

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

NATIONAL CONSTITUTIONAL CONFERENCE

Verbatim Report of

**PLENARY MEETING ON THE STATE AND THE POLITICAL SYSTEM,
HELD AT THE BOMAS OF KENYA**

ON

09.05.03

that we make Lord will be for the unity of this nation. I pray while believing and trusting in Jesus Christ our Lord and Saviour. Amen.

Prof. Yash Pal Ghai: Thank you. Could I ask whether there is any Delegate who has not taken the oath of office or not affirmed? If so, could they please just come there facing me so that I can administer the oath. I know that the Honourable Mr. Kituyi wants to affirm. Do the other two want to take the oath or affirm? Oath. Maybe I will administer the oath first. You have the copy of the oath. What I will ask you is to repeat after me. When I say, 'I' then you say 'I' and then you mention your names; after that you repeat after me. Please raise your hands like this. No, this is for those who are going to swear the oath. Okay. Say 'I' and then mention your names.

ADMINISTRATION OF OATH

Prof.. Yash Pal Ghai: 'I'...

Response: 'I...(they mention their names).....'

Prof. Yash Pal Ghai: Being appointed a Delegate to the National Constitutional Conference.

Response: 'Being appointed a Delegate to the National Constitutional Conference.'

Prof. Yash Pal Ghai: Under the Constitution of Kenya Review Act

Response: Under the Constitution of Kenya Review Act

Prof. Yash Pal Ghai: Do solemnly declare and affirm

Response: 'Do solemnly declare and affirm

Prof. Yash Pal Ghai: That I will faithfully and fully

Response: That I will faithfully and fully

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

Response: Impartially and to the best of my ability

Prof. Yash Pal Ghai: Discharge the task

Response: Discharge the task

Prof. Yash Pal Ghai: And perform the functions

Response: And perform the functions

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

Response: And exercise the powers devolving upon me by virtue of this appointment.

Prof. Yash Pal Ghai: Without fear

Response: Without fear

Prof. Yash Pal Ghai: Favour

Response: Favour

Prof. Yash Pal Ghai: Bias

Response: Bias

Prof. Yash Pal Ghai: Affection

Response: Affection

Prof. Yash Pal Ghai: I will

Response: I will

Prof. Yash Pal Ghai: Or prejudice

Response: Or prejudice

Prof. Yash Pal Ghai: And to the end

Response: And to the end

Prof. Yash Pal Ghai: That in the exercise of the functions and powers as such Delegate

Response: That in the exercise of the functions and powers as such Delegates

Prof. Yash Pal Ghai: I shall at all times

Response: I shall at all times

Prof. Yash Pal Ghai: Be guided by the national interest.

Response: Guided by the national interest.

Prof. Yash Pal Ghai: So, help me God.

Response: So, help me God.

Prof. Yash Pal Ghai: Thank you. Please sign the oath and I welcome you formally to the Conference. Now we have the information. So please say 'I' and your names.

SWEARING OF THE OATH

Prof.. Yash Pal Ghai: 'I'...

Response: 'I'...(they mention their names).....'

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Prof. Yash Pal Ghai: That in the exercise of the functions and powers as such Delegate

Response: That in the exercise of the functions and powers as such Delegate

Prof. Yash Pal Ghai: At all times

Response: At all times

Prof. Yash Pal Ghai: Be guided by the national interest.

Response: Be guided by the national interest.

Prof. Yash Pal Ghai: Thank you. Please sign that document. Thank you very much and welcome to the Conference.

Hon. Delegate Amos Kiumo: Mr. Chairman, my names are Amos Kiumo, Delegate 271, Chairman, Nyambene County Council. Mr. Chairman, I wish to propose that we alter the Order Paper to read; number 4 to come to replace number 2 in order of arrangement so that we can dispense with the issue of finances in order to settle the minds of most of our Delegates who have asked outstanding questions which have remained unanswered since we came here. We expect to have a lot of accountability in this House. Let that issue be settled once and for all, Mr. Chairman. I beg to be seconded.

Clapping from the delegates.

Hon. Delegate Muchai Lumatete: My number is 532, Mr. Chairman. My name is Lumatete Muchai. Delegate representing--

Prof. Yash Pal Ghai: I have not recognized you am sorry. Please sit down. Please sit down.

Hon. Delegate Muchai Lumatete: I am seconding, Mr. Chairman.

Prof. Yash Pal Ghai: I have not recognized you, I am going to make a statement.

Hon. Delegate Muchai Lumatete: Thank you.

Prof. Yash Pal Ghai: The steering committee this morning and yesterday had decided and I think this was announced to the Plenary that we will first constitute the committees, particularly the Committee on Privileges, Discipline and Welfare, and that we will discuss the question of finance in the afternoon.

Uproar from the delegates.

It is important to constitute the Committee on Privileges, Discipline and Welfare because that committee is dealing with the question of finance.

Uproar from the delegates.

I suggest that we constitute those committees that the members are asking to be constituted speedily. 278.

Hon. Delegate Peter Kang'ethe Nkoroi: Thank you, Mr. Chairman. Honourable Delegates, my names are Peter Kang'ethe Nkoroi, Delegate number 278 from Meru South. Now, Mr. Chairman, the Delegates here are demanding to be heard. Mr. Chairman, the issue of welfare and finance was to be solved in the first two or three days of the Conference. Mr. Chairman, this issue is overdue. It is irritating some people because we are making a Constitution, which is focused on accountability, transparency and good governance. This morning, Mr. Chairman, we have been informed that the Privileges, Discipline and Welfare Committee is being appointed by an individual and the rule number 48, Mr. Chairman....

Clapping from the delegates.

Rule number 48 Mr. Chairman, dictates that the Conference shall elect eight Delegates to the Privileges, Discipline and Welfare Committee and these people, Mr. Chairman, are not for the interest of only the Commissioners, they are for the interest or champion the interests of all the

Delegates and all the participants in this Conference. Mr. Chairman, I beg to support the motion that we discuss this matter and we solve it once and for all. It may take us shorter time Mr. Chairman. Thank you.

Clapping from the delegates.

Prof. Yash Pal Ghai: I am going to give the floor to the Secretary to respond.

P.L.O Lumumba: Chair, kindly recognize me. If you look at the supplementary order paper, I believe the Chairman was going to announce that as we are sitting today having received names from the Delegates, he was tabling the names proposed by you Delegates to have the steering committee constitute the Media Advisory Committee and the Privileges, Discipline and Welfare Committee. Once your representatives are constituted by yourself now, that committee meets for briefing by the Finance Committee of the Commission at lunch time because the Act makes the Finance Committee and the Secretariat the custodians of the funds which are to be administered in keeping with the Audit and Exchequer Act and will brief that committee so that they are in a position in the afternoon to come from a point of knowledge to tell you what it is that is happening. One would have thought that you need the information. My technical staff, my Deputy Secretary of Finance, my Procurement officers and all my officers are preparing appropriate documents to be given to this committee so that they address you from a position of information. I would have thought that that is how you do things. If you Delegates, and permit me to say, ambush us now and demand that we discuss finances now, we will not give you information supported with documents. You need documents. I rest my case.

Uproar from Delegates.

Prof. Yash Pal Ghai: 317 please.

Hon. Delegate John K. Waitiki: Thank you, Mr. Chairman. My name is Waitiki, Delegate 317, from Thika. All what the Honourable Delegates are saying, 'fine, we've been here and this is almost the end of second week.' The issue of administration is very very important. You cannot

have a vehicle without servicing it. What we are demanding now is, before we conduct any further business, let's resolve this simple matter of administration. Thank you, Mr. Chairman.

Prof. Yash Pal Ghai: I would plead with the Honourable Delegates to ponder over the points made by the Secretary. Please listen to me. Order.....order! In a Conference as large as this one is, things take time to constitute. We want to make sure that we have all the committees, the representatives that have been identified by the Delegates and have the approval and support. This process can take a lot of time. We want to be democratic and participatory but that does not mean that we have to have many confrontations before the Steering Committee can come to this plenary with the list of names, which you ultimately approved.

We have had to do other business as well and I don't think that there has been undue delay in the establishment of this committee. Today, we want to present you with the list of names, which we have composed after very wide consultations in two lengthy meetings of the Steering Committee and we really need to follow these procedures if this Conference is to proceed in a proper manner. So, I would like to plead with you that the Secretary should read the proposed membership of the two Committees that we agree now on their composition and then proceed with the work of this Conference. The Finance, the Disciplinary and the Privileges Committee should meet with the Secretary as he has suggested at lunch time. Then after that we can have a proper discussion of the issues relating to finance and administration. 368

Hon. Delegate Joel Kipyegon Sang: Honourable Chairman, you and the Secretary of the Commission are missing the whole point. Did it have to take two weeks to realize, Sir, that we need a Privileges, Discipline and Welfare Committee and also the Media Committee and there has been outstanding issues? I raised a motion and you promised us an answer the following day. Then we have not received an answer and you expect us to believe that we are being transparent.

Secondly, we are making a Constitution that is supposed to make the leaders of Kenya accountable to all Kenyans and you are being accountable when you are making this. Can injustice give birth to justice? It is impossible. Could you please, could you please, in the name of transparency and accountability listen to the Delegates. We have been living under very difficult conditions. We do not even understand what we are supposed to get here and there.

Could you please, in the name of understanding, so that our hearts become free and we deal with the business of the Constitution with a clean heart, address these issues. You are trying to evade the issues. Thank you.

Clapping from the delegates.

Prof. Yash Pal Ghai: All I am asking for is a few hours so that we compose these committees, the Committee is properly briefed, the Committee and the Secretary can then leave Honorable Delegates and we can have a proper discussion. It is not too much to ask that we wait for a couple of hours so that we carry our work properly. 301

Hon. Delegate George Ndatho: Mr. Chairman, the Delegates have moved a motion, which was last week proposed and now we want to go to this committee. The committee should not tell us that we have consulted so and so from various places in order to give us its members. I would like to propose, regulation number 48 says that 8 members which compose of the Privileges and Welfare Committee are supposed to be elected by this Conference. Can we do that now, if it has not been done such that you do not come and tell us, 'we have nominated so and so.'

Prof. Yash Pal Ghai: I am going to call on Delegate 223 and then I will make a ruling on this suggestion that we have received.

Hon. Delegate Francis Ole Kaparo: Mr. Chairman, I am Delegate 223, Francis Ole Kaparo, Speaker of the National Assembly. Mr. Chairman, I rise to appeal to fellow Delegates, to appeal to each one of us, to proceed with this issue with absolute care and patriotism. I do understand that the Honourable Delegates requested for the setting up of a committee to look at their privileges and welfare. I do look at the Order Paper and I notice Mr. Chairman, that it does contain that specific item - setting up of a Privileges and Welfare Committee. I understand that on an issue like this, privileges and finance, it is absolutely impossible to transact that business without requisite information on plenary. I do understand that you, Mr. Chairman, has made a personal commitment that this afternoon, after this committee has been constituted. This issue will be discussed. I therefore urge my fellow Delegates, the whole of Kenya is looking at us and at this very moment every Kenyan is hearing what you are saying. I hate to feel that the

impression the country will get out of this all, is that we keep our own privileges and interests above that of the nation. I think it is our duty and we owe it to Kenya to transact to that business that, in the first place, brought us here, which is to seriously review the Constitution of Kenya. I believe that is the primary reason why we came here. Everything else is subsidiary to that initial obligation. So, I plead that, let the Chairman--

Uproar from the Delegates.

