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(CKRC)**

**NATIONAL CONSTITUTIONAL CONFERENCE**

**Verbatim Report of**

**PLENARY PROCEEDINGS, PRESENTATION OF DRAFT BILL,  
CHAPTER ELEVEN - LAND & PROPERTY RIGHTS  
HELD AT THE BOMAS OF KENYA**

**ON**

**27<sup>TH</sup> , 28<sup>TH</sup> & 29<sup>TH</sup> MAY 2003**

**PLENARY PROCEEDINGS, PRESENTATION OF DRAFT BILL, CHAPTER ELEVEN-**  
**LAND AND PROPERTY RIGHTS, HELD AT BOMAS OF KENYA ON 27TH MAY**  
**2003**

**PRESENTATION OF DRAFT BILL: CHAPTERS 11 - LAND & PROPERTY RIGHTS**

**Chair:** Prof. Yash Pal Ghai

**Discussants:** Prof. H. W. O. Okoth Ogendo  
Dr. Mohammed Swazuri

**Session Chairs:** Mr. Wilfred Koitamet Ole Kina.  
Hon. Norman Nyaga

**Meeting commenced at 9.30 am.**

**Hon. Delegate Wilfred Ole Kina:** I now call this meeting to order. I will ask Elizabeth Okeyo to lead us in prayers. Please let us all rise up for prayers, then after this we will have Shiekh Ali Shee.

**Hon. Delegate Elizabeth Okeyo:** Haya tunaomba. Kwa jina la Baba, na la Mwana na Roho Mtakatifu. Amina. Ewe Mola, ewe Mungu wa rehema, umetuamsha leo asubuhi, tuje hapa kutengeneza mambo ya Katiba ya Kenya. Ewe Mungu wa huruma, twakuomba uturehemu tuwe watu wanyenyekevu, tuseme kwa huruma, tuelewe mambo kwa heshima, tuwatumikie watu wa Kenya kwa wema wako Baba. Ewe Mungu twakuomba siku zote utusikilize sisi wote tulioko hapa, uwe nasi tuwe watu wenye unyenyekevu mbele ya Wakenya waliotuleta hapa. Ewe Mola twakuomba, wewe ni Mungu wa mapenzi. Unajua yale tunayoyasema yawe ya haki, yawe ya kweli, yawe ya upendo. Tuwache ukabila ambao ni dudu la kuwaua Wakenya. Tunakuomba hayo kwa ajili ya Yesu Mkombozi wetu. Amina. Kwa jina la Baba, la Mwana na la Roho Mtakatifu. Amina.

**Hon. Delegate Sheikh Ali Shee:** Bismilahi. Kwa jina la Mwenyezi Mungu, mwingi wa rehema, turehemu ee Mola. Utupe kila lilae ambalo ni la bora na la heri, utuondolee fitina na balaa na uchafu na ushetani wa ukabila. Uongoze Wakenya wajikomboe kwenye maradhi ya ukabila. Uwape kila moyo wa kuweza kuishi pamoja kwa amani. Mola, hatuna mtu mwingine wa kumuomba isipokuwa ni wewe. Twakuomba uwabariki Wakenya wote, uibariki nchi hii, utupe kila lile ambalo ni la bora, utuondolee maradhi, ulinde watu wetu, ulinde nchi yetu. Twakushukuru wewe kwa kutuweka katika hali hii iliyo bora mpaka sasa, na utudumishe kwenye hali hii hii bali twende katika hali bora zaidi kuliko hii tuliyo nayo. Twakuomba, hatuna mtu mwingine, utubariki. Amin.

**Hon. Delegate Wilfred Ole Kina:** I will now ask any Delegate who has not been sworn in to present himself or herself for the swearing in ceremony.

**Prof. Yash Pal Ghai:** I think you can stand there. Okay. Could I ask the Honourable Delegates who are to be sworn in today, are you all happy to have an oath or do you want affirmation as Delegates? You will all take the oath? Yes, you will all take the oath as opposed to affirmation? Okay. The way we conduct the swearing in-- Delegates please be quiet! --is that you raise your hand and then I will ask you to repeat the oath after me. That is, the first word is "I" and then after that you mention your names and then repeat after me. So you say "I" and your names, "being appointed a Delegate to the National Constitutional Conference under the Constitution of Kenya Review Commission Act, do solemnly swear that I will faithfully and fully impartially and to the best of my ability, discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias faction, ill-will or prejudice and to that end that, in the exercise of the functions and powers as such a Delegate, I shall at all times be guided by the national interest. So help me God." Will you please sign the oath and then I will counter-sign it later. I welcome you to the Conference. Thank you. *(Clapping by the Honourable Delegates)*

Honourable Delegates, I would like to take just a minute of your time to welcome the representative of the United Nations Development Programme who have very kindly donated us some equipment, which has facilitated the work of this Conference. The screen behind me that you see has been donated by them and they have agreed to give us more screens so that all of us

can see each other. At the moment I am fairly cut off from the screen, and I cannot see very clearly the Delegates who are speaking. With further screens all of us will be able to watch every Delegate who is speaking. There are many other ways in which the UNDP has facilitated our work; they have funded some consultants, they have helped with the publication of our documents. As you know for this Conference we have a large number of documentation in large quantities but for their assistance we would not have been able to do so. So I want to thank the UNDP for the many favours they have done us and now I will ask the representative to formally donate us the equipment, some of which we have placed here, but there is a lot more, and I just want to welcome the Delegate and maybe she may want to say a word or two and then we can resume our normal business. Thank you.

**UNDP Representative:** Distinguished Delegates, may I first sincerely apologize for the resident representative of UNDP, Mr. Paul Andrew Delapore who has not been able to come and be with you at this particular time. May I also take this opportunity on behalf of the resident representative of UNDP to sincerely commend the Constitution of Kenya Review Commission for ably steering this process to this particular event. I would also like to sincerely commend all of you distinguished Delegates for the excellent work that you are so far doing.

Having said that, I would like to take this opportunity again, on behalf of UNDP, to indicate to you that we are sincerely proud to be associated with this very monumental event in the history of our beautiful country Kenya, and to be associated with the entire process of Constitutional review. I would like to assure you of UNDP's commitments to this and other initiatives by the Government and the people of Kenya, which aims at improved governance and sustainable development. I know that you have very critical issues before you that you need to deliberate on, and therefore, I will not take much of your time, but to sincerely thank you all and to wish you the best during your deliberations. Once again, let me assure you of our commitment and continued support to this and other initiatives. Thank you very much.

*Clapping by the Honourable delegate*

**Prof. Yash Pal Ghai:** I will now pass the Chair to my colleague Ole Kina who has a couple of announcements to make and then he and Mr. **Nyaga** will co-chair the session on Land and Property. Thank you.

**Hon. Delegate Wilfred Ole Kina:** Thank you very much, Mr. Chairman. First of all there are notices of meetings. There will be a meeting of the Technical Working Group E on the Judiciary today at 1.00 o'clock. They had indicated that they wanted to meet at 12.00 pm but we advised that they should meet at 1.00 pm in Committee tent number five. Your lunch will be served in the tent. So please meet there, and deliberate in your elections as you are having your lunch. Then there will also be a meeting for Defence and Security in tent number nine at the same time. Lunch will also be served there.

Yesterday, one of the Delegates raised an issue of some Delegates coming into the auditorium armed and of course others are threatened by the fact that that fact since they themselves are not armed and because we want everybody to feel safe, after consultations, we have agreed that nobody should come into this auditorium armed. You are free to carry your firearms, but not into this auditorium, so that everybody here is equal, and that everybody feels free to deliberate without feeling intimidated by someone else's arms. So I hope all of us are going to cooperate, and I think the Clerk to the National Assembly has some arrangements for the deposit of any arms that you have within this compound. So if you must carry your arm you can make arrangements for safekeeping and you can take them whenever you need them.

Having said that, we now want to get into the business of the day. We know we are going to deliberate on land and property. So I will hand over to my Co-chair, Honourable **Nyaga**, to invite the presenters or the Commissioners who are going to present to us that Chapter. Thank you very much.

**Hon. Delegate Norman Nyaga:** Thank you very much, Co- Chair. The substantive Chairman, Professor Ghai, Honourable Delegates, good morning? Good morning?

**Chorus from Honourable Delegates:** Good morning Sir.

**Hon. Delegate Norman Nyaga:** Thank you. Mine is going to be very, very simple and I do not intend to take much time, neither do I want to invent anything new. After so many weeks it has become obvious, and the first obvious thing that has been noted by us is that there are nine sections here; one, two, up to nine. The other one is that there are three major categories which you already know. I also do not want to introduce anything more than was done in the last three days, so I shall use the same method in selecting the people who are going to speak with only one amendment. If for instance we wanted to have somebody from section one speak we shall request the next section to wave their placards so that we can, in the meantime as the first person speaks, get to see who should get the opportunity to speak. It now gives me great pleasure to have to introduce the two main presenters of a very emotive subject...if we may, let us hear what your point of order is.

**Hon. Delegate William Ole Yiaile:** Point of order. My name is Ole Yiaile from Narok Delegate number 361. My point of order Mr. Chairman is this. Now that we are going to handle two Chapters at the same time and very complicated Chapters of Land and Natural Resources, is it not in order that we allow five minutes for each topic, because this is very important to us? Thank you Mr. Chairman.

**Hon. Delegate Wilfred Ole Kina:** May I make this clarification, we are not collapsing any Chapters. We are discussing Chapter by Chapter; we are not going to discuss two Chapters together. If you have a problem with that, I think your problem was that we are going to combine Chapters, but let me assure you that we are not going to combine Chapters.

**Hon. Delegate William Ole Yiaile:** Mr. Chairman, it is not a question of Chapters, it is a question of issues because land is a different issue and even natural resources is a different issues. With all humility, Mr. Chairman, ten minutes will be sufficient, five minutes to cover for each, because those are very intricate subjects and are of national importance and they are interconnected. Mr. Chairman, five minutes will not even be enough for introductory purposes.

**Hon. Delegate Norman Nyaga:** We appreciate your feelings, but I think we also need to be fair to everybody. If we were to give a person ten minutes, given the number of Delegates that we have here, then we would be talking about this subject for the next one week. I think we need to

be fair and be able to come up with a salient point that we want to make in the two subjects. Let me also plead with the Honourable Delegates, the more points of order we take, the more time we are going to take. Let me put up my humble plea to all of you, that we reduce the points of order as much as we can. (*Laughter from the Honourable Delegate.*) Let me also say the following, let us not use the points of order as a matter of information. When you want to give any information, you only give information to a member who is standing on the floor making a contribution. Please do not inform the Chair.

The next one? Okay, let us have that one as the last one and then we get the Presenters to continue.

**Hon. Delegate Mkawerweren:** Point of order, Mr. Chairman. Thank you Honourable Chair, my name is Mkawerweren Chebii, a Delegate from Marakwet. Now my question is, there was a question raised yesterday by Honourable Kipng'eno Arap Ng'eny asking about the experts yesterday. Today morning we have no experts. Now I want to know from you Chair, are these experts representing regions? Are these experts representing the outside world and if it is, who are going to gather the interests of the regions?

**Hon. Delegate Wilfred Koitamet Ole Kina:** That is not a point of order and please don't waste our time. That is not a point of order.

**Hon. Delegate Mkawerweren:** Kindly Chairman--

**Hon. Delegate Wilfred Ole Kina:** It is not a point of order.

**Hon. Delegate Mkawerweren:** Secondly, Mr. Chairman, I want to know if Professor Mutua is a Delegate.

**Hon. Delegate Wilfred Ole Kina:** I think that was ruled yesterday.

**Hon. Delegate Mkawerweren:** It is not here, Mr. Chairman, and prove to me if it is in this book.

**Hon. Delegate Wilfred Ole Kina:** What is in what book?

**Hon. Delegate Mkawerweren:** The list of the Delegates. If Prof. Mutua's name is in the list of Delegates.

**An Honourable Delegate:** He is.

**Hon. Delegate Mkawerweren:** And if he is not, it is wrong to actually write yesterday's statement in this Conference.

**Hon. Delegate Wilfred Ole Kina:** Well I think we will sort out that with the Secretariat. Please let us have the presentations now.

**Hon. Delegate Mkawerweren:** In fact, Mr. Chairman, we need to know these things. They are right here. There are strangers here; he is an Observer. And you are telling me "let us proceed". What criteria are you using Mr. Chairman, can we know if Prof. Mutua is a Delegate in this Conference?

**Hon. Delegate Wilfred Ole Kina:** Honourable Delegate, I am authoritatively informed that Prof. Mutua is a Delegate. *Uproar from Honourable Delegates.* Okay let us proceed.

**Hon. Delegate Mkawerweren:** Mr. Chairman, can I ask if Prof Mutua is a Delegate?

**Hon. Delegate Norman Nyaga:** Thank you. Thank you very much indeed. Since the Chair has ruled we can only take it that that is the correct position. May I now take up this opportunity and introduce to you, Delegate number 553, Dr. Mohamed Swazuri and Delegate number 551, Professor Okoth Ogendo. The two presenters will be able to take us through this subject of Land and Property. Professor Okoth Ogendo.



**Com. Okoth Ogendo:** Thank you, Mr. Chairman, I am Delegate number 551. I have not spoken at this Conference and therefore I would plead with the Delegates to hear me in silence as I make my 'maiden' speech.

Mr. Chairman, what I am going to do first is to take Delegates through the terrain that has led the Commission to make the recommendations that it has made. Dr. Swazuri will present the report of the Commission and then I will discuss the Draft Bill. Let me start by reminding the Delegates, that you have a historic opportunity, and a historic responsibility. You are here to take this process through perhaps the most crucial stage that we have been so far. Therefore, you as Delegates and all of us as Delegates must ensure that the mandate which the Review Act has placed upon you, which is to discuss, debate, amend and finally adopt the Draft Bill is fully executed. It is important therefore that when this Conference adjourns on or about June 6<sup>th</sup>, this Conference must determine precisely when it is going to sit again. (*Clapping from Honourable Delegates.*) I think it will be important that the Commission should be guided very clearly by this Conference.

The process of Constitution making that we are engaged in, in this country is extremely unique. Constitutions are not made this way in Africa. Constitutions are not made in peace times, Constitutions are not made when there is a broad consensus across the country. Constitutions are not made in Africa when the political establishment is by and large ready for change. Therefore what we are doing is important and we must seize that moment and complete it. This far in the debate, we have been asking three questions, from April 28<sup>th</sup> up to this moment we have been asking three questions.

The first question we ask is how do we reconstitute the Kenyan State? We went through the Preamble, Chapter 1 on the sovereignty of the people. Chapter 2 on the Republic and Chapter 3 on the national values upon which the Republic will be based.

We then addressed the second question, which was how do we constitute the citizenry of this country and define and guarantee their basic rights. That took us to Chapter 4 on citizenship and Chapter 5 on the Bill of Rights.

The third question that we have been asking and which has taken us a considerable amount of time, is the question of how we define power, how we regulate power and how we exercise and share power in the new dispensation that we are bringing. That took us to Chapter 6 on Representation, Chapter 7 on the Legislature, Chapter 8 on the Executive, Chapter 9 on the Judiciary and Chapter 10 on Devolution.

That is where we are now. To complete this exercise, we will need to answer another four questions.

The first of those four questions will be: How the public resources of this country should be held, controlled and managed. That will take us to Chapter 11 on Land, Chapter 12 on the Environment and Chapter 13 on Public Finance.

The second question we are yet to answer is how will the security and the integrity of the state be protected and guaranteed, and that will take us to Chapter 14 on the Public Service, Chapter 15 on Defence and National Security, Chapter 16 on Leadership and Integrity and Chapter 17 on Constitutional Commissions.

We will then ask the third question. How shall we handle future alterations, changes or adjustments to the Constitution once we make it. That will take us to Chapter 18 on Amendments, Chapter 19 on interpretation.

The final question we must ask is that once the Constitution is enacted, how will the Constitution come into effect? That will take us to Chapter 20 on Transition and to schedule 6 and 8. When we get there, we will have been ready as a Conference to turn over the product of this meeting to Parliament.

I now want therefore to start the Debate on that group of four questions, which is on the issue of Public Resources of the State beginning with the question of Land. Mr. Chairman, let me start by drawing the attention of Delegates to the fact that in Sub-Saharan Africa, the Land question is the last colonial question, which must be resolved before Africa can be truly independent. I am calling it the last colonial question because of the history of imperial plunder that occurred in this

Continent for nearly a century. In Southern Africa for example, that plunder came through war and conquest and murder by the Boers and the British colonialists in Southern Africa. In other parts of English speaking Africa, the British simply assumed that Land was ownerless. In German colonies, the German government decreed that if you did not have documentary title to land, you did not own that land. Therefore only people who had documentary title were allowed to establish ownership, and of course obviously, it was very difficult to come up with documents at that time. The French used Napoleonic laws, again to declare land in Africa ownerless. Therefore what I am saying is that throughout Africa, land was presumed to be without an owner and therefore was appropriated very quickly and totally by imperial powers.

They consolidated their power through imperial law and imperial force. You will know that in Southern Africa, the process of imperial control was so complete that as I speak to you today, a full 83% of all land in South Africa was reserved and is still controlled by the descendants of the Boers and the English. The more than 40 million Africans in Southern Africa were camped into 717% of what imperial authorities called the Bantustans or the native reserve.

In Swaziland for example, when the Boers came and asked for concessions, King Mswati thought he was entering into an agreement, a contract to provide grazing land for the Boers. When he challenged them, they told him that he had signed an agreement to transfer title to Swaziland and to the Boers. When the British took over, the British called in a surveyor and asked the surveyor to tell them how much land Mswati had given out. The surveyor brought a cartographer who drew a map of the concessions that had been made. When that map was superimposed on Swaziland, it was found that Mswati is supposed to have ceded more than 100% of his country.

In Zimbabwe, now Rhodesia, Cecil John Rhodes applied for title, for the whole country as one single piece of land. Today, as I speak to you, 77% of Zimbabwe is owned by the descendants of Cecil John Rhodes, and the natives of Zimbabwe are cramped into native reserves in that the other 23% which they share with wildlife and game reserve.

In this country, we know the history, we have heard of the Maasai treaties and we also know that the British the first thing they did, was to declare the land from Kiu in Ukambani to Fort Tanan

in Western Kenya as the White Highlands, and then started the process of export creation in this country. In the Coast, the history there indicates that the Miji-Kenda, were basically told that they did not own land. When one Miji-Kenda tried to sell land, and he was asked whom the land belonged to, and he said our land belongs to God, he was then told he could not sell that which he did not own, because the land had become part of the sovereignty of Queen Victoria. And how did that happen? We ask or they asked.

On December 13, 1899, the Attorney General and Solicitor General of the United Kingdom delivered a judgement that declared that in the East African Protectorate now called the Mainland Kenya, all land was ownerless and had therefore by way of conquest and plunder, been vested in the British Government. The result was not only that land was reserved as an estate for Her Majesty, but also that indigenous people lost all title to land. That was the case in the Coastal strip, it was the case in Central Kenya. I might inform you that there was one Wainaina wa Gathomo with his brother, Muritu Waindagara who went to court over land where Kabete now stands. When they went to court the Attorney General of the Protectorate intervened on grounds that these two indigenous people did not in fact own that land and the land belonged to Queen Victoria. The judgement of the court, which was delivered by the Chief Justice then, said that because Her Imperial Majesty had authorized the Commissioner to pass a Crown Land Ordinance in 1915, from that point onwards, no native in Kenya held title to land. The 1915 Crown Lands Ordinance is still in our books as the Government Land's Act.

In Nandi, we are aware of the story of Koitalel arap Samoei and the plunder of land in that area. We are aware of the restriction of land west of the Nandi and indeed when the Carter Commission went to Nyanza, they told the people there, that their land belonged to Her Majesty. And one old man asked Carter, this Majesty that you say owns land, whose son is he? Where is his village so that we can establish whether or not he owns land? Carter wrote in his report, that the Luos do not understand the distinction between politics and property. (*Laughter from the Hon. Delegates*).

The Maasais story is perhaps one of the saddest, but it is also a story that has been replicated in other parts of Africa. The Maasai signed a treaty in 1904; they signed another one in 1911. When the terms of that treaty were violated, the Maasai went to court; the English court said

firstly, that no native could sue the King of England in his own court. Secondly, that the Maasai were not as sovereign and therefore could not sign any treaties. Then the Maasai said, but it was a contract, which required a gentleman's agreement, it was an MOU if you like. And they said Her Majesty does not deal with MOUs and they dismissed the case out of hand. That had happened to Lobengula in Zimbabwe, it had happened to Suboza in Swaziland, it had happened elsewhere. In other words the colonial courts were used to enforce Imperial plunder. We know of the closed Districts of NFB now North Eastern Province and Turkana and so on, and of course we are aware of the dislocation of the Ogiek, the Sengwer etc.

What I am saying this far, is that the land in question for this country is one that has touched all communities and therefore is one that has to be dealt with, decisively and properly. The result of course is that the law of this country now says that land belongs to the State and not to the people. We have a multiplicity of land laws, so complex that even the best Lawyer, will find himself or herself lost in it. We have refused to recognize communities as juridical persons. In fact the British always argued that natives could never own land because they are not juridical persons that is why the British invented the so-called, the Trust Land Board and later in 1963, handed over that land to County Councils, because they could not accept that indigenous people were juridical entities that could hold land directly. That has left us with a problem, which I think this conference will be required to deal with. When independence came in 1963, the first thing that the British did in the Independence Act and Section 202 of the Independence Constitution which you have, was to confirm all titles granted by the British Government up to the 1<sup>st</sup> of June, 1963. And therefore, what we have lived with for the last 40 years was basically a Constitution that said, that it does not matter whether the British were right or wrong, the titles that they had given are good and must continue.

In Zimbabwe for example, the British had the same cross, but there they went further and said you may not change the Constitution for another 10 years. So, in 1990 when Robert Mugabe tried to change the Constitution the matter exploded and you know what the consequences in Zimbabwe have been. In Tanzania, the same colonial laws continue. Therefore, up to this point we are saying that the land question has never really been resolved because the constitutional framework we have had has maintained the colonial status quo. It is for this reason that in Africa, the two most important matters in the political agenda are Constitutional Reform and

Land Reform. There is not a single country in this region that has not gone through the process of Land Reform, South Africa, Uganda, Tanzania, Zambia, Rwanda, Malawi, Zimbabwe and all of them, are asking the question, how does the Constitution deal with the issue of land, land being the fundamental resource for all people? The fact that therefore, all colonial wrongs, if there were any, need to be corrected in the Constitution, is the question that I think we must as Delegates address within the constitutional framework.

I therefore want to hand over to Delegate number 553 my colleague, Dr. Swazuri, to take you through the manner in which the Commission has dealt with this issue in this report. Thank you Mr. Chairman.

*Clapping from Honourable Delegates*

**Com. Mohamed Swazuri:** Thank you Delegate 551. Thank you Mr. Chairman, fellow delegates, observers and other invited guests. I think Professor Ogendo has eloquently and very briefly given us the history of the land problem in Africa and in Kenya. I will briefly take you through the report, if you have it, it is starting on page 311, not necessarily in the order in which it has been written, but I will try to cover all the aspects of the report.

First of all I would like to agree with what Professor Ogendo has said, and concentrate on the effects of all those injustices that were done by the colonial rulers. One of them of course is the existence of many laws on land-some of which are incompatible, others which are antagonistic. We also have marginalisation of the indigenous and customary land management systems. Out of all that, we find some kind of confusion in the administration of land, given that we have never understood the implications of the so-called modern land laws that were brought in by foreign colonialists.

However, the importance of land as a national resource keeps on increasing as the population keeps on increasing also. Therefore, we find that land has become an explosive issue because all land users are competing for the same resource, which can never be increased, it can only be redistributed. Now, the history of land in Kenya as it has already been said, is one of injustice, one where the customary land laws and the issue of indigenous management systems of land was

disregarded or marginalized. When we went through the country to receive the views of Kenyans on the issue of land, we found quite a bagful of such problems, many of which were the results or implications of what Professor Ogendo has just said.

If you look at page 318, that is where we have listed some of the problems of land in this country, starting from dispossession of communities by modern law, and this one is all over the country, and Professor Ogendo has mentioned the Nandi, the Maasai and the Coast people. We have also similar problems even in the North Eastern Province. We have a problem of allocation of land from above. When we got independence, land laws were put in place most of which borrowed from what was already there and the political elite or the rich of that era now took over the distribution of land and we have this concept of allocation of land from higher powers. Then we have the problem of double allocation of land, many people complained of double titles to the same piece of land, therefore leading to even further conflict in a situation where there already exist land conflicts.

Many people complained of double title deed to the same piece of land, therefore leading to even further conflict in a situation where there are already these land conflicts. There is a problem of misuse of Political powers, Administrative powers to further political interest, ethnic interest and the so called land grabbing problems. It is a problem that is affecting all parts of the country and all systems or types of land under this country.

There was also a problem of corruption in the mechanisms of allocation, distribution and management of land. Corruption stemming from officers to the purchasers, to the sellers, to the surveyors and to every other person who is involved in those processes. And people complained of marginalisation of the poor, those ones who do not have a muscle to stand up for their right in land especially in the rural areas and in the urban slums of this country.

That resulted in concentration of land in only a few hands with the majority of people especially in urban areas not having access to land.

We also were told of increasing privatization of land, individualization of tenure because of the theory that was advanced to that communities who own land but may not be able to develop that

land, but individuals of those communities once given title to land can develop, because they can get loans and so on and so forth. Evidence from all of Africa have shown that theory does not work as envisaged.

Then we have communities or individuals in communities who have been made poor because of land disposition and they have no other way of dealing with the issue and therefore have become squatters.

We are also told of environmental degradation of land. We have also learnt that most of the land in this country over 70% in what we can call marginal land, but even the land the 30% or so which is supposed to be fertile land is now under threat either because of poor systems of land management or because of over use.

We were also told of catchments areas or land that have forests, which are very important for the generation of rain in this country being degazetted and being allocated to individuals at the expense of the communities. These have been a big problem and it is still going on.

Then we have the question of as Prof. Ogendo has mentioned multiplicity of regulations, laws and procedures for allocating, distributing and managing land. Most of which are not understood, most of which are incomplete. If you are trying to attend to follow those regulations or laws, there is the element of cost, which comes in. It is very, very expensive to start a process of land alienation or distribution from the time you start up to the end, you must have resources.

Followed by that is the element of time, people complain that getting access to documents pertaining to land takes a long time, a very long time. And those offices that deal with land problems are located far from the people. The people want these offices to be near them so that they can cut on cost.

Followed by that is the question of conflict that arises out of all these processes of land management, distribution and alienation. That when there are disputes over land, the disputes takes a very, very long time without being sorted out. It is common to have problems of land in a Court of Law for more than ten years, for more than twenty years and once the Principal



Litigant dies the problem is still further compounded by the people who inherit that problem.

We were also told of lack of proper State machinery or organs to deal with these land problems. And the Commissioner of Land, the office of the Commissioner of Land which is supposed to be at the forefront of spearheading these reforms has been accused of being the main perpetrator of these problem.

Then we have the question of unplanned land is or unplanned uses over land. Whether those areas were planned or were not planned, there is a tendency to misuse or to impose uses which were not planned for in those areas and therefore we now have a lot of incompatible land uses both in urban and rural areas.

Then we have the question of Foreigners, many people complained that while many Kenyans are unable to gain access to land, there are quite a number of Foreigners who own large amount of land. This is a problem which everybody or many people complained of and therefore they complained of being denied room to develop in this country.

Then, we also have a problem of absentee landlords, just to follow up the issue of Foreigners. We have a question of absentee landlords, people who own a vast amount of land which are not utilized, or under utilized, they do not reside here, they are not here. The lands are just there and anybody who settles on those lands is branded as squatter.

Finally, we were also told of the existence of large chunks of land, correctly owned by Kenyans but which are being under utilized or not used at all. Yet there are other people who do not even have enough land for them to develop. Therefore out of these, that is why people were telling us they need a sealing on the amount of land to be owned or tax on under utilized land.

These are just a few of the issues that we received from the people, in addition to the question of inheritance of land rights, as far as spouses are concerned especially as far as women are concerned. In some areas it was even taboo to talk about inheriting land. In other areas people were acceptable to that idea but it is still a major problem that needs to be sorted which our Laws have not managed to sort out properly.

Then we have issue of pastoral communities, where large amount of land used communally but not owned by anybody are seen to be ownerless, as Prof. Ogendo had said.

Most of these lands are potential lands but people have no resources of making maximum use of them. We need to come up with policies that will enable us to improve the quality of that land.

When we come to land administration, our major problem there or the issue that we saw of significance there is the lack of transparent and effective institutions to deal with Public and Customary land.

Many of the institutions, which are there, have a lot of problems which if the people complained of and many suggested that they either have to be reformed or done away with altogether.

Out of these problems and where we started this land problem as Prof. Ogendo has said is a problem that cannot be sorted be in one day, because it is a problem that involves everybody, everybody has a stake and in fact one of the problems that makes it difficult to solve the land issue is because everybody believes he or she is an expert on land matters, because everybody uses land, everybody is on land anyway.

Therefore we have come up with principle, which the people told us about and these principles are the ones that now have led us to drafting of the bill as it is.

The first principle that we agreed to put down is that, land should be accessible to all the Peoples of Kenya. That the State should have land, should own land, manage land but the people of Kenya however defined, should be a principle focus of distribution of land.

We also agreed with the principle that we have to divide land systems into three; State lands, Private land and Public or Community land.

We also agreed that we need a new land policy for our country and that has led to the insistence on creation of a permanent land Commission.

We have also come up with a principle that land which has been correctly acquired should be protected. And that public land will be governed by all Communities as defined by legislation.

We have also agreed with the principle that, the State shall have a right to compulsorily acquire land where there is basic need. There has been a complain that sometimes land is compulsorily acquired for a reason given but that reason is not actually beneficial to the country or to the people on the ground.

We have also come with a principle that we should study all the past land injustices and find out how to either compensate or to resolve those land issues so that these problems can be sorted out once and for all. Even if it is not now, but can be sorted out even in the near future so that people do not keep on pointing fingers at others.

At the moment the current Constitution has only one or two provisions to deal with land and therefore we are now proposing that this issue be dealt with very firmly and that is why we have given a lot of articles on the land problem.

I conclude by saying that, it is our prayer that we may not be able to solve this problem today because the nature of land, is such that its solution or processes of dealing with land takes a long time. But we believe that as Delegates we shall lay a foundation to resolve this land problem in the near future. Thank you very much.

**Com. Prof. Okoth Ogendo:** Chairman, let me now take the Delegates through the specific Provisions in the Draft Constitution relating to Land but let us start by indicating to Delegates the present Constitution says very little about land. The copy of the Independent Constitution, which you have, has a Chapter 12, which was a very comprehensive Chapter on the question of land. That Chapter 12 was repealed with a result that what you now have is section 75 of the present Constitution which basically protect property of any description. It treats land, in the same way as you treat your necktie or your headgear. It is a property that is all and it says basically that property however acquired, whether you got it by plunder, fraud or whatever, once it is defined in the law as property, it will be protected.

There is Chapter (9) in the Constitution, which is on Trust Land, but let me remind you that Trust Land is a category, which the Constitution think will disappear. It will disappear through the process of adjudication, consolidation, and registration and therefore Chapter (9), does not protect Trust Land. It basically curves it out for purposes of annihilation and therefore, the present Constitution is Anti Land Document. What we have done in the Draft and we had a lot of debate on this matter, was to agree on what it is that ought to go into the Constitution and what should not go into the Constitution.

We are also aware as a Commission, that there was a Commission of enquiry into the Land Laws System of Kenya, which was chaired by Honourable Charles Njonjo which was given extremely comprehensive terms of reference including looking at the Constitutional implication of the Land question. What we did therefore, was to present in the Draft a design, which is confirmed primarily, with the need to entrench general principles and values in the Constitution and the need to leave many specific aspects of the Land question to Acts of Parliament and also to deal with transitional issues that arises from the history of Land expropriation in this country.

The original Draft of the Constitution/the zero Draft of the Constitution had a much longer Chapter and there were a lot of details in there. Eventually the Commission, decided that we wanted to stay at the level of general principles, and what we have done therefore, is to provide first of all in Article 232 of the Draft, for firstly, the need for the definition and periodical review of Land Policy. We think that the State, should be under an obligation, to define and to refine and review a Land Policy for the country and that Policy, will deal among other things with issues of equitable access to land, security of land rights, and sustainable and productive management of land. Transparent and cost effective administration of land, soil conversation and protection of ecologically sensitive areas and socially acceptable management and resolution of land disputes. There of course a lot of questions that a Land Policy might deal with and let me add that in this regions alone, virtually every country except Uganda now, has a Land Policy and Njonjo report has devoted 90% of what it has reported on the question of Land Policy.

Article 233, deals with the question of ownership and we have put in there a fundamental departure to the present Legal System. At the moment land in this country either belongs to the Government or to the County Council. Let me explain that there are many of us, who think that

there are free holders, but the free Hold title you have, is Title granted by the Government and the respect of it is that the Government has the refectionary Title. If you try to surrender you Free hold Title, the Commissioner of Lands will tell you that you can only get a leasehold interest. That Land belongs to the Government in precisely the same way as an earlier allotted Government Plan.

The rest of the land, is what used to be called the Native Reserves which are now vested in the County Council, and therefore we are saying in Article 233, that all land in Kenya belong to the people of Kenya, and the people of Kenya may hold it as Communities collectively or as individuals and therefore we are saying that a radical Title to land, should no longer vest in the Government but should vest directly in the people of this country, and we are saying that subject to what follows next, no person other than a citizen of Kenya, should have the right to acquire any interest in land in this country.

People think that when we do that, we are going to be scaring investors who will need Titled Land but let me remind you that throughout this region now, that is the position. If you are not a citizen, you can only have Leasehold Title. The Uganda Constitution of 1995 makes it clear that only a Ugandan citizen, can hold Title that goes beyond the Leasehold interest. In Tanzania, nobody has ever had the rights to hold more than a 99-year right of occupancy and throughout the region the tendency now is to say Land belongs to the people and the people are the citizens of that country not just anybody who comes to acquire Title to Land.

In Article 234, we are talking about classification of land and we are saying that because land belongs to the people and may be held by communities, individuals, or collectively there will be three categories of land the first being Public Land, and we are saying Public Land because at the moment, what we are calling Government Land is not in law Public Land. It is Land which is Private to the Government and as we quarrel about land grabbing, let us remember that the law makes it legal to grab land through the Commissioner of Lands process because that land is Land Private to the Government rather than Public Land and we want to make it clear in this particular Provision that such land will henceforth be designated as Public Land, not land which the Government can use and dispose off as it wishes.

We are also saying that land, which we are now calling Trust Land, is Community Land and should be held directly by Community and Provision would be made for the modalities through which Communities can hold Land.

Then finally, we are saying that Private Land should remain Private Land and we have defined the categories of land that are to be designated as Private Land and they will be protected.

Article 235, is talking about tenure, the modalities through which land is to be held and it is providing that Public Land, is the collective property of the present and the future generations of Kenyans and must vest in and be held by the National Land Commission in Trust for the people. Now, we have found that if you simply say that Public Land is held in trust for the people, the Trustee very easily become the beneficiary and again we have found an abuse of the trust every where. In Malawi for example, the Land Law says that all land belongs to the people of Malawi but is held by the President of Malawi in trust for the people of Malawi.

Now, I have worked in Malawi and I know that what the President of Malawi, the former President did, was to use his positions of trust to allocate large part of land for people who wanted to grow tobacco and therefore, people lost land through the trusteeship system. We are saying that a Law must be in place that certifies exactly how the Land Commission will hold and exercise that trust on behalf of the people. Community Land, we are saying must vest in and be held by communities which will be identified on the basis of ethnicity, culture, or community interest and again they are precedents in Africa, on how communities can define themselves and be converted into juridical persons for first process of holding land.

We are now saying that nobody should ever say for example, that the Sengwer cannot hold land directly as a community. There will be mechanism for enabling that to happen and community land therefore, shall not be disposed off otherwise that in accordance with terms of law defining the rights and responsibilities of those communities. We are also saying that Private Land must vest in and be held by individuals or other legal persons defined by law and in accordance with legislation dealing with that matter, and we have indicated that within two years of the coming into force of this Constitution, Parliament will enact legislation and will certify what that legislation will contain to ensure, that the Kenya Provisions of the Draft are indeed implemented.

We are saying in Article 236, that property lawfully acquired, will remain protected under the Constitution and therefore we are putting to rest the argument that says that you can steal property and it will be protected by the Constitution, we are saying that only property which is lawfully acquired will hence forth be protected by the Constitution.

Article 237, establishes a National Land Commission, the responsibility of the Commission is first of all to hold and administer Public Land and secondly, to provide a mechanism for the general administrator of land in the country and therefore, we are going away from the situation where the Government directly administers land and putting it in an autonomous Commission that will exercise that power.

We have said in Article 238, that when we talk about land, we are not just talking about the soil but we are also talking about subterranean wealth below the soil. In other words, the Provision of this Chapter, apply to mineral as well that of course is an issue which will need further debate as to whether the communities that own land in the areas where the Tiomin mining is about to start, should not be regarded as the owner of that mineral rather than the state because the position at the moment is that you own the soil, the state owns subterranean wealth and the air space.

Now there are a number of issues which I think will remain unresolved and which I want to pass on to you for debate and those issues include firstly:

- Whether and how past land grievances should be addressed.
- The issues of ownership of mineral even though we have provided that minerals become part of the land that is an issue, which will require further debate.
- The scope of the regular trade power of the state and local authority particularly in the control and sustainable management of land.
- The relationship between the proposed Land Commission and the unit of Devolution of Power is one again that will require further debate.

- Security of tenure for non-citizens may be an issue that you may further want to discuss but as I have indicated the trend throughout the region, is that non-citizens can only obtain Leasehold rather Freehold Titles.
- Finally the modalities, through which communities may be recognized as juridical entities, will require further debate, and as I have indicated there are numerous precedents in Africa on how communities can become legal persona for purposes of holding land directly.

That, fellow Delegates is what the Commission offers you for debate. Thank you very much.

*Clapping by the Honourable Delegates.*

**Hon. Delegate Norman Nyaga:** To the two Presenters thank you very much indeed for the beautiful presentation that you have made to us. Now time has come for us to think about the presentations that have been given to us by the two Honourable Commissioners who have been very able to take us through and we will take a 20 minute break in which we will have some food for thought as we come back at ten past eleven O'clock. Let us be here sharp at ten past, so that we can go to this subject. Thank you.

**Hon. Delegate Ole Kina:** Now I ask my Co-chair Honourable Nyaga to begin this session.

**Hon. Delegate Norman Nyaga:** Welcome back to the session and as we had agreed earlier on, we would like to follow the same procedure that had been followed before. The only deference we said we were going to do this morning was that, when we get the first person to speak, we shall ask the next section to lift their cards so that we are able to check that against our records that we have so that we are able to move faster.

We shall begin off with this side, and we want to begin off with a person representing the professional Group, and I shall call upon 483. But before doing so, I recognize a Point of Order from Honourable Delegate number 538.

**Hon. Delegate Samuel Arap Nge'ny:** Point of order, Mr. Chairman.



**Hon. Delegate Norman Nyaga:** Would you hold on please? We are waiting for a Point of Order from there.

**Hon. Delegate Samuel K. Arap Nge'ny:** Thank you, Mr. Chairman. Very reluctantly my number is 538 Samuel Arap Nge'ny. I have arose on a Point of Order which affects me because you will recall yesterday I rose on a Point of Order and this morning some Honourable Delegate from Marakwet referred to me. But I want to disclaim the name that he used to refer to me i.e Kipng'eno and to tell the whole world my full names are Samuel Kipyebey Arap Nge'ny not the other one, because the other one has a bad history.

*Laughter from Honourable Delegates*

**Hon. Delegate Norman Nyaga:** Thank you. Thank you very much indeed and the former speaker. Can we now have Delegate number 483.

**Hon. Delegate Saleh Faad Yahya:** Thank you very much for giving me this opportunity.

**Hon. Delegate Norman Nyaga:** Order please, Order please. Shall we give Honourable Delegate 483 time to be heard and in the mean time as he makes his contribution let us have placards out for the next row.

**Hon. Delegate Saleh Faad Yahya:** My name is Saleh Faad Yahya Honourable Delegate 483 I am representing the professionals. I would like to start by thanking and congratulating the two Commissioners, Commissioner Okoth Ogendo and Commissioner Swazuri the leading scholars when it comes to land in this country, and we are very fortunate to have them with us. We should take full advantage of their wisdom and their experience.

Having said that, I think we have been given by the Commission adequate guidance and framework for further action. So, generally as professionals we support the basic principles and direction that we have been given. But I do look forward to the debate we are going to have at the committee stage because that is where we can go into specifics and really analyse each

section. In the mean time, there are some issues to be resolved for instance, number one, how do we go about the process of restitution? A lot of people have been dispossessed, they have been robbed of their lands. For example in Coast Province a whole village can wake up one morning and find somebody coming in and saying, “get out this is my land. I have the title deed from Nairobi”. Now that process has occurred not only in the Coast Province but also in the Rift Valley and other places and it is a very difficult processes that we need to look into.

Secondly, how are we going to defend our lands from the process of globalization? The WTO has ruled that anybody can invest anywhere in the world, which means poor the people will be dispossessed and impoverished by investors sitting in London, Washington and Berlin. There is multilateral agreement to invest which is coming into force very, very soon and that will open up our market. In fact we are deluding ourselves that we are making our policies here, the policies will be made in Washington, in London and elsewhere - that is the process that is going on through out the world.

Thirdly, the question of policy formation and legislation, the document proposes two years. Now is two years not too long? This process is (inaudible), people are restless they want change tomorrow; it must be done within six months and that is the timetable we would like to see. Now the Land Commission, how will it work? The Land Commissions before in other countries - Ghana had a Land Commission in 1980's it worked moderately well. In our case we have to make sure that it is adequately staffed, it is representative; it does its work properly.

When it comes to planning, we have lost the planning ethos. The Kenya Institute of Planners are very worried that planning as a culture has been lost altogether. It is mentioned peripherally in the document, but I think we need to look into it in great detail.

Finally Mr. Chairman, the land market is almost collapsed because of dual titles. The courts have colluded with landlords and therefore the banks can't recover their money and so on and so forth. We must find ways of reviving land markets because it is through the land markets that the whole financial market in this country works. Thank you very much Mr. Chairman.

**Hon. Delegate Norman Nyaga:** Thank you very much indeed Honourable Delegate. I now recognize a person who has never spoken before and has his placard up 597, representing Political Parties.

**Hon. Delegate Moses M. Wekesa:** Thank you Chairman for this golden opportunity, to speak on this important matter of our Constitution. My name is Moses M. Wekesa; I am representing the Political Parties.

**Hon. Delegate Norman Nyaga:** Just before you speak Honourable Delegate may I ask the next section to lift up their placards so that we can this section here, section 07. Whenever we have a person talking we would like the next section to lift up their placards so that we are able to check it off against our list. Honourable Delegate you can continue.

**Hon. Delegate Moses M. Wekesa:** I will go directly to my point which is protection of property in land. That is Article 236 (2) where it says, “subject to this Constitution, the state has the power to take possession of or acquire any right or interest in land where the following conditions are satisfied –

“(C) Provision is made by a law applicable to that acquisition or taking of the possession for the prompt payment of full compensation prior to occupation of such land”. I am talking as a victim of this particular clause: in a situation where by one good morning we were waken up by a bulldozer and then we were told, “you are being given two hours to evacuate your property since your part of land has to be used for the construction of a bus park and a market”.

I feel just saying “prompt payment of full compensation prior to occupation of private land by the state or local government” is not enough it is too flat. Personally being a victim of this particular clause, I feel we have to be specific and particular so that some people don’t take advantage of others. It were better if it read “provision is made by a law applicable to that acquisition or taking of possession for the prompt payment of full compensation of exact market value of land and developments there in at the exact evaluation by an approved valuer, if need be, at that particular time”. Thank you.

**Hon. Delegate Norman Nyaga:** Thank you Honourable Delegate. Row number 07 we are looking for a representative from District Representation. Let me also take this opportunity to assure those who did not give me an opportunity as I sat here that, it shall not be an eye for an eye. But I do recognize Honourable Delegate number 332, who has never spoken.

**Hon. Delegate Nathaniel K. Tum:** Thank you, Mr. Chairman. I think you are a good neighbour and I must say that it was very difficult to catch of your brother but now I am sure I have an opportunity. Mr. Chairman, I recognize and appreciate the fact that land ownership has been divided into three; Public land, Community land and Private land. My name is Doctor Tum a District Delegate from Transzoia number 332.

These divisions or classification into three is a little clear indication of where we are heading. It is easier to classify those lands that come under Public Land. I think a definition and a clear indication of what comes under Public Land is very necessary so that peace and harmony can be brought about in this country. Because encroachment of Public Land affects all the other people that live within that area.

Community land, in my view needs a little bit more scrutiny because communities like Ogiek Segwer and others who have not been named have already lost their land or are in the process of losing their land. What happens to those lands, which have already been lost? Mr. Chairman this people still need to survive however few they are, and at least recognition of their existence and the need for them to have land is very, very important. When it comes to Private Land Mr. Chairman, it is very important to recognize and protect Private Land, because that is the engine of development that is where entrepreneurship in this country starts.

Any development by any person, who wants to invest, can only be done if he is guaranteed of long-term ownership without interruption. Mr. Chairman, this is cardinal and it is even cultural in us, it is inherent in our African culture to feel that you own certain property and nobody can “tunya” you at one time in whatever name.

Mr. Chairman, to be able to do this, I think it is difficult for us to entertain a lot of verbiage in defining Private Land. Of late we have been treated with a lot of verbiage, which really threatens

those who genuinely own Private Land, and in these way it can discourage entrepreneurship it can discourage development in these lands. Kenya has come a long way with the old Constitution. I think it is important to recognize the fact that under the old Constitution and the laws that are in existence even as we speak now, those who have private ownership of land should be probably recognized and even as we go into the next stage that recognition should continue.

Mr. Chairman since we believe in devolution it is dangerous to put all the powers pertaining to policy making and allocation of land in the National Land Commission. That will be centralizing the issues of land again and giving power to a group of people nationally, whose intentions, whose narrowness we do not know, because we do not know who they will be. But human beings when they are given too much power they could abuse it.

Mr. Chairman, the interest of devolution which starts from sharing of power at the Presidential level, Prime minister level and bicameral level, I believe that we can create a Regional Land Commission. This Regional Land Commission will understand local regional land problems, they will know who a Segwer is, who Sabaot is, who a Pokomo is, at the local level and they will know the local problems of the people at that level. I say regional because Mr. Chairman, having listened to everybody talking in the last few weeks without having a chance to talk myself, I come to a quiet conclusion – thanks for your not giving me a chance to speak - that, it is viable to have regions rather than districts, because in terms of economics, in terms of management, a region is easier to manage.

The span of control by the central government of districts is too wide, it is uncontrollable. I still believe in Mai Weber's theory of hierachical management. Believing in that, it is good to look at a country like Kenya as a unit, which is manageable, which is harmonious, which can flow in terms of legal, executive and judicial management. Mr. Chairman, That is my contribution for now I will honor the bell. Thank you.

**Hon. Delegate Norman Nyaga:** Thank you Hounourable Delegate 332, in the next row we are looking for a Member of Parliament. In this row and I recognize delegate number 147.

*(Clapping by Honourable Delegates)*

**Hon. Delegate William Rongora Ole Ntimama:** Honourable Chair, I am going to refer to Article 235(4), (b) II, I will read it Honourable Chair. “The review and assessment of all claims to unjust expropriation of land in the Coast, North Eastern, Rift Valley provinces and elsewhere whether arising from historical or other causes, in order to establish their validity and how best they can be justly, peacefully, equitably resolved”. Honourable Chair, it is this Article that says everything.

Honourable Chair, I want to thank the Commissioner who did the presentation today, especially Prof. Okoth-Ogendo, who really knows the problems of land in this country and in Africa, like the back of his hand. But he said one most important thing, which the colonialists used, saying that the land had no owners. I want to go further and say; they also said that it was not occupied. Honourable Chair, this is why we lost a whopping 30,000 square miles of Maasai prime grazing land to the white man in the early stages of the 20<sup>th</sup> century. Two dubious, infamous bogus agreements were land agreements made in 1904 and 1911. They were later abrogated and this is why we were moved forcefully and violently from our ancestral land to areas which were called Southern Reserves, were invested with malaria and tse tse fly.

Honourable Chair, we lost many young men who tried to resist the movement. We lost women and children through exposure and exhaustion; and after that it gave us a big shock and trauma, we have never recovered. What I am saying before this assembly today is that, this assembly, this congregation, is our first and last line of defence in our protracted war for dispossession. *(Clapping by Honourable Delegates)*, in our protracted war for the restoration of our land. I have a lot of faith that even after 40 years and after a hundred years of marginalization, discrimination, dispossession and repression, this Conference is here today. I have a lot of faith in it that it, is going to be our line of defence in trying to get justice to the people who were victimized and who lost their land unjustly.

Honourable Chair, I want to say in the outset that we are not here, with the aim of trying to relocate anybody or to move any Kenyan or to disturb any settlement that has been set. But we have a responsibility as the people, as the community to fight for our land rights. We have a

responsibility (*Clapping by Honourable Delegates*) honour to see that we get our land restored. Our peers in Lancaster House did not sign the 1962 Constitution, because they still hoped and wished that the land will be restored to them, that is our position here today. We are actually backing our Lancaster House peers and we do remember facing Mount Kenya. Kenyatta said he will bequeath the sons of Mumbi and Gikuyu for restoration of Kikuyu land, the living, the dead and the unborn - that the position of the Maasai community today. (*Clapping from Honourable Delegates*) We bequeath our children, the living, the dead and the unborn to go on following this particular issue until justice is done.

I want to talk a little about development. I have said that were thrown into the periphery, development has been away from us for a hundred years. Our people still walk hundreds of miles to reach a healthcare centre. The infrastructure is non-existent, what we have in some of our areas is cattle tracks and nothing more than that. The present free and compulsory primary education in our areas is a myth, we do not know what is happening. (*Clapping by Honourable Delegates*).

Mr. Chair, I also want to say that illiteracy, ignorance and abject poverty are actually the order of the day. We have never had development; even after all this time, after we lost all this land. Honourable Chair, I want to say that what we really want is this. I wish to propose that after this Conference has finished all its work, that it recommends that the Constitution is amended to give way for an appointment of a high profiled Committee or Commission, to look into all those injustices, historical or of the past, which include of course the Coast, North Eastern, the Maasai and all other people who have lost respect and whose land has been robbed either by the colonialists or by some grabbers in our two successive African Governments. We have an option Mr. Chairman, also that we could institute legal proceedings against the British Government, for all these losses and discrimination that has been done. But definitely we are going to enjoin the Kenya Government, because although the British are the principle culprits, definitely the two African successive Governments are accomplices of all these problems that have taken place in this thing.

Mr. Chairman, we sometimes have been a laughing-stock as the community of the Maasai. You know very well, although this is land also, most of our game parks have been hived out of the

Maasai land unit, even with our neighbours across there. But Mr. Chairman, even for all that money, which is boosting the foreign exchange of this country, where we should have got a share for development, we don't. What happened Mr. Chairman, is that some of them equate us with the wildlife. Some of us think because our pictures decorate the logos of tour companies and hotels, some of us say that we are even walking artifacts and so we do not Mr. Chairman have any recognition at all, even for the contribution of preserving dead wildlife heritage, for the benefit of this country and for the benefit of our visitors up there.

Lastly, Mr. Chairman, because I do not want to take most of your time, is to say that the laws of land have discriminated against us. The land adjudication particularly has discriminated against us. The land officers, the provincial administration Mr. Chairman, with their Land Control Boards have all favoured the buyer of the land and discriminated against the seller. In fact what has been going on is the willing buyer and an unwilling seller. The provincial administration and even the Land Control Boards, where the provincial administration have appointed sycophants and quislings who are ready to sell their tribe down the drain, and this is why most of our people, young men, have lost land. They have lost because they have been pushed out, they are all crowded and idling in overcrowded urban centres, which is not very fit for their culture. Some of them have turned into drug addicts, some of them are drinking alcohol, because they have not read, they have no ready skills, they are not educated, what do they do next? Attracted to join the criminal gangs.

Mr. Chairman, even sometimes when we stood firm and defended our rights, for example our grazing rights, our water sources, even when we are the victims we have been termed he aggressor. Even when truly we have been wronged, we are always portrayed as the aggressor, and sometimes we are summarily punished for doing nothing but just for defending what is our right. *(Clapping by Honourable Delegates)*. Mr. Honourable Chair, I have said again and I want, to repeat, that I want the Constitution amended to provide for the appointment of a high profile Commission to look into all these problems of the Coast, North Eastern and Maasai. Thank you.

**Hon. Delegate Norman Nyaga:** Thank you, Honourable Delegate. In the next row, we are looking for a District Delegate. The next row and not a Member of Parliament, a District



Delegate. I notice one that has not spoken before and he is keen on speaking today. Delegate number 428. In the meantime, in the next row I will be looking for somebody from COTU, Trade Unions and that category.

**Hon. Richard Ngoge Kibagendi:** Thank you Mr. Chairman, I am Richard Kibagendi, Delegate number 428 as you have put it. Thank you for the chance. Mr. Chairman, this Chapter has been drafted very well. I want to speak on the ownership of land, whereby it is said that the land belongs to the people of Kenya collectively and as communities. Well that is very good, the land cannot belong to people, all the people in a community, and yet a few of these members have small pieces of land while by whatever means some of our Kenyans have big tracts of land, much of it being underused and yet we have here agreed that land is a very fundamental resource.

Mr. Chairman, I am therefore proposing that this draft Constitution should have a limit, if the land cannot be redistributed, then it should have a limit whereby we say if one can own upto say a hundred acres of land and any excess of a hundred should be taxed, so that the money so collected can go to assist in the development of this country, and moreso in an areas where people have small pieces of land which cannot sustain their lives.

Secondly, Mr. Chairman, while we accept in the Article on the protection of property, I am also of the opinion as it is drafted here, that the property that people have had on the land that they have already acquired, should be protected very seriously by the law so that we live in a peaceful country. Thank you, Mr. Chairman.

**Hon. Delegate Norman Nyaga:** Thank you, Honourable Delegate. As I said earlier we are looking for the category of COTU, NGOs, Professionals, Women Group, Religious Organizations, Political Parties from this row over here; and preferably a person who has not spoken before and has keen interest in speaking today, before we get onto the others. We will get onto you, there will be enough time allotted for this. I recognize somebody from the Political Party group who has not spoken before. Delegate number 585 and this time over here, I will be looking for a Member of Parliament. I hope before that Delegate speaks, I hope that is a point of

order, and you know I am a master of standing orders that it is going to be a standing order. Yes, what is your standing order?

**Hon. Delegate Rita Katamu:** It is a point of order. My names are Rita Katamu, Delegate from Butere Mumias. I have followed you properly and I am seeing you sideline women. Just the way we have always been sidelined on land issues. Kindly, take care and let us participate. Thank you.

**Hon. Delegate Norman Nyaga:** Well, we take your point. I don't think we don't need clap. You have only been and we want to be very categorical in this. We have only done 1,2,3,4,5 people and I will get onto that and I can also tell you as a person I look after Affirmative Action a great deal. So, at this point can we have Delegate number-- The one I had asked to speak, please do continue.

