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(CKRC)**

NATIONAL CONSTITUTIONAL CONFERENCE

Verbatim Report of

**PLENARY PROCEEDINGS, PRESENTATION OF DRAFT BILL, –
CHAPTERS TEN, DEVOLUTION OF POWERS
HELD AT THE BOMAS OF KENYA**

ON

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**PLENARY PROCEEDINGS, PRESENTATION OF DRAFT BILL, CHAPTER 10 –
DEVOLUTION OF POWERS, HELD AT THE BOMAS OF KENYA**

**PRESENTATION OF DRAFT BILL: CHAPTERS 10 – DEVOLUTION
OF POWERS.**

Presenters: **Prof. Yash Pal Ghai**
 Com. Prof. Wanjiku Kabira.
 Com. Dr. Mosonik Arap Korir.

Session Chairs: **Hon. Dr. Bonaya Godana.**
 Hon. Joseph William Nthiga Nyaga.

The meeting commenced at 9: 30 am.

Hon. Delegate Bonaya Godana: Fellow Delegates please take your seats and as you are taking your seats may I invite any Delegate who has not yet been sworn in to come forward urgently. In the meantime let me call the meeting to order and as it is now customary we start the day with prayers and it is my privilege to invite first Dr. Simeon Shitemi to lead as in prayer and there after Mr. Ali Said Chizondo to lead us also in prayer. Dr. Simeon Shitemi.

Hon. Delegate Dr. Simeon Shitemi: Shall we stand? Our Heavenly Father who created the entire universe, who created us not as an evolutionary accident but deliberately with a glorious destiny. Father on this road we've had problems, we've not always loved our neighbour as ourselves, we've not always loved you as our Father. And so Father we ask your forgiveness, we ask your direction, we ask your forgiveness again and again and again. Father we are assembled here to agree on a document that will guide this country into the future. Father I pray that this document may come out seeking to glorify you, seeking to make you the center of your own universe and particularly this corner of that universe. Father help me to continue to love my Muslim brother, remove any mistrust for we come from the same stock, for we are brothers and sisters. Our Father who is in heaven hallowed be thy name, thy kingdom come, thy will be done on earth as it is done in heaven. Give us this day our daily bread and lead us not into temptation but deliver us from evil for thine is the kingdom, the power and the glory forever and ever. Amen. Thank you

Hon. Delegate Bonaya Godana: Please continue standing for Mr. Ali Said Chizondo's prayers.

Hon. Delegate Ali Said Chizondo: Tuombe. *Bismillahi* kwa jina la Mwenyezi Mungu mwenye kuumba ardhi na mbingu. Tuko hapa Bomas of Kenya mwezi huu kwa kutarajia uwezo wako wewe Bwana uliyoumba ardhi na mbingu na ziliziomo katika ulimwengu huu. Ewe Mungu Muumba sisi ni waja wako tumechanganyika dini tofauti, ambazo zote huzileta wewe Muumba na sisi waja wako tuwazikubali. Tuko hapa Bwana tupe rehema zako, tupe neema zako, tupe shifaa zako, tupe kila la heri lako. Wewe muumba wajua yaliyojificha, sisi hatujui yaliyojificha yetu ni kuelekea kwako ili utupatie mwelekeo. Ya Raabi Mwenyezi Mungu sisi hatuna tujuwalo, tuko hapa twatarajia kutengeneza nchi hii kupitia kwako uondolee uhasama, uondolee uhasidi, uondolee vita vya kinafsi utupe mwelekeo na shufaa ili iwe nchi ya amani isifike kama inaweza sifika. *Amin amin.* Thank you

Hon. Delegate Bonaya Godana: The next item is communication by the Chairperson of the National Constitution Conference. Professor Ghai.

Prof. Yash Pal Ghai: Thank you very much. I would like to make a statement about the reports and the media attributed to me about the consensus in this conference on the question of the Presidency and the Prime Ministership. I would like to say first of all that it is not really for me to make any decision for this conference, we have a very clear procedures whereby decisions of this conference are made and they will be made eventually when the conference meets after the report of the technical Committees have been made. So I was not in anyway suggesting that this Conference has reached decision on this difficult question.

Secondly, I would like to say that as part of that I am frequently asked by the press and we have a press conference every day to give a summary of the discussion to highlight the main point and then to indicate whether there is some kind of consensus which is emerging my remarks were made in the context of that request. If have been misunderstood I want to apologise, I want to make clear to the Conference and to the media, to the public that no decisions have yet been made by this Conference and indeed they will not be made until after we have had more detailed examination of this issues in the Committees stage. So if a have misled anyone and if a have mis-

represented anyone, I want to offer you my apologies and promise that in future I shall be more circumspect when I met the press sometimes one is mis-quoted. I would in future to record all the press briefings we have so if there are mis-representations and that can be corrected later on. For the time being I apologise if I have given wrong impression of the work of this Conference. Thank you.

Hon. Delegate Bonaya Godana: I am afraid we skipped the Oath; can we do it? Thank you very much, Mr. Chairman, Professor Ghai. Now dear Delegates I also apologise we jumped one item Administration of Oath and there is Honourable Member, Honourable Wambui Beth Mugo Assistant Minister for Tourism and Information. Who has been traveling out of the country and she is set again to travel tomorrow. I think we will have to go back to that one step to administer the Oath. Honourable Mugo, please.

Prof. Yash Pal Ghai: Could you face me please Ms Mugo?

(The Chairman administers oath to Hon. Delegate Beth Wambui Mugo)

Prof. Yash Pal Ghai: And welcome to the Conference. Thank you.

Hon. Delegate Bonaya Godana: Thank you. With that now dear Delegates we get on to the main business of the morning in the Chair the Honourable Joseph Nyaga from Eastern province and myself as your Vice-Chairman. The subject of today that we begin to discuss today is Devolution Chapter 10. You have I m sure all collected new version of the Chapter, which has been distributed at the entrance for the last few days. I know people have raised queries as to whether we are to go by what is in the text or what is the revised version. I think you are free to look at both and the presenters who are Commissioners will I m sure help us to focus better. I wish now to pass the microphone to Honourable Nyaga to invite the presenters to make their presentations.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you Mr. Chairman.

Hon. Delegate Bonaya Godana: 377. Who is this?

Hon. Delegate Joseph William Nthiga Nyaga: You don't want us to get started?

Hon. Delegate Bonaya Godana: We have not even started I mean.....

Hon. Delegate Joseph Nyaga: Okay, 377. 377.

Hon. Delegate Bonaya Godana: 377 you have the floor.

Hon. Delegate Okiya David: My names are Okiya David.

Hon. Delegate Joseph William Nthiga Nyaga: Just one minute, is it working now?

Hon. Delegate Okiya David: Okay. My names are Okiya David Delegate number 377 from Lugari district. Mr. Chairman, everybody I think was happy this morning when we were entertained by the dance group. However this week we had an item as to the formation of haddock Committee on culture the Chairman promised he will give us a report. To date we have not had that report yet the haddock Committee should give its report next week. When is this going to happen? Yet we are going on today is Thursday.

Prof. Yash Pal Ghai: Thank you very much. Unfortunately not every group has given us their nominations, so the only thing holding the meeting of the Committee is the absences of two names. And we have requested the groups, which haven't given the names to give as by today. Our intention was to convene a meeting today unfortunately we don't have a complete list and we thought it won't be fair to start a meeting without full membership. I can assure you we are doing all we can to expedite the full formation of the Committee and we certainly hope that we will have a meeting this week. Thank you.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you Bwana Chairman. Ladies and gentlemen, Honourable Delegates I look forward to be with you for the next 2 days. Ladies and gentlemen can you hear me now? You know I m new. Can you hear me now? I m really shouting can you hear me now?

Honourable Delegates: *No.*

Hon. Delegate Joseph William Nthiga Nyaga: Most people can hear me, would you please ensure that technology works. The technician is ensuring that the system works, I m shouting as loudly as a human possible. I was saying the following that I look forward to chairing this session over the next 2 days. And I m confident that you will contribute positively, I m confident that at the end of 2 days we will be clear on the way forward. The way to begin is introduction of the Chapter on Devolution by Professor Ghai. After that we will hand over to Commissioner Professor Wanjiku Kabira on my left, who will talk to us about the Draft Bill itself and go through it with us. And finally Commissioner Kangu on my extreme left would then take us through the Principles of Devolution then we will open the subject for plenary discussion. So with your permission, Professor Ghai you have the floor.

Prof. Yash Pal Ghai: Thank you very much. Can you hear me?

Hon. Delegates: *No.*

Prof. Yash Pal Ghai: No. Can you hear me now?

Hon. Delegates: *Noise.*

Prof. Yash Pal Ghai: Okay I will try to speak at the top of my volume and I hope you will be able to hear. I want to thank first of all the Chair for giving me the floor. I want to begin with seeking the indulgence of the Delegates to allow us to table the new version of Chapter 10 and schedule 7. I think I need to give you some explanation why we are departing from the text which is in the green book and asking your indulgence to let us present revised version of that Chapter.

When we had the public consultations and debate on the Constitution issues before the Commission making in Mombasa in August, September to prepare this recommendations. Much of the debate about the question of devolution was based on the desirability or otherwise of a

federal structure for Kenya, and people often refer to the Majimbo Constitution of 1963. so much of our own internal debates also looked at the views that were being expressed by the public on whether we should have federal system based on existing provinces or not. But towards the end of the process of consultation public opinion seemed to change and there was much greater expression of preference of having the districts as the main bases for devolution. Indeed that view was expressed not only by the general public but also by Political Parties. And so by the time we began our discussion in Mombasa we felt we hadn't thought through sufficiently about devolution based on Districts as opposed to Provinces.

Also there was general or at least there was considerable opinion that was expressed to us that we should void very rigid institutions and have flexible institutions and the relationship between the devolved unit and the central Government. At that time we didn't really have we felt enough information to make a fully informed set of recommendations so we agreed to issue a primary thoughts on the subject and immediately after that we set up a task force of Commissioners working with experts from Kenya and we invited a leading expert from Canada to work with the task force. After a week of the work of the task force, we prepared new proposals, which is what we have distributed to you. We felt that under the Act we really had to stick to the document that we had published on 18th of September as the official document of the Commission. But we feel that the revised Chapter is titer, it provides better bases for us to debate the difficult complicated question of devolution. And so with your indulgence I will be speaking so we will my colleagues to the Chapter that we have distributed today.

Let me come to the substance of that Chapter, the question of devolution has been an important theme through out the public consultations. To review Act itself says to that all the organs of review should enable people to exercise power and participate in public affairs, and one of the methods that the Act identifies for a public participation in State affairs is devolution. So we as a Commission were required to consider some form of devolution. Another part of the review Act required the Commission to consider the desirability of a federal or a unitary system of Government. Here the option was left open but we had to consider whether Kenya is best governed through a unitary system or through a federal system. Federalism is one form of devolution but there are forms of devolutions as well, and so we had to consider whether the form of devolution that we recommend would take the form of federation or some other form.

And as I go through our recommendations you will notice that we've opted for system, which is neither federal nor unitary, it is something in between and we will give you the details this morning. We should say that a part from what the review Act tells us about the desirability of devolution we received very wide range of opinion on this question, and there was a general desire for devolution. There was a feeling which was expressed to us almost through out the country that power had been centralized excessively in Nairobi that in order to provide for a participatory system, democratic system and countable system. It was necessary to decentralize these powers so that Provinces and Districts will be able to exercise certain important functions on the own.

There was many complaints about-the people felt alienated from the system of Government and it was too remote to them that therefore, because they were so far away from the center of power their problems were not appreciated and were not tackled. And many many communities said that they felt marginalized and victimized as a result of this concentration of power in Nairobi. Many people complained of the difficulty of access to officials as most Ministries are centralized in Nairobi necessitating long adverse and frequently fruitless journeys to the capital. They felt particularly bitter at the unjust deprivation of resources and the lack of any control over policies that affected them. They said that Local Government were weak and inefficient and unable to provide a forum for local democracy or accountability. They want, greater control over education and health service, land and other resources. They also wanted more communal forms of organizations including greater authority for the elders. There have a critical of Provincial Administration, which they describe as authoritarian and paternalistic. At the same time they wanted a say at the National level principally through an Upper House of the National Legislature.

The Commission found a broad consensus therefore among the people that the power and authority of state should be devolved. It was obvious that people want functions, which are carried out by the provincial Administration to be the responsibility of Local Government agencies and the facing out of Provisional Administration in its present form. There was wide spread wish for the people to take charge of their own lives.

The Commission considered that the goals of Review and the wishes of the people were consistent. We have discussed already the goals of Review which are to provide for better democracy, better participation, better accountability, better responsiveness of Government to people and we felt that a system of devolution could achieve these objectives.

We considered that devolution would indeed enhance the quality of democracy in Kenya and promote the participation of individuals and communities in public affairs. It would increase checks and balances and the separation of powers. It would promote social and economic development throughout the country and ensure the equitable sharing of national and local resources with special provisions for marginalized areas. It was also obvious that powers which were to be transferred to the devolved areas had to be transferred to bodies, which are democratic and participatory. We also felt that it was important that minorities within the devolved areas should be protected and they should have proper forms of representation and participation in decision-making.

Despite the general agreement among Kenyans on the desirability of devolution, there was less agreement on the form and levels of devolution. While many people - although not universally - in the Coast, North Eastern and Rift Valley proposed a federal form of devolution, many people in Central, Nairobi, Eastern, Western and parts of Nyanza proposed devolution within a unitary system. In either case however, few submissions to the Commission provided any details. It was quite striking how little we received in the way of detailed proposals for devolution. So, the responsibility for fleshing out the details inevitably fell on the Commission. Now, what I would like to do is not to go into details of our recommendations because these details will be provided by my colleagues. What I want to just sketch out are the principles and the approaches that we adopted in designing the system of devolution.

The first point as I said we had to consider was, what form of devolution would be most appropriate for our country. Federalism was favored by several groups and individuals. Our own view about federalism was that it provides for a rather rigid system. It provides for rather sharp separation of responsibilities between the center and the Provinces. That it becomes legalistic and there could be conflicts between the center and the Provinces and it may be difficult to

implement national policies if the division of powers is such that it is difficult to pursue coherently policies in particular sectors.

Federalism also requires a very high degree of administrative skills at all levels and we were not sure that therefore, that was the way for us to go. Equally we didn't feel that devolution within a unitary system would achieve the objectives that people had wanted to achieve through devolution. A unitary system has a tendency towards centralization of power as has happened to us in Kenya over the years since independence. There is a tendency for authority the authority of the center to dominate local authorities, as it is also clear from our own experience. So, we rejected the unitary model as well. What we therefore decided on was to provide for devolution and provide for significant degree of devolution. Significant powers would be devolved but we wanted to establish a flexible system in which the center and the devolved authorities would have a relationship of co-operation rather than confrontation or opposition. We also felt that it was important to be flexible about the way in which powers were divided between the devolved areas and the central Government. We also wanted to enhance possibilities for the transfer of responsibilities from one level to another as circumstances changed, to build in many mechanisms for consultation and co-operation between levels of Government.

Finally, we didn't want to entrench the system of devolution too strongly. Devolution would inevitably be a new system for us now because for many years now, we have had the highly unitary, highly centralized State. So we wanted also to retain some flexibility about changing these arrangements if we discovered that what was adopted didn't work in the best possible way. We didn't want to make it too difficult to change that part of the Constitution, which deals with devolution. I will explain later that we do indeed propose some form of entrenchment of the powers of devolved authorities. But they are not as deeply entrenched, as some other parts of the Constitution would be.

Our second approach or principle was that the Constitution should contain only the principles and broad framework of devolution and the details should be established in a Devolution Act. This was again in the interest of flexibility. So, when you look at our proposals, you will find they are quite general and there may be many points on which you might say; 'well the Commission hasn't dealt with it. It hasn't given us detailed recommendations on that, this point

or that point.’ This was deliberate on our part because we felt that to design a system of devolution is a difficult and time-consuming exercise requiring many different kinds of skills. We felt that our job at this stage should be to provide the principles and the broad framework and leave it to a taskforce to be established after the Constitution is adopted to work out the details. The taskforce will be guided by the principles in the Constitution but they would have very considerable discretion in designing the precise arrangements. We felt that this approach would give the public, the government, the ministries and communities a further opportunity to debate the actual detail mechanisms for devolution.

The Devolution Act, which will then result from these discussions, the recommendations of the taskforce would provide the detailed framework, in a way to some extent as the Local Government Act does for local authorities. I will say a little bit more about the Devolution Act but at this stage let me say that the Devolution Act once it is adopted could only be changed by an absolute majority votes in the two Houses of Parliament that we are recommending. So it will not be deeply entrenched but it would not be possible to change it as easily as ordinary Legislation. This is one way in which we are legally protecting devolution but there are other ways, which I will speak about in a minute. The third principle we have adopted is that; even after the enactment of the Devolution Act, the councils who has power to the devolved areas would be phased. So, they will not all be transferred all at once. We are very conscious of the fact that we don’t at the moment have many institutions at the local level, which have the necessary administrative legal, legislative capacities. We don’t want to risk a situation where powers are transferred to Local Authorities or Devolved Authorities without their having had sufficient time to prepare themselves for the tasks that are to be transferred. So, some formula might be established to determine whether the devolved authority has established sufficient competence to assume those functions. This I believe from my experience in many countries is a very important safeguard so that the whole period over which powers would be devolved could take some years. The central Government would have to provide resources to start building capacity at the devolved areas.

We also have provided as part of the flexible scheme and I had mentioned this before that in course of time, some central government functions could be transferred to Devolved Authorities if after a period of time it was felt that there was capacity at the local level, and some things

which technically or legally belong to Central Government can be better exercised at the local level. So, there would be a possibility. Equally, if devolved authority felt that for some reason it needed the assistance of the Central Government, it could invite that assistance, it could indeed temporarily even transfer some functions to the center to be exercised on behalf of the devolved areas.

Another way in which we have provided for flexibility is to allow - and I will speak more about that in a minute - different devolved authorities to share certain functions. They might feel that road maintenance in a particular locality is best done through the cooperation of a number of devolved authorities and they would be free to set up a joint road authority or committee or something so that the neighbouring devolved authorities could work jointly in certain areas.

I have also mentioned the next principle, which I would therefore develop. The principle of cooperation between the different levels of Government and vertically and horizontally, we feel that in some cases of devolution, conflicts can arise between different centers of authority, each trying to extend to its powers and this can lead to conflicts. We believe that we should have a system in which there is harmony between the center and the devolved authorities as well as between different devolved authorities. We have recommended a number of Commissions.

(Power failure)

Prof. Yash Pal Ghai: I think we are back now. So, I was just mentioning about the importance of harmonious and cooperative relationship between the center and devolved authorities.

Now, let me come to some more concrete aspects of our recommendations. We considered how many levels of devolution should there be? We have recommend four levels apart from the national level. The first one is devolution to the village. We defined the village as sub-location, so that we bring together a number of villages. The second will be location, the third would be District. The principle unit will be the District. We received a lot of support for a District as a unit when we had consultations. Our own view was that the Province is too large and Provincial Government may in practice be as remote for a villager as Nairobi is. So the aim was to bring power closer to the people; we thought the Province may not be the most appropriate unit and so

we opted for the District. But we did recognise that there maybe some role for the Province, maybe some role in co-ordination. We did not specify in detail what this co-ordinating or other functions of Provinces might be, but we have said that this is a matter that should be explored by the task force and then should be included in the Devolution Act.

We have also recommended, and I mentioned this point, the District authorities would be free to co-operate in the performance of their functions with other Districts and may set up joint authorities or committees for this purpose. We thought that this would enable those Districts, which have a slight preference for Federal type arrangements to achieve closer forms of association and economies of scale by cooperating with the neighbouring Districts, and we drew this idea from the Ugandan Constitution, which has similar provisions.

We also said that the number and boundaries of Districts would be reviewed by an independent Commission before the establishment of devolution. We realized from the comments that we have received that perhaps we have erred on the side of establishing too many levels of Government. Some comments have said that, it may be sufficient to have Location and Districts only. Others have said that there should be some specific role for Provinces, and I think these are matters for this Conference to debate further. We have also provided that Cities and Municipalities, would be treated as Districts, but Town-ships would be accommodated within the structure of the District or the County Council, that they may have some special status within the District. Again we have suggested that the law should recognize the special status of Nairobi as a National Capital and also as the largest city, very large population. But we have not given any detailed recommendations on precisely how Cities and Municipalities would be accommodated or integrated within a District, or how Townships would participate in the works of the County Councils for example. We feel that these are matters of detail, which require very careful consideration and this would be another task, that the task force would be asked to undertake.

Our recommendations are that Provincial Administration should be abolished. That the National Government would be free to establish offices, branches of its Ministries, and appoint its Public Officers in Districts and other parts of the country. So a National Government would have, national tasks, responsibilities to be performed throughout the country and the different Ministries should have the authority to place their Officers, establish their branches in devolved

areas so that they can discharge their functions. We hope of course that there would be cooperation in these areas between the national and the involved authorities but certainly we see a role for the National Government in devolved areas. But we don't believe that the present system of Provincial Administration is appropriate for that, and there is also a strong feeling expressed to us and indeed our feeling that if this Provincial Administration continues in its present form, it would discourage the growth of vibrant democratic institutions at devolved areas. Devolved areas need space in which to develop and expand and therefore the relationship between the Centre and the Provincial Authorities or the District Authorities, would have to be carefully balanced not to impose too many restrictions on the autonomy of devolved areas.

We have said that there should be some form of separation of powers at the devolved areas, devolved authorities. And we believe there should be a distinction made between Executive Authority and Legislative or Assembly Authorities at those levels. And so we are recommending for the Executive that there would be a District Governor, who would be elected by the people of the District and, who would then compose his own Administration. Then equally there would be an elected Council, which will supervise to some extent the work of the Administration, the District Governor. The District Governor would be removable by a vote of a majority of the members of the District Council, which would need to be supported by a referendum.

We have also recommended that the District Authorities would have their own staff, and that Districts would have a District Public Service Commission for the recruitment, training, discipline etc of district staff.

Let me now turn to the question of revenue, which is clearly an extremely important area. Our principle recommendation is that the main sources of revenue, should remain with the National Government. We believe that in order to have an integrated economy, in order to facilitate planning of economy on a national basis, it is important that the principle taxation powers and other forms of raising revenue should be with the National Government. We have recommended certain taxing powers for the devolved authorities, but these powers, one would have to be given by an Act of Parliament, rather than given by the Constitution itself, in order to retain flexibility. Secondly, these would be sources of revenue which are of local importance, licensing fees, rent

for marketing stalls and things like that and may be some charges for services provided by the local authorities. But the principle of levying and collection of revenue would be done by the National Government. However, we have provided for an independent mechanism for allocating the National Revenue, because we believe that the devolved authorities need considerable resources in order to be able to discharge their functions. So one of our recommendations is that there should be an independent Fiscal Commission, meeting maybe once every four years with half membership appointed by the National Government and half the members appointed by the National Council.

We are recommending the Upper Chamber, which represents the Districts. And this independent commission will then make recommendations on the allocation of national resources for the next four-year period. We have recommended that this Commission should be able to recommend on different kinds of grants, some would be what we call equalization grants, which would give more finances to the less developed Provinces or Districts, and criteria would have to be established for what are the less developed areas. Another formula would be an equal per capita formula, or there could be other kinds of special grants, so that the allocation of resources would be able to take into account, the different needs, the different levels of development, even the topography, the geography of the regions in order to ensure an equitable distribution of resources.

We have also said that some grants could be tied to particular projects, others could be broad grants to be spent at the discretion of the devolved areas. We have said that it should be possible for Parliament to determine that certain kinds of expenditures at the devolved areas must be met from locally raised resources. And one such area would be the salaries of the officials elected and appointed officials of the devolved authorities. The centre may set up levels of remuneration, and may require Districts to raise their own funding, at least for part of the payment for salaries. And we made this point because a number of people said that so far a great deal of the money of local authority goes purely into salaries and administrative costs and little is available for actual delivery of services. So we want it to have some such kind of check in the proposals.

We also emphasized, again responding to what people told us, that a considerable part of the resources and the revenue which are generated from local resources, should be ploughed back in that District for example. Of course very rich Districts must be willing to share their wealth with the poorer Districts, but also it was a case that some not very rich Districts or Provinces find that lots of the Revenue generated in the areas, are actually siphoned off to the centre and never seen in the Districts. Many Districts which are part of National Parks, they generate a lot of income, complained to us about how little of the income generated in their area ever gets back to them. And so we emphasized that the fiscal scheme should ensure that the Districts benefit proportionately, or fairly from the resources that they have in their area.

Let me now, come to the question of law making. In devolved systems and federal systems, it is usually provided that the power to make laws is to be divided between the National and the devolved authorities. And this becomes a very complicated question. It means that you have to break up sometimes, a clear sector like Agriculture into components. We can say that agricultural research with the Centre, fertilizer production somewhere else, marketing, actual production of crops, so that what is now a common sector, gets too divided in this way. And that often makes it difficult to have very coherent policy. We want to avoid that kind of danger. The second problem arises that there are too many legal disputes. If you have different lists. Has the National Government made a law that it cannot make? Because it says that "Primary education is a responsibility of a District and have they done something which has encroached upon that and lots of problems like this end up in courts. We wanted to avoid that, we wanted to avoid people rushing to court all the time. So what we have recommended basically is that though there is a division of legislative responsibility and I will mention that in a minute, that in principal, law making should be done at the national level. We didn't think it was the best the use of the resources of districts or other authorities, to spend too much time on law making. It is a very specialized task and you have to publish the report, the laws, because everybody must know what the law is. The system of District or Provincial gazettes begins to break down. That was in deed already happening in 1963-64 with Majimbo. So we thought that the Districts the devolved authorities would serve the country best by focusing on administration and implementing policies, which had been negotiated between the Districts and the National Government.

So under our scheme, most law making would still be the responsibility of the National Government. Now some of these laws have to be implemented by the devolved authorities in their own areas. So to some extent we separate the responsibility for law making from law implementation. But in order that the districts should have some say in those laws, which they will have to implement, we have provided that these laws should also require the assent of the Upper Chamber. Now I will speak more about the Upper Chamber in a minute. So that the Upper Chamber will then be a forum where district views will be expressed on the desirability of those laws, which have to be implemented by the district authorities. This would be a kind of negotiating forum with the National Authorities, and we hope that the outcome will be a set of rules which are agreed by both levels of Government and which the district will implement.

In this particular way I believe that we would avoid many of the problems that Federal Systems face in the distribution of powers. The litigation that arises and other problems that can also emerge. But we have, nevertheless in the 7th Schedule, provided three lists of legislative topics. The first list, incidentally, this is also a new list. List one includes or contains those subjects, which exclusively belong to the National Government, the Central Government. These are topics, which require to be regulated on a national basis. I can read some of these, I won't read all of them: National Defence and Security, International Relations, International Trade, Tele-Communication, National Elections, Currency, Courts, Citizenship, Immigration, National Public Service, Control and management of disaster and epidemics, Statistics, Central Bank, Banking generally, Patents, Inventions, Trade Marks and so on. Standard Weights and Measures, Research institutes, Ancient and Historical Monuments of national importance, and Post Secondary Education.

We believe that these tasks should be uniformly tackled; there should be uniform standards of delivery. These clearly are necessary to maintain our sovereignty as a republic and so these will be the exclusive responsibility of the National Authorities.

List B is a list of exclusive district powers and these are dealing with matters of local concern. It also includes the responsibility to implement development plans agreed both in the districts or national development plans. It mentions some of the revenue powers that the districts have and as I have mentioned they are of very local nature. Then most substantively we have said that the

provision of a number of services such as education services at the primary and the nursery levels, management of marketing and trading centers, district planning, district statistical services, district projects agricultural services, land administration, land survey, physical planning, trade development services, trade licenses, cooperative development, crops, animals, and animal husbandry, extension services, community development, cultural affairs, district information services, and so on. There are a number of other activities like that which would be the responsibility of the district authorities.

They would also have a responsibility for the management or provision of services for lighting, fire brigades, cemeteries, refuse disposal, and social welfare programmes, and be able to ascertain enforcement functions particularly carefully about the standards and maintenance of buildings, water supplies and so on.

The third list is what we call the concurrent list, it is a list in which both the centre and the district authorities will have responsibility for I have already indicated that most of the laws in this area would be made nationally with the participation of districts. If you look at that list, list three, you will notice that it is a very important list, it talks of revenue but includes the allocation to the district, maintenance of public security and order, secondary education, medical and health services, road services, provision and maintenance of public services and amenities, agricultural services, natural resources, trade licenses, labour matters, human resource management, probation and welfare, safety and security, district police services, preservation of environment, forests, wetlands; identification and preservation of ancient and historical sights, statistics, ports other than major/national thoughts, trade and commerce.

So this is an area where both the center and the districts will have responsibility, and our scheme assumes that the law will be passed by the centre, but much of the implementation will be the responsibility of the district.

So let me now move on to the question of the Second Chamber. We have already had some discussion on this when we looked at the Legislature. I here just want to talk about the role of the Second Chamber as part of the system of devolution. I should say in general that when we began to consider the question of the Second Chamber, we kept in mind the very many functions

of the Second Chambers. Even though this Chapter deals with the Second Chamber in the context of devolution, I think it is important to remind ourselves that the Second Chamber can perform many useful functions apart from being involved in the system of devolution of federation. I can't remember now, but I read somewhere that about 63 countries which are unitary states have Second Chambers. So Second Chambers are not only a feature of federal or devolved systems, they are an important part of unitary systems. Indeed in Britain which had the first Second Chamber, there wasn't, until recently a more centralized state than Britain. I do not want to go into other functions of the Second Chamber the functions of the reviewing Legislation, of having a second chance to look at laws, of representing different kinds of interests than in the Lower House, an additional element of checks and balances, but I want to discuss the role of the Upper Chamber in the area of devolution.

I have already mentioned that the laws in the concurrent area which will be implemented in the districts would have to be approved by the Upper House. Other laws will be referred to the Upper House, but the Upper House will not have any kind of veto. So if the Upper House is not happy with some truly national law, then the National Assembly or the Lower House could proceed with that and disregard, which I hope in practice it wont, the views of the Upper House. But insofar as Legislation which is to be implemented in the district in concerned, the Upper House would have to approve that. We assume that there will, of course, be negotiations prior and during the passage of the Legislation, so that that the views of the districts are fully taken into account.

We have also provided, as you will remember from our earlier discussion, that certain offices' appointment of which is made by the President or by the Government or some other authorities, the Judicial Services Commission, for example, should be confirmed by one or the other House of Parliament. We very carefully identified those posts which should be confirmed by the Upper House, and we identified those posts on the basis that those posts have a very important role in the maintenance of the Federal System, and it was important that districts be comfortable with the holders of these offices. I don't have a list of that with me here, but you will remember that that was the list that we presented when we looked at the Legislature.

Let me say a word or two about the membership at the National Council. In our scheme the National Council will be a kind of a negotiating body between the districts and the National Government. We are taking this model from Germany, and from South Africa where the Second Chamber consists of the representatives, either of District Governments or District Assemblies. The recommendation we have made that the Chairs of the District Councils should be the Members of the Upper House. We have said that they should have it alternate because they may be busy in their work, they may need to send someone to sit for them, and we have said that if the Chair of a Council is a man the alternate should be a woman and vice versa.

We have also provided for a directly elected element in the Upper House, and that is to say that thirty women representatives would be elected to the Upper House using the district or a combination of districts or possibly a province as the constituencies, because if we have thirty we can't give one each to a district, so we will have to work out a system for the representation of the thirty seats for women.

The representatives from the District Councils would be already paid in their other capacity and we do not recommend that they receive a salary as Legislators. We do not see this assembly meeting as frequently as the Lower House. We believe that the members except the women members will be sufficiently remunerated to their regular salaries but of course there will be certain expenses of meetings and so on for which they will be reimbursed.

Now, let me conclude my remarks by mentioning the ways in which the provisions for Devolution both into the Constitution and in the Devolution Act will be protected. I have already mentioned that the provisions of the Devolution Act could only be amended by an absolute majority of the votes of the two Houses. In other words, 58+1% or so of the total membership of the two Houses. I have also said that the Devolution Act will deal with the a large number of matters and I am running out of time so, I don't want to refer to that, but what I wanted to do is to draw your attention to some of the provisions that mostly, included, it is a very long list in a way drawing up an agenda for the Task Force, and you will see it from that list that we have tried to build in some flexibility, fairness and distribution of the sources. Ways of settling disputes, short of going to court, exercising mediation and conciliation. They are set out in our Article 222 and I won't take up your time with repeating those. So in conclusion, what I

want to say is that we have provided a scheme which we think is good for the country, which provides for sharing of power between different levels of government but in a way which emphasizes cooperation between them, other than conflict between them. We have tried to maintain flexibility because it will be a new system and we need to be able to adjust the system as we find others. We have kept to the points of principles and not details because we feel further work is needed. We have provided for fast way of implementing it so that there will be no distraction in the provision of services as we build up capacity at the local level.

Finally, I would like to say that we have had many comments on this Chapter, in particular at the many levels of Devolution and people have raised concerns and particularly about the financial implication of our proposals. I have to confess that we have done any calculation of the cost, indeed this is a question that has been raised about other parts of the Constitution and in my opening statement on behalf of the Commission in presenting and tabling our documents, I had said something about the question of cost. Let me just say that there will be of course considerable savings in our recommendations, like the Provincial Administration and such will be phased out, we have not recommended to add new Institutions. We already have Councils and Elected Bodies at various levels, these are already funded from the National Budget. So, some of the situations we are recommending exist in some form and money is committed to them already in the Budgetary process, so we believe that we have not really recommended many Institutions which will require new forms of expenditure. But certainly, it is a matter that we need to look at and be careful before we endorse the scheme. I would say the two things we need to worry about in devolution are three or four things, and I will just mention them without elaborating them.

One is the question of money. Clearly, we do not want to set up a lot of institutions, which are going to absorb all the money that should actually go for services to the people.

Secondly is the question of Administration. We do not want to create complex systems of Administration, though, of course they are hard to avoid when you have devolution, because you are setting up different levels of authority, but let us try to find administrative arrangements which do not become cumbersome, complex and then are difficult to administer.

The third thing I think we have to guard against is that the local centers do not become systems. They do not become centers of power for particular individuals. We have been motivated to and we have pushed for devolution because we believe it is a way of enabling people's participation. More authority to villagers,, more authority at further local levels. We see this as a principle vehicle of public participation, of accountability and if these areas become monopolized by local, (in Afghanistan they call them Warlords), fortunately we haven't gone to that point, but if you are monopolized by few local groups and you must remember they are minorities in these districts, other devolved areas, we must ensure they are genuinely democratic participatory areas, and we must always be watchful of this concentration of powers in the hand of one or two very powerful speakers, otherwise the whole rationale of devolution goes.

And the fourth and final point that I will make is that it will be very important to have a body which in a way we have recommended, which would be keeping an eye on the unfolding of devolved authorities. And being able to move in and correct errors as they arise before they become entrenched and crystallized. So, I would say that second after system of devolution is an important but a tough but it will not --- and therefore we should make sure that we have enough safeguards so that the aims, the objectives of devolution are preserved throughout and they are distorted, they are not captured by local roots and they become an – (inaudible) of the objectives for the Conference.

I thank you for your attention and hope we can have very fruitful comments from you on these principles. Thank you very much.

Clapping from the Honourable Delegates

Hon. Delegate Joseph Nyaga: Thank you Professor, Chairman. I will not give the floor to Commissioner Profession Wanjiku Kabira, to continue on the subject that has been so well articulated by Professor. Professor.

Com. Wanjiku Kabira: Good morning.

Hon. Delegate Joseph William Nthiga Nyaga: Is there a point of order? What is your number, what is your name, and finally, what is your point of order?

Hon. Delegate Kipkalya Kones: My name is Kipkalya Kones, my number is 216 and my point of order Mr. Chairman is, we have been told that we are going to be working with the new document here entitled Chapter 10. Mr. Chairman, when we opened the Conference, we were told that there are three versions or two versions of the document. The first one was green, and the second was orange and now, Mr. Chairman we have been given a third document entitled Chapter 10, which is a photocopied document. I wonder Mr. Chairman whether we are in order to start adapting documents here which were not laid on the table in the beginning of the Conference and using them (inaudible). Mr. Chairman this probably could bring precedence that we come in here and get ambushed by certain documents and we are told to discuss them. Mr. Chairman, I have gone through this document, and I find that there are certain very serious omissions. For example in the Organization of Devolution, you find that the original document had specified the functions of the provincial Council and on the latest document I have actually been given, there is no mention or there is very little mention of the Provincial Council and we are told that it should be--

Hon. Delegate Joseph William Nthiga Nyaga: Excuse me, Delegate Kones. Your point of order has been made but you are now getting into an explanation. When the Chairman of the Commission started the meeting, he told us that since there are two documents, you can address the previous one, the one you addressed and also you can address this particular document, which has been circulated. So, if it is acceptable please, would you address the two documents because that way your point would be made so that we can proceed.

Hon. Delegate Kipkalya Kones: I am only wondering Mr. Chairman about which document we are really going to be following. Is it the new document that has been circulated now or the orange document?

Hon. Delegate Joseph William Nthiga Nyaga: It is the new document which has been circulated and as explained earlier.

Hon. Delegate Kipkalya Kones: What is the provision, what is the reason for that Mr. Chairman?

Noise from Hon. Delegates.

Hon. Delegate Bonaya Godana: Order, order Honourable Delegates. Hon. Kones, I somehow understand the issue you have raised, and that is why I have (?) my mind to it. When we started this meeting, you will recall that the Chairman of the Commission in his opening remarks, when we opened this Conference some three weeks ago, did actually, indicate that in addition to the documents that you have, there has been another copy of Chapter 10, which I agree was distributed then on the 30th of April, which will replace the Draft which was in the version published as a book. The two earlier versions that you referred to, one is a kind of not-updated but typographically corrected version of the same thing. Alright?

Noise from Hon. Delegates

Hon. Delegate Bonaya Godana: Order, order, and I can tell you that we have actually, before coming here consulted at random with the Commissioners, including those who are present at the Steering Committee today. I think this is not something which should bog us down, it is not a new set of proposals being brought; the Commission had said they will update that particular Chapter and indeed, I think you are perfectly right, as I said, we look at both as the raw materials in front us.

Noise from Hon. Delegates

Hon. Delegate Joseph William Nthiga Nyaga: What is the number again? Let him conclude his point of order. I hope Mr. Kones you are -- But please understand our problem as explained by Honourable Bonaya.

Hon. Delegate Kipkalya Kones: Mr. Chairman, we were given to understand that the orange document was actually a polished document out of the original document, the document that was compiled after listening to the views of Kenyans. Now, what we are seeing in here is that it

looks like the Commissioners have gone around or talked to certain individuals, without authority and they are diverting from the Act--

Clapping from the Honourable Delegates

Hon. Delegate Kipkalya Kones: --of Parliament that empower them to listen and collect these from the members of the public and then send them to the Plenary here. So, it looks like we are now being ambushed with a new document that the Commissioners have gone round and talked to certain individuals and now they are forcing us to compare these documents. We are not going to do that.

Clapping from the Honourable Delegates

Hon. Delegate Bonaya Godana: Okay, thank you. If it is a similar point of order, may I suggest that we have heard your point Bwana Kones. We will take you into account in a minute. Could we get a different angle? 368 please.

Hon. Delegate Joel Kipyegon Sang: Thank you Chair. I actually wanted to raise an objection to your attempt to surreptitiously sneak in a document that we rejected a long time ago. Parliament will not sit to actually amend the Act to bring in that document. We are not going to deceive the Kenyan people, because we have come here to make a Constitution for them. They did not authorize whoever created that document to do that, it is our duty, we are not abdicating it, it is not for negotiation, the Chair is not going to decide. We rejected it and it is on record. We are going to deal with the official document. Thank you.

Clapping from the Honourable Delegates

Hon. Delegate Bonaya Godana: Order, thank you very much. We get the mood of the Conference, let me say this, we have no desire from the Chair to push down your throat what you do not want to hear. I do not think, as a Lawyer really looking at this, I do not think we have a major problem here we are quite willing to say fine, take the original Draft the so called yellow draft as your working document and the other as on par with any set of proposals which you will

get here or you will get when you to technical committee. It doesn't really make a difference. And the Commissioners have said they are quite willing to work on the original version. So you put aside this one. If you want you can use it as set of new ideas, which you can bring up at the technical committee to put in period. I think with that the matter should be settled and let us please get on with the presentation from the other two Commissioners.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much for your being very understanding, I think we have solved that particular problem that was raised by Hon. Kones, I think we go back to original document, use this is a supplementary information document, is that okay please?

Hon. Delegates: No

Hon. Delegate Joseph William Nthiga Nyaga: Could I please, let me plead with you, one or two more Point of Orders but on a different subject. I recognize 228

Hon. Delegate Raphael Livu: Thank you very much. My names are Raphael Livu, I am Delegate No. 228 from Mombasa District. Mr. Chairman my Point of Order is attributed to a story on item in today's Newspaper, specifically the East African Standard in page 2, in which Mr. Chairman the Hon. Delegate No. 127 who is also the Minister for Constitutional Affairs of the Government of Republic of Kenya has intimated that if this Conference does not conclude business by the month of June or early June this year to the best of my understanding, that any adjournment that will arise there from has to go up to the year 2004. Mr. Chairman, I am putting it to you or rather I want to find out from you, or the chair for that matter, who is the spokesman of this Conference? Number one. Number two, Mr. Chairman, whether the Hon. Delegate qualifies to issue a statement in regard to the proceedings of this Conference on behalf of the Conference? Thank you very much. Can I have your answer?

Hon. Delegate Bonaya A. Godana: Thank you very much. The spokesman of the Conference is the Chairman of the Conference, who is also the chairman of the Commission. This Conference is autonomous, it is not subject to the directions of the Minister for Constitutional

Affairs or any other individual outside this Conference. *Clapping.* And I think that statement, we do hope it is another case of mis-reporting or--

Hon. Delegates: No

Hon. Delegate Bonaya A. Godana: Well, knowing the Hon. Minister as a lawyer, I will want to give him the benefit of the doubt, but just in case it is not, I want to assure you this Conference is autonomous and it is not subject to the directions of any individual Delegate including the Minister for Constitution Affairs. So you can treat the statement and the report with the contempt that it deserves. Let us go on with the business. Hon. Delegates.

Noise from Hon. Delegates

Hon. Delegate Joseph William Nthiga Nyaga: Please, please are we satisfied?

Hon. Delegates: No

Hon. Delegate Joseph William Nthiga Nyaga : Okay I think Hon. Delegate Godana has explained clearly what happened. The Chairman is the spokesman and he explained at the very beginning, he will be more careful in future in terms of what he communicates with the press. A point of Order on a different subject please. 79.

Hon. Delegate Kuti Mohamed Abdi: Thank you, Hon. Delegates. As you can see we have gone a long way, this Conference is about confidence building, honesty, both on the part of the Delegates and on the part of the Government. This morning the circulation of this document and this statement that has been raised by my fellow Hon. Delegate brings in a feeling of dishonesty or behind curtain activities. I would really request that this air be cleared and we are following a document, which has come about as collecting and collating of information from the whole country by the Commissioners, and I do not understand how this document came about. Therefore it will be very important that these air is cleared, how this document came about so that we really feel we have the same spirit both from Delegates and from whoever else is in this country that we are in the same boat.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much. Let us leave it to Mr. Chairman to deal with that particular one.

Prof. Yash Pal Ghai: On the question of the new Draft, I explained at some length this morning why we were introducing that and I sought the indulgence of the Conference, no one objected to that. When I made this opening statement, I think it was on the 30th of April, then I presented the outline of our proposals and the rationale. I mentioned again at that time that we would seek to introduce a new version of Chapter 10, I also said that the copies of Chapter 10 were available on that day on the table and certainly they were all taken away. So I assumed that the Delegates had taken those Drafts which I had then requested that we use instead of this. The second Draft is a result of much greater effort, greater thought and I would have thought this Conference would want to receive the best, the more reflective, the more refined Draft. There is nothing to prevent you from rejecting every single proposal in that. The idea of the Draft is to present ideas, you can reject them, and you can bring a new one, so I do not think you need to get very worked up about this Draft. If you like you can make all the recommendations, which are in, the green documents, the green and orange by the way are the same. So this now an occasion to reject, to amend to improve and we should be focusing on substance and I do not think very unduly, there is no tempted ambush this documents were tabled two, three weeks ago. I talked about it and my speech of that day, copies of my speech were made available the following day, you can read that, I said all those things that I am now repeating. Thank you.

Hon. Delegate Joseph William Nthiga Nyaga: Please let us resolve that particular--

Noise from Hon. Delegates

Hon. Delegate Joseph William Nthiga Nyaga: Has been resolved please, and we go back to the original documents. May I appeal to this meeting, to please I understand the concern coming from Hon. Delegates; I am very sympathetic but let us get to the business. I fully appreciate the concern and I am sure, it is in the interest of Kenya, it is in the interest of every single one of us that we quickly build the confidence and the way to do it now, is to start discussing this

particular subject, now that it is clearly explained that there was no ill motive. Any misunderstanding we have apologized for and we hope that you will understand.

Hon. Delegates: Yes.

Hon. Delegate Joseph William Nthiga Nyaga: May I plead with you, 217 on a different subject. 217.

Hon. Delegate: Mbarire Cecily M: Thank you the Chair. My name is Cecily Mbarire, Delegate No. 217. This is not on a different subject, I just want to appeal to the Honourable Delegates to kindly look at the substance in the Draft, the original Draft and the substance that is involved in the new document that was distributed today. In my mind the second document that was actually distributed today has more substance than what is in the Draft. So throwing it away just because it came today does not make it wrong. It is more refined. It is more detailed it talks about the role of the village council, which we lacked in the old document, so I appeal that we use that document today because it is more detailed. Please, let us not throw it away because it was brought today. There is nothing sinister about this document. In fact it is much better than the original Draft.

(Clapping from the Honourable Delegates)

Hon. Delegate Joseph William Nthiga Nyaga: I think it is becoming clearer, as I understand ladies and gentlemen, Hon. Delegates. The Commissioners were instructed by the law that was set to collect views of Kenyans, in addition they were authorized to do research elsewhere, compare with other systems, so what we are getting is definitely a result of what Kenyans said and also as a result of a lot of research that they did elsewhere. No. 15 please on a different point of view, I plead with you.

Hon. Delegates: Shouting

Hon. Delegate Billow Adan Kerrow: Mr. Chairman my Point of Order, is with regards to the story on the Standard Newspapers today. I think we are seriously concerned and we have heard

it from some of the Members who went for that dinner within the Commission that the Minister did in fact ask the Commission that after we adjourn at the end of this month. It is not likely for us to resume again in August, and that is we should resume in December or after or next year, and we think that is going to be part of the schemes to derail this Conference. Can we get an assurance (**Shouting from the Hon. Delegates**) from the Chairman, what was the substance of that meeting and what was discussed and why is the Commission going into consultation with the Minister or regarding this Conference, when there is an Independent Steering Committee that was set up for this Conference.

Clapping by Hon. Delegates

Prof. Yash Pal Ghai: Well, if you give me a minute, I will explain. The Minister invited the Commission to dinner so that we could discuss how the Conference was proceeding. It was not a meeting to make any decision. We examined the pace of the Conference, trying to make some projections, how long it might take. No decisions were made and to the best of my information, the Minister had not issued the statement about it at all. This is speculation in the papers, this Conference is as Dr. Godana said earlier, this an autonomous Conference. The whole process is safe guarded in the Review Act and the Minister cannot make these decisions. So no decisions were made at all and it will be up to this Conference, I hope that we will quite soon may be before we even get to Committee Stage, have a big discussion on what is the best way to proceed. But the Minister cannot make that decision and the Commission cannot make that decision. There is no way the Commission can prolong the process. Commission is just facilitating the work of this Conference in the best way it can.

Decisions are made by this Conference assisted by its Steering Committee.

Shouting by Hon. Delegates

Hon. Delegate: James William Nthiga Nyaga: Excuse me, thank you. I think what we would do--

Hon. Delegate Bonaya A. Godana: Order, order, order Honourable Delegates. (*Hon. Delegates Shouting*). Order, Hon. Delegates. May I seek your attention. Order, order, order, Hon. Delegates. The Minister concerned is one out of 629 Delegates here (*Hon. Delegates shouting*) order, and the Conference, as an autonomous body responsible for its own procedures, is competent to even summon him--

Hon. Delegates: *Yes*

Hon Delegate Bonaya Godana: --and ask him to clear the air as to what he meant.

Hon. Delegates: *Yes*

Hon. Delegate Bonaya Godana: But the bottom line is the Minister has no powers to direct authoritatively the proceedings of this Conference. And I think without spending too much time on this-- *Shouting by Hon. Delegates* Order, let us order. *Shouting by Hon. Delegates.* -- Order, order, order, order, order, let us re assert our authority, our control of the Conference and not cede it to anybody, Minister or anybody else. Now with that I would-- *Shouting by Hon. Delegates.* Order, order, I should think with that really we should defer the matter until the Minister is here. We will communicate to him that the Conference is disturbed by what he was reported to have said and till then, I think you should allow us to continue with the Conference.

Shouting by Hon. Delegates.

Hon. Delegate Joseph William Nthiga Nyaga: Excuse me, ladies and gentlemen--

Several Hon. Delegates: Point of Order!

Hon. Delegate Bonaya Godana: Not on this, not on this please.

Shouting by Hon. Delegates

Hon. Delegates Bonaya Godana: We have not....Mr. Shikuku

Hon. Delegate Martin Shikuku: Thank you very much, Mr. Chairman. First and foremost, we were all sworn in and the Minister concerned is also a member and was also sworn in. We are here on behalf of the multitudes outside there, which expect us to conduct ourselves within the Act and the Rules of this Conference. Since he is a member of this Conference and we have heard this and this is just a tip of the iceberg (*Clapping from the Honourable Delegates*) - we know much more than what is behind this Minister - could he be called here, summoned here to explain himself, otherwise we are going to be very unruly, Mr. Chairman. Summon this Minister, he is not above this Conference to come and explain himself here, and be told we shall decide on the date and time when we come here and he has no business at all to joke around with this Conference. let him be summoned and explain himself before us here.

Hon. Delegate Bonaya A. Godana: thank you, thank you, thank you Mr. Shikuku that is precisely what I had really said is the way out and with that, with the wide cheering that I had, I think there is no more reason for us to continue debating it at this stage. Let us differ our interventions until the time he comes and we are communicating to him that the Conference needs him to come here at the earliest to clear the air. Okay let us go on now with the business, with the presentation please, with Prof. Kabira.

Hon. Delegate Joseph Nthiga Nyaga: Thank you very please, with the is the problem now resolved, we have understood the problems and is being addressed. We will come back to it. We will give you the detail when the Minister will come. (*Shouting by Hon. Delegates*) Please, (*Shouting*) I plead with you. I appeal to you (*Shouting*) now that the point has been made (*Shouting*) we have understood the point.

Hon. Delegate: Mr. Chairman, we need to resolve this matter.

Hon. Delegate Joseph William Nthiga Nyaga: No. 31 a different Point of Order.

Hon. Delegate: No, no we have not resolved this matter, Mr. Chairman--

Hon. Delegate Joseph William Nthiga Nyaga: We have resolved it.

Hon. Delegate: --and as you can see we cannot proceed on this manner.

An Hon. Delegate: Point of Order here.

Hon. Delegate Joseph William Nthiga Nyaga: No. 31 has the Point of Order

Hon. Delegate Mohamed Yusuf Haji: Mr. Chairman, I would like to appeal to my colleagues and fellow Delegates that we came here to do a very serious business and we should not allow small, small things that are reported in the Newspaper to derail us. (*Shouting by Hon. Delegate*).

Hon. Delegates: No! no!

Hon. Delegate Mohamed Yusuf Haji: I have every right to my opinion,

Hon. Delegates: No, no, no!

Hon. Delegate Mohamed Yusuf Haji: Please allow me--

Hon. Delegates: No, no.

Hon. Delegate Mohamed Yusuf Haji: Please allow me--

Hon. Delegates: No, no.

Hon. Delegate Mohamed Yusuf Haji: Now, now we know that in any country in this world there is no way we can divorce the government from Constitutional making. And the Minister has a right--

Hon. Delegates: No, no!

Hon. Delegate Mohamed Yusuf Haji: --to speak to anybody--

Hon. Delegates: No, no!

Hon. Delegate Mohamed Yusuf Haji: --so please, please, please, let us continue with the process.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you, thank you.

Hon. Delegates: (*Shouting*) *No, no, no!*

Hon. Delegate Joseph William Nthiga Nyaga: Please I assure you the Chair has understood the mood of this Conference. We have totally understood it, and we have made it very clear that we will communicate appropriately. Can we solve this problem at this particular point.

Shouting by Hon. Delegates:

Hon. Delegate Joseph William Nthiga Nyaga: So it is just a question of when do have that meeting, okay, leave that to us to organize. Please, okay. (*Shouting by Hon. Delegates*) Please. On a different Point of Order, yes-- (*Shouting by Hon. Delegates.*) --if it is the same one this please as far as I am concerned it has been resolved serve as agreed. 599

Hon. Delegate Bonaya A. Godana: Different point.

Hon. Delegate Joseph William Nthiga Nyaga: Different Point of Order, please, please if it is the same Point of Order, I will be ruthless and I don't not want to be

Hon. Delegate Leslie Betawa Mwachiro: Without intimidation, my Point of Order is different. My name is Leslie Betawa Mwachiro, 599, Political Parties. My Point of Order is like this, this Conference is under the Management of the Steering Committee. Therefore the Commission has no business to go to lunch or dinner with anybody (*Clapping by Honourable Delegates*) be it a Minister or the President (*Clapping by Honourable Delegates*). Therefore the Commission is

totally out of order, it is trying to marginalize the Steering Committee and if there is any discussion the Minister wants to do, he should do it with the Steering Committee and not the Commission.

(Clapping from the Honourable Delegates)

Hon. Delegate Joseph William Nthiga Nyaga: Thank you, thank you, thank you. I think what that Delegate has proposed is excellent, i.e. the Minister and Steering Committee will hold a meeting in order to discuss this

Hon Delegates: No!

Hon. Delegate Joseph William Nthiga Nyaga: No, no I have not finished, we have said he will meet the Steering Committee then come here--

Hon. Delegate: Mr. Chairman, a Point of Order here, a point of Order here, Mr. Chairman

Hon. Delegate Joseph William Nthiga Nyaga: Please can we proceed now, please.

Hon. Delegate: Point of Order here, Mr. Chairman

Hon. Delegate Joseph William Nyaga: We have agreed the Minister is coming to meet the Steering the Committee and he is coming to meet you. Is that enough.

Hon. Delegate: A point of order here, why are you avoiding me. A point of Order here.

Hon. Delegate Joseph William Nthiga Nyaga: Where are you? I cannot see you.

Hon. Delegate: I am here.

Hon. Delegate Joseph William Nthiga Nyaga: No. 143 , you have the floor.

Hon. Delegate Mg'hanga Boniface: Mr. Chairman, Hon. Delegates, this is a Point of Order under Section 32 on the matter of a national importance. And because this matter is of national importance, this Conference resolves that the Minister comes here and clarifies this issue. Two, because Mr. Chairman the chronology of events resulting to the utterances on the press through this Conference is not autonomous and therefore we want him to come here today to explain to this Conference so that we can continue with the deliberations. Thank you.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much, that was decided upon, it is just now the administrative efforts, we are making to locate him. That has been agreed upon and I thank you for that Point of Order. Shall we now ask Prof. Wanjiku--

Hon Delegates: No, no!

Hon. Delegate Joseph William Nthiga Nyaga: --to make a presentation—

Hon Delegates: No, no!

Hon. Delegate Joseph William Nthiga Nyaga: --then we will come back to this subject okay.

Hon Delegates: No, no!

Hon. Delegate Joseph William Nthiga Nyaga: --Please, please I plead with you (*Shouting by Hon. Delegates*) let us make some progress we are now making efforts to locate the Minister, is that okay? That subject please is now concluded let us have... Point of Order...(shouting) we have had enough let us make progress. Prof. Wanjiku proceed. (*Shouting by Hon. Delegates*) Please, I plead with you, we will come back to you, we will come back to you.

(Shouting by the Honourable Delegates)

Hon. Delegate Joseph William Nthiga Nyaga: Let us finish, we will come back to you. (*Shouting by Honourable Delegates*). It is only 20 minutes presentation then we will come

back to you. You know we are very democratic people, don't you know that? According to the programme, we are supposed to have tea now? Do you want to go for Tea?

Hon. Delegates: Yes.

Hon. Delegate Joseph William Nthiga Nyaga: It is hereby agreed we go for Tea, twenty minutes only. Thank you.

The Meeting resumed after tea at 12.15pm.

Hon. Delegate Bonaya Godana: Order, Delegates. Please take up your seats. Honourable Delegates are requested to take up their seats. Please move up faster and take up your seats. Those who have not taken up seats, please take up your seats. Order, order Honourable Delegates, I think it is important that we start and at least finish with the presentation from the two Commissioners before we break for lunch.

I want to restate for the avoidance of doubt that the separate sheet of paper which was distributed as updated version of chapter 10, you treat as a non-paper we are back on the original Draft which was gazetted in the Orange Book. Treat the new updated version as a non-paper which you can pick out the ideas when you go to the Technical Committees or even when your Debate at will. Or disregard it completely that is what a non-paper does.

As regard the issue about the statement reported, statement of the Minister, we are frantically trying to get in touch with him and I hope we can leave the matter where Honourable Shikuku and I said we should leave it until he comes to explain to the Conference. We will come back to it at that point and I think it is really important. I want to plead with you that it is really important that we recognize we are far behind schedule.

The 6th of June when we are adjourning, in fact is approaching and we still have quite a number of topics we have not discussed. I think it is critically important, that Kenyans know we have gone beyond the discussion of the general principles into the actual Technical Committees before we adjourn and I think, it is important that those of you who may be pricked by certain developments which I understand that are pricking, also know that we did not easily follow into

the trap of actually contributing to unnecessary delay of the Conference which some defectors may want.

I would therefore plead for your understanding that we allow now--. We are coming back to the subject as it is but for now, let us allow the two presenters who are left to do it in 20 minutes each so that we can open up the debate before we break for lunch and I am calling on Honourable Professor Wanjiku Kabira first.

Com. Prof. Wanjiku Kabira: Thank you very much Honourable Delegates. I would like you to refer to the Orange text, on the chapter on Devolution, which is on page 154. You can also refer to the Green one the original document on page 41. So what I am going to do, is to look at the organization of the Devolution and then Commissioner Kangu, is going to look at the General Principles after I have completed.

May be before I begin with Article 214, I want to say that, if you look at the report of the Commission either the Green or the Orange Report, you will find that most of the issues we have reflected at the Devolution and the reasons as to why we have devolved power they way we have done in this particular Draft Bill, is based on what the people themselves said about their own situation all over the country and I know Commissioner Kangu is going to deal with that but I would just want to raise two point before I go ahead and say that one of the main reasons and you see it reflected in the Draft where we have talked about the organization of Devolution is people lack control of even local resources. A lot of people felt that they did not control the resources. They were not able to make decisions about Land matters, they were not able to make decisions about Marketing and so on and therefore, they wanted to be able to make decisions at that level.