Prof. Yash Pal Ghai: Order please! Let the Speaker finish please.

Hon. Delegate Francis Ole Kaparo: Mr. Chairman, I am entitled to speak as a Delegate and I am entitled to speak as a Kenyan. Mr. Chairman, can we set up this committee and then make this presentation in the afternoon?

Clapping from the delegates.

Prof. Yash Pal Ghai: I would like to propose that we set up the committees now. I would like to ask the Secretary to read the names, which have been put forward by the Steering Committee for the consideration of this House. So, Mr. Secretary will you please--

Clapping from the delegates.

P.L.O. Lumumba: Thank you very much. These names were proposed by yourselves. I shall now proceed to read them.

1. Baldip Singh Rihal - Professional Organizations.
2. Salim Ibrahim - Nairobi Province
3. Hezekiah Waithanje Minjire - Central Province.
4. Abdullahi Haji Mohammed - North Eastern Province.
5. Francis Wangara - Trade unions.
6. Yusuf Mahmoud Abubakar - Coast Province.
7. Miriam Muto Malogo - Special interests.

From the Commission, in terms of the regulations:

- | | | |
|-----------------------------------|---|--------------|
| 8. Abida Ali Aroni | - | Commissioner |
| 9. Bishop Bernard Njoroge Kariuki | - | Commissioner |
| 10. Dr. Mosonik Arap Korir | - | Commissioner |
| 11. Kamla Sikand | - | Co-opted |
| 12. Shakeel Shabbir | - | Co-opted |
| 13. Joel Kipyegon Sang | - | Co-opted |
| 14. Francis Xavier Ole Kaparo | | |

Prof. Yash Pal Ghai: 390.

Honorable Delegate Kellan Khaoma Wavomba: Mr. Chairman, my names are Kellan Khaoma Wavomba, Delegate 390 from Bungoma. Mr. Chairman, I want to say this with a lot of regrets, that we appointed a steering committee, you never altered anything, they are the way we gave you. We have given you names of our welfare officers from respective provinces and we realize that you have changed. The same names are not the way we gave you. Mr. Chairman, can you please give us the right names for good representation. Thank you.

Prof. Yash Pal Ghai: We have not changed the names. These were the names that were given to us. We had to set up two committees, we had names for the Welfare and Privileges Committee and we had names for the Media Advisory Committee. We got a number of nominations and we had to accommodate them all and the way to do that was to distribute these names between these two committees. So all the names that the Secretary has read to you did come from the Delegates and names that we shall read to you, of the media committee, also are names that came from the Delegates. I propose that—

(Uproar from the Delegates)

Prof. Yash Pal Ghai: 178

Hon. Delegate Rotino Philip Ruto: Mr. Chairman, thank you very much. I think Mr. Chairman, the names you have read are not representatives of all the provinces. Can the names be read per province per province? Because those were the names that we gave?

Hon. Delegate Osoi Kamwende: Thank you Mr. Chairman. Mr. Chairman, with all due respect to the Chair and due respect to these Honourable Delegates. The Commission has made the Delegates to appear like devils in the hands of the public because the Press is saying everything about the Delegate. We cannot walk freely in the streets. Because we have been made to look like hungry people who have come to look for money here. This is because the Commission is not transparent. I want to ask this: Right now, the Honourable Secretary to the Commission has just said that, if we don't form a welfare committee, then we will not be given sufficient information supported with documents. With all due respect, what document is the Secretary looking for, two weeks after the Conference has started, which he never had? Why are you ambushing the Conference and making us to appear as if we are not people of principle? As if we don't deserve respect because you don't want to be transparent? This issue would have been solved, long forgotten and the Conference goes on. Thank you.

Clapping from the Delegates.

Prof. Yash Pal Ghai: The Secretary has the floor please.

P.L.O. Lumumba: Excuse me, the Chairman has given me the floor. I refer Delegates to page number 30 of the document which are the regulations of this Conference. I refer you to page 30, regulation 48. That regulations says, the Privileges, Discipline and Welfare Committee shall consist of three Commissioners. It also says that you shall eight Delegates elected from the Conference. If you understand the direction that the Chairman gave you, there are different categories of Delegates. There are those who are Parliamentarians, there are persons with disability, there are women, there are youth, there are other persons. In other words, the categories are in excess of the eight slots. Being in excess of the eight slots, it follows therefore, that if you went provincial you would have more Delegates and further, if you went to all the categories, you would have even more Delegates. The net effect therefore, is that we must ask ourselves, how do we, with fewer seats, distribute them? And the proposal that we received at the Steering Committee is as follows. That we have some of the provinces represented in the

privileges committee and some of the categories in the Privileges Committees and the provinces that are not represented in the Privileges Committee be represented in the Media Advisory Committee so that all that is taken on board. That is what we are trying to do. Even if the Delegates were to be allowed to elect representatives to the Privileges Committee, you would find yourselves in the same problem, that you have fewer seats to fill, than the categories that actually exist. That is what must be appreciated and if you appreciate that, the question that the Chair is therefore putting to you, having done this kind of balancing act, if you further allowed the Chair to allow me to read the list of the Media Advisory Committee, you would be able to appreciate whether the balance is right.

Prof. Yash Pal Ghai: May be with that explanation, I will ask the Secretary to read the list of the proposed members of the Media Advisory Committee.

P.L.O. Lumumba: These are the proposed names of the Media Advisory Committee.

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|---|---|----------------------------|
| 1. Hon. Delegate Sylvester C.M. Wafula. | - | Professional Organizations |
| 2. Hon. Delegate David Marcos Rakamba | - | Nyanza |
| 3. Hon. Delegate Awillie David Erulu | - | Western |
| 4. Hon. Delegate Michael Oliewo | - | Political Parties |
| 5. Hon. Delegate Nkoroi Peter Kang'ethe | - | Eastern Province |

From the Commission in terms of the rules;

- | | | |
|---|---|--------------------------|
| 6. Commissioner Kavetsa Adagala | | |
| 7. Commissioner Salome Muigai. | | |
| 8. Commissioner Abubakar Zein Abubakar. | | |
| 9. Hon. Delegate Rose Lukalo | - | NGOs |
| 10. Hon. Delegate Mustafa Ali | - | Rift Valley |
| 11. Hon. Delegate Mutahi Kagwe | - | Co-opted from Parliament |

Prof. Yash Pal Ghai: We now have the fourth list suggested by the steering committee of the two committees. Do members approve this list of members of the two committees? First, I will

deal with the committee on Discipline and Welfare and I would ask the Secretary to read the names once again. Then I am going to ask if the Delegates approve of this list or if you have any suggestions for change. The Secretary will you please read the names again.

P.L.O. Lumumba: With the Chair's permission, I am proceeding to read the list again.

1. Hon. Delegate Baldip Singh Rihal - Professional Organizations.
2. Hon. Delegate Salim Ibrahim - Nairobi Province
3. Hon. Delegate Hezekiah Waithanje Minjire - Central Province.
4. Hon. Delegate Abdullahi Haji Mohammed - North Eastern Province.
5. Hon. Delegate Francis Wangara - Trade unions.
6. Hon. Delegate Yusuf Mahmoud Abubakar - Coast Province.
7. Hon. Delegate Miriam Muto Malogo - Special interests

From the Commission;

8. Abida Ali Aroni - Commissioner
9. Bishop Bernard Njoroge Kariuki - Commissioner
10. Dr. Mosonik Arap Korir - Commissioner
11. Hon. Delegate Kamla Sikand - Co-opted
12. Hon. Delegate Shakeel Shabbir - Co-opted
13. Hon. Delegate Joel Kipyegon Sang - Co-opted
14. Hon. Delegate Francis Xavier Ole Kaparo

Prof. Yash Pal Ghai: 436.

Hon. Delegate Mitere Francis Onyango: Mr. Chairman, through your Chair, I would like to express some few comments. The first and foremost is that, you have dictated to this Conference and because of that, you have actually gone round and round reading names and yet we have asked a simple question. That we need our welfare to be established and discuss how much we are getting. Look at the point this way, this Conference Mr. Chairman needs to be systematized before the system systemize P.L.O. Why I am saying this Mr. Chairman is, why do we dwell,

our image has been portrayed in this Kenya. We have been portrayed that we wanted large money and we have asked for a simple remuneration. It is not a question--

Prof. Yash Pal Ghai: It is not a point of order, I am afraid.

Hon. Delegate Francis Ng'ang'a: It is a point of order Mr. Chairman.

Prof. Yash Pal Ghai: Sorry, it is not a point of order. You can put it down. I recognize 500.

Hon. Delegate Kamla Sikand: Mr. Chairman, I am Kamla Sikand Delegate number 500. I see my name has been put in for that committee but the way the Delegates are fighting over the provinces, I believe I am a Kenyan and I request every Delegate to behave here as a Kenyan and don't think of my province, my district. You are doing a very, very serious document for the country, not for your particular district or Province. I, Kamla Sikand, am ready to give up my seat for any province or anybody who feels they have been neglected.

Clapping from the delegates.

Prof. Yash Pal Ghai: 331

Hon. Delegate Isaack Kipkoskei Bungei: Thank you, Mr. Chairman. My name is Isaack Kipkoskei Bungei Delegate number 331. First, Mr. Chairman, I think you are treating us unfairly. The Delegate who has just arrived has not even gone to where she is sitting. We have been raising our numbers here since morning. I don't know what is happening. Secondly, Mr. Chairman, I think you are being held at ransom. There are some things, what we just want is what was allocated to us be discussed here. Nothing more. The Press has taken it as if we are requesting for a lot of money. Mr. Chairman, I agree with Hon. Delegate Mr. Kaparo, but Mr. Chairman, in the afternoon, some Delegates will be paid. Most of them will not be here. We are being woken up by call girls at the hotel. I don't think Ole Kaparo you have experienced that. We have problems.

Clapping from the delegates.

Hon. Delegate Isaack Kipkoskei Bungei: Mr. Chairman, what we are just requesting is that we discuss what was allocated to us, nothing more. Thank you Mr. Chairman.

Prof. Yash Pal Ghai: The Secretary has a suggestion.

P.L.O. Lumumba: Let me have the floor. Let us understand and I say this firmly and in all seriousness. We have money given to us by the Government of the Republic of Kenya. That money is available for administration by the Commission. The Commission having received the money has incurred expenditure, which is founded on a budget, which budget was discussed by the Finance Committee of the Commission, which budget was tabled before the plenary session of the Commission; which budget was taken to the Ministry of Finance, 'which budget was seen by the Auditor and Controller General; which budget was then the basis of the release to us on the released works on the 25th day of April, of the sum of Kshs. 300 Million, which budget was the basis of all the expenditure under different heads. At the end of the day Delegates, we will be required as a Commission to comply with the law. At the end of the exercise, Honourable Delegates, I and I alone will be required to appear at the Public Accounts Committee to explain to them how public funds were dealt with. What we are requesting Delegates, is this, having done our budget, having constituted this Commission committee, it is only fair to the members of that committee that we tell you the following as I will, and I will tell you what I am going to tell the members of that committee. We will give them a budget, which reads as follows; that in order to have this Conference up to the 6th day of June our budget reads Kshs. 390,000,000. That budget of Kshs.390, 000,000 covers the expenses relating to the Conference, which covers many items including the following: the press advertisements that you have seen, the press conference activities that you have seen, all the activities. If you look at that, I'm going to tell that Committee as follows - if the point of orders could kindly wait.

