

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

NATIONAL CONSTITUTIONAL CONFERENCE

Verbatim Report of

**PLENARY PROCEEDINGS, PRESENTATION OF DRAFT
BILL, CHAPTER 6 – REPRESENTATION OF THE PEOPLE,
HELD AT BOMAS OF KENYA, NAIROBI**

ON

9TH, 12TH & 13TH TH MAY 2003

**PLENARY PROCEEDINGS, PRESENTATION OF DRAFT BILL, CHAPTER 6 –
REPRESENTATION OF THE PEOPLE, HELD AT THE BOMAS OF KENYA
ON 9TH MAY 2003**

**PRESENTATION OF DRAFT BILL: CHAPTER 6 - REPRESENTATION OF
THE PEOPLE**

**Part I - The Electoral System and Process
Part II - The Electoral Commission
Part II - The Political Parties**

**Presenters: Com. Mutakha Kangu.
 Com. Phoebe Asiyu.**

**Session Chair: Hon.Delegate Sultana Fadhil (Vice-Chair)
 Hon.Delegate Atsango Chesoni (Western Delegate)**

Hon. Delegate Sultana Fadhil: HonourableDelegates, distinguished guests, mabibi na mabwana. Natumai sasa kila mmoja ashakwenda kuchukua pesa zake, kidogo roho zenu zimetulia na tunaweza kuendelea na kazi yetu. Kwa hivyo, bila kupoteza wakati na kusema mengi, nitamkaribisha mwenzangu Chesoni Atsango ambaye atanisaidia ku-chair session hii na tutazungumza juu ya Representation of the People, na atakayezungumza juu ya Chapter hii atakuwa ni Commissioner Mutakha Kangu. Kwa hivyo, ninawaomba mumsikilize na msaidizi wangu hapa atanisaidia baada ya Chair kuzungumza.

Hon. Delegate Atsango Chesoni: Good afternoon Honourable Delegates? I would like to thank you for having given me this opportunity to chair and say that this is a historic moment because we know that in 1962 at the Lancaster House Conference, we only had one African woman and she was not allowed to present her memorandum; this was Priscilla Abwao. So for us to come to a stage where as a country we have a substantial number of women attending the Conference and to have the various marginalized groups who are not recognized like persons with disability and the youth represented in the Conference is actually absolutely excellent. It says something about us as a country and about where we have come. Without any further ado, I would like to welcome Mr.

Mutakha Kangu who is going to speak on Chapters 9 and 11 of the Commission's Report and Chapter 6 of the Draft Bill on the Representation of the People, thank you.

Com. Mutakha Kangu: Ladies and gentlemen good afternoon?

Delegates: Good afternoon.

Com. Mutakha Kangu: Now if you look at your documents that provide the programme for this session, you will notice that I am expected to talk about Chapter 9 of the Report and Chapter 10. Chapter 9 is entitled the State and the Political System. Chapter 10 is entitled Participatory Governance.

Now under the State and the Political System; if you look at the documents that you had yesterday, you will notice that issues were identified starting with the issue of the ideology of the State and of the Constitution that we are proposing. There is the issue of the Representation of the People and under that, you will find questions of the Electoral Systems, questions of Political Parties and their role and the Electoral Commission and so on. I propose for this evening to address the question of the ideology and I hope that next week we will be able to address the remaining issues. The reason I want to address that and emphasize it, is as you have heard Honourable Delegates stating, and there is one Honourable Delegate who raised the question of our first having to agree on the philosophical foundations and then we can build the rest of the Chapters on that foundation. Our Chairman, when he delivered his speech, he also emphasized the question of the vision of this country and the vision that has to be reflected in the Draft Constitution emphasizing the need to clearly understand the ideological and philosophical foundations of the Constitution we propose.

If you look at Chapter 9 of the Report, you will notice that we have tried to explain what the ideology of a State ideally ought to be, and we have also tried to analyze whether or not the independence Constitution had any ideology, and what is the position under the current Constitution and thereafter, some comparative studies and recommendations for the kind of ideology we would like to have.

Generally, ideology is supposed to be a set of accepted values that in most cases will be inspirational values and a way of life that a society would like to work towards; a set of values that can be used as a mechanism for engineering behaviour in a given society so that society can channel its conduct and way of doing things in a specific direction.

Now in our report we have identified and emphasized what we have referred to as The Republican ideology as being what we would like to have, and it therefore becomes important that members of this Conference be able to understand what is meant by Republicanism and be able to see whether the Draft has effectively captured the principles of a Republican ideology.

That is not to say that the current Constitution had not identified Republicanism as an ideology. Indeed the current Constitution, as is noted in the Draft at Article 1 and 1 (a), describes Kenya as a Republic but of course when you read through the document, if you have come to understand what the content of Republicanism is, you notice that the current Constitution does not sufficiently incorporate the principles of Republicanism. For that reason, we need to clearly understand Republicanism and then be able to analyze the Draft the Commission has presented from that point of view, to see whether or not we have sufficiently captured those principles, and if not, then how we can improve that.

Now in attempting to define what is meant by a Republic or Republicanism, I prefer making reference to what James Madison said in Federalist Paper number 39 - and you need to note that Madison was one of the writers of the American Constitution. He described a Republic or a Republican government as being that system of government in which or under which all authority derives from the people directly or indirectly, and that under that system, those to whom authority of the people is handed over to exercise on behalf of the people, do so during a limited period of time and during the pleasure of the people and during their good behaviour. Those are the principles that Madison identified, and on a closer scrutiny and analysis of those principles, I have myself been able to distill up to about ten or so principles that can be called Republican and the first I have identified is:

1. The centrality of the people,
2. The representative nature of Republican governance,
3. The fact that authority in a Republic must be exercised during a limited period of time,
4. That authority be exercised during the pleasure of the people,
5. That it be exercised during the good behaviour of those who exercise it,
6. That the Republican government ought to be democratic in nature,
7. That it ought to be participatory in nature,
8. That it ought to be transparent,
9. That it ought to be accountable to the people and finally,
10. That in structuring Republican government, power must be shared out in a manner that gives effect to proper separation of powers, checks, counter-checks and balances.

Now, if I go back to the concept of the centrality of the People, I identify two aspects of the centrality of the people in a Republican government. The first aspect being that indeed all authority comes from the people and anybody exercising authority cannot purport to exercise his own authority. He exercises what comes from the people and therefore the people should be in a position to control the exercise of that power. And that reminds me of what Mzee Taita Towett said: we must be very keen on how to ensure that after the people have delegated their power to representatives, how do they go about to recover it if the representatives were to choose to apply it to their personal aggrandizement?

The second aspect of the centrality of the people is that in fact the very essence and origin of the power of the people in government, in politics, in law, is to serve the welfare of the people. So when we talk of government and the people, the most important thing is to ensure that the welfare of the people is properly served. And then of course, that raises the question: in that context, who are the people? How do you define the people? Is it just a handful of demagogues running around saying, we are the people, or is it one community, one tribe or just one gender, or is it one religion? And a proper definition in

this context would be, that people is all-inclusive. We take into account all the people without regard to race, gender, age, sex, ability, tribe, religion and so on. Those distinctions do not come in because everybody, regardless of these things, would like to have their welfare taken care of, because they want to preserve their lives and live long and so on, and that is how people came together to form political society, law and government.

So when we are talking of the Kenyan people, we must be clear in our minds that we don't want to leave anyone outside this definition, we must make a Constitution that would address the welfare of all of us; that will accommodate the peculiar needs of all of us without distinction.

Now in trying to reflect this principle in the Draft Constitution, unlike the other Chapters you have dealt with which may take you to a specific Chapter, I want to say that the ideology Chapter or aspect of the Chapter we are dealing with, will not take you to a specific Chapter but it will pick a number of things in different Chapters to enable you to see whether or not we have successfully captured this ideological foundations in the whole Draft. So on the issue of people, you will notice that we start recognizing the people at the Preamble stage. The Preamble talks in terms of the people as being the source of authority because at the second last paragraph, we say that the people have a right to determine the form of governance of our country. So we are seated here as people in a representative capacity to determine the form of governance that this country is going to have and we are doing that because the people are the source of sovereignty; they are the source of sovereign authority and those we hand over power to, must recognize that.

The Preamble also states, at the second paragraph, that the Kenyan people are committed to nurturing and protecting the well being of the individual, the family and the community within the Nation. So, in the Preamble we have also recognized that.

Com. Mutakha Kangu: Now in trying to reflect this principle in the Draft Constitution, unlike the other Chapters you have dealt with which may take you to a specific Chapter, I want to say that the ideology Chapter, or aspects of the Chapter we are dealing with, will not take you to a specific Chapter but it will pick a number of things in different Chapters to enable you to see whether or not we have successfully captured these ideological foundations in the whole Draft. So on the issue of people, you will notice that we start recognizing the people at the Preamble stage. The Preamble talks in terms of the people as being the source of authority because at the second last paragraph, we say that the people have a right to determine the form of governance of our country. So we are seated here as people in a representative capacity, to determine the form of governance that this country is going to have and we are doing that because the people are the source of sovereignty. They are the source of sovereign authority and those we hand over power to must recognize that.

The Preamble also states at the second paragraph, that the Kenyan people are committed to nurturing and protecting the well being of the individual, the family and the community within the nation. So in the Preamble we have also recognized that whether we want to grab as a constitution, is not for any other purpose, but in fact to serve the welfare of the people of Kenya. And in talking about the people, we start with the individual. The individual, then we move to the family and then the community and then that of course will give you some foundation as to why the Chapter on The Bill of Rights which you were dealing with this morning, targets the individual in the quest for service of the welfare; the individual is identified as very fundamental. So you don't pick up majorities and ignore a few and say, since the majority have decided, the welfare of the minorities can be ignored, because the individual is fundamental.

At paragraph 1, I said in defining people we recognize all diversities, we include everybody. So, these diversities must not bring about a difference in the manner we serve the welfare of the people. So, paragraph 1 recognizes our diversities but says we are willing to be together as a sovereign nation indivisible. So, when you are discussing questions of diversity, the weaknesses of women and the need to have affirmative action

for them, the weaknesses of the marginalized communities, the question of big religions and small religions, I hope that you will bear in mind that the ideology we have picked on recognizes that we must serve the welfare of all and that if we are many, we do not become arrogant and dismiss the needs of the few just because we are many. Now if you move to Chapter 1, you will notice again Article 1 an emphasis on the Sovereignty of the People and the need to serve their welfare. Article 1 in Chapter 1 talks about again the Sovereignty of the People, so the centrality of the people is brought out again at that particular Chapter.

Now, if you look at Chapter 2, Article 8, Sub-Article 3, again we refer to the need to have a policy that decentralizes the institutions of government equitably across the country. Now that is again to realize that government is meant to serve the people equitably and therefore our development policies must ensure that service is rendered in a manner that does not leave out anybody feeling not well-served.

Chapter 3 Article 14, which was talking about The National Goals and Values, also emphasizes the aspect of serving the welfare of the people, and Section or Clause 14 and 15 of that Article also can show how we have tried to capture the welfare of the people in this Draft.

Now if you go to Chapter 8 Article 148, you will again notice that this Draft has tried to emphasize the centrality of the people in it, and that is the Chapter dealing with the Executive. 148 (1) says that ‘the powers of the Executive are to be exercised for the well-being and benefit of the people and the Republic of Kenya’. Sub-Article 2 of that Article says, ‘Executive authority assigned to an office-bearer by or in terms of this Constitution, (a) vests in that office-bearer the power to serve the people rather than the power to rule and (b), shall be exercised in a manner consistent with the purpose and objects of this Constitution’. Of course you will note that if you look at the Act that governs this process, we were told that the object of review is to provide a constitution that will serve the welfare of the people. Therefore, the purpose of this Constitution is to serve the welfare of the people. So those with assigned executive authority too, have no

business exercising that authority for their personal aggrandizement. They are supposed to exercise that authority, to serve the welfare of the people and not to rule. Of course we are coming from a history under which you know that the power in our country is perceived as an instrument for ruling and not an instrument for serving. We are saying this time around, our ideology is that power is an instrument for service of the welfare of the people and not individuals and their personal and friendship interests.

Now if you look at Chapter 10 Article 213, which deals with Devolution of Power, you will again notice that in setting out the principles and objects of devolution of power, Article 213 1(e), (f), (g) and (h), emphasize again the question of service to the welfare of the people. For instance (e) says that the principles and objects of devolution are to promote social and economic development throughout Kenya; (f), ensure equitable sharing of national and local resources throughout Kenya with special provisions for marginalized areas; (g), facilitate the decentralization of Central Government powers and the location of Central Government institutions and departments away from the capital territory, to ensure equitable distribution of resources in all the Provinces; and (h) provide essential services to the people effectively and economically. So again that Chapter carries forward the centrality of the people in governance and particularly the issue of service of their welfare.

If you look at Chapter 11 Article 232, the Chapter that deals with Land and Property, we again have tried to emphasize the welfare of the people and we are saying at that Article Sub-Article 1, --

Interruption: (inaudible)

Hon. Delegate Atsango Chesoni: Okay.

Hon. Delegate Kennedy Kiliku: Chairman, my name is Kennedy Kiliku, No. 447 from Trade Unions. I don't know whether I am lost or it is the Chair which is lost because you are supposed to go Article by Article, but the way the Chair is doing, is giving a general

lecture, and maybe we may get lost in the way. Why can't we follow the procedure, which was followed this morning?

Com. Mutakha Kangu: Now, may I respond to that? I said at the beginning that if you look at the report, Chapter 9 is the State and the Political System. Under that Chapter, we covered the Ideology of the State, we covered the question of the Representation of the People, and I said that under the Representation of the People we should have questions on the Electoral System, and questions on Political Parties. Now, that one you can find under Chapter 6 of the Draft, specifically. But when you come to the ideology, because ideology by nature cannot be put in one Chapter, it runs through the whole document, and that is why I am referring you to one Chapter, to another so that you see what is the value content of the entire document. Then when we finish with the ideology, we will go back to the aspect of Representation of the People, and then we shall be able to concentrate on Chapter 6 of the Draft. But on ideology, and I want to say, Delegate Kiriro said this morning, we must first be very clear on the philosophical foundations of this Constitution, before we can be able to link up the parts. I said when the Chairman spoke, the day he spoke, he said look at this document as a whole, and knowing that if you remove one part without understanding the links between one part and the other, you might dislocate the whole document. So, in dealing with ideology, I am convinced that to take you through bits to show how one part or a principle runs through the whole document is extremely important. I hope that satisfies the concern.

Hon. Delegate Atsango Chesoni: Okay. No. 594.

Hon. Delegate Orié Rogo Manduli: I think that is very well explained, but we are using here different books. Some are using the green book, some are using the orange book. I suggest that as you jump from area to area and point out the pertinent paragraphs, I suggest that you mention the name of the page. You will make life easier for us so we can quickly, instead of wasting the whole time rumbling through and trying to find out; by the time we reach there you have jumped on to the next idea. So, what you do,

mention the page in the green, mention the Article page on the orange, and there we will keep up pace with you. Otherwise it is a wonderful idea.

Hon. Delegate Atsango Chesoni: Thank you, thank you, your point is taken.

Hon. Delegate Orié Rogo Manduli: Thank you.

Hon. Delegate Atsango Chesoni: Okay, what we are doing is looking at Chapters 9 and 10 the Draft report, which is page 155. However, as has been explained by the Hon. Commissioner, this refers in respect of the issue of ideology, he was just giving us a background based on ideology and the various sections out of the Draft Bill and so, in that respect, he will give us what the Article numbers are of the Draft Bill that he is referring to at that point in time. Is that okay?

Delegates: Yes.

Hon. Delegate Atsango Chesoni: However, when we finally get to the question section it will be for the background of Chapter 6 of the Draft Bill and our questions and general comments will be in respect of Chapter 6 on Representation of the People. Okay?

Com. Mutakha Kangu: Now, let me say, I am using the orange document. The main report in the orange color, Chapter 9 is the State and the Political System. Now, for purposes of the Draft, I am also using the orange Draft. The reason I chose not to cite the pages, and instead I am citing the Articles, is because the pages in the orange document are different from the pages in the green document, but the Articles are the same. So, that is why I am referring to Articles. So when you hear me referring to Articles, I am referring to Articles of the Draft and sometimes I also mentioned the Chapter title of the Draft for you to be able to get where I am. And I want to emphasize that the reason I want this captured very clearly, is because when you get that philosophical and ideological foundation, you might be in a position to assess the arguments and criticisms that are being put or made against some of the proposals from a more informed

foundation. You will also be aware that if we remove this part, and it was linked to this one, how else do we replace it so as not to cause dislocation in the entire ideological framework of the Draft?

So, I was at Chapter 11 of the Draft, which deals with Land and Property and I was trying to show you how we have drafted the Articles on land in a manner that shows that this land is the property of the people and must be used for the benefit of the people, because we are saying the first principle under a Republican system, is that government is about the welfare of the people. So, have we drafted a Constitution that actually secures that or are we just making statements and yet the Draft doesn't bring out that? So, if you look at Article 232 of the Draft, Sub-Article 1 says: "land being Kenya's primary resource, and the basis of livelihood for the people, shall be held, used, and managed in a manner which is equitable, efficient, productive and sustainable". So, the points of reference are the people and their welfare.

Hon. Delegate Atsango Chesoni: Point of order. Is it a point of order?

Hon. Delegate Victor Gituma: My names are Victor Gituma, No. 274. Mr. Chair it appears to me that we don't have a quorum.

Delegates: (inaudible murmurings)

Hon. Delegate Atsango Chesoni: Can we have a count please? Delegates, I am sorry we had this conversation earlier, if a Delegate raises the issue of quorum, the Chair is obligated to conduct a count.

Hon. Delegates: (inaudible murmurings).

Hon. Delegate Kaaru Abdulkadir Guleid: Point of clarification.

Hon. Delegate Atsango Chesoni: Okay, clarification?

Hon. Delegate Kaaru Abdulkadir Guleid: My names are Kaaru Abdulkadir Guleid, Delegate number 263. Can you clarify for us, does the quorum need at the beginning or throughout? We had a quorum at the beginning, I think we should continue and complete otherwise we will never go anywhere.

(Clapping).

An Hon. Delegate: Thank you Mr. Chairman I think in all fairness to my Honourable Delegates--

Hon. Delegate Atsango Chesoni: Excuse me. Who is speaking? I am sorry I have not given you the microphone. Could you just wait please, we are consulting on this question.

Prof. Yash Pal Ghai: Thank you very much. Regulation 16, which I read out to you earlier, governs this matter. It says any Delegate may at any time after the proceedings of the Conference have commenced, object that there is not a quorum present. So I am afraid it is not only at the beginning, it can be any time during the proceedings.

Hon. Delegate Atsango Chesoni: May I request the Delegates to please be seated so that the count can be done.

An Hon. Delegate: On a point of order.

Hon. Delegate Atsango Chesoni: No point of order can be taken whilst a count is being done. Please be seated.

An Hon. Delegate: Point of order.

Hon. Delegate Atsango Chesoni: Excuse me, Honourable Delegates please be seated. They are still counting.

An Hon. Delegate: Point of order.

Hon. Delegate Atsango Chesoni: We cannot take points of order until this matter has been resolved. Okay Honourable Delegates I regret to inform you that we do not have quorum and we are going to have to ring the bell.

(The quorum bell is rang for 5 minutes)

Hon. Delegate Atsango Chesoni: Yeah. I have told the Chairman the MPs are not here the Nairobi Delegates are not here, It's only those that are staying in the hotels.

An Hon. Delegate: Point of Order.

Hon. Delegate Atsango Chesoni : Point of order? After counting.

Hon. Delegate Atsango Chesoni: Honourables Delegates there is no quorum so I am going to hand over to the Chairperson of the meeting.

Prof. Yash Pal Ghai: Honourable Delegates unfortunately the Chair has no choice in the matter. Regulation 16 is very clear that after five minutes of the ringing of the bell we still do not have a quorum I unfortunately have no option or anybody chairing the session has no option but to adjourn the conference until the next seating. There is no possibility of taking points of order so I am afraid if I have to respect the regulation I have now to adjourn the conference until Monday morning 9.30 am

Meeting was adjourned at 4.50 pm.

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**PLENARY PROCEEDINGS, PRESENTATION OF DRAFT BILL, CONTINUATION OF
CHAPTER 6 – REPRESENTATION OF THE PEOPLE, HELD AT BOMAS OF KENYA ON
12TH MAY 2003**

**PRESENTATION OF DRAFT BILL: CHAPTER 6 REPRESENTATION OF
THE PEOPLE (Cont. of 9th May 2003)**

**Presenters: Com. Mutakha Kangu
 Com. Hon. Phoebe Asiyo**

**Session Chair: Sultana Fadhil – Vice-chair
 Atsango Chesoni (Western Delegate)**

The meeting stated at 9.45 am.

Prof. Yash Pal Ghai: I welcome you all back after I hope a pleasant, fruitful and restful weekend. I ask Hon. Delegate Sheikh Ali Shee Mohammed to say the prayers for us and will you please all stand up for the prayers.

Hon. Delegate Sheikh Ali Shee Mohammed: Bismillahi, kwa jina la Mwenyezi Mungu, muumbaji wa mbingu na ardhi, tunakushukuru Mwenyezi Mungu kwa uwezo uliotupa, kwa kuweza kufanya kazi hii, kutumikia viumbe vyako kwenye mkutano huu-kufanya matayarisho na marekebisho ya sheria ambazo zitashugulikia watumishi wako na viumbe vyako kwenye maslahi yao ya hapa ya dunia na ya kesho, ya akhera. Tunakuomba Ee Mola wetu utupe nguvu, busara, uwezo, kuvumilia na subira za kuweza kufanya kazi hii ngumu. Tunakuomba wewe, hatuna mtu mwingine, tubariki sisi sote na ubariki wananchi wote kwa jumla Amin.

Prof. Yash Pal Ghai: Thank you very much. I believe that there are a number of Hon. Delegates who have not taken the Oath and I would invite them now to come on the floor

here and I shall administer the Oath for the affirmation as they wish. It is just one person. I think if you just stand there Hon. Delegate Daudi Mwiraria so I can see you and you can see me when the Oath is administered. I think we have one or two other Delegates. You both intend to take the Oath or the Affirmation. We have Hon. Delegate Daudi Mwiraria with us today and on behalf of the Delegates, I want to offer the Mwiraria family our sincere condolences on the grievous loss in your family. We hope you have the courage and God will give you the courage to bear with this loss. We are with you in this tragedy. Thank you.

The way I am going to administer the Oath is that I am going to ask you to raise your hands and then repeat after me, I will say "I", you say "I" and then you state your names and then repeat after me. Please raise your hands and say your names, say "I" Hon. Delegates and 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 a Delegate, I shall at all times be guided by the National interest. So help me God (Repeated). Please sign this document and you are welcome to the Conference and we look forward to your very constructive contributions. Thank you. (Clapping)

Brigadier you want the Oath or the Affirmation? (Inaudible response) You know the form now so please say "I" and your names (inaudible), being appointed a Delegate to the National Constitution Conference, under the Constitution for 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 a

Delegate, I shall at all times be guided by the national interest. So help me God (Repeated). You are very welcome and we look forward to your contributions.

I would like now to make a short statement communication from the Chair. I had already welcomed you back to this Conference after the weekend. I hope you had restful weekend, for this is going to be a strenuous week with some key issues being debated, complex and perhaps controversial. I hope that all the Hon. Delegates will enter into these discussions with an open mind. As during last week, they will listen to what the other Delegates have to say with respect and civility. In my statement on Tuesday, when I outlined the submissions of the Constitution of Kenya Review Commission to the Conference. I mentioned that one of the functions of a long and participatory review process, provided under the Constitution of Kenya Review Act, is to resolve differences between parties, communities and regions and to strengthen national unity. This requires us to negotiate in good faith and to search for consensus. In fact the Review Act states quite clearly that the Conference, as indeed other organs of Review, must aim to make decisions by consensus. It is only after honest and sincere efforts at reaching consensus have failed that the Conference can proceed to vote.

I am confident that we can reach consensus on most issues if we stick to our Oath office, which requires us to make all decisions in the national interest.

Last week I reminded Honourable Delegates that although the composition of the Conference is based on different categories of Delegates, the purpose is to ensure as representative Conference, not to fragment the Delegates into competing and indeed antagonistic groups. One of the principal goals of Review is to strengthen national unity and preserve the integrity of the Republic. We shall not achieve this aim if we lock ourselves into ethnic or regional lobbies. Instead, we should shorten political and social divisions that the Review process aims to remove.

Another problem with the pre-occupation with ethnic or regional identities, is that they obscure the common interests that we have as individuals or classes in social justice and equity and the groupings that unite us, because they transcend such ethnic divisions such

as workers, trade unions, women professionals. Those identities which are borne amongst us are diminished or obscured by this pre-occupation with ethics or regional affiliations. To reduce a complexity and inter-connectedness of the representation in this Conference merely to ethnicity, is to disable the Conference from performing its proper and heavy responsibilities, to lay the legal foundations of the united peaceful and prosperous Nation.

Last Tuesday I also referred to the conflict of interest that Delegates may face between the public duty to ensure a good and a fair Constitution that would serve the National interest and their private concerns. It would be a tragedy of gigantic proportions, if Constitutional issues fundamental to the good governance of the country were personalized and thus explored not in terms of the long-term benefits of the country but as the accommodation of the interest of the specific individuals.

There would be no greater betrayal of the people than the subordination of the national interest to personal obsessional interests. I do not mean to say that there is no place for lobbying or caucusing. Indeed the Conference is about aggregating interests, lobbying, negotiating but also agreeing. The lobbying and the caucusing must be to achieve the aims of Unity and equity and the other goals of the Review Act, not to sabotage the goals of review. Discussions on and negotiations of fundamental issues must be transparent and must take place on the floor of the Conference.