**Hon. Delegate Denis Okuthe:** Thank you, Mr. Chairman. I am Denis Okuthe, the founder Chairman of the Liberal Democratic Party and also the current Chairman of the party with the majority in Parliament. Thank you very much, Mr. Chairman. Mr. Chairman, Honourable Delegates and distinguished journalists. I am going to comment on a few points:

1. Ownership of land
2. Utilization of land
3. The landless in this country
4. Squatters.

When I talk about ownership of land, my dear Honourable Delegate 1 has mentioned about this, but my concern is that, what is the limit of this ownership? If somebody can own the entire Nairobi, what about somebody who does not even have a single piece of land? My request for the Constitution we are going to make for this country is that we have to seriously think about this question of land ownership because we have seen situations in the country where one person or a few individuals own tracts of land which are not utilized and yet you go to places where somebody does not even own a single piece of land. To me, Mr. Chairman, what we are doing here is a very serious document that we are going to produce for this country, for now, for

tomorrow and for the future. I think if you look at the situation in the country today, and I am talking from the Liberal Democratic Party perspective, there is a clique, are a few Kenyan individuals whom I can describe as being very lucky but then there are majority Kenyans who are today, the moment we are speaking now, do not even have a shelter, or anything to put on their heads.

Mr. Chairman, when I look at Article 233 (2), you are talking of individuals owning land. What I would have requested, and if the Honourable Delegates are going to agree with me, is that the Constitution comes up with a provision which sets the limit, the number of land or acreage an individual can own so that every Kenyan is given an opportunity to own land. Mr. Chairman, fellow Honourable Delegates, for a few of us who have had a chance to travel, Kenya can take care of itself by producing enough food that can feed and sustain its people. Sometimes when you travel this country, it doesn't matter where you are traveling, you will find that we have a lot of land which is lying idle. Nobody has a right to talk about that land, nobody has a right to institute condition as to how that land can be utilized. I have gone through this chapter, Mr. Chairman and dear Honourable Delegates, there is no area talking about utilization of land. If I own this land for instance, I am lucky to have bought or to have been allocated the whole Nairobi and I am not utilizing it. It is lying idle, it is a prospective land, it is very productive and nobody is doing anything about it. That is not helping this country. I think there should be a rule in the Constitution that we are going to make, that if you are going to own this land, it doesn't matter how you own it, then you must be given time to use it. Mr. Chairman, Kenya should not be importing maize. It is shameful for us as a country to be importing maize, that Kenyans cannot feed themselves. We should not be importing wheat, we should not be importing all other products which we can produce. The other day I had an experience with a Japanese expert who instead of feeling sympathy for Kenya, that we don't have this to do that, he was laughing off. He said, "Denis you have a lot of water, you have a lot of land, there is a lot of rain, you are lucky to have all these, why can't your people, why can't you as Kenyans utilize this?" If you go deep down why this is happening, it is because there are few individuals who own tracts of land, they are not utilizing that land, and people are starving on the other end because we cannot produce.

Mr. Chairman, the other point that I was going to look at is the squatters. Why do we have squatters in this country? It is a question that we people who are making the Constitution today should really put emphasis on because we are developing a country and the population is increasing. We don't want to create a situation where Mr. Denis Okuthe or somebody somewhere, once he is in power or is close to power, wants to own each and every place that he feels is not to be taken. We have seen situations in this country where people have even grabbed public utility plots, they have grabbed toilets, what about the person who cannot grab, Mr. Chairman? I think when we are making this Constitution, it is important that we really seriously look at this country, look at the children that we are bringing up, look at the population we are having and the population that is going to come so that we guarantee, we put safeguards, we control those who think that they can own.

The other point, Mr. Chairman, before I sit down and thank you very much for giving me this chance because I raised my hand several times, the other issue is compensation. We have a situation in Kwale where Titanium mining and I heard the Minister the other day saying that they will be paid this much per acre. How did arrive at that? I think the Constitution should have a situation whereby it is put in the Constitution that should we find this in this particular place, then this is the level of compensation we are going to give to the people. I have had a chance to be there, Mr. Chairman. Those people are farmers, they have families, if somebody gives you Ksh. 80,000/= per acre, what is going to happen to your family? So, I think it should not be a question of an individual deciding on how much somebody who owns land should be given, but it should be reflected in the Constitution in a way that when you discover whatever resource in wherever he lives, then there is a proper compensation which will enable such people to get shelter, land or accommodation elsewhere. Thank you very much, Mr. Chairman.

**Hon. Delegate Norman Nyaga:** Thank you, Honourable Delegate. The next row as I had said was the category of Members of Parliament. I want to recognize, I want to move from Rift Valley, I will balance you because I know you well. I am your shepherd in Parliament. So, I want to move from Rift Valley and move to the Coast, Member number 53. I will get on to you. Member number 050---

**Hon. Delegate Joseph Khamisi:** Bwana Mwenyekiti, jina langu ni Joe Khamisi, Mjumbe wa Bahari-- (*Noise from Honourable Delegates*)

**Hon. Delegate Norman Nyaga:** I will get to you.

**Hon. Delegate Joseph Khamisi:** --skwota wa hali ya juu, nambari 53. Bwana Chairman, ningependa kuanzia kwanza kunukulu mswada wa haki za binadamu, Article 54 na 59 ambazo zinasema kwamba kila mtu ana haki ya kuwa na ardhi aidha kibinafsi au kwa jumla na watu wake. Article 59 inasema kwamba hakuna mtu atakayeweza kuondolewa kutoka nyumbani kwake kwa nguvu au nyumba yake kuvunjwa bila ya order kutoka kwa Mahakama Kuu. Bwana Chairman, kila siku katika nchi hii ya Kenya hali hii inakiukwa na mimi nafurahi kwamba Kamisheni hii imekubali kuongeza vipengele hivi katika Katiba mpya ili kuondoa dhiki ya wananchi wa sehemu hizi. Bwana Chairman, katika sehemu ya Pwani, tuna wale ambao wametajwa kama ni *absentee landlords*. Watu ambao walikuja na kupewa ardhi na Sultan katika miaka ya 1800, 1900 wakati huo na hivi sasa wale *absentee landlords* hawako, lakini ardhi yao nyingi, mamia ya ardhi yameshikiliwa na maskwota wanaoishi katika sehemu hizo. Na jambo la kusikitiza Mwenyekiti ni kwamba maskwota hawa wanaitishwa kodi. Kila wakati wanapojaribu kulima wanapewa amri ya kutoa kodi ambayo inaitwa 'mkate' kwa hawa majambazi ambao hawako katika nchi hii.

Bwana Chairman, ningependa kukurudisha katika Article 236 (2) (a), ambayo inaipa serikali uwezo wa kuchukua ardhi kwa nguvu iwapo kuna tisho la nidhamu na tisho la usalama. Nataka kusema kwamba lipo tisho la usalama katika sehemu ya Pwani, lipo tisho la usalama katika sehemu ya Bahari ninayowakilisha. Kwa hivyo, ni muhimu kwamba serikali ichukuwe hatua ya haraka kuchukua ile ardhi ili kuweza kuondoa lile tisho lililoko katika usalama na nidhamu ya nchi hii.

Bwana Chairman, ipo pia ardhi ambayo inaitwa ardhi ya Serikali ambayo inakaliwa na maskwota. Tunataka serikali iweze kuwa na imani ya kutoa ardhi ile kwa wale masikwata ambao wako katika ardhi ile. Pia kuna wale mabebe au mabwenyenye waliochukua ardhi kwa nguvu kwa njia ya ku-grab baada ya uhuru wa Kenya. Tunawaomba Serikali, katika Katiba hii, ifute zile ardhi zote zilizotelewa kwa njia ya *decree* ya President ambayo ilikuwa si halali na

ardhi ile ipate kurudishwa mikononi mwa wananchi, kwa sababu wengi waliopewa ardhi hii walikuwa ni marafiki wa viongozi waliopita na tunafikiri kwamba kwa kuwa wananchi wa pale hawana ardhi, ni jambo la dhambi hata kwa Mungu kwamba ardhi hii imenyakuliwa na watu ambao hawafai kupewa ardhi ile.

Jambo lingine ambalo linasikitisha ambalo silioni hapa, ni kuhusu ardhi za *settlement schemes* baada ya uhuru ambapo ndio ilikuwa njia kubwa ya mabwanyenye kutoka Bara kuja kuchukua ardhi katika sehemu ya Pwani. (*Clapping by Honourable Delegates*) Mimi nasema hivi kwa sababu hakuna hata Mpwani mmoja katika sehemu yangu aliye na ardhi ya beach plot. Beach plots zote zimenyakuliwa. Naomba Serikali na Katiba hii mpya sio tu kutupa Kamisheni, hatuna haja ya Kamisheni. Tatizo la ardhi linajulikana na Serikali na ni lazima liangaliwe hivi sasa, sio kesho.

Jambo la mwisho ningependa kusema ni kwamba, katika Katiba hii kwa upande wa mali ya asili sijaona mention yoyote kuhusu mali ya asili ilioko katika Bahari ya Indi. Tunayo mali ya asili katika zile maili tulizo nazo chini ya uongozi wa Serikali. Ningependa kutia pendekezo katika Katiba hii, kwamba mali zilizoko chini ya bahari katika Bahari ya Indi katika ardhi ya Kenya, ziwemo katika vipengele vya Katiba hii ili vipate kuhifadhiwa na Serikali na kuwezesha wananchi kupata utajiri kutokana na uvuvi na kutokana na shughuli nyinginezo za kitalii. Bwana Chairman, singependa kupoteza wakati mwingi, lakini ningependa kuwahisi wenzangu kuhakikisha kwamba mambo haya ya ardhi yanaingizwa kwa ukamilifu sio kijuujuu. Asanteni.

**Hon. Delegate Norman Nyaga:** Thank you very much indeed, Honourable Delegate. In the next row, we are looking for a woman Delegate. The next row is the one next to where the speaker has just finished speaking. The next row over here, woman Delegate, and, because I have the misfortune of not having checked as to who may have spoken before, I would just choose at random and in the meantime I will ask the next row to also indicate their interest in speaking. Now I recognize Delegate number 467.

**Hon. Delegate Mary Wambui Kanyi:** Thank you very much for giving this opportunity to speak on this important Chapter about Land which is very dear to us as individuals, communities

and as a nation. I congratulate the Commission on the Chapter but I have a few comments to make.

One, in Article 232, I am proposing that we add (g), devolution of land administration to the local levels. This is because we are aware that the poor people in the community---

**Hon. Delegate Norman Nyaga:** Please, give your name and number before you go on, it is raising concern.

**Hon. Delegate Mary Wambui Kanyi:** My name is Mary Wambui Kanyi, Delegate number 467, from the NGOs. Thank you. We should add (g) because we are aware of the problems that local people have had in addressing land issues in the community whereby sometimes, they are not even aware of the laws that address issues on land. Poor people have been dispossessed of their land. We have people like women, who cannot even know what is happening on their land and at times they are dislocated or even evicted from where their land that had been sold without their knowledge.

On Article 233 (2), we should add that there must be a limit to the maximum size of land which an individual should own. This is because in all communities of Kenya, whether they are pastoralists or agricultural communities dealing with food crops, we have individuals who own so much land at the expense of other members of the community. So, can we have a limit of the amount of land an individual should own, so that anything extra can go to the other members of the community.

Number (3) of the same Article, we have the issue of the lease which is 99 years, but I am proposing that we add that the lease will be reviewed every 30 years. The reason for this is that we are aware of land, which has been leased even to foreigners in this country. Many generations have come after, and they do not even know the conditions under which their land was leased by their ancestors and they cannot address that issue because the person to whom the land was leased, may be it was for a 100 or 99 years, but a generation is about 30 years. so, can we have a way of readdressing or reviewing the leasehold so that every generation is able to review if possible, even address the rate of the land which has been leased to foreigners.

Article number 235, I am proposing that in number 4, we add number 10, whereby the Parliament would address the issue of compensation of communities whose land has been taken either by the Government for development purposes, or, where there are minerals or other resources to be exploited. This is because we are aware of how our communities, our fellow brothers and sisters are suffering. For example, at the Coast where we have the Titanium, which was discovered, we have communities like the Ogiek who are being expelled from their own ancestral land. Can we have Parliament through an Act, address the issue of compensation in which then we would have to address the details on the compensations – that is the rate as well as well as the time frame – after which the community would be expected to leave the land so that we do not have our people being evicted from their ancestral land which they have lived on for all their lives just to go out on the streets.

Number (b) of the same number, 4, we have the establishment of a Truth Commission to address land related injustices and crimes in the past. Other than having number 2,3 and (c) in that section, I think this Commission would address the wrongs that have been done to our people in this country. This would then be contained in an Act of Parliament, which would be passed by the Parliament.

On National Land Commission, we need to ensure that we have regional representation. We know that different regions utilize land differently and unless we have proper representation from each region, then we would not have all the issues on land properly addressed.

My last point would be to address the gender aspect in land access and ownership. The reason being that we have traditional laws or customary laws in this country whereby women have been discriminated so much that even when land is allocated, they are not considered in that allocation. Even on inheritance, our daughters and married women are dispossessed of property. So, can the Chapter also address the need to a gender-aware access to land ownership not just access, because we can have access when it belongs to your parents but when it belongs to your husband you do not have ownership. So, we need to address the need for access to land ownership for both men and women. Thank you.



**Hon. Delegate Norman Nyaga:** Thank you very much indeed Honourable Delegate. We are looking at the last one and this was going to District Representative and I want to recognize one that has not spoken before. Infact two of them, but I will go for Delegate number 394, you have not had the opportunity of taking the floor. We will be looking for a Delegate from that side but in the meantime, you can continue.

**Hon. Delegate Adungo Asitaluko Mark:** Mr. Chairman, I will declare you my darling because you have just remembered to give me the opportunity having stayed here all this time. My first issue here is, my names are Asitaluko Adungo, from Teso District. I would like to add my voice to those Delegates that have congratulated the Commissioners for the nice job they have done. The Commission has done a good job and the Commissioners that have done the presentations have also done very well. It actually erases the original thinking that was in the minds of many who were campaigning that the Commissioners should not have been with us at the Conference. This now gives us a very clear picture that, without the Commissioners explaining what they have produced, maybe we would not have gone very far. I congratulate them and I would like to request them that whatever papers they have like they had....

**Hon. Delegate:** Point of order, Sir.

**Hon. Delegate Norman Nyaga:** Has he breeched any order? Please, let him continue if he has not breeched any order.

**Hon. Delegate Adungo Asitaluko Mark:** Whatever papers they have, they should not be discouraged from giving us. The other day, they were frightened after being accused of sneaking in some documents. In my view, that document was very appropriate and indeed the Delegates should be allowed to read widely whatever information that will assist them to make rational decisions when they are finalizing the document. Therefore, all information that is available from all corners should be made available to the Delegates.

Coming back to the Chapter we are discussing, I am glad that this time round, the Land Act which has been scattered all over will now be consolidated and perhaps will be one document governing land in this country. If that comes to be the case, we shall be a happier lot than we

have been before because in the past, you found land matters scattered in very many documents. People from Teso sent me to say that particularly, the so-called registered land, when you are inheriting it from your ancestors, you are even asked to take the dead body to court. To them, that was unbecoming and should not be the case. In other words, they are saying that when it comes to inheritance of land or land administration matters, there should be a body at the local level that handles this, particularly the elders who would know better who owns what. That curtails the situation where you have rich people that can go round the courts, which have also been accused of corruption and take over land that belongs to the poor. Therefore they said, the land administration matters, particularly the land that belongs to communities and even registered land belonging to individuals should be relegated or left with the elders who would sort out those land matters well.

I am also in agreement with the Commission that a Commission should be established. We are aware that the Commissioner of Lands which was supposed to be an agent in this country for public and Trust Land had turned itself to a principle and was dishing land left and right, selling it himself and to other people. I think when we have a Land Commission, my appeal is that that Commission to be entrenched in the Constitution, it should be a Constitutional Commission and not just one of these Commissions can be disbanded day after the other. I have seen from the Commission that there is no provision for entrenching that Commission in the Constitution. I would appeal that the Technical Committee that is going to look into this matter, fights hard and recommends that the Land Commission becomes a Constitutional Commission.

I also agree with those that have talked about the absentee landlords. I think it is an abuse of the Kenyan sovereignty for people to own land when they are not in this country. They direct us on what to do with our land, they earn from our land when we are poor and so, any land that is owned by absentee landlords should be taken over immediately.

Another thing that I wanted to add my voice on, is the question of leasehold land. The leases that have been given would last for a period of time, some last for a shorter period than 99 years. But the question is, what happens with the property that has been put up or developed on that land? This is because you find someone who has been allocated a small piece of land, maybe 0.5 of an acre or even less has put much development on that plot. In my view, I think leases to non-

citizens or to foreigners should be short so that when they develop the land and when the lease ends, the land should be reverted to Kenyans and the person be compensated for the developments that he has done on the land.

**Hon. Delegate Norman Nyaga:** Thank you.

**Hon. Delegate Adungo Asitaluko Mark:** Finally Mr. Chairman, I would like to say something about the endangered districts, because Teso sent me particularly for that. The endangered districts should remain. In that, I am referring Kenyans to what one Kenyan statesman said in the year 1962 in London that Kenya is (Inaudible) and nobody can snatch it from us. For the endangered districts, they are ours and nobody should remove them from us. Thank you, Bwana Chairman.

**Hon. Delegate Norman Nyaga:** Thank you. Point of order from Delegate number 531.

**Hon. Delegate Mustafa Ali:** Mustafa Ali are my names, Delegate number 531. Sir, it has come to our notice that there is a particular person whom we can call a stranger coming to this side all the time. Sir, it has come to our notice that there is a particular person whom we can call a stranger. All the time he comes to this side of the house and at one point he was seated here looking at what I was writing and he went and sat there. He is everywhere. He is interfering with the deliberations of this Conference and the nature of interference is worse than the person who was carrying fire arm in this very hall. Can he be warned that he should not go and sit with the Delegates but sit where he is supposed to sit? Or if so - I am talking about a foreigner, he is an American - either he sits where he is supposed to sit or he can go back to--

**Hon. Delegate Wilfred Ole Kina:** Thank you very much on that. Let me say every member here has been allocated a position to sit and I think we should respect that so that we are able to go on with our deliberations.

**Hon. Delegate Sheikh Mustafa Ali:** His name is Dr. Mitch Medina.

**Hon. Delegate Wilfred Ole Kina:** I think that is the name you want. Thank you very much I think he gets the mood of the House, so please wherever you are, sit where you are supposed to sit. Thank you.

**Hon. Delegate Norman Nyaga:** Just to reiterate, what the Chair is saying is that if you are an Observer, you are supposed to sit on that allotted seat where you are supposed to be, in the chair right outside. Thank you. Thank you for that notification.

We are looking at District Delegates again by virtue of their number and I have a record here that tells me that Hon. Delegate number 374 has not spoken since he entered here. Having said so, I want to recognize in the next section the following; and as you know the substantive Speaker of the National Assembly sitting right over there, would you lift up your arm. It is saying that the Chair is always right and therefore, I want to assume I am right and I want to recognize the next person after this one, delegate number 160, for the following reason, we want to know what the Government position is from that delegate who is number 160. So Delegate, continue.

**Hon. Delegate Joseph Soi:** Thank you very much, Mr. Chairman. My name is Joseph Soi, Delegate number 374, from Buret District. My contribution Mr. Chairman, is on Article 233 Sub Section 2. And I think I can read the provision here. Non-citizens of Kenya may hold or use land on the basis of leasehold only and when such leases are granted, shall not exceed 99 years. Mr. Chairman, I mention this Article in reference to some indigenous people who were evacuated from the massive tea plantation in Kericho and parts of Buret to make room for the plantation of tea in those areas. Mr. Chairman, those people to date are languishing in poverty in some parts of Transmara and Narok district.

Mr. Chairman, I propose that those people be compensated in terms of shares from the tea produce or even plot allocation elsewhere in the country. Mr. Chairman, it is even disturbing to know that even the communities from those tea estates do not benefit from the tea produce and this is because a larger percentage of the revenue from the sale of tea, is taken by the Central Government at the expense of the communities in those regions.

I, therefore, suggest once more, Mr. Chairman, that at the expiry of 99 years leasehold tenure, the communities be given an opportunity to decide how they will benefit from the tea produce. Mr. Chairman, when people think of Kericho or Buret District, they probably have an idea that almost everybody in the district is very rich because of the large tea estates. Mr. Chairman, our infrastructure like those are in pathetic situation.

Finally, Mr. Chairman, I propose that the 99 years lease be reduced to even 33 years and this should be subject to the consent from the communities in this area.

Now, the last one, Mr. Chairman, is about matrimonial land. This is the family land. Matrimonial land should not be sold and should be registered in the family name, this can only happen with the consent of the two family members. Thank you very much Mr. Chairman.

**Hon. Delegate Norman Nyaga:** Thank you very much indeed Hon. Delegate, can we have the next row Hon. Delegate number 160. Point of order? Do I hear point of order? Yes, Delegate 111.

**Hon. Delegate Geoffrey Muchiri:** Mr. Chairman, thank you very much. I rise on a point of order. I do not want to contradict what you have said but I want to believe that we are all delegates and there is no position of government or anywhere else that we have in this hall. *(Clapping by Honourable Delegates)* As the Speaker number 160 prepares to rise, he is going to talk of his views not Government. I am a Member of Parliament on the government side, so if I speak what I have, this is not Government position, Mr. Chairman, and I think that needs to be corrected.

**Hon. Delegate Norman Nyaga:** I would want feel that way but my position still remains that the delegate on his speech is a Government Minister and in that capacity the Government is in place and it is important that we, all of us, listen and then we shall give our views. That is exactly why we are here. Hon. Delegate number 160.

**Hon. Delegate Joshua Ojode:** Thank you, Mr. Chairman. My names are Joshua Ojode, Delegate number 160. Mr. Chairman, I would want to give a Ministerial position paper on land

and I would want the delegates also to listen to our stand. What is the stand we are taking on land issue. Mr. Chairman--

**Hon. Delegate Norman Nyaga:** Give the Honourable Delegate time to speak please, your time will come, please.

**Hon. Delegate Joshua Ojode:** Mr. Chairman, let me start with the land policy framework. Mr. Chairman, my Ministry concurs with the proposal that land being a primary economic resource and the basis of livelihood for our people--

**Hon. Delegate Norman Nyaga:** Order, order. (*Noise by Hon. Delegates*).

**Hon. Delegate Wilfred Ole Kina:** Yes 003? Yes, let us listen to one of you, 003.

**Hon. Delegate Abdirahman Ali Hassan:** I rise on a point of order Bwana Chairman, I am worried that the Hon. Delegate from the government side is going to influence the decision of the Hon. Delegates as we deliberate on this very pertinent issue related to land matters. I think it is of paramount importance for the Government side to give us their opinion at the latest stage, at the Technical Committee stage and not at this stage.

**Hon. Delegate Joshua Ojode:** Mr. Chairman, let me promise the Delegates that I will sum up the position of the Ministry. (*Shouting by Hon. Delegates*). Yes, let the Ministry's position be known. (*shouting by Hon. Delegates*).

**Hon. Delegate Wilfred Ole Kina:** May I make a ruling on this, please let me make a ruling on this. (*Shouting from Hon. Delegates*) Hon. Delegates, give me an opportunity to rule on this. Hon. Minister, the Delegates, okay, the Government position is good and let me say this. It appears the Delegates would like to give their position before they know that of the Government so let us respect this Conference, if you have your personal position, I will allow you to give us that and then you will give us the last. You will give us the government position tomorrow as we are winding up. Thank you.

**Hon. Delegate Joshua Ojode:** Thank you Mr. Chairman. Mr. Chairman, I had been asked by some of the delegates to give an overview of the position of the Ministry.

**Hon. Delegates:** No, no!

**Hon. Delegate Wilfred Ole Kina:** Then, I have made my ruling. Thank you. Can we please proceed if you have your personal position please utilize that time if you don't we will get another person. (*Shouting by Hon. Delegates*).

**Hon. Delegate Norman Nyaga:** Okay then one promise, one promise, order, order please, order please, order. Now that the position has been felt, you have been promised as we come to a closure either tomorrow or the day after, it is firm that you will be given that opportunity to make your point. In the meantime, we shall move on to the same section but at least different category. Do we have anybody on Special Interest in that area? Special Interest in that area? Okay, Delegate number 176.

Order please, order, Delegate number 176 has the floor. Order please, if you are retreating, do it quietly please.

**Hon. Delegate Samuel Poghio:** Thank you, Chairman, for the opportunity to take part in this discussion on the issue of land. Mr. Chairman my names are Hon. Samuel Poghio, Delegate number 176 and I would like just to make a few comments.

First, Mr. Chairman, we have all agreed that this is the principle resource. Land, is the principle resource of our people. I would like to speak from the position of one who has been disadvantaged.

**Hon. Delegate Wilfred Ole Kina:** 054 please allow the Delegate to give his contribution; we will come back to you.

**Hon. Delegate Samuel Poghio:** I come as one who has been disadvantaged on the issue of land. Not as a person but as a people. Mr. Chairman, the people known as the Pokots have

suffered close to 100 years because their land was taken away many years ago. The Pokots Mr. Chairman did not feature in the 1963 Lancaster Constitution. To make matters worse Mr. Chairman, one Samuel Poghisio, who stands before you, was actually annexed to Uganda for 40 years because the land was taken away by the colonialists.

You cannot believe this, a few Kenyans know that the Constituency I represent right now called Kacheliba was handed over; 100% Kenyan territory was handed over in 1931 to Uganda for administration purposes because the land in Trans-Nzoia had just been taken away by the colonialists and in the intervening period Mr. Chairman, at one point we lost about 8,000 people because we were congested into an area that could not handle the population. 8,000 Pokots died because their land was taken away, so we stand for retribution. And so, I would just like to say in short that the Lancaster Conference did not address our land but this Conference should address it and must address the issues of injustices. I agree with my colleague who has spoken on historical injustices that we should set a date, this Conference ought to set a date, a cut-off date for discussing those lands. And the Njonjo Commission has recommended 1895, as such a date and this Conference has to accept that kind of date here rather than leaving it to Parliament.

***Clapping by Honourable Delegates***

Mr. Chairman, if you read the Njonjo Report, portions of which we were given, you realize the issue of historical injustice. The Pokots case has been well documented. The Pokot case along with the others who have spoken today and those who are yet to state their case, has been documented well. I would like therefore to ask Mr. Chairman, that the Pokot and others whose land was taken away, that Commission which is supposed to be set up to look into these injustices has to go back to 1895 and look at how land was then taken away, dispossessed from the people.

I agree, Article 235 should include a compensation aspect and also we know from experience, that a lot of people who have sorted out these land issues have resorted to compensation. Mr. Chairman, the Pokot community under the then PC other (?) champion of the Turkana Province of the past, when he testified in the Carter Commission he recommended that



the only option for the Pokot is expansion into Trans-Nzoia back to their land. That is there on record.

At that time, when there were only a few of them - about 18,000 of them – it was recommended that the Pokots be given 10,000 acres from Trans-Nzoia which has never been given. The Carter Commission compensated and promised to give 40 farms to the Pokots out of the settlement areas in Trans-Nzoia; up to now that has not been given. What we are saying therefore, Mr. Chairman, is that we look at land issues today from the perspective of the disadvantaged people who were not educated at that time; the bigger communities swallowed the smaller ones and have pushed into those areas. The settlement schemes in Trans-Nzoia which were supposed to be given to these people as compensation were taken over by the big brothers and so land has to be dealt with in a very specific way.

Our land as we have said, Mr. Chairman, is well documented. I would like to say for example, that there was a case where one million acres was given to some community as compensation in this country. There are identified farms in Trans-Nzoia, ADC farms, which could be given immediately even to the Pokots who are always accused of cattle rustling. Mr. Chairman, if people are squeezed into a place where they cannot expand and without justifying cattle rustling, the people will be forced to settle somehow and find space for themselves. I am saying that they should be given land and even that will change their character, that will change their habit that will change their livelihood.

Mr. Chairman, the new Constitution should follow the Constitution of other countries. In South Africa the Kruger National Park, which was taken over from a certain community was given back by court decision. The Maori of New Zealand were given cash to represent the land which was unused for 100 years. We can actually do something here in this country.

Mr. Chairman, I want to get back to the issue of Kacheliba as a Constituency for the record. When the Constitution was written in 1963, Kacheliba was not part of this country, it was locked out in another country. Now in 1971, Kacheliba was taken back to Kenya for administration purposes. From 1971 to date the Government has been unjust to Kacheliba, all

governments of the time: no Government project, no settlement of any kind, no school built by the Government, no hospital built by the Government, that is a land issue.

The land issues mean that Kacheliba should be considered as a special district in this country. Given their land, which was taken away from Trans-Nzoia, but at the same time recognized as a special place for catching up, this is the place where your equalization grants have to go. Special Affirmative Action for an area like that (*clapping by the Honourable delegates*). Mr. Chairman, if districts were given along political lines, the one which deserves a district are people like those of Kacheliba who were handed over to another territory, brought back without compensation, surviving and always being condemned. I would like to rest my case by saying that the land issues need to include, if necessary, compensation in terms of money, compensation in terms of land and I would like to say, let us read the Njonjo Commission and the Pokot of Kenya to be considered as people whose land was taken away. Thank you very much.

**Hon. Delegate Wilfred Ole Kina:** Thank you Honourable Delegate. I had promised 054, a point of order.

**Hon. Delegate George Munyasa Khaniri:** Thank you very much, Mr. Chairman. Sorry to be taking you back to a matter that you have already ruled but Mr. Chairman, I feel that if we do not question this ruling - I still have a problem with the ruling - we will be setting a very bad precedence in this Conference. Mr. Chairman, in the handbook we have clearly been shown the categories of Delegates in this Conference; they are ten, District Delegates, Members of Parliament, the NGOs, Commissioners, Professional Organization, Women and so on. There is nowhere where it states that there are government representatives in this Conference. I believe that Honourable Ojode is here as a Member of Parliament and therefore when he makes his contribution, he should be talking as a Member of Parliament and not as a Government Minister. Mr. Chairman I beg your indulgence on this matter, I want you to withdraw the ruling that you made, Ojode should be given a chance now and not tomorrow to talk as a Member of Parliament.

**Hon. Delegate Wilfred Ole Kina:** Thank you very much. I would like to remind you that in this very sitting, Honourable Maitha gave a government position as we were talking about devolution. At that particular time, you should have raised it and we should not have gotten into this problem. However, I am aware that we are not here as government, we are here as a people of Kenya and the way we are here we are the government; because it is the people of Kenya who form the government. So, let us not dwell on that, let us go on, and have the next representative from this section. Thank you.

*Noise from Honourable Delegates*

**Hon. Delegate Norman Nyaga:** The people have decided. Let us forge ahead. *La voix de peuple, la voix de peuple*; the people have said, we have heard, let us forge ahead. Let us recognize 499 from the category of Women and that Delegate has not spoken since this Conference started. Delegate 499, can we give her time please.

*Noise from Honourable Delegates*

**Hon. Delegate Tabitha Seii:** Thank you, Mr. Chairman. I am glad you have recognized my hand this time. I want to make my contribution on this very important subject. My name is Tabitha Seii, number 499. I want to make my contribution with regard to this very important subject of land and I dare say it is the one and only cause of conflict in many communities and between tribes. To mention just a few, the land clashes and many other clashes which have come by in this country. But one thing which I would like this Conference to do, is to have clear demarcation in the contributions that we make regarding what is the next thing to be done. People have moved from place to place and if we are going to follow the movements of people-- It goes way back to the 19<sup>th</sup> century to the 20<sup>th</sup> century, people have moved from place to place and none of us had a chance to say, "we came from here we need compensation".

I want to make a proposition, that where people have been found by this present law now, they sit there and observe the policies that will be made, otherwise we will not finish in going backwards and trying to ascertain where people have come from. If we do that, then we are going to go all the way to the River Nile, where I, as a Highland Nilote came from; my ancestors

came down from River Nile and we parted company with the Lake Nilotes and we went up to the Highland and we have never moved ever since.

In areas like the Rift Valley, the Keiyos, the non-Keiyo come from the name of Keiyo which is Maasai, Kerio, Uasin Gishu, where, so many of them; and if we go back to all these places, we know the Maasais were there. How far back can we go? Let us just come to the more recent issues on land, there are some burning issues regarding land which has been corruptly possessed in the present times by the present leaders, the present colonialists among us today and these are lands which we require for our development in these present times. There are forest lands which have been grabbed, there are Trust Lands which have been grabbed, there are public utility lands which have been grabbed, there are lands which have been taken as a result of the ignorance of the people perhaps who lived there and the cleverness of those who have accessed and understood the law; and they have possessed these lands.

This Honourable Conference should be able to make some very clear suggestions as to how far back can we go. This country today is sort of research land. What do we do about the KARI land which has been taken and possessed by individuals? As much as we want to protect individual land, how individual is a land which has been acquired recently, and by virtual of a title deed the person now calls it his own land? Are we going to reflect that and say it is because you have a title deed, which you may have gotten because you were able to bribe somebody, or you were able to influence somebody to get that title deed?

I had in question land which is very close to my heart, the Fluorspar land. This land is a place where Fluorspar mines are placed in the Kerio Valley where the owners of that land today have been made landless and squatters in their own ancestral land because it is right now owned by one individual who has taken that land for himself by virtual of his ability to buy the mines from the Government. How is that going to be repossessed and how are the people who have been reduced to crashers of the very stone where their ancestors lived, going to be compensated? They crash those stones to be taken as minerals to other countries to be sold and they have no compensation whatsoever. They don't have even health facilities for the community, they don't even have schools for the community, they work as labourers in the very land which they owned, and their ancestors lived in. How will such be compensated?

There are also issues regarding land, mortgaged land and this mainly touches families. When land is mortgaged and a bank comes and sells the land, we need to have a clear policy regarding what mortgages can be done and by who within the family. We have people who have been dispossessed; who have been made squatters because they did not understand the law, and that brings me to talk a bit about education. When we make a law, and the people do not understand what the law means, in connection with what they possess, they become losers as a result of ignorance and thus today we have people who have been thrown out of their homes, bulldozers coming to push them out and they do not understand why. Personally I am a victim of this, when one morning a surveyor came and demarcated our land and we were told “you don’t have a title deed and this land is going to a particular school” and we did not know how to get that back; to this day, we do not have that land. So, this Conference, Honourable Chairman, must come out with very clear policies because these conflicts will continue to be in Kenya as long as we do not know how to redress the aggrieved people. Mr. Chairman, Thank you very much.

**Hon. Delegate Wilfred Ole Kina:** Thank you very much. At this juncture, I would like to remind the two committees that were supposed to meet during lunch hour, that is the technical group E, on the judiciary, to meet at tent number 5, your lunch will be served there and the technical committee on defence and security to meet at tent number 9, your lunch will also be served there. The Commissioners will also be meeting; I think they know where they are supposed to meet. Thank you very much, let us adjourn for lunch and come back as soon as possible. Thank you.

## **Afternoon Session**

**Hon. Delegate Wilfred Ole Kina:** Please take your seats; we are about to commence our deliberations this afternoon. We will begin in the next one-minute.

**Hon. Delegate Norman Nyaga:** Good afternoon Honourable Delegates. I believe we are all set to begin the afternoon session and I do hope that you have had a good meal and ready to make a very useful contribution like you have done in the past. We are right now under this category right in front of us, and we are recognizing a number of you, I do not know whether you have somebody from the Religious Organizations in that group or whether you have somebody from the Women Organization from that group, we do not want them marginalized and we recognize at the moment delegate number 390. We have been through yours, just before we went for lunch.

**Hon. Delegate Kellan Khaoma Wavomba:** Mr. Chairman, thank you very much.

**Hon. Delegate Norman Nyaga:** Let us take the order from 145.

**Hon. Delegate Ngoz Abdalla Juma:** Point of order. Thank you, Mr. Chairman, mine is just to remind you that when we left here for lunch, you were on that block, I do not see why you have now gone to the other block and left this block. Thank you.

**Hon. Delegate Norman Nyaga:** Thank you I appreciate, I just wanted to remind you that the Honourable Delegate who spoke is apparently seating in the same block where the Chair seats. Now can we have the Honourable Delegate please to continue.

**Hon. Delegate Kellan Khaoma Wavomba:** Thank you, Mr. Chairman, for your protection.

Mr. Chairman, I would like to contribute on this topic with the following. Mr. Chairman I would like to suggest that this Conference must, before doing any other thing with great concern, take into consideration the issue of the grabbed, stolen and forged land in different parts of these Republic. Mr. Chairman I insist that we must go down on record as a nation that we should never, ever again, allow such a greedy Government to manage the public resources, mostly the land. Mr. Chairman, as a mother I am touched that in some parts of our great country we have no way of expanding some of our essential public utilities like hospitals, airstrips, stadium, among others. This is because the land was grabbed by our own brothers and sisters.

Mr. Chairman, I come from Bungoma District and I would like to say it openly here that we have a very, very sorry state of affairs whereby the main hospital of the District which acts as a referral hospital to other minor Districts can not be expanded and this is because the land that was reserved has been grabbed by people and therefore nothing has been done so far. Mr. Chairman, Bungoma people cannot enjoy the facilities of a show-ground because the land has been grabbed and this one was done during the other regime.

I want to concur with the other speakers, Mr. Chairman, who said that the other Government misused its powers and I therefore urge this Conference that while we sit here to deliberate on this land issues, we should also put in place methods how this other land that was grabbed is going to be repossessed. Because Mr. Chairman we realized that, that is land that is supposed to be utilized by the public and it has already gone away and in the Draft I do not see anywhere, where it is mentioned that such land will be brought back to the public.

Mr. Chairman, just to add a few, the airstrip and the stadium in Bungoma was grabbed by one of the very, very prominent people who had a big office and for this matter we are concerned. Mr. Chairman, I will not forget to mention that even personal land has been grabbed and this is because of the corruption that is in the Ministry of Land and DO's office because they have taken control. The private surveyors have played a big role in this. Therefore I want to propose in this sitting that this Constitution empowers the land tribunal courts for elders. Mr. Chairman I am talking about this because I know very well that these are the people who are on the ground and that they know exactly the real owners of the land and that they can help limit this conflict between the clan, neighbours and any other people. Mr. Chairman, here I have in mind the widows and the orphans. They fall prey to their relatives after the death of fathers and husbands. Mr. Chairman, this is because of the corruption that is in the land offices all over the country.

Finally, Mr. Chairman, I would like to say that when it comes to the public land, this Constitution should also specify how this land is going to be owned and in case of anything like grabbing their must be those other measures to be taken, and this is why we have had people take public land to themselves and nothing is done to them because when they cases go to court, you know what happens. Thank you very much, Mr. Chairman.

**Hon. Delegate Norman Nyaga:** Thank you very much indeed Honourable Delegate. The other row, we would like to get somebody from political party, 594 and in the next one, we want to have the category of “Others”.

**Hon. Delegate Orië Rogo Manduli:** Thank you very much, Mr. Chairman, thank you very much Honourable Delegates. I have been patient and quiet, I was waiting for this, that is why I did not try and talk in other sectors and I do hope that I will not be asked to sit down quickly because I am not talking for myself, but I am talking for all the landless women in Kenya., women who have been landless. They are landless when they are born and they are landless when they are buried. I am talking for them for the first time ever and may be talking for them for the last time because it is possible that we we in this generation will never write another Constitution, before we go. My names are Orië Rogo Manduli, Political Delegate number 594, watu wengi, Ford People.

**Hon. Delegate Norman Nyaga:** Go ahead.

**Hon. Delegate Orië Rogo Manduli:** Hapa, I am repeating again, the parties have only two women, one of them in Labour Caroline Ng’ang’a and myself and we are over 40 parties represented, nearly 45 parties, so you can just imagine how marginalized we are. Now I am talking of a very emotive issue and I am begging the Chair in advance, Chair, please realizing that I am talking for all these millions of women and may be we will never talk again in the next 200 years, kindly allow me a bit more time today.

Now marginalization of women in general starts and ends with land, the ownership of it. In this case the complete non-ownership of land. A girl is born to a man and woman and she is a daughter and she has no land and no claim to any, in the most African Societies here. This girl has no land till one day maybe, she gets married and then she goes and squats on her husband land and works and toils on this land. Now, should this man die before her, she becomes immediately landless again, because the land is then entitled to her son who actually even threatens to evict her from this land. A son who does not even respect her, because she has no land to pass on and will never have any land to pass on. A son who talks to her as if she is nothing, because she has no land to pass on, she is only squatting on the land of the father, and



her own son who she gave birth has the audacity to tell her that. A son who can easily disinherit her if he marries too many women and the land is not enough, he just tells the mother go back to where she came from, “because this land my father left for me”.

Now this mother who is being told to go does not have a place. Her father does not recognize her as a land owner where she came from, the minute she is married, she is a stranger in the home she was born in, her father regards her as a stranger, her brothers regard her as stranger, the wives to her brother regard her as a stranger and she is just a stranger, she is always in between and she is always at the mercy of men. If she is not at the mercy of her father, she is at the mercy of her brothers. If she is not at the mercy of her brothers, she is at the mercy of her husband. If she is not at the mercy of her husband she is at the mercy her son. This woman is always at the mercy of some man all her life, from birth to death. This woman does not know where she will be buried, this girl who is born, she does not know where she will be buried, because eventually she is going to be buried on the land of some man. This woman has no control over her burial grounds and for us Africans burial grounds are very sacred. At death you could find, five, ten men, scrambling over this woman’s body for various reasons, or rejecting her body for various reasons.

I am talking now (*uproar from the Honourable Delegates*) and I am saying that marginalization really begins and ends with land and this is where Affirmative Action has to begin. I am going to talk now, on Chapter 233, are you with me? I will also touch 234, 235, 236 and 237. We are talking of land policy. Now land in Kenya is a resource and livelihood. It is a basis of everything in Kenya and this land is a basis of all our hopes and dreams. Even as this girl is being born, she has nothing to look up to, but land is the basis of everything that is Kenyan. (To the Delegates) Gentlemen, please put you cards down because I am still talking and when I finish then you put them up, I intend to talk.

I am talking of ownership of land, in 233, but before I go to 233 I am talking about 232, still I am going back, they talk of equitability, that the land should be managed equitably, did you hear that? That it should be managed efficiently, productively and sustainably. How do you manage land equitably when there is no equity when it comes to land as far as women are concerned.

Chairman, I begged early, I am not going to be naughty, I am just asking you to allow me a bit more time. No I am talking of--

**Hon. Delegate Norman Nyaga:** We will give you one minute.

**Hon. Delegate Orie Rogo Manduli:** All land here belongs to the people of Kenya, collectively or as individuals. How come the women do not form part of the Kenyan people? What went wrong? Yes, I am talking about a non-Kenyan citizen, and as far as I am concerned, non-Kenyan citizens should not own our land. They can lease it, use it for a period, be it fifty years, ninety-nine years or even ten years but ownership of land in Kenya should be left to Kenyans.

Now, any land acquired by any mechanism of ownership they say, should be protected. And I am saying it is very important that private ownership be protected, because without private ownership being protected, it is going to be impossible to do any business.

**Hon. Delegate Norman Nyaga:** Thank you, thank you.

**Interjection Hon. Delegate Orie Rogo Manduli:** But a private ownership is only protected after checking--

**Hon. Delegate Norman Nyaga:** The Honourable Delegate I am sorry, we gave you an extra one-minute.

**Hon. Delegate Orie Rogo Manduli:** Chairman, one more minute--

**Hon. Delegate Norman Nyaga:** I have given you one more.

**Hon. Delegate Orie Rogo Manduli:** That the acquisition of that land in the first place was proper. When the land was not properly acquired, I don't see why a demand of ownership protection should even begin to happen.

**Hon. Delegate Norman Nyaga:** Thank you.

**Hon. Delegate Orië Rogo Manduli:** I am talking of land, there was a piece of land in Keiyo Valley, a thousand hectares, which was being grabbed to be preserved by an individual just for themselves.

**Hon. Delegate Norman Nyaga:** Honourable Delegate please, let us respect the Chair, I have given you more time and we have more people to speak.

**Interruption Hon. Delegate Orië Rogo Manduli:** Thank you very much Chairman, for giving me the opportunity. I am just saying that Affirmative Action begins and ends with land--

**Hon. Delegate Norman Nyaga:** Honourable Delegate, Honourable Delegate...

**Hon. Delegate Orië Rogo Manduli:** --and in the communities which are being born--

**Hon. Delegate Norman Nyaga:** Please, if you want to be noticed, please, let us respect what the Chair is requesting, thank you.

**Hon. Delegate Orië Rogo Manduli:** Asante Chairman, I respect the Chairman. Thank you very much Chair, I appreciate the time you have given me.

**Hon. Delegate Norman Nyaga:** Thank you.

**Hon. Delegate Orië Rogo Manduli:** Please consider me again, maybe tomorrow. Thank you.

*Clapping by Honourable Delegates.*

**Hon. Delegate Norman Nyaga:** Thank you. Since I had already said that we were going to go for others and I noticed that it is Others that have come up, I should have gone to a different category, but I will be balancing very soon. Out of all the ones that are showing at the moment, I will pick the ones who have spoken least, only once. Delegate number 529, tell us who you are and who you represent.

**Hon. Delegate Rev. Patrick Musungu Maina:** Thank Mr. Chair, my names are Reverend Patrick Musungu Maina representing Religious Organizations.

Land is an issue that affects all of us. Mine is just to have a reflection on the abuses of land in Kenya and more so in particular Western region. I know that so many people will not think that Western province has been a victim of abuses of their land. But in the real sense the Governments that have been there have had a negative attitude and a total abuse of our land rights. For instance, the gold mines in Kakamega, the Rosterman, this land was a communal land, it was taken by the colonialists, they took away the minerals, they subjected the community to labour, and hard one, and when they were leaving, they did not surrender that land back to the communities, the Isukha people. Today the independent Government has since taken over that land and allocated it to private developers with no regard to the local community.

Take the instance of Mumias Sugar Company where the machine is situated, they call it the nucleus. It is ancestral land to the people of Wang'a. How the Government took that land from the community and left it to the machine investors or the cane investors, nobody has been able to answer the Wang'a community. How did the Government change freehold or ancestral land to Trust Land and then leave it on to a third party for development?

Come to public utility land, the Kakamega forest, the Government came up with a scheme and said they wanted to introduce Nyayo Tea Zones around forests. But those Nyayo Tea Zones never took off and the same has ended up being allocated to private developers with no regard to the local people who own and guard those forests. In fact many people have been arrested and subjected to a lot of inhumanities because they were found grazing in that forestland, yet the land is known to be their communal entitlement.

You find that we have a private investor in Kakamega forest at Rondo, but the local people have been denied access to the same. And these are some of the abuses that the current Constitution must find a way to address. We also remember that the Government cannot own land except if they so hold it in trust for the benefit of the republican. But in this country, the Kenyan Governments have abused that privilege because we remember if you went to Mombasa today,

mostly on the island, the whole way ranging from the old harbour to Kisingo, it used to be Government land jointly owned by the East African Community, but the Government of Kenya have since taken over the responsibility and allocated without compensating the republic or without surrendering the necessary fee to the ex-chequer. These are some of the land abuses that the Government needs to be asked upon to re-dress.

We know as a Church, Mosques and Temples, at one time the communities is allocated land to these religious groups either to put up a Mosque or a Temple or a Church and in that relation a school also or an institution of learning. But when the Government started taking over the management of some of these institutions, they did not pay regard as to the original ownership and the arrangement under which the communities had surrendered those parcels of land to those religious groupings, and the Government has gone ahead to usurp the ownership. This amounts to an abuse of communal land and it needs to be surrendered.

Settlement schemes, you find like in Ndalo Scheme which is in Bungoma, one of the most densely populated districts in the republic, the Government had to bring people from outside the district to resettle people there with no regard of the Bukusu people or the population within that district, which are squeezed up to today. And these are some of the abuses of land that this Constitutional Conference needs to come up with a mechanism of re-dressing. Thank you Mr. Chairman.

**Hon. Delegate Norman Nyaga:** Thank you. Thank you very much indeed Honourable Delegate. Let me remind the Delegates, this morning we seemed to have been doing extremely well in terms of keeping within the time frame allocated, and we would like to request the members who will be contributing from now on, to try and keep within the time frame.

I will recognize a Member of Parliament from the next group, and I notice two of them from that group who have not spoken. I now ask member number 050, because I did promise I was going to give that opportunity to you.

**Hon. Delegate Charles Keter Cheruiyot:** Thank you Mr. Chairman for at least having recognized me.

**Hon. Delegate Norman Nyaga:** The next group we will be looking for is District Delegate please.

**Hon. Delegate Charles Keter Cheruiyot:** My names are Charles Keter, Member of Parliament Belgut, and Kericho District.

Mr. Chairman, it has taken me time for me to air my views, but at least I want to thank you. This topic of land is quite sensitive, in the sense that when I grew up, my great grandfather told me that in our culture you could never be a man if you don't have land. I talk here, this afternoon, representing the landless percentage of the population of Kenyan people that is the youthful people.

Mr. Chairman, land ownership in Kenya, the injustices which the colonial and even the Africans did to the Kenyan people leaves a lot to be remembered. If you go to Kericho, it is a beautiful place and it is a place where a lot of tea is produced. Apparently Mr. Chairman, the whole fertile peace of land was taken over by colonial people. They were taken over by being given leases, some of which run to 99 years, some to triple nine years and if it is true that the key resource in our Kenyan country is land, then we need to address this issue seriously.

We cannot have leases, which are going for so many years at the expense of the communities, which were displaced. We need at least if at all it is true that land is a resource to this country, out of the percentage which comes out of that, at least maybe even 30% should remain to develop this country. You find that the tea estates are owned by the white people who left this country, they are staying in Britain, or staying in other countries, and whatever comes out of that, it goes directly to them in Britain and we go as Kenyans to beg for money from them. Mr. Chairman, I would propose that the leases should be reduced from 99 years to even 50 years (*Clapping by Honourable Delegates*) I will also propose Mr. Chairman that Kenyans who are citizens of this country should be given free-holds not leases.

The other injustice Mr. Chairman' concerns the Ogiek community. The Ogiek community happens to be people who live inside the forest, they preserve the forest, they don't destroy the

forest. They have been there for so many years, they have been confined to the forest and if you can remember some time back in either 1976 or 1977 somebody somewhere said these people should be made to leave the forest and what he did was to smoke the forest. This issue should be addressed in this land issue so that something like that should not happen to those people who have been living there; they should be given their own rights to stay there.

Mr. Chairman, the other issue which I am talking about is the National Land Commission, I disagree with this, for if at all the Commissioner of Lands did some great work for this country, then I will propose we go to this. But having in mind whatever has happened, I propose that instead of having the National Land Commission, I support some of my fellow Delegates who have talked about having regional commissions so that they can understand the views of those people which affect their lives.

My last point Mr. Chairman, is that most of the public and community land in this country has been taken away. I will say that those parcels of land which were taken or given away legally should remain. But those which have been proven that they were given out illegally should be repossessed and given to landless Kenyans. With those few remarks I say, thank you Mr. Chairman.

**Hon. Delegate Norman Nyaga:** Thank you very much indeed the Honourable Delegate. Like we had said earlier we would be looking for a District Delegate from the next row and we shall go all the way to Delegate number 323. At this point we are also looking and taking into consideration that the Delegate we have chosen has not spoken yet. Has not spoken at all.

**Hon. Delegate Peter Ejore Emase:** Mr. Chairman, kwa majina ni Peter Derick Ejore Emase, Delegate kutoka Wilaya ya Turkana, Wilaya ya mwisho ya Kenya, nyumba arubaini na mbili. Nimekaa kwa muda mrefu kutoka tuanze, leo nafikiri imefika siku thelathini lakini mmeniona, kwa hivyo nitasema machache juu ya ardhi. Nikiongea juu ya ardhi, ardhi katika mlango wa kumi na moja Article 232 mpaka 238 nimevisoma vifungu hivyo na macho yameshika 236, 233 na 235. Kwa hivyo nitaongea machache kwa sababu wenzangu wengi wameongea juu ya haya.

Nikianza na mambo ya kuamishwa bila malipo, watu wengi wameongea juu ya kuamishwa bila malipo. Njia moja ya kuhamishwa bila malipo ni vile barabara inaweza kupitia katika Wilaya fulani na sijui nani hua analipwa kwa kuhamisha wale watu waliokuwa barabarani, kwa kuwahamisha mahali ambapo watu walikuwa wakilisha wanyama wao. Haya mambo ninayaongea, ninaongea kitu ambacho kingefanyaka na mpaka hata saa hizi kinafanyika, sijui uenda ikawa serikali inajua wale watu walikuwa wanalipa uenda ikawa kupitia kwa Wilaya au Province. Lakini watu wenyewe hawajui kwamba mambo kama haya yanalipwa, lakini nasikia sehemu zingine huwa zinalipwa. Kwa hivyo kitu kama hicho tungeweka kanuni ya kusema, “wakati barabara au wakati mambo fulani yatapita mahali kama hapo watu wale walipwe”.

Neno lingine, nikiwapatia mfano kama uwanja wa Lokichogio. Uwanja wa Lokichogio uko kando ya nchi hii na ndio uwanja wa mwisho kabisa katika Kenya. Wakati watu wa Fuachala waliamishwa kutoka pale, hakuna mtu aliwalipa hata hada, huenda ikawa walilipwa na hatujui mali hiyo ilienda wapi. Huenda ikawa hata wale watu walikuwa wameajiriwa kazi pale, baadaye watu kutoka down Kenya wakifuatwa na kisu, yaani sera la shirika, yaani policy na huyo mnyama anayeitwa sera au policy ndiye amemaliza makabila yale madogo kama sisi. Kwa hivyo wakati tunaandika Katiba mambo haya yaangaliwe. Kuna sehemu zingine kama zile springs za pale Lake Turkana. Kuna mtu mwingine ambaye alijipatia Title Deed pale na huyo mtu kutoka Nyeri amepewa muda wa miaka tisaini na tisa na huyo mtu amekaa pale, mara anahama hata mwaka moja, hakuna kitu kitafanyika mahali hapo, panakaa tu white elephant namna hiyo bila kufaidisha wenyeji, na sehemu kama hizo lazima ziangaliwe.

Ningependa kuongea juu ya Title Deed. Bwana Mwenyekiti, unaona Title Deed mahali kama Turkana, Kenya Commercial Bank zamani ilikuwa inaitwa...(Inaudible) yaani Kikuyu chukueni bure na juzi ikawa Kalenjin chukueni bure. Sasa tungependa hata serikali hii mpya iseme kwamba Turkana chukueni bure ama Teso chukueni bure. Pesa zetu zinakuja lakini haziko huku, zinatengwa na serikali badala ya sisi kupewa, zile mabarua tunapewa na Turkana County Council, inasemekana ukipeleka kwa Bank haina maana, inatakikana Title Deed. Sasa Title Deed inahamishwa na Wakikuyu, Wajaluo, Waluhya na Kalenjin wanakuja wanachukua mkopo, three million or more na kuanza kujenga kule kwetu. Kwa hivyo tungependa kama allocation haiwezi kuadimishwa, basi Title Deed ziingie katika Wilaya ili hata sisi tupate hizo pesa za serikali, tupate kujenga na kujiendeleza. Clapping by *Honourable Delegates*.



Neno lingine, tungesema Elders au Council of Elders wangekaa wadhamini mambo ya ardhi. Hata Moi wakati alikuwa kwa kiti, alikuwa anasema wazee ndio wanajua kuhusu mashamba zaidi kuliko mtu anayeitwa Commissioner of Lands. Huyo Commissioner wa Lands anaweza kukaa Nairobi anampa mtu mwingine kama Njuguna au Kariuki au mwingine Title Deed ya ardhi yetu, anakuja anasema barua nimepewa kutoka above. Kwa hivyo, tukiweka mamlaka katika Wilaya wale wazee wa Wilaya watajua huyu ni mtoto wa nani, watajua huyu ni mama wa nani na watajua huyu ni mvulana wa nani. Kwa hivyo hiyo ardhi au shamba itapeanwa kwa mtoto wa hapo. Kwa mfano, Turkwel Gorge. Angalia ndugu yangu, Turkwel Gorge ambaye serikali ya Wafaransa na Kenya zilitoa shillingi milioni elfu mia tano na sitini, pesa hizo zilikuwa zinatengeneza hiyo dam, yaani Turkwel Gorge ili kutokana na hayo maji Waturkana na Pokot wapate faida ya stima na maji ya kila mwezi, yaani kila siku. Kutembea kwa mto huo wa Turkwel kilometre mia mbili, Waturkana wao wakipanda mto huo along the road, 200 Kilometres mpaka Lake Turkana. Lakini ya ajabu, wale watu wanaitwa, “kutoka above” waligeuza stima hiyo ikawa inakuja mpaka Lessos, sasa mpaka hata kwa nyumba zile za nyasi na sisi wenyewe ambao Mungu alituona tufaidike na mto huo tukawa denied hiyo haki yetu. Kwa hivyo, katika mambo haya ya ardhi, kitu kama hicho lazima kiangaliwe ili msaada kama huo ufikie wenyewe.

