

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

**NATIONAL CONSTITUTIONAL CONFERENCE  
(NCC)**

**VERBATIM REPORT OF  
PLENARY PROCEEDINGS , HELD IN THE PLENARY HALL,  
BOMAS OF KENYA**

**ON**

**11.03.04**

**CONSTITUTION OF KENYA REVIEW COMMISSION.**

**NCC – PLENARY PROCEEDINGS HELD AT BOMAS OF KENYA  
ON 11<sup>th</sup> MARCH, 2004.**

**Present:**

- |                                    |   |                    |
|------------------------------------|---|--------------------|
| 1. Prof. Yash Pal Ghai             | - | Chairman           |
| 2. Hon. Delegate Koitamet Ole Kina | - | Vice Chair of NCC. |
| 3. Hon. Delegate Dr. Bonaya Godana | - | Vice Chair of NCC. |

**Secretariat in attendance**

- |                    |   |                         |
|--------------------|---|-------------------------|
| 1. Andrew Mwendwa  | - | National Assembly Clerk |
| 2. Kipkemboi Kirui | - | National Assembly Clerk |
| 3. Susan Mutile    | - | Verbatim Recorder       |
| 4. Nancy Kariuki   | - | Verbatim Recorder       |

**The proceedings commenced at 9.30am with Prof. Yash Pal Ghai in the Chair.**

**Prof. Yash Pal Ghai:** Sheikh Ali Shee, Florence Mburugu to say the prayers for us today and then that will be followed by the National Anthem. So I ask you now to stand up and remain standing until the Anthem has been played. Thank you.

**Hon. Delegate Neera Kapila:** We pray.

We pay homage to Thee Supreme, Unparalleled, Omnipresent energy, Lord, God of the universe. We see and feel your reterial presence in all creation on earth, Giver of life, Remover of pains and sorrows, Restorer of happiness, we meditate on Thee. Oh nurturing heavenly energy, Bomas is the very first time in the history of Kenya that the 42 communities and government have come together to share their past pains, agonies, injustices and fears and to negotiate a new dispensation. A Constitution that is fair and just to all. We have since Bomas I come a long way. Now that we are close to completing our task, we find that there is further need for consensus building on a few crucial central issues. Thy will is manifest through actions of women and men. Give us the wisdom not to let self interest drag us into a quagmire of great lack. Open the

hearts of all and guide consensus between the divided groups and individuals, reminding them of the reasons that brought us here in the first place and which Kenyans never wish to see repeated again. We want to move towards the future, expressing our hopes and expectations in our new Constitution. We ask Thee Creator of the universe and Sustainer of all life to give us and the Consensus Builders the wisdom and courage to listen here and reach decisions that will move us towards the making of a strong proud united nation, where we are able to celebrate our diversities in security, peace and prosperity. Bless our endeavors heavenly Father, bless us and our nation with success. Oh ever gracious, Omnipresent heavenly energy. *Om Shanti, Shanti.*

**Hon. Delegate Sheikh Ali Shee:** *Bismilahi Rahmani Rahim, kwa jina lako Muumbaji wa mbingu na ardhi na viumbe vyote, tuko mbele yako tukiwa waja wako, watumishi wako, wanyonge, wanyenyekevu. Tunakuomba wewe, ukiwa wewe ndiye Muumbaji wetu, Mlinzi wetu, utupe baraka zako na busara zako na hekima ili tuweze wananchi sisi wa nchi hii, kuweza kusikizana, kuweza kuwa na subira na uvumilivu ili tuishi pamoja kwa njia iliyobora. Mola wewe ndiye ambaye watengeneza yale mambo ya ajabu, mambo ambayo wanadamu hawawezi kuyatengeneza, lakini kwa sababu ya uwezo wako, mambo yanabadilika yakamstaajabisha kila mmoja.*

*Tuna imani sisi tukiwa wananchi wa nchi hii, na hasa tulioko hapa katika hii boma, kuwa maajabu yatatokea na masikizano yatapatikana na mwelekeo bora wa nchi hii utapatikana na Katiba ambayo twanza kuitengeneza na karibu kuimaliza itapatikana kwa uwezo wako, kwa mapenzi yako ambayo yatatawala vichwa vyetu. Mola sisi ni wanyonge, tubariki, ututenge na shetani, utukinge na nguvu za shetani, utupe uwezo wa kuweza kumiliki shetani wa mwili wetu ambaye pia anasaidia kuchangia kuleta maovu kwenye boma hili la Kenya. Mola utulinde, utupe uwezo ili tuweze sisi ndugu kuishi pamoja katika hali iliyobora, hali ya maelewano. Katiba ambayo sisi tunatengeneza ni Katiba ambayo ina malengo ya kuleta masilahi ya nchi hii, kwa vizazi vilivyoko sasa, na vizazi vijavyo, Mola tupe kila nguvu ili tuweze kuwa katika hali kama hiyo ya kuweza kutengeneza. Umetulinda kwa miaka mingi Mola, uendeleo kutulinda, kuhifadhi taifa hili changa ambalo linasumbasumba hapa na pale ili liweze kusimama na kutengeneza yaliyobora kwenye Katiba hii. Tubariki eh Mola, uwabariki kila mmoja na wale ambao ni wagonjwa wote, uwabariki kila pahali na nyumba zetu zote zilinde na utupe amani ya*

*roho na amani ya nchi. Mola tunakuomba kwa jina lako, hatuna mwingine wa kumuomba, mwenye nguvu ni wewe tu tubariki. Amini.*

**Hon. Delegate Florence Mburugu:** We want to dedicate our prayers this morning and to do that all the mothers who are in this Conference, I ask you to sing with them a hymn on a booklet we have distributed on page 8. We want to invite God more to be closer to us today and in the days remaining more than before.

## **SONG.**

### **Nearer my God to Thee.**

1. Nearer, my God, to Thee,  
Nearer to Thee;  
E'en though it be a cross  
That raiseth me;  
Still all my song shall be –  
Nearer, my God, to Thee,  
Nearer to Thee.
  
2. Though, like the wanderer,  
The sun gone down,  
Darkness comes over me,  
My rest a stone:  
Yet in my dreams I'd be  
Nearer, my God to Thee,  
Nearer to Thee.
  
3. There let my way appear  
Steps unto heaven;  
All that Thou sendest me  
In mercy given;

Angels to beckon me  
Nearer, my God, to Thee,  
Nearer to Thee.

4. Then, with my walking thoughts  
Bright with Thy praise,  
Out of my stony griefs  
Bethel I'll raise;  
So by my woes to be  
Nearer, my God, to Thee,  
Nearer to Thee.

5. Or if on joyful wing,  
Cleaving the sky,  
Sun, moon and stars forgot,  
Upward I fly;  
Still all my song shall be,  
Nearer, my God, to Thee,  
Near to Thee.

**Hon. Delegate Florence Mburugu:** We pray this through Christ our Lord.

**Hon. Delegates:** Amen.

*(National Anthem).*

**Prof. Yash Pal Ghai:** Welcome. I would like to make a couple of announcements. When we met yesterday after the tea break in the afternoon there were not very many of you present and we were unable to carry on our proceedings. I would like to plead with you that we continue working at least till 6.00 o'clock and perhaps we could dispense with tea in the afternoon because our experience is that if you go for tea a large number do not come back and we do really need to work very hard in the remaining two or three days so that we can complete the

consideration of the Draft document. So please, make sure that you are here until 6.00 we have a quorum and we can continue our work.

Also when we came back after tea I made a personal apology for some of the harsh words I am told I used in the afternoon. (*Clapping*). And I repeat that really what I meant to say was that if we don't work to a consensus the country could be plunged into chaos. I did not mean to accuse any of you to have that motive but the consequence of not working through consensus will be that and I apologise for the careless way in which I put that argument and gave the misimpression. Thank you very much.

I had also raised in view of the comments some Delegates had made to me whether we were going to be able to finish the whole work by the 19<sup>th</sup>, I had suggested that we could consider meeting this Saturday so at that time there seems to be a lot of support but this was a small house, so I would like you to consider this and maybe we could make a decision on it this afternoon. It seems to me that it will be useful to try to work on Saturday if by close of tomorrow we have not concluded our work. It will be very good if the drafting team had the weekend in which to finalize the Draft then we need to have the Convenors and others look at it, they need to print it, distribute it, so we have to finish the consideration by this weekend if possible. So would you be willing to do so?

**Hon. Delegates:** Yes.

**Prof. Yash Pal Ghai:** Thank you very much. Sheikh Ali Shee had also mentioned in the Steering Committee that we should work most of tomorrow and that the Secretary has agreed that we can do the financial administration somewhere in this building so that you will all be facilitated at the same time. We will be able to use most of Friday and I am sure if we meet the whole of Friday and part of Saturday we will complete the document. I am quite confident of that.

Now, I would like to give the floor to Bishop Sulumeti who will make a brief report on the work of his Committee and conciliation but he will give us a more detailed report in the afternoon with the necessary documents.

**Hon. Delegate Bishop Philip Sulumeti:** Honourable Delegates, allow me to address you while standing my feet are swollen. I want to thank you first for selecting us and I want to report that we did meet yesterday and the people present were Honourable Grace Ogot, Honourable Wangari Maathai, Honourable Sophia Noor, Honourable Ruth Kibiti, Honourable Gitu wa Kahengeri, Honourable Kimaiyo arap Segoo and Honourable Major Masden Madoka. The people we had to facilitate to come to the consensus were Honourable Kiraitu Murungi, Honourable Raila Odinga, Honourable J. J. Kamotho, Honourable Uhuru Kenyatta, Honourable Bonaya Godana, Honourable Musikari Kombo, Honourable William Ruto, Honourable Andrew Ligale and Honourable Amos Kimunya. I left out Honourable Sheikh Ali, I am sorry. He was present. Sheikh Ali Shee was present.

In attendance were Professor Yash Pal Ghai, Professor Okoth Ogendo, Assistant Chair, Koitamet Ole Kina, Secretary General P L O Lumumba and Bishop Sulumeti was the Chair.

The meeting began at 7.00 pm and we ended our meeting at 1.00 am in the morning. We broke for half an hour for dinner and I want to tell you that I saw a lot of humility and I saw a lot of good understanding and I saw a lot of love for Kenyans. (*Clapping*). Everybody wants to do the correct thing and I saw people moving from their rigid positions to a consensus building position. (*Clapping*). It took time. A lot of valid arguments were brought forward. Every argument was analyzed to its finest and final detail and eventually the Consensus Building People said, Kenya comes first. Our children come first and ourselves come last. So I can report to you here that there was a consensus arrived at concerning the Executive. (*Clapping*). Now, the details of that document have been given to Professor Ogendo and to the Drafters so that I will present to you after lunchtime in proper legal language, so that you know whether you are handling an elephant or a rabbit.

What I appeal to you dear Brothers and Sisters, I know we all have come here with very passionate ideas to defend, that is good. That shows you have something, you are a person of substance but please let us extend one extra hand. Let us walk the extra half a mile to meet the other people, the other person as the people whom I facilitated yesterday to arrive at a consensus. So the Executive is ended and I will present it officially --- I mean correctly in the afternoon and whilst you carry on debating here, the team here, these people that I have mentioned I am

inviting them to go to the Defense Tent to complete Devolution so that in the afternoon I am able to present to you a legal document on the Executive and on Devolution. On that note Honourable Delegates, Brothers and Sisters I say thank you very much. (*Clapping*).

**Prof. Yash Pal Ghai:** Thank you very much Bishop and thank you for the hard work your group has done. When we broke up yesterday we were looking at the Chapter on Representation and it seemed that some Articles might have been omitted and we undertook to distribute a new Draft if that was the case. I believe the new Draft has been or is being distributed.

**P LO Lumumba:** It should have been distributed.

**Prof. Yash Pal Ghai:** It should have been distributed. If you do not have a copy let us know. You could either proceed with that document or if you need time to study that we can begin with the Chapter on the Judiciary this morning. So, have you all received a copy of the new Draft?

**Hon. Delegates:** No.

**Prof. Yash Pal Ghai:** No. So we proceed with the Judiciary and in the course of the morning you will get the Draft and we can discuss that latter in the afternoon. Thank you very much.

Now I ask my colleague Ole Kina to take over the Chair, as I have to go to the Consensus meeting at the moment. Thank you.

**Hon. Delegate Koitamet ole Kina:** Thank you very much Mr. Chairman, Honourable Delegates. I know we are all under pressure, and we realize we do not have enough time. So, I would like to sincerely beg you to allow us go through the remaining Chapters as quickly as possible. I would rather we even finish and have time to deal with whatever we may consider difficult. If some Chapters have no difficulty, let us not cause difficulty for the sake of it. I would like to ask the Secretary to lead us through the Articles on Judiciary and Legal Systems. 006, and please I would not like a lot of Point of Orders.

**Hon. Delegate Abdullahi Ali:** Thank you Bwana Chairman, I just want abit of clarification, I do not want to delay your work. The issue is on the presentation by Prof. Okoth Ogendo - the corrections of yesterday on Chapter 86, on Land. Chapter 86 (j) states that-- Chapter 86(2).

**Hon. Delegate Koitamet ole Kina:** We do not have a Chapter 86.

**Hon. Delegate Abdullahi Ali:** Sorry, clarification on Article 86.

**Hon. Delegate Koitamet ole Kina:** 86

**Hon. Delegate Abdullahi Ali:** 86 (2). The following is public land - (j). “Land designated under any law for the time being in force as government forest, national parks, catchments areas or sparsely populated areas. As far as I am concerned that is dis-entrenching the sparsely populated land, and so it should be corrected to read, especially protected areas. Can you please clarify, what is sparsely populated area? Thank you.

**Hon. Delegate Koitamet ole Kina:** Thank you Honourable Delegate, you brought that document here to me, and I cannot be able to answer that question. What I would like to do, is to ask you kindly try to have Prof. Ogendo clarify, and than we will bring the answer to the Plenary. So, we will ask the Rapporteur General to clarify for us all. Please let us continue.

*(Inaudible discussions on the floor).*

**Hon. Delegate William ole Yiaile:** Information.

**Hon. Delegate Koitamet ole Kina:** 361, and the Chair does not want a lot of information this morning.

**Hon. Delegate William ole Yiaile:** Thank you but I would like to say that the Chair should actually accept what is coming from the floor. The information I have, I was also perturbed by that Article. And this morning I went to see the Rapporteur General, Prof. Okoth Ogendo. He assured me, and this is what I want to be put on record. He assured me that it is not sparsely

populated areas. At the same time, we want to follow to know where the principle originated from, because it was never discussed in our Committee, it was never discussed anywhere, we just find a principle entrenched there, and we do not know where it came from. I do beg to say, we should be told who came with that principle, because it is a foreign principle. These are the people who are trying to derail the process by bringing new items all the time and they should be investigated.

**Hon. Delegate Koitamet ole Kina:** Thank you very much. As I said, we will follow it up with the Rapporteur General. Let us please proceed now and we will follow that up with the Rapporteur General and it will be clarified at the Plenary. Mr. Lumumba please.

**PLO Lumumba:** Thank you very much Mr. Chair, I am reading from page number 128. The Title:

**CHAPTER THIRTEEN.  
JUDICIAL AND LEGAL SYSTEM  
PART I – THE JUDICIAL SYSTEM**

**Article 207 - Principles and structure of Judicial power.**

**Article 208 - Independence of the Judiciary.**

**Article 209 - Hierarchy and Administration of the Courts.**

There is a Motion by the Reverend Oginde on that Article.

**Hon. Delegate Koitamet ole Kina:** Reverend Oginde please.

**Hon. Delegate David Oginde:** Thank you, Mr. Chairman, for this opportunity. Mr. Chairman, before I Move my Motion - my name is David Oginde, 534. Before I Move my Motion I would like to make a few remarks if you will permit me Mr. Chairman.

**Hon. Delegate Koitamet ole Kina:** Please Move your Motion, we do not have time for a lot of things. Please Move your Motion.

**Hon. Delegate David Oginde:** I think it will be important for me to make those remarks.

**Hon. Delegate Koitamet ole Kina:** Yes, just a few please.

**Hon. Delegate David Oginde:** I wish to thank God for this opportunity, and especially for this process. Many people as we have tried to discuss this matter on the Article under question, have had the impression that there is a fight or a battle between the Christians and the Muslims. And I would like to make it clear right from the beginning, that there is no fight between Christians and Muslims. I would like to mention for the sake of the Delegates, that actually through this process, some of my best friends have come to be Muslims, and some of the people we interact with in this compound most, are our Muslim friends. And they appear, they can confirm that we have some very cordial relationship with one another. So, I am not standing here to fight between one religion and another. Please may it not be misconstrued that way. People like Honourable Wandati, Yusuf Ibrahim, Sheikh Ali Shee, are some of my very close friends and we have related very well. So, we are not in a battle here for religion.

*(Inaudible responses on the floor).*

**Hon. Delegate David Oginde:** Now to my motion please.

**Hon. Delegate Koitamet ole Kina:** Yes.

**Com. Abdirizak Nunow:** Point of Order.

**Hon. Delegate Koitamet ole Kina:** Point of Order.

**Com. Abdirizak Nunow:** Mr. Chairman, is the Delegate in order, to give a personal statement instead of Moving the Motion? Should personal statements be made under the guise of Moving Motions?

**Hon. Delegate Koitamet ole Kina:** Please can you proceed and Move your Motion.

**Hon. Delegate David Oginde:** Thank you Mr. Chairman, I think in light of the issue at hand Mr. Chairman, I felt that that statement is important, so that people understand--

**Hon. Delegate Koitamet ole Kina:** Please Move your Motion.

*(Inaudible discussions on the floor).*

**Hon. Delegate David Oginde:** Let me say this, the Motion that we have is requiring Article 209 (3) (a), that we amend that Article or that Clause by replacing the words the ‘Kadhis’ Courts” with the words ‘Religious Courts’, so that the Article will then read:, “The Subordinate Courts are, the Magistrates Courts and the Religious Courts”. The reason we are moving this Motion Mr. Chairman, is because after careful consideration, we have looked at the Draft Constitution under discussion, and we want to avoid a situation where the Constitution contradicts itself. The Draft Constitution provides in Article 10, that the State shall treat all religions equally, and there shall be no State religion. While this Article by clearly stating that the Kadhis’ Courts will be part of the Judicial System, actually elevates these Courts and the religion represented, to the level of being a religious state.

We find for example some people have argued that the Kadhis’ Courts are not religious courts. There is nothing more religious than the Kadhis’ Courts, because the Judge to sit in these Courts must be a Muslim, that is a religious position. The people appearing before these courts are of a particular faith. The laws to be applied are religious laws. Therefore these are religious institutions of one particular faith. We have wondered why they have been included in the Constitution. We have been told that it is the right of this particular group, as a minority group. Our question has been, is Islam the only minority group requiring this kind of protection?

We have been told that these courts were enshrined in the Constitution about forty years ago, to serve the rights of the subjects of the Sultan of Zanzibar. My question is, do we still have subjects of the Sultan of Zanzibar in this nation? Are we not all Kenyans belonging to one Nation? We have been told that this was a treaty between the British Colonial Government and the Sultan of Zanzibar.

**Hon. Delegate Koitamet ole Kina:** Mr. Oginde, I think you have made your point. All these arguments have been put before, so please, I would like one person in support,--

**Hon. Delegate David Oginde:** No, no Mr. Chairman, please--

**Hon. Delegate Koitamet ole Kina:** Okay.

**Hon. Delegate David Oginde:** Please, please allow me-- (*Uproar*). One minute please, one minute. (*Uproar*). Because Mr. Chairman (*Uproar*). One minute please to finish.

*(Background Consultation at the “high” table).*

**Hon. Delegate Koitamet ole Kina:** Please, one minute, finish.

**Hon. Delegate David Oginde:** We have asked ourselves, who asked for these Courts? We have been told that a number of Kenyans asked for these Courts. According to records, we find that actually, very few people, less than 31 according to CKRC records, asked for Kadhis’ Courts to continue. A similar number of people actually said they should not continue. So, we find ourselves wondering how comes then these Courts were put in the Constitution. I would like to request the Delegates, in a very sober manner, whereas at this particular point, we are in a position, where we can say, we understand the circumstances, we understand the situation.

Some 100 or 50 years later, we are not going to be around to explain to those people who are coming. And so, we are proposing therefore that we provide in the Constitution – make a provision that will cover for the Kadhis’ Courts, as they are in the current Constitution, yet at the same time not allowing anybody to take advantage of that provision, to do anything that will be contrary to the welfare of this nation. That is why we are proposing that we replace the word ‘Kadhis’ Courts’, with the word ‘Religious Courts’. This will give opportunity for Parliament to enact Legislation that will still allow Kadhis’ Courts to operate, and any other Religion that would want to enjoy similar treatment, can also have opportunity to do so.

Mr. Chairman, in closing I would say this. I find a very major legal contradiction especially as we discussed the Bill of Rights. It was stated clearly and categorically, that no person shall be denied employment in any institution on the basis of their faith. And yet here it is, we are enshrining in the Constitution, an institution that will require that you have to belong to a particular faith for you to participate in that institution. I wonder how Parliament is going to legislate that. Mr. Chairman, with those few remarks, I beg to Move.

**Hon. Delegate Koitament ole Kina:** Thank you. I would like one person in support, 114.

**Hon. Delegate Paul Muite:** Mr. Chairman, my name is Paul Muite, 114. When it comes to matters of faith, matters of religion, it beholds all of us to appreciate how emotive and how sensitive, those issues can be. Mr. Chairman, when I used to practice law, I can tell you that I handled many divorce cases, not between Muslims and Christians, but between Christians of different faiths, Catholics and Protestants. When the man is in this faith, the wife is in the other faith, and there are many marriages which broke up because of that. These are sensitive matters, these are emotive matters and my plea to you Mr. Chairman, is that we as Delegates appreciate how sensitive and emotive these matters are. It is one thing to appeal to rationality, it is quite another to actually agree that we need to approach these matters, very slowly, with mutual respect, knowing how sensitive and emotive they are.

My own plea is that if the debate on this Motion is going to continue, you must Mr. Chairman, allow people to express themselves. I heard you rushing the good Reverend, when he was moving the Motion. That sort of rushing will not do, to matters of faith and religion. My own position is that given the sensitivity of this matter, we have a Consensus Building Committee Mr. Chairman. Why don't we ask our Muslim brothers and sisters, their representatives and the representatives of our Christian brothers and sisters, to actually accord, go before that Consensus Building Committee to discuss this issue, before it is brought to the Plenary for us now to debate Mr. Chairman. I ask that we adopt an attitude that is going to accommodate the sensitivity of this matter. Thank you.

**Hon. Delegate Koitamet ole Kina:** 015.

*(Back ground Consultation at the “high” table).*

**Hon. Delegate Koitamet ole Kina:** 510, point of procedure.

**Hon. Delegate Atsango Chesoni:** Thank you Mr. Chairperson, Atsango Chesoni, Delegate number 510, representing Women’s Organisations. I had put up my card earlier because I did want to raise a point of procedure. Mr. Chairperson, we have consistently had one problem since we started this round. Kindly, please, so that we avoid that problem in the future. Please give a ruling on what amount of time a person who is Moving a Motion is allowed to have to speak.

Secondly, what amount of time, those who are supporting and opposing that Motion are allowed to speak.

Thirdly, how it is we are going to decide what is a contentious issue. Thank you.

**Hon. Delegate Koitamet ole Kina:** Thank you very much. We had actually given that ruling yesterday and we had said that the person Moving a Motion, will be allowed two minutes. And then, we will have one person supporting, one minute. Two people opposing, one minute each. Also I think we will adhere to that and when I ask that Honourable Delegate, please to stop, let us respect that.

**Hon. Delegate Billow Kerow:** Thank you Mr. Chairman, of course the Mover talked for 10 minutes. So, you will allow also a couple of minutes. Mr. Chairman, I want to oppose the Motion, on the following grounds.

One, it is true that there was a Consensus Building Group, that looked at this matter, and it was agreed both in Technical Working Group and at the Consensus Building, that the Kadhis’ Courts be retained as they are. That is what we have in today’s Draft. Our appeal to the Muslim and non Muslim Brothers in this Conference, is that the Kadhis’ Courts have been there for forty years. If a legal provision that we are talking about is not prayer, it is not a mosque. It is a legal provision dealing with widows with regard to their marriage and divorce and so forth and it is not a big thing. It is something that has been there in many countries, and it is there in many

countries today, and our appeal is that on the basis of the diversity of religions that are, on the protection for minority that has been suggested in the Preamble, I think we should and I appeal to my colleagues here to reject the Motion, because of the simple reason that our Muslim brothers are simply asking for a provision that has been there in the last forty years, that allows them to address their matters on marriage and divorce and does not take away from the Christian brothers, and does not add anything new.

Number two, Mr. Chairman, when views were collected, there was nobody, nobody and I challenge the Mover, who gave views to the effect that Kadhis' Courts be done away with. And there was also an opportunity by the religious brothers of the other faiths, to give their views if they wanted their religious courts, to be here. We did not oppose. But I think because of the fact Muslims have asked for Kadhis' Courts, it would be wrong, if our brothers from the Church now say that Muslims should not be allowed. And I think we have a right as Muslims also to put our requests, and that is what we did when the views were collected. And so, I think I appeal to all my Delegates here, to reject this Motion because this matter has been discussed thoroughly, it does not have to go to Consensus, and it should be agreed upon. Thank you very much.

**Hon. Delegate Koitamet Ole Kina:** 542, and then I will be gender sensitive, I will give to 217.

**Hon. Delegate Ibrahim Omondi:** Thank you Chairman, my name is Ibrahim Omondi, 542. I think we are being misinformed here. It is true there was a Consensus Building Group. It met twice, we never reached any consensus and it was disbanded without any explanation. I really think that we need to be properly informed. Thank you, Chairman.

**Hon. Delegate Koitamet Ole Kina:** 217.

**Hon. Delegate Cecily Mbarire:** Thank you so much the Chair. 217, Cecily Mbarire. I wish to appeal to our Christian Delegates, that when I look at Article 223, what in effect we are providing for our Muslim brothers and sisters, is law that will take care of their issues concerning personal status, marriage and divorce. Now, that is what we have been having in the current Constitution, and it has not hurt anybody. *(Clapping)*. This only seeks to take care of our Muslim brothers and sisters because the Koran is very clear on matters concerning personal

issues. It is very clear on matters of inheritance, divorce and marriage. And I have spoken extensively with Muslim sisters, and they have told me, their rights are properly taken care of there. And I appeal to us, since we have done away with what had been there in the first Draft, and we now talking about personal issues, let us provide these to our Muslim sisters and brothers, so that they are comfortable. Thank you the Chair. (*Applause*).

**Hon. Delegate Koitamet ole Kina:** 500. (*Uproar*). I will put a question after 500, please.

**Hon. Delegate Kamla Sikand:** Honourable Chairman, and fellow Delegates, I reject the Motion. I cannot understand, the Mover wants to remove the word Kadhis' Court and insert the word Religious Court, what is the difference? I agree with my Honourable Mr. Muite that religion is a very, very sensitive issue and how would our Muslim sisters and brothers feel, something they have enjoyed for forty years, we snatch it away from them. (*Clapping*). This is a very, very personal issue, it does not affect me, you or anybody, but it does affect our true Muslim brothers and sisters. And there was a treaty, who are we to break a treaty. We cannot break a treaty which was formed – how many hundred years back, or how many years?

