Executive. I would want to thank the Delegates for having been very sober. Why I am saying this Mr. Chairman, is that the two issues that were being raised, it is the President's age, that is one. There was somebody who was on it. The other one was on the Prime Minister, obviously they were talking about Mr. Odinga, let me be frank. They were talking about these things, so it was Kikuyu versus the Luos. The issues are not like that, I am from Mt. Kenya region as we are being called, even more so, I come from Othaya, and me I am for Kenya and not for a particular person.

Clapping

Hon. Delegate Hezekiah Waithanje Minjire: Bwana Chairman before I move on, here we have what we call the powers, we have three people we need really to be coordinated. One is the President's power, the second one is the Vice President, the third one is the Prime Minister. Those three, need to be given some powers. The Vice President's as we are told, is a personal Assistant to the President. What is he going to assist, if the President of this place remains in Kenya, in Kenya, in Kenya? Suppose we have a President like the one we had, going all around, that is only when the Vice President gets a job, and when he gets a job, somebody somewhere will say, you are a President of new before me and things are going to wrong. This one we witnessed.

The other issue Bwana Chairman, I wanted to talk about, is about a Cabinet. I think we need not really debate on this. A Cabinet Minister, was lifted like any other Member of Parliament, but we know very well that when you are a Cabinet Minister, your interest number one, is your constituency, and you have more power than the person who would want to out you or to

challenge you next time. So, I would suggest that Cabinet Ministers should come out from professionals, professionals who have no interest.

Clapping

Hon. Delegate Hezekiah Waithanje Minjire: If I may quote a case, and because I don't want to mention somebody, but the truth is that for those who are nominated like we know some areas, a nominated Member of Parliament or a nominated Councillor, once you have somebody nominated because they were so powerful. The person who actually is in your Constituency he knows very clearly next time, I will not be a Member of Parliament, because this nominated person is so powerful and we have cases here.

Members of Parliament, who are nominated, are today, in this Parliament. I would say for Cabinet Ministers and even this proportional risks, if you are going to have these guys, let them not vie for, I think we should put a clause, that they don't vie for any post, maybe in the next ten years, because they will go and destabilize the work of that Member of Parliament, in their respective places.

Hon. Delegate Wilfred ole Kina: I think your time is up.

Hon. Delegate Hezekiah Waithanje Minjire: Finally Mr. Chairman, thank you very much, I will talk about, when we finish this Executive, and we finish the devolution, I assure the Delegates of the Conference.

Clapping

If I may quote a case, and because I do not want to mention somebody, but the truth is that, for those who are nominated like we know in some areas, a nominated Member of Parliament, or a nominated councillor is nominated because he or she is powerful. The person who is actually in your constituency knows that very clearly. Next time he/she will not be a Member of Parliament because this nominated person is so powerful and we have such cases here, Members of Parliament who were nominees in the last parliament and are now elected members of

parliament. I would say for the Cabinet Ministers and even those proportional lists, if you are going to have these guys, let them not vie for any seats. I think we should put a clause that they should not vie for any post may be for the next 10 years. This is because they will go and destabilize the work of their members of parliament in their respective constituencies.

Interjection

Hon. Delegate Wilfred Ole Kina: I think your time is up.

Hon. Delegate Wilfred Ole Kina: From the same row, we are going to have a Parliamentary Delegate. Please. Delegate number 99.

Hon. Delegate Mganga Boniface: Thank you very much, Mr. Chairman. My name is Yakoyo Midiwo, MP Gem, Delegate-- thank you. I just want to make a few observations, and I think this is to the benefit of the whole conference and particularly to the benefit of the whole conference and particularly to the Steering Committee, when we discuss some of these topics. Since yesterday, we have been talking about the powers of the Executive and I want to particularly talk about the position of the ministers and that of the Prime Minister. We have spent quite a good deal of time talking about how the ministers should not be Members of Parliament and powers of the Prime Minister contradicting or taking from the powers of the President. And I just want to make a clarification, and I wish, had this been done, or if this is done in every topic we are going to discuss, it will save us a lot of time. For example, its is very clear that the ministers are the only link between the Parliament and the Executive. We are saying that if you choose them from without the Parliament, how is Parliament going to communicate or check or know what the Executive is doing?

We are saying this because when the Commissioners went out, they must have asked some questions, they must have put a question out there to make the people say they want a Prime Minister and I think it would have to do with the behaviour of the President and the Ministers that he chooses. We are saying for example, that if I as a Parliamentarian, want to know something about the business -----(inaudible) today in Budalangi, there should be a minister available for me to ask a question in Parliament; that is not so under the current system and we

are saying, make these ministers answerable to a Prime Minister - who Parliament can ask questions on daily basis. The Parliament never has a way of asking the President anything because he is never in Parliament save for once or twice a year. So we are saying, if the Commissioners had said yesterday, had defined yesterday the role of a minister and the role of a Prime Minister, do not spend as much time as you are spending. And it is in all other debates that we have had here because I believe that the ministers have a very specific role and their role, I think is limited to the link between Parliament and the Executive.

I also want to comment on the 15 ministries. I do not think our economy is large enough to accommodate more than that. I think we should define what our ministries are, we should say if they are ten or fifteen, we should put in the constitution like it is done anywhere else, that these are the number of ministries and this and that fall under which ministry. A case in point is where somebody decides that the AIDS funds those under OP. We know so many people are arguing that the AIDS fund should be under the Ministry of Health, but somebody is seeing that there is money to be eaten, so it has to fall under OP. I am saying that leave it, put it in the constitution the number of, the definition of ministries and the number specifically. Thank you very much.

Hon. Delegate Wilfred Ole Kina: Thank you very much. I am forced to adjourn at this moment because the Muslims have to go and pray and they were supposed to have gone at 12.00 p.m. so—

Interjection: A point of order!

Hon. Delegate Samson Nyang'au Okioma: Thank you, Mr. Chairman. I rise on a point of order in view of the part that we did not seem to have sufficient time for discussion. I have nothing against Muslims, but I do believe that if they left quietly for prayers and as they will also continue to pray for us, we can continue without lack of quorum. I suggest we do that, because as I stand here, since we started this conference, expect for a point of order or two, I have not had time to speak, and if we keep losing time like this considering that we have a time limit of 30 days that we had set, we may not have sufficient time to deliberate on these issues. I suggest therefore, that the Muslims can go and pray, and also pray for us as we proceed with the Conference. Thank you.

Hon. Delegate Wilfred Ole Kina: I think we shall just have to adjourn and be back at exactly 2.00 p.m. The session begins at exactly 2.00 p.m, so please be back at exactly 2.00 p.m. Thank you.

Lunch Break

Hon. Delegate Wilfred Ole Kina: I would now like to request Honourable Ng'eny who was here in the morning and who is present now to Co-chair with me to take over. Thank you.

Hon. Delegate S. Arap Ng'eny: Now, Honourable Delegates we will proceed and I must apologize for the gap I created by not being here in the morning, I hope I will be able to finish up in the course of the deliberations. May I make one plea please? On our second day like this, when we are doing general debate, there is a likelihood that so many areas have been covered by those who have already spoken and the danger of being repetitive is always there. I would therefore plead with the Delegates that, where you are supporting what has already been said, simply say that you support the idea which was raised by Honourable so and so. Do not go further to add anything so that we can save time for more delegates to express their views. I would appreciate that very much, and you will also be saving the embarrassment of having to tell you that you are being repetitive. Thank you very much. I am advised that we had reached this row, near the entrance; I am now looking for a parliamentarian in this row who has not spoken at all, at any time. Number 20.

Oh sorry, Honourable Delegates, you are on this column, I will come there later, just hold on. The column near the entrance, number 209.

Interjection: 209 has spoken twice.

Hon. Delegate S. Arap Ng'eny: Mheshimiwa, I am informed that you have already spoken twice.

Interjection

Hon. Delegate Moses Masika Wetangula: Mr. Chairman the rule says that you cannot speak twice on the same subject. I have not spoken on this subject! That is what the rule says.

Noise from Honourable Delegates

Honourable delegates its true, the rules were very clear Mr. Chairman, we have to stick by them.

Hon. Delegate S. Arap Ng'eny: I think the consensus of the conference was that -- for the time being, we will try and limit those who have already had a chance in other Chapters.

Hon. Delegate Moses Masika Wetangula: Mr. Chairman, I have not spoken on this subject, I am entitled to speak!

Hon. Delegate S. Arap Ng'eny: All right, can you go ahead?

Hon. Delegate Moses Masika Wetangula: Thank you.

Interjection

Hon. Delegate Martin Shikuku: Point of order! Mr. Chairman, we did agree and some of us sit here and listen to everyone though we do not speak. We agreed that we must give preference to those who have never spoken at all. And we better keep to that rule if whenever-- I have not spoken on many issues, I am just sitting on my chair to give others a chance, we cannot allow some--

Interjection

Hon. Delegate S. Arap Ng'eny: Your point is understood Mr. Shikuku, thank you very much—

Interjection

Hon. Delegate Martin Shikuku: Can we now follow that rule?

Hon. Delegate S. Arap Ng'eny: Honourable Wetangula, I think you can sense to the mood of the house, number 216 please. I have to request you to hold on until another round comes.

Hon. Delegate Kipkalya Kones: Mr. Chairman, my names are Kipkalya Kones, Delegate number 216. Mr. Chairman, I would like to comment on the Executive Chapter, and particularly Mr. Chairman--, the problem with this Chapter is the way it was drafted, it was drafted in a manner that does not actually flow. You find that certain Chapters come after another Chapter where you think they should have actually come before.

Mr. Chairman, on the issue of the authority of the President, I have seen that the President has been given the authority as the Head of State, Commander in Chief of the Defence forces, the Chairperson of the National Security Council, and the Chairperson of the Defence Council. Mr. Chairman, I suppose the President in this case, is therefore going to appoint certain ministers who will head these departments and I will come back later to that when I get to that topic. On the qualifications of the President, we are told that the President has to be 35 years of age and that he ceases to be the President when he attains 70 years. Mr. Chairman, I feel that there should be no upper limitations of the age of the President. If somebody is still enjoying support and popularity from the people and he is still making sense, and is sane, there should be no reason why they should be stopped from running for Presidency. So, I think this upper age limit is totally unnecessary.

Mr. Chairman, when we go to the percentages of the President's votes, or rather how he should garner the votes, Mr. Chairman, I think, in addition to the 50% rule, we should have that President garnering 20% of the votes in at least five provinces and not reduced to 4 provinces. I think there is a good merit on that because we have had 25% in at least 5 provinces. If we are dropping to 20, let us maintain the 5 provinces.

Mr. Chairman, when we go to the issue of the appointment of the Prime Minister, I do not have any quarrel whatsoever with the position of the Prime Minister. I think we need a Prime Minister, but certainly Mr. Chairman, we should define how we arrive at that Prime Minister.

In Article 171, we are told that the President proposes to the Speaker, a name of Prime Minister who has to be the leader of the party that has a majority in Parliament or failure, a Member or a leader of a political party from the minorities' party in Parliament. We are not qualifying that accordingly so that it creates some confusion. Mr. Chairman, there is going to be a possibility that, that member, one does not have to be a Member of Parliament, it doesn't clarify in here, there is nowhere we are shown that the Prime Minister must be a Member of Parliament. Therefore, anybody can come from outside or can be appointed from outside to be the Prime Minister as far as this clause is concerned.

On the subject of the Prime Minister coming from a minority party, it could be that that minority party could be, for example to day in our country, that minority party could be KANU, and the former President of this nation is the Leader of that party. That means he would be qualified to be the Prime Minister in this scenario. So, Mr. Chairman, I think we are being ambiguous in the way we are drafting this text.

Mr. Chairman, when you go further into Article 170, functions of the Prime Minister. The functions of the Prime Minister are that, he comes the leader of Government and that he presides over the Cabinet meetings. This now brings me back to what I said about the President being the Head of State and also in charge of the Defence Council. The Prime Minister would have certain ministers, so the President will have certain ministers appointed to look after those portfolios. And yet, that same President will not be chairing the Cabinet meetings. These ministers will be responsible and answerable to the Prime Minister, whereas in fact their portfolios are those given by the President. Mr. Chairman, I fail to understand how this will work. I would see a situation where probably we need a Prime Minister, but a Prime Minister who will be coordinating the functions of ministries. But, to have a President elected by the people throughout the Republic, a Vice President who has been subjected to election throughout the Republic, and he is not the Chairman of the Cabinet, this will bring a lot of problems.

In my opinion Mr. Chairman, I could see a smooth running of the government, where we have the Prime Minister who will be the Head of Government and also the leader of Government Business, but the President should be able to preside over Cabinet meetings. There is no way a

President will be accountable to the Republic of this country, if that President is not chairing the Cabinet. Because the highest organ of nation making is the Cabinet and you cannot subject the President of this country to be accountable to the nation, if he is not chairing the highest organ of decision making on the land. Mr. Chairman, I think this is a big anomaly whereas, I support the position of the Prime Minister, I think, the President should be able to chair Cabinet meetings.

Mr. Chairman, the last point is, for checks and balances, let us have members of Cabinet appointed from amongst Members of Parliament because we already have technocrats who will be heading PSS, as accounting officers. So, for checks and balances, to give it a political angle, we need ministers appointed from amongst Members of Parliament. Thank you Mr. Chairman.

Hon. Delegate S. Arap Ng'eny: Thank you, your turn is up. One on the same row, I want to recognize a District Delegate. The same same row, 340.

Hon. Delegate David K. Kuto: Thank you, Bwana Chairman. My names are David Kuto, Delegate number 340, representing Keiyo. First, I should say thank you Bwana Chairman for giving me this opportunity to express my views on this Chapter. It has been a long time since this Conference started, but like other Delegates, I have been raising my hand but this time Bwana Chairman, I should support the sharing of power between the President and the Prime Minister because as the veterans of Lancaster told us the other time, there was misuse of power from one office and that is why we are here. The Constitution was changed several times to suit that individual in that office. So, if we create the post of a Prime Minister, it does not mean that person who also occupies that would be perfect but to be checks and balances, so I support the creation of the Prime Minister's office.

Secondly, Bwana Chairman, on the qualification of the President, I support the fact that the President should be at least 35 years, but the age limit of 70, I see it does not apply because if you say one stands as a President below the age of 70, that means if I stand for presidency at the age of 66, it means when I am 70, I will be out of the office and the Constitution also permits that you serve for two terms of five years each. So, what does it mean? It means, you will serve for 4 years and you will be out. There will be elections most of the times. So, unless we say, you do not stand for presidency if you are at the age of 66, let us say if you stand at 65, then you

qualify and you will serve one term of five years. So, I think this other limits, we should see if it really works, I think it is a bit ambiguous.

Bwana Chairman, on Article 171(6), it says that, if the President nominates one to be a Prime Minister and parliament does not approve within 30 days, the President dissolves Parliament. I wonder if elections were done last year and Parliament does not approve the appointment of a Prime Minister, then the President dissolves Parliament and will go for elections again! This will be a very expensive exercise. Supposing we go for elections and again Parliament does not approve the position of a Prime Minister, it means elections will be continuous. So, I think we should see what would happen with this clause. Bwana Chairman, those are the points I wanted to raise. Thank you.

Hon. Delegate S. Arap Ng'eny: Thank you. I come to the next row, and I am recognizing a District Delegate 274.

Hon. Delegate Paul Victor Gituma: Thank you very much, Honourable Chairperson. My name is Victor Gituma from Meru Central District. I would like to begin by thanking and congratulating the Commission and the Chairman for the job well done including this on Chapter 8 altogether. I would particularly like to say that the language used in the entire Constitution and this Chapter is easy to read and understand. I am sure Mr. Chairman, Wanjiku will laugh all the way to the market and if she does, Kenyans will laugh with her. The language of the 1963 Constitution, as you know Mr. Chairman, was designed to mystify and confuse the Kenyans and it is very difficult to follow, even a lawyer would have trouble with that. No wonder Mr. Chairman that Constitution was amended 38 times.

In my view, the job, which we are doing here generally speaking, is a trust for the Kenyan people. I think you are lucky to be Delegates and because all the diversity of the Kenya people are sitting here today, Mr. Chairman I do not agree with the people who said that this Constitution should be done by a group of people because, that would not be Kenyans. Here today, professors are here, simple people are here, city people are here, villagers are here, lawmakers are here clerics are here that is in my view Mr. Chairman, Kenyans. Speaking on the centrality of the people in this Constitution making, I would like Mr. Chairman to recall the of

Jefferson, who told his friends that both of us consider the people as our children and love them with parental affection, but you love them as infants, whom you are afraid to trust without nappies. I think two of the problems we have had with previous government, is that they treated people as infants, hence they did what they want, and the consequences are there for you to know. Mr. Chairman we should not repeat this mistake and coming to the debate particularly in Chapter 8, regarding the post of the Prime Minister, I support the post of the Prime Minister, because it is necessary and power must be devolved, but my problem is that there may be finally a conflict between the Prime Minister and the President and I have not seen any mechanism which are in place to resolve this conflict, if any. Is it the National Council? If the President was to ask the Prime Minister to give a report and fails to do so, what does he do? Does he go to the National Parliament and ask that they should have a vote of confidence? What happens if the two gentlemen or ladies quarrel?

That is something in my view, which should be looked into. There should be a person who is finally accountable to the people of Kenya, who are the electors, because they are sovereign and although they vote in Members of Parliament or the President the sovereignty resides with the people, and at no time should they not have this power to recall them. Mr. chairman I think the power should be devolved, but I think there should be somebody who finally takes responsibility and who can answer.

Finally, Mr. Chairman I would like to appeal to the Delegates here to listen to one another. I think we are having problems Mr. Chairman, because when someone says something which I do not want, when he is saying it, I am thinking what answer to give him. Mr. Chairman no one knows everything in this world. We learn from one another, if you go to a country like Tanzania Mr. Chairman and you know that very well, they ask you where do you come from? You say, "I am a Tanzanian from Iriga, I am a Tanzanian from Muruguru". Mr. Chairman the leadership of this country made sure that we were not Kenyans. That is why we are having these problems now. If you ask this gentleman or the other, where do you come from? He tells you, "I am a Meru", he does not say "I am a Kenyan first". That problem will be with us unless we learn to listen to one another, Mr. Chairman with patience and understanding and know that the first thing which you must do, is to dare to understand the other person first, before been understood. If we proceed in this way Mr. Chairman I think finally we shall have a consensus. But if we go

the way we are going, we will have problems and we will be blamed all of us here. Everybody will be blamed and Mr. Chairman that is my appeal.

Finally talking on the age of the President, I think somethings the human being know and others they do not know, one of the things you do not know is when you die and that is very good. So we should always give time, Mr. Chairman you know about 200 years ago, people used to die at 40 years, they were very old, but now may be in another 100 years or so, people will be living at 150. That one should be open ended and I support the previous speaker on that. Thank you very much Mr. Chairman.

Hon. Delegate S. Arap Ngeny: Thank you, still on the same raw for the Parliamentarian and you will excuse me because I had called number number 20, I intend to allow him to take this chance.

Hon. Delegate Lucas Chapkitony: Thank you very much Bwana Chairman for recognizing me, as a Delegate I feel...

Hon. Delegate S. Arap Ngeny: Introduce yourself please.

Hon. Delegate Lucas Chapkitony: I am Lucas Chepkitony, Delegate number 20. Thank you Bwana Chairman for giving me the opportunity, for the last three weeks have been trying to talk but have not been given that opportunity and I felt was marginalized. Being one of the Delegate representing 30,000 Kenyans, I think it is a privilege and if one does not speak, he will not be playing the role for which we were sent to do here. My view regarding the President and the Prime Minister, is that we should shade away some of the powers from the President as has been proposed by many Kenyans. As to whether we have the Prime Minister, the Vice President and Deputy Prime Minister, is an issue which I think we need to address, because already when you have a President and a Vice President and when the Vice President is not given a Cabinet portfolio, he feels idle. So when we have the President, we have the Vice President, we have the Prime Minister and the Deputy Prime Minister, if we do not give out the responsibilities and powers, if we do not allocate them properly some will feel idle, and we say an idle mind breeds evil. Although I do support in principle that we create the position of the Prime Minister, but as

for the Vice President, we should have a clear responsibility for the Vice President. For the Deputy Prime Minister we should also have a responsibility, otherwise he will also feel idle.

Regarding Article 156, which is qualification of the President, it says the President must not be an MP, and also the Vice President, I am thinking of a situation where, there several people standing for Presidency, and has his running mate who is also running for the Vice Presidency and when they lose elections they will not be politicians they will have lost being an MP and they will have lost becoming the President. But I think if we are going to allow them to run as MPs, I think we should hold general elections for President and Vice President separately from the parliamentary elections, if we are going to accommodate them to continue in their political careers. I have no problem with the age; I think we should maintain 70 years. When it comes to Article 157 (4) where it says the President will fix more than 50% of all votes cast in the election and the one who attains 20% in half of the Provinces. I have a problem there, I think we should maintain at least one Province above half; in this case it would be five Provinces.

The questions of the cabinet on Article 17(3a), I do not support the view that Minister should appointed from outside the Parliament. This is because, already we have the Permanent Secretaries being appointed, and Permanent Secretaries should be professionals and should be appointed to various Ministries based on their professionals qualification and when it comes to Ministers, they should be appointed from the Members of Parliament.

Well, Article 157 (2), where it says a poll shall be taken in each constituency for the election of a President, I think for each Constituency this should mean a poll should be taken in the whole country for the President and the Vice President. With those few remarks I say thank you for now Mr. Chairman.

Hon. Delegate S. Arap Ngeny: Thank you, I will come to the next column, I understand the column to the left of the entrance I have omitted, “these some of the results of not been here in the morning”. I will take care of you when I reach there, but I will proceed. I hear there are some people forgotten down here, let me look around, district Delegates please, I recognize number 311.

Hon. Delegate Fr. Gitonga Joachim: Thank you Mr. Chairman my name is Fr. Gitonga Delegate from Muranga, I am number 311. Mr. Chairman I would like to comment on three items on the Executive, but before I comment Mr. Chairman you will allow me to back my colleague who is the leader of the Central Province delegation, what he said yesterday, that we the people from Central Province, before we came here we had met twice, at Nyeri and at Embu, the Delegates from Mt. Kenya Region and we came here with one mind of supporting the Premiership and the Presidency as they are in this book. And we have no other mind and we did that because we realized we being about 14 political parties we crossed the Red Sea from Egypt on the 30th of December and now we are in the land of Canaan and we would like to be together and we would not like to go back to Egypt to eat onions. Thank you very much Mr. Chairman.

I would like Mr. Chairman to comment on the age. Many a time we are blamed by our young men that we are telling them you are future leaders when will they lead. Mr. Chairman I understand the future leaders are children from standard one up to the age of 25 years when they are leaving University, after that they are leaders. And I would say Mr. Chairman any young man or woman of 25 years, with a degree as required here, if one can convince 10 million voters that he can lead this country and be given votes, I do not know why we should not let him lead this country. If somebody is over 70, or 75 and I would like to honour one Honourable Delegate here Gitu wa Kahengeri, he is the only the freedom fighter I know who is in this hall. I would to recognize him and salute people of Thika for sending him here as a Delegate. If Gitu wa Kahengeri had money and convinced us has that he can lead this country, I do not see why we should deny him the right of leadership.

Mr. Chairman, I would like also to comment about the work of Vice President. Mr. Chairman I want to quote Julius Caesar of Rome he used to say, that he would prefer to be a President in a small village in the rural areas, than be the Vice President in Rome, because in Rome as a Vice President, he would get frustrations and humiliation and he would not do his work properly. Mr. Chairman we have been having about six Vice Presidents since we got independence. Hon. Jaramogi Oginga resigned because he was humiliated and frustrated, then came Murumbi also resigned due to frustrations, then came Moi, Moi persevered until the end, he got Presidency. Mr. Chairman, in his regime we saw several Vice Presidents, we saw Karanja, he was thrown out of the window. Then came Kibaki, he resigned before he was thrown out of the window, then

came Saitoti, so much frustrated, he was sent away, he was returned back, and we are told he will be returned if you can get enough plates of rice and so on.

So Mr. Chairman, I would hate to see Vice President been frustrated, so I would ask this Conference to put lines and clear rules what will be the duties of the Vice President, what will he be doing? Whom will he command? So that when he wakes up in the morning, he knows what he is going to do, but not wait for directions.