We had a lot of views on access to services for instance. A lot of complains generally about lack of health services, poor roads, infrastructure, lack of access to issues related to land, you know Title Deeds and so on. And insecurity, where they felt that the Police for instance, if they were hired by the local communities, they will be more responsible for their needs and so forth. I think when Commissioner Kangu, deals with that, you will appreciate probably even much more why we have devolved the powers to the level we have done this.

I will quickly go to Article 214, which looks at the principle of the Devolved Government and we are saying that this principles that are based on Democratic Principles, the importance of Legislative, all policy making or supervisory councils and Executive Authorities. In other words, we want to make sure that each Institution that is created, whether they are talking about the Village Council, the District Council, Location Council, has both Legislative and Executive Authority.

We have also devolved powers; to ensure that these Authorities are accountable you know to the people and that the voters themselves are as in the case of the MPs can also be recalled if they do not fulfill the needs of the Kenyans. We have also provided for at least one third of women representation in all the Councils.

I want to go to the next Article. Article 215, which defines the levels of the Government and we have provided like Professor Ghai said earlier for the Village Council, Location Council, District and then Provincial Council. Article 216, refers to the Village Government. We think that the Village, will have a Council and the Council is the policy making body but it will also have an Administrator and the Administrator is the implementer at the Village level. We are also suggesting that this Council will be elected by the people.

We heard many complains for instance about Chiefs and Sub-Chiefs, but we had a lot of recommendations for Village Elders and there is a sense in which Kenyans at that level felt that if they had an opportunity to elect the leader in the village, that leader will feel accountable to them. So we have provided for that at the Village level. We have also suggested that each of the Council, should have between six and ten Members, so that it is manageable and that they will decide on the system of the Government that they need and this are areas which I am sure when we get to the Committees will develop much more.

Article 217, talks about the Locational Government and this consist of two representatives one of whom shall be a woman. Again, we have taken the principle we adopted much earlier on that we need to ensure that this Councils, appointive and elective positions, represent both men and

women and we are saying that this two, should be elected by the Village Councils to represent them at the location level.

The main function of the Location Government is to actually to coordinate activities within the villages and also plan for those activities that are to go across the various villages. Then we have provided for the District Governments Article 218, where we are saying that this is the main level of Devolution. We are saying that the Legislative Authority of the District, invested in the Council. Once again all over the country we were told that they would like the Mayor who will be the District Chair to be directly elected by the people.

What we have here again as in the other two levels, we have Council which is the policy making body and then we have the Executive Authorities. The Executive Authorities, which is headed, by an Administrator who is also elected by the District. I think we are saying that the Administrator is to implement the policies that are decided by the Council but the Administrator is also going to be able to hire in consultation with Councils the members of the staff of the District Council.

We have also provided for the kind of functions that these Councils are going to be involved in. Then Article 219, we have the provincial Government and we are saying that the Provincial Government, remains mainly coordinating body for the district but we are also saying that they are Provincial resources that need to be managed by the Provincial Council because they cannot actually be managed by the District. This is resource that go across the Province itself. Or even institutions like the University, if you have a University within the Province or you have Provincial Schools and so on we are saying that they cannot be owned by the District itself. Therefore, you need some management and co-ordination at the Provincial level. We are suggesting that we have a Provincial administrator, who is going to be the Executive authority of the Province. In Article 219 Sub-section 2, we have provided for the composition of the Council, which is two representatives, one of them who should be a woman and they should be chosen by the District Council from amongst members.

If you look at the Part 3 of the Draft of this a Chapter, Powers of the devolved government and inter-governmental relations, we are suggesting that the District itself, Article 220, that the parts

of the Districts and in list two of the Seventh Schedule and that list is on page 74 of the Draft and I don't know whether we want to go through this list, the list just itemizes the things that the District Council should get involved in, what kind of revenue they should collect and so on.

You have list two which is the District Government list and they are saying it indicates that the District will be able to implement development plan that is page 74 of the green book. The District will also look at the Local Taxes, Education Services; it will look at Nursery schools, Primary schools and Secondary education. The District will also look at medical and health services, take care of the Health Centers, dispensaries, clinics and will also be responsible for promotion of Primary Health care. They will also look at water services, road services, marketing and trading centers and other provision of services. You have a whole list of the functions that the Districts has been mandated to carry out.

Then you have list three, which is a concurrent list, a list that is of activities that are gently carried out by National Government and the District Government. And one can look at the details of those lists and review them and see whether what we have provided is appropriate. So, if you look at the next Article which is Functions of Provincial Government Article 221, you will find that the principal functions of the Provincial Council, like I referred to earlier, is to enhance the capacity of the District Councils and to promote co-operation between the District Councils. We recognize that the various Districts that are provided for have various capacities and we thought it will be important to talk about how enhancement of the capacities of the Districts and that is the function we thought could be carried out by the Provincial Councils.

We also thought that the Provincial government would be able to assist Districts to develop their capacity to discharge their functions. We are taking cognizance of the fact that various Districts may not have similar capacities and therefore the Provincial Council would be useful in helping in that manner.

We have also suggested that the Provincial government would be able to formulate plans and policies for the exploitation of Provincial resources and development of Provincial infrastructure and manage Provincial Institutions, like I suggested earlier. On Article 222, we are talking about urban government and we are suggesting that Nairobi, which is the Capital, will be managed by

an Act of Parliament. There is going to be the Devolution Act, which is also going to put in details how Nairobi itself is going to be managed, because it is both the Capital and also a District. So, we are also suggesting that Towns and Urban Centers have the status of a location while a City or a Municipality will have the status of the District. You will note that if we take 220 (B) we have more Districts than the Administrative districts. We have more units of devolution than the Administrative Districts.

On staffing of developed authorities, which is Article 223, we are suggesting that first of all, the Provincial Administration is abolished when this Constitution comes to into effect, and the District government will employ their staff. We have suggested that the District government to be employing their own staff. We are also saying that the National Government in consultation with the Devolved Authorities should be able to send its own people to the District, but in consultation with the Districts. We have referred to financial arrangements in Article 224 and we are saying that the National Government is responsible in accordance with an Act of Parliament for the collection of the major sources of revenue.

We are saying this is the devolution Act which is going to indicate in details what kind of revenue is going to be collected by the National Government and what the Districts Governments are going to do, to avoid any conflicts between the District and the National Governments.

We have also suggested that the Districts may impose taxes or levies under the authority of the Act of Parliament, they can make decisions on certain taxes, but the Devolution Act is going to deal with that.

We have suggested in Article 225 that the Commission on Local Government Finance be established. We thought that this Commission for Local Government would be able to give advice not only to the National Government but also to the Devolved Government. The advice will include issues involved to unconditional grants, conditional grants and also equalization grants paid to the marginalized Districts. We are suggesting that because we know some of the Districts are better endowed in terms of resources and some Districts are poorer than others, they have fewer resources, that the central government would subsidize the District Government in

order to ensure that there is some kind of equitable development that takes place across the country.

We have also talked about the sharing of National Resources, which is raised consistently by the people as we find in our Constituency Reports and in the main Report. The District shall be entitled to a substantial share of the National Revenue from Local Resources and for the allocation of 60% to the Communities in whose areas resources are generated. We had a lot of complaints for instance, on ... and I think Prof. Ghai mentioned this earlier, like in Taita Taveta where you have Tourist Resources, which not only bring the revenue to the government but also are a hazard to the community or the animals, and the community itself has not benefited from those resources accrued.

You have water that flows from the mountains down to Mombasa and other areas or even to Nairobi but the people who actually maintain the forest have no access to those resources. So, we are suggesting that the sharing of those National Resources with the community on the ground should be done and even when you collect revenue, there should be some kind of equitable distribution of the revenue itself. We are suggesting that the revenue collection and distribution should also come in an Act of Parliament.

Article 227, talks about intergovernmental relations and again the Chairman mentioned a little earlier about the flexibility of the way in which we have devolved the powers.

We need to ensure that districts are also free to co-operate with one another, and also have a mechanism of resolving disputes if the disputes arise, and we are providing for those issues in Article 227.

We are also saying that if we are going to have Public Servants sent to the District, the National Government should be in consultation with the District.

Article 228 provides for prohibition against holding of elective offices, both at the National level and Districts level. So, we are suggesting that you cannot be a Member of Parliament and at the

same time become the head of the District, the Chair of the District and the Administrator for the district. You can only one position at a time.

We have talked about co-operation between Councils in Article 229, we are saying that these District Councils may co-operate in the performance in their function and for that purpose, may set up joint committees or joint authorities. We are providing for that. We are saying that the arrangement for co-operation and for the termination of this arrangement shall be agreed upon by resolution of the District Councils. We want to make sure that District Councils can co-operate if they chose, they can manage Institution together if they chose, but there must be a way in which they can terminate those relationships if they grow sour.

On Article 230, we have provided for Legislative Provisions for Devolution. We are saying again we are going to have an Act of Parliament, in fact a Devolution Act that is going to map out a lot of the details that are not going to appear in the Constitution. We are saying that to give effect to the principles and objects of devolution and other provisions of this chapter, we will have that Act to deal with that. We have given a list of the things that Act should deal with which I am sure you have looked at, and therefore we will move on to interpretation on page 153 and we are suggesting that when we talk about Devolved Governments, Devolved Authorities we mean the Legislative and Executive Authorities at all levels of devolution which are mentioned in this section. I think, basically, we are saying that having provided for those four levels of government we are trying to meet the needs of the Kenyans as they presented them to us.

There was a sense of alienation from the central government, the government seemed to be too far from them in the sense that the police, for instance, if they were hired by the local people they would have more sympathy with the people. They would arrest you properly without beating you before your wife before arresting you, because they know you and you know them. That they will be able to deal with matters that are close to them. I will ask my colleague to continue from there. Thank you.

Clapping by Honourable Delegates.

Hon. Delegate Mutakha Kangu: Honourable Delegates, thank you once again for having an opportunity to speak to you. I want to start by saying that perhaps this is the most important Chapter in the Draft Constitution we have presented to you. Therefore, it is the one Chapter that we as Kenyans must think about very seriously, debate very vigorously and be able to come up with a structure that can be able to enable us to move forward. It is important because it impacts upon several other Chapters that we have discussed. Therefore, we must be very careful about it.

For us to be able to understand the principles of Devolution, I am going to talk about those principles and then raise some questions for your discussion on the questions of design. On the principles, you will need to know that this is the Chapter that is supposed to address the system and structure of government that we are going to have and if we miss the point at this level, then the designs we are coming up with the other institutions may not work well and might lead to a dislocation in the entire process.

For my part, I normally insist that in understanding this review, we must remain focused on the provision that the institution of government is meant to serve the welfare of the people, and it does so through the proper management of the resources to generate more enough for all of us and equitable sharing of those resources. If that is the case, we then say when we started the review as Kenyans we had reached a point we were saying there must be something seriously wrong with the system of the management of our resources and the system of the sharing of those resources. Therefore, to see the need for devolution you may need to look into the some of the details of the problems of a system of centralized government from that point of view of resources.

The centralized system of government we have as the Chairman mentioned, has been found wanting by Kenyans. It is particularly patronizing to the Kenyans, decisions are made at the centre in Nairobi and they are imposed on the people in the villages. Decisions that directly affect the lives of the Kenyans but they have no say in it. Kenyans found that system to be undemocratic, non-participatory and therefore leading to inequitable system of development of the country and sharing of the resources. It is a system that the Kenyans found very unproductive in the management of our resources, very inefficient in the management of our resources, therefore not generating more of our resources. It is very poor in the delivery of

services to the Kenyan people. It has led to a very uneven system of development of the country. That system of centralized government centralizes both political and economic power. It does so in two different ways.

1. It can centralize the power in one individual or one institution and that individual or that institution has the control of all the resources in the country, has the control of the allocation and distribution of the resources. And given the selfish nature of human being, sometimes you find when you are the one dishing you may not dish equally and that has been the biggest problem with Kenyans.
2. That, therefore, has lead to the struggle you have seen in our country based on tribes, how our tribe's man should become the President and so on. It is because Kenyans know when that happens then you are in control of the resources and the dishing out of those resources. So that is one big problem we must address through the system of devolution.
3. Power can be centralized in a region in a given country. So that development are not even across the country. They are concentrated in one place and in our country as the Chairman mentioned earlier there has been a tendency for Nairobi to suck resources from the periphery to itself and the rest of the country is left with very little.

These resources I have emphasized begin with the human resources so that the mother and father in the villages toil and moil to prepare the human resources but at the end of the day they themselves ask their sons and daughters to go to Nairobi because that is where the jobs can be found. Of course they come, they earn the money here but they spend all of it here, they repatriate nothing back to the villages that prepared them as resources. That is a very insidious way of a poor distribution of resources, which our people hardly realize but it is based on a vicious cycle that has been created by our putting everything in Nairobi. Government institutions, commercial institution, industrial institutions, educational institutions, defense institutions, all of them are in Nairobi. Economists will tell you statistics show that 57% of the Kenyan GDP is in Nairobi, so you can imagine what that means to the rest of the country.

The Chairman mentioned the drawing of resources from other corners of the country and it is clear in our country a lot of things, which are supposed to be based out there, have their headquarters in Nairobi. So that the livestock farmers may farm livestock but all the slaughterhouses are in Nairobi. So the jobs that are associated with those slaughterhouses are not easily accessible to the children of the livestock farmers. The industrialists who would like to start the hides and skins factories and industries will also start them in Nairobi because the hides and skins can be found in the slaughterhouses in Nairobi. Therefore, the jobs in those hide and skins factories are not easily accessible to the children of the livestock farmers.

We talk of the sugarcane farmers and you find the Kenya Sugar Authority in Kangemi. The implications are very clear. You talk of the fisheries industries and you find the Kenya Fisheries in Thika, and you can talk of all manner of things in our economy and you will want to cry tears to see how misguided we have been in the management of our economy in trying to serve the welfare of our people.

When you bring all those jobs to Nairobi, the children from all those other corners will run to Nairobi to look for jobs here. Of course the first question will be which relative is there to accommodate my son or daughter. Sometimes there may be no relative. You look at that because all those jobs are in Nairobi, the demand for housing in Nairobi is very high and so those children of livestock farmers when they come to Nairobi and they cannot get the jobs associated with livestock farming they end up having to carry stones on construction sites. Those are jobs that they could easily do from near home, but they can't do that because construction is not going on in their areas because those things were moved from there to near Nairobi. And because the demand for housing in Nairobi is high, we have developed a strange and unique property market in our country under which a one-acre plot in Runda could be worth six million shillings. You will be lucky if you got a million for a similar acre in the best estates in Nyeri, and when you have to take a loan to construct in Nairobi you will spend less than the one constructing in Kakamega because the materials are coming from Nairobi. When you look for a tenant you will get a hundred thousand in Nairobi, the one in Kitui will be lucky if he got ten thousand but it is a house of a similar quality, similar value and so on.

These are some of the dislocations that have come into our system because of the centralized system of government and that is why we must think about devolution very seriously. If you look at the principles of devolution, Article 213 and Article 214, we are trying to address some of those questions. Questions of an equitable way of developing our country across so that things are not leaning in one place. We are addressing questions of efficient delivery of service to the people; we are addressing questions of involvement of people in their own governance in making decisions about their own affairs. We are trying to enhance checks and balances, because we recognize when someone else is cutting the cake from far it is very difficult for you to control him. So we are trying to bring some of these things down so that the people can be able to participate in governance, they can be able to participate in matters that affect them, checks and balances can be enhanced, democracy can be enhanced and so on. So you will need to read Article 213 and read Article 214. You will also need to go back to Article 14 which deals with the National Principles, Goals and Values and look at Article 14 Sub-Article 14 which says, “The Republic shall be committed to social justice and through appropriate policies and measures to providing for all Kenyans the basic needs of food, shelter, clean water, sanitation, education, health, a clean environment and security so that they leave a life a dignity and comfort and can fulfill their potentials.”

Sub-article 15 of that Article says, “ The Republic shall promote equitable development, recognize and enhance the role of science and technology, eliminate disparities in development between regions of the countries and sectors of society and manage national resources fairly and efficiently for the welfare of the people.” So this one is emphasizing and recognizes that currently there are disparities in the development of our country and we must now define a system that can eliminate some of those disparities. The question is to what extent can devolution help us in this direction.

If you go back to Article 8 (3) we have again emphasized that it is the policy of the state to decentralize the headquarters of National Government Departments and National Public Institutions to all provinces equitably. These are important matters and as I said, I do not normally insist on emphasizing devolution of political power. We must talk about devolution of both political and economic power and you must know that when you have all the headquarters of the government and of all other institutions in Nairobi you force people from other corners of

the country to spend more to access government services, to carry money they have earned in the dust in the villages, to come to Nairobi to pursue their problems in the headquarters, pour that money in Nairobi and go back home with nothing. And the people in Nairobi have nothing to come and pursue in your village, so they cannot bring any money there.

Clapping from Honourable Delegates.

We will not be the first people, a lot of countries in the Western world have distributed some of these things across the country and that is why there are cities that have developed across the country; very many large cities. You look at America, you look at Germany, you look at Canada, you look at Australia, and even in Africa look at South Africa with Parliament in Cape Town, the Ministries in Pretoria and so on. Across the border in Tanzania, a lot of activities of international nature now take place in Arusha, and Arusha is developing very fast. You will not develop those villages if you do not take some of these income generating activities.

Let us now talk about the questions of design. If these are the problems we have identified, can we now look at the issues of design? The design the Commission has proposed, can it address some these questions that we are raising? This is what this Conference has to debate and decide and I want to say that because this Chapter is very important, some of us have not stopped thinking about it even after we prepared the Draft and released it to you Kenyans. Now the design we have given you, the first question is on the levels of Government. How many levels of government do we want to have? The Draft we have given you is proposing five levels of Government. The Central, the Provincial, the District, the Location and the village and you will need to ask yourselves as Delegates: is that number reasonable or is it too large or is it too small? That is a question you need to debate. In many places, many people go for two levels of Government: the Central and the devolved level, and then within the units at the second level, you provide for local authorities. Now, if you look at the Draft we have given you, you will notice we have kind of unknowingly abolished Local Authorities and subsumed them in the system of devolution. You will need to think about it seriously whether that is a good design or it is a bad design.

Number two, if you decide there be two levels of Government, the next question will be: how many primary units of devolution should be in the second level of Government? We should devolve power to how many units? The Draft we have given you says the primary unit of devolution will be the District, and currently barring the debate there has been about whether some Districts are legal or not, we know that we have about 70 Districts.

We have also said in this Draft at Article 222 that the cities and municipalities shall have the status of Districts. That therefore means that our primary units of devolution being the District are not just the 70 Districts we know but in fact they are increased by the total number of the cities and municipalities we have. And talking to some people from the Local Authorities, I am informed that that would mean that we have created about 170 units of devolution. You will need to debate as Delegates; is this the right way to go? And on that number of units, I want to refer you to some of the information I have come by during my continued thinking about this topic and research. Looking at comparative studies on countries that are purely federal or quasi-federal, America is the one that has the largest number of units, 51 States, Germany has 15 Lander, Australia has 9 Lander, Belgium has three regions, Brazil has 26 States, Canada has ten Provinces, the Republic of Comoros has four islands, Ethiopia has nine States, India has 25 States, Malaysia has 13 States, Nigeria has 36 States, Pakistan has 4 Provinces and six tribal areas, South Africa has 9 Provinces, Spain has 17 autonomous Regions, Switzerland has 26 cantons and the United Arab Emirates has 7 Emirates. Those are Federal and quasi-federal countries.

I have also looked at countries that are not federal and are not quasi-federal but have simply done what is called decentralization and are called decentralized unions. And under this Antigua has two islands, Cameroon has 10 Provinces, China has 22 Provinces, Colombia has 23 departments, Fiji Islands has 2 ethnic communities, Ghana has 10 Regions, Georgia has 2 autonomous Regions, Indonesia has 27 Provinces, Italy has 15 ordinary Regions, Japan has 47 Prefectures, Namibia has 14 Regions, Netherlands has 11 Provinces, Papua New Guinea has 19 Provinces, Sudan has 6 Regions and those are the examples. So, when you are designing devolution as Kenyans, and I said this is an extremely important chapter, you need to ask yourself, we have proposed to you 70 Districts plus the cities and the municipalities, which I am told, make it about 170.

Now, the next question is: if you decide on different units other than what we have proposed, because what we have proposed exists, then we go by what exists. But if you decide on a different number of units, then you will need to address questions of how do we demarcate the boundaries, what factors should we take into account when demarcating the boundaries? There are factors of the land, there are factors of the people--population, there are factors of the economy, what economic activity to those people engage in? Viability of the economic activities and so on because we know you can't look at agriculturalists in the same way you look at pastoralists. So you need to address all those questions and tell us what system we should take.

Local Government, where do we put it because if I go back to the question of our Draft equating cities and municipalities to Districts, then you will get into the question of what are the boundaries of cities and municipalities? Will they be fixed or will they continue re-shifting as the cities and municipalities grow? What are the boundaries of Nairobi? Jomo Kenyatta Airport is viewed to be in Nairobi, but administratively it is in Machakos. Athi River is viewed to be part of Nairobi but administratively part of it is in Kajiado, part of it is in Machakos. If you go to, say Kisumu and look at Kisumu District and Kisumu City, what are the boundaries? Will they be fixed and what impact? Is the growth of the city as a unit of its own going to have on the neighbouring Districts, you need to address those questions so that we come up with a clear design.

Finally, the Chairman mentioned that we may just put general principles and leave other questions to an Act of Parliament, to another task force to be established at a later stage. You again need to address that to see whether it is the best thing to do or not because our history shows that the Constitution we got at independence from Lancaster did not take off because of the Party politics there had been between KANU and KADU. And I think South Africa is facing a similar problem of implementation because of politics there were between the ANC and the Inkatha Freedom Party. That when South Africa was talking about their Constitution, the ANC was favouring a more centralized system. The Inkatha Freedom Party was favouring a more devolved system. But because elections were won by the ANC, the implementation on decentralization has slowed down. Do we want to take a similar risk? Thank you very much.

Clapping from Honourable Delegates.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much. The three Commissioners have done our first class job, I think now we understand what is ahead of us. Are you ready for lunch?

Honourable Delegates: Yes.

Hon. Delegate Joseph William Nthiga Nyaga: You want to go for lunch?

Honourable Delegates: Yes.

Hon. Delegate Joseph William Nthiga Nyaga: Because it is such an interesting subject, only one hour, we meet at 2.15 p.m. Enjoy your lunch.

The meeting resumed after lunch at 2.35 p.m.

Hon. Delegate Bonaya Godana: Move in and take up your seats. Honourable Delegates, please take up your seats. Order, order, order. Order, Honourable Delegates. We now start the deliberations since just before we broke for lunch, the Commissioners, starting with the Chairman himself, followed by the other two Commissioners had finished presentations and I think it's time really we moved into the deliberations by opening the discussions to the floor. I will give the microphone over to my colleague, the Honourable Nyaga. Mr. Nyaga, please.

Hon. Delegate Joseph Nyaga: Thank you, Mheshimiwa. What I propose is for a change. Instead of starting from this side I will do the opposite, I will start from this side, turning that way.

Hon. Delegate Joseph William Nthiga Nyaga: In order to ensure that the various categories have a chance, we will mix them. So will get to you very quickly, don't worry. We start with one category, another one quickly and back so that we hear the views of Delegates, MPs, Political Parties, everybody. So I intend to start from my right one by one for different

categories then we start again another category so that each category has a chance to speak as many times as possible. Please don't forget the rules of the game, five minutes. So we will start from this side. Group number nine, District Delegates category, I see none. Then Parliament.

Hon. Delegate Bonaya Godana: No, no we continue. No, it's okay.

Hon. Delegate Joseph William Nthiga Nyaga: We will start with number 190.

Hon. Delegate Musa Sirma: Mr. Chairman, thank you for according me this opportunity. First and foremost, the devolution of power from the centre to our various devolved levels is one of the most important things that we must undertake. Central Government, Mr. Chairman, has been so dictatorial in the past, in that ...

Hon. Delegate Joseph William Nthiga Nyaga: Who are you?

Hon. Hon. Musa Sirma: My name is Musa Sirma, M.P. for Eldama Ravine, Delegate Number 190 Mr. Chairman. I wish to say that the Central Government, Mr. Chairman, has been so unfair to certain communities because we have been having all the allocation of resources in this country decided from the centre and it was who is who in the allocation of resources.

This time round we want equitable resources and that comes to what we want in this devolution. Mr. Chairman, the levels of devolution which I would like to propose is, we should have the National Government, which will have its responsibilities. We should come down to the Provincial Government where we shall have a polity only, which is supervisory to the District Government. All the money for development, Mr. Chairman, should go direct to the districts and this will ensure that the money allocated for certain projects is actually given to the district and to the people directly.

The level of the village and the Locational Government, Mr. Chairman, I wish to propose, should be part of the District Government. They should be servants of the District Government and responsible to them because we have elected leaders coming all the way from the location. If we are going to have them within the locations, we could elect the administrators. We have been

electing chiefs before but when we changed and became dictatorial in this country, we just selected and decided to have our own friends and made them chiefs, assistant chiefs for purposes which were well known to those who did it.

Mr. Chairman, I wish also to talk about the item on changed status of the municipalities and the cities as Districts. Mr. Chairman, that is so unfair because we cannot have a municipality, 174 local authorities in the country, to be Districts or have District status. We want to have the District whether there is a municipality or not, they will have their own Acts to run the municipality. We are going to have the District Councils within the District Administration so that they can be able to run what they have within the Districts. These small councils, the urban council, the town councils - all should be done away with because these are useless and non-viable. We have been having local authorities which are of municipality status but they cannot even pay their salaries to Councillors. Some Councillors are even here they might not have received salary for a long time. So we want to abolish them so that we can have either a District Council, which is within the District Government. We are only going to have - as it is written that Nairobi will be run by an Act of Parliament. Mr. Chairman, if that is done, we also want to cater for those people who are not provided with facilities at that time from independence up to now.

We have people moving towards the North Eastern to Mandera, to Moyale even to Taveta on trunk roads without tarmac out of this country. Mr. Chairman, we must provide resources for such trunk roads to those areas which were forgotten by the first Government. Mr. Chairman, I think what Mutakha said, people have been coming to Nairobi to look for their retirement benefits and I think in Parliament now we have a pending Bill, which requires that you will get your salary before you leave the job. So I think that will enable people to have their money rotate within the Districts and within their home areas so that people just don't bring money to Nairobi and we change the level of development. The development in Nairobi should be equal to that in the rural areas, so that ... resources can move around. Mr. Chairman, I beg to support the devolution of power to the three levels of Government. Thank you.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much for speaking within the five minutes. I am now looking for somebody in the District category, who has not spoken. We finished Parliamentary now I am going to group number 8, this other block.

An Honourable Delegate: I am a District Delegate.

Hon. Delegate Joseph William Nthiga Nyaga: We do one, one, one.

An Honourable Delegate: I am here.

Hon. Delegate Joseph William Nthiga Nyaga: Yeah, the other District Delegate who has not spoken and who wishes to speak in this category.

Honourable Delegates: He has never spoken.

Hon. Delegate Joseph William Nthiga Nyaga: Okay, number 359.

Hon. Delegate David Oloisa Mpilei: Thank you, Honourable Chair. My names are Oloisa Mpilei from Trans Mara. May I just ventilate on a few issues, which I would wish to comment on.

One is about the share of national resources. Honourable Chair, I beg that the share of national resource should be clear because it is stated 'substantial'. It should be something like 60 percent that should go to the District Government.

The other thing here is about the District Governor. Honourable Chair, I have not seen the qualification of a District Governor. I believe devolution to the District as a fundamental unit is proper and we need District Administrators with qualifications. A degree holder is my proposal because a District is competitive as there are a lot of services which are involved and we need somebody who is actually qualified. The youth should really compete for this position and I urge you, Chairman, that the age limit should be 21 and above.

The second thing is the issue of 30 women to the Upper House in the National Council. The number should be distributed along Provinces and Rift Valley should be divided into two Provinces each with three women representatives.

The other issue is about cities and municipalities. I oppose the idea of cities and municipalities becoming Districts. This is because districts, the cities and municipalities are a result of the growth of the Districts and these are the market place for those Districts and actually is the .. Honourable Chair, if you change it to be a District you will be removing the symbol as Wanjiku will ask “*Bwana Mwenyekiti utachukua wapi soko yangu?*” because when he grows maize the cess is really catering for development of a city and a municipality. So I think we should just leave the city and municipalities becoming part of the District and should have a status of a Location. That’s all, Honourable Chair, thank you.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much. We now move to this section and I am looking for the other category, which includes Trade Unions, Religious Groups and NGOs. Who has not spoken? I was told it must be the people who have not spoken for the first round so that we give a chance to as many people as possible. So far, 369 people have spoken since we started, so there is still another 300 and something who have never spoken. So, if you see us insisting on giving a chance, it is because we want to be fair. So in this category, I am looking for somebody from the Trade Unions, Religious Groups or NGOs. Delegate number 353.

Hon. Delegate Joseph Njalis Sheul: Thank you very much, Honourable Chair for giving me this opportunity to contribute in this chapter. My names are Joseph Njalis Sheul from...

Hon. Delegate Joseph William Nthiga Nyaga: I am sorry, you are a District Representative, aren’t you?

Hon. Delegate Joseph Njalis Sheul: Yes. It is not fair. I also represent the ...

Hon. Delegate Joseph William Nthiga Nyaga: I will give you a chance but at this point, we note that you have never spoken – we are aware – and we are going to accommodate that kind of a group but for now it is the Religious Groups. Please, you will get a chance. Huko nyuma, 521.

Hon. Delegate: Thank you Mr. Chairman and Honourable Delegates, my name is Wahu Kara, Delegate 521 representing Religious Organizations. My contribution to this debate on Devolution of Power, in particular I would wish those who are going to be in this committee to remember that the challenge ahead of us is to be able to audit our society and put our history right. I am saying this because we must continue to remember that the basis and the centre of power is the citizen, just like the ideals are reflecting here. But, the mechanism and the framework that we are going to come up with is what is crucial because we must guarantee that we are not going to put institutions and structures that are going to continue serving the same interests. I am saying this because we have a history of doing so, and even as we discuss and talk here, we are still repeating to say that “we will give” which means that there is still the same status quo that is in control and it is trying to make sure that it continues being in control, and it is going to be disastrous if we do so.

Therefore, what I am proposing is that the essence of the centre of power and its relationship with the authority to exercise that power, must be put very clearly so that the citizens of this country can have opportunities to be able to correct or to recall or engage, as need be. That is why we should not be contradictory in statements or in semantics hiding what perhaps can be of no use to the citizens. I am saying this because we have seen the district focus, formerly when it was being used to take services closer to the people but it never did. I am saying just like the Americans who in 1776 said, ‘no taxation without representation’, the Kenyans are saying, ‘no governance without services’. Therefore, when we are devolving this process, the question of the citizens and in particular how we view poverty is very important.

I want to remind those who are sitting here that it is not accidental the way our cities are and the way rural-urban migration takes place, and that is why we must realize that poverty is not just a preserve of the rural. I wish you can remember the question of poverty in the urban areas where people are reduced to below destitutes. So, when we are saying that resources are in the cities, I think that is a misnomer and we must be able to understand that until and unless we put the

subject and the problem in its proper context, where the issue of resources and access to resources is what is critical, how we distribute is also what is critical, then I think that even if we come up with a blue print yet the centre of power is still to serve the interests of those who misuse the power when they go into authority, then we shall still be in a lot of problems.

So, I am saying, as we discuss this chapter and come up with recommendations, we must remember that the centre of power is the citizens and we should not contradict that position either by semantics or by contradiction – it has to be very clear – and the citizens must have a way of monitoring how that power is exercised and to guarantee if it abused, create a mechanism of being able to redress it for they are the ones who are the bases and the origins of this power which is bothering us. So, let us not continue to repeat mistakes that have been done time and again and I think our 40 years experience, is classic experience to remind that you cannot cheat for a very long time. I repeat that the citizens are saying, ‘ no governance without services’. Let the people of this country for once, be given the services that they deserve. Thank you.

Hon. Delegate Joseph Nyaga: Thank you very much and more so for being within the five minutes. This category, I am now looking for an MP, preferably one who has not spoken or who has spoken once. Delegate number 64, have you spoken? I have a list here which shows how many times each Delegate has spoken. If you see me referring to it, it is because some have spoken once, twice or thrice. 64, you are okay, proceed, you have never spoken.

Hon. Delegate Joseph Lagat: Yes, you are right Mr. Chairman. My name is Joseph Lagat, MP for Eldoret East. I would like to make a few comments on this subject. First, I think I would like to thank the Commissioner who gave us a very beautiful presentation today. I think if all Commissioners had that status, we would be enjoying ourselves here.

I would like to look at Article number 214, about the recall and I think to many of us, we would not like to see this issue of recall again, especially Members of Parliament, now it is going to the District and locational councils. I am sure that those who would like to be elected at those levels would not want this issue of recall to appear anywhere.

I support the issue of electing 1/3 of women to these levels and I think that is commendable for the Commission. I would also like that when we are electing district governors, we would like to have some qualifications and especially in terms of the fact that those who are elected must be members of that district. They must have lived there for a certain number of years. We would not like a situation where we have outsiders coming to certain districts and becoming governors in areas where they have not been born because that would result in the marginalization of certain communities as many of us have already complained.

Mr. Chairman, I have not seen a clause regulating the span of the councils. I do not know whether they are supposed to stay forever, or ten years. I think that it is important for that clause to be placed there. Mr. Chairman, we would also appreciate if it is emphasized that certain districts have to be subsidized. I think it is very important because some marginal districts would have it very difficult to survive under situations where they have to rely on their own resources. I do not know what happens to certain natural resources like water. For example, in Uasin Gishu where I come from, if I have to get water, I will get it from Marakwet district and we are told to pay 36 million shillings just to tap water that was already there and nobody was doing anything about it. I am not saying they did not need it, I know they preserved the area. I would like to see a situation where the government will have to assist, so that certain natural resources are used for the benefit of districts without necessarily having to penalize certain districts because certain rivers, if you talk of natural resources, some of the water that we take in Nairobi probably comes from Mt. Kenya and if the area residents would say that before you get the water you must pay 50 million. I think it would be disastrous if those issues were not looked into.

Mr. Chairman, I support the three levels just as my colleague has said; from National, Provincial to the Districts. It would be very expensive. I know democracy is expensive, but I think we can work a situation where we do not go to locational levels and we will save this country quite a lot of money. Mr. Chairman, I support the fact that many of the regional centres of many organizations should be decentralized to districts. Looking at passports, for example, it is a nightmare in this country to get a passport because you have to come to Nairobi for almost two months, at the end of which you might not even get the passport. I would like a situation where these instruments like passports and driving licences are given out at district levels so that people do not waste a lot of money and time coming to this city and spending all our money in Nairobi.

Mr. Chairman, I would like a situation where research institutions as well, are not based in Nairobi. For example, I do not see why an institution like KARI should be based in Nairobi yet most of the work it does is supposed to be in the rural areas. Mr. Chairman, I do not support the fact that municipalities should be made districts. I think that is unacceptable because we are complaining of Nairobi sucking resources from all parts of the country. The Municipality will also suck resources from the rural areas and I think for many of us, we would not like a situation where all our resources are taken to a municipality at the expense of the rural population.

Mr. Chairman, Article 230 says that the legislative provision should be amended by absolute majority, I think, it is unacceptable because if you have big communities when they would like to have certain amendments, they would do that very quickly at the expense of other small communities in parliament. I would like a situation where we will retain the 2/3 majority for every legislative amendment just like any other in Parliament. Thank you, Mr. Chairman.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much. Next category, I want to recognize a district representative 357. You have never spoken?

Hon. Delegate Teclah Nairesiai Munkushi: Thank you Honourable Chair. My names are Munkushi Nairesiai Teclah, Delegate number 357 from Transmara. Honourable Chair, I am also for the devolution of power to the districts. In essence, I am looking at Article 213 Sub Article 2 which says: the devolving authorities are entitled to an equitable share of revenue raised nationally to enable them to provide basic services. In this, Honourable Chair, I would propose that funds like the LATFs which are normally distributed to the Council each financial year should be shared to all councils equally in spite of their sizes. Previously, Honourable Chair, Municipalities, Town Councils did get more. This criteria I think should be discarded so that Article (f) and (i) of this Article 213 should be considered where interests of the marginalized, minorities and disadvantaged groups are promoted and protected.

Honourable Chair, I am also looking at Article 226, although it was taken care of by my colleague, I would also go for the 60% of the resources collected from the authorities so that it may help the devolved authorities to be able, so that the devolved authorities are entitled to

benefits of their local resources in order to benefit the local communities within where those resources are found.

Honourable Chair, I feel there is an omission somewhere after Article 223. It would be Article 224 of which I propose that there should be a Commission, the Local Government Service Commission to take care, which should be formed to undertake the affairs of the Local Authorities instead of the Public Service Commission.

Honourable Chair, we have seen several times that the Public Service Commission is taking care of all Ministries in the country. So in most cases, issues pertaining to local authorities take a lot of time to be resolved. So, in this essence, because we are devolving power, I would also wish to see the Commission involved pertaining the local authorities to be formed. And these Commissions should be financed from the consolidated fund. And also it should be a fourteen-member commission of which one third of it should be women. Thank you Mr. Chairman.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much. Next area I am looking for special interest, political parties, women and professionals. From this section, people who have never spoken. 503.

Hon. Delegate Elizabeth Mayieka: Thank you Honourable Chair. My name is Elizabeth Mayieka, Delegate number 503, representing the women organizations. My contribution Honourable Chair, is; I would like the devolution of power to the districts because that way, we will be able to distribute the resources to the rural areas, we will be able to create more industries which will enable our children and our brothers to get employment because there is a big inflow of people coming to the city to look for employment. Honourable Chair, as you know we also have young children who come and look for jobs in Nairobi, may be they don't have families, who can accommodate them? They end up living in slums, they get into bad habits like taking drugs, especially when they are frustrated and they have no job. But if we have all these industries, Ministries, may be in the rural where they can be employed, they will be able to live in their homes and therefore also contributing to their families on the income they get.

I would also recommend that getting this governance into the district will also help a lot of family who have their, may be, especially the women, they have their husbands coming to look for jobs in Nairobi and sometimes they don't go home for a long time. So you find that the women are suffering, may be the children don't get to go to school because also, may be their husbands have not been able to get jobs and provide for them as families.

I also would like to contribute that we do not need the municipals, and the cities as districts because that will be duplicating, to be a district on another district. So we need to do away with that because it will also be very expensive for the government. That is my contribution, Honourable Chair. Thank you.

Hon. Delegate Joseph William Nthiga Nyaga : Thank you very much. Next I am looking for an MP from this section, MP, preferably one who has never spoken. Thirty eight, 38.

Hon. Delegate Kamama Asman: Thank you Mr. Chairman for giving me this opportunity to contribute to Chapter 10 of the Draft Bill. My names are Honourable Kamama Asman, MP, Baringo East, Delegate number 38. Mr. Chairman, this is a very, very important and critical Chapter in this Draft Bill. In so saying, I want to appeal to all delegates to take this Chapter very seriously because if we do not do it, we are running the risk of coming back to this same venue after 40 years as Bomas of Kenya Veterans because we did not debate this Chapter soberly and with a lot of caution.

Mr. Chairman, I want to discuss the provisions contained in the Article 215 and this talks about the Village Government, Location Government, District up to Provincial Government. Now in this situation the word 'village' is quite vague, I don't know whether we are talking about a sub-location or we are talking about just a normal village in our normal set up. Now, when we talk about a village; a sub-location in this country has an average of about 20 villages. So that one must come out very, very clearly because we may end up having so many Village Governments within a sub-location.

Again Mr. Chairman, there is the issue of Provincial Government. I do not think it is necessary to have the Provincial Government. Let us devolve powers to the districts and abolish this thing

of Provincial Government. (*Clapping by the Honourable Delegates*). Even in our normal structure, the current one that we have the Provincial Offices are just, structures that are used to delay government services, or government reports from the district to the Headquarters. So I would imagine a situation like if you have a provincial director of Agriculture. You know, this fellow is doing what is being done by the district people. So I would rather we do away with the province and we go straight to the district.

Article 213, it talks about considering those who are marginalized and in this case Mr. Chairman, I want to look at the welfare of the pastoralists in this country and other minorities. I want it, put in this Clause that the pastoralists and other minorities who have been marginalized since colonial times be considered and be uplifted by way of giving them the Affirmative Action.

Again Mr. Chairman, I want to look at the election of the District Administrator. If you elect a District Administrator through universal suffrage or rather elected directly by all the people. We shall be having a Governor and Members of Parliament are going to be under him, the Councillors are going to be under him, and we shall have a situation where we are just going to have one centre of power. So I would suggest that the District Administrator or the District Governor be elected by MPs and Councillors. That is my position, you have your own position.

Okay, Mr. Chairman, let me also look at this issue of elections from the village level up to provincial level. Mr. Chairman, this system is too political, we use elections after completing our normal national elections, then we go to this election on up to provincial, we shall waste almost one year just doing election. So I would rather we reduce the component of electing all these offices.

Now one last one Mr. Chairman, there is the issue of Nairobi being our capital city. I want some amendments. Amendment to Chapter 2 that Nairobi should be our commercial city and then we will look for an administrative city like the way it is done, if you go to Tanzania we have Dodoma, if you go to Nigeria we have Abuja as an administrative city. We want another city, whether it is Eldoret, Kisumu, Kakamega, Garissa or even Nakuru. We want another administrative city so that these powers can move from Nairobi to those other places. Thank you Mr. Chairman for giving me this chance.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much. Next group, I'm looking for a district representative who has ever never spoken or who has only spoken once, so that we can ensure everybody gets a chance. 239.

Hon. Delegate Halako Fatuma Galgalo: Asante Bwana Mwenyekiti. Kwa jina mimi naitwa Fatuma Galgalo, kutoka wilaya ya Tana River, Mjumbe nambari 239. Kuhusu devolution, mimi naweza kuchangia hivi: kwanza naiunga mkono hii devolution of power na sababu ni kwamba, hii inampatia mwananchi direct contact ya kupanga mambo yake vile anavyoyataka. Tukilinganisha devolution of power na ile Serikali ingine ambayo ni ya centralized, utaona kwamba ile serikali ingine ilimngawanya mwananchi ikamnyima nafasi lakini I think devolution is the answer to the problems of the mwananchi. Tukiangalia kifungu cha 216 (3) kuhusu village councils mimi ningeona hivi, kwamba hiyo serikari ya kijiji ambayo ina wale watu wa kijiji, nimeona ina makosa kidogo kulingana na vile ambavyo imeandikwa; kwa sababu haimpatii nafasi mwanamke kuwa kuna umuhimu wa kwamba achaguliwe. Imesema kwamba, wazee wa kijiji wanaweza kuamua wao wenyewe; kama tunavyojua mila zetu huko vijijini vimewabagua wanawake. Kwa hivyo kifungu hiki kikiwachwa hivyo, ni kusema kuwa wanaume ambao ndio viongozi wa vijiji wataweza kuchagua wao kwa wao na kutochagua mwanamke.

Tena kuhusu manispaa, mimi nimeona hivi kwamba, manispaa zisiingizwe katika district. Tukichukua mfano kama Thika Municipality, na Thika district, unakuta watu ni wale wale, na resources ni zile zile. Kwa hivyo ni kama kukoroga hapo, districts zibaki districts, na municipalities ziingizwe hapo kwa district.

Pia nimeunga mkono mwenzangu ambaye ameunga mkono Local Government Commission, ni muhimu kitu chochote kiwe na commission ambayo inaweza kuangalia maslahi ya hizo Local Government Authorities.

Tena mimi nimeunga mkono districts to provincial, districts ziwe gravity of the devolved government. Hii ni kwamba kuna probability ya kwamba hizo serikali zikiwekwa kwa mkoa, kuna uwezekano wa kwamba yale yale ambayo tulikuwa tunaogopa kugandamizwa, watu wa province wanaweza kuwa na mpango wa kuelewana kagandamiza wilaya zingine. Kwa hivyo

mimi mwenyewe naunga mkono hasa devolved government zirudi kwa districts. Asante Mwenyekiti.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much. This final group, I am now looking for somebody from Unions, NGOs, Professional, Political Party, or Special Interest Groups. 603, have you spoken?

Hon. Delegate Winston Ogola Adhiambo: Thank you very much Mr. Chairman. I am Ogola Adhiambo of Political Parties, Federal Party of Kenya. I would like to give my views on this devolution because I see it is the main problem and is the main problem of marginalization of people. The system which I envisage is that where the district would be one of the good ones but at the same time we would devolve up to a civic level as in Britain, Switzerland, Belgium and these other countries which brought this type of government to us. Why I like this is because as we have been told, we have got 70 districts and we have got a hundred municipalities and the rest which will mean that we shall have 170 units; and since we believe partly also in the rotational presidency, the rotational presidency for 170 will defeat the purpose especially of the marginalized groups. So we propose that federalism is the best way of devolution, that's why Americans have got a lot of riches because it is a devolved country. So we shall have something like 15 plus Nairobi, 16 states, to which the power will be devolved, so they can have a federal President who will be elected by the 17 or 16 presidents so that each ethnic group will have the chance of occupying the presidency post within a period of 15 or 16 years and that will be very good for Kenya.

Another side of this is, if we go to the levels of devolution, the main devolution power area will be the ethnic group and we shall have other smaller devolutions like village, location, and district, which we also agree to. I would like to remind you so that you know that in the world the major devolution principle is federalism and that's why you saw yesterday our Honourable President, the Honourable His Excellency Mwai Kibaki called only the Ambassadors from federal countries starting with the Federal Republic of Germany. Who can tell me which Ambassador from which devolution countries he didn't call? So we should not put Kenya at risk with new experiments. The freedom which you are having is of European origin and we must follow that one but we cannot subject our children to things which we do not know because there

is nobody who can tell me about a devolution country. All these people in this hall just heard of devolution one year ago and we have been used to the unitary government or central government. So I am just requesting you not to put our children at risk. Thank you very much Mr. Chairman.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much. He is an expert in Jimbo. We go back to where we started from, last time we had a Member of Parliament, so, a District Delegate from this section who has preferably never spoken or who has only spoken once. This man, 365.

Hon. Delegate Sisika Leng'ete Moses: Thank you Mr. Chairman. I last spoke in Representation of the People. My name is Ole Sisika, I come from Kajiado. In our memorandum to CKRC, we had actually requested for federalism, but if the Commissioners have recommended, and it is acceptable to us that we have devolution of power, then we must have one which is acceptable to us. Since independence 40 years ago, the central Government have marginalized the Maasais in all their districts. All DCs posted to all districts have come to make wealth in our districts. All DCs who are posted to our districts retire after their tour of duty as millionaires, at the expense of the Maasai. For all these years the central Government made sure that Maasai who are learned people should not head departments in all these districts, leave alone employing them in their own districts. As I speak now, not a single department in Kajiado is headed by a Maasai despite the fact that we have gone to school and we have experienced ones. This is one way of marginalization and that's why we say this devolution of power is necessary. All Maasai districts have been endowed with revenue generating resources e.g. Maasai Mara, Amboseli, Magadi Soda, and honourable Shikuku is my witness. He has worked in Magadi, he was born there, *(laughter)* he knows who is working there. The Maasais who are employed there are only assigned to collect chumvi, sijui kurokota chumvi ama nini, and we have Maasais who have gone to school. This must end. Other resources like Portland Cement used to be in Kajiado but it was taken to Machakos district so that they get the resources; it is coming back to Kajiado very soon. *(Laughter)* So those who are used to resources from Portland, you better try to get other sources from some other places. Nolresh Water Supply from Mt. Kilimajaro, where is the water being used? In Machakos, watering flowers and the Maasais and their cattle are dying in Kajiado and the water is from Kajiado. Think of marginalization, I don't

know what other things you want to know that people are marginalized. We have a saying in Maasai which says this: You better hate me but not despise me, the Maasais are despised because when you hate me you are afraid of me but when you despise me you can do all sorts of things.

I come back to Article 2 and 5. Let us devolve power to the district as the principle level, we don't want provincial councils. This is another marginalization, and somewhere like Rift Valley where I come from, there are many tribes there. We are saying, the level of devolution is the district; we don't want provincials, for it is like returning marginalization through the back door and we have had enough of that.

Article 218, Sub-article 3 and 4, the district administrator should be an indigenous one, not from another community as it is now.

Article 222, Sub-article 2 and 3: cities, municipals, to have standards of district. This one should be deleted completely. These places are where we get our resources from a district. If for example now Kitengela here in Kajiado is developed, it's going to be made a district or whatever, where will Kajiado County Council get the resources? Or that time district councils will get the resources? We should not want that, and I speak because I know there are some people going around wanting to make Kitengela an urban place, to make Ngong an urban place, and we know all the reasons and we know all who are behind these: to deprive us of our livelihood. Our district council must have resources to get the money; we should not be beggars in our own district. We cannot expect to get some money from the central Government; if we have not got any all these years, do you think when we give them power to do these things we will get anything? We will not!

Article 223: district government 'shall', not 'may', employ their own staff; we don't want 'may', because when you put 'may', you will start bringing people from outside. It should be 'shall employ'. Specialists we don't have, we will employ others on contract when we get ours for training. *(laughter)* I am not an alarmist, neither am I a tribalist, but I have been paying for 40 years' marginalization. Our children are at home; we have gone to school and who is getting our jobs in all districts of Maasais? Not Maasais, so don't take me on that angle. I have been saying

and because devolution of power is coming, we have to rectify the wrongs, which have been there for all this time. Thank you Mr. Chairman.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much. That was a representative of a district. Next session we are looking for a Member of Parliament preferably who has spoken only once or not at all. Is 413 an MP? 186, is he an MP?

Speaker: No, he is not.

Hon. Delegate Serut John: Mr. Chairman, my names are Serut John, MP Mt. Elgon, Delegate number 186. I want to talk on this topic of devolution, devolution as it sounds in this chapter, means taking power to the people. You cannot take power to the people when they have nothing to eat, therefore you have to take with you the economy. I come from Mt. Elgon District which is one of the marginalized district which have been talked of here.

This marginalized districts was once part of Bungoma District, most of the schools in Bungoma District were developed at the expense of the schools in Mt. Elgon. So when we are talking of devolution, let us also put into account those districts that were not developed during the Central Government. And the only way to elevate them so that they can also have access to institution of higher learning, is to come up with a fund that will assist them to come up with what I may refer to as model schools.

While within the same topic, Mr. Chairman, the Commissioners have come up with what they are calling the three or four stages of Government. They are talking of the central Government, provincial and then devolution to the district. I would beg to differ with taking the devolution to the village level, this is because of the amount of money that is going to be involved. Let us talk of, when we can implement, my concern is implementation, we can't talk of even starting from the house, to the village but the issue is, do we have enough money? So the manageable levels of devolution as far as I am concerned is from the locational, we go to the district which is going to be the primary level and then we move to the Central Government.

Now looking at this devolution of power. I see another element; the element I am looking at here is the question of resources to the district. If you look at the list, which is provided for here, where are the districts administrator will be getting the resources from.

I will go back to Mt. Elgon, I want to tell you that Mt. Elgon being one of the marginalized district, has no Government land where it will get what is being referred to in one of the Article Act land rent. Land rent is a source of revenue for the district and yet it doesn't have, they are talking of cess, non of these items are there. But another confusing element that I see in the district is the one number twelve on list number seven schedule two, where they are saying rights of a property, belong to the district. I don't know what the Commissioners had in mind. Can we get a clarification as far as these rights of a property, belongs to the district? Because when I look at devolution, we have gone back to what we call Majimbo, is nothing other than Majimbo but sometimes when we talked of Majimbo, some of us were being accused of trying to introduce sectionalism in this country.

Now what is this devolution, isn't it the same thing? According to me, it is the same thing because if you are being asked to use your resources to employ your own staff, here you appointing a governor, you are appointing a District Administrator in the name of a governor, surely where are we heading to? Are we not heading to Majimbo? Every region will manage its own resources, if that is for, can we also be told what happens to the natural resources because it is not elaborate here. What comes out of the natural resources like our forest, like the parks within our own regions, where is the money going to go to? Thank you very much.

(Clapping by Honourable Delegates).

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much. We are now in this section I, in order to make them. I wish to recognize somebody from special interest, political parties, professional NGOs', or COTU or Trade Union this time, from this section. Here there is a point of order.

Hon. Delegate Ogembo Matete: Mr. Chairperson, my name is Ogembo Matete being 591. I want to draw your attention to the fact that you are making a mistake, which was being made

yesterday by saying Political Parties, Special Interest etc. Political Parties have got their own plot and please don't mix us. Thank you.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you, thank you. In fact is that.....(?) persons participate. We have tried to divide the group into three, one-third as this, one-third district category and one third between COTU, NGOs', Professional Women, Religious groups, Political Parities and Special Interest.

The problem we are having is, most of this third categories many of their people have already spoken, so we have to try because they are not as many in terms of Delegates, so we have to accommodate those who have not spoken who in many cases are from other categories. That is the reason if you can bear with us, but we understand what you are saying. 307.

(Clapping by Honourable Delegates).

Hon. Delegate John Nyaga Waruri: Thank you Bwana Chairman for your eyes catching me since I came into this hall. My name is John Nyaga Waruri District Delegate 307 from Kirinyaga District.

I want to be very brief and very fast so that I can beat up the time allocated to me....

Interjection Hon. Delegate Joseph William Nthiga Nyaga: I am sorry, I am sorry I made a mistake, it's not district Delegates, we are looking for the third category please, I am sorry, we will give you a chance. Somebody from the third category, could it be NGOs, professional, Women Religion, Political, Special Interest if not then we will start now coming to complete the district and the MPs. Don't put up your hand unless you are in that category. Give me a minute, 450.

Hon. Delegate James Ngusi: Thank you Chairman, I am Delegate number 450 representing the Trade Unions...

Hon. Delegate Martin Shikuku: Point of order.

Hon. Delegate Joseph William Nthiga Nyaga: Point of order? Yes, Mheshimiwa Shikuku.

Hon. Delegate Martin Shikuku: Mr. Chairman, I thank you very much. We have go to be fair, on that same line there was a Delegate who had started speaking and you told him to sit down and you will come back to him, you have not come back to him. He was 353, if my memory serves me right. And the Honourable Member who is trying to speak now, I always sit here from the beginning to the end, he has spoken.

(Laughter from Honourable Delegates).

Hon. Delegate Joseph William Nthiga Nyaga: Yes, I am aware he has spoken, the program I had with 353 is because he is a district head and I am ensuring that he speaks through the proper category otherwise we will have a mix up with the record that we are keeping. Very soon the district and MPs are going to have a very good a location once we have done one or another, now it is the turn of COTU.

Hon. Delegate James Ngusi: Thank you so much Honourable Chair and Delegates. I had started by saying that I am Delegate number 450, representing the Trade Unions. My names are James Ngusi.

I want to start off by agreeing with the presenters that this is one of the most complicated chapter of this Draft Bill and obviously, we have to be extremely careful and spend a little more time in looking at each and every clause within it.

Secondly, Honourable Delegates, we know very well that from history and from the experience we have had, political power is one means in which economic resources are mobilized. And therefore in principle, the recommendation of the Draft Bill that we have to devolve political powers, requires total support of all the Delegates here. I therefore support right from the start, the devolution of powers from the central Government down to the three levels(Inaudible) and I would like to endorse the view that the district becomes the principle level for the devolution of powers.

(Clapping by Honourable Delegates).

Having said that therefore, I want to suggest very strongly that we need therefore, to make sure that we just don't in theory, devolve powers to the district and then we are doing nothing about making sure that districts become very, very strong and effective instrument for mobilizing both the political as well as economic power that is required to bring about equitable development for our country. And therefore, I would like to urge that when you look at this chapter, we spend a lot of time in looking at how we are going to make sure that the elections at the district levels, are effective so that they give us the right and inspective representation at the district levels, people who will be able to effectively manage the affairs of the district, effectively engage in reasonable, principle, rational negotiation with the national Government.

It is for this reason that I am saying, one actually advise that, we have to very careful about is, how shall we be able to manage the elections at the district levels, given one, the disparity in the political power base in this country. I have in mind for example, a district that is predominantly one political party, how shall he make sure that the other parties within that particular district or the minorities within that particular district, have a voice in the management of affairs in that particular district? These are national Government. I think we need to look at that very seriously and I believe we need to spend time particularly in the Technical Working Committees so that we are looking at this seriously.

Thirdly, I think we have to very careful in writing this particular chapter. If we are saying that we are doing away with the issue of Central Government, for heaven sake let us not mention about the Central Government again here because it has it got not the centralization of powers from which we want to depart. Let us use the concept of the national Government vis-a-vis the district Government all through out this particular chapter if you have to be safe at all. The moment we talk about again the Central Government having the responsibility to take their public officers to manage the affairs at the district level, I think we are not going very far, we are just going back to the old regime where the frustration at the district level particularly with experiment we had with the district development committees. We saw very well that the provincial levels of the Government, was a major stumbling block for the work of the district and

therefore, I do support the proposal that we do a way with the provincial councils from the Constitution.

Bwana Chairman, I noticed under Article 225, of the Draft Bill, I had mentioned about a commission on local Government Finance and yet when I look at Article 103 sub-section (3) under chapter (7), of this Draft Bill, this Commission is not mentioned. Can the Commission tell us what is happening? Was it an over sight? Or what was the intention on mentioning this particular Commission within the Draft Bill. Thank you.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much. I am looking for an MP from the next category who has not spoken or spoken only once. MP this section.

Uproar from the floor.

Hon. Delegate Joseph William Nthiga Nyaga: Just give me a minute or so Number 250, MP. No this section I am looking for an MP, please.

Uproar from the floor.

Hon. Delegate Joseph William Nthiga Nyaga: 612, is that an MP? We cannot see very clearly from here.

Hon. Delegate Nyiva Mwendwa: I am an MP, Mr. Chairman. My name is Nyiva Mwendwa, I am an MP from Kitui West, my delegate number is 134. I want to make a few remarks. Yes, I do support devolution of powers and the first thing I would like to observe is that some of the provinces are very large. I have in mind Eastern Province and the Rift Valley. I think these can be divided into either two or three provinces. I am saying this because I am of the opinion that the powers should devolved not from village but from sub-location, location, and district up to province. Why province? Because in some cases we have just said that we are going to employ our own people. What will happen if you do not have qualified people in the district? I am of the opinion it is possible in some cases, but the district as a unit might be too small. Yes, I agree it should be the focal point, it should be the most important unit, but you might need a province.

Secondly, Mr. Chairman, I would like to observe that when it comes to elections, we should also be gender sensitive, but everybody should be qualified for whatever position there running. I should also like to suggest that we do have the province for this reason. We do have some resources, which are not just in one district, for example, our rivers, our minerals and so forth and you might need more than one district to unite together in the exploitation or use of the resources. For example, we do have our rivers where electricity is produced. This is not in just one but several districts, which I think need to be united. I can see a situation where even some provinces are going to work together. I have in mind North Eastern and Eastern Provinces which are neighbours and have got resources going over from one to the other. Therefore, I think we should be very careful. I do feel that we are getting emotional because of the wrongs which have been done before but I am also sure we are not going to repeat the same mistakes. I am sure the devolution of power does not mean that we are not going to work together. If the communities have not been agreeing, I can see us agreeing in some areas for our own good. Therefore, I do want to suggest that maybe we start from location, district and province. Thank you, Mr. Chairman.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much. I am looking for a district representative, Delegate in this section, preferably one who has not spoken in this category.

