

CONSTITUTION OF KENYA REVIEW COMMISSION

CKRC

NATIONAL CONSTITUTIONAL CONFERENCE

Verbatim Report of

**PLENARY PROCEEDINGS - PRESENTATION OF REPORT -
CHAPTER 15 – DEFENCE AND NATIONAL SECURITY
AND CHAPTER 16 – LEADERHSIP AND INTEGRITY,
HELD AT THE BOMAS OF KENYA**

ON

04.06.03

Hon. Delegate Raphael Mwai: Thank you very much. My understanding is that what you are proposing was not in the motion. You can bring it in the motion in the normal manner; in the meantime we just have to proceed. Thank you very much. Proceed.

Hon Delegate William Saloan Ole: But we had put it across during the debate. (*Noise by Hon. Delegates*).

Com. Idha Salim: Thank you again, Mr. Chairman, Madam Chairperson, Honourable Delegates. As I was saying we are supposed to cover Chapter 15 and Chapter 16 in this session. Chapter 15 is on Defence and National Security and it is found on pages 196 to 200 of the orange copy of the Draft Bill and it is made up of five Articles. Chapter 16 Mr. Chairman is on Leadership and Ethics and it is found on pages 201 and 202. Both Chapters, as you have seen I'm sure, are brief compared to other Chapters. However both Chapters, despite their brevity, are very, very important and do deserve the place which they occupy in the Draft Constitution before you.

Now Chapter 15, Mr. Chairman, is as I said on Defence and National Security. It is superfluous to say that the security of a country and its people need to be organized and managed in an effective way in order to make the people feel secure and safe within the borders of their country. National Defence and Security form a major institutional pillar for any country. Such a pillar represents a country's sovereignty and therefore it is critical and crucial for the physical defence of that sovereignty. Mr. Chairman, given that importance attached to Defence and Security, we asked ourselves, "how has this important institution been dealt with in Kenya since independence?" The independence Constitution of 1963, Mr. Chairman had a whole Chapter - Chapter 9 - devoted to only one security service, namely the police. On the other hand the Army, Navy and the Air Force had no place in that independence Constitution, although section 157 sub-section 7 states that Parliament may make provision for the Police Force forming part of the Navy, Army or the Air Force. Of course that independence Constitution, Mr. Chairman, experienced drastic changes over the years as you all know. The story of its transformation, one might even say distortion, over time need not deter us here since it is well known.

For our purpose this afternoon we need only look at the current Constitution and see what it says about this subject of Defence and National Security. Mr. Chairman, despite National Defence and Security forming a major institution in our country, Kenya's current Constitution also does not contain any specific provisions on the defence force. The names and the functions of the country's Armed Forces or Defence Forces as we prefer to call them in the Draft Bill, appear only in the Act of Parliament, namely Cap 199 of the Laws of Kenya which created these forces. There is a very brief section, section 4, of the Current Constitution, which declares the President Commander in Chief of the Armed Forces. But this provision does not state, let alone set out, the President's functions in that regard, neither does the Constitution empower Parliament to do something along those lines.

One other provision Mr. Chairman, section 86(2), refers to the Armed Forces, Police, Prison Services and the NYS in a significant way. It seems to shield these services from any disciplinary action in case they breach any of the human rights provisions in the Constitution, which I am sure you will all regard as not a very happy situation. In light, therefore, of these shortcomings in the current Constitution, and given the vital importance of having the institution of Defence Forces entrenched in the Constitution; CKRC decided to rectify matters and decided to devote a whole Chapter - Chapter 15 - to achieve this particular aim although in a brief way.

Now we started with trying to seek wananchi's views on this subject through our issues and questions' booklet, which I am sure most of you have seen and have read. It was distributed on the eve of our going out to collect views from wananchi. Under the section on Defence and National Security of that booklet we put 7 questions:

- 1) Should the disciplined forces-the military and para-military, police and prisons and so on be established by the Constitution?
- 2) What mechanisms should be used to discipline the Armed Forces?
- 3) Should the President be 'C' in 'C' of the Armed Forces?
- 4) Should the Executive have exclusive power to declare war?
- 5) Should the Constitution permit the use of extraordinary power in emergency situations such as war, national disaster, insurrection and breakdown of public order?
- 6) Who should have the authority to invoke these emergency powers?

7) Should Parliament have any role in effecting the emergency power?

Now the idea behind distributing that particular booklet was to focus wananchi's views on the major issues which we felt we needed their opinions on. Not that we needed to limit them to those, no, but there were these very, very important issues we felt we needed wananchi's views on, and you know there were issues like the Legislature, Judiciary, Executive, Land and in this case national security and defence.

In the course of collecting those views Mr. Chairman, we found that Kenyans had a lot to tell about and against one of these security services, namely the police. The police were covered in this morning session very adequately, so I needn't deter you in terms of time and discuss the issues concerning the police force and the complaints against the police force. That has been covered up I think adequately by my colleagues in the morning and also by the discussions or the opinions coming from the floor. There were of course proposals for reforming the police again to better training perhaps better pay to instill motivation and so on.

But by comparison during the collection of views from wananchi, we received less views on the other disciplined forces namely; the Army, Navy and the Air Force. And these views did not call for any drastic changes in the Army, Navy or the Air Force. The material collected seems to suggest, therefore, that there is less dissatisfaction with these three organs of defence. Two or three distinct proposals though came into our hands by way of views, namely that during peace time, which luckily we have enjoyed since independence on the whole, that the Armed Forces or rather the Defence Forces must not remain idle in their barracks. Rather they should use their immense resources, use the equipment they have in terms of developing our infrastructure and so on and so forth. In that way they will be utilising this considerable free time they have and the immense resources they have to benefit the people and also the country at the same time.

Also, there were views to the effect that the Armed Forces should as far as possible remain neutral and when it comes to any action on their part they should be seen not to be siding with one or another faction to the detriment of another faction. But on the whole, as I suggested, very few opinions or views were given to us as to serious changes to be made in the Defence Forces. So on the basis of the views we collected and the representations received from the people, the

Commission decided to include clear provisions for the first time in the Constitution covering the management and the administration of the Armed Forces, which hitherto have only seen them being in an Act of Parliament. So as I said, the result is Chapter 15 of the Draft Bill which is before you for discussion and debate and for any improvements you might want to see in that Chapter.

Mr. Chairman, if I may just touch on the very brief Chapter and highlight the significance of those few Articles in that Chapter, my colleague Commissioner Ratanya will see you through them in more detail.

Mr. Chairman, the Articles in this Draft Chapter, though few, do the following.

They spell out in broad terms the object or task of the Defence Forces. That object is the safeguarding of Kenyans' well being, its peace, national unity and integrity. Also, although only two Articles, they emphasize the important principles upon which our national security system should be based, namely the supremacy and the authority of the Constitution. They also stipulate, the Defence and security systems must carry out their duties in compliance with international law and with the utmost respect for the rule of law, democracy and human rights and freedoms. It is important to emphasize that particular principle. If we look round not far from our country, we have seen how the Defence Forces or Security Forces have deteriorated and broken up and in the end become a source of insecurity to the people rather than security for them, and worse still, that in the process of breaking up all rights, freedoms, democracy and the rule of law were thrown overboard.

Mr. Chairman these two Articles also demand the neutrality and non-partisanship of the Defence Forces, forbid them from taking part or taking sides in any political rivalry between different political parties. At the same time, the Article prevents them from carrying out anything detrimental to any political interest that is legitimate. In other words, suppressing a political party that is legitimate or a political organization that is legitimate.

Mr. Chairman, these two Articles also outlaw the formation of any military or Paramilitary organization that is not authorized by Parliament. I need not underscore the significance of that

particular provision. We have of course heard of the “Mungiki”, we have heard of the “Jeshi la Mzee” and so on and so forth. Paramilitary bodies that have been formed illegally and which have in the course of the recent past been the source of havoc and the breakdown of law and order in certain respects.

Finally, Mr. Chairman, the Article sets up two Councils; one being the National Security Council and the other being the Defence Forces Council. Commissioner Ratanya will look at those in great details. But all I will need to do here is point out the three significant aspects arising from these two bodies, namely, that National Security Council will be devising policies related to national security while the Defence Forces Council will make regulations for the training and the effective and efficient administration of the Defence Forces. In other words, there is a clear demarcation of roles of these two bodies.

The third point, Mr. Chairman, I need to note about them is that membership of these two Councils is fairly, evenly balanced between military personnel and civilian membership. This again we found to be very, very important to make sure that our Defence Forces are not controlled entirely by the people or men and women in uniform but that civilian control is achieved.

Mr. Chairman, I think I will stop here in terms of Chapter 15 and leave it later to my colleague, Mr. Ratanya, to run us through the Articles in greater details. *(Clapping by Honourable Delegates)*

CHAPTER 16 – LEADERSHIP AND INTEGRITY

Com. Prof. Ahmed Idha Salim: To continue, if I may deal with Chapter 16 again as briefly as I can, given the constraint of time. Mr. Chairman, Chapter 16, Leadership and Integrity, as I said is fairly brief also, it is only two Articles. I am sorry the other one is actually five Articles; it is Leadership and Integrity that is two Articles, namely Article 276 and 277.

Mr. Chairman, the objective again behind its inclusion in the Draft Bill can be stated to be very simple and very briefly it is the creation of a Kenyan leadership that has integrity. The Chapter

is titled, Leadership and Integrity. Hopefully, the Articles plus other parts of the Draft Constitution I will be referring to will lead us, or give us at the end a leadership with integrity, honesty and probity. Now, to appreciate the full importance of this very brief Chapter Mr. Chairman, we will need to read it alongside Schedule five in the Draft Constitution. Schedule five as you know is entitled, Code of Conduct of Leadership and Integrity.

Also, if I may encroach on the next presentation, it will need to be read in conjunction with Article 285, namely the Ethics and Integrity Commission. There will be a presentation on the Constitution Commissions, one of them being the Ethics and Integrity Commission but Mr. Chairman, this is an obvious case of something that ought to be really related to something else in a different place. These three components Mr. Chairman, Chapter 16, Schedule Five on Leadership and Integrity Code of Conduct and the Commission on Ethics and Integrity really form an interconnected and complimentary unit and as I proceed with this presentation, I think that will be made clear.

The need for this is obvious Mr. Chairman, given the wide spread cry you have been hearing over a long period of time, complaints against corruption, against nepotism, against cronyism, conflict of interests. All these have been rampant in our country and they seem to be uncontrolled in the eyes of Kenyans who gave us their views and even since then we have been reading virtually daily of cases or more than one case of such ills in our society. Therefore, I don't think we need to justify having this Chapter and the other related sections in the Draft Constitution concerning this problem.