I'm going to tell them that in any financial organization this is what you do: you take the 390,000,000 multiply by the number of days that the Conference is going to take, and you will find that in allocating every Delegate to spend so much money that does not mean that, that money is available to the Delegates. It means that some of it goes to administration, it means that some of it goes to documentation, it means that some of it goes to the printing of the material that

you have. I'm going to tell the members of that Conferences as follows: that the only cash money available for distribution to you is Kshs.5000. You deny the follow Delegates Kshs.2500, I'm being transparent if I may be allowed the Chairman has given me the floor. Kshs.2500 is paid as daily allowance to the non-resident district Delegates, Ksh.2500 is paid to the hotels on the basis of negotiated rates, which are lower than their normal rates because of the bulk negotiation. Those Delegates who are not resident they have to have transparent comfort coming here, because they need to be here on time get an additional Ksh.2500, 5000 per day. If Delegates decide at this forum that the hotels which were selected for them by the Commission after thorough negotiations are not good hotels what they would be entitled to would be Ksh.5000 and this is what this could mean:

- 1) That the Public Accounts Committee will be asking me, you Lumumba on what basis were you giving Delegates 5000 shillings on a daily bases without receipts, they would be asking me why were you keeping your Delegates in Kayole? And at a practical level this is what would happen. We would not have a Conference, because with these rains that are raining how are you going to come from Kayole? The insurance cover that we have for you tells the insurer that you live in secure places, how will I take control of my Delegates?

I beg you to listen to me, to listen to me and understand the pain that we are going through.

Hon. Delegates: Noise.

Prof. Yash Pal Ghai: Thank you very much. I hope with that explanation, the members, Honourable Delegates will proceed to the Constitution of these Committees so that we can conduct our business in on a proper way. So I would like to ask the Delegates, if they agree with the list of members of the Discipline, Privileges, and Welfare committee. Are there the Delegates who oppose the list? If you oppose please say, "nay".

Applause

Those who approve the list say "aye".

Applause

Those who oppose the list say “nay”.

Applause

Prof. Yash Pal Ghai: Discipline, Privileges and Welfare Committee, is constituted. Thank you very much indeed. I will now ask the Secretary to read the names of the Media Advisory Committee and then later I ask your approval.

P.L.O Lumumba: With the Chair’s permission, I know read the list on the Media Advisory Committee.

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|--------------------------------|---|-----------------------------|
| 1. Sylvester Wafula | - | Professional Organizations. |
| 2. David Markos Rakamba | - | Nyanza Province. |
| 3. Awillie David Lidbury Erulu | - | Western Province. |
| 4. Michael Oliewo | - | Political Parties. |
| 5. Nkoroi Peter Kang’ethe | - | Eastern Province. |
| 6. Kavetsa Adagala | - | Commissioner. |
| 7. Salome Muigai | - | Commissioner. |
| 8. Abubakar Zein Abubakar | - | Commissioner. |
| 9. Rose Lukalo | - | NGO. |
| 10. Mustafa Ali | - | Rift Valley Province. |
| 11. Mutahi Kagwe | - | Parliament. |

Prof. Yash Pal Ghai: Those who approve the list say “aye”.

Applause

Prof. Yash Pal Ghai: Those who oppose the list say “Nay”. The “Aye” have it. Thank you very much indeed. So the two Committees are constituted and the Secretary will inform us how he wants to have a meeting with the vested Committees.

P.L.O. Lumumba: At exactly 12:00 noon in the Steering Committee tent the Privileges Committee is requested to convene (Inaudible) by the Secretariat of the Conference, that is the Commission. Thank you.

Prof. Yash Pal Ghai: Thank you very much indeed. We had agreed yesterday following a request from the Honourable Delegates that we set aside one hour this morning for the continuation of discussion on the Bill of Rights. So I would now propose that we ask Honourable Haji and Mr. Ole Kina to take the Chair, and we will continue with the discussion we began yesterday. We will allow one hour for that discussion then we will break for tea and in the afternoon. As you know the program has provided for discussion (?) in the administration. Thank you very much indeed.

An Hon. Delegate: Prof. a timekeeper for us?

PRESENTATION OF DRAFT BILL: CHAPTER 5 – BILL OF RIGHTS (Continuation of debate):

Hon. Delegate Yusuf Haji: Mr. Chairman, distinguished Delegates, I would like to thank you this morning for the cooperation you gave to me yesterday, and I will continue with the same arrangement as we departed yesterday. You will recall we ended up here. So we are now going to start on my right, and I will also recognize 406. I just give him a point of order.

Hon. Delegate Michael Senget: Mr. Chairman my name is Michael Senget from Marakwet. Mr. Chairman I'm very concerned that if the trend continues where you are going for people with light skin-- I'm from Marakwet, I'm here, I'm supposed to be heard --

Hon. Delegate Yusuf Haji: I overrule you because I don't see you as Marakwet neither do I see anybody by his or her tribe. I see him or her by their number so sit down.

Applause

Hon. Delegate Yusuf Haji: -- don't waste our time. Okay go ahead please.

Hon. Delegate Shakeel Shabbir: Mr. Chairman: Order, order. Mr. Chairman, fellow Delegates I feel disturbed about the way I think yesterday, one Delegate brought up this issue, it seems to be the way you have started again, under the circumstances I do not wish to speak because I have been suppressed. So I would like to know to pass this to the gentleman who has made so much noise.

Interjection: No no.

Applause

Hon. Delegate Shakeel Shabbir: Sorry Chairman I shall proceed.

An Hon. Delegate: Point of order.

Hon. Haji Yusuf: May I take point of a order from Honourable Shikuku.

Hon. Delegate. Martin Shikuku: Thank you very much Mr. Chairman I'm almost sick, we can't conduct this meeting the way we are doing. First and foremost, he is completely out of order to refer to the Honourable Members' complaint as noise, and the Chair should rule that he withdraws that. Secondly Mr. Chairman, you have, and apologize, you have the power to tell somebody, "that is not point of order would you please resume your sit", but you don't shout at him "sit down". And the Chairman, he should know we are civilized people here, forget having been a PC.

Hon. Haji Yusuf: Point noted.

Applause

Hon. Delegate Yusuf Haji: Okay, can we proceed? Honourable Delegate Shakeel you are wasting a lot of time and we have very little time allocated for this session. Thank you.

Hon. Delegate Shakeel Shabbir: Thank you, I would like to mention section no. 35. Under section 35 Sir, the issue of widows. I speak for Kisumu district my name is Shakeel Shabbir 406. The issue of the rights of widows, you know there are polygamists almost all over Kenya. Widows can be or are in certain cultures disowned and do not have any rights, those ones who are not married under the traditional marriages. So I would like to bring up that issue that should be covered.

On the issue of section no. 34, item no. 4 again; women and men have equal rights to inheritance. However as I noted, 31.4 withdraws that right for the Islamic culture. I would like the words to -- provisions of this chapter on equality “shall” to be changed to “may.

The other issue is Sir, chapter 61. No. 61 is on water, under the present circumstances right now water is being privatized. So water is being taken away as a right or basic right, it is privatized. And I think that we should cover these natural resources not to be privatized to be given to the few rich, that water should be available to every single Kenyan no matter or her/his financial status.

Finally, under section 67 Sir. We think that restitution should be a way of punishment. There are certain times that restitution is made in the most equitable way a punishment it doesn't necessarily mean that it is the only way, but restitution in certain cultures and certain auditions has been the most equitable way of punishment. With that Sir, I would like to end here. Thank you very much.

Hon. Delegate Yusuf Haji: Number 306.

Hon. Delegate Christine Ngari: Honourable Chair, Honourable Delegates, my names are Christine Ngari Delegate 306 from Kirinyaga. I want to refer you to section 38 number 4; women and men are entitled to equal rights in the marriage during the marriage, and at the dissolution of their marriage. And also I want to join it with number 3 section 35 which reads; “women and men have equal rights to inherit have access, and control of property”. These statements are very good to our women and men, that according to the laws that had been made, and especially when people are in marriage, we have a way that indicates the property belongs to

so and so. Currently if it is the title deed, normally it bears the name of one person within the family. We would like to have this regulation enforced by the Constitution, whereby, definite measures will be put in place to protect both spouses. If it is property, if it possible to have both names, so that in the case of succession none of the spouses will be disadvantaged. The current system of going to court is very cumbersome for akina Wanjiku and Njoroge down in the rural areas. So if measures are put in place that will assist in this one it would be very, very helpful.

Again for the women and men in section 35 number 3; we are told that girls, boys, men, and women are supposed to inherit from their parents. One of the Honourable Delegates yesterday queried whether women would also inherit, and men will inherit from the parent of the opposite sex? But we are saying that both women and girls can inherit from their parents, so if that one could be added there it would be useful rather than just leaving it as inherit.

So we are asking the Constitution to make the succession of the law, that it qualifies both women and men to process posses, to own property within marriage, -- to be made easier. Thank you Sir.

Hon. Delegate Yusuf Haji: Thank you very much, I do recognize 320.

Hon. Delegate Kiriro Wa Ngugi: Thank you Mr. Chairman, my name is Kiriro Wa Ngugi Delegate number 320 from Kiambu district. I want to make a general comment on the voice of The Bill of Rights in the Draft. I feel very strongly that the overall voice of this otherwise comprehensive draft is both foreign and unrealistic. When I say foreign I mean for example; wherever and whenever the so-called international norms are in conflict with African culture, this Draft subjugates us to those so-called norms. Subsequently when we get to the Committee stage where people here who have already internalized African culture and will protect it, we will find difficulty in accepting the foreign in puts that are depicted in this entire chapter. I can give an example: whereas there in west they find it useful for the state to carry a big stick for irresponsible parents, the thought of me having to be beaten up by the state, having my child taken to an institution because I am unable-- That kind of thought is repugnant to African thinking, yet here the underlying ethos is that we are so irresponsible we need the state to take care of our children.

Second example; whenever and wherever the African culture is in conflict with the elitist thoughts it is our culture that is told to shut up, that is my pride.

Again the final point, on socialism there was a suggestion- an Honourable Delegate ventured to suggest that after you are 75 years you are the baby of the state and therefore you should be taken care of. We should be careful, because nobody owes you lunch. The whole process of socialism is not that the state owes you anything. The basis is that in the full spectrum since you are the child and then you die and you go to the grave at age 90 that you are not a contributor. Even as we give free primary education this is an investment on that child so that he/she will contribute. Under the full spectrum of time each Kenyan will make a contribution to the state. We do not-- nobody owes anyone lunch. We should not create a Constitution that seems to suggest that every time there is a new problem you go and take the state to court.

Mr. Chairman, the general debate, that is the first stage of this Conference, has missed this general overview of what the document talks about. That is why I'm deliberately not going to the verse and chapter because I would like to encourage the Delegates, first and foremost to internalize the overall view of each chapter, and particularly the entire document. Because it is only after we have done that, that we are able to deal with these document effectively. I encourage the Delegates; the primary duty of these Delegates is to develop a consensus and to bond politically, so that we precipitate the foundational philosophy. We want to live together how can we do that?

While we have agreed on the foundational of philosophy the rest is technical work. And it is very important Mr. Chairman that we dwell on the foundational that will guide us to accepting or rejecting specific provisions in the Constitution. Thank you very much.

