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Verbatim Report of

**PLENARY PROCEEDINGS - PRESENTATION OF DRAFT BILL,
CHAPTER 7- THE LEGISLATURE, HELD AT THE BOMAS OF
KENYA**

ON

13TH, 14TH & 15TH MAY 2003

**PLENARY PROCEEDINGS, PRESENTATION OF DRAFT BILL, CHAPTER 7 – THE
LEGISLATURE, HELD AT THE BOMAS OF KENYA ON 13TH MAY 2003**

PRESENTATION OF DRAFT BILL: CHAPTER 7 – THE LEGISLATURE

Presenters: Com. Dr. Andronico Adede
Com. Mr. Mutakha Kangu
Com. Dr. Charles Maranga

Session Chairs: Hon. Dr. Godana Bonaya
Hon. Prof. Wangari Maathai

Hon. Delegate Wangari Maathai: Thank you very much, Commissioner Phoebe Asiyo and Commissioner Mutakha Kangu for that summary of the discussions on the last Chapter. We are now, Hononourable Delegates, ready to go to our next Chapter, and we want to devote our time to the Chapter on Legislature. At the onset, I would also like to say that we have identified the various constituencies and I have about nine of them. This is to guide me when we come to make contributions and, perhaps once again to emphasize, in order for us to allow every Delegate then to participate, I appeal to Delegates who have spoken not to raise their hands in order for us to be able to give those who have not spoken a chance in the various categories. At the moment, we want to request the Commissioners to introduce this Chapter and we have Commissioners Maranga, Adede and Kangu to lead us through this Chapter. So, if I may call, who is starting? Mr.--

Hon. Delegate Wangari Maathai: Dr. Adede, so please, if you could start us off.

Com. Andronico Adede: Madam Chairperson, I thank you. Hononourable Delegates, the Chapter on Legislature that you have before you has been called for discussion this morning, and I have the honour to give a brief overview of it and pass on, with the permission of the Chairperson, to my colleagues, Commissioners Maranga and Mutakha Kangu, also to help us through the Chapter.

The Legislature is one area that actually reminds us very sharply of the work we are concerned with here - Constitutional-making, and I might start out by saying that to constitute is to define, and to define is in a way, to limit. Therefore, as we start our discussion on the Legislature as constituted in the Draft before you, we have to keep that in mind. The attempt by the Commissioners was to put together a Chapter in which this branch of Government powers and functions are constituted and defined and limited to the extent that they will have to take into account the other powers and functions of the other organs because this is the essence of Constitutionalism. We can see already from the papers that you have in your boxes that this Chapter divided into 5 parts, does a number of things.

Right off the butt it creates a Bi-cameral Legislature, consisting of a Upper House, called the National Council, and a Lower House, called the National Assembly - both referred to as Parliament. The Draft before you also indicates how those Houses are going to be composed and elected. The Draft before you also defines functions or the role of Parliament and you will see that some of the roles in the Draft are very familiar to us, others are new ones that were introduced in response to specific demands and views expressed by Kenyans as we went around the country collecting them. The Chapter also provides for a coalition of the political parties' majority members to form the government. It also provides that Parliament should have unlimited powers over its own procedures and full control of its own calendar. It requires that the Parliamentarians work full time.

Ladies and Distinguished Delegates, these are issues that are already before you, but it is better to put them out here to help us in now going Chapter by Chapter and particularly, Article by Article on the major issues. So, when we begin by saying that the function of Parliament, be it Bi-cameral or Uni-cameral, is legi-representation and law making and supervision of the conduct of the government, what do we mean and what does the Draft Constitution tell us? This is where I would like to say the following:

With respect to law making we have areas contained in Chapter 102 that we already are familiar with but others which are new. For example, we have Article 102, paragraph (e), where

Parliament is now given the function of scrutinizing and over-considering and approving international treaties. This never existed in the old Constitution and speaks volumes of a problem that has been identified here during the discussion; what to do with those agreements that Kenya is party to, but are not domesticated so that they give rights to individuals in the human rights areas, for example.