Mr. Chairman, the leaders to which these two Articles apply range from the President, the Prime Minister, the Ministers, the MPs, local Council Members, the Central Bank Governor, the AG, the Auditor General, the Controller of Budget, the heads of the Police Force and the Correctional Services, as we call them, down to the most junior public officer such as the clerk and the humble messenger. As long as anyone or certain public officer is paid from the public funds, this Chapter and the code of conduct apply to him. All these leaders Mr. Chairman, high and low, are people elected and appointed to lead us and serve us in different positions and different capacities. They are paid from taxpayers' funds to render their services or to render their leadership. They should therefore be made accountable to us for those services and if found

wanting in integrity and in honesty they should be interdicted, replaced, dismissed and even punished.

Mr. Chairman to repeat, given the phenomenal diffusion of corruption in the public service it has become necessary to put in place ways and means to deal with this Council. It has been deemed serious and expensive enough to be dealt with not in an Act of Parliament but through provisions in the Constitution, which we have done. Mr. Chairman, just to give a few examples of the problems we are facing of course by this cancer, which one amongst us has not learnt about the taste of a bribe taking or extortion by a Police Officer? Who among us does not know of a messenger, the simple messenger who insists on “kitu kidogo” before he pushes your file in the right direction? How about the civil servant who insists on getting something for Harambee in his area before rendering any service to you when you visit him and will always have a receipt book for the Harambee in his drawer? Haven’t you read about the senior civil servant who gives tenders to his own company to build the road or some such projects? Haven’t you heard of the ‘cowboy contractors?’ What about those who register illegally allocated land in the names of the members of their families, so that they are not personally exposed or found out? Or the forest officer who connives the illegal felling of trees for a handsome fee in return, contributing sadly to the destruction of our natural resources. Or the revenue collector who collaborates with unscrupulous business people to clear their goods without paying any duties thus denying the government millions of shillings in duty which can be used to improve our educational systems and our health services.

Mr. Chairman, the examples of such corruption are a legend. By the admission of one Minister in the present Government, corruption is still rampant in the corridors of the Government Ministries right now. This Minister put it very graphically the other day. He said that from the top floor in the Ministry building he is presiding, he is standing and working on top of corruption.

Mr. Chairman in short, I believe we have made a case for including this brief Chapter in the Draft Bill and my colleague Commissioner Ratanya will go through the two Articles in a short while. My role is really to sum up their significance again. These two Articles Mr. Chairman, advise all to whom they apply, from the President to the humble public servant, to conduct

themselves both privately and publicly in such a manner as not to compromise their public status or image. They have an image and a status to maintain.

They are called upon Mr. Chairman, not to demean their respective offices and not to allow their conduct to endanger or reduce respect for the Government. They are enjoined to make sure that not only themselves but members of their families also behave themselves in a befitting manner lest doubt arises in the mind of the public that they are not carrying out their duties with integrity and honesty and if need be, they are supposed to dissociate themselves from the actions of the members of their families, if they want to maintain their own integrity.

Mr. Chairman, those are the two Articles, but not content with such instructions to the public officers on their responsibilities in these two Articles, the Draft Bill contains the Schedule I referred to in the form of a code of conduct or leadership and integrity to be found on pages 252 to 256.

Very briefly and very quickly Mr. Chairman, this code of conduct prohibits certain behaviour of conduct of public officers. It limits a public officer in terms of income from public funds. He cannot have too many jobs. It compels him or her to make a declaration of assets and liabilities, which we are happy to note that action is being taken in that regard by the Government. It lists the serious offences that would be regarded as a breach of that code of conduct. The code of conduct forbids the public officer from accepting gifts of any kind or any benefit from any company, any contractor or businessman, something which we know has been taking place over a long period of time. He or she is also forbidden from soliciting contributions for harambees from any one and any gift given to him in his official capacity has to be given to the department or the institution that he is working for. He is not supposed to keep it.

One might ask, what happens if there is a breach, or if the public officer breaches any part of this code of conduct. That is where the provisions of the Constitutional Commission on Ethics and Integrity comes in and that is why I said, it is very closely related to this Chapter.

Now, this seven-man - I apologise to my lady sisters here – this seven member commission has been given powers to deal with any breach of the code of conduct by any public officer, again

high and low. The Commission will keep custody of the declarations of assets and liabilities and avail them for inspection by any citizen. They are not to lie in some office somewhere under lock and key. Somehow, citizens should be in a position to check on somebody's liabilities and somebody's assets if he is a public officer.

The Commission will ensure compliance with the code of conduct. It will receive complaints against and investigate any public officer accused of breaching the code of conduct and if further action is required, the case can be taken up by the relevant authority and will be referred to that particular authority by the Commission.

The Commission will also vet any applicant – anyone applying to any public office - to make sure that he is strictly clean before approving his appointment. If on the other hand he is discovered not to be so clean, then the Commission has the power to reject his application.

Mr. Chairman, the Commission will also investigate instances of corruption and put in place measures to prevent that malaise known as corruption. It will examine procedures of public bodies to make sure that they leave no room for corruption to prevail and Mr. Chairman it is mandated to carry out education against corruption. The form and method of carrying out that education of course, is a matter of detail to be worked out.

Mr. Chairman, lastly I just need to say that CKRC is of the view that the two provisions in Chapter 16 in conjunction with the code of conduct on Leadership and Integrity and the proposed Constitutional Commission on Ethics and Integrity will go a long way towards giving our country a more honest public service and leaders with integrity.

Mr. Chairman, I will stop here and perhaps pass on the microphone to my colleague, Commissioner Domiziano Ratanya to lead us through the Articles of these two Chapters. Thank you very much.

Hon. Delegate Raphael Mwai: Thank you very Commissioner Professor Idha Salim. Commissioner Ratanya will elaborate on the issues that have been raised.

Com. Domiziano N. Ratanya: Thank you very much Mr. Chairman. Honourable Delegates, my colleague has gone through the two Chapters just to give the background and also the highlights and he has even mentioned where we got the authority to give the provisions to the Constitution. Previously the Armed Forces had been established by an Act of Parliament - that is Cap.199. They had never been entrenched in the Constitution. If we check the 1963 Constitution which was the independence Constitution and even the amended Constitution which is the current one that we have, we do not have provisions of Armed Forces in that Constitution. However as you have heard, as we went round to get the views from the public, it was really a concern that there are no provisions in the Constitution regarding the Armed Forces, and especially the Defence Forces. This is why even the public - the wananchi themselves - told us that we have to give power and more authority to the Defence Forces.

It was however not possible to get a lot of information from the public. You know the Armed Forces and even the other Forces have been away from wananchi. We also got information from the Defence Forces themselves, which was very, very little because we could not even go to the barracks to collect information. However we somehow managed to get information from Defence Forces as we went to Mombasa to write the Draft, where we got the memorandum from the Department of Defence. They gave us their views and we understood that they are also interested to have the Defence Forces entrenched in the Constitution. With the strength from the wananchi and also the Defence Forces, the Commission decided to propose the provisions of the Defence Forces to be entrenched in the Constitution and this is how we came up, as my colleague has mentioned, with Chapter 15 on Defence Forces. He has also said that the Police and other forces had been mentioned in the current Constitution, but not the Defence Forces. By this we mean the Armed Forces, the Army, the Kenya Air Force and the Kenya Navy.

Now, since my colleague has gone through and given the background, the most important thing that we are going to do now together is that I will refer you to the actual proposals as they are in the Draft Constitution. The proposals are there in details although we do not have very long Chapters on this. We have the summaries in Chapter 15 while Chapter 16 is on Leadership, which we shall do later.

Honourable Delegates, if we go to Article 271 it generally deals with principles and objectives. However we are now talking about what has gone to the Draft Constitution. The primary objective of the Defence Forces and the security system of the Republic of Kenya is to safeguard the well being of the people of Kenya, the peace, national unity and integrity of the Republic. The Defence and National Security of the Republic of Kenya shall be promoted and guaranteed in accordance with the following principles:-

National Security itself is subject to the authority of the Constitution and Parliament;

National Security shall be pursued in compliance with the law to include International Law and with utmost respect of the rule of law, democracy, human rights and fundamental freedoms.

The Defence Forces shall endeavor to learn from and make use of the experience and traditions of the diverse communities within Kenya and their leaders in making and maintaining peace.

The Defence Forces shall act and retain and require their members to act in accordance with the Constitution and the law including customary international law and international agreements that are binding in Kenya. In the performance of their functions, the Defence Forces and every member of the Defence Forces shall not act in a partisan manner that is, they shall not be members of the political parties for example - they shall not further any interest of a political party or cause prejudice, a political interest or political cause that is legitimate in terms of the Constitution.

Now, the other section here, that is Article 272, is mainly dealing with the establishment of the National Security Council. There is an established National Security Council consisting of the President, the Vice-President, the Prime Minister, the Minister in Charge of Defence, the Chief of the General Staff, the Army Commander, the Navy Commander, the Air Force Commander, the Commissioner of Police, the Director of Kenya Correctional Services, the Director of National Security Intelligence Service, the Chairperson of the relevant Parliamentary Committees and the Attorney General. The President shall preside at the two meetings of the

Council and in absence of the President, the Vice President and in absence of the Vice President, the Prime Minister shall preside.

The Council shall make rules or procedure to guide the conduct of the meetings.

The Council shall elect or appoint its secretary from among its members.

We have then the other Article in the Draft, which is on functions of the National Security Council that is Article 273.

The National Security Council has the responsibility to ensure the integration of the domestic and foreign military policies relating to national security in order to enable the military services, departments and agencies to cooperate effectively in matters relating to national security; to assess and appraise the objectives, commitments and (?) of the Republic in relation to actual and protection and potential military power in the interest of national security and to consider policies of matters of common interest to the department, and hinges on the environment concerned with national security and to exercise supervisory control over these departments.

The Prime Minister shall keep the President informed on the state of the security of the Republic and of deliberations of the council. Where a state of emergency is declared by the President, the council shall be the authority responsible, subject to the Constitution, for taking and implementing the measures that are reasonably justifiable for dealing with situations that had arisen. An agency, establishment or any other organization concerned with national security that is not established except by, or under the Act of Parliament-- I think my colleague mentioned that, there should not be any other forces established by anybody except by an Act of Parliament or through Parliament.

If you go to Article 274 of the Draft, we talk about the Defence Forces. No one may raise a defence force, military or parliamentary organization except, or under the authority of an Act of Parliament That is what has already been said. There is established a Defence Force consisting of-- Honourable Delegates, as you read, you find that there is a National Council and there is

the Defence Forces Council. So these are two different Councils which you should not confuse. The Act that previously established the Armed Forces did not provide for National Council. As you may find we have also included the Police and Correctional Services. They only had Defence Council, so that is the difference. You can see now in the Constitution we have the two Councils.