The last one I want to commend Mr. Chairman, is qualification of a President, it is said in this book that he must have 1000 registered voters to nominate him. Mr. Chairman, I would say we better do away with the registration of voters, this exercise is very expensive and corruptible. Corruptible in this way, we see the candidates who are not popular in their own places, they ferry voters from other areas, from rural areas, and they bring them in the urban area or from one constituency to another. They register them there, so that they can vote for them, now the question is, when you bring all the voters from outside and the others who are there you bribe, whom do you represent in that area? So I would suggest that we do away with registration and remain with ID, so that I can vote anywhere in Kenya, because some Kenyans you find in Lamu and that is the time of election, I should vote there, President is national, the MP is will elect there is going to the national seat, and the Councillor there if I elect him, will serve me at that time. People spend a lot of money moving from one place, going to their place where they registered. If we are Kenyans and we want to unite Kenya, let us remove this animal called registration of voters and be voting anywhere. We have been quoting America and UK and German, what do they do? Do they register themselves? Myself Mr. Chairman, in 1965 I was in Britain and I voted with passport which was bearing name British Subject and when I went to vote I was not asked to register anywhere, why should I be asked to register here in my country and this bars a lot of people. People who are in hospital, in prison, when the registration was going on, they will not vote, people who are in abroad they will not vote. So Mr. chairman I am appealing that we do away with registration of voters and remain with the ID. Again if you register yourself and you have no ID you cannot vote, why not ID alone.

Hon. Delegate S. Arap Ngeny: Your time is up.

Hon. Delegate Fr. Gitonga Joachim: Thank you Mr. Chairman.

Hon. Delegate S. Arap Ngeny: Parliamentarians please from the same column, any Parliamentarian from the same column, I will give number 15.

Hon. Delegate: Point of order.

Hon. Delegate S. Arap Ngeny: Honourable member I am intimating you have already spoken on some other Chapter. Yes if you have spoken please let us not repeat the same. Yes Mr. Billow Adan you have spoken.

Hon. Delegate Billow Adan: Mr. Chairman I spoke on a different Chapter.

Hon. Delegate S. Arap Ngeny: We have just ruled on it earlier on please, I will not come back to you.

Hon. Delegate: Point of order!

Hon. Delegate S. Arap Ngeny: No I do not need any information for now. I am moving to this row, Delegate number 185, Parliamentarian.

Hon. Delegate: You have spoken.

Hon. Delegate Sasura Abdi Tari: Mr. Chairman I have not spoken I was on a point of order, I think the Delegates should understand. I was on a point of order, and if I am in your record I will sit down. Mr. Chairman, I am sure you are not seeing my name there. I would like to go straight to my contribution Mr. Chairman by starting with section 150, my names are Abdi Tari Sasura, I am MP for Saku, I am Delegate number 185, and I want to begin by section 153 that says that the President shall not hold any public office elected or appointed within a political party. Mr. Chairman, this contradicts section 156(e), which at the same time says that the qualification for election for a President is that he has to be nominated by a registered political

party. So whether he holds an office or not, he still has allegiance to a specific party. There is a contradiction here Mr. Chairman.

Second Mr. Chairman we have been saying that powers vested in one person have always been abused but I think I have dictated a reason why Presidents have been abusing their offices, this is because in the older Constitution and even in the current Draft, we have said that the President is protected under section 162, that the president is protected from any criminal proceedings or any civil proceedings. Just because the President knows that no one will take him to court, he commits crimes whether it is criminal or civil. For example if the Nyayo Torture Chambers were sanctioned by any President and if the President was not above the law, any Kenyan will take that President to court. So he will not be able to misuse the powers. So I am suggesting Mr. Chairman, that this Draft should advocate that the Prime Minister and even the President should not be above the law. That is the only way they will respect the Constitution.

And section 174 on the dismissal of the Prime Minister, It is said that on a vote of no confidence passed by Parliament 50%, the president after the Prime Minister has been voted out shall dismiss the cabinet. Now if the vote of no confidence has been passed in the Prime Minister, why does the President dismiss this Cabinet in which he has appointed himself. On the issue of the President having a degree according to the Draft, I want the Draft to specify, like the earlier the President, he had been given so many ordinary degrees, University of Nairobi, the doctor of law etc. Now this Draft should be able to specify which degree, is it the honorary degrees, or it is the regular degrees, it should be very specific and a degree in what.

Section 152 (2) suggests that the President may appoint two Deputy Prime Ministers nominated by the Prime Minister, I think we should save the tax payers efforts. We should not be duplicating jobs here, the Prime Minister needs only one Deputy not two. And Mr. Chairman on the issue of the Prime Minister, I want to assure these Delegates that Kenya has been having Prime Ministers, not legally but by practice. We have had three governments since independence. We had the Kenyatta government, where we had a very powerful Minister in the cabinet who was like a Prime Minister, although it was not legal, under the Moi government we had a very powerful Minister who was like a Prime Minister although it was not legal. Now in this government we are likely to have a very powerful Minister also who is going to be like a

Prime Minister. So what we are doing essentially is just to legitimize something that has been there in practice. So people should not fear the creation of the post of a Prime Minister, that will solve the riddle of this business of kitchen cabinets, which is been floated around.

And Mr. Chairman section 171 (A) is talking about the Prime Minister been appointed from the leader of the majority political party or coalitional parties. I want to address this in the context of the existing party. For example as it were now, NARC is a registered political party. At the same time it is a coalition of parties. So if we say that the Prime Minister should be appointed from a political party, NARC qualifies, if you say the Prime Minister should be appointed from a coalition of parties, NARC qualifies now this Draft should be able to tell us who should be the Prime Minister. It should be either the majority political party or it should specifically be a coalition of parties, because NARC has got an advantage here now.

Lastly Mr. Chairman, the appointment of Cabinet Ministers this Draft generally is advocating the abolition of the business of nomination of Members of Parliament and Delegates have expressed concern that there should be no need for nomination. At the same time, this Draft is saying that Cabinet Minister will be appointed from outside Parliament. That essentially is nomination, so why would we say there should be no nominated MPs at the same time, then we shall say there would be nominated Ministers? So what we do, if we are going to nominate Cabinet Ministers let us sack all the PSs because they will just be serving as PSs. Otherwise there should be a political wing in the office; the Permanent Secretaries are technocrats, the Ministers should be appointed from within Parliament. Thank you Mr. Chairman.

Hon. Delegate S. Arap Ngeny: Thank you very much, I am still on the same column for a district Delegates please who are there, preferably a lady, if I can identify one. Which one? 431.

Hon. Delegate Rose Otieno: Thank you very much, Honourable Chairman and fellow Delegates. I have raised my hand for the last two weeks, but have been given a chance. Now I am not going to say much, I stand to support all what people have said about affirmative action, the post of Premier.

Hon. Delegate S. Arap Ngeny: Name.

Hon. Delegate Rose Otieno: Oh me! I am Rose Otieno Delegate number 431 from Bondo. I stand to support the post of Premier and all that has been said over presidency. But I urge my fellow Delegates, that let us work towards the progress of our nation. Let us not be ambushed to spoil our future, future of our children and the whole nation. Let us work together in peace, love and harmony. Thank you.

Hon. Delegate S. Arap Ngeny: Thank you very much I move now to the next column and I am looking for a parliamentary candidate 164.

Hon. Delegate Olweny Patrick Ayiecho: Thank you, Mr. Chairman. I may want to make just a few comments. First of all, I am very impressed with fellow colleagues here. My name is Ayiecho Olweny, the MP for Muhoroni, Delegate 164. I am very impressed with the performance here because, these people talk of night meetings, it seems we all attended one night meeting all of us here because we have the same ideas here when it comes to this document which belongs to all Kenyans. It doesn't belong to an individual, it doesn't belong to a particular tribe.

Anyway, as regards the sharing of powers, Mr. Chairman, and my fellow citizens, let me remind of a small story in the Bible. There was one person, one leader in the name of Pharaoh in Egypt who had all the powers. He was a dictator, he killed the Israelites until God decided "no, let me get my people out of this place". Now, that is the kind of thing we have had in this country, that kind of dictatorship, and I am happy Kenyans have seen it, God has talked to Kenyans. Now, turning around to sharing of the powers, we see it in the same Bible. I am a Christian okay, I am not a student of the Koran, I don't not know, there may be similar arrangements in the Koran, but God saw it fit that power must be shared. So God, the Father, had some powers, God, the Son, had some powers, the Holy Ghost also had some powers and the angels. So this is what we are trying to do here, the same thing that God did for us. Kenyans had not realized that until this time.

Now, Article 151 in the draft here, talks of a Prime Minister being a party leader, that is, the President should nominate a party leader in Parliament. If the popular party did not have its

party leader being elected to the Parliament, then we have a problem with this draft. I would suggest that the person to be nominated be from the popular party but not necessarily the party leader, because it can cause us a problem if the Chairman of that party did not make it to Parliament. We have had several such cases.

Then Article 171, (1) (a) is also a similar issue. Then I go to Article 151 (2) (a) (iii), where we are talking of number of Ministers. We are estimating the(Inaudible) in Kenya a restriction too early. Kenya is developing and there may be a time when we need more than 15 Ministers. I suggest that this be left open-ended so that the number be determined by Parliament itself as need arises. Because if we restrict it too much, we may come to a point where we have certain sectors that may need a Minister.

Now, 151 (2) (b), is also the same issue, that is, the Deputy Prime Ministers. I suggest also in 171 part 6, I mean the President must not be allowed to dissolve Parliament just because his henchman is not very popular in Parliament. Usually, most of the time, you find that the President comes up with a henchman but the experience is that these henchmen who turn out to be very powerful are not very popular with the people. So we should not give that room to the President that, just because his choice is not popular with the people he takes the whole country back to the elections. Holding elections is a very expensive affair, it is not that comfortable to the country as a lot of resource are spent on it. So that clause needs to be re-addressed so that we don't give the President those powers just to dissolve the Parliament when his choice is not that palatable to the people.

So, 157 (7), I would suggest that, the results of the elections be declared within 48 hours after the completion of the elections instead of giving it one week, which is too long. Many things may be done during that period.

Now, in 171, part 1(c), why are we making an opposition leader a leader of the Government, that is, giving the President the power to nominate someone from the minority party to be a Prime Minister? The minority party to me is a party that has lost, it is a party that deserves being in the Opposition because we also need the Opposition. Why should we bring that one to lead the Government?

Now, we are talking of this document is suggesting that we should have the Ministers being non-MPs...*(Interruption the bell rings)*. Thank you, non-MPs oh, I will shorten, should it be so? We already have the Permanent Secretaries, unfortunately they have the technical expertise for the ministries. Some of them do not have technical expertise for the ministries they are in. If you are going to have non-MP Ministers, let them have the relevant expertise, degrees in the relevant areas and not honorary degrees. Let them be technically qualified. Thank you, Mr. Chairman...

Interjection (Hon. Delegate Wilfred Ole Kina): Order, your time is up please....

Hon. Delegate Olweny Patrick Ayiecho: I have just thanked you. Of course, I am sitting down. Thanks.

Interjection (Hon. Delegate Wilfred Ole Kina): Order! Order! Order! Please. Thank you. Delegate number 399, District Delegate.

Hon. Delegate Ogot Grace Emily: Mr. Chairman, I am grateful, I have waited for a very long time. I will be very brief. First, Mr. Chairman, my name is Grace Ogot, number 399. Mr. Chairman, the post of a President is a very important post and I will be very brief about it.

The President must be 35 but must go to 70 years of age or over if she is capable. When the President is appointing the Prime Minister, it should be with the consultation of other Members of Parliament if it is possible, so that it is a collective responsibility. A Prime Minister is a very very important person.

The Prime Minister, when appointed, should be in charge of the Ministers appointed to the Government and, Mr. Chairman, I do not believe that after Members of Parliament have worked so hard to become Members of Parliament, that you should appoint the Ministers from outside Parliament. It would not be fair to the Parliamentarians, they are also colleagues. There was a section, which I cannot read right now because of time, which says that the Prime Minister will be in a position to run the Government and there was some whispers also that he can chair meetings of Permanent Secretaries who are also non-Parliamentarians to run the Government. In

that case, Mr. Chairman Sir, I feel that the Members of Parliament will be highly isolated and will not do job to which they were elected if they were isolated.

Thirdly, I feel that the Prime Minister should have a Vice, which should be a woman. I think that is in line with the feeling of the Conference now, Mr. Chairman, that gender equality is very good for the future of this country and for the women in general.

Hon. Delegate Ogot Grace Emily: I am being told no problem and I am looking forward to that. Mr. Chairman, I want to say that it is the NARC Government that has brought honour to the women and I say it with authority.

In the previous Government, nearly nine women were in Parliament but they never got anything, except the three of us who scraped the post of Assistant Minister after many years service. With NARC having given seven positions nearly nine ministries, to women, if I had a big delegation here, I could have clapped for the NARC Government but I am not allowed to ask.

Clapping from Honourable Delegates

Hon. Delegate Ogot Grace Emily: On the other issue, other people are asking: Who are those? You know that Mama Jemima was just a Member of Parliament, Grace Onyango elected, never saw a ministry, Asiyo never saw a Ministry, nor Waruhiu, nor Ndetei, nor the other lady from Rift Valley, many of us, Mr. Chairman. (*Murmuring from Honourable Delegates*). You know we never sit on men, we love men.

Laughter from Honourable Delegates

On the issue of whether to have a Women's ministry or not, I think it would not be serving any useful purpose if we had a gender ministry because already we are being taken care of by various ministries. Fortunately, in NARC Government, Mr. Chairman, ministries have very responsible people holding positions. May God bless NARC Government.

On the issue of having Permanent Secretaries appointed from outside, no, no, sorry, sorry. Ministers appointed from outside Parliament, it is unheard of, Mr. Chairman. Which countries would we be quoting?

Hon. Delegate Ogot Grace Emily: After this.....(Inaudible) US is so different from us, they don't campaign like us, they don't have hurdles like we do here. We feel that let Parliament cope with all the situations that may arise, especially in the area of running a Government.

Finally, Mr. Chairman the manner in which you have conducted the meeting today has given us various people's opportunity to speak. And may God bless you to continue with this part until we close at 6.00 o'clock. Thank you very much.

Hon. Delegate Samuel Arap Ngeny: Thank you. I am moving to the next row. For purposes of my administration the Delegates sitting behind the entrance here, those on my left, belong to the other column. So when I come round I hope you can bear with that. District Delegate number 244.

Hon. Delegate Omar Twalib Mzee: Asante sana, Bwana, Chairman. Jina langu ni Omar Mzee, Delegate namba 244 kutoka Lamu.

Bwana Chairman, ningependa kuchangia maswadi yaliyoko kwenye Article 171 na 175. Nikianza na Article 172 (1) Mr. Chairman, wakati CKRC ilipozunguka kutafuta moani kutoka kwa wananchi, Bwana Chairman, tulifahamu na tulisikia wananchi wa Kenya, kuanzia highlands of Indian Ocean mpaka shores za Lake Victoria, wakisema kwamba wanataka creation of an Executive Prime Minister.

Bwana Chairman, sisi hatuna budi kuliunga mkono jambo hilo, na badala ya kuzungukazunguka huku na huku, tunawajibu wa kuangalia ni namna gani creation ya Prime Minister itapatikana. An insinuation yesterday, Mr. Chairman, kwamba labda Commissioners wa CKRC walibandika jambo hili katika Draft Bill si kweli.

Clapping from the Honourable Delegates

Bwana Chairman, jambo la pili ni kuhusu mambo ya kuchaguliwa kwa Mawaziri. Bwana Chairman, mimi sijakuwa tayari kuchangia kwamba Mawaziri watoke from which quarter, lakini Bwana Chairman jambo la muhimu ni kwamba conduct ya Mawaziri lazima iangaliwe kwa makini. Bwana Chairman, lazima kuwe na Constitutional bracket ambayo itawafanya Mawaziri kama mfano wakitoa some alarming statements waweze kukosa kuwa Mawaziri immediately. Kwa sababu Bwana Chairman, Wizara ni afisi muhimu sana katika nchi, Bwana Chairman, na wakati Waziri akitoa statement ni lazima awe na hakika kwamba statement hiyo ina maslahi kwa Wakenya, Bwana Chairman.

Nimeona katika Code of Conduct ambayo iliyoko kwenye Sub-section ya Article 175 Bwana Chairman, na pia imetu-refer kwenye Schedule Five, na ukiangalia details za Schedule Five hakuna pahali ambapo imeonesha kwamba conduct ya Mawaziri wakati wakiwa afisini na namna ya kutoa statement ni hukumu gani itatolewa juu yao. Asante, Bwana Chairman.

Clapping from the Honourable Delegates

Hon. Delegate Samuel Arap Ngeny: Thank you. Parliamentarian from that same row. I am coming round, 152.

Hon. Delegate Nyamunga Erik Opon: Thank you, Mr. Chairman. My names are Erik Nyamunga, MP Nyando Constituency. Mr. Chairman or Honourable Chairman, I would like to start by contributing to section 175 or Article 175 section 3 (a). I have seen from the contribution from Honourable Members there is fear about Ministers who are not professionally competent being appointed to head Ministries.

There is also fear that such Minister or Ministers do favour the Constituencies from where they were elected over and above the other constituencies in the country. I would like to throw some light on this. Maybe, it will help allay such fears because I believe such fear have come about because of the manner in which the previous Ministers have handled themselves because of the excessive powers that were concentrated in one office making some of them powerful and able to get away with what to begin with is un-constitutional.

Now, when you look ministries, you will see that every ministry has a professional that does the core functions of that ministry. If you take the Ministry of Health, there is a Director of Medical Services, if you take for Agriculture, there will be the Director of Agriculture; Works, there will be the Engineer-in-Chief. That carries on from ministry to ministry and that is how we have been able to have Permanent Secretaries who are not professionals in the line of the ministries and Ministers run such ministries effectively.

What I would propose Mr. Speaker is that we have in place in such ministries, professionals performing the core-functions of those ministries. If we could decide to move a notch higher and how they accounting officers of ministries, that is, the Permanent Secretary, if we are worried about professionalism in the ministries, the Permanent Secretary who is a civil servant and the accounting officer of that Ministry, who is charged with the day to day running of the ministry, must possess relevant professional qualifications. So we don't need to have the Minister with relevant professional qualifications running the ministry.

My view is that we do not need to have a situation where we have Ministers coming from non-Parliamentarians. In fact, if we do that, to begin with we are adding cost weight because we are going to have Ministers whom we still have to pay, while if we get them from Members of Parliament they are people who we are already paying anyway.

Permanent Secretaries, the Ministers, if we suspect that we Ministers would be favouring their constituencies more than other constituencies, we already have, in Parliament we passed it recently, a Budget Committee or a Budget Office, there will be no way now the Minister for Finance can ambush us, so there will be no Ministers who can, we will be able to see, Parliament will be able to see that every Minister is not putting big projects in his constituency in complete disregard of other constituencies in the country. So that fear is now unfounded. At any rate, Parliament has powers to block the budget of any ministry from passing, in which case the Minister himself will actually be disqualified.

So that fear is actually unfounded now because they are devolving power, there will be no Minister who is above the law and who will have any way of favouring his constituency above the other constituencies.

On the issue of age, I believe when you put the age limit, the President should be somebody below 70 years, I believe if somebody is 69 years and eleven months he still can run for presidency so by the time he is retiring he is 75 years. So I believe that, as much as it is not clear, is implied.

I support the devolution of power and have the Prime Minister's office (*Interruption the bell rings*).

Hon. Delegate Nyamunga Erik Opon:because the problems that we have had as has been said by other Honourable Members has been because of having excessive powers in one office. Thank you very much, Mr. Chairman.

Hon. Delegate Samuel Arap Ng'eny: Thank you. I will move to the next row and I am recognizing a District Delegate, 298.

Hon. Delegate Rhoda Ndumi Maende: Thank you, Mr. Chair, at long last! I am number 298, Rhoda Ndumi Maende from District Delegates and I totally support the premiership, but I want to make some amendment or proposal that if we will have to have a President who does not have a constituency, why can't we have a Prime Minister who doesn't have a constituency? Also, the Vice President and the Prime Minister, if they hold seats, should relinquish them so that we can go for those elections.

I want to also remind us something about Article 60 Sub-section (1) and (2) whereby the two clauses are contradicting each other. One is saying, number (6) says, about the term of office of the President, that the President shall hold office for a term not exceeding five years beginning from the date of assumption of office. Article (2) sub-section (2) also says, a person shall not hold office as President for more than two terms of the five years. I didn't understand exactly what they mean.

I want also to talk about Affirmative Action. I totally support the District Constituencies. Thank you, Chairman.

Hon. Delegate Samuel Arap Ng'eny: Thank you. Under Parliamentarians from that row please. Number 61.

Hon. Delegate Kimetto Anthony Kipkosge: Thank you very much, Mr. Chairman. I want to contribute on the appointment of the Prime Minister...

Interjection (Hon. Delegate Samuel Arap Ng'eny): Introduce yourself, please.

Hon. Delegate Kimetto Anthony Kipkosge: I am Honourable Anthony Kimetto, MP Sotik Constituency in Bomet and Buret District, two districts. I am representing two districts.

Clapping from the Honourable Delegates

Mr. Chairman, I see from Article 171 (1) that, the President shall appoint the Prime Minister from within the majority party or within the minority parties. Mr. Chairman, what I see here and this has got to be if he is becoming the Prime Minister, he has got to receive what we call the vote of confidence from the MPs. If he will be appointing only one, then if he will be proposing only one, then it will be very difficult, Mr. Chairman, to be sanctioned by Parliament. It could have been the President could have given the proposals of so many so that Parliament can choose from amongst them who should be the Prime Minister. It should not be whenever necessary to fill a vacancy in the office of the Prime Minister the President shall propose one person. He should propose many to enable the MPs to choose.

Mr. Chairman, I also see where the President can appoint the Prime Minister from within the minority parties. If this clause is let to go through, Mr. Chairman, then so many of us will go to the ministry where we are registering the parties to have a minority party, even the mad men could head this State. Being minority party should not come in because we need a popular President, we don't want this which comes from the majority because one single person will register his own party and call it a minority party and pretend to love the President for his appointment. So we do not need anything which is so unpopular. We want this country to be led by popular people. So I don't think this one of the President could appoint from within the minority because minority means it can be singularly one person to register his own party and

sooner or later you will find him leading the nation or a party with only one registered person will be heading this country. So that one, Mr. Chairman, should completely be abolished.

The way I see, the Prime Minister and the office of the Vice President, we are congesting a lot of power, let us have a Prime Minister or a Vice President and, if the President will be doing some things which are not compatible with his nation, let us give them right now the laws which the President will see if he misled the country in such and such a way very soon he will be met by these such and such a law and then he will be impeached immediately. Let every President of this nation know the problems if he misleads the country. If he misleads the country let him know a head of time, let us put things which are here which should be seen right from the beginning of the making of this Constitution.

Mr. Chairman, I have not seen here the punishment for these people if, let us say, the President will try to rig in somebody, I have not seen where it stands here, if somebody rigs you will soon be met with this and this. We are leaving rigging and during the time of campaign rigging has been so popular, the people have been saying we don't want rigging, we don't want rigging and I have not seen here a clause saying, if the President does this, then he will be met with this because of rigging this.

Mr. Chairman, with the few remarks, I bet to support the office of the Presidency and the office of the Prime Ministership if things are given ahead of time. Thank you very much.

Clapping from the Honourable Delegates

Interjection (Hon. Delegate Samuel Arap Ng'eny): Thank you very much. I am moving to the next row, District Delegate 308, please.

Speaker: Point of order.

Interjection (on Delegate Samuel Arap Ngeny): Yes, who is on a point of order?

Speaker: (Inaudible).

Interjection Hon. Delegate Samuel Arap Ng'eny: Yes.

Speaker: Chairman, when we left here for tea you had pointed at the Trade Union to speak. It appears you have sidelined us, it is either District Delegate, Member of Parliament, forgetting that we represent employees who elect these people! I was promised that we would be given chance to speak and we are still being sidelined, forgetting that it's the labour movement...

Interjection (Hon. Delegate Samuel Arap Ng'eny): Order! I have got your point. Order! I have got your point.....

Speaker: Thank you, Mr. Chairman.

Hon. Delegate Samuel Arap Ng'eny:but I did apologize that there may be some things which took place in the morning because I was not here but I will take note of your suggestion. I have recognized number 308.