Hon. Delegate: Point of order

Hon. Delegate Joseph William Nthiga Nyaga: Point of order, yes. Who has a point of order?
295.

Hon. Delegate Saipstone Ngalaatu Musau: Thank you very much, Mr. Chairman. My names are Saipstone Ngalaatu Musau, delegate from Machakos, Masaku County Council Chairman. Mr. Chairman, you have now passed this column twice and have called for an MP. If you do not remember when you come here, it means you will call an MP again. Can you remember a district Delegate when you come here, please?

Hon. Delegate Joseph William Nthiga Nyaga: I will, I assure you I have a very good record. In fact the way the numbers are working it will be district representatives and MPs because the other categories have spoken a lot. You might find you have an advantage in the next round. So I will take that into account. Thank you. I recognize 228.

Hon. Delegate Kilonzi Livu Raphael: Thank you, Mr. Chairman. My name is Raphael Livu, number 228, and representing Mombasa district. Mr. Chairman, will comment firstly on Article 215. My interpretation of this article, on election, in a district where you have 36 locations, you will be talking about 102 Councillors before you talk of the village Councillors. Mr. Chairman, I have a feeling that we are also politicizing too much on this, perhaps you can settle that. Mr. Chairman, this Chapter generally talks basically about women and men. There is not a single mention of the disabled, the youth, the marginalized, professionals and that kind of thing. I do not know where they fit as far as this Chapter is concerned. Mr. Chairman, also in Article 223 (1), you talk of abolishing the provincial administration immediately that Constitution is put in place. Do we have the resources in the first place, to pay the casualties their dues?

Number two, Mr. Chairman, would we have the expertise to replace them once they are disposed of? Mr. Chairman, on Article 218, Sub-article 4 and 5, I would like the presenters to explain the qualifications of the administrators that are mentioned in the Article. Mr. Chairman, Article 229(2) talks of a place where two districts may enter into a coalition. Mr. Chairman, what happens, for example, if Garissa district discovers oil today under this Constitution and decides to enter into a pact with another district and not recognize trade with any other district in the country, don't they have a right to secede as suggested here? Perhaps also the Commissioners should explain that. Thank you so much indeed.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much. Next category. Last time we had women's representative. I am now looking for an MP in this category so that I can balance the numbers. I recognize number 60.

Hon. Delegate James Viscount Kimathi: Thank you, Mr. Chairman. My name is Viscount James Kimathi, MP for Lari, Delegate number 60. I want to agree with my colleagues who have contributed here and I want to modify a bit, Mr. Chairman, and the Honourable Delegates. We

must admit, Honourable Delegates, that the previous regimes marginalized many brothers and sisters of the Republic of Kenya and directed resources to places where there were well-connected men and women. We must, Mr. Chairman, not be sycophants here, we must put things right so that every Kenyan-man, woman and child can benefit from our resources. I am proposing that we divert the entire development funding, other than defence and other necessary resources which should be maintained by the national government, to districts so that it can be distributed and reach every man and woman from North Eastern, Maasai land, Turkana and everywhere. I have sympathized with many places where I have traveled. I have traveled to North Eastern, Turkana, even Kisumu, and I was shocked. I even participated with some Luo brothers in developing some schools. I sympathized with the kind of development in some areas of this country. Mr. Chairman, so that I may not take a lot of time, I will like to modify something. When we talk of districts, we had 41 districts at independence, there so many other districts which were created politically and which cannot sustain themselves. We have heard a speaker talk of a district that cannot sustain itself. We should have a commission to look into those districts which cannot sustain themselves and which were economically created through political favouritism. I would like when we are distributing the money, we do it to 210 constituencies so that it can reach the people, because there some districts with one or two constituencies. If we are giving Kshs. 100m or Kshs. 200m to every district, how can we give Kshs. 200m to a district with only one or two constituencies while some have seven or ten constituencies, Mr. Chairman? We would like to distribute the resources according to constituencies because we have 210 where MPs have been elected and we have wards.

The other thing, Mr. Chairman, I would like rectified well is the manner in which we elect people to represent us at the district level because we have Councillors, a location committee, and now the new people we have to elect. That will be overlapping, so we have to have a mechanism. Also, Mr. Chairman, those political urban councils which were created uneconomically-so many in a few districts should disband so that we have one central point in the district from where all the men, women and children of the district will derive their resource.

Regarding the elections, Mr. Chairman, I would ask my fellow Honourable Delegates to support me that we call upon the Electoral Commission to conduct such elections and they should not be

based on political parties but on suitability. If a man or a woman is suitable to lead us in the district they should be elected and should not belong to any political party. This is because some political parties in some areas are so popular and we might be dominated by some political parties, which do not necessarily have suitable candidates. There is a difference between popularity and suitability. There were very suitable candidates but who, due to their political parties, were left out. Mr. Chairman, I was left out for nearly 35 years, for 35 years I have been trying to come to Parliament and it is only in the last election that I came in, because the supervision was very good. We counted votes at polling stations and I would like the Honourable Delegates to agree with me that we should make it treasonable for anybody to rig elections in future; do away with petitions and replace them with stiff penalties, and never steal the rights of the people.

Finally, Mr. Chairman, a fellow Delegate, who is a Member of Parliament like me, spoke here and said that MPs and Councillors should elect the district governors. I do not agree. We cannot usurp the power of our supporters for MPs and Councillors to exercise. I propose that the population in the district elect their leaders, not the MPs or Councillors. So God bless the Delegates, God bless our country. Thank you, Mr. Chairman.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you Mheshimiwa. Next block, I want to go to COTU, NGOs, and other categories. I recognize 435.

Hon. Delegate John Katumanga: Mr. Chairman, and Honourable Delegates I thank you very much and Honourable Delegates. Yes, I agree that we should devolve powers. My name is John Katumanga. I work for the teachers of this country. I am their national chairman.

Clapping by Honourable Delegates.

Mr. Chairman, let us be very, very careful. Let devolution of power not mean, making many states, which can in future begin talking about creating their own governments out of Kenya. Mr. Chairman I was very saddened when I heard one delegate saying; we shall employ our people in our own way and at the beginning of these discussions we were talking about creating one country. If we are creating one country, I think we should look for efficiency. We should look for

the right kind of people to do the right kind of job. The problem in the past is; people politicized this thing, got mediocre to lead us in various areas. They stole money, they misallocated resources and that is where we are now. Mr. Chairman, education is a basic fundamental right for every Kenyan child.

I feel very sad if you say that local areas should run education, particularly primary schools and nurseries. That is the foundation of education. In 1950's and 1960's we had things called County Councils here. Some County Councils were rich, they even lent money to Britain. That money has not come back but that's not what I am talking about. I am talking about those that were unable to run education services. These councils employed teachers of lower qualification. That drastically affected education. I want to say, Mr. Chairman that anything touching on education should be in list number one. We cannot consign education to list number two. My other concern, Mr. Chairman, is the capacity of people during devolution. The capacity of people who would do the right job. Presently, we have County Councils, City Councils, they cannot even run water services and yet we are going to give them power. We should have a mechanism such that these councils, whatever...should have the capacity of people who can do a nice job. There is money you gave out, you people of Kenya through something called *LATF* . That money cannot be accounted for properly. My fear is how we are going to have checks and balances to make sure that as we devolve this power, that power is not misused. Because power can be misused whether at national level, district level, provincial level or locational level.

The other issue, Mr. Chairman, is about resources; the disparity in resources among the districts, the provinces and so on. If you are going to merely say that the resources will be redistributed equitably, use even evenly and yet those people who are going to lead these small areas like locations, districts and provinces are going to be elected politically. What guarantee do you have, that these people will be forced to make sure that these resources are used equitably or shared. These are my fears about devolution Mr. Chairman. Then we have some people we used to call Administrators. I was frightened by the paper this morning, where you are calling some people Governors. That is a colonial name. It has wrong connotation. It has a meaning of a person bossing over others. I have no quarrel with the questions of calling someone an Administrator, because he becomes a servant of the people. But I have a quarrel in saying; he should be given power to appoint people with the support of the council. It should be the council to appoint the

people. Not to be given to one person called an Administrator because then you go back to the sycophancy we are trying to avoid. Mr. Chairman because I don't want to waste a lot of time, I would like to say once more, all the schools from nursery school to national level should be a national issue. Let us not have the temptation to be cheated that local authorities or whatever we shall call them, location councils will have the capacity to run those schools because they cannot and the education of our children will be in danger. Thank you Mr. Chairman.

Clapping from the Honourable Delegates.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much. I am looking for an MP in this second category. An MP, please. This section, not there. If you have spoken please, make it easy for me. 26.

Hon. Delegate Galgallo Gurrach Boru: Thank you Mr. Chairman, for having recognized me. I am going to be very brief and to the point. My name is Mheshimiwa Gurrach Galgallo Boru, mbunge wa Moyale. The idea behind devolution and why Kenyans asked for devolution is because of past experiences that we have had under central governorship. So, we are asking for devolution of powers to reasonable levels. The way we have in this Draft, I think it is a bit excessive. What we should do is to look at our present systems, at our present levels of Government. See which ones have served us well, improve on those ones and get rid of the levels that have not been performing.

By that I mean, of course for national unity, we need to maintain a reasonably strong national Government that will enable us enjoy sovereignty as a nation. I have a problem with the provincial level, what we have seen over these years, provincial level of Government has been the center of tribalism in this country. I could ask you in this Conference, Honourable Delegates, if I mention Central Province, you immediately think of Kikuyus. If I mention Nyanza Province, immediately you think of Luos and Kisiis. If I mention North Eastern Province, you would think of Somali. That is the system, which we want to get rid of. That system has made us think in terms of tribes and we know tribalism is the biggest cancer in this country today. So, we get rid of that level altogether. It does not serve any purpose other than causing problems for us. Those of us from smaller communities have suffered under the umbrella of province because we do not

get recognition in the provinces. You will see now in Eastern Province, Marsabit, Moyale and Isiolo have been marginalized under Eastern Province. Whenever there are appointments that come up which are based on provinces, it is our bigger brothers, the Embus, the Merus and the Kambas who get it. The rest of us from the smaller communities never benefit under the umbrella of the province. So this level does not serve as any meaning as a nation. We get rid of this level altogether and we go to the districts.

As a Member of Parliament, from my experience over the last five years, whenever I needed to have something done in my constituency, the person I turn to is my District Commissioner or departmental heads at the district level. You can work without referring to the province and have all your things done at the district level. So what we need to do is to strengthen the district level. It is close enough to the community and not too far away from the central Government also. So we should strengthen that level of Government. When I look at the draft I see a place where it says 'District administrators can be dismissed by the council; I think that is giving too much powers to the council. District Administrator, we say, is elected by the community. So, what business does a council have dismissing him. If he is to be dismissed, then we should find a way of maybe just having a referendum of the people who elected him and not just by members of the council who have been elected. The next level that in our current system does not serve any purpose, in my opinion, is the divisional level. Whenever you go to a D.O, he will not be able to make any decision. He will always refer you to the District Commissioner. So what business does he have? The only other level that is effective is locational level. You will agree with me, for anything, whenever you think of the grassroots, the person you think of is the chief and the chiefs have done a job that, in my opinion, should be maintained and strengthened.

So that level of Government also is necessary. The village level surely you have so many villages and you want to establish councils in all those villages and those councils....in one location you have twenty villages, ten to thirty councils, you have over a hundred people. I mean, surely in every society there are leaders and there are those to be led. We cannot have everybody leading. There are few people who have been endowed with powers to lead. It does not make sense for us in saying that we want to devolve powers to everybody. You want to make everybody a leader. It doesn't work. So at village level really, I think the Chief or somebody at the locational level is enough to govern all the villages in that location. There is no need why we

should have so many councils at the village level. All we need is; we have again a strong locational level with a council headed by a Locational Administrator or whatever title you want to give him and we do away with the stories of giving villages as councils. With these few remarks Mr. Chairman, I thank you very much.

Clapping by Honourable Delegates.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much. This last group, I am looking for a District Delegate. 327, behind at the back.

Hon. Delegate Lepuchirit Sophia: Thank you very much, Mr. Chairman, for noticing me. I would like to support the devolution of power. Indeed, we've really suffered....My name is Sophia Lepuchirit from Samburu district. I know when I mention Samburu District, some people automatically think, 'Oh, what a poor district that is.' Definitely, I would like to inform you that Samburu district can sustain itself. We have the manpower, we have the capacity and infact we have the resources.

Clappingbye Honourable Delegates.

The former speaker, Honourable speaker from some constituency said that some districts might not be able to sustain themselves. Can you believe that some of us like Samburu district, we are the custodians of the wildlife just like the Maasais? And yet even at the national level, Kenya Wildlife Services and African Wildlife Services and other organizations cannot even have the audacity to employ our Samburus in that sector and we are the custodians of the wildlife. With all due respect, when we devolve to the districts, we will really be in charge of our own destiny. We have the resources and we have the capacity to maintain ourselves. But it doesn't mean we will not get manpower from other developed areas or from other specialized people like from other districts. Indeed we will work together like we were doing it before. Only this time, the resources will be shared wisely among the people.

Devolution of power; we would like to devolve power to the districts and the provincial level has really marginalized us. Imagine from Samburu district and Turkana district, driving for twelve

hours to Nakuru to come and get our bills or to come and present our problems. We have provincial heads of departments they have never even visited our district. You can wonder. Somebody is in the Government Department; they've never even gone to the interior of the provinces. Rift Valley itself has marginalized us so much. I wanted it to go on record that we from the North don't want to be part of Rift Valley. With all due respect to Rift Valley, we've really suffered. You come to our headquarters in Samburu district, if there is a messenger to be employed at the D.C's office, the messenger is brought from Nakuru, the messenger is brought from Uasin Gishu. Why and yet we have very poor Samburus who could really work there. Rift Valley itself must be divided. Please, Honourable Chairman, I am begging the Honourable Delegates to accept that we've really suffered for many years. We would like to be out of Rift Valley and if need be.....

Uproar by Honourable Delegates.

Please Honourable Delegates, give us a chance to devolve to the districts. If you cannot get to the districts, let us go to North Eastern Province, we would be better off there.

Clapping by Honourable Delegates.

Because Rift Valley has really marginalized us so much. Imagine we cannot even employ our own staff at the district level. Even our Members of Parliament will agree with me. So, instead of Provinces, let us devolve to the districts and our Legislators, our elected Members of Parliament will represent us at the provincial level. They will air our views at the national level. Because the provinces have done us a lot of injustice. Imagine driving all the way from South Horr or from Loyangarani to go to Embu. Or from Wamba to go to Nakuru. It is actually unbelievable. The provinces were created by the colonial government and we should not stick to the provincial boundaries because they have really marginalized us as Kenyans.

We should all agree that we should come out of those boundaries if we want to represent our people collectively. At the Central Government, I am begging the Honourable Delegates to remember that up to now, we have not been given appointments in Central Government. May be if we go down to the districts, we will be able to be recognized because we have educated people

even at our district level. I would like to tell Commissioner Ghai and the Honourable Commissioners, this is the best form of Government, which can serve all Kenyans. Thank you very much for giving us Chapter 10 which will really see that all Kenyans will be treated fairly. Thank you, Mr. Chairman.

Hon. Delegate Joseph Willsiam Nthiga Nyaga: Thank you very much. Somebody has not spoken from this section. Yeah, okay, but please be very brief....

Hon. Delegate John Gitari Munyi: Mr. Chairman, I am John Gitari Munyi, delegate from Embu and I am on a point of information. I would like to inform the Chair that the last two Chairs had promised a Delegate Number 284 that he would be given a chance and there was an oversight. Please round this time, can you rectify the oversight of the previous Chairs? Thank you.

Hon. Delegate John Gitari Munyi: We will rectify shortly, although he has spoken twice.

Laughter from the Honourable Delegates

Hon. Delegate Joseph William Nthiga Nyaga: 449.

An Honourable Delegate: Point of order.

Hon. Delegate Joseph William Nthiga Nyaga: You will get, please. Okay, point of order but please 393, point of order then we come to 449.

Hon. Delegate Roselene Barasa Ashepete: Honourable Chair, my names are Roselene Barasa Ashepete from Teso District. My number is 393.

I would want to say that, it feels bad to be marginalized in the District and also at the Plenary.

Laughter from the Honourable Delegates

Another thing I want to say is that, I have heard Honourable Members talking of political districts. Which Districts were created in the Church?

Clapping by Honourable Delegates

All Districts are political even those ones that were created during independence were created politically and let us not debate on this matter for a long time.

Clapping by Honourable Delegates

You only hurt us when you keep on talking of political districts and another thing concerning the same, if you say that you take the resources to the Constituencies –

Hon. Delegate Joseph William Nthiga Nyaga: Point of order made. Point of order has been made. Thank you very much. Although I wish to confirm that people from Teso have spoken. I have marked and that they have spoken. But you have not spoken.

Hon. Delegate Roselene Barasa Ashepete: Can you allow me to make this point, Sir?

Hon. Delegate Joseph William Nthiga Nyaga: No, no. Point of order. You have made your point of order and it is very clearly understood.

Hon. Delegate Roselene Barasa Ashepete: Thank you.

Hon. Delegate Joseph William Nthiga Nyaga: So, we now have 449.

Hon. Delegate Benson Okwaro: Thank you, Mr. Chairman.

Hon. Delegate Joseph William Nthiga Nyaga: Please, please.

Hon. Delegate Benson Okwaro: Thank you very much Mr. Chairman. My names are Benson Okwaro. I belong to the Trade Unions. Thank you. I want to take this opportunity to give my views on the issue of Devolution of Powers.

Mr. Chairman, I support the idea of Devolution of Power because as you are aware, a lot of the problems that we have in this country, particularly on the issue of sharing resources has been as a result of the Central Government being unfair to other areas. I want to say that the manner in which it has been put in the Draft currently is good enough and is in the interest of Kenyans.

Mr. Chairman, I also want to talk on the issue of level of government. Yes, I support the levels of government as provided in the Draft except for the Provincial Government which may be unnecessary as has been well articulated by speakers who came before me.

Mr. Chairman, I also want to add that when it comes to the issue of employing people in the District levels of government, I have noticed that there is fear from other speakers that probably if in the absence of unqualified personnel, then there will be a problem. I want to say here that it is very easy for the districts concerned to look for personnel from elsewhere and be able to pay them well and I think they will be able to use the pay in those areas and this will be in the interest of those districts.

Clapping by Honourable Delegates

Yes, Mr. Chairman, another area that I want to talk about is the issue of sharing the resources. I think, what should be taken into consideration here is that when the National government will be distributing the resources to the district governments, I think they should also look at how equitably they can be passed. We have fear that probably when these resources are being distributed, they may not be distributed equitably considering the fact that other districts as has been said by speakers before me, have very little resources and we have fear that unless some of these resources are distributed equitably, then such districts may remain marginalized forever.

I think, Mr. Chairman, another area that I thought was worth mentioning is on demarcation of the boundaries. There is one speaker before me who had said that it may be difficult to demarcate

boundaries considering we were told by the presenter that Municipalities and some cities may be seen as units. In a case like this, I think, I would recommend that the districts be left as they are on the seventy districts. So that if say, Kisumu City for example is in the District of Kisumu, then the Government should be in the Kisumu District and not having two governments within a district. I think there may be a conflict of interest and there could be a problem.

I think the other issue that I wanted to talk about has been talked about by others and I would probably want to end there. Thank you Mr. Chairman.

Clapping by Honourable Delegates

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much. We are having problems with the excess light here. I recognize the category of the --. I need a District Delegate from that area or person in order to balance it. Do we have a District Delegate in that area?

Hon. Delegates: (inaudible)

Hon. Delegate Joseph William Nthiga Nyaga: It is the light which is blocking us a bit but we will be able to –

Hon. Delegate Martin Shikuku: Point of order Mr. Chairman.

Hon. Delegate Joseph William Nthiga Nyaga: 255, have you spoken? We are having a problem.

Hon. Delegate Martin Shikuku: Point of order.

Hon. Delegate Joseph Nyaga: No. 258 has spoken twice. Sorry.

Hon. Delegate Martin Shikuku: Point of order. Point of order Mr. Chairman.

Hon. Delegate Joseph William Nthiga Nyaga: Hon. Delegate Martin Shikuku.

Hon. Delegate Martin Shikuku: My point of order Mr. Chairman, I think we will make your work easier if those who have spoken once could not raise their cards. That is the where confusion is coming from. Let those who have spoken, as I have spoken once. I do not raise my card. You do not see me raising my hand at all so that you have an easy job.

Hon. Delegate Joseph William Nthiga Nyaga: Please, could we—

Hon. Delegate Martin Shikuku: -- so that you have an easy job.

Hon. Delegate Joseph William Nthiga Nyaga: Yeah, particularly this area where I cannot see very well. Would you please, those people from COTU, NGO's, Professionals, Churches, Political Parties, who have not spoken, please now, could you give us – 539.

Hon. Delegate Archbishop John Njue Njenga: Thank you Mr. Chairman for giving me this opportunity. It is my first time to speak since this Conference started (*Clapping by Honourable Delegates*) even though I arrived yesterday. (*Laughter from the Honourable Delegates*). I--

Hon. Delegate Joseph William Nthiga Nyaga: Your name, number?

Hon. Delegate Archbishop John Njue Njenga: I am Arch-Bishop Njue John, Number 539 and I am among the Religious Group representatives. Mr. Chairman, I would like to first of all recognize--

Hon. Delegate Joseph William Nthiga Nyaga: There is a point of order here. Yes, point of order Number 12.

Hon. Delegate Hon. Abdul Bahari Ali: Thank you, Mr. Chairman. My name is Honourable Abdul Bahari Ali, Member of Parliament for Isiolo South, Delegate Number 012. My point of order is, in view of the fact that the Speaker who is on the Floor has just said that he came here yesterday; I wonder whether he has taken an Oath here before he can speak.

Noise and uproar from the Honourable Delegates

Hon. Delegate Joseph William Nthiga Nyaga: The Chairman confirms that he has taken the Oath.

Hon. Delegate Archbishop John Njue Njenga: Thank you Chairman. I arrived yesterday and I was sworn in officially and thoroughly. (*Laughter and Clapping from the Honourable Delegates*). Mr. Chairman, I would like to note with gratitude the expression of the last of the Commission who spoke of the importance of this Chapter. That it is extremely important because it is touching on matters that probably were never touched before. It is a section which is reminding us *ya kwamba kumekucha* and it is time for us to really wake up and to take up our responsibilities. (*Clapping from the Honourable Delegates*). For it is really sad, forty years after our Independence that we are still talking of marginalized areas. It is really sad that forty years after independence we are still to talk as we are doing now about evolution. But nevertheless, it is better late than never.

I agree fully that the time has come when we need to have Devolution and which means that the people have to be given the responsibility to determine their own destiny with regard to their lives. (*Clapping from the Honourable Delegates*). And this is why I feel comfortable when we are saying that let this Devolution go at least to the districts. It is there-- (*Clapping by Honourable Delegates*) --that people know exactly what their resources are, people know where their strengths are and so forth. So, I am also confirming very strongly that let this be brought down to the district levels. At the same time in determining who are going to be the leaders of these district levels, I would be very uncomfortable if they were to be left to be elected by Members of Parliament. Let the people decide.

Clapping by Honourable Delegates

Nevertheless, even with this Devolution, I would be very uncomfortable if the Devolution was to bring about the disunity or to tear this country apart. Let the Devolution not be synonymous with disunity. Certainly, mistakes have happened. I think we cannot deny this, but I think it is our time now to be able also to do the liberation Let us repair and in repairing, let us not in any way

at all come to the point of having to create animosity, which can tear us apart. We are sons and daughters of this country and we should remain in unity. In fact we need one another. There is no community, there is no district, and there is no region that can be self-sufficient. Even if as a country with our own identity we cannot be self-sufficient, we need others. So let us create an environment where every district can be able to manage its own affairs but let us not in any way at all enter into a situation of exclusivism. Thank you Chairman for giving me the opportunity.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much. Next category where I normally sit. I have not recognized an MP from this area, is there an MP other than my brother? 202.

(Laughter from the Honourable Delegates)

Hon. Delegate Martin Wambora Nyaga: Thank you Bwana Chairman for recognizing me.

Hon. Delegate Joseph William Nthiga Nyaga: Yes number 150.

Hon. Delegate Norman Gathakari King'ang'i Nyaga: Mr. Chairman, whereas I do recognize, that it was by sheer coincidence that you and I were born of the same parents, is it a crime, is it a crime to be the brother to the Chair, that I may not get an opportunity to speak, so that I am ready to sit here and stay put for ever? Thank you.

(Laughter/applause from the Honourable Delegates)

Hon. Delegate Joseph William Nthiga Nyaga: Delegate number 150, it is because you have spoken once and I was trying to be very fair.

Hon. Delegate Martin Wambora Nyaga: Thank you Bwana Chairman for giving me this opportunity. Mr. Chairman, my name is Honourable Martin Nyaga Wambora, MP for Runyenjes. Can I go on Mr. Chairman?

Hon. Delegate Joseph William Nthiga Nyaga: There is a point of order somewhere. Yes 155. There is a point of order, 155.

Hon. Delegate Raila Amolo Odinga: Mr. Chairman, I confess that I do not share common friends with you. Mr. Chairman, the last time I spoke in this Chamber was on Wednesday last week. It is now eight days. Am I to understand, Mr. Chairman that until the end of the plenary we are not going to have a chance to speak at all, those of us who have spoken?

Hon. Delegate Joseph William Nthiga Nyaga: Thank you. You will be able to speak just hang on. You will be able to speak. Keep trying, keep catching my eye, I will make sure that you speak.

Hon. Delegate Martin Wambora Nyaga: Mr. Chairman, I will say my name again, Martin Nyaga Wambora, MP for Runyenjes, number 202. Mr. chairman, I want to add my points to those of my colleagues who are for devolution. I am for devolution because the people in the rural areas will have a chance for first time to have self-governance. I am for devolution because for the first time my people in the rural areas will be able to have increased checks and balances, as far as the Central Government is concerned. I am for devolution because of the equitable sharing of national resources. Mr. Chairman, I am for devolution because of the more effective provision of essential services, which will come with it.

Having said that, let us make very specific references to the Articles in that Chapter: Affirmative action, Mr. Chairman is also in order. Article 217 on the composition of Locational Council and Article 219 on the Composition of the Provincial Council. These ones are talking about one lady one man. That will bring it to fifty percent of affirmative action. My problem is, that is contradicted by Article 230 (3), which is very clear about women getting one third, one third as affirmative action for those two Councils. I would prefer to go by that one. There is some contradiction there.

May I also go to Article 218 on the District Government, Article 218 (2), talks of the re-composition of the District Council being not less that twenty members, and not more that thirty.

Some of the districts are very very small. I would prefer that we do not have a lower limit, so that for small districts they can even have ten or even five members, but the upper limit is quite in order. Then of course in the same section on the appointment of the District Chief Officers, I concur with the Chairman of NARC who pointed out that they should not be honorary staff of the District Administrator alone. But I want to go a step further and recommend that this be done by a District Appointment Committee, so that the people employed in the district will not have the case like the one we have from the Honourable Members from Samburu, where they do not have anybody from Samburu in the Council. We should have District Appointment Council, which will see to it that there is equitability.

Mr. Chairman, may I talk about the sharing of the national resources, under Article 226, and I quote 226 sub Article (1) which says, “ Districts shall be entitled to a substantial share of the national revenue from local resources.” Mr. Chairman, I am proposing that to be very specific as that local share, and I am saying a district like Narok should be able to get seventy five percent from the Wild Life management, so is Samburu. A district in Coast which raises a lot of revenue from tourism should be able to retain seventy five percent of their wealth. Districts in the coffee growing areas should be able to retain seventy five percent of their locally generated wealth. We should come up very very clear on this issue, because most of the wealth must be felt where it is being generated, and not to be brought to the national government.

Finally Mr. Chairman, I want to say that at the five levels of government, I wish to recommend, even my colleagues too, recommend that we do away with the Provincial Council because they are not effective, they have failed in their work and they are insensitive. The current system of the Provincial set up. But I would still retaliate that the districts remains the focus of the devolution, the location continues to be important, the village should not be left out because they will be formalizing what we already have, the Village Elders.

Hon. Delegate Joseph William Nthiga Nyaga: I am looking for District Delegates in this category, 250.

Hon. Delegate Abdullahi Haji Mohammed: Bwana Chairman, asante sana. Ninashukuru kwa kunipa nafasi hii Bwana Chairman, to contribute on this Chapter of devolution, oh, my name is

Abdullahi Haji Mohammed, delegate number 250, Garissa District. Bwana Chairman, I will refer to Article 226, district National resources should expressly state the percentage to be retained by the district. Because I can actually see some of my friends here, proposed seventy five percent and seventy five percent I think would be a very upper hand because the national government requires a lot of resources to spend on defence and other matters of international relations ...

Hon. Delegate Joseph William Nthiga Nyaga: 279 point of order.

Hon. Delegate Grace Nduyo Ntembi: Thank you Honourable Chair, my point of order, with all due respect to the Chair. Honourable Chair, please, could you kindly be gender balance (sensitive) you are only picking from male and Honourables. *Clapping.* Ladies are here from the districts and other organizations but only a few of us ladies have spoken. Thank you Mr. Chair. I request that next the time for district delegates it will be 279.

Hon. Delegate Joseph William Nthiga Nyaga: I will be very generous in fact about one two three, five women have spoken; I wouldn't be more generous as I have been so far. You can continue.

Hon. Delegate Abdulallahi Haji Mohammed: Asante Bwana Chairman. The other thing that I also wanted to add is on the provinces. The essence of devolution is to take the administration as a government closer to the people as possible and themselves to run those local governments. So the provinces seem to be very big and cumbersome. They have also been abused previously because of marginalizing; some of the provinces just like our fellow Delegates in Rift Valley have complained. So, I propose on the provinces clause, that they be increased from eight to twelve, so that Rift Valley can be made three, Eastern Province two, the others the others I think could remain the same.

I propose that the districts also, because our former northern region, Upper Eastern, North Eastern, we have districts which are equivalent almost two provinces, and to manage them and to take the administrative or devolved powers closer to the people, I think they also need to be divided equally. I think some other districts which are populous will also be the same, and I think

from seventy, we should not put ---(*Inaudible*)--- the district numbers in the Constitution, we are going to give some provisions for future developments and increase of the number of districts from seventy to one hundred in that clause.

The other thing is about staffing. I think the district administrator, the way I view it, is supposed to be taking over. The role of for example, the present system of the District Commissioner, or the Town Clerk, but it should be higher than the Town Clerk because the Town Clerk is just a locality equivalent to the District Commissioner because even the security of the districts and everything will come under him. He will have to deal with the police; he will have to deal possibly even with the intelligence, the criminal investigations. Agriculture and all of the other departments. So he must be a technocrat and somebody qualified. So I think, putting him to an election would be cumbersome and will not produce good administrators. I think that he should be employed, to be appointed by the District Council and possibly, his dismissal to be approved by the National Council, so that the District Council cannot easily dismiss him.

Mr. Chairman, if you can also allow me to, just add one more issue on devolved powers. I propose that the village be deleted, and it should be up to locational level. District, Provincial and National Government. Thank you.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much. The next category I am looking for an MP, so that I wont get into trouble if ...83. Have you spoken 83?

Hon Delegate Wangari Maathai: Many years ago. Yes.

Hon. Delegate Joseph William Nthiga Nyaga: No you have not spoken proceed.

Hon Delegate Wangari Maathai: Thank you very much Mr. Chairman, for this opportunity. Yes I would really like to also agree with other Delegates how important this Chapter is. I would like to say that in many ways it is very refreshing because what we are doing here is trying to regain the self-governance that we had before we were colonized. So the way I am seeing it myself is that we are trying to overcome or to reclaim the governance we had almost 100 years ago. I would like to say Mr. Chairman that one of the most important things that I think will

come out of here is the fact we are reclaiming our culture. And I want to say how grateful I am that we have decided to form a sub-committee on culture.

And two aspects of culture that are extremely important are religion and language. And I would like to say Mr. Chairman that in devolving power we must reclaim the right for us to speak in our own languages. I would like to see National languages, I want to repeat what Honourable Raila Odinga said the last time he spoke, that English and Kiswahili should be our official languages and all our other languages should become our National languages. So that at the devolved level even at the district level we should be able to speak in our languages, so that we can understand what those who are governing us are telling us. There is nothing more dehumanizing and distancing: one of the reasons why our people feel distance from the Government is because they do not understand what we are talking about. Mama anaenda kwa ofisi anasema “*nekwega*”. Anaambiwa, “what are saying mama?” Because we do not communicate with our people at the local level. We must be able to use our languages at the local level.

I would also like to say that Kenya is very much a superficial State, when we say Kenya, and in many ways what we are proposing here in saying that we go district we are actually accepting that we are many Nationalities. We are in many ways micro-nationalities. We have about 42 micro-nationalities in this country. And if you try to compare any one of the communities with a nation like France or like Germany, you will find that each community, which the British called tribe, has all the characteristics of a Nation. We have all the characteristics of the nation so we are micro-nationalities and what are accepting here is that, we are here as a union of nationalities. And we are saying that we need each other that none of us can live alone, can be independent of each other, we need each other. Therefore we need to form a macro-nation called Kenya. And if we could see it that way then we would be encouraged by the devolved Government to bring with us our cultures, our values, our aspirations to this big nation called Kenya-where we can feel protected, we can feel at home, we can feel we belong. And therefore I feel that the devolving down to district level is very welcome, I think the provincial level is redundant. We should go to from national district to location. I think at the sub-location level or village level we should have elders who should continue to give the services that they have always given.

Mr. Chairman, if we accept the principle of us speaking our languages, and I really hope that this is one thing this Conference will endorse, we could easily say that our children and especially if it were possible every child. If it were not possible may be by the time you get out of the university, we are recommending that many of the people go to the university, just to finish is here. Because I think this is very new and it is very important, is it possible for us to say that each child shall learn her or his own mother tongue but shall also be required to learn the mother tongue of another micro-nationality. So that if I m a Kikuyu child I shall learn Kikuyu but I shall also have to learn the language of another community. That way I think we would actually get to know each other better; we would reduce the biases that we have and we would also raise the literacy capacity. Thank you very much.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much. Next category- District Delegates. District Delegates from this section, today I'm concentrating on those who have never spoken. Please if you have spoken don't put up your- please. 329 you've never spoken.

Hon. Delegate Julius Lalampaa: Thank you Chairman. My names are Julius Lalampaa Delegate number 329 from Samburu. Basically my contribution is that we must realise that the systems that the previous Governments have been supporting have not been delivering services to the poor. And those systems have actually been very expensive to maintain and therefore wasting a lot of national resources. In the devolution we should be very careful not to set the same kind of system that will be too expensive for us to maintain. I therefore recommend that we should only have two levels of Government; one should be the district and second should be the locationally level of Government. In that way we shall be able to save a lot of resources in terms of logistical support for those systems to work.

The other thing is that, this distance should actually be geared towards service delivery, more benefits should be driven by the poor. And they should be controlled by the local people and not imposed kind of imported personnel to govern the same resources at the local level. Basically that is what I have. Thank you.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much. Next section I m looking for a District Delegate to balance what we've done so far. A District Delegate who has not spoken. 264. District Delegate.

Hon. Delegate Bonaya Godana: And the ladies should not complain I've have done very well.

Hon. Delegate Eisintele Kureya: Thank you Mr. Chair.

Hon. Delegate Bonaya Godana: There is a Point of Order behind you 497.

Hon Delegate Jillo Mumina Konso: Honourable Chair sir, I m going to leave this Conference without saying a word. I have never spoken nobody seems to look at me I don't know whether... so please give me a chance to speak also.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you, you will definitely speak. It is because that section had no District Delegate to speak on this subject since we started, that is the reason why I had no choice but give it to a District Delegate from this section. From this section it is correct- proceed.

Hon. Delegate Eisintele Kureya: Thank you Mr. Chair. My name is Kureya Eisintele a District Delegate from Marsabit. I would like to support devolution of power and I would like to state that I support that it should be devolved to the district level and not from the provincial level. Because I believe that the reason we requested for devolvment of power is because too much power was concentrated in Nairobi as it was explained today. But we also know that too much power has been concentrated at the provincial level and it has not served the districts, as it was supposed to serve. And this has denied the communities the self-determination, the self-governance and participation in decision-making or policy development. I think that the provincial level will not serve that purpose.

To be able to have self determination and self government and to participate in policy making will result in efficient use of resources and reduce wastage, and also effective implementation of development programs. This will result in appropriateness for the policies for the needs of the

people. And for far too long I think this has been missing and has contributed to the lack of service delivery to the communities especially at the locational and sub-locational levels. For example; the decentralization of services has affected delivery of educational services for many communities, because the development of our curriculum is centralized, and for many communities the kind of formal education that they receive is inappropriate for their own needs. Because as we know education should contribute to the economic development and social development of those areas. For example; in pastoral areas the kind of education that the pastoral children receive is completely inappropriate for animal husbandry and range management in dry land areas. And those children will go through the education system, and those among them who do not manage to qualify for a profession, cannot go back to the pastoral system, because they never learnt the skill to acquire a profession. They have also missed out on how to be good pastoralists so they end up not having a profession and not being good pastoralists either and this marginalizes them even further.

(Clapping from the Honourable Delegates)

I also would like to support the district level: because if we are going to have efficient management of resources, then the people who are going to collaborate in using these resources or to make policy, it will be more beneficial for them if they have commonalities in ecological, economic and social matters. Because that way what they decide to do will be much more manageable, than mixing up with people who have got nothing in common, and that is what has happened with the provincial Government. For example, if we have a provincial council it will be very difficult for people who have got different economic systems to make policies together and this can result in one part being marginalized especially if they don't have the political power or the number of votes to be able to vote in their needs. For example if there is an outbreak of a disease that affects camels in Mandera district, it is more likely to solicit it collaboration from Turkana district which also keeps camels than from Embu district which grows coffee and tea. And if for example there is an outbreak of a disease that affects maize, it is more logical for that district to seek collaboration from another district that grows maize, so and the province does not allow for that kind of flexibility.

Mr. Chairman I would also like to say that I support that the devolution should be at the district and locational level. I think that if we go up to the village level we shall disperse powers too much and I think that is just as wasteful as concentrating powers too much in one place. Whereas I acknowledge that the village elders have done a good job so far, I also know that the term “elders” is not inclusive, it does not include women for example in the many communities. For example in the community, which I come from, when we refer to village elders it excludes women, and women are not allowed to sit in the elders’ councils. So unless we come up with a different system and not refer to “elders” or unless we expand the term “elders” to include other people, then I think women will still be marginalized if we have village Governments. Thank you Mr. Chairman.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much. Could I have a District Delegate? Sorry. I need somebody from, who is not a District Delegate and who is not an MP, from other categories. Do we have anybody in the other categories from this section who wishes to speak? Special Interests, Political Parties, etc. is 393 special interest? 393... 393 from Teso proceed.

Honorable Delegate Roseline Barasa Ashepete: Honorable Chair, for the first time I have a reason to smile, because I have been believing that God’s time is the best time, but I was forced to talk. So, I should start by saying that devolution is the best thing that is going to happen to Kenyans in a long, long time. My names are Ashepete Barasa Roseline from Teso District.

I would want to say this in addition, that the word ‘village’ should be replaced by the word ‘sub location.’ The reason is that some sub-locations are actually large, and if we can only go to the location, we might kind of leave a larger area that should be represented. So, if we replace the word ‘village’, which is smaller, with the word ‘sub-location,’ it can go well.

The Provincial Governments have been (inaudible) and you know once beaten twice shy. We are afraid of the activities that have been done in the provinces, that is why we support that devolution should go right to the districts.

Concerning municipalities and cities, I propose that they should not be considered as districts. In that, whatever resources are generated from the municipalities and the cities should remain in the districts in which they fall. But there should be some resources from the Central or let me say the national Government because somebody cautioned me not to say the central Government, should be taken to the districts. A certain percentage should be set and taken to these districts, while the municipalities and cities remain with the resources and support those districts.

Finally, I want to say that, if we give resources to the constituencies, it might not be fair; because a district like Teso which is a one Constituency District, has not been well divided. A district with over two hundred thousand people having one MP is not well represented. And the Electoral Commission of Kenya should do something about it.

Another point I wanted to bring to light, which is not maybe directly here, is the representation of the people with disability. I realized that the deaf people were not given a chance to become Delegates and only observers are here. How will a deaf person be able to contribute to this Conference? I am talking because I know what it feels like to be marginalized. And if you have never been marginalized, you would not know how a marginalized person feels. Thank you Honourable Chair.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much. Next section I want an MP. 24... I am coming round to this section. This is the last group.

Hon. Delegate Ethuro David Ekwee: Mr. Chairman thank you for the opportunity (*Addressing Honorable Delegates*) Give me the chance to speak. Mr. Chairman...

Honorable Delegate Joseph William Nthiga Nyaga: Yes number 481.

Hon. Delegate Daniel G. Ichang'i: Mr. Chairman, like the Honorable Delegate Shikuku, many of us have stayed here, and have restrained ourselves from talking twice -not because we have nothing to say, but in honour of the rest of the people who have not spoken. I am sitting here with a Delegate 256, and every time a Chairman comes in this area, this man *haki ya Mungu* has never spoken for the last week. So, Mr. Chairman, the Honourable Member of Parliament has

spoken before; but this man you keep skipping. I would also like to contribute, are you now changing the rules? So that we can also put up our cards. Thank you.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much. What we are trying to do, we will ensure that you speak next round. What I was trying to do, was no MP of this subject has spoken for this category. And it is important that since we have now done three rounds, that every section is represented. This particular group, section, has had no MP speak; and it is important to get the views of everybody. That is why I had chosen number 24.

Hon. Delegate Ethuro David Ekwee: Thank you Mr. Chairman. Can I proceed?

Honourable Delegate George Mbogo Ochilo Ayacko: Point of order.

Hon. Delegate Joseph William Nthiga Nyaga: Yes number 11. Yes number 11, continue.

Hon. Delegate George Mbogo Ochilo Ayacko: Mr. Chairman, we must desist from bashing Members of Parliament ... We consist of one third of this conference and every three places, we must get a place. Mr. Chairman, people in this conference must respect each other. They should not come here to fight Members of Parliament.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much. Let me explain what I have been trying to do so that you understand. Each section so far we have attempted to ensure the three categories have spoken. This now is the last of this lot. That is why I chose number 24. Please proceed.

Hon. Delegate Ethuro David Ekwee: Thank you Mr. Chairman. I need protection from these Members. You actually gave two District Delegates opportunity to speak. I have not spoken for the last two weeks.

Noise from the Honorable Delegates.

Hon. Delegate Joseph William Nthiga Nyaga: Continue, please continue. Continue.

Hon. Delegate Ethuro David Ekwee: No, I have a right to be heard and to respond Mr. Chairman. I feel marginalized. Mr. Chairman, I am Ekwe Ethuro, MP for Turkana Central. I want to support devolution with all my heart and soul. I support Mr. Chairman because it will make history in Turkana, we will have a Turkana District Commissioner. Mr. Chairman, I realized this provision, and I want to thank CKRC for the first time I think they have done a Chapter very well. They have abolished the District Officers; this division business has been wasting our time. Mr. Chairman, I also don't want to support the provincial council. As other speakers have said before. For some of us, Turkana District is about 800 km to Nakuru, and that is from Lodwar. From Lodwar to Kibich is 460 km, what good use is Nakuru to us Mr. Speaker? If you want to retain the provincial councils, you have to do two things; Rift Valley has to be split into three provinces, so that we have one in Kapenguria, which will be nearer to us Mr. Speaker and take care of our problems, of cultural ...(inaudible) Mr. Speaker. But because it is just an extra layer, it is going to consume our money; I don't think we need the provinces.

Mr. Speaker, at the District level, I am glad that we are electing the Chief and we are electing the Governor Mr. Speaker. It is completely important that these people respond to the wishes of the people within that district. Because what is happening now, when a mere policeman is misbehaving, we have no power Mr. Speaker to take any action. When you have a local Chief stealing relief food Mr. Chairman, you have no recourse because you have to come to the PS. Mr. Chairman, it is important that some of these things are brought back to the district level.

I also want to say this Mr. Chairman. Turkana district is the biggest district in this republic. Lokitang was a sub-district from the time of independence.

Interjection. Hon. Delegate Joseph William Nthiga Nyaga: I am a Chairman not a Speaker.

Hon. Delegate Ekwe Ethuro: Mr. Chairman, sorry. Mr. Chairman, we need another district in Turkana to make this governance more effective Mr. Speaker.

Noise from the Honourable Delegates.

Hon. Delegate Ekwe Ethuro: What is wrong with these people Mr. Chairman? Mr. Chairman can you protect me.

Hon. Delegate Joseph William Nthiga Nyaga: Please I am protecting him. Would you please let him finish. He comes from very far, you know that.

Hon. Delegate Ekwe Ethuro: I come from far, listen to me.

Laughter from the Honourable Delegates.

Mr. Chairman, while I support devolution, I think we should learn from what the local authorities have been doing. This ...(inaudible) Mr. Chairman is of no use to our places. Mr. Chairman, I appreciate that the Commission has indicated that the Auditor General should be respecting accounts in the devolved Government Mr. Chairman. It is completely important that we have systems of auditing outside those local Governments Mr. Chairman -just appreciate that I am a Parliamentarian- so that Mr. Chairman, we will be able to ensure that the resources obtained in those areas are put to some good use Mr. Chairman. Because if you leave these local authorities to do their own things, the experiences from the county councils, from the municipalities, are not very good Mr. Chairman.

On the issue of the municipalities, or the city being a district: I think Mr. Chairman Delegates don't understand. I think the recommendation is that the ...(inaudible) to the extent of that power being devolved. It is not in the same status like the normal district Mr. Chairman. Thank you.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much. District representative from here, any district representative? Have you spoken 39 something at the back? You are number three what? 398.

Hon. Delegate George Wesonga: Mr. Chairman, I am George Wesonga, District Delegate number 398 from Busia. First, I want to support the principles and objectives of devolution of power. Mr. Chairman, Section 214, I want to go back to it here, recall of members. I want to

say Mr. Chairman that I have always been opposed and I am still opposed to recalling members especially elected people. Just like here Mr. Chairman, District Delegates, if recall was allowed many of us would end up going home for having not talked for three weeks and yet it was not our mistake.

(Honourable Delegates clapping)

So Mr. Chairman recall should not be allowed because elected people are given their terms of office and they should be given that time, because within that time sometimes mistakes are made not because of their own fault, as I have given an example. Even a lot of chairs are empty here but we are going on. Mr. Chairman, I want to talk about Article 215, levels of Government. I want also to join my colleagues, Delegates to say that the provincial level should be removed, because experience has shown that it doesn't serve any purpose.

Mr. Chairman, I want to go to Article 216, village Government. As a colleague said, we turn villages into sub-locations because they are already demarcated. But here, in the Draft Constitution, the village, besides the system of a village Government, including the role of the village council, I want to say no. For uniformity, we should have the system decided all over nationally, and that the roles are also defined nationally, rather than leaving it to the sub-locational or village level.

On staffing of devolved authorities, I want to say Mr. Chairman, here this is Article 223, says that district Governments may employ their own staff. Then under that section they say, deployment of public officers in districts will be done. I want to say that here, when we come to public officers, we should leave it to the national council; so that we develop nationalism, rather than each district employing its own public officers. We shall be increasing or encouraging discrimination and no nationalism.

Mr. Chairman, I want to talk about districts and say that, for the purpose of unity, if any mistakes have been done, we should not go back, as we agreed, especially the creation of districts. We should now say that no more districts should be created, but those ones that are already there, the

seventy, we should regard them as districts when we are carrying out devolution of power and other things.

Mr. Chairman, when we come to education and other sectors which are very important, they should be handled at national level, rather than leave it to the districts, because some of the districts will not be able to carry out the functions. For example, when it comes to salaries of the public servants, salaries of the teachers, and what have you, some district councils might not be able to carry out that: since experience has shown that long time ago, many districts were not able to pay their public servants, and they even fixed their salaries lower than the other districts. Thank you Mr. Chairman.

Hon. Delegate Joseph William Nthiga Nyaga: Point of order from 256.

Hon. Delegate Nur Ibrahim Abdi. Mr. Chairman. My name is Nur Ibrahim Abdi, Delegate from Wajir. I would like to inform the Conference that we are lacking quorum and Mr. Chairman, I would like you to promise that tomorrow you will give a chance to Delegates who have not addressed. Thank you.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you, I have attempted desperately to give people who have had no chance to speak but I said from the very beginning we have over 330 people who have not spoken as at the time we started this session. We will ensure tomorrow, because we know this is a very important subject, we will ensure that tomorrow we give a chance to as many people as possible.

Uproar from Honourable Delegates.

Hon. Delegate Joseph William Nthiga Nyaga: But we have not finished, where are you going?

Noise from Honourable Delegates.

Hon. Delegate Joseph William Nthiga Nyaga: Hatujamaliza, mnaenda wapi?

Noise from Honourable Delegates.

Hon. Delegate Joseph William Nthiga Nyaga: Hatujamaliza. Tafadhalini kaeni chini tumalize, we are in this section. Or do you want to go home? Are you tired?

Honourable Delegates: Yes.

Hon. Delegate Joseph William Nthiga Nyaga: Two more Speakers there, the last two Speakers. Could I have an MP from there? There is no MP there, there is man who has made a lot of noise. We all agree 256 has tried very hard. True? He has made so much noise. 256, you are the last speaker.

Hon. Delegate Bonaya Godana: Honourable Delegates please don't move out. Let us respect each other. You can surely wait for five minutes.

Hon. Delegate Nur Ibrahim Abdi. My name is Nur Ibrahim Abdi, Delegate number 256, from Wajir. Mr. Chairman, I would like to support the devolution of power in that the powers should be in three levels: the District, the National Council that coordinates and ensures the existence of this country, the District Council that undertakes the development of the Districts, the Locational Council and the village level. Mr. Chairman, the powers that are concentrated in the Central Government have subjected to the people of North Eastern several massacres that are documented. If I take one of the massacres that were inflicted to the people of North Eastern is Bula Karatasi of Garissa massacre, which took place on 10th of November 1980 where men and women were put into camp and many of our brothers lost their lives, women were raped, children who were not supposed to be born in that Province or District were born as a result of the rape which was close to the Forces. There were other massacres Mr. Chairman that took place in Mandera in 1984, the Malkamali massacre, where men also were camped in one place, and quite a number of them died. The worst of the massacres was the one of the Wagalla massacre, which took place on the 10th February - 14th February 1984 at Wagalla Airstrip, where almost 5,000 men were put in that camp. They were kept naked, they were not given water or food for three days. On the 14th day of February, Mr. Chairman, quite a number of them were

massacred or they were killed. I can record that the number was almost 386, and I witnessed because I was one of those who were taken there. Mr. Chairman...

Honourable Delegates calling for points of order.

Hon. Delegate Nur Ibrahim Abdi: I am just saying to devolve the power from the Central Government. That is what the Central Government can sometimes cause if it is given the power and it happened.

The other massacre that I can recall is the one of Pokot, in 1984. Mr Chairman, if I come back to the point, Article

Noise from Honourable Delegates.

Hon. Delegate Nur Ibrahim Abdi: Please give me a bit of chance.

Hon. Delegate Joseph William Nthiga Nyaga: You have one more minute.

Hon. Delegate Nur Ibrahim Abdi: Mr. Chairman if I come back to the point, Article 213, I would like another Article to be added immediately after Article (5) and it should read like this “protect and promote the interests and rights of women, minorities and disadvantaged groups.” That should be number 6. In Article number 215 (a), I would like the word village to be deleted and be replaced with sub-location, which we know very well. Article 226 (3), I would like it to read this: “the manner of distribution of revenue shall be set out in an Act of Parliament, and should include budgets that target women and other marginalized communities”. Thank you very much Mr. Chairman.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much for that last Speaker. It is now time to close and I wish to hand over to the big Chairman. Honourable Godana.

Hon. Delegate Bonaya Godana: Well, thank you very much Delegates, I think we have come to the end of today’s business. We want to appeal to those who have tried to catch the Chair’s eye

**PLENARY PROCEEDINGS, PRESENTATION OF DRAFT BILL, CONTINUATION OF
CHAPTER TEN DEVOLUTION OF POWERS, HELD AT THE BOMAS OF KENYA
ON 23RD MAY 2003**

Presenters: Com. Pro. Wanjiku Kabira
Com. Mutakha Kangu

Session Chair: Professor Yash Pal Ghai

Co-chair: Hon. Dr. Bonaya Godana

Co-chair: Hon. Joseph Nyaga

The meeting started at 9.40 a.m.

Hon. Delegate Bonaya Godana: Order, order. Please take up your seats. There a few announcements to make before we begin the morning's debate on the floor. The Committee on Culture chaired by Bishop Njoroge will meet during the tea break in the Steering Committee tent. If you are a member of that Committee, please turn up.

Second announcement: the Conference administration has organized a weekend of excursions on Saturday, 24th May 2003, that is tomorrow, to the following places:

- a) David Sheldrick Animal Orphanage, 11 a.m. to 12.00 p.m. It is not far from here, it is somewhere in outer Karen. Entry is free.
- b) The Giraffe Centre, 12.30 p.m. to 1.00 p.m. Entry is for a nominal fee of 100 shillings.
- c) The Bomas of Kenya, lunch and entertainment, that is again tomorrow, which means after your visit to the animal orphanage, pass by the Giraffe Centre, you will then reassemble back here for lunch and entertainment from 2.00 p.m. to 5.00 p.m.

If you are interested in this programme, you are requested to kindly register your name at the auditorium entrance by 2.00 p.m. today, Friday 23rd May 2003. All the resident Delegates will be picked from their hotels for that purpose, the purpose of the excursion, on Saturday, that is tomorrow at 10.00 a.m. The buses will be at the hotels, leaving the hotels at 10.00 a.m. Non-

resident Delegates will be picked from 680 Hotel if they are interested. Non-resident Delegates to assemble at 680 Hotel at 10.00 a.m. Thank you.

Perhaps, I should have started with the day's prayers ahead of this. The prayer leaders for us today will be starting with Sheikh Ali Shee followed by Reverend Macharia Muchuga. May I ask Ali Shee to please, lead us in prayer. Please stand for the prayer.

Hon. Delegate Sheikh Ali Shee: Tuombeni. Kwa jina lako Muumbaji wa mbingu na ardhi, ee Mola tunakushukuru kwa nguvu zako na busara zako ulizotupa ambazo zimetuwezesha kufanya kazi ngumu hii, kutumikia nchi yetu na watu wako na watu wetu, ambao wanatungojea kwa hamu kuona matunda ya kazi hii. Ni shukrani zetu ambazo hazina mipaka kukushukuru wewe na kukuomba utupe zaidi, zaidi nguvu na busara na uvumilivu tuweze kuendelea na kazi hii ngumu. Mola, hatuna mwingine wa kumuomba isipokuwa ni wewe, twakuomba ubariki watu wetu wote walioko hapa, Wajumbe wote wape afya nzuri, uwape busara na akili na uvumilivu kuweza kufanya kazi hii. Ubariki nchi yetu, bariki wananchi wetu, uwape busara kama hizi na uvumilivu kama huu ili tuweze kupata usanifu katika nchi hii na tuondoke katika ardhi hii kwa salama tukija mbinguni kwako. Tubariki Ee-- tunakuomba kwa jina lako, hatuna mwingine. Amen.

Hon. Delegate Rev. Macharia Muchuga: Our heavenly Father, we bow our heads here this morning to thank you for this new day. It is your day but you have seen it fit for us to be in this day. So, we thank you God. We bow our heads, God, to ask you to lead us throughout this day and to guide us in our activities, even in our thoughts, even in our utterances and all our behaviour. You are God without beginning, a loving Father and we know how much you love us. You are also a God who continues to be patient with us even when we don't obey you. Thank you God for everything. We want also this morning to ask for your forgiveness where we might have gone wrong while we have been here and having forgiven us, cleanse us so that we are fit to walk with you in the next phase of our stay here. We commit each and every Delegate in your hands, we commit our country in your hands, this country is yours and you have placed us here. We are not here by accident and you have got each of our interest in you and you want everything good for us. God, help us to see your good plans for us so that we can obey them. So,

this day we commit ourselves in your hands, start with us and end with us. For we pray in that Precious Name of our Lord and Saviour, Jesus Christ.

Honourable Delegates: Amen

Hon. Delegate Bonaya Godana: Those who are still walking in please take your seats. We will pick up from where we left yesterday and that is to continue with the individual contributions. I take it that the Commissioners are coming to take up their seats because they have to follow those contributions in order to make effective responses and-- (To a Delegate) You want to take the floor?

Hon. Delegate Levi Wangula Ahindikha: Point of Clarification.

Hon. Delegate Bonaya Godana: What is the point of clarification? You have a point of order? Are you clarifying something for me or are you seeking clarification? 379.

Hon. Delegate Levi Wangula Ahindikha: Thank you, Mr. Chairman. My names are Levi Ahindikha, a District Delegate number 379 from Kakamega. Mr. Chairman, we have been receiving materials every morning – (*PA failure*) previous day of the Delegates. Mr. Chairman, Sir, looking on this list, it indicates names of some Honourable Delegates who are not in this Conference. Some of them, Mr. Chairman, Sir, are out of this country. I feel this list is misleading and does not reflect the true number of attendants in this Conference. Thank you, Mr. Chairman.

Hon. Delegate Bonaya Godana: Did I hear the Delegate say that the attendant list we receive everyday is actually erroneous, it includes people who have not attended?

Response from Honourable Delegates: Yes.

Hon. Delegate Bonaya Godana: Which is this list you are talking about; this is a list of speakers? Is this the list which reads 'list of speakers?'

Hon. Delegate Levi Wangula Ahindikha: Mr. Chairman, look at the list of attendants of 19th of May--

Hon. Delegate Bonaya Godana: Okay. We take note of your complaints and I am sure that the Secretariat, who are responsible for administration and marking of the attendance list, have taken note of it. I think it is serious for anybody to falsify records. I hope appropriate action will be taken. Thank you. 602, is yours a point of order?

Hon. Delegate Benjamin Gitoi: Thank you, Mr. Chairman. My name is Benjamin Nyagaka Gitoi, Delegate number 602 representing Political Parties. My point of order, Mr. Chairman, is in relation to Regulation 7 which states that Delegates shall at all times act in the national interest. Mr. Chairman, it has come to my attention that a Delegate, number 452, by name Dr. Willy Mutunga, representing Kenya Human Rights Commission, NGOs, has reported in the newspaper that the Kenya Rights Commissioners released 10-point statement which they claim to be the consensus of Delegates and that they have recommended that Honourable Delegates go home and they have said our work is finished in this Conference. I want to remind the Honourable Delegate 452, we are working here to make a Constitution for Kenya and we are not here to please our donors because he is representing an NGO. Mr. Chairman, I want to remind him that Kenyans do not need only Doctors or Professors to gather here and make for them a Constitution. (*Clapping by Honourable Delegates*). We are entitled to make this Constitution as Kenyans as this is a people-driven Constitution and we should be given a right to contribute fully as Kenyans. Thank you, Mr. Chairman.

Clapping from Honourable Delegates

Hon. Delegate Bonaya Godana: Thank you. Is it on the same subject?