Now the Constitution assigns that function squarely on Parliament and, if you look at volume that contains the views of the people in one of the pages, 260, you will find that is an issue that received quite a lot of comments.

Again, we go to the Chapters where Parliament is given the power to approve the appointments made by the President. This reminds us immediately that we are already in the area where the functions and powers of the organs are now being considered. Here, the Parliament will have the power to approve appointments and the details will be given to you later on. What I am reminding you, is that you can look at it also as a way of indicating what kind of President we are going to have, the Executive part of the government when it comes to such appointments, when you already know that the Parliament, though it doesn't at the moment, now will have the power to approve those appointments.

Again, on the question of Bi-cameral Legislature the major issues, this is something which Kenyans cannot say is completely new; we had a Bi-cameral Legislature at the beginning which was abandoned but now is being suggested here as part of the package of the devolution. Because as we speak about the distribution of powers horizontally between the Parliament, the Executive and the Judiciary, we also have the distribution of power from the central to the lower. So, we can say that the link between the Upper Chamber, which is suggested as will be discussed, is part of linking that distribution of power of legislation and its inventions from the centre to the local areas.

This also reminds us of the fact that when we speak of Bi-cameral Legislation and the Upper House, the Commission did study and find some examples. We know, for example, that the

reasons for which the second Chamber existed in the United States are well known although the Senate is now performing completely different functions as was conceived.

We are also suggesting a Upper House, the Council, with a different composition, with a different requirement of qualification in terms of age and its time-frame. All these have been tried to respond to the requirement we so expect by the people.

You will note that as we also cast our eyes down the road, we see that there is an attempt to create procedures under which the President may be impeached, and therefore, the need to have another Chamber that will provide the procedure as we represent to you for that process. That is not to say that the Upper the Council is being created merely for that, but these are the efforts, these are the views that were taken into account when suggesting also that the second Chamber would be necessary.

One also considers that in normal life, if you look at the requirement of the qualifications of the Upper Chamber, the people are more experienced, they are older, because the age of requirement for being elected to that Chamber is higher that that one for the Lower Chamber. This is a mixture of an attempt to mix, use and vitality on the one hand, and stamina and experience on the other, in the team that you will put together the Parliament to deliberate, to produce, to deliver the goods for Kenyans by way of Legislation, which they will be performing full time.

Because of this new aspect of the Legislature, recommending a Bi-cameral Parliament, with electoral procedures to be explained, it is clear that the legislation also is going to be difficult in that Bills will arise or originate from the 2 Houses and how they are going to be dealt with is later detailed as will be going on Article by Article in a few minutes. The overview is just to give us a general idea as to what this Legislature contains so that we begin to give you details on how the Commission came about making the specific recommendations contained in the Draft. I thank you, Mr. Chairman.

Clapping

Hon. Delegate Wangari Maathai: Thank you very much, Dr. Adede for that very good overview; excellent overview. Now, I will call the next Commissioner to lead us through. Commissioner Maranga, please.

Com. Maranga: Thank you, Madam chair. I am going to try and take the Delegates through the Draft Bill, the way it is, so that we can be able to try and grab some of the few points, which will be highlighted Article by Article. The first Article, I think it is Article 101, which has already established the institution of Parliament and that has been given very clearly the way my colleague has said. We did recommend for a Bi-cameral Legislature where we have the National Council, the Upper House and also the Lower House, which we call the National Assembly.

Now Article 102 does give the functions of Parliament, and I don't want to go through functions because Delegates can be able to read them, but there are a number of functions which have been introduced in the new Draft Bill, and which are clearly stated and are from Article 102 (2) (a-j). But a number of functions which have been highlighted for Parliament have not been there before. For example, we are saying that before the President can declare war, he must consult Parliament, Parliament must approve. The same applies to a state of emergency, Parliament must approve before that kind of action is undertaken.

