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NATIONAL CONSTITUTIONAL CONFERENCE

Verbatim Report of

**PLENARY PROCEEDINGS – PRESENTATION OF DRAFT
BILL – CHAPTER 13, PUBLIC FINANCE AND REVENUE
MANAGEMENT, HELD AT THE BOMAS OF KENYA**

ON

3RD JUNE 2003

**PLENARY PROCEEDINGS, PRESENTATION OF DRAFT BILL, CHAPTER 13,
FINANCE AND REVENUE MANAGEMENT HELD AT BOMAS OF KENYA ON
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**PRESENTATION OF DRAFT BILL: CHAPTER 13, PUBLIC FINANCE AND
REVENUE MANAGEMENT**

Presenters: Com. Mr. Isaac Lenaola
Com. Mrs. Alice Yano

Session Chairs: Hon. Delegate Bonaya Godana
Hon. Delegate Tabitha Seiii

The meeting started at 9.30 a.m.

Hon. Delegate Bonaya Godana: Honourable Delegates please take up your seats, we are running behind time. Delegates, please take up your seats, we have to start our business. Delegates please sit down.

Honourable Delegates, as is customary, we start the morning's business with the administration oath--

Hon. Delegates: No, prayers first.

Hon. Delegate Bonaya Godana: Yes, we start the day's business with prayers and to lead us for prayers today are one, Honourable Delegate Rhoda Kamanda and two, Honourable Delegate Mr. Ahmed Badawy. May I ask Rhoda wherever she is to lead in prayers please. May I ask also that we all stand up for the prayers.

Hon. Delegate Rhoda Kamanda: Let us pray.

In the name of the Father, of the Son and of the Holy Spirit, Amen. Lord we thank you for the wonderful opportunity that you have given us. Lord we thank you for the care you have taken upon us over the whole weekend which was so long and you have

brought us back to meet in this hall. Lord, we ask you kindly, you know why all of us have come to this Conference. We ask you kindly to take care of all of us, to guide us on whatever we are discussing in this particular day. Lord, I ask this in Jesus name. Amen.

Hon. Delegate Bonaya Godana: Mr. Badawy.

Hon. Delegate Ahmed Badawy: In the name Father, of the Son and of the Holy Spirit, Amen. In the name of God, we gather in this Conference. Dear Lord, we worship you and we ask you for help. Ewe Mola, Muumba wa mbingu na nchi, muumba wa wanadamu wote na muumba wa kila sampuli ya sayati, tunakuomba utupatie baraka na rehema katika mkutano huu wetu. Ututie mahadha, ututie masikizano ili tutengeneza Katiba ambayo kwamba itakuwa ni maslaha kwa nchi yetu yote ya Kenya na wananchi wote. Mola aibariki Kenya. Amen.

Hon. Delegate Bonaya Godana: Administration of oath, is there anybody who is taking the oath today?

Prof. Yash Pal Ghai: No.

Hon. Delegate Bonaya Godana: Communication from the Chair.

Prof. Yash Pal Ghai: Thank you very much. I have a few announcements to make. The first concerns-- (*A lot of noise from Honourable Delegates*). Excuse me, I want to make communication from the Chair, can you please listen to me. Please sit down and be quiet, I have to make a couple of announcement at least. One is in relation to the reconvening of this assembly. I had said on Friday that the tentative date has been fixed as the 17th of August and that we would confirm the date today after further consultations.

I had said that the Select Committee would like to meet today, they are meeting at lunch time to discuss the implications of that date for the work of Parliamentarians.

The Steering Committee discussed this matter further today and I am now in discussion with the Honourable Khamisi to decide on the period, may be tomorrow, when his Motion will be introduced. We are at the same time trying to work together with him and the Steering Committee to see if we can agree on a common motion that we should bring to the Conference may be sometime tomorrow in the morning, I will let you know.

I was asked on Friday by an Honourable Delegate whether once we agree on a date, it would be necessary to have a resolution of this Conference. I then said that the resolution will do no harm, but may it wasn't necessary. During the weekend, I studied the Act and the Regulations - and I am expressing here no more than my personal view, it is not the view of the Commission or the Steering Committee - and my own view is that the adjournments of this Conference are governed by Regulation 17 and Regulation 17 says that if there is an adjournment exceeding three sitting days, then it is this Conference which must approve that adjournment.

In the Steering Committee, we felt that if we can agree on a common date, it would not then matter so much what the legal position is. But in my view, it would be appropriate, once we have a date that there be a resolution of this body to confirm that date. This is because even though one can have different interpretations of Section 17, just to obviate further litigation on this issue, it would be useful if this Conference were to then, by resolution, endorse the date for the reconvening of this Conference. We can take that matter up tomorrow when we hope that there will be a Motion on the floor of the Conference.

My second point is really a plea to us to proceed with some expedition, with some speed on the remaining Chapters. Originally when we met or in April, the programme that we had adopted not only covered the general debate on the entire Draft Constitution and the report, but also work in the Committees, and our expectation was that we would finish committee work by the 6th of June 2003 so that when we met in August we would go straight into reporting of Committees to the Plenary. Now, we are in the danger of not

being able even to finish the general debate and that in my view would be most unfortunate.

The Steering Committee discussed, but did not necessarily agree, to combine different Chapters for the purpose of explanation and debate, so we will take the remaining Chapters one by one as we have been doing. But I would urge you to allow the Session Chairpersons, when they feel that a topic has been adequately discussed and we are now getting repetitions, please allow them to propose that the debate be terminated on the Chapter and we move on to the next Chapter. Unless we do this, we are not really going to be able to finish the debate on the whole document and that will adversely affect the preparatory work between now and the time when we reassemble. It would mean that we will have to continue with general debate when we come and it seems to me that the best way for this Conference to proceed is to finish the work in Committees so that the Convenors of the different Committees can study the verbatim reports and prepare themselves for the work of the Committees in August. If we do not finish the debate, the Convenors will be considerably disadvantaged, as indeed would be all of us. Therefore, I plead with you, let us work hard for the remaining days and let us finish the general debate.

In connection with that, there has been a suggestion from the Steering Committee that we should perhaps find a bit of extra time to enable us to complete this work. One suggestion is that we might in the Plenary, go on until 6.30 pm rather than 5.30p.m, that will give us an extra hour. And my own proposal, which unfortunately I did not bring to the Steering, it occurred to me afterwards, is that perhaps we could start our day at 9.00 am rather than 9.30 am. The Steering Committee normally tries nowadays to conclude its work by 9.00 am and I believe that we can start the Plenary at 9.00 am. So, can I get assent from you? Would you be willing, you may not be happy, are you willing to start at 9.00 am and to conclude at 6.30 pm?

Response by Honourable Delegates: Yes. (*Clapping by Honourable Delegates*).

Prof. Yash Pal Ghai: Thank you very much indeed. So with these two announcements I pass the floor back to Dr. Godana and the Co-Convenors whom he will introduce and we begin our debate on the question of financial regulations. Thank you.

Hon. Delegate Bonaya Godana: Thank you very much, Mr. Chairman. Now, Honourable Delegates, my Co-Chairperson today is Honourable Tabitha Seii to my left and I think without further ado I will pass on the microphone to her to introduce the two Presenters of this topic who are to our immediate left and then we start the business of the morning, please.

Hon. Delegate Tabitha Seiiii: Good morning.

Response by Honourable Delegates: Morning.

Hon. Delegate Tabitha Seiiii: We are looking forward at what we are going to do today as a working nation. This morning, we will just go straight to the introduction of this short topic, it is rather technical and I am expecting that we shall move with a lot of speed so that we can conclude it, possibly by lunch hour. On my left are the Commissioners known to you. They will quickly introduce themselves and go ahead to introduce the topic. Thank you. (*Clapping by Honourable Delegates*).

Com. Isaac Lenaola: Good morning. My name is Com. Isaac Lenaola, Delegate 571.

Com. Alice Yano: Good morning Delegates. My name is Commissioner Alice Yano, number 556. Thank you.

Hon. Delegate Sammy Amunga: Point of order.

Hon. Delegate Bonaya Godana: Delegate number 382 has point of order.

Hon. Delegate Tabitha Seiiii: What is your point of order, Delegate 382.

Hon. Delegate Sammy Amunga: Madam Chairperson, I am compelled to seek the guidance of the Chair, because one - my names are Sammy Aswani Amunga Delegate number 382. I am compelled to seek guidance from the Chair because I have seen one of the Delegates suggesting in today's paper that we are going to go to the Referendum, the duty remaining is for the experts. Therefore, from the explanation of the Chairman of the Commission, I am divided and I do not understand and if such a Delegate continues to come up with such kind of statements, Mr. Chairman, I think we should also use the standing orders to stop this particular person from confusing the public.

Hon. Delegate Bonaya Godana: Mr. Amunga, thank you for your observation. But I think it is important, Honourable Delegates, that if you have matters like this to raise, that you alert the Chair a little bit in advance. I am kind of feeling ambushed; I have not read the story you are referring to, I presume you are referring to what is covered in today's media and the purpose of alerting the Chair is not only so that the Chair gives you the floor but also so that we are in a position to weigh the subject matter and decide, you know. Let me say I wish to stand it over, if need be I will come back to it. I hope we can get on with the business without other points of order, for heavens sake, really. I want to appeal to Delegates again in the same spirit that Professor Ghai appealed to you, that we minimize unnecessary points of order and get on with the business.

Hon. Delegate Fredrick Rukwaro Nderitu: Point of order.

Hon. Delegate Bonaya Godana: Delegate number 302. Please really, what is it Delegate number 302 and I hope that is the last point of order this morning before we start. Yes.

Hon. Delegate Frederick Rukwaro: A point of order, my names is Frederick Rukwaro Nderitu, District Delegate from Nyandarua. Honourable Chair, the wordings and the

insinuations that have come up from the Chairman are a bit disturbing. The remaining eight Chapters are being referred to as small Chapters. Some of the Chapters are very important. Public finance is the nerve center of all what we have been doing from Chapter One to Chapter Twenty. We have Chapters like Security, Transition. I think, Mr. Chairman—

Hon. Delegate Bonaya Godana: I am afraid I have to stop you, Mr. Nderitu, Sir. Order, order, please. I think that is not a point of order and in any case the Chairman only made a plea that we be very conscious of the time limit within which we are working. Let us get on with the business. Mr. Lenaola.

Com. Isaac Lenaola: Thank you very much, Chairpersons of this session. Honourable Delegates, today we are discussing Chapter 13 of the Report and the Draft Bill. Those who have the National Report, would you kindly turn to page 357, because that is where we shall start our deliberations this morning; 337 on the big report, before my colleague takes you to the Draft Bill.

Let me indicate from the beginning that Public Finance is as important as any Chapter of this report and the Draft Bill, because without the management of our finances, we cannot implement any of the other Chapters and, therefore, we must take the Chapter with the seriousness it deserves.

Secondly, whereas this particular aspect of the Draft was found to be very, very technical, we found as a Commission both before the writing of the Draft Bill and subsequent to it, that the people of Kenya are people who found that matters of finance were not very, very close to them in terms of the technicality of the law. But we, as a Commission, were mandated to look into the provisions of public finance and revenue management and suggest and recommend improvements to the law in the Constitution and also in Legislation.

What I propose to do, if you look at the National Report, you will see that we have one aspect called 'General Principles' and we have another aspect called 'What the People Said'. I propose to merge the two and make my presentation in terms of the principles and what the Kenyan people said and then go on with the recommendations, which we made as a Commission.

The first point I want to make is this, that Kenyans were very concerned that money that is raised for programmes in Kenya must be used for the intended purposes and essentially what they were saying is that, the role of government is not only to raise the finances, but also to expend the finances in the manner that is requested for the finances. And Kenyans were very concerned, for example, that whereas money has been sourced from donors either through grants or through donations, in fact at the end of the day, the money was not sometimes used for the intended purposes.

Let me give a small example we had when we were in Mandera. Mandera people said, that if you look at the map of Kenya, the road from Mandera to Wajir is supposed to be tarmacked and in fact there was money sourced to tarmack that road. The map indicates that, that road is tarmacked, but in fact those who have gone through the road would know that there is not an inch of tarmack on the road. Therefore Kenyans were concerned that monies which were being raised were not being used for those purposes intended. They recommended that a principle should be put in the Constitution to cover that anomaly.

The second point which I want to raise is that in allocation of resources, it is important that there must be an efficient programme for implementation, monitoring, evaluation and feedback so that it is clear that a programme is implemented and there is a feedback in terms of its viability. In the last many years, all we had was a unit of government called the Efficiency Monitoring Unit, but even that unit itself was not able to ensure that proper implementation was done to the standards required by the law and Kenyans sought that, that ought to be re-addressed.

The third point, which you will see from the national report regards planning, budgeting, raising and expending of monies. Kenyans were saying that in matters of budget it was important that, not just the government, but also other organs of State, would be able to have a hand in the planning and budgeting of State finances. A lot of you would know, and Members of Parliament are present, the Budget is like a secret; it comes in a nice briefcase on the date of the Budget, neither Parliamentarians, nor the public have any idea as to what input or what goes into the Budget.

Kenyans were saying that although it is important that the government plans for the Budget, there ought to be some mechanism where people can input into the Budget. Of course it is important to know that right now there is a Bill pending to create the Parliamentary Budget Office, where Parliament has access to the Budget prior to the Budget day. Also Kenyans were saying that the private sector, public sector and professionals ought to have an input to the Budget before the Budget is submitted to the House. This way, the Budget is enriched with experiences of people who benefit from that Budget. Kenyans also thought that the public in general ought to be consulted when the government plans the Budget and the reason for this is that in any event, the Budget ought to benefit certain people and those people are Kenyan people and, therefore, it is them who know what ought to go in the Budget because the benefits of the Budget really are theirs as and also feel pinch of the taxation is on the Kenyan people.

Point number five, Kenyans said that they are heavily taxed, that our taxation system is very rigid and we must remember that the whole essences of taxation is not to punish the populace; it is not punitive, it is a means of governance where the government renews its undertaking to its people so the people must feel comfortable with the rate of taxation that is being imposed upon them. Let me give you two small examples to illustrate where Kenyans thought taxation is very heavy. If you have heard a song by a singer called Eric Wainaina, not the “Nchi ya Kitu Kidogo” one, but another one, he talks about the heavy taxation Kenyans labour under. At one point he talks about Kenyans having Value Added Tax, Tax Added Value, Pay as you Earn, Earn as you Pay, Income Tax and Excise Duty, all those taxes are loaded upon Kenyans. The point is, if you look, for example, to

our electricity bill for example, you pay much more in taxation than your consumption of electricity. The tariffs are more than what you consume. If you look at your water bill, you pay more in taxation, including a bin which you do not get, but you still pay for it in your water bill.

Therefore Kenyans are saying we have excessive taxation and that our tax portfolio must be commensurate with what we pay. Therefore, there must be a principle in the Constitution which ensures that what we pay in terms of taxation, is really what we can afford. On the same point, Kenyans are saying that the tax collection system must be so efficient as to ensure that all Kenyan who ought to pay taxes, really pay taxes. Kenyans are saying that the people who pay taxes are those people with pay slips, because in any event you have no choice whether to pay or not to pay, but those who do not have pay slips end up not paying taxes. Early this year Kenya Revenue Authority in its quarterly report said that because there was fear that the NARC Government will chase all those tax defaulters they received in taxation 99% of the projected income, which was a record in KRA and now they get 66% to 70% in one quarter, but because of fear that the NARC Government - and this is not to say that other governments were not chasing tax defaulters-- There was fear that the Government was now serious about tax defaulters, all the tax defaulters paid up. Therefore our hope is that at the end of the year, we shall receive 100% in terms of the projections by the Kenya Revenue Authority.

The sixth point, which is a principle and also what Kenyans said, is that we must have a transparent audit and follow-up system. Audit is meant in general terms to be prudent, accountable, diligent, efficient and effective. Once it is not, then it is very easy for money to be siphoned off from public coffers and no one knows where the money has gone. We know that for the last 30, 35 years, the office of Auditor and Controller General every year churns out reports saying that money has not been used properly, money has been siphoned off, money has been done this and that. But what is the follow-up, what teeth does the old man, Mr. D.G. Njoroge, have? I heard of Njoroge when I was in primary school, I heard of him in high school, I heard of him at the university, I heard of him when I was working and we have not heard of what effect those reports

have had because the audit system has no teeth. Kenyans are saying, we must empower that office, we must make it more independent so that it is able to follow up in audit things. You are aware, of course, now that there is a proposed National Audit Bill which is meant to strength the office of Auditor and Controller General, but also as a principle, it is important that principle is entrenched in our Constitution.

Point number seven, government borrowing. All of us know that we can only borrow if we can repay and you can only borrow within your means. If you borrow outside your means, then you are a poor planner. Kenyans were saying that when the government borrows internally and externally, it must be able to repay those monies. It is ridiculous for any country to keep each year borrowing more and more and having no programme for repaying what it borrows. I am informed that as we speak, the external debt is 480 billion Kenya shillings and the internal debt is about 260 billion Kenya shillings. Let me go back to the national debt, we were saying that the government should not borrow beyond its means and I was saying our national debt stands as follows; roughly the external debt is 480 billion Kenya Shillings, the internal domestic debt is about 260 billion Kenya Shillings, which is about 740 billion in total. So we are saying basically what Kenyans were saying is that the Government must borrow within its means and as we go along, obviously it is quite possible that our debt will increase an therefore, you see both in the national report and the Draft Bill that provision for government to borrow must necessarily become much more stringent to ensure that we are able to sustain our debt. Of course it is not possible to run a country without debt but obviously we must put certain standards where we are not squeezed in as a country by the debt. These figures are from a source in Central Bank, they may be just about right.

The eighth point which Kenyans made is that the standard of living in Kenya is way too high; we live a very expensive life. And again to give you figures, about three days ago a Kenyan in the United Kingdom sent these figures through an article in the Standard. He is saying that our Gross Domestic Product in Kenya is Kshs. 18,000 per capita. In the UK it is 2.7 million shillings per capita, yet the price of bread in Kenya is more expensive than in the UK. Unemployment in Kenya is 50%, in the UK it is 1%, yet our standard of

living is still much higher than in the UK and Kenyans were saying that there must be a provision in our public finance system which makes our life bearable, not to count the taxation that I talked about much earlier. Therefore there must be a provision, some principle to ensure that whereas our standard of living is that high, we have an income portfolio which will make us live certainly better lives than we do.

Point number nine regards the Central Bank of Kenya. As you are aware now, Central Bank is governed by The Central Bank of Kenya Act. It is quite easy to manipulate the Central Bank unless the Central Bank has certain independence which can only be acquired through the Constitution. Kenyans were saying the Central Bank must become independent, effective, efficient, transparent and diligent because the currency is an extremely important aspect of our lives, and unless the currency is stable - which cannot be done by the Central Bank - then none of our business enterprises can be of any meaningful use to us. But Kenyans again were very concerned, and this on aside, before I come to the substance of Central Bank, and this is something which the Commission heard literally everywhere in country. Kenyans said the face of the currency of Kenya should not bear the image of any Kenyan, that the currency must bear some national symbol and this is not say we should not have faces of the Presidents on the currency, but Kenyans were saying, suppose we have one term Presidency and in twenty years we have four Presidents, we shall keep changing our currency four, five times in twenty years. Kenyans were saying, let us have a national currency that would out last all of us, but can never out last Kenya. That was an issue which came out everywhere we went in this country. Coming back to the Central Bank, Kenyans were also concerned that the Governor of the Central Bank was not seen to be independent of political forces and the Governor, therefore, ought to have some entrenchment, some security of tenure, which can only be guaranteed by the Constitution. Again, you will see from the Draft and my colleague will speak about what was said about that.

Point number ten, I think it is a very important aspect of public finance, what is the share of revenue between the Central Government and devolved unit? And this you must read together with Chapter 10 of the Draft. When you agree on a devolved unit and you give

that unit some measure of taxation powers, what revenue comes from the devolved unit to the Central Government and what revenue is sent back by the Central Government to the devolved unit? So as we think about what unit we devolve power to and we give them powers of taxation, we must also be clear as to what percentages must come from the devolved unit to the Central Government.

Kenyans suggested that 80% must remain in the unit and 20% must go to the Central Government. Is that viable? Those people who come from say Narok, Laikipia, Samburu and so on, you know that in terms of what we get from the parks, for example, 25% is retained by the local council to assist the local people and 75% goes to the National Government for disbursement to other units. Is that a viable alternative?

In Uganda, for example, what they did in their law is that they put a principle that there shall be revenue sharing between the devolved units and the Central Government. The Local Government Finance Act then went further to determine what Parish Councils get, what District Councils get, what Village Councils get and then the remainder goes to the Central Government. I think as we discuss Devolution, we must also be very clear as to what finances are transferable from one unit to the other. It must also be very clear in our minds before we even reach the units that we are going to form that, say, between the District Council, the Local Council and the Village Council, what comes from the different units and what counts.

Countries like Denmark, Australia and Germany have got an elaborate arrangement between the devolved units, Municipalities, Cities and the Central Government. I think we must think about this as we address this question in our committees.

Madam Chair, those are the Principles that I thought we should share but if you look at the Draft Bill, they are much more comprehensive. What then did we recommend as a Commission? Having listened to Kenyans and having heard what they were saying, what did we recommend? The idea is that you must look at our recommendations in page 345 of the Draft Report, page 345; you must look at our recommendations vis-à-vis what my

colleague will say about what is in the Draft Bill. You must judge if these recommendations have been taken on board in the Draft Bill. This is because if they are not, we shall have failed our mandate to Kenyans to ensure that all these things are faithfully reflected in the Draft Bill.

You should kindly therefore turn with me to page number 345, where we have specific recommendations.

The first one is on budgeting. All I can say about budgeting is that, one, we are suggesting that there must be a Budget Office in Parliament. I am glad to say that the Parliamentary Budget Office Bill - I believe the Honourable Aringo's Bill - would take care of these proposals. But again we propose that there must be a provision in the Constitution, which is the mother principle to the Parliamentary Budget Office. Let me say this Honourable Delegates, a lot of the work on the Parliamentary Budget Office is the brainchild of Honourable Peter Oloo Aringo.

Point number two is that there must be a strategic plan which guides the Government in revenue generation so that the Government has a plan in every three years, not necessarily five years or ten years, but at least in every three years there must be a proposal to cater for the budgetary issues.

Over the page, at page 346, the office of Controller and Auditor General; Kenyans were saying that the duties of Auditor General must be specific and that he must also be independent and he must be entrenched firmly in the Constitution. Thirdly, that he must have the power to follow up on his reports which he makes every year.