Hon. Delegate Saipstone Ngalaatu Musau: A point of order, Bwana Chairman.

Interjection Hon. Delegate S. Arap Ng'eny: Who is on a point of order?

Hon. Delegate Saipstone Ngalaatu Musau: 295.

Hon. Delegate Samuel Arap Ngeny: 295.

Hon. Delegate Saipstone Ngalaatu Musau: Bwana Chairman, I think it would be proper for the Chair to be correcting us as we go on with the debate because initially we were told that minority party here is the official opposition, but the Commissioners did not want to use the word opposition. So could Commissioners please verify this for us so that we can know whether we are talking the Official Opposition or rather a minority party because like in the current Parliament a minority party is like, let's say, Sisi Kwa Sisi.

Hon. Delegate Samuel Arap Ngeny: Order! That is not a point of order.

Hon. Delegate Mathenge James Stanley: Mr. Chairman, can I continue?

Hon. Delegate Samuel Arap Ngeny: Yes 308.

Hon. Delegate Mathenge James Stanley: Mr. Chairman, during the last 40 years Kenya has been independent, they have once achieved one great thing. My name is James Mathenge Delegate, 308 from Kirinyaga, once a very small district but now a very big one.

Mr. Chairman, over the last 40 years a big step has been taken in Kenya, we have done a feasibility study and as we meet here now we have its results. I think we are very lucky to be meeting here at a time like this. The feasibility study is on how to do and not to do things.

Mr. Chairman Sir, let me say therefore, we should come out with a very good Constitution because we have got all the facts with which we have got to make a very good Constitution. Mr. Chairman, for this reason, I strongly support the new proposal in this document of establishing the position of a Prime Minister. I accept the structure as it suggests a President with a Vice President and a Prime Minister with two Deputies. I find a lot of sense with the two Deputies because one would take care of economic matters and the other one political matters, both very important, and for the first time giving emphasis on economic matters.

Mr. Chairman, the proposal has got what was missing in the last Constitution checks and balances. When I read things about vetting by Parliament, that is one good thing; impeachment of the President, that is another good thing; two terms for the President.

These are the checks and balances which will stop excesses in future. Mr. Chairman, one caution, the caution is this, as we go into the groups for discussion, we should look very carefully at the position of Vice President so that we become innovative and not create a floating Vice President.

Also, on the duties of the Prime Minister and other Ministers, we have got a chance to be able to spell out a little more clearly than they have been.

Mr. Chairman, let me jump quickly to one or two other things. Whoever hires, fires. That principle should be observed in the new Constitution, whoever hires, fires and the Trade Unions who are here would bear me witness. If the President is going to hire, he must be able to fire, but Parliament would exercise its supremacy by vetting the candidate, which is another roadblock. Vetting candidates on agreed criteria, they will look at the person who has been appointed, has he been a murderer, has he been a thief, is he a man of integrity? They will come out with very clear, not fictitious things and that is very important.

The last two, Article 151, the Number of seats in Parliament. We are doing a document for many years to come and for this reason alone, I will possibly examine 15 and translate it to 21, but a Government does not need to go to the top. We just caution that we don't want to tamper with the Constitution every day.

Article 156 (d), an MP vying for Presidency, this should not be a sin, but immediately he succeeds, he should relinquish the other position. That's Article 168 (4). If both the President and Vice President die, I think this Conference can stop the President and the Vice President dying together.

Laughter from the Honourable Delegates

Hon. Delegate James Stanley Mathenge: Yap! I know of Constitution, which do not allow the President and Vice President to travel together: be in the same boat, in the same car, in the same aircraft, even ride the same bicycle.

Laughter from the Honourable Delegates

Hon. Delegate James Stanley Mathenge: That should go into the Constitution, to make sure we do not get a Constitutional crisis where you know both of them die at the same time.

Mr. Chairman people get a Government they deserve. I have heard that echoed. People get a Government they deserve. I think when we sit and get out of this building, we should come out with a Government in future, which we deserve. Thank you Chairman.

Hon. Delegate. Samuel Arap Ng'eny: Thank you. I want to recognize a Parliamentarian from that row. And I am seeing number 103.

Hon. Delegate Petkay M'Nkiria Miriti: Thank you Mr. Chairman. My names are Petkay Miriti, Member of Parliament of Nithi Constituency, Delegate Number 103.

I would like to comment on Article 162(1), impeachment of the President on grounds of incapacity. It says that, "the Chief Justice is the person who appoints a tribunal of five doctors". I would rather we don't leave this responsibility, which is very important, to one person. I would rather have a panel of Chief Justice, and maybe the Speaker and others, appointing the tribunal because the tribunal will be responsible for deciding on whether the President will be impeached or not. On limitation of age, I would rather we increase the lower age limit to 40 years. We all know what happened and what Kenyans decided on the age, during the last elections in view of the 'project', and on the upper limit, I would rather we didn't have a limit, after all Judges retire at the age of 74 years.

On the question of the Prime Minister, I will support the position of Prime Minister. However, I would rather the President appointed the Members of the Cabinet. On the question of the appointment of Ministers from outside the Cabinet, I would be a bit cautious because I would ask myself one question, "If Ministers are appointed from outside Parliament, would they ever participate in Parliamentary proceedings? If they do, what do they do as strangers in the House?" Once they participate in Parliamentary proceedings, then they will be Members of Parliament. I think this clause is already invalid. And I can see as a situation where we have prejudice against elected leaders here. This one you can see the recall of Parliamentarians, you can now see it in MPs not to be Ministers, you can see the elected President being deprived of responsibilities and so on and so on. So I would rather we leave the Permanent Secretary to act as a person in charge of the Ministry, and the Minister to be appointed from elected Members of Parliament.

If you read clause 167(7), 165(2), 161, 164 and 165(6), which talk of incumbency and resignation of VP and general transition, during the general elections, I can see a possibility of a vacuum after 2nd August. If for example the election of the President is delayed, because of various factors as stated in the draft, and the Vice President resigns, and maybe something else happens, we can see a vacuum. I would rather we looked into it again and make sure that there is no possibility of us having a vacuum or lack of leadership during transition.

On Article 151(d), if I would read that one together with Article 103 (3) and (4), in the Chapters we discussed yesterday, and Article 272 still to be discussed, I can see an important office which is not a Constitutional office - the office of the Director General of National Security Intelligence Service. For the sake of demystifying that office and removal of ambiguity, and so that the general public and citizens of Kenya have a say in what goes on in that office: I would like that office or I would recommend that it becomes a Constitutional office. And if it is a Constitutional office then, it will be included on the list of Article 103 and 272 and then it will fall in the same category as the office of the Commissioner of Police and Director of Correctional Services.

Mr. Chairman, Article 167(2), the Vice President appears to have no functions. I would echo the voices of those people who said that we should have sections spelt out for the Vice President so that he knows what he should do.

On the question of MPs again, I would urge Honourable Delegates to realize that Members of Parliament are people of high integrity and that we can depend on them. And as we make recommendations, we shouldn't assume that they are people who will not show up in their Constituencies. For example, we have a Delegate who has said that if we have nominated or elected Members of Parliament appointed as Ministers, they will often take care of their Constituencies. But in this situation I know, we have had Public Servants who have only attended to their Constituents, and even these other nominated Ministers will be happy coming from Constituencies. They can still take care of their Constituents regardless of other Kenyans. Thank you Mr. Chairman.

Hon. Delegate. Samuel Arap Ng'eny: Thank you, I'll now come to the last column. Point of order? Now I am moving to the next column.

Hon. George Mwaura Mburu: Thank you Chair, have you allowed me to push a point of order? I am requesting, Honourable Chairman, that you will decide on the procedure we are going to follow, that is, to consider a Parliamentarian, a District Delegate from every row and other Delegates from other categories, so that we can all have equal opportunities. My name is George Mwaura Mburu from the Political sector.

Hon. Delegate. Samuel Arap Ng'eny: Thank you, your point is taken, in fact I was coming to that. I am in the column that I skipped when I started, I should have started here. So I will recognize all categories but not now, I am now recognizing a District Delegate 320.

Hon. Delegate Kiriro wa Ngugi: Thank you very much Mr. Chairman, My name is Kiriro wa Ngugi, District Delegate from Kiambu, Central Province. Sometime in 1961 or there about, the late Jaramogi Oginga Odinga declined to form a Government, waiting for Jomo Kenyatta. In 1992, we had an excellent chance of paying that debt as Kikuyus, we did not pay that debt. Last December after trying twice, Kibaki's dream of becoming President became a reality, when Raila Amolo Odinga, said "Kibaki tosha".

Clapping

Hon. Delegate Kiriro wa Ngugi: Double debt. I want to say from the floor of this Conference, that the debt shall be paid, it needs to be paid, and I see no better opportunity than the opportunity that is available from the new Constitution. We support the position of Prime Minister.

Number two, this country has a lot of diversity and from the event of December, 27, we are informed that when community leaders come together and say we shall do this together, Kenyans rally round and say let's go ahead.

Hon. Delegate John Mutua Katuku: Point of order!

Hon. Delegate Samuel Arap Ng'eny: Point of order number 46, what's your point of order?

Hon. Delegate John Mutua Katuku: I am coming to my point.

Hon. Delegate Samuel Arap Ng'eny: It's a point of order please.

Hon. Delegate John Mutua Katuku: Mr. Chairman, my names are John Katuku, Delegate number 046. Mr. Chairman I am rising to draw your attention to a remark which was made by the speaker on the floor, which touches on payment - and I am sure you have heard about it - this community paying that other community Mr. Speaker. Are you satisfied with that kind of approach to discussing a Constitution, which has nothing to do with this community or that community?

Clapping

Hon. Delegate Samuel Arap Ng'eny: I am sorry I missed some of the words from the Delegate who is contributing, but I want to say this, the Honourable Delegate on the floor, we are not making a Constitution for a community or individual or anybody else. We are making a Constitution for Kenyans today and in the distant future. So can you please stick to that?

Hon. Delegate Kiriro wa Ngugi: Thank you very much Mr. Chairman, if I have offended anyone, or any community, I apologize and withdraw.

Clapping

Hon. Delegate Kiriro wa Ngugi: I would like now to turn to one final point. I want to demonstrate to you some contradiction in the logic in the document called the Short Report and the Draft. Page 46 of the Short Report says, "the role of a Minister is that of a politician he needs to be" and I am reading this verbatim. "He needs to be able to understand the political side, not the technical side of matters. If the Minister knows, or thinks he knows a lot about the subject of their Ministry, this may lead to conflict with the civil service, and his political sense

may be weak". These words are lifted from the report by CKRC. How does the Commission then proceed to propose that members of the Cabinet should be appointed from outside Parliament? Where do we find the highest concentration of Kenyans who understand the political side of matters? We have to resolve this contradiction.

Secondly, there is a notion that is being floated that indeed devolution of the Presidential powers happens when you transfer some of it to one other individual or several other individuals. If there is a thief who has stolen people's sovereignty, how do we solve the problem by giving some power to two or three thieves? The only thing we achieve is the risk that the thieves may squabble over the power they have stolen. Otherwise if they stay together, they will act as if they were an individual. We need to think very clearly, so that there is a clear order of authority that is unambiguous, and that is very necessary.

Finally Mr. Chairman, if we do get tempted to a ceremonial symbol of our National Unity, the way it has happened where it came from - Europe. There was a day when the King or the Queen was an Executive of the Country. They were making day-to-day decisions of their communities. Because of the in breeding that happened with the 'blue blood', the royal families of Europe, slowly over the years they became incapable mentally of managing the day to day activities of state. And the consequence was that the societies they come from decided that the day-to-day management of the affairs of State shall be put under competitive politics. That's why they have their Prime Minister. In order to acknowledge their previous history, where they are coming from, they left a symbol. Our challenge of today is a clear Executive, with a clear hierarchy of authority, and when we do seek somebody, we seek because of a simple challenge - that of day-to-day management of our country. Thank you very much.

Hon. Delegate Samuel Arap Ng'eny: Thank you. Delegate number 55.

Hon. Delegate Enoch Wamalwa Kibunguchy: Thank you very much Bwana Chairman. My names are Dr. Wamalwa Kibunguchy, MP of Lugari Constituency, Lugari District. Before I start making any remarks, Mr. Chairman, I would like first of all to thank the Commission for the work they have done. I think looking through this document, they must have done a great job.

Secondly, I would thank us all Honourable Delegates. I know a lot has been said about us out there, but what I have seen since the beginning of the week, I think we are doing a good job, and the only thing I would like to ask is for us to continue in that same spirit. I know there will be a bit of hiccups here and there, but I know that deep down inside, we shall deliver a good Constitution to the Kenyans.

Clapping

Hon. Delegate Enoch Wamalwa Kibunguchy: I would also not forget the Kenyans who came out in their large numbers, to give their views on the way they would like this country run. And Kenyans spoke, and I think what we are here to do, is to crystallize what the Kenyans said, and some of the things the Kenyans talked about, I will touch on them.

First of all I would like to look at Article 151, the State functions of the President. I know we have said, a lot of powers have been removed from the Presidency. What I would like to propose is, I want to give the Presidency one more power. I would like the President to be able to talk to his people. Because the Constituency of the President is the whole of Kenya, I would like the President to be able to talk to Kenyans once every month. I would like him to tell us what his Government is doing. I would like him to tell us what his plans are, and that will be a state of the art address to the nation once every month. For some of us who are lovers of football, I know when Manchester United and Arsenal are playing, you will find very many Kenyans who love football, glued to their TVs, waiting to see which of the two teams is going to win. And I would like to see a situation where: when the President is talking to the Nation, that Kenyans are glued to their TVs and radios listening to what their President is saying to them.

Sometimes we find one President is too quiet, and there were other times when a President was all over the place, I think this will cure this tendency of roadside addresses, roadside declarations and things like that. It also cures the tendency of some Presidents and I don't want to mention any names, keeping too quiet, such that Kenyans are not hearing their President, and are worried. So that is one function that I would like to give to the President.

Secondly, Article 157: I think, overall, I agree with the way the President should be elected. If we all agree that the President should be elected by at least 50% of the voters, and if we all agree on that principle, I believe this same Principle should be able to apply to the Members of Parliament. We find Members of Parliament, who are Parliament and maybe they were elected by only 20% or 15% of their electorate. They are representing minorities. So I propose that whereas we say the President should get 50% of all the votes cast by Kenyans, we should also say that MPs should also gather 50% of the votes. And if none of them does, then we have a run off the way the President is going to have a run off with the person who is closest to him in the number of votes cast. Thank you very much.

Hon. Delegate Samuel Arap Ng'eny: Thank you very much. I am still on the same row and I am now recognizing any other category of Delegates that are in that column. 529.

Hon. Delegate. John Njoroge Michuki: Point of Order!

Hon. Delegate Samuel Arap Ng'eny: What is your point of order please? Yes? But please make sure it's a point of order.

Hon. Delegate. John Njoroge Michuki: Mheshimiwa Chairman of the session, I wonder why the Honourable Chairman, since he started chairing these sessions, he has very very carefully avoided political parties. He has never mentioned that all along. He only mentions District Delegates...

Hon. Delegate Samuel Arap Ng'eny: Order! Order!, you are out of order. I have started by saying, any other category and I recognized a category that is not of the District and if there are Political Parties, I am coming to them.

Hon. Delegate Rev. Patrick Maina: My names are Rev. Patrick Maina, representing Religious Organizations. I am Delegate number 529. Mine is a brief comment.

One, in Article 149, there is need to include among the Cabinet, that there shall be a Prime Minister and Deputy Prime Minister. Article 151(2), (i), I echo other Honourable Delegates'

feelings that the appointment of a Prime Minister should be from the Party with a majority in the House and not the leader because we shall be personalizing, if we refer to the leader and not the party.

We don't have to have a limitation on the upper age of a President since he has already been qualified for a maximum of two five years term. I don't see the logic of including judicial officers as members of the Cabinet in reference to Article 151(c) and (d). I don't see how other persons can be appointed to become members of the Cabinet other than Ministers and their deputies. When it come to Presidential appointments, Mr. Chair, I will propose that for Constitutional offices, the President should appoint the persons with the advise of the Judicial Service Commission because most of those Constitutional offices have a legal dimension.

I will also want to echo, what other Honourable Delegates have already expressed, that Cabinet affairs have a policy. Every Government must have a philosophy or an ideology through which they will want to carry out their Governmental affairs. You cannot entrust that responsibility just to technocrats, because they might not support the ideology of the party that won an election, and therefore they will bring the same Government down, come another election time. That is why I will advocate that we get Cabinet staff from among elected Members of Parliament.

The idea of a Premier is very welcome just like Pharaoh had to get a Joseph to make sure that there was food in the land, people were administered and there was order. So a Premier will be accountable for the running of Government affairs and that does not contradict the power of the Head of State. This is because the State is greater than a Government. Governments are temporal, while States are perpetual. And so we should not have the fears that the Premier will compete with the President of the Republic of Kenya. Thank you Chair.

Hon. Delegate Samuel Arap Ng'eny: Thank you. At this juncture I want to recognize a representative from the Trade Unions, and I know they are spread all over, if you can raise your numbers, I will pick one of you. 442.

Hon. Delegate Francis Waweru: Thank you very much Mr. Chairman, I don't need to complain again. I have raised my hands except yesterday, and I have not been noticed. All the same, thank you very much.

Hon. Delegate Samuel Arap Ng'eny: Introduce yourself.

Hon. Delegate Francis Waweru: My names are Francis Waweru, I am from the Trade Union, my numbers are 442. I will be very very brief. I want to refer to the position of a President belonging to a party. I don't think we need to have that. Immediately the President is elected, he should detach himself from the matters of the Party because he is a President for the Country and not for the party. The other thing is, this issue of impeachment should go all the way down from the President to the Vice President and to the Prime Minister. Now, the other very important thing which I think must have been left: in the past we have had the Vice President being sacked now and then. I think we should have a situation where the President should have a running mate, so that the Vice President, cannot be sacked at any time by the President.

This question of age: we have seen very many old people doing so well. I don't think it is important to limit the age of the President. We have seen in the United States, a President at the age of 80 years, doing so well.

The question of appointment of Ministers: you cannot have a Minister appointed from outside Parliament, and yet you are expecting him to perform well. Who will check him? All Ministers should be appointed from among the elected Members of Parliament. Thank you.

Hon. Delegate Samuel Arap Ng'eny: Thank you. Now I want to recognize, somebody from the Political Parties. I have 603.

Hon. Delegate Winston Ogola: Thank you very much Mr. Chairperson.

Hon. Delegate Samuel Arap Ng'eny: Sorry Honourable Delegate, I am informed I gave you a chance yesterday. Can I have another Political Party representative who has not spoken? 577.

Hon. Delegate George Kinyua: Thank you Mr. Chairman. I want to Contribute on this Chapter, ...

Hon. Delegate Samuel Arap Ng'eny: Introduce yourself please.

Hon. Delegate George Kinyua: My names are George Kinyua from Political Parties representing United Agri Party. I am standing to support the position that the President should be nominated by a Political Party. Since governance and Parliament are about politics, he should really be nominated by a Political Party.

I am also supporting the creation of the Prime Minister's position. However, the Prime Minister should have reduced powers because of the conflict or the rift that may occur between him and the President. At the same time, we don't know Mr. Chairman, if there were a rift between the Prime Minister and the President, who would solve that problem? A Clause should be put in place in the Constitution defining exactly what would happen if such a rift occurred between the position of the Prime Minister and that of the President.

Mr. Chairman, I also want to say that the Ministers should be nominated from the Members of Parliament. Take for example if a Minister was nominated from outside Parliament, and for example I am a Member of Parliament for a certain Constituency and I go to this Minister, possibly I want a certain project in my Constituency, and he refuses simply because he is not a politician. So I will go to Parliament and start criticizing that Minister. So I think it is only important and fair because this is a game of politics, that the Ministers be appointed from among the Members of Parliament.

At the same time I also support the position that the President should be given enough powers, so that he reflects the sovereignty of the country. This is because if we have a very weak President, we shall also have a very weak country. However, the powers should also be devolved in such a way that every institution shall be able to check the other institution. Thank you Mr. Chairman.

Hon. Delegate Wilfred Koitamet Ole Kina Thank you very much. Honourable Delegates, I realize we have two other important matters to attend to this afternoon: we have the

**PLENARY PROCEEDINGS, PRESENTATION OF DRAFT BILL, CONTINUATION OF
CHAPTER EIGHT, THE EXECUTIVE, HELD AT THE BOMAS OF KENYA ON 19TH
MAY 2003**

PRESENTATION OF DRAFT BILL: CHAPTER EIGHT - THE EXECUTIVE

Presenters: -	Com. Dr. Andronico Adede Com. Dr. Charles Maranga Com. Paul Musili Wambua Com. Ahmed Issack Hassan
Session Chair:	Prof. Yash Pal Ghai
Co-chair:	Samuel K. Arap Nge'ny
Co-chair:	Wilfred Koitamet Ole Kina Nchoshoi

The meeting started at 9.55 a.m.

Prof. Yash Pal Ghai: I call the meeting to order. Today we shall have two prayers: a Christian prayer and a Muslim prayer and I am first going to call on Reverend Macharia Muchuga and then Sheikh Ali Sheikh to say the prayers. So Reverend please.

Hon. Delegate Rev. Macharia Muchuga: May I request the honourable delegates to stand so that we can pray. Let us pray.

Our Heavenly Father, Almighty God we bow our heads with a lot of humility before you because you are our God, the only God we have. We bow our heads this morning to worship you, to adore you and to ask you God to be with us here and to guide us in everything that we do. Help us God to remember that we need one another. Help us God to recognize that you love all of us equally. Help us as we discuss various things to discuss in such a way that nobody hurts the other and also to remind us that we are shaping the destiny of this great land for centuries to come. Help us God to take our work seriously. Father in Heaven, we thank you the way you have guided us since we came here. We may not have endeared ourselves in your eyes in certain instances but forgive us. Cleanse this hall of any evil spirits so that as we continue, we continue with you and you alone. We cannot forget also Father that as we sit here, there are many of our people who are suffering outside. Those affected by the floods, they have lost their property and

their homes. We want to identify ourselves with them God and ask you also to remember them. We know there is a small crisis in this city, where people cannot access water. We ask you God also to intervene. We need you to strengthen our spirits, to strengthen our minds, and our bodies and all this we pray in the precious name of our Lord and Saviour Jesus Christ. Amen.

Hon. Delegate Sheikh Ali Sheikh: Please stand, simameni tafadhali, tuombeni tena. Tuna haja ya kuomba zaidi sisi, hali zetu zilivyo, lazima tuombe zaidi.

Ewe Mola wetu mkarimu, muumbaji wa mbingu na ardhi, tunakuomba nguvu zako na baraka zako zitukusanye sisi sote tulioko hapa na wale ambao wako manyumbani, na ambao wako makazini na ambao wako katika nchi hii. Utupe nguvu ili tuweze kufanya kazi yetu kwa pamoja tukiwa na subira na uwezo wa kuvumiliana. Uwezo wa kusubiri, uwezo wa kuwa na hekima na kuangalia mambo kwa njia ambayo iliyo bora kwa ajili ya masilahi ya nchi yetu hii. Yarabi, Ewe Mola, tunakuomba uibariki nchi yetu hii, uwafariji watu wetu wote ambao wenye magonjwa, walioumia, waliopatikana na maafa mbalimbali. Utufariji sisi sote ewe Mola. Twakuomba hatuna mtu mwingine, hatuna mtu wa kumtegemea isipokuwa ni wewe, twakuomba utubariki, utupe nguvu zako zote, Amin.

Prof. Yash Pal Ghai: Thank you very much. The delegates who have just come please take your seats as soon as you can. Are there any delegates who need to take the Oath or the Affirmation? Well, it seems there is none. I think one advantage that I see in swearing in members every morning is that it reminds us all of the Oath we have ourselves taken and how we have sworn to discharge our functions as delegates without fear, favour, bias, affection, ill will or prejudice and to exercise or to be guided in the exercise of powers at all times by the national interest. I don't think we can repeat this too often, we have to be fearless; we should not come with prejudice. That is to say with our minds made up. We should listen to others. We should not favour any community or individuals over others and at all times we must have regard to the national interest. I think we need to remind ourselves of this everyday as we commence our proceedings.