We are also talking about the approval of a number of appointments, and that is Article 103 and we have given the National Council and the National Assembly specific functions to perform when they are approving a number of appointments that will be made. For example, appointments dealing with the Judicial Service Commission, Ethics and Integrity Commission and so on. All those have been listed on Article 103 (III), which has given the various appointments to the respective Houses to approve. That is a departure from the current position and members of the public did recommend that Parliament should be able to approve all these appointments that senior appointments in government should be approved by Parliament. We did indicate that there are two Chambers and therefore the National Council has been given specific functions to perform in respect of appointments. The same applies to the National Assembly, where we have also provided for specific functions for the National Assembly. For example, the approval of the appointment of the Prime Minister, Deputy Prime Minister,

Ministers and many other senior officers of government, all those have been listed under Article 103 (IV). So, that is provided for and I think, Honourable Delegates, you can be able to read for yourselves.

Then, we proceed on to Article 104, Approval of Expenditure by Parliament. This particular function has always been performed by Parliament and, if Parliament is going to have a supervisory role to play, as far as the government is concerned, then it must have a role in terms of approval of expenditure by Parliament. That has been provided for under Article 104. This means that Parliament will have to approve the budget and appropriate the various finances, which are going to be used in any given financial year.

Article 105, does give the Structure of Parliament, which has already been mentioned, where we are going to have the Upper House, which we call the National Council and also the Lower House which we call the National Assembly.

Article 106 stipulates the procedure for electing members of the National Council, and the Draft Bill proposes that we are going to have 70 members of single member District-based constituencies. So, Districts are going to be electoral units. We are also proposing that we reserve 30 seats for women, who will come from Provinces. Therefore, Provinces are also going to act as electoral units in the new system which is being proposed. So, we are saying that Nairobi will have to be treated as a District, but we have also said that initially, when we wrote this Draft Bill, there were 69 Districts, which had already been created and were in place. Therefore, we said Nairobi will be given one position, plus 69 that adds to 70 members. Then (b) we also said that as for the 30 seats for women, we will give four to each Province and Nairobi will be given 2, to give us a total of 30.

Then, I think Article 107, I want to request my colleague Commissioner Kangu to report on that particular section or Article before I proceed. Commissioner Kangu.

Com. Mutakha Kangu: Honourable Delegates, I would like to first point out that the Chapter we are discussing today is related to the one we discussed yesterday. Yesterday's Chapter lays

general principles for the Representation of the People, and today's tries to make specifics on the Representation of the People in the Legislature. When you come to the Executive, you will again find that you have to refer back to Chapter 6, which we dealt with yesterday, on the Representation of the People in the Executive. So, there will be some relationship between what was done yesterday and what is being done today. Two you will need, when you are discussing today's Chapter, to try and harmonize that Chapter with the one we discussed yesterday just in case there may be some contradictions that may cause a dislocation in the flow of themes. Now, for that reason, I will not want to go back into the details of the Electoral System that is provided for under Article 107 since we discussed it yesterday, but I will make a few comments about it and a few details that can help you understand the process better.

I want to say that for you to be able to understand these clauses clearly and to make them better, you must have details of how they will work on the ground. Some of those details may not be in the Constitution but they will in the draft. Article 107(i) proposes that we have an Electoral System for the National Assembly known as the Mixed Member Proportional Representation System and this section says that the 210 constituencies will remain and then we shall have an additional 96 that will be elected on the basis of proportional representation. Before arriving at those numbers, we had to struggle with the issue of whether or not we are politically ready to disturb the already-existing 210 Constituencies, and our position was that we may not be ready to get into the turbulent political waters if we were to say, let us reduce those constituencies and have a different number. So we decided to retain that and then of course added ninety.

You will need to note that ideally in countries that follow a Mixed Member Proportional Representation System most scholars advised that the best approach to move is to ensure that the difference between the number of seats that are supposed to come from constituencies and the number of seats that are supposed to come from the party list should not be very large if the list seats are going to help in adjusting the imbalances that may come from the constituency seats. In fact in some countries, they insist on sharing out a half a half and Germany does that, they put a half of the seats in the constituencies and the half on the party list. Now, you may want to ask yourselves, when you are addressing the political question I have already stated, whether we

want to adjust the numbers so that the difference is not so huge for us to be able to achieve the intention of balancing between the population and the vastness of some of the constituencies.