Hon. Delegate Haji Yusuf: Thank you very much. 83 please.

Hon. Delegate Wangari Mathaai: Thank you Chair, I would like to contribute in this Bill of Rights especially with respect to the environment as follows;

- On 54 (2), I think it is very important for us to say that a living organism, we had C and D--excuse me. A living organism, a person who owns it, we are talking about ownership in 54, so a person who owns a living organism must treat it with care and respect appropriate to living beings and in cohabitants of Kenya. In other words they too have a right.
- In D which says that a person who owns a part of Kenya must respect and care for it, and conserve and protect it, and any indigenous plants and animals on it as a trustee for the present and future generations. In 63 (1) (c) Mr. Chairman I want to draw attention to the fact that we need to entrench our Constitution the need to educate our children about the environment. So I would like to say that we have a right to environmental education and free access. We say that we have free access but I think the best is we should have a right to environmental education and free access.
- On 75, we are talking about the interpretation of the Bill of Rights, we want to say that on one: when interpreting the Bill of Rights, a Court, Tribunal or forum shall promote the values that underlie an open and democratic society based on human dignity, -- and freedom. We want to add that they shall recognize the importance of considering the interests of other species, aspects of the environment, and future generations, in ensuring that each has the freedom to play its role in the on going evolution of life. These concepts Mr. Chairman are extremely important; they are part of evolving the understanding that these other forms of life are very important to our own survival.
- And 75,2 I want to also draw attention to the fact that we say when interpreting any legislation and when developing the common law or customary law, every court, tribunal or forum shall promote in D--
- In D, I want to add that: they recognize the fundamental importance of maintaining the ecological balance and harmonious relationship between human beings and the environment.

- In 73 C, I want to add something small there, The Bill of Rights does not deny the existence of any other rights of freedoms that are recognized or conferred by common law, customary law or legislation. We add, which we think is very important, unless they are inconsistent with The Bill of Rights.

Thank you very much Mr. Chairman.

Hon. Delegate Yusuf Haji: Thank you very much. Delegate number 511.

Hon. Delegate Ruth Kibiti: Delegate No.511.Thank you very much Hon. Chairman. My name is Ruth Kibiti coming from the Women’s Organization and I want to make contribution to the following Sections.

Mr. Chairman, I am not a very fluent Kiswahili speaker but I know that, the little I know about Kiswahili is that ‘mkosa mila ni mtumwa’. This Draft Constitution Mr. Chairman, has not given us cultural conservation and observers adequate cover and adequate room to be able to preserve our cultural heritage, Mr. Chairman. I am looking at Article 39, the family. Mr. Chairman, I want to propose that when we leave the family as naked as it is, remember it is the corner stone for our socialization and I therefore propose that the State shall recognize the African traditional family as the natural fundamental unit. Mr. Chairman, the African tradition of family has put in place enough social network and enough socialization units to enable us as an African State to be able to highlight our positive values. Any time this particular section talks about culture, it is looking at culture from the negative perspective. Can we also highlight the positive aspects of our culture?

Mr. Chairman, I also still want to move down to Article 38 sub-Section 5 (a). Mr. Chairman, when we talk about marriages, we should not forget that the African socio-cultural systems also have a system of marriage arrangements, which would form the basis for customary marriage when eventually it is enacted in Parliament. So Mr. Chairman, I want to propose that under (a) we say marriages concluded under not any traditions, but under Kenyan African tradition. Mr. Chairman that will also give us room to provide customary codes for regulating the customary marriages. Mr. Chairman, I want to move on and look at the section on language and culture.

Mr. Chairman, language is a sub-set of culture. Language is a tool of culture and therefore Mr. Chairman, I want to propose that section 53 (a) reads as culture and language and Mr. Chairman, I want also to move at that particular position that there is need for culture to be given an upper hand. That section, only to take care of language and does not provide enough room for the preservation of culture. At that position Mr. Chairman, I wish that there is mechanism which is put in place to introduce some aspect of National Cultural Heritage and conservation. Somewhere to take care of our moveable cultural and immovable cultural materials.

Mr. Chairman I want to also move to Article 52, Refugees and asylum. Mr. Chairman, this is the right moment to talk about refugees and asylum. But I also want to move that we should include under that Section, refugees, asylum seekers and internally displaced persons. That is a problem we experience on an everyday basis. It is there now and we need to find a mechanism of taking care of it.

Mr. Chairman, I also want to move a little bit more and propose that when we talk about the environment, we should also find some mechanisms of in-building the right to protect environmental space which is associated with shrines and which is also associated with cultural needs like for example environmental shrines that communities first valued for purposes in interacting with their traditional deities. Thank you very much Mr. Chairman.

Hon. Delegate Yusuf Haji: Thank you very much. 237.

Hon. Delegate Onotto Joshua Jilo: Thank you very much Hon. Chair. At last I have been accorded the chance to make my comments. May I first of all take this opportunity to thank all the Commissioners for the commendable job they have done to bring up this Draft Constitution.

Secondly may I also thank His Excellency the President for addressing the issue of minority in his speech. He said in his speech that the Constitution which we are drafting now or we are writing should protect the rights of the minority and for those remarks, I pay special tribute to the President.

May I now comment on some sections? Chapter 5 Article 34 (3) which states, 'despite clause one that State may take legislative and other measures designed to benefit individuals or groups who are disadvantaged whether or not as a result of past discrimination but any such measure shall' – and then it continues. I propose that this section instead of using the word 'may' should be 'shall' so that it gives the Government commitment to see that these disadvantaged groups, the groups which have been forgotten not by sheer commitment but the government maybe wanted to forget but it just happened because these groups maybe could not give themselves to appear within the other communities that they should be seen. So, this section should address the forgotten groups and the minorities.

Secondly, I would like to address the section Fifty-Five Chapter 5 sub-Section 2 (d), which is on Labour Relations, which states, 'every worker has the right to strike' and it stopped there. I beg to propose that this section should include the following: 'to strike without loss of the employment and remuneration'. If the employer is in breach of agreement, this one is in relation with what happened last year, the year 2002, where the past regime had agreed to pay the teachers the five phase and then they voluntarily broke that agreement and then when the teachers went on strike, the government decided not to pay the teachers for the days that they were on strike and they also decided not to send the contribution or the Union dues to their Union. So, if this change is put into that Section, it will give the Parliament to repeal the Section in the Trade Disputes Act, which states that 'when an employee goes on strike, he doesn't receive his remuneration'. So, that is my contribution on that Section.

Then, on Article Forty-Four 5 (c) observance of a religious day of rest. Here I commend the Commission for having put in that Section. I remember the case of a DO in a District in Nyanza where because of going to worship God on Saturday, this DO was interdicted. So, I feel that this Section will cover the SDA's very well. Thank you very much Mr. Chairman for according me that.

Hon. Delegate Yusuf Haji: Thank you very much indeed. I now recognize 603. Take the microphone please.

Hon. Delegate Winston Ogola Adhiambo: Delegate No. 603. Thank you very much. I had only a few comments to raise on this issue of the Bill of Rights. My name is Winston Ogola

Adhiambo, Founder National Chairman of Federal Party of Kenya and founder of Pharisian philosophy. I came as a representative of a Political Party.

Hon. Delegate Yusuf Haji: Thank you very much.

Hon. Delegate Winston Ogola Adhiambo: The few points are these:

One, On Education: The free Primary education and others. I was thinking that we should make an amendment there so that we have free education. That education should be provided freely in public institutions of learning starting from Nursery up to post University if there is something like that.

(Laughter)

The basic idea why I am saying this is, because education is the medicine for disease number one which inflicts all of us and that disease is ignorance. It is what has been happening even in this Conference.

(Laughter)

Hon. Delegate Yusuf Haji: Yes

All the problems which we have had here is purely due to ignorance not due to badness of any type but ignorance, people misunderstanding each other. So, I see it as a very important thing and then;

Secondly, education is for the Nation, the way I see it because being a National issue it should not be made as if it is a family affair so that the parents are given high prices to pay and yet the child or his education is going to be useful to all of us because you find most people here or the most of the big people or the rich people, by the time they are really assisting others, their parents who had paid for their education are gone proving that education is a National issue which should not be given, the way it is being given to a few people.

Thirdly, the right of free medical health: The medical health or the personal health of everybody should be catered for by the Government which means the amendment which I wanted or I was requesting to be put there in Government hospitals everybody should just be treated freely. Why should we pay? In fact there is no such thing as freely. But these people helping in the way of taxes, in the way of everything and so the Government gets money for these things everyday or all the time. I think this is justified by the fact, with me I have a lot of years, almost approaching seventy, so I lived for quite a bit of the part of the colonial times. These things during the colonial times, health and education was being paid for by the Government. So after maybe forty of so years, honestly it should not be so improved because it is not free. But we are only saying that it should be there at the Government's expense.

The other part which I feel we should also look into is the right of the very low income groups should also be looked into just like the disabled or persons with disabilities.

Then on the side of inheritance especially as relates to women: You all know that it has always been a problem. It is a problem in that, the woman has the possibilities of belonging to two families and that is what is causing problems. You see like in Japan, with the Japanese Royal family, if the daughter is staying within the Royal family there and she is unable to find a husband, she will be taken care of by the parents, the family. But if she has got some luck and gets a husband, then this will now be stopped and her inheritance will be from the place where is married so as to stop this dual problem which of course nature has imposed on her.

Then the one is on marriage but that one people have already commented on it satisfactorily. So, what I wanted is just a law to protect these rights so that if you are harmed by one of the provisions, you have a way of getting some redress like recently, --.

(Bell rings indicating Delegates session is over)

Hon. Delegate Yusuf Haji: -- thank you very much Mzee.

Hon. Delegate Winston Ogola Adhiambo: Just one point. I made a request for a loan from KCB recently and I was refused.

Hon. Delegate Yusuf Haji: Thank you.

Hon. Delegate Winston Ogola Adhiambo: That one, sorry Mr. Chairman. I was refused because I was too old. But I had something to give as security. Asante sana.

Hon. Delegate Yusuf Haji: Thank you very much. I now recognize 221.

Hon. Delegate Ruth Oniang'o: Mr. Chairman I am Delegate Number 221, Ruth Oniang'o and I want to commend your excellent Chairing yesterday. Anyway let me go straight to the matter here.

This is a very, very important Chapter Mr. Chairman. It is really the core of everything we are doing here and I believe if we get this right, then we shall be heading towards a society where we mutually respect each other and probably head towards a one Kenya something that we are still striving to do.

Now, coming back to the subject here, I believe that we need to realize that rights go with responsibility. It is not just right, not just demanding, not just needs and what I want and I don't get the feel that in this Chapter. I think it should be presented in such a manner that we move from a demand mode to a responsibility and what can I do mode?

Secondly, Mr. Chairman, the whole issue of culture: The Chapter was well researched and well presented. But I believe that it is a new area and a difficult subject and there is a tendency not to recognize and appreciate our own culture. The African culture is extremely rich. There are those aspects we need to discard but at the same time there are those aspects, which make us who we are and if we lose that, then we will no longer exist in this world, as Africans and I believe that we need to pick out those particular aspects and move on with them.

Thirdly Mr. Chairman, the whole issue of abuses. Abuses against women, domestic violence, incest, rape, female genital mutilation, you know, those kinds of abuses. I don't see these coming out very clearly and then;

The issue of widows: In each one of our cultures, I think widows used to be taken care of so that they don't go roaming around and giving a bad name to the clan where they have been married. But for some reason, we are losing that Mr. Chairman and though we talk of women being a marginalized group, I think widows are a very special group and we need to revisit that and take care of it.