Point number three on taxation: that taxation must also be mixed with representation. You can't have representation without taxation. That is a principle which we were told to include in the Constitution. A statement on tax levying and collection must also be made every year to the people of Kenya.

With regard to the public debt: that Parliament must approve all public debts. Right now Parliament only gets reports, that we have borrowed, we have borrowed, we have borrowed. Parliament never has an input in determining whether a debt is proper or not. Therefore the proposal is that Parliament must have a role in Government borrowing.

Point number four, like I said earlier, that Central Bank must be established as a Supreme monetary authority of the Republic of Kenya. So that all financial matters are governed by directions from the Central Bank. Central Bank must also protect the value of our currency. I don't think any Kenyan wants a repeat of 1992, when money was – obviously now we know because this is an age of transparency – printed and the shilling went to unimaginable limits in terms of its value vis-à-vis the dollar.

Point number five, and this is an important aspect, retirement planning. The world now is moving towards ensuring that, because life expectancy is much higher than before, and people live longer and much stronger, it is important for people to plan for their retirement. People retire at 55, and you find them stronger than our people a few years back because there is more medication, there is better food and there are better ways of living. We must plan for retirement. We are therefore proposing - and this may not be in the Draft – that retirement planning be given a place in the Constitution. My colleague will touch on that at a later stage.

The other point my colleague will touch on is an economic and social Commission. Kenyans were saying that they want a think tank; a body that just stays through the year thinking out and focusing on our fiscal issues and our economic issues. There was a fear that there is no proper thinking of our policies in terms of economics and finance. If we had a body which just sits day in day out and also monitors our economic gains and losses, and makes provisions as we go along, such a body would then be able to guide the nation into prosperity.

Over the page, there are certain provisions about the contingency funds. My colleague will also touch on those aspects; the contingency fund and the consolidated fund, and how we can manage those two funds to ensure that there is no abuse of the two funds.

Other Commissions – we also heard a lot from Kenyans about other issues which are not necessarily directly financially related. One of them is the human resource of this country. We assume that we are not a resource, that only land, the environment, minerals, and cash are resources. We are also a resource. Under that the human resource in this country is probably as important as its natural resources. Kenyans were saying that we must make a provision where we can tap into our human resource and ensure that it benefits the country clearly. Therefore the question of brain drain, when you hear of Kenyans in silicon valleys; some of the brightest Kenyans now in the computer world, are working with Bill Gates in Microsoft or Oracle. How can you tap such brains which are Kenyan, to ensure that they benefit the Kenyan people as we move into the new millennium? Therefore, people said we must not only look at other resources, but we need to look at the human resource as an important resource of this country.

The other resource is Science and technology. The world is moving towards more science, more technology. No country can be left behind to use a panga and a jembe for the sake of generating revenue for the country. What are we saying in our Constitution about enhancing Science and Technology? Or are making a Constitution only for this year, or for 1963? This Constitution ought to live two hundred years, where Science and technology will be probably the most important aspect of our lives. What are we saying in this Constitution about Science and Technology?

The other point is ‘Intellectual property.’ What are we doing about our patents? What are we doing about our trademarks? What are we doing about purchasing our cultures? The Maasai people were telling us that they have become objects of sale. Our culture is being bandied around the world. How can you tap that culture and make it a viable resource for the people of Kenya? Therefore, if you look at page number 351 to page number 367, we have made elaborate recommendations to you as honorable Delegates regarding all these

issues which are important in the coming world and in the new age. Having so said, the challenge to us and the challenge to those who shall sit in the Committee on Public Finance and other resources is to think out principles, which would ensure that our fiscal policies and our revenue management systems are such that we maximize on our resources and get the greatest benefit which will be of use to Kenyans today and the days to come.

I am told my time is up, I thank you for listening to me.

Clapping by Honourable Delegates.

Com. Alice Yano: Thank you Chair, and thank you Mr. Lenaola for that very good presentation. Now, I am going to take you through Chapter 13 of the Draft, that is Public Finance and Revenue Management and kindly I would want us to move together. That runs from page 46 to page 49.

We started with the principles and objectives of the same, and we said that it is to ensure efficient and effective generation of public revenue, also to enhance participation of people, communities and civil societies in public finance management, equitable sharing of national and local resources throughout the Republic, not forgetting also the marginalized areas of this country, equitable division of revenue all the way from the national to local levels, also to conduct adequate consultation to ensure equitable distribution and to promote transparency and accountability in the budgetary process.

Imposition of tax, that is Article 244, starts by saying that no tax should be imposed unless by an Act of Parliament and that there should be no waiver or variation of tax unless expressly provided for by an Act of Parliament. Exceptions to the same is, if a waiver or variation by any person or authority, the person or that same authority to submit to Parliament within three months of the said variation or waiver, setting out one: person or persons whose favour, variation or waiver has been done, the amount so waived or varied and also reasons for such waiver or variation.

Article 245 deals with the consolidated fund; that all revenues that are raised or received on behalf of the Government, be paid into the consolidated fund and the same forms what we call the consolidated fund. There are also exceptions to the same; that there are moneys that may not be paid to the consolidated fund. Such moneys or revenues which are payable by or under an Act of Parliament into some other public fund established for a specific purpose, or may under an Act of Parliament be retained by the Department of Government, that received them for purposes of defraying the expenses of that department.

Withdrawals from the consolidated fund: How does one go about withdrawing from the consolidated fund? Start by saying that no money can be withdrawn from the consolidated fund except for expenditure authorized by the Constitution or an Act of Parliament, or authorization by appropriation Act or supplementary appropriation Act. I would also want you to look at clause 4 of the same. That where the controller of budget authorizes issuance of money from consolidated fund, -that is not exceeding 20%- when he or she satisfies that an appropriation Act in a given financial year will not come into operation by the beginning of that financial year.

Article 246 sub section 2, all moneys be withdrawn from consolidated funds unless the law authorizes otherwise, for example, the examples I had given you on the public fund. The controller of budget must approve all withdrawals from the consolidated fund.

Article 246 on contingency fund says that the contingency fund will be established by an Act of Parliament and the same be regulated as per the provisions of that Act of Parliament. Financial year estimates be tabled before Parliament by the Prime Minister; these are estimates of revenues and expenditure. It must be done two months before commencement of the financial year; the Prime Minister to prepare fiscal and monetary strategies for economic and social development for a period of three years. Parliament after considering the same may propose improvements or alterations to be incorporated into the plan within 30 days.

Heads of any self-accounting departments, Commissions or organizations set up under the Constitution shall submit to the Prime Minister estimates of administrative and development expenditure and revenues for the following year. This is to be done two months before the end of a given financial year. The Prime Minister to lay the above before Parliament who shall be subject to the usual procedure as set out in the Article.

On presentation of these estimates by the Prime Minister to Parliament, an appropriate Committee of Parliament shall discuss and review the estimates and make appropriate recommendations to Parliament. Representatives from the public and the Economic and Social Commission be included in the Parliament's appropriate Committee for deliberation. Committee on planning and budgeting to control and supervise any money relating to items or votes not relating to specific items of expenditure is also provided for.

Sub section 9. The Prime Minister shall prepare and submit before Parliament, (a), fiscal and monetary programmes and plans for economic and social development covering periods exceeding one year and (b) estimates of revenue and expenditure covering periods exceeding one year. Parliament may make laws to give effect to the provisions of this Article.

Article 247: charge on the consolidated fund. The Parliament shall in an Act of Parliament prescribe the offices in respect of which the salaries and allowances are charged on the consolidated fund by the Constitution.

We have the Appropriation Bill, that is Article 248. The Appropriation Bill contains heads of expenditure other than those charged on consolidated fund by the Constitution or by an Act of Parliament also be introduced into Parliament to provide for authorization of withdrawal from consolidated fund. Supplementary Appropriation Bill to be introduced to Parliament if found out that the amount appropriated under Appropriation Bill is insufficient or a need has arisen for expenditure for a purpose not provided for in the Appropriation Bill.

Power of Governments to borrow, my colleague extensively touched on that. The Draft provided that Governments can borrow from any source subject to (a) it must be authorized by or under an Act of Parliament which should state terms and conditions of the loan and the same to be laid before Parliament for approval. Also I should state that all moneys received be paid to consolidated fund or some other public fund which is existing or created for the purpose of that loan. The Prime Minister to present before Parliament information concerning extent of indebtedness including principal and interest, servicing or loan repayment, utilization of the same.

5 of the same Article provides that for the purpose of this Article the expression “loan” includes any money meant or given to the Government on condition of return or repayment and any other form of borrowing or lending in respect of which moneys from the consolidated fund or any other public fund may be used for repayment or monies from any fund may be used for payment or repayment. That gives you the interpretation of the term “loan”.

Public debts, that is Article 250, provides that public debts includes interest on debts, sinking fund, payments in respect of debts, costs, charges and expenses incidental to management of the debt. The same to be charged to consolidated fund or other public funds of Kenya.

Article 251 deals extensively with Central Bank of Kenya and my colleague covered it and told you that the same now has been included in the Draft unlike what is in our Constitution right now it goes to say that the Central Bank is a Constitutional organ, sole currency issuer, the authority to vest on Board to consist of Governor, Deputy Governor and not more than five other members. Appointments of the Board: the same be appointed by the President with approval of the National Assembly, they will have a five year term and appointment for one further term, and also must have knowledge and experience in matters relating to economics, finance or accounting. How can they be removed as Board members? The same can only be done by the President for reasons of infirmity of body or mind, misbehavior or misconduct or incompetence. It applies also as

we look at Article 284 of the Draft Constitution on removal of Constitutional office holders.

Functions of the Central Bank: if you could kindly turn to page 48 Article 252, we have all the way up to (g). One is to promote and maintain the stability of the value of the currency of Kenya, to issue notes and coins, act as a banker and financial advisor of the Government, conduct the monetary policy of the Government in a manner consistent with the relevant provisions of the law, regulate the currency system in the interest of the balance and sustainable economic growth of Kenya, encourage and promote economic development and efficient utilization of the resources of Kenya through effective and efficient operation of a banking and credit system and also do all such other things not inconsistent with this Article as may be prescribed by law. And it also further goes to say that in performing its functions the Central Bank shall conform to the Constitution and shall not be subject to the direction or control of any person or authority.

Controller of Budget: Controller of Budget be appointed by the President with approval of the National Assembly; it is a Constitutional office. The Controller of Budget to be a fully qualified accountant and finance expert of not less than fifteen years standing with high moral character and proven integrity. What are the functions? To oversee implementation of budget as approved by Parliament that money be spent as Parliament intended and provide accounts of actual expenditure. Also provide technical advise to Parliamentary finance committees, to work closely with Treasury departments and Ministries, submit annual reports to Parliament, and also that it shall not be under the direction or control of any person or authority.

Auditor-General: Article 253. You find that the appointment of Auditor-General is the same as that one of Controller of Budget and must have the same qualifications. Functions? You can look at Article 254 sub section 3 (a), (b), (c), (i)-(v). If you look at them maybe I can just touch on them. That the Auditor-General is to audit the accounts of the Government and state corporations, satisfy himself or herself that all moneys that have been appropriated by Parliament and disbursed have been applied to purposes for

which they were so appropriated; that at least once every year audit and report on the public accounts of the Government of Kenya, the accounts of all officers and authorities of that Government, the accounts of the courts of Kenya, accounts of every Commission established by the Constitution and the accounts of the Clerk of the National Assembly and National Council and also the accounts of political parties funded from public funds. That the President under advice from Cabinet may require the Auditor-General to audit the accounts of anybody or organization as per clause 3(c), that is from 3(c) (i) up to (vi). Removal from office of the Auditor General, also the same applies as of the one of the Budget.

Accounts and audits: Article 256. That the accounts of the offices of the Controller of Budget and Auditor-General shall be audited and reported on by an auditor appointed by the National Assembly; that the Permanent Secretary in charge of a Ministry or an accounting officer in charge of a department or a public body shall be accountable to Parliament for funds in that Ministry or department or public body, and that any person holding a political office who directs or concurs in the use of public funds contrary to existing instructions shall be accountable for any loss arising from that use and shall be required to make good the loss even if he or she has ceased to hold that office. Parliament shall monitor all expenditure of public funds.

Last but not the least is Article 257 on Economic and Social Council. This is a new creation and it is quite detailed in the Article, that it should be established an Economic and Social Council which shall consist of 21 persons appointed by the President with the advice of the Prime Minister. They should be highly qualified and experienced in economics and social development matters; that have no partisan affiliations once appointed to the Council. Sub section 3 goes to provide for the functions of the Council, that it will advise the Government and Parliament on matters of economics and social concern to the people of Kenya; to consider and report to Parliament on all bills and budgetary proposals introduced in Parliament and to monitor progress towards achievement of the rights of Kenyans affecting their living standards particularly the living standards of the poor and the disadvantaged. That also this Council will advise the

Government on the formulation, implementation, monitoring and evaluation of strategic, economic and social policies, for optimizing the collection and expenditure of Government revenue, the acquisition and servicing of the Government's domestic and external borrowing; the acquisition and disposal of Government assets, property and institutions and for the privatization and commercialization of Government services; the generation of additional revenue for the exchequer, local authorities and other levels of Government; the promotion of domestic and foreign investment with a view to enhancing the revenue base of the nation. All the way I think you can look at your Draft up to (l).

Sub section 5: in performing its function the Economic and Social Commission may conduct research as may be required to establish economic and social standards and bench marks; liaise with any Constitutional institution on matters of common concern; publish its report and recommendations and establish its own rules and procedures. The council shall report regularly to the President, Prime Minister and Parliament, and also it goes further to say that an Act of Parliament should be enacted to cover more on Economic and Social Council. Thank you very much.

Hon. Delegate Tabitha Seiii: We want to thank our two Commissioners, Commissioner Isaack Lenaola and Commissioner Yano for briefing us and taking us into this subject. And I want to say that as we start now to debate and discuss, I would like all of us to take note of the fact that if somebody else has spoken and has said exactly what you were going to say, don't speak. If you have left out one point just say the one point you do not have to exhaust your minute, so that somebody else can go on and say something new, so do not repeat yourself. And when the bell rings please stop there and let somebody else go ahead and make their points, so please obey the bell. Now we are going to start from my left and I will give priority to people who have not spoken. I am also aware that there are people who have spoken but they have something very substantial to offer in this discussion. I will start with 311. 311 have you spoken before? Go ahead, 311.

Hon. Delegate Fr. Gitonga Joachim: Madam Chair, my name is Father Gitonga, a Delegate from Muranga. Madam Chair I want to speak about the points the first speaker mentioned, that taxation is not made to punish people but to give them service. There are some services which are so expensive Madam Chair, that many people will not benefit and they have not benefited for the last 40 years. And I want to mention one Madam Chair, the supply of electricity in the rural area. Madam Chair, all the rivers which generate electricity come from the rural area, and when the electricity is generated it is directed to 10% of the population of this country but the rural areas' 90% or 80% do not enjoy electricity. We are told that electricity is very expensive but Madam Chair electricity is not expensive, what is expensive is the way the electricity is supplied. The laws, which were laid down by the colonial people, have not been changed by our last two Governments. And I want to mention one for example; if I want to be supplied with electricity or a school or a market I am told to pay 1 million shillings or even 2 million. Now those millions of shillings buy the transformer, put the posts and electric wires. The moment I pay 1 million that moment that particular transformer or post is not mine it belongs to electrical power company, which means I built a shop for them to trade in. I am poor and I have to pay 1 million shillings to enable the power company to trade with me, that Madam Chair is injustice.

It should be the work of the power company or the Government to supply all the transformers, posts and electrical wires to any institution, to any market and any school. The school is asked to pay just to tap electricity from that transformer but not for me to buy the transformer for 2 million shillings and then from that moment it belongs to the power company. There is no justification for that. Madam Chair, if the power is supplied all over the country, technicians trained in the rural area would remain there and put up their small industries there. Now we train them, they flow into the urban areas increasing their population and the rural area is left without development.

Madam Chair, I would ask this Conference to enact a law whereby it is not the duty a person to buy instruments for generating electricity in his own place but the power company or the Government. It is unfortunate that if a school is asked to pay for

electricity say 1 million and Madam Chair that transformer belongs to the power company. Why should a poorer man buy instruments for trading for a richer person? Madam Chair, I think this should be put very clearly that it is the Government or power company to supply electricity in the rural area-the rural area which has all the rivers which generate power. Thank you Madam Chair.

Hon. Delegate Tabitha Seiii: Thank you very much. The next row 446 you've only spoken once.

Hon Delegate Francis Wangara: Thank you Madam Chair. My names are Francis Wangara, Delegate number 446 from the Trade Union group. First I would like to thank you for giving me this opportunity and to move straight to the point I would like to raise in regard to this topic. First I would like to say that the Central Bank-- I believe that the Government money has been mismanaged by the Central Bank. Why I would like to say so is, we have had cases where banks have emerged and money has been withdrawn from the Central Bank. These banks are aimed at benefiting individuals. The Government has lost a lot of money. This money is given in terms of loans to individuals and it is never recovered, and those banks are closed down just to be put under receivership and those beneficiaries are not followed. It is very embarrassing and the Government has lost a lot of money in that respect.

Another issue I would like to raise is that the Government is losing a lot of money in terms of well-connected people who are in business. What you will find is that they don't pay taxes and in the long run what they are supposed to pay the Government is not forthcoming and therefore it is written off to benefit those individuals.

Another concern of mine is the term for the Governor of the Central bank; in the Draft we are saying it should be 5 years. I would say it should be at maximum 5 years not just to be left open because if somebody is proved to be inefficient then it means he should be withdrawn but if he remains so then he remains there forever.

Another issue I would also like to support is the issue of input in the budget proposals. This is very important and it should be encouraged. Another area I would also like to summarise is that the Government-- When we have devolution of power and money is supposed to be devolved down to the other councils it must come from the original budgets from those councils; so that it is not just from top to down but most Councils should be given an opportunity to come up with their budgets which should be taken to the Central Government for distribution. Thank you, Chair.

Hon. Delegate Tabitha Seiii: Thank you. I m sorry I jumped one row and I will come back to this row because I missed it and 382, you have only spoken once.

Hon. Delegate Sammy Amunga Aswani: Honourable Chairperson, Honourable Delegates, my names are Aswani Sammy Amunga, Delegate number 382 from Butere/ Mumias District.

I would also like to contribute on this subject of Finance Management. I have looked at the Draft and heard what others have just said, the control of the budget is very important because previously what we used to hear was that if one Member of Parliament does not tow the line, the money was then diverted from his or her constituency to another constituency. But since now we are intending to create the budget controller, I am sure because this person will be answerable to Parliament, if money has been shifted from one constituency to another constituency, Parliamentarians will be able to raise the issue to see why this money has been diverted to go and be used in another constituency to deny some citizens their rights. So, this one, I am in agreement that this should be implemented.

Another area in which I would also like to contribute is the Auditor General. Madam Chairperson, we have had what we call the Public Accounts Committee in Parliament. What keeps on lingering in my mind, I have never had people being arraigned before the Courts for the offences they have committed by looting money which has been earmarked for the development of this country. The small man would appear before the

Court but the main looters, nobody will appear before the Courts. I am wondering why. I am of the opinion that probably the Auditor General should be given the powers so that the moment he discovers that this particular officer is the one who has made a mistake, that particular person is charged, because he has the facts and he is the one who should take the matter to the police, let the charge sheet be prepared and let that person be charged before the Court of Law.

Madam Chairperson, there is this issue of Article of 257. 257 talks of the people who will be nominated, that is the 21 persons. I am of the view that we should include there 'but one of them shall be the Chairperson'.

Hon. Delegate Tabitha Seiii: Thank you.

Hon. Delegate Sammy Amunga Aswani: That one should be included.

Hon. Delegate Tabitha Seiii: Thank you.

Hon. Delegate Sammy Amunga Aswani: --so that--

Hon. Delegate Tabitha Seiii: Thank you.

Hon. Delegate Sammy Amunga Aswani: --but, Madam Chairperson, we should also indicate because these are the people who can also mislead the country by coming up with wrong information which they will give to the Government and then it will make the country to sink.

Hon. Delegate Tabitha Seiii: Honourable Delegate--

Hon Delegate Sammy Amunga Aswani: We should also have a provision there that failure--

Hon. Delegate Tabitha Seiii: Thank you. You have made your point. Thank you very much.

Hon. Delegate Sammy Amunga Aswani: But I thought we have to be given five minutes. This is only two.

Hon. Delegate Bonaya Godana: Three.

Hon. Delegate Tabitha Seiii: Three minutes and you have finished.

Hon. Delegate Sammy Amunga Aswani: Okay. I will honour the Chair anyway provided that I will come back again. Thank you.

Hon. Tabitha Seiii: Now, we will now move to the next row and we will take somebody who has not spoken at all. Honourable Musikari Kombo.

Hon. Delegate Musikari Nazi Kombo: Thank you, Madam Chair. My name is Musikari Kombo, Delegate number 072. It is a pity that such an important subject is being given very little time. I think there are a lot of issues that one wants to raise in this matter and five minutes is too little. But I will plunge straight away by first pointing out areas that I think need to be tightened up.

In the recommendation that the Prime Minister shall prepare estimates and present them to Parliament, it seems that the office of the Minister for Finance is being abolished according to this document. So, I thought that area should be tightened up and that the Minister for Finance still remains an important person in our system.

Madam Chairperson, the other area that I thought should be tightened up is the question of the national economic and social council being non-partisan. These are people who are going to advise the President and they must be people who agree with his views and

ideas. So, I think the President should be given sufficient room to pick on people that he believes in.

Madam Chairperson, the question of the Controller of budget and the relationship with that office of the budget office in Parliament, I think that relationship needs to be tightened up. I do not think it is very clear. So, those are the areas that I would like to tighten up.

Now, there are areas that I would like to make recommendations on. For example the retirement age, I do agree that fifty-five is too young. In fact that is when a man is getting a lot of experience and we will loose out. So, I recommend that, that age goes to sixty-five.

Madam Chairperson, on the question of the currency, I agree that we should have not every face on our notes. But I think a case could be made for our founding President, Mzee Jomo Kenyatta's face to remain on our notes as the only face that we can have, the way the Americans have had their experiences with Washington. So, that is what I am recommending Madam Chairperson.

Then, I would also like to say that borrowing – Parliament having to approve – is extremely important and at this juncture, I think we should make demands that all the debts and loans that are outstanding at the moment which were misused by individuals should be forgiven, Madam Chairperson. I think that is important for us.

Savings; money does not necessarily just have to come from borrowings and loans from overseas. I think there are a lot of Kenyans who live overseas and we should find ways of encouraging them to return their money into this country by having ways and means of maintaining savings accounts that will help them to earn more interests. You know, when you go to the Philippines, all the expatriates are given role treatment when they return because they have opportunities to bring in monies.