Two, you will need to note that we have stated at Article 107(i) the number of constituencies and the number of the party list and you may want to ask whether that is the correct thing to do in the Constitution. Is it proper that we should fix the numbers in the Constitution or should we talk in terms of percentages so that if in future we choose to increase the number of seats in the National Assembly, we simply apply the percentage rule. For example, if we were to say that the Constituencies shall cater for a half of the seats in the National Assembly and the party list shall cater for a half, that will mean that in future if we increase the number of the seats in the Assembly, we simply divide a half a half and get somewhere.

So that is a question you need to address as the Delegates to see whether the Draft we have given makes good provisions and it is important that in doing that you go back to the chapter I have already referred to and look at the Article 86, which talks about the Delimitation of Constituencies, because under Article 86 one would see a possibility at a later stage of the number of constituencies or the number of seats in the House increasing. How do we relate that particular Article to this Article 107? Those are questions you need to think about and address.

The next issue emanates from Article 107(iii) and 107(iv), which you must address because those 2 articles are talking about the preparation of the party list and the first question you will need to ask there which arises from Article 73 is how to go about preparing that list and I have already mentioned earlier when I was commenting on what was commented yesterday, that for enhancing democracy it might be worthwhile to consider whether or not the party list should be prepared through an Electoral process in the parties instead of living it to the party leaders.

The second question, which comes from sub-article (4), is the question: which parties are entitled to present a list at the election? If you look at the sub-article (4) we seem to be saying that only parties that are participating in the elections at the constituency level are entitled to present a list

and the question is: If a party does not want to participate at the constituency level should it be barred from presenting a list? Those are questions that you will have to address.

Then under (5), we have tried to address the composition of the list: What should be taken into account, how many slots should go to women and to the other groups and in discussing that particular article you will need to relate it to the chapter we dealt with earlier Article 77 sub-article (2) A, D, C, particularly C, which seems to create some contradiction between it and 107 (5) on the composition of that list.

If you look at 77(ii) (c), there is some separation between 50% for women and the other 50% for the other groups, but if you look at 107(5) a different approach is envisaged. So you need to discuss and harmonize that and see what we can come out with.

Finally, Article 107 sub-article (vi) is extremely important. We may not need to put in the Constitution, whether under this system we are going to have two ballot papers or one but even so we need to be clear in our minds whether we are proposing a system that we would like to be based on one or two ballot papers and, depending on what decision we make, then we can be able to address sub-article 7 clearly.

In some countries they go for one ballot paper. The ballot paper that you use to elect the MP in the Constituency is the same ballot paper that will be counted to get the total of what the party has got. The problem with that system is that it takes away the opportunity of a voter to split his votes because, if you have two ballot papers, you can split your vote so that in the constituency you elect someone who belongs to one political party and vote for a different party. But if you use one ballot paper you cannot split, it means that if you don't like a particular candidate but you like the party on which he is standing and you want to vote for the party, you will be forced to vote for that candidate. So you need to address that and decide: Do we want to have a system of one or two ballot papers? If you look at sub-article (6) the suggestion is that we are going to have one ballot and you need to decide whether that is what we want.

Finally, you need to also decide in working out the proportions of sharing those seats on the party list. How do we go about it? In our country when we share out the 12 seats in Parliament today, we look at the majorities or the number of Parliamentarians and that cannot in any way help you to adjust the imbalances. If a particular party has more MPs it will also get more from the 12. I am sure that is not what we want to do with this system. We want to have a situation that can ensure that one party may get more seats in the constituencies but get less from the party list because it does not have more votes across the country.

What happens in some countries, like Germany is that, in trying to share out the party list seats they get the percentage of each party then they share out the total number of seats in the House on the basis of that percentage. Then they found out how many seats this particular party did get in the constituencies and if its percentage of the votes entitles it, say, to two hundred seats but in the constituencies they have got 150 then that party gets an additional 50 from the list and no more.

If another party is entitled to 100 seats but in the constituencies it has received only 20, then it gets the balance of 80 seats from the party list. That way, you manage to balance the House on the basis of the number of votes as opposed to the number of constituencies. I think those are issues you need to think about and settle your minds about them.