Finally, I would like to remind the Hon. Delegates of the extreme importance of winning and regaining the confidence of the public, not only for our reputation and prestige but even more fundamentally for the legitimacy of the document that we eventually produce. The public must be convinced that we have followed a fair, participatory, open process for the adoption of the Constitution. It will be obvious to all of us from the media coverage of last week's proceedings that the public takes a keen interest in our proceedings and we are subjected to a sharp scrutiny. I myself believe that the Media have not always been fair to the Hon. Delegates. They have seized upon what they

perceive to be our failings and not giving sufficient publicity to our achievements which are considerable.

Clapping

The Delegates have already debated five Chapters of the Draft Constitution and they have shown that they have read the documents with care and have much to contribute to the improvement of the Draft Constitution. I do not question the right and indeed the responsibility of the media to report and comment on the proceedings and work of the Conference and I want to say that the Conference Delegates wants cordial and fruitful relations with the media. All we want is a balanced reporting and commenting and a greater focus and coverage of the discussions of the substantive issues of the Constitution reform. Much of the coverage has been with somewhat marginal issues and the fundamental debate going about the future governance system has not been adequately covered and I would request them to do so please.

Clapping

We are ready to write information briefings. We now have, as you know, appointed a Media Advisory Committee which will provide you any assistance that you need and we hope that the coverage this week will be constructive, even if critical and public will be able to follow the detailed discussions on substantive issues. We on our part as Delegates have an opportunity to dispel the negative image that has been created of the Conference. We can dispel this image by the way we conduct ourselves this and the following weeks. We should try to proceed with speed, we should avoid unnecessary Points of Order. Once the debate on a particular chapter is underway, please desist from making Points of Order which, prevent the floor of argument and which slow us down. For good exchange we do not need those interruptions and I would please plead with you, if you have important Points of Order, keep them till towards of the session.

I also want to say that the Steering Committee had a brief discussion this morning to ensure that all categories of Delegates have an opportunity to speak. Many Delegates have complained that in the whole of last week they were not called upon once, whereas other Delegates were called frequently. I am sure this was not deliberate and a Conference as large as this, with the distances between the podium and the Delegates, it is sometimes not possible to identify people who may have spoken already.

What we would like to do this morning and I have not had time to discuss this with the Chairs, is that we would call upon the Delegates in order of their Constituencies. So we might begin with a women representative, the next speaker will call upon will be somebody from the NGO sector, following religious groups, political parties, parliamentary and so on. In this way we will at least ensure that all the groups represented here have a fair opportunity.

The second point I would make is that if you have spoken once during the day, please do not raise your hands again. We are going to keep a track now of all the Delegates as they speak, so that other Delegates are called upon afterwards. Please assist the Chairs, if you have had a chance during the day to speak, please let others have opportunities. We will perhaps come back with more detailed plans tomorrow as to how we can ensure that all the Delegates have opportunities to speak. We are considering but we have made no decisions, that may after all chapters have been gone through we might indeed have an entire day where people could speak on any issue. So there will be further opportunities but let us now conduct our meeting in a way that every Delegate who wants to speak feels that he or she has been given a fair deal. I wish you all a fruitful week and with that I am handing the Chair back to our co-Chairs - Hon. Vice Chair Colleague, Ms Sultana Fadhil and Ms Chesoni - who will continue the Debate we began on the chapters on representation and values. I will plead with my fellow Commissioners to keep their presentations as brief as possible, so that there is ample time for the participants to make their points. Thank you for your attention.

Hon. Delegate Sultana Fadhi: Hon. Delegates, distinguished guests, ladies and gentlemen, good morning. Kwa niaba ya Delegates, tunamshukuru Prof. Ghai kwa mawaidha yake aliyotupa hivi asubuhi. Ni matumaini yangu kuwa tutayapa umuhimu wake, kwani amejaribu kutuelekeza kwenye ile njia ambayo itaweza kufanya hii Conference iendele vizuri. Pia hivi asubuhi tuliona wenzetu watatu-wawili wakichukua Oath na mwingine Affirmation. Ni muhimu kila tukikaa twataka tukumbuke, kile kiapo tulichukua maana yake ni nini. Tukiwa tutafuata kile kiapo tutachukua, tutaweza kuifanya hii kazi yetu na tupate sifa, siyo kwa sasa bali hata tukiwa hatuko tena hapa duniani.

Siku moja hapa mmoja alisema kwa kuwa sheria, yaani regulation inasema, sote tukiitwa tuitwe Hon. Delegates. Kortini Mahakimu waitwa your Honour, lakini hakuna kifungu cha sheria ambacho chasema mtu aitwe your Honour Kortini ni ile heshima tu. Lakini sisi tumepewa regulation haswa kutuita Hon. Delegates. Kwa hivyo, tujue ni kwa kuwa ni jina tukufu tumepewa si kwa sababu sisi watu mia sita na ishirini na tisa ni watu ambao tuko juu ya watu milioni thelathini wa Kenya. Tumepewa jukumu kubwa kuja hapa kuwaakilisha wale raia wengine. Kwa hivyo, ni muhimu saa nyingine tujaribu kuweza kufuata zile order na tuweze kutoa maoni yetu kwa njia ambayo itakuwa na manufaa kwa wale watu milioni thelathini ambao twawaakilisha. Kwa haya machache ningependa hivi sasa, tuweze kuendelea na mpango wa leo na Bi. Atsango Chesoni ndiye atakaye kuwajulisha wale ambao watazungumza kwa siku ya leo. Asanteni.

Hon. Delegate Atsango Chesoni: Good morning

Hon. Delegate Sultana Fadhi: Yes

Hon. Delegate Prof. Makau Mutua: Thank you very much Madam Chairperson. I rise on a point of Order. My name is Prof. Makau Mutua, Delegate No. 584. I just wanted to commend Prof. Yash Ghai for the very wise counsel and guidance that he has given this National Constitutional Conference this morning on the proceedings. Madam Chairperson, I want to raise two concerns which touch on the effectiveness and the

integrity of this National Constitutional Conference. Madam Chair person I want to note that there has been excessive and detrimental caucusing and lobbying by certain Hon. Delegates. I want to note that Hon. Delegates ought to be aware and understand the fact that Constitution making is unique, is a lifetime, is a sombre and sacred business. We are here to write a Constitution for the Nation not for a tribe, not for a Province, not for any individual

Hon. Delegate Atsango Chesoni: Excuse me.

Hon. Delegate Prof: Yes Madam Chairperson.

Hon. Delegate Atsango Chesoni: Hon. Delegate, this is not a Point of Order.

Hon. Delegate Prof. Makau Mutua: It appears to be a Point of Order Madam Chairperson and I think you should allow me to proceed.

Hon. Delegate Atsango Chesoni. It appears to be a statement, could you please get to the Point of Order.

Hon. Delegate Prof. Makau Mutua: I am getting to the point Madam Chairperson but I think that matters that affect the integrity and effectiveness of the Conference ought to be discussed by the Delegates. Madam Chairperson, I do not think that you ought to shut me up. Madam Chairperson, the point is that we are not here to write a Majimbo Constitution and Delegates ought to understand also that we are not here to write a Constitution either for His Excellency the President or for Mr. Raila Odinga. We are here to write a Constitution for Kenyans. In that vein Madam Chairperson, I want Delegates to take a vow that they will stop caucusing along ethnic, tribal and provincial lines.

Madam Chairperson, I think that our heroes and heroines who fought for this country such as Dedan Kimathi, Mekatilili...

Hon. Delegate Atsango Chesoni. Excuse me, Excuse me

Hon. Delegate Prof. Makau Mutua:would be shocked if they knew that we were not taking this Conference seriously. I rest my case Madam Chairperson. Thank you.

Hon. Delegate Atsango Chesoni: Hon. Delegates, I have been requested to remind us of what a point of order is. A Point of Order must (inaudible) to a particular regulation and to the procedure under which we are going. Thank you. Also avoid mentioning names or personalizing any issues. Thank you. Okay.

Does Delegate No. 99 still wants to raise a Point of Order. Alright, we are going to proceed. When we stopped on Friday. Okay Delegate No. 228.

Hon. Delegate Raphael Livu: My names are Raphael Livu, Delegate No. 228 representing Mombasa District. Madam chair I draw your attention-rather I am standing under Rule 32 Sub-rule “a” of the Conference rules I am rising to draw your attention to an article in the media specifically the East African Standard of Saturday on page 3, which says that “Delegates kick out the Standard.” Madam I wish to draw your attention to paragraph.... which touches on me. It says “ before the issue was raised in the ... some Delegates led by Raphael Livu, myself I believe, roughed up KTN and Nation Cameramen.” Madam Chair I wish to draw your attention to the editorial of the East African Standard yesterday, (11/05/03) in which it said in paragraph two, “that’s not all, the same Delegates now led by a Raphael Livu roughed up KTN TV Cameramen who in their performance of their duties were filming the Delegates as they received their allowances. Madam Chair, I wish to make my personal statement on this. I do not deny that I was at the Dinning Hall when Delegates were being paid. (Interruption) Madam I am raising under a certain section and I do not believe I qualify to be interrupted at this point, perhaps I may seek your guidance.

Madam Chair, during the period that I was having lunch, Delegates who were queuing to receive their allowances did protest in my presence that it was not fair for Cameramen to film them while they were being paid.

Clapping

Hon. Delegate Raphael Livu: Madam Chair I was not party to that process in any way. The only thing is that after having finished my lunch, I put on my jacket and confronted the two Delegates, specifically a Delegate who I identified later to be a Mr. Mutua, to seek from him why he was not respecting what the Delegates were asking him to do. Madam Chair, in my opinion, the Delegates did not rough up the press, the Delegates in my opinion and to the best of understanding did only protest.

Hon. Delegate Atsango Chesoni: Thank you Hon.....

Hon Delegate Prof. Makau Mutua. Madam what is being portrayed in the press especially on my part, is very negative, it is malicious. I wish to (inaudible) the fact that after we left to come to this hall for debate, one of the people mentioned in report did send a reporter that is well known to me to come and ask me to talk well, which in my opinion was to bribe so that my name could not be published. Madam Chair, I reflected or I viewed that as corruption.

Hon. Delegate Atsango Chesoni: Thank you.

Hon. Delegate Prof. Makau Mutua: Madam Chair to quote the words that I said I told the Cameraman.

An Hon. Delegate Point of Procedure Madam Chair.

Hon. Delegate Atsango Chesoni: Thank you.

Hon. Delegate Prof. Makau Mutua: I told the Cameraman Madam Chair, that in my opinion he was being stupid. I believe that is the basis under which that story has been published.

Hon. Delegate Atsango Chesoni: Thank you Hon. Delegates the Conference takes note of your sentiments.

Hon. Delegate Prof. Makau Mutua: Madam Chair I am protected, I am standing under Rule 32 (a) and I think I am qualified to finish my statement if you do not mind please, with due respect.

Hon. Delegate Atsango Chesoni: Okay please do not call anyone any names. Please take note of your language.

Hon. Delegate Prof. Makau Mutua: I apologise, I withdraw.

Hon. Delegate Atsango Chesoni: Yes. Thank you.

Hon. Delegate Prof. Makau Mutua: Madam I have checked with Langata Police Station this morning and they have confirmed to me that no report was made by anybody of an assault of that nature. Madam Chair, I have checked with the Local Post, at Bomas of Kenya, the Commanding Officer has confirmed to me that no report was made to them incase of any report against myself. Madam I have checked with the PR Officer of this Conference and they have confirmed to me

Hon. Delegate Atsango Chesoni: Your complaint has been heard and we advise you

Hon. Delegate Prof. Makau Mutua:that there is no report for complaints that was laid against me.

Hon. Delegate Atsango Chesoni: We have taken note of your point and the Media Advisory Committee will.....

Hon. Delegate Prof. Makau Mutua : My opinion is that the East African Standard and that reporter with due respect, in my opinion that is

Hon. Delegate Prof. Makau Mutua: In my opinion that is the gutter

Hon. Delegate Sultana Fadhi: A Media Advisory Committee was constituted to handle such things, we will refer that to the Media Advisory Committee. Can we continue with our proceedings?

Hon. Delegate Prof. Makau Mutua: Thank you please.

Hon. Delegate Atsango Chesoni: Thank you. I will now request the Commissioner Mutakha Kangu and Commissioner Phoebe Asiyo to please complete the presentations that we had begun on Friday. Commissioner Mutakha Kangu, as you may recall on Friday, was giving us the background to Chapter six of the Bill on representation of the People drawing on Chapters nine and ten of the Commission's Report. He will finish speaking to that matter, after which Commissioner Phoebe Asiyo will then take us through chapter six itself of the Draft Bill. Thank you.

Com. Mutakha Kangu: Thank you very much Chairperson. Last Friday we had started talking about the issue of the State and the political system: which I said can be found in Chapter nine of the Report and I was using the orange Report, then the issue of participatory governance which is found in Chapter ten of the Report. Under the State and political systems I had said that the main issue we will address is the issue of the ideology. And under participatory governance, I said the issues we are going to address are the issues of the Electoral system and process under which we should have the system, the bodies for the management of elections and of course the issue of political parties.

I said that, on that aspect, my colleague Commissioner Pheobe Asiyo will take you through chapter six of the Draft Bill. But, I will lay the theoretical and conceptual basis coming from the reports, and I had started on ideology which I had said, by its nature being a chain link in the entire Constitution, you will not be referred to a specific chapter of the Draft but, in fact to various parts of the Draft to see how the chain links the entire draft.

I had mentioned that, the ideology we have chosen on is the Republican Ideology which I had said has upto ten aspects. One being the centrality of the people, the representative nature of Republican Governance, the fact that the representatives exercise authority during a limited period of time, during the pleasure of the people and during their good behavior. I had also motioned that another aspect is the democratic nature of Republican Governance, the participatory nature of Republican Governance, transparency and accountability as aspects thereof, and finally separation of powers. And I had started giving some details on the centrality of the people and I have said that the people are central in two respects:-

- That they are the source of authority that is exercised by representatives in governance.
- Governance itself is supposed to be aimed at the serving the welfare of the people. And I had tried to show how we have captured those aspects of the people in the Draft, in the Preamble, in the chapter on sovereignty, in the chapter on the Legislature, in the chapter on the Executive. And we had reached the chapter on land in which again we had pointed out that emphasis was put on the people that land has to be managed and owned for purposes of serving the welfare of the people as referred to at Article 232 and 233 which talks in terms of land being owned by the people of Kenya.

And I want to emphasize at that point that the reason we use the term “people” rather than “citizens” is because citizens of Kenya is narrower than people of Kenya. Because

“people”, include even the future generations. Now, if you go further, you will find that even on the chapter on environment, again we emphasize “people” and concept of sustainable development to show that actually “people” captures even future generations.

Now, on the chapter on devolution again, the welfare of the people is emphasized. So if you link all that, you can see that we have tried to bring out the aspect of the centrality of the people as being fundamental to the governance we would like to put in place through this Draft Constitution.

The Second aspect of the Republican nature of governance or of the ideology we have chosen is that governance should be representative and I think that is something we will deal more in detail when we are covering representation. But then, of course one needs to ask “when we talk of a representative, who is a representative?”. Often, people think in terms of elected leaders but then if you accept the definition of people as including future generations and as including younger people who can not participate in elections then you realize that even those of us who vote but do not stand to be elected are also representatives and they cast their votes not only on their behalf, but also on behalf of their other members who can not participate. And therefore, that gives us a reason for crafting electoral rules that do not look at the casting of the votes, purely as a right that belongs to the person who is casting the vote, that can be abused or misused, but in fact, as a public duty which that person must exercise responsibly for the benefit of the entire society including on those who can not participate. So that aspect has to be noted and you will see when we are talking about the right to vote, and when we talk about the duties of the citizen we have suggested that one of the duties is for the citizen, to participate in the electoral process even if it means by voting.

We also have the aspect of holding power or the authority during a limited of time. That is extremely important in a Republican governance and in office for this Draft we have tried to do that in various respects. We have tried to limit terms of office various Institutions, Parliament generally or the legislature normally is elected for a limited period the same applies to the Executive but the Executive we have gone further and

limited the period, to two terms, so that you do not have someone staying in office for far too long as to be tempted to become dictatorial.

For the judiciary, unfortunately they had not elected for a limited period of time and therefore the proposals we are making in this Draft, some of which seek to reduce the retirement age for Judicial officers, we are supposed to try and give effect to this concept of holding office for a limited period of time.

We have also attempted to improve the judicial service commission so that those who are appointed to the judicial offices can be removed when they misbehave, so that even though their time is not strict limited in terms of a specific period of time, they can be removed if they misbehave. There is the aspect of holding office during the pleasure of the people, most of you will reconnect that the Constitution we have today, talks in terms of people holding office during the pleasure of the president. You can be hired and fired without being consulted at any time, and the person who hires you may not be in a position, is not required to consult you. So, we are saying that this is wrong and the Draft is seeking to improve on that situation, by saying that people should hold office during the pleasure of the people and so we are trying to create an infrastructure through which the people, particularly through Parliament can be able to control the president in his appointments.

The president is in most cases required to present his appointment for approval by Parliament and that we believe is trying to change the current situation. When it comes the removal from office, we have also tried to tighten the rules so that people are not fired un fairly even when the general public may still require them for service. So when you look at those clauses, you see them from that point of view.

Then there's the question of holding office during your good behavior. Again on that we have tried to put a number of clauses that will ensure good behavior and this begins right at the level of appointments. We set certain standards that you must meet before you are appointed to office and that is the basis of the clauses on the leadership code of conduct

and clauses on leadership on ethics and integrity. So that before you are appointed, you must meet certain standards therefore when you look at those chapters, you look at them from this point of view.

We have tried to put in place Commissions that will ensure good behavior of leaders, we have put in place provisions that talk about members of Parliament being recalled if they do not perform, because we are trying to hold them down to good behaviour. We have made provisions for impeachment of the president, because we want to hold him down to good behaviour and to service of the people. We have made provisions for a vote of no confidence in the Prime Minister. All this is aimed at trying to provide an infrastructure for giving effect to this Republican principle.

On the issue of democracy, I will come back to it at a later stage when we are talking about the Electoral process and so on. But it is also part of Republicanism in the sense that if power derives from the people directly or indirectly, and governance is representative, then a mechanism for recruitment of the representatives must be devised which can give people an opportunity to participate. And generally all over the world the democratic mechanism for recruitment of leaders and for the decision-making has been accepted as one of the best. So that is how democracy comes in.

Transparency and Accountability, this Draft has again tried to enhance that. Because if people are the source of the authority and that authority is exercise to serve their interests, the people must be able to hold the representatives to account. So the representatives must act transparently and accountably. We can relate that to the impeachment clauses, we can relate that to the power of recall and we can relate that to the financial management clauses we have provided for in this Draft, which include dividing the office of control and auditor general into two, so that the audit mechanisms are improved to ensure that governance is done in a better way.

And then of course separation of power, cheques and balances which is entail for dispersal of power, first in terms of the three Institute organs of state and second even

within the organs, we have proposed in some organs dual arrangement like the legislature and the Executive or this are aimed at improving Republican governance.

- So what falls for you to look at is whether that ideology we have chosen on is the collect ideology for this country and in doing that you may need to look at the Review Act because it also captures some of those things and that is why we settled for it.
- You need to ask yourself, if that is the correct ideology for this country, have we properly ...is it exhaustive in its aspects? If there is any aspect at maybe missing? you may propose them in your discussions.
- If it is adequate, has the Draft adequately captured those principles, so that actually as chain link that links the Draft, we can see this Republicans principles coming out? And when you are discussing various aspects of the Draft, you will need to ask yourself, if we change this particular part of the Draft, will it interfere with this harmony that is supposed to be captured by this ideology or not? If we remove, say the power of clause of impeachment shall we be again ending up with a president who is not held to good behaviour or not?

So those are the questions you need to ask when discussing the various parts of the Draft in terms of ideology.

I would like to rest the discussions on that aspect at that level and move on to the aspects on participatory governance, which of course will capture the Electoral systems as one of the---, Elections being one of the mechanisms of Participation and then of course political parties and the role they play in that.

On Participatory Governance, it is important to note that there are various methods through which participation can be achieved.

One is to be able to control or determine decisions and policies. The other method is through involvement, involving people in decision-making. People being made part of decision making. The other one is influence, being able to affect the decisions or the decision making processes.

Then there's the issue of consultation, being able to be asked about what you think about certain decisions and about certain actions that are being taken. And then there is participation through information, being informed about the decisions that have been taken or are being taken and how they are being implemented.

Then there is the aspect of monitoring, being able to watch and assess how implementation of various decisions and making of those decisions is being done.

Now, if you look at all those aspects and the current Kenyan Constitution, you will be able to notice that the Constitution does not make sufficient infrastructure for Kenyan people to be involved in governance through most of those methods. The only thing we notice under our Constitution today is that you can participate in Elections, but even in Elections again, if the infrastructure is not inclusive enough, as to get everybody participate, women do not have a level playing ground so their participation is not effective, marginalized groups, the youth, the disabled, they all do not have sufficient infrastructure.

Our task therefore was to craft a Draft that may provide a reasonable infrastructure for participation of the people and more so, these marginalised groups so that they can influence decisions, they can be consulted, they can themselves make decisions and so on and so forth.

And again in various parts of this Draft, you will notice provisions that seek to do that. Parliament in its legislative processes, we now have provided should be in a position to involve the people. In the legislature, you will notice that we have made provisions for committees including the committee on good governance. And the participation of the people in legislation.

On amendments to the Constitution, you will notice we have said that a certain amendment cannot be passed until Parliament has allowed a certain period of time between various readings of the Bill for the public to be able to debate and discuss.

We have also made provisions for referendums on certain amendments so that people have more opportunity to participate in decisions.

As I have said early on appointment to various offices, we have tried to limit the power of the president as the appointing authority and subjected it to approval by Parliament. And we are saying that this is trying to enhance people's participation through their representatives in parliament on matters of participation.

On the issue of devolution of power, we are saying that people at the local level should through the devolved systems of governance, have a better opportunity to participate in the governance and running of their own affairs. So there are various clauses which can show and when you are analyzing the Draft you will need to ask yourself whether what we have done sufficiently provides an infrastructure for participation.

Now, Coming to the Elections which are seen as the most common mechanisms for participation by the people, we need to address the question of the Electoral system. But before we do that, we need to note that the current Electoral system in Kenya has attracted a lot of criticism from the people touching on various matters. People complaining that it is not democratic enough, it is not sufficiently participatory, a lot of people are excluded through the process of registration of voters because it demands that you must produce an ID, yet we are not readily giving ID's to young people when they become of age. We reject other evidence of citizenship before you are registered, people have complained about the manner in which we demarcate our Constituencies, people have complained about the Electoral system we have, which is based on simple majority the winner takes it all. People have complained that you get someone who actually got minority votes but he is the one leading, because those who voted against him were divided in various political parties.

People have complained about the issue of our not being able to translate the vote into seats in Parliament because, Constituencies do not take into account the variations in population and so there are those who have said let us have the Constituencies on the basis on population but others are saying that “we came from very vast areas and even though our population are not large, how do we go about”?.

We therefore had to make a choice on an Electoral process that can help us address some of these problems.

People have complained about wasted votes, you cast your vote but because you are voting for someone who has eventually lost, your vote does not count in determining the formation of government. So, to be able to address some of these problems we decided that at the level of the Electoral Process, we first examine three different Electoral processes, look at their advantages and disadvantages and then be able to choose one that can be adopted to our situations and help us to solve our situations.

So, one system that we addressed which you will need to understand and it is mentioned in the draft is the one that we have in Kenya today referred to as ‘the first past the post Electoral System.’ That is a system that is based on single member Constituencies. The country is divided into geographical units called Constituencies and each unit is expected to elect only one Member of Parliament and the person elected is the person who gets the highest number of votes as compared to other contestants.

Normally the end result in most Constituencies is that you get Members of Parliament who actually represent these minorities. Someone gets, say, ten thousand votes but four other candidates behind him, one get nine, another one eight thousand and another one seven thousand and so on. When you get the total of the losers you find that it is far higher than the votes got by the winner, and the consequence is that therefore, the winner is representing a minority group in the Constituency rather than the majorities. So you end up with a situation of wasted votes. These other people who voted for other

candidates, their votes do not count in determining who becomes the leader of that particular Constituency and even at the national level.

The situation at the national level also has the problem of winner takes it all. You find a political party that has won even by a very small margin takes it all and forming a government without bothering to consult with the members of the other parties and so on. This system also has the problem of wasted votes which I have already mentioned. This system does not give us an opportunity to properly translate the votes into the number of seats in Parliament because it does not bother with proportionality. You may get very large number of votes, you become the winner and another person wins by a very small number of votes. That is the argument we have always had about Embakasi and other Constituencies.

So, this system has those problems. But on the advantages side, it provides a direct link between the people and a specific representative. They have someone they can say, “This is our Member of Parliament, we can go to him with our problems and we ask him to address them.” So on the advantages side it makes provision for that. On the disadvantages side **(interruption)**

Hon. Delegate Atsango Chesoni: Delegate 42.

Hon. Delegate Gitahi Kariuki: Chairperson, mine is very short and brief. Mr. Chairman I think we have a problem here. Madam Chair, when we came here we spent a lot of time by way of communication from the Chair. Now, again we go to another Presenter who is taking a lot of time. Why I am asking this **(interruption)** please give me time. If we go this way, with a lot of respect to Presenters, they are giving us a lot of knowledge but the knowledge they are giving to us is all contained in the document that we have. We need them to give us more time than the time they are doing their presentations. That is my question.

Hon. Delegate Atsango Chesoni: Thank you. Number 424.

Hon. Delegate Thomas Aburu: Point of information Chairlady. I think it is imperative and Honourable Delegates take note that what we are being taken through is for the benefit of our future debate. After we have been taken through the Chapters, each Delegate shall be given ample time to articulate his views or her views concerning certain pertinent articles as contained in the Draft. It is not a waste of time when the Presenters are taking us through this document but they are trying to disseminate certain important information.

Hon. Delegate Atsango Chesoni: Thank you Delegate number 424. I am not taking any more Points of Order and I have asked the Speaker to wrap up in the next fifteen minutes. Thank you.