Madam Chairperson - I am rushing through – there are other areas like interest rates, I think we should be very, very clear. We tried to come up with the Donde Bill in the last Parliament and there were a lot of outcries. But we should come out very clearly that banks will not impose on Kenyans interest rates that are absolutely punitive that make it impossible to do business. I think these are areas that we must worry about, Madam Chair.

Lastly because your bell has rang, corrupt organizations like Power & Lighting that the Padre there was talking about-- I think we should make sure that when people are corrupt they do not increase their tariffs at will to cover for their weaknesses. Thank you, Madam Chair.

Hon. Delegate Tabitha Seiii: Thank you. I will move to the next row to somebody who has not spoken at all. Number 401 and while he is speaking, the next row, you put up your cards so that I can check for the people who have not spoken. Go right ahead.

Hon. Delegate Daniel Obare Awora: Thank you, Madam Chairperson. My number is 401, Obare Awora from Siaya, a Delegate.

Madam Chairperson, I just want to tackle a very small point here regarding retirement and planning. Madam Chairperson, before the person retires, he or she must contribute effectively to the nation or to the company when she or he is still working. That person must be regarded as a contributor even if by the time he retires, the person is called a senior citizen, he is still a citizen because he or she has done something when he or she was a respected citizen. I therefore suggest, Madam Chair, that the Constitution should look into this effectively. When a person gets pension, that pension remains stagnant even when he or she remains alive for the next thirty years. Suppose he was getting two hundred shillings as his or her pension, he or she will get two hundred shillings for all those years even if that two hundred shillings is enough to carry him from his or her home to the station where he or she is supposed to receive the pension. I therefore suggest, Madam Chairperson, that this should be entrenched into the Constitution so that

when the Review Commission is looking into upgrading or rating the salaries of the public servants, the retirees should also be considered effectively.

Secondly, these retirees also with that little money and the cost of living and inflation ever rising should also be given some consideration so that when he goes and buys medicine, because as he is getting older and becoming more senior, he is also getting weaker health-wise. There should be some provision so that when such a person goes to a pharmacy and wants to buy medicine, he should buy that medicine less than the man who is still employed or is still in gainful employment.

This person should be given some percentage because he is called a senior citizen and he has contributed earlier. The past always makes the present and why should we not consider the person who has contributed in the past to make the present. So, this person when he goes to buy medicine should be given some consideration or a certain percentage.

Madam Chairperson, that is my contribution. *(Clapping by the Honourable Delegates).*

Hon. Delegate Tabitha Seiii: Thank you very much.

I will again call upon somebody who has not spoken at all, number 350. Honourable Delegate number 350.

Hon. Delegate Saul Kipkoech Kiptingos: Thank you very much. My name is Saul Kiptingos, a Delegate number 350 from Koibatek. I am going to make three contributions.

One is on the currency, that we shall make currency which is able to have a future, which is acceptable. There was a time when we used to even be told that our currency had the impression of a snake and all that; so that we have currency which is respectable or maybe have the first President on the face of the currency and we maintain that.

Two is the revenue, that we have 80% of the revenue being taken to the devolved power, that is to the unit that we are going to devolve, we take 80% and 20% we retain at the central Government. Now, there is the revenue which the devolved power will be collecting from the people, in other words the tax which will be collected from the devolved power should be paid to the central Government so that it will be taken back in equitable amounts to all the Districts or the devolved units.

Now, the issue of the Auditor General: I think the Auditor General here, because they have been producing reports for all the years and no action is being taken, let the Auditor General have power equivalent to the one we shall call a senior Deputy Prosecutor so that at the end of the year he is able to prosecute a case of tax evasion or stealing. Thank you very much. That is my contribution.

Hon Delegate Tabitha Seii: Thank You, Honourable Delegate. Now we will again call upon a person who has not spoken at all. 310. I am happy you are being concise.

Hon. Delegate James Waweru Mwangi: Thank you, Madam Chair. My names are Waweru James Mwangi. A delegate from Muranga District.

First and foremost, Madam chair, I want to congratulate the Commission for bringing up very good principles but my problem would be how do we make the Government respect these very important principles? For example, Madam Chair, we have like equitable sharing of natural resources etcetera etcetera as the principles. But Madam Chair, we know for real that at times we had the sharing of resources in this country pegged to political affiliations and at one time we had the sharing of resources pegged to imaginary policies like, “*Siasa mbaya, Maisha mbaya*” etcetera. So my problem Madam Chair would be, how do we make the Government respect these very important principles?

My second observation, Madam Chair, is on the financial estimates, at 246 (b). In addition to the fact that have a problem with whether it is the Prime Minister or the

Minister for Finance, I also have a problem with the two months where it says “in any case not later than two months”. My problem is, are we shifting our traditional month from June to around April? The other issue is on the same Article 246 (b) sub 5: “that the estimates prepared under Clause 4 of this article shall be laid before Parliament by the Prime Minister, and this article, without revision--“. My problem would be, what about if the departments made proposals which are not workable, which may be over-stretching the national resources?

My next comment is on both the Controller of budget and Auditor General, where it says that they are supposed to report to Parliament after every financial year; I would propose that we say when, after every financial year and not later than possibly 90 days or six months or so, because in my view it does not serve any practical purpose to have reports made to Parliament nine years, ten years after the financial year has ended, and we have heard or seen in most cases reports being laid in Parliament five or more years after the events have already taken place.

Hon Delegate Delegate Tabith Seii: Thank you, Honourable Delegate.

Hon. Delegate James Waweru Mwangi: Thank you very much.

Hon. Delegate Tabith Seii: We will move to the next row and again get a lady who has not spoken, 375.

Hon. Delegate Jane Nandako Kauka: Thank you, Madam Chair. My names are Jane Nandako Kuka from Lugari District. I am going to talk about the Public Finance. These tax payers are all Kenyans who should be enjoying their own wealth, but because of the poor management, we find that a few people who are staying in town are the only people who are enjoying the benefits. But the local people who are just staying in their homes, working on their small farms, struggling very much to earn their living, take nothing of this money.

Now I propose that the Constitution should ensure that every Kenyan enjoys this money, whether rich or poor, whether young or old.

Now as we continue staying like that I support also the Affirmative Action by saying that through Affirmative Action every person in Kenya will be involved in this fund and we shall see that all parts of Kenya will have enough chance to enjoy their wealth. I also propose that the person who happens to misuse public funds must be accused and also made to pay the money, because we people who stay in local areas suffer too much because the prices of all the essential commodities are high and nobody can manage to buy them. So we want the Constitution to say that the prices should be low, so that every old man and woman can also enjoy the wealth of our country. Thank you very much.

Hon delegate Delegate Tabith Seii: Thank you, Honourable Delegate, and again we want to call upon somebody who has not spoken at all. 229.

Hon. Delegate Farouk Said Mdahoma: Madam Chairperson, I will be very brief. My name is Farouk Said, Delegate 229 from Mombasa.

Generally I would like to thank the Commission for the good job that is done in most of the Chapters. I am also thanking you for giving me this opportunity to talk in this important Conference. As I said, I will be very brief because I am aware that we hope to do most of the detail work in our Technical Committees.

Article 243 (a) reads, “ensure efficient generation of revenue”. I think it is important for the revenue to be used efficiently and effectively for the benefit of our people and our nation. Article 243 (c), “ensure equitable sharing of national and local resources throughout the Republic”. In other words the resources should be equitably shared by all the districts and all the people of Kenya. The resources should not only be concentrated in certain areas and other areas are neglected, whereby those areas do not move very fast. Then on the same 243 (c) taking into account the provision for marginalized areas, I think

the marginalized areas here are important, they should be given enough resources so that they move forward and they catch up with other areas in the Republic of Kenya.

Article 259 (2), “the Commissions shall consist of a Chairperson, a Deputy Chairperson and seven other members appointed by the President with the approval of the National Council”. I think Public Service Commission is a very important department or section, which employs the civil servants. I think it is fair if these seven members are picked from provinces, at least every province should be represented, whereby people from all provinces will be able to get employment and promotion and so on and so forth.

257, Economic and Social Council, I think this is a right direction and it is a good idea as we shall devolve power; maybe this Economic and Social Council should be established at the district or provincial level and then their reports and whatever they recommend can come forward to the national level. I propose in terms of resources and revenue where available, I think that area should get sixty percent of their resource and forty percent to go to central government to take care of other items towards the government. I have to respect your bell, but the retirement plan I think is very important for those who work, when they retire, when we call them old citizens, they should not be left so that they are living desperate lives. They should be able to enjoy life until they leave the world. I have much to talk about but I respect your, Chair, I will sit down. Thank you.

Hon delegate Delegate Tabith Seii: Thank you very much Honourable Delegate. The next person ion this row now, I will give to 154, Honourable Delegate.

Hon. Delegate Henry Onyancha Obwocha: Thank you the Chair. I just want to make a few comments and in making these comments - my name is Henry Obwocha, West Mugirango, Delegates number 154. Now, Chair, we Delegates want to ask ourselves in this chapter of Public Finance, what mischief are we correcting, what has been happening that has not gone well with Kenyans? I believe Commissioner Lenaola did make these comments. One, our taxation, the people we have been entrusted with taxation have not done it well. Kenyans are heavily taxed. So what we are saying as Delegates, is that in

the Constitution we should say that taxation should not be more than 30 percent of the GDP of this country, because anything more than that will be too much for the Kenyans.

Two, we are saying that our money that is being collected and put in the Consolidated Funds should never be taken out without authority and that in the Constitution we should make it very, very clear, that nobody should take the money out of the Consolidated Fund and this issue of creating too many funds around is a way of taking people's money or misusing funds this country. All money collected, all revenue collected should be deposited in the Consolidated Fund.

Three, the Chair, it is not very clear in the Draft as to who is going to authorize this money from the Consolidated Fund, because currently it is the Controller and the Auditor General and he is proposing the control of budget. This controller of budget must be a Constitutional office, so that he or she protects our money. We have seen before money taken out of the Consolidated Fund with impunity used for purposes that don't benefit this county.

Madam Chair, I want to say that the other very important issue is about audit. Now how can an efficient audit be part of Government? Currently the Controller and Auditor General is under, although with tenure of office, is in the Ministry of Finance. So what we are saying is that in the new Constitution, there should be a National Audit Office completely independence of government, so that they can audit government. We do not want Controller and Auditor General to be part of government.

Finally I want to say that one issue that has not gone well since independence is the distribution of the resources of this country. We have a development budget but the money never reaches our constituencies, never reaches the people of Kenya. So what we are saying is, in this new dispensation, one third or five percent of the budget should be set a side for development of each constituency. Say twenty million shillings as it is being proposed should go to the constituency to develop the constituency, so that money can reach the constituency.

Finally the Chair I want to congratulate the Commission for the work they have done because this Chapter is fairly technical chapter. Thank you very much.

Hon delegate Delegate Tabith Seii: Thank you very much, Honourable Delegate. We are going to have a fifteen minute break to take some tea and immediately after fifteen minutes we shall start whether you are here or not. Please hurry up and we shall start from this side so make sure that you are here ready to contribute. (*Laughing*)

After Tea

Session started at 11.50 a.m.

Hon. Delegate Tabitha Seii: I would appreciate if you have a background of finance or you have something that nobody else has said, which you would like to say, please raise your number so that I can check if you have spoken, or if you have spoken and you have something substantial to give.

Hon. Delegate Bonaya Godana: Order, order Delegates, please take up your seats we start the session. Please take up your seats. Order, Delegates, please take up your seats quickly.

Hon. Delegate Tabitha Seii: We shall start our first round, please if you are coming in just settle down into your seats so that you do not interrupt those who want to start contributing immediately.

Hon. Delegate Bonaya Godana: Is there quorum?

Hon. Delegate Tabitha Seii: I think we have a quorum now. Let us start from this side and we start with 514.

Hon. Delegate Milcah Ajuoga: Thank you very much, Honourable Chair. My name is Milcah Ajuoga, Delegate Number 514. I will first of all start by appreciating very much the work that the Commissioners did and I have one point to bring out. My concern is about the revenue especially on the area of our public communications. I am very much concerned about the transport system. As you are very much aware, the country generates a lot of revenue from this and the rights of the commuters are not really taken care of. If we go by what we read in the papers yesterday, you realise that the commuters have no rights to choose the means to use. Also the way the revenue is being managed, it is not regulated by the Government, so we have cases where touts are fighting. I strongly propose that our Constitution should address the issue of our public communications as a major source of revenue. Thank you very much.

Hon. Delegate Tabitha Seii: Thank you. Thank you very much, we will take 415 now.

Hon. Delegate John Dache Pesa: Thank you very much, Madam Chairperson. My number is 415, Dache John Pesa, a Delegate from Migori. First, Madam Chairperson, I would like to echo the sentiments of most of the speakers, that the Commissioners have done their best to ensure that the recommendations of Kenyans are actually taken into consideration in writing this particular Chapter. We know very well that the Kenyans have suffered for quite a long time in terms of revenue collection and even in terms of expenditure. We have had revenue collected which has not actually been reaching the Government kitty because some people midway have been diverting the money collected and putting it into their own personal use. This has really hurt this nation, and that is why we have rampant poverty in this country.

On the part of expenditure, it is the common knowledge in Kenya, that many officers that are charged with the responsibility of purchases, have not been actually doing the buying. They have been faking the receipts and accounting for items which have not actually reached their destinations. I now therefore want to appeal to the group that is actually going to sit down, to work on this particular Chapter, to look at ways and means of

ensuring that the Kenyan money collected should reach the right targets that is intended. Similarly, whatever items the Kenyans buy, should actually reach their destination so that they benefit the people that they are intended to benefit.

Number two, Madam Chairperson, maybe I would not have wished to have this title Public Finance and Revenue, I think the Committee should look at that. It is sufficient to say that we are talking about the Public Finance in this Chapter. The other details I think will be talked about later when we come to the groups.

Madam Chairperson, we also know that the interest rates by our banking institutions have really benefited the rich and hurt the many Kenyans who are poor. You find that a rice farmer, for example in Mwea, when he goes to get loans from the Bank, he is charged an interest rate of between say 25% -35%. When this man invests that money in the bank, in order to get profit out of it, this man will hardly get 10% interest on his money. I think this is an area that Kenyans must also address in this Constitution.

Currency; Madam Chairperson, we should be proud of this country and I don't see why we should not have the currency that all Kenyans will accept and reflect what we are proud of. One speaker had suggested that we have for example, the first Head of State in our currency, or another symbol. But I think the continuous change in our currencies now and again should not be encouraged in this Constitution Madam Chairlady.

Hon. Delegate Tabitha Seii: I will give the next 523, the lady seating down here. 523.

Hon. Delegate Ruth Wanjiku Kamau: Thank you Chairlady. My names are Ruth Wanjiku Kamau, representing the Religious Organizations. One of the issues that the Preamble points out is justice. For a long time the Church has suffered injustices in terms of taxation.

First, the people who come to Church are taxed and as if this is not enough the church as a building is taxed too. This same, same people are required to pay their tithes in their

respective churches, which is a 10th of their income. I recommend that the church should not be taxed in any way. Neither should projects began by the church be taxed, because such projects are a great service to the community and they contribute much in poverty eradication. In cases of war, as evidenced in the 1992 tribal clashes and the aftermath of El-Nino which left many without homes, the people affected come to our churches for refuge and there is no way we could have turned them away. Therefore, I recommend that the churches ought not be taxed in any way. Thank you.

Hon. Delegate Tabitha Seii: Thank you very much, those were very short and nice words of your contribution. I will give to Honourable Delegate 292 and be concise to the point. When your finish you seat down and somebody else will have a chance.

Hon. Delegate Francis Nzuki Kaloki: Thank you Madam Chair. My names are Francis Kaloki, District Delegate number 292 from Kitui. I want to contribute on the share of the national and local resources in the Republic. Many areas have been marginalized and as a result they have lagged behind in development. Take for example the lack of hospitals and roads in many areas, I know there are many in most areas. I want to give an example of the Kibwezi–Kitui–Thika road which was surveyed about 30 years ago and from that time, it has not been tarmacked. Rumour has it that this road was tarmacked about 25 years ago, but there are no records to prove that it was actually tarmacked.

I also want to give an example of a hospital in my area, Motomo, where an institution for nursing training was built about 30 years ago, equipped and every part of the training installed but nothing has started and now the equipment is just rotting there. Actually it is true that in areas where there is no Government Minister, people have been suffering. This saying by Government, “Some projects will be undertaken when money is available” has just been a song and of course now people are just tired of it. Madam Chair, I think it would be good if the results were shared equitably if this Constitution comes to force. Thank you, Madam.

Hon. Delegate Tanitha Seii: Thank you very much. I will take 342 now on the other side.

Hon. Delegate Irene Magut: Thank you very much, Madam Chair. My names again are Irene Magut, Delegate 342 from Nandi. I want to contribute something on Public Finance and to begin with, I really want to wonder especially about the salaries paid to the Public Servants. We have a problem about taxes not being collected properly and it is because most of the people who are collecting these taxes are not paid well, so they take most of it and use it on their own needs. So I think that the Constitution should provide an affordable minimum of salaries paid to the public servants enough for their families to live on. For example, at the present for any family really to survive, it will need at least Kshs. 20,000/= per month; for a man with a wife and children at least a life that is a little comfortable, he will need at least that. After all, when we talk of things we buy from the shops, the lower cadre of the people do not buy it at less, they buy it at the same price. So, I mean the Constitution should really look after the people of Kenya.

Secondly, about taxation, sometimes people are taxed so much that even when they have some arrears, sometimes half of it is taken in the form of taxes and you wonder how it is going to benefit you when you are being taxed so heavily and those services do not come back to us.

Also I would like to talk about women. Most times, women are taxed more than men. Take for example a family set up where there is family relief, it is normally given to the men and women do not get it. So, as much as we say we are asking for women at least to be relieved, we feel if we are looking for equality as the Constitution is saying, we should apply it through even in Public Finance.

Also, I would like to ask about the interest charged by banks. Sometimes it is so difficult; how is the country or the Constitution protecting its people? On the currency, I feel that having the image of the founding father of the nation is fine, but I feel things touching on parties should be removed from the currency. Like now we have a 'jogoo' in

the currency, why should we have it when we are a multi-party nation? Thank you very much.

Hon. Delegate Tabitha Seii: Thank you, Honourable Delegate. I will take 093 who has not spoken at all and if you are concise, then we will move faster. Please do not repeat.

Hon. Delegate Stephen Manoti: Thank you, Madam Chair, for giving me this opportunity or so to contribute to this very important sector. My names are Stephen Manoti, Member of Parliament for Bobasi. Madam Chair, as I have said, this is a very important sector because it involves money and money as you know is a tool which moves all circles.

Government revenue: Madam Chair, previously we know some areas with some influential people have received more than others. As it is now, Madam Chair, I will suggest this, since the yearly government revenue is over and above 200 billion shillings, each constituency should be allocated at least 10% of the total collection by the Government. By so doing, Madam Chair, those areas which were left behind will be developed. Those areas which have never seen any essential projects in their areas will see them, Madam Chair.

Madam Chair, we go to central banking, that is the Central Bank. The work of the Central Bank is to supervise the commercial banks. The supervisory team of the Central Bank should be increased to check the commercial banks. You find most of the commercial banks collapsing because supervision is not enough. When the commercial banks collapse, the customers suffer a great deal, Madam Chair. If we have to increase this supervisory team in the Central Bank, it should extend to Co-operative Societies, Saccos. In most Co-operative Societies, Madam Chair, the cooperators lose their money because of lack of knowledge and members have no say. If the supervisory team of the Central Bank can be extended to the Co-operative Sacco Savings Accounts, the cooperators will not lose their money. Thank you, Madam Chair.

Hon. Delegate Tabitha Seii: Thank you very much. I will move on to 511.

Hon. Delegate Ruth Kibiti: Thank you very much, Madam Chair. My name is Ruth Kibiti, Delegate number 511. I have one key point to raise on number 257, Economic and Social Council. Madam Chair, I am worried about collapsing the Economic and Social Councils together. Madam Chair, when you look through the various functions of this Economic and Social Council, it leaves out the social component and usually when economists sit together, they forget the social and welfare concerns of the communities. Madam Chair, I want to propose that the economic and social council, which is a reflection of what happens in the UN system, should be broken down so that we have an economic council standing on its own and at least this description, except for (c), will fit what it is doing and then we will get a new council in place which I want to refer to as the Social and Welfare Council and each District, Madam Chair, should have the Social and Welfare Council looking after the concerns of the communities. Madam Chair, as you realize, communities experience a lot of difficulties, especially women, so we need a Council which will constantly review the social livelihoods of these communities, so that they can update the Members of Parliament and the Head of State on the suffering and joint sufferings of the people so that they can be addressed. Madam Chair, if we leave it at the level of the Economic and Social Council, then they will concentrate on the economic issues, forgetting the key issues, which are social and welfare in nature.

Madam Chair, I also want to propose that when we put in place these two councils, a third of the representatives of the members of each of the councils should be women because they will be addressing issues which affect women and children more than any other person. Thank you very much, Madam Chair.

Hon. Delegate Tabitha Seii: Thank you very much.

An Hon. Delegate: Point of order.

Hon. Delegate Tabitha Seii: Can you hold? What is your point of order?

Hon. Delegate David Marcos Rakamba: The Honourable Chairperson, my names are David Marcos Rakamba, Delegate 433. I am surprised, Chairperson, that you indicated that you are giving the Delegates 5 minutes, but since you started I have been taking notes. The previous member took only 3 minutes; he started at 12.05 and finished at 12.08. The second one has actually taken 4 and the rest have been taking-- There is a move that you are hurrying this Conference so fast and we are talking about very important issues here. Chair, kindly give them enough time so that they can give us the-- This is consensus building and from here it will enable us when we come back to the Plenary to have a light load of issues. Thank you, Chair.

Hon. Delegate Tabitha Seii: Thank you, I have noted your point but each person is getting 3 minutes-- (*Uproar from the Honourable Delegates*). Just a moment, when people finish their points, they sit down. If they have more points to say, I give them a little bit more time. Now we shall move on to 436.

Some Hon. Delegates: Point of order.

Hon. Delegate Tabitha Seii: 436.