The other one established is a Defence Council, which has just been mentioned and its members are the President, the Vice President, the Prime Minister, the Minister in charge of Defence, the Chief of General Staff, the Army Commander, Navy Commander and the Air Force Commander.

Then, in Article 275, the Chief of General Staff of the Defence Forces shall be appointed by the President. If we go to the Constitutional offices, you will find that that is one of them. The President, acting in accordance with the recommendations of the Defence Council, shall appoint the Army Commander. The other point here is that the Air Force Commander, who is also responsible to the Council and the administration of the Air Force, is also appointed by the President through the advice of the Council. Each of the officers referred to in Clause 4, is subject to the general direction of the Defence Forces Council. The President, acting in accordance with the recommendations of the Defence Forces, shall grant commissions to officers of the Defence Forces, and shall appoint persons to office or work in an acting capacity in the Defence Forces.

Subject to the Constitution, the Defence Forces Council may make regulations which shall include matters relating to control and administration of the Navy, the rank of the officers, the conditions of service, the authority and process of command of the officers and the delegation to other persons of commanding officers, to try accused persons and the conditions subject to which the delegation is made.

So, Mr. Chairman, Honourable Delegates, what we are going through here is exactly what is in the Draft. Now we go to the next one, that is, Chapter 16, which is on Leadership and Integrity. The Professor had also given the highlights, so what I will do is just to go through what is actually contained in that Article, 276. This Chapter applies to the President, that is the people concerned under this type of leadership and integrity is the President, the Prime Minister, Deputy

Prime Minister, the Ministers and the Deputy Ministers, all Members of Parliament, all Members of Local Authorities or Local Councils, all Constitutional office-holders will need the meaning of Article 293, which is on Constitutional offices. So it means that all the Constitutional offices are subject to this Chapter. They are all leaders and public officers.

Article 277 is on Responsibilities of office. A person to whom this Chapter applies has a duty to conduct himself or herself in such a way, both in public or official life and in private life, and in his/her association with the other persons, as not to place himself or herself in a position in which they have or could have a conflict of interest, or might be compromised when discharging their public or official duties. He/she should also not demean their office or position, allow his/her public or official integrity or personal integrity, to be called into question. They should not endanger or diminish respect and confidence in the integrity of the Government of Kenya. In particular, a person to whom the Chapter applies, shall not use his/her office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether they are carrying out or have carried out their duty imposed by clause (2). It is a further duty of a person to whom this Chapter applies, to ensure as far as is within his/her lawful power, that those persons for whom they are responsible including spouse, children, nominees, trustees and agents, do not conduct themselves in a way that might be expected to give rise to doubt in the public mind as to whether they are complying with their duties under this section. If necessary, for him/her to publicly dissociate themselves from any activity or enterprise of their associates, or a person referred to in paragraph (a), that might be expected to give such a doubt.

Then the Commission on Ethics, and Integrity, this was mentioned by my colleague, I don't need to mention it, and it is also one of the Constitutional Commissions. This Chapter applies also to a person who is convicted of an offence in respect of their office or position or in relation to the performance of their functions or duties, fails to comply with the direction under Clause (4) or otherwise refuses to carry out the obligation imposed by Clause (1) above.

The Leadership and Integrity Code of Conduct, which was mentioned by my colleagues, will also be checked properly during the committee discussions. I will only just touch on Clauses 16, 17, 18 and 19 in brief.

Clause 16 on the Code of Conduct states that a public officer shall not be a member or belong to, or take part in any society or organization the membership of which is incompatible with the functions or dignity of the public office.

In Clause 17, a public officer shall, within four months after the coming into operation of this code of conduct or immediately after taking office at the end of every four years, or at the end of the public office term, make to the Ethics and Integrity Commission, a written declaration of the properties, assets, liabilities of the public officer, their spouse and those unmarried children under the age of 18 years. A statement in the declaration that is found to be false by any authority or person authorised on that behalf to verify it, is deemed to be a breach of this code.

Any property or asset acquired by a public officer after the declaration required under this code, and which is not fairly attributed to income, gift or loan approved by this code, shall be deemed to have been acquired in breach of and contrary to the code of conduct unless it is proved. An allegation that a public officer has committed a breach or has not complied with this code, shall be made to the Ethics and Integrity Commission. As I said earlier, this is one of the Constitutional offices. A public officer who engages in an act prohibited by this code through a nominee, trustee or other agent, shall be deemed to have committed a breach of this code. In its application to public officers, Parliament may exempt a cadre of public officers from a provision of this court while it appears that their position in the public service does not demand its application. A Public Officer shall not be in position where the personal interest of the public officer conflicts with the duties and responsibilities of his office, or compromise the honesty, impartiality, integrity of the office and the officers.

Then a public officer may not abuse office to solicit contributions from the public. If you check the definition or interpretation of public officer from Article 270 and this was also introduced to you by the other group, you will find a definition of Public Officer. Public Officer means, service in any public capacity of the government including the Police, Prison Services, emoluments which are payable directly from the Consolidated Fund or directly provided by Parliament; this is a public service. A Public officer in this one means somebody who is holding or acting in an

office in the Public Service. So Mr. Chairman, Honourable Delegates I wish to stop there. Thank you.

Hon. Delegate Raphael Mwai: Thank you very much Commissioner Ratanya. I think we are in a position to discuss these issues from a position of knowledge and therefore a position of strength. I invite discussions now starting from this side. Yes 274, you want to say something?

Hon. Delegate Victor Gituma: Thank you very much, Mr. Chairman. My name is Victor Gituma, Delegate number 274. I would like to comment on the object of Defence Forces, that is Article 271 and Mr. Chairman my contribution is that these objects are all dealing with forces, so far they depend on the countries concerned. But you know, Mr. Chairman, that in Kenya, except for a very brief period, there is no time when our Armed Forces were engaged in any war, and in those forty years I am sure there are many officers who were in Defence Forces and just retired and went home.

My proposal, Mr. Chairman, is that there should be an object as far as Defence Forces are concerned requiring them to be engaged in tasks of nation building. So far, they are not compatible with their training. Mr. Chairman, those who are engaged in the army are young men. They have energy and strength. What do they do in the barracks? I am sure they are not in training all the time. There is nowhere to fight. There is nothing wrong if they are engaged in engineering works, so far as water is concerned, roads, airports and so forth. They have the equipment and the machinery. But they cannot be so engaged unless if it an object in the Constitution, they will say they are being misused. Mr. Chairman I think that if this is done, then a certain percentage of the monies which they earn can be used by them because they will be doing this besides their duties. But Mr. Chairman, you will notice also these soldiers when they retire to go home, they don't know what to do, they die very fast. Why? Because they are removed from the barracks. They are just used to staying there, doing a little training, eating, but they do nothing else. But if they are engaged otherwise, I am sure they can find something to do when they leave at fifty-five and so forth. So Mr. Chairman, I think it is very important to have such an object. Otherwise we must look for war for them to fight, which we must not do. Thank you very much Mr. Chairman.

Hon. Delegate Raphael Mwai: Thank you very much in deed. Do we have anybody on this side here? Okay, and 629?

Hon. Delegate T.K. Githiora: Thank you very much, Mr. Chairman. My name is Brigadier Githiora, of the Kenya Armed Forces. I am Delegate number 629, special interests.

Mr. Chairman, the Commission has considered the basic issues which relate to Defence and we are told that they collected appropriate views, three of them were identified as significant issues which were posed to the public. The first is whether disciplined forces should be established by Constitution and the mechanisms of disciplining the Armed Forces. The second is whether the President should be the Commander in Chief and whether the Executive may exercise powers to declare war. The third, whether the exercise of emergency powers should be permitted by the Constitution in situations endangering the lives of the life of the nation, which include war, natural disasters and very serious public disorder, and who may invoke those powers.

Mr. Chairman, Chapter 15 has answered these issues mostly between section 271 and 275 by setting out the principles of defence of the Republic of Kenya and establishing the basic organs responsible for national defence. But it is necessary, in order to fully address the issue which were considered on defence which the Commission compiled, to refer,, by way of cross reference, to other Articles. I am sure Honourable Delegates will do so and they will see, for instance that the reference to the Commander in Chief is in Article 150 and with regard to procedures and powers for declaring a state of emergency, that is found in Article 71.

Now in drawing these provisions on Defence, Mr. Chairman, and National Security, the Commission obviously looked at the roles of other security organs. The Police, the Administration and also, according to the Commissioners, the fact that the current Constitution and even the Independence Constitution made no mention of the Armed Forces other than saying that the President shall be the Commander in Chief. Now the essence of Defence principles has been stated. What is needed, Mr. Chairman, from this particular Draft is a little rationalization of the Articles and we might proceed as follows: -

- We suggest, state in Chapter 15, the core principles and purposes of national defence and provide for the basic structure and organs for the discharge of the functions of national defence.

Mr. Chairman. the main principles are that the Armed Forces are subordinate for the civil power, that they are non political, that only the Government may raise Armed Forces. These are very crucial principles.

- That the Armed Forces should be professional, well trained, modern and well equipped to meet any external threats to Kenya.

Mr. Chairman, currently much of the equipment that we operate in the Armed Forces dates back to the seventies and to the eighties. This is common knowledge. May be in some cases the shelf life of these equipments has been exhausted.

We also suggest that a relationship should be made and a careful distinction made, Mr. Chairman, between National Defence and National Security. National Defence should be defined as defence of the Republic from external aggression; that is external basis. Secondly, aid to the single power in the maintenance of order and Mr. Chairman, you will notice I did not say, law and order, I said order. This is support during natural calamities and any in very serious public disorder.

With regard to National Security, a definition should go as follows, the maintenance of law and order internally, this is within national borders. It is the responsibility of the Police and other administration organs-- Mr. Chairman I would like to request for five more minutes. (*Laughter and clapping by Honourable Delegates*).

Hon. Deleates: Oh yes.

Hon. Delegate Raphael Mwai: Can you summarize now?

Hon. Delegate T.K. Githiora: I will, but I think you gave the Police representative--

Hon. Delegate Raphael Mwai: Proceed, Proceed.

Hon. Delegate T.K. Githiora: Thank you. The assignment of these duties to the Police Force may be done in these Chapters or in a separate chapter. They made their case this morning where the Police Force is established in the Draft Constitution and may I say here that care is to be taken to fit in the Administration Police. We have been told and we agreed they are important, but I think conceptually if we look at the Kenya Police we will see that they offer “*Utumishi kwa wote*” while the Administration Police we could say offers “*utumishi kwa Bwana D.C., Bwana D.O, the Chief and the Sub-chief*”. There is that difference and I think the Police also kind of press for that kind of distinction.