Lastly, Mr. Chairman is just the whole issue of food security, Article 50 where we talk of rights to food, food of good quality but also food of good safety, safe food especially given to what is happening to the environment now, so many industries in coming up and our food systems being polluted and we have to worry about the food safety as well even as we talk about quality. Thank you Mr. Chairman.

Hon. Delegate Yusuf Haji: Thank you very much. 353 please.

Hon. Joseph Njalis Shuel: Thank you very much Mr. Chairperson. I was thinking that the Conference would end without me speaking. But thank you.

I want to address myself to this Bill of Rights. I want to commend the Commission for the good work they have done.

Hon. Delegate Yusuf Haji: 353. Endelea.

Hon. Delegate Joseph Njalis Shuel: My names are Joseph Shuel from Laikipia District. I want to comment on this very good Chapter and I want to go straight to the particular provisions.

Mr. Chairman as has been echoed by those who have spoken earlier the issue of culture is very important and we are who we are today, we dress and we talk the way we talk because of culture and we carry ourselves because of the way we are. I am seeing a situation where cultural values that have defined us and have made us who we are, are going to be eroded, exploited and used for monetary gains and owing to that I want to bring a motion that as what has been said by the Hon. Delegate ole Sironka, I think some people are using other people's culture and my proposal was and is that we need a provision in Article 63 (1) to provide a Bill, persons not belonging to a cultural, religious or linguistic community may not have the right to practice that particular

culture. This is what I am saying because without your permission or whatever it is, because we are seeing a situation even if you cannot, for instance, if you are not a Muslim, you cannot walk into a Mosque and start praying in a Mosque, if you are not a member of that particular group but we are wondering why some people are walking into a culture and even putting on beads and putting other things that we have cultural attachment.

Secondly, I want to echo the view that has been expressed by the person who talked about education and move to Article 58 sub-Article 3 and add that in the, State in trying to implement the free primary education that it should also look into the case of the orphans, the disabled and minority groups in post-primary schools and that could be specifically in Secondary schools so that if the same individual can get some resources to bring them and bring them at par with the rest of other Kenyans.

Something else that, you know, I don't think it's been captured well is the issue of noise. Honourable Chairperson, you will agree with me that if you ever board a Nissan in this City, you will be subjected to a lot of unnecessary noise in the name of music and it is high time that we should be able to make this place a peaceful place for all of us and owing to that, I want to refer the Delegates to Article 43 and would love to introduce a new Clause that goes like this: that, this would be edged, the person subjected to unnecessary noise, because what we are seeing is most of us are subjected to a lot of noise in the name of preaching, in the name of music and this really is destructive and is taking its toll on us.

The issue of family has always been raised but I want to add my voice again on that Mr. Chairperson, that the family is the most important unit in African society and at all costs must be safeguarded and protected. We want to ensure that there will not be homogenous marriages but should be from opposite sex and as has already been said, so in Article 38 (3) I would love to say that they have provided that the persons who are getting married are from opposite sex and not from the sex for that matter.

I also want to add something on Article 82 concerning life. Life is very sacred as we have been told and all of us are aware of that and would love to say that life begins at conception and therefore in my view, the sub-Article one should read like, 'every person including the unborn

child has the right to life'. The unborn child here is specified as the person that has not yet been born.

In the Article 30 sub Article Five I would like us to add after the Civil Society, communities and this is to enable communities to address their own issues touching on them.

In Article 29, sub Article (2), I would also want to contribute on this and say that the dignity of the individuals, the families, interest groups and communities and add up those things, so I am adding families, interest groups and communities. Thank you very much Mr. Chairperson.

Hon. Delegate Yusuf Haji: 521

Hon. Delegate Wahu Kaara: Thank you Mr. Chairman, Hon. Delegates, I want to add a voice on this bill of rights because I think it's a very --

Hon. Delegate Yusuf Haji: Give us your names please.

Hon. Delegate Wahu Kaara: I think I am overwhelmed because I did not expect the chance, but I have it. And I am happy for my colleagues here for also lobbying for the eye of the chair to see me. My name is Wahu Kaara, I am a Delegate Number 521 from Religious Organisations. What I want to bring as a contribution is the essence of the fundamental concern of what the Bill of Rights is. And I also want to bring the historical process that has brought us up to here because rights is not just a matter of stating or having them as ideals. We must also contextualize the demands of the time because we have heard this debate of the rights, right from the universal declaration of rights. We have seen how much people have taken so long to be able to come to this level of this Conference. So what I am trying to say is that, the issue at hand now is this Bill of Rights, to be able to carry the spirit of the Kenyans as they have already clearly articulated and shown. That we are not only wanting to state about rights, but we want this Bill of Rights to fundamentally contextualize and manifest very specifically, that we are talking about entitlements to the demands of our lives. And I am saying this and I would wish that this Bill of Rights puts it very clearly that the economic, social and cultural rights are not just matters of statements, but are matters of entitlements, so that each and every citizen can be able to engage

when it is not guaranteed. That's why these articles are not really giving this entitlement from my point of view, because; for example when you take the article on housing, that we have a right to access adequate housing. What is that adequate housing? And where is it, and how is it going to be guaranteed? The question of food, and the question of health: All this rights and that is why I am saying, the Bill of Rights, must be able to manifest the value that has been very much over emphasized in this plenary on the question of life. And we know the conflict between life is the essence of the value of profit. That's why it is very very important for the citizens to have the power, and this Conference must guarantee that we are shifting the centre of power, not from just management of public affairs, but to where power belongs, to where people are, and to where they can be able to dictate and decide on how resources are accessed and how they are distributed. And that's why the spirit of economic, social, and cultural rights as entitlement, is very very critical and very important at this particular time. This is because that is what will help us to be able to engage for example; with this move of privatization of everything and modification of everything, including the life that we saying that is very much enshrined and defended in this Constitution.

So having said that, I am only pleading with my fellow Delegates, that we realize that this Conference, just like Lancaster Conference was, to hand over for governance by others, but within the status quo. This Conference must shift that power and must go to where people are, so that they can be able to dictate and to guarantee that their life is defended. There is nobody who is going to defend it, it is them who can only be able to defend by being guaranteed that the resources that make sure that that life is there is well distributed and well chaired.

Hon. Delegate Yusuf Haji: Thank you very much.

Hon. Delegate Wahu Kaara: Thank you.

Hon. Delegate Yusuf Haji: 103.

Hon. Delegate Petkay Shell Miriti: Thank you Mr. Chairman, I am Petkay Shell Miriti from Meru South. Delegate Number 103. My first comment will be on persons with disability, article 39(2d), which states that the state shall by registration on policy measures, ensure access to all

places. I am appealing that, that provision is not enough, because as we see in the country, persons with disabilities find it very difficult to access various buildings. If for example Mr. Chairman today, one with a wheel chair wanted to come to you there, he/she will find it extremely difficult to reach you. No person on a wheel chair will go to the floor here; it is difficult. So I was suggesting that there be a provision or it is made mandatory for engineering and architectural designs, to provide for accessibility for persons with disabilities, whether he is visually impaired or crippled.

The other part is on gifted persons, the exceptional persons who are gifted. I feel that the draft has not catered for this. There are Kenyans who are highly intelligent, with IQ ranging over 120 and more often than not, such people once they are recognized as being very clever, are taken out of the country for further education. And the best people in terms of academic qualifications from the country are usually gotten scholarship to go and study out. What happens is that when they go out, the best part of their ideas is drained by foreigners. They come back with education but they leave their ideas in the country where they go for education. I feel that the Constitution should provide for the gifted people with high talent, and high IQ.

My second comment is on article 61, which is on page 12. That is freedom of movement and residence. Mr. Chairman if you read article 61(3), it states that every citizen has the right to enter into, remain in and reside anywhere in the republic. I really don't know how lawyers would interpret this provision in the Constitution, but I see a danger, where Mr. Chairman I could come to your house, on your land, live there and settle there because it's a Constitutional right. I feel that unless this one is well clarified, there will be a danger of misuse by citizens in Kenya, because the way it is, I feel people will come or go to various places, people's private residences and settle there and refer their rights to this section.

Lastly Mr. Chairman, the issue the term prisons and correctional services, article 70 (him) which is on page 15, refers to prisons discipline and the way I see it on article 267, the drafters were trying to avoid the word prison and that's why they included correctional services. I can see there is some confusion here. If we want to adopt prisons, lets adopt prisons and if we want to adopt correctional services, lets adopt correctional services. Thank you Mr. Chairman.

Hon. Delegate Yusuf Haji: Thank you very much. 497.

Hon. Delegate Jillo Mumina Konso: Thank you Mr. Chairman. May I draw your attention to article....

Interjection: (inaudible).

Hon. Delegate Jillo Mumina Konso: My name is Jillo Mumina Konso, I come from Isiolo district, I am a Delegate from women's organization.

Hon. Delegate Yusuf Haji: Your number?

Hon. Delegate Jillo Mumina Konso: 497. May I draw your attention to article Freedom from discrimination clause 3. The article stated, "The state shall not unfairly discriminate directly or indirectly". It says in clause 1, "the state may" and the Delegates have corrected and it should be "shall not make" and then "may take the Legislative and other measures designed to individuals or groups, who are disadvantaged or not as a result of past discrimination, but any other", and then it continues. May I take this opportunity to amend a proposal to that clause and the proposal should read, "Despite clause 1, the state shall take Legislative and other measures including affirmative action program and policies". That is how I wanted it read, that's the correction or amendment, designed to benefit individuals or groups who are disadvantaged or eliminate not and continue as a result of such discrimination and not but any such measures. So I am saying that because affirmative action is meant to correct injustice and it should read that way, instead of those people who are discriminated before should also be safe that they should be reconciled with the state. So that is my proposal and then article 35 on women.

I also wanted to amend a proposal which Article 35 gives a lot of languages concerning women and Bwana Chairman, this language is meant to acknowledge the variety of roles that our women play in Kenya and not only the role as mothers. At the same time it is to acknowledge the unique role that women play in this country; the role as mothers. So I propose that the article will read article 35 (4). "Any law culture or custom and traditions that undermine the dignity, welfare, interest or importance of women... sorry, sorry number 5. The state shall: 5(a) protect women

and their rights, taking into account, the amendments should read now, “Protect women and their rights taking into account the variety and extensive role of women in the society”, including we add (i) affirmative policies until such time periodically, the time some people had suggested.

Hon. Delegate Yusuf Haji: Point of order. Instead of us going into drafting, we just say the way you feel it should be done. Because drafting can only be done by experts. Just capture the principles.

Hon. Delegate Jillo Mumina Konso: The affirmative action should be put under polices in article 35(b). That is my comment.

Hon. Delegate Yusuf Haji: Thank you very much. 43.

Hon. Delegate Mirugi Kariuki: Thank you Chair, My number is 43, Mirugi Kariuki, I wish to comment on the --

Hon. Delegate Yusuf Haji: Point of order 347.

An Hon. Delegate: Who is this, why not?

Hon. Delegate Nafutali Chelagat. Hon. Chairperson, my names are Nafutali Chelagat District Delegate Baringo. Hon. Chairperson, I think now it is becoming Conference knowledge that some big names are dominating the events of this Conference.