Com. Mutakha Kangu: I will try to move a little faster and conclude on this particular system. That system of elections leads to tribal or regional political parties because parties are formed on the basis of regions and in certain regions there is completely no democratic competition because people know this is a zone for a particular party and if you go there to contest on a different party you are simply wasting time. So that is the system we have.

Then there is the system of proportional representation which is based on party list. The whole country is considered as one Constituency and political parties compete for votes in the entire country and before they go to the votes they present a list of candidates saying. "If we win 100% of the votes," these are the people who will be Members of Parliament from our party. Now, the votes are cast and when they are tallied, the seats are allocated on the basis on the percentage of the votes cast. The advantage with this system is that there is proportionality between the number of votes cast for every party and the number of seats a political party gets in Parliament. It also avoids the issue of wasted votes because the every single vote counts in the decision on how many seats each party will have in Parliament.

This system also gives an opportunity to marginalized groups. In the previous systems that I have mentioned you will find women, the disabled and other people do not have the opportunity to compete on an equal basis. But in a system of proportional representation, political parties will be forced to put names of people from these marginalized groups on their list if they want to get votes from those particular marginalized groups.

This system also enables a citizen to make a decision not only at the local level but even at the national level. The problem with the system, however, is that it denies the citizen a direct link with a specific person as their leader. There is nobody you will specifically regard as a Member of Parliament from your particular Constituency. This system also leads to very strong political parties and political party leaders because they are the ones who put names on the list. They become very powerful and sometimes they may even become dictatorial because if you don't dance to their tune, they may not be able to put your name in the list. So that has those advantages and disadvantages.

Then there is a third system that is called the Mixed Member Proportional Representation System which is used in Germany. This one seeks to maximise the advantages of the other two and minimise the disadvantages of the other two. It borrows from the other two. One, you will have a total number of Members of Parliament, you divide them, some of them get to Parliament by being elected in specific Constituencies as representatives of those Constituencies, but others get elected to Parliament on the basis of proportional representation on the basis of a party list. So what this system does is to provide the people with the two options. You can participate in determining leadership at the local level by electing a local Member of Parliament, but you also determine or participate in determining leadership at the national level in terms of which party should form the government by voting for a party so that the party you have chosen if it wins, it form the government. So you participate at both levels.

Two, you can split your vote if you have a system of two votes, two ballots, you cast one ballot for the MP and another one for the party; you can split your vote between two

parties. Choose an MP in your area from one party and choose a different party because you like that party.

Three, this can help us deal with the problem of the densely populated areas and the sparsely populated areas. Whereas we don't want to ignore those in the sparsely populated areas, so we allow Constituencies but we must also take account of numbers and therefore, we allow the party list and so the political parties that have votes in densely populated areas do not lose those votes. Those votes are not wasted, they count when you are determining their percentages on the issue of the party list. So that system is the system we have proposed in our draft which a lot of people have referred to as a system of ninety nominated Members of Parliament. I want to clarify that, that is not the case. The ninety nominated Members of Parliament we are proposing are supposed to be elected on the basis of a party list. When we go to elections, every political party will have nominated candidates in various Constituencies but it will also provide a list with ninety names and it will want to appeal for votes from the members of the public on the basis of that list. And we are saying that if that works, the end result will be that it will help us to start moving away from regionally based parties towards national parties because for people to vote for your party for the ninety seats they would want to see that your list has some people from their area. So if you provide a list that has ninety names from your own tribe, other communities will feel that they don't have to vote for your party and I think that will help us.

Two, we are proposing that those ninety seats should help women get to Parliament and we are saying that list should have forty-five men and forty-five women and they must be arranged in an alternate manner so that if a party wins votes that entitle it to ten seats we shall know five of them shall be men and five of them shall be women. That is the system we have proposed. The last issue I need to address, and Phoebe will give the details of that Electoral System, is the issue of political parties. That again is an issue that has raised a lot of problems in our country; people talking about tribally based political parties, people talking about parties that are like properties belonging to individuals who can use them when they choose, parties that rather than enhance

democracy are actually causing problems, violence in political parties, parties that are not internally democratic and so on.

A lot of problems were raised and Kenyans gave a lot of views on the issue of political parties and as a Commission we said that contrary to the approach that many people have followed, we shall not look at political parties purely from a rights based point of view that says that every citizen has a right to join a political party, so that we look at it as a right to association, but we said we must go beyond a rights issue and also look at political parties as very important institutions in Constitutional governance, as institutions that play an extremely important role in governance. And if you look at our current Constitution you will notice that actually political parties determine who becomes a Member of Parliament because today you cannot contest unless you are nominated by a political party.

Political parties determine who becomes President because you cannot contest unless you are nominated by a political party. Political parties determine who shall be one of the twelve nominated Members of Parliament. These days political parties propose some members to the Electoral Commissions. Political parties are so crucial that in fact if you cease being a Member of a political party you cease being a Member of Parliament. So we are saying if they play such an important role in governance, they cannot simply be viewed as a mere right of an individual who may use it or abuse it, but in fact they should be viewed as important Constitutional institutions that must be provided for in the Constitution. In fact their activities should be regulated by the Constitution because they affect the lives of Kenyans and the manner of governance. We said that we must address the question of the role of the winning party that becomes the ruling party and the role of the losing party that becomes the opposition party. And our reasoning was that, the process of winning an election and another party losing is the process of the losing side surrendering their power to the winning side, so that the winning side may exercise it for the benefit of all. So you don't get into government because your party has won and then you start discriminating against the members of the losing party. When you win elections and become the ruling party you assume responsibilities not only to the members of your

political party but to the entire citizenry because the rest have surrendered their power to you to exercise it for their benefit.

So, we had a lot of views about the need to limit the number of political parties, the need to finance political parties and if we finance them, we need to control those finances and how they are used and we have made provisions in the Draft for all those matters. Now, I want to rest my case at that point and leave my colleague Phoebe to specifically address Chapter six of the draft Constitution.

Hon. Delegate Atsango Chesoni: Thank you. What we are going to do is go for the tea break now and we will be back at twenty minutes past eleven. It is now eleven. Commissioner Asiyo is now going to take us through Chapter 6 of the Draft Bill. Thank you.

Com. Hon. Mrs. Phoebe Asiyo: Thank you Madam Chair. Earlier on this morning, Commissioner Kangu gave us the background on Chapter 6 taking us through Chapters 9 and 10 and building up to the issues of ideology of the Electoral System as well as governance, which he described as a chain linking the entire Draft. He mentioned also the republican ideology in the draft and the centrality of the people in the representation of themselves.

I would like to remind the Delegates that Chapter 6 appears from page 17 in the green book and chapter 68 in the orange version of the Draft Bill.

Part one of this chapter 6 of the Draft deals with the general principles which, as indicated on page 68 of the yellow version, deals with elections, the right to vote, the qualifications for registration, the disqualification from registration, voting and unopposed candidates which Commissioner Kangu also elaborated upon.

Part two of this chapter deals with the Electoral Commission. It deals with the establishment of the Electoral Commission, the functions of that Commission, the staff of the Commission and finally, the limitation of Constituencies.

On political parties on part three, Article 87 deals with the Right to form a political party and Article 88 deals with Roles and Functions of political parties. Registration of political parties is in Article 89, Qualification for registration on Article 90. Corporate status of political parties on Article 91 and Cancellation of registration of political parties on Article 92. The Political Parties fund - which is a new item on Article 93 and Sources of the funding of political parties on Article 94; Purposes of the fund on Article 95. Other sources of funds on for political parties on Article 96. On Article 97 is the Supervision of political parties. Party discipline is on Article 98, Restriction on use of public resources is on Article 99. Lastly, Restriction on holding of office in political parties is on Article 100.

Distinguished Delegates, I want to state that during the Commission's collection of views from Kenyans throughout the country the people had very high expectations of this process. And they articulated what needed to be written in the new Constitution with a lot of clarity. In the context of representation of the people, it become very clear that for democracy to flourish there must be strong and well organized political party systems. The Commission also came to the conclusion that this would ensure political stability and overall national peace and security, which would in turn stimulate investment and spur sustainable economic growth and development. You will have read, distinguished Delegates, the summary of what Kenyans told the Commission in the Report on this subject, which starts on pages 176 to 179 in the yellow version of the report.

Kenyans gave views on whether the Constitution should regulate the formation of political parties and the conduct of political parties; what the people said about whether the numbers of political parties should be limited and if so, how? And whether there should be limitation of political parties; whether parties play roles other than political mobilization which they have done well up to now. And whether public funds should be

used to finance political parties and if so, on what terms? You will have also read what the people said about general political issues.

Coming back to the new provisions in the Draft in this chapter on Electoral System and the Process, if you turn with me to page 68 in the yellow book of the Draft Bill you will notice that on section 6 and 7 there are two new provisions that the Commission came up with. Like for example, that elections shall ensure fair representation of women, the disabled and minorities. Earlier on of course you will have noticed and dealt with the voting by secret ballot, elections being free and fair and elections ensuring fair representation of the people.

On Elections the Draft says that subject to any provision in the Constitution Parliament shall enact a law to provide for the number of Constituencies for the election of Members of Parliament, Provincial Councils, District Councils, Locations Councils and Village Councils and any other local authority. The law also provides for nomination of candidates, the manner of voting at elections, the continuous registration of citizens as voters, the conduct of public election and referendum, the efficient supervision of public elections and referendum including voting on the basis of proportional representation and the registration of and voting by citizens who are outside Kenya. That is, perhaps, a new item.

Political parties, we said, shall ensure that at least one-third of its candidates for direct elections are women. And that 50% of its candidates for proportional representation at public elections are women and that the remaining 50% are distributed among persons with disabilities, the youth, ethnic minorities and any other interest groups.

On the right to vote the Commission indicated that a citizen who is eighteen years of age and above has a right to vote. And that administrative arrangements for the registration of voters and that the conduct of elections shall not deny a citizen's right to vote and stand for elections and shall include a system of continuous registration.

On qualification for registration in Chapter 79, the Commission has indicated that a citizen qualifies to be registered as a voter for elections if at the date of the application for registration the citizen is:-

- (a) Eighteen years of age and above
- (b) Has been ordinary resident in the Republic for a period of not less than one year, immediately preceding that date or for a total period not less than four years in the eight years immediately preceding that age;
- (c) And has for a period amounting in the aggregate to not less than five months in twelve months, immediately preceding that date has been ordinary resident in the constituency in which the application for the registration is made or;
- (d) Has been employed there or has carried business or has lawfully possessed land or residential building in the constituency;
- (e) That a citizen, who qualifies for registration as a voter, shall only be registered at one place.

Distinguished Delegates, I am informed of an urgent notice. That Members of the Privileged Discipline and Welfare Committee will meet at 12.00 noon today at the Steering Committee tent. Please find your way there all those Delegates who are Members of this particular Committee.

Now coming back to chapter 80 the Disqualification from Registration. We have said that a citizen is not qualified to be registered as a voter for public elections or referenda who under a law of Kenya, is declared to be of unsound mind or is disqualified by an Act of Parliament for conviction of an election offence. That the question whether a citizen is disqualified to be registered as a voter for public elections or referenda shall be determined by the High Court.

On Voting, we have said that at every election, the Electoral Commission shall ensure that voting procedure is simple and precise. That ballot boxes are transparent and that votes cast are counted, tabulated and the results announced by the Presiding Officer at the Polling Stations. That I believe was done in the last General Elections.

And on unopposed candidates, where only one candidate is nominated on nomination day previous to an election, the election shall nevertheless be held for the purpose of determining the number of votes obtained by each political party after election. This was clarified by Commissioner Kangu because as he explained, if we accept the MMP system, then all the votes will count. And after the votes have been counted, the candidate will be declared elected.

On part two of the Electoral Commission, we have dealt with establishment of the Commission and the draft has made some changes in the appointment of Commissioners, as well as a number of Commissioners because previously, Commissioners have been nominated by political parties and then appointed I believe by the President. For now, we are saying that the Chairperson and the other Members of the Commission shall be appointed by the President with the approval of the National Assembly.

The Commission shall elect a Vice-Chairperson from among its Members and a citizen is qualified to be appointed the Chairperson of the Commission, if that citizen has held or is qualified to hold office as a judge of a superior court of record. That a citizen is not qualified to be appointed a Member of the Commission, if that citizen is a Member of Parliament or hold or is acting in an office in the Public Service or in the Defence Forces of the Republic of Kenya.

At the time of the initial appointment of Commissioners, half of the Commissioners shall be appointed for a three-year period. I want to explain that this was reached at, because we needed to have a staggered system so that those Members who retire, do not all retire at once, but that some are left to carry on as others retire. That the office of a Member of the Commission when the office of the Member of the Commission becomes vacant at

the expiration of a five-year term from the date of appointment, renewable once only or if the Member becomes disqualified to be appointed, a Member of the Commission or if the Member is removed from office on the ground of inability to perform the functions of the office as Member, where rising from infirmity of body or mind or from any other causes or misbehaviour. And if the Member dies or resigns from the office.

Then on chapter 84 the Functions of the Electoral Commission:

- The Commission will be responsible for continuous registration of voters.
- For the limitation of the electoral constituencies the conduct and supervision of elections and referenda.
- The promotion of free and fair elections and referenda.
- The supervision of political parties.
- The management of political parties' fund.
- The settlement of electoral dispute.
- The promotion of voter education and culture of democracy.
- The facilitation of the observation monitoring and evaluation of elections.

That the Commission will be an independent Commission that conducts its work in accordance with the Constitution. So that it is not influenced by the Executive, the Legislature or individual leaders as might happen if this clause was not put there.

Then on the staff of Electoral Commission:

The Public Service Commission after consultation with the Electoral Commission, shall appoint officers and other employees of the Commission.

And on the limitation of constituencies, the Commission shall by order determine the names and boundaries of the Constituencies. In demarcating the boundaries of the constituency, the Electoral Commission shall consult with all interested parties and take a count onto the population density and the need to ensure adequate representation for

urban and sparsely populated rural areas and population trends, means of communications, geographical features, community of interest, the boundaries of administrative areas and the latest census of the population in accordance with the law.

Every ten years, after census on the population or sooner if there is a variation in the boundary of an administrative area, the Commission may carry out a review and make the necessary alterations of the names and the boundaries of such constituencies. That an order made under this article by the Commission, shall be published in the gazette and shall come into effect on the resolution of Parliament after the publication of that order.

Part Three deals with Political Parties:

On these political parties' issues, the Commission dwelt at length depending on what the people of Kenya told the Commission as we went round the country and there were some very dear feelings from across section of Kenyan people, about the way that political parties should be run and managed.

We have indicated the right to more political party, which Commissioner Kangu mentioned, that in accordance with article 50, any citizen may form a political party. That a political party, is entitled to financial support from the State on the basis prescribed in an Act of Parliament. That no person, may use the State resources to support any political party and that Parliament shall enact a law, providing for the regulation of all political parties.

On roles and functions of the political parties, we said that in order to ensure democracy and the participation of people, a political party has the responsibility to mobilize public opinion on matters of national interest and foster national values and outlook.

- Bring together opinions and resources of the people with similar views, interest of persuasion so as to generate development of the Republic of Kenya.

- To provide means through which the people, participate in the political and Constitutional processes and exercise their civil and political rights.
- That political parties should use their facilities to mediate between civil society and institutions of the State.
- That they should use their facilities to secure representation of the people in State institutions and offer them economic, political and social choices through the Electoral process and bring public opinion to bear on the policies of the Government.
- That they should ensure that cohesion and discipline in the conduct of Government is maintained and hold the Government accountable to Parliament and to the people.

On Registration of Political Parties:

- The Commission said that the Electoral Commission is the Registrar, will be the Registrar of all political parties and for that purpose shall keep and maintain a register of political parties and note the office of the Omondi Mbago as has been the case in the past.
- That Parliament shall by an Act provide for matters, which the Registrar shall contain.
- On qualification for registration of political parties, the Commission shall register a political party if that party by its Constitution or Articles of Association has a national character with the governing body which seeks to promote and uphold national unity to abide by democratic principles of governance and to promote and practice democracy within the party too regular fair and free elections within the party, something which is still very rare amongst many of the political parties.

- That they should promote and respect human rights and gender equality and equity.
- Promote the objects and principles of the Constitution and the rule of law. Now, the Commission shall not register a political party if that party is founded purely on religious, linguistic, racial, ethnic, sex, corporatist or regional basis or seeks to engage in propaganda based on any of these matters.
- That a political party does not by its Constitutional Articles of Association subscribe to the code of conduct for political parties and does not enjoy itself and its Members to observe the code of conduct applicable to all political parties as legally binding code.
- A political party shall not engage in, or encourage violence or intimidation of its Members, supporters or opponents or any other persons.
- They must not establish or maintain a military militia or similar organizations.
- That the political party shall keep proper account and proper books and records of accounts in the form approved by the Auditor-General.
- That within three months after the end of its financial year, a political party shall submit its accounts and books and records of accounts to the Auditor-General for audit.
- That the Auditor-General shall within three months of the submission under clause 5 audit the accounts and submit the report on the audit to that political party.
- That the party shall within one month of the receipt of the report of the Auditor-General publish its accounts in the gazette and national newspapers.

On the Corporate Status of Political Parties:

- On registration, a political party becomes a body corporate.
- 92 on cancellation of registration – the Commission shall cancel the registration of political party if satisfied that the political party, is in breach of a provision of article 90, 95 and 96 or of a provision of its own Constitution or Articles of Association, or has not complied in a material particular with the provision of articles 90 and 95 or obtained its registration in a fraudulent manner, or instigated or connived in the Commission of an election offence.
- Or has not, for each of the two previous General Elections secured at least 1% of the national vote.
- Or has used monies allocated to it for purposes not allowed by article 95.

Now before the Commission cancels the registration of political party, it shall inform the political party of the intention to cancel the registration; and direct the political party within 90 days to remedy the breach or comply with the law where possible.

A Members of the party aggrieved by the decision of the Commission to cancel the registration of a political party, may appeal to the High Court.

On Political Party Fund:

We agreed after listening to the views of Kenyans that there should be established a fund to be known as a “Political Parties Fund”. The Fund shall be administered by the Electoral Commission.

Sources of the Fund:

The sources of the Fund are money provided by Parliament each year equal to not more than decimal three percent of the national budget for the preceding financial year; and contributions and donations to the Fund from any other source. The monies in the Fund not immediately required for payment to political parties shall be invested in such securities as may be approved by the Treasury.

The Purposes of the Fund:

Monies allocated to a registered political party from the fund, shall be used only to cover the election expenses of the political party and broadcasting of the policies of the party.

For the organization by the political party of civic education in democracy and the electoral process and not more than 10% of the administrative expenses of the party. And monies allocated to the Electoral Commission to a political party shall not be used for paying directly or indirectly remuneration, fees, rewards, or any other benefits to a member or supporter of the party. And any other purpose incompatible with the promotion of a multi-party democracy.

Now, 50% of the monies allocated by Parliament shall be distributed equally among political parties each of which obtained not less than five percent of the total votes cast at the previous Parliamentary elections. And the remaining fifty percent shall be paid proportionately by reference to the number of votes secured by each of the political parties and the number of women candidates elected in each party.

I will move faster now because I am told I have another 10-15 minutes left. But there are other sources of funds, which we discussed, and we said that the sources of other funds for the political party could be subscriptions and contributions from the members and supporters and donations to the party by the Members and supporters.

That Parliament shall specify the maximum donation that an individual or a corporation can make to a political party. That a political party shall within three months after the end of its financial year publish the sources of its funds, stating the amount of monies they received from the Electoral Commission. The amount of money received from members and supporters and the donations given to the party, the source of the donation and the amount of the donations.

The accounts of a political party shall be audited by the Auditor-General annually and the accounts so audited and the auditors report shall be forwarded to Parliament and the Electoral Commission. A person who is not a citizen may not make a donation to a political party.

On supervision of political parties, the Commission shall supervise the conduct of elections to offices and committees of a political party, so that political parties will not supervise their own elections after this draft Bill becomes law.

A political party shall within seven months after the end of the financial year submit to the Commission, an annual report on its activities including the auditors report on its accounts. The annual report of a political party may be inspected during normal offices hours by any person. The Commission shall by order prescribe the maximum amounts of money that a political party may spend on each of its candidates for election, to a public office. And the amounts of monies that an independent candidate has been provided for that the amount of money that a independent candidate may spend on an election to a public office.

On Party Discipline, we have said that the Constitution on Articles of Association of a political party shall contain provisions that ensure internal discipline consistent with the principles of democracy, justice and the rule of law. Then a political party shall not punish a Member of Parliament of the party for anything said, in Parliament by the Member in exercise of the privileges of freedom of speech in Parliament. And a political party shall conduct its affairs in a manner that promotes democracy and peaceful politics.

And that a Member of Parliament or local authority who resigns from the political party that sponsored the Member's election will lose the seat.

On Restrictions and use of Public Resources, we have said that except as provided for in this chapter six, a person whether or not a Members of a political party, shall not use public resources to promote the interests of a political party.

On restriction on holding of office in political parties, we have said that the President and public officials of and above the rank of Deputy Secretary shall not hold office, in a political party. That brings to an end the issues in chapter six and I believe, we now have the opportunity to enter into a general debate and receive any questions that might arise from the floor. I thank you Madam Chairman for this opportunity.

Clapping:

Hon. Delegate Atsango Chesoni: Thank you Commissioner Asiyu. I am now going to take questions and comments and I after the recommendations that have been made to the Steering Committee regarding and ensuring that all sectors that are represented at this Conference get a chance to speak, I am proposing to do so in the following manner. The first round of questions that I am going to take is going to be from Delegates who are District Delegates. The first round of questions will be from District Delegates. If you are not a District Delegate, please do not put up your card during this round. And I will go beginning from what is on my right through upto the left. Any District Delegate from my right? Okay, 227 please.

Hon. Delegate Amina Zuberi: Madam Chairlady, Honourable Delegates, my name is Amina Zuberi – 227 Mombasa City Delegate. I would like to refer to article 76 sub-article 2, 3 and 7. Okay, here it says 76 – okay it says voting is by secret ballot, elections are free and fair, elections shall ensure the fair representation of the people. Now to me it doesn't make sense, what I feel is may be it could read as voting shall be by secret ballot, elections shall be free and fair, elections shall be conducted by an independent body.

Number 78, – here it says the right to vote – a citizen who is 18 years of age and above has the right to vote. Whereas in article 80 sub-article (a), they say under a law of Kenya, a person is declared to be of unsound mind is disqualified or something. Okay, now here I think in number 78, it should read as a person who is above 18 years of age and of a sound mind has the right to vote, because I might have registered when I was sound mind and then later on I get into problems and I get a break-down of my mental. Then somebody might take advantage of my voting card and drag me to the voting station or to the polling station. So I think here it should State that somebody must be of a sound mind and above 18 years of age. Thank you so much.

Hon. Delegate Atsango Chesoni: Thank you.

Interjection: They are already disqualified ... (inaudible).

Hon. Delegate Atsango Chesoni: Delegate number 365 please.

Hon. Delegate Moses Leng’ete Ole Sisika: Madam Chair, my fellow delegates. I am happy to get this opportunity. Sorry, I am Leng’ete Ole Sisika delegate number 365 and I come from Kajiado. Madam Chair, I am going straight to article number 78, sub-article number 2, has a right to vote and qualification of registration. All articles under that, but specifically I want to deal on sub-article (c) 1. I want to bring the attention to my fellow delegates that this arrangement will definitely displace us and deny the indigenous communities of their fundamental rights to elect their indigenous men or women to represent them in Parliament.

We are in a process of making a non-oppressive Constitution but let us not at the same time, legalize marginalization to already marginalized communities. As much as I want to act and think nationally, I have to go back to the roots of the place I come because that is where the problem comes from and I want to bring attention of my fellow delegates, I come from Kajiado and in that part of the World, that’s where the Maasai community are.

I want to bring to your attention may be you are aware of that, that we are already marginalized. We cannot even get representation of our people, indigenous people to Parliament and what brought all these, is because of such a clause. Therefore, I want to propose that the right to vote and qualification for registration should be limited only to indigenous communities.

Therefore, we should delete these articles and re-write them afresh. If they continue living, let them live there because some have businesses but they should not have these privileges because they will cause marginalization. Kajiado North is one, Laikipia is another one where our Speaker comes from. There is no way our Honourable Speaker will ever come through the ballot of Parliament. 98% of constituencies in Kenya are represented by indigenous people, why other constituencies are represented by non-indigenous people?

We, the Maasai communities, have been very generous but those who came to marginalize us, use the proverbial camel tactics, they came to ask for a space to put their heads to put their body and eventually the whole body; and we are removed completely. This thing should be changed because we are in this plenary hall and that thing must be changed. We cannot continue marginalizing, we are already marginalized communities. Thank you Madam Chair.

Clapping:

Hon. Delegate Atsango Chesoni: Thank you. Delegate number 303.

Hon. Delegate Margaret Nyathogora: My names are Margaret Nyathogora, a delegate from Nyeri. I want to refer you to Article 76, clause 6, which reads: “Elections shall ensure fair representation of women, the disabled and minorities”. Honourable Chairperson, I am thinking of some disadvantaged communities that might not be included in the definition of the terms minority, disabled and women. So, I am proposing

that that clause should read like this: “Elections shall ensure fair representation of women, the disabled, minorities and other marginalized communities”. Thank you.

Hon. Delegate Atsango Chesoni: Thank you. Delegate number 286.

Hon. Delegate Isa Ireri Ngunia: Thank you, Madam Chair. My name is Isa Ireri Ngunia, delegate number 286, from Mbeere. In the first place, I am drawing your attention to Article 77, subsection 2; which says that a political party shall ensure- I’m drawing your attention to A that says that at least one third of a party’s candidates for direct elections must be women. With all due respect, I think we are going a little bit too far because, if every party will be required to present women as one third of its candidates for elections, then there is a likelihood of undemocratic practices creeping in. When a party is trying to bring in women, I think somewhere men may be suppressed in the process when the party is struggling to have women as one third of its directly elected candidates. I am proposing that clause “A” should actually be erased so that there will be fair play for all candidates of a party, and whoever emerges the winner becomes the candidate for the direct elections.