Nikiangalia pia mambo haya ya lease, mimi nimeshindwa na miaka hiyo tisaini na tisa. Mimi ningependekeza hivi, miaka tisaini na tisa hata saa hii tukitafuta mzee wa miaka tisaini na tisa hapa hayupo! Hata mzee huyu mwenye nywele nyeupe hajafika hiyo miaka. Kwa hivyo miaka tisaini na tisa ni ya kufaidisha mtu ambaye anakuja ku-lease hiyo ardhi. Ningependekeza iwe miaka kumi na tano au ishirini ili mtoto wangu akizaliwa .....*Honourable Delegates clapping--* akifika miaka ishirini atakuwa amepata kazi basi anachukua ardhi hiyo na huyo mtu aondoke, badala ya kuvuna tu na aende.

Neno lingine, yaani nimesema baada ya uhuru. Mimi sijaongea, munipatie nafasi kidogo. Baada ya uhuru mwaka wa sitini na tatu, Wazungu walienda na Mwaafrika akabaki, je, mambo haya ya kusongesha watu wengine, ni nani walibaki kusongesha watu? Si ni Waafrika wenzetu ndio waliobaki na nguvu za kusongesha watu? Sasa tuseme Mzungu ndiye bado anasongesha? Kwa hivyo, mambo ya kusongesha watu kama bado tutasonga, sisi Waturkana,...ile inaitwa Teso,

Sugu au Pokot tutasonga mpaka turudi Uganda basi. Lazima tutafute wazee ambao wanajua ardhi ya Kenya ilikuwa ni ya kabila gani? Kwa sababu wakati huu kila mmoja anakaa katika ardhi ya watu wengine.

**Hon. Delegate Norman Nyaga:** Asante sana.

**Hon. Delegate Peter Ejore Emase:** Kwa hivyo sisi wote ni waamiaji.

Kumalizia, angalia mwaka wa tisaini na mbili na tisaini na saba, Mwenyekiti. Kile kitu kilileta tribal clashes ni mambo hayo ya squatters. Kwa hivyo, tukitaka kumaliza clashes tusifanye mambo ya squatters tena. Sijui ni nani anaitwa squatter, ni mtu kutoka Tanzania anayetafuta ardhi Kenya ni mtu kutoka Uganda anayetafuta ardhi Kenya ama ni watu gani? Kwa hivyo, kama nyinyi ni Wakikuyu au Wajaluo mmemaliza ardhi yenu, kwa sababu mko na district kubwa, songa kwa ile kabila yenu ingine, wacha kutuonzeza. Asanteni sana.

**Hon. Delegate Norman Nyaga:** Haya asante sana. We now go on to the next category on this side. Please, I want to see the boundary on this side and I want to make it certain. Delegate number 347, we want you to be certain whether you are on this block or on the other one. The last time I asked you, you told me you are in the other block and I will take a decision, you are in the other block because that is what you told me and you are sitting on this block. I now recognize Delegate number 470. We will go for others in the other block, so can we see an indication. Delegate number 470.

**Hon. Delegate Sophia Abdi:** Thank you, Mr. Chairman. I would like to add my voice.

**Hon. Delegate Norman Nyaga:** Speak allowed. I am ruling that you speak allowed. Continue.

**Hon. Delegate Sophia Abdi:** I would like to add my voice on land issues. Land is a primary natural resource; it is in most cases the only means of livelihood. It is the foundation of shelter, food, water, pasture and other natural resources like minerals, which in turn will develop sense of national hood. Land is therefore an economical necessity, it is also one of the most important ways through which political influence is likely to be practiced hence land rights, use, interests, management is a great concern to all Kenyan communities.

My concern is that land has been misused, people have abused their powers, influence on land issues and the colonialists' policies have really marginalized other communities. If I can give you an example where the Northern frontier District was before the colonial time, we were in the present land and we living in Nanyuki, Meru, Embu, Bagal and Ukati. All that was where the Somalis and the Boranas used to live but because of barbaric and colonial policies we were pushed, we were beaten and we were pushed to where we are now. They designed their boundaries and when we resisted that, when one of the colonial Chiefs died in Nanyuki, he is my great grand father and he is buried in Nyambene todate. That shows how far we were marginalized and we were pushed back. *(Honourable Delegates clapping and uproar)*. In Kenya, land is...

**Hon. Delegate:** A point of information.

**Hon. Delegate Norman Nyaga:** If it is on a point of information, the speaker has to accept. Do you want to be informed by the Honourable Delegate?

**Hon. Delegate Sophia Abdi:** No, No, I don't want to be informed.

**Hon. Delegate Norman Nyaga:** Thank you. You cannot, this is a point of information. You cannot insist on a point of information if she does not want to be informed, so please will you sit down. Continue.

**Hon. Delegate Sophia Abdi:** Thank you. I would also like to add my voice by saying that I am proud to be a Kenyan because Kenya is a Somali word meaning ours. Our community always says, that Kenya is our land, Kenya is a vernacular meaning this and that but let me tell you today that Kenya is a Somali word meaning ours.

My recommendation therefore is, we would like a redress of historical injustices that were committed against Kenyan communities. I am recommending having a Historical Injustice Commission formed.

**Hon. Delegate Norman Nyaga:** Yes, 308, point of order.

**Hon. Delegate James Mathenge:** Point of order. The Honourable Delegates, my name is James Matenge, Delegate from Kirinyaga. The Honourable member is misleading the House because the word Kenya comes from the word Kirinyaga. *--Laughter from Honourable Delegates--* The whites could not pronounce Kirinyaga, in Kikamba it is called kinyaa and they said, “Ikenya”. Kenya comes from Kirinyaga.

**Hon. Delegate Wilfred Ole Kina:** Anyway, thank you very much. I am sure there are many people here who will claim that the word Kenya comes from their tribe so let us all be happy that we belong to Kenya and we can all claim the name. Thank you.

**Hon. Delegate Sophia Abdi:** Thank you Mr. Chairman. That is his version and this is my version. Yes, my great grand father told me Kenya is a Somali world and I am giving the Kenyan community what I feel about Kenya.

Secondly Mr. Chairman, my other recommendation is that we would like to get a clear definition of what land means. Is it land on ., what do we own under land, what is land? We need that clear definition of what land means because the Kenya government have misused my region, they have buried nuclear wastes in my region. Therefore, I would like a clear definition and I would like experts to be consulted so that they can find the nuclear wastes if the nuclear wastes are there. Then we would like compensation and we would like those people to be brought to court. Clapping by *Honourable Delegates*.

Thirdly Mr. Chairman, the use of Title Deeds as security to obtain loans from financial institutions should be stopped. My reasons are that, there are people who are in good positions politically, they were correct in some systems and they did not even step in some places yet they got Title Deeds and they acquired loans using those Title Deeds. Some of them have never gone to those regions, they have only seen the map of Kenya and they say, “today I want a piece of land in such a district.” For example, if I want a piece of land in Ijara district, you do not know where Ijara is, you get it and seek the Title Deed. Therefore, we would like to have other alternative means to be constituted whereby we can acquire loans. Women also do not have

Title Deeds, they are marginalized, they cannot acquire loans. Therefore, we need other options so that we can also acquire loans.

Finally Mr. Chairman, I would like to add my voice, instead of having the National Land Commission we would like to go to regions because when you are in the region, you understand your problems and you can protect yourself against abuses like depositing nuclear wastes will not take place when you are there defending your people.

**Hon. Delegate Norman Nyaga:** Thank you very much Honourable Delegate for your beautiful presentation. Now, we go on and I remember the last time I went for the others, the last time I went for others; and I want to recognize number 221, category of Member of Parliament, and a lady.

**Hon. Delegate Ruth Oniang'o:** Thank you, Mr. Chairman. I am 221, Ruth Oniang'o, nominated MP, KANU. I want to make a contribution to this, most of the points have actually been alluded to, but I find it difficult addressing land as an entity in itself, Mr. Chairman, because land is a resource, but it does not exist by itself. We have animal resource, we have plants and other animal matter that go with it to make an ecosystem, and we have water as well. So I find it difficult to consider land by itself, and I am hoping that when we come to committees, that that kind of cross-referencing will be given its due consideration.

Mr. Chairman, I would also like to have in the Preamble an acknowledgment of land as the greatest resource we have and that owning it comes with responsibility. We cannot begin to talk of "we own this land," and "I want my land back," without realizing that this resource in fact needs to fit into the national food system, into the national resources. Therefore, some kind of responsibility to go with ownership needs to be acknowledged here.

Mr. Chairman, we also have lands which are productive and lands which are not productive as of now. Southeast of Kenya is not arable at all, but it does not mean it is not productive. I believe that the Government should take responsibility to help develop those areas which have been affected by floods, by drought, and areas which we consider unproductive, so that, in fact, they can be able to feed the people and at the same time be looked upon as a national resource.

Third, Mr. Chairman, there is the issue of cultural practices. It is one thing to have laws which protect us all, and it is another to actually bring them into harmony with the cultural practices. There is a situation where in fact some laws may say 'A woman can inherit land,' and yet when it comes to practice, she is actually prohibited from inheriting land. In the wake of HIV/AIDS now, we have widows and sometimes children left by both parents with nobody to protect them. In fact right now, they are losing their land. So we need provisions for a will, to say in succession terms who is going to inherit their land or who is going to take custody of the land for orphaned children.

Mr. Chairman, there is the issue of fragmentation of land. We talk of land, and yet you can fragment it to pieces, which are not economically viable. That is happening at the moment because each and every one of us wants to own a piece of land. Yet with the land policy, we can consolidate land on a community basis so that it can in fact be more productive for all of us.

Lastly, I think people with too much land, who are not using it need to be taxed for non-utilized land and, at the same time, they should make sure that we actually redistribute much better than we are doing at the moment. I think there are some of us right here, Kenyans, who should be feeling extremely guilty for having so much land while others have none. Thank you, Mr. Chairman.

**Hon. Delegate Norman Nyaga:** Thank you, Honourable Delegate for your contribution. The next group, we will recognize a District Representative, and I want to recognize one that has not made any contribution at all since he came in here. Delegate number 360.

**Hon. Delegate Lorna Timanoi Tetu:** Thank you, Mr. Chairman. My names are Lorna Timanoi Tetu, a District Delegate from Narok.

**A Honourable Delegate:** Point of Order.

**Hon. Delegate Norman Nyaga:** Yes, what is the point of order?

**Hon. Delegate Mike Oliewo:** Thank you very much, Mr. Chairman. My name is Mike Oliewo, Delegate number 613, Political Parties. As you can see, you have jumped this place here; this part onwards is usually counted as one. So we are just asking that you come back when she is through.

**Hon. Delegate Norman Nyaga:** Now, you can tell why I appreciate your comment, Delegate. You can sit down. You understand this issue was brought up before and there was the feeling that you belong to this other block and we have taken you as such. You do remember, the Delegate behind you spoke from that category of people. So let us continue with the Delegate speaking. Thank you.

**Hon. Delegate Lorna Timanoi Tetu:** Thank you, Mr. Chairman. Mine is on land. Land is the most valuable and most important aspect of our lives today. Therefore, it requires some special attention especially in this Constitution. The Maasai, and some communities of Kenya have continually lost their land since the arrival of the Europeans in 1895 and the treaties of 1904-1911 and thereafter. The Maasai lost their land to the White settlers and more for the game reserves. They also lost their land through technical fraud, tricks that were linked to soft loans, illegal allocation by land officials and land transfers contributing to the displacement and dispossession of the Maasai land. The Kenya Government also bought land from the White settlers but it did not give the Maasai even an inch, even an acre of land.

These and many more are the historical injustices done to the Maasai. I am talking about the historical injustices just because we wouldn't, for example, be talking about our background or other events like the Mau Mau fighters who fought for our freedom and many others. I, therefore, recommend the following:

Mr. Chairman, all land that the Maasai lost must be returned back to the Maasai. If the worst come to the worst, compensation must be done.

- 1) Mr. Chairman, there should be established a special fund to develop semi-arid lands due to bad policies on land that were made.

- 2) Mr. Chairman, land registration should be decentralized countrywide, and transactions be carried out at the district level so, Mr. Chairman, that women have equal access to land ownership and other resources; and through this I am in support of Affirmative Action.
- 3) Mr. Chairman, communities living in communally -and group-owned land, such as the pastoralists, hunters and gatherers, should be constitutionally guaranteed protection, security and ownership of the land they occupy.
- 4) Mr. Chairman, the leasehold tenure of 99 years should be reduced to 30 years. That is as in Article 233, sub section 3.
- 5) Mr. Chairman, communities living around game parks, tourism, wildlife, water catchment areas, should own at least 55% of the total value of the benefits derived from the same, and their culture should also be protected by the Constitution.
- 6) Women should be represented by at least one third in the District land commissions that I believe are going to be formed.

Finally, Mr. Chairman, the word 'vacant' does not apply in our land. I am saying this because it does not mean that if I do not have a coffee or tea plantation, my land is vacant. Rearing and herding and grazing are other people's way of life. I am today urging my dear Delegates, men and women, to support me so that a moratorium is put on land for at least 20 years, so that our children can grow and know the value of land. Most of our men sell our land at bars. They do not even know the value of that land.

**Hon. Delegate Lorna Timanoi Tetu:** For those brief remarks, thank you, Mr. Chairman. May justice be done during this era. Thank you.

**Hon. Delegate Norman Nyaga:** Thank you very much. In the next category, I would like to notice Delegate number 140. I also would not hesitate to add that Delegate 140 has not spoken since the beginning of this Conference. There are two others that I would be coming for later who have not spoken. Delegate 140. I would go to the category of others in the next group.



**Hon. Delegate Ndile Richard Kalembe:** Ahsante sana Bwana Mwenyekiti, Commissioner mwenye alianza, Okoth Ogendo, aliongea sana kuhusu historia ya mkoloni; vile alitendea Wakikuyu, vile alitendea Wakamba, vile alitendea Wamaasai--

**Hon. Delegate Norman Nyaga:** Honourable Delegate, can you state who you are? Your name.

**Hon. Delegate Ndile Richard Kalembe:** Ndio naendelea. My name is Kalembe Ndile, Member for Kibwezi. Alituambia historia nzuri sana vile wakoloni walitendea Afrika kwa jumla. Lakini, hiyo historia hakuendelea kwa sababu, kwetu kuna msemu wa Kikamba unasema: “Tuliondoa fisi mweupe, kukaingia mwingine fisi mweusi.” Hiyo ni kusema nini? Mkoloni siyo yeye alitutendea vibaya pekee yake. Wakati Mkoloni alienda, wale waliingia, ile Serikali iliingia bado iliendelea kutendea Wakenya vibaya.

Saa hii tunapongea, nawapa mfano wa Kibwezi, kuna ma-squatter elfu kumi ambao wamefukuzwa kwa ardhi yao ile walikuwa wakiishi, walikuwa na mifugo yao na sasa ni masikini, wako pale hawana chakula na ndio sababu unasikia saa yote Ukambani kuna njaa. Sio kwa sababu vile watu wanasema eti ni kwa sababu ya maji; sio kwa sababu ya maji pekee yake, ni kwa sababu watu hawana mahali pa kulima.

Katika historia yetu mnasikia kuna watu ambao, pengine unasikia, - na ni lazima tutaje hivyo vitu. Unasikia kwa mfaano kuna familia ya Kenyatta ambayo iko na three quarters ya land huko Taita. Unaweza kujiuliza hawa watu, babu yake alitoa wapi huko Taita? Hayo ni maswali ambayo tunafaa tujiulize. Leo, lazima watu wafaidike na ile ardhi ambayo wanayo. Saa hii Kibwezi, ardhi yetu imechukuliwa na wanyama, imepewa wanyama kwa sababu tulionekana sisi pengine hatufai. Tumepakana na ndovu, tumepakana na nyani, tukilima shamba, nyani wanakula, tukilima shamba, ndovu wanakula, na tukijaribu kusema, hakuna kitu kinafanyika. Hiyo ni njia moja ya kusema, katika hii Katiba lazima ardhi yetu ambayo inakaliwa na wanyama itufaidi. Vile Wajaluo wanafaidika na samaki, lazima tufaidike na ndovu. Hiyo ndio kitu ambacho tunasema. La sivyo, tusipitishie hii Katiba. Kama wanyama, kwa sababu wanyama lazima tuwe na wao, tupitishie tuwe na mbuga za wanyama kila wilaya ndio tugawane hao wanyama. Kila

jamii ya Kenya ipate wanyama. Hatuwezi kubalia sisi shamba yetu ikaliwe na wanyama na tuendelee kufa.

Kwa hivyo, Bwana Mwenyekiti, ni lazima pia ardhi itengwe kabisa na siasa. Hatutaki kusikia mtu yeyote wa siasa anasimamia ardhi. 1992, Kibwezi tulipigia DP kura wakati wa multi-party. Ndio tupewe adabu na KANU, Moi na Serikali wakaamua watafunza Wakamba adabu, na kuwafunza adabu ni kuwafukuza kwa ardhi yao; na sasa wengine walifukuzwa 1992 kwa sababu ya kupigia DP kura. Hiyo ndio nasema ni lazima siasa zitengwe kabisa na ardhi. Hiyo ni kitu ya muhimu sana.

Kwa hivyo yangu ni kupendekeza ya kwamba, ikiwa ni mambo ya utumizi wa ardhi ni lazima yawekwe kwa Wilaya na hata ikiwa hata simamiwa na Commission, iwe hiyo Commission haina sauti sana isipo kuwa kuangalia haki imetendeka na wale watagawa shamba kwa Wilaya..

Ndugu zangu, ninamalizia kwa kusema, siku mmoja nilikutana na Rais na nikamuambia mtu ambaye alikuwa ameiba shamba na nilipo mwambia, huyu jamaa ameiba public utility na walikuwa wakiimba ati tujaribu kusaidia. Hakuna kitu ilifanyika mimi ninawambia, kutoka siku hiyo, niliteswa, nikawa na mateso tisa kutoka 1998 kwa sababu ya kusema huyu jamaa ameiba shamba. Na hiyo yote, Wakenya wanajua. Kwa hivyo ndio sababu ninasema ni lazima tutoke hapa na suluhisho kwa sababu shamba ni uahi, shamba ni maisha, shamba ni kila kitu. Asante sana Mwenye Kiti.

**Hon. Delegate Norman Nyaga:** Asante sana Mheshimiwa. Now, we move on to the next block and we will recognize somebody like we said earlier and I would like to recognize from the women category. One who has not spoken before since this Conference started? Delegate Number 492.

**Hon. Delegate Mercy Mwamburi.** Asante sana Bw. Mwenyekiti. Nashukuru mwanangu kwa kuniona. Mimi ni Mercy Mwamburi kutoka kwa women Organization. Nataka kuzungumzia mambo ya ardhi.

Tukiangalia 233 katika Sheria zetu hizi ambazo tunazungumuza, ile ownership of land ya miaka tisaini na tisa, kwa non-citizen. Mimi nina recommend miaka thelathini na akitaka zaidi, aongezewe baada ya kuangaliwa ana hitaja. Kisha, juu ya akina mama, ukitaka vita leo, mama zungumuza mambo ya Title Deed pale nyumbani, utalala macho wazi mpaka asubuhi.

### ***Laughter from the Honourable Delegates***

Kwa sababu, kina baba hawataki tuwe na Title Deeds. Sasa jambo ni moja tu. Ile Title Deed ya family, iwe na jina la baba na iwe na jina la mama na hata mtoto. Na baba hana ruhusa ya kwenda kuchukuwa loan na ile Title Deed bila mama kuwa hapo na family members kusema inawezekana. Kwa sababu kina mama wengi wamelia kwa kuteswa na wanaume wahalifu ama – eh. Magaidi ambao wana koroga mama.

Katika Control Board, mimi nimesha jaribu kwenda kwa Control Board. Kama una bahati utakuja mwanamke mmoja ama ni wanaume watupu. Na wewe mwanamke kama utashindwa kusema, utatetemeka hapo na land utakosa. One third, lazima iwe kwa Land Board zote kutoka kijiji mpaka regional, mpaka national.

### ***Clapping by the Honourable Delegates***

Na mambo ya willing-seller/willing buyer, mama lazima awe ameketi hapo na family members. Mambo ya bar na kupitisha mikataba hiyo haiwezekani.

Courts za elders za land, ninaziamini kwa sababu hizo Courts ndio zinajuwa historia ya land kutoka judge. Mambo ya kuja kushtakiwa hapa Nairobi, nitafute wale ma lawyers, anauliza robo milioni alipwe ndio akusimamie haya hayata faa. Land ziwe zinakuwa judge kutoka kwa kijiji, sub-location, na zikifika kwa district, zimeisha.

### ***Clapping by Honourable Delegates***

Security ya loan, kina mama wanashindwa kupata security ya loans. Kwa sababu Title Deeds hazina majina yao na ninaunga mkono yule anayesema, basi kama hiyo itakuwa ni muhimu, Title

Deeds, basi kina mama tutafutiwe kitu ambacho kitakuwa ni security, nipewe loan na nifanye maendeleo. After all, mama ndio anasomesha watoto, ndio anajua chakula na ndio mkulima wa shamba and yet she is a squatter.

*Clapping by the Honourable Delegates*

Slum areas, single mothers, single mothers ndio wengi. Katika hapo slum areas, popote pale, majengo, Mombasa, Kibira, wapi, Mathare, wapi? Utakuta kina mama ndio wako hapo na hana barua ya kibali ya ile plot. Jambo hilo katika Committee litatuliwe kusudi kina watu maskini, na kina mama na widows waweze kuwa na kibali cha nyumba ile amejenga.

*Clapping by the Honourable Delegates*

Mining areas, kama kule Kwale kwetu, mtu analipwa shilingi elfu tisa kwa acre. Sasa nimesikia inaweza kuwa shilingi tisaini. Kwani yule mtu mwenye shamba lake kwa nini asilipwe akawa akilipwa ale na uko wake na uko na vijuku, na kila mtu wake? Kwa nini inanunuliwa iondoke halafu yeye apelekwe mahali pengine? Kama shamba yangu ina madini, basi Mungu asifiwe.

*Laughter from the Honourable Delegates*

Katika Commissions, nataka Commissions ziwe na hiyo one third na jina la squatter liondoke kabisa. Kule Pwani linatuudhi. Squatter itatuliwe na iishe. Asante sana Bw. Mwenyekiti.

*Clapping by the Honourable Delegates*

**Hon. Delegate Norman Nyaga:** Asante sana. Thank you mum. I think we have been very, very unfair. In the next block I would like to recognize somebody with disability. Do we have that category of a person? Yes. Delegate Number 411.

**Hon. Delegate Mary Teresia Osunga:** Thank you Mr. Chairman. It is very good that at least you think about us. I am number 411, Mary Teresa Osunga from Nyanza Province, Homa Bay

and I am a teacher at Ogande Girls' High School. Okey. I want first of all to tell you the position of my people as regards how land has been abused.

Firstly, the women have not been given a voice even to talk about land. If you talk about land, you are going to earn a wife beating exercise.

***Laughter and Noise from the Honourable Delegates***

Then, the other position is that the people said, that if there is anything, then all the widows should not be denied the land after the death of their husbands and that the disabled people should not be disinherited because sometimes they do disinherit those people with disabilities.

Now, as regards our exercise, right now I want us to look at Article 238. I think that this Article should have (b) and (c) in it. Article 238 (b) should be talking about other meaning of land. Okey Article 238 (a) talks about the meaning of land and that one is what has been explained here, that it means the soil, it means the sub-terrain deposits and it also means the body of water – bodies that is.

Now, I also want that the Committees should put in (b) as other meaning of land, i.e. the land. Land means the types of lands in the geographical aspect and then the land means the Nation. Then (c) should be the viability of lands. That the viability of land depends on what is done on the land and it also depends on how the land is in terms of climatic conditions.

Then Article 237, talks about Affirmative Action and I am now saying it in black and white that there should be regional representation in the Land Commission and it should be a regional one beginning from the village by the way and going up to the top because if a hole is dug, the centre space is just space and the bottom is important at the top. So, we really need that it should begin from the village and that there is a third representation of women and a third of a third of women with disability and other categories.

***Clapping from the Honourable Delegates***

Yes, now when we are talking about-- There is a place in Article 233 – I also think about it in terms of the fact that there should be this leasing of land-- It says that leases should not be 99 years but it should be less because the life span is becoming less and less each time. Generally, there was a place also where it talks about the landless people. I feel that instead of using the words ‘landless people’, we should use the ‘displaced landless’, because people used to have land but they were displaced.

***Clapping from the Honourable Delegates***

When we look at Article 235, (7) and (8), yes, (7), I have already talked about the landless. Now, (8), it means there is something that is talked about here, the establishment of a land fund. As a linguist and as a language teacher we should say it like this ‘the establishment of land fund to enable Kenyans gain access to land on an equitable basis’. I am finishing.

I am finishing please. Now, lastly Article 232, I feel that we are becoming so verbose. Instead of saying land is Kenya’s primary resource and the basis of livelihood for the people shall be equitable, efficient, productive and sustainable, we should say, ‘should be efficient’. Thank you.

**Hon. Delegate Norman Nyaga:** Thank you very much indeed. Indeed, you have displayed the qualities of a teacher. You know when to begin and when to stop. Thank you, maam, thank you. In the next category I want to recognize the category of Members of Parliament and I want to recognize two Members of Parliament who have not spoken. There are two of them and they both come from the same region; therefore, know who you are. Between the two of you, who is older than the other? Okey. I recognize the one who has had the courage to stand, Delegate Number 071.

**Hon. Delegate Harrison Kombe Garama:** At long last! Thank you very much, Mr. Chairman. I was just getting worried being the only Member of Parliament of Shirikisho and being sidelined. Alright I am on land policy.

**Hon. Delegate Norman Nyaga:** What is your name and where do you come from?

**Hon. Delegate Harrison Kombe** Garama: Do you want to get the name? I am Mwalimu Harry Kombe, MP for Magarini, Malindi North.

Land Policy, that is Article 232, item 2 (b) on the security. Security of land for all land-holders that is a blunt statement. I would like to add security of land rights for all holders who acquired the land legally. I am adding who acquired the land legally because we are having at the moment people who acquired land illegally and are being protected and even looking at Kenya today, we are faced with famine and then an investor, has the guts to go and plough off maize from indigenous Kenyans who have laboured without food and here they are getting their maize being ploughed off (*Clapping by the Honourable Delegates*). It is very serious and I wish the Agricultural Minister, if he is around, should take note of that and take crystal line to task off ploughing off the maize plantation that was just about to be harvested.

Item 233, ownership of land: Number 3, non-citizens, I wish to elaborate this further though it has been put across by many Honourable Delegates: that non citizens of Kenya may hold land or use land on the basis of lease, holding tenure only as such leases, guaranteed, shall be or shall not extend beyond 99 years. May I bring to the attention of this Honourable gathering that, the life span of human beings as defined in the Bible is 70 years so it is not realistic for us to put 99 years here. I would therefore recommend that the leases should be at least 10 years and at most 50 years. Again I would like to add item 4 from 3 we go to 4 and the addition reads; such leases shall be liable to cancellation if the investors are:

- 1) Using land for illegal practices.
- 2) Not supporting development projects in the areas surrounding the lease lands. At least if I may consider the area I am coming from we have so many sait companies but you will find at least only one is contributing to the development of the area the rest are not contributing anything and they go to the extend of ploughing the maize for the resident, they are not assisting the residents in anyway. So in such as a case then we should have such leases cancelled.

3) The activities carried on the lease land are taken out to be hazardous. The other time we were discussing on an industry that brewing beer that was killing people and at the same time making men infertile and so women were going to the streets cursing that factory. Such investors should have their leases cancelled.

**Hon. Delegate Norman Nyaga:** Thank you. We are going to the next category.

**Hon. Delegate Ndile R. Kalembe:** Mr. Chairman. May I borrow a minute?

**Hon. Delegate Norman Nyaga:** Thank you. You will get another opportunity; let us go to the next category. We are recognizing a District Delegate. District Delegate, is that 446 District Delegate? No, 324.

**Hon. Delegate Koringura Hellen:** Thank you, Mr. Chairman, for giving me this opportunity. I would like to make some comments on Chapter 10 as regards land. It is common knowledge that land is very important aspect in everybody's life. My name is Koringura Hellen a Delegate from West Pokot number 324. So I would like to comment on article 232 that land will be held, used and managed in a manner which is equitably efficient productive and sustainable. I would like to suggest Mr. Chairman, that since most of the workers on land are women they should be given that opportunity that they also own land so that they can use land efficiently.

On Article 234, I would like to comment on 3 © and (d); I would like to suggest that this particular Article has been drafted well since it also recognizes that grazing land belongs to the community. I would like to say from this Chapter that, since some communities are not farmers they use land for other purposes such as grazing. And therefore any land that can be used in that manner should always be recognized as peoples land and the community uses land in that particular way. Therefore I am also wondering when the Government some time decides to take peoples land and imagine that because it is pastoral land it is not anybody's land. We have a case of Tukwel where peoples grazing lands were submerged by the dam to pave way for electricity to be generated, which is of no use even to the community. For us we see that as a white elephant project because we have never benefited from it even the proceeds of the same has never benefited the communities. So I am suggesting that in this era such people should be



compensated for such loss of land because of the water, which submerged even sewages and even market places.

Mr. Chairman, I would like also to add my voice to what Member of Parliament from Kajeriba said this morning about Article (3) 235 4B and sub-section 2; where it says that the Draft establishes mechanism for the review and assessment of all claims to unjust, expropriation of land in the Coast, Rift Valley. In this case I have a point here to make concerning the land question of Trans Nzoia. Mr. Chairman as you heard that land is very important to any people to survive, when the land of Trans Nzoia was taken away by the colonial Government before independence our people were compressed to some section of dry areas and therefore they were not able to get a livelihood and about 8000 of them died as you have heard in the morning. So to address this injustices I would suggest as this Article says that; it will determine how it can be justly, peacefully and equitably be resolved I propose the following. That our people should be compensated in terms of money, because this is not the first time the South African did for the Maori people in New Zealand. We also know of compensation in terms of money- by the way I want to quote when the Tas Pokot petitioned the British Government in 1997 after it tried for along time with the Kenyan government and they refused to address the case. In 1997 the Pokot petitioned the British government and this was the reply that came to the people and I quote that "it has been it has been the responsibility of the Kenyan Government since independence to settle all outstanding land claims with the indigenous tribes in Kenya and this remains the case". Your request for some sort of compensations therefore lies today with presents Kenyan Government who are responsible for any land claims in settlement in Kenya.

So I am suggesting that the Pokot be compensated in terms of money or land and we still have hopes that since most of the land in Trans Nzoia is still under the Government about 10 farms we know they can compensate us by giving us those remaining farms. Or compensate us in terms of money, because as much as the British Government had allocated some money to Kenyan Government after independent of about 100 million Dollars. They went a head to bring some communities from central and resettled in Trans Nzoia at the expense of the Pokots and also some communities from Western Kenya. I beg to raise my case and say that finally Parliament should not determine the time period of such cases to be determined on land. Finally I propose that there should be a land court to look into these injustices. Thank you.

**Hon. Delegate Norman Nyaga:** Thank you very much indeed for your contribution. In the next block, do I hear Point of Order from somewhere? 228 yes what is your Point of Order?

**Hon. Delegate Raphael Livu:** Thank you, Mr. Chairman. My name is Raphael Livu Delegate number 228 from Mombasa district. Mr. Chairman I am seeking the direction of the Chair as to the terms of reference of this Commission and all deliberations. Mr. Chairman, my understanding is that we are to deliberate on the recommendations that were collected from Kenya when the Commission did go round the country to seek views. My understanding is that we have to deliberate on that document which is the Draft Bill and go by it. Mr. Chairman what I am raising here is us Delegates introducing new views, I would like the Chair to give us direction. I don't think we are making headway. I have a feeling that you are addressing distinctions. Thank you so much.

**Hon. Delegate Norman Nyaga:** I think it is very simple to answer this one. It is not possible to gag what Delegates may want to say, however sad it may be we should allow every single person to ventilate his views and not to go by what CKRC has done. When we get the Committee stage we would even be going deeper, but at this particular point it is basically for every Delegate to be able to ventilate his views so that they can know hear they make very very good view. Thank you. Thank you for your Point of Order. Now I did indicate that the last time we did District on this row and it is not fair we do District again. I would like to recognize another one we might do second category of people we have not recognized the whole day and that is Religious Organization. We want to have the second religious person today how many religious people in this category here? No, no that group over there. There is none at all 520.

**Honourable Delegate:** Point of Order.

**Hon. Delegate Norman Nyaga:** Yes. What is your Point of Order.

**Hon Delegate Salim Ibrahim:** Mr. Chairman, my names are Salim Ibrahim from Nairobi province. With all due respect to the Chair I wonder what that list is doing in front of you

because if you get to pick the same persons to speak over and over and over again then what are some of us doing here? Are we here to spectate?

**Hon. Delegate Norman Nyaga:** It is very unfortunate you know when people clap, sometimes you clap without realizing why you are clapping. If you sit here and people are in different categories than where they are sitting, the choice that one has to make-- I have been there twice on District and I have to mix all this. Since I began chairing this meeting all the categories of people who have spoken have got exactly the number of people that have spoken. I thought you are going to come with the entry of the youth. I will recognize you as that category of District representation next time I come, that will be three people from there. Shall we have the Reverend who got the Chair's eye?

**Hon Delegate James Gatiti:** Thank you ,Mr. Chairman. My names are Father James Gatiti from the Religious Organizations, I am number 520. Thank you for this opportunity. I agree with those who say that land is a very sensitive issue. It is our primary resource and heritage. I recommend the provisions that the CKRC is coming up with that we have the National Land Commission. I recommend that this National Land Commission should work together with the representatives from the Elders Tribunal from our own regions, because the elders know very well about the issues of land from their own grassroot where they come from.

Another question on which I would like clarification from the Commission is this. Is community land the same as Trust Land, and how do we ensure that it is not distributed unwisely or illegally? I realize that the Draft Constitution shies away from how to deal with land disputes, e.g. illegally acquired land. In order to deal with grievances of past historical injustices over land as explained by people in various fora especially at the Coast and Rift Valley Provinces, it is proposed that the Constitution can be amended to provide that; registration be passed for review of ancestral historical land claims and disputes, including those dating back to 1895, with a view to reaching a just and peaceful resolution of the same, taking into account the nature of the unsolved claim or dispute, and current needs and interests of the nation.

Two, the ancestral claims and disputes shall be investigated by Ancestral Historical Land Claims Tribunal to be established by registration, and which shall sit in public and comprise the fair

hearing requirements of the Constitution and the common law. That registration must be passed and all such claims and disputes investigated and resolved within two years from the date of commencement of the Constitutional amendment.

Article 234 (1c), the Constitution does not address the issue of landlessness. It has been addressed very much here in this Conference. I think we should address the issue of landlessness in Kenya. Provisions on land and property is inadequate. Some certain principles need to be put in place in the Constitution. Matrimonial property should be for both spouses, i.e., husband and wife, to make sure that when one spouse dies, the property automatically belongs to the other spouse. One should ensure accessibility to the organs of justice. Non-Kenyans should never be allowed to buy land in Kenya. Details on leasing community land are not clear, so some more details need to be added. The new Constitution needs to establish a new legal regime that will regulate and manage grazing rights for pastoralists and rights of access to water and pasture, livestock and marketing and carrying capacity monitoring and regulation. I also recommend that unutilised land should be taxed. Thank you very much Chairman.

**Hon. Delegate Norman Nyaga:** Thank you very much indeed the Honourable Delegate. I move on to the last one. It will be very, very clear to all the Delegates, a point of order that has been raised by the Honourable Delegate from Nairobi is, what is that list doing in front of you? I want to answer what that list is doing in front of me. How many of you in this section here have not spoken? I recognize number 326 because I can tell all of you, that all the others have spoken, but Delegate number 326 has not spoken. He is a District Delegate. “Can you kindly give us your name and number?”

**Hon. Delegate Rev. Simon Alew:** Honourable Chairman, I am a District Delegate, Rev. Simon Alew and my number is 326. I represent West Pokot District in Kacheliba Constituency. I am going to give my views on Land. My colleagues have spoken, but that one cannot prevent me from giving my own points.

Mr. Chairman, I am here to support the issue of land to be returned to the communities because there are some communities who lost their land during the colonial times. These are the lands we are claiming and it is our time that we have come here so that we can discuss and see how

those lands can be returned to their owners. Mr. Chairman, this issue of land has created insecurity along all these boundaries. The reason is that even since colonial times, I remember in books where somebody mentioned this morning that there are some levels of books which show certain years like 1932. 1917 is the year when the Pokot people were chased away from Trans Nzoia. The issue of insecurity along these borders has been created as a result of people trying to present their views to the Government. That is the last Government since Kenyatta's time and even Moi's times, the boundaries between Turkana, the Karamojong on the other side of Uganda and even Trans Nzoia and part of the Marakwets. This issue has created insecurity because there is nobody listening to these communities. The Maasais and Ogiek have the same problem. This is our time. We have come to this Conference so that we can solve our problems here. On this issue of land, if this Conference is not going to take it as a matter of urgency, the issue of these fights along the borders is not going to stop Mr. Chairman. I am therefore going to read our recommendations as the Pokots:

We believe that the Constitutional Conference of this year, 2003 must determine the cut-off debt for dealing with community's claims to unjust expiration of land. This should not be left to Parliament as per Chapter 11 of the Draft, section 235, sub-section 4(b), (i) and (ii). We propose that the cut off debts be 1913. We have no wish to invade the farms of legitimated owners in Trans Nzoia. We do not seek revenge, but justice. There are 40,000 acres of ADC, which my Member of Parliament mentioned. The Kenya Seeds Farms that border the District of Trans Nzoia and West Pokot will therefore, - and I wish to recommend in this Conference that the Government grants these farms to poor communities, who are landless, like the Pokot people.

Beyond this Mr. Chairman, the new Constitution needs to set modalities and principles for compensating communities, for the expiration of their land by the colonialists and for being neglected by the independence government. The new Constitution needs to establish an Affirmative Action programme for the minorities like the Pokot, who have not shared in the fruits of independence. This programme needs to centre on education facilities and infrastructure, to bring the forgotten people into line with the privileged communities and to give them a share in the National Social economic life.

Finally Mr. Chairman, in line with other pastoral areas, the new Constitution needs to establish a new legal regime that will regulate and manage grazing rights and rights of access to water, pasture, livestock, marketing and carrying rules and regulations for the minority. Thank you Mr. Chairman.

**Hon. Delegate Norman Nyaga:** Asante sana. Thank you Honourable Delegate for your contribution. We now go to where we began from, and if I were to ask you Honourable Delegates, and genuinely ask you, it would be so nice to give an opportunity to every member to make a contribution if they are willing to contribute. How many of you genuinely have not made contributions at all? I notice two of you. I notice 474 and I will come to the next one later. 474 from the Professional Bodies, has not spoken before, since this Conference started.

**Hon. Delegate Anne Okoth:** I am Anne Okoth, Delegate number 474 from Professional Bodies. Thank you Honourable Chairman for noticing me to make a contribution to this issue of land. In Kenya, there is plenty of Land, yet people are without land. This is because around 1890, the British Government took control of all land that was supposedly unoccupied or wasteland in their protectorates. This land was later given by the Government, but was never given to the people. May I therefore suggest Sir, that in the cases where the government sells land to other people for agriculture, preference should be given to the community from where land was taken.

I would also like to support Article 232 (d) and (f) which states that the Government should ensure transparency and cost effective administration of land, and (f) to ensure socially acceptable management and resolution of land disputes. I would like to propose Mr. Chairman, that for this to take effect, in the advent of selling leased land, this should be done by public auction and it should be made public and put in the Kenya Gazette, so that if there are any objections, the people from that community will be able to contribute. We should also have people who can be consulted to listen to disputes and where there are cases, where the environment is encroached upon, then these Professionals can give advice accordingly.

Mr. Chairman, I notice in the document that we have absentee landlords, and in these areas we have squatters. I wonder how long we should call these people absentee landlords. It should not

be indefinite, a set period of time should be put so that maybe after two, three years, if the landlord is not there, the land should be re-located to somebody who can put it into good use, otherwise they should be taxed. In some areas where you have like in Nyanza Sir – there are some people called squatters a very sad name indeed. To get to the sugar plantations, you will find people who are working in those factories. They are given an area, and in that area they are not allowed to put up any structures. You therefore find people living in grass thatched houses and they are not allowed to plant anything and if you look at their houses, they look so pathetic, that they are predisposed to many hazards, including health.

The new Constitution should not allow anybody to be called a squatter in their own land. Yes I agree we should set Land Commissions and I am glad that until '81, we have been told that we can have a National Land Commission comprising of a minimum 1/3 women. However, I want to suggest that this 1/3 should not only be on the national level, but it should have commissions at all levels where power is devolved. This is because if you go to the villages and ask any woman in the village whose farm this is, they will tell you the boundaries better than the men who are there. We should therefore have women at all levels of those Land Commissions. Thank you Sir for giving me the time.

**Hon. Delegate Norman Nyaga:** Thank you very much in deed for being within the time limit, thank you. In the next category I will recognize District Delegates, and I indeed want to recognize the ones that have not spoken in the past. I recognize Delegate number 425. Delegate number 425.

**Hon. Delegate Sylvanus Onyambu Ogari:** Thank you, Mr. Chairman. My names are Sylvanus Onyambu Ogari, a District Delegate, number 425. Thank you very much. Mine is not much, because some of it has already been talked about, but I would like to revisit Article 233, that is land ownership.

I sincerely believe that land belongs to the people of Kenya and I believe that land is actually natural heritage for all the people of Kenya. Therefore, it belongs to the people of Kenya individually, collectively and also privately you can own it. Therefore, I say that people believe that some people own a lot of land and I believe that the land they own should be taxed because they own a lot of land and they don't even know how big it is. These people should actually give

some of this land to the people who have absolutely nothing. I will tell you what one good old man said there, that kama uko na mkate ukatie mwenzako, otherwise there is no democracy.

If I come to two, I will talk of the period after Independence. In fact all the public land was adjudicated, land was surveyed, and from that time, land has been fragmented by individuals, particularly those people we call Councillors. I don't know whether some of the Councils will be affected but I believe those Councillors in early 80s, and late 80s, actually went there and grabbed every piece of land that was there, for public utility. Land was allocated for schools; land was allocated for public amenities and land that was allocated for dispensaries and other social gathering places. These lands are now being used in the context of individuals, what they call development that these lands have been allocated for development. There is no land left. At this stage, people have no place to walk in the street because most of the land that was there has been allocated to what they call developers. I believe in this context, that these lands that have been allocated to these people, we call grabbers, should be repossessed immediately and quickly.

I also believe that in the case of ancestralland, that means marital land that belongs to the woman and the man, that land should have a title deed that bears the two names, that is the woman's and the man's, because men have that tendency of selling land when the woman is not aware. The man becomes very bitter one day and you find that he has just sold a piece of land and he is enjoying it somewhere in the bar.

### ***Clapping by Honourable Delegates.***

Another thing which I think should also be looked into is the cost of title deeds, they are very expensive. It is very expensive, the fact that some people up to this time when I am talking they don't have actually certificate that show that this land belong to them. It is because they cannot afford to get a certificate. The place which I have seen recently very corrupt is the Land department. When you go there, and you want to get a title deed, if you don't grease someone's hand, it will take you even years to get that title deed. It is very difficult to get it. It is because they want some money so they can look for the file, they say it is lost, you go there it is lost, it is lost, until you find a small man there and get something and then the file will be found, then you go get the title deed.



I should we should talk about land in the case of disputes. We have had disputes of land and some people, those who have the money tend to go and settle these problems and they take the case far away, where an old man cannot reach and the man is summoned to go appear may in Nairobi from South Nyanza on the land case. Land cases should actually now be settled at almost village level. These are the people who know the history of the land and the people who know the history of the people who are in dispute. I feel this kind of work, will actually do well and therefore, I want us to revisit it, because I feel that land is life, land is something every person must naturally possess. Every person must possess land because nobody was born in the air. Where you were born there was land. As person puts it, that we should save the people who were displaced, that now become landless, one time you had land but you have been displaced.

**Hon. Delegate Norman Nyaga:** Shukurani, shukurani.

**Hon. Delegate Sylvanus Onyambu Ogari:** Thank you very much Honourable Chairman.

**Hon. Delegate Norman Nyaga:** Thank you very much, thank you very much Honourable Delegate. Now this section I am about to get somebody to speak from is the section where I sit ordinarily and is where I have sat all along and it is the section I am going to go back to. Do allow me to go for the only person out of you with your placards up, who has never uttered a word, and he is sitting on the front row. 234 District Delegate.

**Hon. Delegate Haji Mwijaa Mwinyi:** Bwana Chairman, asante sana. Mimi naitwa Haji Mwinyi, number 234 kutoka Kilifi. Kwanza ningezungumza kuhusu section 232, ambaye (e) inazungumza kuhusu Ecological Sensitive Areas. Ningeomba hii ipanuliwe ili tujue kama inahusu ile mikoko yetu kule Kilifi. Pia, 233 (3) inazungumzia kuhusu renewable period for the leasehold tenure, ya watu ambao si wananchi wa Kenya. Kwanza mimi nakataa kusema wapewe miaka 99. Ningeomba wapewe miaka thelathini na halafu kuwe na kifungu ambacho kitakua kinazungumza, jee baada ya wao wakisha maliza hio miaka thelathini, is it renewable?

Halafu kuna jambo ambalo linatutuzia Bwana Chairman. Sisi kule Pwani tumebarikiwa na kuwa na ufuo wa bahari. Lakini tatizo kubwa ni kwamba ufuo huo wa bahari hatuna nafasi nao sisi. Hatuupati hata sisi wavuvi, kwa sababu yoyote atakaye pewa kujenga, atajenga mpaka ufuo wa bahari. We are talking of the shoreline. Hatuna ruhusa nao. Sasa mimi kama mvuvi kazi yangu ni kuvua samaki, lakini pale nitateremkia ni private land ambao ni ufuo wa bahari. Tunasema hivi, Bwana Chairman, huo ufuo wa bahari, the shoreline, usipewe mtu yoyote kabisa, iwe obsoletely free, ili mtu yoyote ambaye anataka kwenda aende. Kama ni mvuvi awe na ruhusa kutembea ufuo wa bahari yote.

Tunazungumzia swala ya decentralization of documentation offices. Ninazungumza kwamba hizo offices zirudi kwa regional ili, kwamba sisi tuwe na nafasi. Kama tutalipa title deed yetu Kifili tuwe tutaenda Mombasa kupata mambo yetu yote yaishie Mombasa. Si Nairobi. Swala moja zito hapa tumelizungumza lakini, Bwana Chairman, tunalihepa hepa na ni swala la zile ardhi zetu zilizoibiwa, ardhi ambazo zimechukuliwa katika hali ambayo si ya sawa sawa. Na nikizungumza kwamba ardhi iwe na kiwango cha mtu atakuwa na ardhi ya ekari fulani. Tunajua ardhi haikuwi na kuna watu sasa wana nusu ya hii Kenya ni yao. Kwa hivyo ikiwa tunataka kurekebisha makosa hayo, ni tukubali kama vile tulifanya. Tulisema majaji wote waondoke, wale wazuri tuwarudishe. Na tuwe tunataka kuondoke huo uchafu, all title deeds should be null and void wakati hii Constitution imeingia, ili kila mtu aende, kama una haki ya hio ardhi upate. Na wale wenye trust of land, wawe wataangaliwa ni namna gani watapewa hizo ardhi; na wale ni ma-squatter wapate nafasi ya kupata ardhi.

*(Clapping from the Honourable Delegates)*

Katika hii Draft, tumepata kwamba hakuna kifungu cha kulinda ardhi ambayo itakuwa inatoa chakula, the arable land. Ni muhimu sana ardhi ambao inakuwa itatowa chakula ilindwe. Tunazungmuza kuhusu absentee landlords, hawa ni watu ambao tuko nao na wanatutuzia. Ardhi hiyo ichukuliwa ipewe wale watu ambao hawana makao.

*Clapping from the Honourable Delegates.*

Kule Pwani kuna mtindo ambao unaendelea mpaka sasa; Presidential Decree. Kila mwaka, kuna areas ambazo kila wakati wa kura watu wanapewa hio ardhi. Ikifikia kama mwaka ujao kutakuwa na elections watu sasa watakuja wapewe title deeds huko. Elections zikiisha, hizo title deeds hazina kazi tena. Mwaka mwignine wa kura watu wanakuja. We have a place Madeseni area. Watu wamepewa wakipewa, wakipewa, wakipewa. Hivyo ardhi tunasema title deeds ziondolewe, ile regional body ziangalie ni nani ambae ameishi hapo, apewe ardhi aishi. Niko na mengi, asante Bwana Chairman. Umeniona nilikuwa sijaongea kweli. Asante.

**Hon. Delegate Norman Nyaga:** Asante sana thank you Honourable Delegate from Kilifi. Now the next category, I will notice category of an MP. Let me hasten to add on to that, I notice there are very many people from that section who have not spoken, but unfortunately currently they fall under District Delegates and the last three we have heard from are Delegates from the District. I therefore, recognize the category of MPs, Delegate number 188.

**Hon. Delegate Naomi Shaban:** Thank you very much, Mr. Chairman. My name is Dr. Naomi Shaban, MP Taveta. Looking at the Drafts, the land in Kenya has been classified in only three categories; that is public, community and private. I think there is a need for other types of land to be classified also. For example, urban land should be described there, and agricultural land should also be done the same. Foreigners should only lease land or properties for not more than 50 years. 99 years is a very, very long time and most of us will not live to even know land ownership if we have to wait for 99 years. I think Kenyans, the indigenous people the Kenyans, should be allowed to have freehold. I think it is very important for land allocation to foreign investors to be done in consultation with the local elders. For example, more than half of Taveta is in the hands of a foreign investor and I do not think this would have happened if the local community was involved. There is a need for land and property issues concerning women to also be specified.

Ownership as concerning married, divorced and separated women must be specified. The Land Act being used right now is a mockery of the issues of the new millennium. Foreigners who want to buy property in this country, should do so under specified policies. The people of Taveta are under siege. Two thirds of these people are squatters. If they are not squatting on individual land, they are on Trust Lands or other Government Lands.

Policies must be formulated where settlement schemes are concerned. I thought settlement schemes are meant to solve land problems in those areas. It is not meant to give land through back door, to the politically upright, or the very rich in this country. For example, in Taveta we have a Lake Jipe Settlement Scheme. Fifty percent (50%) of the people who were allocated land were people who do not even know where Taveta is located in this country. These allottees have never stepped in Taveta. They ended up getting these allocations like manna from heaven, and even manna from heaven usually people pray for it. It is therefore, very important for these policies to be put in place and very strict measures taken.

I welcome the formation of a National Lands Commission and it should have its representatives from the grassroots, forming the smallest tribunals from the community. The issuance of title deeds in rural areas must be done with utmost urgency. We see people with title deeds but most of them are in the urban areas. In the rural areas nobody really cares.

There is the need for human beings with agricultural lands to be protected by the Government. The wildlife has been so busy interfering with the people and nobody really cares. If a person dies or our agricultural land is interfered with, nobody cares and nobody is compensated. Therefore, there is a need to separate completely the wildlife areas and areas where the inhabitants are human beings. Mr. Chairman, thank you very much.

**Hon. Delegate Norman Nyaga:** Thank you Honourable Delegate who has just spoken, number 188. I now recognize a District Delegate in the next row, point of order, yes, what is your point of order 246?

**Hon. Delegates:** (Inaudible).

**Hon. Delegate Norman Nyaga:** Ooh thank you, we are into the next section.

**Hon. Delegate Norman Nyaga:** Yule mama ambaye amezungumza, amezungumza katika hiyo section yenu, kwa hivyo sasa tumehama tuko katika upande huu mwingine and I recognize delegate number 318. That particular delegate has not had the opportunity of speaking since this Conference began.

**Hon. Delegate Ann Kimani:** Thank you Honourable Chairperson for giving me this chance to contribute my views. My name is Hanna N. Kimani; District Delegate from Kiambu and my number is 318. I would like to bring up these points:

- That the government should make sure that the land is utilized according to its productivity. On this I have decided to give an example of a certain area called Naivasha, whereby we have a lot of water and what you find around there is houses being built possibly by foreigners, whereby we have recreation and sports facilities found there. You find that some of these areas you can have big plantations whereby we can grow some of the things that can be of great profit to our country, because there is a lot of water, which is available there.
- The other thing I would like to say is that the Commission of Land should be entrenched to look into matters pertaining to land.
- What I would also suggest Mr. Chairman, is that land lease should be shortened to 30 years instead of 99 years.
- When we come to areas of matrimonial land Mr. Chairman, I would suggest that the title deeds should have two names, one for the husband and the other for the wife. This is because most of the husbands have sold these lands without the knowledge of the wife and the wife is left stranded with the children without knowing where she can take them. You will find that in most of the areas, men go to the land board, the local land board with their girlfriends instead of their wives and they do not realize that the person with the husband is the girlfriend. So I would therefore suggest that if these two names are written in the title deed, this would guide the board to know who is who in the area of the wife.
- The other thing I would like to add there is that, the Commission should form a way whereby these committees should be formed from the grass root to the national level in order to check on matters pertaining to the land. This is where I would suggest that Mr.

Chairman, we should have affirmative action in our land board whereby half of the members of the land board should be women because if we have a third, this area we will not favour women so much. I would therefore suggest that in most of the land boards, we should have half of the members as women, so that women do not suffer so much in the areas that are not really recognized.

- I would suggest that the documentation offices should have a better link than it has today Mr. Chairman, in order to avoid so many costs with those people who come from the lower levels.
- Mr. Chairman, I would also suggest that a profession should be formed to cater for the widows, widowers and those who have not been advantaged in life in one way or the other.
- I would also suggest that Mr. Chairman, taxes should be imposed heavily on those lands which are not being used. Thank you very much Mr. Chairman.

**Hon. Delegate Norman Nyaga:** Thank you very much indeed for your nice contribution. In the next row, I have three members with their flags up who have never spoken, and I want to do elimination. We have had 11 members from District Delegates, we have had 8 from the category of Members of Parliament and therefore I would like to recognize that category 090.

**Hon. Delegate Lucas Baya Maitha:** Thank you, Mr. Chairman. My names are Lucas Baya Maitha Member for Malindi Delegate 90. Mr. Chairman, the whole drive on new constitutional order has been based on this issue of land and historically, all the struggle throughout this country has been caused by land. We chased the colonialists because the Africans were not allowed to own land. Again, this modern agitation has been due to cartels of people. In fact historically Mr. Chairman, land in this country has been owned by a clique of people who have always been close to the government.

If we go back to the pre-independence Kenya, for example in the Coast, much of the lands you find are under the Mazrui family and this family had historical ties with the government of the

Sultan. Again, most of the big landlords today in this country are those who have had a privilege of being near the source of power. This draft is talking about land being a resource for all Kenyans. It again talks about equitable distribution. Now it is the duty of this Constitution to address this equitability because we have a small number of Kenyans owning the coffee farms, the same people owning the wheat farms, and the same people owning the beach land at the Coast, the very same people. What about the rest of the Kenyans? (*Clapping by Honourable Delegate*). I therefore, propose that at the commencement of this Constitution, it should be inserted in this document that the Government can only dish out land to a Kenyan once. You can get the rest at market value. Every Kenyan should be entitled to land only once from the Government, and you can buy the rest at the market because every re-settlement scheme, you find the same people getting title deeds. Look at Magharini Settlement Scheme, we have big landlords who own coffee farms, but are squatters in Magharini, they have the title deeds. That should therefore be taken into account.