Now to support both National Defence and Internal Security, we are suggesting that a National Security Intelligence Service which provides security intelligence and counter intelligence should be established. Mr. Chairman, by law that body has been created by statutes, it is a significant national security organ, it deserves creation in the Constitution, we strongly recommend it and it should be provided for, if you wish, in this particular Chapter. Parliament could be tasked to enact appropriate legislation for it. The Draft Constitution does not say anything on that very important organ.

Now the National Security Council. This is an overall coordinating national organ. It is necessary, in order to enable the government to oversee and to coordinate the three aspects of National Security, which we have said are Defence, Internal security and Security Intelligence. The National Security Council ought to be chaired by the President and that has been indicated and key persons, the Vice President, a Prime Minister, if there is one. Ministers responsible for Defence, Internal Security, Foreign Affairs, Finance, the Attorney General, the Minister for Justice or both of them, the Chief of General Staff, the Commissioner of Police, the Director General of Intelligence. We take a little bit of a departure from Article 272, which has set out the representation and we suggest this other one.

Previously, Mr. Chairman, such a body existed, it was only Executive, it was legislated for and it did not perform its duties very well. Now there is a mention of command in the Draft

Constitution, Article 274 and 275. Mr. Chairman, the Constitution is not the proper level to set out functional and organizational details of Defence, Security, or even things like Police organs and procedures. So it is recommended that we sort out only basic principles and organs. The Defence Council should be the first one. It is responsible for overall policy, control and supervision. It brings together the Civil power and the Military. It does not interfere with operational command link between the Commander in Chief and the Chief of General Staff and the Commanders. The Defence Council's composition should be at the level of the Minister responsible for Defence as the Chairman, the Permanent Secretary of the Ministry responsible, the Chief of the General Staff and the Service Commanders.

The current position in the Armed Forces Act is adequate, we recommend that it is retained. This organ is responsible to the government collectively. It reports to the Cabinet, the President should not chair it. We do not recommend the structure as suggested, the term Defence Forces has been used, Mr. Chairman. It may be adopted but only for the purpose of emphasizing the difference between National Defence and National Security. In the past there used to be lack of proper control over the duties and roles of the military, the Police, the Administration Police, the Prisons Service, today even Security Companies. In the result, the term Armed Forces was used by all of them. All of them tended to adopt Armed Forces training, employment tactics, uniforms, weapons, misuse of arms, the use of excessive force, inappropriate handling of the public were all blamed on the Armed Forces and that included the Kenya Armed Forces and that was a problem. The distinction is necessary. Currently by law, the Armed Forces means Kenya Army, Kenya Air Force and Kenya Navy. By re-classifying them as the Defence Forces, they will be in the Public perception a separation from other uniformed services.

There are countries Mr. Chairman, which use the term Defence Forces. Usually those countries operate a national militia. They have a concept of a patriotic nationalistic and political people's defence movement. Kenya's Defence Forces are not that one, Mr. Chairman. With regard to the Chief of General Staff, we suggest Mr. Chairman that the appointment of this Principal Officer be left to the President and Commander in Chief, without Parliament approval. We recommend that experience, seniority, suitability for office be left to the Commander-in-Chief to determine.

Hon. Delegate Raphael Mwai: Can you give that to the station, I think you---

Hon. Delegate T.K. Githiora: I will do so, Mr. Chairman and thank you very much for giving me that extra time.

Hon. Delegate Raphael Mwai: You are from the disciplined Forces, you know that.

Hon. Delegate Raphael Mwai: Thank you very much. (*Clapping by Hon. Delegates*) So thank you very much indeed, can I go to that block there? I will come here later. 407 you have something to say?

An Honourable Delegate: Inaudible.

Hon. Delegate Raphael Mwai: Something to say? I can't hear you.

An Honourable Delegate: Inaudible.

Hon. Delegate Omolo Kayila: I thank you Mr. Chairman for giving me this chance. First, I would like to ask you to correct your record. It is said that I have spoken two or three times which I have not.

Hon. Delegate Raphael Mwai: Go ahead.

Hon. Delegate Omolo Kayila: Mr. Chairman, my name is Omolo Kayila from Kisumu, a District Delegate. Mr. Chairman I would like to say that the general public in Kenya knows very little about our Armed Forces. Unlike the Police case in the morning, when a lot was said that enlightened and educated us, I think the previous speaker just before me has also helped to enlighten some of the issues and the setups in our Armed Forces.

Mr. Chairman, I want to start with using my little knowledge about the Armed Forces and arising from what has been presented. I want to say that the public needs to be clear and in the Constitution we need to be clear about what constitutes the Armed Forces and what constitutes Defence Forces, because sometimes we may take these words to be used interchangeably.

The other thing I wanted to say Mr. Chairman, is that during peace time, like we have been peaceful throughout in this country, I think the Armed Forces especially the Defence Forces should be used for nation building, and they should also be used in cases of emergencies like the floods, fires and so on, so that they can help. One would have been glad to see them rush to Budalangi when there were floods there to help in rescuing the people. The other thing Mr. Chairman is that when they talk about National Security Council, that is at national level. I am wondering what would happen when we go the devolved agencies, whether we could have a small group there which may also be feeding the National Security Council with information at the base level on matters of security. Maybe the Commissioners would wish to look at that and put in something so that this is tied up properly because at the national level they may not be everywhere to see the issues and problems of security at the local level.

Mr. Chairman, I also wonder sometimes why in this country there are so many organizations which are calling themselves security organizations. Is it because our Police force and those who are responsible for security have not done a good job that we should be having all these people? And I see them being paraded during national days also marching past the President. I would think that if our Police Forces were properly equipped, trained, made to do their work and resources are made available for them, these organizations could be taxed more so that we have a uniformed force that would help in matters of security.

Another thing Mr. Chairman is that we have seen in the Draft here some protocol but one wonders, in case of emergency, who shall be calling the orders? Who shall be giving the orders? This also needs to come out clearly. The final thing about the Armed Forces is that there seems to be a lot of mystery about their Budget. Nobody wants to say how much money is going there and for what purpose, things are just slammed and perhaps it would be a good idea if these Budgets were open also to public scrutiny. Mr. Chairman, I have not finished.

Hon. Delegate Raphael Mwai: Wind up, wind up.

Hon. Delegate Omolo Kayila: Mr. Chairman on matters of integrity I would suggest that we come out with a clear definition of what Public Service is and who a public officer is. We should specify if a large number of people in the teaching fraternity are also public officers?

Secondly Mr. Chairman, it is defined that the public officer is one who is working in the public sector and being paid from funds provided by Parliament. What happens to the local authority staff, because Parliament never provides money for their salaries?

Hon. Delegate Raphael Mwai: Thank you.

Hon. Delegate Omolo Kayila: If I must stop, Mr. Chairman, then I rest my case.

Hon. Delegate Raphael Mwai: For the time being. Thank you. I go to that block now, 085? You want to say something?

Hon. Delegate Marsden Madoka: Thank you, Mr. Chairman.

Hon. Delegate Raphael Mwai: 591, what is your point of order?

Hon. Delegate Ogembo Masese: Thank you Mr. Chairman. My name is Ogembo Masese, Political Parties. In the morning, there was a complaint here about lack of quorum. What happens is some MPs come in, they sit for 5 minutes, you give them time to talk. We sit here a whole day, we do not talk. I have prepared myself to give my contribution on some areas where I am competent and I cannot contribute. Now, Honourable Madoka has come, you have given him a chance, and we are here. If we get tired and walk out you accuse us of having no quorum. Please be a bit careful.

Hon. Delegate Raphael Mwai: Thank you very much. 085.

Hon. Delegate Marsden Madoka: Thank you, Mr. Chairman, the Honourable Delegate, I was here this morning and I have been here most of this afternoon. Mr. Chairman, first I think let me commend the Armed Forces for the discipline which they have maintained and the good name

they have earned us in their peacekeeping missions. Having been a great Force they have given us a great name.

Mr. Chairman, I would like to agree with what has been said by the Brigadier Githiora and to say that this particular Chapter, I think, needs to be broadened, because of the question of the Defence Forces and national security. National security also includes the Police and therefore, I think in this Chapter we need to move the functions of the Police as stipulated in Chapter 14 to this particular Chapter. The other organ which has been left out is the National Security Intelligence Service. Whereas the Director General of the National Security Intelligence Service has been included in the National Security Council, we make no mention of this particular service in the Constitution. I think we do need to ensure that we stipulate that there shall be an established organ of the National Security Intelligence Service. This then can also come under this particular Chapter.

Mr. Chairman, I just want to take this opportunity also to show what confusion may arise as a result of the separation of powers. You find that in the National Security Council, you put the President as the Chairman of this National Security Intelligence Service. Article 272 and if you go to Article 273 (ii), it says, "The Prime Minister shall keep the President informed on the state of the security of the Republic and of the deliberations of the Council." How can he keep the President informed of the deliberations of the Council, when the President is in fact the Chairman of the Council? It again shows the confusion which may arise as a result of this separation of powers.

Mr. Chairman, I also want to say this, today we find that the Government enters into Defence pacts without getting Parliament involved. I think it is important that if the Government has to enter into any Defence pact, or deployment of our troops in any peacekeeping missions, where the lives are involved, these certainly do need Parliamentary approval. (*Clapping by Honourable Delegates*). The very existence of many of the foreign troops in this country have in fact been a threat to security of this country. Therefore, it is important that we make sure that Parliament does approve all these matters.

Mr. Chairman, there are other things which have not quite been mentioned but I think we need to just say, the Act does not show that we know that the Commanders of the Army or the Navy are not to be in command for over four years. I consider that a very short period. I think maybe a maximum of six years may be more meaningful because when you say four years, the first year he is learning, it is only two years that he is able to implement anything, the fourth year, he is preparing to leave. So, I think we do need to consider the length of command for these particular officers. Mr. Chairman, Brigadier Githiora said most of what I wanted to say, so, I thank you for your attention.

Hon. Delegate Raphael Mwai: Thank you very much indeed. The other block there, I recognize 129?

Hon. Delegate Justin Muturi: Thank you Mr. Chariman. My names are Justin Muturi, Delegate 129. I commend the Honourable Marsden Madoka for pointing out the anomaly that I had noted on 273 Sub-Article 2. So I go to Article 274, which I find a little strange. Mr. Chairman, in that it says, “No one may raise a Defence force or military or a paramilitary organization except by or under the authority of an Act of Parliament”. Mr. Chairman, this scares me because it means to me that somebody, an individual in Kenya, can seek Parliamentary approval to raise some military of sorts. I think Mr. Chairman, I would propose that we say “Except the Republic, nobody may raise a Defence force or military or paramilitary organization”.