Hon. Delegate Francis Ng'ang'a: Madam Chair, mine is 436, Francis Ng'ang'a from Kenya National Union of Teachers. On behalf of workers and teachers in particular, I want to say this is a very crucial subject you are deliberating on because collection of revenue and expenditure is the key thing. Before I come to my point, as we were told the day before yesterday, we are converting ourselves into a working country. Food production is the key; if we produce more food, even workers will buy food from shops at a lesser cost and life will become easier. Madam Chair, I want to say the past corruption and misuse of public funds have made conditions for workers, teachers in particular, in this country, unbearable and that is why we had to go for many years without getting a penny because there was nothing to pay workers. We want to appeal

that this Constitution addresses itself to the management of finances so that people can get properly, the worth of their sweat.

On Central Bank, Madam Chair, I want to concur with other Honourable Members that time has come for us as a multi-party nation, to avoid being so egoistic. We cannot afford to go by every government that comes in place; let us have the currency maybe bearing the image of the first Head of State and the smaller notes bearing maybe signs of our coffee, tea, or maize or anything, so that we have consistency as a country.

Madam Chair, on constituencies, I agree, let us fund them so that money can reach the ordinary mwananchi at that level, because that goodwill consideration by the people who are well positioned in the government has ruined the welfare of citizens of this country in the past and we want to control the future. That is why we are writing this Constitution here. Madam Chair, let us take care of our resources and the resources will be beneficial to our future children. I wanted to say, like my Maasai friend said, Maasais were coerced to sign an agreement in the colonial days; let it be known also, teachers of this country were coerced to sign a useless document and I want to thank this Government for agreeing to look at the issues of teachers since they are one of the largest working force in this country. With that, we will join you to make a better Constitution.

Hon. Delegate Tabitha Seii: Thank you very much. I will take now 545.

Hon. Delegate Simon Shitemi: Madam Chair, let me take this opportunity to thank you very much for giving me the floor. I have had a problem, a dilemma in picking where to begin because –

Hon. Delegate Tabitha Seii: Say your name, please.

Hon. Delegate Simon Shitemi: Okay. The name is Dr. Simon Shitemi, representing Religious Organisations.

Hon. Delegate Tabitha Seii: Thank you.

Hon. Delegate Simon Shitemi: I am sorry. I was going to say that I have had the dilemma of where to start since the Commission opened such a wide trench of ideas. I have had that dilemma, the dilemma of a mosquito in a nudist camp. (*Laughter by Honourable Delegates*).

Let me start on this idea of external borrowing. This is one area for which I salute Professor Ghai and his team for having insisted that Parliament must approve any document that guarantees any borrowing from anywhere. Friends, I will share with you an experience as a former accounting officer, when I was invited to a small caucus of Parliament and asked to sign a document for borrowing money from abroad. Of course I refused, I could not sign that document without my Minister's written authority to do so, and when I refused, two days afterwards, (*laughter by Honourable Delegates*) I was bundled out of my office. At that time I was Director of the Department of External Resources, they call it External Debts. So, thank you, thank you Professor Ghai and your team for making quite sure Parliament is the one that will authorize such arrangement and not a small little caucus somewhere.

Secondly, even with the authority in the hands of Parliament, we must also make sure we block them from being people who promote the idea of 'me first'. We have known how very quickly their salaries have been increased and other privileges when there are people in the rural areas starving.

Madam Chair, allow me to move on to the question of pension. I am a retired man and most of us who are on pension had it revised 10 years ago, and it has remained static. If you are unfortunate and you want a new medical facility, you cannot have it because you have already reached the cut-off point. I think this is one area which the Commission must have time to look into. We have had a very serious drain on our finances, sometimes you write things and you just leave them at that. I think in terms of really, really taking care of the lives of wananchi, the life of everybody, you want to establish

the kind of a watchdog that looks right across the whole expenditure of public funds to identify where there is haemorrhage.

Finally, Madam Chair, there is one very bothering thing. Many of our leaders, both past and present, have huge sums of money in banks abroad. We must find a way in which we can return that money. *(Clapping by Honourable Delegates)* Last year, I was watching CBS, one of the most important TV networks in the US, on the topic of Wealth of Heads of Governments. I was astonished at the amount that some Heads of State have. I looked at it and almost got paralyzed. So *(laughter from Honourable Delegates)* we must find a way in which we can block this. Thank you very much, Madam Chair.

Hon. Delegate Tabitha Seii: Thank you. Now I will go to this side; number 361. *(Protests by the honourable Delegates).*

Hon. Delegate William Ole Yiaile: Hold on, Delegates.

Hon. Delegate Tabitha Seii: Go right ahead.

Hon. Delegate William Ole Yiaile: Thank you very much for protecting me, Madam Chair. Political economy is the right line. That which is not economically viable Madam Chair is bankruptcy, it is actually an uneconomically viable nation that cannot stand on its own, and I think because of poverty Madam Chair, our sovereignty has been compromised. I think let us stand firm and I support the President's Speech of Madaraka Day, that we must work and work hard to put much more effort so that we do not beg.

I do support the speaker who has just spoken because it is shameful that we go to beg for foreign money when a lot of it has been hidden in foreign accounts. I think this is shameful. I would like to use this opportunity to plead with those people who have stolen our money, to tell them to kindly return it peacefully.

I support that 80% of whatever is collected should remain at the devolved authorities and 20% give to Central Government, as recommended in the Draft Constitution.

I also want to speak about the human resource in African countries. We in Kenya, as a Third World country have been losing all our best brains because we have not been able to create conditions that will sustain them and we have been performing below international standards. Therefore, our best boys and girls have been going abroad to look for greener pastures. I think time has come when we must upgrade our performance especially in the management of resources so that we attract back our own people to come and work at home.

On culture, Madam Chair, culture should be tapped, but a lot of care must be taken so that we do not reduce our people, on pretext of culture, into trade objects. That is very dangerous, it should actually be underlined. Like other countries such as Philippines, wanatuma watoto wao huko kwenda kuandikwa ma-yaya. Sasa imekuwa an International problem. Kwa hivo, education, affirmative action and positive segregation of the development for those that have been marginalized should be put in place that is an affirmative action.

Taxation, this is really the most touching place. In Narok which is known for wheat growing, AFC has ruined us. There is taxation upon taxation, you find other interests even after you have paid your loan, there is hindrance fee that is growing on interest, this is really very bad. Na hapa ndiyo kwanza tunaomba ya kwamba even the moral law yenye inasimamia taxation, after you have re-paid the loan with the interest that has been approved, you notice some more interest growing. I think that it is a technical theft and something like that should be stopped. Last year, as I said, a very hot one, there was this AFC Loan that has been written off, but before it was written off, some farms in Narok were sold. I think that is a very discriminiative application of justice, na kwanza mimi naomba mashamba hayo ambayo yalikuwa yanauzwa yarudishiwe wenyewe. Constituency haiwezi kuwa ndiyo pesa zinaenda. You go to the District, it is a contradiction of what we are saying.

Hon. Delegate Tabitha Seii: Honourable Delegate, Thank you very much.

Hon. Delegate William Ole Yiaile: Hata sikumaliza hizo dakika. (*Laughter from the honourable Delegates*).

Hon. Delegate Tabitha Seii: A lady, number 221, an MP.

An Honourable Delegate. Point of order, Madam Chair.

Hon. Delegate Tabitha Seii: I will give it to you. Just go on 221. I will give it to you immediately she finishes.

Hon. Delegate Ruth Oniang'o: Thank you, Madam Chair. I am Ruth Oniang'o, Number 221, a KANU nominated Member of Parliament. I would like to make a contribution to this, Madam Chair, just a few points. First, I would like to see us emphasize more on local wealth creation, instead of always rushing to go and borrow from outside and borrowing especially when we have no intention of repaying. The future generation in fact is the one to re-pay for things they were not associated with.

Secondly, Madam Chair, I would like to propose an establishment of a welfare fund so that no Kenyan is ever found in abject Poverty to take care of an employment and situations of disaster. This is something that is happening in other countries. Thirdly Madam Chair, on taxation, I do not think Kenyans mind being taxed so long as they can see where their money is going. A country such as Norway is heavily taxed and yet you find people hardly spending any money on health care or any of these other services which are supposed to be provided by the Government. I think Kenyans need to see where their taxes are actually going and that should be made public.

I also want to talk about an issue that Commissioner Lenaola talked about. Intellectual resource, Madam Chair, to have a system where we can identify, reward and support our

intellectual resource because that is the only way we can retain it here and actually be able to capitalize on it. Finally, Madam Chair, we should be able to reward personal integrity and financial discipline. We have resources collected in this country and Kenyans cannot really see where the resources are going. We have misused resources and funds and we should be able to reward instead of having punitive measure, we have a reward system so that people are encouraged to use resources more efficiently. Thank you, Madam Chair.

Hon. Delegate Tabitha Seii: Thank you. What is your point of order 282?

Hon. Delegate Lydia Wanjiru Kimani: Thank you, Madam Chair. I am asking, is it in order for the Chair to be recognizing some Delegates to contribute on every Chapter that we are discussing when some of us have sat here and have only contributed in one Chapter? (*Clapping by the Delegates*). Yet you are telling us that you are picking Delegates who have not spoken. Thank you, Madam Chair, it is very unfair.

Hon. Delegate Tabitha Seii: Thank you very much. I have a list here (*Shouting from the honourable Delegates*) which shows me who has spoken and who has not spoken. I will make sure that next time I do not ignore it. Now, I will go this way, 007. Go right ahead.

Hon. Delegate Jimmy Angwenyi: Thank you, Madam Chair for giving me a chance to contribute in this important matter for our nation. Madam Chair, I am really lucky today because I have been here for four weeks and simply because I contributed the first Chapter, I could not contribute. However, Madam Chair, be it as it may, I would like to comment on the following Articles.

Article 246: There should be an Independent Authority to authorize withdrawal of funds from the Consolidated funds. 246 (D), the Estimates and the Budget should be presented to Parliament not by the Prime Minister but by the Minister for Finance. 248, Parliament should have the power to revive, amend, reduce and increase items of the budget so that they can

reflect the interest of the Kenyans. As it is at present, Members of Parliament cannot change the views in the Budget as has been presented to Parliament in which case they are actually blackmailed into accepting a Budget which has been poorly drawn. Therefore, we should give our Parliament the power to make those changes to reflect the interests of the Kenyans.

Article 249, the borrowing by Government in this country is what has destroyed our economy; it is what has increased the interest rates which are raised by our financial institutions to borrowers because the Government has been allowed to borrow even beyond the budget of a particular year. We should tie in the borrowing level of Government to the same level of the Budget or the GDP and they should be approved by Parliament.

Article 253, the Controller of Budget - and this is a very good position which has been created by the Commission - should be able to work with Parliamentary Budget office and the Finance Committee of the House. This is because that is how they can pick some of the needs of our people before the Budget is drawn.

Article 254, The Auditor General should be reporting to Parliament and not Treasury. In most countries which have been able to prudently manage their resources, the Auditor General reports to the people's representative, which is Parliament; we should make that clear in this Constitution. The Council of economic and social affairs should be created and given more specific functions. I have heard a colleague of mine saying that we should follow the example of Norway where the per capita income is 43 thousand dollars per year. The per capita income of Kenya is 322 dollars per year, we cannot borrow from Norway!

Finally, the Government should be made to share out the resources of the country equitably throughout the country so that every section of this country benefits from taxation of Kenyans. Thank you.

Hon. Delegate Tabitha Seii: Thank you, Honourable Delegate. Now, Fatuma 267.

Hon. Delegate Fatuma Boru Jaldesa: Thank you, Madam Chair. My names are Fatuma Boru Delegate from Isiolo District. Madam Chair, I would like to refer to Article 243 (C), which clearly states “equitable sharing of national resources and local resources, taking into account a special provision for marginalized areas----“. Madam Chair, it is very clear from the main report that the community has clearly stated that 80% of the local resources should remain in the area. However it was not clear how much of the national resources will be allocated to the area. It is my opinion that the same percentage should be allocated to the areas which have been left behind during this 40 years of independence.

Madam Chair, when we have put a lot of mechanisms in place to access and try to show prosperity to all our collections, this has to be extended to the rural areas. This is because as we are trying to put this in place, we are trying to alleviate poverty. As I speak here, 80 to 82% of the people living in Isiolo are living below poverty level and 65% of them are living in the rural areas. This is because the resources allocated to the districts never reach people at the grass roots. Therefore as we are here, we have to put a mechanism in place to show that all the allocations made to the districts or to the areas reach people down to the grass roots to alleviate poverty and to make sure that people are put in the same level with those already developed. Thank you Chair.

Hon. Delegate Tabitha Seii: Thank you. Number 278.

Hon. Delegate Peter Kang’ethe Nkoroi: Thank you, Madam Chair. My names are Peter Kang’ethe Nkoroi, number 278 from Meru South.

Hon. Delegate Nancy Iyadi: Point of order!! (*protests from the honourable Delegates*).

Hon. Delegate Tabitha Seii: What is your point of order? Just one moment.

Hon. Delegate Nancy Iyadi: My point of order, I wore red specifically to be noticed! Madam Chair! You mean you cannot notice 330! I have not talked, check your records.

Hon. Delegate Tabitha Seii: Thank you I have just noticed you. *(To Hon. Delegate Peter Kang'ethe Nkoroi)* Go ahead.

Hon. Delegate Peter Kang'ethe Nkoroi: Thank you, Madam Chair. This Chapter which is on Public Finance is a very important Chapter because it deals with money, which has been a problem in Kenya. One, we have read in the newspapers about the misuse of public funds, we have read about one Ministry given 7 billions to control mosquitoes or malaria in this country and this money was misused or taken away. Therefore, it is a very important Chapter and at least everybody should be given a chance to contribute.

Another area that I want to contribute on is the imposition of tax, or taxation in this country, especially in relation to Public Servants and farmers. These people have been taxed heavily in a manner that they cannot be able to even sustain themselves. Now, this taxation I propose that it should be controlled by the Constitution so that even when Parliament is registering it should not have freedom to excessive taxation. Therefore, let only the basic salaries be taxed. Allowances and other small fringe benefits should not be taxed.

On gender sensitivity to taxation, married people should be exempted from taxation to higher percentages. This will enable the families to be able to cater for their children and maintain their families in better living conditions. On this taxation, which is PAYE, VAT, when it is collected at least 75% should be paid to the devolved Government to enable improvements of the services and other facilities in the country.

Revenue collection is another problem. Income Tax people rent out premises and these surpluses the business, leaving some people in desperate poverty. Therefore, there should be laws or provisions to control this revenue collection either internally relating to very

small business people and others. This is because we have all witnessed that sometimes these income tax collections are used to oppress or punish some opponents especially in politics. Now, it should be people friendly this income tax collection. Thank you, Chair lady.

Hon. Tabitha Seii: Thank you, number 081.

Hon. Delegate Simeon Lesirma Saimanga: Thank you, Madam Chair. My name is Simeon Lesirma, Delegate from Samburu District. I would like to make two recommendations. one as you know, --.

Hon. Delegate Tabitha Seii: Go ahead. 081.

The end of tape 10.

Tp11 3/6/03

Hon. Delegate Tabitha Seii: Thank you 081

Hon. Delegate Simeon Simanga Lesirma: Thank you Madam Chair. My name is Simeon Lesirma, a Delegate from Samburu District. I would like to make two recommendations: one, as you know in every organization, commercial or social organization, there must be Internal Auditors to check on the financial implementation of programmes, system development and so on. I would like to comment that we provide within the Constitution the position of Internal Auditors, who report to the Accounting Officers in every Ministry. I also want to recommend that we should have Director of Audit who then will deal with the professional affairs of these Internal Auditors, their training, their terms of service and also collate reports from various Ministries for the same Internal Auditors for the purpose of determining the financial wealth of the Government.

Director of Internal Audit should report either to the Minister of Finance or to the Prime Minister on the state of affairs. This is important because the Controller and Auditor General only make report to Parliament once a year. And there could be cases where corrupt accounting officers may not want to be checked on a regular basis.

Number two, I would like to recommend that the Controller and Auditor General should be given powers to delegate some of the auditing functions to the private sector. Madam Chair, it is not humanly possible for Controller and Auditor General to audit the twenty thousand Government schools in the country, that is not practicable. So I recommend that he should have delegated powers given to the Private Sector services to assist in that job.

I will also want to recommend that the Controller and Auditor General should have a retirement age. Thank you.

Hon. Delegate: Tabitha Seii: Thank you very much, now I will take 529

Hon. Delegate Rev. Patrick Maina Msungu: Thank you, Madam Chair, my names are Rev. Patrick Maina Msungu, representing Religious Organizations . I would like to make a comment on Article 247, 249, 254 and finally 257.

I would like to state that on 257 to start with, I think it will be unfair for us to entrench in the Constitution about perpetual existence of poverty, or poor persons on sub Article 3 (c). We cannot have people who are given the mandate just to make sure that poor people keep being poor and being looked after as poor people. Instead, the authority should provide remedies to reduce if not eradicate poverty. In general, this Article 257 is highlighting, repeatedly, functions of the economic and social council. It is my considered opinion that we should reduce these enumerated functions, because it appears like the economic social council will be assuming the role currently conducted by Investment Promotion Council, Export Promotion Council, the National Industrial

Council, the Habitat, IMU, and the like. We need to be a bit specific with the roles and the functions we intend this economic council to address.

On Article 254, Sub- Article 4, I think Parliament cannot take appropriate action, where it is deemed, for disciplinary purposes, in the case of abuse of funds. I think Parliament should only be able to recommend the necessary action to be undertaken, either by the Attorney General's Office or Director of Public Prosecution. But we cannot expect the Parliament to legislate and also prosecute at the same time. There should be some kind of limitations. Under 254 Sub Article 5, we cannot say that Auditor General shall not be under the control of anybody or any authority, then by whose authority is he appointed? By whose authority is he going to run his function? There must be and he must be subjected to the provisions of the Constitution itself. He cannot be above everything else. And it needs to be highlighted.

Two, these Article or this Chapter does not address the devolved powers, resource allocation, you cannot devolve power and you do not allocate commensurating resources to run those devolved Governments. And this Constitution under this Chapter must come out very clearly in allocating funds to those authorities and stipulating how those funds shall be regulated, shall be administered and shall be accounted for, so that we can understand, we cannot leave that role may be to an explicit Act.

Finally, we have not addressed these other monies which keep coming on and off, called harambee monies. When Nation Newspaper or the Standard or any other multi national company gives out charitably to a communal concern, how do we address them when it comes to their taxation? There should be an incentive through taxation to waive certain tax percentage to companies that plough back their earned profit to community welfare activities. Thank you, Madam Chair.

Hon. Delegate Tabitha Seii: Thank you, thank you 091.

Hon. Delegate: Point of information.

Hon. Delegate Tabitha Seii: What is your information?

Hon. Delegate: Thank you, Chairlady, you will notice that if I have to talk, it is only on Point of Order, I have never spoken on any substantive motion in this House--

Hon. Delegate Tabitha Seii: Okay, I am informed.

Hon. Delegate: -- and now the Point of Order is this: you say you are starting here. I said I have already raised this matter to the Steering Committee, that this Hall be marked in Section 1, Section 2, Section 3, Section 4, Section 5 all round, so when the Chair is saying I am starting at Section 1, we also see it is 1, but now alianzia hapa asubuhi, kutoka hapa--

Hon. Delegate Tabitha Seii: Thank you, your point is taken. 091.

Hon. Delegate Dr. Hezron Manduku: Thank you Madam Chair,

Hon. Delegate: Now, another thing is this; on the subject we are talking about now, we are wandering around, we are not speaking on one point. Mr.Obwocha here said a very important point that this House should know what are we trying to correct--

Hon. Delegate Tabitha Seii: Now, thank you very much. You are taking more time--

Hon. Delegate: No, I am making a statement--

Hon. Delegate Tabitha Seii: You are now contributing--

Hon. Delegate: I am now contributing-- (noise and murmuring by the Hon. Delegates)

Hon. Delegate Bonaya Godana: Order, order Delegates.

Hon. Delegate: Now allow me to contribute--

Hon. Delegate Bonaya Godana: No Delegate please, please sit down. Please sit down.

Hon. Delegate: I have not finished, let me finish my point and then you will know whether I am right or wrong.

Hon. Delegate Tabitha Seii: Now I think you are flouting the rules of this House. Please sit down, we are all Hon. Delegates--

Hon. Delegate: We are supposed to be correcting a mistake which is misuse of taxes. Now, you have not suggested anything on that. I am suggesting that since we are working on--

Hon. Delegate Tabitha Seii: Now if you continuously flout the rules of this assembly--

Hon. Delagate: Alright, okay but I insist you will see you have not corrected anything, *(noise and laughter by the Hon. Delegates)*

Hon. Delegate Tabitha Seii: 091,

Hon. Delegate Dr. Hezron Manduku: Thank you, Madam Chair. I am Delegate No.091, my name is Dr. Hezron Manduku, Member of Parliament from Nyaribari Masaba, in Kisii. Thank you for giving me the opportunity to contribute to this very important Chapter. It is a very important Chapter because this is where every one of us is looking when we are talking of developing our Constituencies or our devolved Government; we are talking about money and this is a very important Chapter. Madam Chair, I just want to commend what the Commission has done, a very good job but a few things must be looked into because they need more details and I am now looking at

creating of employment in this country. We are very poor in this country because most of our people are loitering around without jobs and I commend the President for saying two days ago that Kenya is not a place for loiterers and thieves have no place here and people therefore should be given employment. And I commend a few Kenyan individuals who have put up some small scale and medium scale factories although they are having a problem of taxation. Taxation in this country is a little too high and I am sure the reason why taxation is high is because the Government discovered there were too many loop holes, there were too many people stealing the money that is collected in the Treasury and so they imposed very many taxes so that these taxes can be able to filter in, to cover up for what has been stolen.

Now that the Government has put stringent measures on corruption and stealing, we would like them to look at reduction of taxes. I am looking at one tax which I think is not very conducive to the small manufacturers, Customs duty taxation of 10%. Small manufacturers find it very difficult. If this tax could go to bigger, bigger Industries, the small industries would be encouraged because this can create employment for a lot of our people who are loitering around.

We look at the taxation of 18% VAT as being a little high and then the income tax is high. I think stringent measures should be made so that all the money that is collected should go to the Treasury. Previously, you know they could come and do auditing in your firm, then they tell you that you are liable to pay about fifteen million shillings. But you know we can talk English and I go and talk to my boss, following day the officers come and say, the boss has said we can help you. So they say you can pay 7, give us 3, we give the boss one and you pay that. That means that they have stolen all the money that is supposed to go to Treasury. These measures should be stopped. This country is a rich country if these measures are taken we are going to do very well.

Another one I will look at is the interest rates, interest rates are high and they should be regulated by Parliament. Thank you, Madam Chair.