**Hon. Delegate Koitamet Ole Kina:** Thank you.

**Hon. Delegate Kamla Sikand:** Yes, thank you.

**Hon. Delegate Koitamet Ole Kina:** 579. (*Uproar*

*(Back ground Consultation at the "high" table).*

**Hon. Delegate Koitamet Ole Kina:** Please proceed.

**Hon. Delegate Daniel Rasugu:** This Daniel Rasugu 579. Mr. Chairman, I would request to be allowed this opportunity to support the Motion on the following grounds that one, there appears to be some degree of confusion in understanding what the Reverend was saying. And what I want to say is that when we are saying that the Kadhis' Courts should exist, they should exist, but within which premise, where? How many religions do we have in this country?

**Hon. Delegates:** Many.

**Hon. Delegate Daniel Rasugu:** Many. What we are saying is we should avoid contradictions as they exist. What we want to say is that the Constitution has so provided, that all religions should be treated equally. What we are saying is, Kadhis' Courts must exist, that is for sure and Rasugu, I believe in that, but they must be regulated by an Act of Parliament, just like other religions. So, what I am stating is that Mr. Chairman, let the Kadhis' Courts be there, but let the Kadhis' Courts be regulated by an Act of Parliament, so that we avoid this contradiction in the Constitution.

**An. Hon. Delegate:** Give us a reason.

**Hon. Delegate Daniel Rasugu:** Because we have got other religions which are also not provided for in this Constitution.

**Hon. Delegate Koitamet ole Kina:** Okay, thank you, Mr. Rasugu. (*Uproar*)

**Hon. Delegate Koitamet ole Kina:** I think we are ready to vote.

**Hon. Delegates:** Yes!

**Hon. Delegate Koitamet ole Kina:** Please.

*(Consultation at the "high" table).*

**Hon. Delegate Koitamet ole Kina:** We agreed to move a little faster--

**Hon. Delegates:** Yes!

**Hon. Delegate Koitamet ole Kina:** --and we have heard the views of those in favour and those against. So, I would like you to make your decision because it does not matter how many we are hear, you will vote the way you want.

**Hon. Delegates:** Yes!

**Hon. Delegate Koitamet ole Kina:** So, I will ask us to vote please.

**Hon. Delegates:** Yes!

**Hon. Delegate Koitamet ole Kina:** But there is a point of clarification just behind us, and maybe it will help us when we are voting.

**Com. Alice Yano:** Thank you Chair. The Commissioners were mandated to go round the country to collect views from *wananchi*.

*(Comments on the floor).*

**Com. Alice Yano:** My name is Commissioner Alice Yano. Number 556. We went round the country collecting views from *wananchi*. What we heard *wananchi* say was-especially the Muslims brothers and sisters was that they wanted the Kadhis' Court. When we went to our Christian brothers and sisters and to the Hindus, we never heard any of those denominations asking for (*clapping*) a Court of their own. That is why when we brought our views, we brought our views with the Kadhis' Court from the Muslims brothers, but with no other Courts from the other denominations

Secondly, also there is the issue of the minority, really we have covered for minorities in other instances. We have also the issue of Affirmative Action for women, we have the Ogiek and all that. Please that is the point I wanted to clarify. Thank you.

**Hon. Delegate Koitamet Ole Kina:** Thank you very much. Now let me ask Honourbale Delegates I can see Bishop Njue is really trying to talk can I allow him the last?

**Hon. Delegates:** Yes/No.

*(Uproar on the floor).*

**Hon. Delegate Koitamet Ole Kina:** Okay. Please one minute only. Only.

*(Uproar on the floor).*

**Hon. Delegate Koitamet Ole Kina:** Please just one minute.

*(Uproar on the floor).*

**PLO Lumumba:** No. Chair. Please allow his Grace one minute.

**Hon. Delegate John Njue:** Chair. Thank you for this opportunity, we have listened to a number of arguments and we as it has been said, we would like to have a situation where there is a calm understanding and acceptance of one another. My very strong feeling since it is said that this matter was brought to the consensus and nothing kind of came up instead of rushing this Motion. Chair. I think it will give us even deeper understanding and respect if there is a way in which we could have an opportunity of a deeper Consensus Building, Chairman. This is my - -

**Hon. Delegate Koitamet Ole Kina:** I think I have information about what happened in the consensus because I was there. What Reverend Omondi said was wrong. There was actually consensus and that consensus was taken to the Judiciary Committee so, if we have to follow the truth of the matter, is that, that matter was handled well at consensus and the consensus was actually accepted at the Judiciary Committee. So, let us put the question. I would like those in favour of the amendment.

*(Murmurs from the floor).*

**Hon. Delegate Koitamet Ole Kina:** 059. I want to put the Motion to vote.

**Hon. Delegate Linah Kilimo:** I want to speak before we vote.

*(Uproar on the floor).*

**Hon. Delegate Koitamet Ole Kina:** Order. 059.

**Hon. Delegate Linah Kilimo:** My name is Minister Linah Kilimo. Number 059. Delegate 059 does not matter whether I say Minister or.

**Hon. Delegate Koitamet Ole Kina:** Excuse me.

**Hon. Delegate Linah Kilimo:** Now, can I ask this. When the Commissioners were going round, a Muslim asked their Muslims “how do you want to be catered for in the Constitution?” they did not ask the Christians “how do you want to be catered for”?

*(Murmurs on the floor).*

**Hon. Delegate Linah Kilimo:** Let it go back to the Committee.

**Hon. Delegate Koitamet Ole Kina:** Anyway, I am putting the vote. Thank you very much. The question is. Those in favour of the amendment to replace the word “Kadhis’ Court” with “Religious Court” please raise your placards? Or let us vote. Those in favour of the amendment. Tellers please count?

*(Hon. Delegates raise their placards).*

*(Consultation at the “high” table).*

**Hon. Delegate Koitamet Ole Kina:** Those against the deletion of the word “Kadhis’ Court” please raise your placards?

*(Hon. Delegates raise their placards).*

*(Consultation at the “high” table).*

**Hon. Delegate Koitamet Ole Kina:** I think the “NAYS” have it (*Clapping*). Mr. Secretary please let us proceed with the other Articles.

**PLO Lumumba:** The Chairman has given me the floor, I am now reading on Article- - (*Murmurs*).

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

**Hon. Delegate Koitamet Ole Kina:** Please proceed.

**PLO Lumumba:** -- I am now reading Article 208.

**Hon. Delegate Ibrahim Omondi:** Point of Order.

**Hon. Delegate Koitamet Ole Kina:** Over-ruled 542. You are Out of Order, can you please sit down.

**PLO Lumumba:** And if he does not want to sit down. --

**Hon. Delegate Koitamet Ole Kina:** I will over rule you 542. I gave you an opportunity. I am sorry you are Out of Order.

*(Uproar from the floor).*

**Hon. Delegate Koitamet Ole kina:** I am not going... I will over-rule you again, please you are Out of Order. Take your seat.

*(Inaudible comments on the floor).*

**Hon. Delegate Koitamet Ole Kina:** I will be compelled to throw you out.

*(Uproar from the floor).*

**Hon. Delegate Koitamet Ole Kina:** I am sorry 542, you have to take your seat. If you will not respect the Chair. I am sorry, I will not tolerate you in the seat.

*(Uproar from the floor).*

**Hon. Delegate Koitamet Ole Kina:** 542. Take your seat. Secretary proceeds. Just proceed.

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

**PLO Lumumba:** May I now proceed Mr. Chairman?

*(Noise on the floor).*

**PLO Lumumba:** I am now reading Article: 208, on Independence of the Judiciary.

**Hon. Delegates:** Yes.

**PLO Lumumba:** Article 209, on Hierarchy and Administration of Courts.

**Hon. Delegates:** Yes.

**PLO Lumumba:** Article 210, on Supreme Courts.

**Hon. Delegates:** Yes.

**PLO Lumumba:** Article 211, on Jurisdiction of the Supreme Courts.

**Hon. Delegates:** Yes.

**PLO Lumumba:** Article 212, on Court of Appeals.

**Hon. Delegates:** Yes.

**PLO Lumumba:** Article 213, Jurisdiction of the Court of Appeal.

**Hon. Delegates:** Yes.

**PLO Lumumba:** Article 214, The High Court.

**Hon. Delegates:** Yes.

**PLO Lumumba:** Article 215, Jurisdiction of the High Court.

**Hon. Delegates:** Yes.

**PLO Lumumba:** Article 216, Supervisory Jurisdiction of the High Court.

**Hon. Delegates:** Yes.

**PLO Lumumba:** Article 217, Appointments of the Judges.

**Hon. Delegates:** Yes.

Let us just check that there is a Motion.

**Hon. Delegate Koitamet Ole Kina:** There is a Motion.

**PLO Lumumba:** No. Not at all Article 217, on Appointment of Judges.

*(Consultation at the “high” table).*

**Hon. Delegate Koitamet Ole Kina:** 599.

**Hon. Delegate Leslie Betawa:** Number 599. Leslie Betawa Mwachiro. Chair. If you are reading, you must read even the Motions. I have a Motion on Article 210.

*(Consultation at the “high” table).*

**Hon. Delegate Koitamet Ole Kina:** You have the Chair.

**Hon. Delegate Leslie Betawa:** I need your ears as well.

**Hon. Delegate Koitamet Ole Kina:** You have the floor.

**Hon. Delegate Leslie Betawa:** Chair. I have a Motion on Article 210, Clause 7.

*(Consultations at the “high” table).*

**Hon. Delegate Leslie Betawa:** It is on page 131 of the Revised Draft Chair, in the spirit of the Devolution we move that the Judiciary shall not be devolved. However, what I am trying to say here Chair, is that there is only one Supreme Court in the country rather than having all its sitting in Nairobi, when we have a devolved system of Government. I want to appeal to the Delegates that we basically alter this Sub-Article to say that the “Supreme Court shall sit” instead of “sitting in Nairobi” I am saying, shall rotate its sittings to the Regional Headquarters. So, we delete the word, we insert it after the word “Nairobi”. So, that in the spirit of sending services closer to the people the Supreme Court should also be sent closer to the people at least at the Regional Headquarters. Thank you Chair.

**Hon. Delegate Koitamet Ole Kina:** So, if I get you, you are saying the Supreme Court shall sit, where do we delete and where do we insert? I do not have your Motion please.

**Hon. Delegate Leslie Betawa:** Chair you do not have my Motion?

**Hon. Delegate Koitamet Ole Kina:** I do not.

**Hon. Delegate Leslie Betawa:** Chair it is in this big document. It says and it is Motion 282, Chair. If you do not have this Motion, you are not leading us well. Because everything is already.

**Hon. Delegate Koitamet Ole Kina:** Excuse me? I do not have your Motion. Okay but tell us I have now received it.

**Hon. Delegate Leslie Betawa:** So can you look at it? Chair I am saying insert the words “and to rotate its sittings to the Regional Headquarters” immediately after the word “Nairobi”, and my argument is that we are sending services closer to the people. At least the Supreme Court should go to the Regional Headquarters as well, rather than have it in Nairobi, because Nairobi is a Region just like any other Regions. So, I have basically vested my case and all I want is to have the Supreme Court to rotate its sittings to all the Regional headquarters.

**Hon. Delegate Koitamet Ole Kina:** The Secretary would like to give you some information.

**PLO Lumumba:** I just want to give this information. The traditional in the World is that the Highest Court of the land sits at one sight. It is the other Courts like the Courts of Appeal that may rotate and that is so because it is a Court that deals with the matters of law only. So, you have the High Court in there, at the Regions, the Court of Appeal may move from Region to Region, as it does today, but the Supreme Court normally sits at one site.

**Hon. Delegate Koitamet Ole Kina:** So with that information I would like to invite one person in favour of the amendment and one against the Amendment. 085.

**Hon. Delegate Wilfred Machage:** Thank you Mr. Chairman. Kenyans have suffered for too long with the word tradition.

*(Comments on the floor).*

**Hon. Delegate Wilfred Machage:** My name is Dr. Machage, number 085. Tradition that was actually planted to us by the colonialists, we are now creating a Constitution that has to fit our needs, we know our poverty levels and we know that some of the people who will be required to attend this Courts are so poor that they will not have any justice, because they cannot be able to reach Nairobi. Since Nairobi is just a Region like the other Regions, the other Regions have a right to have this service. I strongly support that the so called traditional is forgotten and we adopt this Motion. I support

**Hon. Delegate Koitamet Ole Kina:** Any body against? 332.

**Hon. Delegate Nathaniel Tum:** Mr. Chairman. As a member of the Judicial Committee, I oppose this amendment because of the fact that Nairobi is the capital- -

**An Hon. Delegate:** Your name.

**Hon. Delegate Nathaniel Tum:** -- My number is 332. Nathaniel Tum. Nairobi is the capital city of Kenya. Although Kenya will be made up of Regions, there must be something that connects us together, something that brings us together. In the case of Judicial decisions, let the Supreme Court be stationed in Nairobi and keep us together as our capital because our capital belongs to all of us belongs to all the regions and something we all own collectively. Thank you Mr. Chairman. (*Clapping*).

**Hon. Delegate Koitamet Ole Kina:** 603.

**Hon. Delegate Winston Ogola:** Thank you very much Mr. Chairman, for giving me the opportunity. I am Winston Ogola Odhiambo. Delegate number 603. I am just requesting that the Supreme Court should be rotational to all the districts, because we have not been given any reason as to why it should be retained it in Nairobi. We have just been told it is traditional. That was a tradition in Europe. Therefore - - and the people for the rotation had a very good reasons. Some people are too old, some are too poor, some are-- So the Supreme Court should be decentralized like that. So, I support the rotational system where we can easily reach this essential service. Thank you very much Mr. Chairman.

**Hon. Delegate Koitamet Ole Kina:** Thank you. I think we are now ready to vote.

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** Yes. So -

**Hon. Delegate Millie Odhiambo:** Point of Information.

**Hon. Delegate Koitamet Ole Kina:** 451. Information?

**Hon. Delegate Millie Odhiambo:** I am Millie Odhiambo. Delegate number 451. Honourable Chair. I think we need to be informed before we vote. If you are looking at the Hierarchy of the Court and with the Supreme Court as the highest Court, the role of the Supreme Court is to deal with the matters that have been appealed, it will only be dealing with the matters of the law. Currently we only have the Court of Appeal. The Court of Appeal has very few cases because it deals with the matters of personal law. Now when we bring in another structure which is the Supreme Court, it will even be dealing with less cases and therefore it means that it will be dealing with only a few applicants.

Now, the information I want to give is this. If we have an applicant who has taken the case up to the Supreme Court from Mombasa and all the cases are from Mombasa on appeal, because the Supreme Court does not determine where the matters come from, if we put it on a rotational basis and we say that the next sitting is in Kisumu, it means we will be getting somebody from Mombasa to go and sit in Kisumu. So from a very practical point of view it is better to have it in one centralized place. Thank you Chair. (*Clapping*).

**Hon. Delegate Koitamet Ole Kina:** Thank you very much. So, I would like to put the question. That the Supreme Court sorry, 210 ... Sorry that the "Supreme Court shall rotate its sittings". Let me put the questions. That the "Supreme Court shall rotate its sittings to the Regional Headquarters" that we insert the words "The Supreme Court will rotate its sitting to the Regional Headquarters". Those in favour of that Motion, please raise your placards?

*(Hon. Delegates raise their placards).*

**Hon. Delegate Koitamet Ole Kina:** Those against?

*(Hon. Delegates raise their placards).*

**Hon Delegate Koitamet Ole Kina:** The “NAYS” have it. Let us proceed Mr. Lumumba.

**PLO Lumumba:** Mr. Chairman. I was on page number 133. Article number;  
218, Qualifications for Appointment of Judges.

219, Tenure of office of Judges.

**Hon. Delegates:** Yes.

**PLO Lumumba:** Article 220, Removal from Office.

**Hon. Delegates:** Yes.

**PLO Lumumba:** Article 221, Subordinate Courts. There is a Motion by Reverand Ogendi.

**Hon. Delegate Koitamet Ole Kina:** There is a Motion on 218 by Honourable Leslie Betawa Mwachiro. 218.

**Hon. Delegate Leslie Betawa:** Chair. Number 599. Leslie Betawa mwachiro. Chair. If you have been looking at the Motions. This Motion fall just below the one I have been moving so, I cannot see how the Secretary skipped it.

**Hon. Delegate Koitamet Ole Kina:** Please move your Motion please?

**PLO Lumumba:** Move your Motion please.

**Hon. Delegate Leslie Betawa:** Chair. I may move my Motion but I think I am bit disappointed. Chair. In moving My Motion in Article 218, Sub-Article (1), I want to delete the word “Persons”, and substitute them with “Kenya citizens”. Chair, this refer to the Chief Justice and the Judges of the Supreme Court. There is no reason why 40 years after independence we should not have these two positions or this one position confined to “Kenya citizens”, because this is essence of Soveignity and self-governance. We want to make sure that the Chief Justice shall always be a “Kenyan citizen” and not from other countries of the Common Wealth. That is my Motion Chair.

**Hon. Delegate Koitamet Ole Kina:** A person in favour?

*(Silence).*

**Hon. Delegate Koitamet Ole Kina:** Those who are against? 586.

**Hon. Delegate George Mwaura:** Thank you Chair. My name is George Mwaura Mburu. Number 586 from Political Parties sector. We must also understand we need Experts in a particular areas and there can come a level of arbitration because Judiciary concerns more on arbitration where by the country might need an outsider to head some of those offices. So I oppose the Motion.

*(Murmurs from the floors).*

**Hon. Delegate Koitamet Ole Kina:** So, can I put the question now?

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** That the “Chief Justice and the Judges of the Supreme Court shall be appointed from Kenyans who posses the following qualifications”. And then it goes on. Those in favour of that Motion please raise your placards?

*(Hon. Delegates raise their placards).*

**Hon. Delegate Koitamet Ole Kina:** Those against?

*(Hon. Delegates raise their placards).*

**Hon. Delegate Koitamet Ole Kina:** The “NAYS”, have it.

**PLO Lumumba:** There is a Motion on 368. Sang.

**Hon. Delegate Koitamet Ole Kina:** There is another Motion by 368.

**Hon. Delegate Joel Sang:** Honourable Chair. In line with the mood of this House, I wish to move very fast. There is a Motion I have raised under Article 220. I am 368, Joel Sang.

**Hon. Delegate Koitamet Ole Kina:** Please before you move your Motion Joel Sang. I notice there is still another Motion By Leslie Mwachiro. Please move your Motion, it was in the back of the paper, we did not see it.

**Hon. Delegate Leslie Betawa:** Chair. I am not deterred whether my Motion loose, but I must move them at least. I have another Motion on 218 (1) (a),. Chair 218(1)(a), I want to insert another Clause in 218 (1)(a) (iii), in the qualifications for the Supreme Court for the Chief Justice, I want to move a Motion so that we can consider the scholars and the teachers of law also to be eligible to be considered, rather than just confined it to practicing Advocates.

So Chair, my Motion is reading like so that we insert --

**Hon. Delegate Koitamet Ole Kina:** We have a Point of Order from 174.

**Hon. Delegate Charles Owino:** My name is Honourable Owino Likowa, MP. Migori. In my Draft there is Sub-Article (a), but there is no roman (iii).

**Hon. Delegate Koitamet Ole Kina:** He wants to insert.

**Hon. Delegate Owino Likowa:** Yes.

**PLO Lumumba:** Thank you.

**Hon. Delegate Leslie Mwachiro:** In that respect I think I can combine 218 (1) (a) (iii) and 218 (2) (a) (iii). What I am saying here Chair is that we should also give consideration or to qualify the teachers of law to be also eligible for appointments rather than excluding them because only lawyers who are practicing law have come to the university. They have been taught by the scholars. Now, how can the students qualify and yet the teacher is excluded? So, this is the point I am trying to make, Chair.

**Hon. Delegate Koitamet Ole Kina:** There is information from the Secretary.

**PLO Lumumba:** The information is this. In order to practice law, normally beyond gaining your academic degree, you undergo professional training and therefore, you may be a teacher of law, and therefore a legal scholar, but not an advocate, where there is training of a practical nature. That is the reason why that has been the position here. (*Clapping*).

**Hon. Delegate Koitamet Ole Kina:** On person in favour? I would like to remind you that we laid out procedures that we will give one person in favour, so please let us do that.

**Hon. Delegate Cecil Mbarire:** Thank you, The Chair. I think I will rise in favour of this Motion because I think it is extremely dishonest to the majority of Kenyans to deny those who wish to be advocates a chance to participate either as High Court Judges or Supreme Court Judges and I think it is only fit that we give them this chance and although they have not practiced, I believe that those many years as scholars, has given them chance to learn and know what goes on in court. So, I will rise to support this Motion.

**Hon. Delegate Koitamet Ole Kina:** Two persons against the Motion, 529.

**Hon. Delegate Rev. Musungu Patrick:** Thank you Mr. Chairman. My names is are Reverend Patrick Musungu Maina. Delegate number 529, Religious Organizations. I speak as one, a member of the Technical Working Group that dealt with this Chapter and as a Co-Convenor for that Committee, the question or the Motion on the floor was dealt with even at that Technical Working Committee level and if the Member or the Mover will be kind to read through, he will realize that Sub-Article (b) incorporates his fears because it is providing for intellectual abilities as demonstrated by academic qualification.

We consider that position and we know that all scholars are competently qualified people but the law so requires that they must be registered as law practicing lawyers with the High Court. So, they have not been locked out. You can be a scholar but as the Honourable Secretary has put it, you must take effort to follow the practice of law other than limiting yourself to the classroom level. So, (b) has already taken on board the concerns of the Motion. I beg to oppose. Thank you.

**Hon. Delegate Koitamet Ole Kina:** 006.

**Hon. Delegate Abdullahi Ali:** Thank you--

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

**Hon. Delegate Abdullahi Ali:** Thank you *Bwana* Chairman. The name is Abdullahi Ali, 006. I do not need to say much because the Convenor has already said. Our scholars, we respect them, we want them very much, but if they do not go to School of Law and they want to be appointed as judges, from the classroom to the courts. I think we will not need the School of Law. So, for the School of Law to exist, to have advocates in place, let our scholars go to the School of Law to become advocates and they will be given the chance. Thank you very much.

**Hon. Delegate Koitamet Ole Kina:** I would like to put the question. That we insert a new Article, that, "scholars and teachers of law in a recognized university be also considered as

Judges for the Court of Appeal and the High Court.” Those in favour of that Motion, please raise the placards.

*(Delegates raise placards).*

**Hon. Delegate Koitamet Ole Kina:** Those against?

*(Many Delegates raise placards).*

**Hon. Delegate Koitamet Ole Kina:** The “Nays” have it. Honourable Sang.

**Hon. Delegate Joel Sang:** Thank you, Honourable Chair. Before I argue in support of my Motion I wish to say that it is written, “one half”, it should be, “**one half of**”.

**Hon. Delegate Koitamet Ole Kina:** Correct that to be, “one half of”.

**PLO Lumumba:** That is number 223 in your schedules, number 223 to guide you.

**Hon. Delegate Joel Sang:** Thank you, Honourable Chair. My Motion is concerned with the treatment of Judges who are facing disciplinary action. This Constitution Honourable Chair, is meant actually to bring about Justice and fair play in this country.

Most public workers when the hand of suspicion is pointed at them, normally they get half of their remuneration. This is because there is suspicion that they have done something wrong. This particular Article Honourable Chair, intends to put Judges in a different category. It tends to give them the privilege of enjoying their full benefits when the hand of suspicion is already on them.

Those who dispense justice over others. Those who sit in judgment over others, like Jesus Christ, should themselves be above suspicion. If the hand of suspicion is pointed at them, then for the sake of fair play, they should be subjected to the full conditions that others undergo. If you want to create a society that has laws which treat all people equally, those who sit in judgment of

others, are much more obligated to be subject to the law. Even Christ Himself said that those who are teachers have to be much more accountable themselves.

**Hon. Delegate Koitamet Ole Kina:** You have two more minutes.

**Hon. Delegate Joel Sang:** So, I request the Honourable Delegates to make a difference in this country by making Judges be subject to the laws, that sometimes they sit in judgment of others over, that we change that Article to read that “a judge who is suspended from office under Clause (4), shall retain half of his or her remuneration and benefits until such time when he or she maybe removed from office or reinstated”. So, I beg to move Honourable Chair. Thank you.

**Hon. Delegate Koitamet Ole Kina:** 253.

**Hon. Delegate Salah Ahmed:** Thank you Mr. Chairman. I am in support of the Motion that we are here making a Constitution and we are treating people differently. I can recall very well that when we were in the Committee of Transition, it was a hot debate and that, people tried to persuade us by saying that, let us harmonize and make it, we should not go while we are divided. We came here today while we are still divided. I want to support the Motion on the basis that each and every Kenyan should be treated equally by virtue of him having or her having the job. It is not because of her that she was a sweeper. It is not because of her that she wanted to become that way, because in any other categories when anyone is on suspension, he or she normally receive half pay. So, I do not see the reason why we are treating a certain category of the society more superior than the other one. I suggested to the Honourable Delegates to look very closely because, this is giving more opportunity to others than the rest. Thank you very much.

**Hon. Delegate Koitamet Ole Kina:** Thank you. 455.

**Hon. Delegate Lawrence Mute:** Thank you, Chair. My name is Lawrence Mute. Chair, I wish to urge Delegates and very humbly that as we make this Constitution, we must take the medium with the long-term view. Chair, we must not make a Constitution on the basis of anything that may have happened recently, which makes us to react or not to react. Chair, I support this

Motion. If a Judge is alleged to have done a mistake, then Chair, it is only fair that the rules that apply across the board, in relation to other civil servants, apply to the judge. Of course, in the event that the judge is exonerated, he takes all his pay, because that is the usual procedure. So, Chair, I urge that we support this Motion. Thank you Chair.

**Hon. Delegate Koitamet Ole Kina:** One person against the Motion? 581

**Hon. Delegate Yusuf Aboubakar:** Thank you Mr. Chairman. my name is Yusuf Mahmoud Aboubakar Delegate number 581. Mr. Chairman, I happened to be a Member of the Committee that discussed this issue and we were informed that we were guided by the presumption that the allegations against a judge, are more less of a criminal nature and we were guided by what we decided in the Bill of Rights that a person is presumed to be innocent until he is proven guilty. So, if there are allegations, that judge is presumed by this very Constitution to be very innocent until he is proven guilty. On proving that judge guilty and you have been paying him full pay, other penalties can be given in respect of that particular Judge including compensation and surrendering what he had illegally earned.

So, Mr. Chairman, I oppose this Motion and on the other reason, similarities given between a judge and a civil servant is not correct. Because one is a Constitutional office with high responsibilities and there is a tendency that one person who has been aggrieved by the decision of a judge may take that opportunity--

**Hon. Delegate Koitamet Ole Kina:** Your minute is over please. 274.

**Hon. Delegate Yusuf Aboubakar:** Thank you, very much Mr. Chairman.

*(Noise).*

**Hon. Delegate Paul Gituma:** Thank you very much, Honourable Chair. I was in a Committee of Judiciary and we had along discussion on this subject. A Judge is just not an ordinary person. His responsibilities are heavy.