I have a few announcements; the first concerns the Notices of Motion. I know that sometimes there has been some difficulty in locating the Motion...the Notices that have been given, because they are given sometimes to me, sometimes to the Secretary, sometimes to staff members and we

want to regularize the method whereby the delegates can give us Notices of Motion. What we are now proposing, that the Notices pursuant to Regulations 24 of the Conference's Regulations should be handed to the Secretary of the Conference or an officer designated by him at any time when the Conference is sitting. Or send the Notice or leave it at the Secretariat office. In this way, we hope that all the Notices will find their way onto my table.

In order to facilitate better co-ordination, all Notices of Motion shall henceforth be handed in the Secretariat office. It is the first room on your right as you enter this plenary hall...up there and not to the Chairperson, the Secretary of the Conference or any other person. Once these have been collected, they will come to my table and I shall forward this to the next meeting after that of the Steering Committee, which will decide if they are admissible and when they should be put on Order paper.

The Steering Committee decided today that it was useful and desirable that the Constitution as a whole should be reviewed from the point of culture. Does the Constitution sufficiently reflect African culture, their diversity and if not, what other ways in which the Constitution can be made more responsive to the cultural dimensions of our lives. In order to carry out this exercise, it is proposed to set up *ad hoc* Committee under the regulations to examine this issue.

Under the regulations, the Committee of this kind has a maximum membership of fifteen, though the Committee will be able to co-opt additional members or indeed experts from outside. We are requesting all the usual groups, categories; to give us one name each, possibly by tomorrow, because we would like to constitute this Committee as soon as possible. The purpose of this Committee would be to look at the entire Constitution, the culture issues cross cutting here in many different Chapters. So this Committee would look at all of the Constitution. We hope that this Committee can complete its work before the technical committees meet so that their findings and recommendations can be fed to all the relevant committees. Once we have the names from you, from the traditional groups, we shall try to constitute the committee within a day or two. I think this is an excellent idea and I know many of you have expressed concerns about perhaps the lack of reference to or accommodation of our traditional cultures. This mechanism will enable us to make up for that deficiency. (*Clapping by the Honourable Delegates*).

Today we will quickly conclude our discussion of the Executive. I think we had a quite detailed and thorough debate on the Executive and towards the end of Friday, we were on the podium receiving notes from some delegates saying that the debate was becoming repetitive and tedious and under the regulations we should terminate the debate. We believe however that we would like to give a few more minutes. If some members have a new point to make -- please note... 'a new point to make'-- then we will give the presenters a very brief period, maybe five minutes each or seven minutes each to wind up. We hope therefore that within one hour we can conclude this and then we can move to the Judiciary.

As we move to the Judiciary, I would just like to make a plea. Some issues in the Judiciary have become rather emotional and controversial. I think we should look at the recommendations of the Commission dispassionately. We should not heckle and we should not make very emotional speeches. We should focus on the recommendations and maybe suggest ways that can be changed. But I hope it will not become an occasion for inter-religious confrontations. I don't think it will, all the religious communities in Kenya have worked extremely well. Indeed Kenya is a model example to the rest of the world of how the different religious communities cannot only co-exist in peace, but can also work together in constructive ways for the welfare of the nation. I would like at the end of this debate, for the sense of unity and co-operation to be even stronger than it has been so far. So I will plead with all of you to examine the issues calmly and coolly and I am quite sure that we will have a satisfactory outcome.

With that I pass the floor to Ole Kina and I don't know whether we have another Co-chair but we have only about an hour for this particular item and I am sure you can handle that very competently. Thank you.

Hon. Delegate Koitamet Ole Kina: Thank you very much Mr. Chairman, I would like to proceed from the point where we left and I would like to have a woman delegate. That is a representative of the Women Organizations. From this side, 510.

Hon. Delegate Atsango Chesoni: Thank you Mr. Chairperson, my name is Atsango Chesoni. I am delegate 510 representing the Women's Organizations. I would like to raise the following points. Point number one relates to the issue of Schedule 5, which applies to most of the

Members of the Executive, but does not expressly appear to apply to the President and I think this is an important omission since Schedule 5 requires that those applying for public office declare their assets and liabilities. So I think it should expressly also apply to the President.

The other issue that I would like to raise is the issue academic criteria relation with the President. I would like to uphold the recommendation that the President hold a degree and also recommend that the same be required of the Prime Minister, the reason being that given that we are in an age of globalization and one of the task that the President accepted to perform is that of upholding treaties and ensuring that the country conform to those treaties and reports on them. I think the President does need some academic background that are enables him to be able to understand these issues.

The other issue I want to raise is in regard to the issue of professionalism of the Cabinet. Even though there is a suggestion that the Cabinet come from outside Parliament for me, the primary issue is that the Cabinet be professional and have the professional skills. So, whether or not the Cabinet comes from inside or outside Parliament, it needs to be made up of persons that hold professional skills on the particular area. If I may give you the example of Botswana where the President constitutes the Cabinet and then if there is nobody who has been elected to Parliament, that holds professional skills in respect of a particular portfolio, then the President draws from outside. So this could be an option that we could consider in respect of Kenya.

I would also like to recommend that there is consistency throughout the document in respect of the principle of the Gender Equality and Gender Equity. Whereas other chapters are consistent on this issue, this particular one is not. There is for instance the requirement that in appointing Permanent Secretaries that there be that principle kept in mind. Then in respect of Permanent Secretaries themselves, there is a gain no requirement that they hold the professional competence in a particular field that they are being appointed to the Permanent Secretary to. I think that again should be incorporated. And also just to observe that if the Cabinet is being drawn from outside Parliament, then I think the Permanent Secretaries become superfluous. So if we choose the option of a Cabinet that is drawn from outside Parliament then I don't think there will be need for the Permanent Secretaries. But on the other hand, if we settle on a Cabinet that is drawn from Parliamentarians, we will still require those Permanent Secretaries.

Then I am not clear whether as to or not the Prime Minister is a Member of Parliament or merely the leader of the majority party in Parliament and I would like that clarification to be drawn. I think there is possibly an interpretation that the Prime Minister is not a Parliamentarian.

Finally, I would like to know why it is the President who dissolves Parliament if it rejects, his proposal for the Prime Minister and to make one observation on Article 156 *vis a vis* the age of the President and just to observe that Malcolm X, Martin Luther King, Pio Gama, Pinto and Tom Mboya, and among some of the luminaries that we had that were leaders and for whom if the age of 35 had been put the people would not have been able to take advantage of their wisdom. There is no equality between wisdom and age. Thank you.

Hon. Delegate Koitamet Ole Kina: Thank you. Professionals, anybody from the Professional group who wishes to contribute? 486.

Hon. Delegate Daniel Njagi: Thank you very much, Mr. Chairman. Under Article 151 and 175

Hon. Delegate Koitamet Ole Kina: We can't hear you, please introduce yourself first.

Hon. Delegate Daniel Njagi: My name is Daniel Njagi, Delegate number 486 from the Professionals. Under Article 151 and 175, Parliamentary approval of Senior appointments is mandatory. We do not however appear to have provided for any dismissal of the same persons.

Hon. Delegate Koitamet Ole Kina: We still can't hear you, please.

Hon. Delegate Daniel Njagi: Sorry. Under Article 151 and 175, Parliamentary approval of senior appointments is considered mandatory. We do not appear to have provided any provision for the dismissal of the same employment. Under the same Articles, a time frame should be provided for Parliamentary approvals to avoid possible government frustration by Parliament.

The duties and the responsibilities of the Minister these *vis a vis* the Permanent Secretary are not clear. Allowing for current arrangement, the duties of the Ministers are mainly political, we

cannot therefore take any persons other than politicians to be Ministers. The best qualification is the people's judgement at elections. If it is agreed that Ministerial duties will conflict with the constituency duties, then a Minister could be required to surrender the latter once appointed Minister. Otherwise, the Ministers must be politicians well versed in Parliamentary and in diplomatic process.

The post of the President is a political post, I suggest that a person appointed to this post must be accepted by a constituency election in Parliament, elected through a political party. If this honourable gathering wishes that the post be delinked from party and constituency attachments the candidate could then be required to surrender such an appointment.

Mr. Chairman the most extensive powers of the President have been the Presidential orders. There are now outlawed under Section 152, further powers are curtailed under 151 (3) and 153. We have also already provided that the President is now above the law, the Draft further provides for impeachment of the President. The President cannot also appoint top Executives at will. Now having the skinned the President of all the above powers and leaving his hands tied up by Parliament and the Constitution, we should then let him manage the people and the country in accordance with his pledge to the people and this Constitution. We must therefore allow the President to appoint and manage the Cabinet and other organs himself, but otherwise in accordance with this Constitution. Consequently, if this Honourable Delegation insists that a Cabinet leader, a Chief Minister or a Prime Minister is required for proper management, of the government then such a person must be part of the Presidential team, under his authority and discharging duties at the discretion of the President.

It is my conviction that providing for an independent Executive Prime Minister is a very risky experience that this country cannot afford. We must provide for one Executive and if we feel that we must remove further powers and still leave the position worth contesting for, then we must transfer such further powers to Parliament or to another assembly of people but not to another one individual. These are my comment, Mr. Chairman.

Hon. Delegate Koitamet Ole Kina: Thank you. District Delegates, and I will be picking at random for this round. 349.

Hon. Delegate David Kigen: Thank you, Chairperson. I am David Kigen from Koibatek, Delegate number 349. I would like to respond to Article 153 about the Presidents decisions. I fully support that the Presidents decision should be written and have his signature. We realise what was happening today, we saw in the papers people who go next to the President and they take snaps together and they use those snaps for their personal interests. So it is important that we constitute this Article by saying, “ President’s decision should be written and have his signature”.

Secondly, Mr. Chairman, is that I fully support the issue of Prime Minister as per what is in the Draft Bill.

About the age of the President or age limit 70 years.....

Having constituted the seat of the Prime Minister and also the issue of 2 terms for the President, we have come here representing people who have sent us and if the people see that the President is no longer competent because he is aged, it is upon the people to vote him out. So, I personally support the issue of 2 terms, I support the issue of Prime Minister but the issue of the age limit, I think that one will be determined by the people during the time of voting. Because it is upon the people to decide whether the President is still capable of leading he is old and cannot lead and they choose somebody who is still young.

About the issue of the Cabinet, Article 175 (3)(a) the President should not appoint MPs as Ministers. During the last 8th Parliament, we realized there were some people who were made be Ministers but during their time in office when they were in Parliament they could not even answer a question for the five years that they were in Parliament. Everything was zero, zero for the whole five years but since that Minister was a friend to somebody, he was appoint to be a Minister. So, this issue of making friendship with Ministers in order to lead the country is not the best and it is good to appoint professionals. We’ve realized from our areas where we come from.... There is a very good example of a tarmac road which was constructed 2 years ago and now there are potholes. This is because the Minister in charge then was not a professional that is why the work was done poorly. Therefore, we propose that Ministers should be professionals outside the Parliament. Thank you Mr. Chairman.

Hon. Delegate Koitamet Ole Kina: Thank you. I will now recognize a Member of Parliament, again from any sitting, I was told some people were down here, are they there? I can't see. Number 31.

Hon. Delegate. Yussuf Haji: Thank you very much Mr. Chairman. I would like to very briefly comment on Section 156, 1(E) on the question of the President belonging to a political party or not. I think we have no choice, we have to do either one of the two, either the President becomes a candidate from a political party from the outset and continues to remain in that political party or from the outset he stands as an independent candidate. I have a reason for saying this because once he is elected on a party ticket, it will be foolhardy really to say that he should divorce himself from that political party, because he has gone to that office through that political party and there is no way you can ever divorce him from that political party.

Secondly Mr. Speaker, the question of Vice- President; when he is a running mate of the President definitely he must belong to the political party to which that President belongs, because there is no presentation of a candidate who will get a running mate from another party. That also clearly shows that there is no way you can divorce either of them from a political party.

Secondly, when we say that we should reduce the powers of the President and I think that is the driving force for this Conference and particularly writing a new Constitution then we must be very clear that we've reduced the powers of the President because it is necessary to do that from experience here and else where in Africa, Mr. Chairman. The President should remain ceremonial as far as I'm concerned because if we have a President who is an active President, you have a Vice-President then you wonder what this Vice-President is going to do. Is he going to be attending funerals, weddings and prize giving days only? Because that is what it means if we have an active President, an active Vice- President and active Prime Minister, the whole country becomes active and then at the end you do nothing really.

So, I'm for Prime Minister because all our laws in this country are based on the Westminster Laws. Even our Parliamentary procedure is borrowed from Westminster. There is no way we can in an overnight borrow the American system or any other system for that matter. Therefore, we should have a Prime Minister who is the head of the government and therefore appoints all the

officials both from Ministers, Permanent Secretaries and the rest, of course in consultation with the President and then approved by the Parliament.

Mr. Chairman, I don't know whether we have a very short memory, when people say that we should appoint Ministers from outside Members of Parliament, let us remember the other day we had a dream team who were appointed from outside the normal offices, what have they done for this country? The first thing they brought us is retrenchment, the thing they brought us is to remove price control for the poor people to enjoy and they left this country in a mess. I think if say we are going to appoint Ministers from outside Parliament then we are going to do that.

Mr. Chairman, I want to appeal to my brothers and sisters here, if we have elected Members of Parliament and you expect them to deliver, the only way they can deliver is when they are sitting with the Prime Minister in the Chamber of the House there, they can tell him the problem of the area, they can converse with him on the development that is needed instead of somebody waiting for an appointment with the President who is in State House and you might not even see him for six months because you have to go through other people.

So, please, you must think twice before you leap because you have elected Members of Parliament to perform and do some good work in their constituencies. If the Prime Minister is sitting with them in the House there on a daily basis, definitely they will be able to talk to him to get certain things done faster and the Prime Minister will have no option because he knows that he is being controlled in the House. So, Mr. Chairman, that is my opinion.

On the age limit, I think as long as the President is popular, even if he is 85 years old and he is going to unify the country, I think we should continue electing him. On the question of degrees, people talking about degrees, you are only a leader because God has given you that quality of leadership. Somebody was mentioning Tom Mboya, which degree did Tom Mboya have? And he is one of the best politicians we have ever had in this country. So, please forget about degrees. Thank you very much.

Hon. Delegate Wilfred Koitamet Ole Kina: Thank you very much. Can I recognize somebody from the NGO'S? NGO. 463?

Hon. Delegate Meshack Suba Churchill: Thank you Chair for this opportunity to contribute on this important issue. Mr. Chairman, my contribution is going to be informed by the fact that, Mr. Chairman, it is indeed excessive powers--

Hon. Delegate Wilfred Koitamet Ole Kina: Order, order. You are not introducing yourself please.

Hon. Delegate Meshack Suba Churchill: Chair, I am Suba Churchill Meshack, representing the NGO sector, Delegate Number 463. Mr. Chairman, my contribution on this matter is informed by the fact that it is indeed the excessive powers of the Executive and indeed the presidency that has led to the inequitable development in this country. Mr. Chairman, I want to say that if you are to visit some parts of this Country, North Eastern Province, parts of the Coast, all this we can blame on the excessive powers of the President. Mr. Chairman, I want to observe that, the fire of tribalism that has threatened to engulf this country and the balkanization of this country can all be attributed to the excessive powers of the presidency and that of course Mr. Chairman, goes along with the marginalization of certain sections of this country.

But Mr. Chairman, I am concerned that once again we are stating that indirectly the President will be above the law. I have a problem with this because it has been very difficult for the rule of law to be upheld in this country because of the fact that the President has been above the law. Mr. Chairman I want to say that more recently, young people were the victims of the excessive powers of the President. That the youth of this country watched in disbelief as people in their early eighties were appointed to Parastatals at the expense of young people and I am now speaking for my generation Mr. Chairman. (*Clapping by the Honourable Delegates*).

I want to say that we must also be very careful when we say that Ministers should come from outside Parliament because as far as I know, appointments that were made recently were outside Parliament. But I see a big mismatch between professionalism and the jobs those people were appointed to. So, we must be very careful as we make this recommendation and be alive to the fact that even if they were to be outside Parliament, the same abuse can occur and unless we are going to make it very categorical, Mr. Chairman, that these Ministers must have certain qualifications, that are commensurate with the jobs they are supposed to handle, then it might not

make much difference. Mr. Chairman, I am saying this knowing very well that in the past we have had Ministers who could not tell the difference between a tarmac road and a murrum road. Mr. Chairman, I want to say that in as much as we want professionalism, so that we do not lose money, we do not pay contractors for roads that are still murrum on the surface but on the pretext that they have been tarmacked. We need to be very careful so that we do not repeat the same mistakes merely because those people are not Members of Parliament

On the issue of the Prime Ministership, Mr. Chairman, I definitely support the idea. But I want to say that if we are not going to have Ministers from within Parliament, then it is only appropriate that we give the Prime Minister two Deputies who can help clarify issues in Parliament whenever matters pertaining to the cabinet are raised. It has been proposed, Mr. Chairman, that we should actually have the President chair the Cabinet. I want to submit that in all honesty, if the President was to chair the Cabinet, I don't think that President would be available in Parliament to answer the questions that may arise. So, I want to say that if we adopt the principle that we get Minister from outside Parliament, that we then approve the recommendation that he has two deputies who can help clarify issues in Parliament, Mr. Chairman. That, Mr. Chairman, is my contribution. But before Mr. Chairman, I know my time is over --

Hon. Delegate Samuel K. arap Nge'ny: Order, order. Your time is up.

Hon. Delegate Meshack Suba Churchill: Mr. Chairman, I want to say in conclusion, that the person for whom the lower age limit was fixed, is in his grave and is no longer harmful. I want to say that twenty-four years after he died, we should not haunt him into his grave. Let his soul rest in peace. Let us remove the lower age limit but I am cautious Mr. Chairman about the upper age limit. We know that some Presidents have become senile while in office. We know that their people have ruled in the name of the President when that person is actually not in-charge. We need to be very careful so that we do not encourage collegiate presidency when that person is no longer capable of ruling.

But once again in conclusion, let us remove the lower age limit. The person for whom it was fixed is dead and he is no longer harmful and in any case, Mr. Chairman, the person who is thirty-five --

Hon. Delegate Samuel Arap Ng'eny: Order, order.

Hon. Delegate Meshack Suba Churchill: - The person who is thirty-five --

Hon. Delegate Samuel Arap Ng'eny: Order, Churchill. Order. I think we have got to move with time.

Hon. Delegate Mieshack Suba Churchill: Thank you, Mr. Chairman.

Hon. Delegate Samuel Arap Ng'eny: Can I recognize District Delegates. District Delegate 231.

Hon. Delegate Kitambi Mwalimu Digore: Thank you, Mr. Chairman. Thank you for recognizing us from the Coast because we have stayed here and we have been raising our hands yet we have not been heard, especially from South Coast. (*Clapping by the Honourable Delegates*).

I am Mwalimu Kitambi Digore, a District Delegate from Kwale and Mr. Chairman, I stand to say that over the weekend we went to see our people. They said that we come and tell this Conference that they badly need a very strong Prime Minister. (*Clapping by the Honourable Delegates*).

They also said that this Prime Minister should be free from intimidation from the Office of the President and therefore he should be protected under this Constitution.

Mr. Chairman, our people also said that they want a very strong Parliament and with reference to Article 171, a sub-Article there that says, "the President may dissolve Parliament", because Parliament may have refused to endorse one of his appointees as Prime Minister. Mr. Chairman,

my people said, there should never be a time that the President shall have powers to dissolve Parliament (*Clapping by the Honourable Delegates*) because Parliament should be supreme and should be the protector of the people.

Mr. Chairman, the people of Kwale said that they see Ministers or ministerial positions to be political positions and that when Members of Parliament are elected, the people bestow their authority and confidence upon them as leaders and they want to see them as Ministers also. That is because they have trust and confidence in them and they are saying that their Ministers should be drawn from Parliament. As for those technocrats that we want, they shall be there as directors and public servants in the form of Permanent Secretaries. Those will do the technical work. But, our Ministers should come from Parliament.

Mr. Chairman, because I want to speak again and I want you to notice, I do not want to take a lot of time. May I beg to say thank you.

Hon. Delegate Samuel Arap Ng'eny: Thank you. Can I recognize a Parliamentarian? Number 56? Have I misread? 53? Oh! 56 is there.

Hon. Delegate Kivutha Kibwana: Thank you very much, the Chair. I want to begin by complaining. Complaining, because it is apparent to me that some of the time those who Chair this meeting identify certain people. Perhaps with a view that at the end, when we are done with discussing certain Chapters, the predominant position is a particular position and of course this will be the material for working groups. I remember like Hon. Delegate Wetangula, I remember some people actually being denied to speak and Chair when we made the rule and we said that anybody who was allowed to speak on any topic for five minutes not ten. We did not change the rules again. But yesterday, not yesterday, but Friday, they were changed as if this is a workshop. They were not changed because we went through them. So, I really want to appeal if certain voices, certain sectors are not listened to, it is going to be harder for us to make consensus later because some people will feel marginalized. Frankly I feel marginalized in this meeting because you remember last time when I talked, I even had to move from where I was sitting to somewhere else and Hon. Delegate Yusuf Haji recognized me. So, please I am appealing to the Chairs to consider all sectors.

Hon. Delegate Samuel Arap Ng'eny: Order, order.

Hon. Delegate Kivutha Kibwana: Having said that--

Hon. Delegate Samuel Arap Ng'eny: Order, order, Honourable.

Hon. Delegate Kivutha Kibwana: Having said that, I would like to contribute.

Hon. Delegate Samuel Arap Ng'eny: Honourable Kibwana, I must put you on order. I am not taking any other order. I am doing it from the Chair. You are being unfair to the Chair because the pattern of recognizing Speakers was the consensus of this Conference. That's what we should do in as far as possible, anybody who has spoken (*Clapping by the Honourable Delegates*) would have to wait to enable others to speak. I would ask you not to direct that complaint to the Chair but, to direct it to the Steering Committee for further discussion if the mode of recognition of Speakers has to change. Can you now continue with the debate?

Hon. Delegate Kivutha Kibwana: Yes, Chair, I appreciate that. But Chair, because it was a rule that we changed ourselves initially, for us to change it again,, it is not a question of consensus, but we have to go back to the rule in that booklet and change it. That is what I am pleading with the Steering Committee and this Conference that we must change the rules properly. That is all. But I do appreciate what you have told me. Thank you, Chair.

So, to contribute, I think that from listening to all of us, it is clear that there is consensus on the question of the Prime Minister and I think therefore, what is critical is the content of the Prime Minister. I have heard many colleagues at the Conference saying that we need an Executive Prime Minister. But I want to point out several factors that are critical when people are designing such premiership.

In our country, you are aware that that we do not have functioning parties. We actually have Parties which rotate around individuals and if you do not have functioning Parties, it is an anomaly to run a parliamentary system.

Secondly, when you have a parliamentary system you must have the ability of existing Parties to form coalitions. We have seen that we are not good at doing that as well. From previous elections, during the multi-party era, we do not really have Parties that have clear majorities, another requirement for a parliamentary system. I am asking this Conference to realize that if we were to route for a parliamentary system with those problems, we could have an unstable political system.

Thirdly the Chair, I think it is important to realize that this Draft in very major ways qualifies the power of the President. A lot of powers are given to Parliament where the President does not appoint people. Parliament vets all the major appointments. Even in terms of land, the President does not just give land as he used to, because there is a Land Commission. So we must realize that this Constitution is actually in many ways curtailing the powers of the President. We will not have the imperial President that we had. So, it is not just a question of saying, let us transfer the Presidency to the Prime Minister, to another person. I think therefore, because I know time is up, it is about to be up, perhaps we need to explore having the Prime Minister who is in-charge of day-to-day running of the Government. That is a major responsibility, a co-ordinating role and this person can either be nominated by the President and vetted by the Parliament or Parliament can be asked to give two names and the President chooses one and this person can be Leader of Government Business, so that the President is the Chief Executive, there is the Deputy President, that is a very good idea. I think in terms of the Cabinet, again the Deputy President and the Prime Minister can help the President to nominate, and then there is vetting by Parliament.

Finally, I originally favoured the issue of appointing a Cabinet from outside, but if it is proportional representation, you have also people coming into Parliament, who are very professional and some of those people can be appointed. So the Chair, I did not intend to speak like I was unhappy, but it is only that some times we have a feeling that some of us are actually being marginalized. There has also been another rumour that I am supposed to be against Kadhis Courts. Again to disparage my name, I don't know for what reasons, when some people have been given--

Hon. Delegate Samuel Arap Ng'eny: Order! order! your time is up please. Your time is up, I am moving ahead.