Hon. Delegate Dubat Ali Amey: Point of order, Mr. Chairman.

Hon. Delegate Bonaya Godana: Yes, that man with a white cap, I cannot read the number, it is 252. 252, quickly, please.

Hon. Delegate Dubat Ali Amey: Thank you very much, Mr. Chairman. I would like---

Speaker: Point of order.

Hon. Delegate Dubat Ali Amey: Chairman, we don't have unlimited resources for this Conference. This Conference must proceed and it must take the right, Mr. Chairman, -- (speaker failure) Kenyan taxpayers have -- (speaker failure). Mr. Chairman, my point of order is; we don't have unlimited resources for this Conference. We are maintained by the Kenyan taxpayers who are very poor people. This Conference must proceed further -- (speaker failure). We don't want people outside to ask what is happening in this Conference. Whatever happens outside -- (speaker failure). Thank you very much.

Hon. Delegate Bonaya Godana: I hope that is the end of points of orders. I want to --

An Honourable Delegate: Point order, we are now hearing. Something is wrong with the mic.

Hon. Delegate Bonaya Godana: Can you hear me?

Response from Honourable Delegates: Yes.

Hon. Delegate Bonaya Godana: I think the problem was with just that one mike of the last speaker, last person who raised the point of order.

Response from Honourable Delegates: No.

Hon. Delegate Bonaya Godana: All of them?

Response from Honourable Delegates: Yes.

Hon. Delegate Bonaya Godana: Okay. Honourable Delegates, you know we should start our debate unless it is really a burning point of order and different from the last two. We have got to

have a limit to points of order. You know a point of order is supposed to be a matter affecting the actual order, the conduct of business not-- What is it 382? Be brief please.

Hon. Delegate Aswan Sammy Amunga: Thank you very much, Honourable Chairperson. My point of order is according to the Order Paper of today. You are telling us to continue from where we left yesterday and except for the prayers which have been completed, administration of Oath has not been done communication from the Chair has not been done. That is my point of order.

Hon. Delegate Bonaya Godana: We are perfectly in order to proceed as we have. There was no Delegate who came forward to indicate that he had not been sworn in and should be sworn in and the Chair today has no communication to make. So, we are perfectly in order. 270, what is it? I will also appeal to Delegates really, let us-- We are really taking time out of what will be a useful discussion. 270.

Hon. Delegate Bariu Beatrice: Thank you, Mr. Chairman, for giving me that chance. My name is Beatrice Bariu, a District Delegate from Nyambene District. My number is 270. My point of order, Mr. Chairman, is on the security of the Honourable Delegates. My question is: is it in order, Mr. Chairman, for Honourable Delegates to call others names using a very abusive language on matters discussed in this House? This is because as I can remember, on Wednesday, Mr. Chairman, when you concluded the topic on the Judiciary some Delegates in the bus which carries Delegates who sleep in 680 Hotel were calling others names using very abusive language and intimidating them telling them anything and they were using language that I cannot even pronounce those names. Is it in order, Mr. Chairman? Thank you.

Hon. Delegate Bonaya Godana: Can you hear me? It is actually out of order for delegates to use insulting language on other delegates and we would want to appeal that, that will be the end; it is not repeated, we have got to conduct ourselves with dignity and decorum.

Hon. Delegates: Inaudible noise.

Hon. Delegate Bonaya Godana: Really, I would want to appeal to the Delegates, let us not eat too much into our time.

Hon. Delegates: Inaudible noise.

Hon. Delegate Bonaya Godana: 246.

Hon. Delegate Joel Haji Mwailengo: Mr. Chairman, my name is Joel Haji Mwailengo, a Delegate from Taita Taveta District. I am asking, Mr. Chairman, whether it is in order for the Steering Committee to contribute to the lack of quorum in this hall. I am saying so because Mr. Chairman, the arrangement with which we have been sitting here and arrangements with which our names are pasted on the chair, we will always lack a quorum, because if these names were put vertical, and the TVs could be cutting the names of those big seats which are having no people, it would desist people from just leaving aimlessly and this one will help us even contribute and finish this work properly. I am suggesting, Mr. Chairman, these names should be vertical, so that when the TVs are catching the pictures here, they will see the names of people who are not contributing anything and those who are leaving. Thank you so much, Mr. Chairman.

Hon. Delegate Bonaya Godana: Point taken. I hope that is the end of points of orders. Okay? Can we proceed therefore, I think we open the discussion and I will pass the microphone so that my colleague Mr. Joseph Nyaga son of Jeremiah Nyaga - I almost said Jeremiah Nyaga - Joseph Nyaga. Thank you.

Hon. Delegate Joseph Nyaga: Thank you very much, Mheshimiwa Godana. If you recall, yesterday we concentrated on people who have never spoken, we tried to allow as many as was humanly possible. Since then, we have also established many people are marked in my record as having spoken but in fact what they have done is either raise point of orders or participate in the motions which are not really the subject topics that we are dealing with. So, if you see me mixing today, if you see me picking up somebody who you believe or you think has spoken before, it is because many of the so-called speaking were points of orders and therefore it is

possible those people have not contributed in terms of the topics that we have. Are we in agreement?

Hon. Delegates: Yes

Hon. Delegate Joseph Nyaga: Thank you. So if I chose somebody, support me, I know we are on the same wavelength, we will be as fair as possible. What I would like also to suggest is if you are in this category, of those who have genuinely spoken and marked in my records as genuinely spoken, please give a chance to those who have never spoken, delegates who have never spoken and those who have done points of orders. According to my records I had called for an MP in this section. The MPs on that line – 155, I know he has spoken, but in that category of point of orders. Please proceed.

Hon. Delegate Raila Omolo Odinga: Thank you very much, Mr. Chairman. Yesterday I said that we did not share common parents, but there is something we share in common, and that is your father and my father were in Lancaster House together.

Hon. Delegate Joseph Nyaga: That is true, makofi.

Clapping.

Hon. Delegate Raila Omolo Odinga: And I think in that spirit you have been very considerate. Mr. Chairman, let me begin by saying that the subject of Devolution elicits a lot of pain when people speak here. This is because of the way that centralized power has marginalized people in the periphery. The process of centralization of power in our country, started way back in 1964, when the independent constitution was revised and a lot of powers removed from the periphery to the centre. Mr. Chairman, I truly understand when people speak so much against the Provincial Administration. This is because, when we moved away from the independent constitution, we did away with the Provincial Assemblies, we retained the County Councils at the District level and at the Headquarters we created a shell at the Province. Because at the District level, you have got a County Council elected and you have got a DC. At the national level here you have got the Executive and you've got the Legislature, which checks the

Executive. But at the Provincial level, you have the PC with his team but there is no elected body to check them. So the PC enjoys a lot of powers derived from the Office of the President and merely interferes with the operations of the Local Authorities, and that is why the Provincial Administration has currently constituted is a relic of Colonialism which has no place in a democratic Kenya. **Clapping.** Mr. Chairman, we want to bring Administration and Government closer to the people, so that the people can preside over their own development.

There are several ways of doing it Mr. Chairman, Nigeria started as a Federal Government with three States, North, South, East and West. Eventually, they changed this and currently Nigeria has got 36 different states. United Kingdom, is moved away from a centralized government to a devolved government with a kind of a mixture, a mixed grill. In Scotland they have a kind of quasi-federal system with the Scottish Parliament, in Wales, there is the Wales Assembly, which is in authority like the one, which we are proposing to create here. In Germany you have got several States, some of them very small the states do not have to be equal. There are city-states like Bremin, like Berlin. Mr. Chairman when we are trying to devolve let us devolve to units, which are economically viable. **Clapping.** If we devolved to tiny units Mr. Chairman, it is not going to be viable economically and we are going to create further marginalization for the people. **Clapping.**

But there are better ways of doing the thing Mr. Chairman; the most important thing is to look for compatibility. There are communities, which are fairly compatible, which can combine to make bigger units. But there are those that because of historical experience must stay on their own and those are the ones who will be in the new haven in United States, it is a state, feudal-requisite state. Bremin is a state we have already given, so there are those ones that you can actually create as separate entities but then, the idea should be to create bigger units, so that we can have administration that is more viable.

Mr. Chairman we are talking about resource distribution and we have first to agree on the responsibilities of these authorities. Mr. Chairman, I saw the list, which was read by the presenter of this document. Mr. Chairman, I believe strongly that an issue like Education, I want to disagree with the gentleman from KNUT. Education must be the responsibility of a viable Local Government. **Clapping.** Issues like health, basic health should also be responsibility of a

Local Government, infrastructure, agriculture, environment, these are issues, which must be the responsibility of Local Government, where people sit and decide how they want these services to be provided. Mr. Chairman, the issue of Legislation will be problematic particularly if you leave the authorities the way they are at the moment. That is the reason why it could be that you have the second chamber dealing with Legislation that affects the Local Government, the devolved Government. I oppose the proposal to have the second chamber vetting Legislation coming from the Lower House because it makes law making too cumbersome. So, the second chamber should be the House of the regions, House of the Districts, or however you want to call them, so that they deal with the laws, they make laws that are applied by the devolved Government in the regions Mr. Chairman.

Mr. Chairman I am conscious of the fact that time is of essence here, but my proposal is, Mr. Chairman, I support the idea of having viable local authorities, let us when we go to the committees sit down and disagree, there is nothing wrong in Teso being a Local Authority, there is nothing wrong in Kuria being a local authority, I know that my friend Mr. Machege is very passionate about this Mr. Chairman, but I am sure that at the end of the day you are going to have a Government structure which will answer the needs of our people for now and for the future. Thank you. *Clapping.*

Hon. Delegate Joseph Nyaga: Thank you very much. This block I am looking for District Delegate. 353.

Hon. Delegate Joseph N. Sheul: Thank you very much Mr. Chairperson. My names are Joseph ole Sheul from Laikipia District. Mr. Chairperson, my general comments over this chapter are really that it is a Chapter full of a lot of errors and a lot of contradictions. But they've already been pointed out and I am happy the Commissioners have already owned up and said there are quite a lot of errors i.e. about Districts, the fact that urban councils have been defined as Districts. I want to go to the issue of marginalisation; all of us are talking about marginalized communities, disadvantage or minorities. Can we have a Constitutional definition here? And I want to plead with my fellow Delegates that we need to come up with a clear Constitutional definition of who are the marginalized, so that when we take up this thing later, we will be able to know who are included and who are excluded.

The other thing is on the formulation of plans by the Provincial Government, as most of other presenters have said, I am for the idea of District, that we devolve to the District level and we cannot allow again the Provincial Government on the Provincial level to formulate plans and policies for the District because then we are going back to what we are running away from.

On issues touching on devolved Government, we need to be very clear on this. In my view here the Draft Bill is not clear, it does not spell out categorically, who is to be responsible here, it says it may, but the District Government may employ. We want to be certain and give either to the District Government or the devolved Government, or to the National Government, and in my opinion, it would be wise to give it to the District Government to be able to utilize their local resources.

On the issue of the financial arrangement, I think this thing is misplaced here, we need to put the things in the right place. We have a Chapter that is dedicated to financial issues or financial arrangements, needs to be put in the right Chapter here. And so we will need to remove them and put where we said we are going to handle issues of public finance and other issues in the Chapters that is ahead of us. So in my view we remove completely the financial arrangement, provision or – and take it to the rightful place.

Mr. Chairperson, I am also against the idea of us devolving too much to the village level to very small units, that will be zones for people to fight even clanism will take root if this one is taken up. I am reminded of village elders and the kind of clanism that exists in the village level. My point of view is that we would like to devolve into three levels as some of fellow delegates have said, we have the District, we devolve from the national government to the District and then to the locational, because then locational are a bit viable and it concludes it has it is quite inclusive and the decision made at the location then can tickle down to devolved District Governments.

Finally, Mr. Chairperson, I want to address myself to the issue of Legislation, but we need to empower the devolved and District Government to be able to make Legislation not only on a very few areas like education and other areas, but even including issues touching on land, issues touching on natural resources that are within the District, so that we do not give them authority.

We need to give them the authority that goes with the power, it might look like that but we are not giving them adequate machinery to be able to implement that and therefore what I am proposing is, that we need to expand the legislative function of the District Government so that they are able to look at the local issues affecting them and be able to address them in a more concrete way. This I have in mind about issues touching on land, I have in mind natural resources that are within the District that needs to be exploited, I have in mind the rivers, I have in mind all the things that are within the district. And therefore, you should not give commensurate responsibility or commensurate powers to be able to legislate on these issues, when we are disempowering District Government which I do not think we are here to do.

Finally, I want again to address myself to the issue of capability some of the things you are talking about devolved government. I will concur with those who have said, we need really to go further a mile. When we devolve to the District Governments, let us also keep in mind that there are communities within the District that need to be brought to the forefront and if you allow the level of district and locational devolved government, then there are also some communities that cannot be brought on the fore. And therefore, what we need to do, we need to devolve to the District Government and allow the District Government to be able to know how we need experience for them to be within their own powers to decide how they are going to bring other communities onto the boat. Thank you very much Mr. Chairperson.

Hon. Delegate Joseph Nyaga: Thank you very much. From this section I am looking for Trade Union, NGO, Professionals, Religious Organizations, Women, Political parties, Special Interests. Excuse me, 436.

Hon Delegate. Francis Ng'ang'a: Mr. Chairman, I want to contribute to the proceedings of the Conference. I want to apologize, some of us have not been here because of some activities that took place in the past where even when we were talking about Judiciary we have had no respect of laws. Laws were floated about and that made some of us to suffer and that is why we are here to debate to change the Constitution of this country. Mr. Chairman, my name is Francis Ng'ang'a, I am the Secretary General of Kenya National Union of Teachers.

Teachers have been suffering in this country that is why we are also locked in discussion today because some people changed laws and floated them. I am here, Mr. Chairman, to say that we are happy, we even in the past discussed the need to bring on board in the Constitution the Industrial Court to take care of the workers.

We are here to discuss about Devolution. In principle, we support devolution. But, Mr. Chairman, we must be a bit careful as to how far we can go with devolution. We must know the history of this country in the past, over thirty years, all regions have not been endowed the same. Some are richer and others are poorer. The history of this country is that we have tried some issues. When we talk about devolution we talk about issues like health, education, and other issues, there is a limit on how we can devolve. The history of the country is that we tried education managed by segments, communities, religions, districts, local authorities and it never worked.

When we talk about devolution, there are issues we cannot touch, like education, because we must give our country room to grow. We must have a national outlook on some of the sensitive issues because a Turkana, Luo, Kikuyu and anybody else wants equal services in terms of education. Therefore, education must be managed centrally. We can only talk about devolving on decentralizing the services. So, Mr. Chairman, as we talk about devolution, we must also have in mind about those who are less endowed and we must go steadily because we are not going to achieve everything for this country only today.

Let us look at the future and let us also change this Constitution and have room to change it in the future as we grow economically. The most important issue today as we sit here is to change the economy of this country so that every Kenyan has something to eat. Every Kenyan has an opportunity to take his child to school.

Therefore, Mr. Chairman, devolution in principle we support and accept but let us devolve where necessary from the National level may be to the District level, location level to avoid the situation where we go to minute villages and create animosity among our people instead of creating core relationships among our people.

Let us also be careful, when we go to Technical Committees let us do what is practical at the moment and let us not be carried by the excitement of the moment, let us address issues seriously and see what is good for this country. I support devolution of power but the issue of education must be left to be maintained at the National level. We can only talk about decentralizing the services. Experience has taught us unless we want to say some of the children will never have access to education, we can talk about it. This is because at no time will the local authorities or districts be able to pay teachers as required. We have tried in the past and it failed. Let us not experiment with our children today, Mr. Chairman. I thank you.

Hon. Delegate Joseph Nyaga: Thank you very much. I am looking for an MP. The next section, 103.

Hon. Delegate M'nkiria Petkay Shell Miriti: Thank you, Mr. Chairman. Honourable Chairman, I stand to support Devolution of powers, my first comment will be on Article 213 as well as 215. I am Petkay Miriti, Delegate No. 103, MP for Nithi constituency Meru South. Article 213 talks of all levels and 215 we see there are four levels that is village, location, District and Province. I would propose that we have definite number of levels on 213 so that it is not just left hanging. As far as I am concerned, I feel that the Provincial Government should g, which means that if it goes we shall have 3 levels left.

Looking again at 213 (1) (A) which gives power of self governance at all levels and 229 which allows for the cooperation between District Councils, I can foresee a confusion arising in future. Districts from various Provinces might decide to set up joint Committees and joint Authorities regardless of the authority from the National level. If, for example, we have about 10 districts from one region setting up joint Committees and at the same time there is that provision for self governance, I can see an aspect of secession. We will see regions seceding from the National cohesion. So, I would propose that cooperation between Districts Councils should not be allowed at this stage, rather, if we have to create Councils as entities, the Constitution provides for such and then if we have to change again, we change in future.

On Article 219 (1) (2), where we have Provincial Councils, I feel that should go and if it goes, then we have to change the second schedule which provides for provinces, districts and

locations. The Provinces the way they are set up, some are too huge and others very small and the districts themselves, some are very large and others very small. For example, we have Districts which are also Constituencies. A District like Meru South is also a Constituency and when we come to distribution of resources to Districts, unless there is a very equitable and proportional allocation considering the geographical areas and the population, then there will be very un-equitable distribution of the resources. So I would propose here that the Constitution provides for a review of Administrative boundaries and Constituency boundaries immediately before it is enacted.

Article 223 (1) talks about the abolition of Provincial Administration on enactment of the Constitution. I would propose it also indicates on how to dispose of the Officers who are working in the Provincial Administration, it should say whether they will be deployed or declared redundant.

On Article 224 (2), the collection of taxes by Districts, some Councils might have a tendency to over tax their people. So I would like to propose that we have fixed rates in all Councils, whether they are rich or poor, whether they have resources or no resources. So it should be governed. If you leave it like that some of our people around the country will suffer. I support Affirmative Action as provided in 231 and 214 (E), after all it is a God given right. God created man and because he could not manage himself properly, he dominated the earth. He also created woman and they were two. So he gave the 50/50 shares. So I support Affirmative Action.

The other one is Article 214 1 (D). I will not support any recall of elected leaders. That Clause, I suggest that it be deleted. On 214 (2) which talks about principles may be it talks about principles, which are indicted in 214 (1) (A), it should show clearly which principles it is talking about.

Finally, Honourable Chairman, on Clause 216 (1)- -

Hon. Delegate Joseph Nyaga: Thank you very much, thank you very much Mheshimiwa.

Hon. Delegate M'nkiria Petkay Shell Miriti: Okay, thank you Hon. Chairman.

Hon. Delegate Joseph Nyaga: Next group I am looking for a District representative. 412.

Hon. Delegate Mbai Crispin Odhiambo: Thank you very much, Mr. Chairman. My names are Odhiambo Mbai, I am a District Delegate from Hombay District. Mr. Chairman, I want to begin by paying glowing tribute to Commissioner Mutakha Kangu for his very beautiful presentation on this Chapter that he made to us yesterday. But, Mr. Chairman, in the same breath, I want also to say that I am a bit disappointed that the principles and the guidelines that we gathered from Commissioner Kangu have not helped us really to discuss this chapter in a manner that can enable us to craft a structure and system of government that will enable us to achieve the key goals of the economic development and prosperity that we need for this country.

Mr. Chairman, I have reserved my comments on this Draft up to this time because I discovered almost immediately that the pattern which we had adopted to discuss this Draft was slightly flawed. I say that Mr. Chairman because Chapter 10 of this Draft Constitution, I consider it to be most important Chapter after the first four Chapters of Sovereignty, Republic and the Bill of Rights. Because of that, Mr. Chairman, I will want to restrict myself merely to the principles I will not go into the Draft at the moment because Mr. Chairman, when you are involved in a work of this nature, which is almost similar to a study research then the sources of your material, if they are confused or inconsistent then the product you are going to produce shall also be inconsistent and confused.

Mr. Chairman, the Chapter 10 which is the most important chapter after those Chapters that I have said is ironically, the most poorly drafted Chapter in the entire draft Constitution. This is because the very source of your Report that you have used to draft this Chapter is equally inconsistent and seriously flawed. Mr. Chairman, I will want to try to make this as simple as possible and in doing that, I will try to address three important issues concerning this Chapter in so far as the principles are concerned.

Firstly, the issue of the situation of this Chapter in the Draft Constitution. Secondly, the title of this Chapter that you have called Devolution; and thirdly, the use of the concept Devolution in this Chapter and in this Report, Mr. Chairman. Because all these are flawed and therefore, the

Draft that is out of it is equally flawed. An attempt to even introduce another Chapter to replace the original one that you gave us has not helped matters; in fact it has even created more confusion.

Mr. Chairman, I will set to make this as simple as possible and I will want to say the following: In establishing or reconstituting modern nation states, the most cardinal principles or ideas that almost all nations have based their nations on are the ideas of Sovereignty and Bill of Rights. The reasons as to why they have done that is because of the premise or the thesis of the liberal theory which state that all human beings are born equal or created equal and they are endowed by their Creator with certain inalienable rights.

Now, it is the two, namely equity in creation and the right they enjoy as a result of their endowment by the Creator is what entitles them to Sovereignty and the Bill of Rights which are those inalienable rights given to them by God. Because they want to enjoy these rights and they also want to enjoy their ability to govern themselves, they create a Government whose purpose is therefore to enable them to enjoy these rights. In fact, Mr. Chairman, Governments are created primarily to enable the citizens that come together in a political community to enjoy those Rights. But once the Government is created, then the people decide the structure and the system of Government that can enable them to enjoy those rights effectively and that is why, Mr. Chairman, the Chapter Ten is a Chapter that should have come immediately after Sovereignty, The Republic and the Bill of Rights because it is only then that we can be in a position to now decide all other things.

Mr. Chairman, if we do not agree on this Chapter, then the entire Constitution is null and void and that is why we must agree on this Chapter in a manner that can enable us to enjoy those rights and our sovereignty in the most effective manner possible.

Mr. Chairman, the title of the Chapter is also wrong, is wrong because this thing is supposed to be dealing with the Structure and Systems of the Government. From there is when we can talk about. Because once we know the Structure and Systems of Government that we want is when we can know whether we need a Bicameral System, what type of Executive System we want,

what type of Judicial Systems we want, how we are going to control and manage our land and resources. We will also know how we are going to control to protect our environment, how we are also going to distribute our resources and so forth.

If we do not know the Structure and Systems of Government, we cannot and we shall not define those other things realistically and correctly. That is why, Mr. Chairman, we must first and foremost situate this Chapter in the correct position that it deserves. Then secondly, we must change the title to actually reflect what it is supposed to be doing, namely, the Structure and the System of Government. I say that because the use of the concept of the term Devolution in this Chapter is the most confusing and most misleading and it has been used here severally without even an attempt from your Chair to correct it.

Mr. Chairman, the concept or the term Devolution as you have correctly defined here simply means the delegation of powers from the Central Government of the National Government to Local or constituent units through an Act of Parliament or legislation..

Now, that is totally different from Federalism or Federation which on the other hand states that it is the separation powers between the National Government and constituent units through a Constitutional Act, Mr. Chairman. Now, once you have known that then you must understand, Mr. Chairman, that the cardinal or the principle difference between Devolution and Federalism is that in the one case of Devolution, power is delegated through an Act of Parliament, whereas in Federalism it is distributed through a Constitutional Act.

In the first case, therefore, what this means is that in a Federal system the National Government cannot (?) the power of the local or constituent units without amending the Constitution and without the consent of those units to which power has been devolved. But what you have done here, Mr. Chairman, is to bundle the two concepts together and misuse them so badly to the extent that we do not know what exactly you are trying to do. That is why, Mr. Chairman, you have come up with something you are calling a mixture of Federalism and Devolution. What is it? Is it a (?) and can it work?

Mr. Chairman, when you went out as the Commission, the most important thing you should have asked, the central question you should have asked is that for the last 40 years of our Independence, what are the issues that have threatened the stability of the political community that we crafted 40 years ago? It is from that central question that you would have crafted a Constitution that would have addressed those issues.

Mr. Chairman, I want just to say one last thing and then I sit down because I might not talk again in this Conference. Mr. Chairman, I am fascinated about this issue because one thing that Commissioner Kangu told us when he made the presentation, he gave us a list of several countries in this world that have attempted to distribute powers from State, National Government to the lower levels. There is no country he gave us that can distribute those powers to over seventy constituent units and expect to govern effectively and distribute resources and at the same time promote industrialization at the local levels and promote the emergence of cities at the local level.

We should not, in discussing this Chapter, be carried away by the euphoria that we are actually going to have our Governments at the District. What it is going to lead to, Mr. Chairman, is serious marginalisation of the communities that even currently are marginalized. Mr. Chairman I want to ask the Delegates to address this issue in a manner that can enable us to create entities that can promote what we want to achieve.

Hon. Delegate Joseph Nyaga: Thank you very much.

Clapping by the Honourable Delegates.

Hon. Delegate Joseph Nyaga: Thank you. The next group is 363.

Laughter from the Honourable Delegates.

Hon. Delegate Keko Somoina Margaret: Thank you very much, Chairman, for giving me this opportunity to air an issue on Devolution. My names are Keko Somoina Margaret from marginalized district Kajiado. So, I support fully the Devolution of Powers and I won't waste

time on what has been said, I am going straight to Article 213 1(A). Whereby on the Draft, we give powers to self-governance. I propose that, we give powers to self-determination. Why Mr. Chairman? Because proper and effective practice of self-governance is through self-determination. I go straight to (G), instead of using the word Province, Mr. Chairman, I propose we use districts, why? Mr. Chairman, we should devolve powers to the District level and not to Province level, the Provincial government lack any powers as provided for in Schedule seven.

Mr. Chairman, I would like to add (K), under Article 213, which should read like this; establish regional boundaries and the right to maintain and use it distinctively. Because, Devolution of powers, is synonymous to federalism and as such should reflect regional autonomy.

Article 214, Mr. Chairman, we should delete number 214 (D), why? To avoid malicious intention, a Member can be voted out at the end of his term, this can apply to both Councillors and MPs. Mr. Chairman, I will not forget Affirmative Action as you can see who I am.
Laughter from the Honourable Delegates.

So Number 214 (E), they are talking of at least a third, of all Councillors are women, that one should be deleted and should be 'shall be women'. List it in line with Affirmative Action and in Affirmative Action, I talk about education. Education should remain in the National level so that the government maybe able to do Affirmative Action (***Clapping by the Honourable Delegate***) for those marginalized groups. 215, Mr. Chairman, it is written, "Powers are", it should read "Power shall" be Devolved to the following. In the Draft we have written the word village. Village.

Hon. Delegate Joseph Nyaga: Try to continue please so that we can go on.

Hon. Delegate Keko Somoina Margaret: We have seen that villages are just market places according to us, so we should Devolve Powers to Location and District, we should delete the word Province completely because those are the marginalizing places. In Provinces, we have been marginalized and we learn from known to unknown. We have seen that in the previous regime, we have P.C's, P.E.O's, and we don't know their work, so, even now we don't know what we are going to do with those ones we are going to elect to be Provincial Administrators or what we may call them 216.

Hon. Delegate Joseph Nyaga: Please, Thank you very much.

Hon. Delegate Keko Somoina Margaret: Thank you.

Hon. Delegate Joseph Nyaga: You have made your point very well. Thank you. District Delegate number 315.

Hon. Delegate Beatrice Wairimu Kamamia: Thank you Chairperson. My name is Beatrice Wairimu Kamamia District Delegate number 315 from Thika. I would like to add my voice on Article 222 Sub-Section 2, a City or the Municipality should have status as a district. I can see one district having about three districts an example is, a place like Thika. We have three Municipalities in the district and one County Council. Those two Municipalities will be two Districts and one County Council, another district. How many districts shall we have in Kenya?

About the boundaries, in the rural areas, there shall be no problems but in the Municipalities and Urban Towns, it will be a bit confusing because we don't know where the boundaries of sub-locations are.

Article 214, Sub- Section 2, I support the Affirmative Action at least one third of Members of the Council shall be women that one I support. Election of a District Governor or Administrator, I am happy that the Governor will directly be elected by the voters. In the past, we used to have problems of the godfathers because they used to come and appoint one person and they came with briefcases, so this time round we shall have an elected Governor by the people not by one person.

Article 219, that one should abolished kabisa the Provincial Administration. It has been marginalizing our people and we don't know as the previous speaker said, we don't know their work.

Article 222(1), Capital City. The Government capital, should be in non-Agricultural areas. I suggest that it should be in a place like Naivasha or Garissa for that matter. (*Laughter from the Honourable Delegates*).

Article 226(1), the District shall be entitled to a substantial share of the National Revenue from the resources and for the allocation of 50%. That 50% is not stated clearly, I suggested that they should receive 60% of whatever the Revenue they collect. Thank you.

Hon. Delegate Joseph Nyaga: Thank you very much. Next category I am looking for is District Representative. 259.

Hon. Delegate Salah Maalim Ali: Thank you Mr. Chairman. I think I have been waiting for a long time and I have got the chance now. My names are Councillor Salah Maalim Ali from Mandela. First and foremost, I want to tell the Commission, the Chair and Honourable Delegates that the Honourable Delegate from Homa Bay raised very pertinent issues that can guide the debate on this Chapter. So I am asking if we could give the Chair a chance to respond to some of the issues that were raised by the Honorable Delegate from Homa Bay.

I go straight to Chapter Ten Article 215, on village Councils. I say that on the village Councils, I want classification of the village, either population or area in square kilometers. So I was saying under the village Councils, because of our nomadic lifestyle for pastoralist, hunters and gatherers, I was proposing if you would have a mobile village government at that level. (*Clapping by the Honourable Delegates*).

Secondly, did you check Article 219? (*Laughter by the Honourable Delegates*) From one to five. If you check the seventh schedule you will see that there are no provisions for the Provincial Government.

Hon. Delegate Joseph Nyaga: Order, Order. Please listen he is making a very important points; continue.

Hon. Delegate Salah Maalim Ali: 219; we have the Provincial Government from sub Article 125. And if you go to the seventh Schedule, you will see there is no Provision for the Provincial Government. So, I am asking we delete Article 219 from one to five.

Thirdly, I am coming to Article 222, Municipality.

Hon. Delegate Joseph Nyaga: Is there sabotage?

Laughter from the Honourable Delegates.

Hon. Delegate Salah Maalim Ali: I am saying under Article 222, that the city or the municipalities are as a result of --

Hon. Delegate Joseph Nyaga: I think we have a little problem. Bear with us please.

Hon. Delegate Salah Maalim Ali: Under Article 222, I said the Cities and Municipalities grew as a result of the districts. So, we have to apportion them the way they are. If it is a City or a Municipality then it has to be part of the district.

I come to Article 225, the Commission for Local Government Finances and I think it is a right thing and it should be there. Under the same Article, I want the establishment of the local Government Service Commission and under the local government you will see that when there is a vacancy for a Council Clerk, the Public Service Commission does not take it very seriously because it has been proved that what they do is to ignore and fill other government ministries. So, we require local Government Service Commission that will employ workers and also will be in charge of hiring and firing of local government workers.

Lastly, I come to Article 223, saying that the district government shall employ their own staff and not-- Thank you.

Hon. Delegate Joseph Nyaga: Thank you very much. This is a convenient stopping point for a quick cup of tea. Since this subject is so interesting and many people want to speak, shall we kick only 15 minutes break please. Is that okay.

Honourable Delegates: Yeah.

Hon. Delegate Joseph Nyaga: See you in exactly 15 minutes time, so that we can continue.
Thank you.

After tea break

Hon. Delegate Joseph Nyaga: Mmekunywa chai, please take your seats so we can get started. I now wish to recognize a speaker from this area. I now wish to recognize a speaker from – what is your point of order, number 237? Yes, point of order.

Hon. Delegate Onotto Joshua Jilo: Thank you, Mr. Chairman. My point of order is as follows.

Hon. Delegate Joseph Nyaga: Continue we can hear you. I hope they have repaired the things during our short break.

Hon. Delegate Onotto Joshua Jilo: Mr. Chairman, Sir. My names are Jilo Onotto, Delegate number 237, from Malindi District, who happens to come from the community which has been marginalized for centuries. The correct name of the community being Wadha, who live along the coast of Kenya, but they have been referred to for centuries by misnomers such as Wasanye, Walangulo, Boni, Awer and so on, to the point that this community has not even been coded among the Kenyan tribes. I don't want to believe that, Mr. Chairman, having been marginalized for centuries, I am also marginalized in this Conference because for three weeks, I have been raising my hands -- *interruption*

Hon. Delegate Joseph Nyaga: You now continue.

Hon. Delegate Onotto Joshua Jilo: I have been raising my hand.

Hon. Delegate Joseph Nyaga: Please continue now.

Hon. Delegate Onotto Joshua Jilo: I continue, thank you very much. Thank you very much, Mr. Chairman.

Hon. Delegate Bonaya Godana: Now you speak.

Hon. Delegate Joseph Nyaga: We do not want to marginalize you, please proceed. (*Laughter*)
He says he comes from a non-existing tribe so --

Hon. Delegate Onotto Joshua Jilo: Let me stand here so that you can see me. Maybe, I have been marginalized because of my height also. (*Laughter*).

Mr. Chairman, I would like first of all to commend the Commissioners for the good work they have done in the preparation of the Draft Constitution. Honourable Chairman, Sir, I stand sincerely to embrace and support the devolved system of governance to the Districts, Locations and if possible, sub-location level, so that the most marginalized communities can also get the chance to participate.

I am strongly against devolution to the Provincial level because it will serve the same purpose as the Central Government system. Ni mpango waswahili wanasema ni sawa sawa na mpango wa ubwenyenye kutoka katika sehemu moja na kuelekezwa katika sehemu nyingine. As I stand before you, Mr. Chairman, and as I have already stated, my community has been marginalized for centuries to the point that to date this community just boasts of one graduate while several communities in this country boast of an overwhelming number of graduates. This is because of the system of governance, which has concentrated most of the institutions in the Central Government. This same system of Government has made it that small communities have not even had the chance to see the doors of the National Assembly, the Wadha being one of those communities.

Mr. Chairman, Sir, the loss this community and other smaller communities have undergone under the Central Government can be likened to a father who, because of one thing or another, has been sentenced to life imprisonment and then mid-way the sentence he is set free because of the prerogative of mercy and taken out of prison and comes out to find that everything has been

shared by those he left behind and he has been left with nothing and nobody to lean to. I hope this Constitution-making will be a form of liberation to such communities.

Honourable Chairman, I also happen to come from a Constituency – Magarini Constituency in Malindi District where tapped water in homes is a pipe dream and this is because of the Central Government system. Mr. Chairman may I refer to the specific items in the Draft Bill.

Article 213 (F) says, “ensure equitable sharing of national and local resources throughout Kenya with special provisions for marginalized areas.” In regard to this, Mr. Chairman, I feel that either this Conference does something or Parliament comes up with strong legislation on how these resources are to be shared after getting expert advice from economists.

Article 213 (G) states, “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.” Here, I say not to the Provinces but ‘to the District.’ In regard to this section, Mr. Chairman, I strongly support the idea of retaining, though I agree with devolution up to the District, Locational and Sub-locational levels, but I support the KNUT Chairman, and the Secretary General who have supported the idea of education remaining with the National Government.

Hon. Delegate Joseph Nyaga: Thank you very much. You have done more than five minutes, please. Let us give to somebody else. We will give you a special chance. You have exceeded our five minutes.

Hon. Delegate Onotto Joshua Jilo: You will give me another special chance?

Hon. Delegate Joseph Nyaga: Half a minute.

Hon. Delegate Onotto Joshua Jilo: Half a minute? Okay. Thank you very much. Again, Mr. Chairman, I also suggest that department dealing with citizenship and immigration should be devolved to the District level, because we have been facing problems in getting passports and so on. So these should be devolved to the District level. Then, quickly Article 213 ...

Hon. Delegate Joseph Nyaga: No, please thank you. Thank you very much. You have done very well, thank you. I will get into trouble with the meeting, please. Thank you.

Hon. Delegate Onotto Joshua Jilo: I hope you will give me another chance Mr. Chairman. Thank you very much.

Hon. Delegate Joseph Nyaga: I am sure you will get another chance now that we know you are so marginalized. The next Chairman will. From this section shall I get—

An Hon. Delegate: (inaudible)

Hon. Delegate Joseph Nyaga: I am sorry, my package does the opposite. These people have not spoken this morning. An MP from this section. 161.

Hon. Delegate Chrysanthus Okemo: Thank you very much indeed, Mr. Chairman. My name is Chris Okemo, a Member of Parliament for Nambale, Delegate number 161. Mr. Chairman, I will be extremely brief. My observation as far as devolution of power is concerned is that in the principles outlined in the Draft, one of the objectives of devolving power is to enable self-governance by people at all levels.

The other is to ensure or to facilitate the equitable distribution of resources. I have a very serious problem with making the Districts the unit of (?). The main reason I say that is because, if you look at the structure based on the districts, we will end up with a very, very huge and very, very expensive structure and that structure is to be funded. The problem is that we have a shortage of resources, we will have a structure that is actually very representative but I think the representatives will spend all the time talking because there will be no resources left to develop their respective areas.

The other thing that I would like to bring to the attention of the Conference is that, we are creating a lot of centres of power. At the sub-locational level, we have elected executives and we also have elected councillors. The same applies to the Locations and Districts. I am

wondering when you have a meeting where you have a Member of Parliament, a Member of the National Council, the Chief Executive - the District Governor - the Chairman of the Locational Council and the Chairman of the Sub-locational Council. I don't know who will be calling the shots. I think it will be total chaos. Total chaos! The way I see it, the power structure is not well-defined.

My point of view is that we should create devolved units that are viable. You can call them Districts, Provinces, you can call them anything, but the major criteria should be economic viability, so that the power that will be devolving from the centre should truly be devolved to these units, which can be able to make a difference. Otherwise, we shall just be having decentralized powers being exercised at the centre but the devolved units will have no real power. So I would like to suggest that we rethink the devolved units and not necessarily base them on the Districts but we define other units that we think are economically viable and that can be sustainable. (*Clapping by the Honourable Delegates*). Well, I can suggest counties because I saw somebody has actually done a pretty good job of it, because I saw somebody has actually divided Kenya into various counties. It looks like a very well thought-out process, however it is not for me to say but I think it is for us. I am merely looking at the pros and cons so that out of that, particularly when we go to the technical committees, we can come up with some very well-defined devolved units which can form the bases for the devolution of power.

Mr. Chairman, the other thing that I am a little worried about is, we are talking about the devolved authorities having an equitable share of revenue from the National Government. We have not quite defined the criteria. I have seen some mention about population and geography as being some of the criteria that will be used for sharing the national resources. I have a serious problem with that because I do believe that if you do that, then communities, for example, from North Eastern Province where population is not really a big factor, will be thoroughly disadvantaged. So I think the first thing we need is to look at their current economic level so that you take into account the past inequity of distribution of resources and equalize that and then have a criteria that you could use, population or geography. We, first of all, need to level the uneven inequity of distribution of resources.

Mr. Chairman, I am also worried about one thing and that is talking about the benefits of local resources going to the local people. What will happen to those areas that do not have any natural resources and no ability to generate their own resources? It means that they will always remain behind. I think what needs to be done is to find a formula that gives more resources to those areas that do not have the ability to generate their own resources. Thank you very much.

Hon. Delegate Joseph Nyaga: Thank you very much. Next section, I am looking for a District Representative, one who has never spoken or has only spoken on a point of order. And I recognize No. 426.

Hon. Delegate: Mary Orwenyo Obonyo: Thank you Mr. Chairman Sir. My name is Mary Orwenyo, representing Nyamira District. My number is 426. I support the idea of devolution of power for better governance and I suggest, let us do away with provincial and village council for reasons which have already been said. We want to have as few as possible devolved centers. Therefore, I propose we have locational and district councils. Devolved government at locational and district levels will create employment opportunities and devolved government will bring services nearer to the people. Most families will be able to stay together to avoid social, economic problems, which could have otherwise occurred. I support Affirmative Action. Thank you Sir.

Hon. Delegate: Joseph Nyaga: Thank you very much. Next I am looking for an MP. I am looking for an MP this time: 204.

Hon. Delegate Koigi Wamwere: Mheshimiwa Mwenyekiti, asante sana kwa kunipa nafasi hii nami nichangie kidogo katika sura hii. Katika kuunga mkono sura hii, Mheshimiwa Mwenyekiti--

Hon. Delegate Joseph Nyaga: Excuse me, there is a point of order 368

Hon. Delegate Joel Kipyegon Sang: Hon. Chairman, I don't think it is fair for people like me who have been waiting only for that Chapter on devolution to be by-passed and you give a chance to somebody who has been speaking every now and then. It is very unfair.

Hon. Delegate Joseph Nyaga: I assure you will get a chance, don't worry. We are giving this session a lot of time.

Hon. Delegate Koigi Wamwere: Mheshimiwa Mwenyekiti, asante sana kwa kuniokoa (*Laughter*). Kwa hivyo wacha niendeleo. Lengo kubwa, la Katiba mpya, lazima iwe ni yaku wasawazisha Wakenya na jamii zetu. Katiba mpya ikikosa kufaulu katika hili, itakuwa ime feli kwa kila hali. Kwa sababu ya historia yetu na ukabila, na hasa vita vya majuzi vya kikabila.

Katiba mpya lazima iseme wazi kwamba kama vile katika taifa, ukabila hautakuwa itikadi ya siasa na sera za uongozi wa wilaya.

Kuhakikisha kwamba ukabila hautakuwa itikadi ya wilaya, na pendekeza tuweke kipengele katika sura hii kwamba, hakuna raia wa Kenya atakaye baguliwa au akatazwe kuishi, kufanya kazi, kupiga kura, kugombea uongozi, kufanya biashara, kumiliki mali au ardhi katika wilaya yeyote nchini kwa sababu ya rangi au kabila yake. (*Clapping*). Katiba mpya ikikosa kupiga ukabila na ubaguzi wa rangi marufuku katika wilaya, ita motisha Wakenya kujenga majimbo kwa jina la wilaya. Mwishowe vita vya kikabila vitazuka miongoni mwetu. Tutachinjana kama vile Warwanda, Waburundi na nchi hii itavunjika vipande vipande kama vile Somalia.

Kuhusu Wilaya, Katiba lazima ieleze taratibu iliyo wazi yakuunda wilaya. Kusiwe na wilaya zingine wenye watu wachache sana, na zingine zenye watu wengi zaidi.

Kama Katiba mpya itahifadhi wilaya zilizoko, sasa Mheshimiwa Mwenyekiti, basi ipendekeze Bunge likike Wilaya hizo katika Katiba, na Serikali iongeze Wilaya zingine katika maeneo yenye watu wengi na Wilaya chache.

Katika Katiba mpya, imefanya makosa makubwa kwa maoni yangu, ukiangalia katika sura hii na ubaguzi wa hali ya juu, kutaja Nairobi yenye watu milioni tatu na wapiga kura elfu mia saba na ishirini na tano kama wilaya badala yakuitaja kama mkoa na kuipa wilaya zizizo pungua kumi kwa maoni yangu. Napendekeza pale Nairobi inapotajwa kama wilaya itajwe kama mkoa, Mheshimiwa Mwenyekiti.

Mheshimiwa Mwenyekiti ningetaka kuzidi kupendekeza kwamba Rais asiwe na uwezo wa kuunda wilaya kiholela ili azitumie kama zawadi zakugawanyia watu wa Kenya. Napendekeza uundaji wa wilaya mpya lazima iwe ikiidhinishwa na Bunge.

Nikiendelea Mheshimiwa Mwenyekiti ningetaka kusema kwamba, katika sura, pamependekeswa yakuwa kiongozi wa wilaya awe akichaguliwa na kura za wakazi wa Wilaya. Lakini hapo, hapo pamesemwa ya kwamba, mkuu wa Mkoa au Kiongozi wa Mkoa awe akichaguliwa na wanachama wa Baraza ya Wilaya. Ningetaka kupendekeza yakwamba kama mkuu wa Wilaya atachaguliwa kwa kura za wakazi wa Wilaya, sioni kwa nini Mkuu wa Mkoa asichaguliwe na kura za wakazi wa Mkoa. Mamlaka yote yakutawala yahitaji kutolewa na watu wenyewe.

Mwishowe, Mheshimiwa Mwenyekiti, naunga mkono kufutiliwa mbali kwa utawala wa Mikoa, Ma-Chief, Ma-DO Ma-DC na Ma-PC ndiyo waliyokuwa uti wa mgongo wa udictator, uliyo tunyanyasa miaka mingi katika nchi hii na kuondolewa kwao, ndiyo hatua yetu ya kwanza yakubomoa udictator na kujenga Demokrasia. Asante Mheshimiwa Mwenyekiti.

Hon. Delegate Joseph Nyaga: Thank you very much. District representative in this category. There is a point of order. 226, point of order. Is he on a point of order? Where is the point of order? Okay put everything down. Point of order, who is it? Yes, the lady, you are number what? 509

Hon. Delegate Martha Rop: Mheshimiwa Mwenyekiti nashukuru kwa kunipa nafasi ya point of order. Nilitaka tu kumfafanulia Mjumbe ambaye ameongea saa hizi kuwa, kila mara akija anaongea mambo ya machungu. Lakini ningekuomba wewe Mjumbe ujue yakuwa tuko hapa tukiwa tunategemea Mungu. Na nafikiri ukiwa na Kanisa inabidi usome yakuwa yale tunafanya hapa ni ya ki Mungu lakini si ya ki sheitani, kwa sababu ukisema watu watakuwa wakichinjana na kuuwana, we are not making a Constitution yaku chinjana lakini ni yakuchunga watu. Thank you.

Hon. Delegate Joseph Nyaga: Thank you very much. May I suggest please that we do not pursue this subject, Mheshimiwa has heard it. The point has been made. Please let us now proceed to this group. District representative 279

Hon. Delegate Grace Ntembi Nduyo: Thank you Hon. Chair for giving me this chance after a long struggle for three weeks that I have been raising my paper. And I think you are now doing the right thing and especially to gender balance. My names are Councillor Grace Nduyo, Delegate No. 279 Tharaka District. I will go straight to devolution of powers. First and foremost, I wish to congratulate the Hon. Commissioners for the recommendable job well done in drafting this devolution of powers. I wish to say that --

Hon. Delegate Joseph Nyaga: Have you finished?

Hon. Delegate Grace Ntembi Nduyo: No I am not through Hon. Chair, but I am coming straight to devolution of powers and I go to Article 215 where we have the levels of Government. I would wish to say that we have three levels of government, that is the location, the district and the village, Hon. Chair. I wish to state that we have a community or a sub-location instead of village, because village is just a minute creation of a colonial era, which is not efficient any more to our communities. And I would wish to say from Article 216 (2), where we have defined a village council to lead a community council which will consist of at least not less than ten but we have affirmative principal, where we shall state a third must be women.

As I go to locational Government my worry is yes, we are getting these people elected but what will be the state of a local council? As a Councillor, because we have not recognized them in this Draft, we have only recognized the Administration and we think this is a very important issue if it is well defined, then we can know-- We Councillors will have to caucus on the issue of locational administration because we have no chance in this Draft.

And I go to Article 219, where we have the Provincial governance, I think in my opinion we are doing away with the Provincial administration because we have seen how we have been marginalized by Provincial Administration. When we want our issue to go to National or the

Central Government it is taking too long and surely it is denying people to be served by the national government, so I think we delete that one and have the three levels.

I am now going to the devolution of government and inter governmental relations. I think, something could be put in place because now here, it is not well understood. Now the powers of the district, government as contained in the list that is in the behind schedule Article 2, because I think we could have been given the guidelines of how the District Administrations and those who are elected, will learn the District, because I am seeing where we shall have a correction, because the Administrators of those who are elected by the people, are not given guidelines on how to work on these items.

I am now going back to Article 214 Sub-section 2, where we have to recall those elected. I would wish -- a moment Hon. Chair. I would wish please don't harass the gender because we have seen men talking a little bit longer, so give us a chance Hon. Chair. Thank you.

Hon. Delegate Joseph Nyaga: Have you finished?

Hon. Delegate Grace Nduyo: I think Hon. Chair, this recalling will make the district and the locations to drag behind so much because, we shall be fighting to recall our people, so I think we don't need to recall them, let us give them five years, just as Parliament will we recall them and then we shall have a system of developing our locations.

Hon. Delegate Joseph Nyaga: Thank you very much.

Hon. Delegate Grace Nduyo: Instead of wasting time to recall them in short time--

Hon. Delegate Joseph Nyaga: Thank you very much, the next.

Hon. Delegate: Grace Nduyo: Thank you very much although I reserve some more four points, Hon. Chair.

Hon. Delegate Joseph Nyaga: Next time, I think the Committee will receive them thank you very much.

Hon. Delegate Grace Ntembi Nduyo: I go to Article 219, where we have the Provincial Governors. I think in my opinion we are doing away with the Provincial Administration because we have seen how we have been marginalized by the Provincial Administration. When we want our issues to go to the National or the Central Government, it is taking too long and surely it is denying people to be served by the National Government. So I think we delete that one and have the three levels.

I now go to the devolution of Government and inter-governmental relations. I think something could be put in place because now here it's not well understood. Now the powers of the District Government are contained in the List that is beyond Article 2, but I think we could have been given the guidelines of how the District Administration and those who are elected will run the District, because I am seeing a situation where we shall have a collision because the Administrator and those who are elected by people are not given guidelines on how to work on this item.

I am going back now to Article 214 sub-section 2, where we have the recall of those elected. I would wish a moment Honourable Chair, I would wish please don't harass the gender because we have seen men talking more times than us. Give us a chance now Honourable Chair, thank you.

Hon. Delegate Joseph Nyaga: Please finish.

Hon. Delegate Grace Ntembi Nduyo: I think, Honourable Chair, this recall will make the District and the Location to retard so much because we shall be fighting to recall our people. So I think if we need to recall them let us give them five years, just as Parliament, and then we shall have a system of developing our locations--

Hon. Delegate Joseph Nyaga: Thank you very much.

Hon. Delegate Grace Ntembi Nduyo: --instead of wasting time recalling them in a short time.

Hon. Delegate Joseph Nyaga: Thank you very much.

Hon. Delegate Grace Ntembi Nduyo: Thank you so much although I deserve some more time, I think I will write to you, Honourable Chair.

Hon. Delegate Joseph Nyaga: Next time.

Hon. Delegate Grace Ntembi Nduyo: Thank you.

Hon. Delegate Joseph Nyaga: The Committee will receive it, thank you very much. We have not had somebody in the next section from Trade Union, NGO, Professional, Women, Religious Group, Political Parties and Special Interest speak in this section. Is there anybody in that category in that section?

Hon. Delegates: Yes.

Hon. Delegate Joseph Nyaga: 586 have you spoken? 586 has not spoken, speak.

Hon. Delegate George Mwaura Mburu: Bwana mwenyekiti nimeshukuru sana, nimekaa hapa kwa wiki tatu bila kuongea, lakini kwa nafasi hii nimepata nashukuru. Kwa jina naitwa George Mwaura Mburu kutoka Political Party sector, I am the Secretary-General of the People's Party of Kenya.

Ya kwanza kuchangia, ni vizuri tukijadili hii Chapter 10 tukumbuke ya kwamba tunahitaji nchi ambayo iko na amani. Wakati watu wengi wanaongea juu ya devolution katika hii Chapter, wanaona ni kama vile makabila yatatengana, pengine kuna jamii wengine wanafinya wengine na mambo si kama haya. Kwanza, ni vizuri tukikubali wenyewe vile tulizaliwa; ikiwa ulizaliwa ukiwa Mjalu sawa, ikiwa ulizaliwa kuwa Msomali sawa, ikiwa ulizaliwa kama Mkikuyu kama mimi from the house of Mumbi, I be proud of that. Halafu tukitoka hapo tunaona ni njia gani tutakazozitumia katika harakati ya kuleta maendeleo katika hizi ngazi za uongozi ambazo

tunapendekeza nyingi zao ziwe katika District. Na tukipeleka hiyo, nataka tukatae kabisa mambo ya kusema municipalities ziwe zikionekana kama District. Kama pahali nimetoka, Kiambu, iko five local authorities: iko Kiambu County Council, iko Limuru Municipality, iko Kiambu Municipality, iko Kikuyu Town Council, iko Karuri Town Council na hii ilikuwa njia moja ya kufanya wananchi waendeleo kuumia sana katika sehemu ile nimetoka Kiambu. Watu wasione ni kama wao wanyanyaswa tu, watu wa kawaida wananyanyaswa kabisa. Mkiweka ngazi za local authorities zikiwa mingi katika mashinani, itahitaji watu wabebe mizigo kubwa ya kuhakikisha ya kwamba hizi authorities zinapata pesa ya kuzi-run.

Hiyo ingine, nataka kusema nimechanganya na nimeona ni vizuri kuchanganya Kiswahili and Kingereza. Jambo lingine la kuwekwa maanani ni kuona ya kwamba katika Village Council tusiwe tunalipa wazee wa kijiji kutawala kijiji chao, lakini the Village Administrator can be paid from the ex-chequer, na ikifika hata Location, hao councillors wa location, wazee wa location, wasiwe wanalipwa. Kuwe wale wanaenda katika District Council ndio wanaweza kuwa wanalipwa kutoka ile kodi wananchi wanaitishwa.

Hiyo ingine nataka kuongea juu yake, ni kusema ya kwamba sisi wote kama Wakenya tuko na uhuru wa kuishi katika kila sehemu ya Jamhuri hii. Kwa mfano, kuna Delegates wanadhania ya kwamba mtu akienda kuishi katika Kajiado, pengine yeye ni mgeni hapo. Na ndio tunataka guarantee --- hata tukiwa tuna-support hii mambo ya devolution -- ya kila mwananchi kuishi pahali pale popote anapotaka kuishi. Na hata katika jamii ya Wamaasai wale wanaongea juu ya Wamaasai wamefinywa sana, mimi nimeona katika jamii -- mimi nimezaliwa hapa Limuru, karibu Ndeiya hapo tumepakana na Maasai wa Ewantokedong' kutoka Kajiado, na wamechukua wasichana wetu tumeoana, tumeingiana sana, sana, sana, sana. Na hakuna haja ya watu kuingiza mambo ya ukabila tukitengeneza hii mambo ya devolution.

Hiyo ingine nataka kuchangia ni kuhusu District Attorney, ni vizuri ikiwa tuna-decentralize power from the top to the viable local authorities and local levels. It is also very, very important that we have District Attorneys who can take care of whatever is really happening at those local authorities. Also, it is very, very important that we remove Judiciary, we demystify it from the top as a domain of lawyers to go to the grassroots, shauri tunajua ya kwamba katika jamii zetu

kutoka zamani, wazee walikuwa wanakutana, mambo yanajadiliwa huko kijijini na kesi zinaamuliwa.

Kwa mfano, kama kesi ya shamba, unaweza kuipeleka katika High Court ambako mawakali wanakula pesa ilhali kule mashinani kuna wazee na watu wanaojua historia. Kwa hivyo nina-support hii mambo ya devolution. Lakini isiwe tu executive authority or the legislative powers, also the Judiciary. We demystify the Judiciary, we remove the legal profession from this business of making a lot of money at the expense of people at the local levels.

Hon. Delegate Joseph Nyaga: Thank you very much. There is a point of order here before I continue. Point of order here, 376? What is the point of order?

Hon. Delegate Chesmei Wambulwa Mafunga: Honourable Chairman, this is probably my fourth time pushing myself on points of order in order to speak but you haven't given me any substantive subject to speak on.

Hon. Delegate Joseph Nyaga: I am sure you will get a chance.

Hon. Delegate Chesmei Wambulwa Mafunga: Now, let me comment on this one, in fact before I finish I would like to raise a matter on devolution.

Hon. Delegate Joseph Nyaga: Not now, we finished this particular category.

Hon. Delegate Chesmei Wambulwa Mafunga: On devolution.

Hon. Delegate Joseph Nyaga: We have a rule, those who have sat here the whole day know we have a rule.

Hon. Delegate Chesmei Wambulwa Mafunga: Alright, okay.

Hon. Delegate Joseph Nyaga: But we have noted you are there.

Hon. Delegate Chesmei Wambulwa Mafunga: Alright, my point is this: on devolution I think we should move from top down to sub-locations.

Hon. Delegate Joseph Nyaga: No thank you, please in fairness.

Hon. Delegate Chesmei Wambulwa Mafunga: Alright, okay.

Hon. Delegate Joseph Nyaga: Mheshimiwa, in fairness--

Hon. Delegate Chesmei Wambulwa Mafunga: If you give me a chance.

Hon. Delegate Joseph Nyaga: We will give you a chance. You take advantage of being my friend. This section I am looking for an MP 088. Please, please so we can make progress. I want as many people to speak as possible and the more points of order we have--

Hon. Delegate Chesmei Wambulwa Mafunga: But you see, as I said count--

Hon. Delegate Emmanuel Karisa Maitha: Mr. Chairman, my number is 088. My names are Emmanuel Karisa Maitha, at the moment I am the holder of the Local Government docket. Mr. Chairman, let me say that being the holder of the Local Government portfolio at the moment in this Government, I was very much worried yesterday when I saw the tempo of the Delegates when we started discussing Chapter 10 on devolution of power. But watching the discussion and contributions of the Delegates this morning, I wish to congratulate most of the speakers who have spoken on devolution of power, because it looks as if people have really understood this Chapter and whatever is discussed has a vision and I am very sure that the capacity building done maybe by the Delegates themselves throughout the night, have made them to come up with good ideas to discuss on issues for this Chapter, Mr. Chairman. Congratulations for what you have been discussing because there must be devolution of power as a centre where local people will have a voice. People must have a voice in any country and the whole world have really recognized devolution of power and people are given voices to talk and do things especially on service delivery.

This country has had problems on devolution of powers especially to local authorities, where the Executive assumes power and silence the communities and on service delivery people have been denied even to know what their rights are. The Central Government at the moment gives Local Authorities three billion shillings every year for service delivery in Local Authorities. For the last four years, nine billion shillings has been given but the communities in Kenya have suffered because they have not seen any service delivery and this money has been misused because most of our leaders elected or appointed on Local Authorities are either stooges of the Executive and not for the public. (*Clapping*). I am sure you will help Kenyans at the moment, the way I have seen Delegates are discussing here, to be build on the capacity on devolution of power, Mr. Chairman.

The Government for the last five months has tried its best to lean on devolution of power by even going to accommodate the views of the community on how they can accept their local councils. At the moment, my Ministry is yet to abolish various Local Authorities, which were created politically to suit some individuals, because people were not even consulted and people are suffering paying taxes, which are not supposed to be paid by communities. (*Clapping*). I am sure you will come out of this Conference as focused Delegates to help us and to help our Ministry come out to serve Kenyans, to serve the public through the devolution of power and give the communities all the strength to speak from the grassroots because this is where power is. I am happy that coming out with all the ideas you are giving as Delegates, the Ministry of Local Government is now reforming very much and we are even educating councillors, we are putting them back to school to know their responsibilities.

We are even seeing the cause, why councillors should be elected together with Members of Parliament. There should be elections of councillors, maybe every three years before the election of Members of Parliament (*Clapping*) by the community. The Members of Parliament should be involved in knowing the development of their communities whenever they are elected which is not the case at the moment. Mr. Chairman, thank you very much and please encourage the Delegates to make sure that devolution of power is a centre of communities power in this country. Thank you very much.