Hon. Delegate David Okiya Nakalo: My names are Nakalo David Okiyo, Delegate number 377, Lugari District. My problem in this country is with multi-national companies that have invested in Kenya. We say yes, it is okay they have invested, but they make lots and lots of profits but at the end of the day you find that all these companies repatriate these profits back to their countries. I want to know, how many Kenyans have invested outside there and what have you put in place to make sure that they can also repatriate those profits back to this country so that they can also create employment? This has brought a great deal of financial drain in our country.

There is also a problem, when it comes to streaming of supplies and procurement in our Government. You find that our Government ministries raise Local Purchase Orders in shillings in prices and therefore most of the time they are buying their goods from retailers yet we have producers who can quote prices that are reasonable.

We also have problems with our banking industry. I think they are very much patronizing and they need a little bit of supervision. We have got to re-visit the Donde Bill where interest rates and base rates should be pegged on the inflation, because you find out that there is no Kenyan who can claim actually to have a savings account. They said very clearly that per capita income is 18,000/= per Kenyan, but you find that most of the commercial banks have put minimum savings to 50,000/=; how many Kenyans are in a position to save 50,000/= in their bank accounts?

There is another problem in our agriculture; we know very well agriculture is the backbone of this economy because of food, employment, foreign exchange, disposable income, but there is very high taxation rate especially on agricultural input, especially fertilizer, machinery and maybe people in colleges who are learning agricultural skills. We need to reduce or subsidize the agricultural industry in order to improve in our cottage industries, or else we may not have any of these industries in place.

There is a commercial aspect; we do not have mechanisms in places where foreigners have been restricted in running some of the businesses in this country. You find out that

someone comes from either India or any other country to open a retail shop in Kenya. They are opening retail shops in small markets. We should put something in place at least to restrict a foreigner from starting distribution, wholesaling, and retailing. If not he should start an industry to employ Kenyans. Thank you very much

Hon. Delegate Tabitha Seiii: Thank you very much. 480.

Hon. Delegate John Njiraini: My name is John Njiraini. I am a Certified Public Accountant or CPA by profession and I am part of the Professionals' delegation. I would like to comment specifically on the question of taxation because it looks like - listening to the sentences that are coming up - we have a problem with taxation and they have feelings that our money is not getting used in the right way, and they have feelings that we are being taxed too much. I think it is time that we started looking at how we can deal with these issues.

I would like to start from the point whereby we should appreciate that taxes are actually an appropriation of private wealth by the State. In other words the State takes your money and goes to do something with it. I think if we understand that the State is taking our money and going to use it, then we need to be very careful about the standards that we set for the State in terms of agreeing to part with that money.

Therefore, looking at this Chapter I have seen that there are quite good provisions in terms of what is going to be done in terms of dealing with the public expenditure, auditing of public funds and so on, but we have ignored completely the question of regulating the power of the State to tax, and I think we need to find mechanism of regulating the power of state to tax.

Article 246 allows the State to tax us but it does not say under what conditions the State would be allowed to continue taxing us, and I think that is an issue that is very important. One of the things we must insist on is that taxation can only be on the basis that we get services, and if those services are not delivered then there should be redress, and that

redress cannot wait for five years it must be immediate. So I am going to be proposing that this Conference considers empowering citizens either individually or collectively to sue the State in situations where services are not delivered (*Clapping by the Honourable Delegates*) and this proposal for example you notice that it is applied in relation to Local Authorities. We have situations where people have successfully sued Local Authorities, the institution that I represent has actually sued Local Authorities across the country in relation to the levying of single business permit. I think we need to extend this power to the State itself, so that for example manufacturers in the industrial area who find that they can not operate because the government has failed to repair the roads in that area should be able to go to court and bar the State from collecting money so that they can use that money to repair those roads. (*Clapping by the Honourable Delegates*)

The other thing that I would like this Conference to very seriously consider, is the question of promoting thrift in Government. Now, if you go out there, I was thinking the other day that if somebody was parachuted into the Bomas of Kenya from out there, they would think this is a very rich country; they would go out there they will see the latest limousines, very sleek cars, beautiful Mercedes Benz and Four Wheel Drives and 90% of these cars have been bought using public funds. Now, if that same person were then to be told that Kenya is among the 20 poorest countries in the world where the average citizen lives on less than a dollar a day, they would not believe it. So, how come that this is happening? And I think that is where the point that was made by Honourable Obwocha is very, very important and this is the question of setting standards in terms of how much of our wealth we agree the State to take from us.

In technical terms we talk about the tax to GDP ratio and I believe that over time generation should be able to say how much of their wealth they are willing to place at the disposal of the State, for the State to use. Because that compels the State then to cut its cloth to its own size. So, for example if today we say that we can only accept to pay 20% of our wealth, then too bad for the government; you have got to cut your cloth according to that size. Stop buying the Mercedes Benzes, stop buying Presidential jets, stop building useless airports and roads that lead nowhere and use the money that we can afford to pay.

Today, at present, the State is taking about 27% - this keeps on varying-- 27% of our wealth is taken by the State for use in terms of public expenditure; what happens if tomorrow the State decides that they are going to increase it to 40%, what can you do? I am going to be proposing therefore that we empower Parliament-- Hopefully Parliament will be responsible on a continuing basis across generations to be able to set a ceiling on the maximum tax to GDP ratio that will prevail.

Then if you allow me, Madam Chair, just to comment on two points. One is the question of revenue collection, it is a very important thing. I have realized that apart from the fact that we have talked about revenue collection here we have not provided for mechanisms through which that revenue is going to be collected, we have not provided for empowering legislation, we have not provided for independence of this process and we know that revenue collection has been used very badly in the past where people have been prevailed upon not to collect money from people who are favoured.

Finally, a very important point here has to do with Parliament. Somebody has mentioned about Parliament and we know what Parliament has done: they have betrayed us. I think Article 246 needs to be amended to provide that the budget relating to Parliament shall not be discussed by Parliament, because, although we have a Salaries and Remunerations Commission that is supposed to be dealing with the question of salaries they can still vote in other budgets to have gems and things and whatever. So the budget specifically relating to Parliament should not be debated by Parliament and even the audit reports should not be submitted to Parliament, they should be discussed by another body. Thank you. (*Clapping by the Delegates*).

Hon. Delegate Tabitha Seiii: Thank you. It is one o'clock or immediately after. When we come back, I will start with 183. Let us go and enjoy our lunch and be back here at 2.30 p.m. promptly. Thank you and enjoy your lunch.

After Lunch

Hon. Delegate Tabitha Seii: You settle down and sit down right away so that we can start. If you are coming to sit down, sit down please. We already have a quorum here. Please also veer off the doorway, the corridors. Please sit down, we want to start. I wonder if 183 is here. Is 183 here? (*Murmurs and noise from Honourable Delegates*). Okay 183.

Hon. Delegate John Sambu: Thank you, Madam Chair. My name is John K. Sambu, Delegate number 183. I want to make a few comments on section 256 – Accounts and Audits. Madam Chair, Honourable Delegates, the use of resources in Kenya in the past has not been maybe proper because the outcome of the audits, in my experience, has been of no consequence. The Controller and Auditor-General has always done his work properly, they have reported, they have made recommendations and the reports have been tabled in Parliament which audits the public funds from departments and ministries and also from parastatals. But Madam Chair, the problem has been the implementation of the Public Accounts Committee and the Public Investment Committee.

I am not defending Parliament, but I have been in one of those Committees for several years, Public Investment Committee and my experience is that we went through reports of the auditor with the particular parastatal and recommendations have been made that, the Attorney-General should take action on the particular officer or individual and nothing has happened. Similar thing applies to the Public Accounts Committee, the Controller and Auditor-General audits; the reports are made available to Parliament but follow-up action is missing and I can see that if we are going to go by what is in 256, section 123 and section 4 - I cannot read all of them-- but I can see in section 3 the end paragraph there says, “any person holding a political office who directs or concurs in the use of public funds contrary to existing instructions shall be accountable for any loss arising from that use and shall be required to make good the laws, even if he or she has ceased to hold that office”.

Madam Chair, this is what Parliament has always done through the Public Accounts Committee and the Public Investment Committee. In fact many a member of those Committees have made enemies with senior public officers or senior parastatals officers for grilling them. These things are on record but no action has been taken. Kenyans may think that Parliament has not been doing its audit work properly, it has been doing. But the previous regimes have never taken any action on any reports or recommendations made by the Public Accounts Committee or Public Investments Committee.

So Madam Chair, my recommendation is to amend these sections to include a national auditor as the previous speaker, I think it was Honourable Obwocha, astuted to. That National Audit Council should act on the reports of the Public Accounts Committee and the Public Investments Committee and it should have powers to prosecute and should have powers to confiscate any property because section 256, sub-section 4 says, "-- Parliament shall monitor to make good the law even if he or she has ceased that office--". If we do not have a Constitutional body empowered to prosecute and even recover, then it will be going contrary to the sections of the Constitution which protect individual property. So, Madam Chair, I believe that this Honourable Delegate, when it comes to Committee stage should amend section 256 to include that there should be a National Audit Council with powers to prosecute and surcharge and recover all funds or properties which were billed by the two Committees, to have been taken illegally.

Madam Chair, I also feel that the public should know what goes on in parastatals and in departments and even in the devolved councils. Unfortunately for now you find a lot of local councils and local authorities are not audited. There is an auditor as per the Constitution who is supposed to audit the local authorities but if you look at many councils they have not been audited for many, many years. So I believe, Madam Chair, that this National Audit Council should also have powers to audit the local authorities. Madam Chair, as I said the Public should know and I believe that the Auditor and Controller General and Assistant Auditor Corporations, if at all they are there, should publish their recommendations of any audit they do on a ministry or a department or a

parastatal. They should be published even in the local newspapers, so that the people know what the recommendations of the auditors are.

In ending Madam Chair, I want to say that we should also put in the time limit; many audit reports are brought to Parliament way, way after the events happen. So there should be a time limit put to the Constitution. Thank you Madam Chair.

Hon. Delegate Tabitha Seii: Thank you very much. I will now give a chance to 614.

Hon. Delegate Daniel Mokaya Rasugu: Point of Procedure, Madam Chair.

Hon. Delegate Tabitha Seii: What is the point of procedure here, is it a point of order?

Hon. Delegate Daniel Mokaya Rasugu: It is both, Madam Chair.

Hon. Delegate Bonaya Godana: What is the difference?

Hon. Delegate Tabitha Seii: I think we are procedural.

Hon. Delegate Daniel Mokaya Rasugu: I am standing on regulation 32 and allow me to so order, Madam Chair, that since the Plenary is almost a quarter full that a bell be rang, so as to avoid repetition.

Hon. Delegate Tabitha Seii: Thank you very much, the bell has been rang and there is quorum.

Hon. Delegate Daniel Mokaya Rasugu: There is no quorum Madam Chair.

Noise by Honourable Delegates.

Hon. Delegate Tabitha Seii: 614, continue.

Hon. Delegate Dalmas Otieno: Madam Chair, thank you for giving me this opportunity to make my contribution on this important topic. First, I would like to say that we are really making a new Constitution in Kenya because the systems as it were before, we were not able to control the Executive in resource allocation. I am disappointed a little, other than the creativity that separated the controller of budget from the Auditor-General, most of the recommendations that are in the report itself do not appear to have found their way adequately into the draft Bill.

Madam Chair, there is need to build the capacity and ability of Parliament to control the Executive in resource allocation. The recommendations were adequate that there should be a Parliamentary Budget office fully equipped, with both the personnel and the consultants that they would be able to hire to advise the members of the Budget and Planning Committees on what a budget is.

Madam Chair, it will be the day that Parliament would one day send the Minister of Finance packing, back to Treasury to go and prepare a proper budget. Until Parliament has that capability, because resource allocation will continue to be at the whims if possible. Madam Chair, I have looked at the security of tenure of Auditor-General and the Controller of Budget and the Chairman and members of other Commissions set in the Constitution. We have retained the old Tribunal system, yet we have known that the system has not been effective in protecting security of tenure. The very person that appoints the Tribunal is the person to whom the report is submitted and there is no provision for appeal, so you are sure you are sacked from the very day that the Tribunal is constituted to enquire into your conduct.

Isn't it possible to give room for an appeal so that Parliamentary officers like controller of budget, like Auditor-General even after a Tribunal has been constituted to enquire into their conduct Parliament or some Committee of Parliament acts as a jury to be able to determine whether the judgement of that Tribunal is adequate or not.

In the past, Madam Chair, there have been more problems of omission than commission, in terms of being able to follow the law on the Constitution. Up to now, what do you do to an Executive that has ignored provision in the Constitution? I think it is creative in this Constitution that there is a Constitution Commission which is being set up, but as drafted now it would appear that it is only a temporary Commission that after all the legislation required under the new Constitution, that Constitution Commission will cease to have any other function. I would suggest that that Constitution Commission should be permanent or the function transferred to the Integrity Commission so that any violation of the Constitution by way of omission or just threats, blatant and abuse of the Constitution, is reported to Parliament through the Constitution Commission or the Integrity Commission.

Madam Chair, on this particular section vote on account which used to be by Parliamentary resolution, unfortunately now you are allowing the Controller of budget to give Government authority to spend for four months; four months is a quarter of one third of the whole year. I think we should retain the previous requirement for Parliamentary resolution by vote on account, instead of giving that power to the Controller of budget.

It has been demonstrated in the past Madam Chair, that pro-action measure as Honourable Sambu has been saying, has not been effective against the Executive. So, if in Section 244 (3), you are allowing tax waiver and then a report to Parliament after the action, you can be sure Parliament will not be effective. We should retain the provision that all waivers must be approved by Parliament and that nobody will be allowed to waive any taxes or any levies and only to report to Parliament act of the action. What will Parliament do? There is no way in the Constitution that has been drafted that we can act against the Executive except by moving a vote of no confidence in the House and it is a serious matter to do so. Yet the little abuses of the law and the Constitution is what had driven this country to where we have reached, until now we need to change this. It is not clear after you separated the Controller of Budget and the Auditor-General, as to whether

appropriations in aid will equally also be approved by the Controller of Budget. Otherwise, there seems to be a loophole there that Ministries and departments, will continue to spend all the appropriation in aid funds without the approval of the Controller of Budget, but of course the Auditor comes later and as Honourable Sambu says, what the Auditor says is too late for Parliament to take action on a powerful Executive.

Madam Chair, on the devolved authorities, we need a definite commitment that is 40 or 50 per cent, to be given to the devolved authorities so that revenue is raised on that basis. Finally please, the Parliamentary Budget Committee with all the powers as recommended, should be cited and reflected somewhere in this Constitution. Thank you very much.

Hon. Delegate Tabitha Seii: Thank you. Please, I want to appeal to you once more, that if somebody has mentioned a point you have, cut down your points so that we reduce the number and have more people speaking. Now, I will call upon the lady in red; *(laughter by honourable Delegates)* the Honourable Delegate.

Hon. Delegate Nancy Iyadi: Thank you very much. My name is Nancy Iyadi from Trans Nzoia District, Delegate number 330, the lady in red.

First of all I will talk about Section 241, on Succession. Madam Chair, when you look at this Section, you find that most Kenyans are living under poverty line and I propose that tax on consumer goods should be controlled because when you look at consumer goods, you will find people who are living below poverty line are buying the same goods as those people living above that line, the prices are the same. So you will realize that these people are really suffering. On that same point, I would also propose that ladies or women be considered. You know, due to nature, women suffer so much buying sanitary towels if I may propose. Women suffer so much because they pay so much for that and I propose that those goods should be tax free. *(Clapping by Honourable Delegates)*.

When it comes to public transport - somebody had already talked about transportation - I would also want Madam Chair, that we have what we call international roads. We have a road from Kitale to Swam, that Swam goes up to Uganda. That road is not tarmacked and it is an international road. I am sure some funds were allocated for that road and it is known that is tarmacked, and I am assuring you that that road is not tarmacked. Therefore, there should be a provision to deal with people who are corrupt in this Constitution.

When you look at Public Service Commission, I would propose that retirees should be taken care of. You realize that when they go chasing for their pension at the Treasury, they die even before receiving that pension. So, they should be taken care of.

Farmers: I would also want to talk about taxation that deals with farmers, something to do with farmers. You realize that farmers put a lot of money in the inputs; they are overtaxed by buying things like inputs, if I may put it in short,. I would propose again that the prices of these goods for farmers be in a better position because agriculture is the backbone of this country. I feel we should have a tax controller. Thank you.

Hon. Delegate Tabitha Seii: Thank you very much. We will take 274. Please say your name and go straight to the point. Where is the microphone? Yeah.

Hon. Delegate Victor Gituma: Thank you very much, Madam Chair. My name is Victor Gituma from Meru Central District. I have only one point concerning Article 234 and it concerns the allocation of resources. Madam Chair, there is something which makes me wonder and that is the Capital City of Nairobi. Everything, Madam Chair, from 1902 is concentrated in Nairobi. The Executive is in Nairobi, Judiciary is in Nairobi, Parliament is in Nairobi, all the industries are in Nairobi and Nairobi, Madam Chair, is not the central part of this country. As you know Madam Chair, Nairobi was a swamp and 7% of GDP comes from Nairobi. My proposal is that the resources of this country must be devolved. One way of doing it, Madam Chair, is what other countries have done. The political capital of a country should be in a central part of that particular

country. So, I am proposing what was done in Nigeria, Tanzania, South Africa and so many countries. We must have a political capital of this country in a central place of Kenya, so that the Chairman Bonaya Godana, does not have to travel that 1,000 kilometres to come to the central part of the capital and somebody from Lokichoggio doesn't have to come all the way to Nairobi, so also from Lamu, from Nyanza, from Mandera. That Madam Chair, is my proposal and it will devolve the resources of this country. Thank you.

Hon. Delegate Tabitha Seii: Thank you very much. Now, I will go to - is that 37?

Hon. Delegate Otieno Kajwang': Thank you very much. Thank you, Madam Chair. I was at home yesterday, they were asking me what I am doing here because they have not heard of me talking. Let me talk, my name is Honourable Otieno Kajwang', MP for Mbita and I want to speak on one subject only and the subject is on the Auditor-General. The position of the Auditor-General as is prescribed in this Draft, does not say exactly whether he will have a term of office, whether he will retire at a certain age and I think that was an omission. In all the other Constitutional offices, we have seen terms, may be it will be corrected but the major point I wanted to raise is that in other countries, they no longer talk of the Auditor-General alone, the Auditor-General as a Commission, the other countries call them court of Audit.

I saw that it becomes a real constitutional office with staffing made by the Commission itself because the problem the Auditor-General has had in this country is that he is given staff from the Central Government and when he gets very good staff, they are not promoted because they audit Government. First of all it is a very hostile office to the Executive and sometimes they take them away if they are very good auditors and so the Auditor-General's office has suffered because of staffing and capacity so that the first thing we should do is to create a Commission of audit and give it a few Commissioners so that they create their own staff, from the central to all districts. Because somebody has already said that our County Councils are not audited, our Towns are not audited, we

lose a lot of money because of that. If they were given a fully fledged Audit Commission, they will do a better job.

Secondly, Auditor Generals are not supposed to look at monies which have been stolen so many years afterwards. In most countries now, the Auditor-General does not only audit how the money was used but also audit whether Government got value for its money so that when the Government pays for a contract on a road, the Auditor-General as Engineers will look at the roads when it is being constructed to see whether the tenderer is carrying out the job as provided for in the design and in the specifications so that he will check whether the goods which have been supplied are the goods which were ordered. He will check whether the goods which are supplied are supplied at a price which was agreed.

We have paid for goods which have not been delivered for 14 years now. We have paid for goods which were supposed to be delivered by some people, somebody called Somaia's Company which has not been delivered up now and money was paid and there is very little the Auditor-General can do other than to report that it was not supplied. They will check on tenderers variations. People now tender at 50% of the cost of construction so that they get in like the proverbial-- no, no it must be the camel and after they get in, and they are lowest tenderers, they stay there they have met a very big stone underneath the road and it has to be varied and NSSF for example, the tender was 300 and something million, it ended up being billions of shillings and of course, those are ways which money is fleeced out of the Government. I suggest that we create a serious Auditor-General Commissioner, I want to call it Commission of Audit and they will not only check whether the money has been used, but whether it has been used properly. Thank you very much.

Hon. Delegate Tabitha Seii: Thank you. 340?

Hon. Delegate David K. Kuto: Thank you, Madam Chair. My name is David Kuto, Delegate number 340, representing Keiyo District. I want to contribute to this Chapter on Public Finance and I feel, and the people I represent feel, that there is a lot of taxing and we should see that we tax our people appropriately because the duty of the Government is to protect its people and the people to pay taxes. We should pay reasonable taxes which should be collected effectively. We know that the taxes that we pay do not reach the right place that is required. I think, maybe even half of it ends in the pockets of few individuals. So, there should be a system that the taxes that we pay are collected efficiently and used correctly.

Madam Chair, if we do not care on how we use the taxes, the poor will remain poor and the rich will get richer because we pay for the same items in the shops regardless of whether rich or poor, at the same price. So, we should regulate and see that we do not overtax our people. So long as the taxes are collected and used properly, I think it is not reasonable that we tax our people highly.

Secondly, Madam Chair, on the revenue that is collected from the Central Government, I propose that the Central Government retains 60% and 40% goes to the development authorities. This is because, Madam Chair, at the moment, the Local Authorities are really suffering because the Government is supposed to be paying contribution in lieu of rates but the Local Authorities are really asking for arrears of about five years. They have not paid, we blame the Councillors and the employees of Local Authorities whereas it is the Government that is supposed to remit those funds to the Local Authorities.

Hon. Delegate Tabitha Seii: Thank you.

Hon. Delegate David K. Kuto: So, Madam Chair, it is my proposal that we devolve power and give this money to the Local Authorities and our people will get the services. Thank you.

Hon. Delegate Tabitha Seii: Thank you very much. Delegate 092.

Hon. Delegate Christine Mango: Thank you, Madam Chair. I am Delegate 092, Honourable Member of Parliament. My names are Christine Mango. I would like to add my voice to what has been said previously that taxation here is excessive. Therefore, we should try to work out taxation which can make people afford a decent life. We pay so much direct and indirect tax that at the end even a working person can live below the poverty line. So, the Constitution should look into our taxation and come up with reasonable taxation rates for Kenyans to afford reasonable living.

We also need to reduce taxation on our farming sector. Like in the sugar industry, everything is so taxed that the farmer ends up with zero payment and a lot of their money has gone to taxation. Also, vehicles like pick-ups that serve on the farms should be bought tax-free to enable people to move around and do their farming. In some countries they have done it.

As regards pension, I would urge the Ministry of Finance to have pension offices in all districts. Retired people have to travel all the way to Nairobi to look for their pension and they are already out of income, they have nowhere to stay when they come to Nairobi and it creates a lot of hardship for them. Therefore, they should be able to access their pension from near home.