Again the issue of absentee landlords, has been well spoken by Delegates, it is a menace in this country. We have people who have never been seen for the last 50 or even 100 years. Ukiuliza unaambiwa huyu, this family is in Yemen, this family is where, but they have title deeds as old as getting back to 1908. Our people are on those lands but they are not able to get the privileges of those lands. Squatters toil, develop the land, and suddenly one day people come with very old title deeds saying, hapa ni kwangu, hapa ni kwangu, hapa ni kwangu. I think at the commencement of this constitution, all such title deeds owned by these absentee landlords who have never been physically spotted on those lands for the last 30 years, should be declared null and void and the squatters given back that land. (*Clapping by Honopurable Delegates*).

Again, there is an important issue, which has been raised which I support, that there should be a land ceiling. There should be a land ceiling because land is not growing and the population is growing. Sasa ukichukua eka elfu moja peke yako what about the future generations? So, we should have every Kenyan entitled to at least a maximum of 50 acres, and if you want a hundred you buy from the market.

**Honourable Delegates:**

**(inaudible).**

Maximum, yes, 50 acres so that every Kenyan can get land. We have Kenyans here who have thousands of acres of land, 10 thousand acres and we have others who do not own even 1 inch, and yet we call ourselves all Kenyans.

Again, the issue of issuing land should be devolved to the units. Land cannot be issued from Nairobi; it cannot be issued from offices. Many are the times ground report has not been taken care of, because somebody is sitting at Ardhi House not knowing where Kajiado is, not knowing where Malindi is, not knowing where Samburu is, and he just uses a map and issues that land. *(Clapping by Honoyurable delegates)*. The whole issue of land allocation should therefore be taken away from the national government and given to the units. The National Government should only have power to appropriate land whenever there is an issue of national importance. Otherwise, when it comes to surveying and issuing of title deeds, let it go to the regions. My time is up?

**Hon. Delegate Norman Nyaga:** Yes, it is.

**Hon. Delegate Lucas Baya Maitha:** Okay, thank you Mr. Chairman, I will speak tomorrow.

**Hon. Delegate Norman Nyaga:** Thank you, thank you. The next section is this section over here, and if I make a ruling to the best interest of that group, one of you of all the ones who have raised their flags, has not uttered a word in this section over here and you can make a ruling in the best interest of that group. One of you, of all the ones who have raised their placards has never uttered a word since he came in here and I will recognize that Delegate who is Delegate number 345.

**Hon. Delegate Lekisemon Mariamu Ntausian:** Thank you Mr. Chair. My name is Mariamu Lekisemon kutoka Baringo. My number is 345. I am representing Baringo and also representing the Ilchamus community, which is marginalized very much. I thank you for this moment because I have tried to raise my hand all the time, even I request you to remove those spectacles you are wearing in order for you to see me. My point is about land. The land is very important to our communities because where we are living, even if we don't own shambas there, where we are living is our area, which we have been given by God. Most of the people in Baringo are



living in dry areas. Some of them don't know where they can cultivate to get food but those lands should be respected by other people, they are our gifts and we should not allow anybody to come and take our lands without our permission.

So, ningependa kusema kwamba kule wameishi, waishi vile vile Mungu aliwapatia. Kama vile Waichamus, wako na Lake Baringo na wanavuna yale ambayo yanapatikana kwa Lake Baringo na wale wanaishi kama Eldoret, pia wanapata mapato yao kutokana na mahali ambapo wanaishi. Lakini tulipata ya kwamba kuna wale ambao walikuja kupitia njia mbali mbali kusema kwamba tugawane ardhi. Hii ardhi walikuwa wanataka tugawane ili wapate njia ya riziki yao. Huko kwetu kwa sababu hakuna mashamba, hakuna rutuba, wakasema kwamba tuweke group ranches ambapo wameweza kujitafutia mahali padogo pa kukulia. Wengine wakasema, "hebu tukate kate kama maploti" ndio wapate kusema ya kwamba ulipe kitu kidogo upate ploti. Tunataka kusema ya kwamba iondolewe kabisa ile Commission ambayo inanyanyasa watu kule mashinani ili watu wetu wapate kupata haki yao ya kurithi ardhi yao.

Pia ningependa kusema ya kwamba ile National Commission ianzishwe huko vijijini isiwe tu ni mahali pale mbali. Kwa sababu National Commission ndio wametukula kabisa. Walidanganywa na wale wazungu wa zamani na ndio wakarudi tena wakabaki wazungu ambao tunaishi nao. Ndio sababu tunaambiwa kwamba, "sasa hii ardhi ni yetu, hii ardhi ni ya Serikali" na kule watu wanaumia, hata wengine hawana mahali pa kuishi, hata kuoa, hakuna mahali watapeleka bibi zao. Mtu anapeleka bibi yake nyumbani kwa mwingine ndio apate kuishi huko. Kwa hivyo tujaribu kuona ya kwamba ardhi yetu ya wananchi wa Kenya, kama Mungu alikuweka sehemu kama Baringo, ujivunie Baringo hata kama unakalia juu ya mawe. Ukae ukule kule na hakuna mtu atakuja kuchukua hata sehemu kidogo (*clapping by Honourable Delegates*) ili tuone ya kwamba hiyo ni haki tulipewa na Mwenyezi Mungu. Huwezi kusonga kutoka kwa province nyingine kwenda kwa nyingine, hata kwenda kwa district nyingine ili ati unyakue pole pole. Wacha wale watu wafurahie maisha ambayo Mungu aliwawekea pale. Ningependa kusema ya kwamba tukiungana mikono kama watu wa Kenya, tuone ya kwamba kila mmoja anapata haki ya kuishi mahali ambapo amepewa na Mwenyezei Mungu. Sitakuwa na mengi, utanikumbuka siku nyingine Mwenyekiti. Asante.

**Hon. Delegate Norman Nyaga:** Asante sana, Mama Delegate, umezungumza vizuri sana. I would like to hear the views from the next category. I think we must agree that we have heard views from up in Turkana, we have heard views from the Coast, we have heard views from Rift Valley, and I think it would only be fair that we hear views from the Northern part of this country and therefore I recognize 015.

**Hon. Delegate Billow Adan Kerow:** Thank you Mr. Chairman, my name is Honourable Billow Kerow from Mandera Central. Mr. Chairman, to begin with, I have a problem with the Chapter when it says that land belongs to the people of Kenya. When you say “land belongs to the people of Kenya”, then you have to reconcile that, in my view, with another important aspect—that of equitable access of all Kenyans to land.

Mr. Chairman, the reason why I have a problem with that is, whenever there is land allocated for instance, there is a lot of ADC land that has been allocated to the landless in this country, in Nakuru, in Naivasha, Kitale and many parts of this country. But is there a time when people from North Eastern for instance, who are landless, have been settled on a particular farm or land say in Rift Valley? Is there any time? There is no time, yet we know for sure that certain landless people have been settled in Molo. People who are landless have been moved from one place to Shimba Hills, Mpeketoni to Bura, to many other places but that has not been common to all other communities. It was specific to certain people. So, the reason why I have a problem with the fact that as stated in the Draft, that land belongs to Kenyans to all people, in that some people will be having the opportunity to move to your land, while you may not have the opportunity to be moved to some other land, if you are landless. So, I would like that Chapter really to read: that land should belong to the indigenous communities of that place.

Secondly Mr. Chairman, many Constitutions in this world, particularly in African countries, emphasize that with regard to the landless there must be the right to obtain land without payment of money. They also have to have protection against the eviction if they are landless. We have seen in this country, for instance in Nairobi, among the urban poor, incidents where people have been evicted. People who are landless have been thrown out and land given to a property developer. So, I think we must make it clear in the Constitution that: all those who are landless, wherever they settle if it is public land they should be protected against eviction.

Mr. Chairman, I will proceed to the pastoralist community. Now, I think it should be made very clear within this Draft also, that pastoralists should have a right to free grazing land. They should also have a right not to be displaced from the areas. We have seen this in the morning, we have heard a lot of presentation from our colleagues from Rift Valley, from the Masai community who have demonstrated quite clearly that they have been displaced from their lands, from their grazing land- yet pastoralists are also people, they are also Kenyans, they are entitled to their land. There is no instance when Kenyans who are farmers have lost their lands to pastoralists. If there is drought, like we see it frequently happening in Samburu and then other parts of this country, when they move to agricultural areas their animals are thrown out and they are thrown out, people have been arrested- yet it always happens that those who want farm can quite comfortably go to pastoralists' land and be given any amount of land they want. So, we want protection for the pastoralists that they must be allowed to freely graze their animals on public land and they should have a right not to be replaced.

In addition to that one of the main concerns we have Mr. Chairman as pastoralists, is in the individualization of the land tenure system for the purposes of commercialization, for the purposes of agriculture. This is what has created the problems that we have, where Trust Lands or common lands as they are referred to in the Draft, have been hived off for commercial purposes by the Local Authorities. It should be made very clear that the Local Authorities, or the Government should not have the right to hive off any public land or Trust Land particularly, without the consent of the communities in that place. In that regard Section 236, Subsection 2 and 3 can be subject to abuse: where it says clearly that the Government or the State has the power to possess land for the purpose of development or for the public interest. I think that has always been used by the State and by Local Authorities to grab land from the communities, from trusts and therefore give it to property developers and other individuals. Mr. Chairman, that right must be checked and that part of the Draft needs to be looked at.

Mr. Chairman, with regard to the settlement of the landless, I have already emphasized that there is need to settle those people who are landless all over the country, and there has to be an equitable aspect that must be brought into this.

Finally, Mr. Chairman, I want to emphasize the issue of the Coast. Our brothers in the Coast have made it quite clear that there are people who are absentees who are occupying their land. My suggestion is that the Government must buy, they should buy that land from those absentee landlords and distribute it to the landless and squatters who are living on it. That has been done in many countries. Mr. Chairman, you remember in Zimbabwe, ---*Clapping from Honourable Delegates*--- Mr. Chairman you remember in this country when we got independence, land was paid for by the British, was bought from the British and was given to the Kenyans who were landless and whose lands had been taken earlier, and that must be done in the same manner. The Government should go out and look for money from the Arab countries, buy it from Arab landlords who are outside and give it to the Kenyans who have settled on that land.

Mr. Chairman as regards North Eastern Province land, I think my sister quite eloquently put it earlier on that our land extended all the way to Mt. Kenya before independence. It is well known that the former colonial masters, the Kenyatta Government, decided to throw out the pastoralists. It is as if those of us who are pastoralists should have nothing to do with cold weather. We have to be baking in the sun out there and I think that is unfair. We want a reparation and the Constitution has made it very clear in Section 235, of the Draft: that a Review Commission be set up to review the injustices that have been committed to, particularly, people in the North Eastern Province, Rift Valley, Coast and other places whose lands have been taken, first by colonialists. When the money came to repay those people who lost land the Kenyatta Government went ahead and paid that money to the coffee farmers. We therefore want a Commission that will be set up, that will look at that aspect of it, so that they can raise those injustices.

Mr. Chairman, I particularly take offense with people like one, Dr. Njoroge Mungai. That gentleman, in the reports that you will find he said it very clearly, in fact he is awfully close to Sir Charles Eliott. Because when the Somalis in North Eastern Province were trying to secede, a statement he gave to the Parliament at the time, “that Somalis can pack their camels and go but the land must remain”, clearly indicates that there are some who believe that land belongs to the State. I think it should be made very clear in this Draft that land belongs to the communities who live there, so (*Clapping by Honourable Delegates*) it should not be assumed that the land

belongs to the State or the Government, and therefore pretend that if you want to do something, then you are told you can go but leave the land behind.

Finally my last comment Mr. Chairman, I want to also emphasize that this Government and any future Government should make it a policy: that if there is any land to be allocated by the Government, if there is Public Land to be given out, it should be advertised for sale, particularly in Nairobi. We have seen individuals who have been given 100 acres, 500 acres to develop. They are called private developers. I think what we should do in this Constitution, is make it clear that if the Government has any public land for sale it should do so competitively, so that all Kenyans have an equal chance of acquiring that land.

My last point regards the radioactive waste that was mentioned by my sister in the morning. Mr. Chairman, that is a clear fact. The Government in the past has allowed some Western companies to dump radioactive waste in parts of North Eastern Province. Since land is a national resource, we want it to be included within the terms of reference of any future committee to be set up to address the historical injustices, they must investigate that, and take action that is appropriate so that those people can be compensated and relocated to other places. Thank you very much for giving me this opportunity.

**Hon. Delegate Norman Nyaga:** Thank you, Honourable Delegate. We now come to the next row and we want to have another view, not too far away from there and the Delegate who was the first one to raise the placard was Delegate number 251.

**Hon. Delegate. Hubbie Hussein Al-Haji:** Thank you Mr. Chairman and Honourable Delegates. I would like to contribute to this issue of land because I believe it is the most essential thing in our lives. Without land no life. I do come from North Eastern and for that reason I live in a Trust Land, which has been abused so much. The British Policy as Professor Ogendo told us this morning says that land in Africa is ownerless, but at the same time the same British went to North Eastern and demarcated the land into grazing blocks and the grazing blocks were given to clans. If Clan A went to the grazing block of Clan B there used to be fights now that was reflected in terms of conflicts. Every drought season we have conflicts because that

precedent set by the British Government is being reflected by the communities in terms of clashes that “you came to my land without permission and you are grazing.”

The issue of Article 326, as my brother says the state has the powers to take possession of land to acquire any rights. Sometimes I think the shiftas because there is no Province in Kenya where the land has not been misused for the purpose of resettlement scheme like Lamu, Mpeketoni District land has been misused. The Government has taken that land and the mpeketoni people are not benefiting. The people taken from Central Province are benefiting from that land and for that reason I would like to have that Act reviewed or rewarded.

The other issue which I want to talk about is that Government Officers who are rejected in other places because they are corrupt, useless and unproductive are taken to North Eastern Province and they abuse land. In physical planning, surveyors have been selling our land, the displaced community has nowhere to settle in Garrisa and especially in urban areas. They are taken to the peripheries where there is no water, resources and no schools. This should be reviewed in the Draft.

The other issue is that grazing blocks in North Eastern Province have been conserved for wild life, parks and our livestock are grazing in tse tse fly infested areas. There are many diseases in those areas, tripanosomiasis and other diseases are taking our animals, we have no way to address that. Therefore the Review Commission should address that issue.

Financial Institutions in Kenya have been abused by fake Title Deeds that people use for borrowing money. Therefore, that issue of Title Deeds being used for borrowing money should also be stopped.

The other issue that I want to talk about is the three-mile strip in the North Eastern Province, which was done through an Act of Parliament in 1968. That three mile strip is a very important resource from Tana River and therefore we have a problem in watering our animals, in getting access to water and although I know there is a Land Commission, something should be done in this draft to address such issues. Thank you very much.

**Hon. Delegate Norman Nyaga:** Thank you Honourable Delegate for your contributions. We now move on to section one and I want to move away from the category of MPs and that of of Districts, to others and I want to recognize religious sector, Delegate number 541.

**Hon. Delegate Okoth, Zacchaeus:** My name is Arch Bishop Zacchaeus Okoth, KC. (Kenya Catholic Secretariat Religious Organization). My first point is on land belonging to communities. Land clashes should be a thing of the past, we have learnt that around Muhoroni there is an area where people were removed from. Our church had to settle some of them, first, with plastic bags and paper bags, then we bought land and built for them huts. The piece of the land they have now is so small that although their sons are ready to get married and settle and they have no land they are living on top of one another. It is a shame that this kind of spirit will continue.

We are saying that the land which these people were dispossessed is still there, it is not being utilized. It is their ancestral land, they have been there from time in memorial and they should be resettled back. I think that is the truth as these people have the right to live and they cannot be squatters, and made sugarcane cutters all their lives.

Number two. Land should also be accepted as belonging to the communities whether these communities are in the urban or in the rural areas. These lands should be respected once they prove that they are the owners from their ancestors. This should be given priority because there is land with three or four Title Deeds and which have endless disputes among those who have the Title Deeds for that land. I want to emphasize that, where land is not given to women, women should be given land so that when their husbands die, they have a right to own the land and even if they are three/four/five of them, let them share the piece of land that they have.

The other aspect is that in reality the settled lands are unproductive. It is the duty of Kenyans to make land productive. If you go to Israel, land is made productive; in Netherlands they have acquired land from the sea. We have plenty of water in the lakes and seas; we should be able to irrigate our lands to make it more productive. The lands should be made in such a way that people can get their livelihoods from there. Even if they only grow trees, paw paws or even

vegetables. I think that land should not be looked upon as purely ownership of tracks of land but make them productive so that Kenyans can also live and share the land which is theirs.

If oil can come from Mombasa to Kisumu, then there should also be pipes of water coming from the Indian Ocean to Manderu all the way through to Marsabit, or even water from Lake Victoria coming back to the dry areas of Nyanza and elsewhere even as far as Baringo and other areas. I think that we should also irrigate the land. Thank you very much Mr. Chairman. I am brief and short.

**Hon. Delegate Norman Nyaga:** Thank you Honourable Delegate Okoth. I now recognize Delegate 368.

**Hon. Delegate Joel Kipyegon Sang:** Thank you Mr. Chairman. I am very happy indeed to have been given this opportunity. I had wanted to speak on the topic of Devolution but I have been- -.

**An. Hon. Delegate:** On a point of order.

**Hon. Delegate Norman Nyaga:** Yes, Delegate 539.

**Hon. Delegate Njenga John:** I hope it is a point of order Mr. Chairman, but it is a concern because you remember that when the Anti-corruption unit began its work, quite a number of offices of the police went into its books, and even when the Goldenburg inquiry began, some files also became invisible. This matter that we are talking about here of land, I think it is very, very sensitive and I was just wondering if there is a way the land-- You know what I mean, they should be properly kept in a secure office. This is a very serious team that is here and the records can go yet people are hearing these. Those who own thousands and thousands of acres are hearing these. Might it not be the case for the Commission to help us to make sure that those files all of them are secured until further notice.

*Clapping by the Honourable Delegates.*

**Hon. Delegate Norman Nyaga:** Thank you very much. Go on, number 368.



**Hon. Delegate Joel Kipyegon Sang:** Thank you very much Honourable Chairman. The issue of land in this country is potentially explosive and the Chapter on land specifically in this Draft is badly done. Badly done, because I think the Commission was taking into consideration the Njonjo Commission, failing to realise that this Conference has a bigger mandate and has the potential as Professor Okoth Ogendo will put it, of reconstituting the Kenyan state and that is exactly what we are doing.

Land is part of the nature of colonial question in this country. As we talk now, the issue of land has ramification beyond our borders. The British colonial Government introduced this issue of expropriating or taking away native land as a way of deteriorating the indigenous communities, appropriating themselves the power to control the primary resource in Kenya. In this, a lot of injustices have been done and I am going to say here and today that, the legality of the Constitution we all making here, shall be determined by the extent to which we address the land question. That we have to make another Constitution within 40 years is not something to be proud of. It shows that the founding fathers of the Kenyan Republic did not take some of the pertinent questions seriously.

Kenyans fought the British primarily because of land many Kenyans died because of land and yet the British outwitted our nationalists in Lancaster. I am bringing to your information that during the Lancaster Conference, Kenyatta was told “Could you delay the independence for ten years so that we can fully deal with the land question to the satisfaction of all parties in Kenya”. Kenyatta said “I am very old, I may not sit on that seat, I want to be the President and you are delaying independence for ten years, I am sure that I am going to live to be a President”. That thing has already planted the seeds of instability within our society, whereby every other day we have to make a Constitution and I am calling upon the Delegates not ignore the question of historical land injustices. We may not be able to dispossess those Kenyans who have been settled in the land that formerly belonged to other Kenyans, but we can at least we can sit down and say that this was a mistake, it was done but we can dispossess these Kenyans who are living here, we will compensate those communities and there are many ways of doing it. We cannot ignore a vestige question and hope to remain stable there after.

I am saying this because in 1902 there was what is known as Crown Land Act and in 1915, the British monarch took away African Land and gave it to Multinationals. Those multinationals own that land to date. I remember in Thika there was a time a Kikuyu trespassed through one of the farms and dogs were set after him just because he had trespassed through a white property that was taken by the Colonialists.

Land is part of the large colonial question and I think even Macmillan in 1960 at Cape Town, when he talked of wind of change, did mean that that the British had changed the Acts. It was only that they changed their tactics in approaching the colonial question. I think colonialism is coming back in a big way through globalization and unless we empower our people by returning part of the stolen land, we will not have dealt with the culture that settled in this country in 1985.

It is on the basis of this that I say it is meaningless for Kenyans to say that we are independent and yet the basic question that keeps destabilizing our society is not addressed. Land is very important. Today, families are struggling to make sure that their heads do not sell land without consulting the rest of the families.

Communities are helpless and poor. I come from the larger Kericho District, we are looking at very beautiful farms and yet we have families scattered in Transmara who were dispossessed off that land, they have nowhere to stay and we are still silent. Who will cry for those people? Who will give them what is theirs?

It is now time to tell them they can cultivate the farms, but the soil is ours. It should be given to us. The royalties that they are paying to Queen Elizabeth should be paid to the Kenyan communities; the Kikuyus in Kiambu and Murang'a; The Kipsigis in Kericho, the Nandis in Nandi, the Taita and the Tugenis in the Sisal farms. We cannot have multinationals taking away our birth rights. These are some of the fundamental questions that if not addressed in this Conference, will make us go for another Constitution in ten years. Kenyans are becoming more enlightened. Kimathi would turn in his grave if he got to know how we have distributed land in this country. Koitalel arap Samoei was killed because of land. The whole (inaudible) of the Kipsigis Arap Ole (inaudible) was punished with the entire clan to Gwasi in

Luo land because they challenged the British Land interests and their occupation on our land. Unless we address these issues, our independence is meaningless.

The stability of the Kenyan State shall always be brought to question because you cannot explain anything to a dispossessed young man who has a degree and no job, who looks at his ancestral land lying in the hands of a foreign multinational and yet he has no clothes or shoes. These are some of things that we must address, and we have no other time in our lives to get our people on some parts of countryside, we are not addressing these issues seriously.

The Lease of land. Our people have spoken; I am fortunate to be one of the people who were involved in the district hearings and the collection of views. I heard a lot, I was the translator in Buret district and part of Bomet District. Many Kenyans want the lease period for rural land to come back to either 30 or 33 years, so that who ever leases land shall see it in his/her life time. For urban land, it can be 66 years but one of the basic rules should be that no foreigner should ever own land in this country.

To conclude, this morning Professor Okoth Ogendo talked about subterranean wealth. In Europe I cannot imagine an African going to start anything that cannot benefit the local community. It is impossible. It is only in Kenya where foreigners come and mine, kill Kenyans and there is no benefit to the local community. Subterranean wealth does not belong to the Government; it belongs to the people of Kenya. The Government is an agent of the people. If you allow an agent to own some property, it would amount to theft by servant. It belongs to the Kenyan people. There is a lot to be said but everybody has to talk. Thank you very much Mr. Chairman.

**Hon. Delegate. Norman Nyaga:** Thank you. You have been a wonderful speaker. I think before we wind up, I would like to hand over the Chair back to the Vice Chair, but I want to say that you have been a wonderful group to spend the day with and we look forward to being with you once again tomorrow. In the mean time, I hand over the microphone.

**Hon. Delegate Wilfred Ole Kina:** Thank you very much. I do not think that I have much to say except that we adjourn this session to continue tomorrow. Have a good night. Thank you very much.

**The Meeting adjourned at 5.35 pm.**

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**PLENARY PROCEEDINGS, PRESENTATION OF DRAFT BILL, CONTINUATION OF**  
**CHAPTER ELEVEN- LAND AND PROPERTY RIGHTS, HELD AT BOMAS OF**  
**KENYA ON 28TH MAY 2003**

**PRESENTATION OF DRAFT BILL: CHAPTER 11 - LAND & PROPERTY RIGHTS**

**Session Chair:**                      **Professor Yash Pal Ghai**

**Discussants:**                      **Prof. H. W. O. Okoth Oendo**  
   **Dr. Mohammed Swazuri**

**Co-chair:**                              **Hon. Delegate Wilfred Koitamet Ole Kina**  
**Co-chair:**                              **Hon. Delegate Nancy Kabeteka Lung'ahi**

**The meeting started at 9.45 a.m.**

**Hon. Delegate Wilfred Koitamet Ole Kina:** We will now start our proceedings today and before we do so we will be led in prayers by Maria Owiro, Delegate number 400 and Sheikh Shee. So may we stand up for the prayers, please.

**Hon. Delegate Maria Owiro:** Let us pray. Fellow Kenyans, the Lord who created you said, “do not be afraid, I will save you, I have called you by name and you are mine. When you pass through deep waters I will be with you. Your troubles will not overwhelm you, when you pass through fire, you will not be burned. The hard trials that come will not hurt you for I am the Lord your God, the Holy God of Israel who saves you. I will give up all nations to save your life because you are precious to me.”

Almighty God and Father, we worship you especially for this morning. We give you thanks, we glorify your holy name because you are only one Lord. You are only one Lord whom we worship and glorify. Father we give you thanks everyday because you are a good God. As we gather here today Father, be with us, give us peace. Father we ask you to give us peace in this Conference. Dear Almighty God, everything is possible with you and therefore we lift up our hearts and ask you Lord to come and fill us with your Holy Spirit, but most of all Lord we give you thanks, because that is all you need from us. All things are yours Father, including this

Conference and everybody who gathers here everyday. As we discuss, as we negotiate, as we lobby Father, we ask for your guidance. We ask for your strength and we ask all this through your only Son Jesus Christ our Lord. Amen.

**Hon. Delegate Sheikh Shee:** Bismillahi Rahmani Rahim, ee Mola wetu muumbaji wa mbingu na ardhi tunakushukuru kwa kutuweka katika hali ya usalama na hali ya amani. Tunakuomba utubariki, utupe nguvu na busara tuweze kufanya kazi hii ngumu, tuweze kutumikia watu wako, watu wa nchi hii ambao walitutumia kufanya kazi hii ngumu. Tupe nguvu zako na support yako ili tuweze kutekeleza kila lile ambalo ni muhimu kutekeleza. Ibariki nchi hii, ubariki na watu wetu wote, utondolee maradhi, utuondolee maafa, utuondolee kila lile amablo ni baya. Tunakuomba hatuna mtu mwingine isipokuwa ni wewe, pasina kupata nguvu zako na busara zako hatuwezi kufaulu kwenye kazi hii. Tunakuomba hatuna mtu mwingine wa kumuomba isipokuwa ni wewe, twakuomba utubariki. Amin.

**Hon. Delegate Wilfred Koitamet Ole Kina:** At this juncture I would like to request anybody who has not taken the oath or affirmation to present himself or herself before we can continue with the rest of the deliberations. We do not have an indication yet of anybody but since that is our first item on the order paper we are opening for whoever has not taken the oath to come up please. Okay, it appears there is no one so we can go ahead.

I have an announcement, that the Technical Committee on People's Representation will meet at tea time at the tent number 3 to elect their convenor. Please make sure you attend that meeting because I think the elections have not been held because of lack of quorum. So I ask all the members kindly to ensure that we do not run into the problems of lack of quorum before the Technical Committees can meet. Having said that--

**Honourable Delegate:** Point of order.

**Hon. Delegate Wilfred Ole Kina:** Yes.

**Hon. Delegate Hezron K. Nyerere Manonda:** Mimi naitwa Hezron Nyerere representing a political party, number yangu ni 596. Point of order yangu ni ya kwamba kwa hoteli ambazo

tunaishi, mostly Meridian Hotel, tumeanza kutishwa na mabarua ambayo yanatupa notice tusiwe na wageni, bibi yangu asikuje, kama ni bibi bwana yako asikuje, mtoto wako asikuje na hiyo ni hatari kwetu. We are scared in these hotels. Kwa hivyo ninaomba Bwana Chairman mshughulikie jambo hilo kwa sababu tunalindwa na Constitution, na tunalidwa na Act ya Constitution, Article 132, Delegate welfare.

**Hon. Delegate Wilfred Ole Kina:** Thank you very much. I think your issue is good but we have a Committee that was put in place to cater for that. So please refer your matter to the Committee on Discipline and Welfare because that is a matter touching on welfare. 228.

**Hon. Delegate Raphael Livu:** Thank you, Mr. Chairman. My names are Raphael Livu, Delegate number 228. Mr. Chairman, I want to submit that you are misleading the Conference. When all Committees were advised to go to their respective tents, I think two/three days ago, I, being a member of the Committee of Representation of People, I think it is working group "C" amongst other people, attended that meeting and we did conduct an election where there were five contestants, two of whom withdrew and three were left in the race and we unanimously elected the Honourable Delegate Prof. Maria Nzomo to Chair that Committee. Mr. Chairman, I think you are now introducing backdoor tactics to frustrate that and I want to submit that, that meeting that you are announcing for that is being convened at tea time is illegal. Mr. Chairman, we conducted our elections and as far as we are concerned that matter was put to rest. Thank you so much.

**Hon. Delegate Wilfred Ole Kina:** Thank you very much. Much as you say you have solved your problems, there are still problems in that Committee, we are referring the issue back to the Committee so you go and meet and sort out whatever problems are arising and you will give us a report. So the meeting is there, called by the convenors, so please attend the meeting and if you solve your problems then the rest of the committees will be in place. Thank you.

I will now carry on with where we left off yesterday. Nairobi is not represented today by Honourable Nyaga, they are very gender-sensitive so he decided that today we will be co-chairing with Nancy Lung'ali and so I will ask her to lead us from where we left off yesterday, Nancy.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you very much Vice-Chair. Good morning Honourable Delegates. My name is Nancy Lung'ahi, Delegate number 224. I will be continuing from where we left off yesterday and I think we are going to start off from that row which is where Honourable Nyaga stopped yesterday. So we will start from this row and come up to here and then we will go back and begin on that row. The way we will do it this morning is, we are going to take the last category first which is Political Parties, Professional Organizations, Trade Unions and other Interest Groups, Women Organisations, we will come round and then when we come back here, we will take District Representatives and Members of Parliament. So we will start with this row and I am looking for a political party representative. Is there a political party representative? 611.

**Hon. Delegate John P. Nyakundi:** Asante sana Mwenyekiti kwa kunipatia nafasi hata ingawa nilikuwa nataka kujitayarisha lakini nimeona hii nafasi singeipoteza. Kwa majina mimi ni John Peter Nyakundi. Ninawakilisha vyama vya kisiasa – Kenya Social Congress. Nikianza, nitazungumzia hili jambo la ardhi ambalo ni jambo gumu sana na ardhi ndio msingi wa hii nchi. Nilikuwa nataka tuwe na wakati mwingi ili lijadiliwe kwa sababu ardhi ndio inatufanya sisi sote tuwe hapa. Na sasa nitaanza na nitagawanya mara tatu: Ardhi ile ambayo iko nyumbani kwa vijiji, ardhi ile ambayo wazungu walichukua, na ya tatu itakuwa ni ile ardhi ambayo iko kwa miji, urban areas.

Sasa vile mnavyoyua bila ardhi hakuna kitu, na mwanadamu wakati alipozaliwa alianza kuwinda na kulima. Sasa wakati alianza kulima ndio akaanza kujua umuhimu wa ardhi. Mashamba kule vijijini msipoyaagalia yanaleta mambo mengi kwa sababu mashamba yameisha vijijini. Yamekuwa kama huko Kisii kwetu, mashamba sasa yanakatwa katwa badala ya kuenda chini kwa sababu wananchi hawana mashamba. Na unajua mashamba ni kitu muhimu; usipokuwa na shamba wewe ni mzembe, hakuna kitu utafanya. Mungu ameumba mtu kufanya kazi nchini, alime apate chakula kutoka huko na bila shamba hawezi kupata. Kwa hivyo nimeonelea yale mashamba yako vijijini yawe ni mashamba yasiyokubaliwa kuuzwa na watu. Kwa sababu kama mababu wetu wangekuwa wanauza mashamba hatungekuwa na mashamba.



Watu wengi wanachukua loan pale vijijini. Wakichukua loan sasa mashamba yanauzwa na mimi nimeonelea kama mtu amechukua loan pale vijijini na shamba lake limewekwa benki isikubaliwe kuuza hilo shamba milele. Ninataka ikubaliwe kwa muda mdogo ikimaliza inawacha. Kwa sababu hivyo ni vigumu hata watu wanapigania mashamba pale na wanauana, mimi nimeona wakiuana. Sasa ni vigumu. Nikija upande mwingine, unajua hii nchi wananchi walikuwa na mashamba pale vijijini. Sasa wakati wazungu walikuja hapa kwa sababu wana nguvu walichukua mashamba yale yakawa yao. Walikuja mababu wetu wale walikuwa hapa, na wale walifikiwa ni Wamaasai na Wakamba na wale walikuwa karibu na watu wengine wale ambao walifikiwa kwa sababu kwetu Kisii walikatazwa. Hata Otenyo alikataa kabisa wasiingie huko na wakamuua kichwa chake kikawekwa Uingereza, tuta-demand kwa utumaduni kichwa chake kiletwe hapa.

Unajua wazungu walichukua mashamba na walipoyachukua yakawa yao. Sasa zile pesa walikuwa wanalipa serikali yao ya Uingereza sio sisi hapa. Wamaasai kuanzia Laikipia mpaka Nairobi walisukumwa wakaenda kwa sababu hawa walikuwa hawalimi, ni watu wa mifungo. Sasa mashamba hayo, hawa wazungu walienda na kitu kimoja ambacho ninajiuliza ni: haya mashamba yalibaki hapa, ni nani analipwa hizo pesa sasa, zile ambazo zilikuwa zinalipa serikali ya Uingereza? Ikiwa watu sasa wako pale, Wamaasai hawana kitu popote, sasa bado wanahama hama.

Kwa hivyo jambo lile ambalo nimeonelea nataka wale walinyang'anywa mashamba kama Wamaasai na Wakamba na wale wengine hapa Nairobi hatuwezi kuwarudisha sasa mpaka serikali ifikirie kutoe a certain percentage kila mwaka kwa sababu kuna mapato yanapatikana basi. Wale watu wawe compensated kwa sababu tukiwaacha hivi watakuja kuuwana. Kama sasa mimi ninunue shamba la mtu, ninunue nikae pale, naye mtu ni maskini mimi ninamlipa pesa kwa sababu mimi niko na pesa, lakini mfikirie sana. Mimi nikifa na yule mtu akifa watoto wake watauliza hilo shamba lilikuwa la nani. Na wataanza kuuwana. Ninataka muangalie hilo jambo, mimi sichochei lakini ninawaambia ukweli ule ambao utasaidia watu. Watu watakuja kuuana. Itabidi kuwe na pesa wale watu wawe wakipewa ili roho zao zitulie.

Kwa sababu ninajua muda unaenda upesi wacha nirudi kwa mashamba yale ambayo yako kwa urban areas. Hatutaki mashamba yaliyo kwenye urban areas yawe ni mashamba ya mtu, ardhi hii

iko kwa miji, iwe ya miji. Tunataka iwe ya miji ili wajenge nyumba pale watu wakodishe, kila mtu apate nyumba hapo, lakini sio kukubalia mtu mmoja ajenge nyumba kama hapa Nairobi aanze kukodisha watu hiyo ni unyonyaji mbaya sana. Tunataka miji ichukue hiyo ardhi ijenge watu nyumba kama vile Sweden na Norway, ijenge nyumba watu wakae, ili ukilipia ile nyumba inabaki kuwa yako. Sasa mtu anakubaliwa anajenga nyumba mia moja hapa Nairobi, anazifanyia biashara na yeye mwenyewe hakai hapo. Ananyonya watu kwa kuweka bei vile anataka kwa sababu serikali haihusiki na hiyo, inasema ni free market. Kwa sababu muda wangu umeisha, mimi nataka muagalie swala la mashamba. Asante sana, ninashukuru.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Haya asante Honourable Delegate. The next row, I will be looking for someone from the Women's Organization. Professional Category, Trade Union. 442. I would encourage the other row to please lift up your placards, so that we can just countercheck.

**Hon. Delegate Francis Waweru:** Mr. Chairman and fellow Delegates, I would like to address myself to protection of property in land, that is 236. I wish to congratulate the Commission for the job well done. I still feel that there is something very, very important that was left out. Some of us witnessed-- My names are Francis Waweru, I am Delegate number 442 from the Trade Union movement. Now I wish to make a point on 236. Some of us Delegates witnessed the tribal clashes. Those farms were legally acquired, those people had the title deeds and as we look at the document, the document does not address on the compensation, on how these people are going to get back their land. As we talk now some of them are still being housed by the Catholic Church. I think something must be done, it must be put properly in the draft, because you cannot say you are protecting property at the same time you are getting people being chased at night out of their land.

The Chairman, this is an issue we need to look into, as people talk here about compensation, we must address that issue. This issue about land is a very sensitive issue. It is an issue we should not talk with hate. It is an issue, it should look us at Kenyans, not as a Kikuyu, a Luo, a Kamba or a Luhya or not. You should look at this issue as a Kenyan, one tribe. Thank you.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you. The next category will be looking for someone from Other Interest Groups or Women's Organization. I recognize 489.

**Hon. Delegate Jane Mumbi Kiano:** Thank you Madam Chair, my name is Jane Kiano, Women Organization. I only have one or two points to make and I want to support my friend, the lady Delegate from Taita, who talked about selling of land. Madam Chair, I know for many years women have suffered because of our husbands selling land and we are left without land. I am hoping that, that is one issue that will be looked at in this Constitution, that we make sure nobody sells any piece of land without the permission of the other members of the family. *Clapping.*

Madam Chair, ten years ago, fifteen years ago, we did bring this as Women Organization to the presence of the Government and I remember that there was something which was a Presidential directive, which was passed to the effect that nobody should sell a piece of land without the authority or the knowledge of the members of the family. I know a lot of women ended up being beaten by their husbands and they were being told we must go there and we must agree, that you have given authority. So there must be that protection of the women, that they must be protected and the members of the family. We must also make sure that the women also inherit land. I know there are some areas where we women do not have a right to inherit land. I am hoping that that is also an issue which will be tackled, because I am a mother of two daughters and I don't have sons. So I am hoping that if anything ever happens, my daughters can inherit whatever little I have.

Madam Chair, also the issue of representation. We would be only too happy to make sure that the Women Representatives will be in the Land Board. I am well aware of the issues concerned, we have gone through a lot of Board meetings, where women do not actually understand what is going on. There are times we are told that we are there to open with prayers and close the meeting with prayers. So I am hoping Madam Chair, this is an area that we will be able to look at, make sure that we get people who qualify to be in those Boards and who are aware of the problems that are facing the women and generally the members of so many.

Another last point Madam Chair, I would want to raise, is the issue of usage of land. I know Kenya is a large country, when you look at a country like Denmark, it is so small and yet at times

we end up getting food from those countries. Let us find a way of better methods of farming, we know River Tana ends up in Indian Ocean and we end up having women and men fetching water and being eaten by Crocodiles, why doesn't the Government come up with a policy of utilizing that water properly, rather than water ending up in the Indian Ocean. I am sure we will never be short of food if the Kenya Government today works out the issue of land and how we can utilize our land better than we have done before. Thank you, Madam Chair.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you very much. I would like to recognize someone from the NGOs, the next row. 458.

**Hon. Delegate Odenda Lumumba:** Yeah, thanks Madam Chair, my names are Odenda Lumumba, Delegate number 458. Now, I will start by saying that I have had a chance, at least by virtue of my work, to go around this country and at least it has given me benefit to understand a bit about the issue of our land and properties in in-depth to the extent that I will speak authoritatively over the principles as they are captured in the Draft Bill. In the very first instance, the first principle we have here is about drawing a National Land Policy and if you check the guiding principles here, we are talking about productivity, equity and sustainability. But all said and done, we don't seem to have a very clear philosophy or ideology that guides us in understanding what this policy is all about.

Madam Chair, it must be known that in Kenya as much as people talk about land being emotive, sensitive and whatever, we all treat land as a commodity in the very first place. Once you have a commodity you go to a market place, you look for the willing buyer and a willing seller, nobody should touch you. That is the philosophy that drives Kenyans. If that be the philosophy, then these particular guiding principles hold least water to most of the Kenyas and I think this is even further guided by the already existing policies over matters of land. If you look at most of our policies over matters of land, they are basically about agricultural cultivation as it were. Yet, in this country the arable land is far less than 17.2% of the landmark of this country. In that same space, we have 80% of the Kenyan population. In the same space, we have water catchment areas in the same physical space.

Majority of the landmark of the Kenyan space is arid and semi-arid. What happens there? It is pastoralism. What faults do we have? Clearly no well-defined policies. We seem to behave as if pastoralism is nothing, we seem to behave as if pastoralism is meant to wither away. (*Clapping by Honourable Delegates*). We seem to behave as if in that particular space we are supposed to contain pastoralism to be sedentary, ranchers as it were, yet the ecological system in that bigger space does not warrant what our policies are.

So I would move and say that we need to address that particular aspect in relation, how is the Kenyan landmark divided or distributed in terms of land use. It is important to realize that within even arable land, land is very skewed distributed. Facts have it very clearly 13% of Kenyans have no land at all. Facts have it, a half of the population of Kenya are women, the same number 51% of them live below poverty line. The same number, if you checked in any registry in Kenya compounded, they own less than 5% of the Kenyan landmarks in their names. These are the main producers agriculturally to our economy. These are the people whose security of tenure in terms of the land rights is skewed over land. It is so weak that you cannot even see how this country can progress. By the way, Kenya lost about 30% of GDP contributed by agriculture. It is a fact that we have 75% of Kenyans who survived around agriculture, what happens about these people. The majority of these people have less than one acre of land they own. Majority of those who have big acreage or tracks of land in this country, they hardly use it. Neither do we even bother to tax them, what are we talking about seriously about this land.

I would move on quickly to say that, the issue of land ownership as much as it is very painful, we have to understand it through the history. When Okoth-Ogendo led us through a bit of the history, we all kept quite and understood what he was saying, but little did we understand what Okoth-Ogendo was telling us. Very simple, we have property interest in land, that pre-existed colonialism. What happened to those interests? They are so historical that we have forgotten about them. We have the colonial property interest over land that was superimposed over the pre-existing one, what happens over that? We gained Independence, what did we do? We superimposed other property interest over the same land. What are we saying about property rights over land in this country? Are we genuine, if we say that the only biggest question which has just been answered is over land and yet we cannot go back and say, what do we do about property rights?

Madam Chair, it is a true pack about this Bill of Rights, that under Article 54, under the Bill of Human Rights, property is purely sanctified under that particular article. But at the same time, we are very concerned about historical claims over land. How on earth are we going to go behind to redress that, if in the same Constitution we sat on the point of the view that existing property rights be sanctified in the same document? Are we really being honest with ourselves? What are we going to do about it? Historical redress over matters of land are important. They are important to the extend that we were told to construct Kenya as a State, reconstruct it. How do we do that? We can only do that if we understand that the importance of this country lies over land. So in my view, the historical redress issues, should be to the extend that:

One, we accept that is correct. Having accepted it, we go ahead and propose redress and I would go ahead and say, those who were dispossessed of their land, historically serving for colonialism upto date, because we are still repossessing Kenyans over their land; should at least earn a compensation from the Government. Further than the compensation, where land has not been developed but has been grabbed, it can be restored to those from whom it was repossessed. That is practical. We can even further go ahead and say, Government programmes over land, should first and foremost target those people who are historically in possess of their land, so that they have an edge and an advantage in terms of development. (*Clapping by Honourable Delegates*). We cannot sit here and imagine that we can rebuild this thing, when we don't go further and go into depth of this thing.

Madam Chair, I would still further move about the classification of land. It is very simple to tell us that land is individual, land is the community, land is the public. Inherently there are problems even with the classification of those lands. The truth of the matter is, there are people even in those classification, their problem will never be addressed. Who talks about the youth, the majority of this society? These people are the majority, where does their future lie? I tend to think that their future is left as biased. It could lie in the public land sphere for intergeneration of correction or redress about their ownership.

But what happens about this whole thing is that, even this Kenya arrangement, the classification we have we don't even point out how do we redress some of the weaknesses we have. Is it

proper for us to move ahead, classify land as it were without knowing how we are going to deal with this thing. Who will ever address within those classification, the problem women who do not have land in this country. How does any of those classification address you? So we should really be very clear and specific over these matters as it were and very finally Madam Chair, we define land very nicely, as including what is on top, what is beneath it and what is slightly above it. That is a very crucial definition by it's own nature.

Our minerals have been always treated as if they have no value at all and the owners of the land under which minerals are, they are always dispossessed simply because the State gives licenses to individuals from without who exploit those minerals. We must redress this particular issue very seriously. Thanks.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you. Point of order from Delegate number 586.

**Hon. Delegate George Mwaura Mburu:** Thank you very much, Madam Chair. My name is George Mwaura Mburu from the Political sector representing People's Party of Kenya. The question I wish to ask as a point of order is whether the Commission has an index of who owns land in Kenya because there is no way you can say this particular tribe owns this. It is that certain few people own title deeds or own land. Do we have that land index?

**Hon. Delegate Nancy Kebateka Lung'ahi:** Excuse me, Honourable Delegate, that is not a point of order.

**Hon. Delegate George Mwaura Mburu:** It is.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** So, we will proceed. I now move to the next row and I will be looking for someone from the Professional category or Other Interests Groups on that row. Special Interests, Religious Organizations - Delegate number 519.

**Hon. Delegate Marie Therese Gachambi:** Madam Chair, thank you very much. I am Sister Marie Therese Gachambi, from Religious Groups, number 519. Madam Chair, first of all I

would like us to ask ourselves that when we are talking of land, who is the owner of the land? Perhaps we have forgotten what we put in our National Anthem that everything belongs to God and we are only stewards who are supposed to recognize that there is someone else who owns it. So, when we are classifying the land into private, common and public land, we have to bear this principle in mind. Having said that, Madam Chair, I would like to refer to Article 233 (2) (b), whereby we have the land that is not used and is just left there while there are so many people that are suffering. Madam Chair, I would suggest that in that Article if we can add 'any unutilized land should be taxed or should be used for the common good'.

Madam Chair, I would also like to look at the issue of public land. When we are talking of public land, we have to remember that Religious Groups use whatever they have for the common good. So, when there is the issue of land that is used for the churches, to grab it or to use it for other purposes is actually, Madam Chair, if I would use the word to steal, from the real owner who is God. So, there should not be any of this kind of going underground and trying to use up the land that is put aside for public worship.

Madam Chair, I would like to support Honourable Delegates who brought the issue of women who have been very marginalized, and we as churches recognize this because most of them land at our own doors. When they do not have anything, they are just thrown out with their children and we do not know what to do with them. Madam Chair, I would also like to add our voice regarding the whole issue of the land clashes when we had so many people displaced and they said they had their own land but we did not know what had happened. Madam Chair, I hope that the Honourable Delegates will resolve these problems which are very acute because what happened as one of the Honourable members mentioned, these people also land at the Religious Group's door.

Madam Chair, I would also like us to remind ourselves that land, whether private, I cannot just use it how I want because even if it is private land, I have to use it for the common good so as to help others and remember that we are all working for the common goal as Kenyan citizens to ensure that no one is sidelined and that we protect our land for prosperity and/or posterity. Madam Chair, thank you very much.



**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you very much, Honourable Delegate. I am now looking for a District Representative from this row, preferably one who has not spoken. Delegate number 388.

**Hon. Delegate Sammy Naibei Chemwey:** Thank you Madam Chair. My names are Sammy Naibei Chemwey from Mt. Elgon, Western Province. I want to address myself to a few issues that are here. I want to speak on behalf of the silent minorities who are not here and yet have claims to land. I want to draw the attention of the Commission to Article 233, where they say that land belongs to all communities but they were not bold enough to declare who these communities are, where they are supposed to live and what was going on there, especially at the advent of colonial conquest in this country. I say that because a Sabaot is sometimes called an Elgon Maasai, a Sebei, has sometimes been called a Dorobo, to the extent that our identity is not very clearly known in this country. If anything, perhaps the clashes brought them to limelight and, if it did, I must submit here that land is the mother of this Constitution. If we do not deal with land very carefully, we will be in problems.

I belong to a community that occupied Trans Nzoia and as other Delegates spoke, they were not keen to say who are the communities that lived in Trans Nzoia. The Senguel are here in their original regalia, not having an opportunity, they are just watching as people talk about Trans-Nzoia, watching their ancestral land being shared out and they have no say. The Mbang'obek of Bungoma have nobody to speak for them. As I speak here, those of my people who were deported to Uganda and those who have read the Carta Commission of 1932 will know that our people were removed from after Moi's Bridge all the way to create the white highlands.

I want to submit today that every conceivable leader in this country has had land in Kitale particularly, yet the very indigenous people that lived there have never been considered. They are not able to present their views here. My people, who are sometimes called the Sebei, as I am here, have already been getting reports that while they were thrown out of Uganda and came here, some of them are being deported back, being called strangers in this nation. Yet, when we sing our songs of circumcision or rituals, we remind ourselves when they were removed from that land so that every conceivable child in the posterity sings a song and with nostalgia looks for a day when he will get back to his cradle-land.

So, if we don't really address the issue of land from a historical perspective, there are people who will never have a chance to be heard. When the Njonjo Commission went round, we provided so much evidence, even the letters that were given by the colonial government when they were removed and evicted from that land, we provided. However, if you look today, and I am doing this with a lot of honour and respect, those indigenous groups who should have been here, perhaps from Trans Nzoia to speak for their rights, are not being considered because their voice is not here. It is just like we were not in Lancaster House and nobody spoke for us and yet this is a historical moment. I would have wished that the Commissioners would have looked at all the communities in Kenya and, if some do not have a district from whose platform to articulate their issues, they should have been in the Observers Group at least to watch how the process is going on as the Constitution is being made.

I want to say that we will begin the issues of land when we actually address it as a human right, a Bill of Right and we allow everybody to state and that is where truth and reconciliation will come from. We were not saying we remove people but identify this land belonged to who and then thereafter go to the issues of addressing to what extent were these people displaced. So, when we are here, we are told when we were talking out there by our people that it is important for us to say, particularly us the Sabaots, who were removed and pushed to the mountains others went to Tanzania, Uganda and others were assimilated by the neighbouring tribes, such that you will find the Sabaot in Nandi, in Luhya-land and everywhere you will find the Sabaot who have been assimilated and lost – that time has come when we must be identified as a people and given our due hearing.

We must say, unlike somebody who said that we cannot go far back, we should go to 1895 and particularly map out where people were living, who was where at what time in this nation. From there, we can address the issue of reparations, be able to look at how land is done and then be able to see how we can co-exist as tribes even in those areas, taking into account that there were people who were actually displaced and marginalized and up to date have never benefited.

Therefore, I am submitting Chair, that it is important for us not just to submit to the issue of saying that we will have a cut off day addressed by Parliament, we must address it in this Conference because we really want to reconcile tribes and work as a team. The reason why the forest is being interfered with is because we were removed from the cradle and pushed to the mountains. Therefore, people are interfering with the forest because they have nowhere else to expand to. Madam Chair, I believe that it is very crucial that we identify, to enable us all live in peace. We are not saying that we create clashes but with truth and reconciliation, it must be put on record. Thank you Chair.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you very much. On the same row, we will look for a Member of Parliament within the same row. Okay, if there is no Member of Parliament on that row, we will come to this row. Number 31, Okay Point of Procedure 446.

**Hon. Delegate Francis Wangara:** Thank you Chairperson. My name is Francis Wangara. I want you to correct what you stated earlier on. When you started, you said you will start with other categories from that end up to there, and then you will go back for the Parliamentarians and other District Delegates --

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Yes.

**Hon. Delegate Francis Wangara:** When you reach here-- You have contradicted yourself and can you correct yourself first Chairperson?

**Hon. Delegate Nancy Kabeteka Lung'ali:** Thank you very much Honourable Delegate. The reason why I did that was because most of the categories we were asking for there, were not representatives, that is why we changed, because we came back and we did not find those people. (*Murmurs from the Honourable Delegates*)

**Hon. Delegate:** Madam.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** If there is no problem we will still take it up like that. So, we can move to the next row.

**Hon. Delegate:** You have given me already.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** 347. I will give you your Point of Order, please allow the Honourable delegate to first make his submission. Thank you.

**Hon. Delegate Haji Yusuf Mohamed:** Madam, Mwenye kiti. Nafikiri jambo lingine kubwa la muhimu sana ambalo inatupaza tuangalie kwa makini, kwa hakika ni mambo ya ardhi. Kwa sababu jina la Kenya sio jina la kabila, wala sio jina la sehemu fulani ya nchi hii, bali Kenya ni nchi ya Kenya nzima, na inatokana na ardhi ya Kenya. Kwa hivyo, tunaona ya kwamba tangu wazungu walipoingia nchi hii kulikua na dhuluma nyingi ambazo zimefanyika juu ya ardhi, na hiyo dhuluma imeendelea mpaka siku ya leo.

Tunajua kutokana na historia na yale ambayo tumesikia hapa. Wamaasai, Wapokot, watu wa Mount Elgon, walitolewa katika ardhi zao, hili kuwapatia nafasi Wazungu wakulima waje wakalie. Na hiyo thuluma haikukoma hapo, hata baaada ya Uhuru, wazungu walibadilishwa na wa Africa wenzetu. Na utakumbuka ya kwamba nchi hii, ilitumia pesa nyingi sana kununua ardhi kutoka kwa wazungu, wakati ambapo tulipata Uhuru na hiyo pesa ambayo ilinunua hiyo ardhi inalipwa na wanachi wa Kenya labda mpaka siku ya leo, kutoka kwa kodi ambazo tunalipa.

Hiyo dhuluma, haikufanyika kwa Wamaasai na Wapokot na Mt. Elgon pekee yao. Hata watu wa Kazikasini Mashariki na Mashariki ya Kazikasini ya juu, pia walipatiwa na hiyo dhuluma. Kwa sababu, tulipochukua Uhuru, serikali walinunua ardhi, kule Nyanza Imefanywa Settlement Scheme ya Muhoroni, mpaka Fort Tana hiyo yote. Rift valley, Uasin, Gishu na Kitale na hiyo ardhi wamenunulia na pesa ya wanachi wa Kenya. Central Province, Nyandarua na Laikipia. Kule Western, Lugari, Coast, Tesoroka, Eastern, Timau. Swali ni hili, waki hiyo ardhi yote wamenunulia, Wamasai hawakupata shares hata kidogo? *(Clapping by the Honourable Delegates)*. Wapokot hawakupata share hata kidogo, watu wa Mount Elgon hawakupata share hata kidogo, watu wa North Eastern and Upper Eastern hawakupata kidole hata kimoja. *(Clapping by the Honourable Delegates)*. Na mpaka hii dhuluma istahihishwe, itakuwa bure kua na Constitution. Tungetaka zile pesa ambayo imetumika kwa kununua hizo mashamba ambazo zimegawanywa kwa watu wengine, hizo pesa zilipwe ridhaa kwa, Wamaasai, kwa Wapokot, kwa

Wamount Elgon, kwa Wasomalia, kwa Waborana, kwa Turkana, (*Clapping by the Honourable Delegates*) kwa Msamburu, kwa Rendile, kwa Taraka, na awa wote walipwe hiyo ridhaa.

Kama hawatalipwa, basi tumekuja hapa kupakapaka mafuta tu mafuta maneno na mambo ibaki vile ilivyo kuwa.

Bi Mwenyekiti, juu ya section 231 (1) ambapo inasemekana ya kwamba mtu ambaye si mwananchi ashikilie ardhi kwa miaka 69. Swali ni hili, kama tumepitisha tutakua na dual Citizenship? Mtu anakua na Passport ya Uingereza na ya Kenya, huyu mtu akimiliki ardhi hapa hatafanywa nini? Kwa sababu ana qualify kuwa mwananchi wa Kenya, hilo pia linatajikana lishahiswe hili tuone ya kwamba Constitution yetu haileti farakano baadaye.