Hon. Delegate George Omari Nyamweya: As the point has been made-- (*Laughter by Honourable Delegates*).

Hon. Delegate Samuel Arap Ng'eny: Honourable Delegates, in line with what the Conference Chairman said at the beginning of this sitting, in the interest of time, I am going to recognize one more delegate from the floor, preferably a lady and then I will call on the presenters to make any remarks relating to them.

Uproar from Honourable Delegates.

Hon. Delegate Samuel Arap Ng'eny: Yes point of order. Who is on a point of order, I am seeing so many cards? 615.

Hon. Delegate George Omari Nyamweya: Thank you, Mr. Chairman, my name is George Omari Nyamweya, I represent the Democratic Party of Kenya, you have ascribed me number 615. I must rise again and I have done so before Mr. Chairman that there is and appears to be a very deliberate and systematic attempt to sideline the Political Parties.

We have had to fight to even be recognized. Now this morning, you said we shall have a few comments and I have not heard you call on the Political Parties, you are about to close this particular session. Now Mr. Chairman, when I look at the Act which brought us here, it is specifically stating that Members of Parliament, Political Parties, the District Delegates, Religious Organizations and Trade Unions. There was very good reason for bringing them here Mr. Chairman. The Members of Parliament came here so that they can contribute here, so that when the matter goes to Parliament, there would be no further debate. And for that, I have tried to show that they should be entitled to contribute. Now the Delegates came here Mr. Chairman from the Districts to ensure that this Commission, the things they have written in the Draft are those that they said at the District.

The Professionals came here similarly for that purpose. The Religious leaders came here to be our conscience so that we don't cheat each other, so the Commission does not sideline us. And the Political Parties Mr. Chairman, came here because we gave birth to this Parliamentarians and so on. You cannot tell us, that because we are Members of Parliament, therefore they can speak on policies in respect of the Parties. That cannot be so Mr. Chairman, and if that is what you are going to do, you should make it clear that the Political Parties should not be sitting here and should not contribute. Therefore we shall say to you Mr. Chairman, we shall go out and tell our supporters that "we have nothing to do with the Bomas of Kenya".

And please don't tell us that you are running out of time. When you rush us and you are going to rush us into a crisis, who would you turn to then, who would you turn to? I know and I have come here specifically Mr. Chairman, representing Democratic Party of Kenya, we were among the first here in Kenya, to state that we wanted a position of Prime Minister, as NARC we sai--

Hon. Delegate Samuel Arap Ng'eny: Order, order.

Hon. Delegate George Omari Nyamweya: No! I am giving my point of order, Mr. Chairman.

Hon. Delegate Samuel Arap Ng'eny: I know you are on a point of order but I want to respond.

Hon. Delegate George Omari Nyamweya: If we are not going to be entitled to speak at all, are we really going to say that we are part of that consensus? Are we going to say that we participated? Mr. Chairman, I rose here earlier on at the beginning of this sessions and I did ask the Chairman of the Conference itself, that "why don't you read through the entire document and then allow us 10 or even 15 minutes to comment on each Chapter? But you then ruled, that "no! we shall go Chapter by Chapter and you shall be entitled to comment on each Chapter as it arises". That is what you did say. Now you are saying "no! we have changed our rules, now you cannot comment, we have finished that one, you spoke the other day on different Chapter, therefore you shall proclaim to the whole World that we were at Bomas of Kenya, and we all agreed". That is not so. Mr. Chairman, before you finish this particular Chapter, I shall demand that I speak on behalf of the Democratic Party on the issues that we raised. I can see there are

contradictions, which can lead this country into a crisis, and I would like to bring them to the attention of the Delegates. Thank you.

Hon. Delegate Samuel Arap Ng'eny: Thank you, I think I want to say this in response to that big challenge, this debate has been going on since Thursday on the Executive. And my records indicate clearly that every category of the Delegates who were here, have been given a chance to speak!

Uproar from Honourable Delegates.

Hon. Delegate Samuel Arap Ng'eny: Every category has had that chance! Political Parties included.

Uproar from Honourable Delegates.

Hon. Delegate Samuel Arap Ng'eny: Order!. It is only that not everybody who is here representing every category has had a chance--

Uproar from Honourable Delegates.

Hon. Delegate Samuel Arap Ng'eny: --and therefore, I cannot take that one.

Hon. Delegate Wilfred Koitamet Ole Kina: Order, order It is clear that everybody feels we have not had enough time to discuss the Executive. I would like to say, that the Conference here as it is, can decide to continue if they feel we want. But I would like to also guide the Conference that we cannot discuss one topic without actually trying to come to an end of it, so I would like just to get a voice from you, whether we would like to continue with this, and have guidance of how long you would like us to continue on this Chapter, because we have to go to other Chapters. So the first thing is, how many of you would like to continue with this Chapter?

Murmurs from Honourable Delegates.

Hon. Delegate Wilfred Koitamet Ole Kina: For how long?

Uproar from Honourable Delegates.

Hon. Delegate Wilfred Koitamet Ole Kina: Point of order. 368.

Hon. Delegate Joel Kipyegon Sang: Honourable Chairman, it will be a tragedy if we are going to be actually controlled so that we don't discuss issues exhaustively. We have made a Constitution before and yet Kenya came to a point of crisis. We are not going to be making halfbaked Constitutions. I have not spoken since Chapter one, and we are dealing with the Executive, one of the most contentious Chapters in this Country. Everybody should be given a chance. The people of Bomet shall be heard. You cannot dictate that we move very fast. We are not actually moving very fast, we are trying to reconstitute the Kenyan Republic. This is the issue, so we shall all be heard. If people are still raising their hands, why are you in a hurry to go to another Chapter? This is the issue. (*Clapping*). Does it mean that the people of Bomet have nothing to say in Chapter 22 (x)? This is very unfair, can we be heard please? Thank you.

Hon. Delegate Wilfred Koitamet Ole Kina: Since--

Honourable Delegates calling for points of orders.

Hon. Delegate Wilfred Koitamet Ole Kina: Point of order 296.

Hon. Delegate Stanislaus Wambua Kasoka: Mr. Chair, my names are Stanislaus Wambua Kasoka. According to what is going on now, Mr. Chair you remember that you rushed us with Chapters 1,2,3, 4 and 5. Actually at the speed we going on, it is my request that, we allocate today to finish the Executive today, and then we can jump to the other Chapter tomorrow so, that every one of us can have a chance to speak.

Hon. Delegate Wilfred Koitamet Ole Kina: Thank you. Point of order 223.

Hon. Delegate Francis Ole Kaparo: Mr. Chairman, I am Delegate number 223, this time I am speaking as a Delegate, Francis Ole Kaparo. Mr. Chairman, I want to pose a few questions to you, and to the organizers of this Conference. Are we here to make a Constitution good enough to last this country for a long time, or are we here to rush against time? I would like to be answered whether we are on a 100 meters dash in a hurry to beat the ten second barrier, or should we be here as a marathon to build up consensus and understand the document we are presenting to the people of Kenya. I truly believe that the document we intend to make here, must be a document that will take this country for a long, long time.

Mr. Chairman, I wish to say the following. If you do not consider this document properly and you give us a bad document, because you must hurry us up, Mr. Chairman, you may drive this country into chaos and crisis. (*Clapping*). And I wish to state from here, Mr. Chairman, we are not prepared to have Kenya, taken into a crisis because people are in a hurry . (*Clapping*).

Finally, Mr. Chairman, what are we really doing here, if I must pose this question? What are we doing? We have gone through Chapter 1, Chapter 2, Chapter 3 and Chapter 4 and yet we have not resolved what it is we have agreed. What have we agreed? For example, we have done the Legislature. What have we decided? Do we have a Bi-cameral Parliament or a Unicameral? At what stage do we make that decision? If you are saying that that decision will be made by the working committees, that is tragic. A working committee will be about sixty people, how can they make a decision of such monumental importance on behalf of six hundred people? I think there must be a direction. Thank you.

Hon. Delegate Samuel Arap Ng'eny: Order, order, Members. I think you have made your points very clear, let me just respond to Hon. Kaparo's final point of order. You have already said you want to continue with the debate, so I wanted to move ahead with the debate. What I wanted to say was that, if you recall the first day, the Conference Chairman, outlined how we were going to proceed with the discussion of the Draft Constitution. And we are still on the general debate in plenary, after the general debate on the various issues, all the issues that will have been raised in the plenary, will be taken to the committees, the technical working committees where specific recommendations of what should be done, including all the motions and resolutions, will be taken there and approved by every technical committees. And then

finally, all those will come back to the plenary and I think that is where Honourable Kaparo is, for formal endorsement of any particular changes, that any technical committee will have arrived at, and that is where we in the Chair here, are following that guideline from the beginning when we started this conference.

However, you have resolved that you want to continue with the general debate, and now I will continue. 594.

Uproar from the Honourable Delegates.

Hon. Delegate Samuel Arap Ng'eny: Yes? Who is on a point of order? 317.

Hon. Delegate Orié Rogo Manduli: I am standing up to contribute, not on a point of order. So I am waiting.

Hon. Delegate Samuel Arap Ng'eny: There is a point of order, somebody has raised a point of order which I want to take. 317.

Hon. Delegate John Kinuthia Waitiki: Thank you Mr. Chairman, My name is Waitiki, Delegate number 317, from Thika. I have not stood here before to make any complaints or even contribute, but what the last Speaker raised, needs to be further addressed. The method Mr. Chairman you are using to pick at random, may not be satisfactory. If we go back to our record from the day one, and actually take tally of all contributions, I am sure Mr. Chairman, you will find that more than 629 Delegates have contributed. What this translates Mr. Chairman, is that from day one, there have been some Members who have contributed more than once and more than twice, granted they have contributed on several Chapters.

Some of us, have refrained because there had been quite a bit of repetition. But there are certain things that perhaps we have picked, that we think cannot be allowed to go all that way before discussion. I have even pointed something that you almost passed and I hope you will give me a chance to mention that cannot be allowed to continue and even when it goes to Technical

Committees, for example technical committee (d) in this particular Chapter, they may not be able to spot it.

What I am suggesting Mr. Chairman, is that let us keep tally of those who have contributed. And we must say that those who have not contributed before, shouldn't or rather those who have not contributed must be given the first chance, so be it Mr. Chairman. Thank you.

Hon. Delegate Wilfred Koitamet Ole Kina: : Order! This is what we have been implementing. You want to continue with points of order?

Chorus from Hon. Delegates: Yes.

Hon. Delegate Wilfred Koitamet Ole Kina: And when can we decide anything?

(Uproar from the floor)

Hon. Delegate Wilfred Koitamet Ole Kina: I think at that juncture, I am adjourning the sitting for a break for tea and then we come back and continue. Thank you.

Hon. Delegate Orië Rogo: I shall be the first one to talk, I hope. Mr. Chairman. You adjourn with me standing Chairman, just remember that when we get back thank you. You adjourn with me standing. Thank you Chairman.

Hon. Delegate Wilfred Koitamet Ole Kina: Then we will continue with general debate for sometime and we will see. May I please have those who will be recognized? Try and introduce new materials so that we not appear to be deliberating what has already been discussed by other delegates. I had recognized 594, a representative from Political Parties.

Hon. Delegate John Michuki: Point of order! Point of order!

Hon. Delegate Orië Rogo: Thank you very much Chair.

Hon Delegate Wilfred Koitamet Ole Kina Nchoshi: A hundred?

Hon. Delegate John Michuki: Mr. Chairman, my name is John Michuki. I am the Member for Kangema and I am also a Minister in government, I am in charge of Transport and Communications. My point of order, Mr. Chairman, is in connection, or in support of what the Speaker of the National Assembly of Kenya, Honorable Kaparo did warn this gathering about the need not to jump over the river, but to wade through it. That is how I understood it to day. If you allow me Mr. Chairman, I will give a small story--

(Uproar from the floor)

Hon. Delegate Wilfred Koitamet Ole Kina: You rose on a point of order--

Hon. Delegate John Michuki: I rose on a point of order which is what I am emphasizing, and I am saying because of the need for us to probe each and everything which is written. I was going to say that those who have read Chaucer, the Canterbury tales, will remember that those pilgrims who went to Canterbury, a long journey, told stories as they moved, and if there was one of them who did not understand what the story was or who had a question to ask, the whole of the pilgrimage stopped, and it did not matter whether they stayed there for one or two hours, but they had to make that other person who is in doubt understand. Please, Mr. Chairman, guide us towards that end. Thank you. *(Clapping)*

Hon Delegate Wilfred Koitamet Ole Kina: Continue 594.

Hon. Delegate Orie Rogo: May I now continue? Thank you very much Chair, Honourable Delegates. First of all I want to remind you of the sacred duty that brings us here. Our joint agenda here is to-- My name is Honourable Orie Rogo Manduli, Ford People Representative, watu wengi, number 594.

Our agenda here, Honourable Delegates, is a joint agenda, to regenerate, to re-engineer this country politically and socially for the benefit of posterity. The engineering is necessary because quite a few things have been wrong and we have this opportunity to do it, we start at the top. At

the top, with the President. I would hate to be an over-burdened President, who cannot look at things logically because everything is on my head. There is not human being born today and walking or even one donkey born tomorrow with a future technology. That can be everything to everybody that can be all things to all people. We need to give our Presidency dignity, we need to give our Presidency room and faith, to think things through, and that is only possible if some of the burdens that are on him today, so that he is not everything to everybody in Kenya. Why is he everything to everybody, we are over 30 million. Why can't we assist the President?

With that, I immediately say, a very big yes, to the Prime Minister ship. But this Prime Ministership must not be pegged to an individual. It must not be pegged to a person. We are creating the position of Prime Ministership and as we sit hear Honourable Delegates, you don't know who is going to sit in that seat, it could be me. (*Uproar in the hall- loud applause*)

And I don't want as situation where we are looking at the Prime Minister as a man, and the Deputy Prime Minister as a woman. Nani amesema hiyo? The Prime Minister, and we are women here who are amply qualified to be Prime Minister. So when the post has been created, then we will find the most suitable person to sit on it. But we must protect the Prime Ministership from the President, because we do know words and disagreements do occur. We must not have a Prime Minister that is so insecure. We must, if we can give our judges security of tenure, we should also be able to give our Prime Minister security of tenure, and get him a way from fear of the Presidency, so that they don't sleep well thinking that every lunch time an announcement will be made.

It is very important that we create, I heard Mr. Speaker ask a question, and I want to answer it for him. He asked, "Have we agreed on a Bi-cameral Parliament or not?" I think the consensus here is yes. It is a resounding yes Bi-cameral Parliament. We must have a Bi-cameral Parliament, we must have a Senate. We must have what I asked, checks and balances, from the beginning. Right from the top, I said we are starting at the top with checks and balances. We are not going to create them for the Presidency, and then we stop there. We are going to create them all the way down to the districts, checks and balances. It is the only way we will be able to run this country with transparency.

Somebody is still wondering, are we recalling the MPs? The answer is a resounding yes. We must recall these MPs. (*Applause*). If we have no checks and balances we have no way of recalling the MPs. We only have five years of nothingness going on in some areas. Five years is a life time, and you cant have five years wasting. It is very important, ladies and gentlemen, Honourable Delegates, that we take this opportunity. I am asking right now, a little question that, is Mr. Speaker here, is Mr. Speaker with us here? I am requesting that if he is not here we in Parliament we have something written on for the Just government of men. Our House of Parliament is for the just government of who? I want that one changed immediately we finish here on the 6th. (*Applause*).

It has to be for the just government of men and women. That must be changed immediately.

Hon Delegate Wilfred Koitamet Ole Kina: Order! Your time is up.

Hon Delegate Orie Rogo Manduli: I want that one be changed immediately we finish here on the sixth. It has to be for the just government of men and women. That must be changed immediately.

Hon Delegate Wilfred Koitamet Ole Kina: Order! You time is up.

Hon Delegate Orie Rogo Manduli: Thank you very much Honourable Chair, I am only sitting down hoping that you give me another opportunity because what I have told you today is as the beginning of a mountain of things that I want to talk about here today. Thank you very much.

Hon Delegate Wilfred Koitamet Ole Kina: Sit down, Order! Right, we will go on. I will recognize somebody from the religious organizations for this round so that we can move. Religious organizations? Religious organizations, I don't see anybody? Where 540?

Hon. Delegate Nthamburi Zablon: Thank you very much Mr. Chairman. I appreciate your eyes seeing me at this time and I am going to make a contribution then I sit down so that I can give time for somebody else to do so. My names are Nthamburi Zablon, delegate number 540, from the religious organizations.

I would like to talk about particularly about the Executive, and how we can balance powers, because that is what we have been talking about. I see much more, other than talking about the individuals what I feel we should talk about is institutions. Because a country is governed by institution rather than by individuals, because individuals come and go, but institutions stay. So we should actually put more effort on Parliament, the Judiciary and the Executive. Executive of course, it has the Presidency, the Vice President, and of course the Prime Minister and Parliament, we should make sure that most things that come through Executive pass through Parliament, so that I think they get approval, so that no one person can do things.

What I feel, is that we should not particularize on age. That is what I almost forgot to talk about. We should not discriminate on age. If we are talking about not discriminating on account of sex, on account age, we should not also discriminate on account of age. I would say, let us leave it open, whether minimum or maximum. Because if you Kenyans you want to appoint a 21 year old and you think that he can be the President, then let it be. Because it is Kenyans which make that decision through the ballot, and if the all 30 million feel that even a 21 year old can do it, let it be, and we should not say that, if we can elect that person, then he is mature enough to run the country, because that is what we give him as the mandate to do so.

Also if we remove the minimum, we should also remove the maximum and say if we also elect that person knowing that he is at an advanced age and we have that confidence, let it be so because it is the mandate of Kenyans and Kenyans should give it that mandate to our Chief Executive.

On account of the Civil Service, and particularly the Permanent Secretaries, I would like the clause 181 strengthened, so that we say what kind of Permanent Secretaries we want, because these are the people that should be running the Ministry, and those are the technical people. I find it difficult to say that we elect a Parliament and then after electing Parliament, then we tell that you cannot have Cabinet Ministers from Parliament, we will have to go outside Parliament and get Cabinet Ministers. I believe these are political leaders and we need Political leadership in Ministries, as well as technical leadership which I believe comes from the Permanent Secretaries, and we should give lee way so that in case there is a Ministry that the President feels

that it needs to be filled up by a person from outside then he can do so, but on the general rule, I would like to see that those who are elected Members of Parliament are also get to be able to run Ministries.

Hon. Delegate Samuel Arap Ng'eny: I will go to a District Delegate preferably a lady, 303.

Hon. Delegate Margaret Nyathogora: My names are Margaret Nyathogora, a Delegate from Nyeri, number 303. Hon. Chairperson, I would like to propose that all Presidential appointed positions, 1/3 of them be given to women. I am talking about Cabinet Ministers 1/3 of it, Assistant Ministers 1/3, Permanent Secretaries 1/3, Ambassadors 1/3, High Commissioners 1/3, Parastatal Heads 1/3. The other thing I want also the Chief of General Staff, immediately after this be a woman. (*Laughter*).

Coming to this one, I am proposing because I want Affirmative Action in action and not in words. The other thing I want to remind the Hon. Delegates that age goes with wisdom. And the ages are very sweet and immaculate, so I am saying if an 85 man can make a baby, even leading this country, he will do it well. So, with age of a President, let it be even ninety. If we can be able to go round this country and get 50% votes, what is wrong with that? In actual fact, these guys when they become old, they are not supposed to be disposed, they are supposed kept in high offices whereby we can go for advice. So, with President's age, it can be as much as ninety.

The other thing I am supporting the office of the Prime Minister, being the chairperson of Central Province Delegates, this one we agreed. But, let this man who is appointed by a Delegate, or a woman for that matter, who has been appointed by the President be not senior than the President. If it is a must, that his powers are going to be like those ones of the President, let then the post be elective, let him go around and get 50% votes of Kenyans. Let it be elective, otherwise it is the best way. Also, I would like him to be accountable to the President. Cabinet Ministers, I am saying and I am proposing to this gathering Honorable Ones, that they should be professionals. Let the Minister of Education be a man who has tested teaching, let the Minister for Roads be an Engineer of Roads, and I am happy we have one, the one who is at present the Minister has tested that Engineering. Let it be that way. And the MP, let him do the job he is

given by his people in the constituency, so that he can be able to cater for those people, to cater for his family, and for that matter, to cater for his friends.

Hon. Delegate Margaret Nyathogora: Thank you I am recognizing a Parliamentarian now. Parliamentary candidates, 95.

Hon. Delegate Kenneth Marende: Thank you Honourable Chair for recognizing me. My names are Kenneth Marende, I am the MP for Emuhaya. Hon. Chair, my starting point is that we as Delegates representing the people of Kenya must recognize that we have a duty to make a Constitution for today, for tomorrow and for posterity. We are making a Constitution for the born and for the unborn. So, we must make a Constitution that is going to stand the test of time. We must make a Constitution that is divorced from individuals from personalities and having said that, Honourable Chair, I have my contribution on various specific aspects, beginning with that of appointment of Ministers. The Draft Constitution proposes, that these persons be appointed from outside Members of the Parliament. Hon. Chair, it is the agreement of this Conference from the very early stages that sovereign authority lies with the people and in my view, Members of the Cabinet who will be Ministers must therefore be accountable to the people. The only persons best suited to be accountable to the people in my view are, Members of Parliament who have been elected by the people and so Ministers must come from them.

Hon. Delegate Samuel Arap Ng'eny: Order, order. I think I have got to be strict here. The issue of the Cabinet outside the Parliament has been said several times; if you have something new, please continue.

Hon. Delegate Kenneth Marende: Yes Chairman, thank you. I have just added my view to it, may be I have been a little more articulate than previously. Hon. Chair, there is a provision relating to appointment of Ministers to act in the absence of substantial Ministers. Hon. Chair, the situation we have today, is that Assistant Ministers are more or less functionless. Assistant Ministers don't seem to have a duty to perform, I am suggesting that in the absence of a substantive Minister, the Assistant Minister or in the case of the new Draft, the Deputy Ministers ought to act as Ministers, and this should go in the Constitution, so that Ministers also have a duty to perform.

Hon. Chair, I also want to add my voice to the office of the Prime Minister. I agree that it should be created, but it is my proposal that that office be diluted from the position that the current Constitution presents. The current Constitution seems to put a lot of power in the office of the Prime Minister, the net effect will be that there is a power struggle between the President and the Prime Minister. We must avoid that. The President must be seen to be in-charge all the time and he must retain executive authority. Whatever role the Prime Minister will play, must be seen to be merely delegated from the Office of the President.

Hon. Chair, I will have had few other points, but for the moment, I will rest my case. Thank you.

Hon. Delegate Samuel Arap Ng'eny: Thank you very much. I will recognize anybody from special interests, who wishes to reflect on this particular chapter. Special interests, 206.

Hon. Delegate: No. Special interest –

Hon. Delegate Samuel Arap Ng'eny: I understand you are not belonging to any special interest.

Hon. Delegate Ali Wario: Asante Mheshimiwa mwenye kiti. Naitwa Wario, Mbunge wa Bura na ninasimama kwa special interest kama mfugaji. (*Laughter and Clapping*). Mheshimiwa mwenye kiti, Mheshimiwa Wakenya wanajua kinaga ubaga kwamba serkali tatu zilizopita; ya Mkoloni, ya Kenyatta na ya Moi.

Hon. Delegate: Point of order.

Hon. Delegate Samuel Arap Ng'eny: 584, yes.

Hon. Delegate Maku Mutua: Thank you Mr. Chairman, I am Professor Makau Mutua, Delegate 584. Mr. Chairman, I am disturbed by your impotence. That Hon. Delegate who is speaking--

Hon. Delegate: He is a parliamentarian.

Hon. Delegate Maku Mutua: He does not represent special interest. You must ask him to sit down right now.

Hon. Delegate Ali Wario: Mr. Chairman, I am the Chairman of Pastoral Parliamentary Group, for his information. (*Clapping*). Mr. Chairman, serkali hizi tatu, zilifanya dhulma dhidi ya wafugaji –

Hon. Delegate Samuel Arap Ng'eny: Order Mheshimiwa, I am not stopping you but I just want to clarify that I accepted your contribution, because of that special interest that you represent that kind of community. And so, I have taken that note.