*(Uproar).*

**Hon. Delegate Koitamet Ole Kina:** Please let us listen to him, Honourable Delegates.

**Hon. Delegate Paul Gituma:** Give me time. I say like this. He must be treated differently because the Constitution itself treats judges differently. We do not want to punish the person on a mere suspicion because he is supposed to behave differently from any other servants of the State. So, why should you punish the person just because of a mere suspicion? He should be paid--

*(Noise on the floor).*

**Hon. Delegate Koitamet Ole Kina:** Thank you, your minute is –

**Hon. Delegate Paul Gituma:** So, I oppose the amendment. Thank you.

**Hon. Delegate Koitamet Ole Kina:** Can I now put the question?

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** Okay. I put the question that a Judge who is suspended from his office under Clause (4) shall retain half of his or her remuneration and benefits until such time as he or she may be removed from office. All those in favour please raise your placards?

*(Delegates raise placards).*

**Hon. Delegate Koitamet Ole Kina:** All those against?

*(Some Delegates raise placards).*

**Hon. Delegate Koitamet Ole Kina:** The “Ayes” have it. What is the confusion?

**PLO Lumumba:** There appears to be disquiet. What is the confusion? You want the question to be put again?

**Hon. Delegates:** Yes.

**PLO Lumumba:** Could you kindly frame it.

**Hon. Delegate Koitamet Ole Kina:** Order please and then listen. Please pay attention. I put a question, that a Judge who is suspended from office under (4) shall retain one half of his or her remuneration and benefits until such a time as he or she maybe removed from office. How many support that amendment?

*(Delegates raise placards).*

**Hon. Delegate Koitamet Ole Kina:** How many oppose the amendment?

*(Some Delegates raise placards).*

**Hon. Delegate Koitamet Ole Kina:** Those who support the amendment have it. 221. Otieno Kajwang’.

*(Noise on the floor).*

**Hon. Delegate Otieno Kajwang’:** Thank you very much. Mfr. Chairman, I think we did not give a lot of thought to this. Judges do not only earn salaries, they also have homes provided by the State, they have cars, provided by the State, they have security, how are you going to halve these ones? Thank you very much.

*(Noise on the floor).*

**Hon. Delegate Koitamet Ole Kina:** I think we proceed.

**PLO Lumumba:** The Chairman has given me the floor may I have it please?

**Hon. Delegates:** Yes.

**PLO Lumumba:** Now, that I have it may I read Article 221 on Subordinate Courts?

**Hon. Delegate Koitamet Ole Kina:** There is a Motion by Honourable David Oginde on 221 (2).

*(Consultations at 'high' table).*

**Rev. David Oginde:** Mr. Chairman, in light of what happened in the Motion on article 209, I wish to withdraw that Motion. Thank you.

*(Clapping).*

**PLO Lumumba:** Mr. Chairman with your permission, I now read Articles 222 on the Kadhis' court, Article 223 on jurisdiction of Kadhis' court,

**Hon. Delegates:** Yes.

**PLO Lumumba:** Article 224 on composition of the Judicial Service Commission.

**Hon. Delegates:** Yes.

**PLO Lumumba:** Article 225 on functions of the Judicial Service Commission.

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** There is a Motion.

**PLO Lumumba:** Is there a Motion?

**Hon. Delegates:** No.

**PLO Lumumba:** May I proceed to read?

**Hon. Delegate Koitamet Ole Kina:** There is Leslie Mwachiro, 224 (1).

**Hon. Delegate Victoria Mutheu:** Thank you Chair. Do I have the floor?

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

**Hon. Delegate Victoria Mutheu:** Thank you Chair. My names are Victoria Mutheu, 294, Machakos District. I intend to --

**Hon. Delegate Koitamet Ole Kina:** Which Article are you addressing please?

**Hon. Delegate Victoria Mutheu:** I am addressing Article 224.

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

**Hon. Delegate Victoria Mutheu:** The Composition of the Judicial Service Commission. I intend to delete the word “chief kadhi” as the only religious representatives here and have it replaced with “the religious representative as Parliament shall legislate” so as to incorporate what we have decided in the Technical Groups, that the composition of the Judicial Service Commission should also comprise other religious representatives. For example the Hindus, the Christians, etcetera. These are men and women of integrity and of upright moral characters and credibility who will help in the carrying out of the duties of the Judicial Service Commission. This incorporation was deleted by the group which went to Mombasa but I still feel persuaded that we need this category of representation here. With these few remarks I beg to move.

**Hon. Delegate Koitamet Ole Kina:** 529.

**Hon. Delegate Rev. Patrick Musungu:** My number is 529, Reverend Patrick Musungu. I would like to inform the Committee of the whole that Honourable Mover of the Motion is misleading the House by insinuating that the people who went to Mombasa, are the ones who inserted this particular Clause in the Draft Bill. To the contrary, this was Debated at the Technical Committee level and the Members of the Committee upon a consensus, they voted for the Chief Kadhi to be included not on the basis that he is a religious leader, but on the basis that as a judicial officer who is in charge of a specific court, he ought to be included.

*(Clapping).*

**Hon. Delegate Koitamet Ole Kina:** Those who support the deletion of (f) the Chief Kadhi please raise your placards.

*(Delegates raise placards).*

**Hon. Delegate Koitamet Ole Kina:** I would like to put the question then, that those who support the deletion of (f) in 224, which says that, “the Chief Kadhi will be among the members composing Judicial Service Commission”, Please lift your placards.

*(Delegates lift placards).*

**Hon. Delegate Koitamet Ole Kina:** Sorry, I think I put the question without asking whether there is anybody in support of the person, so is there anybody who would like to speak in support of that? Point of Order, 015.

**Hon. Delegate Billow Kerrow:** Thank you Mr. Chairman. Billow Kerrow, 015. Mr. Chairman, you will confuse us. You would rather say, “those who support the Motion, can you raise up” that is easier, because when you read you confuse people. Please say, “can those who support the Motion raise their hands” and those who oppose it.

**Hon. Delegate Koitamet Ole Kina:** Okay.

**Hon. Delegate Billow Kerrow:** I think that is easier because they want the Motion.

**Hon. Delegate Koitamet Ole Kina:** Okay, thank you for your guidance. Those who support the Motion, please raise your placards.

*(Delegates raise placards).*

**Hon. Delegate Koitamet Ole Kina:** Those who oppose the Motion.

*(Delegates raise placards).*

**Hon. Delegate Koitamet Ole Kina:** The “Nays” have it. Leslie Mwachiro you have a Motion.

**Hon. Delegate Leslie Mwachiro:** Chair, I am doing my last leg. Leslie Betawa Mwachiro. Chair, I have a Motion on 224 (1), I would like to insert a new Clause and Chair, this is the Judicial Service Commission. Chair, I am still pleading with the Honourable Delegates that we do not lock out scholars entirely. Chair, we know better who is the brightest student and who is a gifted student. Now, these scholars Chair, I am suggesting that we also have two deans from the law schools in the faculties of law, who should be nominated by the universities to actually sit in the Judicial Service Commission. My Motion is as clear as that. I beg to move.

**Hon. Delegate Koitamet Ole Kina:** A person in support? 562. *(Laughter).*

**Com. Mutakha Kangu:** Mr. Chairman, my name is Mutakha Kangu, number 562, and I would like to say that the Judicial job is an intellectual job. The process of creating a jurisprudence, creating our law, developing the law is an intellectual job, and I think it is extremely important that we involve our scholars in the process of developing our judicial process and jurisprudence and we need to have a say in the determining who are intellectually prepared to sit in our courts. I support the Motion. Thank you.

**Hon. Delegate Koitamet Ole Kina:** Those against the Motion, 488.

**Hon. Delegate James Foster:** Thank you Chair, 488, James Foster from the professionals. I spoke on this subject in the initial plenary. I think there are too many judges and lawyers there already and I would strongly oppose the Motion. I think we should have had more independent people but it is too late now, and I oppose having these scholars there. *(Clapping)*.

**Hon. Delegate Koitamet Ole Kina:** 484.

**Hon. Delegate Sylvester Wafula:** *Bwana* Chairman, this is Sylvester Wafula 484 from professional group. My appeal is that as much as we are making this Constitution, let us not forget professionalism. What stops scholars from also being professionals. Let them register, let them do exams and become professionals. So, in that respect, Mr. Chairman, I oppose the Motion.

**Hon. Delegate Koitamet Ole Kina:** And now I want to put the question. Those in favour of the Motion, please lift your placards?

*(Delegates raise placards).*

**Hon. Delegate Koitamet Ole Kina:** Those who oppose. We have to count. I think we do not have a clear cut on this so please maybe we can take a count.

**P LO Lumumba:** Ask those who support it to raise.

**Hon. Delegate Koitamet Ole Kina:** Those who support it please, raise--

*Counting going on.*

**Hon. Delegate Koitamet Ole Kina:** Those against the Motion please.

*Delegates raise placards and counting.*

**Hon. Delegate Koitamet Ole Kina:** Can we proceed as they count please?

**Hon. Delegates:** Yes.

**PLO Lumumba:** I am now reading Mr. Chairman from page number 141. Removal from office.

Page 143 - Presidential Powers of Clemency.

**Hon. Delegate Koitamet Ole Kina:** 225.

**P L O Lumumba:** I am sorry, let us go back.

Functions of the Judicial Service Commission – 225.

**Hon. Delegates:** Yes.

**P L O Lumumba:** The legal system on page 138.

The Attorney General.

**Hon. Delegates:** Yes.

On page 139.

Article 227

Director of Public Prosecutions.

**Hon. Delegates:** Yes.

**P L O Lumumba:** On page number 140.

Article 228

The Public Defender.

Article 229

Removal from office.

On page 143

Presidential Powers of Clemency.

That brings us to the end of the Chapter on Judiciary and Legal Systems. (*Clapping*).

**Hon. Delegate Koitamet Ole Kina:** We are waiting for the vote that we took before we can vote for the entire Chapter.

**P L O Lumumba:** We cannot vote because –

**Hon. Delegate Koitamet Ole Kina:** 487.

**Hon. Delegate Rihal Singh:** Thank you Mr. Chairman, I am Delegate number 487, Rihal from Professional Organizations. I am seeking a clarification on the composition and functions of the Judicial Service Commission. We have not stated in the Draft as to who is going to be the Chairman of this Commission. In the other Constitutional Commissions, we have stated who is going to be the Chairman or we have stated that in the event of the Chairman not being specifically mentioned then Chapter 18, provisions of Chapter 18 shall apply which includes election of a Chairman at the first sitting of that Commission. We have not set that specifically in respect of the Judicial Service Commission, so I feel we need to clear this. It is a question which the Drafters can take care of at the appropriate time but I thought let us bring it out because we have not specifically said who is the Chairman. As you know the current system is, the Chief Justice is the Chairman but we are not saying so in the new Draft. Thank you.

**Hon. Delegate Koitamet Ole Kina:** So you are saying we handle it with the Drafters?

**Hon. Delegate Rihal Singh:** Yes, either we say that provisions of Chapter 18 shall apply on the Chairmanship or we provide specifically in this Chapter who shall be the Chairman.

**Hon. Delegate Koitamet Ole Kina:** 392.

**Hon. Delegate Paul Nakitare:** I thank you Honourable Chair. There was a Motion moved earlier I think under Culture about establishment of African Traditional Courts. I have looked for it and my conclusion is that it is not properly established, especially when you look at Article 209 where it merely says “any traditional courts or local tribunals”. I would have expected that we should have really established it and said that there is established African Traditional Court Systems--

**Hon. Delegate Koitamet Ole Kina:** Please, Honourable Delegates do not move out we are about to vote. We were just waiting for the results of the vote that we had taken.

**Hon. Delegate Paul Nakitare:** So I am asking for your clarification Honourable Chair, how this particular matter has been captured in the Judiciary. The establishment of the African court system and the African traditional oath system. Thank you Chair.

**Hon. Delegate Koitamet Ole Kina:** I think we went through 209 and there was no Motion so we do not want to reopen Articles that we have already voted on.

*(Inaudible comments from the floor).*

**Hon. Delegate Koitamet Ole Kina:** We cannot vote before we get the results of that one Article please and you know that, so please be patient. 542.

**Hon. Delegate Ibrahim Omondi:** Thank you Chairman. My name is Ibrahim Omondi, Delegate number 542. Earlier on Mr. Chairman, when we were taking the vote on Article 219 I was basically raising a point of order asking for division. I feel like I was totally ignored. I feel marginalized and when I came up to the table, I talked to you and I was told it will be done at the

end of this. Now, we do not even have a quorum. Could we please do that proper voting by division? Otherwise, I feel the Church has been mistreated in this place and I feel like we have been marginalized. So let us do it properly, so at least we shall see justice being done. Thank you Chairman.

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegate, we took a vote and there was a clear position so please, take my ruling. You have respected my ruling in all other positions and we should do this. I have the results of the count.

**P L O Lumumba:** 161 supports.

**Hon. Delegate Koitamet Ole Kina:** Please, let us have the Secretary announce.

**P L O Lumumba:** The results are as follows: In respect of that particular Article, those who support are 161, those who oppose 96. The net effect is that if we want to vote for the whole Chapter now, we are short of quorum and we must whip Delegates to come back so that we can vote for the whole Chapter as amended. We need 300 Delegates to be present.

**Hon. Delegate Koitamet Ole Kina:** In that regard, I would like us to adjourn for tea and please come back in half an hour.

**The meeting adjourned for tea at 11.20 a.m.**

**AFTER TEA BREAK**

**The Meeting reconvened at 12.10 with Hon. Delegate Koitamet Ole Kina in the Chair.**

**Hon. Delegate Koitamet Ole Kina:** As we settle down--

*(Inaudible discussions on the floor).*

**Hon. Delegate Koitamet Ole Kina:** Hon. Delegates, I have been urged-- Order please. Order! I have been reminded of the tragic death of the late Professor Mkangi who attended here once as an Observer and Honourable Delegate Mwandawiro Mghanga has requested that we honour the departed Mkangi by giving him a one-minute silence. So, if we can do that please let us just rise up for a one-minute silence.

*(One-minute silence).*

**Hon. Delegate Koitamet Ole Kina:** Thank you very much. As we gather the numbers to take the votes, I will invite Delegate 028, Honourable Robinson Githae, he has a statement he would like to read.

*(Inaudible discussions on the floor).*

**Hon. Delegate Robinson Githae:** Thank you, Mr. Chairman for giving me this opportunity to reiterate government's position on Kadhis' Courts just before we come to the voting.

*(Uproar from the floor).*

**Hon. Delegate Robinson Githae:** Mr. Chairman, Constitution-making is a political affair, mistakes cognisance of the current political situation. It is a give and take situation. You cannot expect to take everything and you cannot expect to get everything. Therefore, to get a win-win situation, we must all give something and expect to take something.

Kadhis' Courts are currently in the Constitution, and I remember I was one of the first people to draw the attention of Kenyans to this, they have been there with us since 1963, there has never been any problem, it only deals with the personal law of the Muslims, Muslims are equal citizens of Kenya and for the last forty years there has been no problem with the entrenchment of Kadhis' Courts in our current Constitution. The Muslims and other faiths have lived like brothers and sisters; Kadhis' Courts should be entrenched in the Constitution in a manner generally consistent with the current Constitution. The application of Islamic law should be limited to personal law, i.e. status, marriage, divorce and inheritance and should be applicable to those who profess the faith.

Muslim personal law must be subjected to the Bill of Rights, which is applicable to all Kenyans. That is the Government's position and I would like to appeal to my fellow Christians to accept that position as a way forward so that we can go to the other issues-- *(Clapping)*. So that we can go to the other issues and particularly more that the Consensus committee has come up with other recommendations and my appeal again to the Delegates is that when the Consensus Committee comes up with its resolutions, that we support them. Thank you. *(Clapping & applauding)*.

**Hon. Delegate Koitamet Ole Kina:** Thank you very much. If we have numbers now, I would like us to take a vote on the Chapter on the Judicial Systems.

## CHAPTER THIRTEEN

### JUDICIAL AND LEGAL SYSTEMS

*(Inaudible discussions on the floor).*

**Hon. Delegate Koitamet Ole Kina:** We went through all the Articles-- I would like to-- (*Bell rings*). Order! Order! I know that there might be a few Delegates who are not supporting all the Articles; you will have an opportunity when you are voting to register your reservation to whatever Article you do not support. So, when you are voting, I will invite those who have a reservation to whatever Article to make sure that they register. So, I will now ask everybody to settle down so that we have a vote on the Chapter on Judicial and Legal Systems, Chapter Thirteen.

*(Consultations at the "high" table).*

**Hon. Delegate Koitamet Ole Kina:** I put the question; that Chapter Thirteen, Judicial and Legal Systems be part of our Constitution. Those in support of the Motion please raise your placards.

*(Hon. Delegates raise placards).*

**An Hon. Delegate:** As amended?

**Hon. Delegate Koitamet Ole Kina:** Of course as amended.

*(Counting of votes goes on).*

**Hon. Delegate Koitamet Ole Kina:** Those against the Motion that we include Chapter 13 as part of the Constitution, please raise your placards.

*(Hon. Delegates raise placards).*

**Hon. Delegate Koitamet Ole Kina:** Those who have reservations on specific Articles please register them now.

*(Hon. Delegates raise placards).*

**Hon. Delegate Koitamet Ole Kina:** Please be specific. Those abstaining?

*(Hon. Delegates raise placards).*

*(Consultations at the “high” table).*

**Hon. Delegate Koitamet Ole Kina:** I think we should proceed as we have finished the count.

*(Consultations at the “high” table).*

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegates, I would like us to proceed to Chapter Sixteen, since the other Chapters are linked to Devolution and the Executive, I think we can go straight to Chapter Sixteen, The Public Service.

## **CHAPTER SIXTEEN**

### **THE PUBLIC SERVICE**

**P L O Lumumba:** Ladies and Gentlemen, do I have your permission to read Chapter Sixteen?

**Hon. Delegates:** Yes.

**P L O Lumumba:** It is on page number 188, the title is Public Service, Part I of it is Public Service and Article 302, Values and principles of Public Service generally.

Article 303 – The Public Service Commission.

Article 304 – Powers and Functions.

Article 305 – Staffing of devolved governments

*(Inaudible comments on the floor).*

Article 306 - Establishment of Offices.

**Hon. Delegates:** Yes.

**P L O Lumumba:** Article 307 - Appointment of Public Officers.

Article 308 - Protection of Public Officers.

**Hon. Delegates:** Yes.

**P L O Lumumba:** Article 308 – Protection of Public Officers

**Hon. Delegates:** Yes.

**P L O Lumumba:** Article 309 – Teachers Service commission.

**Hon. Delegates:** Yes.

**P L O Lumumba:** Article 310 – The Health Service commission.

**Hon. Delegates:** Yes.

**P L O Lumumba:** Article 311 – The Establishment of the Kenya Correctional Service.

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** I think we have Motion. 387.

*(Consultations at the “high” table).*

**Com. Mutakha Kangu:** Point of clarification.

**Hon. Delegate Koitamet Ole Kina:** Point of Clarification?

**Com Mutakha Kangu:** Mutakha Kangu, 562. I would like to be clear that Delegates are aware that there is a corrigendum touching on some aspects of this Chapter, so that they know what they are referring to.

**Hon. Delegate Koitamet Ole Kina:** Thank you very much for your clarification.

*(Consultations at the “high” table).*

**P L O Lumumba:** Can we have the corrigendum on the podium please? The Secretariat staff can we have the corrigendum urgently please.

**Hon. Delegate Koitamet Ole Kina:** 379.

**Hon. Delegate Levi Ahindukha:** I am 379, Ahindukha, Kakamega District. Mr. Chairman, as regards to this Chapter, we do not have the documents relating the Motions Mr. Chairman – so that we can make a follow up.

**P L O Lumumba:** Can we have the corrigendum Secretariat Staff please?

**Hon. Delegate Koitamet Ole Kina:** I would like to appeal to Delegates who may have Motions on this, please when we reach the Article that you have a Motion on, I am looking, so please raise up your placard because I may not also have all the Motions here. So, make sure that you also inform me that you have a Motion. 387?

**Hon. Delegate Nancy Ngeywa:** I am Nancy Ngeywa, 387. I would like to move a Motion of addition to Article 311 (1), where it says, “There is established the Kenya Correctional Service”.

That we add after Correctional Service, “comprising of prisons, probations and children’s department to run autonomously”. Why I say this is because when we talk of the Kenya Correctional Service, actually there are three departments that deal with correctional services and those are the three, the ones that I have just mentioned.

Unfortunately in Article 311 (2) (b), where it says, “the object of the Kenya Correctional Service is to ensure the supervision of offenders within the community, *bla, bla, bla,*”, actually it is a repetition of-- The supervision of offenders within the community is enough, that is the sole function of probation department and therefore its inclusion in this section - Part II of that Chapter means that probation department is actually swallowed by prisons department and this is very wrong because it is going to interfere with the effective rehabilitation of offenders within the community.

My other reasons are that, during the harmonization and rationalization exercise in Ministries, the two departments co-functions were found to be incompatible because the prisons is purely custodial and probation is non-custodial and community based and world over, a probation officer is the discreet, with no badges or sign of office like uniform, and their work is community based, civilian in nature, with humane social work approach. Hence, probation department should not be embroiled in prisons department with the structural paramilitary set up.

Previously also there was the EMPE, Extra Mural Penal Employment, which failed and it was under the Prisons Department but after it failed and lost popularity with the Judiciary, an Interim Committee was formed from the law reform Commission and went round the Country, and it was chaired by Justice Okubasu, collected views countrywide from stakeholders in the Administration of Criminal Justice and the agencies dealing with the same. And after their views were collected and analyzed, it was realized that the best placed department to deal with the community service which was now recommended to replace EMPE, was the probation department and since 1999, that has been a co-function also of probation department and it has actually become popular and I am sure all the Delegates here have seen the work being done in schools, on roads and all that.

Another reason is that, most commonwealth countries have the correctional system as autonomous--

**Hon. Delegate Koitamet Ole Kina:** Yes, and wind up please.

**Hon. Delegate Nancy Ngeywa:** Please allow me to explain.

**Hon. Delegate Koitamet Ole Kina:** You will have to wind up, we said two minutes--

**Hon. Delegate Nancy Ngeywa:** Okay, fine, let me try and hurry, but some people have talked for more than two minutes Chairman. Please allow me.

**Hon. Delegate Koitamet Ole Kina:** Please wind up.

**Hon. Delegate Nancy Ngeywa:** The countries that run autonomous are Japan, Singapore, Malaysia, Ireland, U.K., Hong Kong, Tanzania, etc. The system of putting probation under prisons was tried here before independence and it was found to be invalid, South Africa is actually in this stage and South Africa was used as an example in that Committee but they are many steps behind us. Therefore, the enactment of this will actually be retrogressive.

Also the figures of probation of the people under communities, service and probation is 25, 335, prisons, is 27,697 and I wonder what justification is there for prisons department to take over a department handling a case load almost equal to theirs. And also actually--

**Hon. Delegate Koitamet Ole Kina:** I think you have made your points.

**Hon. Delegate Nancy Ngeywa:** Okay, thank you.

**Hon. Delegate Koitamet Ole Kina:** Yes, so let us have someone to speak in favour of the Motion. 028.

**Hon. Delegate Robinson Githae:** Thank you, Mr. Chairman. I rise to support the Motion. Probation service is a very important function in the administration of justice and it is important that they not only be independent but they should also be autonomous. They should not fall under the police department, they should not fall under the Correctional Services Department, they should be on their own because the work they do is confidential, they should not be under the direction of any person or anybody, or any other body because they are supposed to deal, look at the individual case of the accused person, and then make a recommendation to the courts. This enables the Judge or the Magistrate to come with the appropriate sentence. Infact in some jurisdictions Mr. Chairman, it is compulsory that before any accused person is sentenced, a probation report must be received by the court. Thank you.

**Hon. Delegate Koitamet Ole Kina:** Thank you. One against. 185.

**Hon. Delegate Abdi Sasura:** Mr. Chairman, my name is Sasura, 185. I stand to oppose the Motion. Mr. Chairman, the probation office, over the years has been misused and it has been used as an avenue to avoid custodial sentences, and you find that when somebody is charged in court, the probation officers collude with the sitting Magistrate or Judge for that matter so that instead of giving a custodial sentence to an offender, they decide to give him a non-custodial sentence and put him under probation by the Probation Officers.

Secondly Mr. Chairman, it has not been proved to us that the services of the Probation Officers has borne any fruits, Mr. Chairman.

Lastly, 311 (2) (b), provides adequately for the Probation officers. So, I believe under this Clause, because we are going to have something new called the Kenya Correctional Services, and we are going to enhance the services of the Prisons Department, we should not de-link this from the Correctional Services.

**Hon. Delegate Koitamet Ole Kina:** Thank you. One other against. 015.

**Hon. Delegate Billow Kerrow:** Thank you, Mr. Chairman. Billow Kerrow, Delegate number 015. Mr. Chairman, as the Convenor, I wanted just to clarify. What we looked at, I appreciate

the Honourable Delegate comments about other countries but we looked at the current events in all countries. The Probation Department is currently within the Ministry of Home Affairs together with the Prisons and so forth. In this new definition of Kenya Correctional Service, we have taken all the three, the prisons, the remand and the probation, to be all under one Director General in the Ministry.

Now, we have said in the next Article number (4) of the same 311, that the Parliament will enact appropriate legislation in terms of sending out the organization, the structures and so forth and so forth but we did look at that aspect and I think they even came up with a chart to show that there will be a Probation Department, there will be the remands, there will be prisons, we are not going to have a situation where the remand will be under prison. This is a service that will take over all the three functions within that Ministry and in terms of rationalization really and so it is not going to in any way demean the functions or the role the services that are being provided by the probational services. Thank you.

**Hon. Delegate Koitamet Ole Kina:** I think we are ready to take a vote on that. *(Bell rings)*. Those in favour of the Motion. I would like to remind you – because it appears to some – it says we add that “there is established the Kenya Correctional Service comprising of prisons, probation and children’s department to run independently”. Those in favour of that Motion, please raise your placards.

*(Honourable Delegates raise their placards).*

*(Silence as counting takes place).*

**Hon. Delegate Koitamet Ole Kina:** Those against the Motion.

*(Honourable Delegates raise their placards).*

*(Silence as counting takes place).*

**Hon. Delegate Koitamet Ole Kina:** The “NAYS” have it. Proceed, Mr. Lumumba.

**PLO Lumumba:** Mr. Chairman, in light of the notice of the corrigendum which has been brought to our attention, I do not know whether you have it. Do Honourable Delegates have it?

**Hon. Delegates:** No.

**PLO Lumumba:** If you do, then I am reading on the basis of the corrigendum and I am now at Article 310. According to our records we have a Motion from Peter Kang'ethe Nkoroi which is essentially a drafting matter, "services" instead of "service". I do not know whether you would want to move.

**Hon. Delegate Koitamet Ole Kina:** Is the Delegate here?

**Hon. Delegate Peter Kang'ethe:** Yeah. Thank you, Mr. Chairman. I think this is a drafting matter and I beg to withdraw. Thank you.

**Hon. Delegate Koitamet Ole Kina:** Thank you very much.

**PLO Lumumba:** If that is the truth, then permit me to read Article 312. Director General of Kenya Correctional Service.