Hon. Delegate Yusuf Haji: Thank you very much, I think the last lady who spoke was not a big one, so please allow me to proceed.

laughter

Hon. Delegate Mirugi Kariuki: Mr. Chairman I wish to correct that, name is not one of a big people but maybe a familiar name now to the Conference. My name is Mirugi Kariuki.

The principle of equality before the law, which is Article 33, sub-section 1. I would like to observe that access to justice has been hampered for a long time by poverty. As long as you remain a poor person, you will have serious problems accessing justice. We need to look at this provision with a view to ensuring that the principle of equality of Arms, as the lawyers call it, is observed. You get justice on both sides in an advisory system is equally armed to fight for justice. A rich man and a poor man can never be equal, unless the poor man is empowered. And the way to empower the poor man is to make provisions for a national legal way and scheme. And I am proposing that, that should be considered in promoting the position of equality before the law. Article 69 makes a halfhearted attempt, 69 (h); to assist persons who may be accused before courts and he uses the word accused. My observation here is that access to justice should not only be for those accused of the criminal charges. There are those who would like to vindicate their rights through the new Constitution, access court so that their rights are upheld by the courts. Those persons should be able to get assistance.

There is an inbuilt discrimination in article 69(j), it gives the rights to an advocate of your choice. And (h) for those who wish to seek assistance from the state, the lawyer or the advocate has to be picked for you by the state. That's discrimination and I think it should be removed. The other point about article 69(h) is that it gives the right and takes it away through some discretionally provision there. If substantial injustice would otherwise result, that can be abused. We want a right that is clear. If you are going to have access to a lawyer, through the state assistance, then the provision should be as clear as that. And the provision should also embrace both criminal trials, and also civil litigation.

On the right to life, I welcome the provision, said to us that as long as the country upholds death sentence, it has no moral authority to condemn abortion. And I believe that by providing for right to life here and abolishing death sentence, we can now properly say that he can do away with abortion. I would like to take a rider here, that when the life of the mother is in danger, there is always some lay way given. I would like to go a step further and say that when the dignity of a woman is likely to be compromised, some provision should be made. I have in mind situations where girls, women and nuns are raped and have babies they would not like to keep, I think in that kind of provision, to give way to their dignity as people, as women should be made

provisional, you don't have to burden them with a child of a rapist, who can not be found and who is really a great trauma to their life.

The final point is on the rights of children and we would probably like to share some experience, article 37 that is 5(a) on the rights of children to a name. In some jurisdiction and in particular Caribbean, more specifically Cayman Islands. Every child has the right to know who his father is and carry out a DNA Test. Today we have children on the streets, they say we don't know who our fathers are. Today the street children have the names of their mothers. I think that we should be clearer here. A child has a right to know who is father or mother is and that is possible to establish because there is no child without parents.

Now, as far as the issue of forced labour is concerned, article 37 (5e) should be clearer. It has not outlawed child labour. In fact we need a clear provision to say no child below the age of 16 will be employed as a house girl or whatever. You know how much house girls have been abused in this country by the middle class employers. We need a very clear provision and an equivocal language here to say child labour is hereby outlawed. Thank you Chair.

Hon. Delegate Yusuf Haji: Thank you very much 224.

Hon. Delegate Nancy Lung'ahi: Thank you very much Chair. My name is Nancy Lung'ahi Delegate Number 224 from Nairobi. I would like to draw your attention to article 42 (2) on slavery, servitude and forced labour.

“No person may be required to perform forced labour”. I would like to just share the sentiments that the Hon. Delegate who spoke before me had just said. Forced labour here needs to be defined. What is forced labour? When we look under article 37 on children, when you talk about forced labour, we know how much children have been abused and right now when you say forced labour, we don't know what forced labour is, and that is why many people get away with forced labour. This is because there is no clear definition of forced labour.

On article 53(2) on freedom of trade, occupation and profession: It says that, “the practice of a trade, occupation or profession, may be regulated by law”. I think if we leave it like that as to

say may be regulated by law, it will provide provisions for people to be able to engage in professions that they will demand should be legalized. So I think we should say we will be regulated by law, so that there is some legislation put in place, so that we don't have an illegal trade being legalized, having said that we would like to remain a country with morals. On articles 55(2) on labour relation that, "everyone has the right to fair labour practices" and in (v) "every worker has a right to reasonable working conditions". What is reasonable working conditions, what is reasonable? We know what has been happening in places like the export processing zone, the flower farms and industries. When you decide to clump people in a hall maybe with no ventilation, its hot and they have been put under very harsh conditions of working; are those reasonable? And I think most of those people are able to get away with it because there is no statement defining what are reasonable working conditions. What is reasonable?

And then article 59 on housing, that, "every person has the right to have access to adequate housing". I think that we should add there that "and that the government shall put in place measures to ensure that that is realized". If I take a case in example, and I think this will apply to most of those districts, which are upcoming, I mean a capital city like Nairobi, where we have 60% of people living in the slums. And they occupy 5%. So I don't know when we talk about adequate housing, does that mean that the 60% of the entire population living on 5%. So I think we should be very specific about saying that the government will ensure that people have the right to have access to adequate housing. Thank you.

Hon. Delegate Wilfred Koitamet Ole Kina: Hon. Delegates, I realise there are still many of you who would like to make your presentations. But I would like to urge you, that it is not possible to have all of you. We had decided to have only one hour for this session and we have even over short that. The Chair has even taken away the rights from you of having your tea break, so may I this time please ask the presenters to react to the presentations and then we will proceed to our tea break after that.

Uproar from the delegates.

Hon. Delegate Wilfred Koitamet Ole Kina: There is a point of order. Point of order.

Hon. Delegate Teresa Ogutu Usunga : I am Delegate Number 411 from Homabay Nyanza, Ogandi girls. I do not understand the procedure, because first of all I cannot know when it has reached my section. I have raised my hands from yesterday and I have sought to speak and I now cannot speak. Now my question is, can I give you the notes because now I cannot speak?

Hon. Delegate Wilfred Koitamet Ole Kina: Well, let me assure every Delegate that, we are going to break into working groups and you will be entitled to present your presentations or your sentiments to the group that will be dealing with this chapter. It is not possible for us to deal with this chapter now. So may I take this opportunity to ask Prof. Yash Pal Ghai, Mr. Chairman, who was stepping in for Com. Lethome to react to his position?

Prof. Yash Pal Ghai: Thank you Mr. Chairman, there had been a very large number of very interesting comments, I will not really have time to deal with them all, nor really is it our function to comment on your comments, I think many points that you have made are valid and the proper place for a detailed discussion of that is the technical committee that the Chair just referred to. I would like just to mention some very broad issues that have been raised.

A number of you have commented on the question of culture and how this draft does not sufficiently address the question of culture particularly, African culture. I would just like to make two or three comments on that. One is to say that many of the proposals that we received especially from women and also from other groups, suggested rights which are inconsistent with some traditional cultures. This is a problem that every country has faced. When human rights were introduced, there were certain cultural values or practises, which have to be clarified. This is because many communities do not treat women and men equally. And we believe in equal treatment, then clearly some cultural practises have to be modified to fit in with that.

The balance between a culture of a particular community and the universal notion of rights has to be struck in the context of each country. And I would say that article 31, to which I drew attention yesterday, which enables Parliament to limit the rights of individuals is a mechanism in a way of recognizing community values. And so it says a strong justification related to the

lifestyle of a community; then let me justify the qualification of a right, so that section enables a balance to be struck between universal norms and the traditions of a particular society.

The second point that I want to make is that there are a number of provisions in other chapters of the Constitution, which deals with culture. The chapter on land specifically acknowledges that, there are communities in Kenya, which have different lifestyles from other communities. In many cases, land is central to the question of that lifestyle. Many pastoral communities spoke to us about the need to preserve a communal form of ownership and communal form of management of land. This is acknowledged in the chapter on land. Similarly many cultural practises are related to the environment, how we live with nature. And again the Chapter of environment acknowledges the validity of the different cultural practises about the environment. So culture is dealt with in a number of different parts of the Constitution, but if it is felt that the balance has not been struck properly between universal norms and particular culture, that is a matter I think we can take up in the drafting committee or the technical committee. It is a very interesting and very important point, and I think we need a lot of time to look at that when the matters refer to a committee on human rights.

The third point that I want to make is in a way related to this question of culture. Have we ignored responsibilities at the expense of rights? I would say we haven't. First of all to again come back to article 31, it allows Parliament to strike a balance between community obligations on one hand, and rights on the other. Secondly, we have already discussed I think in an earlier session, article 15 which lists the duties and the responsibilities of citizens, of residents, of corporations. So, it is true that that particular section on duties does not appear in the chapter on rights, but the duties that we all owe to the country and to each other and to our communities is acknowledged in article 15.

The fourth point I want to make is on a passionately put question, that rights should be seen as entitlements and that particularly economic and social rights should be seen as entitlements. Certainly the view of the Commission is the same, we believe that economic and social rights should have the same status as other kinds of rights. If you look at the scheme of Bill of Rights, social and economic right appear in the same chapter as civil rights. Some Constitutions separate, right to housing, right to education, right to health, to medicine, they separate those

from social economic rights and say that these economic and social rights are not enforceable, They are aspirations. We have not taken that line. We have followed the South African Model where economic social rights are part of the main Bill of Rights and are enforceable as much as other kinds of rights. So they are entitlements and are binding on the government.

The question about access to justice is a very important point. We don't deal with that in the right to equality before the law. If we deal with the access to Court in a number of different points, if you can look at article 73(b), we talk of access to Court. We are suggesting that it should be possible for people to go to Court without having very extensive procedures. The Indian Supreme Court has developed a very easy way of access for the poor, for the disadvantaged to the courts. And we are suggesting we should adapt that kind of model, which South Africa has also done. In the chapter on the courts and the legal systems we specifically deals with the question of access of courts, the question of court fees, the location of courts, so that everybody has physical access apart from financial and other access to courts. So these questions have been dealt with but not in article 33.

Many points that Hon. Haji reminded you are really points of drafting. For example somebody raised the question; what are reasonable working conditions? These should be defined. Well it is very hard to define reasonable working conditions, because they vary from occupation to occupation, they change with time. So, we have to live it to Parliament to define what a reasonable and focus ultimately to see whether Parliament has got it right. There are always questions of standards, in law making and in the Constitution it is not desirable to get into a very great deal of details. These are matters to be dealt with in the Legislation, in the court rulings and so on. Another point can be made about some other commentators who have asked for greater clarifications and so on. Of course we could try to be as clear as possible, but there is a danger that in trying to do that, we will have too much details and already many Hon. Delegates have commented and correctly in my view that the document is very long as it is and certainly should not add to the length, we should look for ways in fact in which we can make it a bit shorter.

There are very many other points that I could comment on that there really isn't time. All I want to say is that these are valuable points that you have made, they merit much more detailed

discussion. I am hoping that that discussion will take place in the committee on human rights. Thank you very much.

Com. Nancy Baraza: Thank you very much, Mr. Chairman, I don't think I want to undo what the learned Professor has explained, I think he has given explanations to most of the issues that have been brought up.

An Hon. Delegate: I have a point of order.

Hon. Delegate Wilfred Koitamet Ole Kina: What is your point of order?

An Hon. Delegate: Mr. Chairman I wish to draw your attention to Rule 16 of the Conference regulation. I have been warned. Mr. Chairman I am trying to say that there is no quorum at this point in time. And I would rather that you take action in the pulpit.