One last point is, you need to ask yourself: If we go for this system can we have a fixed number of seats in the House? In other countries they have provision for what is called hang seats or overhang seats that a party may be entitled to on the basis of the votes it has got, to a 100 seats but in the constituencies it has managed to 105 seats and the question is: Do you ask that party to give up the 5 seats or do you let it to retain them and in which event that will increase the number of seats in the House. The solution in Germany is that you allow that party to retain the additional 5 seats as overhang seats but you do not let that to make another party lose 5 seats, a party that was entitled to get a certain percentage, by fixing the number of seats. So you say, if the House was supposed to have 300 seats but a party has 5 overhang seats then the House ends up with 305 seats. Those are questions you need to address. Thank you very much.

Com. Charles Maranga: Sorry, Madam Chair, I did not ask for permission but it is because it was an article when I was presenting and that is why I gave Commissioner Kangu and that is why he was basically here that he will be able to answer questions when they are asked. Thank you.

Article 108 does give the qualifications and disqualifications of the MPs and a number of qualifications are provided for but may be the one which very significant is the one on the National Council, where it is said that any Member who want to be elected to the National Council must be at least 35 years of age and above. For those who are going to vie for National Assembly seats, 21 years is the requirement. Then there is a requirement (E), which says that somebody must have attained at least form four level of education and at the same time we are saying that people must be proficient in Kiswahili and English. We have also added another language, Sign Language. Sign language is for the Delegates may be who might not know-- I think if you see what they are doing as the translation now is what we call Sign Language. So those can qualify to become Members of Parliament.

We have also, under Article 108(ii) given conditions under which a member can be disqualified and those are provided for and I do not want to go into all those details.

Then there is a question of Article 109, the representation of women, where are proposing that at least 1/3 of Members of each House shall be women. How that will be achieved is now the duty of the Delegates to determine.

Then we have kind of given a calendar for Parliament and we are saying that Parliament should have its own calendar and that election of Members of Parliament, unless Parliament is dissolved earlier under a specified terms, will now have to be conducted at least 45 days before the expiry of their term of office. That applies both to the National Council and the National Assembly.

Article 111, the Tenure of office of MPs. What Members need to note, Honourable Delegates, are the conditions which have been attached when the office of an MP becomes vacant and, if you look at F, it is indicated that MPs could be recalled according to this Draft Constitution; G,

that if a Member leaves a political party for which they stood as a candidate for election to Parliament to join another party or to remain in Parliament as an independent Member, then they loses their position or seat.

Then H, also does indicate what happens if an independent candidate joins a political party. The candidates position becomes vacant. I think those are issues which can be discussed now.

Then Article 112, which is on the Recall of an MP. When we went throughout the country, members of the public did indicate clearly that they should have the power to recall their MP in case he/she is not performing or abdicates his/her responsibilities, and we have given terms and actually, if there is a petition, that is 112(3), the recall of an MP shall be initiated by a petition in writing by at least 30% of the registered voters. That is an article which is now in the Draft Constitution, is here to be discussed and, Honourable Delegates, you have to ventilate on that. But this was an overwhelming call from members of the public.

Then we have given part (3) Article 113, the Speakers of the respective Houses. Article 113, the Speaker of the National Council and how he is going to preside over the business of the House. Then we have Article 115, which deals with the Clerk of the National Council. I do not want to go into those details. Then Article 116, which provides for the Speaker and the Deputy Speaker of the National Assembly and how they will preside over the business of the National Assembly. Then we also have Article 118, the Clerk of the National Assembly, and transaction of the business of Parliament. What you note from the Draft Bill is that we have tried to strengthen the Committee system of Parliament, which I think is also coming in the next one or two articles.

The other question we have tried to address in the Draft Bill is on the leader of the minority party. We did find that, especially for those Parliamentary parties which are not forming the Government, there is need for an opportunity to elect their own leader in Parliament who will need to be accorded the respect he/she deserves in the House. We have clearly given the status of the leader of the minority party and we have clearly indicated that his official status should immediately follow that of the President and the Prime Minister. May be, this would be clear when we present tomorrow again.