Mr. Chairman, I go to Chapter 16 Article 273, where I find the provisions of Schedule 5 with regards to declarations. In my view this may at the present time be deemed as superfluous in light of the recent enactment of a law called the Public Officer Ethics Bill, which I suspect borrowed quite heavily from this Draft. Mr. Chairman I want to point out that under Section 8 on page 69 it purports to define the following as serious offences which are in conflict with the leadership and integrity code. (a) Mr. Chairman, says, “Conviction in a court of law and sentenced to a term of imprisonment without the option of fine for a serious offense”. And then, in all that follows, a lot of crimes are described, like misappropriate and the rest. Mr. Chairman, in my view, there is some conflict because misappropriation is actually a serious crime, corruption is a serious crime and if we do not put a minimum period for the incarceration after

conviction then, Mr. Chairman, we run the risk of somebody being convicted by some capricious judicial officer and locked in cells for one month or imprisoned for one or two months and they may very well not even succeed in having the conviction overruled on appeal. Now, I think to leave as open as it is may open some avenues for abuse. So I propose that, that be looked into.

Mr. Chairman, while still on Chapter 16, looking at Article 276, there is a small issue, perhaps the last one because Mr. Madoka has covered most of what I had wanted to mention with regard to the others. It says the application of the leadership, leadership and integrity code, it says that this Chapter shall apply to the President, the Prime Minister, the Deputy Prime Minister, the Ministers and the Deputy Ministers.

One, it obviously seems to have forgotten the Vice President or Deputy President as the case may be if we create one, so I think it is an omission that we need to cater for so that the Vice President is also covered by the Leadership Code. But it goes on to say that even Members of Parliament are covered by this which is okay. It is still the same way as it is in the Public Officer Ethics Bill, I mean Act of 2003 and all members of local authorities and all Constitutional office holders within the meaning of Article 293. Mr. Chairman, it omits Members of the National Council. If we agree that we are going to have National Councils and the District Councils, it is important that this leadership code as proposed in the Draft Constitution be made to apply to them. Thank you Mr. Chairman.

Hon. Delegate Raphael Mwai: Thank you very much indeed. I recognize 392.

Hon. Delegate Eliud Paul Nakitare: Thank you very much Honourable Chair. I would like to agree with those who say that the Defence Council or the Armed Forces--My name is Paul Nakitare Delegate 392 from Bungoma. The Armed Forces have something that we can all borrow from as a nation and that is their disciplined nature. Honourable Chair, I think that if all of us were as disciplined as Armed Forces, this country would move very far in terms of many things including development.

I find, Honourable Chair that many of us particularly in the working force, we tend to be too lethargic. We are not devoted, we are not committed to our work as much I have seen the Armed

Forces do. So, if there is anything we can borrow, Honourable Chair, from the Armed Forces or Defence Forces it is discipline and I pray that all Kenyans can learn in terms of the spirit of the President to be very disciplined in working and in a working discipline.

Second point, Honourable Chair, which is a little negative on the side of the Armed Forces, there is usually a slight tint of discrimination in employment. When the Armed Forces go around the country to recruit the youngsters, there is always discrimination some of which is on the basis of ethnicity and who you know and you find that Armed Forces may not have a national outlook. All the Armed Forces, Honourable Chair, I think should maintain that national outlook and I think this should be reflected in the Constitution.

I would also like to agree with those who prescribed the fact that the Police Force perhaps would have been better amalgamated together with the Chapter on the Defence Forces because they do more or less the same thing. Those who defend externally and those who defend internally I think their processes are more or less the same. In the same vein, somebody also mentioned about the formation of illegal Paramilitary groups. While this I think should give rise to the fact that maybe people do not feel that they are well protected I think that if the Police Force cannot cope, perhaps they can also share some responsibility with the Armed Forces.

Now, I will also would like to agree very much that the Defence Forces, because they have plenty of time on their hands should really be significantly involved in matters of civil construction and re-construction. There are very bad roads all over the country yet the Armed Forces have some of the best equipment that we see around. Let them get involved, let them get to rub shoulders with the people around the country doing good things that we all expect.

On the question of integrity, Honourable Chair, I think integrity issues should also apply to Private Sectors. Private Sector has also done a lot of mistakes that we tend not to look at, for example Private Sector is responsible for a lot of extortion some of which is very difficult to note. I have a case in point of tenders for example: a lot of Private Sector business people extort a lot of money unknowingly every time they float the tenders. They ask for a lot of money unnecessarily for a tender copy that probably cost five shillings or ten shillings, instead they ask for two thousand, three thousand, five thousand, in fact some of them, if they run out of money,

go out tendering and they raise millions of shillings and don't appoint any one of the tendered and so they should also be subject to integrity.

Finally, Honourable Chair, retired officers should be considered. There is a limit as it has been stated here; some of them have very little pension. Honourable Chair, some make five thousand, dues of two thousand shillings a month from their pension. If they would get something else in terms of a job, perhaps they should be excused.

Finally, Honourable Chair, everybody, school kid, every public officer, I think should be given a copy of integrity rules which I find to be very good. Everybody even in schools should be given a Code of Conduct to assist all of us to be good citizen. Thank you very much.

Hon. Delegate Raphael Mwai: Thank you very much indeed. 317.

Hon. Delegate John Kinuthia Waitiki: Thank you very much, Mr. Chairman. My name is Waitiki, Delegate 317 from Thika. I would like to address this issue of security and Defence.

The way Chapter 15 is drafted and a bit of Chapter 14, indicate that perhaps we know very little how the security organ operates. If you allow me, Mr. Chairman, I rather not go on to Article by Article, but I would rather take this one minute or so to explain the concept. I have spent thirty seven and half years working for the Armed Forces and I would like to assure the first Speaker I am not about to die having retired.

Mr. Chairman, when we talk of National Security, it is not as implied in section 15. Defence alone is not the security. We must start from the Police and other agencies and we see how all these organs relate to one another; that is when we can now understand what we are talking about security and that is when we actually really decide whether we need this Armed Forces, Police or National Security Intelligence.

I do agree, Mr. Chairman, that we need this National Security Council that never existed because it is from the National Security Council, that all these organs will get direction and the direction will mean the size of the organs that we want to establish, their type of equipment and

deployment. You may find the reasons as to why we keep on bashing the Police today is because they have been taken just like any other civil servants to fend for themselves but had we put them and established them in this National Security Council, that would have given them a policy guidance, then they would have been more effective.

Mr. Chairman, in the Draft you have indicated that the President will be the Chairman of the Defence Council. This is a mistake because the Defence Council is a junior organization that can be handled by the Minister. You also indicated that the Prime Minister will be briefing the President on security matters and in one of the sub-sections, you have said that the National Defence Council will nominate the Secretary. I propose that the Director General of the National Security Services should be the Secretary and, quite regularly, as he is doing today, brief the President on the daily basis on security matters.

If all this organs are harnessed and given direction from a central point, we may not have experienced the tribal clashes we had. We had these clashes because one of the agencies had information and by design or default, decided not to pass this information because there was no law requiring them to do so. Law was there but no authority was above them to force them to share the information. So if this information was passed to the other agencies definitely timely action would have been taken.

Mr. Chairman I think you have rang the bell, I will contribute further in the Technical Committee. Thank You.

Hon. Delegate Raphael Mwai: Thank you very much. 416

Hon. Delegate Oyayo David Adundo: Asante sana Bwana Chairman. My name is Adundo, Delegate from Migori 416. Please note that this is the first time I am speaking.

Hon. Delegate Raphael Mwai: That is why I called upon you to speak.

Hon. Delegate Oyayo David Adundo: Mr. Chairman, I am very delighted to talk about disciplined forces, because in my view the biggest danger to this country is indiscipline it is even bigger than corruption. But I want to speak on what is written here. I have not seen specifically

in this Constitution where we are creating the Defence Forces. I am requesting a statement which creates the Defence Forces in the Constitution. It is not done anywhere. I also suggest that we have a very specific definition of Defence and security, because if you look at 271 Section C, we are saying the Defence Forces shall endeavor to learn from and make use of experience of traditions in making and maintaining peace. I do not know whether this is the duty of the Defence Forces.

In 272, we are listing members of the national security council, some of whom have not been created, I do not know where we have got the Army Commander, Navy Commander, the Air Force Commander. And therefore when I go back to what I said, let us create in the Constitution the Defence Forces and its functions; these three arms before we start using them in the national Security Council.

Mr. Chairman, I would like to suggest that the President Chairs the Security Council and not chair a subordinate council. And those three parts, I agree with members who have suggested; this, the President, the Vice President, the Prime Ministers cease to be members and give this responsibility to the Minister in Charge of Defence. I am not really sure whether this is the right place, but I do not know why we killed the Ministry of Defence. I do not know whether we should not provide for it, instead of calling him the Minister for the time being in charge of Defence. In any country's Defence this is one of the key Ministries and this country has deliberately over the last 20 years or so played down the role of the Minister for Defence. I am asking the Technical Committee to find out whether there is a possibility to create the Ministry of Defence in the Constitution, so that we do not have to attach any Tom, Dick and Harry and call him a Minister for Defence. Even sometimes we have had Assistant Ministers responsible for Defence. So that was my last contribution here. I do not want to talk about integrity--

Hon. Delegate Raphael Mwai: Thank you very much.

Hon. Delegate Oyayo David Adundo: --because I have read Shedule 5 and I am quite satisfied with what is written there. I thank you very much for this. I hope you will give me time to talk on civil rights subject later on. Thank you very much.

Hon. Delegate Raphael Mwai: Thank you very much. 368

Hon. Delegate Joel Kipyegon Sang: Thank you very much, Mr. Chairman, my name is Joel K. Sang, a Delegate from Bomet. I thank you for giving me an opportunity to speak on this important subject on which I have some very pertinent contributions having served in one of those areas. Mr. Chairman, as the last speaker has pointed out, the Constitution should explicitly create the Defence Forces. It should say so in no uncertain terms.