Clapping

Then, Madam Chair, we should try to avoid a situation whereby men are going actually to be exposed to undemocratic practices. Now, I’m drawing your attention to Article 85, where we are told that the Public Service Commission, after consultation with the Electoral Commission, shall appoint officers and other employees of the Commission”. To guarantee its independence, the Electoral Commission should not consult with the Public Service Commission. The Electoral Commission should be given the leeway to employ its own staff without consultation because, of course, when they consult it and the Public Service Commission becomes the employer, the staff may be loyal to the Public Service Commission instead of the former being fair and independent. So, I think the Electoral Commission should be able to employ its own staff but not consult the Public Service Commission in that matter.

Then I will draw your attention to Article 95, which is about the purposes of the fund. I am having problems at the very end of Article 95, subsection 3, which says that the funds to be given to a political party will be according to the number of votes secured by the party and its number of elected women candidates. I have a problem with that. Actually, we are getting so far by allowing women the whole thing that even a political party is expected to fight men!

Noise from Honourable Delegates

Hon. Delegate Isa Ireri Ngunia: No, yeah. Now a political party is required to fight men so that they get funding! With all sympathies, I have a mother, sisters, brothers and even daughters but when it comes that a political party must fight men so that the more women the political party has, the more funding. So political parties will be trying to fight men so that they can get more. I should think---

Noise from Honourable Delegates

With all due respect, Madam Chair, I am proposing that subsection 3, should end at “political parties” and we erase the part talking about women. Thank you.

Hon. Delegate Atsango Chesoni: Honourable Delegates, please, we were reminded about how we should conduct ourselves. Even if you do not agree with what a Honourable Delegate is saying, please don't boo. The other thing that I was going to raise is that I have heard a few mobile phones ring. May I remind you of regulation 39 G, please switch off your mobile phones. I am now going to request Honourable Delegate 254, please, to speak.

Hon. Delegate Fatuma Sheikh Muhammed: Thank you, Madam Chair and Honourable Delegates. My names are Fatuma Sheikh Muhammed, delegate number 254, Wajir District. I want to comment about Article 86, sub-article 2(iv) which says: “The latest census of the population in accordance with the law”. Here is when you talk about

census being taken especially for the pastoral people. When a census is being carried out in a place may be, or a time when a census is carried out, the pastoral people move from one place to another. So, nobody can state the population of the pastoral people because of the movement; sometimes they are in Ethiopia, in others they are in Somalia. So, nobody can correctly state the population of the pastoral people. So here we should not be relying on the population of people as it will be unfair to the pastoral people for us to rely on the census of the population of that particular region. Thank you, Madam Chair.

Hon. Delegate Atsango Chesoni: Thank you. Delegate number 246, please.

Hon. Delegate Mwilengo Haji Joel: Madam Chairlady, my name is Joel Haji Mwilengo, a Delegate from Taita Taveta District. I want to comment on Article 90, subsection 1, Qualifications for registration. I propose that the Daft should indicate the period where it says: “To abide by democratic principles of governance, and to promote and practice democracy within the party through regular, fair and free elections within the party”. We have to indicate the period because, if we compare with the recent regime, where some parties kept on postponing elections for period of even up to 15 years, time has to be indicated because when we say ‘regular’, it is not explicit to me. It can even be 20 years. On Article 90, subsection 3, which spells out some prohibitions on political parties, I would like to propose that we add another prohibition, item (c), to put a clause which will prohibit parties from administering oaths that could be an infringement of the voters’ right of Freedom of Association as per Chapter 5, Article 48. In the previous past, we have had cases where members were bound by oath and, if they ever made a mistake of defecting, some of them even died or had problems. So, with due respect, we have to add another clause to prohibit parties to administer oaths.

Another issue concerns the delimitation of Constituencies. In demarcating the boundaries of Constituencies, I propose, Madam Chairlady, we add the word “Ward” because when we talk of Constituencies we have to add the word “Ward” for councillors. Article 86(i) A says: “the Electoral Commission shall consult with all interested parties”. I want to ask, who are these interested parties? The Draft should be specific otherwise in the

recent past we have heard cases where MPs have always claimed to be the only interested parties.

The other one is Article 96, subsection 5, other sources of funds for political parties. For a person who is not a citizen, we should add the words “shall not,” not “may”, because when we add “shall”, it is stopping outsiders. Otherwise, if it is our party, somebody who is not a citizen, I would propose the Constitution provides for the money to be put in the general fund of all political parties. Thank you so much, Madam Chairlady.

Hon. Delegate Atsango Chesoni: Thank you. Delegate number 321 please?

Hon. Delegate Loyor Rodah Arupe: Thank you, Honourable Chairlady for this session. I am Rodah Arupe Loyor. I am Delegate number 321 from Turkana District. I want to take you back to Article 78, section 2, that is, the “Administrative arrangements for the registration of voters and the conduct of elections shall not deny a citizen’s right to vote and stand for elections and shall include a system of continuous registration”.

Madam Chairlady, having come from one of the marginalized districts that is, Turkana District, I know it is a right for anybody to vote from where the election shall find him present. But in this section, having come Turkana, we are victims of this kind of things, Madam Chairlady, whereby people from other parts of the country come there and take advantage of the local people. For instance, having been allowed to vote, it means they have also been allowed to take any political seat from the indigenous people. I do not want to be tribalistic but in terms of these political positions, we are victims of that. Again, in terms of women representation, having come from a pastoralist tribe, the people whose livelihood is solely dependent on animals, they are the people who actually feel that women- it is like I am getting that feeling from some of the Honourable Delegates here - are not supposed to be in leadership positions. Although we have tried these days to come forward in terms of civic education to create awareness to people, but to my astonishment, sometimes educated people are the ones who actually try to oppress women...

Clapping

....unlike the uneducated who, when everything is explained to them, actually understand. Thank you, Madam Chair.

Hon. Delegate Atsango Chesoni: Thank you. Delegate number 380, please.

Hon. Delegate Charles Lwanga: Thank you, Chairperson. My name is Charles Lwanga, Delegate number 380, from Kakamega. I want to take you to Article 78, whose title is, "The right to vote". I want to suggest that the words "compulsory voting" should be added to Article 78(i), which reads: " A citizen who is eighteen years of age and above has a right to vote". The words "has the right to vote" should be changed to "must vote". My reason is that, if you look at Section 15 (c) in the Bill of Rights, citizens are given the democratic right to vote. However, I am saying that if there are two candidates, A and B, a voter must go and make a choice between those two people. So it has to be a must that you have the democratic right to go and do it. If we leave it that way, we will continue having the problem whereby when we go to vote, like what I saw in the last elections, people go and sit at the polling stations and wait for politicians to come along and induce them so that they can vote. So, we want them to be compelled to vote and, since it is also a duty, it encourages equity for all social groups. Although there are disadvantages, there are other systems which have practiced this, like Australia and so on. The disadvantages, you realize, are there. When you go to Section 70 again, is the Bill of Rights for the rights of persons who are in custody. We also are encouraging them to vote. I mean, how will they make choices if the politicians do not appear there to campaign? We must think about that.

In Article 92 (1)e, "The Electoral Commission shall cancel the registration of a political party if satisfied that the political party has not, for each of the two previous general elections, secured at least one per cent of the national votes. Then it goes on, in Section 2, to say that the Electoral Commission shall inform them within 90 days. Now, let us say you lost elections last December and you are informed within 90 days, that is,

between January and March, to remedy that situation. How you will get voters to help you get beyond one per cent within 90 days, I don't know. May be, you should say, you give them five years in which to think about remedying that situation.

Another point I want to come to is Article 96(5), which prohibits a non-citizen to make a donation to a political party. We should not think in terms of--- I think the elections we had last year. Maybe, we should say that a person may make a donation to this party subject to that being recorded, because if we do this, we are preventing creative persons from getting money from elsewhere. It may be the only way of being able to form a political party because somebody will be able to fund you from elsewhere. Thank you, Madam Chairperson.

Hon. Delegate Atsango Chesoni: Thank you. Delegate number 252 please.

Hon. Delegate Dubat Ali Amey: My name is Dubat Ali Amey, Delegate number 252 from Ijara. Madam Chair, I would like to comment on Sections 83, 84 and 86. It is my humble feeling that when Constituencies are being demarcated, population alone should not be the criterion. Madam Chair, we know there are some areas with little population but, if we look at the diversity of the area, you will see that it really needs proper representation. Let us take one Constituency, the Noth Horr Constituency. It is 40,000 sq. km. Madam Chair, you know there are some countries with only 11,000 sq. km. So, when you look at representation, you don't only look at population, you don't look at the people of Mathare and Embakasi alone. Let us look at representation universally. Let us look at the United Nations: India has only one ambassador compared to Comoro Islands, Rwanda, Burundi and even Kenya. We have 53 ambassadors to the United Nations whereas India has only one ambassador. Now, are our ambassadors going to be subordinate to India's because it has a higher population? So, I think when we are looking at Constituencies, we much look at---

Clapping

....the virility, the diversity, the wild animals, the resources and everything.

Clapping

Leaving that aside, Madam Chair, I want to comment on the formation of the Electoral Commission. With all due respect to the Electoral Commission, it is my humble feeling that immediately this Constitution is enacted, the members of the Electoral Commission relinquish their posts so that we can elect a new Electoral Commission. It is also my humble feeling that the Electoral Commission staff should not exceed more than 9 people including the Chairman. Madam Chair, if I look at the registration of voters, we are always disadvantaged. We are pastoralists, nomads, who move from one place another looking for pastures. I think those who are drafting this Bill should have looked at mobile registration and voting centres, so that everybody is given a chance.

The other thing which I want to say, Madam Chairlady, is that I have heard one of the Commissioners saying the system in Germany --am I becoming defiant?

Laughter from Honourable Delegates.

Should I leave it there? Okay, now somebody referred to Germany. You cannot compare the Germany system of elections with Kenya. The Germans are a homogeneous people and united. They are the same people. You cannot compare this with Kenya. We are very different people ethnically, culturally and religiously. So the question of NMP has not been properly captured. NMP means giving thanks to those who had chance. I want the Ugandan system of election for women, where we would only vote for woman on a specific ticket.

Clapping

Hon. Delegate Atsango Chesoni: Thank you, thank you Honourable Delegate. I am now going to give us a break for lunch. The Steering Committee is going meet. We will

return at 2.00 o'clock when I will begin from the people that are on the immediate left of the staircase opposite the door. This is still District Delegates. Honourable Delegates, let me just let you know that I will then intend take comments from Parliamentarians and also members of the civil society. Every single sector will get an opportunity. So don't feel that, because you are not a District Delegate, you are not going to get an opportunity to speak. Thank you. Oh, I am sorry, there is also a notice that the next Media Advisory Committee meeting is being held at 1.30 p.m. at the Commissioners' lounge today. Thank you.

The meeting reconvened after lunch at 2.20 p.m.

Hon. Delegate Atsango Chesoni: Honourable Delegates, I am going to continue taking questions. Number 390.

Hon. Delegate Kellan Wavomba: Honourable Chairperson, Please protect me Honourable Chairperson.

Hon. Delegate Atsango Chesoni: Proceed.

Hon. Delegate Kellan Wavomba: I would like to make a contribution on Chapter 6 Article 85. Honourable Chairperson, I would like to support the other Honourable Delegate who said that a Public Service Commission after consulting with the Electoral Commission shall appoint officers and other employees of the Commission. Honourable Chairperson, I would like to propose that the Public Service Commission be removed from this Article because it is a Commission like the Electoral Commission. This one here Honourable Chairperson will give a leeway to the Public Service Commission to appoint its former employees for example, the retirees and like we are having many of them right now in the Districts as the District Electoral Commissioners. This is done at the expense of other well-learned boys and girls who have the knowledge but they have no jobs. Keeping in mind that these retirees earn their pension, it is also unfair because

while they work as Districts Electoral Commissioners, they also have pay. Therefore, we are doing that at the expense of those other boys for example those who are retrenched.

I would like to make another proposal Honourable Chairperson, that we include at least two clauses on Article 85. The first one, we erase the Public Service Commission from it. Then the second one reads, 'the employees, and those are the District Electoral Commissioners, be knowledgeable, of good conduct, not partisan and of the age of between 35 and 55 years. Honourable Chairperson, you realize that while we do that, we will also be giving a way to our young boys and girls who have gone to school, they have the knowledge but they have no jobs. I would like us to add clause (c) to read, 'All employees of the Commission shall not be employed by any other body'. Thank you Chairperson.

Hon. Delegate Atsanga Chesoni: Thank you. Delegate number 271.

Hon. Delegate Amos Kiumo: My number is 271, Amos Kiumo, Delegate from Nyambene. Chairperson, I need to contribute on a few things: One, number 98 (2), 'The Constitution or the Articles of Association of a political party to read, 'A political party shall not punish, a Member of Parliament or a member of a council of the party for anything said in Parliament or council by the member in exercise of the privileges of freedom of speech in Parliament'. That is to include the local authority in that clause so that it can rhyme with 98 (4).

Something else I would propose is, for nominations of MPs and Councillors after elections to be discouraged as it defeats the purpose of electioneering because normally those that get nominated after elections are the most unpopular, those that have been rejected by the voters and those who are not correct for the population. That should be discouraged because we are having rejectees going in where they are not wanted by the people. Chairperson, I would propose that we put in a clause for all voters to vote unless there is a good reason for not voting.

Number 77: 1(B), I would propose that this be corrected to add the continuous registration of citizens as voters through facilitation of necessary documents like ID cards and Passports. Another Article I would suggest... Thank you Chairperson.

Hon. Delegate Atsango Chesoni: Thank you. Number 381 please.

Hon. Delegate Rita Katamu: Thank you Honourable Chair. My names are Rita Katamu, Delegate from Butere Mumias. I want to draw your attention to Article 76 sub Article 6. Here it reads, 'Elections shall ensure fair representation of women, the disabled and the minority'. I don't know Honourable Chair how 'fair' is 'fair'. I would propose that for the women to come in, you know women have been away for so long, we should give them something that is very much meaningful and the Article should read, 'The elections shall ensure at least a third representation of women, people with disabilities – we shall not call them disabled – people with disabilities and the minorities.

I also want to move to Sub Section Seven where it reads, part 7 (b) where we have nominations of candidates, I want us to add there because it's reading, 'subject to any provision in the Constitution, Parliament shall enact a law to provide for nomination of candidates'. I want to add something there so that we have nomination of candidates on legislative and executive bodies. Otherwise, we also go back to seven where it reads, 'elections are conducted by an independent body free from political interference'. I feel political interference is not the only interference, we also have other interferences. Therefore I wish it to read, after political interference 'and any other forms of interferences'. Thank you Honourable Chair.

Hon. Delegate Atsango Chesoni: Delegate number 263 please.

Hon. Delegate Kaaru Abdulkadir Guleid: Thank you Madam Chairlady. I am Kaaru Abdulkadir Guleid from Moyale. I want to draw your attention to section 79 C (2) when the qualifications of registration include employment, business, lawful possession of land and residential buildings. For one, we have a very small percentage out of those who

have acquired the age of eighteen who have employment. So, if that the basis for qualification of registration we are putting some people at a bad situation for that.

Secondly, unless the employment itself should include self-employment. On the side of business, very few of our voters or those who are supposed to be registered as voters have businesses and unless now the business should mean farming, pastoralism and bla bla.

The third is lawful possession of land it that's the base for registration, then some of our people are living in villages where they have a communal land thus they don't possess their own land in that case. The third aspect, if we put residential buildings as the basis for qualification for registration then some have a problem because unless the residential buildings includes even huts and tents or whatever it is. Thank you Madam Chair.

Hon. Delegate Atsango Chesoni: Thank you. On my left we have a lot of activity. I will go for Delegate number 242 first, please.

Hon. Delegate Amina Ahmed: Asante Mwenyekiti. Kwa majina naitwa Amina Ahmed nikiwakilisha Wilaya ya Lamu. Tatizo langu lilikuwa ni Article 82, 'Wagombeaji bila ya kupingwa'. Kwa mfano, mahali pamoja pamekuwa na wagombeaji watano wa vyama tofauti tofauti, A, B, C, D. Halafu kabla ya uteuzi katika kupendekezwa siku ya kuteuliwa, wa chama B ameteuliwa bila ya kupingwa. Sasa uchaguzi lazima ufanyike na siku ya uchaguzi wa chama A akashinda kwa kura nyingi. Sasa, nilikuwa nataka kujua kama hapo kutakuwa kuna haki ama kuna ukora fulani ulipitika. Asante.

Hon. Delegate Atsango Chesoni: Asante. Delegate number 268 please.

Hon. Delegate Godana Adhi: Thank you Madam Chairlady, my name is Godana, district Delegate number 268 from Isiolo. While I agree with the presenter Commissioner Kangu that there is synergy between that particular chapter and some other chapters in terms of entrenching the centrality of the people, I would like to draw the attention of these Honourable Delegates to this particular chapter in terms of

devolutions of power. I want to say that it is important that when we look at Electoral Commission, some of the devolved Government would have liked to have control of some of these processes and I don't see that leakages at all because many of the Delegates are voiced that in some of the areas it would be impossible actually to ensure participations of the communities in elections. And I think that could be poor if under different circumstances the devolved Government would come up with its own system to ensure that the locals within that devolved Government would be enabled to participate efficiently and effectively in the election processes. And that is very important because I am sure some of the devolved governments would even like to be the force behind some of these processes. I think that would be important if it is entrenched and the Electoral Commission could only be given the facilitative and regulatory power in terms of elections and I think that would be important if it is entrenched in the Constitution.

Hon. Delegate Atsango Chesoni: Thank you. Honourable Delegates I am now going to take comments from Parliamentarians and I am going to begin on my right. Any Parliamentarians on my right? I will move to the next section, Honourable Delegate number 155 please. 187 I will come back to you after 155.

Hon. Delegate Raila Odinga: Thank you very much Madam Chair. My names are Raila Amollo Odinga, Member of Parliament for Lang'ata and so I wish to welcome the Delegates to Lang'ata Constituency. Madam Chair, generally I would like to congratulate the two presenters for very eloquently presenting this chapter. But I want to begin by saying that there is a lot of detail that is contained in this chapter which should go into municipal legislation. I see here three Acts of Parliament: one, The Electoral Code, two, The Independent Electoral Commission Act, Three, Political Parties Act. Because Madam Chair I believe that the Constitution should contain matters of general principles but the details should go into consequential Parliamentary Act. So, we are going to propose in the committee that this be done and if we do that we can make this document less voluminous as it is right now.

But I want to speak on clause 77 which deals with the representation of women in elections which says that the parties shall ensure that at least 1/3 of its candidates for the elections are women and then 25% of its candidates for purpose of representation are women. Madam Chair I believe very strongly in affirmative action as a principle and contrary to what was said by a member here, it is not a question of competition between men and women. We are talking here about gender mainstreaming. Gender mainstreaming basically means that all adult Kenyans should have equal rights to representation and that because of historical discrimination against women, discrimination in terms of empowerment, education, early marriages, discrimination in employment and so on, women have been very disadvantaged and therefore, we as a country should try to empower our women. But Madam Chair, I do not believe that if you follow the route of 'A' you will be able to achieve that objective. If you merely require political parties to have 1/3 of their candidates as women candidates because most political parties will face candidates only in the areas where they know that they have no chance of winning and therefore we will not achieve our objective.

I therefore want to propose that it is in the proportional representation seats that we can actually achieve our objectives and whereas the numbers can be achieved particularly when we are considering a second chamber but instead of talking about 50%, we should talk about 2/3 of those seats reserved for women. If we do so we will ensure that those women will actually come into Parliament and Madam Chair these are not nominated seats contrary to what has been said in the past. As you rightly said, these are seats that are going to be contested by political parties.

Another alternative which was suggested by another member, I think was it from Garissa or somewhere, is the Ugandan example. In Uganda they created districts as constituencies preserved exclusively for women. This was meant to give women a training ground, the women go and contest for those seats and only women vote for them. But then most women went and campaigned and once they are elected to Parliament, in subsequent elections they said that they had already acquired the experience and

graduated and then went to compete against the male counterpart and won. So, that is another alternative which we can consider. Madam Chair I thank you.

Hon. Delegate Atsango Chesoni: Thank you Honourable Delegate. Honourable Delegate 187 please.

Hon. Delegate Isaack Shaaban: Thank you Madam Chair for giving me also to contribute to this debate. I wanted to contribute on this issue about representation. My name is Honourable Shaaban, Member of Parliament Mandera East. Chairperson, when you refer to representation, one is representation and the other one is effective representation. While Honourable Raila who is elected in Lang'ata might have represented more than 50,000 people, he has access to these people and if he wants to meet them, he needs to have three or five barazas and in three days he is able to meet the people he represents while a Member of Parliament in Northern Kenya for example in North Horr who might be representing probably 20,000 or less, I don't know whether he will have access to those people he represents in a month. So, one issue is about representation and the other is whether you have effective representation and you are able to represent those people as a result of geographical, communication and other problems.

Therefore Chairlady, when we talk about Kenya, we are talking about two fundamental issues. We are talking about Kenya of it's people united in diversity; we are talking of Kenya and it's land. So when we talk about Kenya basically we are talking about Kenya and it's people and then we are talking of Kenya within it's territorial boundaries and so you wonder which is more better, which is more important; Kenya its land or Kenya its people. Take this scenario; if today Kenya was to be invaded by another country and a few people are killed on the Kenyan border, will Kenya go to war with that country which has killed it's people? Or take the other scenario, if another country invades Kenya and takes away a portion of Kenya's land, will Kenya go to war? Which of the two is more important.

There are a lot of times Kenya's people were killed and Kenya has not gone to war. There was a time Kenya's land was about to be taken and Kenyans went to war. So I think sometimes, Kenya's land is more important than its people but both are very important. Let us talk about land; there are some people trying to say that in some places there are only animals, gazelles, there are no people and MPs are not representing enough people. I think we have to talk to Kenya of its people and Kenya of its land.

Number two, what I would actually say is that those areas especially the marginalized areas are under represented and if you had to add more seats for us to have effective representation and actually we are representing the person who has elected you, we need more seats in the so called, where people are saying there are less people.

Number three, this issue of mixed representation I think it is exciting, for the benefit of those who are marginalized and who require affirmative action, probably say the women, the disabled and the minority. My fear is Chairlady, that is subject to abuse in that when majority of Kenyans practice what they are as Kenyan leaders it is likely that people will 'write' their own friends, they will 'write' their own list of friends and at the end of the day we might have met the qualifications and the conditions but we would have the party list consisting of people who are friends of those party leaders who are at the top. That is the only danger. Mrs. Madam Chair, let me say my last bit.

In Article 99, restriction on holding of office in political parties. Article 100 says, 'the President and public officials over and above the rank of deputy secretary shall not hold office in any political party or in a political party'. What will that imply? Does it mean that any officer in the public service below the rank of deputy secretary can join political parties or what does it mean? Our Public Service then will be politicized. Chairlady, we need to correct that.

Hon. Delegate Atsango Chesoni: Thank you Honourable Delegate. Honourable Delegate 218 please.

Hon. Delegate Adelina Ndeto Mwau: Thank you Madam Chair, my names are Adelina Ndeto Mwau and I am delegate 218. I want to affirm and congratulate Hon. Raila for explaining to us the principle of Affirmative Action, affirming Article 77 and making a proposal that at least one third of the candidates for direct elections be women. I don't see why political parties are afraid of actually making sure that their one third of nominees are women. I want to add that the 80% of their candidates of proportional representation at public elections be women, each representing a different district until all the districts are represented.

I would also like to talk on Article 95 in relation to funds. I am making a proposal that 50% of the monies allocated to Parliament shall be distributed equally among political parties, each of which will have obtained less than 5% of the total votes in the previous election and which ensure at least one third of candidates elected are women. Political parties' funding will need to tie with women's nomination. If we are actually going to talk of mainstreaming women in political processes. If we are agreeing on affirmative action, let us make sure that women participate in our policies, our laws, our Constitution. And why are women being made to go to a district constituency? It means women will have bigger constituencies to actually make sure that they get to Parliament. Thank you Madam Chairperson.

Hon. Delegate Atsango Chesoni: Thank you. Hon. Delegate 151 please?

Hon. Delegate Joseph Nyagah: Thank you Madam Chairperson, my names are Joseph Nyagah, MP from Mbeere district. Two, three points: First, is it Napoleon, I am not a historian, but is it Napoleon who said a short vague Constitution is what we need so that lawyers and Parliament can then do the detail? If it is the case, shouldn't we be doing that also, and my friend Raila said, reduce the number of paragraphs so that we can pass the rest to Parliament but knowing very well that the instructions came from this group and that it must be passed. But if we make it too detailed, we will have problems.

Elections: Paragraph 77(2) – What does it deal with? Madam Chairperson, it is about the ladies. I also agree that we need to give ladies a chance. We need to give them the opportunity to grow but not forever. (laughter) What we should do is, like other countries have done, because we recognize they are marginalized, we should give them an opportunity ---

Interjection : Chairperson : You need to speak into the microphone.

Hon. Delegate Joseph Nyagah : We should give them an opportunity to take off, get into the District, Parliamentary candidature they always want. Once they have established themselves there for 20 years and they are equal to us, we should then compete on equal basis. But we need to give them a chance to take off from where they are.

Clapping

Sources of funds, Paragraph 96(5) : The world is becoming very small, we have party alliances internationally. The world is becoming a village. We will work with partners around the world; it will be unfair for us not to help our friends in other countries and for other countries, other parties also not to help us. We should not over restrict it. I know this was done to restrict a situation where a German NGO had been financing my former party for many years, but the world has changed. I think what we should do now is adapt to the changing world and allow for alliances. And if we want to finance other people and other parties want to finance us, we should not stop them.