Then Article 121, does deal with the emoluments of MPs and we are saying that, may be now and in future, Parliamentarians should not be let to determine their own salaries, allowances and benefits. This should be determined by a Salaries and Remuneration Commission which is an independent body. That is a proposal.

There is the issue of Determinations of Questions of Membership. For example whether a person has been validly elected or not should be determined by the High Court.

On part 4, which is Article 123, we are giving the procedure, Legislation and Procedure in Parliament, on how Parliament is going to exercise its legislative powers. That is provided for in Article 123 and we have clearly indicated that Parliament shall exercise legislative power by Bills passed by Parliament and assented to by the President. But we have also given the provision that, if the President refuses to assent to a Bill it can still become law through the House.

The other issue is the Presidential assent, which is given under Article 124, then Article 125 is Advisory Opinion on Constitutionality and Re consideration of a Bill. If a Bill is referred to the Supreme Court for an advisory opinion concerning its constitutionality, the President may not assent to the Bill until the court has delivered an opinion. So this is a mechanism of checks and balances of what Parliament passes and may be what Executive wants to do.

Article 26/127, on what goes on in the House or Parliament. Then there is the issue of Article 130. The introduction of Bills in Parliament.

Then Article 134, the Official languages of Parliament which, we have recommended, shall be Kiswahili, English and Sign Language. Remember earlier on, we said one of the qualifications for somebody to be an MP is to have proficiency in any of the three languages.

Then there is Voting in Parliament, Regulation of Procedure in Parliament and contents of Standing Orders. This has been provided for. Under Article 140 is the question of the

Committees of the House/Parliament. Members of the public did indicate that they really wanted to ensure that there are certain Committees which are in place and are working. They did indicate to us that you need to strengthen the Committee system in Parliament so that each Committee of is responsible for what is happening in Government. They need, for example, to have a Committee on Good Governance and Public Participation, which is provided for under article 140. There is a Committee on Social and Economic Affairs, Committee on Parliamentarians—all those have been provided for and why they wanted the Committees to be strengthened is because that is the best way Parliament can be able to work.

Then Article 141 clearly indicates where the seat of Parliament would be, that is Nairobi, and the details are given under 141, (ii) (iii) (iv).

On the issue of the dissolution and Prorogation of Parliament, members of the public felt that the National Council should have a term of 4 years and the National Assembly should have a term of 5 years, unless sooner dissolved and of course there are specified conditions under which the National Assembly can be dissolved, like if there is no formation of Government and so on. That is provided for in the Draft Bill. May be when we discuss on the issue of the Executive tomorrow you will also see the bearing on that.

Then the question of the No confidence Motion has been provided for, so that if, for example, the National Assembly passes a resolution that it has no confidence in the Government then the Prime Minister shall resign.

Then the other issue is on Article 144, which provides for Freedom of speech and debate, Article 145, Powers and privileges. Then the issue of Public access and participation. What the members of the public said is that the business of Parliament should be broadcastive so that members of the public can be able to follow the proceedings of the House. So this would be a major departure from the current system. We did try to entrench the Parliamentary Service Commission under Article 147 and provide for its membership and this will have to be discussed.

Otherwise, let me say that the kind of Parliament we proposed is because of two or three reasons. One, people wanted power to be devolved; two, they want Parliament to have powers to oversee the Executive; three, the other issue that we have provided for under the arrangement of the Executive, is that Parliament should be able to impeach the President. Therefore, as a necessary requirement you need to have two Chambers, one which originates the motion of impeachment and the other one to undertake the trials. So that is where we have registered the two or bi-cameral system of Parliament. Ladies and gentleman, thank you very much.*Clapping.*

Hon. Delegate Prof. Maathai Wangari Muta: Thank you very much. We want to thank Commissioners Maranga, Dr. Adede, and Kangu for that excellent presentation of that chapter on the legislature. We want to propose that at this juncture we take a short break of 15 minutes for tea and then we come back and resume our discussions. So in 15 minutes by my watch what. Anyway in 15 minutes we should be here by 20 to. Ladies and gentleman, Honourable Delegates.