Juu ya section 234 (3) ambayo inafanya description ya Community land. Ninaona ya kwamba kuna kasoro fulani juu ya Trust Land. Wakati definition ya Trust Land inafanywa, iongeswe Indigeneous Community because ukisema Community juu juu, itakuwa kama ile ya Wamaasai, wengine wataamishwa na wengine waje. (*Clapping by the Honourable Delegates*).

Section 237 (1) juu ya establishment ya National Land Commission, ninaonelea ya kwamba hakuna haja ya National Land Commission. Kwa sababu hiyo ni sawa na Commissioner of Lands pale ambapo watu wanaenda kugawanya ardhi na shamba. Na wale ambao wanaenda kuchunga asubuhi, na kuvua samaki usiku, wanazaulika hakuna kitu ambacho wanapewa kama tunataka Devolution, devolution ya land ianze tuwe na district au Provincial Land Commission kwa kila mkoa, hiyo ndio tutaona ya kwamba haki imefanyika.

Juu ya rights, ya sehemu mbali, mbali ya Kenya hakuna sehemu ambayo ni ndogo kuliko sehemu ingine, hakuna. Mtu hasiseme kesho hati population yao ni kidogo, swali ni hili, China ambayo hiko na 1.2 billion people katika united Nations wana vote moja, sawa sawa na Uingereza ambayo ina 60 million voters in population. (*Clapping by Honourable Delegates*) India ina watu 900 hundred million people, chukua Comoros Island, watu elfu mia tano, hawa wote wako na vote sawa, sawa, kwa hivyo rights ya mwananchi hakiwa yeye ni mrefu au mfupi, mnono au mwebamba, yeye ni mwananchi wa Kenya na ana haki. (*Clapping by the Honourable Delegates*) Asante sana.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you very much. From the same row I would like to take a District Delegate preferably some one who has never spoken. 347.

**Hon. Delegate Chelagat Naftali Kemboi:** Thank you, Honourable Chairperson. My names are Naftali Chelagat, District Delegate Baringo. As much as I could like to appreciate the statement made by Honourable Manduli yesterday, I want to emphasise that we need to have a land.... A provision that makes women, accessible to land. Having said that, I would like to draw your attention to Article 233 (3), it should read "Non- citizens of Kenya would be prohibited from acquiring land and omit, the traditional phrase except on the basis of lease hold tenure.

The history of historical injustices, handled by the Land commission should go beyond pre-independence. Madam Chair, having come from Baringo District, we all know - it is conventional knowledge - that Baringo as a District was declared as a "closed district". Now, I am proposing that the Government should compensate the people of Baringo because it was a district which was called a "closed district". We all know that it was just last month that the people of Baringo died, I think what contributed to the deaths was that our district was called a "closed district". I think this really made other people not to come to Baringo as a district. We know that we have the Berekele Irrigation Scheme. Today I would like to bring to the knowledge to this Conference that Baringo can be one of the granary of this country, if they can have good land policies.

The clause on Land in section 235, should read, "Land in Kenya should be classified as, Public, Private and Communal". The clause on Land principle as you see in Section 232, should read, "the Communal Land shall be clearly alienated and invested in communities". Therefore in accordance with Citizens of the Tenure defined by Customary Law, or Legislation" there should be a well defined Constitutional frame work that defines Trust Land and Pastoral Land and creates room for ownership of land by Community and not the Local Authority, as we see Section in 237.

This should be non- renewable and ownership should be referred to the communities if land previously owned by non- citizens. Communal land Policy should be entrenched the

Constitution. Madam Chair, I am proposing that the National Land Commission, should be abolished in this Draft Bill and we have a regional Land Commission and its powers to be defined as it is in section 238 to 239.

Madam Chair, we see in the Draft Bill, there are some confusion. We are having many Land Laws; we need to have only one Land Law in this country. Madam Chair, I am proposing that we substitute the word community with the word communal. I think it is justified because the original Land Tenure in Kenya, belongs to the indigenous people and not in black communities. Thank you.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you very much Hon. Delegates, I now move to this row and I am looking for a Member of Parliament from this row. 237?

**Hon. Delegate Joshua Jilo Onotto:** Yes 237. Thank you very much Madam Chairlady, I am Jilo Onotto, Delegate number 237, from Malindi District. I happen also to come from an indigenous minority group known as Wata, from Coast Province. May I put to you this point of order Madam, as far as possible, when we are in this Conference some communities either have a councillor to represent them here or a Member of Parliament also to represent them here. But here such small communities like the Wata, the Senguer, the Ogiek, the Elmol have no Councillor or MP to represent them here in this Conference. Therefore, I would like the Chair to give a ruling that, delegates coming from such small communities should be allotted at least 10 minutes to give out their views. *(Clapping)* And also Madam Chair....

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you, thank you very much Hon. Delegate, you have made your point.

**Hon. Delegate Joshua Jilo Onotto:** I just wanted to say one--

**Hon. Delegate Nancy Kabeteka Lung'ahi:** You have made your point, I understand and all Delegates here are equal, I will give you an opportunity to speak. If you please just take your seat and let us proceed.

**Hon. Delegate Joshua Jilo Onotto:** Thank you very much, but there is that book in the Animal Farm which says all animals are equal but others are more equal than others.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you very much Hon. Delegate, please take your seat.

**Hon. Delegate Joshua Jilo Onotto:** Thank you very much.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you. I will move to the next row and I had asked for a Member of Parliament, one who has never spoken. 167.

**Hon. Delegate William Omondi:** Yes, Madam Chair, my name is Hon. William Omondi, Delegate number 167 and the Honourable Member of Parliament for Kasarani, Nairobi. Madam Chair, on contributing to this topic here, I would like to begin by saying that as you all know, land is a very, very essential thing to Kenyans. It is something that does not grow, it is something that is very sweet and we will therefore need to protect it very, very jealously.

Prof. Okoth Ogendo during his presentations said that the foreigners when they came here, they used very many bad laws, these laws were deceitful and as a result, they managed to take all our land right from Kiu to almost lake Victoria. The succeeding governments, when they came, they also attempted to create very, very many legislations, very, very many laws, the purpose of which was to confuse the indigenous people and to leave the foreigners and those ones who were well connected to own all chunks of land at the expense of the indigenous people. Madam Chair, I think this is what, when we sit here we must see that we put a Constitution in place that will come up with legislation which will harmonize all these bad laws and come up with something that would protect the indigenous people.

Madam Chair, I want to give one example, those ones who had got the chance to tour Nyeri, you find very many people in make-shift living on the road reserve and when you traverse from Kiganjo to Nanyuki, you see very many large chunks of land and the ownership of those pieces of land cannot be explained. I think this is what we must earnestly look forward to protecting. because it is said that the indigenous people have the right on their land. Now these ones, who



are well connected, who have got money, it doesn't matter whatever means, they gained acquisition or they gained ownership of this big farm land, but what I know is that the people themselves, the people's right, the birthright override all other interests on these pieces of land.

If I give another example, in Nairobi Madam Chair, we have some bigger slums; we have Korogocho, we have Kibera, we have Mathare. We have so many slums with thousands and thousands of people living there, and when you go around it you find so many Asians owning so many big pieces of land and you question yourself, how did they come here and how, when they were occupying these pieces of land, where were these indigenous people? Madam Chair all these came about, we know they came by some means, they did not force themselves inside there, but these means are what we want to correct here, so that the indigenous people gain access to what is rightfully theirs.

I want to make a big comment also on the process of land recording, land survey and the rest. These methods should also be made easy by legislation. We don't want our offices, the Lands Offices to be fully occupied by dilapidated files, to be occupied by people who cannot explain things very quickly because we are in modern Kenya, we want some modern technology to prevail in our offices and all these offices to be scattered all over the country so that land information can be made accessible easily. You find that when you go to Lands office and you want a fact, a mere fact, you will be told to wait for three days to one week, we want when we need this kind of information for development to go on smoothly, to be availed instantly and if we can employ these modern methods, then I am sure this will become a reality.

Another thing when we begin by surveying because the land process – excuse me Madam Chair I am explaining something - When on surveying process I discovered that in Kenya, forty years since independence, we have only one hundred qualified surveyors. How is this possible and in all the Institutions of higher learning, all Universities produce very, very many scholars in survey. I wanted to say this, that this method of licensing Land Surveyors must be made very, very easy and then the Surveyors themselves must be given a very, very smooth environment to operate, so that the process of surveying and producing maps, boundaries, areas for surveying become easy. Thank you very much.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you very much. I will be looking for a District Representative from the next row and this time, I am looking for a lady.

**Hon. Delegate:** Point of order, point of order.

Madam Chair, I am told you are going by a list and looking at the people who have spoken

**Hon. Delegate Nancy Kabeteka Lung'ahi :** Yes

**Hon. Delegate :** Madam Chair I spoke on People's Representation and I spoke on the Executive. I stood on a point of order and I stood on a point of information and I am told I am marked four times. Madam Chair, there are two topics that I really wanted to contribute to. One, on the Judiciary, I did not get a chance. The other one is on land and it is very important and since yesterday, I have been passed by and by.

**Hon. Delegate Nancy Kabeteka Lung'ahi :** Thank you very much Hon. Delegate. I hear you and we will look at that. If you will allow us please, let a lady speak this time and I will recognize 399.

**Hon. Delegate Grace Ogot:** Madam Chair, I am greatly honoured to get the opportunity to speak on the issue of land. Madam Chairperson, I might depart a bit from what other people are saying or will say. I want to stick to land issues as it affects minorities. Madam Chairperson, I want to start with families, in a family where a man has four wives or three. Madam Chairperson, Title Deeds are in the name of the man and Madam Chairperson, the man chooses to put the joint names to the first wife, he forgets, wife number two, wife number three, wife number four. (*clapping*) Madam Chairperson, when the gentleman dies, the first wife inherits all title deeds to the land, leaving the three wives unattended to, can the Constitution take care of the second, third and fourth wife? (*clapping and cheering*).

Madam Chairperson, the second person in a family of boys and girls – and Madam Chairperson, I am speaking from experience, both as a former Member of Parliament, former Assistant Minister and also as a woman. Madam Chairperson, the girl child has nothing. Even when the

father is alive. Can the Constitution protect the girl child; because she also has the image of God (*clapping*) At the beginning in all communities it was assumed that when you are a girl child eventually you will get married, but Madam Chairperson, now we outnumber the men and many of them don't want to take a second wife, Madam Chairperson, (*clapping and laughter*) where will a girl be? We want the Constitution to protect the girl child so that the properties of the father can also now belong to the boys and to the girls. (*clapping*)

Madam Chairperson I move quickly to the Land Office. You can walk for three, four years to Land Office before getting a Title Deed until your husband dies and then you as a woman will never get that Title Deed and then the stronger brothers-in-law will snatch all of it from your family. Madam Chairperson, can the current Constitution also protect a girl child?

Finally, Madam Chairperson, there are those people who are landless in Kenya today and in this I am not looking at Nyanza province, I am looking at all other parts of the country where other people own tracts and tracts of land and others have nothing. Can the Constitution this time round, where we have a new government, where we are the people who will remain in history as having come to see the Constitution in Kenya for the future, can we also have fairness in allocation of land? I don't believe in grabbing, Madam Chairperson, but when one has gone to ask for a hundred title deeds, why can't the community also check on that list? One blessing that will come from this new Constitution is that now regionalism will come in a different name; I'm calling it region but it will be district or province. If they were larger and able to keep an eye on the issue of land, then, Madam Chairperson, these cases of brother and brother hacking one another and killing themselves will not arise because then we will have elected, not appointed, chiefs and assistant chiefs. We will have elected those who are literate and those who will be able to sort out the issue of land in communities where we live. At the moment, if you take a standard seven chief or assistant chief, Madam Chairperson, quite a number of these things we are talking about here will not concern him, because he will not be in a position to comprehend the issues that affect land distribution on an equal basis.

Finally, Madam Chairperson, we hope that according to the new Constitution a title deed would be taken within 3 to 4 months, not 3 to 6 years. God bless you, Madam Chairperson.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you very much, Honourable Delegate. We will now have a short break; we will go for tea for 20 minutes and be back by exactly 11.20 a.m.

*After Tea*

**Hon. Delegate Wilfred Koitamet Ole Kina:** May I now call this meeting to order.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you, Honourable Delegates. I think there is an announcement from the Privileges, Discipline and Welfare Committee. There will be an urgent meeting of the committee members during lunch break in the tent below the coffee area, lunch will be available at that tent. This has been called for by the Committee Chairman, Mr. Rihal. So, members of the Privileges Committee, please make sure you attend that meeting.

I would now like us to continue with our proceedings for this session and we will continue from where we left off and we were on this third row and I was looking for a district representative from this row, and I will take somebody who has never spoken, I recognize 358.

**Hon. Delegate Moses L. Naimadu:** Thank you very much, Dada Mwenyekiti. Majina ni Moses Lkena Ole Naimadu, Delegate number 358, kutoka Transmara. Mimi nataka niseme kuhusu mambo ya land policy, Article 232(2), "the state shall define and keep constantly under review". I am suggesting, instead of National Land Commission, I put "Regional Land Policy", directed at ensuring among others.

Ningependa pia niongee juu ya ownership of land, nayo ni Article 233, clause (1), all land in Kenya, belongs to the people of Kenya, collectively as communities and as individuals. Clause (3), non-citizens of Kenya may hold or use land on the basis of leasehold tenure, only and such leases however granted shall not be 99 years but shall not exceed 33 years. Why? Because, 99 years is too long; in any case the life expectancy in Kenya has reduced to 45 years.

Halafu, Article 235, "public land is the collective property of present and future generations and shall vest in and be held by the National Land Commission in trust for the people and not by the National Land Commission". Why I am removing the National Land Commission, ni ya

kwamba, National Land Commission, ndio imetuletea shida kwa mashamba. Nataka tu nichukue mfano ya mahali mimi natoka, ambapo baada ya mashamba kukatwa, au kuwa demarcated, ina draw interest ya watu wakubwa kutoka kwa serikali. Nataka nichukue mfano wa Trans Mara, mahali panaitwa Kiminde au Kirindon, kwa wale wanaojua. Shamba liligawanywa na baada ya hilo shamba kugawanywa, watu wakuu kutoka serikali, ya regime iliyopita walipata sehemu, na baada ya wao kupata sehemu, hata kabla mwezi au miezi miwili haijaisha, tayari title deed zimetoka; na wale watu ambao ni wenyeji, au the indigenous of that demarcated land, mpaka saa hii, zaidi ya miaka kumi, hawajapata title deeds. Ndio nasema, au ninapendekeza, National Land Commission iondolewe ipelekwe kule mashinani. Ipelekwe kwa district au kama si district, ipelekwe kwa regional, ili, kila region ipate land commission yao. Hii pia, in that Article 235, 4(b), (a) inasema, “the establishment of a land fund to enable Kenyans gain access to land on an equitable basis”, hiyo mimi nasema iondolewe kwa sababu, mara nyingi serikali inatoa pesa, na baada ya kutoa pesa, hizo pesa zinafaidi watu wachache, lakini hazifaidi wale watu ambao wanatoka huko. Kwa hivyo hiyo iondolewe kabisa sababu haina maana, na hiyo ndio njia moja itakuja kufanya watu wengi, wale hawajui maana ya kuchukua hiyo loan, kupoteza mashamba yao. Nataka niende kwa haraka, nitoe mapendekezo yangu.

Mapendekezo yangu, “establishment of National Land Commission”, Article 237, there is established a land commission, consisting of a Chairperson, a deputy Chairperson and eight other members nominated and appointed in accordance with the laid down provision of this Constitution. (2), the function of the new created regional land, commission are, to hold the title deed to the public land in the trust for use by the people of that community. (b), they administer public land on behalf of the community of that area. Parliament shall enact a law to define organizations and the powers of that commission.

My proposals on land, the need to establish or adequately address the historical injustices on land rights. These are backdated from the treaties signed between the Maasai and the Colonial regime. The more we look backwards, the further we see forward. This should therefore be backdated to 1980. Thank you.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** I now move to the next row and I am looking for a Member of Parliament who has never spoken. We will also take a district Delegate from the same row, but we will start with the Member of Parliament, 063 I recognize you.

**Hon. Delegate Joseph Kahindi Kingi:** Asante sana Mwenyekiti, kwa kunipatia nafasi hii ili niweze kutoa mchango wangu kwa mjadala huu ambao unaendelea. Kwa jina, mimi naitwa Joseph Kingi Kahindi, natoka sehemu ya Ganze, wilayani Kilifi, mkoa wa Pwani.

Naungana na wenzangu waliotangulia kuzungumza, kwa kuwapongeza Commissioners ambao wametayarisha shughuli hii na ambao wameisimamia vyema mpaka kufika hapa tulipofika. Ni nayo imani, ya kwamba tutakuwa na Katiba nzuri, tutakua na Katiba ambayo itaweza kuwalinda Wakenya wote. Shughuli hii tuliyo nayo, inafuatiliwa vizuri na Wakenya ambao wengi wako huko nje, na wengi wao tunazungumza nao kila siku, na wanatupatia maoni yao.

Sasa kwa shughuli hii ambayo tunazungumzia sasa, hasa huu mjadala wa ardhi, huu mjadala ni muhimu sana kwetu zote kama Wakenya. Shinda nyingi ambazo tunazo kuhusu ardhi Mwenyekiti, nafikiri ni shida ambazo tumezileta sisi wenyewe kwa sababu Mwenyezi Mungu, mwenye huruma alituumba sisi na akatupatia taifa hili tunaloliita Kenya, na alifanya hivyo kwa wema wake, na akasema nyinyi mtakua hapa na nyote mtakuwa Wakenya, na ardhi yenu ndio hii. Hiyo ina maana ya kwamba, kulingana na yeye, ametupatia ardhi ambayo sawasawa ingekuwa ni kwamba tuwe na mamlaka sawa, tuwe na uwezo sawa, tuwe na haki sawa, juu ya ardhi yetu. Kwa hivyo, tunapoanza kugawanya ardhi na kumpatia Mkenya mmoja acre elfu kumi, na kumpatia mwingine robo acre, tunaenda kinyume cha mapenzi ya Mwenyezi Mungu na hapo ndipo tunapoanzia matatizo.

Utaona kwamba leo tunaweza kusimama hapa, na tukasema kwa sababu sisi ni Wakenya, na Wakenya wanaweza kuishi mahali popote na kuwa na mali mahali popote, labda ni kitu tunafurahia; lakini hiyo ingekua sawa iwapo kama kwa mfano tuchukue mkoa wa kati, ardhi imegawanywa sawa kwa watu wote walioko huko, na sasa hakuna sehemu iliobakia, basi hao tunaweza kuwapeleka mkoa mwingine, tukaenda tukawapatia ardhi sawa na wenzao. Lakini kama tutachukua watu ambao kwao kuna mmoja mwenye acre elfu ishirini, na tuwapeleke mahali kwingine basi huko tutakuwa tunaenda kupeleka matatizo.

Tumezungumzia habari ya vifungu hapa tukasema, labda Wajumbe wasipofanya kazi zao vizuri, wae recalled. Twachelea ya kwamba, ikiwa issues za ardhi hazitazungumziwa vizuri hapa na kuwekewa muongozo vizuri, basi wengi wetu tutakuwa recalled kwa sababu ujumbe ulioko ni kwamba, nendeni mkatengeneze Katiba na mkirudi hapa, ardhi yetu ya mkoa wa Pwani, tuwe tunaipata wenyewe. Wao wanashangaa ni kwa nini acre zaidi ya elfu ishirini inakuwa ni mali ya mtu ambaye hata hayuko katika taifa letu. Kwa nini Mkenya mmoja ambaye ana asilia ya kigeni, anapewa acre elfu sita akuze makonge kwa zaidi ya miaka mia mbili na hali wao, wako tu neighbour pale, na hata robo acre hawana?

Tatizo lingine ambalo mimi nafikiria nalo limetukumba Mwenyekiti, ni kwamba, siku ile sisi tulipokubali kuchukulia ardhi kama commodity yeyote nyingine, kama nguo, kama nyanya, kama viazi ambavyo tumekuza, na kuwapatia uwezo wa kununua na kuuza ardhi, hapa ndio mashaka menyi yalipoingilia. Tumesema, ardhi ni yetu zote sawa. Itakuwa aje mmoja afanye kazi kwa bidii usiku na mchana, anapata pesa kidogo lakini anaweka akiba pole pole; mpaka afikie kiwango labda ana elfu mia mbili, aende kwa Mkenya mwenzake, ambaye alikuwa anafanya kazi ya office ya Ardhi, na kwa sababu alikuwa na uwezo wa kunyakua ardhi kila mahali, amechukua maplot mengi, kila mahali ambayo hayahitaji, hasa kwa kujenga huko au kulima, lakini ameyachukulia kwa sababu ya biashara; sasa huyo achukue elfu mia mbiri ambazo amezitafuta kwa uchungu, akanunue ardhi ile ile ambaye yeye pia amezaliwa hapo, achukue pesa zake ampatie Mkenya mwingine? Kwa nini iwe hivyo? Ikiwa wakati wa kuomba ardhi unasema nataka ardhi ili nijenge nyumba, nataka ili nilime, mbona sasa serikali inaruhusu ardhi hii uliopewa kwa kulima, uiuze? Kwa nini tuiseme, ikiwa umepatiwa ardhi ujenge nyumba, na umeshindwa na kujenga nyumba baada ya miaka mitano, ardhi hiyo itachukuliwa, ili ipewe Mkenya mwingine ambaye anahitaji, na tuhakikishe amejenga nyumba. Ikiwa umepewa ardhi ulime, basi ulime ardhi hiyo, baada ya miaka mitano kama hujaitumia kwa kulima, ardhi hiyo ichukuliwe ipewe Mkenya mwingine na aweze kulima. Lakini si kuruhusu kuuza ardhi kama nyanya. Ni nani alikuza ardhi hapa ili aweze kusema hii ni yangu na ninaiuza? Hapo ndio kwenye Shida.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Asante sana Mheshimiwa.

**Hon. Delegate Joseph Kahindi Kingi:** Hii ni mara ya kwanza kuongea ningomba unipe nafasi kidogo tafadhali. Niongezee muda kidogo.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Dakika moja.

**Hon. Delegate Joseph Kahindi Kingi:** Tuna shule, mashule mengi sana kwenye nchi yetu, na tukubaliane hapa tuseme ya kwamba, ardhi itakayotengewa shule itakuwa kiwango fulani, kama itakuwa ni acre kumi na tano au iwe ishirini, na tuhakikishe ya kwamba ardhi hizo zinatengwa vizuri na zinakuwa mali ya shule, na office zitakazohusika na kupeana cheti za kumiliki ardhi ziweze kuhakikisha ya kwamba shule hizo zinamiliki ardhi. Wakati tunapopeana sehemu za ardhi kama kule kwenye ufuo wa bahari, na tupeane ardhi hizi kwa mipangilio maalum. Inavyotokea leo ni kwamba, ufuo wote unatolewa, kila mtu akipewa anaweka fence, sasa wavuvi hawawezi kufika kwa bahari yao tena kuvua samaki. Sasa ninapozungumza kuhusu kumaliza umasikini, tutamalizaje umasikini ikiwa ardhi yetu hii au nafasi hizi ambazo watu wangevua samaki, tunazifungilia na watu hawawezi kufika?

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Asante sana. Muda wako umekwisha tafadhali. Thank you very much.

**Hon. Delegate Joseph Kahindi Kingi:** Nafikiri utanipatia muda mwingine wakati mwingine. Asante.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Ee, nitakupatia. Asante. 228

**Hon. Delegate Raphael Livu Kilonzi:** Thank you Mr. Chairman. I am standing in regard to your earlier announcement that the technical working groups C where you announced a meeting at the committee tent number 6. Mr. Chairman, we have held such a meeting and I wish to put it to your notice that the deliberations of that meeting today or rather statistically that we did not agree on a formal ground as to who is the Chairperson of that committee. Mr. Chairman I want to submit to you that the Chairperson we elected two, three days ago, stands to be the Chairperson of that committee. However, Mr. Chairman, we are aware that your committee -



give me sometime please - did make arrangements to interfere with that process. Mr. Chairman I put it to you or rather I am putting it to notice, that if---

**Hon. Delegate Wilfred Koitamet Ole Kina:** Honourable Delegate I would like to tell you that the committee did not intend to interfere and that's why we referred the matter back to your committee. And there is somebody from that committee who will come to report to the Steering Committee on the deliberations.

**An Hon. Delegate:** Mr. Chairman--

**Hon. Delegate Wilfred Koitamet Ole Kina:** I am sorry, I am not going to tolerate that, we have to continue with this here.

**An Hon. Delegate:** Mr. Chairman, I am standing and --

**Hon. Delegate Wilfred Koitamet Ole Kina:** I am sorry, I am sorry, you are out of order please sit down.

**An Hon. Delegate:** I am standing on rule 32 (1) Mr. Chairman and you are not qualified to ask me to sit down.

**Hon. Delegate Wilfred Koitamet Ole Kina:** I am, please I have ruled you out sit down.

**An Hon. Delegate:** Mr. Chairman, may I refer you back to the rules?

*(Murmuring by Honourable Delegates).*

**Hon. Delegate Wilfred Koitamet Ole Kina:** Please you are out of order, sit down please.

**An Hon. Delegate:** Mr. Chairman, I am not out of order.

**Hon. Delegate Wilfred Koitamet Ole Kina:** You are out of order! Can you please sit down?

**An Hon. Delegate:** Mr. Chairman, can you tell me why you are asking me to sit down?

**Hon. Delegate Wilfred Koitamet Ole Kina:** I will be forced to put you in order! Please sit down.

**An Hon. Delegate:** Mr. Chairman,...(*A lot of noise from Honourable Delegates*).

**Hon. Delegate Nancy Kabeteka Lung'ahi:** I would ask 595.

**Hon. Delegate Joseph Martin Shikuku:** Mr. Chairman, I must congratulate you for having ruled that Honourable Delegate out of order. Let us have some discipline, while the Chairman is speaking, you are not supposed to be standing on your feet, you must resume your seat immediately (*Clapping by Honourable Delegates*) when the Chair is speaking. And we must have some order and we cannot have people speaking when they have been asked by the Chair to resume their seats. (*Clapping by Honourable Delegates*).

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Okay, I think we will proceed and I will just make a humble plea to Delegates, please respect the Chair. And just to tell you about how we are going to proceed, we did cut off with the other categories where we had Delegates from the various categories speak. And this round we are going to take one District representatives and one Member of Parliament from each row and when we come back here, we are going to go back to other categories which is Political Parties, Trade Unions, Religious Organizations, professionals and then NGOs. So we are going to proceed we are on this row, we have heard from a Member of Parliament and so we are looking for a District Delegate probably one who has never spoken before. I recognize 352.

**Hon. Delegate John Muchai Kiniti:** Thank you Honourable Chairperson. I want to thank you for at least saving me from the agony of becoming a spectator in this Conference.

The issue of land-- My names are John Kiniti a District Delegate from Laikipia number 352. I would like to say that land in Kenya is not well distributed and I was thinking of the place where I come from, Laikipia, where 70% of land is owned by the ranch. They own in the name of Al Pajeta, Oljogi, Soliolite, Contential, Laikipa ranching and others. And the indigenous people own the remaining 30%. And if justice is to be done then that land should be redistributed.

I wish to support those who say that we should have a Constitutional sealing, a limit on how much a person should own. No one should be allowed to own more than 100 hectares, because why should we have people owning 10 thousand hectares maybe in Rift Valley, five hectares in Nairobi, ten hectares in the Coast, where are the others expected to go and land is not expanding.

And again, I wish to say here that the land skirmishes or land clashes we have been having in this country should be tackled only when we have the historical agreement recognized and we have compensation for those people who were offended. And the Government should embark maybe on making investments to those areas that people suffered because they were dispossessed. Again people should be allowed to own land in any part of the republic.

Lastly, I want to support those people who are advocating for reduction of the lease period from 99 years to 30 years, in any case, if a lease was granted today, I don't know how many people will live to 99 years to confirm whether or not the lease granted was lawful or not. Thank you Honourable Chairperson. *(Clapping by Honourable Delegates)*.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you. The next row I am looking for a Member of Parliament, 217.

**Hon. Delegate Cecily M. Mbarire:** Thank you the Chair. I stand here to support chapters 11 and 12 that we are discussing on land law. I am particularly happy because now I am convinced and I am sure-- Oh sorry, my name is Cecily Mbarire I am a nominated Member of Parliament. I support this because now I am sure that I can get the piece of land that I have been eyeing back home that belongs to my father but which initially was going to go to my brothers only, so now I know that I can get a piece of land at home. *(Clapping by Honourable Delegates)*.

I want to say that it is so important that we recognize that, although women provide for over 80% of agricultural labour in this country, only less than 5% of the land is owned by women themselves. So it is about time that we gave women a chance to own land and we are therefore requesting that the Constitution goes a little further Madam Chair, to say that no citizen should be deprived of land on the basis of gender, marital status, age or any other reasons created by history, tradition or custom. We know very well that this is what has been used against the women. You are told because you are not married, “can you look for a husband very quickly and get out of our land, this belongs to us”. We have been told that customarily, no woman owns land, traditionally a woman could not own land, but we are saying that those traditions and customs that have been retrogressive and that have been discriminated against women or young people must be done away with, and this should be clearly stated in the Constitution. And as such Madam Chair, I propose that once this Constitution comes into effect, it should be clearly stated here that all the land that is owned by family right now and which in the past has had the name of the father, should allow all the women with their spouses to go back to the land board and ensure the title deed have the name of the woman and the man. (*Clapping by Honourable Delegates*).

The other thing that I want contribute to, Madam Chair, is that all trust land that had been irregularly or illegally allocated to private developers, must be repossessed and from now on we want to see to it that any trust land that is being allocated must be allocated as long as the use of the land will be in the interest of the community. And we want the community to be consulted before such land is allocated to those so called private developers. (*Clapping by Honourable Delegates*).

The other issue Madam Chair, is the issue of resettlement schemes. Madam Chair, we know that there are very many resettlement schemes in this country and up to now giving an example of Mwea irrigation scheme, many of those farmers do not have title deeds today. And many of them have not even been allocated specifically pieces of land that they can call their own. We want that done urgently and we also request that priority be given to those that do not have land and not those that have land. And also that female-headed household and the youths whose parents do not have land should be given first priority when we are resettling the landless.

The other issue, is the issue of the clash victims Madam Chair, Madam Chair you will recall that way back in the 90's very many people were displaced through the land clashes in Rift Valley and other places. We are saying here that, if they must be resettled immediately this Constitution comes into effect, many of them were deprived of their pieces of land illegally and we are saying that, that land must be repossessed by Government and those clash victims must be resettled.

Finally, Madam Chair, I propose that all structure that deal either with land resettlement, land disputes or land redistribution must have the following persons, well represented in those committees:-

- We must have women, because we know most of the land board back home have been used by men to sell their pieces of land without their wives knowledge and without their children's knowledge. So we want to have women there and we want to have youth there and we want that clearly spelt out with the Constitution. That if a particular board has ten members, a third must be women, a third must be youth and the rest can go to the other people. Thank you very much, Madam thank you.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you very much. From the same row I am looking for a District representative. A District representative from the same row, I recognize 245 she has never spoken.

**Hon. Delegate Mariam S. Mwanyota:** Thank you Madam Chair.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** 591, if you just hold on, I will give you your point of procedure. Please allow the lady to talk.

**Hon. Delegate Mariam S. Mwanyota:** Thank you Madam Chair, my names are Mariam Mwanyota, District Delegate 245 from Taita-Taveta District.

Madam Chair, despite the fact that many issues have been handled, there are few issues I would like to raise. One, as I sit here, I have realized that we recommend this lease hold land, but I realize we seem not to look into the issue what happens when these leases cease to be in force. I believe it is important that we have something to safeguard this lease hold land, we have them. When the lease expires, what happens?

Now, it is good that many people seem to realize that land ownership should go with responsibility. I would like to further request that it is important we also look at the lease hold land, it should also go with the responsibility. If the leasee says we want to put up an industry, then the period of that lease hold should be determined by that industry. If the lease hold land is going to be for agriculture, that should also be determined by the fact that this person is going to use that land for agriculture. And therefore we should put in force conditions that will make it possible for us to review those lease holds.

Madam Chair, I would also like to look into the issue where we have the right to own property. When we talk of the fact that everybody has a right to own property, what goes into our minds is that property refers to land. And therefore matrimonial property referred to in sub-section 2 (35) 4 (a) 5, refers to a very large extent the family land, and therefore this means that it will reach a time when this land cannot be fragmented any more, because of population increase. So just as we would like to have a higher ceiling for how much land someone should own, I still feel it is important we also have the lowest ceiling, for how much fragmentation the land should go to.

Protection of property land, I would like to say that as provided in Article 236, I think it is important we also put that Parliament should enact a law for the prompt compensation and the resettlement of displaced persons, displaced either by clashes, displaced because their land has been taken by the Government for public utility e.t.c.

Mr. Chairman, I would like to add my voice for one minute on issue of title deeds, this should be brought to the local area because it is cumbersome. And the ownership of property should be clearly stated in this title deed, and therefore I request that this title deed should be have provisions whereby the name of the wife and family members are included there. Thank you very much.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** I would urge Honourable Delegates, please stick to the time so that we can have as many people able to speak as possible. There was a point of procedure 591.

**Hon. Delegate Ogembo Masese:** Thank you, Madam Chair. My name is Ogembo Masese Delegate number 591. On Friday last week, I raised a point of procedure which according to me was not addressed fully. Now, I have since then established that Hon. Delegate Prof. Makau, was sworn in on the 2<sup>nd</sup>, although it is not appearing on the votes and proceedings of the day. He came in through Safina Party, which is represented here by Farah Maalim Mohamed who was sworn in as per the votes and proceedings of 7<sup>th</sup> May. That means then that Prof. Makau's oath was invalidated by this later one. To-date, I think the two are sworn in and procedurally with due respect, Madam Chair, that is wrong and I think it is of great urgency that we Delegates be informed and the correct procedure be followed.

**Hon. Delegate William Ole Kina:** Thank you very much, let me let the substantive Chair answer that.

**Prof. Yash Pal Ghai:** Thank you very much. Perhaps I can explain the history behind this query. Originally Farah was appointed or nominated by the leader of Safina Party, subsequently he withdrew and Prof. Makau Mutua replaced him. We have a letter from the leader of the Safina Party that Prof. Makau Mutua will be the representative of Safina Party. The matter was referred to the Accreditation Committee of the Commission and in lieu of resignation by Mr. Farah the nomination of Prof. Mutua was endorsed. This matter was brought to the full Commission, which endorsed the recommendation of the Accreditation Committee. We have explained this to the Steering Committee and I would also like to tell the Delegates that we have a placed in our office just outside this door, the list of all the Delegates who have sworn the oath of office, with the details of when they were sworn in, if any Delegates has any objection to that, will you please let the Secretary, Mr. Lumumba, have a note of that. Thank you.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you very much. I think we can now proceed, we were on that row and we are looking for a Member of Parliament from that row.

**An Hon. Delegate:** Point of order.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Is it a burning point of order. Okay 421.

**Hon. Delegate Thomas Mosabi Merengo:** Nashukuru Madam mwenyekiti, nimesimama kwa nambari 421, kwa majina ni Thomas Merengo kutoka Kuria. Madam Chair, sisi Wajumbe watatu kutoka Kuria tumekuwa marginalized na kiti chako. Tumebeba kadi zetu mara nyingi katika ukumbi huu. Tunaomba kwamba tuwakilishe watu wetu kwa mijadala, hata ile ambayo imepita hatujawai kuchangia. Kwa hivyo, nakuomba kwamba wakati huu utupe nafasi tuzungumze, otherwise we shall be called back home.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** I hear you, Sir, we will get to you when we come back to that row. We proceed, a Member of Parliament from this row, preferably one who has never spoken. Number 055.

**Hon. Delegate Kibunguchy Enoch Wamalwa:** Thank you very much Madam Chair. My name is Dr. Kibunguchy from Lugari. First of all, I would like to start of with Article 233. Under Article 233, to me the reading of it gives us a way of how to look at land in this country. Because it says that all land in Kenya shall belong to the people of Kenya. And when we look at that, what I would like to draw you attention to Honourable Delegates, is certain people in Kenya, like the movie says, "The Children of a Lesser God". Certain people in Kenya have been marginalized when it comes to land. Certain people of Kenya are living in squalor.

As we talk about this, one thing that I would like to ask when we are through in writing this Constitution is that there should be certain words that forever should be erased from our vocabulary. One of those that I have in mind is the word called squatter. If the land in Kenya belongs to the people of Kenya, how come Madam Chair, we have these people called squatters. We should be able to erase that word completely, because land should belong to all of us, so long as we are Kenyans. When we talk about squatters, I have in mind especially the recent history in Kenya where people were driven form their land through something called clashes. In my Constituency of Lugari, you find these people almost ten years later, they are still living besides the shops, along the railway lines and things like those. They are all crying to us, and telling us that we should be able to erase this word called squatters from our vocabulary. And when we are through with this constitution, I hope that they will be no body in Kenya who will be called a squatter.



When we look at that, I will also like us to look at Article 237 and we would like also to look at some people in this country who own large tracks of land. They have land, some of them all they have is title deeds in their briefcases, but they might not even know where that land is. We should be able to say like Kenyans said, when the Commission was going around collecting the views, Kenyans said we must have a ceiling to how much land each individual should own. I think we need to go back to that, because there some people who own large tracks of land and yet others do not have, even in my place we call it a point, and when we say a point, it means it is less than anything that you can measure. Some people do not even have a point of land, and therefore we should be able to make it a rule that there must be a ceiling of land that people should own. Some of them who have large tracks of land, when you look at them-- Let me not go into that. We want to say that there must be a ceiling of how much land people should own.

The last thing, which I would like to mention, is that when we talk about land, we should also talk about what we get out of that land. In this country, the one person who has suffered most is the one person called a farmer. Farmers have not been recognized, farmers have been, and in fact when you talk about people who are marginalized, farmers belong to that category. Especially when we came up with a policy of, in Kiswahili they call it "Soko Huru" and this issue of 'Soko Huru' has marginalized the farmers in this country. We need to be able to look at how much the farmer is contributing to this country and how much he is getting for himself or herself. I think farmers are people who we need to really look into their welfare. You will need to give me just a minute, I will finish on that issue about farmers because it is very emotive.

We need to reach a point where farmers are being subsidized, there is no way you can compete, when we are talking about 'soko huru', there is no way you can compete with some people from outside like America and other countries where the farmers are subsidized and yet Kenyan farmers are not subsidized. We need to be able to put that explicitly in the Constitution, that the farmers' welfare is going to be looked into.

Finally, Madam Chair, I would like to look at the people and areas where we are getting minerals, where we have set up factories and things like those. I think the people around those areas, especially the people whose land has been used in that connection, they need to be compensated plus those who are running factories, etc. In those areas, we need to plough back some of those

profits to the local people in that area, in terms of setting up schools, roads and even looking after the environment. When we talk about that, I have in mind a factory near my constituency called Pan African Paper Mills, and that factory is notorious for having polluted our environment. Year in year out, we have talked about this and yet the previous government did nothing about it. I think that is something although I know it will come in the Chapter of the Environment, we need to mention it here and now. Thank you very much.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you Honourable Delegate. On the same row, we are looking for a District Representative, 356.

**Hon. Delegate Kesendany Ezekiel:** Thank you Madam Chair. My name is Ezekiel Kesendany, Delegate number 356 from Nakuru District. Madam Chairperson, I am raising to comment on Article 324, (1) and (2), entitled 'Classification of Land,' and I read: 'All land in Kenya is designated as public, community or private land. The following description of land is public land: land which at the commencement of this Constitution was held as alienated Government land in terms of the Government Land Act Cap 301.'

Madam Chair, this clearly tells me that the land we have been fighting for, that is the Mau escarpment, will only be translated into the next Constitution and we remain landless forever. Madam Chairperson, this Article continues to deprive the Ogiek, the Sengwer and other marginalized indigenous minorities their rights to acquire land like other people in Kenya. Madam Chairperson, this constitutional process is a matter of life and death for some of us.

Unlike other Kenyans, Ogiek live in the Mau escarpment, where it is their only known ancestral home. The Carter Commission of 1932 identifies the Ogiek in the expansive Mau escarpment, but fails to recognize them, and instead recommended that they be moved to Chepalungu, which was then called the Lumbwa Native Reserve, 300 kilometers from their ancestral home. Madam Chairperson, the proposal was not implemented, and it could not work, because in 1932 it was not possible to collect all the Ogiek people in the expansive Mau escarpment and take them 300 kilometers away.

Secondly Madam Chairperson, the only property owned by the Ogiek community is that of beehives, and beehives are hung high up in the trees. It could not be possible Madam Chairperson, to transport those properties, those beehives full of bees, to Chepalungu!

*Laughter and clapping by the Honourable Delegates.*

Madam Chairperson, the Ogiek community being hunters and gatherers also, had a good number of dogs and all that, and taking them away from where they know could not be possible. What I want to say here Madam Chairperson is that Ogiek are natural conservationists. They have put these beehives up in the trees, and that by now we have over ten million beehives. That means ten million trees preserved, and I want Professor Wangari Maathai to know that.

*Laughter.*

Madam Chairlady, there were subsequent forest legislations which did not only criminalize our stay in our homes, but also denied us our way of life. The fishermen of Lake Victoria, the pastoralists of the Kenyan plains, the farmers of the Rift Valley, the hunters and gatherers of the Mau escarpment, were forced to abandon their traditions and were reduced to beggars. Madam Chairperson, as I am speaking now, they live on relief food in a very arable land. Madam Chairperson, there have been over twenty evictions, and as I stand here there is already an existing Court eviction order and that we are only living there on a Court injunction.

Madam Chairperson, we have not enjoyed national resources since independence. Things like education, health and infrastructure are only heard over the radio. The Government should not talk of free education if schools themselves are not available where we stay, because there are no developments in a forest. Madam Chairperson, I believe that the Ogiek land is not lost. It was taken away by the State, and the Ogiek demand that they be given back their rightful home.

Madam Chairperson, the Ogiek population is about twenty thousand. We are a minority because of the unfavourable conditions. We are always living in fear, na vile Waswahili wanasema, 'mwenye haya hazai.'

***Laughter.***

Where we are Madam Chairperson, where we live, we are always alert because we expect anything. Kwa hivyo mama analala na nguo zote, mzee analala na nguo zote hata watoto wanalala na nguo zote Madam Chair.

***Cheers from the Honourable Delegates.***

Madam Chair, I want to extend this to other minorities like the Sengwer, who are living in the Cherenganyi hills. The Elmolo in the Elmolo bay, the Endorois in the Lake Victoria, and the Tiriki who are living in those places of Hamisi. These people also should be recognized. And I am realizing Madam Chair, that the minorities in this Conference have been marginalized more than they have been, because we have all the categories of our people in the society. Only the minorities are not recognized. How I came to this Conference Madam Chair was only through the grace of God. To get a chance in Nakuru district to come here was not possible. And we expected fairness like other Kenyans, we wanted CKRC to see that there are minorities who cannot be elected anywhere because of their numbers.

Madam Chair, I would therefore make the following recommendation: that the Constitution recognize the existence of the minorities in this country. That this Constitution restores lands from which the claimants were dispossessed. Madam Chair, the Constitution should also protect (inaudible) of rights such as use, occupancy, access and possession backed by registration.

Madam Chair, the Mau escarpment I have been talking about is about 83,000 hectares. Half of it is gone, and it was not taken by the Ogiek. The current destruction of forests in those regions is done by outsiders, not the Ogiek people. They are saying they are protecting the same land, and at the same time they are cutting, they are making decisions in Nairobi, and we see people coming to settle there. I want this one, Madam Chair, to stop, and that such pieces of land in that place be taken back to the trust of the community, so that the Ogiek also will live like other people. We cannot write a Constitution here and we are not on an equal footing, Madam Chairlady. We are not the same. We are talking of sharing things, and some of us are far much

behind what we are doing here. It will be meaningless Madam Chair, to write a Constitution when other people are not on board.

Finally, Madam Chair, we will also fail in our duty if we don't address issues of the land clashes in Rift Valley. This is a very good forum to put this thing to an end, and to address realities on those regions. Madam Chair, finally, I want to talk about--

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Your time is up Honourable Delegate. Your time is up. Thank you. The next row. I am looking for a district Delegate who has never spoken. District Delegate 346.

**Hon. Delegate Isaiah Cheruiyot:** Thank you Madam Chair. My name is Isaiah Cheruiyot, District Delegate from Baringo. I would wish to say that land is a very precious commodity for every Kenyan and even for everybody in the world, because land is a primary resource. So, I would wish also to concur with other Delegates who have mentioned about it. On Article 233, I would wish also to comment on land leases which are expiring. I think in certain areas we have some land which had been leased to outsiders, and I think if they expire, the land now should be returned to the community which was alienated from that land. Because most people who were alienated by the white settlers, or removed by the white settlers, the land was taken away; but now I understand most of the lands are now reaching the 99-year lease. The land should now be returned to the indigenous people, or be given out to those who have no land in those areas.

Another issue is that I would wish also to propose that there should be a land policy to protect also those areas which are called marginalized. If we talk of these semi-arid areas, they have not been taken keen on. They have been left out. The past two Governments have been investing mainly on these highland areas. But these marginalized areas, semi-arid areas, there is no clear policy which takes care of that so that it could be productive and help those people in those areas. There should be a clear policy on land, which can assist those areas or promote those areas so that those people can come up to the level which other Kenyans are.

Also, the issue of land commissions. I would propose that land commissions should be vested in the districts or the regions who understand the problems of those areas. If we put it to the

National level, it will not be any good to the people, because decisions will be made very far away from where the problem is. Another issue I would also support is that, the issue of 99-year lease should be reduced to either thirty or thirty-three, somewhere there, a reasonable period which could be looked into. Thank you Madam Chair.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** On the same row, a Member of Parliament who has never spoken ... 082. 349, I will give you your point of order after the Honourable Delegate has spoken.

**Hon. Delegate Ligale Andrew Ndooli:** Thank you Madam Chair. My name is Andrew Ligale from Vihiga. I want to make a case for a National Land Commission. I know most Delegates who have spoken here have made a case for Regional or District Land Commissions, for very good reasons. In the recent past Madam Chair, we have witnessed terrible experiences in our country, that where land which should have been planned, alienated for proper use for commercial, for industrial, for residential, like it used to happen in the past, and I am speaking as a previous director of physical planning in this country and who saw proper development and alienation of land for proper use in the early sixties and seventies. Most of the abuse of our land and alienation for speculative purposes has happened in the last ten/fifteen years. I know that most of the people who have spoken here with bitterness about those practices are basing their comments on those events of the last fifteen years.

Prior to that Madam Chair, we had practices that ensured that people got land for purposes that were useful to this country. That anybody who wanted to invest in industrial development, in commercial ventures in our major towns, came in and made an application, and we had a very good rapport between the Commissioners of Land then; and I am talking of a mzungu Commissioner of Lands with whom I worked, Jimmy Oloklin, and the first African Commissioner of Lands, James Njenga, and various mayors of town councils, who were mindful of the need for proper development in this country; that in effect, we had a proper utilization of land.

In the recent past, we have seen greed set in, and we have seen people allocated land for speculative purposes. They get that land and then they sell it to people who should not own land

-- the Wahindi and the others who don't necessarily qualify to own that land, and other people who are buying it for speculative purposes. But I want to make a case Madam Chair, for the need for a National Land Commission to take care of policy issues, policy matters such as for instance, your land is only valuable as long as it is serviced, as long as it has infrastructure, as long as it is able to produce. To have land, however large it is, if it is not productive, it is of no use to you.

For instance, we have semi-arid lands in this country, which if they were irrigated, they could produce a lot of food for our people. But at the moment they look barren, they have no use to anybody. Now, any small local authority, District Council or District Commission will not have the power, the necessary resources to be able to plan and to be able to irrigate those lands for prosperity, for the production of food that we need. Decisions for example, in areas like the wetlands - and I have in mind the Lower Tana River areas - which are so essential for the protection of our wildlife and so on, need to be made at the national level, and not necessarily at the local level.

The controversy or the conflict between wildlife and human beings in our country for example, those kinds of issues can only be best determined at the national level, not at the local level. I am suggesting Madam Chair, that we need a National Land Commission to deal with the national issues, policy issues. And if we are starting from scratch, and we have learned from the mistakes that we have made in the recent past where land has been alienated purely for speculative purposes, I am putting it to dear Delegates here that we have a chance to make a good start. And because in the recent past most of those decisions were made by one man, the Commissioner of Lands, being directed from the so-called higher authority, there we had no chance for these decisions to be made in the interest of the country as a whole. But a National Land Commission will comprise of Kenyans from all parts of this country. They will therefore be making decisions for and on behalf of this country, not in the interest of one person. So, I am pleading that instead of dismissing that proposal because of the recent experience where decisions were made by one person, let us give a chance for a National Land Commission to be established, to be able to deal with those issues that are of a national nature, which are going to benefit all of us. Thank you Madam Chair.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you very much. We now move to the next row, I am looking for a District Representative. 255. Yes, point of order 381.

**Hon. Delegate Maalim Omar Ahmed:** Okay, thank you Honourable Chair my names are...

**(Interjection)**

**Hon. Delegate Nancy Kabetaki Lung'ahi:** Okay, just hold on, sorry 381. I had given the other gentleman the point of order, please hold on.

**Hon. Delegate David Kigen:** On a point of order. Thank you Madam Chair. My name is Kigen David, Delegate number 349. According to my observation Madam Chair I can see that some districts whereby they have two representatives contributing in this debate of land, while other districts neither the MPs nor the Delegates have spoken. So I think you should also base your distribution on those who are going to speak from the districts because land problem in Mombasa is not the same problem in Koibatek.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you, I hear you but we will give an opportunity for everybody to be able to speak and we are not choosing the numbers according to districts, we were just choosing the numbers according to the way they appear here, so I hear you. 381, you had a point of order?

**Hon. Delegate Rita Ombito Katamu:** On a point of order. Thank you Madam Chair. I am Katamu from Butere Mumias. It has come to my notice that I have been registered five times having spoken at your table there, it is very unfortunate. I have been here on points of order especially when the ladies are not given a chance. I have only spoken once and the people of Butere Mumias are expecting me to contribute a lot of land, kindly consider me.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** I hear you mum, thank you. The next row, 225.



**Hon. Delegate Salim Ibrahim:** Thank you Madam Chair. My names are Salim Ibrahim representing Nairobi Province. First Madam Chair, I want to take you to Article 235 (iii) b (ii). I want to bring a case whereby I want Nairobi to be recognized as part of the areas that historical injustices have been committed. I am asking for the recognition of Nairobi as such an area simply because when most of us talk about marginalized communities we think of the rural communities yet we forget that in this city we have the most marginalized communities in this country. (Clapping by *Honourable Delegates*)

When I say this Madam Chair, I am talking in relation to the Swahili community in Pumwani and the Nubian community in Kibera. We have to appreciate the fact that these two communities were the earliest communities to settle in this city. We have to appreciate that they have a legal claim to the land in this city.

Madam Chair, we have to realize that these two communities do not have a fall back position as most of the other communities who are residing in this city. When I talk about a fall back position, I mean that most of the other communities would always fall back to their rural areas in case of any problem but these two communities do not have anywhere to go. They call Nairobi their home, city. (Clapping by *Honourable Delegate*)

Madam Chair, I want to bring to your attention that the City of Nairobi has been seriously marginalized. When I say marginalized I mean to say that in the Constitution whenever we talk about issues to do with Nairobi we are always saying, “an Act of Parliament will be enacted to say this and that,” we see this as marginalization because in Constitution making this is the national cake--

**Hon. Delegate Nancy Kabeteka Lung’ahi:** Okay, just hold on. 361, you have a point of order?

**Hon. Delegate William Ole Yiaile:** Onm a point of order. Thank you Madam Chair. My point of order is this. Ole Yiaile is my name, Delegate number 361 from Narok and don’t mark me in your record as having spoken because I have not spoken. Is it in order Madam Chair for the

speaker on the floor to insinuate that they got to Nairobi before us who were pushed from Nairobi using guns? (*Laughter and clapping by Honourable Delegates*)

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you Honourable Delegate but let us avoid answering back on the floor. The Honourable Delegate is just airing his views when you get an opportunity you will also be able air your views, so give him time. Thank you very much, please continue?

**Hon. Delegate Salim Ibrahim:** Thank you Madam Chair for that kind of protection. We are not here to argue about who came earlier than the other one but the facts are, we were here at that time.

Okay, as I continue, I was talking about the marginalization of Nairobi. We are saying that in Constitution making this is the national cake that we are getting to share amongst all of us. Then when we keep on saying that Nairobi will be catered for by an Act of Parliament. We simply think that you are telling us that, "please, we are having a meal here go and sit somewhere and once we are through with this meal we will prepare another meal for you". We cannot take this Madam Chair.

Madam Chair, we have to know that in this City of Nairobi most of the slum areas have always been earmarked for slum upgrading. But the problem with this slum upgrading is that, the people who reside in these areas have never been included as the stakeholders in such projects; so that at the end of the day these projects are done and then they get to benefit other people instead of benefiting the real beneficiaries of such. So we are asking, if any such projects will be done in future, we want the people of such areas to be included as stakeholders so that in case any land gets to remain after such projects still this land will remain as part of the land of the respective communities. We only have to look as far as the estates that have been created recently as Otiende, Highrise and all the other estates. They were created in the name of slum upgrading only to end up in the hands of other unscrupulous people.

Finally Madam Chair, I wish to say that you have to have a city coming to your region to appreciate the injustices that are committed with commercialization. Thank you Madam Chair.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you very much Honourable Delegate. I would like to appeal to the Honourable Delegates that we would give this chance to 237 from the Watta community. Thank you.

**Hon. Delegate Joshua Jilo Onotto:** Thank you very much Madam Chair for honouring and recognizing me. My names are Jilo Onotto, Delegate number 237 from Malindi District representing the district, at the same time by sheer lack also representing the Watta indigenous, minority, a community in Coast Province.

May I now address this issue of land. This is a very intricate issue which needs to be addressed with a lot of care. As regards the Watta community at the Coast, if I may stand here and claim that almost the whole of Coast Province ancestrally belongs to the Watta community I will not be wrong. *(Laughter and clapping by Honourable Delegates)* This is proved by the names of most of the places in Coast Province which have a distinct meaning in the Watta language. May I just give a few examples?

One, we have Mombasa; Mombasa initially was known as Mambasa and this one in the Watta language means a huge rock. This was at the present Fort Jesus where a Watta old man used to live in a cave and he sold that cave to the Arabs when they came, and he left it and went ahead hunting and gathering. We have Voi, this one originated from the word “boi” yaani crying in our language. This is a place where the Watta community gathered and started crying remembering their kinsmen who were killed by the Kambas in a raid. *(Laughter and clapping by Honourable Delegates)*

We have also Barchuma, a Town along the Mombasa – Nairobi road. Barchuma in the Watta community language means, a chair “barchum” nimekosea hapo?

**Hon. Delegates:** Hapana.

**Hon. Delegate Joshua Jilo Onotto:** Sawa. Then we have Kilbasi which is also a small town along the Mombasa – Malindi – Nairobi road. This town originated from a festival in the Watta community which is known as “belbasi” which is a festival which marks the end of famine.

Malindi, this one originated from a Watta word which the Watta call “molonde”. Molonde means a market place and Malindi originated as a market place where the Arabs used to trade with the Watta in ivory and rhino horns.

Kilifi in the Watta language it originated from the word “kilif”, kilif means water. Then we have the word “tezo” tezo came from the word teso which means a settlement. That was a big settlement for the Watta community, and then “bofa” which means snake in Kilifi. Godoma originated from the word “dagom, kolo dhagoma” and then we have “jila” in Kilifi also.

**Hon. Delegate Nancy Kabeteka Lung’ahi:** The Honourable Delegate can you come to the point please?

**Hon. Delegate Joshua Jilo Onotto:** And then we have “Aricho” and so on. These are just a few examples. Let me now come to Article 235 (4) (viii), the establishment of a land fund to enable Kenyans gain access to land on an equitable basis. This Article surely should look into the fate of these smaller minority groups who were displaced or were cheated in selling their pieces of land and so on.