Hon. Delegate Wilfred Koitamet Ole Kina: Thank you very much. In fact we have just arrived at that session. We are going to break early today, because the Muslims are going to pray and we are resuming at 2:30 pm. Thank you very much.

AFTERNOON SESSION.

REPORT OF THE PRIVILEGES, DISCIPLINE AND WELFARE COMMITTEE

Session started at 3.20 p.m.

Members: **Hon. Delegate Baldip Singh Rihal**
 Hon. Delegate Shakeel Shabbir
 Hon. Delegate Abdullahi Haji Mohammed
 Hon. Delegate Kamla Sikand
 Hon. Delegate Francis Kwangara

Prof. Yash Pal Ghai: Honourable Delegates, will you please take your seats? We are about to resume our proceedings. Honourable Delegates, I call the Conference to order. Honourable Delegates, you will remember that this morning we set up the Privileges and Welfare Committee and we said that the Committee would meet after the morning break and report to the Conference when we meet after lunch. The Committee met from 12.00 p.m. until about 2.15 p.m. and I have invited the Chairperson of the Committee and the members to join me on the podium here so that they can give you a report on their meeting and proposed action. So please take your seats because I am about to ask the Chair of the Committee, Mr. Baldip Singh Rihal to give you a report of the Committee's deliberations this afternoon.

Hon. Delegate Baldip Rihal: Thank you Mr. Chairman. Honourable Delegates, my name is Baldip Singh Rihal. I am Delegate number 487 from the professional organizations and for my sins when the Committee met this morning before lunch they elected me unanimously as the convener of the Committee. There seems to be a point of order there. You want to say something? Is that allowed, Sir?

Hon. Delegate David Okiya Nakalo: I am Okiya David, Delegate number 377. I want to bring this to your notice; I think everything is being stage managed here. We are going to discuss but I doubt if there is a quorum, Mr. Chairman.

Hon. Delegate Baldip Rihal: May I request all Delegates please, Honourable Delegates, please take your seats so that we can do a count and see whether we have a quorum in the house.

Hon. Delegate Paul Muite: Mr. Chair, do I have the point of order? 114 point of order, Mr. Chairman.

Prof. Yash Pal Ghai: I am afraid we have to wait until the count is over.

Hon. Delegate Paul Muite: That is the point of order I wish to raise, Chair. We are not voting.

Prof. Yash Pal Ghai: Never mind, we still have to have a quorum before we can proceed to any business. Please resume your seat, let the counting take place and then we will discuss how to proceed.

Hon. Delegate Paul Muite: The chairs occupied are more than the chairs that are empty Mr. Chairman. We are taking time instead of progressing.

Delegates are counted.

Prof. Yash Pal Ghai: While the counting is going on, I would like to tell you that when a Delegate raises the question whether there is a quorum in the House the Chair has no option but to require the number of Delegates present to be counted. If there is a quorum we continue, if there isn't we ring the bell and, if within five minutes or such a longer time as the Chair decides, there is no quorum the meeting then has to be adjourned until the next sitting of the Conference. So let us wait for a couple of more minutes when we should have the total count and decide whether we have a quorum or not.

Hon. Delegate Raila Odinga: Point of order.

Prof. Yash Pal Ghai: There cannot be any point of order until we have finished the count. Please resume your seat.

Hon. Delegate Raila Odinga: Mr. Chairman, there has to be a point of order because it---

Prof. Yash Pal Ghai: Please resume your seat. I am the Chair, please resume your seat.

Hon. Delegate Raila Odinga: Mr. Chairman, you will not shut me down because I have a very important point of order. Mr. Chairman, you need to be also conversant with the procedures like of Parliament. The issue of quorum only arises when we are dealing with the substantive matter of the Constitution. This, Mr. Chairman, is like a Parliament sitting during the Question Time. Quorum does not arise at this time because we are not yet dealing with substantive business in the House.

Secondly, Mr. Chairman, it is not all the time that counting has to be done, sometimes it is a matter of common sense. The Speaker looks at the House and rules that there is a quorum. Otherwise, Mr. Chairman, we will be here for donkey's years because every time any Member who wants to interrupt the business of the House is going to insist that there is no quorum. Common sense must prevail, Mr. Chairman, and, therefore, I will propose that the business should proceed.

Prof. Yash Pal Ghai: I am sorry to say that I, as Chair, I am bound by the regulations, which are very clear. If there is no quorum we cannot proceed. I am sorry. Whether there is a voting or not, that is the rule. We do not have a quorum and I am afraid that we have to allow --

Hon. Delegate Raila Odinga: Mr. Chairman, regulation number 16 is the one that deals with quorum and it says, 'any Delegate may at any time after the proceedings of the Conference have commenced object that there is not a quorum present.' The business had not commenced when that Delegate raised the issue of the quorum so that Delegate was out of order.

Prof. Yash Pal Ghai: I am sorry, the rules say that the ruling of the Chair on these points are final and I am afraid I am bound by regulation 16 and I see no ambiguity in that and am afraid I

will have to ring the bell now. The rules say that I have to ring the bell, which we did and if, after the bell, we do not have a quorum then I would rule whether we adjourn or we have a short recess and resume again. So please cooperate, it is a very important issue and we have to follow the rules. Now I am going to ask the Marshal to ring the bell.

(The quorum bell was rang for five minutes)

Prof. Yash Pal Ghai: Honourable Delegates, we have now counted the number of Delegates and I am glad to say we have a quorum now. So we can proceed with our work and when I was interrupted on a point of order which required us to count the members, I was about to, in fact I had already asked the Chair of the Welfare and Privileges Committee and he had just began his presentation when the interruption took place so I will ask Mr. Rihal to resume his presentation to you. Thank you.

Hon. Delegate Baldip Rihal: Thank you, Mr. Chairman. Honourable Delegates, as I said- and I will repeat it again for those Honourable Delegates who were not in the House earlier-my name is Baldip Singh Rihal, Delegate number 487, from the professional organizations. And perhaps for my sins when the Committee held its first meeting just before lunch, I was unanimously elected as the convener or the Chairman of the Committee. Before I read a statement that the Committee has prepared, Honourable Delegates, I want to make a very personal plea to you all, please. The questions of finances and the privileges and the lot of issues that were raised by the Delegates over the number of days we have been here are very complex; they are not easy to solve and as you can see the Committee met only for about two hours today. Obviously, we have not had time to go into all the matters in detail. What we intend to do this afternoon, Honourable Delegates, is to read a statement and to tell you, Honourable Delegates, what the Committee is planning to do from Monday so that all the issues and all the problems the Delegates have raised will be looked into and will be solved. So this is the statement, which as Chairman or convener of the Committee, I have been asked to read on behalf of the Committee.

“We, the Committee, met and held deliberations this afternoon. We wish to state as follows. The Committee thanks you for your understanding and requests your continued indulgence throughout the Conference.

1. Resident Delegates, and by resident Delegates we mean those Delegates who are staying in hotels, will be paid their daily allowances including the weekend days of Saturday and Sunday and the Commission is already making arrangements to clear the arrears up to and including the coming Sunday, 11th May, 2003. I believe, and this exercise was going on in the dining hall, many of the Delegates have been paid and at least that should help you go through the weekend.
2. The Delegates were informed earlier by the Secretary to the Commission, that the Commission had worked on a budget of approximately Shillings Kshs.15,000 per Delegate per day. This, let me emphasize Honourable Delegates, was just for budgetary purposes and this figure was arrived at by taking the total number of Delegates, who are six hundred and twenty nine, and it was contemplated that the duration of the Conference will only last thirty days and therefore on that basis, the budgetary allocation that the Commission requested from the Treasury came to Kshs. 300 million. This is the figure that the Secretary gave to you earlier some days ago.
3. The Committee has sat and listened to all the concerns raised by many Delegates and the Committee is going to give all these issues very careful and necessary consideration and, as I said in my opening remarks, Honourable Delegates, we are going to try and find solutions to all these issues and problems.
4. The Committee shall regularly keep the Honourable Delegates and the Conference briefed on all the issues that have been raised so far and will be raised in the coming days.
5. A sub-committee has been formed by the main Committee to look into all the different issues and concerns that have been raised. The Committee consists of the following Delegates:

Honourable Delegates Joel K. Sang, Abdi Haji Mohammed, Baldip Singh Rihal and the members of the Commission who comprise the Finance Committee.

6. The sub committee will report back to the main Committee. We are holding a meeting of the Sub Committee on Monday morning when we will go into most of the issues and we will try before the end of the day on Monday the 12th May, 2003, to come back and give you a report on our deliberations and what changes, if any, we want to make in the monies that have been allocated for various purposes.
7. The Committee is committed to addressing all the issues and concerns raised by The Delegates.

Honourable Delegates, this is the statement from the Committee and I would like to say that this whole subject of finance, administration, privilege and discipline is a very complex subject. Please, we want your patience and tolerance and we want to try and solve everything amicably over the coming days. Thank you very much. Another member who is on the sub-committee, whose name was not on the written statement, is Honourable Delegate Hezekiah Wapanji Minjire. Thank you. I hand over back to the Chairman.

Prof. Yash Pal Ghai: Thank you very much. 385.

Hon. Delegate Caleb Juma: Honourable Chairman, I am Caleb Juma number 385 from Vihiga. I would request, because I have been here very patient, I would request the honorable Chair, and the Honourable Delegates, we give you up to Monday, so that we come and get a full report here instead of making, because people are taking us wrongly, because we are actually people grown up, and we came here for a business. I request you to do your work, as you are promising; by Monday we get a report here, and this one, so that we do not look like people who came to look for money. We came to do the business here. So I am proposing, give the Committee up to Monday to give us a final report. Thank you.

Prof. Yash Pal Ghai: Thank you very much in deed. 430.

Hon. Delegate Albert Onyango: Thank you very much Mr. Chairman. Mr. chairman my name is Albert Onyango, a Delegate from Bondo District, number 430. Mr. Chairman, may I now

propose that since we have been given what we had wanted and that we are going to get a full report on Monday, may I now propose that we proceed with the remaining parts of the business? Thank you.

Prof. Yash Pal Ghai: Well we a motion that is, 259.

Hon. Delegate Salah Maalim Ali: My names are Councillor Salah Maalim Ali, Delegate number 259 from Mandera. Thank you Mr. Chair, I also thank the Discipline and Welfare Committee for the good work they have started, and my concern is, I also rose on a point of order on Tuesday, complaining about the reports that are being circulated around by the media. I think the induction course conducted by the CKRC for the journalists did not satisfy them well, because today, yesterday they wrote an item, written in the *Standard* on page two saying that the Delegates added one more demand to the request on the welfare that is by asking them to be entertained before they start proceedings. This was reported by a Mr. Martin Mutua. Secondly, as Delegates were being paid at the hall, the East African Standard Crew were recording, were filming the payments. This poses security risks both to the Delegates and to the paying officers.

(Applause from the floor)

I am requesting the Chair and the Media Advisory Committee to expel Mr. Martin Mutua of East African Standard and they write, the East African Standard, at the editorial writes an apology to the Delegates, until the Media Advisory Committee gives us a way a head. Thank you.