Leader of Government business, Paragraph 122: I am a former Ambassador, protocol is important. He should not come next to the President and the Prime Minister. He is even a Vice President in protocol. Leader of Government Business under normal practice around the world comes as a Cabinet Minister, he is given a status yes, but not ahead of the Vice President and not ahead of the Cabinet. It is important, as a former diplomat, to tell you that, that is the way the world does it and I can advise you, I plead with you, so

please accept it that way. I am not against my friend Kenyatta. A lot of things, Madam Chairperson, can be taken care of.

Standing Order, because even 122(b) is something that can be taken care of in terms of standing orders in Parliament. Thank you Madam Chairperson.

Hon. Delegate Atsango Chesoni: Hon. Delegate 220 please?

Hon. Delegate Julia Ojiambo: Thank you very much Madam Chairperson. I want to briefly comment on Article 79(1).

Hon. Delegate Atsango Chesoni: Please give your name and delegate number

Hon. Delegate Julia Ojiambo: My name is Julia Ojiambo and my number is 220. I wanted to briefly comment on the registration of voters, Article 79(1). Madam Chairperson, I see a lot of hurdles being put in the way of a citizen who wants to be a voter. I would have wished that for a citizen to be voter, it be put very plainly that once you are a citizen and you are 18 years you qualify to be a voter. There are a lot of our young people outside this country and they qualify to be 18 years just about the time they are coming back. And if you are going to say, “You are 18 years and you have been outside”, that is going to cause again some hurdles in their way. I would rather wish to see that a lot of those hurdles put in their way reduced for a citizen wishing to be a voter.

On 96(5): Political parties’ fund: Madam Chairperson, I am happy to note that registered political parties can be funded. I want to add here, Madam Chairperson that donations should be allowed and that parties must be made to declare what they get from outside. And the functions of the parties Madam Chairperson, we have said that the parties are going to do a lot of mobilization and assisting Kenyans who are members of their parties to understand a lot of things about their country and the politics of this country. And they must be assisted because a lot of political parties have looked like beggars when they are

actually playing a very fundamental role in this country, so they should be allowed to get friends to assist them to manage their responsibilities.

On 95(3), I want to mention that the parties being funded according to the number of women candidates elected on their party ticket is a part of affirmative action Madam Chairperson. Some countries in Africa and in Europe have done this with a lot of success, I would wish to encourage that this clause be retained in this Constitution as a part of affirmative action.

Lastly, I want to comment on 77 and congratulate my predecessors who have spoken positively on the affirmative action and wish to encourage the political parties to retain one-third representation for women particularly at nomination stage, Madam Chairperson. Because it is at this stage, Madam Chairperson, that women are weeded out of the election process and they never come to see the rest of the electoral process because the parties have unwittingly weeded them out. So political parties, please assist women by allowing them to go through the nomination process at the early stage of the electoral process. Thank you very much, Madam Chairperson.

Hon. Delegate Atsango Chesoni : Thank you. Hon. Delegate number 98 please?

Hon. Delegate Elias Nzau: Thank you Madam Chair. My names are Elias Nzau from Maragwa Constituency and I want to make one or two comments. One is to be found on 76, Article 76 sub-section 3. I find that there is no sub section 4, I wish that can be corrected. On sub section 5, I want that to read, "Elections shall ensure the fair representation of the people including people with disabilities". That shall subsequently ensure that what I see here, sub section 6, which states that, "Elections shall ensure fair representation of women, the disabled and minority", becomes null and void, that should be deleted. On 83 (7) (c) you will read something like; "If a member is removed from office on the grounds of inability to perform the function of office as a member, whether arising from infirmity of body or mind or from any other causes or of misbehaviour ... I want us to add, after misbehaviour",... contrary to Commission's terms of reference.

This will ensure that the so-called misbehaviour shall not be sanctioned arbitrarily or out of political or other partisan forces. So to qualify 'misbehaviour', it should be in terms of the terms of reference of the Commission.

Number 84(1) (f): The management of political parties' fund. Madam Chair, I want us to ensure that this question of how we manage or the ECK will manage political parties' fund is qualified. As of now it is left too open ended and a ruling political party can most easily manipulate or ensure those other parties' political funds are not necessarily facilitated.

Number 90: I want to add an (e) at the end. Number 90 we have up to (d) and I want us to add (e) to ensure that qualification for registration of political parties shall be for those parties that shall have a membership of at least 10,000 subscribers or 10,000 followers from around the country. So that we do not have these cases of political parties registered of only five or ten officials only for purposes of being bought when convenience demands. Well, I want to end by adding 92 (d) on 92, I want us to add (g) on Cancellation. We should add (g) where the question of cancellation is addressed. If a party, in terms of following or membership, falls short of 10,000 subscribers or members, that should make it a candidate for cancellation accordingly. Thank you Madam Chair.

Hon. Delegate Atsango Chesoni: Thank you Honourable Delegate. Hon. Delegate number 94 please?

Hon. Delegate Christine Mango: Thank you Madam Chair. I am delegate 94, my names are Christine Mango, a Member of Parliament for Butula. I would like to comment a little bit on Article 76, about elections being free and fair. I would like to add that elections should be free and fair at party level and also at ECK. When I mention ECK, I tie it up with Article 84 (h) which is on the promotion of voter education and culture of democracy. Now ECK usually waits at the time of election is when it is trying to give civic education. It should start right now to give civic education and also to educate all Kenyans, so that come the voting time everybody knows what to do; because

what happens at the end, agents are bought and they are compromised. If we start early then nobody gets compromised.

I would also like to comment on Article 81. Voting is part of human right and therefore, I would like to add that every Kenyan should be accorded opportunity to vote so that during voting there should be mobile units to go to those who in the hospital. If they are registered voters, they should be accorded an opportunity to vote. Those in the Armed Forces, I don't know why they are excluded from taking part in voting and even Kenyans who are abroad should be facilitated to get registered, so that they can also vote. We have very many Kenyans away and they never take part in decisions of electing candidates.

Finally, I would like to comment on Article 77 (2). Most of the political parties in their manifesto have indicated that they will have at least one third of their candidates for direct election who would be women. Many of them turn round and never honour this. First of all those who are able should make it through direct nomination and those who can't should be accorded the proportional representation so that they can have a chance to also learn the way of getting into democracy. As it is, many women are locked out and it will take a long time before women in Kenya can attain any representation. The playing ground is not level and this Constitution should try to level up the playing ground so that many Kenyan women can take part. Thank you Madam Chair.

Hon. Delegate Atsango Chesoni: Thank you Honourable Delegates. Hon. Delegate number 215 please?

Hon. Delegate Mutula Kilonzo: Thank you Madam Chair. First of all my name is Mutula Kilonzo, Delegate 215. I would like to briefly mention that while I agree with Hon. Raila that the provision of political party management in the Constitution is unwarranted, I would also like to point out and urge Delegates to realize that political party management should be left as flexible as possible and therefore it is fair that this be

done through ordinary legislation. But the basic principles of how a party should be organized, should be stipulated in the Constitution.

On Electoral Commission, I cannot disagree more with him. We have witnessed, since January, two Parliamentary by-elections and several local elections, whereby those elections are being organized under an Electoral Commission that is not independent, because the current structure of Government has placed the Electoral Commission directly under a politician who comes from a particular political party in a multiparty democracy. It is totally wrong. And I urge the Delegates to realize that if the present structure of Government continues, and if the suggestion of Hon. Raila goes that you merely put Electoral Commission as in a 'liquid' form, then the irregularities that have occurred since January will continue and the gains that Kenyans made during the last elections will be totally destroyed. We have argued forever, the Government doesn't listen and it is time that the country realizes that we have an illegal ministry that is purporting to run elections under one single politician who is a member of a political party, ignoring the wishes and desires of the other political parties.

On women, I would like to urge my fellow men of this country to understand that empowerment of our women should be natural. (clapping) We should not appear as finding it difficult to consider the empowerment of our women as a natural process, because they are part of us, they are us and so on and so on. Therefore, other than the polarization that appears to be there politically, I believe that when the working committees consider this provision, they will come to realize that it is important that we make provisions that enable our daughters, our wives, and our mothers the opportunity to participate in nation building (clapping) without appearing to be acting 'save us' from their men. It should come naturally. Madam Chair, thank you very much.

Hon. Delegate Atsango Chesoni: Thank you. Hon. Delegate 214 please?

Hon. Delegate Esther Keino: Thank you Madam Chairperson. My name is Esther Keino, MP, Delegate number 214. I would like to speak about the issue of Affirmative

Action, and add my voice to that. The Review Act makes provision for the Commission to address the issue of gender equity and gender equality as a main concern. And the Commission went ahead and gave this prominence through the Draft Bill on Article 76, as we have seen number 6, Article 77, Sub Article 2 and 95 Sub Article 3. I am a bit surprised and rather disappointed at what is emerging here among some delegates, who are not really appreciating the issue of Affirmative Action or the justification for it. Affirmative Action has been put in this Bill to safeguard the rights for women and other marginalized groups. I think we are failing to understand and acknowledge the factors that have historically and systematically marginalized women and continue to marginalize them today and will even marginalize us tomorrow because of our culture.

I would like to say that we should put in place specific provisions for Affirmative Action - which we know are temporary anyway - to create a level play ground for men and women and thereafter once we achieve parity, then we can leave everything else to chance and competitive politics. But we cannot talk about competitive politics when the situation is not equal for all of us. I would like to tell delegates that Kenya like other African countries and even beyond, patriarchal in nature. Patriarchal systems, by design, place more privilege on men and discriminate against women, especially in the area of leadership and all other sectors of our society. This we cannot debate, we all know that. Of course you know culture changes very slowly and the reality in which we live today, if we do not put in place Affirmative Action, women will really not have a chance. I don't know why some delegates are threatened by this kind of provision.

In my own opinion parity is a good thing for our entire society. Kenya deserves to utilize the full potential of its human resource if it has to realize sustainable development. This cannot be realized until and unless the women are fully integrated into our development programmes including leadership. Shutting women out is not only hurting women but hurting the rest of the society. I say that we cannot fully guarantee the enjoyment of women and full participation of women in leadership unless we acknowledge this first and put in place specific mechanisms to address discrimination created and perpetuated by patriarchy. Thank you.

Hon. Delegate Atsango Chesoni : Thank you. Hon. Delegate number 37 please?

Hon. Delegate Otieno Kajwang': Thank you Madam Chair. I have been looking at the Draft, I have seen that you have provided for parties to nominate candidates. But assuming somebody does not want to belong to the party and wants to merely stand as Otieno Kajwang', MP for Mbita, how does he get through? Assuming his party declares him a rebel and removed him but he does not want to go to another party. I have not seen a provision for independent candidates. It used to be there at independence. Did you see it somewhere, may be I did not read it, but it should be provided for. So that, you know, I have a right not to be forced to belong to a party.

Another one is your provision 87. I don't know whether it is the wording or the typing. But you said, 'Any citizen may form a political party'. You know Otieno Kajwang alone cannot form a political party. A political party is an association of persons. So, may be change the wording. The wording should say, 'Any number of citizens may form a political party'.

Three, somebody called from Mombasa yesterday and told me to say it here and I think he was right. Let me repeat it, 'That naturalized citizens, a person who comes to Kenya and speaks good Kiswahili and marries our daughter and starts some business should not be allowed to be our President. May be his child who is born in Kenya may be allowed. So, naturalized citizens should not be allowed to be Councillors, MPs and President (clapping). If of course they live here and we have generations of them, then we can elect his son or daughter but otherwise, people will come here with a lot of money start big industries and employ big people and tell us he is very good, you will soon find a 'Mzungu' being our President and we can't allow that. I am not against 'Wazungus' but this is our country.

Then the Electoral Commission. I suggest that it be smaller, I think you have suggested that, but it should not be less than 6 and not more than 8 members then you add the

Chairman so they should be 9 in total. I am thinking of our provinces, one from each province with the chairman coming from anywhere. I think right now, even themselves, they sometimes tell me, “Kajwang’ we don’t have any job to do”. In five years they just sit and wait for somebody to die so that we have a by-election. So they don’t have a lot of work.

You do not seem to have given the Commission independence. There is a common phrase which is used to give people security of tenure, the Attorney General and the Auditor General, that in doing their work or performing their duties they will not be subject to the direction of any person or authority. Put that to make them feel a little bit more comfortable. I think I was talking to the Chairman of the Electoral Commission and he was thinking that, that was lacking, so somebody can direct him although you say he is independent. The staff, if they are independent then they must employ their own staff, they don’t go back to another Commission. A Constitutional Commission is independent from another Constitutional Commission and they can only consult the Treasury. One other little thing, you said the Commission will determine the limitation of Constituencies. I think we give them a little more power and say, ‘The limitation of constituencies and other electoral areas’. Right now they don’t have powers to address wards, they don’t have powers to address this special constituencies for women and for the disabled. So give them that power in other electoral areas and I think that will cover them. Thank you.

Hon. Delegate Atsango Chesoni: Thank you. Hon. Delegate number 44 please?

Hon. Delegate Martha Karua: Thank you Madam Chair, the name is Martha Karua, Delegate number 44, Gichugu in Kirinyaga. Madam Chair, I want to start with the clause on the Electoral Commission, alluded to by the last delegate. I would propose that the clause reads that the Electoral Commission should not be less than three and not more than eight. The reason being that right now we are talking about provinces; in future we are hoping after we make this constitution, we are going to become more cohesive as a nation.

We therefore may reach a stage where we do not need provincial representation on the Commission and we need to be able to make the Commission even more leaner without resulting to the amendments of the constitution. When we give the limit of eight, it means for now, when we still have fears, we cannot be represented in the Electoral Commission. I do recall the days we had only one Electoral Commissioner, and elections were still going on. They have become worse managed during the period we had more Commissioners except of course the last General Elections. I do not chair the sentiments of my learned colleague Mutula that the Electoral Commission is not independent, I think since December, they have shown they can run the elections but we need to trim them.

On the representation of women, I want to applaud those who have agreed to the one third policy, also to echo what Professor Onyango said, we recall that political parties presenting their views to the Commission, without exception, all supported, Affirmative Action for women and other marginalized groups. During this year, during the nomination of women to Parliament, we launched the parties especially NARC and KANU, they deliberately nominated more women than men, showing that they have recognized that we need to hear women's voices in Parliament.

Let us therefore embrace this principle, it's a felt need by this country and let us acknowledge that both women and men are equal human beings who can contribute meaningfully and should contribute to meaningfully to nation building. It is true that some of us have been able to come through the turbulent waters and get elected; but I want to tell you it is not easy, I do not want my daughter, your daughter, or your niece, to have to face what we have had to face in the field. Let us remove obstacles to let our daughters and sons strive equally, then we can claim to be civilized.

Clapping

On section 100, I would want to say that we bar all civil servants from holding office in political parties and also the President. Let us not say the President for purposes of uniting the nation and civil servants for purposes of giving even service throughout the

nation. Let us not introduce clauses of rank; that allows other civil servants, to become politicians. I don't think it is right.

On the funding of political parties, I would suggest that the funds be distributed among the parties in proportion to the votes they got. When you say the first 50% equally, we are encouraging briefcase political parties, so that even the parties with one Member of Parliament gets an equal share to a party with 130 members. That's encouraging briefcase parties. Let it be equal to the number of votes, let Kenyans decide how much money each party is going to get through the votes they cast.

I also want to comment on proportional representation, I had one of my colleagues steering that the party list may consist of friends of politically correct people. The difference between nominations in a mixed member proportional representation, and nominations that we have them today, is that the electorate is shown during the elections time, the party list, so if party X, has put only their cronies without consideration of other factors, the electorate will be won and when voting, they will know this is not a serious party. So there is less chance of abuse when the party list is there as we vote. There is more chance of abuse when we nominate after we have already been elected. May I then to wind up saying this, that we need to embrace an all inclusive approach that gives every Kenyan, man or woman, able or disabled, an equal chance. And I want to say with regard to the differently abled persons, we should provide that during nomination, 50% of the mixed member proportional representation be women, and that all the parties when nominating, should take into account the issue of disabilities, youth and other minorities, so that we do not seem to say, it is the 50% belonging to the men that will bring in disabilities. There are disabled men and women, let each 50% take into account all those considerations across the board. I thank you.

Hon. Delegate Atsango Chesoni: Thank you. Honourable Delegate number 6.

Hon. Delegate Ali Abdullahi Ibrahim: Thank you Honourable Chairperson, my names are Abdullahi Ali, MP Wajir North. I want to support a colleague of mine who said

earlier that, a country is about land, a country is not about people, because in the long run, the people will populate that land and fill it up; but if your imaginations just shows you that there are 100,000 voters in Embakasi, and there are 15,000 voters in Wajir North, then you are mistaken because in the long run, Wajir North will have large number and the work of Embakasi will remain stagnant because of family planning. So think about that.

Clapping

And again, what I want to tell you is that, if you take the map of Kenya, and remove the former NFB, that's Northern Kenya, you will have a very ugly map. Think about that also, so, land, number one, two, people.

Number two, I want to support the issue of mixed member representation, I think that is a very marvelous idea, I think it should be supported by everybody, it is not only for women, it is for everybody in this country who has been sat for a very long time.

I'm going to comment on No. 77(g) where people are talking about Election, there are people abroad, who can vote in this country. Let's take care of or think about that. You know what happened in Florida in the U.S.A.? Let's say the biggest issue, it was the biggest problem, and they have the capabilities and they have done it for many years. So, if we don't want to risk ourselves out, then we have to think about that one and do it rightly the way we have to do it today.

Number 77, my Honourable friend just took it out of my mouth, that 50% for women, fine, but when you are talking of 50% for female, you put there the disabled female, the youth, the minority, and all those; and when you talk of the other 50% then for men with disability, youth, every minority, (*clapping*) that should be done. It will clear all this. But I have an issue here, you are talking of other interest groups, who the hell are these other interest groups? *Laughter*

No, no, pastoralists?

Inaudible interjection:

Hon. Delegate Ali Abdullahi Ibrahim: Okay, if it is pastoralists put it there, I will accept it. *More laughter* But if you are talking of people who are already taken care of, then that will bring problems because others are going to come through the back door. So we should be specifying who these other interest groups are.

When we are talking of party funding, that's 96(5), I don't have any problem with a party being funded, but the government of the country should be able to take care of the political parties in the country. If we allow political parties to be funded from outside, we will have puppet political parties. Thank you.

Hon. Delegate Atsango Chesoni : Thank you. Honourable Delegate No. 7 please.

Honourable Delegate Jimmy Angwenyi: Thank you Madam Chairperson. My name is Honourable Jimmy Angwenyi, MP for Kitutu Chache, and I am the man, who spearhead the interests of the man. *Laughter and clapping.* Madam Chairperson, I would like to refer to article 76(6) where it says, Parties must ensure that women are represented; and yet you have said that Parties and the election process must ensure free and fair elections, and that all people should be represented. Madam Chair, I would like to put that, the details for one third or 50% could be done with subsidiary legislation. Either say in the constitution that the elections should be free and fair and all peoples of Kenya would be represented; then the details should be in the subsidiary legislation Madam Chairperson.

Number two, when we say that a party must choose one third of their candidates for direct elections to be women, supposing women don't want to join a particular party, what would that party do? So again you either put that in a subsidiary legislation.

Three, The elimination of constituencies – Madam Chair, what we have put in the constitution right now, is what is in the current constitution; why can't we say, that the details of how a constituency will be eliminated, will be put in a subsidiary legislation again so that we say, land, takes 50% of the factor ring, people, 30%, women, 10%, something else, let's say 5%, because I'm still using the word people and the women, because you have used it in this Constitution, to say, all people will be represented. Then you have gone ahead and said, women be represented in a particular way, as if women are not people. *(laughter & clapping)*. Madam Chairperson, we are making a constitution, a constitution for the people of Kenya, it just happened the people of Kenya have adapted a patriarchal culture.

We want to turn it around and make it a matriarchal culture. Madam Chairperson, I don't think that's an intention of making a constitution. The Constitution should be written with a culture of the people of Kenya. The culture, which has been derived, from God, because God in his wisdom, kills a man before a woman. *(Laughter)* Madam Chairperson, I'm saying this because God was capable of killing the two people simultaneously but he chose in his wisdom to kill a man before a woman Madam Chairperson and give the man the leadership of the family Madam Chairperson. So Madam Chairperson I'm saying, that let us enact a proper Bill of Rights for all the Kenyans. A proper Bill for all the Kenyans, and then make subsidiary registering for the details to support Affirmative Action for our people. Thank you.

Hon. Delegate Atsango Chesoni : Thank you. The Parliamentarians will have one more place and I'm going to give it to Honourable Delegate No. 614 please because I don't need to take anyone from that section.

Hon. Delegate Dalmas Otieno : Thank you Madam Chair. My name is Dalmas Otieno, .I only have –

Interjection: inaudible murmuring

Hon. Delegate Atsango Chesoni : Yah? Sorry, I'm sorry, Honourable Delegate 614 you are not a Parliamentarian. I'm sorry. You will speak in the next round. Honourable Delegate 131.

Murmuring & laughter

Hon. Delegate Mwandawiro Mghanga: Asante sana mwenyekiti. Yangu ni kuchangia, -- jina langu ni Mwandawiro Mghanga, ni Mjumbe No. 131, Mbunge wa Wundanyi. Kile kitu naomba kuchangia ni kwamba, tukitazama hiyo sura ambayo inazungumza kuhusu vyama vya kisiasa, naona kuna kitu ambacho kimesahaulika hapo, na ni ufafanuzi hasa wa maana ya chama cha kisiasa. Na ni mapendekezo yangu kwamba, kama tungekua na ufafanuzi wa maana ya chama cha kisiasa, itatusaidia sana katika kutengeneza hizo sheria ambazo zinatawala chama cha kisiasa.

Kwa hivyo mapendekezo yangu ni kwamba, sehemu 87(1), iaanze kwa ufafanuzi wa chama cha kisiasa. Na mimi ningependekeza kwamba chama cha kisiasa ni muungano wa watu wenye itikadi moja, falsafa moja, mtazamo mmoja, na nidhamu moja – kwa kizungu tunaweza sema, a political party is a group of people, united by a common ideology, philosophy, vision and discipline. Tukikumbuka hayo, tunaweza kukumbuka, nawaomba Wajumbe, kwamba, tukiendelea kuzungumzia sana na kutoa sheria nyingi zaidi kuhusu mambo ya ----- (inaudible) vile vinavyokuwa, sasa pia tunakua tunapinga uhuru wa vyama vya kisiasa. Ndio kwa maana, mimi ningependekeza, kama tungekubaliana na kuwa na ufafanuzi wa chama cha kisiasa, halafu, mimi ningekubaliana kwamba, sehemu ya 87(4) ambayo inasema Parliament shall enact a law providing for the regulation of political parties. Hiyo, pamoja na miongozo michache katika katiba ambayo inasema, jinsi vyama vya kisiasa vitakavyotambuliwa, labda itakuwa na idadi ngapi ya watu, ama tutakuwa tunatimiza masharti gani kidogo, lakini tukiingia sana kwa undani, saidi, tutakuwa tunanyima uhuru wa vyama vya kisiasa.

Halafu mimi nakubaliana kabisa kwamba, katika nchi yetu, kuna haja ya kuwa na fera za maksudi kabisa za kuwasaidia ile sehemu ya jamii ambayo imegandamizwa na

kunyimwa haki kwa muda mrefu, wapate uwezo. (*clapping*) Ndio kwa maana na kubaliana kwamba, wanawake, kuna haja ya kuwa na fera za makusudi za kuwachiza wanawake wanakuwa sehemu za kisiasa number hiyo. (*clapping*) Na nikizungumzia hizo kwa sababu tunahusu vyama vya kisiasa, mapendekezo yangu ni kwamba, maana ya kidikadi iwe ipo hapo. Kwa hivyo tukumbuke hata wanawake tukizungumza, lazima kuwe na fera za maksudi dani ya wanawake ya kuhakikisa wale wanaweke wa kutoka sehemu za wafanyakazi, wale wanawake wakitoka sehemu za wachungaji, wale wanawake ni masikini ambao katika sehemu za mashabani, nao vile vile watapewa kipao mbele. (*clapping*) Haitosi tu, kuwapatia nafasi wanawake wa sehemu za pepari mchoro, sababu tusahau wale wengine wa sehemu za chini. Hiyo ni mapendekezo yangu.

Clapping

Na kuhusu jinsi vyama vya kisiasa tutapata fedha, kama tunaweza kubali pesa kutoka nchi za nje kwa chama cha kisiasa au la, mimi naona mapendekezo yangu kama tunajua ufafanusi wa vyama vya kisiasa, ni kwamba, kila chama cha kisiasa, ikiwa ni chama kwa kweli, lazima kiwe na ifikadi fulani na lazima kiwe na watu wenye ufikadi ya namna hiyo ulimwenguni. Kama chama cha Naitonal Conservative Party, Social Democratic Party, Liberal Party, Communist Party, Socialist Party, hivyo vyote zina marafiki wa kimataifa, na kwa hivyo ninaona, na nina kubaliana na Mheshimiwa Nyaga hapa, kwamba kila chama kina jukumu la kimataifa, la kusaidia vyama vingine duniani na vile vile za kusaidiwa na vyama vingine duniani vyenye itikadi sawa.

Mwisho kabisa, ni kuendelea tukisisitiza tu kwamba, wakati tunazungumzia vyama, tusitilie maanani mambo mengine halafu tukasahau kwamba, vyama vinahusu itikadi – vyama vinahusu falsafa, vyama vinahusu njia ya kuwa na mawazo tofauti katika nchi. Maana ya kuwa na vyama ni kwamba sisi wote Wakenya, tuna mawazo tofauti tofauti jinsi ya kuendesha nchi yetu, mawazo ya kutatua matatizo yetu ya kiuchumi, ya kisiasa, na ya kijamii. Na tunashindana katika uwanja wa kuomba kura. Kwa hivyo tusisitize sana juu ya falsafa na juu ya itikadhi. Asanteni sana. (*clapping*)

Hon. Delegate Atsango Chesoni : Asante. I'm now going to take perspectives from the Honourable Delegates who are here as representatives of the various sectors of civil society. That is Special Interest Groups, Political Parties, that's the non-parliamentary political parties please, Religious Organizations, Women's Organizations, Professional Organizations, Non Governmental Organizations, Trade Union representatives. What I am proposing is that we take two each from each of these categories.