Hon. Delegate Joseph Nyaga: Thank you very much Waziri of local authorities. Next section, I recognize somebody from the organizations such as COTU, NGOs, Professional Groups, Women, Religious Groups, Religious Groups, Political Parties and Special Interests in order to balance the number. The other category, please if you are not that category, do not raise your placard because it is causing us some problems here and we want -- 261, but you are a District Representative. No, sorry you cannot. Obviously, there is nobody from this category -- 519 is a Religious Group, isn't it? Okay, Religious Groups.

Hon. Delegate Gachambi Marie Therese: Thank you Mr. Chairman for recognizing me. I am Gachambi Marie Therese from the Religious Groups, number 519. Mr. Chairman, I would like to support this whole idea of devolution of power to enhance self-governance and also participation of the people at the local level. I would also like to point out, Mr. Chairman, that it is our hope that this kind of bringing power at our local level will not create Ghettoes or exclusiveness whereby the power is monopolized by influential groups at the exclusion of the weak. It is important Mr. Chairman, that we protect and promote the interests and the rights of the minorities and disadvantaged groups as we say in Article 213 (i).

The reason for saying that Mr. Chairman, is because we churches, whenever there is displacement of people, people who are weak, the orphans, the aged and the disabled, they are not given the opportunity. They end up in the churches trying to see them and we are hoping that at the local levels, we will all seal that concern for the weak.

Mr. Chairman, there is need for transparency and accountability. It is important that mechanisms for monitoring and evaluating should be put in place to ensure that there are checks and balances. We are saying this Mr. Chairman, because whenever we have these marginalized groups and help is sent to them, it is diverted and it does not reach the people that it is aimed at. Mr. Chairman, we hope that when we have these responsibilities at our local levels, we will distribute them equitably and we would ensure that there is a developmental plan that is coordinated with the national plan so that we do not become just concerned with our own interests and not the overall interests of the nation.

Mr. Chairman, I would like to request the Honourable Delegates to remember that religious people or churches belong to all Districts. They are part and parcel of the people and they should not be perceived as foreigners when they are rendering services in any District but should be accorded scope to contribute in all aspects. Mr. Chairman, there is also need to recognize that education and health are very crucial aspects and if they are left at this level, there will be some Districts that will be disadvantaged and they will not have quality service.

Mr. Chairman, I would like to request that what the Honourable Delegate who spoke from Homa Bay who had very pertinent issues, brought up, should be addressed. We are supporting the affirmative action, Mr. Chairman, but at the same time, we want it to be extended to all minorities. Thank you, Mr. Chairman.

Hon. Delegate Joseph Nyaga: Thank you very much. 259 has a point of order.

Hon. Delegate Salah Maalim Ali: I thank the Chair. My point of order is in reference to the utterances made by Honourable Karisa Maitha, Honourable Delegate number 88. My names are Councillor Salah Maalim Ali, and I am here to say that not all councillors are illiterate to be taken back to school. Some of us are highly educated and we are serving the purpose of the community. Thank you.

Hon. Delegate Joseph Nyaga: Thank you. Next section, I am looking for a District Delegate.

Hon. Delegates: Point of order, Mr. Chairman.

Hon. Delegate Joseph Nyaga: 263.

Hon. Delegate Kaaru Abdulkadir Guleid: Thank you, Mr. Chairman. Centralization of power to Provincial Administration has outlived its usefulness and it has become a source of frustration to both the political leaders and the citizens at large. Mr. Chairman, the system manifested creates marginalization of the minority groups and abuse of the powers of Governing. In fact, it denotes inequitable distribution of the natural resources of the country and that is why a place

like the Great Northern Road was not tarmacked. The only part which has tarmac is Kenya because of inequitable distribution of resources.

Mr. Chairman, the Draft Constitution proposes to move from that system to devolution and I would like to beg the Honourable Delegates that it the high time you move from Egypt to Canaan. Mr. Chairman, devolution of power is inadequate because it is not anchored with the government's policy paper on decentralization of power. Mr. Chairman, for a meaningful decentralization to take place, a comprehensive policy should be formulated.

Mr. Chairman, I support the devolution of power only to two levels; one, the Central Government and second, the District and the third level to be either the Local Government or the Village Government. The District Government should be given an authority to legislate how many types of Local Governments or Regional Governments it is going to have depending on the resources or revenue that it is going to generate.

Mr. Chairman, the third comment I want to make is the abolition of Provincial Government. I am saying that because the Provincial Government is not shown anywhere on the seven shadows and if at all these provinces have to be retained, I beg that some of the provinces have to be divided into two or three parts. In particular, the Eastern Province should be divided into three parts to cater for the Northern Province which will include Marsabit, Isiolo, Moyale and our brother Samburu with the headquarters at Isiolo and the same to be done for the Central Province to have its headquarters at Embu for Meru and Embu Districts, and for our brothers in the South for the Ukambani to have their headquarters in Machakos.

Mr. Chairman, the proposed Draft did not say any qualifications for the District Administrator and I believe it is vital to have a competent District Administrators. I would like to suggest that one of the qualifications is that he should be a Kenyan citizen, should reside in the District, should own property in the same District, should be over 30 years, should have a minimum education of 'O' level or its equivalent with proven experience in Management and Public Affairs.

Mr. Chairman, in sub Article 231, there is a place, it says, 'the Provincial Administration and the secretariat shall be given funds from the National Government'. I suggest that since the province is not there, the departmental staff in the District should be paid by the National Government. Mr. Chairman, on the seven schedules, there is no place where the judiciary is mentioned and there is no District that can do well without the judicial service. So, at least an Article should be added to say that each District should have judicial services. Thank you Mr. Chairman.

Hon. Delegate Joseph Nyaga: Thank you very much. It is 12.31, and for the sake of our Muslim brothers, we normally go up to 12.30 on Fridays, we will have a long lunch break but please let us be on time for 2.00 o'clock. We will start promptly at two o'clock because I see many people want to participate and the only way we can do that is if we all come back on time. Those who are praying, good prayers and those who are going to eat, enjoy your food. Thank you.

The meeting adjourns at 12.30.

After Lunch Break.

Hon. Delegate Joseph Nyaga: We had agreed that we will start at exactly 2.00 p.m. We have not done very well because it is 2.10 p.m. Before I give a chance to this side. I have been asked to read the names so that we know each other. The Ad hoc Committee on Culture:

1. Prof. Wangari Maathai - Parliament
2. Kareng'e Wa Gacuru - Central Province
3. Eliud Paul Nakitare - Western Province
4. John P. Nyakundi - Political parties
5. Deo Maasai - Nyanza Province
6. Jamilla Mohammed - Professional organizations
7. Atsango Chesoni - Women Organizations
8. Rajab Mwondi - Trade Unions
9. Dubat Ali Amey - North Eastern Province
10. James Kosgei - Rift Valley Province
11. Archbishop Gitari - Religious Organizations

12. Rev. Samuel Muchuga - Nairobi
13. Mwathawiro Mugange
and Onotto Joshua Jilo - Coast
14. Eisintele Kureya - Eastern

And the Commissioners are going to be:

1. Kavetsa Adagala,
2. Abubakar Zein Abubakar, and
3. Bishop Bernard Njoroge Kariuki.

We now know the members of the Ad hoc Committee.

Before we broke up for lunch--

Hon. Delegates : Point of order.

Hon. Delegate Joseph Nyaga: Where are the points of order? I hear some-- yes, 52 first.

Hon. Delegate Daniel Khamasi: Thank you very much, Mr. Chairman, to have read to us the names of the Delegates who will be serving on that Committee. Mr. Chairman some of us love culture with a passion and we would like to participate in that debate when it comes to the floor as much as possible. But what is tickling Mr. Chairman, is that as much as the other Committee has been established, we would like to know who is going to convene that particular Ad hoc Committee on Chairmanship. Because if we are now following here the tradition of Parliament normally the mover of a motion does actually chair that particular Committee and I would like the Chair to respond, and tell these Delegates as to who is going to chair that particular Ad hoc Committee and on what basis? Thank you.

Hon. Delegate Joseph Nyaga: Thank you, I am advised that the first meeting obviously has to be chaired by a Commissioner in order to allow for the group to select, appoint or elect their own

Chairman and that first meeting is going to be by Bishop Bernard Njoroge Kariuki. He is going to call the first meeting so that the Committee can organize itself and start working and also select, appoint, nominate or elect its own Chairman.

Hon. Delegate Daniel Khamasi: Mr. Chairman, thank you very much for that clarification. We would like to make it very clear here because the information that we have may be wrong but now we are getting the right information from the Chair. We would like members of the Steering Committee not to begin usurping Chairmanship of Ad hoc Committees. Thank you, Mr. Chairman.

Hon. Delegate from the floor: Point of order

Hon. Delegate Joseph Nyaga: One last point of order please. Yes, point of order... then let's make progress please. 303

Hon. Delegate Margaret Nyathogora: Mr. Chairman, mine is very simple, Eastern Province where you come from is not represented.

Hon. Delegate Joseph Nyaga: It is represented by Kureya Eisintele. I think Eastern Province should sit down and re-organize-- I thought it was resolved.

Hon. Delegate Bonaya Godana : What is the problem about representation of Eastern? There is somebody here, a lady by the name Kureya Eisintele, who works in the NGO world but who is also a District Delegate here. What is your problem? *Noise from Hon. Delegates.*

Hon. Delegate Joseph Nyaga: What is your number? *Noise from Hon. Delegates.* 298, you represent Eastern Province in the Steering Committee. Would you tell us what is happening? Please talk in the microphone.

Hon. Delegate Rhoda Ndumi Maende: Thank you Chair, we had already given the name and we do not know that name which came from you. So the name we have given just now is the name which has been confirmed by the Eastern Province.

Hon. Delegate Bonaya Godana : No, no, look you may have to get back and sort it out. It looks like Eastern is very large and-- But you know the lady, alright?

Hon. Delegate Rhoda Ndumi Maende: We don't know the lady.

Hon. Delegate Bonaya Godana : You don't know her? Here she is, Eisintele Kureya.

Hon. Delegate Rhoda Ndumi Maende: No, then we don't know.

Hon. Delegate Bonaya Godana : How come you don't know and she saw you this morning, on another matter.

Hon. Delegate Rhoda Ndumi Maende: No. (*Noise from Hon. Delegates*). We have agreed on the person who is going to represent Eastern Province, unless now you give us two chances.
Noise from Hon. Delegates

Hon. Delegate Bonaya Godana: No, no, I come from Eastern Province. May I suggest Eastern Province. *Noise from Hon. Delegates*

Hon. Delegate Rhoda Ndumi Maende: Suggest then, can we meet outside after the session?
Noise from Hon. Delegates. Yes, we have given the name.

Hon. Delegate: Point of order.

Hon. Delegate Joseph Nyaga: Excuse me, Eastern Province, this issue has been settled. Eastern Province we can meet on our own to resolve our differences not in public. (*Noise from Hon. Delegates*). Now let us proceed, please let us proceed. (*Noise from Hon. Delegates*). We were going to begin from here. It is the chance of an MP. (*Noise from Hon. Delegates*). MP number 3. (*Noise from Hon. Delegates*).

Hon. Delegate Ali Hassan Abdirahman: Thank you, Bwana Chairman.

Hon. Delegate: Point of order.

Hon. Delegate Joseph Nyaga: Okay, hold on for a point of order. 361 point of order. Yes 361 there is a point of order.

Hon. Delegate William Salaon Ole Yiaile: Thank you Mr. Chairman. My point of order is very simple and straight. Culture is a very sensitive issue. When you come to representation of culture, it cannot be delegated to another culture to speak on behalf of another culture. That is the problem which we are facing. I would beg that those members who sit in the Executive Committee, should actually give others room so that they can also participate.

Hon. Delegate Joseph Nyaga: Which Province are you talking about?

Hon. Delegate William Salaon Ole Yiaile: I am talking about the province we call Kenya (*laughter*). Therefore we must have a good order in the appointment of Cultural Committee. You cannot have those people who lost their culture speak on behalf of those people who still have their culture. Thank you Mr. Chairman.

Hon. Delegate Joseph Nyaga: Thank you, that is a very good point. Thank you very much. I think we are ready since I know everybody wishes to participate in the devolution subject. Could we now have MP number 3, the floor is yours.

Hon. Delegate Ali Hassan Abdirahman: Thank you very much Bwana Chairman. My names are Abdirahman Ali Hassan, MP, Wajir South Constituency in Wajir District. I would like to contribute to the on going debate on the devolution of power, but before I comment on the critical areas, I would like to make some reflection on the effect of the centralized power on areas like the one I come from. Actually devolution of power as we are discussing it is long overdue according to me because communities at the periphery far away from the powers that make the decisions have continued to suffer for decades now.

I would like to comment on how the communities were viewed. The communities were viewed as only passive recipients, not as active people who could contribute both ideas and resources for their own development. I would like just to give one simple example, we have known in this Country for instance, programmes that were developed for Arid areas and it never went beyond Machakos. Programmes were manipulated to the advantage of those people who were in leadership positions and all technical persons, yet there was no representation from the kind of communities I am talking about. Now that we are talking about giving power to those communities, I view it as a way of power, the local communities to govern themselves and to run their own affairs. It is a welcome move and we support it.

In terms of design I personally support the four levels. Many people who commented before me wanted to evade or avoid – sorry to use that word – but to avoid the Provincial Government. I personally know the Provincial Administration did not do any good and those who advocated for its scrapping is a welcome idea, but I would personally maintain that we get some coordination mechanism at the Provincial level not that the funds go to the Province but the funds go directly to the District, but we need a coordination mechanism at the Provincial level. And as suggested by the Draft we are not getting a very huge team just a coordination mechanism to be able to facilitate a linkup with the Central decision making organs at the National level.

I oppose the people who are now saying that we do not require district collaboration. We will require the district collaboration and some collaboration at the provincial level. There are a number of resources that are shared commonly by these communities who may be based at the different estates. We must be objective in our thinking, we must be objective, we do not have to think of the sizes, and nobody will surely succeed to the think of that. What we want is to foster very good relationships amongst communities. You know very well that things like security have been an issue. How do we handle the common problems like the natural resources and security issues, if we do not have some co-operation between the districts and even provinces? We have alienated Kenyans for so long, let us open up and get together.

My other comment is on Article 228, which prohibits holding effective elective offices at both the national and devolved levels. There is a suggestion that somebody cannot hold offices at both levels, which is very good, but there is something much more than that which I thought will

be of paramount importance if it was taken care of. The integrity of those who hold offices need to be put in place. We may have to encourage our local natives to take up these positions of district administrators or even higher levels, yet some of them may be of questionable character. We have a history in this country of re-cycling professionals who have failed to deliver. What we require is some recommendations on the integrity of these personalities.

Finally, I want to call for the scrapping of Local Authorities now that we are getting district administrators. Some of these local authorities are being resuscitated through the local authorities transfer fund; some of them would have died many years ago had it not been for the introduction of the levies. I wish Honourable Karisa Maitha was here, we are not advocating for their existence because they have failed to deliver.

Finally, many of us who listened to Salah Maalim from Madera, really laughed when he talked about getting mobile government units. It is because the people at the top decision-making levels failed to give us appropriate policies that will have enhanced our development needs. Now that we have got people who will be representing those who cannot be reached right at the village level, I think we might not require those mobile units up there, but for a long time we are saying because of inappropriate policies, we were not able to benefit much. I stand to support devolution of power at all levels transferred directly to the district. Thank you very much.

Hon. Delegate Joseph Nyaga: Thank you very much. We now go to this block, people from the category that I call others, Special Interest Political Parties, etc. etc. I recognize 487.

Hon. Delegate Baldip Singh Rihal: Thank you, Mr. Chairman.

Interjection by Honourable Delegate: Give me one minute please.

Hon. Delegate Ogembo Masese: My name is Ogembo Masese, number 591, from Political Parties, Kenya National Congress. Mine is a point of procedure sir, in our handbook or rules and regulations, number 61 which says that, “no Delegate should partake in the deliberations of the Conference if that Delegate has not taken that oath of office”. It is very sad sir that one of our Honourable Delegates, a very prominent one, has been participating here and has even played a

very important role of welcoming the President and yet he has not taken the oath of office. He has further-- the said Honourable Delegate is in company of another Delegate here by the name of Honourable Professor Makau Mutua who is writing some articles in the papers dismissing this Conference. The matter was raised in the morning. Now, I am referring to the Safina Party leader, Honourable Paul Kibugi Muite. He has not taken the oath of office and yet he has been participating here, has even welcomed the President and he is a lawyer--

Hon. Delegate Joseph Nyaga: Order! Order! Order Honourable Delegate. We want to confirm, and the Chairman of the Conference here, that both Honourable Muite and Honourable Makau have taken their oaths of office.

Hon. Delegate Ogembo Masese: Honourable Makau has but Honourable Muite has not.

Hon. Delegate Bonaya Godana: Well, I am afraid the person who administers the oaths is the Chairman of the Conference and he says that he has administered it; it is in the records.

Hon. Delegate Ogembo Masese: Mr. Chairman, Sir, I stand to be corrected but I want to see that in the daily proceedings. Table it, it is not there, we want to see it and we want you to be honest Mr. Chairman, Sir.

Hon. Delegate Bonaya Godana: The Chairman confirms they did, he signed, he countersigned their oaths and we will table it.

Hon. Delegate Ogembo Masese: Mr. Chairman, it is not a question of the Chairman saying, table the thing, if it is in the proceedings, it is not there! But if it is there you show it to us.

Noise from Honourable Delegates

Hon. Delegate Bonaya Godana: It will be brought, it will be brought.

Hon. Delegate Joseph Nyaga: Thank you very much. Let us now proceed while that is being produced. We now proceed. Thank you.

Hon. Delegate Baldip Singh Rihal: Thank you, Mr. Chairman.

Noise from Honourable Delegates

Hon. Delegate Joseph Nyaga: Order! Order please, let us listen.

Hon. Delegate Baldip Singh Rihal: I am Delegate number 487, my name is Baldip Singh Rihal representing the Professional Society. I have been taking care of the welfare of all the Delegates, that is 628 and I was beginning to wonder that being Delegate 629, whether anybody would take care of my welfare. I would like to thank the Chairman for giving me this opportunity. Now, in principal Mr. Chairman and Honourable Delegates, I am in favour of the devolution and passing the power to the people to rule themselves; but I think let us be realistic and see how far we can go down the line and how far we can give these devolved powers to the people.

With lots of humility Honourable Delegates and Chairman, I like to share some of my experiences in urban development, housing, land matters and local government matters for over 40 years, 35 of which I was in the public service of Kenya and the last 10, 12 years as a professional consultant. I would particularly like to question the availability of money for the institutions that we are proposing to create. Now, let me be brief but come to the point straight away, over the last 15, 20 years, many new municipalities were created in this country and let us be honest, not one of them is a viable or a bankable institution even to date. If we are going to go on creating more institutions, this will mean that somehow we have to find the resources from somewhere to sustain them and the major source of revenue to the local authorities at present comes from the property taxation known as rates. Now, only Nairobi, Mombasa, Kisumu and I believe Nakuru have their own valuation sections or departments, which prepare the valuation Law on which the property taxation is based.

Let me just illustrate my point by pointing out what has happened in Nairobi. Nairobi has been existing as a municipality since 1928, and up to now it has only managed to prepare four valuation Laws, the first one was done in 1931, the second one in 1956, third one in 1971 and the last one in 1980. When the 1980 valuation Law was prepared and tabled by the council, there

was a lot of public outcry because the capital values of the land had gone up more or less 5, 6 times from the 1971 valuation Law and the whole matter had to be sorted out right upto the top levels of the government. There was one person called Veers Rihal, a Deputy Secretary in the Ministry of Local Government who had to write all the papers and sort out all the legal issues before this law was introduced. Now, I am driving to the point of the sustainability of the Local Authority, the incompetence we have in many of these local authorities is because many of them cannot do things the right way, legally. In the year 2001, Nairobi City Council prepared a new valuation law, it was published and the council tabled it; but you know what happened? Legally, the notices published were in the wrong manner, and the High Court eventually had the-- a case was filed and High Court quashed Nairobi City Council's decision to introduce the new valuation law.

Now the next fault of all these is, we are relying on one form of taxation, that is the rates, and it takes a long time to prepare the valuation laws because the system is centralized in the department of lands. It cannot cope with the amount of work and the number of laws which have been prepared even for the existing municipalities and when new districts will be created. New urban areas or more municipalities will be created, we will only be loading our problems as it is today and none of these authorities will be financially viable. Most of the earlier speakers have questioned it and I would also like to question it. The Honourable Minister for Local Government also alluded to this point. That how are we going to make these local authorities viable? One is through the property taxation and through other levies and fees which the local authorities charge. There is a limit to which you can tax people, we all agree and say that Kenyans are the heaviest taxed people in the world. Are we prepared to pay more taxes to sustain the devolution? So please, let us be realistic on what we are going to come out with, these are some of the matters of detail which of course cannot be written in the Constitution, but we must take cognizance of the reality and see what we can eventually afford as a country. How many districts we can create, how many local authorities we can create and how much viability they will have in order to provide the services which is their primary function. I think I will stop there and may be make some other points at another opportunity. Thank you Mr. Chairman.

Hon. Delegate Joseph Nyaga: Thank you very much. An MP from this category now, who has not spoken. 222.

Hon. Delegate Tett Betty: Thank you, Mr. Chairman. My number is 222, Member of Parliament. Mr. Chairman, it is clear that the Draft Constitution aims at devolving power and responsibility to autonomous local government authority in Kenya, where the people are empowered by the law to self-governance. This is a development Mr. Chairman, which should have taken place 40 years back since it enables the local population to take full charge of managing and running their own affairs, without undue interference from the central government. Mr. Chairman, the proposed system will enable them to provide for such services as water supply, running and management of their schools, roads, health services and other services they require.

It will also enable the local population to resolve the internal conflict to the advantage of the entire population. The proposed government shall be in charge of safety and security in the areas of jurisdiction, i.e. they shall employ their own policemen and policewomen from that area, who will boost security of the area. The new Constitution Mr. Chairman is actually trying to create a popular system at the local level aimed at satisfying popular demand for effective and efficient service delivery. This is why this system must be for the people and must be situated and operated by the people right at their doorstep. Mr. Chairman, the local system will also enable every district, location and sub-location to mobilize its own resources to the optimum level with a view to realizing the benefit, therefore in term of increased economic, production, employment, high living standards, proper environment consideration, in other word the people will be in charge of managing their resources and most of their affairs. In this way Mr. Chairman, efficiency and effectiveness of services deliver will be realized at all levels.

The Draft Constitution however, does not come out clear on how to establish and constitute the proposed level of these new authorities. For example if a community wishes to establish a location or a sub-location council, what procedure will they follow in establishing such an authority. If a municipality council wants to become a city, to whom does it apply to? And if a city has out grown city status and wants to change its status to a metropolitan city what procedure do they follow? Putting into account metropolitan are not provided for in the Constitution Mr. Chairman. I feel that this should be provided for, in the Constitution or in the Devolution Act. The structure that I think will work is the district council and in urban setting,

these are cities and municipalities. Location and Sub-location in the districts and urban councils are wards.

Let us look at the resources as my friend there was wondering where the resources are going to come from, Mr. Chairman. At the moment we get 5% of the income tax from the government to the local authority, this is distributed by a way, LATF. It is actually the income tax and not the rate Mr. Chairman. This is totally inadequate at the moment and I suggest a figure of 40%, this is a fair deal Mr. Chairman. The 5% comes to about Kshs. 3 billion and the 40% will come to about 92 billion. We collect 230 billion every year and therefore 40% will come to about 22 billion, the details of sharing shall be provided for in the local government finance commission. I suggest that the sharing of the local government finance commission be fair in distribution especially taking care of the marginalized communities and for example in Wajir where they do not even have toilets. That should be taken care of. Mr. Chairman, when you look at that 40% it is a lot of money, and if you distribute fairly, each district will get about 37 billion. So if you go down to the local location and sub-location and you divide that, you will see that, that money is so much, that they will be able to take care of so many things and even start their own little businesses here and there. This is what I call devolution of power, where the locals will be able to take this opportunity. Mr. Chairman I would request that membership of the local government to be deleted from the Constitution and at the same time to be provided for under the Act of Parliament as suggested under legislative provision for devolution on page 71, 222(p). Mr. Chairman the committee should harmonize the use of the word 'government', whenever the word 'local government' is used to describe district government and also vis-a-vis. The committee should come up with one term, and I think the term 'local government' will cover all classes of local government, that is the district, location, sub-location and the councils. Mr. Chairman as you can see the people at the grass-root level will be very busy when all these devolution of power will be given to them. They will be able to employ their own policemen, they will be able to take care of their own security, they will be able to do a lot of things, and in that way all the MPs who are stuck in Nairobi sometimes, they will not be able to stay in towns that time, they will be able to go down and in that way the recall will not arise from then onwards, and this will be very good Mr. Chairman.

Mr. Chairman incompetence will not arise, because people will be fighting to better their lives. They will not have the central government to take care of them; they will be taking care of themselves, of their health matters, their location and everything. They will be also be levying, like for example they will be levying the hospitals, hotels and will have a lot of money and that will be very good for devolution of power.

Hon. Delegate Joseph Nyaga: Thank you, I allowed her to speak a little longer because she is an Assistant Minister in the local authorities ministry and it is good to hear some of the views. Now the next section, I am looking for a category called special interest, political parties, religious group, professional, in this group I see the man who normally sits next to me 226.

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

Hon. Delegate Samuel Macharia Muchuga: I am laughing because from Chapter-- my name is Muchuga number 226--

Hon. Delegate Joseph Nyaga: There is a point of order 231.

Hon. Delegate Kitambi Mwalimu: Mr Chairman, thank you for according me this opportunity because I see everybody is listening, I do not know whether the Honourable Delegates are listening to our contributions carefully. My name is Mwalimu Digore, I am a delegate from Kwale. I was just wondering whether it was in order for the Honourable Delegate who has just spoken to allude here in this Conference that there are no toilets in Wajir districts and whether that Honourable Member comes from that district, is that information healthy? And if she does not come from, where do they go when they have to answer a call of nature.

Hon. Delegate Joseph Nyaga: The reason I allowed her to make those commends was as Assistant Minister in the Ministry she knows a lot, but let us not give those kind of examples in future, but it was important for her to explain because she knows the problems of the district of the local authorities, but we will give such examples again. Number 31, but please do not think it is everybody.

Hon. Delegate Yussuf Haji: Mr. Speaker I would like to inform the Speaker, that the Honourable Minister is very right because in Wajir, we don't have toilets, but we have buckets.

Hon. Delegate Joseph Nyaga: Thank you, it is now very clear the Assistant Minister was speaking on point of authority. Continue.

Hon. Delegate Samuel Macharia Muchuga: I said my name is Muchuga and my number is 226 from Nairobi. Mr. Chairman, I want to make one general comment before I come to the point I want to make. That when we are talking about devolution, we must remember that cost is very important. The cost of devolution is important, the second thing is the viability of the unit that are created, that is very important. But I want to come back to my district in Nairobi and I want to refer to article 221.

Hon. Delegate Joseph Nyaga: I am sorry speaker, 626 insists on a point of order.

Hon. Delegate Mamo Abudo: Thank you, Mr. Chairman my name is Mamo, number 626, I wanted to ask whether it is in order delegate number 226, is from Nairobi and you have just called for other categories, please.

Hon. Delegate Samuel Macharia Muchuga: I am saying, Mr. Chairman I have never spoken, I made a point of order.

Hon. Delegate Mamo Abudo: I am saying you said on that category--

Hon. Delegate Joseph Nyaga: Okay, the point of order is correct, that I made a mistake, you are not from religious organisations, you are from Nairobi, but since Chair is allowed to make mistakes; I shall not repeat it and I am going to correct it straight after this. You proceed, but thank you very much for alerting me.

Hon. Delegate Samuel Macharia Muchuga: I think some people are eating my time, I want to talk about Nairobi, when we talk about urban areas, we say Nairobi is going to be managed through an Act of Parliament. If you look at the report that were prepared by the Commission

and I have read all the 8 reports, nobody in Nairobi asked to be managed through an Act of Parliament and I am wondering why Nairobi has not been put or considered just like Mombasa City and Kisumu City. Nairobi is a cosmopolitan city and this city you should know is composed of three categories of people. The first category is of those people who are born in Nairobi and their fathers and fore fathers were born in Nairobi. The second category is of the people who have come to Nairobi and they have made Nairobi home, they have got property and they want to live in Nairobi. Some of these have got two properties, they have got another property at home and another here. Then there is another category, the third one, which is composed of people on transit. The people who have come here to earn money and later on go home when they retire. These people have got their hearts at home. These are the three categories who comprise Nairobi people, and anybody considering the issue concerning Nairobi has to understand the dynamics involved as far as these three categories of people are concerned.

I am concern because Nairobi has been considered to be a district, when it is convenient, and when it is not convenient they call it a province. I would rather we consider Nairobi as a province and in fact they had been two reports, Omamo and Mbugua, have said that Nairobi cannot be governed they way it is, it has to be divided into four barracks. Some wanted more barracks in Nairobi and if that is the case, if you divide Nairobi into four barracks you will have an approximately one million people in every barrack and this is reasonable. And if you do that, you will be able to consider Nairobi. Now Mr. Chairman what I am saying is this, Nairobi is a city but it is more than a city. Like in Johannesburg, you will find there many cities within Johannesburg, you have got Horizon City and other cities within Johannesburg, and this how you should consider Nairobi for governing purpose.

The other thing I want to say clearly is this, if you are going to govern Nairobi or manage it through as Act of Parliament, the views which were expressed by the people of Nairobi must be echoed in the Act that is going to be prepared. Otherwise the rest of Kenyans will be preparing a people driven Constitution, but when we come to Nairobi we will say the people of Nairobi are not going to be considered.

The other option Mr. Chairman, is to let Nairobi have a style of government that will govern the other cities, that is only how we can do justice to this city. The other thing Mr. Chairman I will

tell you, since we came here, we are three Delegates, and only one Delegate from Nairobi had been allowed to talk, the other two of us have not been allowed to talk. Thank you.

I want to make another point Honourable Delegates, we are happy that you are in Nairobi and we welcome you here and we consider it our privilege to have you in this city, it is your city as well, but I am talking for those who live in this city. That Act Mr. Chairman, let it echo the views that were expressed by people of Nairobi. The other thing it must also capture that Act. The style of government that will be enjoyed by the rest of Kenyans. We cannot just say Nairobi City will be managed by an Act of Parliament. Thank you Mr. Chairman.

Hon. Delegate Bonaya Godana: Thank you. Order! Honourable Delegates. A while ago, fifteen or so minutes ago, an Honourable Delegate alleged that the Honourable Paul Muite had not been sworn in and yet he was participating in the Conference. When I said the Chairman of the Conference had confirmed that he had countersigned in the hall and with this Chair, the Delegates insisted we must table it.

I now want to confirm here I have the original copy of the oath sworn by Mr. Paul Kibugi Muite, countersigned by the Chairman, this is the 30th April this 2003. (*Clapping from Honourable Delegates*). I confirm therefore Paul Kibugi Muite is properly participating in the Conference. Thank you.

Uproar from Honourable Delegates.

Hon. Delegate Joseph Nyaga: Thank you very much. I am looking for an MP from this section.

Honourable Delegate: There is a point of order.

Hon. Delegate Joseph Nyaga: What is the point of order? Who is on a point of order here? 98, point of order then we go back there.

Hon. Delegate Peter Elias Mbau: Mr. Chairman--

Interjection Hon. Delegate Joseph Nyaga: Please let us listen to point of order.

Hon. Delegate Peter Elias Mbau: Mr. Chairman, my name is Elias Mbau, MP for Maragwa Constituency. I want to express my utter disappointment with an Honourable Member of this very honourable Conference standing here and demanding that the Chair, insisting the Chair is wrong even when the Chair continues to insist that Honourable Paul Kibugi Muite and Honourable Professor Makua Mutua had actually taken an oath before proceeding to this Conference. The member appeared like he had information that the rest of us did not have. I want to appeal to this Conference to demand that that Honourable Member apologizes unconditionally on his knees.

Clapping from Honourable Delegates.

Speaker: Thank you, Mr. Chairman. I said I went through the daily votes and the proceedings and the name is not there, so can you protect me, Mr. Chairman, please.

Uproar from Honourable Delegates.

Hon. Delegate Joseph Nyaga: Order! Order! Order! Order all of you! Order! Honourable Delegates sit down, please. Just sit down. Order! Order! Delegates--(Inaudible).

Hon. Delegate Bonaya Godana: I think we did not really intend to spend time on this. It is unfortunate the Honourable Member did not want to believe us, but he is right in that the name was inadvertently omitted committed from the votes and proceedings of 30th April.

Clapping from Honourable Delegates.

Speaker: Thank you, Sir.

Hon. Delegate Bonaya Godana: I think you should not contradict the Chair. If the Chair says “yes I countersigned” let’s go on, the matter is now closed. Let’s get on with the business.

Hon. Delegate Joseph Nyaga: MP, 376. Is that an MP?

Response from some Honourable Delegates: Yeah.

Hon. Delegate Joseph Nyaga: I hear, no, I am looking for an MP from that section. 105.

Honourable Delegate: Mheshimiwa, I am very lucky to be here.

Hon. Delegate Maalim Abdi Mohamed: Thank you very much, Mr. Chair. Mr. Chair, I would like to join my colleagues who supported devolution--

Hon. Delegate Joseph Nyaga: Who are you?

Hon. Delegate Maalim Abdi Mohamed: My name is Mohamed Abdi Mahamud, MP Wajir East - that is where one of the members asked why Wajir people do not have toilets. Mr. Chairman, I am very glad that the Assistant Minister for Local Government raised a very important issue and I will comment on that one later. Thank you very much.

Now, Mr. Chairman, I think many people have talked of the rationale behind devolution. Mr. Chairman, we very well know that those of us who had excessive political and Executive power have made part of this country to be marginalized. Mr. Chairman, an example is in 1963 up to 1965 or so during the Shifta problems, some people in some parts of Kenya were trying to secede simply because of resource allocation and the political power concentrated in certain parts of the country.

Similarly, the Luo Nyanza were politically alienated in the 60s' and late 70s' and as a result they formed the KPU and even that party was banned. In the same way, there was the Mwakenya Movement of 1980s. You know very well who the Mwakenya were, they were denied their political and economic rights and other things and as a result many people became dissatisfied with the system and started operating clandestine movements which led to the detention of so many people some of whom are with us here. Mr. Chairman, all these resulted in dissatisfaction

and the whole thing came from power. All the power was centered somewhere and the people with Executive power were dishing out resources the way they wanted in terms of even scholarships, Mr. Chairman. You know those people very well. Even the sons and daughters of colonial chiefs, home guards and the booth lickers were the ones actually who rose to prominence became Permanent Secretaries and big people, thus marginalizing the smaller people. They became Ministers and later took all the resources to their areas.

So, Mr. Chairman, as a result of all these problems, after 40 years, people are now realizing that it was important to have political power. Now, when we say political power sometimes somebody will say, "but you have Members of Parliament". We have Members of Parliament in Wajir and yet our people do not have toilets the way the Minister has just confirmed because the water level is very high and if people use pit latrines they will contaminate their source of water. *(Clapping by Honourable Delegates)*. So, Mr. Chairman, when we talk of political power we are talking of the Presidency and the Vice President, we are talking of the Prime Minister and that is why that debate was very hot. In Kenya it appears that only the big tribes can produce Presidents. For heaven's sake, now that you have heard our cries, we, smaller communities, should be given a share of this national cake as a token *(Clapping from Honourable Delegates)* so that we become satisfied and happy and Kenya remains united, Mr. Chairman. I am glad to realize that many Kenyans have now realized that and we are happy nobody is seceding. All that we want is the power to be devolved politically, economically, socially, educationally and administratively to the district and location, Mr. Chairman.

Mr. Chairman, I know it is very beautiful to say that but these also have their own challenges and when I say challenges, I mean those areas already I said have been marginalized, will continue to be marginalized if we don't specifically say those districts or areas that were disadvantaged due to many factors be given special consideration, Maybe -- (Inaudible) saying yes certain districts to certain areas even in Kiambu, Mr. Chairman. Kiambu people think that it is the richest district in Kenya and yet there is Karai who are on famine relief, Mr. Chairman. We have disparities like that in all parts of the country, districts, and provinces in locations. There may be certain areas, like Karai, which maybe because they have not produced anybody with political power, have been marginalized.

Mr. Chairman, I go for the three levels of devolution which are national, district and the lowest, the location. Thank you very much.

Hon. Delegate Joseph Nyaga: Thank you very much, Mheshimiwa. District category. I am looking for districts, please district people -284.

Hon. Delegate John Gitari Munyi: Thank you very much, Mr. Chairman. My names are John Gitari Munyi, a Delegate from Embu. In brief, Mr. Chairman, I do agree on devolution from the national to the district as a center, down to the location. However, there are some districts, Mr. Chairman, which I feel cannot sustain themselves and therefore will need to come together to do so. Nairobi as a capital city should be on its own. Mr. Chairman, there is political devolution and economic devolution. As we try to put the two together, we must be extremely careful because in this Conference as I was listening, there has been strong feelings or tribal connotations where people and many of the Honourable Delegates are taking it. It is like a succession, where a family head is distributing his wealth to his children.

It should be taken when the family head and the children feel they have come of age and need to participate fully in the family affairs. Mr. Chairman, may I say this, as we devolve power, it is extremely important that we realize some services like education cannot be taken down to the districts. History can prove it. Down the history lane, Mr. Chairman, we had education being managed by local authorities and it was in total chaos. Today nursery school teachers are paid by councils, and I can tell you, Mr. Chairman, we have got nursery school teachers who have not been paid for the last five months and they are paid about Kshs. 500, which are peanuts.

Mr. Chairman, I would also like to draw the attention of this Conference to the fact that when there was total chaos in the education sector, Mr. Chairman, it was the wisdom and introduction of a Bill in Parliament, the Act that created the Teachers Service Commission which was introduced by then Honourable Jeremiah Nyaga, and we have got a lot of respect of that. We cannot go back, teachers cannot go back, the education sector cannot go back to such a kind of situation.

The other day we mentioned clearly that in Maasailand, the boys there are marginalized, as much as I am not very sure on the definition of the word “marginalized” as far as the Conference is concerned, but the girls there are getting educated to the disadvantage of the boys. That is a fact. Mr. Chairman, even today in Maasailand, we have got a policy in the education sector where 85% of those pupils who go through primary education are taken to the local schools in the district. This has made some of the districts to have a big problem. If we say we devolve education down to the district it will be a big problem and it will create total chaos. So I don’t support that.

Mr. Chairman, may I also say this, some of the districts and areas cannot sustain themselves. We have got some areas like where I come from Embu, where the district grows coffee and tea and farmers there can be told to pack their own tea and coffee and the value added; those people who want to buy tea from Europe, America, from Asia and other parts of the country can buy them from the factories at the price of those people and it will be okay. But there are some areas, Mr. Chairman, where districts cannot sustain themselves. We are saying that people can sustain themselves through tourism as it has been mentioned.

Mr. Chairman, even the policy of tourism a round the world is changing from the Animal Safari, today we have got what is being called the Coffee Safari and the Tourism Sector is moving a way from that direction. So even those areas cannot sustain themselves.

Mr. Chairman, may I say this-- I support Affirmative Action, but it has to have a limitation. We cannot say “one third” forever, it should be “one third” for the next two terms. Thank you, Mr. Chairman.

Hon. Delegate Joseph Nyaga: Thank you very much. We now move to the next section. I am looking for Special Interests, Political Parties and Religious Groups. I see 472. These are the disadvantaged people I am told.

Hon. Delegate Miriam Muto: Thank you Mr. Chairman and Honorable Delegates; my names are Miriam Muto, Delegate number 472. Thank you so much, for quite a long time I have been marginalized but right now I have overcome it. Just to raise my point, I support the idea of

devolution of power. By this I mean, when power is put in one central place, it is misused. I want to first give one example with the National Fund for the Disabled. This fund was entitled to help people with disabilities; it was implemented in Nairobi, and this fund has been managed by the board of directors or the trustees who are able-bodied people. We cannot find persons with disabilities there. So, this fund has lost meaning, because somebody somewhere with all the power has decided to use it for his own benefit.

Coming to my point, I want to make it clear that as much as we support the devolution of power, I would like it to be efficient and accessible to all persons. In this I am going to apply the Affirmative Action and the Bill of rights, whereby all persons have a right to participate. These are persons with disability. For example, if I may give an example of where I come from, that is Taita Taveta, where the Chief is, the place is not accessible, I cannot access the place due to my disability. My colleague with hearing impairment cannot access the services because there is lack of interpretation services. And even for those who have visual impairment cannot access those facilities because facilities like Braille are not available there. So what I am trying to say is, as much as we talk about this devolution of power, and all the services, these services must be accessible for all persons with disabilities.

In Article 213(i), whereby it talks about protecting and promoting the interests and rights of minorities and disadvantaged groups. I recommend that this clause should be amended to read: “protect and promote the rights of persons with disabilities, minorities, and other interests.”

I also want to make my observation on Article 214(e) on the principles of devolved Government: at least one third of members of councils are women. I want to make it clear that we want to also apply the Affirmative Action. Among these women also one third should be women with disability.

On Article 214, I recommend the inclusion and participation of persons with disability in all, and where they have talked about electing we’d want to see that all persons or the issues of persons with disabilities are included. By that I mean not somebody sitting there and saying that I am talking on behalf of persons with disability. Here I mean, and I know, we are capable of running

our own affairs. So where they are talking about having representation, persons with disability should represent themselves in the sector.

Article 216, I also want to recommend that in the village council, where they have said that the village council shall contain not less than six or more than ten, I recommend also two persons with disability should be represented of whom one shall be a woman. And those are my observations, thank you.

Hon. Delegate Joseph Nyaga: Thank you very much. Next section I am looking for an MP number 73.

Hon. Delegate Konchella Gideon Sitelu: Thank you Mr. Chairman. I am Delegate number 73, Honourable Konchella, from Kilgoris constituency. I am happy because I have this opportunity after waiting for a long time. I'll go back a little since I missed all the other numbers in this discussion. I will start with nomination. I agree with the Affirmative Action. I totally agree with it. But let us go a bit further, let us look at those communities that will never get to Parliament by virtue of their numbers. And I would like this honourable assembly to allocate ten seats for people like Elmolo; one Elmolo MP, one Dorobo MP, one -- (inaudible) MP from North Horr, huko mbali, who will never see the doors of Parliament because they are too marginalized, they are too small. And others, of course I cannot tell all, but at least ten. That is one.

On the question of land, I would like to address the issue of the Maasai. We were moved by the Colonial British Government in 1904 from Eldoret, ama Uasin Gishu, it is called the Uasin Gishu Plateau. We lost our land against our will, and we were moved to Kilgoris, Trans Mara, a place invested by mosquitoes and tsetse flies. We lost our cattle and we continued to lose our people. We want to go back to Eldoret, but since it is not likely to be possible, I want to suggest the following: the British Government had agreed to pay a compensation of hundred thousand pounds sterling in 1904 for loss of wildlife as they moved down to where we are. The British Government should pay that money with interest at the current rate from 1904 up to today, for the Maasai to restock their cattle.

Clapping by the Honourable Delegates.

I also wish to say that Maasai land is not idle land. When you see there is nobody living there, it is because the cattle have moved away to allow the grass to grow, and they will come back for the grass again.

Now, to come to the powers. I agree on devolving power even to the President, but the current President we have has been mandated by the People of Kenya –three, four million of them- to rule them for five years. So, it is not likely that the people of Kenya would say “Mr. President, you can remove some of your powers.” We would probably say “No”. We gave you a mandate for five years to rule us, we have no power to remove any powers we have, until and unless we go to the ballot box. Now, since that is the problem, and that is the situation that is likely to be, let us be more practical, let us talk and plan a Constitution that is going to serve us for the next fifty years, because we have the environment, we have the Government. If the previous regime has pushed us to where we are today, let us then, knowing that we have the environment, do a Constitution that is going to be practical. Let us talk practical things here and do what we think is going to work. I’m doing this because when we go to the issue of the Senate, for example the Senate is going to be elected out of the people who are councilors today. (*Noise from the Honourable Delegates*).

I am coming to devolution. It is part of the devolution process; I am taking my time because I didn’t get the opportunity to do that. When I talk about that, I want to say, let us not create institutions that are going to be a bottleneck to this country. We know what is wrong with the present Constitution. Let us ensure we correct it as we modify the Constitution and create laws that will govern us for a long time. Why I am saying this is that if we devolve and create a Senate as it is today in this Constitution, there is no reason why we should have 210 MPs; they should be half, simply because they will have no work. They will be there in Parliament with no other responsibility other than to create laws in the National level. In fact we will have no reason for anybody to recall MPs because they will not have any responsibility at the Constituency level.

The District Governor so to speak, be it somebody elected, will be the one responsible for managing the districts, and the MPs will have no business to be there in the district, as per the current Constitution. So, let us be very careful on what we are creating because we are going to

come back and I intend to say this: let us allow in the Constitution here, a provision to say, “before five years expire, let us come back here and say that was not correct, let us redo it,” so that by the year 2007, we will have a Constitution that will have gone through. And indeed I dare say here, that let us go through what we are going through today, and let these delegates now go back because they are educated, now they know the law, they know the process. Let them now go to the people and talk to them and say, “yes, this is the Draft we have made, do we agree?” And let the Kenyan people say “Yes, we have agreed with what you say, now go and pass it.” Then let us come back here in the next three months and pass it.

Let me go to the question of devolution now. I want us to remove the following: the Provincial Administration should go in its totality. Divisions should also go in the current Constitution. So should Sub-Locations and villages. The Maasai people for example don’t have villages. They have communities. So let us replace that with communities because communities have leadership. They have governance, which are based on culture, which are practical, which can work. I want to say the last one because time has run out. Let us maintain the central Government, the district and the location and the community.

Lastly, the resources. One third of the National budget should go to the districts. The Minister for finance should say, one third of the national budget should go to the district on equal basis, to be able to run the services, and 75% of what is collected or revenue earned in the district should be kept in the district to run the services. Thank you.

Hon. Delegate Joseph Nyaga: Thank you very much, thank you very much. Do we have a district representative here? 262.

Hon. Delegate Abdikadir Guyo: I have strong support for the idea of devolution of powers so in connection to that I have four points to put across.

One, in Article 213 that is Section (i) a, in the draft it reads, “that give powers of self-governance to the people at all levels and enhance the participation”. So Mr. Chairman what I want to propose in that Article is that, we give power of self-determination and self-governance

to the people at all levels. This is simply because proper and effective self-governance is through self-determination.

Point two, in the same article 213 we have A up to J, so here I want to propose that this one should be added, “establish regional boundaries and the right to maintain and use it distinctively as letter K, since devolution of power is synonymous to federalism and as such should reflect regional autonomy.

The third point Mr. Chairman I want to raise is in Article 214, sub-section (i) ‘e’. I want to propose. Here it says in sub-section ‘e’, the Draft Bill says “at least one third of the councils are women”. So I want it to be like this; at least one third of the women councils shall be women. The reason is that, where there is any form of disparity that may inhibit the participation of the women, mechanisms shall be put in place to ensure the women are facilitated to be effective members of these councils and that is in line with the affirmative action principle. (*Honourable Delegates clapping*).

The other point Mr. Chairman I want to mention is in Article 215. I want to propose where it says in the Draft, “powers are to the following levels.” So I want it to read like this: I want that (a), to be deleted and it should be substituted with ‘shall’. So in that case it should be “powers shall be devolved to one, districts; two, to locations”. The reason is that when we say (a), (a) is discretionary as opposed to “shall” which is obligatory.

Second point, provinces and villages should be left out for effective devolution. Finally the district is the principle level of devolution of power. So Mr. Chairman, I want to say strongly I am supporting this pact because we have got a lot of problems within the administration from the province. In that case it is my humble regard that I am appealing that the powers should be devolved to the district level. Thank you.

Hon. Delegate Joseph Nyaga: Thank you very much. The next group I want, are categories called COTU, women, professionals, NGOs, political parties and special interest groups. 508

Hon. Delegate Mereso Agina: Thank you Mr. Chairman. I want to stand here and support the issue of devolution but I want to speak on the issue --

Hon. Delegate Joseph Nyaga: Who are you?

Hon. Delegate Mereso Agina: Mr. Chairman, my name is Mereso Agina Delegate number 508 representing women organization. Mr. Chairman in Chapter 10, 213 (v), it says, “the National and Devolved Governments shall ensure the participation of communities in policing and the maintenance of law and order”. Mr. Chairman I want to speak on this point because when we talk about devolution we are just looking at power, resources but we are not looking at the issue of how we secure ourselves, and this is a fundamental right.

Mr. Chairman, there have been so many problems in terms of security because previously communities were not responsible for their own security. We can speak here of a District Security Committee presently which comprises of the DC, CID Head, the Chief boss, the DC and one other person. These people in most cases, hail from outside the district and they do not know what happens at night, and that is why we have a lot of illegal arms circulating all over and we cannot get hold of them. Mr. Chairman, the point I want to raise here is that we need to sell out the issue of the District Police that are going to be formed, and the Local Police because they must be there and then the National Police. That is spelt out in Chapter 15, parts 264 and 265 where it says, “the National Police Force and division of its functions shall be organized to take care of devolution,” but that in Chapter 14 is not linked to Chapter 10 and the establishment of District Police and the National Police is not mentioned, which is the Kenya Police, but the other local Police and these must be there.

Mr. Chairman, we know that for people to take care of their own security they must be involved in the mechanism of their own security. In this regard Mr. Chairman, whereas Chapter 10 is well written, I think there is need for Chapter 10 to be redrafted and to have in that board people who have dealt with administration, people from the Police so that this can be engraved. Mr. Chairman, I want to give an example of a country like Ethiopia or India where the District Police or the Local Police actually know what is going on in a district. In Ethiopia even in the remotest place, the Local Police communicates with the regional Government at any given time. Because those people, as much as we have the defense in Chapter 15 and it is well established, those are the people who will know, they are the front line security that we have. We have to be aware, as

much as we devolved power, we still run the risk of being invaded because we wouldn't know. Mr. Chairman I will not belabour the point but I hope in future you will look down here because you don't seem to see us here. Thank you very much.

Hon. Delegate Joseph Nyaga: But I have just seen you. Thank you very much.

Hon. Delegate: Point of order.

Hon. Delegate Joseph Nyaga: We will be asking them to respond not right now, so lets have a few more speakers then we ask them to respond so that we can get their reactions to some of the comments we have been making over the last two days. I want to continue with my circuit. I am wondering, would it be useful to the Conference if some people who are ex-administrators of provincial administration spoke at this point, so that we can hear them? Yes? No?

Murmurs from the Honourable Delegates

Hon. Delegate Joseph Nyaga: I think you want to hear one or two, wouldn't you?

Murmurs from the Honourable Delegates

Hon. Delegate Joseph Nyaga: Okay, District Representatives from here then I continue with my programme. District Representative 337.

Hon. Delegate Michael Kipkemboi: Thank you Mr. Chairman, my name is Michael Kipkemboi Sengech from Marakwet District. Mr. Chairman I am sure when this Conference hears of a district like Marakwet, West Pokot, Turkana, Samburu, Mandera what comes to their mind immediately is the issue of cattle rustling. Mr. Chairman many a times many speakers have referred to some districts as unviable, unsustainable and all manner of adjectives. We suppose they are talking in reference to districts mostly in ASAL areas, Marakwet being an example.

Mr. Chairman I have never heard of anybody from those districts referring to their own district as being unviable. Mr. Chairman, we want to devolve power to the districts. Mr. Chairman,

even if some districts are said to be poor let that not be a problem to anybody apart from that person from that district. Mr. Chairman, I am saying so because we know why we settled in those districts. God provided every facility, every source of food to those people, it is them who know, let them be given the ability to design their livelihood.

Mr. Chairman, I am against devolving power to the provincial level. For one, we have heard of North Eastern Province, the problem of shifters. We have heard several times people talking on secession. Rift Valley for example, just recently they talked of secession. Western Province sometime in 1992 as a result of tribal clashes they talked of secession. Mr. Chairman should we devolve power to the provinces with the likelihood of provinces seceding is very high? Mr. Chairman, we devolve power to the district.

Secondly Mr. Chairman, I would want to mention once gain, these marginalized districts have gained in the Draft. The principle of community policing, law and order. Mr. Chairman the problem affecting such districts, like cattle rustling, is a result of the Government's inability to offer security to the people and their property to the extent that the communities have taken steps to self-protection. That is why for example in the North Rift Districts of Turkana, Marakwet, Pokot, Baringo, Samburu, all those areas have illegal firearms. It is because of the Government's inability to provide security.

Mr. Chairman it is such a welcome idea, it is such a welcome principle, that the Constitution is acknowledging community policing, law and order maintenance. Mr. Chairman, I would say 95% of Marakwet District is trust land, it is community owned property. To suppose Mr. Chairman that we shall come up with a Commission such as the Land Commission to take care of trust land, Mr. Chairman for us is suspect. We want trust land to remain in the hands of the District Councils so that the District Councils shall be in charge of survey and demarcation of that land for the people living in those areas.

Mr. Chairman Marakwet District is endowed with a lot of resources, forests, minerals. Unfortunately Mr. Chairman, like somebody from Kajiado raised, we produce water out of our natural forests to Eldoret Municipal Council. Mr. Chairman the community does not benefit from that water. Whereas it is commercialized Mr. Chairman, we expect that Municipality to

plough back some of the benefits of that water to forest conservation in Marakwet. And by so doing the local people will see the benefits of preserving the forest.

Hon. Delegate Joseph Nyaga: Excuse me, there is a Point of Order from Delegate number 255. We were just about to ask these people to speak. We are just about to ask the experts to --

Hon. Delegate Ahmed Maalim Omar: Thank you Mr. Chairman. My Point of Order is about the speaker who has just spoken. He said that the past attempt to secede was because of devolution. That is very wrong. There are other factors why people wanted to secede probably because of mistrust or they were not recognized and because of the historical issues. Therefore, at that time there was no devolution of power. It is only now that we are talking of devolution, therefore, the speaker should withdraw. Also Mr. Chairman I'm also an expert on Devolution--

Hon Delegate Joseph Nyaga: Okay, thank you very much. I'm sure he has got your Point of Order, he got a misinformation on that issue.

Hon. Delegate Sengech Michael Kipkemoi: Mr. Chairman, I wanted that Point of Order because he we was just supporting or he was adding what I never said.

Hon Delegate Joseph Nyaga: You have one more minute left.

Hon. Delegate Sengech Michael Kipkemoi: Thank you. Mr. Chairman,--

(Laughing by Hon. Delegates)

Hon Delegate Joseph Nyaga: The rule should not allow Point of sympathy. Continue.

Hon. Delegate Sengech Michael Kipkemoi: In any case I don't require any sympathy Mr. Chairman. My proposal Mr. Chairman, is that let Districts submit 60% of what they get locally in terms of revenue to the Central Government and remain with 50%. So that the remaining 40%, go to the Central Government in provision of health services as education, maintenance of security and international relations. Mr. Chairman, to conclude, I humbly request that people

should insist on referring to some Districts as being in capable of self sustaining. Mr. Chairman, we are able if given the free hand to design our destiny Mr. Chairman. Thank you.

Hon Delegate Joseph Nyaga: Thank you very much. Before we come to Point of Orders, please we want them to respond very soon please.

Noise by Hon. Delegates.

Hon Delegate Joseph Nyaga: 377 what is your Point of Order? 206 what is your Point of Order?

Hon. Delegate Wario Ali: Thank you very much Mr. Chairman and Honourable Delegates. Mr. Chairman sir, this is a very, very important topic in this particular process. And to the best of my understanding Mr. Chairman, we have not effectively discussed this particular topic. I therefore make to move a procedural motion so as to enable the Delegates to discuss this topic exhaustively up to Monday. I therefore request Mr. Chairman, to extend time to this particular motion because we believe independence is almost coming to the District level. So I beg Mr. Chairman, time for this particular subject to be extended up to Monday Mr. Chairman.

Hon Delegate Joseph Nyaga: Is that the consensus?

Honourable Delegates: Yes.

Hon Delegate Joseph Nyaga: Then we propose we close on Monday, so please let's concentrate on the subject, so we can get as many speakers as possible.

Hon. Delegate: I believe I have authority to say we can close on Monday, Mr. Chairman.

Hon Delegate Joseph Nyaga: Yes, I have been authorized by the big Chairman to say we can close on Monday. So, everyone, we are now in districts and this section of districts. I recognize the man standing 413, a former Member of the old Legco.

Hon Delegate Ogingo Otieno Kevin: Chair, I want to thank you most sincerely.

Hon Delegate Joseph Nyaga: Order, listen to former...

Hon Delegate Ogingo Otieno Kevin: Chair, I thank you more sincerely for giving me this opportunity to make a contribution on this very important matter. But first, I want to share with you my experience; my name is Otieno Ogingo, a former Member of Parliament and a former Assistant Minister and a former Member of Regional Assembly and a former Member for the East African Legislative Assembly. I am the representative of Homabay district; I'm a Delegate from Homabay District. Mr. Chairman, I have another capacity here also I'm the Chairman of all the Delegates from Nyanza region. I have undergone some frustrations since I came here, but in any case, I want to start off by sharing my experience as a Member of the then Regional Assembly and in this case Nyanza region.

It is important for the Conference to know that we had a Cabinet, which is still on and is about to be outgoing Constitution. That Constitution is the one that is still running this country. The rewriting of the Constitution is based on the current Constitution. When we were removed in 1965, the Regional Assemblies were scrapped not because they were un-workable. They were scrapped because people at the center with authority said that they wanted to amass more power. And my friend, the Honourable Shikuku, is here can bear me out, that is the time KADU crossed the Government. And I think the only survivor at that time was Honourable Shikuku, who said that on principle, he wasn't going to cross to the ruling party. (*Clapping*). What I am trying to say here Mr. Chairman, is that we have a wrong notion of regional setup. We look at the regional setup in terms of a Provincial Commissioner. But that is not correct, it is not correct to think that when you talk of a Province, you are all the time seeing the PC, seeing the DC, seeing the Presidency, no. When you devolve power like it happened in that time, it was devolution of power. PC's were reduced to Civil Secretaries, there was a President, there was a Vice-President. I happened to have been a Vice President and Minister for Finance and Establishment. And things moved, they moved and had we been allowed to continue. Chair, the story today in terms of development, would have been different. But because we allowed for the powers to be concentrated at the center that was the genesis of corruption and the looting in this country. No checks and balances were forth-coming at all. That time, the President of the country would not

make decisions affecting regions without due references to the Provincial Presidency. And that provided checks and balances and we are saying, we are devolving. I agree with my colleague from Homa Bay, Dr. Mbai, who says that we are merely devolving passing power. When you pass power, you must understand the consequences. Parliament in one day can withdraw those powers to the center. If you don't make this a Constitutional matter the powers we are talking about should be given to the people by the Constitution. But you cannot do so, you give it to the people, we were withdrawing it but we are allowing Parliament in the direct way to withdraw those powers through an Act of Parliament. That happened in that particular time.

So Chair, this is a very important matter, we are trying to come up with a document that we believe is the Supreme law of the land. And we are doing it for posterity. We are not doing it for today, we are not doing it for an individual, we are pleasing anybody. We are doing what we believe is right and let us not rush to the matter so fast as if we are being manipulated by forces that we don't seem to know.