235 (4) (a) (ix), the ascertainment and adjudication of any land held for the benefit of any community by any person or agency, and the transfer of such land to communities entitled to it. In Malindi District, we have got areas which were given to developers, while the communities living on those pieces of land were already farming on those pieces of land and had already developed those pieces of land and title deeds were offered in Nairobi. This is really an offence and such things should be addressed in this Constitution. Then we have got issues of absentee landlords at the Coast, especially in Malindi and other areas like Kilifi. Absentee landlords are a thorn in the feet of the Coastal people. These absentee landlords have been changing ownership from the original absentees up to the point of the houseboys of those absentee landlords and they still claim to own those pieces of land.

This Constitution should do something about that, such pieces of land should be either repossessed by the Government and given to those who have already developed those pieces of land. With those few remarks, I say thank you very much and God bless you.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Okay, thank you. Honourable Delegates, we will take a break and go for lunch but before that there is an announcement, a notice to all Delegates. The Conference administration has organized the weekend excursion on Saturday, 31<sup>st</sup> May 2003 to the following places:-

The National Museums of Kenya and the time is 10.30 am to 12.00 pm and the entrance fee is Kshs. 100/= . At the same day there will be lunch at Bomas of Kenya from 12.30 pm to 2.00 pm.

The Nairobi National Park from 2.30 pm to 5.00 pm. The entrance fee is Kshs. 150/=.

Kindly register your name at the auditorium entrance by 2.00 pm on Thursday, 29<sup>th</sup> May 2003 if you wish to participate. All resident Delegates will be picked from their hotels at 10.00 am and non-resident Delegates will be picked from 680 Hotel at 10.00 am.”

We will now break for lunch and come back at exactly 2.30 pm. Thank you.

#### ***AFTER LUNCH BREAK***

Meeting started at 2.50 p.m.

**Hon. Delegate Wilfred Koitamet Ole Kina:** We are about to continue from where we left in the next two minutes. So please take up your seats.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Good afternoon Honourable Delegates, welcome to the afternoon session. I think we will proceed, we finished from this row before lunch on that row, so we are going to finish here and then we start off from that row. So on this row

Honourable Delegate 252, I see you. I will give you a Point of Order. I will recognize you when I come to that row. We are just finishing from where we left on and we going to start on this row and when I come there, I will recognize you. Thank you. I am on this row and we are looking for a Member of Parliament, then a district Delegate, then we go back to this row. 005.

**Hon. Delegate Akaranga M. Epainitous:** Thank very much for giving me this opportunity, my names are Moses Akaranga, Member of Parliament Sabatia constituency. First thing, I want to comment on our Muslim brothers who over the weekend, visited our churches and they got some views concerning Kadhis' Courts. I m happy to learn that even our Christian brothers told them to support the Christians on Christians Courts. Let me go right to the point on land; first we have problems in this country because we do not have what we call National Land Policy. Most of our lands, are distributed to people with money and if you don't have money in this country perhaps you will not even be given any land. We find that we have our brothers and sisters who were actually born perhaps in Nairobi the ones we have been calling the "*Chokoras.*" They do not have any land. We need to have a National Land Policy which will address the cases for such people.

I am told that even some Kenyans are owning thousands and thousands of acres of land at the expense of other people. I think Chairman, it is not fair for this country to allow people to own land which is lying idle. I recommend that when the country is selecting the national policy at least we introduce tax on the idle land, so that people will be able to dispose some of the land which they are having. Now I come back to the urban areas, land within urban areas to my recommendation, this land should be held on leasehold. I have found that even in Nairobi, we have some of the land there is on free hold. I recommend all of them to be on leasehold, this means that as urbanization expands, all rightful land coming within the urban area, should automatically fall under leasehold, but subject to the payment of certain compensation. I am saying that Chairman because in a place where I come from, we have urban area where all land are considered as free hold and the municipality cannot get any income. And if we do not have this policy, we find like Nairobi, there are some areas where people have grabbed even the playing ground. Our children don't have any place where they can play, because land has been grabbed including even the toilets have already been grabbed. We need to have that National Land Policy to protect some of these facilities to this Nation.

Also in the leasehold, I m suprised that in the Draft Constitution they say; the Non-citizens of Kenya, shall own land on leasehold of 99 years. I propose that this leasehold should not exceed 50 years, because if somebody is a non-Kenyan and is holding leasehold for 99 years and me as a Kenyan, I m holding a leasehold for 99 years again. Which means; non-Kenyans and a Kenyan there is no difference. We need to have a difference between a Kenyan and a Non-citizen.

When I talk on the inheritance of land under customary law, I think it is important for us to consider gender sensitivity when we are distributing our land down at home. A number of good ladies in this country are not married and we are not going to force then to get married, but there are our children they belong to us. Therefore, when we are looking at the distribution for land in homestead or family land, let us consider the numbers of girls we have, like in my case, I have already given part of my land to my daughters. And when we are here also we Delegates, let us be considerate to our ladies in everything and in all areas which we have been talking about a third of women, should be considered. Now when it has reached on land I hear some people murmuring saying why should we give it to ladies? No, let us be considerate that ladies play a very important role in development of this country. (*Honourable Delegates clapping*). And of course if you look at that way on the Chapters on which we complete on Devolution of Power, this is indeed compares too well with the Devolution of Power. Mr. Chairman, with those few remarks I say thank you very much.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you very much Honourable Delegate. I take a District Delegate from the same row and I recognize 259.

**Hon. Delegate Salah Maalim Ali:** Thank you Madam Chair, my names are Councillor Salah Maalim Ali a district Delegate from Mandera. Land is a very sensitive issue it is a very important issue and if I might say I applied for land for five consecutive years. I applied for land in Mandera just to get a piece of land. After I found that I was not getting it, I had to vie for a seat to become a Councillor so that I get the piece of land at home.

I will go to Article 234(1) and my suggestions are that we classify land into two groups: Pastoral land and Agricultural land. Then anything else either private or public comes under those two categories.

Article 237 (1), about the Land Commission, I want representation of the youth to be a third of that commission either nominated or elected to represent the interest of the youth in issues of land. Because it is unfortunate that we have to wait for our parents to die, so that we can inherit land if one is under the age of 40. So I think it is in good place that we get a third of that representation in the Land Commission. Now coming to North Eastern Province, when we talk to pastoral and nomadic communities, they say that they do see men with masks and trucks dumping items that are not known to them and this should be radioactive materials and toxic wastes that have been dumped. A place in Wajir called Arbijan has toxic wastes dumped and I visited a hospital in Wajir in March and I saw one guy who took bath with water from a well and his whole skin peeled off. He is just like an albino case now and lying still in the hospital. These are coming as a result of toxic and radioactive wastes which are being dumped there while the communities are hoodwinked into tribal clashes. So I want that issue to be addressed in this particular case.

Lastly but not least. I m talking about the issue of Title Deeds. In North Eastern, even if you have 100 acres of land, you cannot use that for collateral security. A small piece of land in Kiambu with may have few coffee trees, is more valuable when it comes to the bank securities than a 1000 acres in North Eastern Province. I am now proposing because of our nomadic and pastoral lifestyle than an area in North Eastern, where somebody can have ten acres with 400 or 500 herds of cattle or camel, which is valued at more that five million shillings. So when it comes to land value in North Eastern, that land has to be valued along with stock of animals that it holds. If it is 300 herds' of camels, that it is holding and it is value may be four million shillings which the bank should be considering while valuing the holding that are the livestocks.

The other issue that I want to talk about, is when I heard sentiments expressed by women Delegates about how they suffer when it comes to the issue of inheritance of land either when the parents die or upon the death of the husband. My advice, is to go to the Commission. As Muslims, we have very unique system of inheritance and I would ask if the commission could



check the Koran so that they could borrow a leaf on how that issue of land is inherited among the Muslims.

Lastly but not the least, the issue of land. Since women are the ones who are at home, I think a good share or a good percentage of land, should go to women because they are the one that feed the family in most cases. With those few remarks, thank you.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you very much. Honourable Delegates this is how we will proceed from here, we have just finished one round of district Delegates and Members of Parliament, in the morning, we also considered people from the other categories. So we are now coming back to this side and we are going to start with either the other category and may be a Member of Parliament or a district Delegate. We will take two from every row but I would like to start with the other category which is religious organizations, professionals. So I recognize 525, I did say that we will recognize two people from each row. So if we take one person from one category, we will either take a district delegate or a Member of Parliament, I will take a district Delegate from that row. Thank you.

**Hon. Delegate Ibrahim Ahmed Yussuf:** Thank you Madam Chair, my names are Ibrahim Ahmed Yussuf, Delegate number 525. Madam Chair, I would like to commend the Commissioners on their presentations yesterday which was a commendable presentations especially from Professor Okoth Ogendo, for the experience and the wisdom he has on land which is immeasurable. Having said that Madam Chair, I have a problem with section 235, that talks about public land which is the collective property of present and future generations. Madam Chair, we cannot purport to start Kenya, from this Conference. Kenya started some 40 years ago, we forgave the colonialist for all the ills that they did but you cannot talk about land without talking about the past. Madam Chair, when Lord Delamere decided to come and settle in this country, among the expatriates at that time that he brought with him from what is known as the British Somali land was my great grandfather. He came to specialise in the art of sign language and he helped to translate for Lord Delamere and to the locals. After his retirement, the natural place for him to settle was among the Maasais and I am telling you this Madam Chair, because one of my parents was born in what is known as Ruaraka, I think the place where Kenya

Breweries is now. One of them was born in what is the National Park now and I know the tree and I want to tell that one to Professor Wangari Maathai, I want that tree protected.

Madam Chair, having said that the whole of Nairobi, courtesy of the Maasai, that is where my parents were born-- People were pushed back, the Maasais were pushed back so were my people and we ended up in a section of Ngong. Madam Chair, it will be unjust if half of the land rent that is collected in Nairobi does not go to the Maasais. Madam Chair, Maasais are some of the best conservatists when it comes to matters of environment. I remember when the Government of that day decided to kill J.M Kariuki, they decided to hide his body in the Ngong Hills, it was forested; you go to the place now, it is like everything mchwa imekula kila pahali. Madam Chair, the Maasai land has been stolen from them, I know it is impossible for them to be compensated by land but there should be a way of compensating them. Madam Chair.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** 586 please hold on let him finish I will give you your Point of Order.

**Hon. Delegate Ibrahim Ahmed Yussuf:** Madam Chair, still talking about the past I know the people of Lamu, the Bajunis, who are the inhabitants of that area, very good farmers, decided that now we have a new Government, let us go and ask for things to help till the land. They went to the first President of this country Mzee Jomo Kenyatta and asked for tractors, but unfortunately for them that was the time when Kenyatta was trying to implement what he has said in the book "Facing Mount Kenya," that "I shall bequeath land for the house of Mumbi and the Kikuyus, the past the present and the future". What he did, he told them "give me one week and I will get you the tractors", and what they saw were three truck loads of people from foreign areas being allocated what is called Mpeketonis scheme.

Madam Chair, the people of Lamu up to now don't have Title Deeds to their land but the so-called tractors have Title Deeds to their lands and they are foreigners to that area. Madam Chair, I am still on the issue of-- *(Noise by Hon. Delegates)*

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Okay just hold. Order please, 586 I did promise you that I will give you your Point of Order. Let us not shout about it let him finish, I will give

you your Point of Order and you will bring to the attention of this Conference what you would like them to hear please.

**Hon. Delegate Ibrahim Ahmed Yussuf:** Thank you very much Madam Chair. Madam Chair we had in the Coast region something called the Waqf properties. The Waqf properties is where a Muslim wills a third of his properties to a charitable organization. That is the only thing that is allowed to will a way and mostly it goes to charitable organizations. Unfortunately the President of that day decided that a Provincial Commissioner, is the person who is going to head that Waqf Commission. We have a case of a land in Kanamai there is instant Conference at this moment this is a property that was wheeled away and the PC just told the Muslims choose somewhere else because this one I have taken in his capacity as the Chairman of the Waqf Commission. Madam Chair, I know we cannot be compensated for that, but I am not going to insist that that land be taken away from the people who were given, because it is going to be an emotive issue. The people who received are the NCKK. As Muslims, we don't want then to be taken but we want to be compensated at the value it stands at the moment.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you.

**Hon. Delegate Ibrahim Ahmed Yussuf:** Madam Chair I haven't finished I am going to talk about Taveta. Madam Chair.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Your time is up Honourable Delegate please.

**Hon. Delegate Ibrahim Ahmed Yussuf:** Thank you.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you. I would like to make a plea to the Honourable Delegates. In as much as this is a sensitive issue, please do not shout down another Delegate when they are making their point. If you want to make a point of order, I will give you time to make the point of order. 586, did you have a point of order?

**Hon. Delegate George Mwaru Mburu:** My name is George Mwaura Mburu from the Political Sector and I am a proud son of the House of Mumbi. Is it in order for the Honourable Delegate to mislead the Plenary that the Maasai are the only people who really conserve the environment properly? When you move around Kajiado, and all that way to Narok, no trees have been planted. That is my first point of order. The second one--

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Excuse me Honourable Delegate, that is your opinion. It is not a point of order and so I will overrule that. Please take a seat and if you wish to correct something, you should actually wait until your turn comes and you will speak out your views and bring to the attention of this Conference the issues that you wish to address. So, if we could please proceed, I would like to recognize from the same row, .a District Delegate who has never spoken since we started this Conference, 372. *(Clapping by the Honourable Delegates)* Can you please let the lady speak then I will give you your point of order.

**Hon. Delegate Boniface Chelangat Soi:** Thank you Madam Chairperson and Honourable Delegates. My names are Chelangat Soi, District Delegate number 372 from Buret District.

Madam Chairperson, in respect to the provision in Article 235 (4) I fully support the protection of dependants of deceased persons who have any interest in any land including the interest of spouses in respect of the occasion of the land.

Madam Chairperson, in Article 236 (3), I also support the statement in this provision that power to regulate the use of land, interest or rights in land in the interest of defence, public safety be in the hands of the State. Madam Chairperson, this power should only be applicable so long as it does not interfere with the acquisition of the property of land.

Thirdly, Madam Chairperson, on the question of Buret/Kericho Tea Estates, mainly owned by the multi-national companies, Madam Chairperson, the communities from these two Districts do not benefit from the sale of the commodities. Instead, Madam Chairperson, they suffer so much as they do not have good schools, or roads, and even health facilities. The roads are impassable during rainy seasons though a mass of wealth from the Tea Estates passes through them. *(Clapping by the Honourable Delegates.* Madam Chairperson, I therefore suggest that the 99 year lease be scrapped entirely.

*Clapping by the Honourable Delegates*

Also, Madam Chairperson, I suggest that the companies and the State do consider increasing the meagre Shillings 22/= per acre currently being paid to the County Councils to maybe Shillings 1000/=. With those few remarks, Madam Chairperson, I say thank you very much.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you very much. I would like to recognize that we now move to the other row and I am looking, okey, 433, point of order?

**Hon. Delegate David Marcos Rakamba:** Madam Chair, I am raising on a point of order under Clause 34 (3) that no person shall actually use derogatory language in this Conference for the person who is not within this Conference and who cannot defend himself or herself in this Conference. I feel so much touched by the kind of language being used whereby some people are referring to some communities as tractors and whatever. That language is not good for the sake of this Conference.

*Clapping by the Honourable Delegates*

**Hon. Nancy Kabeteka Lung'ahi:** Thank you very much Honourable Delegate. I hope the speakers who are using that language have heard that and we can proceed. The next row, I would like to consider other categories. If you can wait on your point or order, let us hear from someone else. I am looking for Political Parties from that row – 595.

**Hon. Delegate Joseph Martin Shikuku:** Thank you very much Madam Chairperson. I would only like to more or less inform you what expired. My name is Joseph Martin Shikuku, the son of Oyondi. (*Laughter from the Honourable Delegates*).

Madam Chairperson, I am just trying to part with knowledge of a thing that happened in 1963 if my memory serves me right and I would rather with your permission change into Kiswahili.

Tulipokuwa Lancaster, jambo la ardhi lilichukua muda mrefu. Muda mrefu sana kwa sababu kulikuweco na maoni tofauti tofauti. Lile lililokuja kwanza lilikuwa la Maasai United Front. Wao, wakati huo, walikuwa karibu mia mbili hamsini elfu na walikuwa na ardhi kubwa ambayo walifikiria kwamba tukipata uhuru, huja wale ambao hawakuwa na ardhi wakaingilia kwao na kuinyakua. Ikatubidi tufanye mpango. Mpango huo ulikuwa ni kwamba, ardhi iliyo katika district iwe chini ya County Council hiyo, ili waweze kulinda ardhi yao isije ikanyakuliwa na wale wengine ambao wanangoja kuinyakua. Jambo hilo halikuweza kuwafurahisha Wamaasai. Ndio kwa sababu wakati huo, wale viongozi wa Wamaasai walikataa kuweka sahihi katika ile 1963 Constitutional Conference Constitution. Walikataa.

Pia tulikuwa na taabu kutoka upande wa Nandi. Pia wao walikuwa wakisema walipambana na wabeberu wakawa na Treaty na pia Wamaasai walikuwa na Treaty ambayo walifanyiwa ujanja na jambo hilo tukalizungumza kwa muda mrefu na tukasema kwamba hilo jambo tukirudi litatengezwa. Lakini tuliporudi, hata wale wanaolia huko Coast, ile ten mile Coastal strip, tuliwaambia tukifika nyumbani, kwa vile sasa Sultan ameshalipwa, na itakuwa chini ya maongozi ya serikali ya Kenya, jambo hilo tutaliangalia. Mpaka leo na kesho, halijaangaliwa. Na nilizungumza wakati ule wazee walikuwa hapa, *(Clapping by the Honourable Delegates)* nikawaambia hiyo si haki; watu kutoka huku pande za bara wanapata Title Deed na hali wale walio Pwani hawana Title Deeds. *(Clapping by the Honourable Delegates)*. Ukweli na usemwe Bi. Chairperson. Ukweli usemwe. Na ni ukweli tu ndio utaokoa Kenya hii. Ujaja na mambo mengine hayataokoa Kenya.

### *Clapping by the Honourable Delegates*

Ukweli usemwe. *(Clapping by the Honourable Delegates)*. Na ukweli ni kwamba hawa watu wa Pwani, Mijikenda na wale wengine huko, mpaka leo ni squatters. Na hilo jambo liangaliwe.

Jambo lingine ni hili. Saa hii nimesikia wakati huu wote, kila mtu anatoa na hii ni area ambayo imenipa nafasi ya kusikia maoni ya kila mtu, wale walionyang'anywa, wale waliodhulumiwa, na mambo haya yote yaangaliwe. Jambo la ardhi sio mchezo. Tunataka tuliangalie sawa sawa na tutende haki hasa kwa wale walionyang'anywa na hawana mahali pa kukaa. Warudishiwe kama mahali hapo pako patupu, warudishiwe ardhi hiyo.

*Clapping by the Honourable Delegates*

Pia, saa hii kama kuna mtu anasema kwamba ile ardhi kwa mfano ile ya Kericho, ambayo iko na majani saa hii, wanataka warudishiwe hiyo, mimi ningependa kusema hivi, kweli ndio huu: hatuwezi tukakata yale majani yote tukaanza kuweka manyatta ya wale waliokuweco. Hapana, kwa sababu hicho ni kitu kinatuletea uchumi. Jambo linaweza kufanywa ni wale walionyang'anywa hiyo ardhi wawe wakipewa maendeleo kama kulipia watoto wao fees kutengeneza daraja, kutengeneza barabara, kutengeneza mambo ya maendeleo. Hatuwezi kung'oa chai hiyo na tuweke watu wetu wakae pale.

*Clapping by the Honourable Delegates*

Madam Chairperson, jambo lingine ambalo wengi wamesema juu yake ni hili la ardhi. Ninataka kumpongeza Bwana Okoth Ogendo, kwa sababu alitueleza kinaganaga mambo yaliyotendeka. Dhambi zingaliko, dhambi za watu kunyang'anywa, hata watu wengine wakauawa, ziko. Lakini, tuangalieni tunaweza kusahihisha hayo makosa namna gani. Na mimi ningependa kusema hivi, kuhusiana na ardhi. Jambo la mwisho ni hili. Ikiwa tutakatakata ardhi hii, na tukiendelea na ule mpango ya kuwa Shikuku ana watoto saba wanaume, tuwakatie na wao watazaa tisa wanaume, wawakatie, mwisho wake ardhi itajaa manyumba na maboma. Watu watakula nini katika nyumba hizo? Ni lazima tuwe careful.

*Clapping by the Honourable Delegates*

Tuwe careful. If we fragment the land, you are permanently going to remain poor and hungry na saa hii, Waamerika wamechoka kutusaidia. Mnaharibu ardhi yenu na mnategemea mtu mwingine kuwasaidia. Tangu lini Mwamerika akawa ndugu yako? Babu yako alikwambia ndugu yako alienda America na anakuja kukusaidia wewe? Yafaa tuchunge ardhi. Ardhi ambayo haitumiwi, ni lazima Serikali itoze yule mtu au watu ambao wanaweka ardhi kwa maridadi. Kwa sababu saa zingine huenda weekend na bionoculars anatengeneza: unaona yule sungura kule? Unaona yule Digi Digi? Waswara ndio wanaishi huko na hali wananchi wengine hawana hata ardhi. Na pia kuweco na Committee ya kuangalia ni wangapi wana acre ngapi na ni

wapi. Unaweza kupata mtu ana shamba Nyandarua, ana shamba huko Ndalua, ana shamba kule Nyahururu, kila mahali ana shamba, mtu mmoja. Hiyo ni lazima iangaliwe, kwa sababu tunataka kila mtu aweze kupata kitu kidogo. Sisi binadamu tunaongozeka, lakini ardhi haiongezeki. Kwa hivyo, tunataka tuzungumze jambo hili na wale ambao wanareport waandike shida hizi zote, tuje tutengeneze Committee nzuri na tuangalie tutasaidia watu wetu kwa namna gani, kwa sababu hawa watu hawatahama Kenya, wako hapa, and to think that they will evaporate, you are in dreamland. Thank you Madam Chairperson.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you, thank you. From the same row, I will recognize the district Delegate Number 361

**Hon: Delegate William Salaon Ole Yiaile:** Thank you very much Madam Chair. May God bless you, may you prosper and see your great, great, great grandchildren. Madam Chair, the question of Maasai land and other communities, My name is Ole Yiaile Delegate Number 361, District Delegate from Narok. The Maasai's main question is a very sad one, very sad in the sense that we did not only lose land but thousands and thousands of our people lost lives. They were massacred and the facts were hidden from the books buried from the books of history and all the records. This is because they knew and understood that our custom in Maasai when somebody dies, we even do not call that name again and therefore some people took advantage of that.

The first massacre occurred in 1890, just at the place now called Maai Mahiu or Kibong. Over two thousand people were massacred and only seven hundred were recorded.

In 1910, the Germans who used to control Tanzania in those days, massacred our people at Maasai Mara, where Maasai Mara is today and only sixty people were recorded while eight hundred died.

In 1913 the Community took their case to Court, we discovered that there was an enemy here who has come with a weapon that we could not resist through our normal spears, clubs and rungas, we were forced to sign an agreement to save our own children. We did not want to sign this agreement with these strangers because we wanted to, but we were forced to sign, because we wanted to survive.



Madam Chair, in 1946 there was this District Commissioner, Major Grant who was killed because he refused to take seven oxen in exchange of just one which the owner said that he could not part with. In the process, the District Commissioner was killed and two hundred people were massacred in cold blood yet not even one was recorded in history as having been killed. In the same year, we have those people who were coming from the Second World War, the soldiers who went to fight in the foreign colonial wars. Those are the people who came to talk about fighting the Europeans and we also contributed our sons into the Mau Mau with those people who said they were fighting for land, General Ole Kisio, General Ole Ngero and Welenga are very good examples. The same history was again hidden, because these days when people talk about the liberation struggle, the Maasais are not mentioned. We have never surrendered, we have never surrendered Madam Chair.

In 1963, we thought Independence was coming to give us a reprieve. We thought that now we are going to get Independent and therefore get part of the land that we had lost. When the whole thing came I thank god because Hon. Shikuku has just reminded us that the rights that we have been fighting for in the last one hundred years on land were never addressed by the 1963 Lancaster Constitution.

What is the problem then? Madam Chair, it has been said here and for any Kenyan who can see ahead the next struggle in this country is between those that who have and those who do not. Sometimes the truth is bitter, but it is also necessary to swallow the pill because it will cure you. Our request is this one, and I do agree with somebody who said that truth oppressed to the ground shall descend again and the no injustices can last forever. One day, we have hope that it will be addressed.

Our request here is, we have come to the National Constitutional Conference to request you to give us an handkerchief to wipe away our tears. We have come to this Nation of Kenya to request you to give us savlon to apply to this wound that has troubled and aching us all these years. How? It is very simple, all that we need is a Constitutional recognition of the fact that we really lost land and we contributed, probably more than any other community in this country.

What else? We want land especially in the Pastoralist areas to be communally owned, Communally owned because our lives are intertwined, no one can live away from the other and we need that issue of land to be so. We also need British Law pertaining to land to be scrapped out of our Constitution. Why? because we used to have, and every culture in this country has laws pertaining to its own land according to individual communities. Preserve those laws, let us put them in the books so that they can be applied.

We are requesting for (inaudible) on Maasai land sales. A very sad story is here, a mzee goes to the club, he is given beer and then he is paid to sign some documents. The following morning, two days or ten weeks later, somebody comes with a title deed. Mama hata hajui, liliuzwa lini, wanaambiwa tu, sasa nyinyi hameni shamba limekwenda. To protect those children, I am appealing even to all the mothers who have been talking about gender, I agree with you 100% that your names must be in the title deeds, so that whatever the husband does, you also get to know. So that we can be able protect those children and women.

Madam Chair, the ADC farms should actually be given to communities. This is because we want the new generation to also have a say on their ancestral land. The truth is, true peace is not merely the absence of tension, it is the presence of justice. The tension you see in Maasai land today and in any other areas is a necessary tension that comes when the oppressed rise up and move forward towards a permanent positive (inaudible) God bless you.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you. We now move to the next row, I would like to take someone from the other category and I recognize 473.

**Hon. Delegate:** Point of Order

**Hon. Delegate Nancy Kabeteka Lung'ahi:** If you let the lady speak, then I will give you, your Point of Order please. I will give you your Point of Order 255. Go ahead.

**Hon. Delegate Pamela Arwa Mboya:** Thank you, Madam Chair. I would like to take this opportunity to commend the Commissioners' Report and Draft Bill. Since we started this meeting it has all along addressed how we can go about addressing marginalization in this

country. I am Pamela Mboya Delegate number 473. Madam Chair, one area that does not come out very clearly or has not been discussed, is the area of urban land. Urbanization, Madam Chair is here with us to stay and in fact it is going to continue even when we have devolved. We will still have the Mombasas, Kisumu, Nakuru, Eldoret, they will be there Madam Chair. I am concerned that the majority of our people living in the urban areas do not have proper settlement. There are many slum areas and that this could be addressed by legislation, but I think we should mention it here Madam Chair. There are people who are earning one million and over shillings, but there are also people who are earning seven thousand and less yet they must find accommodation in the Urban areas where they are staying.

Nairobi for example has, I believe 60% of the population of Nairobi are living in slums and squatter settlements with very poor services. Madam Chair, I think we should address how to allocate and plan land for these areas because we are not just going to be seen only in our farms and how much we own, but how we live in those areas. If it has come out in the report, I have not particularly seen much about that. I want to mention also Madam Chair that, Kenya happens to host the United Nations Center for Human Settlement and I want to say that the Vancouver Declaration, talked at length about eviction, against evictions and I know that in the past we have had several evictions, some of them inhuman in our own country and that this is the kind of marginalization which we should be addressing. The Vancouver Declaration says that you cannot evict somebody out of their settlement even if it is a cardboard box, until you have an alternative for them. Madam Chair, I would like us there to look into this, whether it will come out clearly in the Draft Constitution, but I do know that it is a problem which we will have to live with.

I talked about marginalization Madam Chair, and I want to just mention that I am very, very happy to see the support that has come from our young men and women, but let me to say that if you want to eradicate poverty, then give land to women (*Clapping by Hon. Delegates*) Why do I say so ? I am saying so, Madam Chair because women till that land. Women work on that Land, if they do not have titles to that land they cannot go and borrow any money to work on it. A lot of our men are owning the title deeds and working in towns, while the poor women who actually till the land do not have the title deed as. As a result Madam Chair, what really happens

is that what we would have produced from farming is almost half of what the women produce now.

Madam Chair, marginalization of the aged, marginalization of the widows and orphans and marginalization of minorities is rampant. I know we have addressed this, but I still repeat that in the area of land, this marginalization is something that is going to affect many of us and I am so happy know and to listen to all the people who have talked about it

Madam Chair, with regard to Commissions, Land Commissions, I have nothing really against Land Commissions at the National level, but I would like to say that once again, it is at the regional level, the local level, that the issue of land comes at its most and I would like to see most of these Land Commissions at the regional level represented by women, at least 50%, I would like the women to be there, at least 50% of them. This is because they are again the people who really use that land. They would know how to work on it better if they owned it. There is a difference between owning and just working on it for the rest of the family.

Madam Chair, HIV Aids has left a lot of Orphans in the hands of the older people. A lot of the older people are having to look after Orphaned children but they do not own the land where they. I have a case in point, I work with HelpAge Kenya and recently we had a case where an old lady came to us and reported that her two sons, very strong able-bodied sons who work in the urban areas sold the land, they sold the land and took all the money. They left her with no land and she has nowhere to keep her grand children, the orphaned children. What kind of justice will this be? Madam Chair, I feel that as we go along discussing land, we must bear in mind the number of people who have been marginalized and especially the minorities.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you, thank you. The point of order 255?

**Hon. Delegate: Ahmed Maalim Omar:** Thank you. My names are Ahmed Maalim Omar from Wajir District. I am rising under regulation 32 (i) relating to matters of privilege. Madam Chairperson, with due respect, we have seen that this system of saying people who have not contributed is subject to abuse probably not by you, it could be probably by any other person. The last time for instance, I made contribution was on Legislature, but have seen people who

have contributed on the Executive, on the Devolution of powers, getting an opportunity to speak. So I would like to recommend that probably you ask, “Are there any persons who have not contributed?” And you take their numbers. Number two; the issue of land is very sensitive. For instance I have seen Wajir District is marginalized, I would like to recommend that at least for every district, a delegate must contribute. Because this will at the end of the day, go to the committee stage and we don’t want some districts contributing and some contributions not reaching the committee stage. Thank you.

**Hon. Delegate Nancy Kabeteka Lung’ahi:** I hear you Honourable Delegate, so we will do our best to try and make sure that we recognize that so when we come back, we will reconsider. On that note, if I have to look for somebody who has never spoken it is 266.

**Hon. Delegate Galgalo Adano Tuye:** Asante sana, Madam Chairperson. I would not like to say I have been marginalized, but probably I was mistaken as an observer. That is the reason why I think I did not have time to talk. Now the issue of the land; the injustice of the... My name is Galgalo Tuye, I am a District Delegate from Marsabit. My number is 266. Now the injustice and social vices about land did not actually end up in the highland areas. It has also gone down to the lowland areas, and has affected us also in the desert. I come from North Horr. And we have been affected in two ways.

One is in the name of conservation. The Gabra Community are actually are actually people who attach a lot of value to wildlife. In 1980 Sibiloi National Park was declared. Right now, that park has no animals. At that time it was rich in giraffes, rhinos and they have become extinct. The land is just, un inhabited by animals. Just because they could not explain where these animals have gone, it just still has the status of the national park. The communities in the first case have not been actually involved in decision making of that particular national park. The decision was made by few people regardless of what socio-economic impact it would have on the community. We are appealing; because this Conference is actually enlightening us on the recovery of our rights. These parks, I call upon the Conference on my behalf, and on the behalf of the entire community for the de-gazettment of Sibiloi National Park, because there are no animals there. What is there is only an archeological site called Koobi Fora.

The other one, I am referring to Article 232, sub article 2 (b) where they say security to all landowners, users and occupiers is guaranteed. Right now, in North Horr Division in an area called Tiri, that area is actually occupied by foreigners from Ethiopia. The community could not get access to that area because they are being killed all the time. They have never actually negotiated with us in terms of resources sharing. They use the power, the guns. They have turned our lives into hell and reign of terror. They have killed many of our people, and the guards are there. They taken much of our property, we have no future, our lives are in despair. So I am making an appeal that Kenyan security forces should be awakened, that we should not allow foreigners to occupy our land, use our resources in terms of pastures and water, at gun point. So we could not agree to such a thing, and I am putting across an appeal to all of you to embark on removing such foreigners from or area.

Again there are other Delegates who said that they would not agree for others to go and buy land in other districts. We do not actually like to confine ourselves to the area of our locality. You know hyenas are said to be very territorial. For example, if one hyena lives here and another one lives there and A goes to B, and lets say A has food there, those in B will come and fight him and kill him. We should not agree to this greed of hyenas. Kenyans should go and have land everywhere within the country, build, have shambas and prosper. With those few remarks, thank you so much Madam Chair.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you so much Honourable Delegate. I will now move to the next row, and I would like a Member of Parliament who has never spoken. 141.

**Hon. Delegate Reuben Owino Meshack Nyanginja Ndolo:** Thank you very much, Madam Chair. My names are Reuben Owino Meshack Nyanginja Wuod Ndolo the MP for Makadara. Madam Chair I think I would like to go the way of my tutor Mr. Martin Shikuku, I would like to speak in Kiswahili. Mama Mwenyekiti, ninakushukuru sana, na Mungu akubariki.

Ardhi imekuwa ni kitu kibaya sana katika nchi yetu ya Kenya. Vita vyote katika Africa, na hata nchi yetu ya Kenya vimetokana na ardhi. Hilo kila mtu lazima anafahamu. Nakumbuka ukoo wangu ulitoka sehemu ya Uyoma, ukakuja kutafuta kazi katika area ya Nairobi, in the early

1940s. Wakaenda wakakaa area ya Juja, kama watu wa kufanya kazi katika shamba la makonge. Wakapewa ardhi. Huyo mzee alikuwa anaitwa Nyanginja woud Ndolo. Akapewa ardhi pamoja na ndugu yake aliyeitwa Peter Oronge. Lakini hio ardhi baada ya uhuru 1961, wakafukuzwa na ile serikali ilikuwa imechukua uhuru. Serikali ile ilichukua uhuru wakawatoa katika area ya Juja wakapeleka hadi mtaa wa Mbotela, na wakachukua hio ardhi kutoka Kasarani, mpaka area ya Juja. Kwa hivyo nikisema hivyo, nina maana ya kusema kwamba, Mkenya amekuwa mtumwa katika nchi yake.

Mama Mwenyekiti, nikirudi nyuma, wakati nilikuwa kijana, nilikuwa nikisoma sana vitabu vya hayati, yeye bado ni shujaa kwangu-hayati Jaramogi Oginga Odinga. Katika kimoja cha kitabu chake, alisema, “you need to survive that political heat/emperature.” Bwana Oginga Odinga alizungumza mambo ya land grabbing. Kesho yake akiwa Mombasa na hayati Robert Ouko, akafutwa kazi. Hiyo ni kusema mwananchi wa Kenya amekuwa mtumwa katika nchi yake, na mpaka leo katika area ya Nyanza, watu hawajalima pamba. Bibi Mwenyekiti, nikisema hivyo, nina maana ya kusema kwamba mambo ya ardhi yamechukuliwa na watu wachache, watu ambao hawana huruma. Nikisema hivyo nina maana ya kusema kwamba, ninasikitikia watu wa Coast, kwa sababu wakati watu wetu wamepewa hizo nyumba--

Mtoto ya Shangazi yangu Peter Oronga akaenda Mombasa, mzee wangu akafuata yeye Mombasa, tukaona ajabu sana kifika Coast. Kutoka Taita Taveta uende mpaka eneyo ya Wabarawa, watu hawa hawana title deeds na nchi ni yao. Na watu ambao wamechukua hiyo ardhi, ni Wakenya wengine ambao hawana huruma ya ubinadamu kwa sababu ya greediness ambao ni uchoyo mbaya sana. Mama mwenyekiti, ukiona kwamba tukirudi nyuma tutaenda haraka sana Mama. Ukirudi pahali mimi nawakilisha sasa, Makadara, namshukuru sana Mkangu alisema 57% ya GDP ya Kenya inatoka Nairobi, lakini 42% ya GDP inatoka kwa Constituency yangu. Na hii ni kusema hapo utakuta viwanda na wananchi wa Makadara mpaka sasa katika hizo viwanda, wananchi ambao wana pesa, wao ndio wamechukua ma title deeds na tukisema kwamba wananchi ambao wako pale wa kawaida hawana hata nyumba, nadhani hata Wakenya wote wanafahamu. Mimi nawakilisha area ambayo wananchi wote ni squatters, watu ambao wanakaa kwa slums na hao watu ambao wanasema hiyo ardhi ni yao, wanalipisha watu hizo nyumba bei ambayo ni kusema, wanaibia watu. Thank you very much God bless you.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Asante sana. Thank you very. With your permission, I would also like to recognize another member who has never spoken, 130.

**Hon. Delegate Chirau Ali Mukwere:** Thank you very much Madam Chairperson. My name is Chirao Ali Mukwere Member of Parliament Matuga Constituency, Coast Province, Kwale District. I stand here to speak strongly on behalf of the people who live South of the Ferry. The people of Kwale District particularly the Digos, a community to which I belong, have probably been the most marginalized, most mistreated, most robbed, most insulted, and most forgotten on the question of land in this country. I will take his point of order with your permission Madam Chair.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Who has a point of order? 436.

**Hon. Delegate Francis Ng'ang'a:** Madam Chair, where we are sitting, we are wondering you have given two Members of Parliament an opportunity to speak when Trade Unions who represent the workers in this country, the workers we are talking about, are not being given an opportunity.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you Honourable Delegates. Probably you were not here this morning I did touch on the Trade Unions, I will give you a chance to speak but they had a chance in the morning. There is no category which has not been able to speak. So, if you please allow the Honourable Delegate to continue, and we are going to give you a chance. Thank you.

**Hon. Delegate Chirau Ali Mukwere:** I would like to elaborate further Madam Chair by taking Kwale District as a case study on the problems of issues of land in our country. I will probably make some sentences which may sound a little bit threatening, but that is the truth that is prevailing on the ground.

The people of Kwale District particularly the Digos, do not sell their land. In 1963 soon after independence, a decision was made to institute land adjudication in Kwale District and the government of the day identified only Digo land, the most fertile bits South of the Ferry. They went ahead and adjudicated our land, and this is a correction to my friends who say that Coastal



people do not have title deeds. Yes they do in Kwale District, only the Digos. But you know what happened, soon after getting their title deeds, people from up-country mainly within the government, went ahead and tried to convince them to sell their land. But the Digos do not sell their land traditionally and that also appears in the 1932 Carter Commission. We do not sell our land. It is clearly documented, we mortgage our land and we pay back exactly what you paid irrespective of the development. They did not respect our culture, they did not respect our traditions and what they did is they went ahead and got signatures from the old folks who never went to school and now they are telling us, they bought land very cheaply at a throw away price, of probably ten shillings per acre. That is the money the old people wanted at that time and we are telling you, the Digos of Kwale District whom I represent, have told me to come and tell you, they will pay back exactly that amount, because the land was sold-- (*Clapping from Honourable Delegates*) --on a willing buyer, willing seller process but the willing seller had a different basis of understanding before the sale and the willing buyer had another motive.

I would like to mention here to make further progress Madam chairperson, that in 1963, and Honourable Shikuku would probably correct me, when we negotiated our independence constitution at the Lancaster House Conference, later on there were funds availed by the Colonial Government, to buy off land in the so-called White Highlands and that land was given back to the indigenous people. With the robbery of Digo land, we would like to tell this government that our land was stolen by the previous regimes and we would like the government to buy off that land again and give it back to the indigenous people, the way it was done in 1963.

*Clapping from Honourable Delegates*

Madam chairperson, we also have problems with government officers that is why we support the question of Land Commissions at the district level. We have had problems with authority to allocate land. Our people are fishermen over and above being people who till the land, there was authority given to the President of the land to allocate land, and what happened is all dished land in Kwale District that is South of the Ferry, was allocated to the politically correct people and some tribesmen and at this minute as I talk, our people cannot do fishing because they have no access to the Ocean any more and that land was allocated by the senior-most authority on the land.

Madam chairperson, the question of Settlement Schemes is unacceptable to us and I am taking Kwale as a case study, maybe further observations could be made when we proceed with the process of creating a new constitution for Kenya. May be the Settlement Scheme that we recognize in Kwale is the Shimba Hills Settlement Scheme, that was done in a more judicious manner, in fact before independence. But all other Settlement Schemes that were created thereafter, were Schemes where land was given to Secretaries in Nairobi, in the Office of the Commissioner of Lands by the District Government Officers in the Districts, who were just agents of operation, agents of the robbers and they created marginalization and poverty that is unheard of.

Madam chairperson we would like to make it very, very clear that land is a potential matter, the Digos have been locked out of their land and you have locked us out, we are even shivering. But let me remind Kenya and I am not threatening, that even the Kaya Bombo Clashes which were instigated from elsewhere, took the question of land as the main basis of the fight and I am telling you we learned from last experiences that when the Digos shiver, the rest of the Kenya catches pneumonia.

*Clapping and applause from the Honourable Delegates.*

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you very much.

**Hon. Delegate Chirau Ali Mukwere:** Madam chairperson, I am a very bitter man on the question of land, in fact I have hardly talked one hundredth of what I wanted to say, but just register my presence and the views of Kwale people. I thank you.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you very much Honourable Delegate. I now move to the next row, I recognize 319 who has never spoken.

**Hon. Delegate James Kinuthia Mwangi:** Thank you very much Madam chair. I am James Kinuthia Mwangi, a Delegate from Kiambu District number 319. Coming to Chapter 11, which deals with the land issue, I have this to say.

I am happy with the Review Commission, for having come up with a good land policy framework as in Article 232. However, just like what was pointed out yesterday by Honourable Delegates, the issue of landlessness has not been well addressed in the Draft Bill, yet the concern was widely expressed in many constitutional forums. Chairlady, ni vibaya sana kwa watu wetu wale ambao wako huko nyumbani na wanatarajia, na wanajua vizuri kuna wakilishi wao hapa Bomas of Kenya ambao wanaongea mambo muhimu sana. Na kama siku ya leo, wanaongea mambo inaohusu ardhi, kwa hivyo inaweza kuwa vibaya sana, hii Conference ikimalizika bila kutatua taabu ambazo hao watu wanangojea kwa hamu. Tumezoea kuambiwa, na hapa nawaambia kweli, ati adui moja wa nchi yetu hapa Kenya ni kutosoma, umaskini, na magonjwa. Lakini mimi naweza nikasema, adui ile moja kubwa sana na nyinyi nyote munaweza mukaniunga mukono, ni ubinafsi, ubinafsi ndiyo umemaliza watu wetu. Na hapa watu wanasema ebu tuangalia mambo haya kwa makini sana kwa sababu kuna watu wanaweza kufikiria, yaani ubinafsi unapatikana kwa kabila Fulani, huu ni uongo, uongo mtupu.

Tukienda kwa Maasai, hata huko tutaona kuna watu ambao wana ubinafsi, na wamenyanyasa watu wao. Tukienda hata kwa wale ambao wanasema ni marginalized, huko Lodwar, hata wapi kuna watu ambao wamekuwa kama Mungu, hawa wanaabudiwa kama Mungu kwa sababu ya mali ile wako nayo.

### *Clapping from the Honourable Delegates*

Vile vile, kuna watu wanaweza wakafikiria pengine kama huku Kiambu, Central Province, watu wanaweza kufikiria watu huko wametoshaka tu, wako na mashamba. Ebu niwaambieni ukweli mtupu, mnaweza mkashangaa sana mukienda Kiambu, mtakuta watu wale ambao mnaweza hata kuwaonea huruma, wako Kiambu, maskini, maskini ya mwisho, ya Mungu. (*Clapping from Honourable Delegates*) Hao watu wako na umaskini hata sijui vile mtu anaweza kusema. Kama mimi wakati nilikuwa Councillor, nilikuwa katika Wadi inaitwa Anima, na Anima Ward iko katikati ya mashamba, mashamba makubwa. Na hayo mashamba makubwa, pia ni ya watu wachache sana, unaona mtu mmoja anasimamia maskini karibu milioni moja. Amewaandika wamekuwa kama watumwa. Hawa watu hata hawana makao ya kukaa.

### *Clapping by Honourable Delegates*

Usiku na mchana wana wasiwasi kwa sababu wanaweza wakafukuzwa wakati wowote. Wakikosa kwenda kazi, ni shida. Hawa watu ni Wakikuyu, lakini wale hata wanawafanya hivyo ni Wakikuyu. Sasa hiyo ni taabu moja tunatakiwa tuingalie vizuri sana, kwa sababu kweli kuna haki, mtu mmoja awe na mali ile inaweza ikagawiwa mamilioni ya watu! Kwanza tuangalie hiyo, kwa sababu tusipoangalia mambo kama haya, sijui vile tunaongea, lazima tujaribu kungalia mambo haya. Na wakati kama huu sasa tunasema, tunataka, tunatajaria hii devolution of power iende huko kwa villages, ni wakati mzuri wa kuangalia mambo kama haya. Kwa sababu watu wale wako huko, wanajuana wao wenyewe. Wanajua hawa masquatters ni akina nani. Ni nani wanafanya hawa watu ma-squatters.

Sasa vile mimi nilitaka kupendekeza, ni hivi, hao watu ambao wamewaajiri watu hao kutoka zamani na mpaka sasa wanawaajiri, waliajiri wazazi wao na watoto wanakuja, wengine wamekufa na wengine wanaendelea kuajiriwa. Tunataka kusema watu kama hao, mashamba hayo makubwa, makubwa ndiyo the solution to these squatters, hao watu wawe wanakaa huko. Wapatiwe mahali ya kukaa, tusingie ati kuna watu kama hao wanakosa mahali pa kukaa, na mimi sisemi tu ati ni huko tu, mashambani ya kahawa kwa sababu ndiyo iko Kiambu sana. Hata mashamba ya majani kuna watu kama hao, mashamba ya sisals kuna watu kama hao, mashamba ya pineapples kuna watu kama hao. Mahali popote kuna mashamba haya makubwa, tuseme na tuamue na tuseme kabisa, ati hatuwezi tukaruhusu, tuwe tunaangalia watu wengine waonekana kama ndiyo citizens kuliko wale wengine. Watu wote ni lazima wawe sawa, na huu ndio wakati, na wakati umefika tuseme hapana hatutangojea tena. Hata mtu anashindwa, kweli ni faida gani mtu anaweza kupata akiwa citizen? Kwa sababu mimi nikitoka hapa nikiwa sina kitu niende Uganda, nitaona kama vile tu naona nikiwa hapa, kwa sababu hata hapa sina kitu na huko tena hata naweza nikakaa hata pengine vizuri zaidi kuliko vile naweza nikakaa hapa kwetu. Hiyo mambo inatakiwa isikataliwe kabisa, na tujaribu sisi zote popote tuko tujaribu kupigana na ubinafsi, ule ambao umemaliza watu wetu na unaendelea kuwamaliza. Asanteni sana.

*Clapping from the Honourable Delegates.*

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Asante sana. From the same row, 116.

**Hon. Delegate Mungatana Danson Buya:** Thank you Madam Chair, I just wanted to make two points and then sit down. My name is Mungatana the MP for Garsen and Tana River district. I am Delegate number 116. Madam Chair, we have heard so much about different tribes being mentioned here. We have heard a lot about the Maasai, we have heard a lot about those who are supposed to have deprived others, but there is another tribe that we have not heard about and this is the tribe of the Kenyans like me. My mother is a Taita, my father is a Pokomo technically my tribe should be Pokotaita but unfortunately I got married to a lady from another ethnic community called the Kikuyu who right now a lot of people do not think are very good.

*(Laughter from Honourable Delegates).*

Now I have a daughter, a very beautiful daughter I assure you and now I think my daughter's tribe will be Pokokiki and I choose to call that tribe the tribe of Kenyans. In this Conference we have failed to address that tribe of Kenyans and we are talking about history and continuing in history and I warn you people. We are not making this Constitution for ourselves, we are making it for the generation that will be there 50 years from today, and many of you sitting here will not be there, and I think I will be there. *(Laughter by the Honourable Delegates).* I want to tell you on a very serious note that if you do not reflect the interest of the tribe of Kenyans, we shall come back to Bomas of Kenya, I shall lead that delegation here and we shall change the Constitution again.*(Clapping by the Honourable Delegates).*

This is why I want to make very serious suggestions to this Constitutional Conference. First and foremost I want to make a passionate appeal, stop talking about tribes because this is not in the future and I will tell you something else. In Garsen Constituency which I represent the Orma, the Pokomo' the Luo and all other people whom I represent in that place, because of this thing called tribe, people were killed and people paid with their blood. I want to make a passionate appeal again to the Delegates don't talk about tribes, don't talk about tribes because this is not our Kenya for now. Let us talk about the Constitution in 50 years.

I would like to make a small observation. There is Section 234, sub-section (3). In this Section ladies and gentleman, Honourable Delegates it talks about community land. As far as Kenyans

are concerned when you talk about Community Land, if you come to the Maasai area they withhold, it will only be available to the Maasai. If you go to Kiambu they will hold it, it will only be available to the Kikuyu who are living there. The same to Turkana, and this is how Kenyans are going to interpret community land.

Ladies and Gentleman, I want to appeal to you that we drop this concept of Community Land. Let us talk about County Councils and things that are recognized, we can create as many as we want but let us not talk about Community Land because then we are balkanizing Kenya. We will not have achieved the aim of putting this country together, we will not have achieved the aim of Constitution making: which is to make this country one nation and one people where the tribe of Kenyans will be able to live in this nation in peace in 50 years to come. I urge you we drop this thing of the community. In fact I will drop the second point I want to emphasize on this point.

I want to say again that there are people who get educated, they come from home the father sells the cattle or he sells the land to make sure that you go to school. You come to school, you come to Nairobi where you get a job and then you run a small business just enough to sustain yourself and your family. When you go to the village they say that you are rich but what is your richness? It is the plot of land you have mortgaged, the land that you are buying a house where you are mortgaging. When you go to the village they do not recognize you as one of them, they look at you as a person from Nairobi so, which Communities will these people belong to? I want to ask you people to think about this and think about it carefully.

I think since I still have time I will do one more point. Section 235, provides for the historical reparation for communities that have been deprived. Here unfortunately the views I have heard so far people are talking about the colonialists and other people, a lot of history. But I want to talk about after independence, in our district in Tana River District, it's the Government which has been the great oppressor of the people of Tana River, it is not anybody else. If you look at this land the Government through the agent of KWS have taken half the Tana River District. If you look at this other side of the ADC farm, they have taken the other side. If you look at the Beach Plots we have no people from Tana River who are getting allocated those lands. So where are the people of Tana River are supposed to be? We are technically squatters in our own land. So I am asking the Government and the County Councils to remove these agents and let the

Country Councils to decide the future for the people of Tana River, na wagawanye hiyo mali kwa watu wa Tana River, and not any other way. Thank you.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you very much Honourable Delegate. I would also like to recognise, on the same row, a person who has never spoken before 057.

**Hon. Delegate Kihara Njeri Jayne:** Thank you Honourable Chair. My name is Jayne Kihara, MP-elect, Naivasha Constituency. (*Clapping from the Honourable Delegates*). Thank you for giving me this chance to talk about this land issue, which is as important as it is sensitive, where we have seen a brother kill a brother, a wife kill a husband, a husband kill a wife and so on. My observation would be that we come up with a Constitution that should provide the Government with power to compulsorily acquire private land illegally acquired and distribute it to the landless. Every Kenyan must own a piece of land. Its unfortunate that we have people who call themselves Kenyans, who have been with us and only thing that they can show as Kenyans is their Identity Card. It is important that Kenyans own land anywhere in the country.

In Nairobi for example, we have people living in slums and they do not have any other home. They were born and bred there, they is nowhere else they can go and they are not even allowed to own that piece of land they are sitting on. We have seen slums go up in flames and before the fire is investigated we have seen fences come up, because those are lands which have been grabbed by people who own everything and do not care about those who have been sitting there all along and they do not have another home.

Madam Chair, we should come up with a Constitution which provides a policy where if one buys a piece of land, they should prove ownership 3 generations down the line. I say this because we have seen land which has been grabbed only to be sold to an innocent buyer who will not be able to acquire that land because it has changed hands three, four times and getting to make it your land because you have worked and paid money for it becomes a nightmare. The Government should take care of that.

Madam Chair, the Government should protect title deeds and properties. We have seen double title deeds for one property. Again this is a problem that makes people kill each other because

you have paid for land and I have paid for it and the one who sold has taken double money and we have got title deeds and we cannot share that plot. Thank you very much I hope I will be able to contribute again.

**Hon Delegate. Nancy Kabeteka Lung'ahi:** Most certainly. Thank you very much. We move to the next row I recognise 380.

**Hon. Delegate Charles Lwanga Lwole:** Thank you Hon. Chairperson, my name is Charles Lwanga Delegate No. 380. I want to talk about land as follows:

- Land and Population
- Land and Research
- Land and Industrialization
- Land and baking the National cake.

The concept that 80% of the Kenya's population can live on land of 17.2% is a wrong one because that leads to fragmentation of that land. When you fragment land, as it has already been said before, that means that the people that occupy land are usually poor. Hence they cannot educate their children properly resulting to incompetent labour coming from people who are poorly educated. We must begin to solve this problem by practising what other people have done, like the principle of (inaudible) which says that one child will inherit all the property. That process has to think about urbanization. Shall we urbanize so that we build up houses and things like that, where other people can simply live in urban areas and have other forms of occupation.

We also have to think about our family planning methods. I think the sort of family planning we have is permissive because it says you can have as many children as you like, simply because you can take care of them. May be we should start beginning to say that we can only have two or three because we can afford to take care of those, as times are changing and we are going with the rest of the world.



I also think that we should have a clear National land policy which will encompass these factors that I am talking about. So that in the National land policy it will be talking about a National Land Commission which can be devolved to the particular areas that people have set aside as regions to be a holder of the public land for the present and the future, that should be what we will be looking at. That land policy must be reviewed at the specific times, like every twenty years, so that we are in tandem with the current times.

Land and Research: Agriculture apparently appears to be our main issue, but the way we are funding research institutions in this country, very poorly, we are not even giving 1% of the funds of our national budget to research. If we are not going to research in this country, either scientific research, historical or whatever, you are finished. This is because the rest of the world survives by research. The rest of the world is going towards knowledge research, while we are very busy here talking about land, and farming and whatever. Nobody is surviving on farming any more, so if we want to go the same way other countries have gone, we must focus on research. Our research must clearly support agriculture so that we can be producing food properly. I do not know why we can build a pipeline to pump oil all the way to Eldoret, to go into Uganda yet we cannot build one from Lake Victoria to Machakos to irrigate that area. We have got a problem we have got to start thinking about. *(Clapping by Hon. Delegates).*

Next, I want to talk about land and industrialization. The way we have located our industries is so squeezed that I do not know whether there was no sufficient land so that Industries are in Nairobi and Thika. Can't Industries be in Garissa so that... I mean if we have an Industry in Garissa, that Industry may begin to serve Somalia, if another one is in Busia it may begin to serve areas like Uganda. When you look at the way our Industries are operating, if you are producing Coca-Cola here, Uganda is producing Cola-Cola too, you cannot sell it there. We are producing mattresses, they are producing mattresses. We should start producing other things like bicycles, motor engines, so that we are a step ahead of the countries surrounding us. Otherwise, if we are producing bread to sell to Uganda, we are not going to survive.