Interjection: Point of order

Hon. Delegate Atsango Chesoni: I'm afraid we have a particular order we were following this morning – first we took District Delegates, for the record we took 14 District Delegates, I have not given you the microphone please.

Speaker: I have not spoken either, but I have rose on a point of order.

Hon. Delegate Atsango Chesoni : The Chair has not permitted you to speak

Speaker: ----- (inaudible)

Hon. Delegate Atsango Chesoni : Okay, thank you. This morning we took District Delegates, we took 14 District Delegates, we've taken 14 Members of Parliament. I am now going to take 14 views from the other groups of Delegates. If we have sufficient time, after we are completed with that, we will come back and give all the other groups, an opportunity to speak again so that every single part of constituency that is represented at this Conference has had a chance to speak today. (*clapping*) Do we still have points of order? Okay.

Hon. Delegate George Omari Nyamweya: Madam Chairperson, since we arrived here, sorry, my name is George Omari Nyamweya, from the political parties, Democratic Party of Kenya, and you have ascribed to me number 615, I will accept the number. Now, Madam Chairperson, there is obvious and deliberate discrimination here. If you read Act

3(a), it gives sufficiently the constituencies, which have been represented at this Conference. It does not give you, or anybody else, the authority to start saying, these particular groups I'm going to lump them together, these ones will have Parliamentarians, these ones will have districts, and so on. If we are going to build a country and respect the laws of this country, we must respect the laws which have brought us here and we start on that basis. I am going to suggest very strongly, the way you have started is very well, you have recognized all the constituencies, please carry on along those lines, and you will not get any trouble from some of us; but indeed if you go the other way, we really are not going to get very far, because I for one, I've come here with the spirit of reconciliation of bringing all Kenyans together. Let us not use technicalities to divide us; let us all give our views fairly, honestly and without fear. That's my point of order, Madam Chair.

Hon. Delegate Atsango Chesoni: Alright, number 593.

Hon. Delegate Gervase A. Akhwabi: Thank you Madam Chairlady, Honourable Delegates, Madam Chairperson, the Section of the law that Honourable Delegate Nyamweya was referring to, is Section 27, Sub-section 2, which sets out the constituencies. You have started with (c)- representatives from districts, you went to (b), Members of Parliament, the Commissioners who are in (a) are *ex-officio* and therefore they have no right to vote. Now Madam Chairlady, you should go to the representatives of political party; and that should be the order and then you can go to the others.

Hon. Delegate Atsango Chesoni : As far as the Act is concerned, all Delegates are equal over here. I just want to let you know that all categories will have an opportunity to speak. The reason we were following this order is that we were attempting to ensure that there is no particular category of Delegates that are left out. *(clapping)* I just want us to be very clear about that. Okay, now Political Parties I had placed in the same category as all the others, reason being the first category I dealt with has 210 Delegates here. The second has 222, I thought the others would then fit into the last cluster and that we would therefore be able to divide time equally and fairly amongst them. *(clapping)*

So, having said that, I am now going to move on. I would like to take comments and questions from persons that fit into any of the other last categories that have not been covered yet this afternoon. Okay, Delegate number 525 please.

Hon. Ibrahim Ahmed Yusuf: Thank you Madam Chair. My name is Ibrahim Ahmed Yusuf, Delegate number 525 from the Religious Organizations. Chair, I would like to contribute on elections, that is section 77(2) (b) and (c). My proposal is that the 50% of women that has been suggested there should be based on regional or provincial basis. We should also replace the word 'interest groups' with the 'marginalized groups'.

The next Section is 78(1) – it is my suggestion that we lower the age from 18 to 16, the whole world is taking that route in so many things and I think we shouldn't be left behind. It should also include the rights of citizens abroad to vote, prisoners, and women in the maternity. Qualifications for registration, that is Section 79(1) (b) and (c), Madam Chair it is my belief that with globalization, what should be the criteria for registration is citizenship. If we decide that we are going to register people who have lived here for a year or some few months in a constituency, we will actually be losing on a lot of citizens who are abroad and have been forced to live there because of lack of employment in the country.

On disqualification, Madam Chair, that is Section 80(1), I would like somebody who has been adjudged bankrupt to be included there as one of the disqualifications.

Madam Chair, on the establishment of the Electoral Commission of Kenya, that is Section 83, my suggestion is that we should have a minimum number of eight and a maximum of 10, but whatever number we take, half of it should be women in division on provincial basis.

Madam Chair, on the party discipline, that is Section 98, I would like to suggest that we should not have a membership of a party on technicalities; An MP or a councilor should resign once he is in disagreement with his party and not be there on technicality.

Madam Chair, on the sources of funds, that is Section 96, I would like to suggest that all the sources should be from legal sources. We should not have drug dealers contributing and people who have looted funds from the country contributing to a party.

Madam Chair, on the restriction of holding an office, that is Section 100, I think you've just mentioned the President and any civil servant who qualifies to an undersecretary. I think we should include the MPs and councilors and the Vice President should not hold any political party once elected. Thank you very much.

Hon. Delegate Atsango Chesoni : Thank you. Honourable Delegate number 505

Hon. Delegate Fatma Ali Saman: Thank you Madam Chairlady. I wanted to add my voice to the Affirmative Action...

Interjection Hon. Delegate Atsango Chesoni: Please give your name.

Hon. Delegate Fatma Ali Saman: Okay, I am Fatma Ali, Delegate 505 from Women's Organizations. I would like to add my voice to Affirmative Action and by so doing I would like to also correct the former Honourable Delegate who had spoken about the same.

The African society has recognized the woman as a kingmaker, so for us to refer to culture marginalizing us will only be one-sided. I therefore urge members of this Conference to be able to give women their place by supporting all the principles of Affirmative Action. Days are gone when we used to assume that women cannot perform. Women can perform and we are going to prove it in this Conference, God-willing.

I would also like to make particular reference to Islam. Islam recognizes the woman as a nation; we should therefore not shy away from supporting women and giving them their places. It is high time we accepted time has come to give women their places and to allow them to have a better place in the society.

On Political Parties I would urge through the Chair that we maintain the entrenchment of political parties in the Constitution. It is important because we are looking at political parties that are going to groom or bring in politicians who will present us in a more powerful, well recognized, more transparent Parliament.

We are also looking at political parties that are expected to have a national outlook to also bring in party lists if the mixed-member representation is going to go through. We therefore urge that the political parties' regulations be properly entrenched as they are and even be improved, God-willing.

Finally, on Article 100, on holding of a political party office, I would urge that we include the Prime Minister too because we are expecting we will have an executive Prime Minister after this Constitution, God-willing.

Clapping from Hon. Delegates.

Hon. Delegate Atsango Chesoni: Thank. Honourable Delegate number 459 please. Please state your name, Delegate number and the category also.

Speaker: Point of order.

Speaker: Madam Chair, you did promised me and up to now I have been saying you have been doing very well and was good evidence of Affirmative Action. You have passed my block and you have reached the next block and I was waiting to be called by you. *(Clapping from Hon. Delegates)*. It was a promise, which must be kept. Thank you.

Hon. Delegate Oduor Ong'wen: Thank you Madam Chair. My names are Oduor Ong'wen representing NGO community, number 459. Madam Chair, first of all I want us to be able to recognize a principle, and the principle is that we know that when you enjoy absolute power, it becomes very difficult to let go. I have been following the debate

on Affirmative Action and I get assent that we men, because of the power we have enjoyed for a long period of time, it is quite shameful for some of us to let go.

Clapping from Hon. Delegates.

Madam Chair, we even go to the extent of selectively quoting from the Bible to try and entrench that position. If I might use the same, perhaps God realized that man would not be capable of making it alone and therefore needed the other sex for the purposes of making the world complete, and therefore women have held absolute power for this period of time. We do think that to make this power meaningful to serve everybody it is important that we bring in the other half not as a matter of favour, but as a matter of right.

Clapping from Hon. Delegates.

I, therefore, Mr. Chairman, fully support the provision for the Affirmative Action and do suggest that we go beyond what is already there.

Secondly, Mr. Chairman, I want to address the issue of funding of political parties. As my friend Honourable Delegate Mghanga did say, political parties are founded on the basis of ideology, principle and international solidarity and therefore restricting the funding of political parties might sometimes undermine the enhancement of those ideological orientations. But I am also aware, Mr. Chairman, that maybe there was a move to safeguard foreign interest controlling our politics; therefore it is important that we are able to strike a balance and the balance we should be able to strike is that every political party should be able to declare their sources of funding so that we are able at least to keep out agenda that might be detrimental to the fundamental interest of this country.

Madam Chair, there was a hypothetical question here that women might refuse to join particular parties and therefore they might not have women on their party lists. I think that the Affirmative Action should begin at party level. If you can form a party where

more than half of the society is reluctant to join and therefore you cannot be able to find people to join it, then that kind of party has no business taking part in our political development. Thank you.

Hon. Delegate Atsango Chesoni: Thank you. Honourable Delegate number 498.

Hon. Delegate Maria Nzomo: Thank you Madam Chair, my name is Maria Nzomo, I am Delegate number 498 representing Women's Organizations. I had wanted to talk on the issue of Affirmative Action, but now all I can say is that I strongly support all those who have spoken very well in support of the Affirmative Action and I don't think there is much more to be said about it, except to urge those who are still not supporting it. I imagine they really are not thinking very differently, maybe they had not understood but now things have been so well-explained by very able speakers here. I am sure even before we leave this place tonight they will all have joined us, so that issue will be behind us and then we can move on to other matters.

Clapping from Hon. Delegates.

Having said that Madam Chair, I would also like to say that we need to be careful and I support the idea that we shouldn't get into too many details in this Constitution because a Constitution is really a statement of basic principles and not a legislation; legislations are the ones that spell out the details.

On the other hand, I think we can and in doing so be so brief as to be so vague as to leave a lot of space for manipulation of certain clauses at the level of legislation. So there must be certain fundamental statements that must be made within the Constitution. And I beg to disagree in this regard with a Delegate who said for example that going to the details of percentages on representation is a detail that can be put in a subsidiary legislation.

I would like to propose that this is not a detail, it is a principle. I think especially the principle of a minimum one-third representation has to be a principle not something to be put in a legislation whether principle or subsidiary.

I would also like to add in that regard Madam Chair if you allow me this section which has been referred to by a lot of Delegates. Just in way of improving the way it is presented here, this is Section, I believe, 76 and this is 3, 5 and 6, especially 5 and 6. I would like to propose there, in order to remove the fairness vagueness associated with the use of the word "fair" especially, and one Delegate appointed to that, if we could say under Sub-section 5, where it says elections shall ensure the fair representation of the people. We state that elections shall ensure equality of representation of both men and women as the principle element when we talk about people.

And then the following Article which talks about women, the disabled and minority. I think we should remove women from there because in my view once you start lumping women with the disabled and minorities, very soon people will assume that every woman is in that category and I think the disabled have a right to be respected as a category on their own and minorities. Women and men as members of society are the two principle agents that make our society as they are in that regard. So I would propose that Article be reworded to actually address issues of minorities, the marginalized and so on.

On the establishment of the Electoral Commission, Madam Chair, there is the provision for the various structures under the Commission. There is the position of the chairperson and other positions. I would like to propose in this regard, Madam Chair, where it says that the Commission shall elect a Vice Chairperson, that we add it there just to ensure again the principle is followed the principle of equality that we elect a Vice Chairperson not from just among its members, but from among the members of the opposite gender. That is to ensure that if the Chairperson is a woman then the Vice Chair becomes a man.

Finally, Madam Chair, on the issue of Political Parties and I think this is my last point. I would like to say that in fact we should not even be discussing this too much, because if

you look under Article 90, and that is where this principle is clearly stated in sub-section (b), it says that political parties would abide by the democratic principles of governance and that it would also promote respect of human rights and gender equality. Once you have said that, then you have to be consistent with all the principles within political parties that have to do with that and that is the issues of representation of the people including women.

So I think we need to see all these in totality in order to appreciate and that is I think what all of us are talking about: ensuring that we are consistent with the principles we are talking about and not forget that we only agreed on basic principles within the Bill of Rights and when we are also talking about the National Goals and Principles. Thank you very much Madam Chair.

Hon. Delegate Atsango Chesoni: Thank you. We are going to go for tea break, I will consult with other persons regarding the issue of Political Parties and I will give the ruling after tea break. We are coming back from tea break in half an hour, at 4.30 we should be back please.

Hon. Delegate Atsango Chesoni: Honourable Delegates, I would like you to be seated so that we can begin again. We have quiet a substantive matter to pursue on several categories of Delegates who had wanted to raise concerns.

Hon. Delegate Atsango Chesoni: Honourable Delegates, yes, delegate number 544. Please state your name and delegate number as well as category.

Hon. Delegate Rupinder Singh Sehmi: Honourable Madam Chair, thank you very much for giving me the opportunity to speak. My name is Rupinder Singh Sehmi, representing Religious Groups. There are a few articles on which I wish to put forward these comments. The first one is article 76 and I will take it along with article number 77. Article 7 (6) talks about elections ensuring fair representation of women, the disabled and minorities.

If you go over to 77(2c), it talks about ethnic minorities. This seems to cause certain confusion as to whether or not these two expressions, “minorities and ethnic minorities are mutually exclusive and whether they are not”. If the intension is that it was meant to be ethnic minorities in both sub-articles, then either we should have the word ethnic included in sub-article (6) of 76 or, we exclude the word ethnic all together, that is my first comment.

The second comment relates to article 85, that is the staff of the Electoral Commission. This stipulates that the Public Service Commission shall have to concentrate in the Electoral Commission, appoint the officers and employees the Commission. I respectfully feel that this is (inaudible) of the independence of the Electoral Commission of Kenya and that it gives the Executive an opening to influence the appointments to ECK.

My third comment relates to article 94 (1b) which is about the sources of funds. It talks of contributions, donations to fund from any other source. I seem to feel that this is open to abuse because there could be interests, which by donations or by funding the political parties may wish to promote their own agenda. And I suggest that we should introduce more checks and guides, inspect the sources than we are done under 96 (3). These are my comments, thank you very much.

Hon. Delegate Atsango Chesoni: Thank you Honourable Delegate number 455 please.

Hon. Delegate Lawrence Murugu Mute: Thank you Madam Chair, if you may allow me Madam Chair, I want to refer Delegates to some of the things which were happening last year. My name is Lawrence Mute, I come from the NGO sector that is, the persons with disability caucus. I want to refer Honourable Delegates to what was happening last year. If you recall the nominations for people who wanted to stand as Candidates in the elections from all the parties, if you can recall there was a lot of excitement, a lot of campaigning and people were carousing and others were stealing certificates and all that.

Now, if you look at article 95 and perhaps cross-refer it with article 99, I am very skeptical that within that context of last year, Political Parties as a purpose would have been able to be good civic educators. So that I think that in terms of purpose, although I agree that Political Parties have a role in terms of educating the public. I think it is blurring of issues if we are saying that Political Parties should use public funds for purposes of Civic Education. I think perhaps the Electoral Commission or other more or less excitable institutions at that time should have this purpose and money should not be used for that, managed by Political Parties, that is for Civic Education.

Secondly, if you recall what was happening a couple of months ago, after the election there was a lot of lobbying for nomination of the 12 MPs and of course we were very happy that we were told and indeed it happened that different Political Parties nominated a majority of women. I do know at that time people with disabilities were told that, 'actually we are not able right now to nominate you, wait for the new Constitution'. Basically, I think the idea was that 'your time for eating is not now'. Now people with disabilities don't want to eat what is not theirs, they only want to eat their fair share. Our skepticism with what is provided in Draft Constitution right now for example viz-a-viz proportional representation is that if you leave any discretion at all with Political Parties to decide what is fair, then we are very likely going to be at the bottom. And the language, which is used currently in Draft Constitution, is not tight enough. At the same time I listened to the contributions this afternoon and I must commend the Honourable Delegate Martha Karua, because for the first time and particularly coming from a Delegate who was a female, if I could say so. She actually stated very clearly that it is not just affirmative action, because we make a mistake, it is not about women. First of all we must establish the principle very clearly, not linking it with anything as a principle, because it is about correcting imbalance and then after that now we can begin asking what groups are we talking about, which are disadvantaged. I think fellow delegates, I support affirmative action because it is necessary for women and it is also necessary for people with disabilities. For goodness sake, let us not just think about one sector when we are talking about these things. Thank you very much.

Hon. Delegate Atsango Chesoni: Thank you, during the break, I received some clarification from the Political Parties. I would like to apologize to the Political Parties for having distinguished between Parliamentary and Non-parliamentary Political Parties. Therefore, in this section we will be taking remarks from both Parliamentary and Non-parliamentary Political Parties.

Secondly, I am going to take four representations from representatives of Political Parties. So at this point in time, I would like to request only representatives from Political Parties before I continue with the rest. Only representatives from Political Parties to please put up their cards so that I can pick four of you. I am going to take delegate number 614, delegate number 587, delegate number 615 and delegate number 593. I will come back again if there is some space later. So in that order please.

Hon. Delegate Dalmas Otieno: Thank you, Madam Chair; my name is Dalmas Otieno representing KANU. Madam Chair, first of all I would like to say that I support affirmative action and that to me affirmative action must be affirmative. And affirmative action to me means that there must not be any risk of failure. So, affirmative action as regards to women, the objective is not to give them practice in being Parliamentary candidates. The objective is to get them in the House so that we benefit from their ideas right where it matters. So, as regards to women, I would propose that we are more definite than we are as of now. We should agree on the number of women we should have in that House and the Electoral Commission should get the boundaries to ensure that we have that number. If it is one hundred, we should carve out hundred constituencies for women on the basis that fair constituencies will be distributed throughout the country and let us guarantee that we have hundred women in the House.

As regards to people with disabilities and similarly the minorities, we should be very definite when we talk about affirmative action. We should have clear seats marked for those with disabilities and it should be known that they will be contested by those with disabilities. The voters for those seats are known and can be kept in those registers.

Madam Chair, there is a problem with the minority they should be distributed throughout the country and let us guarantee that we have a hundred women in the house. As regards people with disabilities, similarly the minority, we should be very definite when we talk of Affirmative Action. We should have clear seats marked for those with disabilities and it should be known they will be contested by those with disabilities and the voters for those seats are known and can be kept in those registers.

Madam Chair, there is a problem with the minority. This gives me difficulty with MMPR. Effectively, at the time of elections, Parties will go for votes, we cannot cheat you otherwise. Going for votes means the bulk of those Party lists will be targeting voting centers. The effect of this will be to further marginalize the sparsely populated areas of this country. As far as I know, representation means communication with the grassroots Kenyans, so that their ideas may reach the national fora for decision-making. It is the derogatory therefore, for anybody to say that we don't represent stones or rivers or such other things. We are representing people; that the MP must have an opportunity to communicate and be in communication with the people represented. If you take Embakasi with 132,000 voters, Kiss 100 they listen to it, FM what they listen to it, TV what they listen to it. The MP can call a rally within two minutes and he has 20,000 people listening to him. Somebody from the sparsely populated areas has to travel distances to be able to communicate with his or her people and that way get their feelings incorporated in national decision-making.

As regards the funding of Parties, I believe we fund Parties for purposes of policy formulation and implementation. We should fund Parties for that purpose. We must not mix up Party funding with Affirmative Action. For that reason, I would rather we propose that 50% of the money is given to Parties in proportion to the votes they acquire. The second 50% should be divided into 25%, given to those Parties equally, so long as they have 5% of the National vote. The remaining 25% of the fund should be credited to an Affirmative Action fund for the purpose of promoting Affirmative Action in the country. In other words, for a Party to access the Affirmative Action fund from the Electoral Commission managing that fund, the Party must make a proposal indicating how they are

going to use that fund to promote one of the Affirmative Action sectors. One, are you going to do civic education among women? What are you going to do as a Party that will promote women's political activity in the country, before you are given access to any funding from the Affirmative Action fund?

Similarly, if you are going to do something for people with disability or for the minority, make the proposal before you can be allowed to access the Affirmative Action fund which takes 25%; thank you madam.

Hon. Delegate Atsango Chesoni: Thank you. Honourable Delegate number 6, okay 587, and then 615 please.

Hon. Delegate Caroline Wambui Ng'ang'a: Thank you madam Chairperson for giving me this opportunity. I want to commend the method, which you introduced of calling people, because it had appeared that some people came to bring others here, because they were not getting a chance to speak from the time they came here. That system seems to be working well and I request we continue with that system, so that nobody is left out; thank you. My name is Caroline Wambui Ng'ang'a, Delegate number 587, representing Political Parties, ... Labour Party of Kenya.

I want to make a contribution on the sources of funding for Political Parties. Article number 96(5) where it says, 'A person who is not a citizen should not make contribution.' First of all, I want to say it contradicts Article 94, which says (b), 'that contributions and donations to the funds come from any other source.' So for that to be valid, then we cannot rule out the other people who are helping.

Secondly, I want to say in Article number 88 we have talked about the role of the Political Parties therefore, we are saying they have got so many roles to perform and they should not be left to get membership funds and contribution that are not sufficient.

I want to make a contribution from Article number 84, functions of the Electoral Commission. (g), it says, 'The settlement of Electoral disputes.' I propose that we add that, 'including power to prosecute election offenders.' A lot of times the ECK say they have found elections unfair and not free but they tell us that their hands are tied. So we need to untie their hands, so that if we give them power, we give them power also to prosecute.

Article number 95, 'The purpose of the funds,' I am saying, that number three, sub-article 3 should remain the way it is; because if we remove that, we are saying that the Political Parties, who are very popular with leaving out women, will continue to leave out women. Because money in this country touches the heart of everybody, when they hear they will not get the money, then they are sure to nominate the women and the marginalized groups. So I propose that, that one remains.

In Chapter 3, we had also talked about, I'm not taking you back but I'm saying, for the State to implement the one third principle in all elective and appointive bodies, then it is imperative that we implement the Affirmative Action. In section number 77 on elections; 1(b) -nomination of candidates-. I'm proposing that a provision be made that the law should allow voters to be given leave of absence from their working places, during nomination time. Because what happened, nomination is viewed just as a small exercise and therefore, a lot of people are denied leave by their employers to go and exercise this very important function of nominating a candidate of their choice.

Then, under Article number 8, Voting: I propose we include number (d) to read as follows -during the last elections, people were being registered away from their Constituencies and I thought it worked well. Therefore I am proposing - because a lot of times, during election time it rains - we should put a provision which reads that, "the Electoral Commission of Kenya shall make provision for the voters to vote in leaders of their Constituencies from their areas of residence." What I am saying is this, if I reside in Nairobi and I want to vote Caroline Wambui Ng'ang'a from Lari constituency, then I don't have to go there. Just as I was able to register from Nairobi, then there should be a

provision to allow me to vote here, so that the exercise becomes less expensive. We find a lot of Kenyans are not making use of their right to vote because they are hampered by lack of funds among other things. Thank you Chairperson.

Hon. Delegate Atsango Chesoni: Thank you. Honourable Delegate number 615 please.

Hon. Delegate George Omari Nyamweya: Thank you very much Chairlady. My name is George Omari Nyamweya representing Political Parties, -the Democratic Party of Kenya. I think I have mentioned here that, as you are aware, the ruling Party NARC in fact is not represented in the sense that it never was part of the process to begin with, but that is something else. I wish to begin with --madam Chairlady, that when we were writing the Constitution, I know the mood was very very hostile last year and the attitude we took and the approach was perhaps based in a little bit of anger and a bit may be of expectation and hope. Perhaps now that we are here and transition has taken place, we need to reflect a bit more soberly about what it is we are doing. I believe, at the moment, like looking at the representation of the people, this particular chapter is too detailed. We are going to create a Supreme Court; I believe we are, many of these things, if a dispute arises, will have necessarily to go to the Supreme Court. That Supreme Court will have nothing else to do other than trying to interpret this. I would agree with the Honourable Delegate Raila Odinga that some of these chapters or some of these aspects, we can actually take them to Parliament for detailed legislation, so that we concentrate on the principles which we want to give to the Kenyan people.

Madam Chair, you will see that we are talking here about The Provincial Council. This Council I take it is based on the current Provincial boundaries. We are saying we are going to eliminate, very quickly, the Provincial Administration. So if we are going to get rid of the Provincial Administration, the Provincial boundaries, how then is it we are now legislating for a Provincial council? I think we will be better off going direct to the districts and we forget about the Provinces. I think that is where we need to look at where our representation is. If we are trying to get nearer to the people, we also don't want huge Provinces like Rift Valley ...

Interjection. Hon. Delegate Atsango Chesoni: Hon. Delegate, please reserve your comments for Chapter 6 issues; you will have another opportunity to contribute to chapter seven issues.

Hon. Delegate George Omari Nyamweya: I see this is included here, 77 Madam Chair. It is there; it is not that I 'm plucking it from the other place. If I may also mention then, registration of voters: it is one thing we have always been advocating that once a person is 18, combines the ID and electors card into one, they have the same details. So that when the person is 18, they get that card straight away, it serves both purposes. I think that will be very useful. That is the National ID we are talking about Madam Chair.

Allow me also Madam Chair to comment on proportional representation. The very idea of these 90 seats, these additional seats, I think here that the mischief we are trying to create -please let us be very honest-, there are some Constituencies, which in terms of the people who are there are very small. There are Constituencies, which are very large in terms of numbers of human beings; but also here we are trying to say that there are people who cannot compete effectively. I believe that at least at The Democratic Party, when we were presenting our views, we were aiming to use these 90, in fact our initial figure was 105, to address that disparity; to address those women who were not able to deal with this; to address the disabled persons. If you actually put it as a list before elections, you will be able to show what percentage you have as a Party. Show the minorities, the marginalized, the disabled, the women and so on. This is a position I concur with the Honourable Delegate Martha Karua, she captured what it is that we actually had in mind. I would urge you to look at it that way, so that when we are dealing with our people, those who have had the disadvantages historically, let's not categorize them that these are women, these are disabled, these are this, these are all our people who have had a disadvantage; so we are very very strongly in favour of Affirmative Action. Affirmative Action in that sense, to give our people a chance to progress, to come up on average, so that we have a Nation which is equal, where we treat each other very fairly.