**Hon. Delegate Koitamet Ole Kina:** I think that is the end of the Chapter.

*(Consultations at the "high" table).*

**Hon. Delegate Koitamet Ole Kina:** So, I would like to put to the vote, that Chapter 16, the Public Service, be part of our Constitution. Those in favour, please raise your placards.

**Hon. Delegates:** Amended, amended.

**Hon. Delegate Koitamet Ole Kina:** Of course as amended.

*(Uproar on the floor).*

**Hon. Delegate Koitamet Ole Kina:** There was something to do with drafting and we agreed. So, Chapter 16 stands part of our Constitution.

*(Murmurs on the floor).*

**PLO Lumumba:** Still counting.

**Hon. Delegate Koitamet Ole Kina:** We are still counting, please, we are still counting.

*(Noise as counting takes place).*

*(Consultations at the “high” table).*

**Hon. Delegate Koitamet Ole Kina:** Those against the inclusion of Chapter 16 in our Constitution, please raise your placards. Those against the Motion.

*(Silence as counting takes place).*

*(Consultations at the “high” table).*

**Hon. Delegate Koitamet Ole Kina:** Those abstaining.

*(Silence as counting takes place).*

**Hon. Delegate Koitamet Ole Kina:** Okay, as we count, I would like to announce the results on the Chapter on Judiciary. **“AYES” 279, “NAYS” 11, Abstentions 3 and Reservations 8.** So, the Chapter on the Judiciary stands as part of our Constitution. *(Clapping).*

**PLO Lumumba:** As we wait we (?)

**Hon. Delegate Koitamet Ole Kina:** And as we wait, we would like to proceed to Chapter 17, National Security.

**PLO Lumumba:** Mr. Chairman, do I have the floor?

**Hon. Delegate Koitamet Ole Kina:** Yes, please.

**PLO Lumumba:** May I then read on page number 196, Chapter number 17, the title National Security, Part One, National Security Organs.

Article 313 on Definitions.

Article 314, National Security--

**Hon. Delegate Koitamet Ole Kina:** *(Inaudible).*

**PLO Lumumba:** A Motion?

**Hon. Delegate Koitamet Ole Kina:** Let me please remind you that I do not have your Motions here, so if you have a Motion please, alert me. 528.

**Hon. Delegate James Mageria:** Thank you, Mr. Chairman. 528, James Mageria. Unfortunately, there are a few Motions and we do not even have them ourselves, so I will try to go to my office -- Please, just wait for the copy of that so that we can participate on that please.

**Hon. Delegate Koitamet Ole Kina:** I am saying, please read it from the floor. Read your Motion.

**Hon. Delegate James Mageria:** I do not have it here because it was given for typing and it has not been returned yet.

**PLO Lumumba:** Mr. Mageria, Motions are accepted from the floor, can you formulate it?  
Does it relate to Article 313?

**An Hon. Delegate:** There is a Mover.

**PLO Lumumba:** If there is a Mover, can we have the Mover, please?

**Hon. Delegate Koitamet Ole Kina:** 488.

**Hon. Delegate James Foster:** Chairman, 488, James Foster, Professionals. My Motion is that we delete from item 314, sub-paragraph (d), “the Administration Police Service”.

*(Murmurs on the floor).*

**Hon. Delegate Koitamet Ole Kina:** Please, move your Motion again.

**Hon. Delegate James Foster:** The Motion is that we delete, from the list of the National Security Organs, the Administration Police Service.

*(Noise on the floor).*

**PLO Lumumba:** Can Mr. Foster be allowed to move his Motion in silence, like we always do?

**Hon. Delegates:** Yes.

**PLO Lumumba:** Let him be so allowed.

**Hon. Delegate James Foster:** The reason for moving this Motion, Chair, is that we have a National Kenya Police Force and the Administration Police owes its origin, as everyone in this room knows, to a small group of people who where, so to speak, the hand maidens of the District Officers and District Commissioners.

In the Committee on Devolution, we foresaw that there would be a need to have people at the District level performing such a function, but what I am opposing is that we have a national body with a National Commandant, a National this and a National that. We have a National Police Force, and the Administration Police should be devolved down to the districts. If they want to have a National Training School for the training of these people, then I would have no objection. I beg to move we delete the Motion organ, Sir.

**Hon. Delegate Koitamet Ole Kina:** One in support of the Motion? 252.

**Hon. Delegate Dubat Amey:** No, I am not. (*Laughter*).

**Hon. Delegate Koitamet Ole Kina:** Anybody supporting the Motion? 487.

**Hon. Delegate Rihal Singh:** Thank you, Mr. Chairman. 487, Rihal, from the Professional Organizations--

**Hon. Delegate Koitamet Ole Kina:** Order, please. Let us listen to the Honourable Delegate.

**Hon. Delegate Rihal Singh:** This Motion actually should be read in conjunction with another Motion that will come later, when we come to Article 320 (6), because there, it is proposed that the Kenya Police and the Administration Police be merged as one integrated service. So, if the Kenya Police will be mentioned under 314, as part of the National Security Organ and if we agree to what is proposed under 326, it then makes sense that the Administration Police is not mentioned separately on its own. So, this is the reason that this Motion is being proposed by Mr. Foster.

We need to consider the two together and integrate. If we accept the second principle then the first one must automatically be removed. Thank you.

**Hon. Delegate Koitamet Ole Kina:** 406.

**Hon. Delegate Shakeel Shabbir:** In furtherance to that – Shabbir, 406. May I, with the permission of the Honourable Delegates and the Chair, suggest that either you allow me to present the Motion now to save time? If that is agreeable, I think it will save this Conference a lot of time. If that is agreeable, we could do it now Sir, together.

*(Murmurs on the floor).*

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegates, the two Motions are related and I think whatever decision we take on, Mr. Shabbir's Motion will have an effect on the Motion of Mr. Foster. So, let us take Mr. Shabbir's Motion and then after that, we will vote for Mr. Foster's – because in fact after we vote for Mr. Shabbir's Motion, then Mr. Foster's Motion will have either been defeated or accepted.

So, I would like to invite Honourable Shabbir to move his Motion.

**Hon. Delegate Shakeel Shabbir:** Thank you, Honourable Delegates, Chairman. I beg the permission--

*(Murmurs on the floor).*

**PLO Lumumba:** Could we kindly give Mr. Shabbir the floor?

**Hon. Delegate Shakeel Shabbir:** I beg the permission to raise the following Motion. With your permission Sir, in furtherance of time, there are two Motions which are next to each other and very much related. Section 326 (2) be deleted and replaced with the following provision, “that the Administrative Police Force shall be an integral part of the Police Service, but administered as a separate autonomous branch of the Police Service”.

I would like to tell you why I thought this proposal should be brought to the floor. Firstly, although there is a misconception, let me please say that I fully support the functions of the Administrative Police Service. They have done excellent work and they are a key security

function within the community. In the North Eastern, there are thirty eight Administrative Police Posts and maybe just two Regular Police Posts.

I also wish to suggest, however, that the AP was irregular in its forming. It is not under any recognized structure and the proposal that I have is to incorporate the Administrative Police Force as an autonomous separate part of the Police Force with a separate Commission or Commandant who is totally responsible with a separate accounting system, separate uniforms, its own identity, its own corporate structure and command structures. It would not, as people say, fall under the direct supervision of the Inspector General. It would be like the Armed Forces where you have the Navy, the Air Force and the Army and the Chief of Defence Forces is like a ceremonial head. So, the Inspector General would be like a ceremonial head. The reason we are saying this is because under devolution of power, there will be problems because the Administrative Police Force are really linked with the PC, Provincial Department--

**Hon. Delegate Koitamet Ole Kina:** Yes, please wind up.

**Hon. Delegate Shakeel Shabbir:** Yes, Sir. With the Administration. I fear that when the Administration maybe faced out under the devolution and replaced with another structure, our Administrative Police Force will be marginalized. I would like to move that we have a separate autonomous branch, which is not controlled by the Inspector General, it is a separate branch but under the structure like an overall structure of the Police Force.

**Hon. Delegate Koitamet Ole Kina:** Thank you very much.

**Hon. Delegate Shakeel Shabbir:** Thank you, Sir. I beg to move.

**Hon. Delegate Koitamet Ole Kina:** I will want somebody to speak in favour. 197.

**Hon. Delegate Noah Arap Too:** Thank you, Mr. Chairman. Too, Delegate number 197. Mr. Chairman, historically and during the colonial days, Administration Police were only up to the rank of Senior Sergeant and they were there to assist at that time in connection with the task, but for some strange reasons Mr. Chairman, the Force got build up, up to the level that it is now.

Mr. Chairman, I am standing to support the Motion by the Delegate Shabbir. First of all Mr. Chairman, it would not be right have two parallel posts. Mr. Chairman, I appreciate that the Administration Police is doing a good job, but it needs to be thoroughly structured. And for this reason Mr. Chairman, I want to suggest that the APs be put under the Inspector General Police so that it is a unit like the General Service Unit, like the CID, like the Anti Stock Theft Unit, reporting directly to the Inspector General. So, I beg to support. Thank you.

**Hon. Delegate Koitamet Ole Kina:** Thank you. 031.

**Hon. Delegate Mohammed Yusuf:** Mr. Chairman, I am 031, Mohammed Yusuf Haji. I beg to oppose the Motion. In the first instance the Mover has shot his legs, because when he says that he is merging the Administration Police with the Police and at the same time he says it will be separate and autonomous, I think if we understand English, that is not the correct thing to say. *(Clapping)*.

Secondly, Mr. Chairman, the statistics that he has given also--

**An Hon. Delegate:** Do not exist.

**Hon. Delegate Mohammed Yusuf:** Even if they exist, if there are thirty eight Administration Police Post against two Police Posts, again he has shot himself in both legs. *(Clapping)*.

Thirdly, Mr. Chairman, the Administration Police have moved from the historical utterances that have been made here. It used to be trouble Police, now it is Administrative Police. Mr. Chairman, we know, we are in this country and in Africa we have seen so many coups by the military. When you build another very strong force, you will hear there will be a coup by Inspector General of the Police. *(Clapping)*.

Let us not put our eggs in one basket, we must have parallel Forces that will be a deterrent to anybody who wants to take us back to coups. *(Clapping)*. With those remarks - I am a man of very few words - I oppose the Motion. *(Clapping)*.

*(Murmurs on the floor).*

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegates--

**PLO Lumumba:** Let us have the floor, please.

**Hon. Delegate Koitamet Ole Kina:** Please, order, order.

*(Murmurs on the floor).*

**Hon. Delegate Koitamet Ole Kina:** Order, order. I am aware you want to vote, but let me also say this. I want to allow Delegate 624 also to speak. Please. 624.

**PLO Lumumba:** Let him speak in silence.

*(Murmurs on the floor).*

**PLO Lumumba:** Gender will be respected shortly.

**Hon. Delegate Koitamet Ole Kina:** 624, please.

**Hon. Delegate King'ori Mwangi:** Thank you, Chair. As I stand here before you, my fellow Delegates, I will not be talking about the moribund Kenya Police and the moribund Administration Police. I will be talking about the future of Kenyans to have a new Police Service. I will be talking about the desires of Kenyans to have another Police Force. Many of you have been asking for a radical surgery in our security services. The service I will be talking about is not the Kenya Police Force or the Administration Police, I will be-- My name is King'ori Mwangi, Delegate number 624, representing Special Interests, namely the Police.

*(Murmurs on the floor).*

**Hon. Delegate King'ori Mwangi:** The Police.

*(Murmurs on the floor).*

**PLO Lumumba:** Please, please, please.

**Hon. Delegate King'ori Mwangi:** Give me a chance. Ladies and gentlemen, because what I talk about here affects all of us, myself included. I am not here for non-partisan interest; if what I say does not make sense, just reject it.

However, ladies and gentlemen, I am asking – we have been talking about a radical police surgery. We have a historical opportunity this afternoon to actually create a new service which is not the one led by Mr. Nyaseda or the one led by Mr. Mbugua. It will be a new one which can recruit from the Kenya Police and from the Administration Police Service.

Now, what we have been asking is that we be given a chance to have one unified command. One unified command here does not mean that whatever they do, they get instructions from the Police Headquarters or from the Inspector General. We are asking that -- We have got services that will be complementary to one another. Ladies and gentlemen, none of you have ever heard any Member of Parliament or even a newspaper column, asking the Commandant of the Administration Police to explain misdeeds of Police Officers. Say for example Administration Police anywhere in this country, they always ask the Commissioner of Police and what we are asking is let us come up with institutions that will be complementary other than competitive. The issue of an Inspector General becoming too strong, I think that Delegate is not properly informed. We are saying, in Kenya today, one of the problems we have is lack of personnel, we are having about one thousand five hundred Kenyans being policed by one Police Officer. The wish of Kenyans would be - or like the UN standards - to have four hundred and fifty Kenyans being policed by one Police Officer. This would contribute towards the security of this country. So, the size of the force would not necessarily influence the fact that the Inspector General is the one who can give legal orders. This Constitution has also outlawed the issue of legal orders. If an Inspector General in future would command his junior officer to--

**Hon. Delegate Koitamet Ole Kina:** Thank you.

**Hon. Delegate King'ori Mwangi:** --or to do something wrong. Give me-- I am a single issue Delegate.

**Hon. Delegate Koitamet Ole Kina:** One Minute.

**Hon. Delegate King'ori Mwangi:** Yes. So, ladies and gentlemen, I am asking, today the General Service Unit and the CID are semi autonomous. If the AP would come in, they would also be semi autonomous. That does not mean that they would meet on the top. An Administration Constable employed today can never make to become a detective in banking fraud, he can never be a Police Pilot. Now, once we are under one roof, we would be able to complement one another and be transferred.

Lastly, about two years ago very many Administration Police Officers were to transferred to the Kenya Police. Today some of them are OCPD's, others are Staff Officers Administration and Staff Officer Operations. It shows there is no conflict, we can work together. Let us not look at King'ori and look at another person, let us look at the interests of Kenyans. Let us not look at the holders of the offices, they do not create a job for me.

**Hon. Delegate Koitamet Ole Kina:** Thank you, I think you have made your point.

**Hon. Delegate King'ori Mwangi:** Thank you. (*Clapping*).

**Hon. Delegate Koitamet Ole Kina:** I want to be gender sensitive please. I would like to listen to a voice of at least one of our – 327.

**Hon. Delegate Sophia Lepuchirit:** Thank you very much Mr. Chairman. My name is Sophia Lepuchirit from Samburu District, Delegate number 327. Honourable Delegates I would like to send a passionate plea, please do not vote for that Motion. If all of you would know the kind of work the Administration Police do in Northern Kenya, our Districts would be totally extinct. (*Clapping*). Would be totally extinct today if Administration Police were not there. I beg to

differ very much with the Honourable Delegate who was just on the floor. The role of Administration Police in policing the community is irreplaceable, the Police can never at any one time conduct the work of Administration Police. The Administration Police will also be extremely useful in the devolved units and when we go down to the devolution of power, you will never believe the kind of role the Administration Police play. They man the government ministries, they are the ones who are intermediaries in times of conflict, during cattle rustling they bring back our cows, when the people steal our cattle they bring back to us *(Clapping)*. The Police are-- and they are highly trained and highly qualified Policemen. So I am begging the Honourable Delegates to vote for an autonomous Administration Police.

**Hon. Delegate Koitamet Ole Kina:** Thank you, thank you. The final word before we vote from 390.

*(Inaudible noise from the floor).*

**Hon. Delegate Koitamet Ole Kina:** Yes, let us listen to another member.

**Hon. Delegate Kellan Wavomba:** Thank you very much, Chair.

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegate, please proceed.

*(Inaudible noise from the floor).*

**PLO Lumumba:** Please, please give us the floor, please.

**Hon. Delegate Kellan Wavomba:** Thank you, Chairman. I wish to stand here and oppose the Motion with my flesh, bone and marrow. Mr. Chairman, I am saying this because like what my colleague has said, the AP is down on the ground with us. You go to the Police today and say you have been robbed, you will be told about the car that has no fuel. *(Clapping)*. Mr. Chairman, we have the Administration Police who walk with us to the scene of crime, and those are the people we need for our security. *(Applause)*. Mr. Chairman, look at the security in town here, I come from Western Province but I want to feel for my colleagues in Nairobi. You go

round the streets right now, you will find three APs with their guns walking round the town and that is why we have that opportunity to walk in town peacefully now unlike before, because they have been put on the streets. Mr. Chairman I beg to oppose that Motion and let my fellow Delegates support it fully, that we have to oppose that Motion fully.

**Hon. Delegate Koitamet Ole Kina:** Thank you. Can I now put the question?

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** Those who support the Motion, please raise your placards. The Motion is-- Listen that “The Administration Police services shall be an integral part of the Kenya Police Service but administered as a separate branch of the Police Service”. Those who support that Motion, please raise your placards.

*(No placards raised).*

**Hon. Delegate Koitamet Ole Kina:** Those who oppose the Motion.

**Hon. Delegates:** “NAY”.

**Hon. Delegate Koitamet Ole Kina:** The “NAYS’ have it. *(Applause)*.

**Hon. Delegate Koitamet Ole Kina:** Subsequently-- *(Clapping)*.

**Hon. Delegate Koitamet Ole Kina:** In view of this regard, Mr. Foster’s Motion is also defeated.

**Hon. Delegates:** Yes.

**PLO Lumumba:** Thank you very much. With the Chairman’s permission--

**Hon. Delegate John Waitiki:** Point of Order!

**Hon. Delegate Koitamet Ole Kina:** Point of Order, 317.

**Hon. Delegate John Waitiki:** Mr. Chairman, my name is Waitiki, 317. I had an amendment to the amendment and I raised my number but you did not notice.

**Hon. Delegate Koitamet Ole Kina:** I am sorry, we have taken the vote.

**Hon. Delegate John Waitiki:** Agreed, but my Motion is still there on Article 326 (2).

**PLO Lumumba:** It will come, we have not reached there.

**Hon. Delegate John Waitiki:** Fine. Thank you.

**PLO Lumumba:** With the Chair's permission-- Yes.

**Hon. Delegate Koitamet Ole Kina:** Sorry, 356.

**Hon. Delegate Ezekiel Kosgey:** Mr. Chairman, I have a Motion on 328.

**PLO Lumumba:** We have not reached there. We are on 314.

**Hon. Delegate Ezekiel Kosgey:** Yes.

**Hon. Delegate Koitamet Ole Kina:** Please, we have not reached there, we just had to combine the two Motions - 326 and the initial one because they dealt with the same matter. So, we are proceeding, please.

**PLO Lumumba:** With the Chair's permission may I now read?

Page 196, Principles and Objectives of National Security – Article 315.

Page 197, Establishment of the National Security Council – Article 316

Page 198, Functions of the National Security Council – Article 317

Article 318, Establishment of the Kenya Defence Forces

Page 199, Article 319 – Command of the Kenya Defence Forces.

### **Part III - The National Security Intelligence Service**

Establishment of the National Security Intelligence Service – Article 320.

**Hon. Delegate William Ole Yiaile:** I have a Motion.

**Hon. Delegate Koitamet Ole Kina:** A Motion, 361?

**Hon. Delegate William Ole Yiaile:** Mr. Chairman I have a Motion there. If you look at 320 (2), I wanted to introduce an Article there in (2) (a), because if you look at that office, it is a very senior office, it is an office that is very sensitive that needs to be protected by the Constitution and I stand of course to be corrected and I wanted to introduce this Motion – 320 (2) (a), that “The Director General of the National Intelligence Service should hold office for a term not exceeding ten years and shall not be eligible for re-appointment”. *Hapo*, 320 (a). So, I am asking the Honourable Delegates to support that Motion because it was just left like that. And then (b), “The Director General maybe removed from office by the President in accordance with the provisions of 324 (5) and (6) of this Constitution” That area is very important and it was left out, so I beg the Delegates to support that one so that we do not waste time because it was an area that was not covered. Thank you very much.

*(Consultations at the “high” table).*

**Hon. Delegate Koitamet Ole Kina:** 528.

**Hon. Delegate Marsden Madoka:** Sorry, Mr. Chairman. I am actually Delegate number 086, but I had not collected my card. I just wanted to-- Delegate 86, Marsden Madoka. The part III, we talk of the National Security Intelligence Service that had been amended by the Technical Committee to read “National Intelligence Service”. So, we just wanted to put down that on record.

**Hon. Delegate Koitamet Ole Kina:** Thank you. We have a Motion on the floor, I would like two Delegates in support of the Motion. 37.

**Hon. Delegate Otieno Kajwang':** 037, Honourable Otieno Kajwang'. Mr. Chairman, I want to say something very briefly, this is a Constitutional office, and it is almost a tradition in this Draft that a Constitutional office now has a fixed term. We did not have a fixed term in the old Constitution or the one which is current, for the Attorney General and we said that Parliament will enact the limit or the age when he may retire. But from independence – now forty years, Parliament has not enacted such a Bill or an Act of Parliament. So, we should quickly agree with the amendment which is proposed, that we give this gentleman or lady ten years – one term, and after that is over, we appoint somebody else.

Secondly, that a person who holds such an important office should not be removed from office because the appointing authority does not like his face, because most of the time he will tell the appointing authority some things he does not like. But I think we should then say, that he can only be removed like we would remove a Judge, Attorney General, or those other Constitutional officers. Thank you.

**Hon. Delegate Koitamet Ole Kina:** 547.

**Hon. Delegate Abdulrahaman Wandati:** Thank you, Chairman. Delegate number 547, Abdulrahaman Wandati. Mr. Chairman, I am persuaded to believe that in an office such as the one we are discussing on National Security Intelligence, I am persuaded to believe that a holder of such an office becomes better with age, and that if we limit the term of service to ten years, perhaps we remove this person from the office at the time when he is getting better at his service – at a time when he may serve us even better than he would be doing at that time. So, I would like to oppose the proposal, that we limit the term of the holder of the office of Director General for the National Security Intelligence to a one ten-year term or to any number of terms because of what I have stated.

The second problem I would have, is what do you do with such a person with the information they will have collected over the ten years of their service when you retire them, what do you do with them, with that information? Thank you, Mr. Chairman.

**Hon. Delegate Koitamet Ole Kina:** Thank you. 368.

**Hon. Delegate Joel Sang:** Thank you, Honourable Chair. I am 368, Joel Sang. Honourable Chair, many people remember one person by the name J. Edgar Hoover, he was the Director of FBI for forty-four years. Every major scandal in America, you will hear his name. Any shadowy thing, you will hear his name. America is a democracy and whenever you are found, you are brought to account. We do not want to create a situation where somebody because of the nature of their job, creates a dynasty and then you have that person abusing office. (*Clapping*).

The Director of Intelligence is a very senior person with a lot of information and even sometimes perhaps more than even the Chief Executive of the Country, and has got a lot of sensitive information. That person should be given a limited duration to serve the country, although somebody did say that people become better with age. I wish you would know a little history about the Mossad. They know the most effective duration that an Intelligence Agent can be very useful to the country. You use somebody for a long time under stress and he has to meet certain deadlines, or she has to meet certain deadlines, you will find that after sometime, they do not deliver as they used to before. So, actually, what we are very concerned about is the freedom of Kenyans and the Institutions to be secure at all times.

**Hon. Delegate Koitamet Ole Kina:** Yes, thank you.

**Hon. Delegate Joel Sang:** So, I am suggesting that we fix the period either at 8 years two terms of four years each or two terms of five years each. So, that a very lucky Director General of Intelligence, may serve only two Chief Executives. Thank you.

**Hon. Delegate Koitamet Ole Kina:** Just a minute, because you appear to be amending the Motion that was on the floor, but I think what we did if we remember all the Constitutional

offices that we have established so far, the tradition is that we give them one term of ten years. So, do you want us to stick to that tradition that you have already established?

**Hon. Delegates:** Yes.

**Hon. Delegate Joel Sang:** It is in order for me if it is a single term of ten years, I think that is fair. I am in agreement. Thank you.

**Hon. Delegate Koitamet Ole Kina:** Thank you very much. So, I think I now want to put the question. Those who support--

*(Consultations at the "high" table).*

**Hon. Delegate Koitamet Ole Kina:** I think, 057 you would like to say something?

*(Uproar on the floor).*

**Hon. Delegate Koitamet Ole Kina:** Please allow me to allow him, just one minute.

**Hon. Delegates:** Why?

**Hon. Delegate Koitamet Ole Kina:** Please, please allow me, please. Honourable Kivutha please.

*(Uproar in the House).*

**Hon. Delegate Kivutha Kibwana:** Thank you very much the Chair.

**Hon. Delegate Koitamet Ole Kina:** Order! Order!

**Hon. Delegate Kivutha Kibwana:** Although the tradition has been to give Constitutional office holders a term of ten years, I think this particular position of the person in charge of National

Security is considerably sensitive and normally, each Chief Executive should also be allowed to work with the person that they have a rapport, because on the whole the information that is collected and distilled is shared with the Chief Executive. And so, it might be a good idea if the person in charge of Security serves for five years – that is the period of elections, and that term is renewable to a further five years so that there is no way of whoever is the Chief Executive also being comfortable with whoever is the Chief of National Intelligence. *(Clapping)*.

Chair, I really did not run away as it were because *(Uproar)*, because government never runs away.

**Hon. Delegate Koitamet Ole Kina:** Okay. So, there is an amendment, we have to deal with Honourable Kivutha's amendment that "the holder--" So, we have to dispose this amendment first before we can vote.

*(Consultations at the "high" table).*

**Hon. Delegate Koitamet Ole Kina:** Point of Procedure, 259.

**Hon. Delegate Salah Maalim:** Thank you Chair. My names are Salah Maalim. The previous Speaker proposed that there are two terms of five years each, and earlier, you had ruled Joel Sang on the same issue. So, I think we take things the way they are and we vote. Thank you.

*(Consultations at the "high" table)*

**Hon. Delegate Koitamet Ole Kina:** I don't think there is anything wrong, I had asked the Honourable Delegate whether he wanted us to stick to that or he wanted us to change, so he chose to stick. But then another Delegate with different information wants us to amend. You have a right – we want to dispose that amendment first and then we vote. So, I want to put the question, the amendment first. So, those who support the second amendment that we have a two five-year term, please raise your placards.

*(Delegates raise their placards and counting is done).*

*(Consultations at the “high” table).*

**Hon. Delegate Koitamet Ole Kina:** Now, I would like to take a vote on those against the amendment. Please raise your placards.

*(A few Delegates raise their placards).*

**Hon. Delegate Koitamet Ole Kina:** I think the amendment is carried. Yes. *(Clapping)*

*(Consultations at the high table)*

**Hon. Delegate Koitamet Ole Kina:** So, now we proceed please.

**PLO Lumumba:** Can we now read Article 321?

**Hon. Delegates:** No.

**Hon. Delegate Koitamet Ole Kina:** No, just let me clarify something. The point is, we have voted to limit the time of the Director General into a two-term of five-five years, so that we allow whoever becomes the President an opportunity to choose whoever. So, what I would like to clarify to--

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

**Hon. Delegate Koitamet Ole Kina:** Yes, that is what--

*(Uproar in the House)*

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegates--

*(Consultations at the “high” table).*

*(Uproar in the House)*

**Hon. Delegate William Ole Yiaile:** Ole Yiaile is my name. Mr. Chairman, security of tenure of office has got certain limitations including time. When you remove it, you reduce it to five years, actually what you have done is that you have removed the security which we are moving to provide. Why? Because everybody who comes would be eager to renew his tenure after every five years and the security--

**Hon. Delegate Koitamet Ole Kina:** Excuse me, Honourable Delegate, I think we have voted on that amendment and we have finished.