Secondly, in the past the Department of Defence and also the National Security Intelligence Service had been taken over by the Office of the President, which has always been overloaded with work and has not been as efficient as it should be. There is no gainsaying the importance of these two arms of the security apparatus. One the Armed Forces especially in Kenya have had a mystic around it and many people have not actually contributed to our present status as far as the Armed Forces are concerned, because many people consider it as specialized area, a sensitive area. But in my view the Ministries should always be subject to civilian control and the Government of the day must have the ultimate say on the direction of the Military. However, it should be given enough operational capacity so that there is no undue interference in its professional role. I say so because the two Departments which have been treated as one Chapter by this Draft Constitution are as they should be, they are serving the same purpose. One the efficacy of the Defence machine to carry out its National responsibility of national Defence can only be carried out fully if the intelligence machinery is working properly. I can give you an example of where the coordination of these two arms of government can bring about enhanced security for the country.

The state of Israel, it is a very small country, has big a army, it is surrounded by very many hostile countries. But it has been able to ward off any attempt to overrun it, because of the efficiency of its Intelligence service. The Intelligence service in Israel is treated with a lot of respect. The Politicians do not interfere with specialized intelligence work. Here in Kenya you would be surprised to learn that many political assassinations have come up with an intelligence angle. I remember during the Ouko inquiry, there was a special branch officer in Kisumu who was mentioned adversely.

During the death of Pio Gama Pinto, the person who killed him has said he was walking with certain people he knew were connected to the intelligence service. This is a misuse of this very important organ. One, the intelligence service is not supposed to be misused by the ruling elite, it is a national institution which should not serve the President of the day. It should serve the Constitution of the Country.*(Clapping by Hon. Delegates)* In fact I suggested that the Director General of National Security Intelligence Service should report to Parliament at least twice a year and I say so because I know there is a Parliamentary Committee on Defence and National Security. And here we are creating a very wide national security council.

I know several countries where the President has been an agent of a foreign power. I know of a country where the Minister of Defence is an agent of a foreign power. I know of a country which was overrun in ten minutes because the Chief of the General Staff had been penetrated by a foreign agent. Abdulhakim Amir, the Chief of General Staff of the Egyptian Armed Forces in 1967 was an Israel agent. And because he was working in conjunction with the Israelis, the time of striking Egypt was known to him and he had to delay Egyptian response, in spite of urging by the rest of the Intelligence, that he should take action. The Egyptian Air Force was immobilized within ten minutes and Egypt had to surrender, to the humiliation of Gamal Abdel Nassir. Why did this have to happen? It happened because there are no checks and balances. In the case of Kenya if the Director General of Security Intelligence was to report to Parliament, his counter Intelligence would discover that a member of the national Security Council is serving foreign interests and he will be able to confide in the Parliamentary Committee, so that if it is the President, a motion of impeachment will come in Parliament. If such a person is below the President, that person would be relieved of their duties and prosecuted.

Give me one more minute. In the world today the emphasis on intelligence matters has moved from Military advantage to economic advantage. In other words as early as 1992, British Counter Intelligence and Intelligence was saying their emphasis was now on the economic and industrial espionage and gaining advantage. In Kenya it should be the case. We are a backward country because we do not have a lot of secrets. Our own things are being (?) by foreigners, because we are docile and foreign nations are very active in our midst.

Hon. Delegate Raphael Mwai: Okay can you wind up?

Hon. Delegate Joel Kipyegon Sang: Therefore I am suggesting, Mr. Chairman, that the Defence and National Security should be subject to Civilian control and should have minimum interference and should be allowed to work with maximum professionalism and should report to at least a Defence and security committee of Parliament, in order to defend us against foreign agents. Thank you very much. *(Clapping by Hon. Delegates)*

Hon. Delegate Raphael Mwai: Thank you very much. This side here now. Here, we do not have anybody here. 470 first and then we come here.

Hon. Delegate Sophia Abdi: Thank you, Mr. Chairman, Hon. Delegates. My names are Sophia Abdi Noor and I come from North Eastern Province. I am representing the NGO Sector. Hon. Member Delegates, I am afraid that there is very little that is known about the Kenya Army by Hon. Delegates, unlike the police forces in this country. Unfortunately or fortunately, I come from a region where we know a bit more about the Kenya Army. What we know about the Kenya Army is that they are not different from the Kenya Police, more so, we are the people who suffered double tragedy under the Kenya Army and the Kenya Police. I can share my experience with the Kenya Army. In 1980 we had a massacre in Garissa district, where the Kenya Army was used, where they burnt houses, they killed people, they massacred us, they robbed us and they rapped ladies. When they did that, in the morning it was announced that the Minister of Internal Security was flying to Garissa to see what happened, the effects of the massacre. Mark you we had not even buried our bodies, we did not mourn. Then the Internal Minister came in and we were told to go and welcome the Minister. The Kenya Army came to our houses and we were rushed to the Airstrip to welcome the Internal Minister, our bodies were still lying on the ground. We went because we were fearing, we were scared, we went to the field. I was a kid and I played for the Minister of Internal security when my brother was killed in that massacre. Then we say that the Kenya Army-- He is here in this Conference today, right now he is seated here, we know him--

Hon. Delegate Raphael Mwai: Make the point. Make the point.

Hon. Delegate Sophia Abdi: I am not going to name him. I am suggesting it is very good that we are now constituting the Kenya Army in this document and we want the separation of power within our society. What we need is the Executive to be separated from the Kenya Army. We do not want a situation where the Executive uses his powers, his position to go and influence people and they misuse their powers to go and massacre citizens of this country. We are citizens by right! And we have suffered under the Kenya Army. It is not only one instance, there is Wajir Massacre, there is Manderu Massacre, there is 1966 massacre, we have gone through a lot of massacres as people who are coming from Northern Frontier Districts. We have suffered under the Kenya Armed Forces and it is good that this historical Conference is today discussing about the roles, the responsibilities of Kenya Army. Please when we are discussing about our National Defence, tomorrow it might be your region, yesterday it was mine, and we are discussing; we are building our Constitution on historical perspective, on historical injustices that happened to us. So let us open our mind and let us discuss this topic and let see to it that we have a mechanism whereby we can check people properly, we can balance them and we can separate powers. Thank you very much Mr. Chairman. *(Clapping by the Hon. Delegates)*

Hon. Delegate Raphael Mwai: Thank you very much.

Hon. Delegate Sophia Abdi: Then, Mr. Chairman, for the last 40 years, we did not have any war in this country and our armies have been enjoying themselves. We have got very good people in the Armed Forces, we have got good resources in the Armed Forces, we have got good brains in the Armed Forces, let us use them. Let us give them some responsibilities, let them not be idle. When they are idle, idle mind always think of evil things. Let us use them. *(Clapping by Hon. Delegates)* thank you very much Mr. Chairman.

Hon. Delegate Raphael Mwai: Thank you very much indeed. Let me see, I am trying to see clearly 311.

Hon. Delegate Fr. Githonga Joachim: Thank you, Mr. Chairman. I want to comment on Leadership and Integrity. Mr. Chairman, long before what is called Ndegwa Commission, the Public Officers had integrity and they had discipline. But when they were allowed to do business, that is when corruption came in the Civil Service and unless they are not allowed doing

business, then corruption will continue in this country forever. Mr. Chairman, you will see that if the Doctors are working in the hospitals and outside they have clinics, in those clinics, you find all the possible medicine but you do not find them in the General Hospitals.

Take teachers Mr. Chairman, they have their own businesses, they are running “matatus” because their salary is not sufficient and they leave the children in the classroom. This is why the children are failing because teachers are given very little salary and they cannot operate on that salary, so they go to do business.

Take for example Policemen, Mr. Chairman. The “matatus” we see bring problems in this country, if you go and check, you will find that most of these “matatus” belong to the Public Officers, the DC’s, Policemen and other government officers and that is why you see “matatus” touts feel very strong because they are. They are like a government within themselves because they are protected by the government public officers who own these “matatus”. So, it is up to this Conference to know what to do with the Public Service, whether they are going to continue to do business or they are going to do public work. If you go to all offices, Mr. Chairman, you will find that corruption has continued in this country, because you cannot distinguish businessmen and the government officers.

We say let us give them enough salary, but salary is not always enough. They need to change their attitude, their character. We have people in this country who are millionaires and they are draining the economy of this country, looking for more money wherever they are. So, money alone is not enough, we need to change their attitude. And I propose, Mr. Chairman, that all the Civil servants should now begin going to K.I.A to be retrained once again in discipline and character. Policemen should also be taken back to Kiganjo to be retrained in order to attain dignity and to be taught good conduct. Thank you Mr. Chairman.

Hon. Delegate Raphael Mwai: Delegate 395.

Hon. Delegate Emukule Asitaluko Mark: Thank you Chair, a couple of very quick points;

Public Service. We need proper definition of Public Service. The draft people should look at this again, it cannot merely mean persons in any civil capacity of the government because the Armed Forces are (?) of the Public Service; that is one point.

For the recorders, I am using the written Draft, the red book. There are a couple of points there.

Section 273, which Honourable Muturi referred to. Subsection 4 says “an Agency establishment or other organization concerned with National Security, shall not---”, instead it is written does not, just look at that spelling.

There is a similar Section 274 which supports the establishment of the Defence Forces: the Kenya Army, Kenya Air Force, and the Kenya Navy. The new Subsection 2 in that Section is again similar to the Section that I have just referred to, “person may raise an Armed Force or Military or Parliamentary organization except by or under the authority of an Act of Parliament”. Now, that is an important point because it has been said here before, Jeshi la Mzee, Jeshi la Mungiki, Jeshi la everybody else.

Now, on the composition of the Defence Council, we should have specifications that the PS in the Ministry of Internal Affairs should be Secretary in addition to all those persons named.

Now my Points on the Military: the Draft Constitution as well as the green copy we are following do not have anything about declaration of war; absolutely nothing about the declaration of peace; absolutely nothing. The point Honourable Madoka touched, the deployment of Armed Forces outside this country, the deployment of Armed Forces in this country in times of crisis, we need to sort out all those things. In the same copy I have referred to, it is a good thing they have provided for the National Security Intelligence Service and its composition etcetera. Thank you Chair.

Hon. Delegate Raphael Mwai: Thank you very much indeed. 438.

Hon. Delegate John Cheruiyot: Thank you Chairman for giving me this opportunity. My name is John Cheruiyot, I am representing Trade Unions. Chairman, I want to contribute on

Chapter 16, and I was prepared to contribute on chapter 15, but I was skipped. Chairman, Article 276 (f), I want to discuss on Public Officers and in my opinion, Public Officers relate to mainly the Civil Servants and Civil Servants are people who are so under privileged and poorly paid. When we talk of public officers, Chairman, Kenyans and Delegates, remember that when you talk of Public Officers, Kenyans have been made to see the teachers as people who are under paid, deserve better terms and conditions of service. Here, Mr. Chairman, I have no quarrel with KNUT, in fact I commend the leadership of KNUT to articulate and fight for the teachers so tirelessly headed by abled Chairman who is here, Mr. Katumanga and Mr. Nga'nga as the Secretary General.