Now Madam Chair, I should also comment on the Electoral Commission. I agree that its size should be reduced and its independence enhanced. One of the things when enhancing

it is: to give it the ability to fund itself, to recruit its own staff, and to have its own program. So I would disagree that we should try and tie it up with the Public Service Commission. Perhaps before I sit Madam Chair, there is a Political Party funding - after all I do represent a Political Party- the mischief here we were trying to get rid of, was to avoid a situation where we have briefcase Parties. We were also avoiding a situation where one or two people Lord it over a Party because they are the ones who are funding it. So you get public funding, you are actually addressing a situation where no one person or a group of people can control and run the affairs of the Party as dictators because they contribute the money. I think this is the spirit we are trying to capture here and to avoid that, let the parties perform, be paid or receive dividends on the basis of that performance.

Finally, Madam Chair, because I need a clarification here, just a clarification from the presenters. You are talking about the President not holding a Political Party office; but here we are also saying we are going to create an office of Prime Minister. A Prime Minister who shall be the leader of the Party with the largest majority or coalition of Parties in Parliament, if we now eliminate the politicians, the Members of Parliament from being leaders of those Parties, how in heaven's name are we going to be able to select who should be Prime Minister, who should be elected Prime Minister or President?

Hon. Delegate Atsango Chesoni: That is under the Executive.

Hon. Delegate George Omari Nyamweya: I think there is a case that we need to look at. It is also in this chapter. We need a clarification on what we are talking about, who is restricted from holding Political Party office. Thank you very much.

Hon. Delegate Atsango Chesoni: Honourable Delegate number 693, after which I am going to be taking two representatives from the Trade Unions, so please prepare yourselves.

Hon. Delegate Winston Odhiambo (603): Hallo, thank you very much Madam Chairperson. My name is Winston Ogulla Odhiambo, the founder, Chairman of Federal

Party of Kenya, founder of ...(Inaudible) philosophy and founder of democratic harmonization. I held my hand about a Political Party, and I wish to talk with the chairperson, and I'm a head of a Party, working too hard and the only one doing civic education even now here, ...(Interjection. Inaudible). What is out of order is mentioning certain Political Parties and I was the first to put up my hand, then Trade Unions are fixed there, and this is a purely political meeting and I don't want to be marginalized. In any case, I am also an old man. There also I feel marginalized.

Interjection. Hon. Delegate Atsango Chesoni: Honourable Delegate I'm going to request that you please sit down. Honourable Delegate please sit down. Thank you. Honourable Delegate number 593 please.

Hon. Delegate Gervase A. Akhwabi: Honourable Chairperson, Honourable Delegates, my name is G. B. K. Akhwabi, number 593 representing FORD Kenya. Honourable Delegates, we came here to try and bring our differences to narrow to be able to select who should be Prime Minister, whom we should elected Prime Minister or President.

Hon. Delegate Atsango Chesoni: That is under the Executive.

Hon. Delegate Gersave A. Akhwabi: I think there is a case that this is also in this chapter, they need clarification on what we are talking about, who is restricted from holding political party office. Thank you very much.

Hon. Delegate Atsango Chesoni: Thank you. Honourable Delegate number 693, after which I am going to be taking two representatives from the Trade Unions, so please prepare yourselves. Yes.

Hon. Delegate Winston Ogola Adhiambo: Thank you very much, Madam Chairperson. My name is Winston Ogola Adhimbo, the founder Chairman of Federal Party of Kenya, founder of. ...(Inaudible) Philosophy and founder of Democratic Harmonization.
(Applause)

I held my hand about political parties and I even talked to the Chairperson. I am a head of a party working too hard and the only one doing Civic Education even at the moment. No party is doing this..

Hon. Delegate Atsango Chesoni: Excuse me Honourable Delegates, what is the point of order please?

Hon. Delegate Winston Ogola Adhiambo: What is out of order is mentioning certain political parties and I was the first to put up my hand, then trade unions are fixed inside there and this is purely political meeting and I don't want to be marginalized. In any case I am also a old man, they are also being marginalized.

Hon. Delegate Atsango Chesoni: Honourable Delegate, I am going to request that you please sit down. Thank you. Honourable Delegate number 593 please.

Hon. Delegate Gervase Akhwabi: Honourable Chairperson, Honourable Delegates, my name is G. B. K. Akhwabi, number 593 representing Ford Kenya. Honourable Delegates, we came here to try and narrow our differences. To try and create a society that is going to be governed by a Constitution that reflects our collective thinking, our collective aspiration. And I think that it is appropriate for me as the Secretary for Legal and Constitutional Affairs of Ford Kenya, to put forth Ford Kenya's position.

Ford Kenya since inception has always been for affirmative action and I stand here to confirm that position. That we support affirmative action for women, the women members of our society have been disadvantaged and yet they are the biggest contributors to the economy of this country. (*Applause*) Ant it is for that reason, that at Ford Kenya, a constituent member of NARC, we support the proposition that one third of all the candidates put forward for elections at all and any level should be women, at least one third. We also support the propositions that in the proportional representation, at least one third should be women. Indeed, in Ford Kenya our position is that half of that number should be women. But in implementing that affirmative policy, at Ford Kenya

we say that the women should also practice affirmative action as will men, so that at least a proportion, one third of the proportion assigned to women should consist of people with disabilities and, or, minorities. That is our position.

Secondly, Madam Chair, we have a number of reservations or comments that we wish to make with regard to the rest of the proposals in these two chapters.

One, we think that the government has no business regulating and stifling democracy in the political parties. We believe that it is the duty of the government to provide or the State to provide the broad principles of democratic practices in parties but, it should not go out of its way to try and run the political parties. And it is for this reason that we agree with what Honourable Raila Odinga said that there is too much in this draft or these proposals that should actually should be left to legislation. It should not be part of the Constitution. If you look at the provisions of the entire paragraph 77 and 79, they actually relate to details of what should be done and we think that this should be done by legislation, not the Constitution.

The same goes for matters touching on the Electoral Commission. The Electoral Commission should be independent. We have given a lot of details of what it should do, but we are not saying how independent it is going to be. I think independency should be enhanced rather than providing for the details that should be provided elsewhere.

Lastly, Madam Chairperson. We have these provisions relating to registration of voters. Article 77 (g) in my view appears to contradict what is stated in Article 78 to a very large extent. 77 (g) says, “the registration and voting by citizens who are outside Kenya’ That is, the matters that should be provided, but when you look at Article 79, people outside Kenya do not seem to be provided for. This may have been an omission and I would be grateful if that would also be taken care of.

Lastly, leadership and political parties. Rather a leader like a Prime Minister, ought to be the leader of a party that commands the majority. We cannot say that we exclude the

Prime Minister from leadership of a political party when we want him to have the majority support in Parliament that is the contradiction. Those are my comments, Madam Chair.

Hon. Delegate Atsango Chesoni: Thank you. I am going to request two representatives of Trade Unions, so only representatives of Trade Unions, please put up your cards. Okay, 438 please.

Hon. Delegate Leslie Mwachiro: Point of order.

Hon. Delegate Atsango Chesoni: I am taking Trade Unions please, two representatives of Trade Unions.

Hon. Delegate Leslie Mwachiro: Madam, point of order.

Hon. Delegate Atsango Chesoni: All right, point of order.

Hon. Delegate Lesley Mwachiro: Bibi Mwenyekiti, sina lamiki lakini tunataka usawa. Watu uliowachagua kuzungumza katika vyama vya kisiasa, wote wanatoka upande wa juu, chini hukutuangalia hata kidogo. Ikiwa mambo yataendelea namna hi,i utatuita wabaya bure na hali tumekuja hapa kama tunatafuta usawa kulingana na dhuluma tulivyopata kutoka serikali za Kenyatta na za Moi. Mimi nimeinua mkono tangu asubuhi mpaka saa hii, umeshamaliza vyama vya kisiasa na chama chetu ni chama ambacho kinaandika Kiswahili na hujatuita. Sijuhi tuseme nini sasa Bibi Mwenyekiti.

Hon. Delegate Daniel Rasugu: Point of order.

Hon. Delegate Atsango Chesoni: Yes, 576.

Hon. Delegate Simon Mwai Gakuya: I thank the Chair and fellow Honourable Delegates. I would like also to tell you about these non-parliamentary parties, because

you don't seem to know whether they are still around here. You are only taking the parliamentary those who are always there. They know how to discuss things there and we are here to discuss our own affairs also. Thank you.

Hon. Delegate Atsango Chesoni: Thank you. All right I would like to just say that I have not deliberately chosen any one particular constituency. Not being a member of the political parties, I would not be in a position to know which are parliamentary and which are not. I gave four positions to parliamentary parties, I am going to continue giving positions to the other categories. I am going to take your point of order after I am done with this. So I would like to please...

Interjection

Hon. Delegate: Point of order.

Hon. Delegate Atsango Chesoni: I am going to take the point of order, I am responding to the two points of orders that were raised.

Hon. Delegate: Reserved.

Hon. Delegate Daniel Mokaya Rasugu: Madam Chair with due respect, my name is Daniel Rasugu, Delegate number 579. I have raised my hand since Thursday, Friday to this day ...(*Murmurs from delegates*) and what I am asking... My point of order is, if you are not going to let us speak kindly, some of us will walk out of here in protest. So, I beg your Chair to let me contribute for political parties. Thank you Madam Chair, I would like to proceed. (*Murmurs*)

Hon. Delegate Atsango Chesoni: Honourable Delegates, just a minute. From all the points of orders raised it appears most of you want a chance to speak, isn't it?

Hon. Delegates: Yes.

Hon. Delegate Atsango Chesoni: Okay, I am prepared to continue this session until each one of you has spoken. Are you prepared to remain here? (*Murmurs*)

Hon. Delegate: Point of order.

Hon. Delegate Atsango Chesoni: Are you all prepared to remain here we continue with this session until we have all spoken?

Hon. Delegates: No.

Hon. Delegate Atsango Chesoni: Okay, what time do you want us to break?

Hon. Delegates: Now.

Hon. Delegate: Point of order.

Hon. Delegate Atsango Chesoni: My schedule to break this session is at six originally.

Hon. Delegate: Why are you avoiding me?

Hon. Delegate Atsango Chesoni: Okay, you have said you want to break, what time is it now?

Hon Delegate: 5.30 pm

Hon. Delegate Atsango Chesoni: 5.30 pm. It is 5.25 pm, if we are to break this session at 6.00 pm it means some of you won't be able to speak, but if you want I am prepared to continue even if it is up to midnight. Are you prepared to remain here?

Hon. Delegates: No.

Hon. Delegate: Point of order.

Hon. Delegate Atsango Chesoni: Kwa hivyo, wengine wenu mwataka mfahamu kwa nini ikiwa hamkupata nafasi ya kuzungumza. Waksi ni ule ule ukiwa mko tayari kama nilivyowaambia, nyote kila mmoja apate chance tuendeleni mpaka midnight sasa. Kwa hivyo, hatuwezi kuwapa nyinyi nyote, mtusamehe, mnaafhamu.

Hon. Delegate: Point of order.

Hon. Delegate John Cheruiyot: Thank you Madam Chair for giving me this ...

Hon. Delegate Atsango Chesoni: Sorry, Delegate number 438, I have given you the floor however, I need to take the points of order.

Hon. Delegate John Cheruiyot: Okay.

Hon. Delegate Atsango Chesoni: Honourable Delegate number 578.

(Murmurs from the delegates)

Hon. Delegate: What is the problem?

Hon. Delegate Atsango Chesoni: Honourable Delegate 578 please.

Hon. Delegate Jacob Ochino Ogundo: Thank you, Madam Chairperson. I am grateful that I have the opportunity to address the Conference on the chapter that we have been discussing since morning. Madam Chair, I would like first of all to plead with you, that when it comes to Trade Union Movements making contributions to this very important document, it is essential that the Honourable Delegates pay keen attention, because during the struggle for independence of this country, when our noble leaders had been arrested and confined into detention, had it not been because of the efficient and effective

representation of the Late Honourable Tom Mboya, using Labour Movement as a vehicle we would not have been independent today. So we cannot be marginalized when we have the opportunity also to express our points as Labour Movement in this Conference, please give us time.

Applause

Madam Chairperson, I also want to plead with you please, that since you started giving chances for people to talk, the Delegates....

Interjection

Hon. Delegate Atsango Chesoni: Please make your point of order.

Hon. Delegate Jacob Ochino Ogundo: I am not on a point of order.

Hon. Delegate Atsango Chesoni: Okay just hold on a second please. May I remind Honourable Delegates of regulation 39 (e), “while a Delegate is speaking all other Delegates shall be silent and not making unseemingly interruption.” Now, could we please allow the Delegate that has the floor to complete what he is saying, we will get chance to all of you. Thank you.

Hon. Delegate Jacob Ochino Ogundo: Thank you, Madam Chairperson. Madam Chair, I want to contribution on...

Hon. Delegate: ...(Inaudible)

Hon. Delegate Jacob Ochino Ogundo: My name is Jacob Ochino...

Hon. Delegate Atsango Chesoni: Are you making a point of order?

Hon. Delegate Jacob Ochino Ogundo: I am making a contribution on the document.

Hon. Delegate Atsango Chesoni: No, if it is a contribution for Trade Unions, I will take you when I start, let me just complete this.

Hon. Delegate Jacob Ochino Ogundo: I am one of them.

Hon. Delegate Atsango Chesoni: Yes, I have taken note of that. I will take you at that point in time. Honourable Delegate number 611 please.

Hon. Delegate John Nyakundi: Asante sana Mwenyekiti na Wajumbe Waheshimiwa wenzangu. Mimi kwa majina najulikana kama John Peter Nyakundi, nawakilisha vyama vya kisiasa na kutoka Kenya Social Congress. Waheshimiwa mlioko hapa wacha niwaambie, tumeteseka, tumeenda jela, mimi nimeenda Nyati House, nimeenda Nyayo House, hatutaki muda kuenda hivi kwa sababu ukweli hautakikani ndio sababu nimenyimwa nafasi mara nyingi sana kuongea hapa. Hata mwenzangu Mwandawiro Mganga ameenda Nyayo House, mimi nimeenda Nyati House na Nyayo House. Si ni vyema ningepewa nafasi niwaambie?

Basi sisi Wajumbe tuliohapa, tumechaguliwa na watu kuja kuwaakilisha hapa. Hatukuja kuomba, tumekuja kuwaakilisha watu hapa. Wacha niwaambie, tutawacha vitu vitatu; tamaa, ubinafsi na kutoona mbali. Tukiwacha vitu hivi, tutatengeneza Katiba iwe ya Wakenya. Mimi sitaki vizazi vijavyo vipate taabu vile tulipata. Mimi kwa upande wa vyama vya kisiasa ningerudia Chapter 5, kwa sababu tangu jana nimenyimwa nafasi kuongea juu ya utamaduni wetu ama...

Hon. Delegate Atsango Chesoni: What is the point of order please?

Hon. Delegate John Nyakundi: Sio point of order, ni ku-contribute yaani kutoa maoni.

Hon. Delegate Atsango Chesoni: No, I will not take a contribution.

Hon. Delegate John Nyakundi: Sura ya sita, mimi naongea kwa vyama vya kisiasa, nipe nafasi.

Hon. Delegate Atsango Chesoni: No, I will come back to political parties when there is an opportunity.

Hon. Delegate John Nyakundi: Umenipa, nipe hiyo dakika moja hata Vyama vya kisiasa.

Hon. Delegate Atsango Chesoni: No, I cannot do that because I have passed over other people, it is not fair.

Hon. Delegate John Nyakundi: Vyama vya kisiasa, wamevikoroga, vile tulipitisha pale Mayfair. Wamekoroga hawataki mimi niwaambie vile mambo yalivyokuwa, wameficha.

Hon. Delegate Atsango Chesoni: Thank you very much Honourable Delegate number 611.

Hon. Delegate John Nyakundi: Unasikia vile wananikoroga?

Hon. Delegate Atsango Chesoni: Honourable Delegate number 611, thank you very much.

Hon. Delegate John Nyakundi: Okay, asante sana.

Hon. Delegate Atsango Chesoni: I am sorry, I am not taking any more points of order. I am going to continue with the Trade Unions, Honourable Delegate number 438 you have the floor.

Hon. Delegate John Cheruiyot: Thank you very much, Madam Chair for giving me this opportunity. I would like to thank the Commissioners for presenting very ably, this

chapter which is very important. My name is John Cheruiyot, Delegate Number 438, from the Trade Unions. Madam Chair, I would like to begin by enlightening and thanking the member who has just spoken about the role of the Trade Unions in the liberation struggle of this country.

Uninterestingly, Madam Chair, I am drawing your attention to the elections Article 77 (C). When we say that 50% will be for other marginalized, disabled and other interested parties, we are actually deliberately omitting the trade unions. Trade Unions, Madam Chair, if I may enlighten the Honourable Delegates and I would like the Honourable Delegates to bear with us and support the course of the Trade Union Movement. In fact, already we have actually tabled a motion. Trade Unions, if I may just refresh your minds, is all the workers in the industry workers in the plantations, in sugar, tea, sisal, the teachers, the workers in Local Government, the civil servants, the dock workers and the domestic servants. All these are categorized as workers in this country and are producing and hold the will of the nation of this country of Kenya.

Honourable Delegates, we would like to think that the Trade Union should be given a definite slot in the Constitution. In Uganda and Tanzania there are ten and five Members of Parliament representing the Trade Union constituency. We would like therefore to highlight the role of the trade unions which should be recognized substantially in the Constitution. They should be recognized, we had Dennis Akumu who was one of the veterans and his loyalty was divided between the constituency and articulating the rights of the workers. We feel that this section should be given to the Trade Union completely. Madam Chair, I am appealing to you Honourable Delegates that, when the motion is brought to this distinguished Conference, please support the course of the Trade Union Movement.

The next small one is article 89 (i), the Registrar General. Commissioner Phoebe said that registration has been now moved from Registrar General to Electoral Commission of Kenya. I would have believed Madam Chair that this is an executive function and I don't

see anything wrong with the Registrar General registering any political party and handing it over for management and supervision to the Electoral Commission of Kenya.

The other one is also on the Public Service Commission, the staff of the Public Service Commission. I have a feeling Madam Chair that we are making Electoral Commission to be subordinate to the Public Service Commission. I don't see why we are having Public Service Commission to recruit members and hand them over to Electoral Commission of Kenya. The two are at par and therefore we should give the Electoral Commission of Kenya the right duty to recruit its staff and run independently.

The other one Madam Chair is article. (I beg your pardon Madam Chair).

The accounts of the political parties, Madam Chair, I agree that you give it to the Auditor General. But we have known the length of time that the Auditor General takes in actually auditing the accounts, and you will recall even Elmot Coll in Germany how he had a problem with party funds. I have a feeling that perhaps, we get a quicker way of auditing the party funds not just the Auditor General. That is my observation. Thank you Madam Chair.

Hon. Delegate Atsango Chesoni: Thank you. I am still taking one more representative of Trade Unions. Honourable Delegate number 443 please.

Hon. Delegate Roselinda Simiyu: Thank you very much Madam Chair, my names are Roselinda Simiyu from the Trade Unions. Madam Chair, as my brother has already said, we understand that we, the workers are the ones who run the economic will of this nation. Madam Chair, as it has already been said, is that as time goes on, the nation is forgetting that workers exist in this country. An example Madam Chair, I would like to give an example whereby, when Acts were brought to Parliament and just being passed. Whereby retrenchment could be done at the wish and the will of an employer. Madam Chair, that will be very dangerous for any nation that is considering its economic growth,

not to include the people who generate that economic growth into its policy-making organ.

Madam Chair, I would like to go to article 77, sub article 2 (b) that says, 50% of its candidates for proportional representation at public elections are women and remaining 50% to be distributed among persons with disability, the youth, ethnic minority and other interested groups. Madam Chair, I would like to point out that Trade Unions have to be given a slot as a very very important member of this country. And Madam Chair, what we don't understand is that this list that shall be submitted, it has to be submitted by a political party. Madam Chair, why are we pegging the representation in Parliament on political parties? Madam Chair, I feel that if a political party has to come up with a list then where is the democracy? Because we are talking about democracy! Madam Chair, because some of us represent groups that do not peg themselves on any political affiliation and we are strongly feeling that there is need for our voices, for those people who don't have any political parties to be heard and to be represented in Parliament Madam Chair. So, we feel that the MMP version will not auger very well. We need to come up and clearly state that if a third of the seats have to go to the women then a certain number, we have to define what we are talking about when we talk of the minority groups. If we say these will be allocated to the Trade Unions, these to persons with disability, these to the youth ,so that we have a clear understanding of where we are slotting what.

Madam Chair, on affirmative action, I would like to say that section 77 (ii) A, should be amended and read that; "a political party shall ensure that at least a third of the representatives from direct elections are women", because Madam Chair, if you talk about the candidature, there is a likelihood that some of them might not make it there, but if we put it that, "any political party has to make sure that a third of its representatives are women", we are sure that we are going to have women there. Thank you very much Madam Chair.

Applause

Hon. Delegate Atsango Chesoni: Thank you. I am now going to take representations from professionals. Two representations from professionals, okay, Delegate number 475, please.

Hon. Delegate Anne Wairimu Njogu: Thank you, Madam Chair. At the very onset, I would like to commend you very much that I think you have handled this Conference chairing today in a most dignified manner. (*Applause*)

Hon. Delegate Atsango Chesoni: Thank you.

Hon. Delegate Anne Wairimu Njogu: And that quite a number of people from various sections have been able to present their observations. I would also like to salute all the delegates who have applauded or supported the affirmative action. In saying so, I would like to take the Delegates back to our preamble.

Interjection

Hon. Delegate: ...(Inaudible)

Hon. Delegate Anne Wairimu Njogu: I beg your pardon Honourable Delegates, I am Anne Njogu, Delegate number 475 from the professional society. Thank you very much.

I was saying that I applaud all the Delegates who have supported the affirmative action and in saying so, I would like to take you to the preamble of our draft Constitution.

Hon. Delegate Atsango Chesoni: Please restrict your remarks to the....

Hon. Delegate Anne Wairimu Njogu: Under the preamble in paragraph three, “recognizing the aspirations of our women and men, for a government based on the essential values of freedom, democracy, social justice and the rule of law”. Social justice is one of the messages, I mean affirmative action is one of the social justice messages that

a country like ours can take to redress the various biases that have gone on in our country vis a vis women and the other marginalized groups. I would like to say that, in seeking gender equity that guarantees that women and the other marginalized groups are supported through legal reform and social practice, to overcome both obstacles that were previously put on their route, we need to have and to support the affirmative action.

I would also like to comment on Article number 80 vis a vis registration of voters. I would say that the bankrupt, or people who have been judged bankrupt, should not be given the right to vote unless and until they have been discharged as bankrupt.

I would also like to comment on Article 95, sub section (iii) vis a vis allocation or funding of political parties. Madam Chair I do conceive that, unless all the political parties are given to see what is in need for them indeed, then in this shall we not be able to support the issues of Affirmative Action and thereby I do support the proviso therein. I would also like to support the issue as articulated by another Honourable Delegate, there is funding of political parties that we must seek to ensure that we do not end up utilizing public funds to finance briefcase political parties.

Hon. Delegate Atsango Chesoni: Thank you. Honourable Delegate number 483 please.

Hon. Delegate Saleh Faad Yahya: Asante sana. I am Faad Yahya Delegate number 483 representing the professionals. The few comments some of them in general nature and some more specific. Now the first is that we have had time and again this morning and this afternoon that the representation is not about numbers it is more than numbers. Delegates or rather our Parliamentarians seek to represent cultures, languages, and religious environment. They represent the word and the richness of the diversity of this country. Therefore proposing a representation will seem to be appropriate to me, however the actual point has not been properly explained to Delegates and to the population, its therefore necessary for the commission to find the way in which that particular proposal can be presented much better so that it is better understood by everybody, because at

moment people confuse professional representation with nominations which is encouraged.

Second Madam Chair is that when we elect leaders we must make sure that representation is quality representation. The question of quality is very important because not all leaders, not all representation have the same caliber; some are more clever than others. But what is really important is that access to data and to facts about the constituency is not uniformly available. I have been approached several times in by research and consultancy capacities, by Parliamentarians who wanted me to assist them with collecting, and analyzing data on their constituencies. Simple data population, environment, infrastructure and so on, now many representatives are not able to conceptualize that kind of data and unfortunately they are not provided with researchers, it is most important that our representatives are provided with researchers.

In that point Madam Chair is that if you look at article 76, seven we talk of political interference in the Electoral Process but in past the interference come from the states so we must mention that state interference will also be excluded. Then I don't see why under article 83, (4), the chairmen of Electoral Commission should be a person qualified to be a judge, it is not a judicial position, it is a management position so somebody who is superior sufficiently say and experience for example in management in business, in public administration, in political science should eligible.

Now on the question of boundaries, one of the criteria is census....

Interjection – Bell rings

I will finish in a minute Madam. Now the census as we know in the past has been notoriously deficient in Kenya. We want to make sure that census will not be manipulated unfortunately I noticed that the post of Director of statistics is a Constitutional post. Thank you very much Madam Chair.

Clapping from Hon Delegates.

Hon. Delegate Atsango Chesoni: Okay, Honourable Delegates, I had received the request earlier regarding the time allowed for this session, because we still have a number of people who want to speak. It is now quarter to six, I have not yet taken representation from any one who represents special interest group, let alone the fact that various other constituencies to feel that the amount of time allowed to them was not adequate.

So with your permission can we go on for another quarter of an hour?

Murmuring from Hon. Delegates.