**Hon. Delegate William Ole Yiaile:** No.

**Hon. Delegate Koitamet Ole Kina:** Yes, we have finished please, let us proceed, we are not going to advance an argument on an Article that we have already voted for. So, please Honourable Delegates we are proceeding.

*(Consultations at the “high” table).*

I think we want to do – there is a clarification please, let us clarify here.

*Consultations at the “high” table).*

**PLO Lumumba:** There is (b), there is a Motion on removal. Yeah, that is the one that ought to be moved now.

**Hon. Delegate Koitamet Ole Kina:** 194.

**Hon. Delegate Gor Sunguh:** Mr. Chairman, with due respect Sir, Gor Sunguh, 194, Parliament. Mr. Chairman, I would like to know the procedure you are using because if you have a Motion on the floor, then there is an amendment, you cannot vote on an amendment on an amendment to

the original Motion which is what is in the Constitution. And besides, if you are going to vote, people need to know clearly what they are voting for, these amendments should be in writing, we cannot accept amendments on the floor. That way we will be voting on something we do not know. Would you kindly clarify so that we know what we are voting for, and then we can proceed. Thank you.

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegates, I think we are all following the proceedings. We are following the proceedings and if we are not following the proceedings, you have the opportunity to ask for clarification when I move that we did. An Amendment was proposed and then somebody moved to propose an Amendment on the Amendment and I made it very clear that we were voting on the Amendment to dispose first, the Amendment on the Amendment and that is what we did.

**Hon. Delegates:** Yes!

**Hon. Delegate Koitamet Ole Kina:** So, I have ruled and we have taken a vote on that. Now, what we want to do, we have finished the question of Tenure. Then we had (b). We now want to address your Motion on (b). Can you please proceed?

**Hon. Delegate William Ole Yiaile:** My Motion of (b) actually was to provide for the sacking (*laughter*) of the Director General according to 325, like you would sack the Police Commissioner, like you would sack a Judge, like you would sack- So, in fact the introduction of the other new one of five years did not even have any effect, because according to the present law, the way to sack him is already provided. He could even be sacked before those five years if he inefficient, dishonest and all those things are there in the Constitution. So, what I am trying to say actually, the Honourable Kivutha's Motion or Amendment on the other Amendment was actually total confusion. This is because the way to sack him is properly enshrined in the Constitution; Article 325(5) and (6). Therefore, we are voting for nothing! So, I move that we adopt the Article as presented. Thank you, Mr. Chairman and I plead with the Delegates that we accept it as presented (*Applause*).

**Hon. Delegate Koitamet Ole Kina:** You cannot go back to open an Article that we have voted on. I asked you to move your (b) so, if you do not have (b), we can proceed. So, can we now proceed?

**Hon. Delegates:** Yes!

**PLO Lumumba:** Are people tired so that we have lunch?

*(Mixed responses from the floor).*

**Hon. Delegate Koitamet Ole Kina:** 228.

**Hon. Delegate Raphael Livu:** Thank you, Chair.

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

**Hon. Delegate Raphael Livu:** My name is Raphael Livu, Delegate 228. Mr. Chairman, yesterday, I raised an item on corrigendum which you have not answered me to. Today, I also have in my possession another corrigendum from the Rapporteur General. Mr. Chairman, however, I remember when we adopted Article 7, in this Conference, we adopted it as it was read by the Secretary. However, Mr. Chairman, my understanding is very clear that we gave or rather we said that the principle power of --

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegate?

**Hon. Delegate Raphael Livu:** Yes, please.

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegate, right now we are dealing on this Chapter. Kindly confine whatever you want to raise on the Chapter that we are dealing with.

**Hon. Delegate Raphael Livu:** I thought I had--

**Hon. Delegate Koitamet Ole Kina:** If you have anything against another Chapter, you will raise it at the appropriate time.

**Hon. Delegate Raphael Livu:** Mr. Chairman, I had alerted--

**Hon. Delegate Koitamet Ole Kina:** Please, let us confine ourselves on this Chapter.

**Hon. Delegate Raphael Livu:** Mr. Chairman, I had alerted you that I was going to raise on a point of information.

**Hon. Delegate Koitamet Ole Kina:** Please, let us confine ourselves on this Chapter. 252. *(Uproar)*.

**An Hon. Delegate:** Point of Order! Point of Order!

**Hon. Delegate Dubat Ali:** Mr. Chairman, I seek your guidance. We have provided for tenure of office for the Director General. I think it is wise for us to put something for his removal.

**Hon. Delegates:** Yes!

**Hon. Delegate Dubat Ali:** Otherwise, it will be ambiguous.

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegates, that is what I did. I asked the Honourable Delegate 361 to move his (b) and he did not move it.

**Hon. Delegate William Ole Yiaile:** I moved it! *(Uproar)*.

**Hon. Delegate Koitamet Ole Kina:** I think, Honourable Delegate 361, just calm down and then move your Amendment well, because I do not think Delegates even understood what you were saying.

**An Hon. Delegate:** Point of Clarification!

**Hon. Delegate William Ole Yiaile:** Let me repeat.

**Hon. Delegate Koitamet Ole Kina:** Okay, just calm down. Please calm down and move your Amendment.

**Hon. Delegate William Ole Yiaile:** Okay, thank you. Let me repeat. This time, I am going to speak very slowly (*laughter*). Mr. Chairman--

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

**Hon. Delegate William Ole Yiaile:** Yes, thank you. Ole Yiaile of course is my name. Now, (b). The Director General may be removed from office by the President in accordance with the provisions of Article 325, Sub-Article 5 and 6. I move that we adopt the proposal including the Amendments with the Amendments; whatever Amendments of Amendments you have made. Thank you very much.

**Hon. Delegate Koitamet Ole Kina:** Okay, anybody in support to speak in support of that Motion? 599.

**Hon. Delegate Leslie Mwachiro:** Chair, 599, Leslie Betawa Mwachiro. Chair, my words are very few. I am actually supporting that Motion, but I want to make a correction which is actually information. Chair, it is not 325. Chair, please listen to me.

**Hon. Delegate Koitamet Ole Kina:** Yes, yes.

**Hon. Delegate Leslie Mwachiro:** It is not 325. It is Article 336. This is because 325 is a different Article altogether. So, we will be passing an Amendment which has no relation to the tenure of office. So, is you are agreeable, Chair, it should read 336 instead of 325 and I beg to support.

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegate, you are being corrected on the numbering and I think that is correct if that is what you--

**Hon. Delegate William Ole Yiaile:** I accept.

**Hon. Delegate Koitamet Ole Kina:** Okay, thank you. It is 336.

**Hon. Delegate William Ole Yiaile:** I accept because I was quoting the old Zero Draft. So, I accept.

**Hon. Delegate Koitamet Ole Kina:** Okay, thank you. Anyone in support?

**Silence.**

**Hon. Delegate Koitamet Ole Kina:** Okay, any one against that? Against, 406?

**Hon. Delegate Shakeel Shabbir:** It is a correction. I thought the-- Shabbir, 406. I thought the Honourable Delegate actually meant 324; Sub-Article 5.

**Hon. Delegate Koitamet Ole Kina:** No, no. We have been corrected. It is 336.

**Hon. Delegate Shakeel Shabbir:** Would you like to see 324; Sub-Article (5). I am sure the Honourable Delegate meant that when he said 325. Could he just clarify himself?

**PLO Lumumba:** Just information.

**Hon. Delegate Koitamet Ole Kina:** Information

**PLO Lumumba:** Excuse me? Just information. I believe that while the principle of removal is right, what we should accept is to introduce an Article for removal that is specific to that provision. The cross-reference to the Police Service is legally inelegant. So, we introduce an Article for removal to deal with the National Service.

**Hon. Delegate Koitamet Ole Kina:** 194.

**Hon. Delegate Gor Sunguh:** Mr. Chairman, I think this needs to be explained further with due respect to my Honourable colleagues, William. That in fact, we need to put a time-frame and the manner in which somebody can be removed from these offices. Mr. Chairman, if you look at what is going on at Goldenberg, those who were involved were some of the people who were in charge of the National Intelligence Service of Kenya. Mr. Chairman, there was no way in which you would remove them except through the President. Mr. Chairman, this is a Constitutional office like my colleague, Honourable Kajwang' has said. Therefore, it is necessary to make this Constitutional office answerable to the people by being able to remove them through the provisions set out in 336.

Therefore, Mr. Chairman, I would like to appeal to Honourable members of this Conference, that we do vote in favour of this Amendment by my Honourable colleague. So that we can go on and make sure that the Director of this Service is answerable to the people of Kenya and can be removed whenever it is necessary if they flawed the rules. Thank you.

**PLO Lumumba:** Yes, but that is carried.

**Hon. Delegate Koitamet Ole Kina:** That is it. Now, I would like to put the question. That those who are in favour of the Amendment as of the Motion moved by Honourable Ole Yiaile, please lift your placards.

**An Hon. Delegate:** Point of Order, Mr. Chairman!

**PLO Lumumba:** Please, what is the order when counting is taking place? Give it. What is it? You will tell us. Will they clarify from that? You cannot have order when we are counting.

**Hon. Delegate Koitamet Ole Kina:** Please, for those with the Point of order, reserve until we finish voting.

*(Murmurs on the floor).*

**An Hon. Delegate:** Point of Clarification! Point of Clarification, Chairman!

**Hon. Delegate Koitamet Ole Kina:** Can you please lift your placards as I said and we finish counting?

**PLO Lumumba:** You do not need to count. It is voice-vote.

*(Consultation at the “high” table).*

**Hon. Delegate Koitamet Ole Kina:** Please understand. He has moved an Amendment to include an Article that was not there. That is why we need to count. Please. *(Noise)*.

**An Hon. Delegate:** Point of Clarification!

*(Consultation at the “high” table).*

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegates, the Motion is, that the Director General be removed from office in accordance to Article 336. So, that is what we are trying to say, please, for those who do not remember.

**An Hon. Delegate:** Point of Order!

**An Hon. Delegate:** Point of Information! *(Noise)*.

**PLO Lumumba:** I think there is too much noise.

**Hon. Delegate Koitamet Ole Kina:** Order!

**PLO Lumumba:** Is there any confusion on the floor?

**Hon. Delegates:** Yes!

**PLO Lumumba:** Therefore, the Chairman should clarify before we ask for the votes.

**Hon. Delegates:** Yes/No!

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegates. A lot of us understand but a few are sounding confused. So, let us also carry them along.

**Hon. Delegates:** Yes!

**Hon. Delegate Koitamet Ole Kina:** 024. Please, please.

**Hon. Delegate David Ethuro:** Mr. Chairman, thank you very much. I am sorry for appearing like I am taking you back, but there is a real problem here. If you look at Article 336, you are talking of Constitutional Commissions and the proposal that Honourable Shabbir brought is the relevant one. We are talking about Article 324 which was dealing with the Police Service which I believe it is true. How elegant it is Mr. Secretary General, it does not matter. It does not have to look nice in order for the provisions to be met. I also happen to have been in that Committee, Mr. Chairman. The idea which is correct is that we need a Clause for removal and the Sub-Clause, 5 and 6 in Article 324 can be imported to the Director General. Thank you Chair. That is why I am saying, you cannot vote on what is wrong! That is the clarification we needed. Thank you.

**Hon. Delegate Koitamet Ole Kina:** I think the clarification is right. What we are going to do here is to ensure that what we are voting for is not Commissions. It is a Commission's office. So, please let us vote and then we will make sure that the drafting is done correctly. Please let us vote and then ensure that it is placed in correctly during drafting. Is that okay?

**Hon. Delegates:** Yes!

**PLO Lumumba:** Can I read it out?

**Hon. Delegate Koitamet Ole Kina:** Can we have the Secretary read it out for us, please?

**Hon. Delegates:** Yes!

**An Hon. Delegate:** Point of Clarification!

**PLO Lumumba:** The voting is at two levels. That members, we want to include in the Constitution a provision for removal of the Director of the Intelligence Service. That what provisions we want to use are those to be found in article 324 (5) and (6). Therefore, when we vote, we are telling the Draftsmen, "Do move those provisions to the right place so that we have a way of removing the Director."

**Hon. Delegates:** Yes!

**PLO Lumumba:** Can we now say those who say, "AYE" say, "AYE".

**Hon. Delegates:** "AYE".

**Hon. Delegate Koitamet Ole Kina:** Please, the tradition we have put is not a voice-vote.

**PLO Lumumba:** I was carried away (*Laughter*).

**Hon. Delegate Koitamet Ole Kina:** Please, lift your placards as we have established as a tradition? (*Laughter*).

*(Consultation at the high table).*

*(Hon. Delegates raise up their placards).*

**Hon. Delegate Koitamet Ole Kina:** Please, for those who are moving out, please do not. Let us spend the remaining about ten minutes to conclude the Chapter. So, please do not move out. Let us spend the few minutes to conclude the Chapter. We are still voting, anyway. We have not yet taken the vote of "NAYS".

**PLO Lumumba:** You can now call for “NAYS”.

**Hon. Delegate Koitamet Ole Kina:** So, those opposing the Motion, please lift your placards?

*(Delegates raise placards).*

**Hon. Delegate Koitamet Ole Kina:** Those abstaining? Okay, we can now proceed as they count.

**PLO Lumumba:** We can now, with the Chairman’s permission, go to page 201.

*(Murmurs on the floor).*

**An Hon. Delegate:**

*(Inaudible).*

**PLO Lumumba:** What? We are reading-- There is a Motion? On which Article?

**Hon. Delegate Koitamet Ole Kina:** 250.

**Hon. Delegate Abdullahi Haji:** Thank you, Chair. I am Abdullahi Haji, number 250. I beg to move my Motion on Article 320 (2), to delete the words, “ with approval of Parliament” and substitute thereof the words “ in consultation with the National Council” in relation to the appointment of the Director General. Since this Service is a discipline and command service and security organ, I think just the same as the Armed Forces where the President appoints the Commanders of the Services in consultation with the Defence Council and I think the same uniformity should also be in the Security Service. The President to appoint the Director in consultation with the National Security Council. I beg to move my Motion.

**PLO Lumumba:** Information?

**Hon. Delegate Koitamet Ole Kina:** There is Information.

**PLO Lumumba:** The trend throughout the Constitution is that all Constitutional office holders will be subject to Parliamentary approval.

**Hon. Delegate Abdullahi Haji:** Yes, but I have moved a Motion on the same thing also on the Inspector General and also the Commandant of Administration Police. So, all the security organs and the uniformed staff to be consult the Police Service Commission or the Security Council, just like the Defence. So, I beg to move my Motion.

**PLO Lumumba:** Anybody to support?

**Hon. Delegate Koitamet Ole Kina:** Anybody supporting the Mover of the Motion?

*(Inaudible response from the floor).*

**Hon. Delegate Koitamet Ole Kina:** Apparently, there is none. So, do we move straight to the vote?

**Hon. Delegates:** Yes!

**Hon. Delegate Koitamet Ole Kina:** So, those in support of the Motion please, lift your placards?

*(No placards raised).*

**PLO Lumumba:** Those who oppose?

**Hon. Delegate Koitamet Ole Kina:** Those who oppose the Motion?

*(Hon. Delegates raise their placards).*

**PLO Lumumba:** It is carried.

**Hon. Delegate Koitamet Ole Kina:** The “NAYS” have it. Let us proceed.

**PLO Lumumba:** Page 201, Article 322: Establishment of the Kenya Police Service.

Article 323: Objects and functions of the Kenya Police Service.

Article 324: Appointment of the Inspector General of the Kenya Police Service.

**An Hon. Delegate** A Motion.

**PLO Lumumba:** A Motion?

**Hon. Delegate Koitamet Ole Kina:** Is there a Motion? 320. 250, sorry.

**PLO Lumumba:** Is there a Motion, 397, David Erulu? David Erulu is on this side. Oh, there is also another Motion on this side.

**Hon. Delegate David Erulu:** Thank you very much. Erulu David, 397 from Busia. In line with other Constitutional offices which we have already given two five-year terms, it is also important that we have a similar approach to these other Constitutional offices of the Inspector General which is a very important office. This being a security organ of Government, we do not want a situation where the holder of office stays in long enough- like the Honourable member said, about the Goldenberg saga. So, the Motion I would like to read is amended as follows:- The Inspector general shall hold office for a one term of five years, but is eligible for another one of a maximum of five years. I would like you to read this Motion together with 328 for the Administration Police. 328(1). So, I beg to move.

**Hon. Delegate Koitamet Ole Kina:** Anyone in support of that Motion? 252.

**Hon. Delegate Dubat Ali:** Thank you very much Mr. Chairman. I am going to be very brief. Mr. Chairman, I think the Inspector General of Police should have protection of office so that he is not harassed by politicians. However, at the same time, we should also not allow him to stay in

for ten years without proving his efficiency. So, I think the Honorable Delegate was right. The Commissioner or the Inspector General of Police should have a five-year term of office so that he does not go to the PS to ask him to give him money. He has his own money, if he wants to buy curtains, he buys. If he wants to buy a gun, he buys. We give him that freedom to look after our security but at the same time, not leave him loose because for ten years, there can be a lot of change.

**Hon. Delegate Koitamet Ole Kina:** Okay, thank you.

**Hon. Delegate Dubat Ali:** He might not even have the dynamism--

**Hon. Delegate Koitamet Ole Kina:** Okay, thank you very much.

**Hon. Delegate Dubat Ali:** --for that purpose.

**Hon. Delegate Koitamet Ole Kina:** Thank you. 024.

**Hon. Delegate David Ethuro:** Mr. Chairman, I rise to support that particular Amendment. As you realize, I had also put my own Amendment and it is basically on the same principle of consistency so far. Given that we had given the Director General ten years which we broke into two terms, I think we should do the same for the Inspector General. Thank you.

**Hon. Delegate Koitamet Ole Kina:** Can we put that to vote now?

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** Those in favour of the Motion please raise your placards.

*(Hon. Delegates raise their placards).*

**PLO Lumumba:** Those against.

**Hon. Delegate Koitamet Ole Kina:** Those against?

**Silence.**

**Hon. Delegate Koitamet Ole Kina:** The “AYES” have it. So, can we proceed please?

**PLO Lumumba:** Ladies and gentlemen, is there another Motion?

**Hon. Delegate Koitamet Ole Kina:** Yes, we are proceeding to the next Motion. 250.

**An Hon. Delegate:** Another Motion here!

**Hon. Delegate Abdullahi Haji:** Thank you Chairman. I am Abdullahi Haji, number 250. I beg to move a Motion on 324(4). That which says, “The Inspector General shall exercise functions not be subject to the direction or control of any person or authority”. So, my Motion says all those words after “ shall in exercise of functions subject to directorship” to be removed and to be replaced by “in exercise of his functions without bias or favour” because this implies that he will not even take orders from the Executive. It also contravenes some other Sections of the Constitution which says that the security organs will be under the civil authority of the Republic. So, I beg to move hat Motion.

**PLO Lumumba:** Information?

**Hon. Delegate Koitamet Ole Kina:** We have some information.

**PLO Lumumba:** Under the Third Schedule of the Constitution, those words are to be found in the oath of office.

**Hon. Delegate Koitamet Ole Kina:** So in view of that, Honourable Abdulahi would you like to withdraw your Motion? Because actually the words are covered, when the Inspector General or whoever takes office, there is an oath of office in which he swears those words.

**Hon. Delegate Abdulahi Mohamed:** But when he says explicitly without a direction from any person or authority, that I think should be qualified with a lawful authority if that is the case – yeah, it is an amendment. Otherwise, we are creating a police State.

**Hon. Delegate Koitamet Ole Kina:** 352.

**Hon. Delegate John Kiniti:** Thank you, Mr. Chairman. I am John Kiniti, Delegate number 352. I wish to state that, that one is actually a drafting question. As a general principle of the Constitutional Commissions page 206 it states that, “the Constitutional Commissions are independent and are not subject to direction or control by any person or authority”. Therefore, I do not think we have much to add. Thank you, Mr. Chairman.

**Hon. Delegate Koitamet Ole Kina:** I think - may be for guidance, this is a Constitutional office and those are Constitutional Commissions.

**PLO Lumumba:** There is information. The definition section includes offices and Commissions as will become evident when Kerrow Billow’s Chapter is presented.

**Hon. Delegate Koitamet Ole Kina:** Do you still insist on your Motion Honourable Abdulahi?

**Hon. Delegates:** No.

**Hon. Delegate Koitamet Ole Kina:** So, may I now put a question?

**Hon. Delegate Abdulahi Mohamed:** I see the mood of the Conference and therefore, I withdraw my Motion. (*Clapping*).

**Hon. Delegate Koitamet Ole Kina:** Thank you very much, let us proceed.

**PLO Lumumba:** Article on page 204 Part VI--

**Hon. Delegate Koitamet Ole Kina:** There is a Motion 305.

**Hon. Delegate Dominic Nderi:** Thank you very much, *Bwana* Chairman. I am Nderi, number 305, Nyeri District. My Motion seeks to amend the Revised Zero Draft by inserting a new Sub-Article 325(5)(g) to read, “the commission shall have a civilian oversight body to investigate complaints against police officers and take appropriate correctional measures”. *Bwana* Chairman and Honourable Delegates, some or most of you people might have come across a problem where you report harassment by the police at a police station. You might even have a relative who was assaulted by the police and you have to report such a case at a police station. Whenever you report such a case at a police station, it is supposed to be investigated by the Officer in charge of that station.

That Officer in Charge, during the investigation he is a human being and he will always tend to protect his officers. Such cases are so many and in one station you may have even up to three or four complaints within a month. For an Officer in charge to investigate all those cases in good time, some in fact, the person who is complaining might even forget to go there and ask what is happening. We need a separate body within the Police Service Commission, that body would have officers at regional headquarters to deal and handle only the complaints against police. If we are really serious and we want to mould our police force so that it may match with today’s changes, we need such a body that will be responsible to handle and investigate cases of complaints against police officers. Let us not leave these cases to police officers to investigate other police officers because there may not be any justice there and in most cases such cases are delayed at the police stations, such files do not even reach police headquarters in time. So, we need to have a body to do it and process those files quickly because when we delay this justice we deny Wanjiku the justice. So, I am requesting you Honourable Delegates to support me in this so that we may have such a separate body but within the police service. I beg to move.

**Hon. Delegate Koitamet Ole Kina:** Thank you. Before we proceed I think there is information related to that Motion, so maybe we listen to the information first.

**PLO Lumumba:** On page number 211, the Commission on Human Rights and Administrative Justice is given several functions on page 212 and among those are; to investigate human rights

within the disciplined forces including their relationship with the public. I believe that, that body would adequately deal with such oversight. (*Clapping*).

**Hon. Delegate Koitamet Ole Kina:** Is the Honourable Delegate satisfied?

**Hon. Delegate Dominic Nderi:** I am.

**Hon. Delegate Koitamet Ole Kina:** Thank you very much. So do you withdraw your Motion?

**Hon. Delegate Dominic Nderi:** I withdraw the Motion *Bwana* Chairman.

**Hon. Delegate Koitamet Ole Kina:** Thank you very much. So let us proceed.

**PLO Lumumba:** Article--

**Hon. Delegate Hellen Yego:** (*Inaudible*).

**Hon. Delegate Koitamet Ole Kina:** 468.

**Hon. Delegate Hellen Yego:** Thank you, Mr. Chairman. My number is 468, Hellen Yego from NGO. I am sitting with a Delegate who has a Motion on 324 and he has put up his card we are marginalized by this gate, nobody can see us. Can you please give him a hearing? Thank you. – 202.

**Hon. Delegate Koitamet Ole Kina:** Please can he move, I did not see and therefore I am not trying to marginalize anybody it is upon you also to alert me.

**Hon. Delegate Martin Nyaga:** Thank you, *Bwana* Chairman. My Motion was similar to Haji's Motion, so I gave it up. Thank you.

**Hon. Delegate Koitamet Ole Kina:** Thank you very much. He has withdrawn so can we proceed.

*(Consultations at the “high” table).*

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegates, I think we have completed the Chapter so we can adjourn for lunch and then come and take the vote when we come.

*(Protestations from the floor).*

**PLO Lumumba:** Mr. Chairman, we have done a quick count, for this matter to go into the Constitution, it requires that we are quoried. We are slightly under quorum.

**Hon. Delegate Ezekiel Kosgey:** Point of Order.

**Hon. Delegate Koitamet Ole Kina:** 356.

**Hon. Delegate Ezekiel Kosgey:** Mr. Chairman, Kesendany, 356. We cannot conclude that Chapter Mr. Chairman before I raise my Motion on 328.

**PLO Lumumba:** Yes, let him move.

**Hon. Delegate Koitamet Ole Kina:** Yes, please just settle a little bit let him move his Motion, I had not seen. 328 please.

**PLO Lumumba:** 328 let him move the Motion. Suba Churchill please.

**Hon. Delegate Koitamet Ole Kina:** Please just sit down for a few minutes.

**Hon. Delegate Ezekiel Kosgey:** Mr. Chairman, I want to move a Motion on 328(1)--

**Hon. Delegate John Waitiki:** Point of Order.

*(Consultations at the “high” table).*

**Hon. Delegate Koitamet Ole Kina:** Please.

**Hon. Delegate Ezekiel Kosgey:** Mr. Chairman, I want to insert the word “general” immediately after the word “commandant”. Mr. Chairman, I am saying this because we have to maintain consistency in these Constitutional offices because we have Director General of Kenya Correctional Services, Director General National Security, we have Inspector General in the police force. So, it will be fair Mr. Chairman to also include Commandant General because it is part of these offices. I beg to move the Motion.

**Hon. Delegate Koitamet Ole Kina:** 317.

**Hon. Delegate John Waitiki:** Mr. Chairman, 317 Waitiki. I drew to your attention earlier on that I had a Motion on 326, we have not even dealt with it.

**Hon. Delegate Koitamet Ole Kina:** Move it. We have been counting please, so move it but we have to dispose of Kesendany’s Motions first. Can we please - I think to do justice to those Motions, let us move them after lunch.

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** We resume at exactly 3:00 p.m.

**Meeting adjourned for lunch at 2:15 pm.**

### **AFTERNOON SESSION**

**Meeting reconvened at 3.20 p.m. with Koitamet ole Kina in the Chair.**

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegate 356, Ezekiel Kesendany to move his Motion now.

**Hon. Delegate Ezekiel Kesendany:** Thank you, Mr. Chairman. My name is Kesendany, District Delegate from Nakuru. Mr. Chairman, when we rose to go for lunch ,I was moving a Motion on Article 328 to insert the word “General” immediately after the word “Commandant” in the title and accordingly in Clauses 1 and 2, and also in Article 316 (k). Mr. Chairman, I want us to maintain the spirit of consistency because we have Director General in the Kenya Correctional Services; we have Director General in the National Security Service and we also have Inspector general in the Kenya Police Services. So I am saying that, having confirmed the administration police service, we want to give its Commandant a title commensurate with other Constitutional Offices of the same level and that we have Commandant General for the Administration Police. I beg to move the Motion, Mr. Chairman.