Hon. Delegate Ali Wario: Thank you, Mr. Chairman.

Clapping.

Hon. Delegate Ali Wario: Bwana mwenye kiti, dhulma ilifanywa dhidi ya wafugaji. Ukiangalia mauaji ya Wagala Massacre, ukiangalia Malkamari, haya ni kwa sababu mamlaka ya Rais ilikuwa kubwa kiasi kwamba, ataua mtu anayetaka kila asubuhi. Na nina simama leo Bwana mwenye kiti kusema lazima –

Hon. Delegate Samuel Arap Ng'eny: Order, there is a point of order, 388.

Hon. Delegate Sammy Naibei Chemoei: Mr. Chairman, my name is Sammy Naibei Chemoei, Delegate number 388. Mr. Chairman, with due respect that the current speaker may represent certain special interest, but he is not listed as belonging to the group that are given in the book as belonging to the special interest and that is not right Mr. Chairman, he should sit down.

Hon. Delegate Ali Wario: Mr. Chairman Sir, with all the due respect to the Hon. Delegate who is speaking, I hope we have only one Chairman and that Chairman has already made the ruling, and I wonder Mr. Chairman – (*Clapping*). Mr. Chairman, and I stand to ask for you to

intervene and give me protection so that I can contribute, they are interfering with my five minutes.

Mheshimiwa mwenye kiti, nimesema ufugaji ilifanyiwa dhulma isiyo kuwa na kiwango. Hii ni kwa sababu, mamlaka ya Rais –

Hon. Delegate Samuel Arap Ng’eny: Please allow the Member on the floor to finish his contribution.

Hon. Delegate Ali Wario: Mamlaka ya Rais Mheshimiwa mwenye kiti ilikuwa kubwa sana kiwango ambaye ataamua wafugaji mia mbili kuuawa bila kujali haki yao, na bila kujali utu yao. Basi leo Mheshimiwa mwenye kiti, tunasema mamlaka kama hiyo lazima ipunguzwe kwa Rais, na itakapopunguzwa, hatutapunguza mamlaka ya Rais kuweka hapa chini, tutapunguza tupatie institution ingine. Tutapatia nani? Tutapatia Waziri Mkuu.

Mheshimiwa mwenye kiti, swala la umri. Umri ni kitu muhimu sana, huwezi wewe kama mtu unasimama hujui wajukuu wako ni nani, na unatamani kukuwa Rais ya Kenya. Kwa hivyo, sisi tutakalo miaka sabini, imekutosha, nenda nyumbani upumzike, patiana nafasi kwa wengine. (*Clapping*). Mheshimiwa mwenyekiti, nimezungumzia kifungu 151 sehemu ya mbili tatu ambayo inazungumza, Rais lazima achague mawaziri kumi na tano. Ikiwa ni lazima, mawaziri wachaguliwe kumi na tano, Mheshimiwa mwenyekiti, dhulma iliyofanyiwa wavugaji ni kwa sababu mbinu ya maisha yao haikujulikanwa na wapanga sheria ya nchi hii. Hivyo basi, tungependekeza kati ya wale waziri kumi na tano, mmoja lazima awe wa kuendeleza ufugaji katika nchi ya Kenya.

Mheshimiwa katika kumhuzulu rais, hii ni kifungu mia moja sitini na tatu, moja – impeachment. Hapa tunaambiwa Bunge ikae, ipendekeze, iende kwa nyumba kubwa. Nyumba kubwa hapa, baraza la taifa lina miaka minne. Ikiwa hii ndiyo miaka yao ya mwisho, then Bunge iamue kum-impeach miaka inayokuja na tayari hayuko ameenda kufanya uchaguzi, vipi itaendelea impeachment hiyo, Mheshimiwa mwenyekiti?

Mwisho, tayari tuko na katibu wakuu ambao wanatoka wananchi, ambao si wanasiasa, ukiwaongezea tena na Mawaziri ambao hawatoki Bunge, msafara huo utafika mwisho. Asante, mwenyekiti.

Hon. Delegate Samuel Arap Ng'eny: Thank you. I am looking for a District Delegate from this area here. 370?

Hon. Delegate Joseph Maritim Soo: Thank you very much, Mr. Chairman I think let us allow debate to go on. Mr. Chairman, thank you very much.

An Hon. Speaker: Point of order.

Hon. Delegate Samuel Arap Ng'eny: 121, what is your point of order?

Hon. Delegate Karue Muriuki: On a point of order, by the way, my name is Eng. Muriuki, Delegate number 121, otherwise Member of Parliament for Ol Kalou in Nyandarua District. My point of order, Mr. Chairman, is very simple. Debate on this particular topic was extended so that presumably we can get more people to speak and more alternative views. There are some Delegates who have been seated for the third week now and they have not talked on this topic or any topic at all, starting off with myself. So, what I am suggesting, Mr. Chairman, is that the rest of the period be devoted to allow the people who have not talked at all. Thank you, Mr. Chairman.

Hon. Delegate Samuel Arap Ng'eny: Thank you very much, that is what the Chair is trying to do Unfortunately, today, I don't have the register for people who have spoken but I am trying my best to ensure people who speak are the ones who have not spoken, continue 370.

Hon. Delegate Joseph Maritim Soo: Mr. Chairman, thank you very much for this golden opportunity you have given me to share a view.

Secondly, Mr. Chairman, thank you very much for having directed this Conference not actually to repeat –

Hon. Delegate Samuel Arap Ng'eny: Why don't you just allow the member on the floor to continue?

Hon. Delegate Joseph Maritim Soo: Mr. Chairman, thank you very much for you have directed this Conference not to repeat or make decision every now and then on what we have discussed. In fact, my name is Arap Soo Joseph, a Delegate from Kericho, number 370. May I say that I have not spoken since I happened to sit hear. Maybe, may I inform you, Mr. Chairman, you have not been seeing this row here, somewhere here, they are also Delegates.

Hon. Delegate Samuel Arap Ng'eny: Please use your time to make--

Hon. Delegate Joseph Maritim Soo: May not repeat please. My point number one, we thank the previous Parliament which, having conceived a young child in the form of the Constitution of Kenya Review Commission, which is this one, to continue with reviewing of the Constitution of Kenya on behalf of the 30 million Kenyans.

Two, through devolution of powers, I believe the word devolution means a lot and everything has got to be devolved from top to the bottom.

Thirdly, before I sit Mr. Chairman, I would like this Government arms not to be politicised:-

1. Judiciary,
2. Legislature and
3. Executive.

I know that these will be professional and therefore should not be politicized in whatever way. Thank you very much.

Hon. Delegate Samuel Arap Ng'eny: 302, point of order.

Hon. Delegate Fredrick Nderitu: My names are Fredrick Rukwaro Nderitu. Mr. Chairman, you have introduced a very serious precedent through the previous Honourable speaker. You have allowed people to come in two categories as Delegates. There are many Delegates here who hold other offices, elective offices, what will stop another Delegate to say that he is representing coffee farmers, another, tea farmers, fishing, sugar industries, than people invest in various categories. So, I would want you to accept that, that was an error and it should be corrected and it should not be there because some of us have never talked since we came here. When you introduce various categories in this Conference through the back door that is a process and form of rigging. Thank you.

Hon. Delegate Samuel Arap Ng'eny: Another point of order.

Murmur from the Honourable delegates.

Hon. Delegate Samuel Arap Ng'eny: 424, Where? There was a point of order. 382.

Murmur from the Honuorable Delegates.

Hon. Delegate Aswani Sammy Amunga: Thank you very much, Honourable chairperson and my colleague Delegates. My name is Aswani Sammy Amunga, Delegate number 382. Honorable Chairperson, I would also like to contribute on what is going on especially the Executive issue. The people of Kenya had mandate us to come and discuss their destiny.

Hon. Delegate Samuel Arap Ng'eny: Order! Order! That is not a point of order.

Hon. Delegate Aswani Sammy Amunga: I thought you had given me a chance to contribute?

Hon. Delegate Samuel Arap Ng'eny: You raise a point of order and I give to tell me what your point of order is?

Hon.Delegate Aswani Sammy Amunga: No, no. I did not raise a point of order. You had just given me a chance, Mr. Chairman to, talk.

Hon. Delegate Samuel Arap Ng'eny: Then you hold on a minute, there was somebody with a point of order. I hear Honourable Anyieni has a point of order.

Hon. Delegate Aswani Sammy Amunga: Will that guarantee that you will come to me? I am thankful.

Hon. Delegate George Ayako: Thank you, Mr. Chairman. My point of order is in respect of the point of order which are being raised questioning the validity of that Honourable Delegate to contribute as an interest group of pastoralists. Mr. Chairman, some of the special interests which are here are nowhere in the country of Kenya. Most of them are in Nairobi and they want to dominate this conference. We represent special interests from the rest of the country. So, if that Delegate was contributing as a pastoralist we should respect that interest, Mr. Chairman. *(Clapping by the Honourable Delegates)*. If I contribute as a coffee grower, the coffee which has been destroyed in this county, you should respect my contribution as a coffee grower. So, Mr. Chairman, this entire people raising points of order we do not even know which interest they will represent in my Constituency.

Clapping by the Honourable Delegates.

Hon George Ayako: That is my point of order.

Hon. Delegate Samuel Arap Ng'eny: Order! Delegates, I think I want to give further understanding. We came to this conference representing all the interests of Kenyans and I thought I was using my understanding to recognize the member who is being questioned know because of that particular special interest that combines with him being a Parliamentarian. Also, you will find, if I was to call youths now, they could as well be district Delegates because within the districts we had a category of youths. So, I think Delegates, without belabouring and splitting our hairs, let us allow debate to continue and let us be friends and move together.

Clapping by the Honourable Delegates.

Hon. Delegate Samuel Arap Ng'eny: I had recognized erroneously but I want to give him now. 382

Hon. Delegate Aswani Sammy Amunga: Thank you very much, Honourable Chairperson. My name again is Aswani Sammy Amunga, delegate number 382 from Butere Mumias District.

Mr. Chairman, a lot has been said about what people of Kenya wanted. I have been very much keen looking at the main Report volume one, page 243. The people of Kenya want a Parliamentary system of Government. That is what the people of Kenya had told the Commission.

Mr. Chairman, although the Commission has decided to curb and have trimmed the powers of the President, but to me the President still has more powers and that has been the problem in this country, one person having more powers and has messed up many things up in this country.

Mr. Chairman, though I support the ideas or the contribution from others that we maintain those organs so that we should have the President with some powers, a Prime Minister with some powers and also the Parliamentarians with powers.

Mr. Chairman, I was looking at Article 171, but I was of the view that we should also insert another paragraph which says, within seven days following the summoning of the National Assembly or whatever necessary to fill the vacancy in the office of the Prime Minister, then the paragraph I wanted to add, 'after consultation with the political parties the President should propose the Prime Minister to the National Assembly Speaker,' because we are seeing a situation, we are afraid, probably the parties may not agree. It has happened in Italy and India. So the best thing for us is for the President to consult with the political parties before the decision is made who should be the Prime Minister.

Though, Mr. Chairman, you have cautioned us, the issue of a Cabinet being appointed from outside Parliament, has really been talked about by many people. I am yet also to voice my feelings because when I look at Article 176, it really explains the decisions and what Parliament should do. Mr. Chairman, it is unfortunate, after the election some of us we have been watching what is going on in the country. After the elections what normally happens, the winning party

Members of Parliament will rush to Nairobi and start to canvassing and lobbying, for appointment to ministerial posts, something which we want to avoid. To avoid it, Members of Parliament should stick to articulate the needs of their voters, who are their bosses and then we should have members of the Cabinet appointed from outside. It is indicated clearly that this people will be recalled to be summoned by Parliament. Those issues that Parliament had already passed, if not yet implemented, they will be summoned to come to answer. If they will not answer that means one has to be sacked. In the history of this country, again, I have seen a situation where a Cabinet Minister becomes a small god. He will divert money, which is actually voted for a certain Constituency. Simply because they don't agree with a certain member of Parliament, that money will be transferred to another Constituency just to frustrate that Member of Parliament. (*Clapping by the Honourable Delegates*). Therefore, I don't see the need of appointing the Members of Parliament to the Cabinet. Instead, let us have other people. Moreover, Mr. Chairman, we are trying to create employment. There is no point of one person having more than two jobs. (*Clapping by the Honourable Delegates*). Some of our professionals are actually hovering in other cities all over the world looking for jobs. Why don't we accommodate them by appointing their ministers so that they can man those ministries.

Mr. Chairman, I heard the bell. Thank you very much.

Hon. Delegate Samuel Arap Ng'eny: Thank you. I want to recognize a Delegate representing Trade Unions. Those representing Trade unions?

Hon. Delegate Dr. Gisuka Wilfred Machage: Point of order, 84. On a point of order. My name is Dr. Gisuka Wilfred Machage, point of order. Member of Parliament for Kuria Constituency. Mr. Chairman, it is apparent that to catch your eye you have to raise a point of order, just like it happened with the previous speaker. So, I have raised a point of order to catch your eye-- (*Laughter*) --because I have been raising my hand since morning. So, can you rule, as you ruled previously that I am given a chance to speak after the next speaker.

Uproar by the Honourable Delegates

Hon. Delegate Samuel Arap Ng'eny: Order! Order! Delegates. I will do the best from the Chair and recognize people in their categories and I had said I wanted to recognize the people representing Trade Unions for now. I see 450.

Hon. Delegate James Ngusi: Thank you Mr. Chairman, I am delegate No. 450 representing the Trade Union. I want to start by saying that, I am James Ngusi. I want to start by saying that in principle the Draft Bill has done a commendable job in proposing the establishment of the Office of the Prime Minister. However, I think if you look critically at the powers that have been left in the hands of the President as represented in Article 150. I am seeing a major problem that is going to afflict this Nation. Article 150 Sub-section 1 (A) is saying the President is the Head of State, Commander-in-Chief of the Defense Forces, the Chairperson of the National Security Council and the Chairperson of the defense council. Here is one of the areas that will bring about problems in this Country. I would like to suggest that if the powers of the Prime Minister so established as contained in Article 170 it will be difficult for us to see any peace in this Country, where the President has all the armed forces at his disposal, and has to beg for resources from a Prime Minister who is responsible for the economic resources in this Country. I therefore want to suggest that the powers ascribed to the President as contained as Article 151 and 150 Sub-section 1 should be removed and transferred elsewhere within the Constitution. Otherwise the President left as it is will move and surround the Parliament, the National Assembly and dissolve it, hold it at ransom and the Prime Minister will not be able to function at all.

Secondly, I do support that the appointment of Ministers has to be done from people who are not Members of Parliament. I think this has already been stated, the merits for this particular choice are very clear. We want cabinet ministers who will be fully responsible. I would only urge that we insist as Delegates, that the Minister so appointed must be appointed on the basis of professional criteria.

Thirdly, I want to observe that I don't think there is any justification for the appointment of two Deputy Prime Minister, I think we need to reconsider this and it is my hope that when we are in technical working committee, we shall be able to come up and examine the merits and de-merits for a second post of the Deputy Prime Minister. Thank you.

Hon. Delegate Samuel Arap Ng'eny: Thank you. I want to recognize somebody from special interests. I have categorized. Yes?

Hon. Delegate Dr. Lihanda Savai: I am Dr. Lihanda Savai, representative of political party, Kenya Republic Reformation Party Delegate No. 608, please why don't you say Political Parties are requested to speak a bit, you just call--

Hon. Delegate: Wilfred K. Ole Kina: Order, order, order

Hon. Delegate Dr. Lihanda Savai: I am very--

Hon. Delegate Samuel Arap Ng'eny: Order, Delegate. That category is not represented here, so I am going to Political Parties. Non-parliamentary parties, 609. Point of Order Martin Shikuku.

Hon. Delegate Martin Shikuku: Mr. Speaker, Mr. Chairman, I am forced to stand and draw your attention to the fact that we have an Act under which we operate, and in that Act there is no non-parliamentary party, just Political Parties. Would you be kind enough to consider the Political Parties, because we had Hon. Nyamweya, who stood up here and you have completely forgotten about it. You should know we are all here because of Political Parties. Don't forget for a single minute.

Hon. Delegate Wilfred K. Ole Kina: I have called somebody who represents Political Parties, he will identify himself.

Hon. Delegate Kenneth Njiru: Thank you Mr. Chairman, my name is Kenneth Njiru, Delegate No. 609. Mr. Chairman, my contribution to the Chapter on the Executive takes-- Nimesema 609, United Democrats,hiyo na mumealikwa, Mr. Chairman, if I may proceed. My contribution is from Traditional aspect, or should I say the cultural aspect as I address the issue of the Executive. I am told that in traditional Africa, we had the traditional elder, both male and female, persons who never lied, persons who are wise in the ways of society, persons who never

stole, persons who basically were the custodian of the norms and the cultures of the society. Mr. Chairman, as I address this particular Chapter, I cannot help but think that some of the problems that we are going through in this Country and even indeed in the other African countries is because these type of people have not been given their due consideration. When the Mzungu came in he found African Society that had their cultures and the people who were manning this societies were put aside and in their place they picked a puppet, who adapted the Western way of doing things. Mr. Chairman, if I were asked in that regard, I have come to believe that when we are talking about the President of this Country, I believe he or she should be a mature elder statesman or woman for that matter. I believe such a person would be able to give due stability that is required in this Nation. Such that when we leave the Prime Minister for the younger generation, kama kuna taabu, the old people will be able to say we think... And I do not think that such a President should have Executive powers, but the type of powers they should have are what we may call the moral authority to say that I think the power of powers today we see in what we call the wazees. Because when a mzee tells you I think we do listen. Mr. Chairman I think it will be important to de-link politics from this office.

What I mean by that is today, we see so many old people who would lie to this Nation, saa sita ya mchana in the name of politics. They will tell you politics is the art of the possible and in my mind Mr. Chairman, I believe it is time to de-link politics from the Presidency. Let the Prime Minister be the politician. If he or she has to lie, let them lie, but the mzee or the President will be able to say you cannot do that. So Mr. Chairman, without going to the other issues, I simply like to say I support the issue of the Prime Minister and that basically is my contribution. Asante.

Hon. Delegate Wilfred K. Ole Kina: Thank you very much. I am recognizing parliamentary Delagates. Parliamentary 176

Hon. Delegate Samuel Poghio : Thank Mr. Chairman, my names are Hon. Samuel Poghio Delegate No. 176. Mr. Chairman I would like to affirm you the chair and I also say that, please be consistent when somebody complains and they are given a chance after they complain. That has led to people complaining so that they get a chance. Mr. Chairman, I am glad that I got a chance to speak without complaining, thank you.

I want to comment on Article 148, sub-article 2 (a), supposing we are talking about Mr. Chairman, the Executive, we are told that theirs is to serve the principle, behind experience, is to serve rather than to rule. So I do not understand why we are bothered that one has more powers than others, if they both or all to serve in the Executive. And I would like to say as we have said and others have said and I would like to join with my friends that the presidency and the office of the Prime Minister should be complimentary to each other and both are supposed to serve. So I do support the creation of that position.

I would also want to comment Mr. Chairman, on the appointment of Ministers, much as I do not have a problem with Ministers coming from outside the Parliament, I think then we should be reading this Chapter together with the previous Chapter to understand the setting of the parliament, because if the Ministers are going to be appointed from outside the Parliament, they have then to be nominated and so they will take over the sport, the positions we have kept aside for nomination of an MP, because if they are to sit in Parliament, they have to be nominated into Parliament. So whose position are they going to take? So let us read that together with the other Chapter, so that we understand the setting of the Parliament. I also need to say Mr. Chairman, we do not want to short change the people, if the people are going to determine who goes to parliament, we should also allow the Members of Parliament to be appointed Ministers. May be if we agree that they are not going to be holding Ministerial position, then anyone can be elected and they can relinquish their seats but remain as Ministers. But let us agree with the others that really it is important to have politicians working with politicians. If you understand again, reading Chapter 7, if you understand the working of Parliament as it is today, if a non politician comes to that Parliament and tries to present his work and he is an outsider, he can really have a hard time trying to put his case through. So let us read this two Chapters together.

Mr. Chairman, as for the issues of separating Ministers into deputies and assistants, I am for the creation of a position of deputy ministers, but not necessary for all the Ministries. They are some Ministries where you do not really need deputies. There are others who are big, the big Ministries may require deputies who can actually act and sit in Cabinets. The others may remain as assistants. But we can follow examples in other countries, in Tanzania and in Uganda, they

have come up with issues Deputy Ministers in Uganda, is the Ministers of State, alternate Cabinet position, so we can create that.

Mr. Chairman, I would like also to take this opportunity to support the term limits, and the age limits. Mr. Chairman, even if we say older people are wise and have wisdom with them, there has to come a time, when you cut off. We have Civil Servants who retire at 55, they are still young but we decide on an age and cut-off. After 55, they can be good businessmen, they can be good farmers. Presidents can make good businessmen, good farmers after 70. So let them go home and go and be good businessmen. Let us not hold people in places, until we are tired of them. We have seen enough of that.

Mr. Chairman, I need to also thank those who have said something about creating, giving the President the opportunity to appoint ambassadors and high commissioners. My problem with the situation as arranged today, is that ambassadors are people who are respected overseas, but they fall under a Permanent Secretary, when they come home. I think those arrangements don't seem to be right. At abroad they fly flags, they are very high commissioners and ambassadors, when they come here they are subjected to a Permanent Secretary, some of them have been higher than that Permanent Secretary before and they can be mistreated, let us look at that. Such arrangements where we put our ambassadors and high commissioners in places where they get as much respect as they get outside of the Country, in places where they represent. Other than that I would like to thank you. That is all I had to contribute.

Hon. Delegate Wilfred K. Ole Kina: Thank you very much. There is stillroom for a Parliamentarian, the other side of the Country. No. 45.

Hon. Delegate Njenga Karume: Asante sana Bw. Mwenyekiti, Jina langu ni Njenga Karume, Mjumbe wa Kiambaa.

Kwanza ningetake kusema, ninakubaliana na wale wanasema ni vizuri tuwe na ofisi ya Prime Minister. Lakini ni vizuri kuifikiria itakuwa namna gani. Kwa sababu kama tujuavyo katika nchi yetu ya Kenya, kama ni President anachaguliwa na wananchi, na tunasema ile Katiba tuna tengeneza ni ya nchi, kwa siku ya leo na siku itakayo kuja. Na kama President amechaguliwa na

watu milioni tatu au milioni kumi, kwa sababu tuko wengi katika Kenya, na hawa wananchi wanampa kura kwa sababu wanamjua, wanamu fahamu na wanajua atawaongoza sawa sawa na ndiyo sababu wana amani, ya kuwa wana trust yeye, yeye ndiyo atakuwa achunga mambo yao. Halafu akisha kushindana na pengine walikuwa wamasimama na wengine, waka nyimwa kura hawakuwa President, halafu anaambiwa hiyo madaraka tume kupatia tukiwa wana nchi, tunataka uchukuwe were mwenyewe, utafute mtu mmoja rafiki yako umpatie hiyo madaraka yote tumekupatia. Hiyo ni ngumu sana ingawa wabunge watasaidiana na yeye. Lakini ni ngumu. Katika nchi hii na zaid ya Africa mzima tumeone mengi Bwana Chairman, kwa sababu mambo yakugawanya madaraka, kwa chochote hata kama ikiwa ni kampuni kuwe kuna Managing Director wawili, hata kama ni mambo ya Kanisa kuwe Bishop katika pahali mmoja ni wawili, hapo ni vit akila siku. Kwa sababu mimi napendekaza tuwe na President aliye na nguvu, na tuwe na Prime Minister asiye na madaraka sawa na ile ya President. Maana wakianza kugawana ukubwa hapo ndiyo vita itatokea. Prime Minister ataanza kutafuta watu wake, wajumbe wake wale watakuwa upande wake, Rais atafanya namna hiyo hiyo, kwa hivyo tufikirie, hii nchi kitu tunataka zaidi ni tusiwe na vita kama tuliona mahali pengine. Hiyo ni kitu ningetake tuchungulie sana, tuwe na Prime Minister, lakini kugawanya, power sharing, hapo hiko danger kila mahali, hata ukiangalia, tumeona mengi kwa namna hiyo. Kwa hivyo mimi hayo ndiyo ninaona inatakiwa kufanywa.