All right, what I will do then is I will take one representation from special interest groups please. Special interest groups please and then after that I will take one from Religious Organization and two more from the political parties, okay. All right so special interest group could we have one representative from special interest group please, and could you please be somebody who has not spoken before.

Special interest group please. Special interest group falls in the categories of 617 through to 629. Any one here from that category? Okay I will go to 599 from political parties please.

Hon. Delegate Leslie Betawa Mwachiro: Kwa jina ni Leslie Betawa Mwachiro wa chama cha Majimbo na Mwangaza na pia ningeomba nizungumze kwa niaba ya Shirikisho. Kwanza kabisa asante sana Bibi Mwenyekiti.

Nataka kuzungumzia kuhusu namba sabini na nane na sabini na tisa, umri wa kupiga kura. Imeandikwa ni miaka kumi na nane, lakini tunajua ya kwamba umri wa chini kabisa wa msichana kukubaliwa ama kuruhushiwa kujuana kingono, yaani sexual consect ni miaka kumi na sita. Ikiwa msichana wa miaka kumi na sita aweza kuruhushiwa kuzaa awe mama, kwa nini asiruhusiwe kupiga kura.

Clapping from Hon. Delegates.

La pili, lakini sheria ndivyo anavyosema kwamba msichana wa miaka kumi na sita ako huru kufanya mapenzi.

La pili Bibi Mwenyekiti ni mambo yaliyozungumzwa na Commissioner Kangu. Commissioner Kangu alijaribu kufafanua kuhusu watu na raia lakini kuna maneno mengine matatu yanataka kuongezwa katika hii Katiba, Mwananchi na Mwenyenchi. Mwananchi ni yule ambaye amepata urai, lakini Mwenyenchi ni yule mzalendo ambaye ana haki ya kumiliki nchi hii ya Kenya, hao ndio wenye nchi. Na tunasema Katiba ambayo itaangalia maslahi ya wenyenchi kwanza halafu ndio wananchi nyuma. Kwa hivyo tunataka kusema hivi, wakati wa kupiga kura, wale ambao sio wenye nchi waruhusiwe kupiga kura tu lakini wasiruhusiwe kusimamia viti wachaguliwe.

Pili, wenye nchi ni wale ambao wemejitolea kwa hali na mali kwamba hao ni wenye nchi wa jimbo Fulani. Na kwamba kila mali yao yote wanayopata hawaipeleki jimbo lingine ila lile jimbo lile lile lao ndio hao wenye Nchi wa lile jimbo, kwamba hao wangukuwa wanaruhusiwa na kusimama na kuchaguliwa pamoja na kupiga kura, lakini wale ambao wamepelekwa kufanya kazi Mombasa Kilindini kwa nini asimame Kilindini achaguliwe kama Mjumbe wa Mombasa kuwakilisha watu wa Mombasa. Ni yule amekwenda kule kikazi, afanye kazi na akiwa anataka kujihusisha kisiasa achagwe wale wenyeji wa kule ambao anampendelea. Hapo nafikiri ingekuwa ndio bora zaidi.

Tatu, kuna wale watu ambao hawaruhusu wake zao, wato wao wa kike na madada zao kujihusisha katika mambo ya siasa. Kuna watu wengine msichana akisema anaenda mkutano wa siasa, haruhusiwi, hawa wanadhulumu akina mama ama watoto wa kike. Kwa hivyo mtu yeyote ambaye atakuwa anafanya jambo hilo adhibiwe kwa kupata kifungo kichopungua miezi mitatu.

Na lingine Bibi Mwenyekiti ni kwamba katika uchaguzi katika mamlaka, badala ya kusema ati thelathini 30% peke yake iwe ya akina mama, mimi ningeomba hivi.

Tunafanye hivi, mwaka huu mjumbe akiwa mwanamunme baada ya term mbili iwe ni lazima achaguliwe mwanamke katika sehemu hiyo, hiyo ndio itawezesha mwanamke siku moja kuwa Rais wa Kenya ikiwa tunazungumzia habari ya 30% ni siku gani mwanamke atachaguliwa kuwa President wa Kenya, ikiwa hatutasema akitoka mwanamume, awe mwanamke, akitoka Kibaki awe mwanamke President. Ama Rais akiwa mwanamume Prime Minister awe mwanamke.

La mwisho ni hili na viongozi wa wafanyikazi. Na maliza sasa, viongozi wa wafanyikazi wa mwaka wa tisini na tisini na moja wakina Mboya sio wa leo. Viongozi wafanyikazi maika miwili iliyopita tulikuwa tunaita migomo ya wafanyikazi na viongozi wa wafanyikazi waende kazini. Kwa hivyo viongozi wafanyikazi wa sasa kama akina Mboya, kina Juma Boy ambao walikuwa wanasimama kiume na wanasiasa, lakini viongozi wafanyikazi wa sasa tafadhalini tunajua wanarambaramba sana tunawaomba wasimame kiume. Asante Bi. Mwenyekiti.

Hon. Delegate Atsango Chesoni: Asante sana. Can I consult you please? Okay 346 please.

Hon. Delegate Cheruiyot Isaiah Kiplabet: Thank you Madam Chair. I would like to request you, you find that a quorum now is not enough. I think and the question you adjourn it until we come again tomorrow because of quorum.

Murmuring from Hon. Delegates.

Hon. Delegate Atsango Chesoni: Okay, the issue of quorum has been raised and I think we are in a situation where we are going to have to adjourn because we do not have sufficient quorum to continue with the discussion.

Prof. Yash Pal Ghai: If you ring the bell and after five minutes you have to follow the rules.

**PLENARY PROCEEDINGS, PRESENTATION OF DRAFT BILL,
CONTINUATION OF CHAPTER 6 – REPRESENTATION OF THE PEOPLE,
HELD AT THE BOMAS OF KENYA ON 13th MAY 2003**

**PRESENTATION OF DRAFT BILL: CHAPTER 6 - REPRESENTATION OF
THE PEOPLE (Cont. from 9th & 12th May 2003)**

Presenters: Com. Mutakha Kangu.
Com. Phoebe Asiyu.

Session Chairs: Hon. Dr. Godana Bonaya
Hon. Prof. Wangari Maathai

The meeting started at 10.00 a.m.

Prof. Yash Pal Ghai: I call the meeting to order, please take your seats so we can have the prayers.

Prof. Yash Pal Ghai: I would like to request Rev. Muchunga to please say prayers for us this morning and shall we all please stand for prayers. Okay.

Rev. Samuel Muchunga: Let us pray, Almighty God, the everlasting Father, Creator of heaven and earth, and everything that we see, God who was there, God who is there and God who will always be there, One God, with all the powers, with all the glory.

We bow our heads this morning with a lot of humility, thanking you for giving us this day, thanking you for giving us this forum, so that transact the business of this Conference, so that we can shape the destiny of this land, our land. We thank you for giving us this country, we thank

you for giving one another. Help us God to do what is needy, to glorify Thy name, and to care for one another.

Grant us good will so that we may see beyond our self-interest, we look for Kenya. Help us to be accommodative, help us to be patient and tolerant, so that we can do your will. Thank you God for everything. We have stood now this morning, to ask your permission to continue with this business, for we pray in Jesus name.

Delegates: Amen

Prof. Yash Pal Ghai: Thank you very much. Are there any delegates who have not sworn or affirmed and would like to do so now? If so will you please come here in front of me so that we can administer the Oath.

(Delegates moving in front to take the Oath)

Prof. Yash Pal Ghai: Would you like to take the Oath or Affirmation?

Hon. Delegates: Affirmation.

Prof. Yash Pal Ghai: Oath? Okay

Hon. Delegates: We are all believers.

Prof. Yash Pal Ghai: Do you all have copies of the Oath?

Hon. Delegates: Yes.

Prof. Yash Pal Ghai: So, I will ask you to repeat after me. You say, 'I', and then your name and then repeat after me and have your hands raised. So let us start. 'I', and then you repeat your name.

Hon. Delegates: I (their names).

Prof. Yash Pal Ghai: being appointed a delegate to the National Constitutional Conference,

Hon. Delegates: being appointed a delegate to the National Constitutional Conference,

Prof. Yash Pal Ghai: under the Constitution of Kenya Review Commission Act,

Hon. Delegates: under the Constitution of Kenya Review Commission Act,

Prof. Yash Pal Ghai: do solemnly swear,

Hon. Delegates: do solemnly swear,

Prof. Yash Pal Ghai: that I will faithfully and fully,

Hon. Delegates: that I will faithfully and fully,

Prof. Yash Pal Ghai: impartially and to the best of my ability,

Hon. Delegates: impartially and to the best of my ability

Prof. Yash Pal Ghai: discharge the trust,

Hon. Delegates: discharge the trust,

Prof. Yash Pal Ghai: and perform the functions,

Hon. Delegates: and perform the functions,

Prof. Yash Pal Ghai: and exercise the powers devolving upon me by virtue of this appointment,

Hon. Delegates: and exercise the powers devolving upon me by virtue of this appointment,

Prof. Yash Pal Ghai: without fear,

Hon. Delegates: without fear,

Prof. Yash Pal Ghai: favour,

Hon. Delegates: favour,

Prof. Yash Pal Ghai: bias,

Hon. Delegates: bias,

Prof. Yash Pal Ghai: affection,

Hon. Delegates: affection,

Prof. Yash Pal Ghai: ill-will,

Hon. Delegates: ill-will,

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Prof. Yash Pal Ghai: I welcome you to the Conference, please sign the Oath. We look forward to your contribution, thank you. Honourable Delegates, I have a few announcements, we had last week invited all the categories of honourable members to give us your nominations for the Technical Committees. We have received some names, but not all of the categories have given us the names. We are anxious to establish these working Committees as soon as possible. So could you please make sure that by the close of day today, we have received names from all of you? As you know the Media Advisory Committee has been established and the Steering Committee had the request of the Chair of the Media Advisory Committee, I was asked to announce that Delegates who have any particular points about the media which you would like to have discussed should, in the first place, give a notice of the complains or the suggestions to the Committee. The Committee will then examine it, bring it to the Steering Committee and then it will come to the Conference. So please in future deal, in the first instance, with the Chair or the Secretary of the Media Advisory Committee.

I think those are the two announcements I had wanted to make. You remember that we had hoped at the end of proceedings yesterday, to give sometime, a few minutes to the Chair of the Welfare Committee, Baldip Singh Rihal, to make a brief report on the work of this Committee and the recommendations that they have recommended which the Steering Committee has accepted. I am now going to ask him to please come to the microphone and make his statement.

Hon. Delegate Baldip Singh Rihal: Thank you Honourable Chairman. Honourable Delegates, let me first of all brief you on the slight changes we have made in this Plenary Hall for the comfort and welfare of the delegates. As you notice this morning, the seats have been shifted towards the right. We have brought all the Observers at this end of the Conference Hall and the delegates sitting now is up to that stair level. Delegates, this has been made in order to enable you to come into and get out of your seats with a little more comfort. Many of the Honourable Delegates are much bigger in size than I am, so we certainly need more room to move around. So please, there is no motive behind it, I have heard comments that this is being done for some political reasons. Please there is nothing like that, it is just to make your sitting comfortable. That is all please, thank you.

Now the Privileges, Discipline and Welfare Committee had several sessions of meetings yesterday and it considered various issues that had been raised by the honourable delegates. I am pleased to report, honourable delegates, that the report and recommendations on the various issues that had been raised were put to the Steering Committee for adoption. The Steering Committee did indeed adopt all the recommendations of the Welfare Committee and I have therefore been asked to make these statements to the Plenary session. The Committee addressed the two major concerns that had been raised by the honourable delegates and the first issue concerned the out-of-pocket allowances for the delegates who are resident in hotels.

And the second issue that is also connected with the hotels was about their accommodation and the type of meals they get in those hotels. On the issue of the allowances, honourable delegates, I am pleased to report that an acceptable and objective

solution has been reached on all the issues and the details of what we have agreed are being communicated to all the delegates to the provincial coordinators. With regard to the accommodation, this is a very difficult issue honourable delegates and the Committee would like to plead with all of you, please those who are resident in the hotels, that because the Commission had entered into contracts and arrangements with all the hotels where the delegates are placed in, it would be very difficult to break those contract mid-way, because it will create other serious financial implications.

So please, we want all honourable delegates to bear with us and stay in the hotels where you are and steps and actions are being taken by the Secretariat to make sure that the conditions in those hotels are made more comfortable and the type of meals that you are served with are made better and the type of food that you get is suitable to your palate. The Secretariat of the Commission has indeed written letters or are in the process of dispatching those letters to the hotels and they will have them today. So please we would like to urge delegates that we do not want delegates to come up with the idea that they would like to move out of the hotel and move else where.

As you all heard in the newspapers and also watched news on TV over the weekend, there was an incident in one of the hotels in the city. The Commission and indeed the Welfare Committee is very concerned about the security and welfare of the delegates. So please, we want you to remain where you are because the Commission has taken action in conjunction with the police authorities and also the hotels to make sure that more security arrangements are put in place in the hotels and police patrols are increased.

We have also decided, and I think that it has been implemented, that at least one member of my Committee, that is the Welfare Committee will be placed in each of the hotels where the delegates are resident. So I would like to request the delegates, please if you have any complains or issues you would like to raise about the hotel and the services you get there, please see the delegate who is a member of our Committee and he will be able to attend to these issues on the spot, then bring them here if we need to consider them at a higher level.

So, finally, honourable delegates, we want to thank you all for your patience and we want to urge that we now proceed with and focus on the core business of our Conference and devote all our energies towards producing a Draft Constitution that all the Kenyans have been yearning for. Thank you very much.

Prof. Yash Pal Ghai: Thank you very much. When we were debating the question of the representation as set out in the Report and in the Draft Constitution, we were unable to give the Presenters time to respond to the comments from the floor, because at that time when they were about to begin their response somebody discovered that we were not correct and then we had to adjourn. So what I suppose is that we give each of the two Presenters no more than ten minutes in which to make whatever remarks they have and then we shall move to the item on the Order Paper which is the discussion of the Report and the Draft Bill on the Legislature. At this stage I am going to pass the microphone to my colleague honourable Dr. Godana who will chair the session today together with Prof. Wangari, they will co-chair the debate on the Legislature. Thank you.

Hon. Delegate Samuel Macharia Muchuga: Mr. Chairman, I stand here to raise a point of order, which to me is very very important. We came here on 28th of last month and we have continued with our work. My name is Muchuga, Delegate number 226 from Nairobi. and there are some of the Delegates here who have never spoken, Mr. Chairman. Not because they did not want to speak, but because nobody has noticed them. No wonder, if you saw last night's TV news, some Delegates were seen to be sleeping through the session. Because they have been raising their hands from 28th of last month and nobody has ever noticed them. I personally, I have been raising my hands. I wanted to contribute on the Bill of Rights, that debate was closed while my hand was still up, from nine o'clock upto six. Then yesterday, I wanted to contribute on the Legislature and I was not given a chance. Mr. Chairman, I have seen Delegates here who have spoken almost everyday, and at times more than once a day. I don't want to mention names, but if you want me to give the names, I can.

Now, Mr. Chairman, it is not even difficult to ask who has not spoken since we came to this Conference?" this Constitution is not going to be made by 50 or 100 people, but by 600 people and everybody must be given a chance. Yet there are people who are repeatedly being asked to speak, making some Delegates tired, some even go and stand outside because they are not being noticed, a way must be found. It is not difficult to find out who has not spoken, rather than always jumping to one person. That is the point of order.

Prof. Yash Pal Ghai: Yes, Delegate number 99.

Hon. Delegate Boniface Mganga: Mr. Chairman, surely it may not be practically possible, my name is Boniface Mganga, MP for Voi, for everybody to have an opportunity to speak. But what I would like to say, Mr. Chairman, we being a God fearing Nation, the Honorable Delegate, the one who prayed this morning, prayed for peace and for unity and besieged God to guide this Conference. If you truly believe in what you are saying when you are praying, can we leave the hand of God to guide this Conference.

Prof. Yash Pal Ghai: We could not hear your last couple of words, could you repeat your last two sentences? We were not able to get what were you requesting us to do?

Hon. Delegate Boniface Mganga: My request was that, if he prayed for peace, he prayed for unity, he prayed for God to guide us, could the Delegate, the Honorable Delegate who is even wearing a collar, leave the hand of God to guide this Conference.

Prof. Yash Pal Ghai: Delegate number 599.

Hon. Delegate Leslie Betawa Mwachiro: Thank you Chair; 599, Leslie Betawa Mwachiro, Political Parties, Chama cha Majimbo na Mwangaza. Mr. Chair, I want to ...(inaudible) you allowed us an extra half a day to discuss the Bill of Rights or

Citizenship, can I propose now that you give us another half a day to continue debating the chapters which were raised yesterday. Thank you Chair.

Prof. Yash Pal Ghai: We have agreed with the program Committee that we will give the presenters of yesterday a few minutes to respond. Then we follow the order paper and start our debate on the executive. I am concerned about the previous speaker's remark, the original, about our inability to get everybody who wants to speak to speak. We started a procedure yesterday, which I am told went on very well. I was not able to be in this room for long yesterday whereby we called upon different categories of delegates. So, at least this method ensures that all categories of members have a chance to participate. I had also requested yesterday that those who have already spoken, perhaps should not be so eager to raise their numbers. They should ensure that others have a chance too. It is quite hard for the Chair to remember who spoke yesterday or the day before, perhaps we should keep a list of the numbers, and make sure that those who have not spoken so far, get opportunities from now onwards. I am sure the Chair will exercise his or her discretion to allow the widest possible participation.

I also mentioned that members who don't get a chance to speak could give us a written set of comments. I know this is not the best way, but we will make these written remarks part of the record of the relevant committees and so they will be available to all the members who wish to read them. with that, I turn the floor to Dr. Godana. Thank you for your corporation.

Hon. Delegate Dr. Bonaya Godana: Distinguished Delegates, I think we have a program which we have to follow. We have to manage time, and I think success will demand, give and take. I think we have already ventilated enough for the commencement period. I would wish that you allow us now with my Co-Chair Professor Wangari Maathai, to dispose of the initial part of this morning's business which is response, for ten minutes, by the presenters of yesterday. Please allow us to do that. May I now...

Interjection. Point of order from the floor: ...(inaudible).

Hon. Delegate Dr. Bonaya Godana: Really, I think I am not denying anybody a point of order, but I am also making a plea for understanding that we have got have a limit on points of order, then we have got to manage time. We have to go through with the business. I think the Chairman, the substantive Chairman of this Conference, Professor Ghai really allowed enough of you. Unless there is something affecting actual order at the Conference, I would wish that really, I plead with you to put down your hands and allow us to proceed. Okay, 355.

Hon. Delegate Michael Githu: Honorable Delegates, my names are Michael Githu, Delegate number 355. I also think the issue of the marginalized in this conference, through, I mean those who cannot speak, or those who have not spoken must be addressed on the floor of this house, because we risk going back to wherever we came from, with (inaudible) ideas, which is incorporated in this Constitution may as well add value to the Constitution. So, let us discuss that issue of addressing in this Constitutional Conference, Honorable Delegates.

Hon. Delegate Dr. Bonaya Godana: Thank you, I think I have to repeat what Professor Ghai has already made clear. We have taken note of the concerns of the Delegates who said they have tried to catch the Chair's eye, for the last few days and have been unable to. And we will try as much as possible to avoid the pitfalls by which, you know, we repeat calling on the same person or the same Constituency. We are doing everything to ensure that we give as many people as possible a chance. But you will accept that it is not possible on any single day, for even over three days or four days, to allow each and everyone of 629 delegates to take a position. And we are devising rules, guidelines on how we can actually appeal to you to allow at certain points, Delegates from particular categories or particular Constituencies, not to mention particular regions, to take the floor. We have taken note of your concerns. Please allow us to continue now. Mr. Mukangu, ... Honorable Phoebe Asiyo first.

Com. Hon. Phoebe Asiyo: I thank you, Mr. Chairman. Mr. Chairman, I will be very brief, because most of the comments that were made by Honorable Delegates on Chapter 6, from Article 76 to Article 100, did improve the chapter generally, and brought up new ideas that gave greater value to the electoral system and process, the Electoral Commission and part three of that chapter which dealt with the Political Parties.

Mr. Chairman, the establishment of the Electoral Commission drew many comments, with the majority of speakers suggesting that it should be a leaner Commission and that a Commission to be free to hire and fire its employees, and not the Public Service Commission. Many Delegates also welcomed the registration of Political Parties by the Electoral Commission. Others recommended that civic education by the Commission should be a continuous exercise, instead of the current practice of waiting until a few months to the general elections, before the Commission starts educating Kenyans. There suggestions also that the Commission should be autonomous and independent, and that it should not be manipulated or used by leaders or even the Executive.

On Political Parties, Mr. Chairman, it was suggested that most of what appears in the Draft Bill should be left for legislation by Parliament. Some said that the Government must not run Political Parties and that the provision in the Constitution on the legislation on Political Parties should be as flexible as possible.

On funding of Political Parties, many Delegates accepted the provision but said that Political Parties should be free to receive funds from anywhere, including outside this country. It was recommended that all civil servants should be barred from becoming officials of Political Parties. On the idea of independent candidates, it was actually recommended by some of the delegates.

A view was expressed that effective representation depends effective communication, the terrain of the area, and the geographical feature of Constituencies. And that it should be put in mind when the demarcations of the Constituency boundaries are carried out by the Electoral Commission.

On the MMP system of election, fears were expressed by some Delegates, that Political Parties could manipulate and enter only their friends in the Party lists. But these fears were discounted by those who spoke after these fears were expressed. A Member of Parliament suggested that what we need is a short and vague Constitution in order to give Parliament the rest of the work to do.

Mr. Chairman, Affirmative Action for not only women but also for people with disability as well as minority received widespread support from a cross section of the delegates who spoke. Honorable Martha Karua took time to explain in detail about what Affirmative Action really means.

Reduction of the age of voting to 16 years was also proposed for the purposes of voting. But this did not seem to receive support from many Delegates. Some Delegates had difficulties with provisions in Article 79 a Delegate from Kajiado argued that this provision will deny the indigenous communities their right to vote and stand for the elections, where as the bulk of residents come from outside those areas. I will end here, Mr. Chairman, and ask Commissioner Kangu to deal with the rest of the questions as well as comments that Honorable Delegates raised yesterday. I thank you.

Com. Mutakha Khangu: Honourable Delegates, I will not have much to say except to start by noting that a number of Honourable Delegates were of the view that there are a lot of details in the Drafts most of which would do better in supportive legislation. But I want to note that similarly, a number of the contributions made by members may also be details that may require to go into legislation. I agree that all that is good for our debate because when we finally pass this Constitution, and Parliament has to make legislation that should give effect to this Constitution, the proceedings of this Conference may become quite useful to Parliament, and therefore, it is reasonable that members should be able to discuss and raise some of those details to be used in future in that regard.

Now, a Delegate raised the issue of the Boundaries Commission being mandated to deal with not only constituency boundaries, but also wards for Local Authorities. What I would like to note there is that indeed he has raised a valid point and we should be talking of a Boundaries Commission to deal with electoral units, boundaries of electoral units, and not just constituencies, because if you look through our Draft, you will notice that we seem to have created a large number of different types of electoral units. For instance, the Provinces are electoral units for purposes of the National Council electing women to go to the National Council and so they are electoral units. We have Districts as electoral units for purposes of electing other members of the National Council. So, it is in order that if we talk of a Boundaries Commission, its mandate should be to address all the electoral units and not just constituencies as we know them.

Now, another Delegate raised another very important issue, which we have noted and I think needs to be given serious thought, the issue of the requirement of soundness of mind before you are registered as a voter. The Delegate pointed out correctly that that may also arise when it comes to qualifications to vote. You may have been registered as a voter when you were of sound mind but at the time of elections you may have ceased to be of sound mind. I think that is a very valid point.

Now, the issue of losing candidates not being nominated, I would like to point out that this Draft has done away with the content of nominated MPs and therefore, we do not expect someone who has participated in the elections and lost, trying to find his way into the House through nomination because we have abolished that, and we emphasized that the 90 seats on the party list, are not strictly nominated in the sense we know about but in fact they are people who are elected. And while on that particular point, a number of people raised questions saying probably people will put their friends in the list, particularly when it comes to women, and it might be worthwhile to start thinking of, if we approve that particular electoral system, is it possible for us to provide for a mechanism of preparing the party list that will be based on elections within the party itself instead of leaving it to party leaders to decide whose name should go into the list. So that is something we can look at.

On the issue of devolved Government, Delegate Godana from Isiolo, mentioned that it might be worthwhile to consider the issue of the Electoral Commission vis-a-vis elections at the devolved levels - whether we will use the National Electoral Commission or we can have the local people devising their own mechanisms. It is an important issue but it must be given a little more thought so that we can become clearer on it.

Another point was on whether a political party must have a minimum number of members before it can be allowed to be registered and if it falls below that minimum number, it be cancelled. That again is a worthwhile consideration. Then the necessity for the independence of the ECK both at the levels of finances, security of tenure and the recruitment of its staff and finally the recent governmental arrangements that have placed the Electoral Commission under a ministry. Those are issues I hope will be a little more discussed in the committee so that proper decisions can be made about them.

Honourable Mwandawiro raised an important issue of the need to have some kind of definition of the political party in the Draft, and I think it is worthwhile thinking about and the German Basic Law may be a good example to look at, that you must define what a political party is, before you can make other provisions about it. On the issue of funding of political parties, a lot of people seem to be against the idea of our barring foreign persons from funding political parties, but what informed this decision was the need to protect our sovereignty and, because we recognize that political parties are vehicles through which people can be able to capture government and the apparatus of the State, we do not open room for foreigners to hijack our sovereignty by funding political parties and then we end up losing to foreigners.

Two, there is the question of international criminals trying to entrench themselves in our country by financing political parties and pushing certain people or certain political parties to capture government and in the process they will have captured the control of our government and we would have lost our sovereignty. So, as we talk about our allowing political parties to be funded by foreigners and by anybody, even companies