Prof. Yash Pal Ghai: I think since we have also this morning elected, or appointed the Committee on the Media, I would request that Committee to try and meet as soon as possible to consider your proposal and the general question or the general dissatisfaction that Delegates have expressed with the way the proceedings have been covered. So can we please ask this other Committee to meet as soon as possible, and try also to give us a report early next week? In fact the Secretary tells me that the Committee has requested us to make an announcement now that this Committee will meet in the Steering Committee tent after these proceedings are concluded. So I am glad they have taken this initiative and I hope we can deal with the many complaints the Delegates have made. Thank you.

Hon. Delegate Bahari Abdul Ali: Thank you Mr. Chairman, my name is Abdul Bahari Ali from Isiolo South. I am rising on a point of order on matters that touched on the safety of the Delegates, particularly the observers. You may have realized on several occasions, the gentlemen and ladies on your right have been involved in accidents relating to the seats that they have been sitting on. We know in this country there is less care about standards and quality, and now that this Committee has been formed pertaining to welfare, I would like you to seriously consider before we start reporting serious accidents here, considering moving those seats once and for all, and return them to wherever they were brought from.

Number two; Hounourable Chairman, perhaps, is pertaining to this corner here. We have been raising our hands and numbers but then because we are almost just behind you are unable to notice us here at this corner, so this makes us disadvantaged. In view of the fact that we are having a weekend and the Welfare Committee has been set up, can our welfare be looked up in that light also? Thank you very much Mr. chairman.

Prof. Yash Pal Ghai: May I respond to these two points, which I think, are very clear points. On the question of seats the administration of Bomas has ordered stronger chairs, I am not quite sure, but the Secretary can tell us when we can expect those chairs. I fully share concern that these chairs are very fragile and we may have a very serious accident, and we have to do something about it urgently. Perhaps I will ask Mr. Lumumba if he has information as to when they can expect the new supply.

P.L.O. Lumumba: The Administrator has just walked in here to tell us this. The chairs will be delivered this evening.

Prof. Yash Pal Ghai: On the second point, I know that a number of Delegates feel that they are systematically excluded from making presentation. Let me first make a point that I don't think any Chair has deliberately excluded any Delegate, but I do know that some Delegates have had their hands or boards up for long period and feel very frustrated that they are not called up. I think their area number of problems or a number of reasons why perhaps there has been a fair system of recognizing Honourable Delegates. One, I think is a point to make there is a problem

of visibility and you notice that I have now requested all the camera people to operate from the floor, I know that when I have chaired myself, a huge sector is obscured by the camera people and so it is easy to overlook that sector. But we have been operating so far, you may have noticed on this basis, that we can divide this room into kind of A to G, and then it is easier to move from one to other. But I don't think in itself solves the problem, because it gets the room covered, but it doesn't mean that the categories of members are covered, and so what we are going to consider, may be I will make some proposals to the Steering Committee on Monday, for some measure whereby we call upon Delegates in terms of sub-sections, may be parliamentarians, then NGOs, then Districts, so I need time to think, consult my colleagues, and we will like to propose or adopt a system on Monday, which will provide for a better and a fairer distribution of opportunities for making your points. So I accept your criticism and I can assure you that we will do all we can to deal with this very important problem. There is an alternative, that is there is another way we can deal with those, with the fact that we probably are not going to have the time in the general debate for everyone who wants to make a point to may be write down their comments and pass it on to the Secretariat and we will make sure that they are presented to the relevant committees.

When we were going round the country listening to people's views on changes to the Constitution some times we had to do that when we were running out of time. And that system did work reasonably well. So that is another optional that the Steering Committee can consider on Monday. So I assure you that by Monday we will have some new proposals on how we can ensure a fair distribution of opportunities. Thank you. Okay 149.

An Hon.Delegate: Thank you very much, I would like to suggest that--

Hon. Delegate Simon Nyachae: 149 is I. Mr. Chairman, I feel very concerned about a statement, and I don't think clear guidance has been given about the press. We might find ourselves sending out to the countryside very wrong signals. We don't want to have war with the press at this Conference. This morning a Committee was set up. Mr. chairman it, in my considered opinion, the right thing to be done if any Delegate has grievances about what the press is doing, let the matter be referred to the appropriate Committee. Let us not start having war at the Conference floor with the press. So Mr. Chairman, I believe your directive should be,

if anybody has a concern, and of course the press are not angels; but we don't want SKY News, CNN, and so on, because if these people are in the same team the journalists start broadcasting out there, "the Delegates have started expelling the journalists". This will not be good for this Conference, and therefore we should process every issue through the Committees. Let it be analyzed there, grievances should be sorted out there in the Committees. It becomes necessary then we should come here. Singling out a journalist, one person, you called him Mutua, Martin Mutua, I don't think it is fair. So Mr. Chairman, all I am asking is that let us not discuss individuals here who are professionals. Let the matter go to the appropriate Committee, which we have set up.

Prof. Yash Pal Ghai: That is precisely what we had agreed a few minutes ago, that these matters would be referred to in this case to the Committee on the Media. Thank you. Are there any further points of order because I would very much like to proceed with the business of the Conference as two Honorable Delegates have already suggested. So can we proceed and we wait with your point of order? Thank you very much in deed.

Your point of order, thank you very much indeed. I am very grateful to the committee on Privileges for the very speedy way in which they have began their work. I think they have presented us with an excellent report and I hope that on Monday, we can have more substantive discussions on this issue. So, I thank the committees' Chairmen and members and indeed I thank the Delegates very much too, for the very understanding attitude of the complexity of the situation. So thank you very much, I will now ask my colleague Vice Chair Mrs. Sultana Fadhil and Ms. Chesoni to come to the podium; they are going to be joint chairs of the next part of our business, which is the presentation of the Chapter on Representation. Thank you very much.

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

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

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

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

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

Hon. Delegate Atsango Chesoni: Good afternoon Honourable Delegates? I would like to thank you for having given me this opportunity to chair and say that this is a historic moment because we know that in 1962 at the Lancaster House Conference, we only had one African woman and she was not allowed to present her memorandum; this was Priscilla Abwao. So for us to come to a stage where as a country we have a substantial number of women attending the Conference and to have the various marginalized groups who are not recognized like persons with disability and the youth represented in the Conference is actually absolutely excellent. It says something about us as a country and about where we have come. Without any further ado, I would like to welcome Mr. Mutakha Kangu who is going to speak on Chapters 9 and 11 of the Commission's Report and Chapter 6 of the Draft Bill on the Representation of the People, thank you.

Com. Mutakha Kangu: Ladies and gentlemen good afternoon?

Delegates: Good afternoon.

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

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

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

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

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

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

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

1. The centrality of the people,
2. The representative nature of Republican governance,
3. The fact that authority in a Republic must be exercised during a limited period of time,
4. That authority be exercised during the pleasure of the people,
5. That it be exercised during the good behaviour of those who exercise it,
6. That the Republican government ought to be democratic in nature,
7. That it ought to be participatory in nature,

8. That it ought to be transparent,
9. That it ought to be accountable to the people and finally,
10. That in structuring Republican government, power must be shared out in a manner that gives effect to proper separation of powers, checks, counter-checks and balances.

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

The second aspect of the centrality of the people is that in fact the very essence and origin of the power of the people in government, in politics, in law, is to serve the welfare of the people. So when we talk of government and the people, the most important thing is to ensure that the welfare of the people is properly served. And then of course, that raises the question: in that context, who are the people? How do you define the people? Is it just a handful of demagogues running around saying, we are the people, or is it one community, one tribe or just one gender, or is it one religion? And a proper definition in this context would be, that people is all-inclusive. We take into account all the people without regard to race, gender, age, sex, ability, tribe, religion and so on. Those distinctions do not come in because everybody, regardless of these things, would like to have their welfare taken care of, because they want to preserve their lives and live long and so on, and that is how people came together to form political society, law and government.

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

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

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

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

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

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

At paragraph 1, I said in defining people we recognize all diversities, we include everybody. So, these diversities must not bring about a difference in the manner we serve the welfare of the people. So, paragraph 1 recognizes our diversities but says we are willing to be together as a sovereign nation indivisible. So, when you are discussing questions of diversity, the weaknesses of women and the need to have affirmative action for them, the weaknesses of the marginalized communities, the question of big religions and small religions, I hope that you will bear in mind that the ideology we have picked on recognizes that we must serve the welfare of all and that if we are many, we do not become arrogant and dismiss the needs of the few just because we are many. Now if you move to Chapter 1, you will notice again Article 1 an emphasis on the Sovereignty of the People and the need to serve their welfare. Article 1 in Chapter 1 talks about again the Sovereignty of the People, so the centrality of the people is brought out again at that particular Chapter.

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

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

Now if you go to Chapter 8 Article 148, you will again notice that this Draft has tried to emphasize the centrality of the people in it, and that is the Chapter dealing with the Executive. 148 (1) says that ‘the powers of the Executive are to be exercised for the well-being and benefit of the people and the Republic of Kenya’. Sub-Article 2 of that Article says, ‘Executive authority assigned to an office-bearer by or in terms of this Constitution, (a) vests in that office-bearer the power to serve the people rather than the power to rule and (b), shall be exercised in a manner consistent with the purpose and objects of this Constitution’. Of course you will note that if you look at the Act that governs this process, we were told that the object of review is to provide a constitution that will serve the welfare of the people. Therefore, the purpose of this Constitution is to serve the welfare of the people. So those with assigned executive authority too, have no business exercising that authority for their personal aggrandizement. They are supposed to exercise that authority, to serve the welfare of the people and not to rule. Of course we are coming from a history under which you know that the power in our country is perceived as an instrument for ruling and not an instrument for serving. We are saying this time around, our ideology is that power is an instrument for service of the welfare of the people and not individuals and their personal and friendship interests.

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

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

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Interruption:

(inaudible)

Hon. Delegate Atsango Chesoni: Okay.

Hon. Delegate Kennedy Kiliku: Chairman, my name is Kennedy Kiliku, No. 447 from Trade Unions. I don't know whether I am lost or it is the Chair which is lost because you are supposed to go Article by Article, but the way the Chair is doing, is giving a general lecture, and maybe we may get lost in the way. Why can't we follow the procedure, which was followed this morning?

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

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

Hon. Delegate Orié Rogo Manduli: I think that is very well explained, but we are using here different books. Some are using the green book, some are using the orange book. I suggest that as you jump from area to area and point out the pertinent paragraphs, I suggest that you mention

the name of the page. You will make life easier for us so we can quickly, instead of wasting the whole time rumbling through and trying to find out; by the time we reach there you have jumped on to the next idea. So, what you do, mention the page in the green, mention the Article page on the orange, and there we will keep up pace with you. Otherwise it is a wonderful idea.

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

Hon. Delegate Orié Rogo Manduli: Thank you.

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

Delegates: Yes.

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

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

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

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

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

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

Delegates: (inaudible murmurings)

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

Hon. Delegates: (inaudible murmurings).

Hon. Delegate Kaaru Abdulkadir Guleid: Point of clarification.

Hon. Delegate Atsango Chesoni: Okay, clarification?

Hon. Delegate Kaaru Abdulkadir Guleid: My names are Kaaru Abdulkadir Guleid, Delegate number 263. Can you clarify for us, does the quorum need at the beginning or throughout? We

had a quorum at the beginning, I think we should continue and complete otherwise we will never go anywhere.

(Clapping).

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

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

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

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

An Hon. Delegate: On a point of order.

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

An Hon. Delegate: Point of order.

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

An Hon. Delegate: Point of order.