Secondly, there is a pension regulation that says that when I die, my husband can continue drawing my pension up to when he dies and that as a woman when he dies, I can only draw pension for five years. This regulation is not gender-friendly, it discriminates against women. Therefore, it should be amended to be gender-friendly. The reason given is that the man is guarding my grave. Similarly, I would also guard his grave and therefore it should be changed so that it is friendly to all who are bereaved. Thank you very much, Madam Chair.

Hon. Delegate Tabitha Seii: Thank you. Delegate 125, please.

Hon. Delegate David Musila: Thank you, Madam Chair. My name is David Musila, Delegate number 125, Member for Mwingi South. Madam Chair, the prosperity of any nation depends on how well it manages its resources and that is why I think this Chapter is very important. I would like to confine my contribution to the area of section 254, the Auditor General. As some of my colleagues have already said, Madam Chair, I think it is very important that we ensure that we put the office of the Auditor General properly in place so that it is in charge of auditing government resources.

Section 110 (3) of the current Constitution, Madam Chair, states that Parliament will pass a law to regulate the retirement age of the Controller and Auditor General. Unfortunately, there has been no law to regulate the tenure of the holder of the office. The current Controller and the Auditor General, for example, served under Kenyatta, 24 years under Moi and he is still the Controller and Auditor General to date. While I do not wish to question his integrity or capability, I think it is common sense, Madam Chair, that you cannot have a single person auditing an institution that long. Therefore, my first recommendation, Madam Chair, is that this Constitution must be very clear as to how long the Auditor General should serve. In many countries, particularly those prospering countries, the Auditor General in Government serves for only a period of 10 years with security of tenure, of course, but the term is limited to 10 years. That is why I think we will be doing a great deal of service to our country if we ensure that our Constitution limits the term of service for the Controller and Auditor General to 10 years.

Also, in the Constitution, it is said that he is accountable to the Minister of Finance in a way. There is no way Madam Chair, a person will audit the person who is his boss. Therefore, we must make it very clear that the Controller and Auditor General is answerable to the institution of Parliament. That way, we are able to check and ensure that the Government spends its money properly. The frequency, Madam Chair, is also very important. As Honourable Sambu said earlier, at the moment Parliament is considering audit reports which are six years old. In most cases, Madam Chair, whenever we want to follow a person who misappropriated public funds in an audit report which is five years old, we are often told that this person retired many years ago or this person is

dead and therefore the matter seems to end there. We would like a situation to be created where Government funds are audited annually without exception so that six months after the end of each financial year, the accounts of that particular year are brought to Parliament and are discussed accordingly.

I would also briefly recommend as follows: that the Controller and the Auditor General should serve a maximum of ten years; be appointed by the President subject to confirmation by Parliament; and that he be answerable to Parliament; and that these audit reports be done six months after the closure of the financial year. Thank you, Madam Chair.

Hon. Delegate Tabitha Seii: Thank you. Delegate 538.

Hon. Delegate Samuel Arap Ng'eny: Thank you, Madam Chair. My number is 538, Samuel Arap Ng'eny from the Religious Organizations. I have one main thing I want to dwell on in my speech.

Madam Chair, I will want the Commissioners who presented the Report to respond on this whole idea of a Parliamentary Budget Office. I seem to have a problem with that office and I want to be educated. I think in the same way, other Delegates here will be educated. What I see in the Report's recommendations is that there should be a Parliamentary Budget Office and it was alluded that the vice chairman of the Parliamentary Service Commission has drafted a bill for the same. That being the case, I am asking that people here be educated when they get to the Committees. This particular Committee on finance should come up with a proper relationship between that office and the various departments of Government because what I know, Madam Chair, is that when a Minister of whatever Ministry comes to Parliament and says that he/she wants to render particular services and gives the estimate of the amount of money they require to render those services, they are asking Parliament.

The danger of this proposal is that you are making Parliament an executive body that will be preparing the Budget with all the consultants and other people and then again they will

be asked to give that money. I am finding some difficulty in that and that is why I am asking that we have a proper distinction of what is being proposed here and what is supposed to happen. So, to that extent, I am glad that the Commissioners did not include it in the Draft Bill until it is made very clear what is going to happen. This is because the functions assigned to Parliament in our earlier Chapter are that they pass legislation and they act as an audit body for Government expenditure. When that is the case, they do it through the Public Accounts Committee and the Public Investments Committee which has already been dealt with.

I also want to support and say that the main failure has been in the Executive because those recommendations are complete in themselves, but when no action is taken, then Parliament cannot act as the Executive.

Finally, I just want to touch on Article 249 (4) on the issue of the Prime Minister. I want to tell the Commissioners that the fact that the Prime Minister is coming here as a Finance Minister, is due to the fact of appointing ministers who are not Members of Parliament and that is why the Prime Minister is being quoted in every section and chapter as answering questions in Parliament. A Prime Minister who comes out of this Draft will die before they complete their term of office because everything has been given to them. Thank you very much.

Hon. Delegate Tabitha Seii: Thank you. Delegate number 202.

Hon. Delegate Martin Wambora: Thank you, Madam Chairperson, for giving me this opportunity. Madam Chair, my name is Martin Nyaga Wambora, Member of Parliament for Renyenjes Constituency, an ex-Deputy Director of Budget, I have been Chief Finance Officer, Deputy Secretary Finance, so I want to contribute to this very dear topic which I have been involved in for a long time.

Let us start with Article 243: The principles and objects of public finance and revenue management. I think the Commissioners got it right. The principles and objects are

correct. All we need to do is implement them as required; equitability, equitable sharing of national wealth, not local resources, but national resources is quite in order. Adequate consultation, that one is important and that is how the Parliamentary Budgetary Committee comes in. Because Parliament has not been consulted in the past by the Executive, we are now going to have an office in Parliament which will make it possible for Parliament to be consulted and advised adequately.

The other principle is on transparency and accountability in budgeting. I want to say this, for ten years in the budgetary process, I have noticed unlike other countries, unlike America where the sensitive security institutions like DOD, like the National Security Intelligence Service are normally called before the Congress, Congressional Committees, in Kenya it doesn't happen. This is one of the weakest points in the budgetary system in Kenya where there is no accountability, no transparency when it comes to DOD and NSIS. Oh, yes. Then the other principle is to ensure efficient and effective generation of revenue. Here we have another weakness, a very strong one in terms of implementation. We can only achieve effective generation of revenue if our expenditure is prioritized correctly. We do not do that. And I will give you an example: this financial year the Department of Defense got 14.5 billion shillings, the Ministry of Agriculture got 5.5 billion shillings. The Ministry of Agriculture is an economic ministry, DOD is a social department and it is not right, Madam Chair; until we get it right, we shall continue messing in our budgetary system.

Article 244, tax waiving by treasury. This has led to loss of a colossal amount of money. I agree with Mr. Dalmas Otieno when he said Parliamentary approval must come first, not after to save Wananchi from loss of their money.

Article 245(2)(b), that one, we are exempting departments to spend the money which they raised, let us call 'AA' Appropriation in Aid, let us do the same for the Local Councils, for the Local Government so that they can also be left with the money they raised.

The most important of my points is on Article 246, Financial Year Estimate. I concur with the former Deputy Speaker, this work cannot be done by a Prime Minister. There is no country in the world where this work of the budget is done by a Prime Minister, it must continue being done by the Minister for Finance, it is at the level. Thank you Madam Chair.

Hon. Delegate Tabitha Seii: Thank you 590?

Hon. Delegate Patrick Onyango: Thank you, Madam Chair, my names are Patrick Onyango, a Delegate representing a political entity. This is the second time I am standing to speak but I only have one thing to say in the Values and Principles as well as the Objects. It appears to me - and having read the main Report - that one Principle and Value which has been left out is that which is geared towards ensuring the evolution and growth of indigenous finance capital as opposed to the frame which we have now which tends to suggest that Kenya has its financial capital base in external sources that is International Finance Capital. I am saying this because as a nation we cannot industrialize if we don't have our own home grown indigenous finance capital. We have evidence and we have demonstrated through hard work as citizens that we can survive without the support of the Bretton Woods institutions for eleven years. When the new Government came into power, it demonstrated that indeed it can generate revenue locally without depending on International Finance Capital. That is my contribution Madam Chair, thank you.

Hon. Delegate Tabitha Seii: Thank you. 220?

Hon. Delegate Julia Ojiambo: Thank you very much, Madam Chair, for giving me an opportunity to speak on this important subject. Madam Chair, I want to commend the Commissioners and say it is high time Kenya evolved a culture of excellency. This indeed, Madam Chair, starts with this Chapter because the management of national finance and revenue is a very important aspect of our national development without which, as a nation, we can move nowhere. I want therefore to comment on the position

of the Chief offices in this whole Chapter that is the Governor, the Auditor General and the Controller of Finance. And I want to say that these, Madam Chair, must be the best professional men and women that this country can afford in terms of professional preparation in areas of finance and revenue collection. I want, therefore, to add my support to the fact that these people should hold their offices for ten years so that they have opportunity to utilize their skills in the management of a very important aspect of our resources.

I want also to quickly look at Article 251 and say that therefore the Central Bank Governor must regulate and control the local banks. Madam Chair, the local banks have been a disgrace to the development of this country, and particularly, some of them, the finance houses as well because they have imposed interest rates and penalties to our people, and completely crippled the effort of the local people to even source funds from them for development. And as you know Madam Chair, for a long time, even entrepreneurs in this country have not been able to move. I want to mention here Madam Chair that the area of Jua Kali has been left out completely. I hope somewhere in this document the contribution of Jua Kali to our resource development can be brought into the Constitution and this sector be protected. Their contribution is very important in resource development.

Madam Chair, I want to say just one thing about the constituency development fund and support that 5% of the National Budget should go directly to the constituency where everybody is. This money can therefore be used to replace a lot of money that people have been looking for from banks, from everywhere and cannot reach it. They have a right to consolidated funding and therefore it should be at that level.

Lastly, I want to comment on the Economic Social Council and add that this Council Madam Chair, should identify men and women of excellence and pass them on to the Nation to be awarded with gold medals for their contribution, because our people have been demoralized and left this country because intellectuals are not appreciated. Thank you very much.

Hon. Delegate Tabitha Seii: Thank you very much. 191

Hon. Delegate Soita Shitanda: Thank you Madam Chair. My name is Soita Shitanda, a Member of Parliament from Malava. Madam Chair, I would like to comment first on taxation. While welcoming the proposal in the Draft Constitution, I feel that what is there is actually not enough. In the past this particular law has been misused especially as regards waivers and even in creating laws in Parliament that have denied the Government revenue. We all remember the Goldenberg scam. This scam was actually regularized through Parliament. Maybe some form of change should be effected on this particular law, on taxation, to ensure that even where Parliament is given the power to change laws regarding taxation, they should be subjected to maybe some form of tribunal which would make recommendations to Parliament for such changes to be effected. We also have under these taxation laws cases where people evade to pay tax, and when they are prevailed upon to pay tax they run to the law courts to obtain injunctions. So that you find that there is a lot of money in terms of tax arrears, there is very little the Commissioner of Tax can do because those cases are pending in court. Maybe we need some amendment to the taxation laws so that we are exempted from that requirement that when an issue is before a court of law it cannot be dealt with by any other Government agency.

Madam Chair, we have the issue of the Controller of Budgets, yes it is good for the Controller of Budgets to be given some powers, but I believe that to give him power over the vote on account is vesting too much power in that office. Let that power remain with Parliament, let Parliament be the authority to give that kind of accessibility to State resources.

We have proposals on the CBK functions, I believe these proposals are not strong enough, they are more or less like what we have right now. As we all can remember, because of the weak functions of the Central Bank of Kenya, we have had commercial banks in this country operating like casinos. They charge interest rates as and when they

wish without consulting any institution. The Central Bank departments are not very effective in the management of the affairs of these banks. So these functions of the Central Bank should be strengthened to make sure that the work or the operations of commercial banks are brought under close scrutiny so that they don't exploit our people. The same should apply where State Corporations invest public resources in some questionable banks at will. The Central Bank should be strengthened to make sure that if such resources are to be invested in private banks, they must have the blessings of Parliament.

Finally, the offices of the Controller and Auditor General, as my colleagues have already said, should be made autonomous from any department of Government. Thank you.

Hon. Delegate Tabitha Seii: Thank you very much. Yes, is that 583, point of order?

Hon. Delegate Apolo Njonjo: Madam Chair, I am number 583, Apolo Njonjo, a Delegate from political parties. Is it in order for you Madam Chair to only recognize Members of Parliament? Look at what you have done in this round, you have only recognized Members of Parliament all the way through, Madam Chair, is it in order? Is it in order Madam? (noise from Hon. Members)

Hon. Delegate Tabitha Seii: Quite unfortunately, I can only see the numbers from here, I do not see the faces. (*Noise from Hon. Delegates*)

Hon. Delegate Apolo Njonjo : Madam, no, that is not correct. It is possible Madam for you to differentiate who are Members of Parliament and who are not.

Hon. Delegate Bonaya Godana: Order, order,

Hon. Delegate Apolo Njonjo: Madam Chair and Chairman, I think you have been very partial. You have been partial to Members of Parliament and even when you select, you

only select those who are former Members of Parliament. When shall we discuss this budget? They are the ones who have messed our finances.

Hon. Delegate Tabitha Seii: Okay your point is taken. (*noise from Hon. Delegates*)

Hon. Delegate Bonaya Godana: Order, Order, Order.

Hon. Delegate Apolo Njonjo: (inaudible).

Hon. Delegate Tabitha Seii: Okay, you are being mistaken. (*Noise from Honourable Delegates*)

Hon. Delegate Bonaya Godana: Order, order, order, order, Honourable Njonjo. (*More noise from Honourable Delegates*) order, order Honourable Members, order, order, (*more noise*) order, order! Honourable Delegates I think once-- (*more noise*) Order, may I have your ears? When you do not have my ears or if I would not have your ears, what do you want us to do? (*More noise*) Order! Do you want to go home? (*Yes from Honourable Delegates*) No, no, no, no. I am sure we came to work and we should work. So, will you respect the Chair please. Let us have the order. (*More noise*) Order! Order! Order! Order! Order! Order! Order! Order! Order! Order Delegates! Order! Thank you.

Hon. Delegate Tabitha Seii: Now I am going to ask number 603 to speak. He is not a Member of Parliament.

Hon. Delegate Winston Ogola Adhiambo: Thank you, Madam Chairlady. I am Winston Ogola Adhiambo, the National founder Chairman of Federal Party of Kenya, the founder of Fascism philosophy and the founder of Democratic Harmonization. Thank you very much for the opportunity. Number one I wish to say this: you have all seen how difficult it is to achieve social justice. (*Clapping from Honourable Delegates*)

Number two, my main aim in this hall is to enrich the poor and mistake the rich.

On revenue collection, we have this to say. The revenue collection should be done at the level to which power will be devolved. I am requesting you humbly to listen to what I am saying. I would like the revenue collections to be done at the level at which power will be devolved because the national level has failed. Just that. Then revenues remitted, will be like this: the level at which the power will be devolved to give revenue to the local people for the services and also to the national government. And if the revenue, when it has been collected, then 70% of that money should be used in the local area for all the social services which have not been done. Secondly, 30% of that money should be remitted by the authority at the level to which power has been devolved to the national government. This is to carry out the many functions as Works, Foreign Affairs, Parliament, Supreme Court, Defense, minting of the currency and Citizenship. Then the fear of the President misusing the money will be eliminated because we shall arrange for the President to work for only one year term in rotation since the 42 tribal Presidents will be elected by the tribes and they form the Federal Presidential Council, (*Laughter and Noise from Honourable Delegates*) and the Federal Presidential Council nominates one amongst themselves for a one year term so that he does not have a chance of misusing anything – including himself. (*More laughter and Noise from Honourable Delegates*)

Then we go to the Ministry of Finance, the Ministry should be under the Minister for Finance and this Prime Minister coming between here should actually be deleted and Kenyans should not think of this Prime Minister affair because the debt here, I am realizing, is also a thousand billion Shillings.

Hon. Delegate Tabitha Seii: Thank you.

Hon. Delegate Winston Ogola Adhiambo: (?) my daughter Atieno is
(?) my son Ochieng is in university, then--

Hon. Delegate Tabitha Seii: Thank you very much.

Hon. Delegate Winston Ogola Adhiambo: (inaudible). There are people who are dreaming of this Prime Minister, that should be removed because those are selfish people fighting for themselves without thinking how we have been for the last 40 years when Government people who were born like ourselves and getting all our money--

Hon. Delegate Tabitha Seii: Thank you very much Honourable Delegate

Hon. Delegate Winston Ogola Adhiambo: -- (?) and we cannot accept! We have refused! The power to the people! (*Noise from Honourable Delegates*)

Hon. Delegate Tabitha Seii: Thank you. Number 493. Go right ahead..

Hon. Delegate Amina H. Soud: Asanteni. Jina langu naitwa Amina Soud kutoka Lamu. Na represent Wanjiku kutoka Lamu. Point ya kwanza ile nataka kuzungumza ni Prime Minister. The Prime Minister should sit in the Finance Planning Committee but he should be co-opted.

Second point is the whole Chapter, it is not clear how it is connected to the structure of government that has been suggested in the Draft, this is devolved government because there has been no suggestion as to how this should be married to the devolved power, it is like the Commissioners were sitting differently. There should be a Commission to see how much each unit can produce, expend and take surplus to the Central Government. (b) How much the Central Government will need and send back to the weak units and then if we read this Chapter with the schedule 5, Article (3), - if you give me time to read this for you - it says "the President, Vice President, the Prime Minister and the other Ministers of the government, Permanent Secretaries, Civil and-----" and then it says that, "who shall not maintain or operate a bank account in a country outside Kenya". In this way, we are not helping Kenyans, instead I suggest that they have a current account to run their businesses but force the people outside Kenya who are Kenyans to otherwise stay in Kenya. That's how we are going to benefit as Kenyans. And then 251, Article

(5). The CBK Board Members, I wanted to add that they should have accounting, finance and what have you, I said we add marketing also because if they have marketing ideas in their brains, it will help in making the currency stronger.

Then there is 257 (2)(b) you said, 'work appointed to the council', if they were not appointed then they should be nonpartisan. How do you expect them to change just like that? Thank you very, very much.

Hon. Delegate Tabitha Seii: Thank you. 015.

Hon. Delegate Billow Adan Kerow: Thank you, Madam Chair. My name is Honourable Billow Kerow, Member of Parliament for Mandera Central, Delegate number 015. Madam Chair, this is a very important Chapter because it deals with finance. You will appreciate that one of the most important areas of concern in governance in the last three years has been the area of finance. The manner in which the government has appropriated public finance, has been one of concern to all of us and, therefore, I would like to address the few of the key issues that I think are relevant in the sections. I will seeking your indulgence.

Number one, Madam Chair, it is important to note that the government plays a critical role through the Ministry of Finance, through the Central Bank, in ensuring macro-economic stability in the country. The financial sector in general, this is the banking sector in particular, is very critical in that respect and ensuring that there is financial stability in this country; but what we have seen over the years, is that the Central Bank which has the responsibility of ensuring that the financial sector is stable, has failed and we have seen as has been mentioned by my colleagues who have spoken in the past. We have seen the huge levels of bad debts that have been accumulated by our banking sector, which runs over 200 billions, we have seen that there are over 35 to 36 banks which have collapsed in the last 15 years and we have seen many other evils related to the weak corporate governance in the finance sector and therefore, many Kenyans have lost billions of shillings in their deposits.

Now the Chapter, Madam Chair, does not address some of the weaknesses in the Central Bank and I wish to mention a couple of them, one on Section 251 Madam Chair, it does not state that there will be a board and it mentions that the Governor, and at currently in fact the Governor, is the Chairman of the Board of the Central Bank but we have seen that has been a major problem and we want to suggest that the Chairman of the Board of the Central Bank, should be an independent, non-executive Director and it should not be the Governor because when the Governor is the Chairman of the Board, then you are going to eliminate those checks and balances which are necessary to ensure a transparency.

The Minister of Finance under the current set-up, the Ministry of Finance still has the major influence in the running of the Central Bank. I think we should make it clear under Section 252 Sub-section (2), that the role of the Minister for Finance should be minimized so that the Central Bank can be independent as much as possible. This is necessary to ensure that those banks particularly in the public finance institutions which have been responsible for the loss of billions of shillings and even those small banks like Euro Bank which collapsed. All these things happened because of the interference by the government and the interference by the government comes in through the Minister for Finance. So we should make it clear under that Sub-section, that the role of the Finance Minister should be minimized as much as possible.

Madam Chair, it has already been emphasized and I need not to emphasize the fact that the Section 248, which requires that 10% of authorized expenditure can be rectified later by Parliament, I think that is risky and we should ensure that all expenditures must be ratified by Parliament upfront and I think that has been emphasized by my colleague.

Section 249 Madam Chair, Sub-section (a), it is very important to curb the excessive government borrowing both externally and internally. You will appreciate that in other countries, the level of government indebtedness is tied to the GDP and in this country as we speak now the amount of public debts or the internally and externally, is close to 35% of the GDP and I think it is prudent to reduce this, to limit it to about 10-15% of the GDP

so that we do not live beyond our means. We are in a situation where the government can borrow at will and simply bring such a loan to Parliament for the purpose of ratification and this is what should have been endorsed in this Draft and I think we should prevent that situation by making sure that the amount of borrowing is capped to a particular level not exceeding 10-15% of the GDP, this is necessary in spite of the fact that we are devolving, I think it is important that we limit the amount of borrowing, that the government can do.

Madam Chairlady, Section 253, talks about the reports by the Controller General but it should clarify to whom the accounts or the reports of the Controller will be submitted. This is not clarified and there is no Act of Parliament provision to have the Parliament to state to whom the Controller should submit his report.

And Section 257, the Economic and Social Council, I get the impression that the role given to this council overlaps with the role of the Members of Parliament in some respect but I think it is more important to clarify exactly whether the duties of the Social and Economic Council is binding, the advise is binding on the government because if the advice is not binding on government, then it is really going to be ignored by the government of the day but more important here Madam Chair, is the question of the social aspect of the government financial policy, needs to be addressed by this Council and members have voiced concern on the high interest rates and you will remember the Donde Bill for instance, which addressed the social concern.

The social aspects of the high interest rates and it is amazing that today, Donde Bill, is an Act of Parliament, its force yet it is not being enforced by the Central Bank and the results is that many Kenyans are suffering, businesses have lost because of the excessive amount of interest rates, it's an Act of Parliament which is still in force but it is important that such accounts will be empowered to look at social aspects of some of these regulations that come out of Parliament and Central Bank in particular.