We know full well that the Constitution that we want to come up with after this Conference must protect the minorities, they must be protected fully on the principle of "the strong, and the strong must protect the weak". I am wondering whether the Commission thought seriously about the entry point of the devolved powers. When you talk of Districts, I don't know whether for purposes of Governance, it is going to be one district or it is going to be combinations of districts. I would be more comfortable if you say that a number of Districts may form District Council but when you talk of one small district alone, you are making everything more of a minority than you intended to do.

Chair, it is important; we do know and can I read very quickly the purposes the people's demand according to the first two paragraphs on top of page 290 of the Constitution of Kenya Review Commission (CKRC) report that majority of Kenyans who made their presentation to the CKRC expressed the desire to have very substantial powers and functions of the State transferred to the local levels. My quarrel is the entry point. Mr. Chairman I m about to finish, there are few negative areas but if I had the time I would have gone into the strategy that all to be used. But I have already indicated to you, you must think of a broader base of the revenue the revenue base for the functioning of the Councils must be examined. And I leave this to the Technical

Committee that is going to handle this matter. Thank you very much Mr. Chairman for giving me the time.

Hon Delegate Joseph Nyaga: Thank you very much former Majimbo Vice President. The next block, do we have a District Representatives in this section? Do we have an MP in this section? Who has a Point of Order? 201, you have a Point of Order? Okay 201, that is where I come from I have to be careful in case when I return, I have no place to go back to.

Hon Delegate Waithaka Mwangi: Thank you very much Mr. Chairman.

Hon Delegate Joseph Nyaga: You are.

Hon Delegate Waithaka Mwangi: My name is Waithaka Mwangi Member of Parliament for Kinangop in Nyandarua district.

Hon Delegate Joseph Nyaga: Number?

Hon Delegate Waithaka Mwangi: Number 201.

Hon Delegate Joseph Nyaga: You have never spoken, so continue.

Hon Delegate Waithaka Mwangi: Thank you.

Hon Delegate Joseph Nyaga: MP continue. 583 what is your Point of Order? 583 Point of Order.

Hon. Delegate Apollo Njonjo: My name is Apollo Njonjo Delegate 583. When you last called for this row here.

Hon Delegate Joseph Nyaga: Yes.

Hon. Delegate Apollo Njonjo: You admitted yourself that you have made a mistake when you had first called a Political Party Delegate, but then you had given it to a person from the District of Nairobi. You promised to rectify that mistake you have come now back to the same row and you have moved on to a Member of Parliament. Mr. Chairman, I'm just reminding you of your commitment to this row.

Hon Delegate Joseph Nyaga: I believe in my commitment and you are quite right, I will give it to a Political Party. Sorry, I had committed next time, we will give it to the MPs. So who--

Hon Delegate Waithaka Mwangi: Why don't you allow me to finish then you can give him as a commitment? Because you had already also given it to me.

Hon Delegate Joseph Nyaga: No, no. Political Parties.

Hon Delegate Waithaka Mwangi: You had promised to give to them but you had already given to me I am a head of them.

Hon Delegate Joseph Nyaga: Political Parties would you please, since I have accepted I have made a mistake would you allow me to let him finish then I would definitely ensure it is Political Party.

Honourable Delegates: Yes.

Hon Delegate Joseph Nyaga: Thank you for being understanding, continue but your one minute is gone.

Hon Delegate Waithaka Mwangi: I also thank Dr. Njonjo for understanding. Thank you very much my name is Waithaka Mwangi Member of Parliament of Kinangop from Nyandarua district. and I also wish to support the idea of devolution of both political and economic power to three levels but not to the levels as or thought out in the Draft Constitution. I would wish to have the devolution of powers to three levels that is; the National level, the District level and the location level.

The reason why I would not support the idea of devolving powers to the Provincial level is because in my view the Provinces and the functions that are addressed to at the Provincial level, are a bit superfluous. Because you find in the past, even I the past Mr. Chairman at the Provincial level, this is where you find most of the very, very good brains in the country being dumped when they perform very well at the district level, they are transferred to the Provinces as Deputy Provincial Commissioners or Deputy Provincial Directors and there they rot and they are the best brains. In fact most of the activities that are useful to this nation are performed at the district level and not at the Provincial level. So if you look at the Article itself, it shows that District Council will be elected directly by registered voters in the district. The District Administrator, will be elected directly by the registered voters in that district, but the Provincial Council will be formed by two Members of the District Council, going to the Province and forming the Provincial Council one of which must be a woman. Also the Provincial Executive will be composed of Members of the District Executive and then they will elect their leader from amongst themselves. That means, there will be some people who will be holding two positions at one particular time, if you are appointed the Provincial Administrator, and you are also a District Administrator there is no provisions in this Draft order that you have to relinquish one position. It means either you will be very busy at the district level and therefore you have no time to deal with matters that pertains the province or you will be very busy at the provincial level and therefore you have no time to deal with matters that pertains the district. Therefore in my view, the Provincial level is superfluous and the same should be done away. In fact even drawing up of these provinces, if you look at the way the provinces are done, they are problems in themselves.

Hon Delegate Joseph Nyaga: I hear Point of Orders everywhere. 430 what is the Point of Order?

Hon Delegate Albert Onyango: Thank you very much Mr. Chairman. My name is Albert Oyango, I m a district Delegate form Bondo district. Mr. Chairman, looking at the Conference, you can also see for yourself that there is no quorum and I then propose that we continue with the deliberations on Monday. Because Mr. Chairman, there is no way the Commissioners will reply to the empty chairs.

Hon Delegate Joseph Nyaga: It was decided that we will continue the meeting on Monday so the Commissioners will respond on Monday.

Honourable Delegate: Information Mr. Speaker.

Hon Delegate Joseph Nyaga: So we continue, correct?

Hon Delegate Albert Onyango: Thank you, Mr. Chairman.

Hon Delegate Joseph Nyaga: We have one more minute.

Hon Delegate Albert Onyango: Mr. Chairman, on the review of the boundary, the district boundary. If you look at the Draft Constitution it talks about especially in Article 222. It presupposes that there will be three levels of Government; the Central Government, the Devolved Government and the Local Government. And in my understanding, we were doing away with the Local Government but Article 225 (1); talks about a Commission on local Government, finance shall be appointed every four years, I presume it is very 4 years who are appointed by the National Council. It should actually be put very clearly for avoidance of doubt, we are going to do away or abolish the Local Government, so that we don't have Councils because their work will be taken over by the District Councils and the locational Councils. So in the Drafting of this Constitution, we need to be very careful that we do not leave a lot of doubts that will make the Constitution very difficult to implement. Thank you.

Hon Delegate Joseph Nyaga: Thank you very much. I think it is Friday afternoon and the other issues of Administration matters to be taken care of and it is important we pay attention to those Administrative matters also. And it is time to go home for some us; it is time for some to be entertained over the weekend as the Commission clearly stated in the morning.

So I now wish to adjourn the meeting to Monday morning 9:00 am not 9:30. 9: 00 am and I apologize to very many people who wish to speak but let's meet on Monday and we will finish on Monday. Thank you very much I wish you very good weekend, those travelling overseas I wish you good trip.

Hon. Delegate Dr. Bonaya Godana: Honourable Delegates, Fellow Delegates, please take your seats. Delegates are requested to take their seats please. We have to start please. We are lagging behind in time. Honourable Delegates, Honourable Delegates, please take your seats. We are kicking off the meeting.

As is our tradition and as is customary, we start with prayers and to lead us in prayers this morning are Honourable Delegate Reverend Patrick Maina on behalf of Christian believers and Hon. Delegate Mr. Badawy on behalf of our Muslim brethren. May I see Reverend Patrick Maina? Where is he seated? Reverend Patrick Maina. Where is he? Okay. Please may we fellow Delegates, all stand for prayers.

Hon. Delegate Rev. Patrick Maina: Almighty God, we thank you this morning because it has pleased you to give us life. It has pleased you to cause us to wake up out of our beds. It has pleased you Lord God of Glory that we gather and continue with this deliberation in crafting the Constitution of the Republic of Kenya. We thank you because prayers have been made before and prayers will continue to come before your presence. It is our trust in you that you are causing us Lord to realize that we are people chosen of you. We are not Kenyans by our own choice but it pleased you to cause us to be Kenyans. As we continue we know feelings have been expressed, utterances have been made both good and evil. It is our prayer that you cause us to forget the evil utterances that have been made that can bring about disunity among us.

We thank you Lord that you will shield us and unite us as a people of one cause. Bring us together this morning as we embark upon today's business. Cause the Chairs and all the delegates to realize that we are not here to lift up ourselves. We are not here for tribal sentiments. We are not here for shortcomings, but we are here to lift you. We are here to build Kenya. We are here to impress brotherhood. We are here to traverse beyond tribal and ethnic boundaries. God help even the faiths that are represented in this Conference to know that we are not here to propagate our faiths, but we are here to allow those faiths to radiate and embrace the love of God.

We thank you and we praise you for we know your grace will sustain us throughout the day. For it is in Jesus Mighty Name, we pray. AMEN.

Hon. Delegate Mr. Ahmed Abdulrahman Badawy: Bismillahi Rahmani Rahim. In the name of Allah, the Beneficent, the Merciful, Praise be to Allah Lord of the world, The Beneficent, the Merciful, the Honour of the day of judgement. Ewe Mola ambao kwamba umeumba kila kitu, umeumba mbingu na nchi na umeumba watu. Ewe Mola twakuomba ututeremshie neema yako, na kila Lema katika nchi hii yetu na vile vile utatuteremshie neema yako baini yetu sisi hapa ambao kwamba tumekusanyika kwa sababu ya kuandika na kutengeneza Katiba ya nchi nzima. Basi ewe Mola tuteremshie neema kama hiyo, utujaze mapenzi na masikizano na kila sampuli ya baraka baina yetu sisi ili tuweze kutengeneze Katiba, ili tuweze kuishi pamoja sisi na vizazi vyote vitakavyo kuja, leo mpaka kesho ambapo kwamba tutakuja kubirikana na wewe. Hakuna anayeweza kutukamilishia mambo haya na maisha yetu mazuri, ila ni wewe. Kwa hivyo twakuomba. Wasallahu alla Sayyidna Muhammad Waahlihi, Waashabihi Wassalam, Amin.

Hon. Delegate Dr. Bonaya Godana: The next item on the Agenda on our programme is the Administration of Oath, which normally takes place soon after prayers. No Delegate has come forward to indicate to us that he or she would like to be sworn in but we are getting reports from some Delegates that there are still quite a significant number of Delegates who have not yet taken the Oath as required. Let me say that if you have not taken the Oath, if you have not taken the Oath, you are a stranger in this Conference and you are not supposed to take the Floor. There has been a query whether for those who may have taken the Floor and contributed without taking the Oath this far, whether we should not expunge their contributions from the records. We therefore want to appeal that if you know that you have not taken the Oath, you should please immediately report to us. I think we are going to be much more strict after this. I would also want to appeal to the Delegates to let us know if they know of Delegates who have not taken the Oath and who have taken the Floor and are still participating in the Conference.

Prof. Yash Pal Ghai: Honourable Delegates, I have no formal announcements to make. A few announcements we need to make from the Steering Committee will be made by Hon. Dr. Godana. I just want to take the opportunity to welcome you back to this Conference, to express the hope that you had a restful weekend and that I look forward to another very fruitful week of

the Conference and that my own wish, and I think that of the Steering Committee, is that we can conclude most of the Chapters this week, so that the few days that we have next week - you remember that we do not have a full week next week - we can go into Committee business. So, please be restrained in the points of order so that we can make progress and I wish you all a very enjoyable week here. Thank you.

Hon. Delegate Dr. Bonaya Godana: Thank you very much and on that note, may I say that we think we should wind up this subject today by lunch hour and I hope we can count on your understanding. That will be two and a half days, so that we can move on to the next subject which is Land and Natural Resources which as you know is equally, if not more passionate.

Now, may I also announce that the Technical Committees will meet in their respective tents over break time. We are allocating it thirty minutes when we go for tea break. Please hurry up to your respective tent so as to wind up the preliminary business of deciding on your convenor and so on, so that we can come back to wind up the debate on the subject of the Plenary which is the Devolution, before we break for lunch.

May I also announce that the Committee on culture, the Ad Hoc Committee on Culture will be meeting this evening from 6.00 p.m. to 8.00 p.m. in the Steering Committee tent. Now, with those few announcements then, we come to the main business of the morning and that is the continuation of the Plenary Session on the subject of Devolution and I pass on the microphones to my colleague Mr.—

An Hon. Delegate: (inaudible).

Hon. Delegate Bonaya Godana: What is that 385 what is it? 385, do you have a point of order? Yes. Yes, please quickly.

Hon. Delegate Caleb Jumba: Bwana Chairman, I am Caleb Jumba, Delegate from Vihiga, in Western Province. I am raising a point of order Bwana Chairman, on the media yesterday night on Nation TV, which was raised by Honourable Raphael Wanjala in a Party held in Matungu in Mumias on Saturday. This Honourable Member is supposed to be here and raise these issues

here. We are actually very sad about his report on Saturday on the reason why he is accusing the Delegates sent here to be incompetent. Bwana Chairman, what I understand is that we are still discussing these issues here and we have not come to a conclusion and this Honourable Member, Wanjala has never even raised a point of order in this Plenary here. (*Clapping by the Honourable Delegates*). He has never even contributed on the motion here, but he gets time to go outside there and starts blaming the Delegates here. We are more competent than him because if the Delegates have contributed here and he is among the Members of Parliament who are always absent--

Hon. Delegate Dr. Bonaya Godana: Please be brief.

Hon. Delegate Caleb Jumba: I am therefore asking the Chair to caution this MP because we are supposed to discuss our matters here and not in the parties outside. We are very much saddened with his remarks.

Hon. Delegate Dr. Bonaya Godana: Point well registered.

Hon. Delegate Caleb Jumba: He should come here and withdraw that one, Mr. Chairman.

Hon. Delegate Dr. Bonaya Godana: Point well registered. I would want to appeal to Delegates, as the Chairman, really to –

Hon. Delegate Caleb Jumba: Thank you very much.

Hon. Delegate Dr. Bonaya Godana: --restrain. We should all restrain ourselves not to spend unduly long time on points of order before we get on to the business. Professor Wangari? I hope that will be the last point of order for the morning Mr. Mathenge? Professor Wangari first. Please be very brief please.

Hon. Delegate Prof. Wangari Maathai: Thank you very much, Mr. Chairman. Honourable Delegates, today we shall be discussing land and tomorrow we shall be discussing the environment and it is appropriate that we honour this part of our heritage. We originally had an

idea that we could bring into the memories of this hall, many people who have struggled and who have brought us to this point almost for the past one hundred years and that we would remember them as heroes. We then are confronted with the problem of a criteria as to who is a hero and that idea was abandoned but we decided that we would continue nevertheless, to bring these trees here. I want therefore to ask the Delegates that even though we are not going mention people by name, I know that each one of us knows somebody who has been responsible for the protection of our country, of our lives and especially when we were not even old enough to understand what was going on. We want to thank them, we want to honour them, we want to remember them.

We also at this time as we discuss the environment, want to look at those trees and remember that they represent the non-human community of life that we share with. There are many, many others who are not here, the trees, the birds, the animals and they are all part of us and for the next two days, we are going to be discussing about them. I want to read something that we have suggested for the Preamble that captures all that we are trying to say and the recommendation is as follows in the Preamble.

“Celebrating this beautiful land that has given birth to us as a Nation.

Shapes our diverse cultures. Sustains us as parts of the community of life on earth and for which many died in the long struggle for freedom and justice.

Conscious of our common and secret responsibility to the present and the future generations of humans and other species to protect and care for all the living communities of Kenya and to ensure that we maintain and strengthen the integrity of the natural systems that supports all of us.

Thank you Delegates. I hope that we shall have indeed a good communion not only with us but also with those who have died--

Hon. Delegate Dr. Bonaya Godana: Please.

Hon. Delegate Prof. Wangari Maathai: -- and all the other community of the living in this beautiful land. Thank you very much.

Clapping by the Honourable Delegates

Hon. Delegate Dr. Bonaya Godana: Delegate number 38. Please, I am giving you two minutes. I think point of orders have become alibis. Please quickly. Strictly two minutes.

Hon. Delegate Asiman Kamama: Thank you, Mr. Chairman. Mr. Chairman, my point of order is somewhat personal and I wish to say that on Friday the 23rd, the Daily Nation on page 5, column 5, quoted me as having said and suggested that the Provincial Administration be scrapped for serving no useful purpose. It further depicted me as having said that the Provincial Administration has been abused and subsequently outlived its usefulness.

Mr. Chairman, I have been a District Officer in the previous regime and on this matter, I want to be a bit neutral because all the members of the Provincial Administration, I would say that most of them are my friends and I want to say that this paper quoted me out of context and I remember I did not say any thing about Provincial Administration on that day. I talked about the office of the Provincial Director of Agriculture and I did recommend that devolution is an idea whose time has come, but I did not say that the Provincial Administration should be scrapped as was depicted. So, Mr. Chairman, would I therefore be in order to say that the Daily Nation apologises to me because they have put me at loggerheads with my former friends. (*Uproar from Hon. Delegates.*) This is a personal matter and I wish to say that this is a personal matter and I wish to say that the Daily Nation should apologise to me for writing what I did not say. I also wish to say that as we recommend the Provincial Administratio--

Hon. Delegate Dr. Bonaya Godana: Mr. Kamama, I think your point has been well made and I think what your are complaining about.. (*Uproar from Hon. Delegates*). Order! Order! Delegates. I am dealing with another point of order. I am dealing with a point of order already. Let me finish with this point of order.

Hon. Delegate Asiman Kamama: Let me finish, Mr. Chairman.

Hon. Delegate Dr. Bonaya Godana: Mr. Kamama, please sit down.

Hon. Delegate Asiman Kamama: Thank you, Mr. Chairman, but the records should be put straight. (*Uproar from Honourable Delegates*).

Hon. Delegate Dr. Bonaya Godana: Order! order! Honourable delegates, you see... Order! 379, please, will you respect the Chair. I am dealing with a point of order, alright? Let me say this. The Honourable Kamama's complaint is that the media has been unfair to him. This is a complaint which, from time to time, Delegates have made here. We can only hope that the Nation Media representative here has taken his point. Whether they misquoted him or no-- If they misquoted him, we expect them to correct the report. I think all of you do complain from time to time that the media does not report you accurately. I would really wish we don't, through this, get into unnecessary debate and would wish really to plead that we get on now with the business of this morning without further points of order. Mr. Nyagah.

Hon. Delegate Joseph Nyagah: Thank you very much, Mr. Chairman.

An. Hon. Delegate: Information, Mr. Chairman.

Hon. Delegate Bonaya Godana: Who are you informing? The Chair? (*laughter from Honourable Delegates*).

Hon. Delegate Joseph Nyagah: What information?

Hon. Delegate Dr. Bonaya Godana: Order!, Order!, Order!

Hon. Delegate Joseph Nyagah: Point of information is when the Chair does not know something, or the meeting does not know something and you want to advise them accordingly. So, let us get to the business because we have been asked to continue up to 12.00 O'clock, if you would agree with me.

An Honourable Delegate: Do not be dictatorial, Chairman.

Hon. Delegate Joseph Nyagah: Delegate number 355, I am going to be a dictator very soon if you are not careful. Delegate number 355, you are the last one. Thank you.

Hon. Delegate Michael Githu: Honourable Chairman, my name is Michael Githu, Delegate number 355. I think we heard from the word go that Devolution was the most important Chapter in this Draft Constitution. It is the Chapter which has been most distracted since Thursday and Friday and you now want to cut it short until noon. Is it fair? Should we not discuss it throughout the day, Honourable Chair?

Hon. Delegates: No!, no!

Hon. Delegate Dr. Bonaya Godana: I think it is fair because we have also to be fair to other subjects. Devolution is one of the topics, definitely a critical one, but there are other equally burning topics, including the one on which we are supposed to start today - Land. I think we have to give all delegates an opportunity to ventilate on various topics. Please let us have a common understanding, that we have to wind up. Every thing that has a beginning has to have an end. Let us agree that we wind up this at noon today. Thank you. (*clapping by Honourable Delegates*).

Hon. Delegate Joseph Nyagah: Thank you very much. I hope you had a good weekend. We are back to where I normally pick. Delegate number 385, Political Parties.

Hon. Delegate Bonaya Godana: Political parties?

An. Hon. Delegate: Mr. Chairman, I am not 383 but you promised

Hon. Delegate Bonaya Godana: 583, 583.

An. Hon. Delegate: Okay. Thank you, Mr. Chairman.

Hon. Delegate Apollo Njonjo: My name is Apollo Njonjo. I am a Delegate representing Political Parties, specifically the Social Democratic Party of Kenya. Mr. Chairman, thank you

very much for keeping your promise. I hope your other Chairmen will also keep promises; when they promise a Delegate that he will speak, they will provide them with that opportunity. Thank you very much. Now you will be welcome when you come back here. (*laughter from Honourable Delegates*).

Mr. Chairman, my party and I are believers in the delegation of power and authority to appropriate levels of governance. We are also very firm believers in the participation of the people in institutions of Government. For this reason, we take this Chapter and the proposals made therein very seriously. Mr. Chairman, I believe this Conference had beautiful presentations, one by a Delegate from Homa Bay, I think this was Dr. Mbai, and another presentation by Mr. Rihal. Serious issues were raised and I hope the Conference will consider the points laid by those people.

In our seriousness of trying to create a situation where we have sustainable and operative devolved Government, we must pose certain questions to ourselves. First, Mr. Chairman, the Lancaster Constitution of 1963 did indeed have Devolution. It did in fact have regional assemblies, regional governments, and regional civil services, and there was an attempt then, to devolve political and Executive power to the region. Mr. Chairman, we have the same kind of proposals that we have here of again devolving decision-making, some elements of Executive authority, to Districts or Provinces or villages. We must put the question, 'why did those of 1963 not work?' so that we don't repeat the same mistakes that were made in 1963. In our view, there are four reasons why that collapsed.

First, the weakness of the political party, then the Official Opposition Party was Kenya African Democratic Union (KADU) of which Honourable Shikuku there, was a prominent member. It was a very weak political party, Mr. Chairman, and most of the opposition then was also very weak. There was lack of adequate parliamentary support for devolved government. Mr. Chairman, the Kenyatta Government also carried lots of 'carrots' that it could attract the likes of Honourable Shikuku to join them and form the opposition.

Mr. Chairman, perhaps the most fatal mistake that they made was that they failed to define in 1963, whether Kenya was a Federal Republic or whether it was going to be a Unitary State.

They took a hybrid position and I think this is the same mistake that your Commission has taken. You failed to define, Mr. Chairman, whether this is going to be a Federal State or a Unitary State. Again, you go to what you see as a middle ground, a hybrid. I do not think that hybrids will work here, they have not worked before, and I believe that on that count, the Commission has failed to honour or to answer satisfactorily, term number 17(d)(ii) of the CKRC Act, which asks you to be very clear about a Federal or Unitary State. Mr. Chairman, I think the Commission has failed to deal with that, and that is the matter that needs to be dealt with outside here.

Mr. Chairman, when one reads and looks at the five-tiered structure that you have proposed of a National government, the Province, the District, Location and Village of devolved government, it does not tally with what you have reported on page 286 of the main report. If one reads that page, one does not see any necessary sequence of those institutions that you have named there. They do not arise from what you were told. In fact you tell us that there was less agreement on what form of devolved governments to have. Yet you have gone ahead and defined those devolved forms of government. While the people of Kenya did tell you they did not want majimbo, others told you they wanted majimbo. When questions like those crop and crop up seriously Mr. Chairman, I would suggest that rather than the Commission taking a position vis – a- vis them, then that is a matter for taking to the people of Kenya in a referendum because the Commission failed to collect sufficient information to base any recommendations on that.

Mr. Chairman, I have another serious problem with the recommendations that you have made. These stem from what you have said about the five-tiered structure of government. You yourself have written as follows: one of the most important considerations of devolved governments, you have stated, “the units,” and here I am quoting. “The units to which power is to be devolved should, as much as possible, experience equal or near equal; social, economic, demographic and geographic circumstances.” That is not Apollo Njonjo saying that, that is the Commission saying so. Yet we know that Kenyan provinces, Kenyan districts and Kenyan locations are distinctly experienced, the very opposite of what you have said, should be the basis of those units. They are the very opposite and yet you have gone a head to define them as the units of devolved government. I propose that the determination of units of devolution be made by an independent Boundaries Commission, outside this review as was done in 1962, 1963. I do not

think that the Commission has the capacity, the time to define the units of devolution. I think we need an independent Boundaries Commission.

Fourthly, Mr. Chairman, I propose a different type of affirmative action for devolved government. At the grass roots, districts, towns and municipal levels, Mr. Chairman; affirmative action should be for and on behalf of the Kenyan poor. We have had a lot of affirmative action in other areas. I would suggest that this is the time for affirmative action for the poor.

Finally Mr. Chairman, with your indulgence I propose that the entire Chapter ten of the Draft Bill be struck off the Bill, save for Articles 213 1(a) and Article 230 (1). All the other sections of that Chapter should be struck off, because they were improperly done, and because Mr. Chairman, the others who spoke before me, said they were not thought carefully. In fact I feel Mr. Chairman that the Commission here should be surcharged for having misused public funds and produced a very poor Chapter Ten. Thank you very much, Mr. Chairman.

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much. I will be very strict on the five minutes formula now so that we can get as many people to speak. I am looking for an MP in the next section? A District Delegate from that section, somebody who has not spoken? 392. Hasn't he talked? Are you sure?

Hon. Delegate Paul Eliud Nakitare: Thank you Honourable Chair for this opportunity. First I would like to revisit the issue of the structure of devolution.

Interjection from the Chair: You have spoken before?

Hon. Delegate Paul Eliud Nakitare: No Points of Order Honourable Chair, I have risen on a Point of Order. The structure of devolution, sorry, my name is Paul Nakitare Delegate 392 from Bungoma.

The problem, Honourable Chair, I see on devolution is the structure that has been recommended. I would say from the outset that we have said everywhere that power springs from the people, and from the people it is beamed to the national level, that is the Presidency. We have also

argued vehemently that that power has been misused, hence the need to decentralize it and devolve it from the national level, that is the Presidency and other structures. Now the problem, Honourable Chair and Delegates, is that we must give these structures strength to survive. To devolve power from the national level direct to the districts, it weakens that power somewhere in the middle. That is why I would like to suggest that we need a firm grid in the middle, between the national level and the district to make it firmer, and I can see that that was as the logic in 1963 Constitution, Chapter 6, Article 91 to 102. The suggestion was the region, and I think within the region we have proper and stronger ramification of devolution. Power is like the rays of the sun, we give it to the national level, and when it comes back to us, it should be stepped down like electricity. I think in that way, when we have power in the region it will be properly catered for, that is where we will be able, Honourable Chair, to deal with question of economic devolution, which I think is also very important.

Further more, Honourable Chair, we should be worried while discussing this subject of the difference between logics and passion. Passion becomes very popular but logic is a dry area, because we should also consider, Honourable Chair, the issue of implementation. I see a lot of difficulties in implementing powers from the district level. We need to have a region, which will also control and supervise the district. Mind you when we devolve power to the districts, the districts are not necessarily the implementation level. Districts through the councils or councillors will also devolve power to the locations. In fact the locations and sub locations, those of us who have worked in administration, are more important for implementation purposes. So having said that, Honourable Chair, I am routing for a stronger regional dispensation of the devolution aspect.

Now, on the side of economic devolution, we are supposed to devolve power from Nairobi. The only problem, of course, as the headquarter, is that we cannot devolve structures that have already been established, that is the difficulty. But when we talk about devolving economic power say, to the district for example, we should also understand the fact that the district should enjoy local resources and there are very many problems to this particular area. For example the devolved power, particularly the economic power within the district which we are supporting, does not always work well. Resources, for example that are given to the districts, when it comes to the aspects such as industrialization, the sourcing of economic power tends always to be taken

outside the district. A good case in point is the donor funds in education efforts. The donor funds are devolved or given to the districts, but the sourcing of the district's resources that are required are sourced outside the district. So you find that the hundred or so million shillings that are given to the district are all sent out to Nairobi and other areas, hence the district does not enjoy that devolution we are talking about. I am saying, in this particular respect, that kind of money should circulate in the district. The traders in that particular place should be the ones that supply things within the district.

So, Honourable Chair, I am saying that it is very important that we consider the structure and further more the marginalization of the lower levels will always continue. Look at the Councillors for example. We have Councillors, we give them power, they are the people dealing with the people, but look at the kind of salary they get in comparison to Members of Parliament. The Councillors in fact should be made to earn more money. So I am saying, Honourable Chair, for want of time, that we should really consider the issue raised by the Member of Homa Bay in terms of the structure of devolution, if this particular devolution exercise is going to be useful. Thank you Honourable Chair.

(Clapping by the Honourable Delegates)

Hon. Delegate Joseph William Nthiga Nyaga: Thank you very much. The category that I am looking for next are district representatives, district. 308.

Hon. Delegate James Stanley Mathenge: Thank you Chairman for giving me an opportunity to contribute on this debate which I consider a very important topic. Thank you Chairman of the whole Conference and the two Commissioners who introduced this subject because I thought you did a very good job, within that time.

Mr. Chairman, let me say from the outset - my name is James Mathenge, District Delegate from Kirinyaga. Let us say I am a student of devolution; therefore, I support devolution unreservedly. The rest of my discussion would be two obstacles which I see in front. The first obstacle, Mr. Chairman is this: first of all, I am a student on devolution because I know devolution is one sure way of correcting what we have experienced in the last forty years because it will bring about

faster development, better use of resources, power sharing - and stopping to concentrate at the top - to the middle and the bottom. I know the growth of the population of this country is going in leaps and bounds, in about twenty years we will double, therefore, there is need to create the cities outside Nairobi in the devolved area, to industrialize first so that we can cater for this population.

There are two obstacles: number one; where do you devolve? Where? I said that districts need to be held together and the Commission has alluded to that in a very loose manner. Two or three districts can get together and cooperate. The Commission was being shy, possibly, I don't blame them, but I think you ought to have been bold, and this is a subject for the Technical Committee. If you devolve power you must a vessel in which the power is going to be held, and be shared up by the districts. You cannot be shy over that. So that is one area. The Districts and the County Councils, they are too many. You cannot devolve to two hundred entities. If you devolve that you have probably spread yourself too thin. You need something a little bigger which can hold the power. That is a subject for the Technical Committee. The Provinces are there today, they are not right. Some are just the right size, Western for example; some are the wrong size, Rift Valley and Eastern Province. That is a subject which we must now, if anybody has to make a decision, what we say, bite the bullet, it is this Conference. To see devolution, yes, but to where? I say to areas larger than the present districts. *(Clapping by Honourable Delegates).*

The second obstacle is something we have had in our system right from the beginning - I call it some animal, for lack of a better word - called Provincial Administration. Provincial Administration was an importation from India. From the British Government's experiences in India, they thought they could throw something to Kenya, because we became colony much much later, and the DC in India meant a Deputy Collector of taxes. They were told to collect taxes; second thing is to keep law and order, to keep the native under control. It was specifically for the natives. The present Permanent Secretary in the Office of the President, the real name should be C N C – Chief Native Commissioner. That was the set up. What happened was there were also Magistrates later on, they were to hear cases and all that. In short what happened was on the law part of it, the police was increased, they have taken it. When you come to Taxes, Revenue Authorities have been increased, they have taken it.

What is left is really nothing. Nature hates virtue; the political orders successfully found it a good vessel for holding power, excellent vessel for holding power. What they have done, the result of that, is that they have killed our County Councils, the County Council cannot operate under that umbrella because of the Provincial Administration. They command no mass resources. Mr. Chairman, from an expert point of view, a devolved authority will not require the present set up of Provincial Administration. The County Council will be able to take over the duties of their duties. For your information, the British Government, the author of Provincial Administration, do not have any semblance of Provincial Administration. Thank you, Chairman.

Hon. Delegate Joseph Nyaga: Thank you very much. That is a former Permanent Secretary, Internal Security and Provincial Administration, who has just spoken. In this section, I will take another District Representative; shall we get 389?

Hon. Delegate Wilberforce Kisiero: I thank you, Mr. Chairman. My name is Wilberforce Kisiero, Delegate 389 from Mt. Elgon District. Mr. Chairman Sir, I join those colleagues who support Devolution of Power. In the process of devolving power, I also support the balancing of the powers and the distribution of resources from the center to the district. Mr. Chairman Sir, although I support the position of devolution of power, I also sense a problem. There is not much goodwill to the Districts that were created after independence and especially those that were created during the Moi regime. Hence, if power is going to be devolved to the districts, I see that those districts that are not favoured by some of our top colleagues may be the first ones to be done away with, because we have already heard that those districts, which are weak may not survive or may not have the ability to look after themselves. My fear then is, if we are going to devolve power, then the national government should be prepared to grant those districts enough funds through what they call equalization of grants, because without bringing those districts to a level where they can also (*clapping*) be equal to those districts that had received favours in the past, then they are likely to die off.

As I said earlier, these districts which are not liked very much, the so-called political districts, are called districts that were created by Jerry Mandarin. I never saw any Jerry or Mandarin in

Mt. Elgon. Mt. Elgon was created specifically to address the issue of inequality that had been created first by the colonial government and secondly by the successive government never paid attention to the plight of those small communities. Therefore, Mr. Chairman Sir, I hope that in devolving power we should be able to look after those districts, give them enough resources and bring them to a standard level with the others.

Mr. Chairman Sir, another problem that I see is that those districts cannot survive for long, so long as power at the top is not properly shared out between the top members of the Executive. If power is left in the hands of one person as it has been in the past, it is obvious that power in the same hands will tend to favour his group of supporters. He will tend to forget the small communities, because the small communities do not contribute enough of votes for him and therefore they go for the big communities which will contribute a large number of votes that will sustain those people at the top.

You will notice from the past, Mr. Chairman, Sir, that there is hardly one person appointed to the Cabinet from the small communities. For the last forty years, I do not know of any Kuria, Teso or Sabaot who was appointed as a Cabinet Minister. You know when power is given to friends and the big communities and the small ones are neglected, what happens is that the big communities continue to enjoy and to grow. All the Harambees go to those communities, all the facilities, all the funds are distributed to those communities. Therefore, Mr. Chairman Sir, we can only sustain devolution if power is distributed well and if the small communities are also considered. This is because Mr. Chairman Sir, (*clapping*) some of those who think that small communities should not be left to exist forget that even the big communities live in the land that is meant to be occupied by the small communities yet they do not complain that the land they occupy is not good. Mr. Chairman Sir, I thank you.

Hon. Delegate Joseph Nyaga: Thank you very much. In the next section, I am looking for somebody from the category called others, Trade Unions, NGOs, Professionals, do we have any? If not, then we go to the Districts.

Hon. Delegates: We have.

Hon. Delegate Joseph Nyaga: 261.

Hon. Delegate Khadija Fugicha: Thank you, Mr. Chairman. My name is Khadija Fugicha a Delegate from Moyale District. I would like to comment on Chapter 10, Devolution of Power Article 226 which is, Sharing of National Natural Resources. I therefore say that the manner of distribution of the revenue shall be set out in the Act of Parliament that is what the Article says. I propose that it should include a budget that will target women, marginalized communities, and the minorities. The above addition is consistent with the goal of ensuring that the provision provides a framework for creation for structures, mechanisms, and process in various governmental organs for gender mainstreaming. Part of this process is ensuring that, if such infrastructures and the following programs are funded, women advancement will be funded accordingly also. This provision guarantees that women empowerment, activities are targeted and funded throughout the district and up to the village levels. I would like again to propose that the devolved government to have rules and mechanisms for the protection of women as a minority and the promotion of their rights and interests.

Finally, let us include that from the composition of provinces, districts, locational and villages councils we have women. Thank you very much.

Hon. Delegate Joseph Nyaga: Thank you very much. Do we have an MP in this section? Are there MPs in this section? Number 42.

Hon. Delegate Godfrey G. Kariuki: Thank you very much, Mr. Chairman. My name is G.G. Kariuki from Laikipia, number 42. Mr. Chairman, I have a problem since we started talking about the Devolution and I think at the drafting stages my problem will have been resolved. First of all Mr. Chairman, I am trying to find out whether we are talking about devolution in terms of economic and resource devolution, or we are just talking about this business so-called power? This is because personally as an author of the elution of power, I know very well that power does not exist. Power exists where people have the resources, enough to sustain themselves then they become powerful, and they do not need power from any one. They want power because the resource which they have, gives them that stability and it sustains itself.

Mr. Chairman, we should be more concerned here not with the power because we have seen how power comes and goes. When we devolve ourselves to districts, we must know, or we must remember that in 1962 and 1963 power was given to regions and many other areas including districts. But that power was again taken away slowly, and it disappeared back to the national level. Now, if we had devolved ourselves into gaining more resources and more strength economically, that power would still have been with us today. If we are not careful Mr. Chairman, we are going to devolve powers in areas where they are not able to sustain that power, because for example now, no County Council, about 75% of all the District Councils and Municipal Councils are not capable of paying their staff or the workers. Now, having known that they are not capable of sustaining themselves, we should find a way of creating a situation from this Conference where all the County Councils, District Councils, Urban Councils and Town Councils will be given enough resources. This is because if we are not careful again Mr. Chairman, we are going to create Districts which are richer than others and we must know that for the last many, many years, most Districts have been left behind economically and that even people who used to enjoy that power --

Hon. Delegate: Excuse me.

Hon. Delegate Bonaya Godana: Is it a burning point of order 603? Please, is it very --- could you allow him to finish, he has only two minutes left? (*noise from Hon. Delegates*) Okay. 603, can't you wait for him to finish? You do not want him to finish and then you can continue?

Noise from Hon. Delegates.

Hon. Delegate Winston Adhiambo: Thank you, Mr. Chairman Sir. This is a point of order and it is on the speaker, because he is misleading the House. Kenya has power because if the country has power—

An Hon. Delegate: Interruption, 603.

Hon. Delegate Winston Adhiambo: I do not think that somebody who was once a powerful—

Hon. Delegate Joseph Nyaga: That is an opinion.

Hon. Delegate Winston Adhiambo: --person can come here now that he has no power—

Hon. Delegates: That is not an opinion.

Hon. Delegate Winston Adhiambo: --and tell us to imagine Kenya has no power. Thank you very much.

Hon. Delegate Joseph Nyaga: Thank you, that is an opinion not a point of order.

An Hon. Delegate: Point of order, Mr. Chairman—

Hon. Delegate Joseph Nyaga: Please let us save time, let us not introduce points of orders that will delay us because I want as many people as possible to speak this morning. Thank you.

Hon. Delegate Godfrey G. Kariuki: Mr. Chairman, I am very grateful for that point of order because the old man was suffering from making his point and he has made it. Mr. Chairman, what I was trying to say is that even the districts, now under the current constitution, if you look at the people who were appointed in high offices of the government, they are the people from rich districts. People from areas where children have been able to be educated more than other districts. Mr. Chairman, if we want to bring sanity to our people and our leadership, then we must make sure that the central government takes care of all the districts and be ready to have some districts which are richer than the others to pay money to smaller districts, although we might have some problems there. For example, under the current proposals, if the districts which have more money refuse to pay to sustain others, where is the remedy? This is because if you look at the UN for example, a majority of the United Nation members are the poorest nations and the big Nations, if you look at the records, they refuse to pay their subscriptions of their membership fees because they know that they are sustaining an organ which is working against their interests. Mr. Chairman, even here, if we are not careful, some districts will object to pay their share of the money to support other districts. What should be our remedy? We would want those who are going to do the drafting to take into account that point because I consider it to be a

very serious one. Mr. Chairman, I think District governance is the best sort of devolved government. Now, Mr. Chairman I do not think that I have spent all my time.

Hon. Delegate Joseph Nyaga: You have.

Hon. Delegate Godfrey G. Kariuki: Have I?

Hon. Delegate Joseph Nyaga: Yeah, but wind up now.

Hon. Delegate Godfrey G. Kariuki: Thank you very much so that tomorrow you may give me another chance.

Hon. Delegate. Joseph Nyaga: You have, but wind up. MP, next category. MP, 31.

Hon. Delegate. Haji Yussuf Mohamed: Thank you very much Mr. Speaker, I know from one side may be what I am going to say may not please many people because--.

Hon. Delegated Joseph Nyaga: Why?

Hon. Delegate. Haji Yussuf Mohamed: But that is my opinion and I want you to bear with me. Mr. Speaker my names are Mohamed Yussuf Haji. Mr. Chairman, I am saying this because the Provincial Administration had the face of a beauty and also a beast. The beauty of the Provincial Administration was in as far as coordination of Government activities are concerned from the Division up to the Provincial level and perhaps its beastly design was as a result of lack of clear definition of its role in any of our Statutory Laws and as a result it was open to abuse.

As Kenyans Mr. Chairman, we have now come a long way and we know our rights and we are capable of defending those rights as democracy continues to grow and give space to wananchi. Mr. Chairman no doubt Devolution is very good, but it must not be created to bring confusion and duplication of roles, because this is likely to breed rivalry, and lack of harmony both in all the levels of Devolution as suggested in this current Constitution. Elected leaders Mr. Chairman operate in political consideration and partisanship.

Too many elected leaders will find bottlenecks to operate harmoniously. It is my considered opinion that the proposed Devolution should allow a well-defined mechanism of linkage with Central Government. It will defeat the purpose of separation of powers when the District Councils are to make their laws and at the same time they are expected to execute those laws, which they make. I insist that the Central Government will succumb and post technical Personnel for example MOH and PMOs.

There may arise a normal disagreement. In that case, if such matters are to be referred to Central Government, it will render Devolution meaningless Mr. Chairman. Hence the need to have a modified Provision Administration System as a linkage with the Central Government and supervisory officers seconded to the Districts and Provincial governments.

Mr. Chairman, I object to the use of village; village has colonial and oppressive connotation, because people of Central Province during the emergency were put in villagerisation, people of Northern Kenya during the time of Shiftas were put in villagerisation. I will recommend that we remove the use of village and maybe change it with community councils.

On education Mr. Chairman, I agree with the Speaker who said, I think it was the Secretary General of KNUT, that we already have Provincial and National Schools. These National Schools Mr. Chairman were built with resources from all parts of Kenya, and if we are to have one Education system, I feel that education from Secondary schools to University level should be in the ambit of the Central Government.

Mr. Chairman on section 227, on suspension, I feel suspension should only come after investigation because if you start with suspension it can be used to arm twist the Districts and the Councils because you are told to toe the line, if you do not toe the line, then you will be suspended. So suspension should only come after a thorough investigation has been done. Did you ring the bell? You did. (*Laughter from the Honourable Delegates*). Mr. Chairman as a former PC I like to obey, so I obey the order. Thank you very much.

Hon. Delegate. Joseph Nyaga: Thank you very much. He has put his case very strongly as a former PC. We now go back to-- *(Noise and murmuring from the Honourable Delegates)*. We now go back to 433, and I am looking for a District Representative from this category. Somebody who has not spoken. Who is this? Preferably on a point of order only.

An. Honourable Delegate: I have got a point of order please. Why don't you-- *(Noise and mumuring from the Honourable Delegates)*.

Hon. Delegate Joseph Nyaga: The gentleman 433. Yeah.

An Hon. Delegate: (inaudible).

An. Hon. Delegate: No. I have stood here several times I am not going to--

Hon. Delegate Joseph Nyaga: Excuse me, we are coming to your section very soon. We respect your opinions and we are coming to your section, please do not get excited. *(Shouts from Honourable Delegates)*. You have spoken and you will speak I assure you, do not worry. Number 608. You will get a chance to speak we have nine sections and it is not a motto of shouting that will make a difference. Please. Let us be fair to the others please. We are coming to you.

Hon. Delegate. David Marcos Rakamba: Thank you Mr. Chairman, Honourable Delegates. My names are David Marcos Rakamba. A District Delegate number 433. Mr. Chairman I do support Devolution of power. Mr. Chairman reasons as to why I support it have already been said. Mr. Chairman, I straight go to the principles of Devolution in this Chapter ten.

Mr. Chairman, the Principles under Article 213, I concur with them and I support them but part 2 of Chapter ten that is 214, lacks to address the principles evidently. I look at it by addressing physically the principles and in this case Mr. Chairman we find out that the principles under (D) have said there shall be separation of power. Mr. Chairman when you go through the whole Chapter you realise that the separation of powers has not been actually drawn out clearly because

that means Federalism but when you look what they have brought up in the Draft, it is like they are talking in a middle ground between Federalism and a kind of Devolution.

Mr. Chairman, I also look at the principles where they say Economic Equitability. If you look at the District or through that have been created around page two there could not be economic sustainability and that means therefore it contravenes what has been set out on the principles. Mr. Chairman, you realise they have talked of the resources and they have equally talked of development. Kenyans need to achieve these development, but we cannot achieve this development with the kind of Structures set out in this Draft Mr. Chairman and this therefore I would like to address specifically some terms equally used.

Mr. Chairman you realise they have talked of local resources, Nation resources, they have also talked of National Revenue and they have also talked of marginalized areas. Mr. Chairman I have always watched this outcome and seen marginalised in one term or another. Population centres and marginalized are at a given area where you find distorts around 680 and another one 5.3. It says according to land resource and the rest, these communities are also marginalized but Mr. Chairman when you look at it, it has only talked of marginalised communities.

Mr. Chairman, when you continue further you know this is the same thing that happened in 1963. When you look at the 1963 kind of Devolution they have also addressed the same issues but they were not clarified yet. That makes the 1963 Constitution lose its meaning up to the present time. Mr. Chairman, I should believe if we have to assist Kenyans first is that we borrow the principles but I am worried with the Structure that has been set Mr. Chairman. You look at all the countries that have applied this kind of principles Kenya is not going to be unique in its setting.

Mr. Chairman, in this kind of thing where they are talking of politics I am seeing power being seen as actually the Devolution in terms of political power, but I am not seeing serious people taking consideration of economical viability of the the devolved system. Mr. Chairman it will be wrong to cheat anybody here that a rich district can actually meet the demands of another district which is small, which by demand has accepted to be creative using the criteria of Devolution. If you want power you must be able to sacrifice for that power, Mr. Chairman, because if we are

talking of using equitability, that is population, using ethnicity, using what we also call minority marginalisation and Geographical factors, as factors that will determine the Structure of System then, I assure you that we are going to come up with 150 Districts. In these Districts if we have to address Democracy and equitability, then that Law system cannot be able to run these Districts considering our economy.

Mr. Chairman, I request the Delegates to look at this fact with a lot of soberness. Mr. Chairman we could cheat Kenyans if we come with 150 districts that they could be the basis for setting out our kind of devolved power. Yes I know people need power but they should need power with economic viability. Mr. Chairman. I therefore propose that the whole Chapter was well thought out, with well intended principles. But it is very sincere that it cannot work and therefore we call for the Technical Committee that is going to handle it to look for viable Structures that actually can work in this context looking at the economic viability. We cannot go down with this one Mr. Chairman.

Finally, Mr. Chairman, you know we have looked at Devolution in terms of power but I have also seen Devolution as my last comment if not looked into, we are devolving power between all age groups but we are not looking at Devolution Power also from the old people to the young people. Mr. Chairman, as they proceed to discuss Devolution of Power also they should think of handing power from the older to the young generation. Thank you Mr. Chairman.

Hon. Delegate Joseph Nyaga: Thank you very much. This section I am looking for in the category called Special Interest, Political Parties, Religious Groups, and Women that category. I recognize 502

Hon. Delegate Rose Arungu Olende. Thank you Hon. Chairman and Honourable Delegates. I think the weekend has given us opportunity to reflect on this section-

Hon. Delegate Joseph Nyaga: Who are you?

Hon. Delegate Rose Arungu Olende: My name is Rose Arungu Olende, representing Women Organizations No. 502. Hon. Chairman, I have listened very attentively to Hon. Delegates

contributions to this section and to the Commissioners presentations, especially Commissioner Kangu that really made this room just stand still. I wondered, with all the thoughts Commissioner Kangu had and which he presented so eloquently here, I wondered just like other Delegates have wondered why the Commission was not bold enough to suggest to the Conference the Devolution structure? I would like to ask them that question very seriously and they could tell us later, why is it, why were they no bold enough to suggest the regions? Because Hon. Chairman, after reading the documents we had, to me there is not document that gives better regional assembly than the 1963 Constitution I wondered (*Clapping by Hon. Delegates*) because I felt that if I was speaking in the Commission which I was not, I would have made my life very easy by picking up the 1963 Constitution to get the regions. And listening here (*Clapping by Hon. Delegates*) I felt that the combination of Commissioner Kangu's ideas and the Hon. Delegate of Homa Bay talking on the structures of Governance, I felt that those could give us a way through. I even looked at the known paper that was presented by Prof. Ghai. It gives something but it falls short of something. So, I would suggest or propose that Commissioner Kangu and the Hon. Delegate from Homa Bay put their heads together and I think they would come out with something that will help this country (*Clapping by Hon. Delegates*) It seems we are all stuck on our little Districts, I do not know why? Because I am not so stuck with mine, I do not see where mine will take me to, and I am not going to say which one it is mine because I might displease some people. I think we should not be so stuck to our little Districts, we should look at the whole, what will help, the country, the whole of Kenya. And I think the Hon. Delegate from Homa Bay has got a very good idea and Hon. Kangu has got the passion that goes with that idea. So the two should put their heads together and propose something for us which the Commission did not propose. Thank you Hon. Chairman.

Hon. Delegate Joseph Nyaga: Thank you very much, thank you very much. I am looking for a district representative in this section. District representative. And I recognize 305.

Hon. Delegate Dominico Muraguri Nderi: Thank you very much Bwana Chairman, I am Dominic Nderi, district representative No. 305 representing Nyeri District Bwana Chairman. Bwana Chairman, my comment is on Article No. 216 which says in the Draft that the Village Council shall contain no less than six members and no more than ten members, Bwana Chairman. My recommendation is that we amend that section and it should read as follows: The

Sub-location Council shall contain not less than six members and at least one third of them shall be women.

Bwana Chairman, I also would like to comment on Article to 217 (2) whereby I find that there is need Bwana Chairman for further separation of power between the Political and Administrative wings of Locational Council, in order to avoid unnecessary conflict of power. Let the Constitution clarify, who is responsible to the others in the location.

Bwana Chairman, the qualifications of the location Administrator and his Council Members has not been defined in this Draft. I propose that it should be specified for example:

1. They should be citizens of Kenya
2. They should be residents of the relevant Local Authority, Bwana Chairman
3. They also should own properties within the Local Authorities where they are seeking to vie, Bwana Chairman.
4. They should also be at least 30 years of age.
5. Bwana Chairman, they should further have a minimum academic qualification of at least “O” Level education.
6. Bwana Chairman, they must be registered voters within the relevant locations Bwana Chairman.

I would further go to Article No. 224. In this Article Bwana Chairman the Local Government Service Commission is conspicuously missing and I propose that, it be inserted to read as follow: Bwana Chairman.

That there shall be established an independent Local Government Service Commission which shall comprise as follows:

1. Eight Provincial representatives elected by the Local Authorities in the Province.
2. Bwana Chairman also one representative of Kenya Local Government Workers Union,
3. Should also have two experts on Local Authority matters and one member representing the ALGAK Bwana Chairman.

And here the affirmative action should be given a room and therefore Clause 3 should read as:

That one third of the members of the service commission shall be women.

Bwana Chairman, on Devolution I strongly support the Devolution of power from National level up to District level, Locational level down to Sub-locational level Bwana Chairman. I disagree with those Hon. Delegates who have said by establishing Village council, we would be creating Clanism disagreement and other problems. Bwana Chairman, let me remind the Honourable Delegates that even today as we review the Constitution Bwana Chairman, of this country we have Village Elders who assist the local Assistant Chiefs. I therefore move that we have the Village Council so that the Village Elders may be officially recognized and enjoy the Constitutional blessings, Bwana Chairman. Thank.

Hon. Delegate Joseph Nyaga: Thank you very much. I am a looking for a district person in this category. District representative from this section. Yes Point of Order Please, because we are about to take a short break after this category.

An Hon. Delegate: Mr. Chairman, I am rising on Point of Order to request you to recognize Hon. Shikuku who has been trying for two three days to talk on this topic and he has been a champion of Devolution. I would like you, Mr. Chairman, to recognize him. (Clapping by Hon. Delegates)

Hon. Delegate Joseph Nyaga: Thank you very much good advice. I have only on a few Political Parties but we will definitely recognize them. In fact at this point, are there people who served in the Majimbo Government as Councillors, Vice Presidents, Ministers like we had the other day? Do we have any in the room? People with experience of Regional Government. Okay, it will just be very interesting to hear them, but in this category I am looking at No. 299. Then we take a break after that.

Hon. Delegate William Matheka Nduse. Thank you, Mr. Chairman, for doing what the others have not done for recognizing me since we came this way. My names are William Matheka, 299 from Makeni. I support Devolution, Devolution is the transfer of authority from the centre to

the periphery. From the headquarters down to where Kenyans are. Why are we devolving? Because the centre has not been able to deliver. That is why we have to go down to where Kenyans are. Devolution is of several models. I see what the Commissioners have proposed, they have proposed for a Local Government model. So Mr. Chairman, this is what I am proposing as the levels of devolution.

First, I am not forgetting the Village Council level, this is where Kenyans live. This is where really Kenyans are supposed to be served at. Let us borrow an example from Tanzania, Tanzania have what we call Balozi wa Nyumba Kumi. This is a respected Elder, who deliberates and solve problems at that level. Here in Kenya we are having our Elders who in most cases serve about one hundred or so households. So, if we are devolving we also have to think of that level.

The other level, I am proposing is at Locational level, District level and another coordinating level which might be a collection of some Districts which interrelates to each other. So I am proposing, let us move away from the current Provinces, which are too large. Which are not well put and we have another coordinating level of may five to seven Districts which are almost similar.

Mr. Chairman, responsibilities of some of these Governments has to be coordinated at District levels, but Public Health Services, Education services and Security has to be coordinated from the National Government.

Elections to these Governments: I am proposing that at Locational or Sub-locational levels, we have to put proper mechanism so that Elders from one Clan, they are locations which are dominated by one Clan. We have to make sure that one Clan does not dominate that region. So proper mechanism has to be put of may be households, we count like twenty to give us one Elder or thirty then another Elder, so that one group of people do not dominate Administration of those levels.

I am supporting affirmative action, ladies and our daughters be given a third of all appointments at those levels. Thank you, Mr. Chairman.

Hon. Delegate Joseph Nyaga: Thank you very much. It is time for quick Tea Break as announced earlier by Hon. Godana, the Committees will be meeting now, let him explain and give us the details. Actually it is Prof. Ghai who will explain Please.

Hon. Delegate Bonaya Godana: Actually it is Prof. Ghai who would explain.

Prof. Yash Pal Ghai: Honourable Delegates, we would like now you to go to the Committees to which you have been appointed, these are the Technical Committees. We want to use this break for the Committees to meet. The meeting will be convened by a Rapporteur who is a Commissioner and the sole part of the Commissioner is to enable the Committee to recommend a convener, a Chairperson for the particular Committee. I read out the premises where different Committees will meet. The Technical working group A, which will deal with the Preamble, Supremacy of the Constitution, Republic, National Values and Principles will meet in Committee Tent No. 1.

The Technical working group B dealing with Human Rights and Citizenship will meet in Committee Tent No. 2.

The Technical Committee Group C, dealing with the Representation of the People will meet in Committee Tent No. 3.

Technical working group D on the Executive will meet in Committee No. 4.

The Technical working group E. on the Judiciary, will meet in Committee Tent No. 5

The Technical working group on the Legislature that is No. F will meet in Committee Tent No. 6.

The Technical working group G on Devolution will meet in Committee Tent No. 7

The Technical working group H Dealing with Public Finance, Public Service, Leadership and Integrity will meet in Committee Tent No. 8.

The Technical working group I, on Defence and National Security will meet in Committee Tent No. 9.

The Technical working group J on Land Rights and Environment will meet in Committee Tent No. 10

The Technical working group K on Constitutional Commission and Amendments in Committee Tent No. 11.

The Technical working group L on Transitional and Consequential arrangements will meet in Committee Tent No. 12.

I also have here the Ad Hoc Committee on Culture, I thought they were actually going to meet at 6.00 p.m. this evening at what is known as the Commissioners Lounge.

So the primary purpose of the meeting today is for the Committees to recommend the name of a convener to the Steering Committee and the Steering Committee will no doubt, take fully into account the wishes of each of the Committee.

We are going to be issuing tomorrow, I hope, the guidelines for the work of the Committees. And when those guidelines have been issued the Committees may wish to meet again briefly to determine how they would conduct their work. So the primary purpose of the meeting today we see is to elect your convenor and to get to know each other.

We think half an hour should be enough for this purpose, we are anxious to conclude the discussion on devolution, so please take no more than half an hour and come back, say, by 11.35 a.m.. Thank you very much.

After Tea Break

Hon. Delegate Bonaya Godana: I call the meeting to order before I give the microphone to my co-chair the Honourable Nyaga. Order! Order! Order! Order Delegates. We have to start this session and before I give the microphone to my co-chair Honourable Nyaga, I have an important announcement to make. The rapporteur for Technical Committee 'K' on Constitutional Commissions says the committee which could not meet because of lack of quorum will meet at 2.30 p.m. again in tent number 11 and also Delegates from North Eastern Province please note that you have not submitted any name for this committee. You have not submitted from North Eastern Province any name to represent you in this committee. I am certain that you will need as a region and an interest group, representation on issues of National Constitutional Commissions. Thank you. Mr. Nyaga, please start.

Hon. Delegate Joseph Nyaga: Thank you, Mheshimiwa. I think we finished with this category, didn't we? I am in this category now, correct? I am looking for an MP from this category, is there an MP in this category? 131.

Hon. Delegate Mwandawiro Mghanga: Asante sana Mwenyekiti kwa kunipatia huu wakati kuchangia kwa hiyo sura muhimu kuhusu usambazaji wa mamlaka ya kitaifa. Mheshimiwa mwenyekiti nimesikiliza michango mahsusi ya Wajumbe wote kutoka sasa na singependa kurudia yale mambo mengi mazuri ambayo yamezungumzwa na waheshimiwa Wajumbe. Kile kitu ambacho ninaomba kuchangia tu ni kwamba kwanza kabisa ninakubaliana na kanuni za usambazaji wa mamlaka. Kuna haja ya kusambaza mamlaka ili kuimarisha umoja wa kitaifa zaidi, ili kuimarisha demokrasia zaidi, ili kuhakikisha rasilimali za kitaifa zinafika mashinani, na kwamba haki inatawala katika kila pembe za nchi na kwamba kila mtu ambaye ni mwananchi wa Kenya anahusika katika usimamizi na utumiaji na ufaidi wa rasilimali tulizo nazo.

Ndio kwamba ninaomba vile vile kupongeza Makamishina waliokusanya hizi habari na hasa kwa kuleta kile kifungu 213 (1). Kile kifungu katika sura ya kumi, mia mbili na kumi na tatu, moja ni muhimu sana tukisome kwa makini na tukizingatie kwa sababu kitatusaida zaidi katika kuweka misingi ya usambazaji wa mamlaka. La muhimu zaidi ni kwamba tukisambaza madaraka katika nchi yetu tukumbuke kwamba hatuko hapa kuvunja umoja wa kitaifa. Tuko hapa na tunasambaza madaraka ili kuimarisha umoja wa kitaifa. Vile vile tukumbuke kwamba

hatuko hapa kuwarudisha Wakenya nyuma; tuko hapa kuwapeleka Wakenya waende mbali zaidi kuliko pahali walipo.