Habari yakuzungumza mambo ya umri, mimi nilikuwa nafikiria tuwache mambo ya umri tuwachie wananchi wa Kenya, kwa sababu wanajua mengi. Tumeona katika mji zingine, tumeona watu wakiwa wazee 70 years over 70 na wanashindwa na kazi wanaharibu nchi. Tumeona mahali pengine watu wakiwa 40 years the young people, wameshindwa na kazi, wanaharibu, vita, wanasikia watu wanapigana, damu inamwagika. Kwa hivyo ni kitu it depends, ni mtu wa namna gani. Kwa hivyo mimi ningefikiria ni vzuri tuwachilie wananchi siyo wajinga, wataangaliya huyu ana miaka ngapi? Wanafikiri awaongoze au asiwaongozee, kwa hivyo, hiyo ndiyo kitu mimi ninafikiria zaidi.

Na tena, kusha kuchagua Mawaziri, mimi nafikiria ni vizuri, Mawaziri wawe wanachaguliwa, wakiwa Wabunge, hiyo ndiyo inaonekana, pengine inaweza kuendelea sawa, kwa hivyo mimi uwoga wangu na taabu yangu ni hii mambo yakugawanya madaraka kwa watu wawili. Hata ukiangalia Mawaziri, Bwana chairman, Ma-Delegates, Mawaziri, mara ingine na kila mtu ana

Wizara yake, mara ingine wana pigana ati sababu gani unaingilia Wizara yangu, hatuwezi kuendelea namna hii, pengine hata kwa Bunge tuseme sasa, tunataka speaker wawili wawe sawa sawa, haiwezi kuendelea. Kwa hivyo mimi naunga mikono na tujue hakuna kiti cha mtu hapa nchini ya Kenya ni cha wananchi. Kwa hivyo si ati tunazungumza si ati ni Fulani atakuwa Prime Minister, ni nani atakuwa nini. Wananchi watakuwa wakichagua, kwa hivyo ningesema madaraka tuiache zaidi kwa wananchi.

Ya mwisho, naona umepiga kengele, ningesema sisi hapa ndiyo viongozi wa nchi ya Kenya, please tusitoke hapa bila kuwa na uamuzi tume maliza mambo ya Katiba. Hakuna leaders wengine watakuja kutengeneza, kwa hivyo tuzungumze halafu mwishowe tukabuliane tutoke na Katiba, tuambie wananchi wa Kenya. Hii ndiyo Katiba yenu. Lakini tusitoke bila kupata sababu hile ilitutuleta hapa. Asante sana.

Hon. Delegate. Wilferd Koitamet Ole Kina: Thank you. I will recognize a District Delegate from this side, I have been accused of not looking here. A lady, 506.

Hon. Delegate Fatma Ibrahim Ali: Thank you, my name is Fatma. Thank you honourable Chair, my name is Fatma Ibrahim, 506 from Women's Organizations. I would like to contribute on Article 151 and I wish to refer to that Article which talks about the Powers of the President. I am not against the powers of the President but I would like the powers of the President to have some control, checks and balances so that we do not have a President who is more powerful than the people, who is a small god in the country. The reason as to why I am saying that is I would wish to refer to Article (4) where it talks about declaring a state of emergency. I wish to refer to the incidents of North Eastern Province where the President had excessive powers.

An Hon. Delegate: Point of order.

Hon. Delegate. S.K. Arap Ng'eny: Order, order Delegates there is a point of order, yes 295..

Hon. Delegate Saipstone Ngalaodu Musau: My names are Saipstone Ngalaodu Musau Delegate number 295. District Delegate, Chairman Masau County Council. You have given this chance to District Delegates and the Honourable Delegate said that she is from Women's

Organizations. Please can we be given that chance and then she can wait for her chance.
(Clappin)..

Hon. Delegate S.K. Arap Ng'eny: I will give another one to a District Delegate so hold yourself.

Hon. Delegate Fatma Ibrahim Ali: Thank you. I wish to refer your attention to Article (4) where I was before I was interrupted where the President has excessive powers to declare a state of emergency. I wish to bring to your attention that the people of North Eastern have suffered. We know that several genocides have happened because of this declaring of state of emergency. Sometimes people are just tortured for the reason that they are opposing the system or they are radical people. So I think we need to reduce the powers of the President on making decisions on emergency issues and it should be brought to the attention of the public so that they are aware such emergencies can be declared by the President to enable them give their views and if they can support if it is necessary.

I wish to refer you to Article 157, that is Presidential elections. I wish to take you to Section(4) where it says that the President should receive more than 50%. I agree, but he should also get over 25% in 5 provinces. I think if we just say more than half I think we can have a leeway whether it is 4 or 5 or 6 or 7. I think it should be 5 provinces and it should be 25% so that in each province he can get 5%.

I wish to refer you to Article 161, where it talks about the protection of the President when he is in office. I wish to bring to your attention that currently we are looking at massacres, genocides and tribal cleansing. How do we prosecute the President when the Constitution has already given him the leeway not to be prosecuted? I wish to bring to your attention that unless we spell out in which circumstances he cannot be prosecuted in this Constitution I think we will be allowing the President to misuse his powers and continue killing people assuming that that is an official decision of the country.

Section (2) where it says that unless they are wholly of a private nature. I do not know at what stage we say something is of a private nature. Is it when we cannot do any accusation or take a

President to court so that he can be brought to justice on what he has done in terms of the injustices and human rights abuses he has done? I think we need to be clear and state clearly in which circumstances this thing becomes official or private.

On Article 170, on Prime Minister. I strongly support the Prime Minister position and I think it is very necessary. We have under a system of a President with excessive powers especially people with limited say in the Government like the pastoralists and the people from the Northern districts. I think the Prime Minister position is very important and he should be given powers. I think in Article 174 where it says dismissal of the Prime Minister. I think 50% alone is not enough. At the rate I think we would have 10 Prime Ministers before one term ends. The reason being that the Parliamentarians we have can easily be induced to do a vote of no confidence and I think we should put another clause stating that the Prime Minister can be dismissed under other circumstances.

Hon. Delegate: Wilferd Koitamet Ole Kina: Thank you, now Honourable Delegates I think at that juncture I am adjourning the sitting for lunch and then we will continue in the afternoon. Meeting Adjourned.

Afternoon Session resumed at 2.40 pm.

Hon. Delegate. Wilfred Koitamet Ole Kina: We resume our debate which was interrupted when we went for lunch. So can you please take your seats those still standing.

Hon. Delegate S.K. Arap Ng'eny: Right, order Delegates, here we go. I just want to make one thing about the order in which I will be calling now so that we do not appear to be disorganized. I had started in the morning with random kind of picking and I think some categories think that that has not worked well. So when I come to any row I will be calling the three categories of our representation here so that we can cover by the time we reach the end we come and start again and see how far we get. I will be starting with the District Delegates and I am beginning from my right. District Delegates, those who have not had a chance if you are available please, we are moving. 400.

Hon. Delegate. Owin Rose Marie: Thank you Honourable Chairperson for giving me an opportunity to say what I have observed. I am Marie Dan Owino. I am a woman. I am a villager. Delegate number 400 from Siaya District. Thank you Honourable Chairman again. *(Applause from the Honourable Delegates).*

Hon. Delegate S.K. Arap Ng'eny: Order Delegates. Can you put the microphone a little far? Right.

Hon. Delegate. Owino Rose Marie: Okay, I am sorry. I would like to thank the Commissioners for a job well done. I am thanking you dear Commissioners because I believe that the research you have done was extensively done before coming up with this Draft Bill and I am repeating and say thank you.

Honourable Chairperson, allow me to say something about the President and that is Chapter 8 Article 150. I would like to say that the President will be elected by Kenyans and I hope that this time round he will campaign so that he may have a taste of the trauma and the stress people go through. Perhaps this will make him remember those who helped him.

I also want to say that he will be an Executive President as prescribed in the Draft Bill and I wholly support it as it is.

Honourable Chairperson, the President will serve two terms only, that is ten years if he makes it for the second time. Age limit, Honourable Chairperson, according to me is a must. I feel that the age will be from 35 years to 75. There is no need for someone over 70 years to be the President of this country. I believe there are so many younger people - energetic, educated younger people - who can lead this country. I am saying this because when you reach a certain age normally some people start losing their senses and definitely most of the Delegates will agree with me because I am sure you have seen that, if not in Kenya maybe elsewhere. I therefore repeat and appeal to my colleagues that this is a very serious matter. There is no need for Kenya to have a very old President who cannot do his work properly and in that case you might know who is ruling the country because now and again there are so many people around

the President that you can never know who is giving those statements and who is doing the appointments.

Honourable Chairperson, on Article 163, the President will be impeached under the conditions prescribed in the Draft Bill and I see no problem with that. Article 162, Honourable Chairperson Sir, I have a problem with this Article. Honourable Chairperson, who will know that the President is incapacitated and that he cannot discharge his duties? Who is this that will inform the National Assembly? I need some clarification on that.

Hon. Delegate. Owino Rosemarie: Sorry Mr. Chairman, I would also like to say that I support the Executive Prime Minister's post as it is in the Draft. Thank you.

Hon. Delegate. S.K. Arap Ng'eny: Thank you, still in the same column, Parliamentarians. I am on the same column, number 166.

Hon. Omino Joab Henry Onyango: I am glad that you have now abandoned your leftist tendencies and you are now looking to the right. Mr. Chairman, I want to begin by drawing attention to Chapter One of the Draft Bill. My name is Honourable Joab Omino, MP Kisumu Town West.

Chapter One deals with the Supremacy of the Constitution and the Sovereignty of the People and I think, Conference Chair, it goes some length to explain what these concepts are all about. These concepts can only survive in a democratic environment. Kenya has had two regimes: that of Kenyatta and of Moi, neither of which were democratic. Kenyans are now saying in respect of this Constitution they do not want another Kenyatta nor another Moi, and that is why when we talk about separation of powers and create a position of a Prime Minister we are trying to avoid creating another President in the image of those first two.

Mr. Chairman, if you look at the functions of the President and those of the Prime Minister I see no conflict whatsoever. Indeed if we are being realistic, let us ask ourselves today: does the President perform all those functions including those to which we want to assign the Prime Minister? He doesn't. At the moment some of those functions are in fact being performed by

civil servants. We cannot argue successfully that we are happier with a situation where purely political matters are handled by public servants but we cannot have a Prime Minister who is one of us to handle those same functions. I therefore support strongly the position of an Executive Prime Minister. Mr. Chairman, they are not going to go to those offices, both the President and the Prime Minister, as enemies. They will be members of the same party, in all probability friendly but more importantly serving the same Kenyans.

Mr. Chairman, there has been argument about whether members of the Cabinet should come from Parliament or from outside Parliament. I support the view that they should come from outside Parliament and you ordinarily know I would be an interested party because I am an MP and I would have a chance of becoming a Minister. However, Mr. Chairman, if we are talking about separation of powers then we must have the Executive on their own and the Legislature on their own. It will perform a further very important and crucial function in my view that when Ministers are from outside Parliament they will do what Parliament does. At the moment let us be honest, I do not see a Minister nearby but I can see one former one. If I were to ask him whether he was really in charge of his Ministry he will tell you no. So why don't we go the whole hog and appoint people who are not MPs but who perform functions as Parliament direct.

Secondly, it will improve the functioning of Parliamentary Committee System because that is where now policy which comes from the people will emanate from, and Members of the Cabinet as Members of the Executive will have no choice but to come to Parliament when Parliament says they should do so.

Mr. Chairman, you know Parliament is Parliament it is supreme also. We must give it real authority over the Executive. There are different Arms of the Government but they are not equal. So who takes responsibility for things that happen in this country? It must be Members of Parliament and within them, there is the President, there is the Vice-President and hopefully the Prime Minister.

There is a little problem there because the President is an elected Member of Parliament, the Vice-President is an elected Member of Parliament, the Prime Minister and his Deputy will be elected Members of Parliament. Now, we must find a way of ensuring that there is work for the Parliament as the custodian of that supremacy of the Constitution and that sovereignty of the Kenyan people: because the Kenyan people practice their sovereignty through their elected Members of Parliament. Thank you.

Hon. Delegate Samuel K. Arap Ng'eny: Still on the same row I want to recognize the other groups. Next column, 471.

Hon. Delegate Rose Owino: Thank you Mr. Chairman. My name is Rose Likalo Owino Delegate 471 representing civil societies. My introduction is very brief. I too support the division of the Executive powers to create the post of Prime Minister. In supporting the creation of this new position I want to say that there should be clear articulation of the roles. It has been cited severally by many of the Delegates that there is the potential of conflict. Like the previous speaker, I agree that conflict is not likely to be frequent but having recognized it I think we would be doing ourselves a dishonour to leave here without providing for some conflict resolution mechanism. I would like to suggest that we give this post, it could be either in an institution - identifying some institutions that could play the role of conflict resolution. It could be procedural, and that I think is left to this Conference to direct. I would like to seek clarification from the presenters, if at all they gave such a mechanism any thought, and if they could give us direction or indication of that.

The second point I would like to make is that I also think that there should be some reporting role for either the Prime Minister or President. Very often it seems in Kenya we are left in an environment where we are just speculating and rumoring and nobody really is in communication with the public. I see some communication role--

Hon. Delegate Samuel K. Arap Ng'eny: Honourable Delegate I am sorry to stop you but I am not denying you the chance to continue. You will continue, can you make clear what you are asking the Presenters to clarify because it has not come out clearly?

Hon. Delegate Rose Owino: Okay. Thank you Mr. Chairman. What I am asking is did they give any thought to a conflict resolution mechanism, in case there is conflict between the President and the Prime Minister? What possible mechanism could come into play? I am suggesting that we should think of an institution that is vested with that role. If not a physical institution then some procedural mechanism that kicks into play in the event of such conflict. Because we cannot leave here knowing that there is the potential of conflict, and just dismiss as being unlikely. We must provide for that.

The second point I wanted to make briefly is that I think there needs to be a reporting role. In the context of this Constitution I think that role should go to the President, it can go to either. But having said in Article 150 (1B) that the President will act as symbol of National Unity, I think the role falls clearly to the President. I was saying earlier that very often we are left with rumours and speculation and it is in that environment that we make all our decisions as Kenyans. And really it is not a healthy environment. Thank you.

Hon. Delegate Samuel K. Arap Ng'eny: Thank you. Can I have a Parliamentarian from that same row? 187.

Hon. Delegate Ali Isaack Shaaban: Mr. Chairman. I would like also to agree with those who have said we should not hurry this debate because we are in Africa and the sun does not set in Africa. My name is Honourable Shaaban Ali Isaack Member of Parliament Mandera East Constituency. Mr. Chairman on the issue of the Provinces, I would say that the President should garner at least five provinces and he should get at least, instead of the present system 25%, to be enhanced to 30%. So the President who is elected carries majority of Kenyans and he is popular throughout the country.

Mr. Chairman as an Honourable Member of Parliament has just said, the Sovereignty of the people of Kenya is very important. Kenyans should exercise their democratic rights directly especially when they are electing anyone to any office, that is the Executive, especially the office of the President or the one of the Prime Minister. And for that reason Mr. Chairman, when they are also removing those people in those offices with the Executive powers either the President or the Prime Minister, they should do so through the democratically elected representative of the

people and that is Parliament. In this case, I propose that since the President or the Prime Minister will enjoy Executive powers, they should be elected by people. For that reason, Mr. Chairman, when they are being elected - because the people of this country are supreme and we want them to safeguard their sovereignty, we should ensure that those people elected in the Executive offices are actually, those who are given the Executive powers – people who can exercise their democratic rights through the powers of the ballot.

In this case Mr. Chairman, I have no problem with the removal of either the Prime Minister or the President by the two-third majority of Parliament. However, Mr. Chairman, I don't know where the Vice-President will fall because in the present system, the Vice-President is neither a bird nor an animal because he has no powers that he enjoys. In my proposal Mr. Chairman it is that the Vice-President is given some powers, together with the Prime Minister and the President and then they are elected by the people of Kenya. So that the Kenyans can exercise their democratic rights directly, and when they are firing these people in these offices they do so through their democratically elected representatives - that is Parliament.

Mr. Chairman, I would propose that the Ministers should not be more than twenty, I think we should not limit them to fifteen increase them but they could be between fifteen at minimum but not more than twenty. These Ministers should reflect the diversity of the Kenyan people. Thank you very much.

Hon. Delegate Samuel K. Arap Ng'eny: Thank you. Can I have a District Delegate please from there? 419. Microphone please.

Hon. Delegate Philip Romanus Onyango: Thank you very much Mr. Chairman. I wasn't aware that I would get a chance to talk because I have been here since 28th and up to now I have not spoken. I move on to Article 161.

Hon. Delegate Samuel K. Arap Ng'eny: Your name please.

Hon. Delegate Philip Romanus Onyango: My name is Romanus Philip Onyango from Suba District, Delegate 419. Article 161, I do not think I am in agreement with this Clause or Article with stipulates that the President cannot be charged, I feel he should be charged, Mr. Chairman.

I move to Article 163 Impeachment, if the MPs do not want to be recalled, then I don't see why the President should be impeached because impeaching the President amounts to recalling him indirectly. So the MP's should also be recalled.

I move to Article 171 – Appointment of Prime Minister. Mr. Chairman, I am in full support of having that position but I would like to add here that whoever is appointed as the Prime Minister should not be from the same region where the President comes from, because if you are not careful we might end up with having the President coming from one region and he also wants to appoint somebody from the same region as the Prime Minister. So it should be stipulated that the Prime Minister must come from a different region from which the President comes from.

Mr. Chairman Article 171(a) is not very clear. One may be of the majority Political Party but still not be a Member of Parliament, so that needs to be clarified. Being a leader of majority Political Party does not necessary mean being a Member of Parliament.

I move on to Article 171(6). I do not think it would be very good for Parliament to be dissolved just because they have not succeeded in getting a Prime Minister. Once MP's have been elected for five years, why should the Parliament be dissolved just because the President has not managed to get the Prime Minister appointed.

The next, well is 175. Article 175(1). The President shall appoint the remaining Members of the Cabinet in accordance with recommendation from the Prime Minister. Remaining Members of Parliament. On remaining Members of the Cabinet, who are these remaining Members of Cabinet? It's not very clear Mr. Chairman. Thank you, that's all for the time being.

Hon. Delegate Samuel Arap Ng'eny: Thank you next row, I am looking for a District Delegate. District Delegate 235.

Hon. Delegate Reuben R. Tsuma: Thank you very much Mr. Chairman. My name is Reuben Tsuma, District Delegate from Kilifi number 235. My contribution is going to be very brief. I would like the Conference to take note that for forty years the sons of Israel were wondering in the deserts, simply because they had been displaced. I want to go now to Kenya for forty years again. We have been wondering not getting the fairness that we expected mankind to give unto every Kenyan.

Here I also want to also go back to history, being a Christian I want to quote the Bible and this is the issue of Esau and Jacob. Esau stole the birthright of Jacob and as a result of that theft, Jacob had a problem as far as getting what was rightly his. Now this Conference, looking at this Conference is the first one in history and mankind as far as Kenyans are concerned. That we have all Kenyans here represented and therefore we are seeking for our birthright. That somehow somebody called Esau in Kenya, stole the birthright of Kenyans and we want restitution of this birthrights.

The issue of conflict between the President and the Prime Minister, to me it doesn't arise because looking at the work that has been done by the Commission, I see absolutely no conflict whatsoever. In particular, once we go to the next chapter, after Judiciary, the devolution of powers is going to bring about the roles that the President and the Prime Minister are going actually to have as a safeguard to the kind of new Kenya that we are looking forward to during this particular Conference. Of course, having said what I have said, there is the issue of Affirmative Action and this one I would like to raise my voice and say I am supporting of that the Affirmative Action totally. So Mr. Chairman, I will not repeat points that have actually been raised I had put them down, but I noticed that my Honourable Delegates have actually mentioned these points and there is no need for me to take time more than is necessary and for that one I thank you very much.

Hon. Delegate Samuel Arap Ng'eny: Thank you. Parliamentarian, on that row I see 150.

Hon. Delegate Martin Shikuku: Point of order.

Hon. Delegate Samuel Arap Ng'eny: Yes Mr. Shikuku.

Hon. Delegate Martin Shikuku: My point of order is just the question of putting the records right, I am also a Christian but the one who stole (*Laughter from Honourable Delegates*) the baraka was Jacob from Esau and not Esau from Jacob. I think that should be put straight, Sir.

Laughter from Honourable Delegates

Hon. Delegate Samuel Arap Ng'eny: Thank you very much, I know you were in the Seminary once, so you fit in the right place. (*Noise from Honourable Delegates*). Carry on, Honourable Nyagah.

Hon. Delegate Norman Nyagah: Bwana Chairman, thank you very much for giving me this opportunity. I am Norman Munene Gathakari King'ang'i Nyagah, M.P. for Kamukunji. (*Laughter from Honourable Delegates*) Member Number 150.

Dear Delegates, mine is going to be short and brief particularly after speaking after so many eloquent speakers have spoken before me. And I want begin on saying who I am. Over the last eleven years I have fought for the rights on Affirmative Action for the minority in what I do in Parliament. And I have stood very, very firmly, three weeks ago I sat with a group of many ladies again to look at the various aspects as contained in the draft Constitution. I am saying this for the following reason – we have not been sincere as to how far we are going to take Affirmative Action. We should go the full hog, like in Uganda where they have a woman and that seat is given for a woman for Vice Presidency. Even in Kenya, we should do likewise the same and we should not even debate too much about it. I think this is something that we need to be honest and sincere from the bottom of our hearts. Let us not only talk from the mouth upwards but not from our hearts.

Now, having said so, I have the following two issues that I want to take up. Bwana Chairman, let me begin on from the time I was in the Democratic Party before I came NARC that transformation. In that transformation, we supported that there should be a Prime Minister and there is no reason as to why I am now in NARC that position should change. But also in NARC we made a presentation that a Prime Minister's position should be in place and I see no reason

why the position should change now. However, the only difference and I want to stand by what we gave then and now, is that that Prime Minister must be checked by the President in the following manner:-

If you look at this, it says the following: that the President whoever it will be and I want to destabilize these issues between Hon. Mwai Kibaki as the President, Hon. Raila as the possible Prime Minister and so on and go beyond because they are going to go anyway. They are going to go to Heaven or elsewhere at a situation when you do not have this position. We said the President should chair Cabinet in that document, I am not disowning it, I am standing by it and I gave that presentation when it came to my turn to speak in Kamukunji.

Now, having said so the Prime Minister should not be made Executive in the following manner: he is appointed by the President, the President should have the powers to hire and fire at will in the following manner--

Hon. Delegates: No, no.

Hon. Delegate Norman Nyagah: You have made your presentation, kindly let me make my presentation. Let me be heard, you will not influence me by shouting. I would like to be heard as I have listened to you in great silence. It's a virtue to learn to listen to others and to differ. This is what I have learned in my eleven years in Parliament. Mr. Chairman, this position of Government in future, we should introduce something called the vote of confidence once a year, so that that Government can be checked by its own people whether it is performing its duties. The following has been advanced, you can call a vote of no confidence where a certain percentage of people can object the presence of that Government. I know a country like in Britain, where once a year and this is how Margaret Thatcher was removed from power, when she found out in that vote of no confidence she was not able to go through it, she then resigned her position.

I am suggesting in future, any Government led by the Prime Minister who shall be the Head of Leader of Government Business in Parliament, should be checked once a year. The other one I have found very typical to comprehend in my head, is why we should create an age limit for the

Presidency. A political office where we are giving age limitation like a Civil Servant. If and I am against it, if we should go and create that age limit, let me suggest the following:-

- That we should also create an age limit for Members of Parliament.
- That we should also create an age limit for Prime Minister.
- That we must also create an age limit for the Vice President, if we have to do it along with the Councillors. Does some make any reason?

I want to suggest the following, in terms of political hierarchy, the highest authority on land, is the Presidency and we are giving him 70 years. May I then suggest now for the position of the Prime Minister, give it 65 years, like that of a Judge. And may be for the Member of Parliament, so that I am knocked out completely come the next election, give it 55. My brother Joe who has been knocked out completely now then-- (*Laughter & Clapping byHonourable Delegate*) No, it is unfortunate, I had not even began I was only introducing myself as to who I was. God bless you. Thank you.