Madam Chair, the Auditor-General, I need not to emphasize, it needs to be empowered, it must be an institution, that will be empowered so that they can provide public accounts in real time. Today the accounts of the Auditor-General, are at least four to five years late, as we speak, the public accounts for 1998 are yet to be submitted to Parliament for review and I think that is really a shame and so we should emphasize that this Public Accounts department in fact, the Act in the Constitution, should indicate the minimum number of auditors in that department. Madam chair, thank you very much--

Hon. Delegate Tabitha Seei: I would wish for you to submit some of what you have written so that it is also captured because we cannot just give you indefinite time.

Hon. Delegate Kerow Adan Billow: Thank you very much.

Hon. Delegate Tabitha Seei: Delegate number 576.

Hon. Delegate Simon Mwai Gakuya: Thank you, Madam Chair, and fellow Honourable Delegates. I would like to dwell on Article 243, that is equitability of national-- My names are Rasta Mwai Gakuya, Chama Cha Umma representative, Political Party.

The equitability of national resources has not been taken very seriously because if you look at this Article, you cannot see equity if you do not know what you own. You have to take stock for the whole country. Take for example, the soda lakes we have in East Africa especially in Kenya, take Magadi Soda, it is one of the richest lakes on the planet. It makes billions of dollars for foreign Governments, while our people are languishing in poverty. If you take the coffee that we have for example, it is not equitably divided to our people. They are paid labour money not what they have produced, only labour. The time we start paying for what they have done, our country will be out of poverty.

I would also like to contribute as regards taxation. The family units are taxed, so we should also devolve our power to the family units because the family units are the ones

that make the nation. We should understand that the people who are living in poverty are the same people who are paying taxes to the Government. Very few rich people pay taxes to the Government.

I would like also to give a point on the same equitability of natural resources. Our lakes are very rich in soda carbonate. This is a future research that should be conducted because we shall be feeding the whole world with food and we can make our nation a power to reason with in food production for the coming years.

Hon. Delegate Tabitha Seei: Thank you.

Hon. Delegate Simon Mwai Gakuya: We should also take note of what we are supposed to own. Take for example if you try to take a cup of water from Lake Victoria, Egypt will declare war on Kenyans. Are we here to declare war on other people or are other people here to declare war on our resources? Thank you.

Hon. Delegate Tabitha Seei: Thank you very much. Delegate number 367.

Hon. Delegate Alexander Kipngetich: Thank you very much, Madam Chair. I just want to touch on two issues on this chapter. My names are Alexander Chepkwony, Delegate 367 from Bomet.

On Article 243 (a) the primary object of the public finance and the individual management system of the republic of Kenya is to ensure efficient and effective generation of revenue for the purposes of promoting and safeguarding the well being of the people of Kenya. Madam Chair, I am interested in this Article especially bearing in mind that Kenya is an agricultural country and the main economy of Kenya lies or depends entirely on agriculture. I want to say that we need to support the agricultural sector in the country, because as we want to manage the finances, we need to manage the finances we are able to generate and we get these finances specifically from agriculture. I have in mind institutions like the Agricultural Finance corporations that are operational in

some places in Kenya, while other places like Bomet where I come from, we used to have an agricultural finance institution but presently and it is very shameful to say those offices have been used or converted to appear to be a distributing facility. It is very shameful and I would appeal that we need to have that institution in place in Bomet, because it is potentially an agricultural district and we want to have the support of that.

Similarly number two, Madam Chair, when I look at Article 247, which talks about Parliament, Parliament prescribed the offices in respect to which the salaries and allowances are charged on the consolidated fund by the Constitution. Madam Chair, I think if we allow Parliament alone to prescribe the offices for salaries and allowances, I think it would not be safe for Kenya because this is the reason why in some cases you hear of Members of Parliament voting within five minutes and their salaries are up, because they have this machinery at hand. If this will be the case, I would propose that there should be a salaries commission to take care of issues related to salaries and allowances. I would also want to say that even the councilors be made to earn their allowances through the consolidated funds. Thank you very much, Madam Chair.

Hon. Delegate Tabitha Seei: Thank you. Delegate number 86.

Hon. Delegate James Omingo Magara: Thank you, Madam Chair, my names are Omingo Magara representing South Mugirango. Madam Chair, I think I want to take on quickly the issues that are very panel in this particular discussion and I am looking at the issue of taxation. We need to have taxation with representation Madam Chair, or taxation where we have people getting services for their taxes.

Kenyans are overly taxed but unfortunately they don't see where the money goes and it is important that people need to pay tax when services have been given or they demand services. There is an issue I want to raise Madam Chair, on the issue of foreign investors. We need to also put a ceiling at the level which a foreigner can pump in resources. We cannot allow them to come and run kiosks here. It is a bit abnormal and against the national justice.

Madam Chair, I am now moving on to the imposition of tax. Taxation Madam Chair, is actually what is cardinal in terms of running the Government and we are saying, are we going to ask people to pay tax for the sake of it? Pay tax for people to apply the same tax for services that are not necessarily social effective in terms of providing service or social justice of the people? We are saying the Government as one of my colleagues has said, needs to be able to collect tax and fix the taxes on the revenue collected and not the vice versa. Sometimes we do plan, even anticipating donor funding Madam Chair, when we do not even know whether we are going to receive the funds. We need to get to reality and drive a Volkswagen if we must, not a Mercedes 500 or 600 for that matter Madam.

We are saying, we need to be realistic in terms of savings so that we will be able to collect taxes and apply the same tax for the benefit of our people. Domestic borrowing Madam Chair, is an area that causes the public to pay high interest rates if the Government does massive domestic borrowing. Thus I think I am glad that I have introduced this clause and we are going to move in to that and perhaps create (Inaudible) to have that portion of domestic borrowing controlled or managed by Parliament or through the section that we are moving in to in terms of control.

There is a critical thing here Madam Chair, if you allow me. Article 254 on the Auditor General, is abnormal. It is unheard of that today we have accounts of the Kenyan Government ready up to the year 2000. Even when Parliament looks through those accounts you are not only actually doing a postmortem of a carcass, but you are doing postmortem on the bones. You cannot even have the autopsy to do diagnosis in that particular account. Those who ate are already dead and even buried. We require the building capacity of Auditor General's office, so that the accounts can be run concurrently or if possible we move them closer to the expenditure period so that when the executive spend or the accounting officer spends, they know that we are behind them in terms of checking controls. We can not be able to do a postmortem on a carcass Madam. It is unreasonable and does not make sense. Thank you, Madam Chair.

Hon. Delegate Tabitha Seii: Thank you. Delegate number 530.

Hon. Delegate Florence Mburugu: Thank you, Madam Chair, and Honourable Delegates. My names are Florence Mburugu, Religious Organization. I want to contribute on Article 243 that the primary objects of the public finance and revenue management is to ensure....(*A lot of noise by Honourable Delegates*).

Hon. Delegate: Chairlady you are very unfair.

Hon. Delegate Tabitha Seii: Now I will take your point of order, let her just finish. Continue.

Hon. Delegate Florence Mburugu: Thank you, Madam Chair. I was saying that since the object of the principle finance is to ensure an efficient and effective generation of revenue for the purposes of promoting and safeguarding the well being of the people of Kenya, that we need to look at a number of things in which revenue is laid in this country. Kenya being an agricultural country, we realized that there has been a lot of tax imposed on farm inputs and very little paid on the output. I want to suggest that all tax on farm inputs is scrapped off, and that we have an import tax increased because it is an observation that those people who bring things into this country do not pay as much tax for those goods and therefore the goods we produce do not fetch market in our own country which is really a shame.

We are looking at the finance resource management of this country, for example when we have students in the university getting loans to pay for their education at the end of the day, these people do not get a job to repay those loans and some of them get out of this country which means that those resources are actually wasted and the people paying taxes that are eventually wasted.

Some of the money that is contributed by the public is used to make investments, for example the NSSF Funds. Here is a very big building called NSSF and that must have

been built from the NSSF funds. Since these buildings are rented, I don't understand why then pensioners have got to get their pension at a particular time while that building is fetching money all along. We are saying that if this money is going to be invested, then it should be invested for the good of those who contribute to these funds. We are talking about equitable sharing of the resources. Amazingly for example if you say that the education money was shared in this country, it was the same amount of money for all the schools regardless of where they are in the country. One of the reasons why this country is going into the drain is because there has been marginalization especially in education, and the populace has been ignorant of what is going on. I suggest that when money is put into education, those who do not have access to education, get something better to help them come up to educate their children and perhaps even the teachers who are teaching in such places should be motivated so that they can work much harder.

The church subsidizes for what the Government does and it runs schools and hospitals. I would suggest that part of the public finance goes to the churches too, the main stream churches to help them run those services that they help the Government do. Thank you very much Madam Chair.

Hon. Delegate Tabitha Seii: Now, I will take one point of order. Delegate number 165, what is your point of order?

Tape 19

Hon. Delegate Tabitha Seii: 165, what is your point of order? 532, what is your point of order?

Hon. Delegate: Lumatete Muchai: Thank you, Madam Chair. My point of order is very simple. My name is Lumatete Muchai. Madam Chair, you are causing disharmony in this Conference. You picked two speakers there, then you started picking one by one. Please, please be fair.

Hon. Delegate Tabitha Seii: Thank you, your point is taken, 265.

Hon. Delegate Denge Wario: Thank you, Madam Chair. My names are Denge Wario. I am Delegate number 265 from Marsabit District.

Madam Chair, we have observed that the Budget is only made to fulfill a mandatory exercise for the government, but in most cases it is not taken as an instrument of enhancing efficiency in the government. I will therefore propose, in order to ensure that the Budget is an instrument of the enhancement of efficiency, the formation of Budget committees at grassroot level, manning at district level, for purposes of preparing and implementing budgets. This would be in line with Article 243, which highlights participation of the community in public management. Also, for promotion of transparency, I think a budget should be published by each Ministry in the daily media.

In regard to revenue, the government should tap more revenue resources by exploring new avenues of revenue potential and opportunities to generate more revenue, especially in oil exploration and mining. We have in mind places like Marsabit District, where there is a oil deposit. We have in mind also mica, silicon, graphite and so forth.

Madam Chair, I also propose that the devolved government be given the opportunity to negotiate with international organizations and other government bodies in order to solicit for funds to implement explorations and other areas where the devolved government would wish to do some activities.

In regard to the Ministry of Finance, Madam Chair, at the district level, the department of finance has been shelved under the Office of the President and this has overshadowed the Ministry of Finance. It is completely incapable of performing their duties because they are **at the mercy of the Office of the President. I therefore propose that the Ministry of Finance should be made independent at district level so that it may have its own offices, vehicles and so forth. Otherwise, at present, it is actually incapable because of intimidation and being overshadowed by the Office of the President. Madam**

Chairperson, the PS in charge in the Ministry should be given security of tenure because he/she is the person who is directly accountable for all government funds in the Ministry. This person cannot work independently if they have not been given security of tenure in their office duties. Therefore, I propose that the PS be given tenure of office.

In regard to donations made in the name of God that we receive, several churches, mosques and other NGO's do receive a lot of donations from outside, locally and also internally. What we have come to discover is this money is being used by individuals for their own progress, either to develop their own selves and so forth. I propose, within the office of Auditor General, a unit to be established in order to audit registered societies like churches, mosques and NGO's, in order to ensure that all the money donated to them is used properly.

Lastly, Madam Chair, the other area which actually has affected the common mwananchi or any other person is the auctioneering section. In this section, you have severally seen how auctioneers come into effect by, say, taking off the property of an individual. Even if, say, a bank loans you a piece of land, which is worth Kshs. 200,000 the auctioneers can come in and take your property worth about Kshs. 5 million, without even regarding what the cost is. I think it is important that a limited amount of money also is entrenched by an Act of Parliament to ensure that auctioneers do not actually invade people's property for some little money which they owe. Thank you very much.

Hon. Delegate Tabitha Seii: Thank you, Honourable Delegate. Number 473, yes, what is your point of order?

Hon. Delegate Sylvester Wafula: Chair, my name is Sylvester Wafula. I am in a very humble professional. I am wondering, I just need guidance from the Chair, just tell me how many times I have talked and I will keep quiet. I want that information.

Hon. Delegate Tabitha Seii: You have spoken once.

Hon. Delegate Sylvester Wafula: That is not right, and how many people have talked twice and three times and have been given a chance? I need that clarification, I have a very burning issue, but if you do not want me to say it, I will not say anything.

Hon. Delegate Tabitha Seii: I am going to check and give you the clarification. Go ahead, 473.

Hon. Delegate Pamela Mboya: Thank you, Madam Chairperson. We are discussing today the issue of public resources and capacity building and I want to refer, particularly, to page 220, which is discussing retirement benefits planning. Madam Chairperson, I have no problem with retirement benefits planning, all I want to point out is that, really, this applies to about 20% of the people who are working in the formal sector. Madam Chairperson, there are nearly 80% of the Kenya population left here, and quite a bit of them are self-employed people. The *Jua Kali* are included, the farmers are included. I would have liked to see that the Draft Constitution before us, will address in a deliberate effort, on the part of this country, to encourage people to save for their old age, not necessarily through working in the formal employment, but farmers can do it, *Jua Kali* can do it, and this is the best area in which this should have been introduced.

Madam Chair, the other point I wanted to mention quickly is that a number of people who are unemployed, and there not unemployed because they want, but because there are no jobs. When we talk of social security benefits, I would have liked to think that this should apply to the older people, say over 65, and see that the age 65 has repeated here today and it looks like that we Kenyan are deciding at what age we want to establish the beginning of aging. So I just wanted to point out that the social security that we have been talking about, which is mentioned a lot on the Report, should identify who are the people who should be receiving social security welfare, because that also comes within our capacity building and public resources. Thank you.

Hon. Delegate Tabitha Seii: Thank you, 344. Let us take a point of order from 428.

Hon. Delegate Richard Ngoge: Thank you, I am Richard Ngoge. With all humility Chair, when you started in the morning, you very clearly told us you wanted to hear from people some of whom have experience in finance. The whole morning and afternoon, we have been waiting to hear from people like Hon. Nyachae, who held the position of Finance Minister, so that we know what problems have been there in this country and, especially when Kenyans gave their sentiments, when the economy was in a wreck. Thank you, Madam Chair.

Hon. Delegate Tabitha Seii: Thank you, we can only give to people who are here. I do not see him here (*uproar from the Honourable Delegates*). I will give him; he did not raise his number. (*uproar from the Honourable Delegates*) note is taken.

Hon. Delegate Sego Kimaiyo: Thank you, Madam Chair. I wish to make a comment on Article 253. I am glad that the Controller of the Budget will be able to look at the proposed projects and allocation thereof before they are actually implemented. Madam Chair, since we are now going for devolved government, I do notice that there is no provision for a Controller of Budget at the Devolved Authorities. I would propose that we have that at the devolved authority level.

Secondly, Madam Chair, as to the Auditor General, I would similarly propose that we have an office of Auditor General at the devolved level because, definitely, money would be involved, budgeted for and spent and we need that type of policing before and after the same is dispersed.

Number two, Madam Chair, is on government stores. When you move around the country, you will notice that there are too many vehicles and other types of stores which are defective or allegedly defective and have actually cost a lot of money. We need to come up with a clear policy on how we are going to handle them; perhaps dispose of them and get the salvage value. You will notice that a motor vehicle, which is only two

years old, is already declared unserviceable and as you know the country has already lost a lot of money over it. When it comes to waivers, I know of situations whereby certain Kenyans have imported window curtains from abroad and receive waivers. We should actually be able to determine what type of goods we do have in mind; what type of goods do qualify for such waivers; such that we do not have waivers for even goods for which are available in this country. Do the goods for which we are going to have waivers add any value to the economy of this country? We should be able to determine that one in advance.

When it comes to the Economic and Social Commission, I think it is a very progressive view, in view of the fact that we have got foreigners who have come to invest in this country and in most cases, their investments are far much more than even the strength of the State in terms of finance, to the extent that our sovereignty is in one way or the other compromised. It is my view that we should determine a policy whereby we know where the cut-off point is, as to how much a foreigner should invest and take from this country. It is a very progressive view. With those few remarks, I thank you for giving me this opportunity.

Hon. Delegate Tabitha Seii: Thank you. 398.

Hon. Delegate George Wesonga: Thank you Madam Chair, I am George Wesonga, 398, a Delegate from Busia. First Madam Chair, I would like to suggest that the heading of this Chapter, instead of having Public Finance and Revenue, we should have Finance and Revenue Management.

Madam Chair, Article 257, this is about the Economic and Social Council, Madam Chair, I would want to talk something about retirement, and say that when employees are employed, right away from the employment time, their age and details are taken. So I want to suggest that when it reaches retirement, they should be given their retirement benefits on the last month of their working period rather than them staying for several years before getting the retirement benefits which leads them to death. Also on that, I

want to suggest Madam Chair, that once people have retired, increment is never considered on their benefits. I want to suggest that whenever increments are considered for other workers, the retired people should also be considered Madam Chair.

On the Controller and budgets, I want to suggest Madam Chair that on many occasions, the Controller and budgetary office – mainly finance – take money to the lower levels i.e. districts almost when the year is just ending. The end result is that this money is called back and therefore does not benefit the Constituencies or the lower level people. I want to suggest that once money has been allocated to an area, if it is not spent it is not the mistake of the residents of that area; the mistake is that one of the workers. And therefore, that money should not be recalled back, but should remain there and be used for the purposes for which it was recommended and forwarded Madam Chair.

On projects also, I want to suggest that on many occasions projects have been started, money given from the treasury, only when we have elections and new Members of Parliament come, they abandon those projects and start on new projects. It is my proposal that once projects have been started through the Government or using Government money, these projects should be completed before we embark on new projects.

Hon. Delegate Tabitha Seii: Thank you.

Hon. Delegate George Wesonga: Madam Chair, I want to say something very little on taxes. The management of taxation in this country is the poorest, and more so the employees of Kenya Revenue Authority. Madam Chair I also want to say that the Constitution says that we are all equal before the law; but unfortunately when it comes to taxation, there are people who are more equal than others, because they are allowed to import a lot of goods like vehicles without taxation, and yet the small man has to pay tax for that very small vehicle he or she imports. It is my suggestion that all of us should be treated equally when it comes to importation, when it comes to taxation. Thank you Madam Chair.

Hon. Delegate Tabitha Seii: Thank you very much.

Hon. Delegate Bonaya Godana: Before my Co-Chairperson calls on the next speaker, I feel like interrupting to relay some information to you. As some of you have heard, our Co-Delegates, our fellow Delegate Honourable Martin Shikuku was involved in a car accident this morning. The Secretary of the Constitution of Kenya Review Commission,— Mr. Lumumba, has been to see him and has sent us a message that he is in good shape, he is at the hospital with some pains and that he is talking. The Chairman of Welfare is going to visit him and I hope we will give you an update on his condition tomorrow morning.

Hon. Delegate Tabitha Seii: Thank you. We will do one more round and then I would like to propose that we terminate this so that we may be able to introduce the next topic for tomorrow. (*Noise by the Honourable Delegates*). 506.

Hon. Delegate Fatma Ibrahim: Thank you. My name is Fatma Ibrahim Ali, 506, representing Women Organizations. I wish to contribute to this debate and I wish to recognize the important role of this chapter. This chapter is a co-chapter for all the chapters in the Draft and I think we should put a lot of effort and flesh into it. My contribution is on Article 252, concerning the functions of the Central Bank of Kenya.

I wish to propose that the Central Bank should regulate interest rates because we know in Kenya, financial institutions are charging high interest rates which is excluding the lower cadre of community to access trade loans and credit. And the Central Bank should be mandated to regulate interest rates of any financial institution in this country; both the foreign ones and the local commercial banks.

My other contribution is that the Central Bank should also be committed to promote micro-finance and enterprise development programs, to support such programs because it really helps to alleviate poverty among the poor people. It targets the really low-income group, it mobilizes the micro-enterprises and small businesses, mobilizes resources,

savings mobilization, among the low-income group. The Government should be committed to support micro-finance and small enterprise development, especially the ones targeting the poor groups and the women.

I wish to propose that in this chapter we establish a disaster fund to tackle or address situations like floods, draught, terrorist attacks because Kenyans are not really prepared for such disaster. And I think it is necessary and it is very important to establish a disaster fund, which should be made permanent so that it is able to address such needs. The other one is on the Economic and Social Commission. It has not specifically mentioned the membership of the Economic Social Commission. I propose that it should have 50-50% for both men and women, so that we increase the participation of women. The social aspects and the economic aspects really affect women, especially the ones at the grass root level, and I think we should commit ourselves in this chapter that 50-50% representation of men and women should be addressed. Thank you.

Hon. Delegate Tabitha Seii: Thank you. 395...

Hon. Delegate Matthew Emukule: Thank you Chair. My name is Matthew Anyara Emukule, Delegate number 395 from Teso District. Madam Chair, I have been a legal practitioner in this area of the law and I want to congratulate the Commission for drawing up a very, very good chapter. I have only a few comments, one concerns Article 257 - the Economic and Social Council.

Madam Chair, we have the Village Council, we have the District Council, we have the Provincial Council, and we have the National Council. I think this name is a little bit of a misnomer. In the main Report, we are referring to Economic and Financial affairs Commission. In my view the name should be changed to a Commission like other constitutional commissions.

Two, on the same issue, I would propose that this commission is so important, it should be a marriage between the public sector and the private sector, which drive the economic

development of our country. The composition of it, when an appropriate Act of Parliament is enacted, should have the majority of persons from the private sector.

Two, Madam Chair, I would like to speak about Government borrowing. I commend the commission again for examining the relevant provisions of the existing Constitution and the existing Borrowing Act. They have indeed done a good a job in tightening the Act as refers to external loans and credit under which Government could borrow without reference to Parliament. Now, unlike the guarantee loan Act, which requires Parliamentary approval before borrowing, now even ordinary borrowing by Government is subject to Parliamentary approval. That is essential so that it can also set the limits of that borrowing.

The contingency fund, Madam Chair, should not become a slash fund. We should have elaborate provisions, so that its expenditure, its used is controlled. A public debt should have the provision for a full disclosure of the extraneous amounts. Thank you Chair.

Hon. Delegate Tabitha Seii: Thank you. 381.

Hon. Delegate Rita Katamu: Thank you, Chair. My names are Rita Katamu, Delegate number 381 from Butere-Mumias District. I would start with explaining my worry, because most of the public finance has been wasted on ‘white elephant’ projects. We have very many white elephant projects that were began and up to date they are not complete, and we have not been told how they are going to be completed and yet public funds are involved.