I also want to talk about let me just finish one point. We are all talking about having districts, but we are not thinking about how we are going to provide for those districts, I am talking about baking the National Cake. We must begin to think about how we utilize that land. We are

currently, importing tomatoes, onions, pineapples from Tanzania while this land we are busy talking about is lying idle. We better change that policy very quickly. Thank you very much.  
*(Clapping by Hon. Delegates)*

**Hon. Delegate Nancy Kabeteka Lung'ahu:** 231 –

**Hon. Delegate Kitambi Mwalimu Digore:** Thank you, Madam Chair. My name is Mwalimu Digore, from Kwale District, South Coast. I may have had a lot to talk about since my Member of Parliament has just contributed, I will only say what he left out. This is because I want to save your time.

Madam Chair, so much has been said here about colonization and the effect it has had on us. But having listened to the Hon. Delegates, I want to add a little to what they have not experienced elsewhere, which we have experienced at the Coast. The Coast or the Coastal strip was colonized by the Portuguese, hundreds and hundreds of years ago. After the Portuguese, came the Arabs, and we were colonized by the Arabs under the Sultanate of Zanzibar. Then after the Sultan, came the British and that is where we are at par with you. After the British, came the Kenyatta regime and after that the Moi Government.

Madam Chair, all these regimes that I have categorized here, five of them have contribute, and abused and insulted our people on matters of land. None of them is different from the other. The Portuguese took the land, allocated it the way they wanted and whatever they did at that time, was legal according to them. Since they were reigning. The Arabs took our land gave it to whoever they wanted and it was legal at that time according to them. The British took our land, they re-distributed it to whoever they wanted and that was legal according to them that time. Kenyatta took the land, he even took a very big chunk of Taita Taveta District, two thirds of the District and that was legal according to him. It was legal because he was the head of state and we had a legal system, so it was legal. He legally acquired two thirds of Taita Taveta district. We all know what happened during Moi the era. All the Beach Land which is equivalent to the Coffee that is in Central Province and the Tea that is in Rift Valley. That is our resource, that is where our economic strength would have been, but we have been impoverished because that land was taken, we have been marginalized and we are now very people. The Digo people, because

everything that would have given those riches that our brothers and sisters enjoy elsewhere was taken away from us.

Now, I want to pause a question, before this Honourable Conference, this term we call legal, this term we call lawful, what is legal and what is lawful? To me I think question of the land is beyond law. It is bigger than law. The question of land is one of politics. It is not law, because if you say legal, then we are referring to a legal system of that era, of that time and all these reigns that I have counted here, all these five everything they did was legal. Therefore, there is no question of legality or illegality or lawful and unlawful. We are saying that on matters of land, we have got to go back to the history and establish exactly what happened and how that land was acquired.

Madam Chair, I was only just beginning--

**Hon. Delegate Nancy Kabeteka Lung'ahi:** I am sorry your time is up Hon. Delegate, please next time you will have another opportunity to contribute.

**Hon. Delegate Kitambi Mwalimu Digore:** Thank you, Madam Chair.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you. I would like to move to the special interest group and I would like to start with the category that has only two representatives these Judges of ours and I am wondering whether we have any of them that would like to contribute. Number 620? If they are not there, they had asked to say something, if they are not there, then I think we will move to the next row. Sorry, before we come back, let us give number 320 an opportunity.

**Hon. Delegate Kiriro Wa Ngugi:** Thank you, Madam Chair. My name is Kiriro wa Ngugi, Delegate from Kiambu. I rise to speak *(Noise by Hon Delegates)*

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Alright, if you all speak I will not be able to know what you are saying, so can we have one person speaking. Who has a Point of Order? 419

**Hon. Delegate Onyango Philip Romanus:** Madam Chair. Thank you very much. I am raising a Point of Order in connection with the next speaker, the one you have just called . My name is Philip Onyango Delegate 419 from Suba. The previous speaker was from Kiambu, this one is also from Kiambu. I come from Suba, the three of us have not spoken, please that should be taken into account. Thank you.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you, I hear you Sir, I will give you that opportunity. Hon. Delegate, I will give you a chance the next time so that we can have some order, I will move to the next row.

**An Hon. Delegate:** Madam, with respect.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** There are several people from your region who wanted to speak, I recognize that but I have not seen them that is why..

**Hon. Delegate Kiriro Wa Ngugi:** I am beginning to feel marginalized, Point of Order. I am from Kiambu and I am beginning to feel you marginalized. The fact that somebody else has spoken of--

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Hon. Delegates, I think what the Hon. Delegate is trying to raise is that he has a right to speak but Hon. Delegate, you have had other opportunities to speak several times, and I think that is why they are raising on a Point of Order, so 503

**Hon. Delegate Kiriro Wa Ngugi:** Madam Chair, part of the reason I wanted to speak is that the under current going on now the peasants of Kiambu who sent me here are feeling marginalized. They are not the ones who have taken land from any one and I stand here to speak on their behalf.

**An Hon. Delegate:** Point of Order

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Okay, just hold on. Hon Delegates can we have some order. We are also considering that all the Delegates speak to represent various areas.

They are people who have spoken, three people from the same district. Please do not shout, you will not help the situation. Do not heckle, Rachuonyo has not spoken, Suba has not spoken, Migori has not spoken, I know there are people who have not spoken, but—

*Noise and shouting by Hon. Delegates.*

**Hon. Delegate Nancy Kabeteka Lung'ahi:** We will give all of you a chance. We will give all of you a chance, if the Point of Order is on that Hon. Delegate, then we will give you a chance.

*Shouting and noise by the Hon. Delegates*

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Order Honourable Delegates. We were going to give a chance to somebody on that row and if there was a dispute over that particular Delegate, then we give 543. Please give him an opportunity to air his views. Thank you. I will come back to this row now.

**Hon. Delegate Raval Shashikant:** Thank you Madam Chairlady. My name is Shashikant Raval, Delegate number 543 representing the religious community. It is sad, it is heart breaking what we have heard since this morning, the feeling of the people who have been robbed of their land, their rights and talking about the displaced people and people in slums. I will not take more time, I don't want to repeat what has been said, but it is something which is at the heart of most of the people. I fully support that the Commission that we are talking about should have the involvement of the woman. You have heard their plight. They till the land but they get nothing in return. At the same time I propose and I don't want to be offensive, that even His Excellency the President or whoever the President is of this country, cannot give land freely at his will to the people that he wants to.

*(Clapping by Hon. Delegates)*

Madam Chairlady, I also support the feelings of my brothers and sisters or Honourable Delegates that we should also look into the question of giving land to non-citizens. The criteria, the number of years of the lease should best be worked out but we do not want and somebody has already explained that under the dual national citizenship, people will take advantage of this. I

urge Honourable members, my brothers and sisters to contribute more because this is one Chapter in our Constitution which is at the heart of the people. Thank you Madam Chairlady.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you very much Honourable Delegate. I now move to this row. 334.

**Hon. Delegate Moses Kiplangat Keter:** Thank you very much Madam Chairlady. I will go straight to the point and one thing I want to say is that first of all we have to be very careful that we form a Constitution that can make the tribes exist together. One thing which we have to--

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Your name please.

**Hon. Delegate Moses Kiplangat Keter:** I am called Moses Keter, Delegate number 334 from Uasin Gishu District and nobody has talked from Uasin Gishu on land. First of all I think we cannot have a Constitution or a policy on land without our history. It is very important we know where we come from, how people were displaced, the injustices we have had in relation to land and what we should do to correct them at this Constitutional Conference and make sure that our future generations don't have the problems that we have had. If we try to ignore the tribes we have or to ignore our differences and look for ways of being together, we shall do something very bad and we will get more problems.

I come from Uasin Gishu, but originally I came from Nandi. We have a big problem as Nandi's and as Honourable Shikuku said Nandi's did not sign the 1963 agreement because it did not help us. We have a bigger problem now, which is not the making of the colonialists, it is the making of the previous government. In Nandi hills we have the tea estates. There was an agreement that after a certain number of years the estates would revert back to the indigenous people. Those leases have expired and our own people have taken over those leases and extended them, instead of that land reverting back to the Nandis. These are things we have to refuse so hard because of the past regimes who themselves were people who were in government who have taken over. You would see an estate, Nandi Tea Kapchorwa. It is no longer multi-national, it is a Kenyan despite the agreement that we had with the colonialists that after the expiry of a certain time, it will come back to the indigenous people.

We also have a problem in Uasin Gishu. If you read history one or two years ago, we had the East African Understanding Extract Farms (EATEC) which were being sold. These lands had an agreement that at the expiry of the term it would revert back to the Nandis of that area. It was sold to other people and we feel hurt because we did not have that chance to express ourselves and see those lands which were rightfully ours being given back to us. Other people come in, they said that they are selling, they are doing what, we don't understand and we feel there is an injustice which we feel this Constitution should be able to correct.

One thing which we see is that, if we are not careful to address these injustices we might end up with a problem which we had in 1992. May be that problem was created politically but it was boiling underground. When the white people took over our land we felt hurt. When they moved away and a different person came to take over that land, it was more hurting. May be it was ceremonial land where our people used to do their ceremonies and we felt we should have it back to do what it was used for. I believe in the formation of the Truth and Reconciliation Committee and this Truth and Reconciliation Committee should actually be there to reconcile me and make me accept to live with my neighbour from Kiambu and to reconcile that man from Kiambu to make him know how to come and live with me in Nandi land. We don't want to chase anybody away but we have to reconcile and understand each other so that I don't feel that he is being imposed on me but that he is coming as a brother whom we have agreed together to stay together. That is the only way we can get rid of these problems of land clashes. Let us not take land clashes lightly and let us make a Constitution which will make sure there will be no more land clashes in Kenya. Let us not forget our tribal differences and let us not forget how we exist. I drink milk, this man eats "*irio*" let him teach me how to eat "*irio*" and I will teach him how to drink milk if we have to live together. However, if he comes there and he wants to teach me how to eat "*irio*" and he is not interested in my milk, we will not exist together.

Another thing I wanted to talk about is that we have heard a lot about women. We are not against the women and I will be very happy the day I will see a woman buying land, marry my son, and register that land in my son's name and her name. It will be a happy day but not the other way round only. I am a bit sad by the fact that we are concentrating on inheritance by women. Even women of substance who are in a position to buy land, but they have the right to

acquire land but they still want this man to go back to that little land he inherited from his great grand father and share it and share it. Okay for those who are at home there who cannot acquire land, let us expand our thoughts. Let us not concentrate on just inheriting these small thing here. If I heard Mheshimiwa Cecily Mbarire right, she is a Member of Parliament and for God's sake she can acquire land anywhere and leave those few boys there to share the little the father had. Let us not confine ourselves to just coming back.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you

**Hon. Delegate Moses Kiplangat Keter:** I did not know I had taken so long. Okay, thank you.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Your time is up. I would like to recognize on the same the row somebody who has never spoken, 041. If you allow the Honourable Delegate to air his views I will come back to you and I will give you your point of order. 252 I see you, I will come back to you. 252 I have seen you I will give you the point of order.

**Hon. Delegate Karaba Daniel:** Please give him after I have spoken.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Yes.

**Hon. Delegate Karaba Daniel:** Thank you. Madam Chairlady, I am very grateful that you have given me this chance. One thing I would like to address this gathering is that we seem to be dwelling on--

**Hon. Delegate Karaba Daniel:** My names are Daniel Karaba, MP Kerugoya-Kutus in Kirinyanga. For those people who might be interested, it is in the Mt. Kenya slopes.

It is important to note that land issue in this country is very sensitive and as we talk here, we might even fuel more problems than we might think of solving them. I am very interested in the way history has evolved since the time of Sultan and the time of ten miles coastal strip, the invasion of Arabs and Portuguese and the like plus also the white settlement on the white highlands. I agree entirely that history had it's part that time but we should also live to be



corrected by history as we correct ourselves now. If there was a mistake done those days by whoever did the mistake those are the colonialists we should call it a colonial policy and a colonial mistake. Let us correct the impression now and that is why we are seated and gathered here.

I agree that most of us were not born then and we are now going to make a Constitution which is going to live forever may be ten, fifty, hundred years as my friend from Tana River says. Let us believe that as Kenyans we have a right to live in this country and as many people have said, we have the right to stay and live and occupy this country called Kenya, but the moment we start talking about tribal affiliations that unless you are from this tribe, you cannot live this way, then we are going to live in a lot of miseries and that is what was seen in 1992 tribal crashes, 1997 it happened and we might even be thinking about other tribal clashes after here. If we are going to be that tribal based I am sure we are going to live and regret in future.

I have one or two things to develop. One of them is the problem which is even affecting present Kenyans and more so those who live on the fringes of Mt. Kenya. We have seen our forest particularly Mt. Kenya curved out to other people or even by the former Government where tea is grown. If you go to those places now, the tea farms have grown into bushes, there is nobody taking care of them and nobody can even occupy those lands. I am therefore imagining and appealing to this congregation that we agree that such tea areas or those which are called the Nyayo Tea Zones are reverted to the landless who were evicted from the same areas to create the tea zones. This is because these tea zones are not productive and as it is said in the Constitutional Bill here, we need to make the land here productive. Therefore if the tea zones were curved from the forest to grow tea let us grow tea, export and then earn what we call that extra foreign exchange.

We have other land particularly in Kirinyaga called Mwea Settlement Schemes. In 1954 about 56 thousand acres was to be developed by the then Mau Mau detainees. These were the people who were denied land, these are people who were killed and for your information, I am a teacher of history and what I know of is that when the White settlers came to Central Kenya, they took all the arable land, the possible good land in Kiambu, in Muranga and all the other areas in Central Rift. Those are the areas now, which have led to landlessness in this country and more so in

Central Province. I am therefore asking those people, even those who are occupying Mwea Tebere Irrigation Scheme to be given title deeds the way it should be done elsewhere. We are being treated like the tenants and it is true, for it is like now we are going to be leased the land for 99 years yet we are living in Kenya.

I am therefore suggesting to this meeting that we underscore the importance of people owning land even if it is one acre or five acres. Here in this midst we have people who are washing dirty line here. They have thousands of acres, even some of them a hundred thousand, some of them even land equal to a Location and yet they are the same people who are telling us that land has been grabbed. They are the same people who have grabbed land. Why don't they agree that first of all we share whatever they have grabbed then we go ahead and share the rest of the country. Thank you very much Madam, and next time please note my number 041. Thank you.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you. Please this row you would allow me. It was an oversight, I had a promise to give an opportunity from the category of persons with disabilities. And I would like to give that opportunity to 252. If you could allow the Honourable Delegate 252 to make his submission then I will give you your Point of Order.

**Hon. Delegate Dubat Ali Amey:** Thank you very much Madam Chair for at least seeing me. I want to be very brief, Madam Chair, I see the issue of Land should be properly addressed. This Constitutional Conference must come up with very clear stand on land. Madam Chair, there are some Districts where the Indigenous people have been thrown out. Look at Lamu, that District used to be 100% Muslims but today, the population is fifty, fifty. Why don't people of Lamu have Title Deeds? The people who have landed there have the Title Deeds now, is that fair? Are we supposed to keep quiet? We are not going to accept such things, if some people feel that they are hurt "ni shauri yao" we are going to say the truth.

Madam Chair, this country belongs to all of us and we must address these issues so that we can stay together as brothers and sisters. Now, I have about four points:-

I would like to urge this Conference to come up with a very clear stand on the demarcation of rivers. Rivers should not be adjudicated because it is the life-line of everybody and particularly

the pastoralists. We want to have access to the rivers and we would not allow river areas to be adjudicated.

The other thing is, there are Dams upstream of Tana River, this Dams cause havoc on us. People who are living in the lower parts of Tana River, Ijara, Garissa and Tana River, we must be involved in this Dams, we want to be stake holders, we have to be told and we must have a say in this Dams, because this Dams generate a lot of money. We are not compensated and the way they accumulate the water but when they don't need the water, they release it destroying our crops, destroying our life, destroying our houses and everything. Nobody is talking about our predicament. These Dams generate a lot of money and we want to demand that whoever is managing it to sit with us, give us compensation so that we will also survive. Look at what is happening in Tana River now and Ijara, I am very sorry that the pressmen of this country are very unkind to us since they don't report what is happening. I always see Budalangi, are we not equal to them? *Clapping by the Honourable Delegates.*

Madam Chair, the other thing has been said, it has been said that there is a nuclear waste in North Eastern Province and what we are seeing is that half of the community are suffering from cancer. Cancer, is not a Pastoralist disease and we want the government to address this issue, appoint environmental team of experts to go and inspect what has been buried in our lands so as to make it accessible.

The other thing Madam Chair, if you look at this country, all the Pastoral land has been given to the Game Reserves and the National Parks. We have not been involved but look at Ijara District now, we have Aruare Game Reserves, Booni Game Reserves, We have Tana Primate and we have nowhere to graze our animals. This Game Reserves, must be degazetted. We would look at how we can create a small Reserve, which will help us.

Madam Chair, the other thing is that I have been a Chairman of the County Council of Garissa, the law of this country, discriminates against certain communities. The Physical Planner, the Lands Officer, the Surveyor, none of them come from this area. They have been alienating land. They have even planted--

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you Honourable Delegate--

Hon. Delegate Dubat Ali Amey: No, Madam Chair, I must tell our Predicaments to this Conference. The Lands Officer, the Physical Planner, the Surveyor they are not answerable to the County Council, they just plan, make their own descisions and allocate land to their relatives and this is very unfair---

**Hon. Delegate Nancy Kabateka Lung'ahi:** Thank you Honourable Delegate, your time is up. Thank you. I will come back now to this row --

**Hon. Delegate Dubat Ali Amey:** Lastly, Madam Chair --

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Please Honourable Delagate.

**Hon. Delegate Dubat Ali Amey:** We want them to be compensated, they have been subjected to historical injustices. Thank you very much.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Please your time is up. Thank you. I want to recognize some one in this row who has never spoken. 333.

**Hon. Delegate Nakalo David Okiya:** Point of Order please.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** 377.

**Hon. Delegate Nakalo David Okiya:** My name is Nakalo David Okiya Delegate number 377 from Lugari. Madam Chair, you can see how emotive this motion on land is, I would request you, to give us more time tomorrow to continue because by the end of the day, we shall not be even half way-- (*Clapping by the Honourable Delgates*).

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you Honourable Delegate. If you will allow the people from this row to please make their presentation. 333.

**Hon. Delegate Emmy Jerono Kipsoi:** Thank you, Madam Chair.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** I will give you your Point of Order after-- Please allow the lady to speak. I will give you your Point of Order after the lady has spoken. I will give you your Point of Order. Please take a seat. I will give you your point of Order after the lady has spoken. Please respect the Chair. *(Clapping by the Honourable Delegate)*. I will give you your Point of Order. 333 please go on.

**Hon. Delegate Emmy Jerono Kipsoi:** Thank you Madam Chair. My name is Emmy Kipsoi Delegate number 333. I want to make three points on this Chapter, that is Chapter 11 on Land. I appreciate the fact that the Commission through this Draft has recognized Land being Kenya's primary resource and the basis of livelihood for Kenya. Knowing the Position of women, we have been marginalized on account that we have not been able to access this primary resource and all through this Draft, we have been trying to see that the position of women is safeguarded and protected to enable them to participate in the development of this country.

It is unfortunate that when we get to this Chapter under Article 235 4 (A) 4 and 5. We are leaving our protection to Legislature that is, we are saying that Parliament will enact Laws, that will protect the dependants of the deceased person holding interest in any Land including the interest of spouse in actual occupation of land and in 5, we are saying the recognition and protection of marital property particular the matrimonial home during and at the termination of marriage. I feel we have moved this far and in every Chapter, we have actually tried to place the protection of women in the Constitution. We cannot leave this particular Chapter without seeing that we have gained all through from Chapter one to ten, are left to Legislature.

That means, we are not sure what Parliament will say in term of the laws, we have seen previously, where laws that have been supposed to take the interest of women into account have been thrown out because of the nature of our Parliament which is usually men-dominated.

I wish to propose that in this Conference, we see that we endorse the protection of dependants and spouses actually in the Constitution rather than leaving it to an Act of Parliament – *(Clapping by the Honourable Delegates)*.

Secondly, I wish to propose that we scrap the position on what we are calling in the Draft, the National Land Commission. That position, goes against all the principles that we have worked on from Chapter one to ten where we are trying to get people more involved in governance and participation in development. If this Land Commission is going to work and in Schedule 8 (17) 2 we are saying that all that land whose Communities has not been identified is protected under the Land Commission. What I want to know is that how does the Commission define what Community Land is, and what basis will be used? Fine, they have defined that in 2 (A), but still if we are leaving it to the Land Commission to define what community land is, and for whom that Community Land go to? This will lead us to the problems that we have always had.

So, I wish to propose to this Conference that we rename this Land Commission into Regional Land Commission which will also have other junior Commissions such as, the district, or the village Council, which will help in settling land disputes because the people will know who owns land and the history of the land in question.

Finally, I just want to make a correction to one of the Delegates in this Conference, that raised an issue about inheritance of land. In inheritance of land have been a cultural and a traditional practice and those are some of the things we as women, are trying to correct at this point. I have no problem registering land that I acquired with my husband and at the same way, he should not have any problem to register what he has with me.

Secondly, if the women in this Conference happens to be well endowed, it does not mean that the position they are taking here is personal position. rather, they are in a position that is supposed to be for the benefit of all women who are not well endowed. So, when you see us here fighting for land inheritance and equal participation, we are not fighting it for our selves. We have sisters and mothers at home who do not have the benefit of being well endowed. Then we also have gentlemen who inherit land and they are well endowed. Why don't we say that if you are not well endowed, you don't inherit if that is the position? Thank you Madam Chair.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Thank you. 280, your Point of Order?

**Hon. Delegate Kaimba Bruno Kibaara:** I am Honourable Delegate Bruno Kaimba, from Tharaka. I would like to say to this Conference that I did not just come here to sit and fatten like a white cabbage, and expect-- Please if I have to talk only through Points of Order of.....

**Hon. Delegate Nancy Kabeteka Lung'ahi:** Honourable Delegate. You should withdraw your language, that is not a good language to use and you know that you are supposed to conduct yourself in a manner like a Honourable Delegate (*Clapping by the Honourable Delegates*).

**Hon. Delegate Kaimba Bruno Kibaara:** No --

**Hon. Delegate Nancy Kabeteka Lung'ahi:** So, will you please refrain from that kind of language if you wish to address this Conference please use proper language.

**Hon. Delegate Kaimba Bruno Kibaara:** I have acted with civility for about four weeks and you haven't seen me therefore - --

**Hon. Delegate Nancy Kabeteka Lung'ahi:** I have only been on this Chair today Honourable Delegate. Take a seat. I will give you an opportunity to speak. Thank you.

**An Hon. Delegate:** Point of Order.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** We will now go on, I would like to recognize somebody else---

**An Hon. Delegate:** Point of Order Chairperson. Point of Order.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** 579.

**An. Hon. Delegate:** Point of Order.

**Hon. Delegate Nancy Kabeteka Lung'ahi:** I have given somebody else a Point of Order. So, if you take your seat I will come to you. 271 please sit down.





**PLENARY PROCEEDINGS, PRESENTATION OF DRAFT BILL, CONTINUATION OF  
CHAPTER ELEVEN- LAND AND PROPERTY RIGHTS, HELD AT BOMAS OF  
KENYA ON 29TH MAY 2003**

**PRESENTATION OF DRAFT BILL: CHAPTERS 11 - LAND & PROPERTY  
RIGHTS**

**Discussants:**                   **Prof. H. W. O. Okoth Ogendero  
Dr. Mohammed Swazuri**

**Session Chair:**               **Com. Mr. Wilfred K. Ole Kina**  
**Co-chair:**                       **Com. Nancy Lung'ahi**

**The meeting started at 9.55 a.m.**

**Hon. Delegate Wilfred Koitamet Ole Kina:** In our deliberation this morning, we have Neera Kent Kapila and Sheikh Ali Shee to pray for us. There is a podium call for Arnest Kiprotich Kaitany. Let us rise up for the prayers please.

**Hon. Delegate Neera Kent Kapila:** Heavenly Energy, this is the very first time in the history of Kenya, that the forty-two communities of Kenya have come together to share their past pains, agonies, injustices and fears. We want to move towards the future, expressing our hopes and expectations. We ask you, Creator of the Universe, and Austainer of our life, to give us the wisdom and courage to listen, hear, and make decisions that will enable us towards the making of a strong, proud and united nation, where we are able to celebrate our unique diversities. Bless our endeavours heavenly Father. Om Shanti! Shanti! Om.

**Hon. Delegate Sheikh Mohammed Ali Shee:** Bismillahi Rahmani Rahiim. Kwa jina la Mwenyezi Mungu, mwingi wa rehema, mwingi wa imani, tunakushukuru kwa nguvu zako ulizotupa, subira uliyotupa, uwezo tulionao umetokana na wewe. Tunakuomba utubariki, utupe kila lenye heri na kila ambalo ni nzuri. Utuepushie kila ambalo ni baya, ni ovu na tunashukurani kwa kutuweka katika hali nzuri, hali ambayo mpaka sasa tunajivunia nayo. Tunakuomba

uendelee kutupa nguvu kama hizo, utupe busara zaidi kuweza kufanya kazi hii ngumu ambayo iko mbele yetu. Eh Mola, wewe peke yako ndiyo ambaye tunakuomba, hatuna mwingine wakumtegemea isipokuwa ni wewe, tupe hekima zako na baraka zako na kuungwa mkono na wewe. Utubariki na ubariki nchi yetu, wananchi wetu, utuondolee kila ovu, kila mateso, kila maafa, wewe ndiwe tunakuomba utubariki. Yarabi Amina.

**Hon. Delegate Wilfred Koitamet Ole Kina:** Honourable Delegates, as we continue with the debate on land today, I would like to bring to your attention that we have had a number of notices of motions and at the Steering Committee this morning, we were unable to exhaustively discuss all motions to decide on which is to be laid before the Conference. And so all those decisions will be made tomorrow morning. We will continue with the debate on land. Point of order.

**Hon. Delegate Daniel Kamwende Osoi:** Thank you, Mr. Chairman. I will not talk on motions, but I am making this point of order for the second time now. You find it is now 10.00 O'clock. Some of us arrived here by 8.00 a.m., some by 8.30 a.m and we cannot start the proceedings of the day because of the meetings of the Steering Committee. Now Delegates are even finding it hard to leave their hotels early because they know they cannot start early. I suggested that the Steering Committee should think of meetings to prepare for the works of the following day in the evenings after the Conference breaks so that we can stop wasting time. I hope this will not be taken as a contribution because I need to contribute in this very important Chapter. Thank you.

**Hon. Delegate Wilfred Koitamet Ole Kina:** Thank you very much, Honourable Delegate, but with all due respect to your comment, I would like to say that the Steering Committee meets very early in the morning and many times we are here on time, we ring the bell but apparently most of the members linger outside. We hope that we will keep to the time. When we ask Members to go out for 20 minutes break, we take an hour! So please let us all respect time and we shall save a lot of time for our deliberations. At this juncture I invite my Co-chair to lead us through the debate. We hope to conclude this debate on land before tea so that we get on the debate on environment after tea. Delegate number 438.

**Hon. Delegate John Cheruiyot:** Thank you, Chair, for giving me this opportunity. I rise on a point of order in respect to the coverage that is given by the press on these proceedings.

Chairperson, for the last three days we have not been fully covered. I am saying so because we have been discussing a very important Chapter. This Chapter, and perhaps Devolution and Bill of Rights, is so important that people at home are monitoring and are enquiring so much. I would request the media houses through you, Mr. Chairman, to give us more coverage, more than the Goldenberg issue. In the Goldenberg issue, we see they take much time on even tracing files, instead of reporting the very important issues that we are covering in this Conference. This is a historic time and my point of order therefore is that you request media houses to give us more coverage. I commend the 'Nation' because on Wednesday they did very well, they covered this report in three or four pages.

**Hon. Delegate Wilfred Koitamet Ole Kina:** Thank you very much, but unfortunately the Chair does not control the media houses. We will only appeal to them to report to the Kenyans what is happening here. But we cannot really dictate on the media houses as to what to carry. So thank you very much, let us proceed with today's deliberations.

**Hon. Delegate Nancy Lunga'hi:** Thank you very much, Chair, good morning Honourable Delegates. I take this opportunity to welcome you to today's session. We will be continuing on the topic of Land and Property up to about tea break. So we will begin from where we started. I will urge that unless it is a very important burning point of order, that we allow debate to continue so that we don't waste a lot of time on points of order. So if we could begin because there are a lot of people who have not had an opportunity to contribute to this important Chapter, we do realise that it is a topic that is sensitive and everybody would like to contribute to it. And as much as we are not in a hundred-metre dash, we are not here till eternity. So we have to respect the time and you have to allow debate to continue for other Chapters. So we will plead that those of you who will not be able to speak, you still have an opportunity to give your presentation to the technical committee that will be dealing with land. But we are going to take off from where we started yesterday, I would like to make another plea to all Honourable Delegates, the reason why we had to adjourn the session yesterday was because of lack of quorum and that is because most of the Delegates after they have had an opportunity to make their contributions, they just take their bags and go. That means you leave no quorum for the other person who wants to make a contribution to speak. So we lose a lot of time because many

members walk out during debate session, after they have had an opportunity to talk. It is important that we stay, so that everybody can be able to air their view.

So without much ado, I think we will begin the session. I would like us to start from this row where we stopped yesterday. And I am going to take two people from this row, one from the Religious Organizations and Professional Bodies. So could I have somebody from the Religious Organization on this row please? Religious Organizations, 515.

**Hon. Delegate Mohammed Ali Shee:** Asante Bibi Mwenye kiti, kwa kupata nafasi hii, kuzungumza na kutoa mchango ambao kwa muda mrefu tumekuwa tuingojea na sisi kutoa mchango wa aina hii. Ni jambo ambalo linajulikana kwa kila mmoja katika sisi, kwamba ardhi ni muhimu sana kwa maisha ya mwanadamu.

Vita vingi vimetokea, vita vimetokea katika historia ya mwanadamu kwa sababu ya kupigania ardhi. Ardhi ni mama ya kila kiumbe. Hakuna kiumbe ambacho mama yake si ardhi, kuanzia mwanadamu, wanyama, miti, maji na kadhalika. Wenye nguvu kwa sababu ardhi ni kitu muhimu, wenye nguvu wamekuwa wakinyakua ardhi, na wakifanya ni mali yao, kuwapokonya wale ambao hawana nguvu. Mwenyezi Mungu katika vitabu vyake vitakatifu vyote, anasema kuwa ardhi amewapa wanadamu waithabiti, waitumie kwa njia iliyobora. Waitumie kwa wao wenyewe na kwa wanyama na kwa miti na maji. Lakini wenye nguvu wananyakua ardhi wakaifanya vile wanavyotaka wao.

Katika taarifa hii yetu ya Kenya na penginepo katika bara letu la Africa, utaona namna gani ardhi imekuwa ni tatizo kubwa na ni kwa sababu ya mvutano na vita baina ya wanadamu. Ardhi katika nchi yetu ya Kenya imevamiwa na wakoloni kwanza. Wakajaa, wakapigana na wenyewe na baadaye wakoloni kama hawa tukawafukuza, tukawaondoa. Kisha baadaye, baada ya sisi wenyewe kujitawala, wamekuja wengine, na wao wakiwa wana sura, wana picha ya kuwa ni watu wetu, lakini matendo yao ni matendo ya wale wale wakoloni ambao tuliwaondoa. Ardhi tukanyanganywa na wale wale wakoloni wengine ambao ni watu wetu, na wao wana picha ile ile, wana kazi ile ile ya kikoloni. Sijui kama tunafahamu nini maana ya ukoloni. Ukoloni si lazima uje kwa mtu mweupe. Ukoloni unaweza kuja kwa mtu mweupe, mweusi na mwekundu. Kama tulivyoona Ethiopia ili koloni Eritrea ambao ni wekundu kama wao.

Na sisi vile vile nchini Kenya, tulikoloniwa na wenzetu ambao ni wenye nguvu. Sijui nitawapa mfano wa kwetu Lamu, mimi kwetu ni katika kisiwa kinaitwa Pate, island katika Lamu District, wilaya ya Lamu. Sisi kulingana na akiologia yetu, taarifi ya zamani ya Lamu, wakazi wa Lamu ambao ni Wabajuni ndiyo wengi, Waboni, Wasanyo hao minority. Kuna taarifi inayosema kwamba sisi tumekaa Faza zaidi ya miaka elfu na mia nne. Akiologia hiyo iko museum. Leo watu wa Faza nikiwaambia msistajabu, hawana karatasi ya kumiliki ardhi hii yao ambayo wamekaa; wamepigana na wakoloni Wareno – Portuguese - katika 16<sup>th</sup> century, mpaka leo makaburi ya Wareno yako katika area yetu. Kwenye shamba la babangu mimi, mpaka sasa ukienda utakuta karibu kuna kaburi la Mreno. Leo watu hawa hawajapata kitambulisho cha kumiliki ardhi, ardhi hii yote ya Lamu ikiitwa katika historia Bajuni Land. Leo wageni wamekuja, wakoloni wengine, wamechukua ardhi zetu kwa nguvu, kwa udanganyifu kamalivyo sema mwenzetu jana kwa kuwaita jina ambalo watu hawakulipenda na mimi pia sikulipenda, lakini hakika wamekuja watu, wakoloni wengine, kama wale wakoloni wakizungu waliyo kuja wakafanya settlement hapa Rift Valley, na wakaja wakoloni wengine wakafanya settlement pahala panaitwa Mpeketoni. Ile ni settlement ambayo haina tofauti na settlement iliyofanywa na wakoloni weupe Rift Valley.

**Hon. Delegate Nancy Lung'ahi:** Asante.

**Hon. Delegate Mohammed Ali Shee:** Kwa sababu ukoloni - nisamehe Madam kidogo, Chapter nne zimepita sijazungumza hata moja. Wakoloni hawa wamekuja, wamevamia ardhi zetu. Wamepata makaratasi ya kumiliki, watu miaka ishirini tu sasa, wana haki za kumiliki, sisi wenyewe indigenous, wenyewe waasili sisi hatuna karatasi hata moja. Amini-ni hivi sasa, mimi nina shamba la babangu. Babangu ana shamba hilo amerithi kwa wazazi wake zaidi mababu sita, halina karatasi hata moja. Huu ni nini ikiwa ni udhalimu na si unyanyasaji wa wakoloni wengine ambao ni katika sisi, sisi wakoloni? Haya maradhi ambayo ni lazima yaondolewe nchini Kenya. Maradhi haya ikiwa hayataondolewa, vile vita ambavyo vilianza Likoni, vinaweza vikasambaa, vikaingia pwani nzima, baadaye vikaenea area zingenezo.

Sisi wananchi wa nchi hii lazima tuwe na busara ya kuweza kusikizana, kuangalia namna gani tatizo la ardhi tutaweza kulitua, au si hivyo ndugu zangu, wengine ni watoto wangu, matatizo

waliopata katika nchi nyingenezo ambavyo zimepigana, wamemwaga damu na sisi tunaweza kukafanya hivyo, hivyo baadaye ikiwa si sisi, ni watoto wetu ni wajukuu wetu.

**Hon. Delegate Nancy Lung'ahi:** Haya, asante.

**Hon. Delegate Mohammed Ali Shee:** Lazima tutafute suluhisho ili tuweze kulipata, tuweze kutatua tatizo kama hili.

**Hon. Delegate Nancy Lung'ahi:** Asante sana.

**Hon. Delegate Mohammed Ali Shee:** Madam nafikiri nimechukua muda ambao ni mrefu lakini nina saha ambao lazima tupeane Mungu awabariki na atubariki zote. Asalamu Aleykum Warahmatullahi Wabarakatu. Thank you very much.

**Hon. Delegate Nancy Lung'ahi:** Thank you very much Delegate. *Clapping by Honourable Delegates*

**Hon. Delegate Nancy Lung'ahi:** Okay, the same row someone from the Professional category, 481.

**Hon. Delegate Daniel Ichang'i:** Thank you, Madam Chair, I will speak in English, not because I am proud of it, but because I have a point to bring across. My name is Daniel Ichang'i from the Professional Organizations. I think I need to introduce myself a little further; I had no choice but I was born on the Slopes of Mount Kenya. Having said that, I have been told that I have one point out of the eight, which is Maasai, I have another point which I am told is Kamba and six of the rest are from the Gikuyu people.

Madam Chair, we have heard some people talk about our women here and say that they are wealthy and they are fertile, because they eat *irio*. I want to say, in my own honest opinion, there are only two tribes in Kenya - the 'wenye nchi' and the 'wananchi', those who have and those who do not have. (*Clapping by Honourable Delegates*). It is my considered opinion that when this country had a people's watchman - and I don't if know we will get another - those

who do not have were oppressed by a social, political and economic class, which has membership in all communities. (*Clapping by Honourable Delegates*).

Poverty has no community, wealth has no community and those who are moneyed and well connected here and have stood here to purportedly fight on behalf of the so-called marginalized, I ask you in the words of Jesus Christ, go first and give half of what you own to the poor. (*Clapping by Honourable Delegates*) then come here and talk about marginalization. I stand here not because of the marginalized but because of the enslaved. I have seen the marginalized have their own paper here. I know one of the distributors of that paper, he is a man from Mount Kenya. He has marginalized his first wife, the wife of his youth and taken on others. I want to tell you people, before God let us be honest. (*Clapping by Honourable Delegates*).

I think in the question of land, the entry point must be the Bill of Rights, for there is no way any individual can enjoy the basic human rights if they have nowhere, like Jesus Christ, to lay their head. In my considered opinion, I agree with the Delegate from Narok, there is no way you can discuss land and resources apart from each other. Indeed, as he said, the next fight may be between those who have and those who do not have. We in Central Kenya have our sons in prisons, it is not that our mothers want to see our prisons populated by our young men, no, it is because of poverty. We have our young ladies who are prostituting themselves not because they think it is right, but because of poverty. Our children have full in the streets, children of the Gikuyu people, as parking boys and girls because the social, political and economic class has continued to enslave them through poverty. Go give half of what you have to the poor and then come here and politice.

Madam Chair, there must be a way to retribute for past wrongs. Injustice is injustice as Sheikh has said. If somebody goes and settles the landless in Mpeketoni and gives them title deeds and does not give the indigenious people their title deeds, that is injustice, whether it is perpetrated- (*Clapping by Honourable Delegates*) by the colonial, the Kikuyu or Kalenjin elite. Let us be honest and I want to say even as Mzee Ntimama said, as we have this high profile permanent Land Commission to address this question, I want to say that we must also have a True and Reconciliation Commission, where these matters can be addressed. (*Clapping by Honourable Delegates*).

Madam Chair, as a professional I must also talk on the other side of the coin. We must recognize however that land is a crucial part to the general economic well-being of our nation. I urge the Honourable Delegates to consider creation of wealth as very important. Indeed, creation of wealth cannot take place in isolation to land or exclusively because of land. The prosperity of the nation is at stake when we talk about land tenure. Access to credit is already as a result, I believe of this Conference, affected. There is nobody in this country who is going to give you credit unless you lease, the remaining lease on your piece of property or land is more or less forty-five years. We must be careful when we talk about land tenure, because we undermine the very economic basis of this nation.

Consider, Madam Chair, and I am finishing, food production. Agriculture only accounts for 25% of our GDP whereas services already account for 56%; manufacturing only 19. In the U.S., 2% of GDP comes from agriculture, the rest is manufacturing and services. We must be careful therefore, not to throw as the “mzungu” says the baby with the bath water.

On resources, exploitation of our natural resources has been hampered by the confusion and injustice of the land question. We want to have harmonized laws that benefit everyone. Indeed, Madam Chair, land must be translated from being a tool of the political, socio-economic elite, a tool of political domination to a means of wealth creation and well-being for Kenyans. The entry point I emphasize must be the Bill of Rights.

Lastly Madam, I want to thank you for seeing me and I pray God of the Gikuyu and Mumbi to bless you and increase your territory (*Clapping by Honourable Delegates*) for seeing me even if I am from Mount Kenya.

**Hon. Delegate Nancy Lung’ahi:** Thank you very much, Honourable Delegate. Thank you, I would urge Honourable Delegates, please let us try to speak within the minimum time of five minutes so that we can have as many people as possible able to speak. I will now move to the next row and I would like to look for someone from the Women’s Organization. 509.



**Hon. Delegate Martha Rop:** Thank you, Honourable Chair. Morning all Delegates. I am Martha Chemarinta Rop. My number is 509 from Women Organizations. In Chapter 11, section 236, clause 1, it says “subject to this Constitution, property rights in land lawfully acquired shall be protected and may be freely alienated without discrimination on the basis of gender or any other cause”. Okay. When we come to women, actually they are being discriminated so much. Why? Women suffer the greatest land rights in our country, whether within the customary system or within the modern statutory system.

Two, it is true women and the girl child are always rendered destitute by our inheritance and succession laws which are never enforced, hence patriarchal practices continue to restrain women and the girl child. The enjoyment of land ownership has to stop, therefore Affirmative provisions are needed in historical injustice redress in favour of women and the girl child.

Okay. Nikienda kipindi cha lugha yangu ambayo naipenda ambayo ni Kiswahili nitakuja kwa upande wa squatters. Squatters katika hii sura ya kumi na moja, mia mbili thelathini na sita mkiendelea kusoma ili nichunge saa, ni kwamba mtu anaitwa squatter, labda wengine wenu mnasema kama ni history tu, na hamjawaona. Hebu ni wahadithie story moja ya kuwa, kuna shamba inayoitwa ..... and farm katika Uasin Gishu, Moi’s Bridge location, ambayo iko pale Rift Valley. Kuna watu zaidi ya elfu moja na mia mbili na moja na hawo watu hawana shamba wanakufa kutokana na AIDS karibu kila wiki watu wawili, watatu wanakufa lakini serikali haijachukua hatua yoyote. Mambo hayo inashangaza ama ningesema asante kwa Mr. Haji aliyekuwa PC wakati huo mwingine pale na ambaye aliongea juzi, anajua mambo ya hii farm. Kwa farm tulianza kwa location, DO, DC mpaka wapi, tukitetea hao watu mpaka sasa na walilipa pesa na hawakusaidiwa na Land Commission ilikuweco. Je, mnataka hii Katiba iwe ikiwa haija tunatengeneza na kuna wale wanakalia?

Mr. Haji nafikiri hata wewe utatusaidia kunong’onezea wale ambao wako, wasaidie hao watu ili hiyo kidonda isije ikakufuata. Maana uliongea na uliwacha kidonda ikiwa inaiva huko nyuma.

*Clapping by Honourable Delegates.*

Nikifuatia mambo ya squatters, kama kuna mtu ambaye hajapata Uhuru katika Kenya na anaweza sema ‘sijapata uhuru’, ni mtu anayelitwa squatter. Hakuna tofauti na wale Ogiek hakuna

tofauti na wale Sengwer, kwa sababu mkiwa mnaongea hapa, tafadhali mkumbuke amri kumi za Mungu. Amri ya kwanza ambaye inasema Mungu aliumba mbingu - na nchi nasema kwa wale Wakristo, sijui kama Waisilamu wako na hiyo amri - ya kuwa Mungu aliumba mbingu na nchi kwanza kabla binadamu. Na aliumba kwa sababu alijua hiyo ni kitu ya maana sana, kwa hivyo Madam Chairperson, tukiongea mambo ya land, hata unasema kutusaidia tuongee zaidi ya siku tano mpaka kila mtu analize mambo yake. Mambo ya shamba imeua – kijana ameua baba yake, ndugu ameua ndugu kwa sababu ya shamba. Mimi nikisema hivi, mjomba yangu aliua kijana yake wakati alikuwa akitaka kumlazimisha amuandikie shamba. Kwa hivyo mimi ninajua mambo ya shamba. Wacha wale wanafanya hadithi, hadithi. Sisi tunatoka Uasin Gishu, karibu na Trans Nzoia pahali kuna mambo ya shamba.

Tafadhali sikuwa nimeongea, unajua ulihesabu tangu speaker ikianza huko. Kwa hivyo nipee dakika moja, Madam Chairperson.

**Hon. Delegate Nancy Lung'ahi:** Honourable Delegate, please stick--

**Hon. Delegate Martha Rop:** Moja tu, nilikuwa naomba ya kuwa mambo ya shamba ni kwamba lazima tuangalie sana hasa kwa wamama. Unakuta mambo ya Ukimwi inaua baba na mama na watoto wako, na serikali haichukui hatua kuchunguza maisha ya hao watoto. Tafadhali Katiba hii iangalie vile itatengenezwa kuchunga hao watoto ili wapate shamba. Akina shemeji wananyan'ganya hawa shamba, wakina nani.

**Hon. Delegate Nancy Lung'ahi:** Haya asante, sana.

**Hon. Delegate Martha Rop:** Kwa hivyo Mungu awabariki, lakini mambo ya shamba itemwe zaidi, Madam Chairperson.

**Hon. Delegate Nancy Lung'ahi:** Asante sana, okay. From the next row a District Delegate 255.

**Hon. Delegate Ahmed Maalim Muhammed:** Thank you, Madam Chair. My names are Ahmed Maalim, I am a District Delegate from Wajir. First, I would like to note that just like in

the rest of the country, the people in Wajir District or Northern Kenya lost quite a chunk of land to the colonialists because they invoked what was known as special district administration ordinance of 1934 and pastoralists were put into grazing areas and water points. After independence when the land was brought back by the Government it was given to agriculturalists but not pastoralists.

On 232, under National Land Policy, I would like to say that it appears that the National Land Policy does not recognize pastoralism. For instance, in 1985, the ASK show in Garissa, had the theme as: “Kukomesha Maisha ya Kuhamahama”, “to stop pastoralism”. I am recommending and when I am recommending, I am recommending on behalf of the people of Wajir District whose land mass is 10 per cent of the land mass in Kenya. The statistics are very clear that the National Land Policy should recognize pastoral land. Related to that under 234 (1) clarification of land. I also think that the classification of land should recognize pastoral land because our carrying capacity is 50 per livestock unit. Therefore it cannot be like the rest of the highlands. I was told by the people in Wajir that we need pastoral land to be classified as community land so that we can graze our livestock and that is the only assurance of survival for the pastoralists. You must appreciate that pastoralism has a major place in the Kenyan economy.

233(1), The interpretation of land belonging to the community, I think that one should be very clear. 234 (2)c, assumes there is vacant land. We don't know if that land is referring to our land because we know that our land is vacant and the rangelands are used for grazing. The Constitution should therefore be very clear about vacant land. 235(4)3, this Article should emphasize that community land will not be allocated without the consent of the respective communities. We have seen and we have lost prime pasture land to administrative centres, communities were not consulted and it has had a problem in our district. 235 (4)b, where it is referred to the cut off date for review of expropriation. I would rather feel that the National Constitutional Conference should determine the cut off dates. If we take it to Parliament, I think some of the people who have taken the land are in Parliament and they may push back the period.

Under 237 (1), National Land Commission, I think we don't need the National Land Commission. This is because as it is now, the Commissioner of land allocates land while sitting

in Nairobi when he has not seen the land he is allocating. We have seen that Government offices, and people's properties have been allocated left and right. I would therefore like to recommend in the spirit of devolution, that management of land should shift to the devolved government.

236 (2)b refers to Local Authorities. I think some Local Authorities have also been tainted. We have seen a case in Wajir where the Local Authority was recommending the allocation of a 1,000 acre chunk of prime pastoral land although it was rejected by the District community. We feel that the management 236 (2)b should refer to the devolved Government and the communities residing there, not the Local Authorities. Thank you, Madam Chair, I would like to respect the time given.

**Hon. Delegate Nancy Lung'ahi:** Thank you very much. Member of Parliament from the next row, 204.

**Hon. Delegate Koigi Wamwere:** Mheshimiwa Mwenyekiti, Katiba mpya inatangaza kwamba ardhi yote nchini ni ya wananchi wa Kenya kwa pamoja wakiwa jamii au watu binafsi. Ingawa hili ni tangazo nzuri na la haki, halina msingi mpaka Katiba mpya pia itangaze mambo mengine kadha. Jina langu ni Koigi Wamwere, nambari yangu ni 204.

Kwanza kabisa, ni lazima Katiba mpya itambue kwamba kabla ya uhuru, Wakenya walinyang'anywa ardhi yao kwanza na Mwaarabu na baadaye Mwingereza wakitumia siasa za ubaguzi wa rangi. Mwaafrika hakuwa na haki ya kumiliki ardhi yake mwenyewe. Mali, ardhi na heshima zote zilimilikiwa kwa mpangilio wa ubaguzi wa rangi uliomuweka mtu mweupe kama nambari moja, Mhindi kama nambari mbili, Mwaarabu kama nambari tatu, Msomali kama namba nne na Mwaafrika mwenye nywele ngumu kama nambari nne na nusu. Hata katika jela, chakula kilipeanwa kwa mpangilio huo huo. Kenya ilikuwa koloni la Mwaarabu na Muiingereza kwa sababu watu hawa wawili walichukua ardhi ya watu wetu wa pwani, ardhi ya Wakamba, ardhi ya Wakikuyu, ardhi ya Wamasaai, ardhi ya Wanandi, ardhi ya Wakipsigis, ardhi ya Wapokot, ardhi ya Waluhya, ardhi ya Wajaluo, ardhi ya kila Mkenya. Kinyume na maoni ya wengine hapa, hakuna hata kabila moja la Kenya ambalo halikunyanganywa ardhi au kuuliwa watu wake na mkoloni. Baada ya kutawaliwa na mkoloni, hakuna Mkenya ambaye hakutaka

kurudishiwa uhuru na ardhi yake. Kutuzuia tusiungane katika vita vya uhuru wetu, Muiingereza alitumia ukabila kutugawanya, kututenganisha, kutufanya tuchukiane na kutupiganisha. Mpaka wa sasa bado tumetengana, bado tunachukiana, bado tunalaumiana na bado tunapigana.

Baada ya uhuru tuliama kuishi sio kama mataifa tofauti ya kikabila lakini kama taifa moja la Wakenya waliomiliki ardhi ya nchi yao kwa pamoja. Hii ndiyo sababu Wakenya waliikataa KADU iliyoitea majimbo na kuichagua KANU iliyokuwa ikitetea Kenya kama nchi moja. Kwa bahati mbaya baadaye, viongozi wetu hawakutupilia mbali ukabila. Badala yake waliutumia kama vile mzungu katika vita vyao vya kutunyanyasa na kunyanganyana mashamba, biashara na madaraka serikalini. Nisikiavyo hizi hisia na chuki za kikabila bado tunazo. Kwa sababu ya ukabila na ukabila, Wakenya hawakutumia usawa kugawa mali, ardhi wala haki miongoni mwa watu wa kila kabila au baina ya makabila yetu. Kama alivyosema mjumbe mmoja hapa, wakimilikiwa njia na ukabila viongozi wetu walinyang'anyana ardhi na mali kama fisi. Baada ya matatizo yetu yote, sasa tunasema tunataka kuiliki ardhi na mali ya Kenya kwa namna mpya ya usawa na haki. Kufanya hivi, ni maoni yangu kwamba ni lazima Katiba mpya ipige marufuku ukabila, ubaguzi wa rangi na ukabila. Hatutafua dafu tukiongozwa na hisia chuki na fikra za kikabila.

Tunakumbuka hivi majuzi, tulipigana vita tukisema watu wa makabila mengine hawana haki ya kumiliki mashamba katika wilaya na mikoa yetu. Moto wa vita hivi bado upo ingawa chini kwa chini. Mimi mwenyewe nimeshindwa kujenga na kustawisha shamba langu ndogo kwa kusumbuliwa na hofu pamoja na hatma za kikabila. Ni lazima Katiba mpya izikomeshe chuki za kikabila ili Wakenya wapate haki na amani ya kumiliki mashamba kila pahala nchini. Katiba mpya lazima pia iamuru kwamba, watu elfu mia sita waliopoteza makao, biashara na ardhi yao katika vita vya kikabila kule Kitale mpakani wa Wamasai na Wakisii, Eno Supukia, Molo, Londiani, Pwani, Laikipia na Bantu Forest, warudishiwe usalama na mashamba yao mara moja. Katiba mpya haitakuwa na maana kama Wakenya hawa wataendelea kuishi kama wakimbizi nchini mwao.

Pili, lazima Katiba mpya ipatie maskini---

**Hon. Delegate:** Point of Order?

**Hon. Delegate Nancy Lung'ahi:** Excuse me Honourable Delegates, please allow the speaker to finish and then I will give you time to raise your point of order. Please, do not heckle or boo anybody on the floor. Thank you, go on.

**Hon. Delegate Koigi Wamwere:** Pili, lazima Katiba mpya ipatie maskini wa nchi hii wa makabila yote ardhi na mashamba zaidi. Maskini wa Kenya wanangojea Katiba mpya iwapatie mashamba. Mheshimiwa Mwenyekiti, miaka arobaini baada ya uhuru, naamini ni aibu kwamba asilimia 73 ya ardhi ya Kenya inamilikiwa na matajiri wachache ambao ni asilimia 10 tu ya watu wetu. Kwa mtazamo mwingine, asilimia 90 ya watu wetu inamiliki asilimia 27 ya ardhi yetu na nusu ya wakulima wetu maskini wanamiliki asilimia 5 tu ya ardhi yetu. Kwa sababu ya ukosefu wa usawa katika kumiliki mashamba nchini mwetu, mamilioni ya watu wetu ni maskwota mijini na vijini, kila mahali nchini--

**Hon. Delegate Nancy Lung'ahi:** Thank you, Honourable Delegate, your time is up.

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

**Hon. Delegate Koigi Wamwere:** --na zaidi ya nusu ya wakulima wetu wadogo wanaishi katika ufukara kwa sababu wanamiliki chini ya hekta moja ambayo ndiyo—

**Hon. Delegate Nancy Lung'ahi:** Thank you, very much Honourable Delegate. Thank you so much. Your time is up, utaniwia radhi tafadhali muda wa kuongea umekwisha tafadhali.

**Hon. Delegate Koigi Wamwere:** Nimemaliza dakika zangu tano?

**Hon. Delegate Nancy Lung'ahi:** Tano. Zaidi ya tano.

**Hon. Delegate Koigi Wamwere:** Huwezi kuniongezea moja nimalize sentensi hii? Sentensi moja tu Mwenyekiti. Maskwota na wakulima maskini wote hawa wanangojea Katiba mpya iwaokoe kutokana na ufukara huo.

**Hon. Delegate Nancy Lung'ahi:** 361, I will give you your point of order. I will give you your point of order if. Thank you. *Clapping by Honourable Delegates.* I would like to appeal to Honourable Delegates that when an Honourable Delegate is speaking, please give him time to finish and I will give you your point of order. 361?

**Hon. Delegate William Ole Yiaile:** Thank you, Madam Chair. Point of order yangu ni hii. Is it in order for the speaker who has just spoken to insinuate about Eno Supukia which is a water catchment area, which is Trust Land and which has even never been earmarked for demarcation ya kwamba watu waliingia na wakanunua. How could somebody buy communal land? I think he is betraying the congregation here. Thank you.

**Hon. Delegate Nancy Lung'ahi:** Thank you, Honourable Delegate but I think in this process people are allowed to air their views and whether or not you are opposed to them, you can also air your own views. Please let us not make this a time to exchange (*Clapping by Honourable Delegate*) or answer back to other Delegates. I gave you an opportunity to speak yesterday, so please respect everybody's view. Thank you. I will move to the next row and I am looking for a District Delegate.

**Hon. Delegate Muchiri Geoffrey Gachara:** Order, point of order? 111, that is a point of order?

**Hon. Delegate Muchiri Geoffrey Gachara:** Madam Chairperson, I have been asking for a point of order, thank you that I have a chance now. I want to suggest one thing as a matter of procedure. Because of the many points of orders that are coming on the plenary, the Steering Committee must reserve 30 minutes before we start for points of order. Something akin to the question time. *Noise from Honourable Delegates.*

**Hon. Delegate Nancy Lung'ahi:** Points of order arise out of discussion. So, we cannot allocate time for points of order. They arise as a matter of discussion. It is therefore not in order for you to suggest that the points of order be allocated for time and if I can, I can overrule you because you are not on order. Thank you very much.