You may know, Chairman, that Civil Servants Union was banned in 1980 and for 20 years, Civil Servants have not been able to articulate their problems. Many are being sacked and you will remember, Delegates. the sad story of the Dream Team, how the Dream Team decided to retrench so badly Civil Servants. Families went away while so many families even died and they were given only forty thousand. They have suffered so much so that you hear many of them are saying they are civil sufferers. It was not only until the year 2001, Mr. Chairman, when the Union of Kenya Civil Servant was re-registered, and even with that, the recommendations of Saeed Cockar Commission said in brief that only officers up to job group H and below are unionisable. That is a very small fraction of the entire Civil Service which numbers about 200,000. I commend Commissioner Salim because he seems to know the rules of corruption in the Civil Service. They are badly paid, nobody has spoken for them for the last 20 years, when other Public Officers are being fought for and Civil Servants are the people who keep continuity in the government. Somebody talked this morning about a country like Italy, even last year in Kenya after the Parliament was dissolved, you know the people who kept continuity were the Civil Servants. I commend the KNUT because it has made sure that all cadres of their teachers are unionisable while you only unionize Civil Servants from Job group H and below, and you leave all the others suffering. They cannot argue and yet they say they are the custodians of the government documents, it is they who will implement government policies.

I am talking, Chairman, of about 200,000 people in this country who are so badly paid and nobody speaks for them. You hear many of them have just been sacked by their Minister, he will wake up in the morning and say 20 Forest Officers were seen carrying a log of a tree and all

of a sudden they are sacked. Mr. Chairman, we need to define the laws of sacking of a Public Officer, we are forgetting that they have families and they suffer when you just summarily dismiss them without any valid cause. It is so sad and many people have suffered. Many people have been retrenched and even when it comes to their retirement benefits, we know many Civil Servants who come all the way from Siaya, from Kwale, and they have got to stay in Nairobi for three months, without getting their retirement benefits.

Mr. Chairman, it is in order - and I am finishing - that a cheque for benefits of any retired officer should be prepared so that before they leave the service, they are paid fully. I would have said more, Chairman, but thank you for giving me this opportunity. *Clapping by the Honourable Delegates.*

Hon. Delegate Raphael Mwai: 322.

Hon. Delegate Lomorukai L. Emmanuel: My names are Emmanuel representing Turkana District. I want to go into chapter 15, Article 271, that says “the primary object of the transfer Forces and the security system of the Republic of Kenya is to safeguard the well being of the Republic of Kenya, the people, the peace, national unity, and integrity of the Republic”. I feel that the integrity of international territorial borders of this country have not been safeguarded by the Defence Forces of this country since the colonial time and post colonial regimes up to now. Why I am saying so is because SPLA, the guerilla movement in Southern Sudan, occupies 43 kilometres inside Kenya and they have gone to an extent of even demanding to demarcate the land or the lemi triangle to belong to them. So, I feel this issue should be addressed as a matter of importance by this Conference. This has caused a lot of insecurity mostly to the Northern Frontier Districts, whereby as you move from Kapenguria to Lokichogio, which is approximately six to seven kilometers, there is a lot of insecurity and the Defence Forces or the security agents have not addressed this problem. Even today, this morning, a lot of people traveling in a convoy were shot at.

So I feel this is a matter which is urgent and when we talk here maybe we are talking for the sake of the people of Nairobi because I think most people in this Conference don't understand the insecurity in most parts of Northern Kenya. (*Clapping by the Honourable Delegates*). Why I am

saying so is that around 1991, because most of the Defence unit has been concentrated within Nairobi and urban areas, and they cannot trace and know what is happening in regions like Northern Frontier Districts. This has gone even to an extent where military jets from Sudan come and bomb Lokichogio and it really makes us wonder, we as Kenyans, whom do we tell we are Kenyans and we do not know what the security system or the Defence Forces of this country are doing for us. My recommendation is that because of insecurity in attack-prone areas, communication facilities must be availed for better communication between regions and the National Government.

Insecurity in this country is growing worse just because most of the retirees from Military and the Police are in Town and the Government is not even addressing any issues for their better living and that is why they have resorted to committing a lot of crimes. I think this issue should be addressed by the Government as a matter of urgency because a lot of crimes and a lot of insecurity has come into this country because of that.

The last one is that the people who have been residing in Northern Frontier District, that is Turkana, Pokot, Somali, Marsabit all those areas the government and the Defence Units of this country have been massacred and the role of the National Defence Forces is to deal with the external aggression or forces. We feel that if the communities living along the borders are threatened with massacre by outside forces, it is the primary role of the Government to defend them. The Government ought to compensate the victims of massacre and form an inquiry to investigate why those communities were killed and the Government failed to perform its primary role. The reason I am saying this is we are massacred in thousands and when one person is killed or a student from Nairobi is killed a Commission of inquiry is formed. (*Clapping by the Honorable Delegates*). We would also like a commission of inquiry to be appointed to investigate the causes why we are being massacred in large numbers. Thank you.

Hon. Delegate Raphael Mwai: Thank you very much indeed. Number 350.

Hon. Delegate Saul Kiptingos Kipkeoch: Thank you very much, Mr. Chairman. My name is Kiptingos Saul from Koibatek District. I will contribute three parts.

First, I will talk about the military. We do have forty thousand soldiers in the military, for the last forty years they have not done any service to this country. They have been deployed to various countries to maintain order, in countries like Sierra Leone, they have been deployed to maintain order in Iraq and many other countries yet we have not benefited. We have been having law and disorder in this country, yet they are sitting down there and they are not helping the police. We would want that the National Security Council be advised that they deployed to work with the police to maintain law and order.

We would also want them to be engaged in important national building like building of bridges, roads and all that. They should be able to use their abilities and their machineries to help build of the country. Even in irrigation, you see we are importing even rice to feed these military officers, yet we have got very big fields which the military can come in and we produce our food.

In employment, we do not need to have the forty thousand being in employment, why don't we have a military reserve, people being trained as they get engaged in other activities so that they can just be called upon when there is war when they can come into the military and do us service. We do not need to have them staying idle, doing nothing, they should actually be re-serviced and a few well trained, about ten thousand of them should remain in the barracks. Thank you very much.

Hon. Delegate Raphale Mwai: Thank you very much. Number 192.

Hon. Delegate David Kiprono: Thank you, Mr. Chairman for recognizing me at last. My names are Honourable David Sudi Sutter, MP Marakwet West, Delegate 192.

I would like to contribute on Chapter 15, Defence Forces and National Security. Mr. Chairman, I do concur with what other Delegates have said concerning the national security. I do agree that the Defence Forces for the last forty years have done a very commendable job. The Defence Forces and national security includes all the security forces, the police and the Armed Forces. Mr. Chairman, what I do not agree with is that if you read section 271, it says " The primary object of the Defence Forces and security system of the Republic of Kenya is to safeguard the

well-being of the people of Kenya, the peace, the national unity and the integrity of the Republic.” Mr. Chairman, referring to that section, I come from a community called Marakwet and for close to forty years, we have not known any security for these people. They have always been fighting which has not ended to date. Recently, people were being jailed in the name of cattle rustling. You wonder why our security forces cannot arrest such a situation.

There are people whose properties are stolen, they move and when they are followed, we are told that they have crossed the borders to the neighbouring countries, yet we have lost lives and property. Mr. Chairman, this is the work of the military forces to make sure that they safeguard and patrol the Kenyan border, because we are a sovereign state and when we are inside, we know that we are protected. Mr. Chairman, I am speaking for the people of Marakwet and so many other communities in Kenya who have such kind of problems. It is my feeling that the work of the military be redefined not to be confined to the barracks alone. They should move and build the nation at large. They have the best machinery, they have the best knowledge and we should entrench that in this new Constitution. Thank you, Mr. Chairman.

Hon. Delegate Raphael Mwai: Thank you very much. Number 302.

Hon. Delegate Fredrick Rukwaro Nderitu: Thank you, Mr. Chairman. My name is Fredrick Nderitu, a Delegate from Nyandarua. I will first of all comment on the presentation of the Commissioners. The last two topics, starting from Public Finance the presentation have been very intensive and very elaborate, disjuncting themselves from the content of the Draft Bill and I would, therefore, request that we get that presentation so that we can rack our brains during our break to understand the content of these technical Chapters more thoroughly.

Secondly, I would want to say that because the two Chapters link together with Defence and Integrity, we are going through the process of Constitutional review and if we have to achieve anything beyond that, we need to have a review of the attitudes of our people at all levels. When the Commission went round they provided civic education; they only think that only the ordinary Wanjiku needs to be educated, but even those people in the private sector, those people in the public sector need that education. Call it public, if you call it civic they may think it is very sentimental, call it public education, private education, elite education but they must also be put

through the process of change towards the people, towards work, towards property, towards ethics and integrity.

Mr. Chairman, without the political good will even if we have a well trained police force and Armed Forces, they will not achieve anything. This is because we have seen things happening under their noses and they cannot be corrected because they have not received authority from above to do their job. Mr. Chairman, that is very, very unfortunate. We must have political goodwill to have these people perform; even if you give them all types of equipment, they will not perform well unless they know that they have the protection, they have been told to do the work and they will do that work.

Mr. Chairman, if you go to the countryside and more so in the urban areas, you will be perplexed at the number of security guards that we have in this country. We have about thirty thousand policemen but I am telling you the security guards are more. That means that the country, the people have entrusted their security more to the private sector than to the public sector, it is very unfortunate. We must therefore reverse that trade, we must empower our people, we must ensure that our people have got enough time and they have the attitude to do good work.

Finally, we cannot forget to say that unless we address the root causes of the insecurity, those given the power to give security cannot. One of the major problems is utterance by our leaders, they cause insecurity, economic woes. When you do not pay the farmers who produce pyrethrum - they have not been paid for one year - and you can afford to have somebody put their money in a fixed deposit in a corrupted bank, if they rise even the police force and the Armed Forces will not stop them. The farmers of this country are so much disadvantaged, they are not even represented in this Conference as a group; we have no farmer in the whole Constitutional Conference; there is no mention of a farmer, of agriculture, the backbone of this country. Mr. Chairman that is bad, we should have people representing the pastoralists, people representing the coffee farmers, representing the tea farmers, pyrethrum farmers, milk industry, mention them because that is where the problem of this country has emanated. This is because of not recognizing the people who have many things. We have human rights representation, ethics but those people on the ground there are not represented in this Conference.

Hon. Delegate Raphael Mwai: Okay, that is all right now.