Ninasema kwamba kufikia wakati huu, pamoja na kwamba utawala ulikuwa mbaya hapo awali, lakini kuna mambo mengine mengi Wakenya sisi tumepata. Mambo kama kwamba sasa Wakenya wamesambaa kote nchini, hakuna pembe ya Kenya ambayo huwezi kukuta mtu wa kabila moja anawakilishwa. Na ninaomba wakati tunaleta usambazaji wa mamlaka tuhakikishe kwamba hatuwarudishi Wakenya nyuma, tunawachukua kutoka hapo halafu tuwapeleke mbele. Ndio kwa maana wakati ninazungumzia habari ya wilaya lazima tuelewe kabisa maana ya wilaya. Wilaya isije ikatafsiriwa kuwa kabila. Wilaya itafsiriwe kuwa wakaazi wanaoishi katika wilaya fulani.

Wakati ninaposema rasilmali tulizo nazo katika wilaya ya Taita Taveta, rasilmali za madini, za misitu, za ardhi, za maji ziwafaidi watu wa Taita Taveta, hatusemi watu ambao wanaongea Kitaita pekee yao, na hatumaanishi wakaazi wote wanaoishi katika Taita Taveta. Na ndio kwa maana naomba tuweke kanuni za kuimarisha kifungu 203 ili tusije tukasababisha ukabila katika kusambaza. Kifungu kiseme kwamba kila Mkenya ana haki ya kuishi na kuwa na mali pahali popote anapochagua nchini na kwamba awe na haki zote pahali ambapo anaishi.

Jambo lingine la pili, tuna bahati kama Wakenya kwamba tuna Kiswahili kama lugha ya taifa. Naomba kabisa tukumbuke hiyo bahati tuliyo nayo, na ndio kwa maana hapa tukitengeneza Katiba naomba kwamba ikubaliwe kwamba Kiswahili kiendeleo kuwa lugha ya kitaifa. Kwa sababu tukisema kwamba eti lugha ya Kitaita ndio itakuwa Taita Taveta (in Taita language), hakuna mtu anasikia kwa sababu ninazungumza Kitaita. Na kama hakungekuwa na Kiswahili inamaanisha kwamba makabili ambayo yanaishi Taita hayatakuwa na haki sawa kama Wataita. Kwa hivyo ninaomba tuimarisha lugha ya Kiswahili pahali popote tulipo. Na yale ambayo yamesemwa hapo awali kwamba tunafanya usambazaji wa mamlaka ili kutengeneza haki zaidi tukumbuke kwamba rasilmali zote zilizoko Kenya za kiasili na za watu ni mali ya Wakenya kwa ujumla. Na tunafanya usambaji ili itumike vizuri na kwa haki zaidi ili kila mtu afaidike. Sio kwamba tunafanya usambaji ili kabila fulani iwe inavutia kwake. Ndio tunasema zile wilaya ambazo zitapatikana kuwa tajiri lazima kuwe na kifungu cha kuhakikisha kwamba zinasaidia wilaya zingine ili sote tuendeleo mbele.

Mwisho, ninaomba kusema kwamba sera ya elimu lazima isisitizwe ni sera ya kitaifa. Tutakuwa na sera moja ya elimu, mtihani mmoja wa elimu halafu ndio utekelezwe katika wilaya zote. Hakuta wilaya moja itakuwa na sera ya elimu pekee yake. Nadhani ninaweza kukomea hapo. La muhimu tu ni kwamba tukumbuke ile misingi, tukishakubaliana kuhusu misingi na kanuni za usambazaji wa mamlaka basi hayo mambo mengine ni technicalities ambazo tunaweza kukubaliana. Asante.

Hon. Delegate Joseph Nyaga: Thank you. Next category is District Representatives. I recognize number 320.

Hon. Delegate Kiriro wa Ngugi: Thank you very much, Mr. Chairman. Mr. Chairman. My name is Kiriro wa Ngugi from Kiambu. Some time in 1885 a bunch of colonialists sat in Brussels in Belgium and proceeded to partition Africa amongst themselves. They created territories and colonies later turned into mission states without regard or respect whatsoever to the social cohesiveness and lifestyles of Africans. Our founding fathers of the OAU resolved to respect these boundaries. With great respect this was a grave mistake. Fortunately the new African Union has however already acknowledged this mistake. The cohesive social unit in the African society is the ethnic community. Their intensity and distinctiveness, must find its space and expression in the institutions of state.

We Kenyans now here at Bomas of Kenya I would encourage to reflect on the following.

1. There are two other groups of Africans sitting separately in the city attempting to bring sanity and good governance to their respective countries. The Somali people from Somalia are at the Six-eighty, they cannot sit in their country.
2. Another group sits a few miles away at Machakos. We Kenyans sit in our own country, eating our own food, served by our own people.

This Conference must resolve to send our African brothers a message of goodwill and wish them God's speed. We cannot succeed unless and until other Africans succeed. With your permission

Mr. Chairman, I would like to ask those Delegates here present who would wish to send such goodwill message to these fellow brothers, those in favour of sending such messages please say “Aye.”

Honourable Delegates: “Aye.”

Hon. Delegate Kiriro wa Ngugi: Those who do not wish to send such a message say “Nay.”

Noise by the Honourable delegates.

Hon. Delegate Kiriro wa Ngugi: I think there you heard it, Mr. Chairman.

Hon. Delegate Joseph Nyaga: You have two more minutes left.

Hon. Delegate Kiriro wa Ngugi: The second point. We sitting at Bomas of Kenya, this place is significant in another relevant dimension. This is a national centre of cultural richness and expression at least in song and dance. An institution such as the Bomas of Kenya would have been unthinkable in the 50s and dearly 60s. Our colonizers--

Hon. Delegate Joseph Nyaga: There is a point of order from Mheshimiwa Shikuku. You have only one more minute left.

Hon. Delegate Martin Shikuku: My point of order, Mr. Chairman, as much as I hate interrupting the Honourable Speaker, do you know he has taken a vote, which can only be put to the Conference by the Chair. Is that in order?

Hon. Delegate Joseph Nyaga: Have you taken a vote?

Clapping by the Honourable Delegates

Hon. Delegate Kiriro wa Ngugi: I took it and it was ignored. The reaction was ignoring it, so I did not take it seriously.

Hon. Delegate Joseph Nyaga: Continue, you have two minutes left.

Hon. Delegate Kiriro wa Ngugi: Thank you very much.

Hon. Delegate Joseph Nyaga: One minute, I mean

Hon. Delegate Kiriro wa Ngugi: Our colonizers demonized all African culture and expression. Bomas of Kenya is an important landmark in African emancipation and renaissance at least in song and dance but this is not enough. We must go beyond mere song and dance. Our cultural richness and distinctiveness must also inform our structures of governance. The NARC Summit is a perfect example. Kenyans approved this team of leaders overwhelmingly last December, precisely because the voters from the several ethnic backgrounds felt properly represented at the Summit. It will be a tragedy of great proportions if the new regime neglects or sidelines the original NARC Summit. Indeed, I would not hasten to suggest that our singular challenge as a Constitutional Conference is to find ways and means of institutionalizing the concept of the NARC summit forever. Thank you Mr. Chairman.

Hon. Delegate Joseph Nyaga: Next category I am looking for an MP. MP from this block. I see no MP wishing to speak. Are there MPs in this section?

Honourable Delegates: Yes.

Hon. Delegate Joseph Nyaga: Konchella has spoken already. MPs who have never spoken on this subject? 53.

Hon. Delegate Khamisi Joseph Matano: Asante Bwana Chairman kwa kunipatia nafasi hii. Mimi jina langu ni Joe Khamisi, Mjumbe wa Bahari na number yangu ni number 53. Bwana Chairman, mimi ninasimama kuunga mkono kusambazwa kwa mamlaka ya serikali kutoka juu hadi kijijini. Ninaunga mkono kwa sababu kwa muda mrefu mamlaka ya serikali yamekuwa mikononi mwa serikali kuu ambayo kusema kweli imekuwa ikinyanyasa sehemu hasa zile sehemu ambazo zinaitwa marginalized areas. Tumeona kwamba uongozi mbaya pia umezidisha

hali hiyo. Kwa hivyo tunataka kwamba mamlaka yatakayotolewa na Katiba hii yawe yanaenda mpaka katika sehemu za chini. Lakini tukifanya hivyo pia inatubidi sisi tujaribu kuwaelemisha wale wenye vijiji au katika location ili waweze kuwa na uwezo wa kutekeleza majukumu yao sawa sawa. Iwapo hatutafanya hivyo basi tutaleta msuko suko katika sehemu za chini na hii itakuwa ni mbaya kwa maisha ya Wakenya kwa jumla.

Vile vile ningependa kutaja juu ya kuandikwa au kuteuliwa kwa Provincial Administrators. Ikiwa tunasema kwamba Locational Administrators na Village Administrators lazima wateuliwe na raia basi mimi ninapendekeza kwamba Provincial Administrators pia wateuliwe na raia na sio kuteuliwa na kamati ya District Council au kamati yoyote ile. Hii ni kwa sababu tunaona katika chaguzi za Mayor wale wenye pesa ndio wanaweza kuchaguliwa kuwa katika sehemu za vyeo kama vile. Kwa hivyo hatutaki watu wenye pesa kuwa ndio watatawala wale maskini; tunataka uchaguzi uwe katika hali ya kidemokrasia.

Jambo lingine Bwana Mwenyekiti ni kwamba hoja imewekwa hapa kwamba kuwe na qualifications kwa wale watu ambao wanachukua vyeo katika Mashinani au Village au Locational Councils. Na hoja hiyo imesema kwamba watu wale ni lazima wawe na mali katika sehemu ile ili waweze kuchaguliwa. Mimi ninapiga hiyo. Kwa sababu katika sehemu nyingi kuna wananchi ambao hawana mali na ambao wana hekima ya kutosha ya kuweza kuchaguliwa na kuongoza watu wao. Katika sehemu yangu mwenyewe kuna watu ambao hawana mali ya ardhi, hawana mali za nyumba, wanaishi kama ma-squatter. Watu hawa ikiwa tutafuata hoja hii basi ndio kusema kwamba katika sehemu nyingi hasa katika sehemu za pastoralists hawataweza kuchagua watu, kwa sababu watu wale hawana mahala ambapo wanaita in mahala maalum. Kwa hivyo Mwenyekiti ningependa kupendepekeza kwamba hoja hiyo ipuuzwe ili kwamba mtu yeyote anayekubaliwa na wananchi, anayechaguliwa kwa kura na wananchi katika sehemu zile aweze kuongoza kwa hekima za watu wake.

Bwana Chairman, ningependa pia kusema kwamba tukizungumzia kusambaza madaraka pia tuzungumzie kusambaza mali. Sisi kule Mombasa tuna bandari ya Kilindini ambayo inatoa ma-billion ya pesa kila mwezi. Lakini pesa zile zinachukuliwa kila Ijumaa na kuletwa Nairobi hatuzioni tena. Ikiwa tutagawanya madaraka tugawanye pia na mali. Sisi watu wa Mombasa tupate kupata kifungu kikubwa hata kama ni sabini na tano kwa mia, zikae pale na kusaidia

maendeleo ya sehemu ile, ili kwamba watu wa pale wafaidi na ile bahari walio nayo pale na utalii ulioko pale. Kwa hivyo Mwenyekiti maoni yangu ni hayo, na ningependa kuongeza tu kwamba katika Katiba hii tutilie maanani na tusikilize sauti za wananchi katika mambo haya. Asante.

Hon. Delegate Joseph Nyaga: Thank you very much. In the next row I am looking for an MP. Yes 538.

Hon. Delegate John Cheruiyot: Mr. Chairman, I am rising on a Point of Order for your clearance. Where you are sitting and behind you, we are supposed to have Commissioners and on the right in the two columns, there we are supposed to have Observers. Is it in order for me to find out that behind you I am seeing faces that I have not seen before, could it be in order for you to explain why they are there and who they are?

Clapping by the Honourable Delegates

Hon. Delegate Joseph Nyaga: The team, which is behind me, I am told-- The Steering Committee last week asked for a drafting team to be put in place. Those are members of that drafting team that was approved at the Steering Committee last week. (Murmurs from Honourable Delegates). But I thought it was a choice of the Steering Committee, it asked for a drafting team to be put in place? So, we should be comfortable with it. (Murmurs from the Honourable Delegates).

Hon. Delegate Bonaya Godana: Honourable Delegates if you look at your rules or procedure, rule 47 (1) says" there shall be a Drafting Team for the Conference, consisting of such experts as may be appointed by the Commission whose functions shall be writing and so on" it goes on for nearly a whole page. The Steering Committee did actually get the names of the drafting team experts from Kenya, from outside, from the rest of Africa, and this are not participants in the Conference in the sense the Delegates are, but obviously it will be very useful to them to pick up the mood of the Delegates as the discussion continues on particular topics. They are sitting there just to have a feel of what really Kenyans are negotiating about. I think it is a very simple matter and we should not really dwell on it.

Hon. Delegates: No, no.

Hon. Delegate Joseph Nyaga: 131.

Hon. Delegate Mwandawiro Mghanga: Point of Order. Bwana Mwenyekiti ninaomba kusema ya kwamba ikiwa wao ni wataalam ambao wamekuja kusaidia kuandika draft ya Katiba je, wanaelewa Kiswahili? Na kama unasema ni “mood”, wanaelewa hiyo “mood” tunayozungumuza kwa Kiswahili?

Hon. Delegate Bonaya Godana: Ninataka kujibu hivi, hata hapa nchini, even here, even in government, government makes a decision about drafting a particular law. Often they go outside the Attorney General’s Chambers to get private draftsmen. In this country much as policy making maybe thought out initially in Swahili or whatever local language, the ideas that will be formulated in whatever local languages you want, the actual drafting is done in English. Even those who do not know Swahili once they get the message, will be able to draft it. I think these are people who ultimately are not drafting now, as they are hearing the arguments, no. They will draft once we are through with the ideas in the Technical Committees and the Plenary.

Hon. Delegates: No.

Hon. Delegate Bonaya Godana: For your benefit we might even inform you, although we have no Swahili draftsmen in Kenya, we have now got a Swahili professional draftsman from Tanzania, he will be part of the team.

Hon. Delegates. No.

Hon. Delegate Bonaya Godana: So, your worries should be taken care of. (*Murmurs and Laughter from Honourable Delegate Bonaya Godana*) I don’t think, Honourable Delegates, really we should-- (*Murmurs from the Honourable Delegates*). What would you want us to do? (*Murmurs from the Honourable Delegates*) Number 05, number 05, what is your problem?

Hon. Delegate Akaranga Moses Epainitous: Mr.Chairman, is it in order for you as the Chair - my names are Moses Akaranga the Member of Parliament for Sabatia Constituency. Is it in order

for you to allow the strangers to come into this Honourable Conference and then as a Chairman, you fail to introduce them until Honourable Delegates /Members ask you to do. (*Clapping by the Honourable Delegates*) It would have been easy for you, Mr. Chairman, just to stand up and apologise and introduce them to us. (*Murmurs from the Delegates*).

Hon. Delegate Bonaya Godana: Okay, Order! Order! Honourable Delegate Shikuku. Last Point of Order and then I will respond. Honourable Shikuku (*Murmurs from the Honourable Delegates*)

Hon. Delegate Shikuku: My Point of Order Mr. Speaker, in all humility, you have quoted our rule 47 this does not give those gentlemen or ladies behind you the reason to sit there. These are supposed to advise the Delegates in their various Technical Committees and the rule reads so, probably I have the wrong book, but it says there shall be a Drafting team for the Conference Consisting of such experts maybe appointed by the Commission whose functions shall be to “give advice to the Honourable Delegates, Committees and Technical working groups”. If they are going to give advice to the Honourable Delegates - I know this means the Committees - if you think they have got to give advice to us in this Conference, how are they going to give us when we are seated here? It can only be in the Committee and not here.

Hon. Delegate Bonaya Godana: Mr. Shikuku, Thank you very much. I am a bit surprised that as a veteran Member of Parliament, you did not come to my assistance on this. (*Laughter from the Honourable Delegates*). Even in Parliament, you know when you are discussing the various Bills, Draftsmen come in as experts to sit at their bench and you don't recognize them, they do not contribute to the debate, the purpose is to get a feel so that they will be much better to reduce that feel into necessary amendments or to put it in a language which they managed to capture the mood in the house.

Now, let me say this Honourable Delegates, we are having a Conference in which participation is by way of debate. That is why when we say you are a stranger in this we mean you have no authorisation to be within the hall and secondly, as far as contributing to the debate is concern, you have no authorization as a delegate under oath they are not seeking to contribute but they have authorization from the secretariat like the observers, to seat in and have a feel and really,

really there is not threat whatsoever to the integrity of the debating process alright? It is supposed to be only an addition to them, as this will sharpen their skills and understanding what exactly we want.

I want therefore to appeal that really now that we know who they are we apologies that we did not introduce them when they first came in. *(Clapping by the Honourable Delegates)* alright but really let us give them the respect that I think they deserve as our invited guests and as our experts. Okay, good *(Clapping by the Honourable Delegates)* with that I think at some stage early this afternoon we will read names of all experts who have been approved by the Commission and by the Steering Committee alright? By now may we continue? Thank you. *(Clapping by the Honourable Delegate).*

Hon. Delegate Joseph Nyaga: Thank you very much. This category, I am looking for an MP, MP in this category who has never spoken? Number 20. *(Murmurs from the Honourable Delegates).*

Hon. Delegate Chepkitony Lucas Kipkosgei: Thank you very much, Mr.Chairman, for giving me this opportunity to contribute on this important chapter. I wish to start by saying that I truly support - My name is Honourable Lucas Chepkitony Member of Parliament Keiyo North Delegate number 20. I do support the Devolution of Power, although people have used the word decentralization and devolution synonymously. To me Devolution is giving or delegating powers of self-governance to the people, and also giving people to make a decision and participation in local undertakings.

In the past upto to now we had the centralized unitary type of government and we have seen the role it has played in the last 40 years and I think it has been wanting, this is why we are calling for decentralization. I have in mind in the Devolution, it involves Powers going back to the people and so on. The economic power also goes to the people, and with the devolution we are devolving into ways; in the civil service we have to have a devolution involving the civil service and political system or political structure. So, we have two systems in the devolution. The structure will change political structure and civil service structure will change within the devolution.

When you come to the political structure the current local government system will change because we have to go to the system where we elect the people to be responsible to the people. So, I do support the system where the regions will be the main power base, then the districts, and locations. I do not support the idea of the villages, they look too low and it will not be economical to serve from the villages. So, I will support Location, Districts and Provincials. We should have Provincial Legislators, District Legislators, Legislative Councils which is going to legislate on a certain relevant issues according to the system we are going to devolve and Parliament will play its own role. Within the Political structure we will also have the members of Parliament under the Devolved system playing their role as Members of the Parliament. Within the civil service structure we may allow the civil service to take care of the security systems under the devolved government and the extension service from the ministries. And when it comes to economic power, I support the idea of having a centralized system of collection of revenue by the Kenya Revenue Authority and it should be distributed to the regions based on the number of regions we have their requirement, but we should have equal representation.

In the past we have supported the centralized system because we believed it can take resources to the poor districts but that has not been the case. I think the basic system will be the devolved system where the economic or the Revenue will be taken to various devolved centers, region and districts and the people there will control administration and usage whatever money they are given to implement their development projects, In that way it will be responsible to the people's needs and it is unlike the current system where the Civil Servants have been the center power, the ones implementing the government projects. I think the civil service should not play any role in the, I think the role of the provincial administration is going to change drastically and I think Mr. Chairman. I could like to end there. Thank you very much for giving me this time.

Hon. Delegate Joseph Nyaga: Thank you very much we are almost going for lunch break and we know we are getting to an end. This category now, I am looking for a District to represent this category. 242. Allow the lady to speak, please. (Noise and murmuring by Hon. Delegates).

Hon. Delegates: Allow the lady to speak, please.

Hon. Delegate Joseph Nyaga: I will give you the point of order, but would you allow the lady to speak, please.

Hon. Delegate Amina Muhudhar Ahmed: My names are Amina Muhudhar Ahmed, District Delegate from Lamu. I want to contribute-- (*Noise and murmuring*)

Hon. Delegate Joseph Nyaga: You don't want to allow the lady to--

Hon. Delegate Amina Muhudhar Ahmed: I want to contribute on Article 227.

Hon. Delegate Joseph Nyaga: 382, you don't want to allow the lady to continue.

Hon. Delegate Amina Muhudhar Ahmed: I am proposing three things. One.

Hon. Delegates: Mr. Chairman--

Hon. Delegate Joseph Nyaga: You don't want to allow her to continue?

Hon. Delegate Sammy Amunga Aswani: No, I have a reason why. We are 629 but what I am wondering Mr. Chairman, you tend to be giving a chance to only certain people to talk, you leave others. *Clapping and Noise from Hon. Delegates.* One would talk more than four times while others are waiting, yet we have the same feelings that we should contribute towards a certain Chapter, you are avoiding to give us time.

Hon. Delegate Amina Muhudhar Ahmed: I have never talked.

Hon. Delegate Sammy Amunga Aswani: It is very unfortunate, Mr. Chairman.

Hon. Delegate Amina Muhudhar Ahmed: I have never spoken.

Hon. Delegate Joseph Nyaga: I will try my level best to be fair.

Hon. Delegate Amina Muhudhar Ahmed: Number one, I am proposing three things on Article 227 – share of National resources.

Number one: District Delegates shall be entitled to a substantial share of the National revenue from Local resources and for the location, a fixed percentage to the communities in the areas the resource are generated.

Number two: The revenue from National resource shall be shared equitably between the District and the National Government.

Number three: The manner of distribution of revenue shall be set out in an Act of Parliament.

Article 223 on staffing of devolved authority: I would like to propose clause 2 should look like this. District Government shall employ their own staff including Chief Officers who shall be recruited by the Local Government Service Commission. Thank you.

Hon. Delegate Joseph Nyaga: Good, thank you very much. We now go to this section.

Noise from Honourable Delegates

Hon. Delegate Joseph Nyaga: Excuse me, let us be fair, there is no section which has been marginalized.

Noise from Honourable Delegates

Hon. Delegate Joseph Nyaga: You are being unfair to the other eight groups. So, I have a very good record and I know who has spoken and what block has not spoken.

Noise from Honourable Delegates

Hon. Delegate Joseph Nyaga: If I am going to be fair, the fair thing as per my records is to call somebody from this category, block number 9 and I recollect from other categories. *Noise from Honourable Delegates.* People have never spoken from other categories.

Noise from Honourable Delegates

Hon. Delegate Joseph Nyaga: Is there anybody from this side?

Noise from Honourable Delegates

Hon. Delegate Bonaya Godana: What about 614.

Hon. Delegate Joseph Nyaga: I am coming to you.

Hon. Delegate Bonaya Godana: Please quickly we are wasting time.

Hon. Delegate Bonaya Godana: 163, is an M.P. because I have checked the others have spoken from the categories.

Noise from Honourable Delegates

Hon. Delegate Philip Okoth Okundi: Thank you Mr. Chairman, my name is Honourable Engineer Philip Okundi.

Hon. Delegate Joseph Nyaga: 259.

Hon. Delegate Philip Okoth Okundi: Member of Parliament for Rangwe, Homa Bay District.

Hon. Delegate Joseph Nyaga: Give one minute to 259.

Hon. Delegate Philip Okoth Okundi: I would like to make a small ...

Hon. Delegate Joseph Nyaga: Please, hold on for a second.

Hon. Delegate Salah Maalim Ali: Honourable Chairman, my names are Councillor Salah Maalim Ali District Delegate from Mandera. I am on a point of order that is very important to the proceedings of this house and I am asking the Chair whether it is permissible or in order for a Honourable Delegate, regardless of his social status to come to this Plenary when he is armed? I saw this on Friday afternoon, a Honourable Delegate having his pistol holstered around his belt. *Noise from Honourable Delegates.* So I am taking clarity from the Chair, whether it is permissible or not. Thank you.

Noise from Honourable Delegates

Hon. Delegate Bonaya Godana: We will want to advise all armed Delegates *order, order* to be aware of the concerns of other Delegates and I think the Steering Committee may have to resist this. Thank you. Continue.

Hon. Delegate Joseph Nyaga: Okay, continue Honourable Okundi.

Hon. Delegate Philip Okoth Okundi: Thank you Mr. Chairman, I repeat, my name is Honourable Engineer Philip Okundi, Member of Parliament for Rangwe Constituency in Homa Bay District. I would like to make a few comments on this very vital area of the Constitution making in Kenya. I support whole-heartedly the issue of devolution of power from the centre to the various areas of the Republic. If we look, Mr. Chairman, carefully to the history since we became independent in 1963, had we followed the Constitution approved at that time, devolution would have taken root in this country; and we would have flourished so well that this increased ethnic tension would have disappeared.

The sensitivities that we have watched since that time because the Constitution, particularly areas referring to devolution of power, were scuttled, withdrawn and brought back to the centre, so other things started people became very sensitive and we now talk of ethnicity all over the place. We find lots of units set-up on their own as Districts based on lines which hinger very heavily on the ethnics sensitivities. So, we had a very good Constitution, but we did not allow it to work.

This is the time we must now make it work. If you read through the reports, which Kenyans actually made to be compiled when the Commission visited them in their various Constituencies, those reports are there at the door.

Almost every one of them, including the leaders we have today in this country right up to the President, they said never again shall we allow concentration of power at one centre. This is very clear and very evident and I think that we can only do Kenya justice as Honourable Members talking on their Constitution, that we register, praise and encompass posterity, so that the future as a Constitution which can overcome the mistakes which we have gone through in the past. But we must look at how best to do it, we must think of re-engineering our country, completely into viable economic and political components that it can embrace the devolved powers rushed down to those particular areas.

The consequences of not doing this, is what will amount to units which will have had devolved powers but they will be so many of the little decision making authorities like Parliaments and then we shall call them or they will apply to be taken over by the centre because they are not able to adequately and economically run their devolved power in areas where they are. So we must think about this and we must do it in such a way that we will not allow this mistake to creep in because it must know that leadership is full of requirement to consented power, where those leaders are.

Mr. Chairman, I am forced to say here, that since we started the debate on devolution of power, so much has been expressed and excellent ideas have passed through. I think that we now know, we can see a consensus build up which is so big that talks around what we are nearly all talking about. I would suggest that we now move to the next stage, so that we allow this debate to be close in such a way that we go ahead to formulate those ideas into Committee stages, whereby we shall have devolution which is to the areas which will be practically, politically and economically manageable. Thank you very much.

Hon. Delegate Joseph Nyaga: Thank you very much. I have one more final speaker before you break for lunch, I am looking for the category called “Others” here.

Noise from Honourable Delegates

Hon. Delegate Joseph Nyaga: 595? He has had very many points of orders. I am having this problem of people who have point of orders, they are marked in my book as having spoken, so please do bear with me. I am trying my level best to ensure that everybody gets a chance to speak.

Hon. Delegate Joseph Martin Shikuku: Thank you very much Mr. Chairman. I am very happy God has kept me alive upto this moment. I would like to part with a little knowledge taking into account my participation in two Conferences. The last one being the Independence Conference. Mr. Chairman, I would like to draw the attention of all the Delegates, to what the elders told them on the day we were on that podium. They all said in unison, “that we came back with a good Constitution and we messed it up here”. Everybody heard that. Mr. Chairman, the truth can be buried for a while but it always oozes out after certain period.

What we are debating here Mr. Speaker is tantamount to trying to re-invent the wheel. The wheel was invented in 1963. So, many having listened and I am always around here, having listened to the contributions so far made by the Honourable Delegates, I have not found one man or one lady, who says we should continue with the present system of governance and I am happy. Because they could not see what we saw in 1963, now that they have had forty years of suffering, they have woken up and they want to take the “gari” and drive it themselves.

Clapping by Honourable Delegates.

Mr. Chairman, we must also understand and I agree with the last speaker, the 1963 Constitution was not given opportunity to operate, it was killed before it was allowed to work. That is the ugly truth. Some people had their own agenda and they made sure the powers that we had decentralized right down to wananchi, was again put back to the centre and in the one man’s hand. A man and his clicks, who could do anything and nobody will check on him. A man who could take a Member of Parliament right from the floor of the house throw him into detention, at his pleasure. You are detained at the pleasure of the President. We were only released because he happened to die. *Clapping and Laughter from Honourable Delegates.*

Those who have not tasted this power, would understand from us. Even today the Honourable Delegates are enjoying that privilege, whereby now that you are a Delegate you cannot be arrested coming to this place or leaving this place for your hotel or your home. But despite all that, too much power is in the centre, we had to be taken out of Parliament and thrown into detention at somebody's pleasure. You have tasted it, some of us who have tasted it will make sure that we decentralize these powers right down but not in the manner some people are thinking about. Let me tell you this, we talked of regions, I know from the sufferings that you would like to have these powers sent right down to the District, even the Village because you have suffered for forty years. But I want to give you this view, take it or leave it. If you take Districts to be the centre of power with everything, there are some Districts which will not be able to run their own business.

Let us look at this and I am on this Committee of devolution, we would like to look at the region, the Country as such. Do we need more units and how do we get this District, that District coming here and forming some reasonable, economical, political whatever, viable. ***Clapping by Honourable Delegates.*** When we do this, we will not be taking into account the propaganda, that if you have these regions, then you will not allow anybody else to come to this region. Far from the truth Mr. Chairman, those who are in that region belong to that region. All they have used in that region not used that region to siphon the wealth and whatever sent to the original District where I came from, they should be committed to that region and stay there and develop that region. ***Clapping by Honourable Delegates.***

Mr. Chairman, I would like also to say this, we who are alive we want this country to be a happy country. You cannot be happy if one of your brother or sister is not happy. Look at your own hand Mr. Chairman, those fingers are not equal, we must devolve a Constitution that will take care of all these fingers. There is nobody who should be left out, if you cut this finger here, the rest of the fingers will also feel the pain. So everybody is important. ***(Clapping by Honourable Delegates).*** We must look for the weak ones to carry them over, we do not say that he is from that area, that District is very poor leave it there. No, taxation is also provided for in this Independent Constitution, whereby a certain percentage will remain in the region and a certain percentage goes to the headquarters which will take care of the weak District around. ***(Clapping by Honourable Delegates).*** This is what we should do Mr. Chairman.

Last, Mr. Chairman, I would like to point out, though you distributed the Independent Constitution to Honourable Delegates here, you left out the schedule. Actually it means nothing to you unless you read a schedule. Schedule one to eleven is not there and I have asked the CKRC to provide those schedules, so that it makes sense to the Honourable Delegates here Mr. Chairman. If you look at that, look at everything you think of, please take that Constitution and I agree with the Honourable Member, if you had allowed that Constitution to function, we would not be where we are. But of course everything is not bad, nothing is hundred percent good nor is there everything that is a hundred percent bad. Because of the suffering the people have had, I am happy to say you have now woken up, do not let it out. Do not leave this power again to go to the centre, for it shall be back here again. Thank you Mr. Chairman. *Clapping by Honourable Delegates.*

Hon. Delegate Joseph Nyaga: Thank you very much. I suggest we now take a quick break for lunch, we wind up in the afternoon or shall we finish now? *Noise from Honourable Delegates.* Okay, there is a Delegate who wishes to make a statement, Makau Mutua, where is he? *Noise from Honourable Delegates.* Makau Mutua.

Then while he is preparing ad-hoc Committee on culture. The earlier announcement was you would meet tonight. No, you are meeting over lunch break in the VIP tent, lunch will be served. Ad-hoc Committee on culture. Bwana Makau Mutua.

Hon. Delegate Prof. Makau Mutua: Thank you, Mr. Chairman. My name is Prof. Makau Mutua, Delegate number 452 (*number belongs to Willy Mutunga*) representing Political Parties. I want to thank you Mr. Chairman for giving me a chance to issue this personal statement on my behalf and on the behalf of Dr. Willy Mutunga. Honourable Delegates should be aware that on Friday there was a discussion in which our names were mentioned. We do not know exactly what the contents of those charges were, but we have been able to get a rough synthesis-- excuse me, 582, yes?

Hon. Delegate Bonaya Godana: Wouldn't you allow him to read his statement which is a response to an earlier point of order?

Hon. Delegate Njuguna M. Kung'u: Mr. Chairman, this is a very important point of order. My name is Njuguna Kung'u from Political Parties. The Honourable Delegate is not sworn in as a Delegate in this Conference and therefore he is a stranger (*clapping by Honourable Delegates*) and cannot address the Conference.

Clapping by honourable Delegates

Hon. Delegate Prof. Makau Mutua: Mr. Chairman, if I may continue, (*noise from Honourable Delegates*)

Hon. Delegate Bonaya Godana: Mr. Mutua, please save us this embarrassment. Have you been sworn in?

Response from the Honourable Delegates: No.

Hon. Delegate Bonaya Godana: Order. It is a very simple matter. Did you swear before this Conference?

Hon. Delegate Prof. Makau Mutua: Mr. Chairman, can I speak for myself? I was sworn in on May the 2nd, over there at the front. I do not know why some Delegates keep on insisting that I am not a Delegate in this Conference.

Hon. Delegate Bonaya Godana: Continue.

Hon. Delegate Prof. Makau Mutua: Thank you, Mr. Chairman. I simply want to say that we are responding to the comments made by some Honourable Delegates last Friday, comments which appear to have been sparked by a story in Daily Nation of the same date. We need to make it clear to the Conference and to Honourable Delegates that the Kenya Human Rights Commission for which we work, has been agitating for a new Constitution for the last 13 years. We have all well supported a people centred process in making of Kenya's Constitution. We have never challenged the sovereignty and legitimacy of this Conference of which we are proud

members. We realize that the Conference is a microcosm of Kenya. It is multi-ethnic, multi-religious, multi-racial, multi-class, multi-generational and multi-regional.

Hon. Delegate Martin Shikuku: Point of order. This Conference is gender balanced and represents minorities as well as people with disabilities. We support the essence of duty and history.

Hon. Delegate Bonaya Godana: Shikuku, you don't want -----(inaudible)

Hon. Delegate Prof. Makau Mutua: The Honourable Delegates have displayed in their deliberations so far--

An Hon. Delegate: On a point of order.

Hon. Delegate Prof. Makau Mutua: We applaud the challenge, the courage of Honourable Delegates to jealously guard the Constitution making process from political manipulation.

Hon. Delegate Joseph Nyaga: You do not want to let him finish? Shikuku 595, one minute.

Hon. Delegate Prof. Makau Mutua: Mr. Chairman, can I finish my statement?

Hon. Delegate Joseph Nyaga: Please, can you let him finish?

Honourable Delegates: No.

Hon. Delegate Joseph Nyaga: Shikuku, yes please, one second, Shikuku.

Hon. Delegate Martin Shikuku: My Point of order, Mr. Chairman, I am sorry if I am a nuisance, but I like order. The Honourable Delegate said, and could he resume his seat when I am on a point of order.

Hon. Delegate Joseph Nyaga: Yes, Mr. Shikuku.

Hon. Delegate Martin Shikuku: Thank you.

Laughter from Honourable Delegates.

Hon. Delegate Joseph Nyaga: Can you address the Chair Please.

Hon. Delegate Martin Shikuku: Mr. Chairman, he said he was sworn in on May 2nd. If you look at votes and proceedings of that date, there was no swearing in ceremony or administration of oaths (*clapping by Honourable Delegates*) and Mr. Speaker here is the (?), let him-- I want to table for you to see, there was no administration of oath on 2nd May.

Hon. Delegate Prof. Makau Mutua: Mr. Chairman, I think it is for the Chair of the CKRC to declare. You know I cannot --

Hon. Delegate Joseph Nyaga: Could you also, because it is lunch time conclude quickly while we are sorting out this thing please.

Noise from Honourable Delegates

Hon. Delegate Prof. Makau Mutua: So, Mr. Chairman, I will finish my statement.

Uproar from Honourable Delegates.

Hon. Delegate Joseph Nyaga: Order, order. Please let him finish please.

Honourable Delegates: No.

Hon. Delegate Joseph Nyaga: I plead with you, please let him finish. He is almost through.

Response from Honourable Delegates: No.

Hon. Delegate Bonaya Godana: Order, Order. Order. Order Delegates Order. Order, Mr. Makau Mutua, please sit down. Order, order fellow Delegates. Order, order. I think I did give some communication from the Chair this morning when we started that we had received complaints that there are many Delegates, a significant number of Delegates who have not taken the oath of office and that the legal consequence will be that if they have not been sworn in properly, they are strangers and if they have already made communications or contributions, query whether those contributions should not be removed from the records. As it is now, we have a situation where the Honourable Member says he was sworn in and he has cited the specific date, the votes and proceedings copy that we have been shown does not show that there was any swearing in on that day but I think we have also been told in the past that may have been some typographical errors. As we check this--

Honourable Delegates: No

Hon. Delegate Bonaya Godana: As we check this, so as not to waste unnecessary time after lunch. May we allow him to finish because it is--

Honourable Delegates: No.

Hon. Delegate Bonaya Godana: Order. Because after all-- Order. In fact if we establish that he was not sworn in, the consequences will be very grave in addition to his record being (?) but you will recall that Delegates in this hall a few days ago raised serious allegations, that two Delegates the Honourable Mutua and the Honourable Mutunga had issued statements which offended the Delegates and you had demanded that they be asked to come here and explain and I think that is the purpose of his point of order. He is standing not to contribute on the debate, but indeed to respond to that. I think it is worth for that, you should allow him to wind up and we will still revisit the matter, it is not the end and we will still have to get it from the records and establish that in fact legally he was a stranger. Okay?

Honourable Delegates: No.

Hon. Delegate Prof. Makau Mutua: Okay, Thank you Mr. Chairman. Mr. Chairman--

Hon. Delegate Bonaya Godana: Can you also wind up please?

Hon. Delegate Prof. Makau Mutua: We applaud the courage of the Delegates to jealously guard the Constitution making process from political manipulation.

Speaker: Point of Order Mr. Chairman. Point of order. Mr. Chairman, why can't we wait until you verify the records and then he can answer in the afternoon?

Hon. Delegate Bonaya Godana: Order, order. You know Honourable Delegates, Honourable Delegates, I think the minimum that we can do here, you may disagree with the Chair but for heaven sake accept the ruling. There are procedures for revisiting it later. (*clapping by Honourable Delegates*). We need to have order. I have said that for the moment, you will allow him to speak without prejudice to the serious consequences flowing from the recognition, if we do establish that indeed he is not a valid Delegate. Alright? Let us allow him to finish.

Hon. Delegate Prof. Makau Mutua: Okay, thank you Mr. Chairman if I may finish. I was saying that we applaud the courage of the Honourable Delegates to jealously guard the Constitution making process from political manipulation. It is evidently clear to us that such political manipulation would want the process either irresponsibly rushed or irredeemably delayed. We support the process that will give Kenya an effective Constitution, a process in which Honourable Delegates create a balance between conflicting political manipulations. It is Mr. Chairman on the basis of these beliefs that we believe that Delegates ought to think about what happens after June the 6th. It appears to us that given the pace of progress that we are making, it may not be possible for us to go to committee working groups--

Hon. Delegate Bonaya Godana: Mr. Mutua, I am sorry I have to intervene. I think we gave you the floor to respond to the allegation which was made, not to make a statement.

Hon. Delegate Prof. Makau Mutua: That is what I am doing, Mr. Chairman.

Hon. Delegate Bonaya Godana: Not to repeat the same statement or make a statement.

Hon. Delegate Prof. Makau Mutua: I am not making a statement, Mr. Chairman, I am simply-

Hon. Delegate Bonaya Godana: Just respond to the statement.

Hon. Delegate Prof. Makau Mutua: Yes, I am simply saying that the statement which was carried in the local press, indicated that we wanted the Conference to be disbanded. Nothing could be far from the truth, but we were saying, Mr. Chairman that we need to think about what happens between, after June 6 and August when we resume and what we did was to make some suggestions about the way forward., that this Conference ought to think about after June the 6th. It is, I think our responsibility to think about what will happen after June the 6th so that when June the 6th gets here, we are not simply ambushed by lack of a schedule. What I was suggesting along with the Commission was that we adopt one or two options that is all I was saying Mr. Chairman. The first option was that I wanted a team of experts to be appointed to synthesize the comments of this Conference refine the Draft Constitution and prepare a report so that when Delegates come back in August, they can adopt that particular Draft Constitution.

Hon. Delegate Joseph Nyaga: I think in fairness, we have given you enough time in fairness. Delegates, let us break for lunch. I think your point is clearly understood by everybody in fairness, and let us leave it at that. The point is very clear, thank you very much. We will meet in exactly 45 minutes time, 2.15 p.m. Thank you.

The meeting adjourned at 1.30 p.m.

Afternoon Session

Hon. Delegate Bonaya Godana: Delegates, please move in to your seats. Delegates, please move in and take up your seats. Delegates, please take up your seats and Honourable Nyaga, my Co-Chair, come up to the podium.

Hon. Delegate Joseph Nyaga: We are now ready and I am going to call on District Delegates from this area, District Delegates from this block. Number 307.

Hon. Delegate John Nyaga Waruri: Thank you Bwana Chairman for having given me this chance which is my first time and I will go straight to my points. My name is John Nyaga Waruri, District Delegate from Kirinyaga. I will talk about the levels of Government, Article 215 (1) A; on Village. I propose that we delete the word Village completely and replace it with sub-location throughout the Chapter.

On Article 216 (1), this is where the Draft says that the ‘Village decides’. We should not have anywhere, where a Village decides, whether to elect or to appoint elders. I suppose everybody should be subjected to an election whereby everybody should participate; be it in the village, elders or anybody else. Still on Article 216 (2), we are not told how these people would be elected because it says, “they should elect 6-10 Village representatives in a Village” which I propose to be a sub-location but we do not say where these people will be elected from, whether from ‘itura’, ‘manyatta’, clan or whichever and that should be specified. At the same time, we should say that a third of the members should be women.

Article 217, should read, ‘the Location Council should consist of two representatives, one of whom shall be a woman’. In 2 and 3, delete Locational Administrator and replace it with Location Chairperson throughout the Chapter. We should also specify on the qualifications of those who are to be elected because we do not want to have primary dropouts being location chairpersons. We should have people who have attained ‘O’ level and above.

Article 218 should read, ‘The District Council consists of members directly elected by the registered voters of the district and the ward or location determines the number of representatives to the Council’. Alternatively, it should read, ‘The District Council shall consist of Locational Chairpersons elected at the Location or Ward level’. Still on Article 218 (3), you should delete District Administrator to read ‘Executive Mayor’ or ‘Executive Chairperson’ throughout the Chapter. Those people who would be elected as Executive Mayors or Executive Chairpersons, should have specified qualifications which should be ‘O’ level and above and not just ‘O’ level

but somebody who has attained maybe a certificate, diploma or a degree. This is where we are going to devolve power and therefore we should have people who are more qualified.

Still on Article 218, we should add another number which is seven to read, 'The District Council shall nominate Councillors to cater for Special Interest Groups, a third of whom shall be women, in case those Special Groups are not elected at the district level. Perhaps we should ask ourselves when we should want the Executive Mayors and the Chairpersons to be elected although this will come during transition, but it should start next year in August when we have elections for Mayors and Chairmen.

I would also propose the term for elections for Civic Councillors or the representatives at the district level that it should be for five years and not four years. We should also ask ourselves whether Members of Parliament, should actually be Councillors of that Local Council, just like it is the case in Tanzania. Thank you very much, Bwana Chairman.

Hon. Delegate Joseph Nyaga: Thank you very much. I am now looking for somebody from the other categories, Special Interests, Political Parties, Religious Groups and Women from this block, please. If you are not in that category, please do not raise .I recognize number 540.

Hon. Delegate Nthamburi Zablon: Thank you very much, Mr. Chairman. I would like to go straight to the points without wasting time so that I can give somebody else time to speak, I can share time with others if I can be quick enough.

My name is Nthamburi Zablon, Delegate number 540, from the Religious sector. In particular, I would like to speak on the whole aspect of the village. I think we should delete the word Village because to me, it does not make a lot of sense and I see powers devolving from the centre to the districts and to the locations. Personally, I see three stages and because we need to make this process much more people-friendly, we need to know that carrying too much baggage can be a problem as well since we do not have much resources to go around and carry a big administration. So, I would recommend that we have three centres where power will be devolved into which is from the centre, to the district and lastly to the location.

Mr. Chairman, the other aspect that I would like to draw attention of this meeting to, is Nairobi where I come from. I would say that Nairobi should be considered under the special category. I would like to see boroughs created in Nairobi, which are more like locations, but boroughs, so that it is not seen as one entity because it is a bigger extra district and you can even make it a Province. It needs to be considered since it is big and it does not infringe upon any other district, so it is special. So, I would like Nairobi to be treated in a special category of its own.

The other aspect I would like to see, Mr. Chairman, is that when it comes to Article 224 about financial arrangements, I would like to see some percentages being put so that when revenue is collected at the district level, we should see what percentage remains in the district and what percentage is passed on so that the district is left --- Or rather, it may not even be the district, it may be a region because I would like to see viable units being created so that we maybe able to function. It may be three, four or five districts put together and given a name, probably a County, or another term that would be much more viable, a unit than just a district because the district might be too small a unit for administrative purposes. I would like us to think of a bigger unit than just a district that would be viable economically and administratively.

The other point, Mr. Chairman, just before I sit down, is the whole question of sharing resources. The way I see it is that unless we put a number of districts together, it may not be easy to share resources, and I can see the sharing of resources actually dictates having bigger units for administrative purposes. In particular, if we put units that have a common interest, it would be easier to govern the distribution of resources in an easier way. Thank you very much, Mr. Chairman.

Hon. Delegate Joseph Nyaga: Thank you. The next category MP who has not spoken, or who has spoken only on a point of order. *(Noise by Hon. Delegates)*

Excuse me, if you allow me, and I know you will, please I am pleading in advance. There are people who have participated in this system like we had former Vice President of Nyanza speak the other day. That was useful to the meeting I think, wasn't it? It will be useful if Hon. Nyachae could speak to us because you got the top of the bottom. *(clapping)*

Hon. Nyachae, thank you for supporting me, I will skip you next time, that section.

Hon. Delegate Simeon Nyachae: Thank you Mr. Chairman. I have been quietly listening to the discussion on this subject and I believe that some of us will be making more detailed contribution when we go to the Devolution Technical Committee. However, I believe Mr. Chairman here at Plenary, we need to consider certain basic principles of devolution.

Now if you go back to the Majimbo days, why did Majimbo not work because a lot of people seem to be thinking that Majimbo failed because the then President and his Cabinet wanted to take all the powers. That may be one of the reasons but there are many reasons that made things quite complicated, because the principle which must be considered and it was promised at that time at independence but it never worked, that is how do you help the regions which are economically not strong enough to support themselves? At that time education was given to the regions, but some regions could not cope to support the education system and therefore the issue of viability of devolution and decentralization must be taken into account.

In 1965, the then Government realized that certain regions were not able to support themselves. In Sessional Paper No.10 of 1965, they promised that national resources will be diverted in equitable but favouring the regions which were economically weak. This has never been done. And this is something you have to consider, are you willing, when you are talking about devolution, are you willing to spare, not from one district being asked to release resources to a neighbouring district, that will not work. The human nature is such that selfishness will not allow. But at the national level the revenue you earn, how much are you going to allow to go to district which have remained behind and which are economically weak? In Germany when they joined hands, national resources were diverted to the previous East Germany, more than the West Germany. Are you prepared to do that? This I think is an issue, which has got to be considered Mr. Chairman. Right now as we are talking here, we are talking about devolution and we are saying you are going to have the Local Governments and the rest of it. Do we really feel serious about this without considering the economic devolution?

In North Eastern, 67% of the population there are below poverty line. In Nyanza, the Luo Nyanza 66% are below poverty line. In Central 32% only. Then majority of areas like Rift

Valley, some of the Northern areas like the Uasin Gishu and so on, they are somewhere around 49/50%. You go to Turkana, it is over 60%, how are you going to share resources so that everyone of us, when we talk about power we cannot give power to the ordinary family at home. It is food the ordinary family requires. Here in Nairobi now, what is really not being considered is that it is only about 20% of the population. If you devolve power here, it is only about 20% of the population here which leaves comfortably. The rest are in slums, they don't know what to do, a man and wife are having four children and they are earning, whatever they do will be an average of eighty shillings or below per day. How many children can actually get enough food, five of them, the wife and husband with eighty shillings in Nairobi. These are issues we have to consider.

Mr. Chairman, in this Paper you have for instance recommended, under 213(1)(e and f), you have attempted to talk about this economic issue, but when you go through the Chapter that issue has not been dealt with. So are we prepared to look at economic viability. Now Mr. Chairman, I am saying this because I went through, just before I retired from the civil service, I attempted to implement the Sessional Paper of 1965. I produced what we knew as the district focus, when I retired it was got rid of and it was got rid of because the intention was to help the poor areas to get their fair share. Is this going to be done this side? Or are we just saying you have the powers and you can talk about powers but the economy you can represent yourself. These are issues we have got to look at when we are talking about devolution Mr. Chairman.

Mr. Chairman, when we are talking about devolution, are we talking about the existing systems of boundaries or are we talking about the viability? For example, how do you have a place like, let me give example of where I come from, Kisii. Do you have to devolve to the District and Kisiis three districts? Their economic activity across the board in the three districts is the same. Isn't possible to combine them and make them a unit? (*Clapping*) Rather than saying let devolve to a district? Now when you are talking about the Masaailand, the problems of the Masaai from Transmara to Loitoktok is water, the grazing, all these, their needs are the same. Isn't possible to make them a unit in devolving, so that they can plan their things together? (*clapping*) Then you have the commercial farmers, like Uasin Gishu and Kitale, Nandi you can bring them together. How are you going to divide units to districts, for instance, take the Coast Province. You take Kilifi, you take Kwale, they all grow Korosho and Minazi, how are you going to say the DC

should be based at the district level? If we are going to build the economy of the people, then make Korosho viable, all people should be involved in the whole thing. The same should apply in the case of Nyanza and Western Province. I don't want to go into details Mr. Chairman for now, but I am lucky that I may be selected to go to the devolution, so I will make my contribution there. Thank you for the opportunity.

Hon. Delegate Joseph Nyaga: Thank you very much and I thank you for allowing the Chair to make arbitrary decision. I am looking for a district delegate from the next category. District delegate, preferably one who has not spoken. District Delegate 282.

Hon. Delegate Lydia Kimani: Thank you Mr. Chairman, I am Delegate number 282. Name is Lydia Kimani. I stand here to support Chapter 10 on Devolution. Kenyans while they were giving their views to the CKRC, it is evident that they wanted devolution, but as we come to devolve, I would like to draw your attention to what the previous speaker actually has said. Let us devolve but let us devolve to viable institutions. Having said that, because what I wanted to say, most of it has been said, I would like to talk on a few institutions, comment on a few institutions, that is Communication, Health and Education. These should be left for the National Government and Security as well. We know that we have been talking of marginalized groups but let me tell you my fellow delegates, that everyone here has been marginalized in one way or another. There are some districts where you will go and you will not find a single foot of tarmac. There will be some areas where you will go and not find a single pipe of water. There are some areas where you will go and may be we are the producers of electricity. So we are saying as much as we know we have been unfairly treated for the last forty years, we are saying let devolve to institutions that are economically viable and I want to support what Honourable. Nyachae has said that there are districts that can be combined and be viable institutions of devolution. I don't wish to take the five minutes because most of what I wanted to say has been said but let us devolve and devolve in such a manner that we are not coming to destroy this country. Thank you very much.

Hon. Delegate Joseph Nyaga: Thank you very much. I am now looking for people in the category of political parties, religious groups that set of category. If you have not spoken that is.

And I recognize number.... Political parties, that category? Somebody who has not spoken please, or who spoke on point of order. 528, have you?

Hon. Delegate James Mageria: Thank you honourable Chairman, my name is James Mageria, Religious organizations. I feel that devolution of power is the best thing that will have happened to Kenya if we introduce it in this Constitution. Devolution of power must also, particularly be based on principle. We were given quite a number of principles by the Chair and also by the Commissioner who so eloquently spoke to us but I think two principles are paramount. Principle number one is efficient and effective service delivery to the people of Kenya. So services. Number two is equitable development and distribution of resources not just distribution because we cannot distribute what we do not have. So equitable development and distribution of resources to our people.

For an effective devolution of power to happen, it will require a complete paradigm shift, moving from centrally driven development and distribution of resources to people driven. So that people feel that they have to participate to develop those resources so that when the distribution is being done, the contribution in development authority offices will be rewarded. Unless people know that they will be rewarded for the hard work that they have put in, you will find that devolution may not take root.

To do that we need to move again, a paradigm shift from the things that we know about districts and provinces and locations at look at the whole country afresh. And looking at it in terms of viability, in terms of sustainability, so that we don't just look at the districts as they are we get what we call paralysis just looking at what has happened before. Because it happened, it must happen as it was in the beginning is now and for ever shall be. I think that is a dangerous route to take. Let us brace ourselves and look at our country afresh and see whether or not we should not change the boundaries in such a way that we have viable, sustainable Counties. You can call them any name like 'Sehemus' or Counties so that we don't get fixated to the things we are used to and be locked down there.

Having divided those, we need also to consider, constituencies so that representation and services, that is administration are paired so there is counter checking, there is standardizing and

making sure that there are checks and balances all along. So I would like to suggest that from the Counties which are viable economically because economy is the essence of all these things we are talking about not just political power. Then we go to constituencies you can give them any other name, so that those are divided to the Counties being about 20 to 30 constituencies could be 200 to 300 and we will have now the governance centred there. From there then we go to locations or wards or whatever you want to call them, there again making sure that we have both administration and representation paired at those levels. So instead of us going all the way down to the village I was suggesting three levels of devolution. One, viable sustainable 20 or 30 Counties. Two, constituencies for the sake of administration and also production of resources, also that representatives and administrators will be there, they should be about 200 or 300, that is a detail to be dealt with. And finally, the locations and within the locations and within the locations then they can have the small divisions at the other levels. So this is what I would like to suggest but let us keep our eyes, our ears and our attentions to two things; services and viability. Thank you Mr. Chairman

Hon. Delegate Joseph Nyaga: Thank you very much. I am looking for an MP in the next section. An MP, 081.

Hon. Delegate Simeon Saimanga Lesirma: Thank you, Mr. Chairman. My name is Simeon Lesirma, Delegate from Samburu, and my number is 081. I would like just to comment on a few details with regard to the Executive authority at the district level. I would recommend that the district administrator should not be elected but rather should be a technocrat who coordinates government professional activities such as agriculture, health and other government operations and should be somebody who is transferable from one district to another.

With regard to security arrangements, I would recommend that we retain the current arrangement where central government is in charge of security arrangements from district to central government, the way it is now other than the areas where local by-laws are made in which case local security arrangements can be made to implement by laws.

On education, it can be centralized from nursery to secondary school. Most of the secondary schools in the districts are shared by the Board of Governors anyway, who are local members.

However, I would like to recommend that in every district we have a national school - currently we have 17 national schools in Kenya and I think it will be nice to have a national school in every district - which would accommodate students from all the 42 ethnic tribes in Kenya for us to remain a united nation.

In terms of the resources, Mr. Chairman, I believe that this country is well endowed. We are only unviable in some of our districts because we have been made so. It appears that those who have taken more from those who have less. If I may give an example of my district, we host one million acres of indigenous forests, we are also a district which is high potential for wheat growing and yet, Mr. Chairman, in the league of poverty we rank the highest – Samburu district is the poorest district in Kenya, 83% of the people live below poverty line. Now, I believe massive resources originate from districts such as Samburu, Marsabit, Turkana and Pokot, the so-called marginalized districts. The problem is that the resources are taken to the centre. If you look at those districts, that is where tourism is the main economic activity and yet when you look at revenues from tourism, which is about Kshs. 23 billion, very little of those resources go back. When you look at the PokotS or Mbeere people, Mr. Chairman, the water belongs to them, massive resources of water are used in those areas to generate power. Where does that power go? It passes the community there and is sold by Kenya Power & Lighting Company to people who have nothing to do with those resources. So, I believe that some of the resources can remain behind, the magical formula of one third, as the rest can come to the centre for redistribution to the rest of the nation. They should be enough for all of us. There are enough resources in this country.

Finally, Mr. Chairman, there is a clause on suspension of government. I believe this is a dangerous clause; suspension of government should not be done by the President or by the Prime Minister. It should be left to the local people to determine whether the government is running well or not and they can vote it out through a democratic process. Thank you very much.

Hon. Delegate Joseph Nyaga: District Representatives. I recognize 257.

Hon. Delegate Sahara Ahmed Hillow: Thank you, Mr. Chairman, for keeping me so long. I am just on the track. I would like to support the Chapter on devolution – My name is Sahara

Ahmed, District Delegate Mandera, and number 257. Mr. Chairman, I would like to contribute on Article 214(2) that the Organization of the Devolution of Principles of devolved government as subject to the constitution: (a) “The structure of devolved authorities is based on democratic principles and the separation of powers”. Mr. Chairman, I would like to add, “and the protection of rights on the basis of participation, accountability and social justice”.

The other thing I am supporting, Mr. Chairman, is whereby it is said in the same Article 1(e), “at least one third of the councils are women”. I would like to say, “at least one third of the council shall be women”. Mr. Chairman, I support the devolved power for locations and districts and I would like to delete the provincial administration of the Provincial Government as stated.

My other contribution, Mr. Chairman, is on the staffing of Devolved Authorities on Article 223. On this Article, Mr. Chairman, probably on number 4, I would like to add “the district service commission”. I would like to add this because most of the parts of the country, as you know, for example, the Northern frontier districts, have so much been marginalized and forgotten in the past in the history of this country. For that matter, I would like the staffing of the Devolved Authorities is to be employed so that employment opportunities can also be near to those places. Mr. Chairman, we have suffered under the rule of central government because those parts of the country, like the NFD, have been so marginalized for the whole of that period until the poverty line is even below recognition. These areas are still far from developed and the poverty line beyond estimate due to the historical injustice that has taken place in that part of the country.

I would also like to contribute on Article 224, which is the Financial arrangements, and I would like to point out that number 3(c), Equalization grants paid to marginalized districts. I would like these grants to be defined and the districts, which have suffered historical injustice and cannot cope up with the developing country Kenya benefit. I therefore would like it to be specified the amount of percentage of money or grant which should go to this part of the country; and I would suggest it to be at least 30% of the national grants to go to these districts, Mr. Chairman, for a limited period of about 20 years, so that development that has been lagging behind in this part of the country can be compensated, Mr. Chairman. As you know Mr. Chairman, in most of those service delivery points of the country which are densely populated, the walking distance in search of water is about three kilometers while in the remote parts like where I come from, the

walking distance is between 30 to 100 kilometers away, whereby somebody can go looking for water for about 72 hours. Mr. Chairman, it is in this sense you probably heard about Mandera sometimes back in the news, that people fought over water with monkeys. That means, Mr. Chairman, that the provision of basic needs in that part of the country will be a historical milestone. Currently, still people are walking for long distances, from one village to another as a means of communication, just the same way they did a long time ago.