**Hon. Delegate Koitamet Ole Kina:** Anybody in favour? 266.

**Hon. Delegate Adano Galgalo:** My name is Galgalo, a District Delegate from Marsabit. In fact we have noted that the APs have been marginalized in the past. This morning when we were talking about the APs, the police had representatives who really did a lot of advocacy about the police but the APs were denied such a chance. This time we would not like them to just stay without Commandant General. We want the APs, to have the Commandant General who will be responsible for their affairs. We know that the APs have done a lot of service for this country. In fact, in every war the APs die first and that is to say that they are heroes. They should not be left without a Commandant General. Let us give them Commandant General with full force.

**Hon. Delegate Koitamet Ole Kina:** Thank you. Any dissenting view?

**(Inaudible discussions on the floor).**

**Hon. Delegate Koitamet Ole Kina:** So, can we vote?

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** Wait. 100, what are you saying please? Please let us listen to the Honourable Delegate.

**Hon. Delegate Boniface Mghanga:** Yeah, Mr. Chairman, my name is Boniface Mghanga, number 100. Designations in terms of names should be derived out of functions. To change the designation from “commandant” and adding “general” does not add anything. When you talk of “Inspector General” there is also an implication that there are very many inspectors below. So, you go up until you get the position of Inspector General. If you are going to add “general” to every designation, then we can as well as have an Army Commander General, Navy Commander general, Air Force Commander General. Mr. Chairman, I think this one it is just a matter of semantics, it does not add value at all. We should leave it as it is, Commandant of the AP. Thank you very much.

**Hon. Delegate Koitamet Ole Kina:** Thank you. 006.

**Hon. Delegate Billow Kerrow:** Thank you, Mr. Chairman. We are supporting the “general” because we want to have “commandant” in every region. If there is an AP Commandant in every region the one in charge here will become the Commandant General. So, that is why we are supporting that. Thank you.

**Hon. Delegate Koitamet Ole Kina:** Are we ready to vote now?

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** Okay. Those in support --

**Hon. Delegate King’ori Mwangi:** Point of Order.

**Hon. Delegate Koitamet Ole Kina:** Point of Order, 624.

**Hon. Delegate King’ori Mwangi:** Thank you, Mr. Chairman. As the fellow Delegate has said, the word “Commandant General” may not add value. Besides, within the region, that is, within East Africa, COMESA and Africa, we do not have any rank called Commandant. However, once he is made Commandant General does it mean the nine Commandants in the Kenya Police will now fall under the Commandant of the AP. So, ladies and gentlemen, although these are

semantics it is likely to cause confusion. So, we have Commandant, General Service Unit; Commandant, Anti-terrorism unit; Commandant, Air Wing, Commandant, Railways; Commandant, Airports; Commandant, Dog Unit; and Commandant, Kiganjo. Now, Commandant General, does it mean now they are going to fall under the administration police. I oppose the Motion.

**Hon. Delegate Koitamet Ole Kina:** 185.

**Hon. Delegate Sasura Abdi:** Thank you, Mr. Chairman. My name is Sasura. I am Delegate 185.

*(Inaudible discussions on the floor).*

**Hon. Delegate Koitamet ole Kina:** Order! Order, Delegates, please.

**Hon. Delegate Sasura Abdi:** Mr. Chairman, I think there is need to add the word “general” there, because in the hierarchy of APs, you find that there is the College Commandant even as it is now. So, there is the need to refine the manner they pick, and besides I would like to correct the previous speaker, because when it comes to Police Service that is a separate entity. It does not mean that all the junior Commanders in the police service will be under the Administration Police Commander General. So that is the correction I want to make. There is need to have the Commandant General for the Administration Police.

**Hon. Delegate Koitamet Ole Kina:** So, can we now vote?

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** I would like those in favour of the Motion please raise your placards.

**(Hon. Delegates raised their placards).**

**Hon. Delegate Koitamet ole Kina:** Those against the Motion, please raise your placards.

**(Hon. Delegates raised their placards).**

**Hon. Delegate Koitamet Ole Kina:** The “AYES” have it. (*Clapping*). Then there is a Motion by 317, please. Let us listen to 317.

**Hon. Delegate John Waitiki:** Thank you very much, Chairman. May I have your attention, please? My name is Waitiki, 317. Mr. Chairman, I had stood up earlier and had a Motion on 326 (2). My Motion is to amend Article 326, Sub-Article 2, to read as follows. “The Administration Police Service shall operate in support of the Kenya Police Service.” Mr. Chairman --

**Hon. Delegate Happy Gloria:** Point of Order.

**Hon. Delegate Koitamet Ole Kina:** What is the order? 396.

**Hon. Delegate Happy Gloria:** Thank you, Chair. I am Delegate number 396, Happy Gloria Wabwire. Chair, I think Delegate Shakeel Shabbir moved a Motion, 328, and he also moved a Motion 326 (2) which overtook Honourable Delegate Waitiki’s Motion. Actually, it died a natural death since the two Motion of Shakeel Shabbir, 326 (2) and 328 (1), were defeated. So, please we move.

**Hon. Delegate John Waitiki:** Mr. Chairman.

**Hon. Delegate Koitamet Ole Kina:** Yes, we had not considered that Motion of 326 (2) we considered a Motion by Shakeel and the other one by -- But I think it is the same Motion. I want to ask the Honourable Delegate, will you still want to push that Motion while it appears it may not even move.

**Hon. Delegate John Waitiki:** Mr. Chairman, you remember I had raised my number to propose an amendment on an amendment, that would have been proper but you did not see. Later on, I stood up and I told you that I had an amendment. It is not the same as what was proposed earlier.

**Hon. Delegate Koitamet ole Kina:** Please then move your amendments. Let the Honourable Delegates listen to you.

**Hon. Delegate John Waitiki:** I will say again, I have a Motion to amend Article 326 (2) to read as follows. “ The Administration Police Service shall operate in support of the Kenya Police Service.” Mr. Chairman, I have reasons and hear me through. We have created the security organization and I will be specific on the two organizations, the Police and the Administration Police. While we may not agree that the roles are the same, but they are similar in nature. Mr. Chairman, earlier on we were told that we need checks and balances and we were given the examples that, if one force becomes too strong it may do something unpleasant. Mr. Chairman, I would like the Delegates to note these historical facts.

In 1964, Eleven Battalion Kenya Rifles mutinied. In 1971, we had people who were taken to court for planning to overthrow the Kenya government. Later on, we had even a Policeman who had organized an illegal organization called *Ngoroko*, and fellow Delegates, you remember 1982 - all those were against the Kenya government. At no one time did we call a parallel organization to deal with those situations. So that ground is not founded. The present recruitment takes care of such things. Mr. Chairman --

**Hon. Delegate Koitamet Ole Kina:** Yes, and your two minutes are almost exhausted. So, please --

**Hon. Delegate John Waitiki:** Mr. Chairman, this is a crucial issue as it deals with security and we cannot handle it emotionally. Mr. Chairman, when you have two organizations dealing with one single objective, they do not sit down to agree who and why and where to act on. They are given specific instructions. My purpose of bringing this Motion is to harmonize the current Chapter 85 and Chapter 84, namely the APs Act and the Police Act to bring to this harmony that

does exist today. Mr. Chairman, you do not want to have two bulls in one *boma*. You cannot have that.

**Hon. Delegate Koitamet Ole Kina:** Okay, Thank you very much. I think the point has been made.

**Hon. Delegate John Waitiki:** Mr. Chairman, let me conclude. I would like it to go on record that this system we have created may bring trouble but, looking at the mood that we have in this Conference, it will be futile even to ask for a vote. Please take that record. I withdraw.

**Hon. Delegate Koitamet ole Kina:** Okay, thank you. He has withdrawn, so we proceed.

*(Consultations at the “high” table).*

**Hon. Delegate Koitamet Ole Kina:** So, we would now like to vote for the entire Chapter as amended. So, all in favour of the Chapter as amended, please raise your placards.

**PLO Lumumba:** There is a Motion?

**Hon. Delegate Koitamet Ole Kina:** Which Motion? Sorry.

**Hon. Delegate Dominic Nderi:** Number 305, Nderi, District Delegate from Nyeri District. *Bwana* Chairman, I seek to amend the Revised Zero Bill, that is, Article 323 by adding a new Sub-Article.

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegate we passed 323 a long time ago, where were you?

**Hon. Delegate Dominic Nderi:** I had two Motions *Bwana* Chairman.

**(Uproar from the floor).**

**Hon. Delegate Koitamet Ole Kina:** We went through all Motions.

**Hon. Delegate Dominic Nderi:** I had two, may I continue *Bwana* Chairman. It is a very small--

**Hon. Delegate Koitamet Ole Kina:** Okay, Delegates let us give him an opportunity so that he does not say he never moved his Motion.

**Hon. Delegate Dominic Nderi:** Thank you very much, Chair. I seek to amend Zero Bill, that is Article 323, by adding a new Sub-Article 1 (h) to read as follows; “co-ordinate, supervise and control all private and quasi-government security organizations to ensure safety and security in the Republic of Kenya.”

Honourable Delegates, you are aware that we have so many security companies at present in this country. Some companies have even over a thousand, or even thousand *askari*. These are battalions. What I am saying is that security organs have no mandate over these security companies. They are security companies and I am proposing that since they are security companies, they should be supervised and controlled by a government body, that is a security organ, because if they are left just the way they are now, we may eventually find this country in some problems. We need to have these people controlled for security reasons. *Bwana* Chairman, I beg to move.

**Hon. Delegate Koitamet Ole Kina:** Anyone supporting? 086.

**Hon. Delegate Marsden Madoka:** Mr. Chairman, I stand to support that Motion. What he has said is very, very true, that we do have many of this private security companies and some of them are even armed and I think we do need a body that will take control for the coordination of all these security services. I do support the Motion. (*Clapping*).

**PLO Lumumba:** This is perhaps not very procedural but I believe that the Conference would benefit if a Member of government told us what the current position is.

**Hon. Delegate Koitamet Ole Kina:** 057. Let us learn of the current position. I think we want to make informed decisions.

**Hon. Delegate Kivutha Kibwana:** Thank you, very much the Chair. I think - although we had passed that particular section, I think the Motion that was brought by the Delegate is a very important one because we have proliferation of a lot of agencies that offer private security and this is actually an important supplement to the security by our organs and as we are told by the representative of the police, we don't have enough policemen and women for the population. So, it will be in order if this Conference was to accept that there needs to be some coordination - some even training for this security people, watchmen and so on and sometimes even - like in Uganda, they even have guns and so on, so that there is more effective security. And I think from the point of view of the government, this would be very much in order because one plank is strengthening this private security, another plank is strengthening community policing and a third plank is actually strengthening the police, the administrative police, all these. So, I personally think that this is really a Motion that deserves our kind consideration.

**Hon. Delegate Koitamet Ole Kina:** Thank you. My question is not yet answered. I asked, what is the current position?

**Hon. Delegate Kivutha Kibwana:** The current position is they manage themselves and if today I wanted a business, I could collect 20 people, even some of them could be thieves, they might not be vetted and I could make them security people to guard your homes. So, it is very haphazard and it really requires attention.

**Hon. Delegate Koitamet Ole Kina:** 087?

**Hon. Delegate Marsden Madoka:** Mr. Chairman, the present position is this; in that we know all these security companies have their own coordinating body but this body works under nobody. If they want to consult the government, they do. If they don't, they go on their own way. That is the present position and that is why this Motion is very appropriate that we have somebody worth while to be termed as a government body which will coordinate the activities of these companies.

**Hon. Delegate Koitamet Ole Kina:** Bishop Gitari, I thought you had put up your hand! Okay, now may I ask, do we vote on this or you still want to talk?

*(Uproar on the floor).*

**Hon. Delegate Koitamet Ole Kina:** 364.

**Hon. Delegate Daniel Ole Osoi:** Thank you so much Mr. Chairman. 364, Ole Osoi. I fully support the Motion but I think it should not be under the Kenya Police. It should be under Police Service Commission. That is where all the security heads meet, they make decisions and they can also come under that Commission so that they are issued licenses by that Commission, not the Kenya Police.

**Hon. Delegate Koitamet Ole Kina:** 624.

**Hon. Delegate King'ori Mwangi:** Let me explain how we currently establish our security firms. You first go and register in the Attorney General your name and then after that then you apply. It is rated from the OCPD, the DC and then the PC. After you have gotten your license, that is then between you and government security organs. In Uganda for example, at their police headquarters they have a coordinating body that coordinates. An example here in Nairobi every night, there is over 300 vehicles doing private security job but they are not coordinated. If only they were coordinated, they could even be able to get like a channel within the police 999 room where they can be calling for support and all that. The aim is not to control them for any other reason, is just to coordinate and then you are able to supplement them. This is because when you as an Honourable Delegate, you have a set of an alarm and securicor is coming to your place, they can also call us and say, at Delegate a, b, c, d, there is a robbery going on and then we would be able to follow them up through that coordination within a legal mechanism. Thank you.

**Hon. Delegate Koitamet Ole Kina:** 031.

**Hon. Delegate Yusuf Haji:** Mr. Chairman, I am 031 Mohamed Yusuf Haji, Parliament. I think the last Speaker has explained the current procedure but I would like to add that once a securicor is registered, it is just like any other private business and to put them under a further supervision, might even bring a cock-up in the operation and in this manner they may not be as effective as they are supposed to be. The question of coordination Mr. Chairman, those are very administrative matters that any police officer in the--- OCPD can call those people, sit with them and agree on the mood of operation for that locality. That is what we have been doing.

**Hon. Delegate Koitamet Ole Kina:** So, let me put the question, because I think Delegates have ventilated that, at least now we have a picture. I was trying to call upon people who have been in the Security Services before so that we get the picture. So, now I think we are ready to proceed and vote. **As many as are of the Motion please raise your Placards.**

*(Hon. Delegates raise their Placards)*

**Hon. Delegate Koitamet Ole Kina:** **As many as are against the Motion please raise your Placards.**

*(Hon. Delegates raise their Placards).*

**Hon. Delegate Koitamet Ole Kina:** The “AYES” have it. *(Clapping)*. So, Article E will be included.

Now I would like to put the Chapter as a whole.

**Hon. Delegate Joel Sang:** Point of Order.

**Hon. Delegate Koitamet Ole Kina:** 368.

**Hon. Delegate Joel Sang:** Honourable Chair, I have been actually asking you for a Point of Order all this time from here until you reached there. I had wanted--

**Hon. Delegate Koitamet Ole Kina:** You are on the floor you have Point of Order.

**Hon. Delegate Joel Sang:** I had wanted the guidance of the Chair - I wanted to enquire whether we are grabbing with a Legislative issue or a Constitutional issue? That was my question.

**Hon. Delegate Koitamet Ole Kina:** Did I – these are functions. So, I think we are dealing with functions.

*(Consultations at the “high” table).*

**Hon. Delegate Koitamet Ole Kina:** So, I think we have already voted and this is a function so I do not think it is a problem.

**Hon. Delegate Joel Sang:** Okay, that is all.

**Hon. Delegate Koitamet Ole Kina:** Can we now vote for the entire Chapter on Security?

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** As many as are of the inclusion of Chapter 17 National Security, as amended please raise your Placards.

*(Hon. Delegates raise their Placards).*

**Hon. Delegate Koitamet Ole Kina:** Yes we are going to do the count.

*(Counting going on)*

**Hon. Delegate Koitamet Ole Kina:** As many as are not for the inclusion of Chapter 17, in our Constitution, please raise your Placards.

*(Hon. Delegates raise their Placards Counting going on).*

**Hon. Delegate Koitamet Ole Kina:** Those against specific Article raise your Placards. And please be specific enough to inform what specific Article you are against.

**PLO Lumumba:** Can our tellers actually move and ask which specific ones. You cannot do it from down there. You must actually move and go up.

*(Hon. Delegates raise their Placards Counting going on)*

**Hon. Delegate Mike Oliewo:** Point of Order.

**PLO Lumumba:** We are counting, there can be no Point of Order, you that!

*(Counting going on)*

**PLO Lumumba:** The tellers are not moving?

**Hon. Delegate Mike Oliewo:** Thank you Chair. My name is Mike Oliewo, Delegate number 316, Political Parties. Mr. Chairman, I think you are setting a precedence which may not be very helpful to us in future. We have been voting previously very peacefully but now you are also calling for a vote on specific Articles.

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegate, let me--

**Hon. Delegate Mike Oliewo:** And we have proceeded up to this point without--

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegate, if you have been following very, very carefully that has been done even yesterday, even today. If there is something specifically we have done that. We want to keep our records clean so please allow us to get everything as it has been done in this Conference. Those abstaining?

*(Consultations at the "high" table)*

**Hon. Delegate Koitamet Ole Kina:** So, as we wait can we move to the next Chapter? Chapter 18, Constitutional Commissions.

*(Consultations at the “high” table)*

**Hon. Delegate Koitamet Ole Kina:** I am informed that there are several corrigendums that you will find. We will not speak to them today, the Rapporteur General will speak to them tomorrow morning. So, let us proceed with Chapter 18, Constitutional Commissions.

**PLO Lumumba:** Do I have the floor from the Chair and yourselves please? On page 206. The Chapter is 18, the subject is Constitutional Commissions.

Article 239; Principles applicable to all Commissions.

Article 330; Objects and Independence of Commissions.

Article 331; Incorporation.

Article 332; Composition of Commissions.

**Hon. Delegate Koitamet Ole Kina:** 255!

**Hon. Delegate Ahmed Maalim Omar:** Thank you. Delegate 255, Ahmed Maalim Omar. Mr. Chairman, before I move my Motion there are inconsistencies. If you look at 332 (1), it says, “a Constitutional Commission shall consist of at least three and not more than ten members”, but in several other Chapters like Commission on Revenue Allocation, 296 (2), Public Service Commission 305 (5), the members are more than ten. So, I wanted to move a Motion to delete “ten” and insert “fourteen”. I was moving this Motion in order probably to moderate from the “ten” to a higher number but not very high also. The fourteen will take care of the Region diversities as stated in Devolution. Mr. Chairman, when they are diversities the Constitutional Commissions will make a decision from an informed position. Otherwise, if you put a few

members together who may not have the feel of the whole country, then there may be some injustices in terms of allocation of resources. Thank you.

Oh! Sorry, I beg to move that Motion. Thank you.

**Hon. Delegate Koitamet Ole Kina:** We have information from the Chair.

**PLO Lumumba:** There is information which we are getting from the Rapporteur that even as you move your Motion, you look at page 207, Article 332 (2), where there is that provision “Unless otherwise specified”, you may want to read it and then decide whether you intend to proceed with that, what you described as inconsistency.

**Hon. Delegate Ahmed Maalim Omar:** Yeah! Mr. Chairman, I was trying to move this Motion to take care of regional diversities but having been informed that, if it is specified elsewhere it is taken care of then I--

*(Inaudible comments from the floor.)*

**Hon. Delegate Ahmed Maalim Omar:** --Oh! Sorry, thank you. Mr. Chair--

**Hon. Delegate Koitamet Ole Kina:** Please can you – we would like to hear what you are saying here.

**Hon. Delegate Ahmed Maalim Omar:** Mr. Chairman, what I am saying is I want us to have some consistency. You cannot say Part 110 and then you say you qualify, because we are making a Constitution, so I would like to proceed with the Motion. Thank you.

**Hon. Delegate Koitamet Ole Kina:** 015.

**Hon. Delegate Adan Kerow Billow:** Thank you, Mr. Chairman. Billow Kerow, Delegate number 015. Mr. Chairman, it is true that when this Chapter was done the provisions were to apply uniformly to all Constitutional Commissions, so that with regards to their number, their

appointment, their removal and all aspects of - their retirement and everything that there is uniformity as regards to the Constitutional Commissions. However, I do agree with him that in the drafting there has been changes that have been done including even in Public Service Commission where the number was changed from what we had, nine to fourteen.

So what I would suggest is on 332 (1), we have to start of by saying, “subject to this Constitution a Constitutional Commission shall consist of”, that way then any other commission that has been determined in the other Chapters can be taken care of or can be excluded from the provisions of this particular one. So, that is my suggestion.

**Hon. Delegate Koitamet Ole Kina:** There is a Point of Clarification. 562.

**Com. Mutakha Kangu:** Mr. Chairman, I would like to draw the attention of the Honourable Delegates to Article 329. The very first principle on Commissions, it says that, “ the Principles provided for in this Chapter apply to all constitutional Commissions except where specific provision is made to the contrary in this Constitution”. I think if that Clause addresses which the concerns the Delegate has raised, it is the first principle; it subjects all other clauses under this Chapter to anything that maybe provided to the contrary in this Constitution.

**Hon. Delegate Koitamet Ole Kina:** In the view of the clarification, is the Honourable Delegate satisfied?

**Hon. Delegate Ahmed Maalim Omar:** Yes.

**Hon. Delegate Koitamet Ole Kina:** So do you withdraw your Motion?

**Hon. Delegate Ahmed Maalim Omar:** Yeah, I withdraw the Motion. Thank you. (*Clapping*)

**Hon. Delegate Koitamet Ole Kina:** Thank you. Let us proceed. There is another one - Leslie Mwachiro.

**Hon. Delegate Leslie Mwachiro:** 599, Leslie Betawa Mwachiro. Chair even with that clarification, I still would like to see whether my Motion can actually be seen to be different from the one which has just collapsed. Chair, I am really not sure how we can have a Commission of three or a Commission of ten and yet we are devolving Executive Authority or Governance in this Country. I am saying this, the way I put mine is basically we take care of regional diversity in the sense that, whatever Commission is going to be established whether a constitutional one or otherwise we should take care of the diversity of the Regional Assemblies.

So, my wording is actually different and I have been very specific. We substitute, “at least three and not more than ten”, with, “of one nominee from each regional assembly as has been quoted in Article 296 (2) (c) and 296 (2) (d)”. Here Chair, no person will complain that we are not being involved in the National affairs of the Country, because it is us from the Districts and from the Regions who make one Nation of Kenya. So, I think everybody from now onwards would like to feel that he is participating in the deliberations or in the executive decisions being taken for Kenyans by any Commission that is going to be established. So, Chair if that clarification is still not withstanding, I still would like to move my Motion.

**Hon. Delegate Koitamet Ole Kina:** Anyone in support? 613.

**Hon. Delegate Mike Oliewo:** Thank you, Chair. My name is Mike Oliewo, Delegates 613, Political Parties. Mr. Chairman, I think that the amendment as proposed by Honourable Betawa makes a lot of sense because essentially we are devolving and we want to create a situation where every region feels as part of this Country. We want to create a situation where there is a sense of ownership of whatever goes on at the National level and we want to create a situation where there is a proper sense of belonging Mr. Chairman. Our history is such that, previously there was no obligation on the part of any appointing authority to diversify appointments to any commission or anybody of a National nature. I think this amendment as proposed by Honourable Mwachiro, the fears of all the devolved units and adequately takes care of the feeling that some regions may be marginalized in future or be discriminated against. I stand to support this amendment in total. Thank you, Mr. Chair. (*Clapping*)

**Hon. Delegate Koitamet Ole Kina:** Thank you. 062.

**Hon. Delegate Anthony Kipkosge Kimeto:** Thank you, Chair. My name is Honourable Anthony Kimeto, Delegate number 062. I tend to support the Motion which is now in place, since we are in devolution we need not to be so much selfish. That number of three according to me should have been brought up to according to - the number of devolved units in devolution. Instead of putting three, we are becoming selfish in one way or another and maybe in another way round a few people who are at the top might be selecting their own people (*Clapping*) and maybe, be doing what we call important things which all the Kenyans must carry.

According to me, the minimum number three should not be there. The minimum number could have been according to the number of the devolved units in this Republic to enable every devolved unit in our Provinces get the chance to be elected to the Commission.

**Hon. Delegate Koitamet Ole Kina:** Thank you.

**Hon. Delegate Anthony Kipkosge Kimeto:** --to get elected in the Commissions. Thank you, Mr. Chair.

**Hon. Delegate Koitamet Ole Kina:** Thank you. 424.

**Hon. Delegate Thomas Nyabote:** Mr. Chairman. Thank you very much. My name is Nyabote, number 424. I tend to differ with the Mover of the Motion because he is quoting Section 296 (2), Sub-section (c), which actually is a specified Commission in that it is referred to as the “Commission on Revenue Allocation” and that is why it is having an element of Devolution. When we were discussing the set up of these Commissions, we took into account the elements and the principles of Devolution before we arrived at these Commission because we knew that we had to cater for cross-cutting issues and I therefore tend to agree or disagree that if we were to allocate the function of the appointment of Commissioners to Constitutional Commissions on regional balancing, we shall be politicizing the appointments.

On Commissions, which is actually quoted in Article 232(1), it is a national issue. In certain developed democracies, we have seen where a Commission is headed by one person. What is

needed here, and that is the principle we purchased or we bought, is the appropriate and adequate staffing of the Commission up to the level of the Districts and that is why we developed that level. Thank you, Mr. Chairman.

**Hon. Delegate Koitamet Ole Kina:** Thank you. 282.

**Hon. Delegate Lydia Kimani:** Thank you Mr. Chairman. I wish to support the Motion of Delegate Leslie, that we amend the minimum number of 3 to suit the number of regions that will be agreed upon, because we know we are here to correct the anomalies that have been there since independence. We know there are some areas which have never seen a Commissioner or a Judge, or anybody else in those senior positions, appointed. So I stand to support the Motion. Thank you.

**Hon. Delegates:** Vote. Let us vote.

**Hon. Delegate Koitamet Ole Kina:** Let me ask, because I am caught up in a situation since we have not yet finalized or voted on the regions and when we say 14, unless we exclude numbers because if we put a number then I do not know how the effect of our discussions on Devolution will affect whatever decisions we will have taken now. Yeah. 282.

**Hon. Delegate Lydia Kimani:** Yeah. Mr. Chairman, I was very specific, I said the regions that will be agreed upon. So I was not specific on the number and my name is Lydia Kimani. Thank you.

**Hon. Delegate Koitamet Ole Kina:** Yes. Let the Mover of the Motion read it again.

**Hon. Delegate Leslie Betawa:** Chair, 599, Leslie Betawa Mwachiro. Chair, My Motion says after we substitute, we put in “of one nominee from each regional assembly”.

*(Murmurs from the Honourable Delegates).*

**Hon. Delegate Leslie Betawa:** Okay. "One nominee from each region". I am not talking of 14, Chair. The one who was talking of 14 was the previous Motion but not mine. I have no number at all, it should be equal to the number of regions that will be established.

**Hon. Delegate Koitamet Ole Kina:** So are we prepared to vote now?

**Hon. Delegates:** Yes.

**PLO Lumumba:** Mr. Chairman, at the risk of irritating Delegates and at the risk of irritating you, is it not the kind of thing that you would actually want to discuss after you have discussed Devolution?