Hon. Delegate Fredrick Rukwaro Nderitu: This is very unfortunate Mr. Chairman. Finally, please if you allow me. One of the major things--

Hon. Delegate Raphael Mwai: Can you--

Hon. Delegate Fredrick Rukwaro Nderitu: I may not have another chance.

Hon. Delegate Raphael Mwai: No, no, no, you will have all the chance you want.

Hon. Delegate Fredrick Rukwaro Nderitu: A minute only. The other major problem is giving some people some offices, so much power that even when you tell them to do the work they cannot. For example, yesterday we talked about the Auditor General, you give the Auditor General the work to audit and he cannot audit books for the last five years.

Hon. Delegate Raphael Mwai: How do I stop him Delegates?

Hon. Delegate Fredrick Rukwaro Nderitu: Yet we have so many private accountants who can help this country to achieve the goals so that the people can be harmonized. Thank you.

Hon. Delegate Raphael Mwai: Thank you very much indeed. I am trying to wind up this session, we should be getting out of here in the next five or so minutes. So I would like to call on 423, to make a very short presentation.

Hon. Delegate Clare Omanga: I am Clare Omanga, Delegate number 423 from Kisii District. I also want to contribute on Defence. If you see the Defence it is looked after very well when you compare it with the police and others like the prisons and we are very, very proud of them. Most Kenyans learn about our Defence Forces when they are going out to Liberia, Czechoslovakia and that sort of thing. We really need to know our forces here in the country. Unfortunately that has not been the case. You see what happened the other day when there was no water in Nairobi, the Armed Forces came in and we had water within a few days. They are very well trained in all

sections of life, yet they are in the barracks from January to January when there are a lot of problems in the countryside. Bridges are not there and a lot of other things whereas we see the British Army coming here and going to the countryside to build schools and bridges all over, when our own army is not doing the same. So, something is wrong. (*Clapping by Honourable Delegate*). What I was going to suggest is we should not separate our Armed Forces, treat others very well and others badly. Look at the prisons, they do not even have uniforms. Look at the police; I do not have to repeat what was said in the morning. So, let us be fair and treat them almost equally.

Now, we grow food all over the country. Some sections of the country do not have food, some like Kisii have so much food. Sometimes, I give cabbage to my cows and the milk smells like cabbages the next day. Why can't the Army help us by lifting some food from areas which grow plenty to the areas where there is no food, instead of just lying there. My friend here says that the Army also should be taken to the borders and even go around the countryside, DO's offices, DC's offices where there are vehicles broken all over. Kenyans must be serious, we are not like America. We have the Armed Forces with workshops, the police with workshops and yet you find that in police stations, the vehicles are spoilt hence immobility. The DC cannot move because he does not have a vehicle, what are we doing? Let us think more seriously. Let us use the Armed Forces and the police forces' garages to repair these vehicles, which are littered all over the countryside.

Hon. Delegate Raphael Mwai: Thank you very much indeed.

Hon. Delegate Clare Omanga: Thank you Sir. I am very grateful.

Hon. Delegate Raphael Mwai: I will ask Prof. Idha Salim to make some response to those presentations.

Uproar from the Honourable Delegates

Hon. Delegate Raphael Mwai: I am afraid we must be conscious of what we agreed upon. We agreed to leave here at 6.00 p.m. and we must be able to follow that. In that spirit, I will ask

Prof. Idha Salim to respond so that we go on the way we had agreed before. Thank you very much.

Com. Idha Salim: Thank you very much, Mr. Chairman. My response will be fairly brief but before I do so, I want to say thank you very much to all of you who contributed comments and views on this two Chapters, they are extremely useful for us and we assure you that they will be taken into consideration when it comes to the second stage of our work after we come back from the adjournment. I want to note that one particular proposal has been made by quite a number of you including the last speaker, namely that the Defence Forces should not remain idle in the barracks, eating very well and dressing very well, and feeding very well, but they should be involved in nation building. But I think what we were all saying is that is not enough to set it, it is important to have a provision in the Constitution to that effect.

Your views coincide with the views we collected from the field, that is a suggestion made by many, many wananchi, that the Defence Forces should be involved in nation building. Brigadier Githiora, I want to thank him especially for his quite comprehensive views on those two Chapters.

I should tell everybody that Brigadier Githiora was with us on the eve of the aborted Conference last October and he was one of the PR reviewers of the Draft Bill and I would like you to really take the trouble to read his detailed comments and view in the red book you have, the big compendium. Not only on these two Chapters but also on many chapters in the Draft Bill. This is going to be a very useful document to all of us when we come back, we hardly mentioned that the document for the compendium in the course of our presentations but we must not neglect that particular document, the red book as we have called it in a general way. There we have all the views given to us by Brigadier Githiora on this Chapter, and I would like to assure him that those views will be taken into consideration at the committee stage. For example, that there should be no reference to law and order but rather to order the place of the National Security Intelligence body in this particular Chapter and also the fact that the National Security Council should be enlarged to make sure that the Foreign Minister, the Finance Minister among others should also be members of the National Security Council, the Foreign Minister because very often our Defence Forces are involved across the borders or sent abroad and therefore the Foreign Minister

is party to anything related to that. The Finance Minister for obvious reasons, because money come from Treasury and he is an interested party.

Mr. Chairman, I will be very, very brief. There were also comments related to the names given to Defence Forces rather than Armed Forces, this is a deliberate move from calling them Armed Forces because we feel that these forces should be there for our Defence. The word 'armed' suggests something the military, something almost verging on the aggressive and therefore in this era, we should really talk in terms of Defence Forces, those really concerned with our Defence against aggression rather than suggesting that the "armed" and therefore possibly a source of aggression themselves.

Mr. Chairman, there were references to the military budget of the Defence Forces to be transparent and known to us, in fact among the recommendations given in that red book and I believe it is from Brigadier Githiora, is that there should be a report from the Parliamentary Defence Committee to Parliament on the military budget and that this committee should be given a report on how the monies given to the Defence Forces have been utilized and for the Parliamentary Defence Committee to scrutinize the use of those funds and to report to Parliament accordingly.

Justin Muturi, Mheshimiwa 129 noted an anomaly in Article 273. Mr. Chairman, I must admit that I myself noted that the Vice President is not included in the list of the people to whom the provisions of those two Chapters should also apply and therefore that is also something that will be taken care of. Yes, no reference to the creation of the Defence Forces again, that is a suggestion made by more than one speaker that there should be something in the Constitution to say that we hereby create the Defence Forces. But I think somebody else mentioned the fact that there is no reference to the commanding officers, while in fact if we look at Article 275, there is a reference to the commanding officers. So, that is actually stated in Article 275. The intelligence machinery, there is the suggestion that the intelligence services should have a provision on them that is obvious and concrete otherwise, the reference to the Chief of the intelligence services being a member of the National Security Council may not make sense, unless we have a provision on the intelligence services themselves.

Mr. Chairman, I think we said that since the Ndegwa Commission, corruption has set in and of course to Father Gitonga we say that the code forbids public officers from engaging in any business. So, in effect this is virtually putting faith to the Ndegwa Commission recommendations. The definition of Public service is there, someone suggest that it is not there, it is there in Article 270 page 195, as is the definition of public officer. Also someone suggested that there is no reference anywhere to the declaration of war, declaration of emergency but actually there is but this is a case of cross cutting issue, the declaration of war, the declaration of emergency is done by the President under advise and this is taken care of under the functions of the President in Article 151 page 115. I think Mr. Chairman that is all I need point out. Thank you very much.

Hon. Delegate Raphael Mwai: Thank you very much. Commissioner Ratanya, do you have anything to talk to us very briefly?

Com. Domiziano Ratanya: Yes I will. Okay, thank you very much, Mr. Chairman, I wont add more to what Professor has said but there is something which I think is very important mentioned by Honourable Madoka, that we should move the police from Public Service and be included in this Chapter, that is Chapter 15. I think that one can be looked into, it is a good proposal. Then, another one is the Chairman of Defence council. In the two councils, National Security Council and Defence Council, the Draft has given that the President should chair those two councils but here I have heard proposals from several of you and I think they are reasonable that the President should not be called to chair the Defence Council. That should be given to a junior officer.

Then, the other one is, a Delegate from Nyandarua has mentioned about change of attitude and more of civic education, in fact that is important that people should have more civic education especially in the private sector, not only to be directed to so-called 'Wanjiku' but even others. The other one is the definition or the roles of various forces like the Army, the Police, Security Intelligence, Prison, Administration Police; I think Brigadier Githiora mentioned that there should be distinctions. So, in working out this Draft maybe we should have distinction to distinguish between the roles of the Army, Police and other security forces.

The other thing I would like to mention Mr. Chairman finally, is the details of this Chapter especially Chapter 15, there is a point to be looked into more detail during the discussion in the Technical Committees and here I think we said that we collected maybe very little during the collection of views because we could not get access to the barracks. We could not even get direct proposals from individual soldiers and so on, we only got a memorandum from the office of the President, also Brigadier Githiora assisted us very much. I think we need more so that we make this Chapter more elaborate and another thing is we should teach the Constitution proposals of just main basic points to be in the Constitution but the details can be in the Act of Parliament like Cap 199, Armed Forces Act or other regulations because we cannot uphold the details in the Constitution provision. Thank you Mr. Chairman.

Hon. Delegate Raphael Mwai: Thank you very much, Commissioner Ratanya. I have a request from Honourable Wangari Mathaai to make an announcement and with your permission, I will allow her to do it now.

Hon. Delegate Wangari Mathaai: Thank you very much, Mr. Chairman, Honourable Delegates. I wanted to announce that tomorrow is World Environment Day and that the whole world will be marking the day when the world met in Stockholm and agreed that we should mark the day as the day when the first meeting of the environment was convened in Stockholm Sweden in 1972. We have requested our Chairman Professor Ghai to plant the tree tomorrow; just as you get into the park there, there is an open area, that is where we want to do the tree planting because the other area is too wet but this area is a little better. So, we will take a tree here, maybe I ask them to dig about 10 holes and we will have trees planted between 9.00 and 9.30 after the Steering Committee. It should not take more than ten minutes. I would also like to encourage Delegates to plant trees in the same place but you have to dig your own hole to demonstrate that you are really committed and the tools are there. So, you just have to dig and I will give you the tree and you plant, but you should plant as we had agreed. The original idea of bringing these trees was to plant for our heroes and they didn't take off but I still believe that all of us have heroes and even the President on the Madaraka Day said we should remember our heroes. So anybody who has a hero, or for whom they want to plant a tree especially the dead heroes, we will give you a tree to plant there tomorrow and you can plant any time. There is