I want to talk about the public fund that sometimes goes to waste. Some people have been collecting money - like the Kenya National Assurance company collected money from very many of us, very many desperate people, people who had hope, they talked very well and very many people gave their money. Up to now, we don’t know what is happening. We were told sometime back that the money will be refunded, but if you go down there at the company, there is misery; because sometimes you are not even allowed

in. Therefore, we should have at least a body that should be taking care of such monies so that people don't go at a loss.

At times, we have had money being given to constituencies to develop, or areas for development. But there have been some political interference, in that some areas have gone without any development at all. I want to put in mind Mumias Constituency, which is right now an island of electricity. It came a time when all areas around Mumias were given electricity, and Mumias was left as an island. I wonder whether Mumias is part of Kenya. Therefore, I request that the constituency money or any money given for development should be given equally so that everybody is able to develop.

There is some money that we normally give, the civil servants or those employed give, which is called the widows scheme. I wonder who eats this money or who gets this money, because all the widows I know have never benefited from this money. We need some correction.

On taxes, I am putting in mind Mumias Sugar Company, or the farmers around Mumias Sugar Company, who have been taxed so much that when you go to Mumias right now, Mumias people are very poor because of these taxes. I request that Constitution puts in mind such taxes so that farmers are able to develop. Thank you Madam.

Hon. Delegate Tabitha Seii: Thank you. We will go to the next block. 596 is the only one with the card up.

Hon. Delegate Hezron N. Manonda: Mimi naitwa Hezron Nyerere, mini ni representative wa political parties. Sitaongea mengi kwa sababu wengi wameongea. Shida yangu ni kuhusu revenue collection na public taxis. Hawa taxi operators katika Kenya, wameachwa nje ya biashara ambapo tulisema one person - one employment na pia tunasema one company – one business.

Taxi drivers wetu wemeachwa nje katika miji yetu ambapo mahoteli yamechukua biashara yao. Mahoteli yanafanya biashara ya taxi, ilhali taxi magari yao yanalipa ushuru, yanalipa road licence na yanalipa insurance, PSV na hata Police Act. Na magari yanaoza ndani ya town bila biashara yoyote. They have been chased away from their business centers by these commercial hotel owners kama Grand Regency, Norfolk au Hilton. Katiba iwaangalie hawa taxi drivers, hata wanalinda wasichana wetu usiku wakati kuna shida.

Kwa upande mwingine naongea kuhusu chartered flights kutoka ng'ambo, zinaleta watalii kwa maelfu katika mahoteli yetu ya Mombasa na viwanja vyetu vya Mombasa na hawa wazungu wanakuja na vouchers, hawaachi pesa ya cash ya kulipa haya mahoteli. Ambapo hizi pesa zinawachwa ng'ambo na hazisaidii watu wa Kenya. Kuwe na Katiba ambayo katika biashara mtu akitaka kulipa pesa aje alipe hapa Kenya, asilipe ng'ambo aje na makaratasi hapa anaita vouchers na hizo vouchers hazisaidii Mkenya yeyote. Na kama collection of revenue inaweza kuwa kwa njia ya kisawa Kenya inaweza kuwa na pesa mingi sana ambazo zinaweza kulinda mfanyikazi hata yule mtu ambaye hana kazi. We have a lot of money in this country but it has been looted by commercial companies, let this money be paid in this country so that it benefits this country. I just had those two points.

Na tuwe na monitoring committees, taxpayers monitoring committees, ambayo ina-monitor hivi vitu. Wabunge wasiwachiwe haya mambo kufanya pekee, yako na tayari wanakula peke yao hata hawashugulikii Wakenya wale wanawapatia kura, mostly workers. Asante.

Hon. Delegate Tabitha Seii: Thank you very much. 378.

Hon. Delegate Dorcas Mbeleresia: Honourable Chairlady, I am so much privileged, my size was almost making me to comment something bad about my Creator because since I came here I think this is the second time I am talking. (*Honourable Delegates laughing*). I have one comment only, I feel the complications we are getting due to

revenue is just because of ignorance, carelessness and theft. Because if you allocate funds to do something, you should monitor them, look and evaluate to ensure that funds have been spent on whatever they were allocated for. So at least all these people collaborate to steal government funds which are being paid by the taxpayers. There is nobody in the two regimes who can be excused from being a looter of these funds. So I feel there should be an Act through the Constitution which should be used to execute these people if these issues continue whereby funds are allocated, they say a road has been repaired, a road has been constructed and they have never been there then they report that it has been done. Nobody knows whose pocket the money ends in.

Lastly, retirement age, I would concur with my friends, should remain at 55 years so that we allow the youth to get such positions. Last but not least, public funds have been wasted in very many different ways even through school management and in different institutions. I feel we should correct ourselves, if I rectify myself and you a fellow Delegate rectify yourself, Kenya will have good revenue and good funds. Thank you.

Hon. Delegate Tabitha Seii: Thank you very much. 149.

Hon. Delegate Simeon Nyachae: Thank you Madam Chair, I am Delegate number 149, my name is Simeon Nyachae. First, I would like to convey some information because it appears some of the Delegates may not be fully in the picture of how these things operate. There is no taxation on agricultural inputs and some Delegates seem to think there is taxation on agricultural inputs. If there is anybody saying that the price has gone up because there is taxation on agricultural inputs he or she is exploiting you, there is no taxation even on agricultural machinery.

The second point I want to make is this, in connection with the borrowing, I think the experts who were dealing with this should have gone a step further to find out this 480 billion we are owing as external loan, how much of that came into the country as money? Because most of that debt is equipment to support the manufacturing industries in Japan, Britain, Germany and so on. Even the aircrafts you get for Air Force you get them on

credit, it is an external debt, you are supporting the industries out there. How much cash comes here to support the ordinary person in his living condition? That is another point we need to bear in mind.

Three, Lady Chair, please understand, and that expert there should understand, that in the whole system of Government, the Minister for Finance is a full time executive. He does not have time like other Ministers and therefore if you are saying you are going to give the job to the Prime Minister and then you are going to give the Prime Minister other jobs you will mess up your finances. You must have a Minister for Finance who will discharge the duties fully. (*Honourable Delegates clapping*). This is extremely important if you want.

Lady Chair, please note that corruption is what has ruined this country, it is not the taxpayer who has refused to pay tax. I will give you one example, when I was the Minister for Finance I did a survey on the construction of roads. The cost of tarmacking a road in this country costs three times per cubic foot as compared to the cost of making the same tarmack road in Tanzania and the lifespan of the road in Tanzania is double the lifespan of our roads which costs us more. (*Honourable Delegates clapping*). These are the clear indications and I took it up, those who are in the Treasury can trace it in the file, I know it is the World Bank who were supervising these projects and I said, how come the roads in Tanzania last longer, how come they cost one third per cubic foot compared with our roads? That is corruption.

Now Lady Chair, you have brought in the Director of Budget, you have given him part of the responsibility of Parliament, that once Parliament has approved the Appropriation Act then the matter goes to the Director of Budget to release the money. Now the truth of the matter is, under which powers, the same powers which the Parliament has given him? Now the next question is, there is a serious omission in the whole of these recommendations, a very serious omission and an omission which has existed since independence. That is, once the Director of Budget has reported misappropriation, you

are saying he reports to Parliament and Parliament will take action. Public Accounts has been reporting to Parliament, what action have they taken?

Now you say the Director of Budget will report to Parliament to take action, Parliamentarians will just make noise in Parliament about these thieves but there is no action. Nobody since independence has been prosecuted, convicted and sent to jail for stealing millions from Kenyans because the Public Accounts Committee brings reports to Parliament, they grumble there, they say Attorney General should take action, no action is taken. So can you please, when you are refining these recommendations, specify what action would be taken after the matter has been reported to Parliament, who takes that action? That is absolutely necessary, *(Honourable Delegates clapping)* so that people can actually be made to understand that they will end up in court not just grumbling in Parliament. I don't have time to speak more but I definitely have a lot of views about these recommendations. Thank you. *(Murmurs from the Honourable Delegates)*.

Well I don't know, I am listening to the Chair, if I am granted permission I will talk. *(Murmurs from the Honourable Delegates)*.

Hon. Delegate Tabitha Seii: Let me give you another two minutes.

Hon. Delegate Simeon Nyachae: Thank you. Now, let me put it this way. The question of importation of items and the borrowing from outside, the system has been that the Minister for Finance or any other Minister gain time to an agreement, they sign it, we see it in the press and then very quietly when the Kenya government has been committed then you have a Sessional Paper taken to Parliament and after so many days if nobody raises any query the commitment is there. There must be a requirement that no Minister including the Minister for Finance should commit the country into indebtedness before Parliament has approved. *(Honourable Delegates clapping)* Because at the moment commitments are made, that is why we are talking about Presidential jet, what have you and so on. These debts will continue so long as commitments are done and then Sessional Papers are prepared later. So can we tighten the rope there so that you control

all these people. Lady Chair, let me stop there so that the others can have a chance to contribute. Thank you.

Hon. Delegate Tabitha Seii: Thank you very much: 306.

Hon. Delegate Christine Nyawira: Thank you very much Honourable Chair and I have first of all to protest because I understand I have been recorded there as having spoken four times while the truth is that I have spoken just two times. (*Murmurs from Honourable Delegates*).

An Honourable Delegate: (Inaudible)

Hon. Delegate Christine Nyawira: Now, I want to respond to Article 251 where it is talking about the Board, that is 251, Section (3). The authority of the Central Bank of Kenya shall be vested in a Board which shall consist of a Governor, a Deputy Governor and not more than five other members. I wish to propose that if the Governor is of one gender then the deputy should be of the other gender because if we look at this country we have to bear in mind that women provide 80% of the national labour force which generates funds but this contribution remains undervalued and invisible in the gross domestic product. So women should be boosted by having a Deputy or a Governor in the Central Bank. Then the members should be varied and we should have one third.

In Article 257 where we are talking about Economic and Social Council, I also propose that we have affirmative action. The Economic and Social Council should also be created at all levels of the devolved power on advisory role to the elected leaders. They should be advising the elected leaders on these areas of economic and social affairs.

About the currency, the currency should not be changed each time we have a new President. We should have the face of the currency bearing some national environmental images to boost national unity. Again I propose that proper survey should be done all over Kenya for projects that have been awarded certificates of completion that in reality

nothing or very little has been done on the ground; these projects should be given a priority in funding.

Lastly, the looters of public funds in the past must be followed closely and all the money stuck in foreign accounts must be returned to this country.

Hon. Delegate Tabitha Seii: Thank you very much. 423, you have not spoken at all. Wait for the microphone.

Hon. Delegate Clare Omanga: Thank you, Madam Chair. I have not had a chance ever since I came to this Conference. I am Clare Omanga, Delegate number 423 from Kisii district. What I am saying is, Kenya is a very, very rich country if we have sustained ourselves for the last fifteen years without any donor money, I am sure that we can still do it, because we are a country which has grown more than the sister countries around us. So, we should not appear to be begging donor money all the time when it is not even necessary. About a week ago or two weeks ago, there was a press statement in one Ministry that they wanted to have a department to deal with certain issues and there was a word that any donors wishing to help us, please come and help us to form a department. I think that is a disgrace. We should live above that.

Another thing is about tax collectors. I am not repeating but unless the Ministry of Finance does something about the tax collectors, we will never manage. This is because they come to you, they out that you should be paying twenty thousand and they tell you, “give me just five thousand” and they cancel all that money. I am happy that something is being done and that is why we collected quite a lot last time.

The next thing, we must literally dig all arable land in Kenya to at least grow our own food instead of importing food. It looks like there is so much good and that I would suggest that the Government brings experts from either Israel or Egypt which are desert land, yet they have got so much food that we are now importing from them. It is a disgrace to Kenya. There is so much money being stolen from banks everywhere. Why

don't we use that money to bring these experts so that they can show us what to do with our land.

Another thing, Kisii has never seen a Mzungu tourist. Why? Because we have no animals and such things. But I believe all over Kenya, like Luhyas have grindstones around the lake, there is a lot. Why don't the Ministry of Tourism find out what there is all over the country so that tourism is equitably shared by all Kenyans. Again Madam Chair, there are a lot of minerals in the country, why don't we dig up these minerals and help our people. When are we going to get these minerals to help us since we are soon dying? Thank you.

Hon. Delegate Tabitha Seii: 168, you have not spoken at all.

Hon. Delegate Stephen Alloys Ondiek: My names are Stephen Alloys Ondiek, Member of Parliament for Ugenya. Madam Chair, I have only two points to make.

One is about the financial borrowing. Madam Chair, the banks in Kenya have decided to be shylocks instead of being banks. These controls should be done by the Central Bank. The Central Bank has failed in its duties. This is because if you borrow a million shillings for your business to run, they expect you to pay about Kshs.300, 000 per month. Which kind of business can you get a profit of Kshs. 300, 000 per month? Within a few months, say six months, you find that your account is reading about Kshs. 9,000,000. It will force you to lose your property worth Kshs. 30 Million because of Kshs. 1 Million borrowed. Madam Chair, this is a serious matter that the Central Bank and the Kenya Government, especially at this time of making the Constitution, we should put that in the law. How we can control the interest rates in this country. The interest rates have made many organizations, many businessmen to fail. Today, people do not even borrow money from the banks. Because the moment you borrow any money, you are assured of losing your property which is worth millions of shillings.

Secondly Madam Chair, I am talking about these investments. I am so surprised that the Treasury spends a lot of money, investing, allocating in properties like buildings and so

on through certain Ministries. Like the Office of the President, there were so many buildings which were put up, for example Nyayo bus area. The buildings were put up, only windows were not fixed and those were left there. It is over ten years now and these buildings have not been put to use. The money has been wasted, that kind of money should have been used for other purposes. Madam Chair, we would like that when the Treasury is allocating its budget, it must be able to follow, to make a follow-up where the money is being spent and how the money is being used. Some of these projects are being made for other people to put in their pockets and that is not helping our country.

Another point Madam Chair, when you are making a budget, the budget should start from the district level going up. There is no point if a project is going to cost 10 Million shillings for the Government, the Treasury allocating 1 Million shillings in a year? That is not going to help anything at all. They should be able to produce the finances according to what is supposed to be used. This will be able to help people at the point. For that reason Madam Chair, those are the points that I had in mind. Thank you very much.

Hon. Delegate Tabitha Seii: Thank you very much indeed. At this point now, I would like to seek the indulgence of this assembly to see whether we can terminate this debate and get our summary done so that we are able to move on to the next step.

Clapping from the Honourable Delegates.

Hon. Delegate Tabitha Seii: Thank you very much indeed and it has been such a special pleasure to be your Chair for today. I hope I have not made so many enemies. I want to call upon the Commissioners to do the summary.

Com. Isaac Lenaola: Thank you very much Honourable Delegates. In view of the pressure of time, my colleague and I have agreed that I will give a short response to specific questions raised both in the morning and this afternoon and I will be extremely

brief. So if you could just bear with me for a few minutes, I will just take you through what we have.

Firstly, on the question of economic and social council, it is indeed true that if you look at the national report at page 349, we recommended a Commission but the draft bill has a council. So that has to be harmonized by the relevant committee of the Conference.

Point number two, on the harambee funds, we had initially wanted to indicate that even harambee funds must be audited by the Auditor General. The trouble is that harambee funds must have a legal basis and our problem was that we could not find a legal regime under which harambees fall and you cannot provide an ad hoc programme within the Constitution which has got no legal basis somewhere. So we had a problem in indicating where harambees fall.

Point number three, questions have been raised about the age of the Auditor General, terms of service and so on. If you look at Article 293 of the Draft Bill, we have indicated there that where any reference is made to Constitutional Commission, the same reference shall apply to other office holders under the Constitution and that includes the office of Auditor General. Therefore, the question of age, security of tenure, removal, appointment qualifications are covered in fact in Article 293. What we should have perhaps done is wrap the issues together and not scatter them in the way that we have done in the Draft.

Point number four, a very important question has arisen regarding what we are calling physical devolution, financial devolution. If you look at the draft, it is not clear the financial relationship between the Central Government and the devolved units and I think what we must do in the course of this Conference is to clearly indicate how the Central Government related to the devolved units in terms of finances. As I said in the morning, in a place like Uganda, there are specific and clear provisions about how finances are shared. For example in Uganda, a sub-county collects say 100% revenue. 35% goes to the district council. Of the remaining 65%, 25% returns to the village council. 5% goes to the parish council and 5% to the county council and then the council retains 30%. So, they

have a clear percentage division of revenue. We do not have that in this draft. Therefore, the committee on the Public Finance and the committee on Devolution must raise that question. What is the percentage which remains in the district council or in the provincial council or in the village council or whatever unit of devolution. That question must be addressed if physical devolution must make sense in this draft.

The other question which I am sure my friend Kiriro Wa Ngugi would like answered is this; what portions can be levied by the devolved units and what taxes can be levied by the Central Government. Again from the draft, if you look at the 6th Schedule it is not clear what taxes can be levied by the district council and what can be levied by the national Government. For example, in the United States local councils have property taxes, sales taxes, alcohol and tobacco taxes, fuel taxes and income taxes exclusive themselves. Therefore, we have several taxes and others which are national. We need to address that in this draft and I am afraid we did not address it and the Conference must do that. Therefore, I think the question of physical devolution must be addressed if our finances will make sense in this draft.

Second, lastly, Honourable Samuel Ng'eny asked about the parliamentary budget office. Unfortunately, my reading of the draft report, this is very clear. I think basis for having a parliamentary budgetary office and its functions. Therefore, if you look at page 345, we have very, very clear detailed functions for the budget office. However, anybody wanting more detail can also pick out the national budget bill which is pending before Parliament and you can see the sort of thinking that we had when we were crafting the budget office.

Lastly on Government borrowing. Honourable Nyachae is extremely right that the borrowing is in terms of machinery, it is in terms of motor-vehicles, in terms of planes for the Airport and so on. But in terms of repayment, we shall repay in cash. We shall not return those things back to Japan or the machinery back to Japan. We shall repay in cash and this budget is a sandstone which you must carry along from one financial year to another. We must address it and one way of course is to join Professor Wangari Maathai, in saying you people up in the West loaded us with these debts, can you now

write them off and then we start with a clean slate and then we shall manage our finances from now onwards because if you are broke you either say forgive me or find a means of saying let me have a means of repaying you. As it is now, we shall carry these debts on and on and there is no light at the end of the tunnel. Thank you very much.

Hon. Delegate Bonaya Godana: Okay, and now with that we come to the end of that session on Public Finance, we go straight to the next session at least to do with the presentations.

Commissioner Abida Ali is here? Commissioner Abida Ali? We agreed this morning that we will continue up to 6.30 and I think it will be good if we can get the presentations out of the way so that tomorrow we get into the actual discussions, we start straight with the Speakers okay? Right. So, Honourable Nicholas Kipyator arap Biwott, what is your point of order?

Hon. Delegate Nicholas Biwott: Actually I wanted that point of order addressed to the Commissioner who was replying because on the borrowing, I just wanted to know whether the question of external borrowing by devolved authorities will also be addressed. That seems to be omitted.

Hon. Delegate Bonaya Godana: I think a number of Speakers did actually allude to this fact that the Draft as it is, is unclear on the place of devolved authorities in relation to the whole financial package in the Draft. Obviously it should come up at the Technical Committees and in our discussions henceforth but I do think we should reduce this now to a question and answer session. Thank you very much. I want to thank very much Honourable Tabitha Seii, the Co-Chairperson for this session from the women's group category. Thank you.

May I ask the Chairperson from one of the delegates categories to come over and join me. I also want to thank you for your very good cooperation, I will pass on the Chair to

Honourable Ole Kina, who will Chair this session I presume with another Co-Chair whose identity will be notified to you shortly. Thank you very much.

Hon. Delegate Wilfred Ole Kina: Thank you very much. 424, what is the point of order?

Hon. Delegate Thomas Nyabote Aburi: Thank you very much, Mr. Chairman. I think in the morning during the Steering Committee, we did actually stress that the Chairing shall be done in such a way that gives conducive environment towards the debate in the Conference. For the last one or two or three weeks I have been here and some of my colleagues have been here, actually this region has been marginalized, has been ignored. I am requesting you that we came here by our own rights we have got views to represent and we are requesting you that you be very fair. We feel totally disappointed and we hate it.

Hon. Delegate Wilfred Ole Kina: Well, thank you for your sentiments, we shall try as much as possible to ensure that everybody or as much as humanly possible in such an environment feels represented. Well, without wasting time because I realize a lot of us are getting tired, I will invite the presenters, Commissioner Abida Ali and Pastor Ayonga, to do their presentation of our next chapter. 576.

Hon. Delegate Simon Mwai Gakuya: I wanted to bring to your attention that there is lack of quorum in the hall. You are here but you can see the count of the numbers.

Hon. Delegate Wilfred Ole Kina: I have asked for the bell to be rung to see whether we are going to form quorum before we take the other decision. I am aware that all those people seated here are very serious delegates who would like to see this Constitution and dispensation carried on forward and so let us just wait for one more minute to see whether we are going to get additional members coming in before we take the final decision.

Hon. Delegate Wilfred Ole Kina: 246, your point of order?

Hon. Delegate Mwailengo Haji Joel: Mr. Chairman, my point of order is still on the quorum but I was saying some of us since we came here on 28th we have been sitting here from 9.30 a.m up to 5.30 p.m. but the surprising thing is that we have had very little time or number of times to talk, the same people who leave us here are the ones who are always given preference to talk the next day. So I am suggesting Mr. Chairman, that whenever there is no quorum those who remain behind as we go out, we sign our names there so that we are given the chance the next day because once somebody speaks here he leaves. I was also suggesting the same list should be publicized in the daily papers so that people at home can see those people who stay up to the last minute and those people who waste time here. That is my order Mr. Chairman. Thank you so much.

Hon. Delegate Wilfred Ole Kina: Well, I think the Hon. Delegate 246 has very good advice or contribution on that and we shall consider actually whether it is something that we can put in practice so that tomorrow those people who have sat here have more opportunity to contribute than those who are not here. I think we are not going to do any business as we wait so please 361, wait with your information until we decide whether to proceed or not.

Hon. Delegate William Salaon Ole Yiaile: But it is advisory as we wait for others to come Mr. Chairman, with all due respect. My information is this, I do one hundred percent agree with the speaker who has just spoken, some people speak and they sneak out of this hall. A list must be put in place so that the people of Kenya know the right serious representatives who came to represent them here without jokes and I do also agree that when we come to future deliberations only those people who sit up to 6.30 p.m. the agreed upon time should be given to contribute in this hall, those people who just come and take Kenya for a ride should know that they are stealing from the nation of Kenya.