Mr. Chairman, the other thing I would like to comment about is that the economical background of that pastoral community is the livestock and livestock products which have been ignored from a long time ago and up to this time the ----- (inaudible) which is agriculture, is having a lot of boards. For example, they have the Coffee Board, the Tea Board and probably very soon we may have the Sukuma Wiki Board of Kenya. In that sector they have ignored the huge livestock market products for a long time yet it is the social economic background of the marginalized or the pastoral community. So, Mr. Chairman, I would like to conclude and probably propose the establishment of the Kenya livestock and livestock products board. Thank you very much.

Hon. Delegate Joseph Nyaga: Thank you very much. 347 please. You have not spoken 347, you might be judged out spoken now.

Hon. Delegate Kemboi Chelagat Naftali: Thank you Honourable Chair person. My names are Naftali Chelagat, District Delegate Baringo. I would like to know whether it is in order for Chair only to be recognizing Members of Parliament when it comes to column.

Hon. Delegate Joseph Nyaga: It is not in order, you are quite right and in that column I have recognized a political party, I have recognized women and I have recognized District Delegates, so I will bear in mind what you have just said.

Hon. Delegate Ali Abdul Bakari: Thank you very much Mr. Chairman, for giving me this opportunity, although it came a little bit too late in the day. Mr. Chairman I would like to join my colleagues in thanking or congratulating the Commissioners for making a serious attempt in defining this structure of Government for us.

Mr. Chairman, like all the other speakers have perhaps said it is now quite evident that the structure that we have adopted and practiced for the last 40 years has not served this country. It has not served the citizens of Kenya, it has only served a few individuals. Mr. Chairman, Kenya being a unit, any structure that you set up certainly must be seen to be serving the community. Must be seen to be serving that institution that unit effectively and efficiently. A structure set up is never permanent because the environment changes, the needs of the community change and the needs of Kenyans have changed and it was never even the same in the first place because it was imposed on Kenyans. It is unfortunate that it has continued to be sustained because it served partisan interest. Mr. Chairman, there is no structure that remains permanent, because they are meant to serve people and it is high time this one is overhauled.

For example, Mr. Chairman, and Honourable Delegates we have a system where we have employed public servants, we are paying salaries, there are no development activities, the community need service, there is no service and tax payers money is being used or has been used only to pay salaries. Are we serious when we are talking about development and we want to pay salaries only? And we don't own services to the people? The social infrastructure is totally lacking, what have been doing? It is very, very unfortunate that we have sustained that kind of a structure that has not served this country at all, at all.

Mr. Chairman, perhaps to add my voice to the rest of the Delegates, I agree devolution has to be in sustainable units, and when we are talking of sustainable units here, the issues that we will be looking at, the factor that we should be considering is the level of development of those units, the infrastructure, the practice, the main economic state of those particular units so that like Honourable Nyachae perhaps said when you are signed a particular area, when you are picked on a particular area, for example Marsabit, Isiolo and Moyale, it is quite evident that their nature of problems are the same and you will be addressing those issues. When you have touched one issue, water for example, then water is a problem certainly across the board. When you talk about roads, a road is a problem certainly across the board, not a single tarmac and many Delegates here have mentioned all these. Now that these have been practiced for quite a long time, the point I want to emphasize is about the equalization fund that has been mentioned in this document. This matter perhaps has not gotten the emphasis that it deserves, redistribution

on a deliberate effort by the system to redistribute the resources with a view to ensuring that there is equity across the country, is absolutely necessary and these matters must be seriously emphasized.

Mr. Chairman, I wonder whether we will get out of this, because some of our communities in this country have been reduced to underclass. You know the watchmen of this country if you look around; they come from the same community. The cooks of this country if you look around come from the same community, it is not by choice, it is the system that has dictated to them. The structure that we have adopted over a long period of time and sustained it that has put them in that situation.

Affirmative Action in mandatory here, Affirmative Action is mandatory. Mr. Chairman, while we devolve, there must be some reasonable link between the centre and the devolved units, the links that must hold us together as a country, because that is what we have agreed as a nation to maintain. But the needs that are beneficial to this country, that the needs that are beneficial to the people of Kenya wherever they are.

Mr. Chairman, I don't take a lot of your time, but just to emphasize the issue of natural resources. Natural resources must benefit, particularly the minerals, the dry lands of this country have a lot of potential as much as people are saying they have no potential, they have a lot of potential underground, if you don't see it up, it is bellow the sea level or bellow the surface level. And those must be seen to benefit initially the communities where those resources are found. Thank you very much, Mr. Chairman.

Hon. Delegate Joseph Nyaga: Thank you very much. Do we have any District representatives here? District People here, this section, give me a minute. *(Clapping by Honourable Delegates)*. Oh, yes, I am being asked, there is a very old veteran, Gitu Kahengeri. Lets go after the people who were there at that time, shall we? Yes, thank you being so understanding, I will come to you a man who was there Bwana Gitu Kahengeri, 316. Is that original structure? Let us see how it was like in those days. I am sure you accept and when we get there identify some of the senior categories. *(Clapping by Honourable Delegates)*.

Hon. Delegate Gitu Wa Kahengeri: Shukrani sana Bwana Chairman. Kama nilivyosema wakati ambao tulianza mkutano huu, mimi ni freedom fighter. Na habari ya devolution, ilikuja katika kichwa changu tangu nilipokuwa wa miaka ishirini. Kwa sababu niliona wale waliokuwako na sisi, oh sorry. Nimeulizwa kusema jina langu. Jina langu ni Gitu Wa Kahengeri na nimesema pia mimi ni freedom fighter na Delegate namba yangu ni 316.

Kwa hivyo tuliona Wazungu wakitunyanyasa kwa sababu ya ukubwa, tuliona tunataka power iwe devolved, na hiyo ndio sababu yake sisi tuliona kufa na kupona mpaka hii power iwe devolved. Mpaka sasa, tunajua binadamu ni kitu hatari. Binadamu akiwa na uwezo, anaweza kuja katika kichwa chako, akachimba mashimo manne akaweka nyumba juu yake, halafu ukitembea unatembea naye. Hii ndio kawaida ya binadamu.

Kwa nini tunataka devolvement ya power? Ni kwa sababu, watu wote wa nchi hii walizaliwa na wakapewa bongo, mikono, wanaweza kutembea, kufanya kazi na kufikiria. Kwa hivyo ikiwa tuna Serikali ya nchi ya Kenya, sio haki iwe kwa watu wachache. *(Clapping by Honourable Delegates)*. Hii ndio sababu tumeungana hapa, tangu tulipoanza kuzungumza, nasikia Delegates wengine nikisikia hivyo, nasikikia uchungu kwa roho wakisema, marginalized. Hili neno ndilo tunataka kumaliza katika nchi ya Kenya. *(Clapping by Honourable Delegates)*.

Sisi tulizaliwa katika nchi ya Kenya, kutoka Namanga mpaka Moyale. Kutoka Indian Ocean, mpaka Lake Victoria. Wale watu waliokati hapa wanahaki ya kula, kuvaa kwa njia iwezekanavyo, kutokana na mali iliyo katika nchi yetu. Kwa hivyo Mr. Chairman, mimi nilikuwa Chairman katika Majimbo yaliokuwako 1963. Na mimi nilikuwa Chairman wa law and order, mimi nakumbuka watu waliopewa vichaka katika scheme uitwayo Ithanga. Namna ambayo tulifanya na tukaona watu wa nchi hii wakiwa Wakamba, wakiwa Wakikuyu, wakiwa Wajaluo wapate makao Ithanga, hii ndio sababu yake sisi tulipigana na Wazungu.

Mimi ningewauliza, Honourable Delegates, kila mtu anaweza kusimama na kusema habari ya district yake, anaweza kusema hakuna maji, hakuna shule na tunajua inaweza kukosa. Kwa sababu kila nafasi ya nchi yetu sio lazima iwe na rotuba. Mahali iliyo na rotuba na sisi ni nchi yetu, ni lazima tufanye sacrifice. *(Clapping by Honourable Delegates)*. Wakati tutakapokuwa na raha katika nchi ya Kenya, ni wakati utasema mimi nikiwa na mkate, ndugu yangu hana,

tutagawana. *(Clapping by Honourable Delegates)*. Kama hatutafanya hivyo na kila district ikikubali hiyo, basi sisi tutakuwa na mivurugano ya kutoka tulipoanza mbele kabisa mpaka mwisho, hatutakuwa na raha.

Mali ya nchi ya Kenya ni nyingi, na inataka kuendeshwa vizuri na watu wa haki. Sasa wale watakaokwenda katika kamati ya devolution, wajue tunataka nchi hii iwe na counties, bigger sized than a district, *(Clapping by Honourable Delegates)*. Halafu ndio tena tuseme hakuna wale watu wanaitwa marginalized, watu wa Kenya ni watu wa Kenya, tuulize central Government ya kwamba kodi ambayo tunatoa, watu wanaotoa kodi kutoka Ijara, kutoka Tana River, kutoka Thika kwetu, kutoka kila mahali, iwe ni mali inayotunza watu wa nchi hii. *(Clapping by Honourable Delegates)*. Nataka kuleta mfano mmoja, wakati wa majimbo tulikuwa na devolved power, ilikuwa central Government, ilikuwa Majimbo yenyewe ya province, ilikuwa district councils na ilikuwa area councils ya division. Mtu akikuambia ya kwamba, ilianguka kwa sababu watu hawakuweza kuendesha, huyu ni mdanganyifu. *(Clapping by Honourable Delegates)*.

Lakini kuna kitu kimoja ambacho kimekuja mpaka wakati ninaposema hapa Bomas of Kenya, uchaguzi wa nchi hii ni mwovu kabisa. *(Clapping by Honourable Delegates)*. Mtu mmoja akitembea katika kando, kando ya Tana River na kuchukua ng'ombe za Wapokomo zote, zote mimi nasema zote, halafu akaenda akauza na asubuhi yake atakwenda stadium ya Tana River kuomba kiti cha kuwa Councillor. Huyo mwizi atapewa kiti, *(Clapping by Honourable Delegates)*, kwa sababu ana mali *(Clapping by Honourable Delegates)*. Najua watu wengi wa nchi hii ambao ni watu muhimu, ambao wanaweza kuaminika na ambao wanaweza kusambaza mali ya nchi hii kila conner ya mwisho. Hata watu wa El Molo wawe na chakula. Thank you very much. Nitaacha sasa, shukrani sana.

Hon. Delegate Joseph Nyaga: Aendele? Kwa hivyo nitafute wazee wengine kama yeye, sivyo? Haya jitayarisha mzee mwingine pale. Gitu one more minute. Dakika ingine moja. Endelea. Dakika ingine moja.

Cheering by Honourable Delegates.

Mzee mwingine pale ajitayarishe.

Hon Delegate Gitu wa Kahengeri: Kwa hivyo mimi nasema hivi, nyinyi mlioko hapa ni viongozi wa nchi hii. Mkitaka nyinyi kutajwa wakati mtakapokufa, lazima mfanye vyema. Mtu mmoja asifikirie district ikiwekwa ya kwetu, labda mimi ndiye nitakuwa mkuu wa district hiyo. Mimi nataka nyinyi kufikiria, tukiweka county, na mimi nikipewa nafasi ya kukalia kiti, itakuwa juu yangu kuona kila mtoto katika county hii amepata elimu. Usiangalie kama mlizaliwa pamoja, kwa sababu ninasema nchi hii mtalala vyema, kufurahia matunda ya nchi yenu wakati ambao uongozi mwema utakuwako, ambao utafikia kila mtu.

Viongozi wasifikiri wakipata ruhusa ya kuongoza, na wakigandamiza watu, wengine wanafikiria wakisema watu hawa, kwa nini hawafi? Kwa nini hawafi mimi nibaki hapa nikiwa kiongozi? Wakifa hawa, -kiongozi aliyeko hapa na anafikiria hivyo- hawa wakifa, na ukiangalia kwa upande huwaoni, na wewe jioni ya leo, utachukua kamba, utajiweka kitanzi, ufuate hawa mahali walikwenda. Kwa hivyo dunia inakaliwa na raha kwa sababu ya watu wote wanaofanya kazi ya kuendesha mambo yao mbele. Wale watakaokwenda katika devolution wafahamu hivyo. Na wafahamu ya kwamba hatutaki kukatakata nchi mahali ambapo hata tukiweza kufanya yaliyo mema, hatuwezi kwa sababu ya kuweka units nyingi kupita kiasi. Shukrani.

Hon. Delegate Joseph Nyaga: Thank you very much. Makofi kwa mzee. Ahsante mzee. Kuna mzee mwingine kama huyo? Mzee mwingine kama yule. Number what? 386, 386, mzee ulikuwa historian kama huyo sivyo? 386 ni historian kama huyo. Si ni vizuri kusikia history?

Noise from the Honourable Delegates.

Tutakuja hapo. Excuse me, no problem; tutakuja hapo. Tutakuja hapo. Sasa ni wazee hukumbuka. Sasa ni wakati wa wazee hukumbuka. Tutakuja hapo. Sasa ni round ya wazee.

Hon. Delegate Ohare Charles Edward: Thank you very much, Mr. Chairman. My names are Edward Charles Ohare, number 386; district Delegate from Vihiga. Mr. Chairman, I support devolution of power. I happen to have been a victim of the devolution when I was a member of the Regional Assembly, for the Western Regional Assembly. I was the Chairman for Works,

Communication and Power, and therefore the Regional Minister. If we agree here that devolution will be there, and the Government of the day does not have goodwill, then the whole thing will not work.

Let me give an example. I am of the opinion and I propose that when the powers are devolved to, say, the districts and the sub-locations and so on, we should do away with Provincial Administration. The Government in the office normally strangles, or exerts its power down to the people through the Provincial Administration. I have been a District Commissioner. I know how we DCs used to oppress people for the Government.

Cheers from the Honourable Delegates.

We have had the Constitution for forty years. We have to change, and we have now to involve people. People must be involved right from the village upwards, and power must be devolved from upwards going downwards so that everybody is involved. Now how can we involve everybody? Mr. Chairman, I feel that the way the Bill has been drafted, will have to be redrafted. We have to devolve power to some homogenous units; units which can be workable. At the moment, if we use districts passé, some districts may need a lot of assistance. If they are left as they are, and we devolve all the power to them, there will be a little problem. We should for example -I propose that in some Provinces which are big like Rift Valley- we divide Rift Valley say, into four units of devolution. A place like say, Nyanza, we give Kisii area their own unit, and Luo Nyanza their own unit. When we devolve power, and those people are of the homogenous set up, then we find that power when devolved, will have to be worked out properly and will have to go to the people the right way.

Mr. Chairman, although I am not for Provincial Administration, I feel that when power is devolved, it should first come to the Provincial level where proper planning and coordination of the powers which have been devolved to Districts can be planned. When we have now planned at the Provincial level, those planners at the Provincial level will be able to know the problems of the people down the floor, they will be able to know the problems of the people who are marginalized, and know how to address the problems of the marginalized. If we just devolve it to the present districts without proper smaller units or provincial units, it will not work. I propose

that we have, -we do not have provincial, we don't call it provincial, but Regional organization at the provincial level-, which will now be assisting the District Governments wherever they will be. Those district Governments as I have said, should have been brought together in the form that will really be workable.

Honourable Delegate Joseph Nyaga: Tupatie mzee mwingine? Thank you very much. There is another mzee mwingine pale. Na utuambie ulifanya nini. We are coming that way. Tell us what you did. It is important for people to understand in which context you are speaking.

An Hon. Delegate: Point of order.

Hon. Delegate Joseph Nyaga: Continue please. Please we are coming to you. 277 you have a point of order? Just hold on for a point of order. 277 has a point of order. I think there is only one more person in that category.

Hon. Delegate M'Thigaa Godfrey Mbuba: Thank you Mr. Chairman. My names are Godfrey Mbuba, a district Delegate for Meru South. Mr. Chairman I am surprised in the way you are discriminating Kenyans. You are coming up with-- *(Noise by the Honourable Delegates)*.

Hold on. Give me time, I have given you yours. Mr. Chairman, what age limit do you take? I am 60 years old. Am I not a mzee? *(Noise by the Honourable Delegates)*.

Why do you discriminate throughout? You are marginalizing others, which is very wrong

(Inaudible) tell us to go home.

Hon. Delegate Joseph Nyaga: Thank you very much. He is right to complain. You see, the job of the Chairman sometimes is to assess the mood. When Gitu Kahengeri spoke, it was obvious to me that people wanted the older people to speak. The people who were there then. However, if that is not the case, I will go back to the normal. I was only operating based on what people's reaction was. I do apologize. Meru South utapata nafasi yako.

Hon. Delegate Ogero Benson Kegoro: Mr. Chairman, I do not know whether the Honourable Delegate is saying that I am not a mzee, but he will be reached also at long last. Mr. Chairman, my names are Ogero Benson Kegoro. I am a District Delegate from Nyamira, number 427. Mr. Chairman, I also happen to have been a member of the Regional Assembly in 1963, in Nyanza. Therefore Mr. Chairman, my friend on my right, Mheshimiwa Delegate Owingo Otieno, was my Vice President in Nyanza Regional Assembly, and my colleague there, Odhiambo Mamba who is a Member of Parliament now, was a Minister for education in Nyanza Regional Assembly.

Mr. Chairman, at the Lancaster House Conference, I mean document work, like Mheshimiwa Okundi said, things were not the same as they are now. During that time Mr. Chairman, you remember Delegates like Shikuku and others went to Lancaster House to come up with a new Constitution. There were two main parties: KANU and KADU. KADU was for Majimbo, when KANU was for a Unitary Government. When they were arguing in Lancaster House, they were told to come here and hold elections, any other thing, they will sort out when they have had elections. So we went for our elections in 1963 using a Majimbo Constitution. That is how we were elected under that Constitution in Majimbo.

Now, because some people had sinister motives, they never wanted a Majimbo Constitution to continue. During that time Mr. Chairman, there was also the Upper House, which was elected by the Wananchi for forty-one Districts. We had forty-one Senators when we had eight Provincial or Regional Assemblies, and the National Assembly.

Mr. Chairman, we had worked well in the regions. Like Nyanza for example, we had three districts, namely Kisii, South Nyanza, and Central Nyanza. Kisumu had not been born. We elected our President and Vice President. we were also elected as Ministers. For example, I was a minister for health for Nyanza. Mr. Chairman, I was running round to see about health services in the entire Nyanza, and the Regional Medical Officer was under me as the Minister for health then. We were also in charge of district hospitals. County councils were also given some powers. They were collecting revenue, like for example GBT. They were in charge of primary education, they were in charge of health services from dispensaries to health centers, they were in charge of roads, the minor roads, which were classified. These services were later taken away by the central Government in 1970. However, those people were also answerable to us from the lower

level to the regional assembly. For example, the Chairman or the Vice President was the Chairman for finance and establishment; which was equivalent to a minister for finance in the upper layer.

We were therefore in charge of the regions and we were collecting our own funds. We had funds that we were using and, Mr. Chairman, if somebody had his sinister motives he was done away with. PCs were known as Civil Secretaries while the DCs were known as Regional Government Agents. The PC wrote to us in 1965 telling us we were no longer Regional Assembly members, but we have been converted into Provincial Councils. We were going to meet once in a month. No sooner had we started meeting than we got other letters that the regional assemblies were disbanded. Mr. Chairman, not long after that we found that the senators were also withdrawn and there were constituencies which were created for the forty-one senators. They never went for elections until their term of office alongside with the National Assembly came. Those senators were also absorbed. So somebody at the national level had sinister motives of doing away with us, as people who had been devolved to work for our people, at the lower level. At the same time, the Upper House was also disbanded. That is now how somebody had power to do what he wanted to do because he had done away with Senators and the Regional Assembly members.

Mr. Chairman, I am also for devolution. However, I am for devolution in the manner that Mheshimiwa Nyachae and Gitu Kahengeri said. In that for example in Nyanza, if I give an example of Nyanza, because we say seventy districts are too many; plus municipalities, they may be more than seventy. Why don't we come up with a formula, for example in Kisii, where we had one district, we have now three districts, we have municipal council of Kisii. Also in Luo Nyanza, they have now nine districts plus Kuria; nine. They can come up with also some districts put together, so that we can have three larger units in Nyanza. That will serve for even Central Nyanza. Rift Valley being bigger, it can be sub divided even into bigger units than ourselves so that we have smaller but bigger units than the seventy ones. Therefore, Mr. Chairman, I am for devolution, but we devolve to the districts, and we combine some districts together, to make a larger unit.

We also come down to the locational level; we have locational Government, and not what we call village Government. Mr. Chairman thank you very much.

Hon. Delegate Joseph Nyaga: Thank you very much, to avoid the problem we had a few minutes ago, is there somebody who served in the Regional Assemblies or Lancaster House who has not spoken?

Hon. Delegates: No

Hon. Delegate Joseph Nyaga: Okay then everybody in the old category we are through. (*Uproar from the Honourable Delegates*). Is there somebody from the Regional Assembly or Lancaster group? 247.

Hon. Delegates: Yes.

Hon. Delegate Joseph Nyaga: Okay we will give you six minutes.

Hon. Delegate Munene J. Othiniel: Bwana Mwenyekiti, mimi na sema hivi, jina langu ni Munene Othiniel kutoka Taita Taveta. Bwana Mwenyekiti wakati tuko hapa tunatengeneza Katiba ya Kenya hii, kwanza tukumbuke kwamba jambo ambalo linatuaribu sisi wa Kenya ni neno linaloitwa ukabila. Kama tusipo tafuata njia ya kuondoa neno hilo, ukabila, hata tukisema devolution za haina gani, bado hali yetu itarudi pale pale. Bwana Mwenyekiti, tunasema na tumesema na wengi wameongea hapa, wakisema kwamba Mwanakenya yeyote akubaliwe kukaa mahali popote, akubaliwe kuwa na mali mahali popote ndani ya Kenya hii, ni sawa. Jambo hilo limejaribiwa, mimi nimesema natoka huko Taita Taveta, sehemu ya Taveta, kama Kenya sehemu zingine zingefanya vile Taveta inafanya, Kenya ingekuwa na umoja mkubwa sana. Taveta kuna karibu makabila yote, na walikuja wakakaribishwa na Wataveta. Hata mashamba wakapewa, hata mnakuta kuna Wabunge walikuwa wanachaguliwa huko ambao si Wataveta, lakini sehemu zingine za Kenya hii tunajua hata ukienda ukijaribu kuweka hata kama ni kiosk ya biashara, wewe utasumbuka kwa maana wataambiana usinunue pale, mpaka utafunga mwenyewe. Utakosa biashara mpaka ufunge uondoke, hawakuambii ondoka, lakini yale makuruu watakayo kufanyia wewe utahama. Mambo hayo yameturudisha nyuma sana. Hiyo

ndio inafanya mpaka ukienda mahali kutafuta kazi, kuna mwenzangu mmoja jana, yeye anaitwa Kihara, lakini ni Mtaveta, kama jina langu Munene, ni Mtaveta, Munene akienda kutafuta kazi Nairobi, ni rahisi yeye kupata kuliko Mwamburi, kwa sababu ya hilo jina, lakini baadaye utaanza kusalimiwa kwa lugha ambayo huijui watakugundua, halafu hapo utaanza kuchezeza mchezo mpaka mwenyewe utachoka.

Kwa hivyo kama hatuwezi kuondoa ukabila, ndungu zangu hatuwezi kuendelea Kenya hii. Pale ninapotoka mimi ni jirani na Tanzania kabisa, kitu kimoja Mwalimu Nyerere alichofaulu kufanya, ni kuwafanya Watanzania wajitambue kama Watanzania, na sio kama Wachaga, wanini, hapana. Kama sisi tunaweza kujitambua hivyo, kwamba mimi naitwa Munene, Mkenya, mimi naitwa Kamau Mkenya, kwa kweli tunaweza kwenda mbali sana. Lakini tunapozidi kujitambulisha na kabila zetu, basi ukitaja jina fulani kila mtu anakuangalia vingine.

Kwa hivyo Bwana Mwenyekiti mimi nasema hivi, if we really want to devolve powers, we have to be very careful or else, instead of creating devolution we shall create the devil himself. Kwa hivyo tuangalie sana, tuna-devolve kutoka wapi, sio ku-devolve tu kwamba kutoka kwa President, wale wananchi walioandika maoni yao, ukiwauliza wao hawakusema mambo haya, walisema wamechoka na chifu anayeandikwa, wamechoka na DC anayetolewa huko analetwa kwetu, wamechoka na PC. Wao kama hao watu wakiondolewa wapewe nafasi wao kuchagua walikuwa wanatosheka hivyo. Kwa hivyo devolution kwa wale wananchi kule juu nyumbani ni kuondoa hao watu na kuweka wale wanaotaka. Hiyo ndio meaning ya devolution kwao.

Hon. Delegate Joseph Nyaga: Thank you very much.

Hon. Delegate Munene J. Thiniel: Niachie hapo? Bwana Mwenyekiti ningetaka kumalizia kwa kusema kwamba, units za devolution tuanze tu pale chini, kwa vile tunavyosema kwamba power itoke kwa wananchi, basi itoke kwa wananchi pale chini kwanza, halafu iruke iende juu kidogo. District bado ni kidogo sana. Kama ile Constitution ya mwaka wa sitini na tatu, Bwana Mwenyekiti, ilikuwa na Regional Assemblies, zilikuwa nane, tunaweza kukaongeza ile sehemu kubwa tupunguze kidogo, ile ndogo sana tuunganishe na nyingine tuzipatie majina mengine, tukibadilisha majina, maana Mkoloni alipoweka hayo majina ya Kikoloni hapo ndani, provinces,

districts, hiyo ndio sasa inasumbua watu, lakini tukiweza kuunganishaunganisha tuweke majina tofauti, hayo mambo yatafanyika na yatapendeza. Mimi ningeachia hapo kwa sasa, asante Mwenyekiti.

Hon. Delegate Joseph Nyaga: Thank you very much, I think we have finished that category now, what I will do – kuna mwingine this section? 275 were you in Lancaster or Regional Assembly or PC wakati ule.

Hon. Delegates: Neither.

Hon. Delegate Joseph Nyaga: Let me now balance, because there areas that we need to balance so that everybody has a chance to speak. Were you Regional Assembly, a Senior DC or Lancaster?

Hon. Delegate M'Rinyiru Julius M'Mworia: Lancaster.

Hon. Delegate Joseph Nyaga: Okay continue, your name and your number.

Hon. Delegate M'Rinyiru Julius M'Mworia: Thank you Bwana Mwenyekiti for recognizing Wazees. I am one of the Lancaster House Attenders; my name is Julius M'Mworia from Meru central, number 275. I am an elder, Mzee wa “Njuri Ncheke” ya Meru.

Hon. Delegate Joseph Nyaga: We will give you six minutes.

Hon. Delegate M'Rinyiru Julius M'Mworia: I was in the Lancaster House Conference in 1962.

An Hon. Delegate: (inaudible).

Hon. Delegate M'Rinyiru Julius M'Mworia: I was not among the members of Lancaster who attended on the first day and it was not me alone, I know a number of them who are not here. I

can remember Henry Muli, I can remember, I not know whether he exists even now, Mr. Apollo Kideru, Ngala Mwendwa and a number of others.

Mr. Chairman, the Conference was so difficult because there were so many problems, Somalis wanted to go to Somalia, Maasai and their united front wanted to have their land returned which had been taken by Britain and Coast (*Mwambao*) all these things were there. Now if I compare the problem those people faced that day and what we are doing today, I find this is a very childish game. Already we agreed we have one united Kenya, the problem we are facing is how to devolve this thing to the lower level, because the central government had become a monster, which people could not really contain.

Mr. Chairman, what I wanted to say is this, people have said they want this thing devolved. You heard the members who were there did not agree. Dr. Kiano was for us to consider the economic factors, whether these things will be able to sustain themselves. Dr. Towet gave a different version. He said do not bother about financial considerations, give the people what they want first and the others will follow. You can see there, they did not give us the proper direction to follow. It is now for you, ladies and gentlemen to think the best way forward. As the people have said they want the devolution down to level, I would suggest that we allow them to the lowest level possible, let them try it, if they fail they will come back later on and do something else. If we prevent them now, they will say you are just not giving them the freedom they want. Mr. Chairman, although these people do not know very much, when they are giving their views, they never thought of the economic involvement in that. Now let them have it and if they fail, they may go back completely to centralization. We learn by our mistakes, I think that is the best way we can do this Constitution now.

Hon. Delegate Joseph Nyaga: Thank you very much. I now have to balance because as a result of this exercise, some sections have more people who have spoken. If you see me skip some sections it is because I want to balance the list before the end of the day. Could we now go to section two in order for me to balance? *(Uproar from Honourable Delegates)* I am balancing, do not worry I am going to balance. From this section could I have special interests, political parties, women and professional groups. Secondly, business groups - 617. Everybody is getting a chance.

Hon. Delegate Manu Chandaria: Honourable Chairman--

(Noise by Hon. Delegates).

Hon. Delegate Joseph Nyaga: Please. This section I owe you two, I know.

Hon. Delegate Manu Chandaria: Honourable Chairman, Honourable Delegates you know-- *(Uproar from Honourable Delegates)* --this is what will happen if you go very low. Just leave it for the time being.

Honourable Chairman, I was very surprised--

Hon. Delegate Joseph Nyaga: I am going to take on a point of order in a minute let him finish. Let him finish you will be recognized.

Hon. Delegate Manu Chandaria: I was extremely surprised with the maturity of this Conference since the day I started attending and this is what it means for Kenya.--

An Hon. Delegate: *(inaudible).*

Hon. Delegate Joseph Nyaga: Who are you and what is your number?

Hon. Delegate Manu Chandaria: My name is Dr. Manu Chandaria.

(Honourable Delegates clapping)

Hon. Delegate Joseph Nyaga: Special interests?

Hon. Delegate Manu Chandaria: This is a win, win situation for Kenya that people can sit, discuss, agree, disagree and again agree. Devolution of power at the lowest level is almost necessary for every third world country, it cannot go without it. However, this devolution of power must be with responsibility, accountability and a list of costs. If the cost is going to be higher, then again devolution of power will mean nothing but creating more offices, more people to work for.

I would like to also say that for this devolution of power, we want to create Kenyans with a commitment. I hope that we talk about creation of wealth and this is what I have not heard at all during these last two weeks - creation of wealth and not the distribution of poverty. *(Honourable Delegates clapping)* If we go down this is the only way that Kenya has. By having a seat, by being somebody means nothing. It only means then you have got something that you can feed your children on, you can have a job and work for yourself. That is what it means and that is what I think Kenya really needs.

In Kenya when we started off at independence, we are now four times the population. We don't have water in some places, we don't have education in some places and yet the population has grown four times. We cannot stop this, but we must make sure that we are using our human efforts, our human resource and that is the biggest resource that we have got in this country. That if we all work together from the lowest level coming up, I think we can build Kenya once again as an engine of growth and a country to be envied in the Eastern Coast of Africa. Let us control more facilitation and these are words which I have never liked, when you have somebody sitting on a chair then you say, "lets control more facilitation" I have never liked this. Let us go to a level where we can see more facilitation for our people so that we can get something going.

Reduce the cost of surviving in Kenya; today the cost of survival in Kenya is very, very high. Reduce the cost of business in Kenya then and then we will be able to get somewhere close to where we are trying to get to. The last thing I wanted to say Sir, is that women in this country have been marginalized. Over and over I have heard about it and this is one of the major resources of this country. They have taken, sitting, anything that you can think about. They

have walked miles for water, for wood, for food and expect and yet they have been able to look after your children. I think that the women as my understanding is, they are far more honest than what we are. Let us give them a chance in this particular issue that, you give them a dispensary, you give them a school and if you go there you will find a total difference. I think this is what we should be doing. Lets create wealth, let us not have time to distribute poverty. It is nice speaking everywhere but without food on the table for our children when we go home then Kenya is nowhere. Thanks, Sir. (*Honourable Delegates clapping*)

Hon. Delegate Joseph Nyaga: Thank you very much. I wish to balance the section that had been left behind. This section and behind, 509. You had a point of order, yes. I am trying to balance the sections that are behind like this one.

Hon. Delegate Martha Rop: Bwana Chairman, I hope you are not actually balancing because I have raised points of order several times but you don't look at the women, why? I am from Women's Organizations, I am Martha Rop. My point of order is on women. There are women like Mrs. Mwamburi 492, wale walikuwa huko na nataka pia wasikizwe. That is why I am here as a woman delegate.

Hon. Deleage Joseph Nyaga: I asked several times for people who were either in Lancaster or people who are in Regional Assembly to help us, I really tried. This section, special groups, women groups, religious groups from this section, 533.

Hon. Delegate Hellen Munga'athia: Thank you Mr. Chairman. My name is Hellen Munga'athia, Delegate number 533 from Religious Organizations. Mr. Chairman, I would like to say that I support devolution of power. Number two, I support Affirmative Action. One third of women participation in all sectors of government is most welcome. However, I would like to know Mr. Chairman because I feel that Affirmative Action has been left open. We would like to know Mr. Chairman, when this case will be revisited to raise from one third to at least a half.

Mr. Chairman, I support the devolution of power to the villages, locations and districts. However Chairman, I would like to know the criteria that we will use to select the Councils for each of the levels, to access the electorates, to nominate the Executive and the Council members.

Mr. Chairman with that I suggest that we need to set a qualification standard to help in the short-listing of these people. There must also be very clear roles, otherwise there will be clashes and a conflict of interest between all these. The Council members and the Chief Executive at each level should be credible and of good moral behaviour in all the set ups. There should be offices for each level Mr. Chairman, otherwise official matters will be solved in houses and will cause a lot of misunderstanding in both villages and in the districts.

Having given my views Mr. Chairman, I wish to pose the following questions to the Commissioners. Throughout the Conference I have been listening and getting very concerned with these three terms, minorities, the marginalized and majority. Mr. Chairman, these three terms have featured a lot in the draft and I would like Mr. Chairman, one to know the bracket of the minority so that we may know where our stand is even as we move to the Committees so that we can contribute effectively.

Number two, I would also want to understand Mr. Chairman and I hope the rest of the Conference understands these terms properly, so that as we come to the closer debate we will know how to deal with them.

Number three Mr. Chairman, I would also want to understand the majority because I have a feeling that the so called minorities and marginalized are using these two terms just to harass those who are called the majorities. Let us understand these terms Mr. Chairman, so that we know where we come from and where we stand, because as my sister said here we could be very, very marginalized but then we are put in categories that we don't understand. Thank you very much, Mr. Chairman.

Hon. Delegate Joseph Nyaga: Thank you very much. In an effort to balance, my total number of speakers who have spoken over the last three days from each block, I need somebody from this section. (*Uproar from Honourable Delegates*) Give me a minute, 301 has never spoken. 301. Please, yes, I have heard all your requests. We will finish at 5.00 pm then we will give the Commissioners 15 minutes each to respond.

Hon. Delegate George Muchiri: Thank you Mr. Chairman for permitting me to contribute towards devolution of power. My names are George Ndatho Muchiri, District Delegate number 301 from Nyandarua District.

Mr. Chairman, I wish to contribute on Article 219 on Provincial Government. I wish to say that a Provincial Government should not be formed and that this Article should be removed from the Constitution. This level of government will serve no purpose and it will be a waste of resources to maintain its personnel. The Constitution should seek ways to coordinate the existing provincial organizations for smooth planning.

Mr. Chairman, I fully wish to support Article number 218 on District Governments. District Governments should be the principle focus of devolved power but the Constitution should endeavour to make every unit viable and self reliant economically to be able to sustain itself by ensuring services to its inhabitants, without having to rely on national government. By this suggestion I mean that their creation should not be restricted to tribal barriers. I also support creation of the National Council. By this Mr. Chairman I don't want to support the existing formal districts. Mr. Chairman, it will be very impossible for a district with about 150 people to be able to raise sufficient finance to support its people. It would not even be able to maintain the roads within and I am sure it will not stand long before it fails. Therefore, my suggestion here is to have a district of a better size Mr. Chairman.

Mr. Chairman, on Article 226 concerning national resources, I wish to support that water be regarded as a national resource and that if one district supplies water to another, compensation in form of sales shall be made. Here Mr. Chairman, I wish to quote an example of Sasumua Dam which has collected water from Nyandarua District supplying to the Nairobi City where it is used commercially without making any returns to support the welfare of the Nyandarua people.

Finally Mr. Chairman, I wish to comment on transition of power from the present system to the devolved one. As there is no mention in this Constitution, this is a case that should be taken care of. It is my proposal that the Delegates who are participating in this Review Conference be involved in transition Committees in their respective districts because they are well acquainted

with the devolved power. With the few remarks, I wish to thank you Mr. Chairman and fellow Delegates for this opportunity.

Hon. Delegate Joseph Nyaga: In order to balance, so far this category (*pointing to different categories*) since I started chairing has Thirteen Delegates, Ten Delegates, Nine Delegates, Nine Delegates, Nine Delegates, Eleven Delegates, Eleven Delegates, Ten Delegates and Eleven Delegates. That is the summary. So, for me to be fair, I need somebody from there, there and there before we conclude. 292.

Hon. Delegate Francis Kaloki: Thank you, Mr. Chairman, it is my first time to be on the floor, but I am not complaining a lot, I only saw that you have been longsighted, you couldn't see me and I am here. My names are Francis Kaloki, a district delegate number 292 from Kitui. Bwana Chairman, I am in support of the Devolution of powers. As it is in Article 215, 1-3, levels of Government. That is from the village, location, district and some units which I have to explain later. We should do away with the provincial administration. I have a simple reason that was mentioned there before, that might seem to be useless but surely it is very important. That Mzee who was here, mentioned something about the hostility of the Provincial administration and that is what is there mostly. You can bear me witness because of all these delegates here, at least once or a number of times, one has fallen into the warm hands of a provincial administration officer, be it a Chief, a D.O, a District Officer or that category. Surely ninety percent of the Kenyans have suffered under this system of Government, the provincial administration. These officers take a lot of pride for being in the Office of the President.

They fail to speak or act in place of the President who has all the powers that we are trying to curtail. Elected persons would not be corrupt and of course Kenyans would be happy when they have elected their own people to lead them. It would be more preferably if Devolution begins as an Article 15, as I said before, forgetting about the provincial administration. But having created other units to coordinate a district, we should avoid calling such units the provinces or regions as this would mean majimboism and divide the nation. Please Chairman, if large provinces were sub-divided and made about twenty units to be called Local States or the Counties, the coordination would be easier. But Mr. Chairman, there should be a caution. If the Central Government doesn't pay great attention, there could be an upper writing with some Local States

or the Counties wanting to form their own states or becoming independent. We have had some utterances during the last general elections whereby some regions wanted to form their states and leave other parts of this country.

I want again to say that there could have been a sinister motive. Why did the Commission propose about Devolution of Powers although I am supporting it? Yes, it could be a good system of governance but only where there are no ill motives. Mr. Chairman, Article 226, the share of National Resources. Districts within one Local State or the Counties as you may call them Mr. Chairman, the ones which might be more productive than others within, might have a tendency of not wanting to share the resources equitably, and let me give an example of Eastern Province where the electricity power of this country comes from. Districts like Mbeere, Machakos and Embu, might not want to share their resources with other districts, which do not produce.

On the other area of the grants, Article 225 (3) Mr. Chairman, grants are based on population, geography and other factors. This can as well bring a problem. The areas which have been left behind on development and given a small percentage due to the population being small, while the area requires much on its development. I want to finish by urging that, the would-be Central Government, to be more on the lookout so as not to have this country involved in chaos. Thank you Mr Chairman.

Hon. Delegate Hon. Joseph Nyaga: Thank you very much. 599.

Hon. Delegate Leslie Mwachiro: Mr. Chairman, thank you. My number is 599, Leslei Betawa Mwachiro, Chairman of Chama cha Majimbo. I want to bring to the Conference, the original Constitution of 1963 which has Charles Njonjo's handwriting and comments trying to do away with Majimbo. So, if anybody wants the actual copy, I have it here because the one which has been circulated, is not complete. Chair, the Chapters, 4-10 in the old Constitution, would have solved our problems here. Because it has dealt with Devolution from the Executive, the Legislature, the Judiciary and how the regions will interlink with the Executive has all been detailed in Chapters 4-10 of the old Constitution. I think we should not complete our deliberations without actually visiting these Chapters and borrowing from them.

Otherwise, we will actually be trying to invent a wheel as much as Shikuku says and yet the wheel was already invented in 1963. Chairman, I have been looking at the constituency reports and nobody talked about Devolution. They were either against Majimbo or they were for Majimbo. Those were the two bottom lines. Also, I am happy this week that the word Majimbo has now been cleansed. A lot of people here, even from Central Province - Hon. G.G. Kariuki also used the word Majimbo, which means now-- Majimbo is now an acceptable term within our political vocabulary. I have to say this, we cannot just devolve power to the Prime Minister and the Vice President and say that we have completed or finished with Devolution. Devolution means devolving power from the Central Government, to the Regional Government and actually sharing it between the President, the Prime Minister and the Regional Heads. Provinces must refer to the named region and not just provinces because provincial administration is now like an issue to a lot of people. So let us go back to the word Region when we talk about Regional authorities or Regional Assemblies. I have been talking to Mheshimiwa Nyachae here and he told me that he has actually agreed with our list of how the regions should now be formed.

We have Northern Corridor, where we have Pokot, Marsabit, Isiolo, Turkana and Samburu. The Western region should have Busia, Kakamega, Bungoma and Kitale. The Nyanza region should have Siaya, Kisumu, Homa Bay, Migori, Suba, Bondo and Kuria. The Southern region should have the Gusii, Nyamira and Kisii region. Longonot region is a new region, which should have Nakuru, Laikipia, Nyandarua, Narok and Transmara. The Rift region should actually be the Kipsigis, Nandi, Eldoret, Baringo, Keiyo, Koibatek and Marakwet. Nairobi capital should actually manage places like Ongata Rongai or parts of Kajiado and Athi River. It makes me no sense that people in Ongata Rongai have to travel to Nakuru to have their regional matters sorted out and yet it is only two kilometers from Nairobi.

Central region should have Central Kenya, Meru, Embu and Mbeere. Also here we should realize that all districts in Kenya are political districts. You remember during the times of Kenyatta, he actually grabbed Thika from Maragua and put it in Kiambu. So these issues of having political districts did not start with Moi, or end with Moi, they started with Kenyatta and as Moi said, he was following Nyayo, he's actually followed Nyayo to the letter. Eastern region should have Machakos, Makueni, Mwingi and Kitui. The Coastal region and we are not Swahili by the way - somebody is circulating a document here saying that we are Swahilis-- Coast is not

Swahili, but Coast should have Lamu, Malindi, Taita Taveta, Kwale, Mombasa, Kilifi and Tana River. The eleventh one is the Frontier Region, which should be Garissa, Wajir, Mandera and Ijara. If we do it like that, we would have solved the problem and we will actually have embraced Majimbo and actually we will have devolved the Executive power from the President, the Prime Minister and the V.P to the indigenous people. Thank you Chair.

Hon. Delegate Joseph Nyaga: Thank you very much. That was the last Delegate. So far, am very happy, ninety-five people spoke on this particular subject. *Clapping from the Honourable Delegates.*

Ninety-five. I apologize to very many of my friends, colleagues, honourable delegates, I would have liked two hundred to speak. I am sure you sympathize with me. I am sure you feel very sorry for me. If you do, that is the end of this particular session and I now wish to hand over the Chairmanship to Hon. Godana. Thank you.

Clapping from the Honourable Delegates.

Hon. Delegate Bonaya Godana: I think naturally the next phase is for our presenters - the two Commissioners who are here, Prof. Kabira and Commissioner Kangu and of course the Chairman of the Commission, Prof. Ghai, three Commissioners, I beg your pardon - to respond in about no more than ten minutes each. Preferably in about five minutes please. I will start with the Professor.

Prof. Yash Pal Ghai: Thank you very much indeed. It is not my intention to comment on every comment on the Draft. We have had nearly 100 speakers and it will be impossible to comment on all. What is more important, I do not see our function as defending our Draft, we presented you our ideas. We have had an extremely interesting and in my view, useful debate, we have learnt a lot from your comments and all this will be available to the Technical Committee where the debate will be resumed. I just want to make two or three very broad points. I am not going into details.

It seems to me that we do have a very substantial agreement on the need for devolution. I think that is almost universal. We have less agreement on the abolition of Provincial Administration, we have less agreement on the precise structure of devolution and the powers that would be given to the devolved unit. I noticed a major support for the District being the major recipient for devolved power, but I should say also that the way we had planned or made our recommendation, giving very substantial powers to the District was on the assumption that the district boundaries and the number of Districts may be revised. You will notice that we have a recommendation that there should be a Boundaries Commission, because we feel Mr. Mutakha brought this out very clearly at the start of our presentation that is if we have 70 or more Districts, it will not really be very sensible or feasible to give them all the powers that we have identified in the Seventh Schedule.

So I think there is a trade off between having larger units than the present than giving them more authority, more power or keeping the District as they are, some quite small, but then not giving them so much power that they are unable to discharge their responsibility. There is another trade-off: If we have a very large unit then a lot of people may feel very remote from the capital and that it doesn't matter whether a particular power is located in Nairobi or Nakuru or Kisumu. So I think we have to have a trade-off between bringing power sufficiently close to the people that they feel a sense of participation and access which dictates a small size and having the economy of scale to suggest a large size. This is a problem that is not unique to us; every country which has worked out a system of devolution has had to contend with this dilemma.

I think we all recognize that there is very little capacity at the moment at local levels, but that doesn't mean that we should not aim for significant devolution. Before we proceed to that, we establish the necessary capacity at those levels. So I think we have to have a time perspective on the establishment of devolution; it has to be done in phases; it has to be done both with the establishment of capacity, the transfer of resources and the function to follow their capacity.

I think the question of levels: 'do we have too many levels?' Yes, perhaps we do have too many levels. When we thought of village Government, we didn't have in mind a very elaborate structure; we have an idea of democratic village assemblies. Some of us visited the Village Development Programme in Kilifi district and were quite impressed by the level of democracy at

the village level. It did not mean people (inaudible) fulltime, people were being paid, people would meet and decide on small development for the village, raise funds for that, and this seems to me to be a good training. If democracy can be established in villages, surely it will increase the general degree of democracy in the country. So we did not have in mind a very formal structure, but I do notice that there is a wish to reduce the number of levels and maybe to have three levels, which many people have talked about.

On the other hand, when we are talking of levels, let me make a point which many of you have raised today particularly, and this is about to re-organization of our territory. People are suggesting maybe 18 units, maybe call them counties, call them regions of 14 and that may be a way to go. Then I think what we will need to do is to think of other kinds of levels because I know many people are committed to districts-that is very clear - even if they are small and may seem unviable to us. They are saying that because they feel they are minority in a larger Province and therefore the District gives them protection. I would suggest that, if we increase the size of units we inevitably are going to create more minorities. Now, I think we should think of ways in which we can deal with the anxieties of minorities. We might save any 14 territorial units. We recognize this will create communities who may feel that they are too small to be able to influence the unit, but there is no way we could not give the communities certain powers as well that might involve a new layer or new structure and many countries today are finding this a necessity. Sri Lanka is finding it, they have districts, they call them districts they are quite large but then within that they are minorities and they are developing several ideas to take care of that minority by special representation at the District-wide level but also special powers to be exercised locally by the community. I think it can be done and I hope the Technical Committee on Devolution will spend some time on it. I hope very much, now that we have constituted that committee, the members of the Committee will begin to think now, even before we meet again, as to how we can respond to the diverse and what seems competing presentations here. I believe they can be harmonized and I think people can start thinking about it even now.

I want to comment on another point, which is may be, connected to the re-organization of territory and this is how central a place we give to ethnicity. I think we have had too ready divergent views here, some people have warned us against creating devolution in such a way that it would threaten a national unity. Others have said that, "let us face it, we are tribal the most

cohesive community in a society is the tribe, the ethnic group and let us build on that,” and I think we have to strike a balance. I, personally, if I can speak only for myself, would be very worried if we created structural ethnicity; we may go the Yugoslavia way which completely collapsed because the whole structure in Yugoslavia was ethnically based. There are other examples too where states have collapsed because the entire basis of organization of the state was ethnicity. I think we should not give up on our vision of a Kenyan identity. I think as younger people grow up they are much more conscious of being Kenyan than perhaps belonging to a particular ethnic group. So I think we have to strike a balance here between the requirements in the Review Act to strengthen national unity, national integration with recognizing the diversity we have. It may be, and we have a Committee on Culture now that the place for culture is not in the state domain but may be in the public and private domains. I think we have to be very careful how we strike this balance between ethnicity and national integration.

Another point that has come up is how much detail do we want to put in the Constitution and how much in the legislation. I see the point that my friend, Commissioner Mutakha, made that we need to have enough security and enough guarantee in the Constitution and he gave us examples from some countries which had not brought sufficient detail and the government was able to stop the full implementation of that.

The debate here has made it clear to me that we really have to clear, sort out many, many areas, and it may be that, that is the way to go I am not recommending this, and I am suggesting that may be one way is to have sufficient detail in the Constitution to protect the fundamental principles of devolution and the requirement of devolution but leave the details to be worked out to a task force.

I think devolution is both a highly political phenomenon in which there are other kinds of arguments that we have had over the last 3 days, and those political issues have to be resolved by this Conference. Devolution is also a very technical subject; it involves text powers, it involves the precise demarcation of territory, involves the precise division of subjects, modalities of implementations, which is a highly technical area which I do not think this Conference should try to solve but leave it to a task force. That is my own view.

Maybe, since we don't have too much time, I will close on this point but there is one question that was raised which I want to comment on. I think it is from the Delegate from Homa Bay. He said we are recommending something between federalism and unitary state, he said it can never work. I want to disagree. Majority of the devolution system in the world fall in that middle category, they do not fall in federalism nor in the unitary system, they fall in that middle category and I believe that that can work.

Finally, let me thank you all very much indeed for your very valuable contribution. I m sure that the recommendations that you have made and those that will emerge from the Select Committee and then from the Conference will greatly improve the Draft that we have prepared for you. So, I am really truly grateful for the wisdom that you have presented to this conference. Thank you.

Clapping by Hon. Delegates.

Hon Delegate Bonaya Godana: Thank you very much, Professor Ghai. I now pass on the microphone to Professor Kabira.

Com. Wanjiku Kabira: Thank you. I will take very few minutes because I am sure people must be tired.

Thank you very much, Chair. I want to say, like Professor Ghai, I am not going back to a lot of the issues that have been raised. I think they will be debated at the committee level but we are actually very grateful for all the contributions that have been made in the last three days. I have two or three issues I wanted to raise. One of them came up on the first day, Thursday last week. Since we are writing a new Constitution, are we recognizing that power resides with the people? Therefore, we are making decisions about what kind of powers that peoples themselves they want to retain. What powers do they want to surrender to the district or the larger unit and to the central government?

I think this is important because we have been saying that we want to reflect as truthfully as possible the views of Kenyans. When we come to the village level or the sub-location for instance, Kenyans were saying that they want to be able to deal with land disputes; they want to

deal with their own security; they want to deal even with marriage issues and so on at that level. In other words, they are saying there are things that they would want to manage themselves and things they would like to leave to the higher levels. In other words, they are making decisions on how they want to participate in their own governance and maybe, as we discuss the various levels we may want to take that into consideration. It is important to find out whether it is the people who are surrendering the powers to the higher levels or whether we are beginning with the power being at the higher levels. That may help us in conceptualizing the whole devolution process.

The other issue I want to raise has to do with the viability or non-viability of the district, and this is related also a little to what Professor Ghai has been saying, that a lot of districts with many people will defend the district because the district is not just about the economy, it is a reaction to a certain extent, to marginalization in the past. It is a place that people can call their home; it is a place that gives them a sense of identity, a sense of belonging, a place from where you can negotiate. We are saying that some of the people feel that they have been marginalized by the previous Government and therefore sometimes you want to hold on to the units because you need an negotiating point.

As we move on to greater entities in order to make them economically viable, we need to create institutions that also creates confidence in the people so that they can work. In other words, we should create units that are people-friendly, that allow for the minorities to be able to grow that allow for those who have been marginalized to participate fully in their own governance.

I think, maybe, those are some of the issues we need to look at. As we went around the country, there were very many requisitions for new districts. We had different types of history. For instance in Sabot, listening to one group talking about the history of the district and another group talking about the history of the district. A lot of the fears that the people had had to do with their having been marginalized in the past and their feeling of powerlessness. Therefore, when we think about bigger units I think we need to think about how to deal with those fears.

I also wanted to add this, there is a sense of alienation that Kenyans have felt, like Coast Province, for instance, where we have many squatters, in the Rift Valley as well, a sense of

alienation, a sense of oppression and so on that makes them feel that they want a place they call their own and I think those are issues we need to take into consideration.

I also wanted to refer to the equalization principle because I know it has come through quite a number of times and I think it is very important to think about, because again as we think about the economically viable units we need to think about how those, which may not be economically viable, can be facilitated. I liked what Chandaria was talking about, that we should think about less control and more facilitation so that people can develop and grow and feel they are part of Kenya and be able to believe in themselves.

On the question of minorities, which was raised a few times, we have a group like Wathay in North Eastern province, the Seguers in the Rift Valley, Ogiek and so on. I think these minorities must find their place within whatever unit we are talking about because unless we talk about Affirmative Action, not only for women but also for those who will never find their way into decision making, then they will continue to be marginalized. These are the issues that have been coming up consistently as we went around the country.

So we are saying that we need to accommodate diversity, protect the interests of ethnic minorities, support Affirmative Action in this area and therefore we need to create structures that help us gain confidence in order to alter the unjust conditions that we have been living under. I think in a sense, we are saying that some of these things should help us as we create units that, are viable to remember that a country is as strong as its weakest point. There are communities in this country that are too weak to exist by themselves or that if not facilitated then the country as a whole cannot be strong. If we say that 80% of some Kenyans go to bed hungry, live below the poverty line and we have resources that can ensure that that kind of experience does not happen in this country, then I think it is the responsibility of the new Constitution to guarantee proper issue like grow and participation of all Kenyans.

Finally, I want to say that we have received a lot of information and I believe the Devolution Committee is going to be able to look at all the recommendations and debate them. Thank you very much.

Clapping by the Honourable Delegates.

Com. Mutakha Kangu: Thank you very much, Mr. Chairman and the Honourable Delegates. I also want to say like Professor Ghai did, that I am very happy with the debate we have had on this topic particularly about the fact that there seems to be a unanimous consensus on the question of principle, that is indeed we need Devolution. I am sure that a few years ago, at the time we started taking the views, the position in the country was that most of us perceived the situation as being of a polarized country over the issue of Devolution, people saying we want majimbo, others saying we do not want. But I am happy to say that today we seem to have agreed that we need devolution and the Honourable Martin Shikuku put it better that we have learnt from our history.

Now, having agreed on that, on questions of design, I hear Members raising issues and the first important issue that I heard being raised came from Dr. Odhiambo Mbai and Dr. Appolo Njonjo, both of whom are saying that we need to come out clearly whether we are firmly deciding on a federal system or a unitary system. They were of the view that a middle line would not do, but Professor Ghai said that it is possible to have a middle line. But I also want to add that even if we were to firmly say a federal arrangement, it is important to note that even within federal systems, there are different types of federalism and you can be able to graft your own that may differ from what other people have.

Number three; still on the issue of design, I hear the debate on the numbers going on, the units. At the beginning the debate was in the dichotomy of province or district, some people saying district and others saying province. But I get the sense towards the end that we were moving away from the dichotomy of those two and we had started talking about viability, creating units that are viable and probably after that, organizing a ceremony for naming of those units. We may call them provinces, we may call them districts, we may call them counties. But I think it is important that we move out of the straight jacket of district or units and think more about what is viable.

When trying to think about what is viable, I would like to remind the Delegates that we are talking about devolution in terms of the principles we have supplied, as one of the mechanisms

of putting in place reasonable checks and balances on national government or central government and we are trying to do so by removing certain functions from the centre and taking them to the devolved units. The reason why we are doing that is that when we allow the centre to perform all the functions or most of the functions, it easily gets the opportunity to abuse power and misuse it and become less accountable. I would think therefore that the more functions we remove from the centre and give to the units, the more secure we might be and in which event, we require units that are capable of taking over most of those functions so that the centre is left with very little and most of our people who have been engaging in a mindless struggle for the control of the centre may lose interest in that and start concentrating at the local level.

In that event therefore, the question of distribution of functions becomes extremely important. Unfortunately, I noted that the debate did not seem to address or dwell much on that issue of functions, but I think the Committee will be able to do so to clearly distribute the functions in a better way and while people were talking about functions, I heard the Delegates from the Teachers' Union saying, 'let us leave education at the national level'. But I want to say that in distributing those functions we can be able to say what aspects of education should be handled at the National level and what aspects can be handled at the devolved level. For instance, you can say, policy matters, standards and examinations because they have to be standardized should be handled at the National level but the actual delivery and management of schools and other educational institutions may be taken at the lower level. Of course the other way would be again to look at the levels of education. Maybe lower level education maybe at the lower level and higher education at the higher level. So, a little more thinking will need to go into the distribution of functions.

I have also heard people emphasizing the fact that we are coming from a past under which a number of regions or districts have been left behind in terms of development and there is need to pull them forward as we move and I think therefore, emphasis is on what is called financial equalization. Hon. Delegate Mzee Gitu wa Kahengeri was very clear and I also want to add that there is just no way we are going to live together if we ignore the weaker members of our society. The very basis of human beings coming together into organized society was to ensure that those who could not make it relying on their personal strengths, can be assisted by contributing their little strength into the common fund of public power that serves all of us. So,

we must emphasize financial equalization and structure it very well to make sure that all of us are moving forward together and examples are all over. There are examples in Germany and they were mentioned by Hon. Delegate Simeon Nyachae. I think Canada also has some arrangements of financial equalization. Switzerland in its arrangements also has some financial equalization. So, it is something we must think about seriously.

There is a question which arose from the Honourable Member from Isiolo about linkages between the national government and the devolved government and I think this is something Professor Ghai mentioned when he presented the other day that we must provide for proper inter-governmental relationships. In places like Germany, some scholars call them, “the joints and hinges of the governmental levels”. We cannot function properly if we do not provide for both institutional and – I do not know which term to use-- But we must provide for institutions that link the devolved governments and the national government so that there is communication and synergy in the running of the affairs. I think in the Draft, we have made a provision of what is called a Commission on Local Government Finance and we also made reference to the role of the second Chamber and I think this is a question that we need to think through seriously – how do we utilize these two institutions in making sure that we have proper inter-governmental relationships so that proper negotiations and communications are taking place between the centre and the devolved governments?

Finally, the question of minorities which Professor Ghai and Commissioner Wanjiku Kabira have referred to. My own comment on that will be that we must accept as a Kenyan people that whatever units we create, there will be those in which there will be some minorities. Even at the Locational level you will find people who say, “we are of that house and not the other house”. So, we must accept whether we devolve to districts or to provinces, there will have to be some minorities in the units that we create and it is therefore the task of this Conference to design proper mechanisms for the protection of those minorities within the units we create. If we accept that, then we shall not be pushing for an approach that wants to identify every other small group and give it its own unit, but that we shall be saying, let us have units that are viable but recognize that in those units, there are minorities who as of right must be protected and have their welfare taken into account. Thank you.