Hon. Delegate Samuel Arap Ng'eny: Thank you very much.

Hon. Delegate Norman Nyagah: Thank you, you gave me the opportunity. Thank you.

Laughter & Clapping byHonourable Delegates

Hon. Delegate Samuel Arap Ng'eny: Now can I have the other categories, not District, not Parliament, so that I can recognize somebody? Can I have 216, 616 sorry, 615. It's Political Parties 615.

Hon. Delegate George Omari Nyamweya: Thank you Mr. Chairman, my name is George Omari Nyamweya. I represent the Democratic Party of Kenya and it is just fortunate that the number of alphabet that Norman Nyagah is sitting next to me. Mr. Chairman, I would like to say that in the year 2000, the Democratic Party proposed the position of Prime Minister. In the year 2002, I, myself, together with the current President of Kenya and the Vice President of Kenya proposed to this Commission the position of Prime Minister. I would, therefore, like to say--

Because it is being insinuated that perhaps we saw with the clarity of opposition, now perhaps with the dazzle of power we may be thinking differently. That is the furthest from the truth. We have been committed to the position of Prime Minister from then and we are committed to it now. Let that be very clear to everyone in this hall. Mr. Chairman, we did say then, and now I will say it again, we had said that let the President chair the Cabinet. Let the President chair the Cabinet. If we have elected the President directly, you cannot ask him to completely be sidelined from the activities of the government. We are saying that let the Vice President deputize in the absence of the President. Now, Mr. Chairman, if you look very quickly through the Draft here, there is a sure recipe for conflicts. Because if you look at Article 149, Mr. Chairman, it says, "The National Executives of the Republic of Kenya comprises the President, the Vice President and the Cabinet". The Cabinet, Mr. Chairman, is comprised of the Prime Minister, the Ministers and Deputy Ministers. That is the executive authority.

In this particular Draft, we have said that the President shall assign particular Ministers to actually carry out legislative of those, which have been enacted by Parliament. And further down, we have also given exactly the same powers to the Prime Minister. I ask you, who is going to appoint this one to do this or the other? That is something we need to redraft because we all accepted, I believe we all agree we are going to have a Prime Minister. Then in the nature of consensus and national reconciliation, why don't we sit down and allocate these duties specifically so that there is no conflict in future? Perhaps there may not be any today. And I speak also as a lawyer, Mr. Chairman. The job of a lawyer is to draw a contract to avoid the possible pitfalls, that is what we should be doing here. Let us not wait until we have a crisis and then say we are going to change it this way.

Now, Mr. Chairman, quickly going to the question of appointing Ministers. The whole idea, what we designing here now in Kenya is a hybrid system and let us be clear. People want the President yes. They don't want a President who only receives ambassadors and so on. People want those powers reduced, so we are also having a parliamentary system. So, we are going for a hybrid.

If we want Ministers to be answerable to Parliament and the Prime Minister is a Member of Parliament, and we have said his deputies or her deputies should also be Members of Parliament,

what apt reason is there to have Ministers from outside Parliament? So, we need to have those Ministers there. Mr. Chairman, just one last thing I would like to say where there is a complete conflict. We have said in this Draft that the Ministers are answerable to Parliament. Then in the same Article, we are saying that the Ministers are answerable to the Prime Minister. This cannot make sense, Mr. Chairman. Let the Ministers, the Prime Minister be accountable to Parliament and I think we will be making a lot of sense there. I would urge that perhaps when we go to the committees, we would like to re-submit this position; I think we are coming to a consensus and these positions are acceptable to all of us. Let no one think, and I repeat very sincerely, let no one think that because an election has been held and people have now received certain positions, the thoughts that brought us this far have changed. They have not, Mr. Chairman. Thank you, very much.

Hon. Delegate Samuel Arap Ng'eny: Thank you, thank you. Now I come to the next row and I am recognizing a District Delegate. 265.

Hon. Delegate Denge Wario Guracha: Thank you, Mr. Chairman, at last you have recognized me. Mr. Chairman, it has been said the further we look backward, the further we shall see forward.

Hon. Delegate Samuel Arap Ng'eny: Introduce yourself please?

Hon. Delegate Denge Wario Guracha: My name is Denge Wario Guracha, Delegate number 265 from Marsabit District. Mr. Chairman, it has been said that the further you look backward, the further you will see forward. As we look at the history of this country, we have seen the powers of the President have been misused. The President himself has been subject to misuse of power and as a result, several lives and properties have been damaged, destroyed or even massacred. I will call upon these Delegates to see to the matter that arises from Emergency Decree Act by the President. I would propose that this Emergency Decree Act should be declared by the approval of Parliament rather than the Cabinet and the President sitting together to declare. The length of period also to be reduced to seven days. As you all know, Northern Kenya was subject to this decree for about twenty years. These areas include Marsabit, Moyale,

Isiolo, Wajir, Tana-River, Lamu and the rest of places. In these areas, several lives have been lost and properties destroyed.

I would like to take on Vice President's issue. Given that by the virtue of his office, the Vice President is the principal assistant of the President. Since he is also a running mate of the President, I would like to propose; during general elections whereby the President either dies or is incompetent to run for the election, the Vice President is allowed to take over. Because we have seen that practically like in the last General Elections when the President had an accident, the NARC Members wouldn't have had an opportunity to elect anybody from their party as the President. I think this will give them an opportunity or will give anybody an opportunity, any other time.

In case of taking the President to court, I would wish to propose that the Draft proposal says that the President is protected from any proceedings of the court when in office. I would wish to propose that civil and criminal proceedings can be instituted against the person who ceases to hold the office of the President. That means that the President can be sued or can be taken to court after he resigns from the office.

The other point is, as I am standing here, I do support the office of the President Minister but I propose that the Prime Minister comes from the minority group and that gives an opportunity to the minorities to also share the Kenyan cake. However, I would like to take this opportunity to remind the Delegates and Kenyans in general, that it is pre-mature for anybody to mention anybody's name to the post of the Prime Minister as at now. This would bring chaos into our country and we shall start re-grouping again. On the other hand, I would like to state that the Comptroller of State House be appointed as a civil servant and because nothing has been mentioned about that office in the Draft Constitution, I would propose that the Comptroller of State House is appointed from the civil service and he is appointed by the Public Service Commission as any other civil servant. Thank you.

Hon. Delegate Samuel Arap Ng'eny: Thank you. Can I have a Parliamentarian please? 121?

Hon. Delegate Karue Muriuki: Thank you, Mr. Chairman. My Name is Karue Muriuki, Delegate number 121, Member of Parliament for Ol Kalou in Nyandarua District. Mr. Chairman, when the Commissioners went round collecting views from wananchi, ‘Wanjiku’ gave her views and there are a lot of issues, many issues, but she didn’t give a system of government, Mr. Chairman. She did not, for example, say that you will have 90 seats of nominated Members, and so on. Mr. Chairman, if we sit here and come up with the wrong provisions in the Constitution, ‘Wanjiku’ will still ask for her rights. For example, if she says, “I don’t want the Chief to come and take my chicken in the name of Harambee”, it is up to you Commissioners and us here to come up with a Constitution which guarantees that right, whatever the person will be called. So, if we write our Constitution and the person, whatever he is called, goes and takes her prize Jogoo, she will still have a quarrel with us, Mr. Chairman.

By that I mean, as we talk here, we get closer to the ideas. When I first heard that we are going to have Members of the Cabinet being selected from outside Parliament, I thought it was a wild idea but the more I listen, the more I soften and I say lets get closer. However, Mr. Chairman, I think we have a duty to look at what those Ministers’ duties are. Examples are being given like in US, where the Ministers come out of Parliament, I think it is called Congress. But if you look at the duties of those people there, they don’t even use the word “Minister”, they say “advisor” because in their context there and their stage of development is such that those individuals do advisory work to the President. Our Ministers here have the duty of articulating public policy and I think it is only fair they should be politicians, whichever way you look at it.

By the same token, Mr. Chairman, you will hear a comment here and some of the experts tell us, “Oh if you do that, that is a parliamentary system.” If you agree to have a Prime Minister, and by the way I support the position of Prime Minister, but I am informed by a few experts here, who have no duty to respect that if you do that, it means Presidential system, if you do this it means Parliamentary system. I don’t think, Mr. Chairman, I am half a century old, I have been in Parliament for sometime and it is not exactly explicitly clear to me and I don’t think it is anymore clear to me than it is to ‘Wanjiku’. If you say Parliamentary, what do you mean exactly? I think I would request for sometime so that an impartial expert explains to us which is this system and what it entails. Somebody even suggested that it is a republican system. I am not sure that we are all clear; we are not experts in this sector, Mr. Chairman.

Having said those general points, I would like to come to one of Affirmative Action. Mr. Chairman, I have been a Member of Parliament for five years, this is my sixth year, and I have something in Ol Kalou we call 'constituency day' when people come once a month and say all sorts of things and bring all problems. Listening to the kind of problems which reach me in that office, I am fully convinced that we do require affirmative action. However Mr. Chairman, having said that, if we are going to hit a target we must at least aim in its direction. I don't think the provisions which are in the Draft Bill adequately address the requirements of affirmative action. If we only look at women and its top layers, first layer and top layers, I think we shall be missing the target by a large margin Mr. Chairman. I have heard people who had their land taken away simply because they cannot read. We need affirmative action to protect people who cannot read because their land goes. There are some people who cannot access certain facilities simply because they are disabled, for example. So my view is, as far as affirmative action is concerned, I think we need a whole chapter and not a mention the way we have done it, but not restricted to the narrow sense of just 1/3 of women. I think there a lot of women here who have gone very far up in the society without having to be pushed anywhere.

Mr. Chairman Sir, I also want to revisit this issue of recalling of Members of Parliament vis-à-vis the current discussion. I think I will go overboard and say instead of having a provision where we call anybody - and if we are writing a Constitution - if you are recalling a Member of Parliament you must be able to recall councillors and even the Chairman of Constitution Review, if that is going to be a policy. So, Mr. Chairman I would go overboard and say: anybody who is appointed under the Constitution is protected for a certain number of years, so that if you are given two or three years you are not disturbed by the one o'clock news to know whether you are still on duty so that you can give appointments at 2 p.m. So if we have a policy that you can recall somebody, then you must do it wholesale. My suggestion is, instead of that let us give: if it is Minister let him be there for three years or two years – a fixed term – so that he knows what his job is, what his targets are, and we can ask him what he was doing. We can review it after the period he has served.

Hon. Delegate Samuel Arap Ng'eny: Time is up please conclude.

Hon. Delegate Karue Muriuki: Thank you very much, Mr. Chairman.

Hon. Delegate Samuel Arap Ng'eny: Thank you. "Other interests" in the same row please, "other interests" other than districts or Parliament. Yes, 481.

Hon. Delegate Daniel Ichangi: Thank you Mr. Chairman. I want to stand on the point of order. My name is Daniel Ichangi, number 481. I wish to humbly, propose the following: that the Honourable Delegates at this National Constitutional Conference do now move to close the discussion on chapter 8 – wait let me finish – and that this Conference now moves to consider chapter 9 on the Judicial and Legal System. I further do now propose to the Honourable Delegates and the Chairman, that those who have not had a chance to speak yet, be given a priority when we begin the discussions on chapter 9 on the Judicial and Legal System. Thank you Mr. Chairman.

Hon. Delegate Samuel Arap Ng'eny: Honourable Delegates, that is a kind of closure motion which is covering our regulations, but it is up to the Conference to decide that this particular discussion on The Executive be brought to an end adequately so that the Conference can move on to the next. I will therefore put the question, those who are in favour say 'AYE'.

Hon. Delegates: 'AYE'.

Hon. Delegate Samuel Arap Ng'eny: Those who are against say 'NAY'.

Hon. Delegates: 'NAY'.

Hon. Delegate Samuel Arap Ng'eny: I think the 'AYES' have it. I will now call on the presenters to make any general comments so that we move on. Thank you.

Interjection: (Inaudible)

Hon. Delegate Samuel Arap Ng'eny: Yes, 278.

Hon. Delegate Peter Nkoroi: Thank you Mr. Chairman. Is it in order for a Delegate to raise the card from chapter 1 up to chapter 8 and the motion is closed technically here? We came here to represent people Mr. Chairman. We did not come here to marathon. Mr. Chairman, we are here for the purpose of Kenyans and the unity of Kenya is number one. We have heard a lot of sentiments here which we do not agree with and so we must be given a chance or let the presentation of the Draft end and then we will discuss the whole draft in the plenary. Thank you Mr. Chairman.

Hon. Delegate Samuel Arap Ng'eny: Order, order. I put the question and you responded and I have given the ruling. You can only call for a division if you do not agree with my conclusion.

Hon. Delegate Jimmy Angwenyi: Point of order.

Hon. Delegate Samuel Arap Ng'eny: Yes, Honourable Jimmy Angwenyi.

Hon. Delegate Jimmy Angwenyi: Mr. Chairman, we had discussed this motion and you were going round the rows, you have reached midway. These people of these rows have not been given their chance. You just can't stop them on the way. Mr. Chairman, unless you were initially looking down upon the Conference. Secondly Mr. Chairman, I could contribute on this motion today if I have got interest, tomorrow I may not have interest in the motion coming up tomorrow. So you cannot say I will be given priority the next day in a motion in which I don't have any interest. So Mr. Chairman, what I am saying is, we are in the morning, we want to give ourselves adequate time to discuss this matter. Please give us that time.

Hon. Delegates: Point of order.

Hon. Delegate Samuel Arap Ng'eny: Order! Order. Hon. Delegate Martin Shikuku.

Hon. Delegate Martin Shikuku: Mr. Chairman, I believe in procedure but one thing I think you didn't do, you didn't quite explain to the Delegates here that you are going to put the matter to a vote or oral vote and therefore, those who say 'AYE' and if 'AYEs' are more than 'NAYs', 'AYEs' have it. You also did not point out to the Honourable Delegates that if one disagrees with

your ruling that 'AYEs' have it, he has the reason to stand up and demand a division. In view of that fact Mr. Chairman, we may let you off the hook but next time please make it very clear to the Honourable members. *(Noise from Honourable Delegates)*

Hon. Delegate Samuel Arap Ng'eny: Order. I think I made it very clear that, that motion is a closure and it is up to the Conference to decide, and you made the decision. Yes, number 15. Delegate number 15.

Hon. Delegate Adan Billow: Mr. Chairman, I rise on a point of order. While I do appreciate the spirit of the motion that was raised, Mr. Chairman what you should have done with that motion is to ask for anyone who can second that. It was not even being seconded, and would I suggest that since it is late in the afternoon, could we be allowed to spend the remaining hour or so of the day to finish this subject then we continue tomorrow on the new subject. Thank you.

Hon. Delegate Samuel Arap Ng'eny: 385. Delegate number 385.

Hon. Delegate Caleb Jumba: Thank you very much Honourable Chairman. I am Caleb Jumba, Delegate number 385. I am proposing that because we were going round, let us finish with this corner here and then we can go back to the Chair - that will be democracy, because if we just move, some people said yes without knowing what they were doing. So Bwana Chairman, we finish over here.

Hon. Delegate Samuel Arap Ng'eny: Honourable Delegates, that motion on closure if you look at the regulations does not require a seconder and does not require notice. 139 raise your point of order.

Hon. Delegate Alfred Mwangi Nderitu: Thank you very much Mr. Chairman. My name is Honourable Alfred Mwangi Nderitu from Mwea, I am Delegate number 139. Mr. Chairman, I really don't like getting into trivial matters but you should listen to the mood of the people. This is their Constitution, so besides that we are rushing to close. If right now I would refer you to Section 166 or Article where--

Hon. Delegate Samuel Arap Ng'eny: Order, order Honourable Nderitu. You rose on a point of order. I want to hear your point of order.

Hon. Delegate Alfred Mwangi Nderitu: It's a point of order, I want to refer you where there is a mistake, there is an error in this books please. And now that we are closing this chapter that error has not even been identified by anybody. So I am just mentioning that there is an error where it asks you to refer to Article 199 (5) which does not exist. With some of these things we say please give us time to go through this Mr. Chairman. Thank you very much.

Hon. Delegate Samuel Arap Ng'eny: 379.

Hon. Delegate Levi Ahindikha: Thank you Mr. Chairman. My name is Levi Ahindikha, Delegate number 379 from Kakamega District. Mr. Chairman, as a matter of procedure, any motion should have a seconder and since this motion does not have a seconder it is unprocedural.

Hon. Delegate Samuel Arap Ng'eny: I have given a ruling on that one. 185.

Hon. Delegate Abdi Tari Sasura: Mr. Chairman, I am Delegate number 185, Abdi Tari Sasura from Marsabit. Mr. Chairman, I think we should respect the rules of this Conference. And Mr. Chairman this chapter of the Executive has been exhaustively discussed, and we are just repeating ourselves for the third day now. You have already put the question, you have made the ruling and we cannot go back, and we are tired, and it is not even on the Order Paper. Can we now proceed Mr. Chairman, don't back track on your ruling.

Hon. Delegate Samuel Arap Ng'eny: Order! Now, Honourable Delegates I am calling on Dr. Adede to say any comments that he has.

Interjection from an Honourable Delegate: Point of order Mr. Chairman, this is the last point of order.

Hon. Delegate Samuel Arap Ng'eny: No, I am taking no more points of order please, I am sorry. Please give out that microphone.

Hon. Delegate: Point of order. I am only asking....

Hon. Delegate Samuel Arap Ng'eny: Please release the microphone. You should not speak on the microphone before you are recognized.

Com. Dr. Andronico O. Adede: Thank you Mr. Chairman for this opportunity to respond very briefly on some of the points which have been raised in this rather important Chapter, which has exercised your minds quite well since you started on Tuesday last week. You will recall that in this hall in discussing this Chapter, you behaved according to the oath. You have discussed it with clearness, here without favour. In giving your views in response to the Draft before you, the Pharaohs of Egypt have been called, Julius Caesar has been called, the despots of old have been mentioned, but much more often Lord Acton. You remember he is one who said that power corrupts and absolute power corrupts absolutely. This is what was staring Kenyans in their faces as the Commissioners went around to collect their views, and views were expressed on this chapter unanimously that the time had come for Kenya to do and face the idea of preventing power being concentrated in the hand of one person.

For that reason, an attempt was made by the Commission to find a way of distributing that power in response to the specific requests by the citizens of this country that the power should be distributed. In the Draft before you, the Commission suggests that the distribution should be done for example through the creation of a Prime Minister position, so that power should be shared between the President and the Prime Minister. In this, the Commission had three options, one as explained at the beginning - to have a purely Parliamentary Executive which tends to concentrate power on the Prime Minister, and therefore tends to prevent the people from having their views separated by the person who is directly elected President - that is not good enough. Or to have a presidential Executive - which as I said concentrates the power around the President, and therefore unable to deal with this question of creeping authoritarianism from which Kenyans were trying to run.

Accordingly, the Commission chose a mixed system - in which an attempt is made to share the power between the President and the Prime Minister, therefore having what we call a Mixed

Executive System. Whether this is successful or not the discussions throughout the three days have demonstrated. It is now up to you as you go to the committees to take those points that have been raised to improve the text before you that suggests a Mixed System of distributing power between the Prime Minister and the President.

Let our courts deal with the law. For example, it will say; “Therefore, the idea of giving the President the power to prefer the Bill to the Supreme Court for advisory opinion is a bad idea, it was argued, because that will mean you are taking the bill which is still the province of the Legislature and giving it to the Judiciary to second-guess before it becomes law. Ponder those because there are a lot of points to ponder.

How dare you, how dare you, make a President who is directly elected to have less power than the Prime Minister. Does the Cap say so? How can the Prime Minister, who is not directly elected, be allowed to wield such great powers. Yet it happens all the times. That is the system that exists where the Commission did its studies. In, for example, Great Britain, Tony Blair is not directly elected but he wields a lot of power; the Chancellor of Austria wields a lot of power and is not directly elected; and the Chancellor of the Federal Republic of Germany wields a lot of power but he is not directly elected. That is one model.

Then there is another model where the Prime Minister may be appointed by the President himself and acts like his chief assistant, kind of Leader of Government Business in Parliament, and that is the Ugandan and Tanzanian model. There is a large era of history for us to look at, we pick up, we elect and make it relevant to our situation, but the common denominator is that the call has been made to distribute the power to prevent it from being concentrated in the hands of one person.

Why suggest that Ministers should come out, or should be appointed from outside, of Parliament. That would make it impossible for them to even know the workings of, and be responsible to Parliament. Read Article 176, which gives you the idea behind the Commission thought, because in the end those Ministers are going to be ex-officio Members of Parliament to which they will be responsible. That is the idea. You can reject it, you can accept it, but that is the actual basis on which the position was made to make sure that, that portfolio held by

professionals is national so that those who are dealing with the day to day running of the Government in those departments spend more time with that kind of work instead of worrying about the responsibilities in their constituencies which are also equally demanding, or by worrying about their legislative action which is also equally demanding, and the idea of relieving the work of the day to day running of the Government to a group of Ministers that are appointed from outside. These are points to ponder which the committee should take into account as it begins dealing with specific issues to improve upon the text presented to you by the Commission.

Some of your comments have been quite specific, asking the drafters to be a little more careful – ‘tighten your reference procedure’, some Articles have been referred to wrongly. These will be corrected very easily; even asking us, the Commission, or the people who are going to do it to make sure that the Prime Minister’s functions are spelled out clearly in the Constitution in the view of others and also the functions of the Vice President are also clearly spelled out in the Constitution itself. These are some of the issues that the Committee will now take on board to begin to address this question in a technical way.

Why is it that Parliament will dissolve when the President has appointed somebody as a Prime Minister who fails to get the majority in the House? Why should that lead to the dissolution of Parliament? It has been asked. What is the solution? Suggest. The Commission suggests that the situation of power in the government for 21 days is too long. When it is not possible to have one person who can command the majority of Parliament then Parliament will stand dissolved. That is the suggestion in the Draft, you can accept, reject or amend it, but the idea was that the Government must function. Suppose such a thing happened, what would you do? Already, it has been said that it should not lead to the dissolution of Parliament and that is what the Draft says. Thank you.

Hon. Delegate Samuel Arap Ng’eny: Thank you. Dr. Maranga?

Com. Dr. Charles Maranga : Thank you, Chair. My brother has done some comments, which I think are quite right. Mr. Chairman, I am not going to take long too, but I want to thank the Honourable Delegates for listening to us, first and foremost. Secondly, Mr. Chairman, we, as a

Commission, have been enriched by the comments of/from the Delegates. The comments I am making now will not necessarily mean that that is the position of the Delegates or the Commission as such. What we were presenting was the position of the Commission as we got the views from the Kenyan people. Mr. Chairman, a number of comments have been made too in the last two to three days. The first one, Mr. Chairman, people, the Honourable Delegates are trying to tell us that the power-sharing structure between the President and the Prime Minister needs to be re-defined. Mr. Chairman, whether to shift one or two functions from the President to the Prime Minister, that is the duty of these Honourable Delegates.

Point number two, Mr. Chairman, a number of questions have arisen in terms of the qualifications of the President. Should, for example, the President have an upper age limit? Should a Prime Minister have an age limit, for example? Do they need to have specific qualifications? That question needs to be answered by the Honourable Delegates. Mr. Chairman the question of conflict has been asked. Are we not going to have a conflict between the President and the Prime Minister? Mr. Chairman, this particular Draft Bill does provide a mechanism for resolving a conflict between the Prime Minister and the President. For example, it has been provided for in this particular section that in case there is a conflict between the President and the Prime Minister, Parliament has a role to play. Parliament can break that deadlock. For example, if we are able to impeach the President, and pass a vote of no confidence in the Prime Minister, then Parliament would be playing its role. If, for example, the President violates the Constitution by not allowing the Prime Minister to perform his or her functions, Parliament has the duty to impeach that President. If the Prime Minister is undermining the Constitution and the President is supposed to safeguard that very Constitution, then Parliament has a duty to pass a vote of no confidence. That will resolve a conflict. Mr. Chairman, those are in-built checks and balances which have been presented in the Draft Bill and which, you have a duty to increase or add or subtract where you feel the Draft bill has gone overboard.

Mr. Chairman, the question of the number of Ministries has been brought out. It is the duty of these Honourable Delegates to see the upper limit which the Draft Bill sets out, whether 15 is adequate or we need to increase.