**Hon. Delegates:** No.

**An Hon. Delegate:** Chair- -

**Hon. Delegate Koitamet Ole Kina:** Those who would like to oppose. 028.

**Hon. Delegate Robinson Githae:** Thank you, Mr. Chairman. My name is Robinson Njeru Githae, Delegate number 028. Mr. Chairman, whereas I appreciate the sentiments that the Mover of the Motion has expressed, I think we would be treading on dangerous grounds in the sense that these are professional bodies and they require professional people irrespective of where you come from--

*(Murmuring from the floor).*

**Hon. Delegate Robinson Githae:**--They require people whose sole criteria for nomination is competence and - -

**Hon. Delegate Koitamet Ole Kina:** Order. Order, Delegates. Please, let us listen to the Honourable Delegate.

**Hon. Delegate Robinson Githae:** --Competence and merit. Mr. Chairman, I think it would be politicizing the whole exercise if we have to appoint people from the region they come from. Can you imagine, for example, if it is appointment of a Judge, you say “you are not going to be appointed because you come from this region although you are competent”? I think Mr. Chairman, the way it is is the way it should be. Therefore, I oppose the Motion. Thank you.

**Hon. Delegate Koitamet Ole Kina:** 422.

*(Murmuring from the Honourable Delegates).*

**Hon. Delegate Koitamet Ole Kina:** 422.

**Hon. Delegate Maasai Maroa:** *Bwana* Chairman. I am Maasai Maroa- -

**Hon. Delegate Koitamet Ole Kina:** Order. Order, Delegates.

**Hon. Delegate Maasai Maroa:** *Bwana* Chairman, I am Maasai Maroa, number 422, from Kuria District. I stand to support the Motion because this idea of expertise and so on, is the one that has destroyed this Nation. *(Clapping)*. You will find that those who are considered experts are normally not experts. Normally they are relatives of those who are on top. *(Clapping)*. There are some areas which have Experts - knowledgeable, professional people - but they will never taste any position since they do not have their brothers and sisters in that place. *(Clapping)*. Consequently, I stand here to support the Motion as it has been suggested. I think the Mover put it very well, that one person from any regional assembly--

**Hon. Delegate Koitamet Ole Kina:** Okay. Thank you.

**Hon. Delegate Maasai Maroa:** -- From any region, regardless of how many regions there are, so I stand to support the Motion.

**Hon. Delegate Koitamet Ole Kina:** Okay. 376.

*(Noise on the floor).*

**Hon. Delegate Mafunga Chesmei:** Honourable Chairman, thank you very much. I am one of those who has been really suffering because of this raising of cards and not being looked at.

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegate, you have the floor.

**Hon. Delegate Mafunga Chesmei:** I have the floor now, let me say. As far as I am-- When we first started giving evidence, I said that we should have three people from every old region, that is twenty four people and these twenty four people would be the ones now electing a Chairman and then the process goes on for them to be approved by the Parliament and then appointed by the President. This is how I had put it, now we are increasing the regions. Okay, the number may increase, there is no problem. That is how it should be. Now, again one thing we must remember is that we are here making a Constitution for the people of Kenya who sent us, we are not making our own Constitution. These people said they want to have the Government close to them and they be participants, how are they going to if they do not participate in the distribution of employees in this country?

**Hon. Delegate Koitamet Ole Kina:** Okay. Thank you.

**Hon Delegate Mafunga Chesmei:** So I would like all this positions of the Commissions to be electoral *ili watu wawe wana* participate, all of them. (*Murmurs*). Yes, so that they know they are now participating in the Government. If there is anything wrong, they ask their representatives because you are now confusing. You are leaving out Chapter 2--

**Hon. Delegate Koitamet Ole Kina:** Okay. Okay. Thank you.

**Hon. Delegate Mafunga Chesmei:**--Which says "all authority comes from the people". All authority comes from the people; you are not trying to take account of--

**Hon. Delegate Koitamet Ole Kina:** Yes. Thank you very much.

**Hon. Delegate Mafunga Chesmei:** --Thank you.

**Hon. Delegate Koitamet Ole Kina:** 211.

**Hon. Delegate Amina Abdalla:** My name is Amina Abdalla, Delegate 211, from Parliament. I stand to oppose that Motion, in that we will not be forming Commissions that have such large numbers just so that everybody is on the decision making table. *(Clapping)*. We must have Commissions that have effective numbers, that can make decisions at an effective speed and efficiently. We just do not have to make Commissions so that all our regions are represented, we make effective Commissions that we can afford to pay. Thank you.

**Hon. Delegate Koitamet Ole Kina:** Thank you very much. Commissioner Nancy Baraza, for information.

**Com. Nancy Baraza:** Thank you, Mr. Chairman. I am Nancy Baraza, Delegate number 561. Just for point of information, I think the reasoning that went behind the limited number of Commissioners and Commissions is the issue of costs and the issue of efficiency also. I think going by-- The Electoral Commission in fact is to be reduced, first of all to create efficiency and also cut down on costs, then those Commissions will reach every part of the country in a devolved manner through staffing. So, if we create Commissions of big numbers, the Government may not afford to finance them. *(Clapping)*. That is the reasoning which went behind it.

**Hon. Delegate Koitamet Ole Kina:** Okay. Now I would like to put a question. Those who support the amendment, please raise up your placards.

*(Honourable Delegates raise their placards).*

**Hon. Delegate Koitamet Ole Kina:** Tellers, please count.

*(Noise as the counting is done).*

**Hon. Delegate Koitamet Ole Kina:** Okay. Thank you, those who oppose the amendment?

*(Honourable Delegates raise their placards).*

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

**Hon. Delegate Koitamet Ole Kina:** We will only take your order after the counting, please.

*(Silence as counting is done).*

*Consultation at the “high” table).*

**PLO Lumumba:** Tellers, are we through? Tellers, raise your hands if you are through so that we can proceed. Teller number 6, are we through?

*(Consultations at the “high” table).*

**Hon. Delegate Koitameti Ole Kina:** Okay. As the count is being taken, can we move to the next Article? Yes. Nur Ibrahim, please can you move your Motion? Nur Ibrahim.

**Hon Delegate Nur Ibrahim:** Thank you very much. I am Nur Ibrahim, Delegate 256. I do withdraw the Motion. *(Clapping).*

**Hon. Koitamet Ole Kina:** Thank you. That has been withdrawn.

**PLO Lumumba:** There is another Motion by Mary Wambui.

**Hon. Delegate Koitamet Ole Kina:** Mary Wambui, are you here? Please move your Motion.

**Hon. Delegate Mary Wambui:** Okay. Thank you, Mr. Chair. My name is Mary Wambui Kanyi, Delegate 467, and I wanted to move a Motion of amendment for Article 332, Sub-Article 7. This is going to bring into account the balance for gender in terms of the leadership in the

composition of the Commission and the proposal is that we insert the words “taking into account gender balance, the” immediately before the words “members” and inserting the words “and a vice chairperson” before the words “chairperson” and “from” so that the new Sub-Article reads “taking into account gender balance, the members of a Constitutional Commission shall elect a chairperson and a vice chairperson from amongst themselves”. The reason I am making this amendment is that we have acknowledged the principle of the Affirmative Action and the participation of men and women in leadership in this country and in governance so that even though we are putting the principle of Affirmative Action, if it comes to elections, we are aware that currently it may be women who will be fewer and so when it comes to elections they may not get through to the position, either the chair or the vice chair.

Maybe in the future men will be fewer in the Commissions and so when we take into consideration the gender balance between the chair and the vice chairperson, we are taking account of both the present and future and I beg the Delegates to support this Motion. Thank you.

*(Consultation at the “high” table).*

**PLO Lumumba:** There is information, please. The principle of gender is already carried out throughout the Constitution.

**Hon. Delegates:** Yes.

**PLO Lumumba:** I believe that the Constitution does not want to go into the matters of election of a Commission. I do not know whether my sentiments capture the mood. *(Clapping)*.

**Hon. Delegate Koitamet Ole Kina:** So, anyone in support of the Motion? So, can we take a vote?

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** Those in support of the Motion, please raise your placards.

**Hon. Delegate Richard Kibagendi:** Point of Order.

**Hon. Delegate Koitamet Ole Kina:** Point of Order, 428.

**Hon. Delegate Richard Kibagendi:** Thank you Mr. Chairman. 428, Kibagendi Richard. Mr. Chairman, with due respect, while we need guidance from that end, we would like for any Motion moved, you give this Conference room to say before you can guide us because it is like you are dismissing nearly every Motion that is coming up by the guidance you are giving.

**Hon. Delegates:** No.

**Hon. Delegate Koitamet Ole Kina:** Well, Honourable Delegates, I think I am not voting for any Motion. The votes for every Motion are coming from you but I think it will be wrong for us to withhold any information that probably will make the Delegates make an informed decision. So I think it is right that we guide Delegates because sometimes they must not necessarily vote as we want and because I am not voting. We are trying to make sure that when we take votes here, people know exactly what the current situation is. So, I want to call for a vote for all those who oppose that amendment. Please raise your placards.

*(Murmuring from the floor).*

**Hon. Delegate Koitamet Ole Kina:** Order. I had asked whether there was anybody to speak in support of that Motion. I did not get anybody. Okay. 500.

**Hon. Delegate Kamla Sikand:** What the Secretary is saying is that gender balance will be granted in the Constitution. Do we have to vote on this Motion if we are granted the gender balance is throughout the Constitution?

**Hon. Delegates:** No.

**Hon. Delegate Kamla Sikand:** No. I thought we are already granted a gender balance throughout the Constitution.

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

**Hon. Delegate Kamla Sikand:** This is information I am asking.

*(Comments from the floor)*.

**Hon. Delegate Kamla Sikand:** Of course I am supporting it.

**Hon. Delegate Koitamet Ole Kina:** The question I am being asked is if the principle has been taken care of in the Constitution. Do we have to vote for the Motion?

**Hon. Delegates:** No.

**Hon. Delegate Koitamet Ole Kina:** Well, if the Mover has not withdrawn the Motion, I think my hands are tied. We have to make a decision.

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** So, please can we make a decision on that? Unless the Mover has withdrawn it and she has not. So those against the Motion, please raise your placards.

*(Honourable Delegates raise their placards)*.

**Hon. Delegate Koitamet Ole Kina:** The “NAYS” have it. Let us proceed.

*(Consultations at the “high” table)*.

**Hon. Delegate Koitamet Ole Kina:** I have the results of the amendment of Article 332.

“AYES” 215. “NAYS” 116.

So the “AYES” have it. (*Clapping*).

(*Consultations at the “high” table*).

**Hon. Delegate Koitamet Ole Kina:** Wait. We will find out whether that is two-thirds and then I will make the final ruling on that. Sorry. Then we have results for Chapter 17, National Security.

“AYES” 327. “NAYS” 15.

No abstentions and reservation on specific Article 5. So the Chapter 15 shall be part of the Kenyan Constitution. Thank you. (*Clapping*).

**PLO Lumumba:** May I proceed?

**Hon. Delegates:** Yes.

**PLO Lumumba:** Article number 333, there is--

**Hon. Delegate Koitamet Ole Kina:** Procedure? 287.

**Hon. Delegate Nichasius Njoka:** Thank you, Chair. I am standing on a point of procedure. I am Nichasius Mugo Njoka, 287. The last Motion that we have taken a vote Mr. Chairman, we only took a vote of those who are against that Motion and we have not taken those who are for the Motion and now we are continuing Mr. Chairman. Can we correct that?

**Hon. Delegate Koitamet Ole Kina:** I think that is not the right position. I said those for the position they raised their hands and those against they did.

(*Uproar from the floor*).

**Hon. Delegate Koitamet Ole Kina:** Okay. Let me ask, would you like to take that vote again?

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** Okay, fine. Those supporting the Motion, please raise your placards. The Motion raised by Honourable Delegate 467. The Motion was about putting figures of Affirmative Action in the Article. So, those in support of this, please raise your hands.

**An Hon. Delegate:** Why don't we read the Motion.

**Hon. Delegate Koitamet Ole Kina:** I would like to read the Motion, please. Listen to the Motion, please. Before you raise your Point of Order, listen to the Motion.

**PLO Lumumba:** The Motion as moved by Honourable Mary Wambui reads thus, "that we insert in Article 332 Sub-Article (7) the words 'taking into account gender balance' immediately before the words 'members' and further insert the words 'under vice Chairperson' between the words 'Chairperson' and 'from'".

**Hon. Delegate Koitamet Ole Kina:** So, those in support of the Motion, please raise your placards.

*(Counting of votes)*

**Hon. Delegate Koitamet Ole Kina:** Those against the Motion, please raise your placards. Once again, the "AYES" have it.

*(Uproar from the floor).*

**Hon. Delegate Koitamet Ole Kina:** Sorry, once again the "NAYS". Sorry, forgive me. It was a slip of the tongue. The "NAYS" have it. Thank you for your correction. Can we proceed now?

**Hon. Delegates:** Yes.

**PLO Lumumba:** Do I have the floor to proceed?

*(Noise from the floor)*

**Hon. Delegate Koitamet Ole Kina:** Point of Order, 221. Order, please. 221.

**Hon. Delegate Ruth Oniang'o:** Thank you, Chair. Delegate 221, Ruth Oniang'o, Parliament. We have just said that the principle of Affirmative Action will be weaved through this Constitution. I would like to see the brief and the wording for that Affirmative Action and where it will be placed to make sure that indeed it will pass through so that whenever we come across anything like this, we do not have to go vote again, Mr. Chairman. Thank you.

**Hon. Delegate Koitamet Ole Kina:** Professor Kabira would like to give us information on that.

**Com. Wanjiku Kabira:** Although we said under the principles, Chapter Three I think, that the principle of Affirmative Action will be adopted one-third women's representation, it actually does not prevent us from mainstreaming gender within the whole text. I think the Motion that has just been defeated was going to lose nothing. The Chapter was not going to lose anything by actually taking into consideration gender parity particularly considering that we have just agreed that the representation will be from regions and therefore, whoever is appointing, does not have a choice as to how to implement the one-third because you cannot tell a region, "you produce the man" and another one, "you produce a woman". So, I think Ruth's concern is important and as we vote for or against issues related to gender, maybe we need to take that into the consideration but the principle appears in Chapter Three. Thank you.

**Hon. Delegate Koitamet Ole Kina:** Thank you very much. 302.

**Hon. Delegate Fredrick Nderitu:** Thank you, Honourable Chairman. I stand here not only annoyed but also irritated. The reason is that Bwana Chairman, we have been here the whole day and since Monday. There are some people here who have contributed more than five times during talking time and others have been here with very important points to raise and it appears you have a special way of catching their eyes. So, it is important, Mr. Chairman, you be professional in appointing people who are going to contribute in this Constitutional process.

**Hon. Delegate Koitamet Ole Kina:** Thank you. I am trying and I will continue to try. Thank you very much.

*(Noise from the floor).*

**Hon. Delegate Koitamet Ole Kina:** Order! 015.

**Hon. Delegate Billow Kerrow:** Mr. Chairman, Billow Kerrow, 015. My point of order is, is it in order when we have in Article 332 (2), it clearly says that “unless otherwise specified, Members of a Constitutional Commission shall be identified and recommended in such a manner” etc. Taking into account the principles of Affirmative Action, I think this thing is mainstreamed in most of the Chapters in that manner and I think to repeat it again in every other Clause, is going to make it redundant and I would suggest that we leave it at that point.

**Hon. Delegate Koitamet Ole Kina:** I think that has been clarified well, so, let us proceed, please. Information, 446.

**Hon. Delegate Francis Wangara:** 446, Francis Wangara. I want to refer to Article 13 (2)(j), which says, “under the national goals, values and principles, one of the issues which the Government will do, is to implement the principle that at least one-third of the members of all elective appointive bodies shall be women”. This thing is covered.

**Hon. Delegate Koitamet Ole Kina:** I think that is okay. We can now proceed. Please, let us proceed.

**PLO Lumumba:** May I read page 208, Article 333 ‘Staff of Commissions’ and we have a Motion from Leslie Mwachiro.

**Hon. Delegate Koitamet Ole Kina:** 599.

**Hon. Delegate Leslie Mwachiro:** Leslie Betawa Mwachiro, 599. Chair, I might be speaking too much but it is because I had a lot of Motions. So, the Delegate who complained, I want to put him to rest that I am not being favoured.

Chair, my Motion on 333 (3) is that I am trying to say the title of ‘staff of Commissions’ if we can basically put it as ‘Secretary of the Commissions’ and then under that we basically say, “under the secretary of the Commissions”. Then in the actual meat of the Article, it should read, “A Constitutional Commission shall recruit such staff as it may require for the discharge of its functions under the Secretary of the Commission”.

Chair, I want us to look at Article 303 (3) and (4). Chair, in this particular Article I am referring to, it says “there shall be a Secretary to the Commission” but in these Commissions, we have not basically catered for the Secretary to the Commissions and I thought, here it says “there shall be a Secretary to the Commission who shall be the Chief Executive and then (4) basically begins by saying, “the Secretary of the Commission shall hold office...” I am trying to see whether these two Sub-Articles cannot be inserted under “Secretary of the Commission” in this particular Article 333. Actually, it could be basically a way of making a very big correction but getting things right that there will be a Secretary to every Commission formed who shall be the Chief Executive because I can see it has been left out here although it has been captured in the Article I am trying to refer to here which was basically dealing with the Public Service Commission. So, Chair, I beg to move my amendment.

**Hon. Delegate Koitamet Ole Kina:** There is a point of information from 411.

**Hon. Delegate Mary Teresa Osunga:** Thank you, Chair. I am 411, Mary Teresa Osunga, District Delegate, Homabay. I wanted to inform that as you are talking about the staffing of the Commissions, are you meaning to say possibly the Secretariat because if you refer to the word “secretary” then it means a person. Are you talking about a group of persons who are responsible to this or a person? Thank you.

**Hon. Delegate Koitamet Ole Kina:** Clarification. 599.

**Hon. Delegate Leslie Mwachiro:** Chair, when you read Article 303(3), it says, “there shall be a Secretary to the Commission who shall be the Chief Executive”. So, we are not talking about a Secretary, we are talking about “that there shall be a Secretary to the Commission who shall be the Chief Executive and shall be appointed”-- I will not go beyond that. But then, in this Article we are saying, when we talk about the staff of Commissions, I am saying the staff of Commissions should actually fall under the Chief Executive of the commissions. So, it is basically a matter of tidying up this particle Article, 333. It has not mentioned that there shall be a Chief Executive of these Commissions were are setting up.

**Hon. Delegate Koitamet Ole Kina:** We would like to be informed by 015 who was actually the Rapporteur of that Committee.

**Hon. Delegate Billow Kerrow:** Chairman, there is a difference here. The Public Service Commission and the Teachers Service Commission are executive Commissions and there is a Chief Executive because they work full time, they are salaried and they have responsibilities like any other full time employees. These other Commissions on this Chapter are on *Ad hoc* basis and are not on fulltime. So, they do not have a Chief Executive who sits day to day, who has nothing else to do. So, it is different. That is why in Public Service Commission, we have a Chief Executive who is the Secretary but in these ones we do not have. I think that is the difference that we should appreciate. Thank you.

**Hon. Delegate Koitamet Ole Kina:** Clarification.

**Com. Alice Yano:** Thank you, Chair. I am Alice Yano, 556. The issue of dealing with maybe the Secretariat or the Secretary in the Constitution surely would be too much detailed and issues or organizations and recruitment of their staff should be left to the same organizations. Thank you, Chair.

**Hon. Delegate Koitamet Ole Kina:** I would like anybody who supports the amendment, please to speak to it. 226.

**Hon. Delegate Rev. Samuel Muchuga:** 226, Samuel Muchuga. Mr. Chairman, we voted earlier on and you gave us the numbers 215 for “**AYES**” and 116 for “**NAYS**” and you said you were going to give us that.

**Hon. Delegate Koitamet Ole Kina:** I have the results. please--

**Hon. Delegate Rev. Samuel Muchuga:** Give us then.

**Hon. Delegate Koitamet Ole Kina:** I will give you at my convenience, please just wait. I said speaking for, I thought you would be speaking for that Motion. I want to put the question. Those in favour of the Motion please raise your placards.

*(Counting of votes)*

**Hon. Delegate Koitamet Ole Kina:** Those against, please raise your placards.

*(Counting of votes)*

**Hon. Delegate Koitamet Ole Kina:** The “**NAYS**” have it. I can now announce the results of amendments on Article 332. Yes, indeed “**AYES**” were 215 and “**NAYS**” were 116 and the total was 331. Therefore, “**AYES**” do not constitute two-thirds of the Delegates present and voting and so the Article is defeated.

*(Clapping).*

**PLO Lumumba:** Mr. Chairman, do I have the floor?

**Hon. Delegate Koitamet Ole Kina:** Please proceed. Please, we would like to proceed, Honourable Delegates.

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** We cannot push things into the Constitution. I would like to rule you out of order Honourable Delegate. Please, you moved your Motion, it was discussed, we moved a vote and it has lost. So, what do you want to say again on that? Okay, please, one minute. Let us give him one minute.

**Hon. Delegate Leslie Mwachiro:** Chair, I thought Motions do not need two-thirds. Mine is a Motion and I thought Motions are carried by simple majority. This is what the rule says. So, unless you are making new rules here for this particular Motion, I thought Motions are not carried by two-thirds majority.

**Hon. Delegate Koitamet Ole Kina:** For inclusion of an Article to the Constitution, it will require two-thirds. I think those are rules. I did not write the rules, please read the rules again and let us proceed.

**PLO Lumumba:** Do I have the floor?

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

**PLO Lumumba:** Page 208, Article number 334, we do have a Motion, ladies and gentlemen, Winston Adhiambo.

**Hon. Delegate Koitamet Ole Kina:** Winston Adhiambo, please move your Motion

**Hon. Delegate Winston Ogola:** Thank you very much, Chair.

*(Noise from the floor).*

**Hon. Delegate Koitamet Ole Kina:** Order! Delegates. Please, let us listen to the Honourable Delegate. 263, Point of Order.

**Hon. Delegate Winston Ogola:** This one, the numbering is slightly different. Kenya Fisheries-

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**Hon. Delegate Koitamet Ole Kina:** Wait, I have a point of order.

**Hon. Delegate Abdikadir Kaara:** According to the numbering here, Mr. Odhiambo's amendment is supposed to be under Article 339. It is not yet.

**Hon. Delegate Koitamet Ole Kina:** Sorry.

**PLO Lumumba:** We are sorry.

**Hon. Delegate Winston Ogola:** Can I wait?

**Hon. Delegate Koitamet Ole Kina:** Yes, please wait.

**PLO Lumumba:** 334, 335 – proceedings of Commissions, 336 – removal from office, 337, funds of Commission, 338, annual and other reports, 339 – additional Constitutional Commissions. Ogola.

**Hon. Delegate Koitamet Ole Kina:** Yes, Honourable Ogola.

**Hon. Delegate Winston Ogola:** Thank you very much, Mr. Chairman. I wish to move a Motion of addition to add the "Kenya Fisheries Commission". I will be short, I just wish to be given a few minutes to justify.

**Hon. Delegate Koitamet Ole Kina:** Yes, you have the floor, please.

**Hon. Delegate Winston Ogola:** I would like to talk very briefly on the reasons--

*(Noise from the floor).*

**Hon. Delegate Koitamet Ole Kina:** Order! please. Let us listen to the Delegate, please.

**Hon. Delegate Winston Ogola:** --very briefly on my reasons for requesting for a Fisheries Commission. As the productivity from land nears its limits, humanity has to turn to the aquatic environment for future survival.

*(Clapping)*

**Hon. Delegate Winston Ogola:** While the land environment is subject to far reaching climatic changes like winds, rainfall, drought, floods etc, the aquatic environment is sealed from most of these onslaughts.

*(Clapping)*

**Hon. Delegate Winston Ogola:** The productivity of lakes, rivers and oceans is less affected by certain climatic changes which affect land. The fishermen want a Commission to look into their problems which face the industry. The Lake Victoria, that is Western Kenya, fishermen are tired of constant harassment from Uganda and Tanzanian fish officials who behave like Elizabethan Seamen. You remember Francis Dreck (*Laughter*) sinking the beards of the Spanish King.

The Law of the Sea of 1970's gave Kenya the grand opportunity to utilize the exclusive economic zone but up to now, Kenya reaps essentially nothing from this valuable area, while foreigners from the Far East treat Kenya's EEZ like their territorial waters. Kenya is likely to have several outlets for permanent rivers which could be utilized for fish production but due to mismanagement of the resources, the Republic does not benefit.

On the point of the Exclusive Economic Zones, may I inform the Delegates that it stretches from the Tanzanian border up to Somalia border which is approximately 300 miles and going into the Sea, it is 200 miles. This comes to 60,000 square miles, the most valuable resource where Kenya is losing billions of shillings to other countries because they have failed to do the proper investment.

**Hon. Delegate Koitamet Ole Kina:** Thank you. I think you have made your point, please.

**Hon. Delegate Winston Ogola:** There is a slight thing. Just excuse me; there is a slight thing.

**Hon. Delegate Koitamet Ole Kina:** Okay, one more minute.

**Hon. Delegate Winston Ogola:** Thank you very much. It should be noted that the three successive Governments of Kenya have failed to place the fisheries department in any Ministry. In fact, every time the Government changes, it is put in another Ministry. So, it will never be able to settle properly and to be developed. Even this very year when I am standing here, fisheries have now been moved to the livestock industry and I think this will not help.

**Hon. Delegate Koitamet Ole Kina:** Okay. Thank you very much. I think you have made your point. I would like someone in support, 057.

**Hon. Delegate Kivutha Kibwana:** Thank you very much, Mr. Chairman. I think the Fish Commission is a very important proposal and people should consider it on its own merit. I am saying this because we have a Meat Commission, we have Land Commission and fisheries are a very, very important part of our country's development that have been neglected and I think as has been ably suggested, it is Lake Victoria, it is the Seas, it is actually a resource that can bring a lot of money to this country. I do ask the Delegates, although this is an extra Commission and we do not want to have very many Commissions, but at least in relation to this resource, I should plead with the Delegates to look at this matter from *Mzee* with the seriousness that it deserves. It is something that needs to be supported.

*(Clapping)*

**Hon. Delegate William Ole Yiaile:** Point of Order!

**Hon. Delegate Koitamet Ole Kina:** Point of Order, from where, 361.

**Hon. Delegate William Ole Yiaile:** Mr. Chairman, Ole Yiaile is my name, 361. My point of order is this one. With all due respect, Mr. Chairman, the Kenya Meat Commission, is it really included in this Constitution?

**Hon. Delegates:** No.

**Hon. Delegate William Ole Yiaile:** In fact, as I support the Speaker and I thank Prof. Kibwana for insinuating that the Kenya Meat Commission is here although it is not, I am praying that this Honourable Delegate, as we approve Adhiambo's Motion, we also include an additional Commission that is known as Kenya Meat Commission so as to cover all the Coastal areas and to cover the sale and the control of market and their livestock in this country. Thank you, Mr. Chairman.

**Hon. Delegate Koitamet Ole Kina:** 037.

**Hon. Delegate Otieno Kajwang':** I sympathize with the Mover of the Motion because we have been trying to have a Commission of this nature in Parliament for a long time, but this is not a Constitutional Commission. This is not a Constitutional matter, otherwise we will have in this Commission the Pyrethrum Board, the Cotton Commission, whatever and whatever. So, Adhiambo, we hope that we will do a Bill in Parliament to create this commission but I think we should remove it from the Constitution and I do not think Honourable Kibwana is sincere.

**Hon. Delegate Koitamet Ole Kina:** 545. Honourable Delegates, I would like--

*(Noise from the floor).*

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegates, order! I am speaking please. I would like Honourable Kajwang' to withdraw the fact that he has imputed improper motive on another Delegate. Please, withdraw.