**Hon. Delegate Muchiri Geoffrey Gachara:** My second point of order Madam Chair,

**Hon. Delegate Nancy Lung'ahi:** Thank you, very much. Only one point of order Honourable Delegate. Can we please proceed otherwise we are going to spend a lot of time on points of order and we have people who would like to contribute to this very important topic. Unless it is a burning point of order, I would first say we take a District Delegate and then I will give a point of order. A District Delegate from the next row, I recognize 300.

**Hon. Delegate Lydia Muriuki:** Thank you very much Chair, my name is Lydia Muriuki from Nyandarua District, Delegate 300. I wanted to make a contribution, but before I do that I want to make a small comment. We have heard a lot about land and about the way most people have been marginalized in some areas and I am glad that some of the people who were making those very stiff contributions, are people who up to this day own land in some of the Districts we come from. *Clapping by Honourable Delegates* And those lands are even named after them. They have been in the Provincial Administration there and even those lands are named after them. They should even make a point of taking some of those marginalized people from their areas to those areas where they still own land. *Clapping by Honourable Delegates.*

So let me make a point, going straight to the Draft I want to make a point in Article 232(f). Sorry I am in Article 232(a). The statement is a bit ambiguous in that it lacks clarity. I propose that the Technical Committee be more--

**Hon. Delegate Nancy Lung'ahi:** Delegate 300, hold on point of order 595.

**Hon. Delegate Martin Shikuku:** Thank you, Madam Chairperson. A point has been made. I do not wish to take the time of the Speaker on the floor of the House, but an important statement has been made that is the meaning of point of order. Can she substantiate, amongst us here that some people have grabbed land, even name them then. Could she tell us who they are? Can she substantiate that statement? *Uproar from the Honourable Delegates.*

**Hon. Delegate Nancy Lung'ahi:** Hon. Delegates, Hon. Delegates, order please.



**Hon. Delegate Lydia Muriuki:** Please can I go on with my contribution?

**Hon. Delegate Nancy Lung'ahi:** Please go on with your contribution.

**Hon. Delegate Lydia Muriuki:** Some of these things are more than obvious, we do not need to name them. *Uproar from Honourable Delegates.* So I was on Article 232.

**Hon. Delegate Nancy Lung'ahi:** I would suggest, however, let us refrain from making comments or utterances that will cause uproar on the floor, let us restrict ourselves to airing the views and bring the issues forward.

**Hon. Delegate Lydia Muriuki:** Thank you, Chair. I am on Article 232 and I was of the opinion that the statement was a bit ambiguous in that it lacks clarity. I propose that the Technical Committee be more explicit in defining appropriately what is the associated resources, is it finance, material, i.e. water for irrigation programme? From past experience, undefined terms have not been of much help to Wanjiku. So what I am trying to say is that in as much as that statement deals with the kind of resources that are made probably to help the land. I want to say that ...

**Hon. Delegate Nancy Lung'ahi:** 595 I will give you, let her finish, I will give you the point of order.

**Hon. Delegate Lydia Muriuki:** I want to say that it is in order for it to be more explicit on what they really mean. I am on (s) now, while I applaud the Commission because of invoking this Clause, women have also suffered a lot of injustice through the present system of the Land Board, where the DCs have been sharing, in essence the DO, a lot of pollution has occurred where women have lost their right to land through the back doors. I thank God that with devolved powers, women will be more protected.

On the Land Commissions, it has already been stated that we should go back to regional Commission, so I don't need to go into that.

Lastly, I just wanted to say that most of our fathers now are the people who own land and most of the youth in the urban areas have been able to bequeath education from their parents and have been able to get themselves very good job, but back in the rural areas, the only thing that our people depend upon is land. What I am saying is that the old people now should learn to start bequeathing land to the youth so that we can be able to also make a livelihood for ourselves. Thank you very much.

**Hon. Delegate Nancy Lung'ahi:** Thank you very much Hon. Delegate. I go back to 595 on the point of order. *Uproar from Honourable Delegates.*

**Hon. Delegate Martin Shikuku:** Madam Chairman, these proceedings have got to go according to the order and it is quite in order for anybody-- If I am saying something that is not true, I am to be challenged to substantiate. When I asked the Hon. Delegate to substantiate she did not, as a matter of fact she was rather rude, if I may say so. Would she now, because I am also a member of this congregation, did I grab the land? If I grabbed let her say so, but she must substantiate her statement. *Uproar from Honourable Delegates.*

**Hon. Delegate Nancy Lung'ahi:** Hon. Delegate, Hon. Delegates, order, Hon. Delegates I would like to plead with you. We are not in Parliament and it is not a matter of answering or telling somebody to substantiate. People are airing their views according to what they think. You do have an opportunity to oppose or to accept, it is up to you to take it or not to take it. But it is not a point of clarification. So we are going to proceed to the following row.. *Uproar from Honourable Delegates.* 479.

**Hon. Delegate Kavoo Kilonzo:** Thank you, Madam Chairperson, my name is Kavoo Kilonzo, Delegate number 479 from the Professional Association. I want to make my observation that, one, the previous Government did offend almost, if not all, the communities as far as land is concerned. Whether it was by sins of omission or commission and from what I have heard, something needs to be done. Some things will cost the Government nothing to do, of course stopping doing what is offending the communities costs nothing and should be done immediately.

Issuance of Title Deeds: every time the Government is asked to do something, we are told that it will be done when money is available. People pay money to get Title Deeds, but in the same way they are denied the same. How did they get the money if they cannot issue the Title Deeds in the first place?

That we need to settle those who have been displaced or lost land is not in doubt because everybody must live on some land somehow. Now if we have got to settle the issue of squatters then we must also stop manufacturing them. Indeed once people are settled it should be made illegal either to buy or sell that land and if it has to be sold then it should be at the pleasure of the Commission whether Regional or National of Lands at that time. Otherwise, we are encouraging people to become career squatters, they are given land here, they sell that one, they go to the next one, therefore it should be made totally illegal to buy or sell and every person should just be settled once. If you sell it then you should face the law. Those who have land should only be allowed to sell to a minimum size otherwise, we will manufacture another squatter from those who had land. There should be a minimum size for those who have land which they can sell and the minimum size should also be retained even if the land is being mortgaged otherwise somebody who has had land gets a loan and is thrown out and his people are left without land.

Madam Chair, I want also to observe that should the new Constitution come into force which I am sure will, then the Government will also be declared landless because there is nothing like Government land.

In the same Draft we have also recognized refugee status. Where will the Government settle refugees when they come; because they are already on community land anyway?

I want to find out how a Will that is written by the owner of the land ties with the issues on land. If I am on the Will, and since we are going to have new Title Deeds which will look like a passport, with five or 6 names, my names appears on a Title Deed, but my father writes on his Will that I should not inherit land. How will those two be settled? Thank you very much Madam Chair. *Clapping by Honourable Delegates.*

**Hon. Delegate Nancy Lung'ahi:** Point of procedure? 176?

**Hon. Delegate Samuel Poghio:** Madam Chair, thank you very much. My point is on procedure. Madam, you cannot just wish away points of order or procedure. My name is Samuel Poghio, Delegate number 176. It is very clear from our rules that if someone imputes improper motives on other members, that it is out of order and they should stop then, not to wait until they have finished. *Clapping by Honourable Delegates.* Rule number 34(4) no delegate shall impute any improper motive on any other delegate, Rule number 34(3) it shall be out of order to use derogatory language on any person or persons, even not present here. So even if we want to wish away points of order to save time, we must correct the things that we think are wrong because this is a very honourable assembly. This is for you, Madam Chair.

**Hon. Delegate Nancy Lung'ahi:** I hear you Sir. Can we please proceed? We go to the next row and take someone from the Trade Union.

**Hon. Delegate:** Point of order

**Hon. Delegate Nancy Lung'ahi:** I will give you, your point of order after 447 has spoken. 447?

**Hon. Delegate Kennedy Kiliku:** Asante sana Mwenye kiti. Kwanza Conference hii imechelewa sana, ingefanywa miaka kumi iliyopita. Mimi Jina langu kamili naitwa Joseph Kennedy Kiliku, natoka kwenye vyama vya wafanyakazi namba 447. Nilikuwa nikichunguza vita ya ukabila kwa sababu ilitetwa na ardhi mpaka ikanibidi nikasema Mt. Elgon ni lazima iwe District vile niliona mimi.

Mnyakuzi mkubwa, mporaji mkubwa ni Serikali ya Kenya, zote mbili. *Clapping by Honourable Delegates.* Shida iko hapo. Hivi tukiwa hapa tuzungumze tupitishwe ya kwamba hakuna mamlaka itapewa hata Serikali yenyewe, kuingilia watu na kupeana ardhi bila kibali, bila kuelewana, na bila kulipa kwa jamii ambayo inatake mahali. Hicho ndicho kilileta shida. Mzungu alipokuja hapa alichukua ardhi yote, nchi hii ilikuwa ni wafugaji lakini baadaye Mwaafrika alichukua Serikali akafwata nyayo ya Mzungu. Hivyo ndivyo ilifanyika na tunaomba, kwa mfano kama kule Mombasa, tuliambiwa na Mheshimiwa Shikuku, saa nane usiku kule Lancaster House, walikwenda wakapitisha ufuo wa bahari urudishwe kwa Serikali ya

Kenya na ikarudishwa na Sultani wa Zanzibar akalipwa. Lakini hivi sasa, Mombasa, wenye Mombasa hawawezi kufika watu hamsini kwa ardhi. Manyumba iliyo pale yote, una nyumba lakini ardhi si yako, una nyumba lakini ardhi si yako. Nyumba zote, karibu zote Mombasa. Hii ikiwa Sultani alirudisha kwa Mwaafrika, kwa Serikali yetu, ni kwa nini Mombasa mtu akiwa na nyumba hawezi kutoa Title Deed akamiliki ile ardhi? Ndiyo nakwambia, tulipata sisi, tukapewa uhuru tulitoa wale Wazungu tukapata Waafrika wetu wakatunyanyasa vilivyo. Mimi nasema ya kwamba ikiwa nimeona hapa Serikali ina ruhusa ya kwenda kuchukua ardhi ikiwa kuna kazi wanataka kufanya, sikubaliani na hiyo. Kwa sababu Serikali imefunuka kutumia kivua kwenda kwa watu na kusema wanataka kupitisha barabara watatumia bulldozer watu wanapewa 30 days notice na kama hutoki, na hakuna kitu, na malipo ya Serikali ni ile ile unajua. Ni lazima ikiwa Serikali inachukua ardhi ya mtu ilipe kulingana na market price ikiwa ni lazima. Hakuna kwenda kunyanyasa watu namna hiyo.

Kitu kingine Mwenyekiti, ni kwamba, wakati ulipokuwa wa Serikali zile zilipita, mtu alikuwa anakuja hapa Nairobi, anapewa barua hapa allocation inafanywa hapa... Mtu mwingine alipewa mpaka alipokuja kule Mombasa akakuta ardhi amepewa 20 kilometers away into the Sea. Maana yake hajui, alikuwa mtu anapewa karatasi akaambiwa umepewa ardhi, hajui mahali anaenda. Hiyo na iishe. Land Commission ni lazima itoke hata siyo kwa District peke yake, pawe na wazee katika location. Waende katika District ndio tujue ile ardhi ni namna gani. Na hakuna watu kuruhuziwa kuuza ardhi kiholela holela. Mimi nilipata shida na Wakisii na Wamasai kule Nyangusu na Kilgoris, Masai anakwenda anausa ardhi yake, anausa kiholela holela kisha anataka kwenda kusema amenyang'anywa na Mkisii. Kumbeye aliuza lakini hakuna mtu pale katika nyumba yake anajua aliuza. Ni vizuri utaratibu usimame, mtu akiuza ardhi yake asimamiwe na jamii zake kama ni lazima auze. Asiuze kiholela holela. Kwa hayo machache Asante sana. *Clapping by Honourable Delegates.*

**Hon. Delegate Nancy Lung'ahi:** Asante sana. 368.

**Hon. Delegate Joel Kipyegon Sang:** Thank you Madam Chair. This Conference has galvanized the attention of Kenyans all over and the manner in which you conduct it, Madam Chair, must reflect the standards of all debate in the Commonwealth. Somebody has made

insinuations, very serious allegations against somebody and you are not making her either to substantiate or withdraw; somebody's reputation is on the line. Thank you.

**Hon. Delegate Nancy Lung'ahi:** I think Honourable Delegate we did solve that and we will not go back to that debate. Thank you. *(Noise from Honourable Delegates)* Point of information 311.

**Hon. Delegate Fr. Gitonga Joachim:** Madam Chairlady, my name is Father Gitonga, a Delegate from Murang'a. Honourable Shikuku asked for substantiation from the Honourable Delegate from Nyandarua. I want to remind Mr. Shikuku that in Parliament he said KANU was dead, he was asked to substantiate and he said it was obvious. *Laughter & Noise from Honourable Delegates.* So, this is also obvious. Thank you.

**Hon. Delegate Nancy Lung'ahi:** Honourable Delegates, we are not going to go into that debate, that is not the way forward for this debate and for this Conference. *(Noise by Honourable Delegates)*. Order please, order please. I would now add that you allow us to continue with debate please. *(Noise by Hon. Delegates)*. I am afraid that I will not be taking too many points of orders because now we have actually indulged ourselves in answering back at each other and I don't think this is how the debate is supposed to go. I do respect 595; I will take your point of order because I know that you have burning issues to say; but for the sake of the Conference can we please allow *(clapping and noise by the Honourable Delegates)* debate to continue. If we go in this direction, we are allowing our personal sentiments to get to the floor. 595, could you please make your point of order? *(More noises by Hon.ourable Delegates)*.

**Hon. Delegate Joseph Martin Shikuku:** Thank you very much, Madam Chair. I do not wish to waste the time of this House but when somebody misinforms the Congress, he should be asked to withdraw. I never said 'It's obvious'. The issue was, I said KANU was dead and it was the late Seroney who was in the chair who said, 'It's obvious'. Not me. Can the Honourable Delegate have his facts right and withdraw? I never said, 'It's obvious' *Noise from Honourable Delegates.*

**Hon. Delegate Nancy Lung'ahi:** Honourable Delegates, its quite obvious that the debate is getting out of hand. We are now discussing issues that we should not be discussing at Plenary; and if we continue in this way, we are not going to go on with the debate. So, I will urge please, Honourable Delegates, do not refer to something that you do not have facts about. Do not make statements that you cannot otherwise substantiate. So, could we please be clear on that. So, we will go on please. The next row and I will come to this row, I am afraid I will not take points of order right now, let us go on with the debate. If it is on the same issue, I think the point of order from 595 has made it clear and I think we can go on from that; and we have agreed that we are not going to make statements that are not factual and we are not going to personalize issues and we are not going to allow people to make statements that they cannot substantiate. So, with that, with all due respect, let us go on with debate. So, on this row, I would like to recognize a Member of Parliament, 209.

**Hon. Delegate Moses Masika Wetangula:** Thank you, Chairperson, for recognizing me after such a long time. I have a few remarks to make on this Chapter. My name is Moses Wetangula, MP, Sirisia from Bungoma. Chairperson, I think this Chapter in the final draft should be amalgamated with the next Chapter on Environment and Natural Resources because it goes together with Land.

Secondly, I want to touch on Clause 236, where we say, "Property Rights and Land Lawfully Acquired". Chairperson, this Clause is capable of spiralling into a lot of problems. The Colonial State was illegal, it acquired land, it passed it on and has passed on; how far back do we go in declaring illegalities. I think we need a very clear explanation from the land law luminary Professor Okoth Ogendo, on what they mean by that.

Clause 235 –land to be held by the National Land Commissioner. Chairperson, I believe we are just trying to create another monister; we have had problems with the Department of Land, the indiscretions of the Commissioner of Land are known, and we are simply creating another office that is going to be a headache to the management of land in this country. If we are going to devolve power to the regions, we should all vest all land issues in the regional organizations that are going to handle local issues because land is basically and essentially a local issue. Madam Chairperson, the Draft forgets or omits to mention that we have to recognize customary land

rights especially as they relate to alienation of land and inheritance. I would wish that that should be Constitutionally recognized.

Chairperson, there is also an omission on the issue of ownership of subterranean wealth; its my view that all precious subterranean resources including oil, gold, copper or all those other minerals if they were found, must belong to the people of Kenya and not the owner of the land. And when they are appropriated, the benefits must go to everybody. If we leave it the way it is and tomorrow we discover oil on my land, I will be a nuisance to the State.

Madam Chairperson, we have also talked about settling the landless. I would like to urge caution that in trying to solve the problem, we may create more problems. We should be looking at creating urban centers where we provide facilities like sanitation, water, electricity and everything and get people to live together so that we do not disrupt agricultural production in this country by over subdividing land into small unproductive portions. Indeed, Madam Chair, I heard one Delegate talk of even sub-dividing the tea estates of Kericho. We should be careful with what we say because we may have very serious implications to our economy as we are agricultural based. We were reminded by some gentleman that our arable land is only 17% and that begs caution as to how we have to use it.

Madam Chair, I also want to touch on the issue of redress for the people who have been oppressed in land grabbing right from the colonial State. It's my thinking that the beginning of correction of errors is an acknowledgement of wrongdoing. We want the State, the Kenyatta regime, the Moi regime and the current regime, which has not made any mistake so far, to acknowledge to the people of Kenya that we have inherited the problems that have subjugated our people into landlessness and denied them their rights. Once we do that, then we shall move to the next stage of not giving back land but compensating adequately to many of those who have suffered from this injustices, if we do not want to cause a problem; Because if we talk of returning land to those who owned it at the turn of the century, we all know that more than half of Kenya was owned by the Maasai people of Kenya. Who do we remove to put back the Maasai where land has been taken, for example, in the Rift Valley? The whole of Uasin Gishu was occupied by the Maasai, the whole of Nakuru district was occupied by the Maasai and so on and so forth. So, in trying to solve a problem, lets not create more problems.



Finally, I want to mention a point that Mr. Ichagi mentioned. We have heard very eloquent speeches here about land tenure and how long a title deed should last. Madam Chair, there is no bank that is going to extend credit to anybody if your lease is less than 45 years. I would want to suggest that we stick to the 99 year leases that are existing, so that we can be able to give an opportunity to those who own land to access credit.

Finally, finally, I want to suggest that all beaches along the Coast must be public property and nobody, not even the hotel (*clapping from Honourable Delegates*) should own our beaches so that everybody can enjoy the beaches that we have. Thank you, Madam Chair.

**Hon. Delegate Nancy Lung'ahi:** Thank you very much. From the same row I would like to recognize someone who has never spoken since the Conference started, and I would like to recognize 048, who has never spoken. If you allow the Honourable Delegate to-- Okay, 532.

**Hon. Delegate Rogers Lumatete Muchai:** Thank you, Madam Chair. My name is Lumatete Muchai, Delegate number 532. If you want to conduct this Conference in a fair way, please, for heaven's sake do so. When you were on that last row there, you allowed two speakers. When you came round, you have been allowing one, one, one, you are going that side, you are now allowing two; that's not fair.

**Hon. Delegate Nancy Lung'ahi:** I think when we started, we said that we are trying to make sure that we try to get people who have never said anything and there are people who have talked (*Noise from Honourable Delegates*) Okay, alright, I take your concern, I hear you.

**Hon. Delegate Peter Kenneth:** Thank you, Madam Chair. My name is Peter Kenneth, Member of Parliament for Gatanga. I want to specifically deal with issue 237, item 2(1) and I would like to support the previous speaker Honourable Wetangula, that this Chapter should have been combined with the next one on Environment. But specifically on the issue of forest Madam Chair, I feel that the National Land Commission or the regional commission that might be formed, who will be according to (a) hold title to public land in trust, should never at any one time interfere with the forest. I think if you go to the next Chapter, there is only a very small Clause that says to protect forests. I think the Land Commission should preserve forests and

never at any one time give any part of the forest to anybody for any allocation. The forest might be in specific areas but they account for everybody and all Kenyans should own the forests. You will appreciate, Madam Chair, that they are not only catchment areas, they provide food, irrigation, water and power. So, even those who are not near forests actually use forests and no Land Commission should whatsoever give any forest and probably we need to look at what the gazetted forests were and we revert them to what they were originally. *Clapping from Honourable Delegates.* At the moment, if you look at the area under forest cover, it is actually far much less than the recommended forest cover for any country. We therefore need to look at our forests specifically looking at Kakamega Forest going to Doinet, Kinale, Aberdares, Mt. Kenya, and ensure that we retain them to what they were originally. We are going to have very serious repercussions in years to come if we do not revert forests to belong to everybody and it should not be converted for any pastoral use. Thank you Madam Chair.

**Hon. Delegate Nancy Lung'ahi:** Thank you very much. I will move to the next row, I would like to recognize a district Delegate who has never spoken, 393.

**Hon. Delegate Roseline Ashepete Barasa:** Honourable Chair, my names are Roseline Ashepete Barasa, I am from Teso district. I would want to put one question to my fellow Honourable Delegates. In the past, when you would get to any office and talk about your tribe, somebody would frown at you. Please let us try to erase the word 'tribe' from future documents so that we can feel free to go to any office and not be frowned at. This would bring unity to the nation.

Number two, I want to be very brief, I want to talk on leasehold land. When land has been leased out, first of all I do not support the 99 year period, let it be reduced to 50 years and when it has been reduced and the land reverts back to the government, let it be legislated upon and given to squatters. We do not want a situation where some of us are enjoying and others are suffering in the cold and have nowhere to call home.

Another point I want to make is that during the past regimes, there is land that was given out by the former Heads of States as gifts to some people because they were well connected. These pieces of land are so vast, why can't these lands be given back to those people who have nothing.

Even though every time we talk of settling the squatters, we are never sincere. Year in, year out, these people are suffering and we are there watching them like this, not caring what they are going through.

My last point is on succession. The method used is a bit hard for the rural people. You are told to go to court and you do not have money to buy food, and yet you are told to go and pay the money so that the Title Deed can be transferred to you from your husband's name. It is cumbersome, it has given many rural women problems and a proper mechanism should be set out to see how succession of property can be done in a better way. Thank you Honourable Chair.

**Hon. Delegate Nancy Lung'ahi:** Thank you very much. 393. On the next row, I recognize another District Delegate number 424.

**Hon. Delegate Thomas Nyabote Aburi:** Thank you Honourable Chairlady for at least recognizing me after staying here for 39 days. I would like to speak on very few pertinent issues concerning land. My name is Thomas Nyabote Aburi, District Delegate number 424.

Now, I want to speak on Article number 237, which reads "establishment of National Land Commission". Most of the problems we have in Kenya concerning land have been brought by the establishment of a National Commission of Land. Most of the land that have been allocated to those people who are politically and correctly connected, do not actually besiege being allocated land. Most of the land that has been allocated had been snatched from people who own it naturally, who are indigenous and has been given to people who do not deserve it and do not utilize it economically.

When you look at the way the Ministry of Tourism actually utilized the revenue collected from tourism, the Maasai and all those people who are actually supposed to benefit most, are the most are neglected. The level of infrastructural development in the Maasai region is totally neglected, it is totally unacceptable in that the infrastructural development in the Trans-Mara, Narok and Trans-Nzoia does not besiege what we get from our Ministry of Tourism.

I would like to go to another area, Article number 235 (iii), which says that the review and assessment of all claims to unjust exploitation of the land in the Coast... most of the land in Coast belongs to the Coastal people, but because of certain political aggression, the Sultan of Zanzibar was given a right to rule the ten Coastal streets for a hundred years. By now, most of the regimes, the first regime, the second regime *waligeuka wakawa mkoloni mkanda mnasi, kwa sababu* they did not recognize Kenyans who actually are owners of that land. I am requesting the Commission at this time, especially in this Article to look at various indigenous Kenyans who actually deserve to be recognized in terms of compensation. Why should we a foreigner who is not staying in Kenya, is not utilizing the land he has been given. He is staying in Italy, staying in Germany but he is allocated one thousand, ten thousand hectares when we have got squatters in Kenya Kenyans who are actually refugees squatters in their own land.

On to another Article number 238, Interpretation. In this chapter land means soil. Land cannot be land, if we do not actually interpret the texture of land. In Kenya we have got minerals however scarce they are, but you find that we give licenses, like the one that the Government is almost giving the Tiomin mining company without regard to indigenous people who own that land. Why should you give an hectare of land to a foreign company at the rate of 9,000/=, what can 9,000/= actually buy in Kenya at the market price, without even looking at the environment and the side effects of this mining. Look at the way most people have gone to Western Kenya, the type of scent that is emitting from making from the Western Paper Mills is seriously affecting our people in the Western region, the rate of asthma has gone up. The companies that are mining are doing industrial exploitation of natural resources and should be made to understand that they must protect our people. We are going to have a lot of eye problems in the quarry region because of the mining that is done there.

White farming areas in Trans-Nzoia, we do a lot of maize farming, but how much is that farming being used in that area? The past regime has intentionally created poverty by making the farm input so expensive, but when it comes to selling price, it sets the price, one hectare will take at 5,000/= to do farming in Trans-Nzoia or Uasin Gishu. How much do you get from that one-hectare as a farmer at the end of the year? It is uneconomical. Therefore, the Commission should have addressed some of the economical land use when they were drafting this Article.

With those few remarks, I say thank you very much. (*Clapping by Honourable Delegates*).

**Hon. Delegate Nancy Lung'ahi:** Thank you very much. Honourable Delegates, at this time I think we will take a short tea break for twenty minutes and we will be back at exactly twenty past eleven.

**An Hon. Delegate:** Quarter to twelve.

**Hon. Delegate Nancy Lung'ahi:** Quarter to twelve, sorry.

## After Tea Break

The session resumed at 12.10 p.m.

**Hon. Delegate Nancy Lung'ahi:** If you could please take your seats. In the next one minute we will begin the session. Thank you. I have an announcement to make, announcement, can I have your attention please. The technical working group H, on Public Finance, Public Service, Leadership and Integrity shall meet today at 1.30 p.m at tent number ten. Those people in that committee please make sure you attend that meeting. The meeting is called by your Convenor Honourable Billow A. Kerrow.

We will now begin and I think just before we broke for tea we were on this row, so we will come to that row and I am looking for someone from the professional category.

**Hon. Delegate Adelina Ndeto:** On a point of information.

**Hon. Delegate Nancy Lung'ahi:** Point of information, Delegate 218.

**Hon. Delegate Adelina Ndeto:** Thank you, Madam Chair. I am standing on my point of information to respond to a headline, an Article in the Nation, “gender activist dropped as the head of committee”. Madam Chair, the facts are as follows. We had an election on Monday--

**Interjection Hon. Delegate Nancy Lung’ahi:** Excuse me, Honourable Delegate, if it is regarding that particular issue, the Chair has told me that they will give you time to bring that matter to the floor this afternoon, immediately after lunch. You will be given an opportunity to explain and if you do not mind, you will have that opportunity.

**Hon. Delegate Adelina Ndeto:** Okay, thank you, Madam Chair.

**Hon. Delegate Nancy Lung’ahi:** Thank you, Honourable Delegate. Another announcement, I would like to bring to the attention of the *Ad hoc* Committee on Culture, you will be having a meeting today at 6.00 p.m at the Commissioners’ lounge. All the members of the *Ad hoc* Committee on Culture, please make sure you attend the meeting today at 6.00 p.m at the Commissioners’ lounge. Thank you.

We will now start this session proceeding and I will look at this row, 487.

**Hon. Delegate Rihal Singh Baldip:** Thank you, Madam Chair. Honourable Delegates. I am glad to be given this opportunity to present my views on the land issues. First of all, let me tell the Delegates that like my colleague, Honourable Andrew Ligale, I have some working experience in the land matters.

I started my public service career in this country in the Department of Lands in 1956. My name is Baldip Singh Rihal, I am from Professional Organizations and my number is 487. In 1961, I was sponsored by the Government to go to university to study and to become a Chartered Surveyor/Valuer and I worked in the Ministry of Lands for a few more years before I was moved to the Ministry of Housing and finally to the Local Government, from where I retired.

Now, Honourable Delegates and Honourable Chair, I want to raise three issues. They may sound matters of detail, but I believe that they need to be considered very seriously by the whole Conference so that when the Technical Committees meet, they can go into the details.

I am raising the the first issue because it is one of the main problems that we have had in this country over the last few years which have led to the serious problems on land allocation.

Under section 17 of the Government Lands Act, the President has power to make a direct allocation of land to whoever he chooses. I want to put it to this Conference that it is time to consider whether the President should continue retaining this power which he holds under the Government Lands Act, after we have passed this Constitution. I know we have considered and we have debated on the issue of the Executive and what powers the President should hold in future. But this is a specific power that is given to the President and even the Njonjo Commission looked into this issue and I made presentations before that Commission. I went over this issue and the Njonjo Commission writes in its report that this particular provision was repealed in 1965. But then at the same time, the Njonjo report says that they are not sure about the constitutionality of that amendment. Therefore, it appears that the President has been going on exercising this power and he has been allocating land to whoever he pleases.

Now I think Kenya is privately the only country in the world that I know where a person writes an application to the Commissioner of Lands seeking allocation of a piece of land. And believe you me, it is directed or it is channeled through the President of the country. The President then decides, endorses that letter and sends it to the Commissioner of Lands. So please Honourable Delegates, this is a serious issue because it will kill many of the problems that are pertaining on the land allocation and the systems that have been used over the last few years.

My point number two Honourable Chair, concerns section 12 of the Government Land Act, that section very clearly provides that land in urban centres shall be sold by the Government through an auction. And since the Second World War, no auction of public land has taken place in this country. What has happened is, we have developed a dual pricing system on the land allocation. When the Government allocates land - and I have worked as a Valuer of the land and there are two or three other colleagues of mine in this house who can vouch what I am saying-- When the

Government values land and allocates it, you pay only one fifth of the market value as the down payment, what we call stand premium. The rest of the price is deferred and is recovered by way of the annual length over 99 years.

Before if a developer or the so-called private developer develops that land, he is allowed through another regulation that was introduced in 1994 to sell that land or speculate on it and this is what my colleague Mr. Andrew Ligale was referring to yesterday. We need to address this issue Honourable Delegates, whether we should insist that in future that all the money from dual pricing system that has prevailed in this country is stopped and we have one price and the total price comes to the Government Exchequer and it is then utilized for the benefit of the country and so that the development is for the benefit for all communities, not for individuals to profit overnight.

Many of the people who have had cheap Government land are also able to sell it overnight even before a title has been issued and they sell the letter of allotment, reaping wild profits. Let us be honest about this, it has been happening many times in the recent years.

Therefore, at the Conference, we need to consider seriously whether this issue should be enshrined in the Constitution and not left to other legislation that Parliament will in due course - I know Parliament will debate the Njonjo Commission and they will make recommendations - change the Government Lands Act. This is the major issue that has led to lot of abuse and (inaudible) by many individuals in the recent years.

My point number three concerns the sanctity of the development plans. We know who are in the planning profession and evaluation profession, that is land purchase price when there is demand and supply and how that land will be utilized also. The utilization or the use of land is determined by the physical plan which the physical planners are supposed to prepare. We have had wonderful physical plans in this country, but over the recent years, they are all politicized.

Planners are always blamed that “you have not planned for this, you have not planned for that”. They have done their duty, they have done their professionals’ work, it is the individuals and people with connections who then go and pressurize the planners to change the particular use of



the land and designate it for a purpose that is most in demand so that they can get that land allocated and command a high private price.

**Hon. Delegate Nancy Lung'ahi:** Thank you Honourable Delegate.

**Hon. Delegate Rihal Singh Baldip:** My point therefore is that these three issues need to be considered seriously because once we have addressed them at the Constitutional level, I think we will be able to solve a lot of the abuses that have taken place over the last few years. Thank you.

**Honourable Delegate Nancy Lung'ahi:** Thank you, we move to the next row, I am looking for a District Delegate, 418.

**Honourable Delegate George Orwa:** Thank you, Madam Chairperson, for giving me this golden opportunity to hold this microphone for the first time. My name is George Orwa Ochieng' Delegate number 418, District Representative from Suba. Madam Chair, with due respect to you, may you allow me to proceed with some few items, may you allow me to express myself in the national language.

Madam Chair, nikitazama vile mambo ya ardhi katika nchi ya Kenya yalivyo, ni jambo la muhimu sana. Kenya kuna category mbili, kuna group moja ambayo inaitwa "Walala heri" na group nyingine inaitwa "Walala hohe". Katika group ambayo inaitwa "Walala heri" wamemeza ile group inayoitwa "Walala hohe". Kwa sababu katika nchi yetu ya Kenya tumejidaganya ama tumedanganyika kana kwamba tulipata uhuru ama Kenya ilipata uhuru, ilhali uhuru wa Kenya ulionekana kwa wale ambao ni "Walala heri". Land yetu ya Kenya imechukuliwa na Wakenya wenyewe. Tunavyosema tangu Kenya ipate uhuru, kuna wazungu ambao walikuja na wakachukua ardhi ya Kenya kwa njia isiyofaa. Na wazungu wenyewe walipotoroka wakabaki Wakenya wenyewe walioanza kunyanyasa Wakenya wenzao na Wakenya wakawa ni watumwa katika nchi yao. Ukienda kama sehemu za Coast - mimi nimejaribu kutembea Coast, na nikiaza mbele kidogo, wakati tumepata uhuru hayati Mzee Jomo Kenyatta alisema adui wetu wa kwanza ni kuondoa ujinga, kutosoma na kutoandika, na afya. Wakenya wamegandamizwa na umasikini ambao ni moja ya yale mambo ambayo yalikuwa yanatakiwa kuondolewa. Malisho ya shamba, unakuta ukienda kama sehemu za Coast, walk along the lake, along the Indian Ocean, sehemu

ambayo inastahili, hata wale ambao wanaweza kujiendeleza maisha yao kwa mambo ya uvuvi, hawaruhusiwi kupata njia ya mpenyo kufika baharini ili waende wavue samaki. Kwa sababu hawana nafasi na inasemekana wale ambao wana-own ile land ambayo iko along the lake ama along the ocean, “Walala heri,” hawawapi “Walala hohe” nafasi ya kupata nafasi ya kujimudu.

Tunaposema katika nchi ya Kenya wale ambao wamechukua mashamba, unakuta sehemu zingine kama Narok, PC yeyote akienda kupata kazi sehemu za Rift Valley, lazima achukue shamba ya wenyewe kutoka Mount Elgon kufika Narok. Tukitaka kusaidia Wakenya kwa wakati huu kwa sababu wanyanyasaji wa nchi ya Kenya ni “Walala heri” na ndio viongozi wetu mpaka dakika ya siku ya leo, lazima tutazame na tuangalie ni njia gani ambayo “Walala heri” wataweza kujua nao kana kwamba “Walala hohe” vile vile ni wananchi wa Kenya ambao wanatakikana wa-enjoy kama vile wanavyojisikia.

Wakenya wazalendo, huu ni wakati ambao tunasema tumekuja kutengeneza mambo ya Katiba itakayoweza kuangalia watu wa Kenya kwa miaka ijayo, na tusiichukue hii fursa kwa dhaha, tusiichukue tu kuwa nafasi ya kuonekana tuko hapa, lakini tufanye jambo ambalo linaweza kusaidia Wakenya kwa siku zijazo. Na tunapotazama njia ya kuangalia maslahi ya watoto wetu wa siku sijazo, lazima kwanza tuangalie wale ambao wameshika usukani katika nchi ya Kenya, wameshika ardhi gani. Kwa sababu charity begins at home. Lakini kama wewe ni mzazi, unawaambia watoto wasitukane wenzao, lakini wewe unaendelea na kutukana watu watoto wakisikia, je watoto watakusikia? Kwa hivyo wale wakubwa wetu ambao wanaendelea na kunyanyasa watu kwa ardhi, wakome, na serikali, kwa sababu huu umati ulio hapa ndio serikali, waangalie namna wanavyoweza kuwaondoa wale watu ambao ni walaghai wanapojaribu kunyanyasa Wakenya kwa kuwazuia kupata haki yao. Asante mwenyekiti.

**Hon. Delegate Nancy Lung’ahi:** Thank you so much. That is a Delegate who has never spoken or been given an opportunity to utter a word in this Conference. Number 589 from political party.

**Hon. Delegate Daniel Njoroge:** Thank you very much, Madam Chairperson. I am from Political Parties, my name is Daniel Njoroge and my number is 589. I have sat here and have

really appreciated all the contributions from all the people here. I have had quite a good amount of experience from different parts of the country.

The assignment which we were given by Prof. Ogendo is that we look for a solution to these problems, and from the many contributions the major problem here is that of resource distribution. We have people in this country who are still having lots and lots of land which they are not utilizing and during independence the land that was in the hands of the colonialists was purchased through government funds. I am now offering a solution that the government of the day tries to purchase some of this land which is being held by some of our people who really got this land during the independence and others during the last regime. The purpose of holding it was mere speculation; if the government could tax this land or alternatively offer them an option to buy this land, then they can settle quite a lot of those people out in the countryside who really need land and this will now be a solution between the majority of the marginalized people and the minority who are marginalizing people.

My solution to this one is that we get the government to get land and settle those people in Nairobi, Kisii, Chavakali, and everywhere where people need land. Once they are given this land, wherever it is and then they are put together, the government will have solved a lot of problem relating to these people who have been explained here as “Walala hohe”, because most of these people who got this land actually got it so that their children will come and inherit it. Some of these children are going overseas, they do not need this land whatsoever; all what they are waiting for is for somebody to come forward and say here is your land, if you do not utilize this land we shall tax it; if you do not want us to tax it, we offer you such an amount of money for the land. It is not very, very easy for everybody to get land in this country, but at least if you give about two million people some land, those people will ease the pressure wherever it is, and this socially will become a very, very major step in this country.

The other one is that our government really wants to enable people, they want to create so many jobs per year, that is another way of creating jobs in this country. So Madam Chairperson, all what I am offering is a solution, because all the other issues have been touched on properly by everybody. Our complaint about whatever the other government and other people did, will not help us. What we need to do is to look forward and then see how we can solve some of these

problems and I am offering that as one of the major things to solve the problem. There are all problems with all the people everywhere in the country. Thank you very much Madam Chair.

**Hon. Delegate Nancy Lung'ahi:** Did I hear a point of order? Number 468.

**Hon. Delegate Hellen Jepkerich:** Thank you, Honourable Chair, with due respect, you have forgotten a constituency called NGO, please remember that. Thank you.

**Hon. Delegate Nancy Lung'ahi:** I have not forgotten, since morning we have called all categories, maybe you were not here, but everybody from every category has had a chance to speak, I have not forgotten any category. Number 235.

**Hon. Delegate Tsuma Reuben:** Asante Madam Chair. Nashukuru tangu tulipoanza tarehe ishirini na nane, nimekuwa hapa nikisikiliza kwa makini wenzangu wakizugumza kutoka pembe na pembe za hall hii, nimepata nafasi moja ya kuzugumza, nashukuru. Nataka kukujulisha, nataka kuuliza pamezungumziwa hapa maneno ya squatters na ikasemekana jina hili ni baya ni lazima liondolewe katika kurasa popote linapoonekana katika Draft Constitution. Mimi niliyesimama ni squatter; je mwenyekiti, kuna haki ya watu kuzungumza, kuzungumza na mimi ambaye ni squatter, mmesema jina hili litolewe, sijapata nafasi ya kuzugumza?

**Hon. Delegate Nancy Lung'ahi:** Okay I hear you sir, nakusikia. I think I did say in the morning that we refrain from using language that is going to offend other people and Honourable delegates I would like us please to adhere to that, so that we do not have a problem with people who feel offended with any such language. About picking, from this row I am seeing about 8 people who have never spoken since we came to this Conference. Unless it is a burning point of order please allow us to proceed. On this row I will recognize someone from Religious Organizations, number 537, who has never spoken since we began the Conference.

**Hon. Delegate Asiya Mahmood:** Thank you, Madam Chair, it is about time anyway. My name is Asiya Mwanzi from Religious Organizations, Delegate number 537. I would like to make reference to Article 233. I noticed here that the state of the squatters has not been addressed, so I would like to propose an additional clause to Article 233 that will stand to protect squatters,

stating that “any Kenyan citizen who has lived on an unclaimed parcel of land for a period of over 10 years is entitled to a title deed making them legal owners of such a piece of land and as such shall not be subject to eviction”.

Point number two, I would like to contribute on land disputes especially disputes regarding families and communities. I would say that such disputes should be referred to the land tribunal of that particular location or district where wazees who know the history of that land can contribute toward the settlement of such a dispute. Thank you.

**Hon. Delegate Nancy Lung’ahi:** Thank you very much. I will come back to that row, I realize there are a number of you who have never spoken. Let us go to the next row, number 284.

**Hon. Delegate John Gitari:** Madam Chair, I am John Gitari Delegate from Embu, number 284. Madam Chair, it is good there are those people who have never spoken; fine, some of us have spoken once or twice, but there are people who have not been in this Conference. They have just come or they do not bother to follow the deliberation in this Conference. So please let us not have people who have not been attending this Conference when they come; some of us have been faithfully sitting here, contributing and listening to other people, we have not been part and parcel of the lack of quorums because we have been sitting here up to the evening, please also have that in mind.

**Hon. Delegate Nancy Lung’ahi:** I hear you, Sir, but I would like to bring to your attention that the last three people who have spoken have been here throughout. Yes, the lady from Religious Organizations has been here, the two district delegates and the person from the political party. They have been attending, they have never had a chance to speak. Please let us not get personal, we are not saying that we are only choosing people who have never spoken, we will come back to your row. Thank you. Could we please move to the next row please, I am looking for someone from – I think 252. With due respect please allow us to continue, I will come back to you. I will come back to your category, I have not forgotten, thank you. Non-Governmental Organizations from that row. Do we have anyone from the NGO sector? Women Organizations, number 511.

**Hon. Delegate Ruth N. Kibiti:** Thank you very much, Madam Chair. My name is Ruth Kibiti, Women Organisations. I have several issues here to raise, Madam Chair.

I want to take you to Article 232 (b) which says, security of land rights for all landholders, users and occupiers. I want us to say, instead of saying 'security of land rights' I think we have to ensure that at least where it says, "for all" we say "for all women and men and holders". Madam Chair, the key problem here is poverty and the constituency of people in this country who are affected by poverty are women. The reason why women experience extreme poverty is because they do not own land. If land title deeds Madam Chair, are going to be pegged on who uses that land then women in this country are going to benefit. Madam Chair, I am appealing to this Conference to support the view that title deeds should be issued only to land users and women in that category are going to benefit.

Madam Chair, there is another category of people who are not being attended to and that is the category we would wish to call children or people whose parentage is not clearly identifiable in the community, those children that we get without proper plan. Madam Chair, when it comes to allocation, inheritance and even access of land, these are children who end up on the streets of different city centers. Madam Chair, may I appeal to this Conference, that when they are talking about squatters there is a specific category of the street children which must be addressed on how we are going to settle them permanently to have access to some user rights to certain land. Every Kenyan, Madam Chair, we are saying in this Conference, should have access, should be entitled to at least one or two acres of this land we call ours.

Madam Chair, I also want to take you to ownership of land on Article 233. All land in Kenya belongs to women and men. Let us delete the word "people" because, Madam Chair, as one speaker alluded in the beginning of this debate, when we refer to people from a cultural perspective it automatically eliminates women and when we refer to land women have already been disadvantaged. Let us get a way from using the word 'people'; let us mention women and men rather than 'people' because at the level of interpretation women will be forgotten.

Madam Chair, I also want to take us to the issue of the National Land Commission. Madam Chair, I am opposing the existence of Regional Land Commissions which have been proposed.

Instead, Madam Chair, I want to propose community land board. Madam Chair, Regional Boards will exclude women again. The distance from the village where women operate will make it difficult for them to accept Regional Boards. Community Boards, Madam Chair, will serve and listen to the interest of all people who are disabled in one way or another and women fall in that category.

Madam Chair, I also want to refer to the issue of land cases. Madam Chair, land cases in the country have a history of taking a long long time, sometimes even up to 15 years. Madam Chair, I wish to propose here that there should be special community courts that handle land cases, any land dispute. This should be facilitated and should make decisions as fast as possible. Madam Chair, I am thinking that even land cases could be handled in the same manner as election petitions.

Madam Chair, I am almost coming to the end, just a few minutes. Madam Chair, I want to refer to the issue of creating communal land title deeds. Madam Chair, there is one aspect that we are forgetting, that if we sub-divide certain sections of our land the title deed will not be even possible to continue sub-diving. Some people are leaving in point something of an acre.....

**Hon. Delegate Nancy Lung'ahi:** Thank you.

**Hon. Delegate Ruth N. Kibiti:** Madam Chair, I am proposing that in those kinds of circumstances, communal title deeds will be relevant and this will serve the interests of women in this country. Thank you very much, Madam Chair.

**Hon. Delegate Nancy Lung'ahi:** Thank you very much. I now move to the next row, 056.

**Hon. Delegate Kibwana Kivutha:** Thank you the Chair, my name is Kibwana. I have many points to make but I will make the following.

I think we have an opportunity now through this Constitution to really ensure that land is managed well. I think something that perhaps this Constitution should help us achieve is to get

all parcels of land given an identity number, so that even before the Titles are issued you have actually all the land in the country identified.

Secondly, we can also through this Constitution remove all the restrictions that impede the use of land titles for security. At our present stage of development, one of the reasons that prevent us from developing capital through land is because we have so many impediments as regards land titles. Therefore, we have a lot of land which is, as one author has stated, dead capital. So I hope we can use this Constitutional process to make sure that titles are clear, free from impediments so that now the banks and whoever can actually accept them for security. If we do that it will be very positive for our development. That is why I think with Wetangula, before we decide how long our leases should be let us be careful so that we don't again have leases which cannot be used as purposes of security.

Thirdly, we need to correct all injustices, previous injustices, and I think this Draft tries very much whether it is squatters and slum dwellers, I think they should not be evicted without court processes. Whether it is historical claims, whether it is displacement, I think the Land Commission should be one way of trying to address all that. Also, public or Government land, which was given to people who sold it instead of developing it should bring back the money to the State.

I think also we should penalise people for bad land use, may be a broad principle can be stated within the Constitution and later in ordinary law this can be developed, because even in some jurisdictions you are not allowed to farm if you are not trained because they value their land. I think we should start valuing our land. Even the idea of land trimming for subsistence agriculture, I think that should be like 50 acres or so, so that only commercial activities like ranching, plantation and so on are allowed a lot of acreage. I also think that there should be minimum acreage for agricultural land. I think that has been stated because of subdivision which is senseless.

Some of this Chapter, particularly the beginning of it, is about policy prescription, it is not really law in the ordinary sense of the word. Some of the language should be taken back to national



goals and so on and that run through a lot of the Draft where some things are very general, not prescriptive.

I want to make this last point very emotionally and this is the point that relates to matrimonial property. This Draft says that another law should be created after this Constitution to take care of matrimonial property, particularly the matrimonial home. But I think this Constitution should actually say where a man and woman within their marriage have worked together and they have property, they should enjoy it equally and during the duration of their marriage and if they divorce they should share it half half. I think we need to very clearly acknowledge that when a man and a woman work together and develop property, that property should be equal. The idea of family land the title being in the joint name automatically, I think that is also equity. I want to say this to our Kenyan men women will love men even more if they are economically free because only a free spirit can love freely and abundantly. *(Clapping by Honourable Delegate)*. Truly, if we free the women of Kenya through land issues and free all issues we will give this country half of the energy that it has. So really it is something about development. I know this because since 1994 my wife has not been allowed to work by the Government so that I could be punished and I know that when women don't work it is not good.

**Hon. Delegate Nancy Lung'ahi:** Thank you. I would like to take one more person from that category, because that is the only place where they are, and these are persons with disability. 472...

**Hon. Delegate Miriam Muto:** Thank you, Madam Chairperson. My names are Miriam Muto, Delegate number 472, representing persons with disability. I don't want to repeat what the other Honourable Delegates have said, but what I want to emphasize is when it comes to the issue of land for persons with disability, especially women, it is double jeopardy. First, you are a woman, and second, you have a disability and to add to that you are an African woman who doesn't own property. This becomes even harder. So, I would urge that the Constitution protect us because when it comes to the issue of land, we suffer more, even our male counterparts.

In the family you find that, if you have five boys, ama five young men, four of them are 'able bodied' and the other has a disability, this man with the disability will never inherit land at any time. So, I want to urge this Constitution to protect persons with disabilities, especially women.

Also I want to say is that when it comes to land tenure, I would recommend that it is reduced to fifty years. Why do I say this? The reason is that you find the life span of human beings has been reduced so that if you live beyond seventy that is a bonus. So, I would urge that this land tenure should be reduced. Thank you very much. *Clapping by Honourable Delegates.*

**Hon. Delegate Nancy Lung'ahi:** Thank you. At this juncture, it is a few minutes to one, I would like to ask our presenters to respond at this time, so that we can go on to something else after lunch.

**Hon. Delegates:** Point of order! Point of order!

**Com. Swazuri:** Thank you, Madam Chair. I would like to start the--

**Hon. Delegates:** Point of Order!

**Hon. Delegate Nancy Lung'ahi:** 235, just hold on please. We are asking the presenters to make their presentation at this time. *Noise by the Honourable Delegates.*

We-- Excuse me-- Just hold on. If you shout then we will not be able to hear one another. I will give you your point of order, if you allow me to speak, and I will give you a chance to speak. But if you shout, we will not be able to hear one another. I did say from the beginning of the session today, that we may have at (?), in fact we were supposed to end before tea break, but because of the demand we went on until lunchtime. In as much as we all agree that this is a very sensitive topic and everybody would like to contribute to it, we also said that we are not in a one hundred meter dash; but we are also not here till eternity. We have several chapters that we need to finish before we break off next week on Friday. We cannot spend one week on the issue of land. You also must understand-- *Noise by the Honourable Delegates.*

If you give me a chance to finish, I will give you a chance to speak, each one of you. You should understand that not being able to speak does not mean that your views will not be taken into the report that will go to those Technical Committees. We have received so many presentations from people who have never uttered a word in this Conference; and they have made presentations and given them, and they will be considered. *Clapping by the Honourable Delegates.*

So please, do not feel that if you do not speak at this particular time, that your views will not be taken into consideration. If you present your views and when the Report comes out your views are not there, you have a chance, and you have a right to raise issue with that particular Committee. I beg you please, let us bring this debate to an end, and let the presenters give us their final presentation. Thank you very much. So, without much ado, Professor, Commissioner; thank you. *Clapping by Honourable Delegates.*

**Com. Mohammed Swazuri:** Thank you, Madam Chair. I understand the plight of the Delegates who want to add their voices to this matter. As I said when we were presenting, this is a matter that will occupy us for generations to come; it is a very emotive subject that acquires new dimensions every time.

This is how we have agreed to respond: first of all I will isolate the main issues of concern raised by the Delegates and then Professor Ogendo will propose or tell us the mechanism that we intend to use in order to address them.

We have found out from the presentations here that there is need to look at the poor legislation on land, complex legislation, legislation that does not satisfy the needs of the people in as far as land is concerned. We have also found out that people are concerned about the processes of acquiring land documents, both the length of the processes and the costs of those processes.

Then the issue that has dominated most of the presentations is the one of the past land injustices, some saying that we need to address them today, others saying that we need to forge ahead. I think the Commission looked at these and thinks there must be a time when we have to address these issues. We cannot leave them unattended for good; because if we leave it this time, fifty years down the line I can assure you they will still come up. So, I think there is consensus that

we need to sort out the historical injustices, either through compensation, or through other means.

Policy formulation is another concern; that we need land policy formulated and also shown as part of the Constitution, or part of legislation. And in this case, people are supporting the idea of having a National Land Commission. What we envisaged is that this Land Commission would have a chance or responsibility of formulating policies and constantly keeping them under review. And we have heard that many people want this decentralized. As we said in the beginning that the current office of the Commissioner of Lands has been blamed for most of the land problems that we have, and therefore, the need to decentralize this office.

All we are saying is that the issue of land cannot be left to individuals to determine. It cannot be left to the market either. It cannot be left to the Government alone. It has been found out that the Government structures have failed, and therefore, one component people are asking is the communities, who should also now be involved in the land management systems.

The other aspect is the one of inheritance: how people, or communities, individuals should inherit land; either family land or community land. This is a matter that we have to decide upon, especially when it comes to the girl child or the females. And then that is linked to the question of having names of spouses or family members in the documentation of land.

Then we have sub-division of land into uneconomical sizes, linked to the question of having a land ceiling either we have a land ceiling or we have taxes on land. I think the draft, or rather the Commission's view was that some aspects of land uses should be given limits, others should be allowed a free hand, but we need to harmonize that.

Squatters and the landless: it is a concern given that most of the squatters and the landless were made into those situations by activities not of their own making. Therefore, we need to harmonize that so that we give free access - everybody has access to land- those who will have a chance to get land through purchase, or through allocation by the Government or by the communities, can be enabled.

In some places we have had complains of absentee landlords, especially at the Coast; and I think the view is that we need to look at these lands. Those ones which are not being utilized properly should be either repossessed or bought by the Government and then redistributed to the needy people, especially giving priority to those ones who are there locally.

Then, marginal lands, or arid and semi-arid lands: we must institute mechanisms to ensure that we exploit this land because arable land is now becoming a problem, it is already in shortage, and we cannot continue to fight over that. In fact others are suggesting that we need to urbanize a lot in order to take care of everybody who wants a piece of land.

Leases to foreigners: I think there is now the debate on whether we should allow 99 years or less, I think it has been ventilated very well. Most people are of the opinion that I think we need to look at this in order to reduce it, because 99 years is a long time, although we know that there are some investors who require quite a long time for their investments to be viable on land.

Then we have land related resources like game parks: they should be managed in consultation with the local communities. This one has always been avoided, but I think people are now saying, we need to consult the local people, and we need to share some of the revenue and benefits from these game parks, so that the people can also take part in the conservation.

Slums: urban slums where majority of the urbanites reside need to be looked at. And our concern there is mainly, that these people need security of tenure, that they need security of life, that they will not be evicted all the time, and that they can also get collateral or security over their property.

Then, we have the last issue of wealth creation: some people are already thinking that we should abandon the question of land being the most important factor of production and go to other mechanisms of acquiring wealth. What we know is that, at the stage of development where we are and with the large amount of land unused at the moment, we still believe that we can cling to land as one of the most important factors of production and see how best we can harmonize it and use it in order to allow the other factors to be assembled on it. With those few remarks, I say thank you. *Clapping by the Honourable Delegates.*

**Com. Prof. Okoth-Ogendo:** Fellow Delegates, I think my colleague has covered fairly exhaustively many of the issues that have arisen in this debate, my comments are going to be short. The first comment I want to make is that the Bible tells us that after the sixth day, everything that required to be completed to be created was created. They don't create land any more but they create people. And therefore, as population pressure increases, we will have to think through on how we are going to manage on Planet Earth.

This has been a great national debate, an important opportunity for a national catharsis. I have learned a great deal about the problems of land throughout the country. The general principle that I think is coming out of this is that: to the extent that it is possible to do so, all the issues that have come out here should get Constitutional guidance. Throughout the Draft Bill, you will notice that the Commission has provided for Parliament to pass laws. Sometimes we did that because our own thinking was not complete, and we wanted Parliament to continue that thinking. My plea to you is that by the time we are through with this Conference, all the thinking that is necessary to create a constitutional obligation on any matter should be completed. We should not leave it to some other body to continue with that thinking.

Therefore, to the extent that we are able to do so, we should find or provide for clear constitutional principles, guiding the characteristic of land as property and land as a national resource. The obligation to define and periodically review a land policy should be clear in the Constitution, even though some of the issues we want in that policy may be in the nature of directive principles, as Professor Kibwana indicates.

The question of public control of land ought to be very clearly defined and especially the relationship between the State and the individual with the State land. The question of security of tenure for communities, for individuals, for women, for children, for all categories ought to be answered clearly in the Constitution. The important question of land administration, particularly the need to administer land at all levels, local, regional and national ought to find constitutional backing.

The issue of sustainable management and use of land, which connects to the next chapter of environment, clearly ought to find constitutional protection. The important question of equity of