**Hon. Delegate Otieno Kajwang':** I will withdraw the word 'sincere' but I do not think that he was intellectually persuaded.

**Hon. Delegate Simon Shitemi:** Mr. Chairman--

*(Noise from the floor).*

**Hon. Delegate Koitamet Ole Kina:** Please, there is a Delegate on the floor, please. 545.

**Hon. Delegate Simon Shitemi:** Thank you, Mr. Chairman. My name is Simon Shitemi, Delegate 545. I find a lot of sense in what Honourable Adhiambo has said. I find a lot of sense in what Prof. Kibwana has said and I find a lot of sense in what Honourable Kajwang' has said. I stand to find, to suggest a way forward. We already have a department of fisheries in this country and that department has been busy doing a good job with limited--

*(Inaudible discussion on the floor).*

**Hon. Delegate Simon Shitemi:** Please hear me out, with limited capacities. There was a time I was the Chief Clerical Officer, Ministry of Tourism and Wildlife and so I am speaking from considerable experience. We have enormous potential, the way our colleague Mr. Odhiambo is saying, enormous potential for making fisheries the second largest foreign exchange earner after tourism. All we need to do is to find a mechanism for proper organization--

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegate, sorry, for cutting you short. I would like to plead with the Delegates who are leaving, that we are just about to finish this. Please, be a little patient so that we finish this and the Honourable Delegate on the floor, you have only one minute now, please.

**Hon. Delegate Simon Shitemi:** Okay. I was just pleading with fellow Delegates that I am speaking from intimate knowledge of this subject, having been the PS, Ministry of Tourism and Wildlife. We must explore and exploit the potential of fisheries. Thank you very much Mr. Chairman.

**Hon. Delegate Koitamet Ole Kina:** Can I put the question please?

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** All those in support of the Motion please raise your placards.

*(Hon. Delegates raise placards).*

**Hon. Delegate Koitamet Ole Kina:** Let us clear the Motion, the Motion will be read to you.

**PLO Lumumba:** I think there is need for explanation. That people do support the Fisheries Commission, but the question is, should it go into the Constitution?

**Hon. Delegates:** No.

**PLO Lumumba:** So, when you are voting for support, it is to the effect that it goes into the Constitution, not that you oppose it. On that basis, can we put the question?

**Hon. Delegate Koitamet Ole Kina:** Those who support the Motion, can you please raise your placards?

*(Few Delegates raise placards).*

**Hon. Delegate Koitamet Ole Kina:** Those who oppose?

*(Hon. Delegates raise placards).*

**Hon. Delegate Koitamet Ole Kina:** The “NAYS” have it. Shall we please proceed?

*(Inaudible discussions on the floor).*

**PLO Lumumba:** I now have the floor to read page 211, The Commission on Human Rights and Administrative Justice, Article 340. On page 213, Commission on the Implementation of the Constitution, Article 341.

**Hon. Delegates:** Yes.

**PLO Lumumba:** On page 214, The Gender Commission.

**Hon. Delegates:** Yes.

**PLO Lumumba:** On page 214--

**Hon. Delegate Koitamet Ole Kina:** 217?

**PLO Lumumba:** Sorry.

**Hon. Delegate Cecily Mbarire:** Thank you, Chair. 217, Cecily Mbarire. My concern is, what consideration was put into place to determine that the Commission only needed five people? Is it because of its less importance or is it because it is gender or what is it that made them put five people when other Commissions are getting nine and ten?

**Hon. Delegate Koitamet Ole Kina:** Honourable Delegate, do you have a Motion?

**Hon. Delegate Cecily Mbarire:** Yeah, I have a Motion that we add this to eight members, a Chairperson and seven other members and I know why I am requesting that Chair. Because this is a very important Commission, the work is enormous, they must look into all policies of government, all policies and laws of government to ensure that gender issues are taken into consideration. I do not see how five people can take into consideration all policies and laws of the Country. I do not see how that is possible.

**Hon. Delegate Koitamet Ole Kina:** Thank you. There is information--

*(Inaudible discussions on the floor).*

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

**P L O Lumumba:** Information.

**Hon. Delegate Koitamet Ole Kina:** Just please, hold on, there is information from Commissioner Adagala and then we will take your Point of Order.

**An Hon. Delegate:** Professor Kabira.

**Hon. Delegate Koitamet Ole Kina:** Professor Kabira.

**Com. Wanjiku Kabira:** Sorry, I just wanted to clarify that during the harmonization meeting, the Gender Commission figures were changed to be the same as all the other Commissions. That was the final agreement.

**Hon. Delegates:** Yes. (*Clapping*).

**Hon. Delegate Koitamet Ole Kina:** So, in view of that do you still have a Motion?

**Hon. Delegates:** No.

**Hon. Delegate Koitamet Ole Kina:** So, can we proceed?

**Hon. Delegates:** Yes.

**Ho. Delegate Silvester Wafula:** Point of Order.

**Hon. Delegate Koitamet Ole Kina:** Yes, 484.

**Hon. Delegate Silvester Wafula:** 484, Silvester Wafula. I may have left my spectacles behind or something. I do not seem to see even this Motion on schedule.

**P L O Lumumba:** Motions can be moved from the floor.

**Hon. Delegate Silvester Wafula:** Unless it is that way, otherwise it is not on schedule.

**Hon. Delegate Koitamet Ole Kina:** Okay, can we now proceed then?

**Hon. Delegates:** Yes.

**PLO Lumumba:** Proceed?

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

**PLO Lumumba:** On page 215, Salaries and Remuneration Commission.

**Hon. Delegates:** Yes.

**PLO Lumumba:** There is a Motion, by Ngorongo Makanga.

**Hon. Delegate Koitamet Ole Kina:** Ngorongo Makanga are you here?

**PLO Lumumba:** Honourable Ngorongo Makanga?

*(Inaudible discussions on the floor).*

*(Consultations at the "high" table).*

**Hon. Delegate Koitamet Ole Kina:** So, Honourable Delegates before we take a vote for this Chapter, I would like to establish whether we have quorum to take the vote.

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** So, please let us be patient a little, to establish whether we have the quorum to take the vote.

*(Inaudible discussions on the floor).*

**Hon. Delegate Koitamet Ole Kina:** We need accurate figures please. Just be a little patient. *(Bell rings)*. Can you please ring the bell?

*(Inaudible discussions on the floor).*

**Hon. Delegate Koitamet Ole Kina:** Delegates who are out here please, those who can hear me, can they come in please? Thank you, Nyakundi. Can we proceed with the other as we establish that? Please.

**Hon. Delegates:** Yes.

**P L O Lumumba:** I have the floor on page 217. Amendment of the Constitution.

## CHAPTER NINETEEN

### AMENDMENT OF THE CONSTITUTION

**PLO Lumumba:** 343.

**Hon. Delegate Koitamet Ole Kina:** 355?

**PLO Lumumba:** Ngorongo Makanga.

**Hon. Delegate Koitamet Ole Kina:** 355.

**Hon. Delegate Michael Githu:** *Asante, Bwana* Chairman. My names are Michael Githu, 355. I am just a District Delegate and I want to comment on Sub-Article (2), The functions of the Salaries and Remuneration Commission.

The functions are set – you know – is to set the salaries, allowances, and so on and so forth. But there is a place there where they say, “... and members of all constitutional Commissions”. Elsewhere, it would appear as if this is the same Commission which determines the salaries of our MPs, Councillors and so on; and if that is so, then I am moving to remove the word “Commissions” and put the word “offices” because I think the Members of Parliament and the Councillors are also members of constitutional Offices. So, I am proposing that it reads something like this, “to set the salaries--,

**Hon. Delegate Oduor Ong’wen:** Point of Order.

**Hon Delegate Michael Githu:** --allowances, pensions and other benefits of all public offices--

**Hon. Delegate Koitamet Ole Kina:** There is a Point of Order, just-- 459. 459 Ong’wen.

**Hon. Delegate Oduor Ong’wen:** Mr. Chairman, we do not seem to have the Motion being moved.

**PLO Lumumba:** It is actually there as number 344 on page 133 of the Schedule of Motions. You may not have it, so we can help by reading it out. He wants to insert the word “offices” immediately after “all constitutional”. That is in Article 343 (2) (a). Information?

**Hon. Delegate Koitamet Ole Kina:** Yes, point of information, 529.

**Hon. Delegate Rev. Patrick Musungu:** My number is 529, Reverend Musungu. May I inform the Mover of the Motion that if he can go to Clause (b), and unless he is not satisfied with the provision in Clause (b), then he can proceed with his Motion?

**Hon. Delegate Koitamet Ole Kina:** Can you please read Clause (3)?

**Hon. Delegate Michael Githu:** Okay, (b), it may appear alright.

**Hon. Delegates:** Withdraw.

**Hon. Delegate Koitamet Ole Kina:** So, do you want to withdraw or you want to persist?

**Hon Delegate Michael Githu:** No, I want to persist because I also want to move to (b), if allowed. So, I was hoping that those who benefit from this Salaries Commission like the MPs and Councillors for that matter would maybe support that we remove the word “Commissions” and insert the word “offices” because these are Constitutional offices as far as I am concerned.

Then on (b) as he says, I would also like maybe to say, after the word “officers”, “and members of elected devolved governments”; because they are left out. I beg to move Mr. Chairman.

**Hon. Delegate Koitamet Ole Kina:** Someone in support of the Motion?

**Hon. Delegate Billow Kerrow:** Point of Order.

**Hon. Delegate Koitamet Ole Kina:** There is a comment, 015?

**Hon. Delegate Billow Kerrow:** Mr. Chairman, I think when we were doing this, in Sub-article (3), the definition of “public officers” as used in this Chapter covers anyone in the pay of government including even Members of Parliament. They are all in the pay of government. And that definition covers constitutional office holders and elected offices. I do not think there is merit in adding. However, the reason why Commissions are different is because members of commissions are not the same as constitutional office holders but all the other employees, including MPs, are all covered in the definition of public officers. So, I think that Motion is really superfluous and should be done away with. Thank you.

**Hon. Delegate Koitamet Ole Kina:** In fact it says very well that, directly from all who are paid from Consolidated Funds or directly out of money provided by Parliament. So, since the Delegate persists, anyone who would like to support the Motion?

**Hon. Delegates:** Withdraw.

**Hon. Delegate Koitamet Ole Kina:** Can we vote?

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** Is there anybody who would like to speak against it first?

**Hon. Delegates:** No! No!

**Hon. Delegate Koitamet Ole Kina:** Okay. So, I would like to put the question.

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** Those in support of the Amendment, please raise your placards.

*(No placards raised).*

**Hon. Delegate Koitamet Ole Kina:** Those against the Amendment.

*(Hon. Delegates raise placards).*

**Hon. Delegate Koitamet Ole Kina:** The “NAYS” have it and that concludes that Chapter.

**P L O Lumumba:** Chapter Nineteen, Amendment of the Constitution.

## **CHAPTER NINETEEN**

### **AMENDMENT OF THE CONSTITUTION**

**P L O Lumumba:** Article 344.

**Hon. Delegate Joseph Kamotho:** Point of Order.

**Hon. Delegate Koitamet Ole Kina:** Yes, 040.

**Hon. Delegate Joseph Kamotho:** Mr. Chairman, 040, Honourable J. J. Kamotho, Member of Parliament. Have we voted for the Chapter?

**Hon. Delegate Koitamet Ole Kina:** No. We said we are trying to get numbers, we will vote. So, in the meantime we said we proceed on the other, we may vote for the two concurrently.

**Hon. Delegate J. J. Kamotho:** We proceed with the others?

**Hon. Delegate Koitamet Ole Kina:** Yes. I think I had requested Delegates that we look at the others and then we will vote. Is that okay?

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** Okay. Please proceed.

**An Hon. Delegate:** 341, Motion.

**Hon. Delegates:** Motion.

**Hon. Delegate Koitamet Ole Kina:** There is someone with a Motion?

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** I can hear a voice say, Motion. Please if you have a Motion raise it. I can not see you. 057.

**Hon. Delegate Kivutha Kibwana:** Thank you very much, Chair. Having looked at this document I do not know whether there is a place where civic education on the Constitution is allowed because that is a very, very important aspect and I think because of the kind of

experience Delegates have here in terms of having gone through all the documents and debated it and so on, I think it would be important for Delegates here to be part of that civic education exercise. (*Clapping*). As well as NGOs and whoever else. So, if it is not in the implementation of the Constitution, then I hope it is somewhere else. That was what I wanted to suggest in terms of an Amendment.

*(Inaudible discussions on the floor).*

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

**PLO Lumumba:** Article 344, 345,

**Hon. Delegates:** Yes.

**PLO Lumumba:** 346.

**Hon. Delegates:** Yes.

**Hon. Delegate Alexander Chepkwony:** Point or Order.

**Hon. Delegate Koitamet Ole Kina:** There is a Motion?

**PLO Lumumba:** Motion?

**Hon. Delegate Koitamet Ole Kina:** 367. As we prepare for that Motion, I think the concerns of Honourable Kibwana are taken care of in implementation.

**Hon. Delegates:** Yes.

*(Inaudible comments from Hon. Delegates).*

**PLO Lumumba:** Let me--

**Hon. Delegate Koitamet Ole Kina:** Order!

**PLO Lumumba:** Let me just go beyond my mandate as the Secretary and my good friend and teacher Professor Kibwana, if we look at Article 341, the function of the Commission is to monitor, facilitate and oversee the development it lists all those things. I want to be educated by my good teacher. Would we then bind constitutionally that all Delegates of the Conference shall be involved?

**Hon. Delegates:** No.

**PLO Lumumba:** I want it--

**Hon. Delegate Koitamet Ole Kina:** 057.

**Hon. Delegate Kivutha Kibwana:** The Chair and the Secretary, the functions of the Commission is to monitor, facilitate and oversee the development of legislation. That is very specific, Administrative procedures - that is very specific. Reporting to the President and Parliament on the timely implementation of the Constitution, that is very specific. Therefore, what one is asking is for a specific mandate to do civic education on the new Constitution because part of implementing the Constitution is making sure that people know it. And I was also further saying that, we have an important resource here in terms of Delegates who for one year have gone through this Constitution and are very acquainted with it.

**Hon. Delegates:** Yes. (*Clapping*).

**Hon. Delegate Kivutha Kibwana:** And of course civil society organizations, the traditional ones which do educate. So--

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

**Hon. Delegate Kivutha Kibwana:** I think that if we have like a specific motion on civic education--

**PLO Lumumba:** Information please. On page 258,

**Hon Delegates:** Yes.

**PLO Lumumba:** On page number 258, that is Transitional Provisions I think. The schedule dealing with it, there is a specific mention from the effective date, the government shall through its relevant organs conduct and facilitate civic education on this Constitution to the people of Kenya in the national languages and in their local languages. (*Clapping*).

**Hon. Delegate Koitamet Ole Kina:** I think now the Honourable Delegate is satisfied. Is that so?

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** So, we can proceed?

*(Inaudible discussions on the floor).*

**Hon. Delegate Koitamet Ole Kina:** We had a Point of Order. 387.

**Hon. Delegate Alexander Chepkwony:** A Motion, Mr. Chairman.

**Hon. Delegate Koitamet Ole Kina:** 367, sorry. A Motion.

**Hon. Delegate Alexander Chepkwony:** Thank you very much Chairman. 367, Alexander Chepkwony, District Delegate from Bomet. This Article 367 (1), Mr. Chairman, is very important because it calls for a section of the people of Kenya to amend the Constitution. It calls for a popular initiative of one million people. What I intend to propose as an Amendment to this Sub-Article Mr. Chairman is, the popular initiative should have the support or the popular

initiative should reflect a national outlook which has to prevent or we need to prevent a lopsided popular initiative that may be inherent to one area or region or district Mr. Chairman. So, I am intending to insert the words “voters drawn proportionally from all districts of the Republic” after the word “million” in the Sub-Article (1) Mr. Chairman. We need to have people drawn from all parts of Kenya to amend the Constitution so that if we talk of at least one million people, we are not sure where these one million will come from. (*Clapping*). So, we want to put in place a Clause to reflect that we have the national outlook in this exercise. Thank you very much and I beg to move.

**Hon. Delegate Koitamet Ole Kina:** 026.

**Hon. Delegate Gurracha Galgallo:** Thank you, Mr. Chairman. 026, Gurracha Galgallo, Parliament. I stand to support this Motion because Mr. Chairman, it makes a lot of sense. We know that there are disparities in populations of different regions and just to get one million signatures, may only take single regions in certain case, for example Rift Valley, Central Province, or even Coast may register one million voters and if they are going to change a Constitution as a region on its own I think it will not be a very popular idea for us as a nation and so if we say one million but proportional representation from all the regions, it will be better for our nation. Thank you Sir.

**Hon. Delegate Koitamet Ole Kina:** Anybody against the Motion? 278.

**Hon. Delegate Peter Nkoroi:** Thank you, Chair. I am Kang’the Nkoroi, 278. Now, Delegates, this issue we discussed in the Committee dealing with Commissions for I think two days. Why we all agreed to have one million signatures without references to the devolved units or local and ethnic groups is because you can have a situation where you have a community like the Ogiek, the Constitution or the laws at that time may not be in favour of their economic undertakings. So, we allowed, in such situations, if those people can be able to raise just a mere one million, even if they are the people affected, then after that drafting is taken to Parliament, a voting referendum will be done which will now be the whole national referendum or voting warranting now that amendment to be made. So, this specification is to enable every group or people in Kenya to initiate a Constitutional Amendment but then the voting will have to follow from the whole of Kenya. That is what we meant. Thank you, Mr. Chairman.

*(Inaudible discussions on the floor).*

**Hon. Delegate Ashepete Barasa:** Chair.

**Hon. Delegate Koitamet Ole Kina:** Yes, 393.

**Hon. Delegate Ashepete Barasa:** Delegate 393, Ashepete from Teso. The Constitution, being the supreme law of the land, can easily be changed by a specific group of people if we leave it open the way it is. This is very vulnerable because we are aware that there are people in our country who have bigger numbers. Supposing they decide to change the Constitution and they are from one specific region, the Constitution is going to affect the entire Republic. *(Clapping)*. So, I wish that we draw this one million from our diversity so that we know what we are changing in the Constitution, so that we do not get subjected to the ideas of one specific group. Thank you. *(Clapping)*.

**Hon. Delegate Koitamet Ole Kina:** 366.

**Hon. Delegate Caroline Ruto:** I am Delegate number 366, Caroline Ruto. I believe that anything that warrants an Amendment of the Constitution should get the goodwill of all parts of the Republic. So, I stand here to support the Motion that it should actually reflect-- The one million signatures should be representative of all parts of the Republic because as we were saying that some communities have larger numbers and they would always be subjecting us to tribal referendums. So, I stand here to support the Motion.

**Hon. Delegate Koitamet Ole Kina:** So, I want one person who opposes the Motion. 455.

**Hon. Dlegate Lawrence Mute:** Chair, my name is Lawrence Mute. Chair, one point which has not been raised, we are talking about the figure 1 Million. If we do not want to change this Constitution for very many years from now, I am wondering whether we should state the figure 1 Million or whether we should not look for a percentage perhaps of registered voters so that rather than just say 1 Million, supposing we have born many children and we are 70 or 80 Million

people in this country do we still want the figure 1 Million? Why don't we find out a percentage figure of registered voters which we then say proportionally-- I agree with the principle of proportionality? Why don't we look for a percentage figure? I have no suggestion Chair. Thank you.

**Hon. Delegate Koitamet Ole Kina:** Is there anybody with a different opinion on that? 102.

**Hon. Delegate Jakoyo Midiwo:** Thank you Mr. Chairman. I stand to oppose that Motion. My name is Jakoyo Midiwo, Delegate number 102. The reason I am saying that, that if we support that Motion it will subject us to the rule of minority. In other words it has reverse effects. Because let us say, we want to make a Constitution amendment on an issue that is affecting women, is it not easy to do civic education and petition 1 Million women in Nairobi or 1 Million Kenyans in Nairobi where the population is or better yet, suppose there is something which is a constitutional issue in the area of Kiambu for example, we cannot say we want to take this issue to Malindi where those people are not affected by the same issue. Simply put --Mr. Chairman, I thought the 1 Million people are not the people changing the Constitution, we are only petitioning for a vote which will involve all Kenyans. Thank you Mr. Chairman.

**Hon. Delegate Koitamet Ole Kina:** I think we have spoken to that matter and I think we are now ready to vote. 278, you move the Motion.

**Hon. Delegate Peter Kang'ethe:** Not moving. Thank you. Mr. Speaker Sir, I wanted to clarify because I participated in this debate in the Committee.

**Hon. Delegates:** No.

**Hon. Delegate Koitamet Ole Kina:** You have already stated.

**Hon. Delegate Peter Kang'ethe:** No, no, no. The initiative is not changing. To start the initiative is not changing, changing requires other conditions. Thank you Mr. Chairman.

**Hon. Delegate Koitamet Ole Kina:** Thank you. Now, I think the Delegates have enough information and they can vote on that, so I would like those in support of the Motion, please raise your placards?

*(Delegates raise placards).*

**Hon. Delegate Koitamet Ole Kina:** This means 1 Million from all areas of Kenya and not in a particular region alone.

**P L O Lumumba:** Mr. Chairman, before you vote the provision is vague. When you say proportionally from all the country what do we mean? So even as you vote I want you to consider the vagueness of proportionally.

**Hon. Delegate Koitamet Ole Kina:** So all those in favour of the Motion please, raise your placards. Sorry, I am being reminded that there is an amendment by Lawrence Mute and maybe before we take the final vote on that we should vote on that amendment.

*(Inaudible comments from the floor).*

**Hon. Delegate Koitamet Ole Kina:** He did not give us a specific percentage so I would ask the Delegate please to give us a specific percentage. Lawrence Mute, please.

**Hon. Delegate Lawrence Mute:** As I said Chair, the important thing is that in order for an issue to be determined as an issue which needs to be discussed by the whole country, we need to agree on a percentage rather than a figure. I honestly do not know because that just occurred to me now, so Chair I cannot really make a suggestion. Thank you.

**Hon. Delegate Koitamet Ole Kina:** 353.

**Hon. Delegate Joseph Shuel:** Thank you Chair. My number is 353, Joseph Shuel. I stand to support the Motion or support the amendment as moved by Honourable Lawrence Mute and I introduce to say that currently before we go for elections or rather the provisions that we have at

the moment is that for a President to be elected, he has to garner around 25% from every province. I would like to move a Motion that we use 25% of all registered voters in Kenya and that will be good for us. Thank you.

**Hon. Delegate Koitamet Ole Kina: 225.**

**Hon. Delegate Salim Ibrahim:** Thank you Mr. Chairman, I am Salim Ibrahim, Delegate number 225. I would like to advise all the other Delegates, please let us not have knee-jack reactions to everything. Let us read the document properly and understand the provisions. If you go just a head on Sub Article number (4) you will find that once the petition has been done, it will be brought back to the district for you to look at it. So for us to invoke the rule of first going to the district to get the right numbers, we will be doing double work. Please let us look at the provisions properly.

**Hon. Delegate Koitamet Ole Kina: 114.**

**Hon. Delegate Paul Muite:** Mr. Chairman, I was going to support the principle that Delegate Lawrence Mute said but the way to arrive at the percentage which I think is a very good idea because if we look into the future, there will be a time when we will be 80 Million Kenyans and therefore if we write the figure 1 Million in the Constitution, at that time when we are 80 Million Kenyans one Million will be a very small figure. So the idea of percentage is good and the way to fix that percentage today because I think when the figure of 1 Million was being suggested, it was with reference to the fact that we are 30 Million Kenyans. So if you have to take your pen and paper or your calculator you should be able to give us a percentage of what 1 Million is to 30 Million Kenyans and that is the percentage that we should put in. Thank you.

**An Hon. Delegate:** Under amendments.

**Hon. Delegate Koitamet Ole Kina: 407.**

**Hon. Delegate James Kayila:** Mr. Chairman, my number is 407. I support the amendment and suggest that we go by a figure of 10%.

**Hon. Delegates:** Yes.

**Hon. Delegate Koitamet Ole Kina:** We have –

**Hon. Delegate James Kayila:** That 10% should be a minimum from every region so that the distribution is also equitable.

**P L O Lumumba:** I am just informing us to read the Article again. That it is at least 1 Million citizens who are registered voters not the total population.

**Hon. Delegate Koitamet Ole Kina:** So, as we are amending and amending and amending. We are saying, it is 1 Million who are registered voters. So if we are taking a percentage it should be a percentage of registered voters. So, please can we get a final suggestion on this? 531.

**Hon. Delegate Rita Katamu:** Chair, really I have not spoken ever since.

**Hon. Delegate Sheikh Mustafa Ali:** Chair, I am Mustafa Ali, Delegate number 531. I stand here to support the amendment but I just want to amend what Honourable Muite said. We should go by the number of registered voters, so if we have 8 Million registered voters today then we can tabulate that and get a percentage from the 1 Million and get a percentage from that and then that is the percentage that we can put here.

**Hon. Delegate Koitamet Ole Kina:** I think since-- the Delegate has given us a good idea that we are targeting registered voters here.

**Hon. Delegate Rita Katamu:** Yes, Mr. Chairman.

**Hon. Delegate Koitamet Ole Kina:** 381.

**Hon. Delegate Rita Katamu:** Thank you Chairman. As much as we may think of the percentage we should also consider that at least a third of that percentage should be people of

either sex. I say this because mostly ladies do not get information in time and it can come a time when the voters they are giving the decision are mainly men. (*Noise*).

**Hon. Delegate Koitamet Ole Kina:** 388. Order, even if I put a question now which question will I be putting, so please let us agree on the question to be put.

**Hon. Delegates Sammy Chemwey:** 388. Thank you Mr. Chairman. My name is Sammy Chemwey, Delegate 388 from Mount Elgon. In addressing this Motion I want to plead to the very, very kind hearing of these, Honourable Delegates. I do want to request the Delegates to consider something. That we are likely to kill something before it is even conceived. When you look at the provisions under this Article, we are talking that we want to initiate, to bring up an issue which maybe affected and we want everybody to know in the whole country what somebody is suffering from. By initiating the number of signatures of 1 Million, we are simply sensitizing the whole nation that there is a problem at a particular point. And at that time when we sensitize them it gives them an opportunity to hear and to feel the pulse of a particular part of this country. At that moment therefore, it is not a moment of decision or wanting everybody to know, it is a cry by a particular segment of this nation and if you look at the provisions in this particular Article I do want to draw your attention to Clause (7) of that Article. Which says that when the Draft Bill has been approved by a majority of the District Councils it shall forthwith be introduced in Parliament. What I am saying is, at the moment when the Draft has been brought and it is introduced and the majority have understood what is ailing and what is eating somebody at a particular corner, it is at that moment that you will have won the hearts of many people for it to go for debate in Parliament. I want to plead with our Honourable Delegates here, that recently even when we had an issue we were circulating our own signatures wanting to bring attention of this country that we wanted this Constitutional Conference to go on and we circulated signatures. If we had subjected it to all the country we would not have been heard. So I am pleading that at this particular moment, the issue of the signatures is premature for us at that moment to subject it to the entire country. Mr. Chairman, I move that we oppose that amendment. Thank you.

**Hon. Delegate Koitamet Ole Kina:** Point of Order and must be a Point of Order. Yes, 379.