Hon. Delegate Bonaya Godana: Order, order. Order Delegates, order fellow Delegates, may you all please take up your seats and we begin the business for this part of the morning. Before we do so, which is to open the discussion to the floor after the presentations for Delegates to ask questions, to seek clarifications and make comments, may I announce the following:

- Notice is here by given of a meeting of the Media Advisory Committee to meet at 1 pm that is when we rise for lunch, today at the VIP tent next to where tea is normally served. I now pass to my Co-Chairperson Wangari Maathai.

Hon. Delegate Wangari Maathai: Thank you very much. Honourable Delegates we are ready to start our contributions. As we already noticed this is not going to be easy but we do want to make sure that as many people as have not spoken are allowed to speak. It is also very important for us to remember that one third of the house are Members of Parliament and the other third are Members of districts. So with that in mind let us commence the discussions. So could I ask, do we go through with the block, is it easier to go with blocks? Yes. So we start on this block and I want to go by categories so that we are clear, so that I don't make mistakes because I can't tell who is who?

I want to start with district Delegates on this block, only the district Delegates and only those who have not spoken please. If anybody .(Inaudible) 395.

Hon. Delegate Anyara Emukule: Thank you Madam Chair. My name is Anyara Emukule 395 from Teso district. I would like to congratulate (Inaudible). I think this is what we are the 42 and other communities in our country. I would like to comment on article 102;3 which has been captured by the Commissioner. That there will be no rules (Inaudible).

I would like to comment on article 107 (Inaudible) It seems to have worked well on the tribes with regard to the parties. We from the marginalized minority groups, we rather prefer that the constituency number be increased from 210 to 240 and 60 places should be allocated on the basis of the new system being introduced in Kenya. Thank you Madam Chair.

Hon. Delegate Wangari Maathai: Thank you very much. I m having a problem with hearing but I hope others can hear better. May be if you put the microphone a little further from your mouth it might be easier because of the echo. 379. I'm still dealing only with district Delegates.

Hon. Delegate Levi Ahindukha: Thank you Madam Chair. My names are Levi Ahindukha Delegate number 379 from Kakamega district. I would refer you to Article 101 A. There is a National Council which is the Upper House and National Assembly which is the lower House and this is the Parliament. I'm wondering at what stage will they be sitting so that they can put in place all what has been mentioned in article 102 (2) A up to J. In article 112 sub-article 6, Mr. Chairman Sir, I don't think any Member of Parliament will want to hear him/ her of being recalled. Therefore they cannot enact any effective procedure on how they can be recalled. I propose therefore that a Commission be formed to find a better and acceptable way of recalling our Members of Parliament. Thank you Madam Chair.

Hon. Delegate Wangari Maathai: Thank very much. I need to move to the next block may be I should take 407 before I move to them. Now I'm on that block 407. I m still dealing with district Delegates please.

Hon. Delegate Omolo Kayila: Thank you Mr. Chairman. My names are Omolo Kayila from Kisumu district Delegate number 407. Madam Chair, I think the Commissioners did a very good job in this chapter but I have a few things that worry my mind. If you look at section 106 of the Draft Constitution, the area dealing with the Members of the National Council you find that membership will be by districts, so all the districts will covered 70 of them, 71 may be. If you look at Nairobi, for a long time now there have been complaints that Nairobi should be divided into smaller municipalities.

If you look at section 222(two) which talks about devolution, those urban Governments will be considered as districts, because a municipality or a city council is also defined as a district. So we may end up with 2 different definitions of what constitutes a district. We need to harmonize this, because at the devolution level the municipalities are also called districts. At the level of the Legislature the districts are recognized as 70 districts plus Nairobi, this needs to be harmonized. The Draft does not give any possibility of new creations new districts that may be created in the future. If Nairobi is likely to be divided into several districts or several municipalities than one can foresee also Mombasa being considered for such division. If that is the case those will form new districts and if they are not catered for in the Constitution, then we may end up with some problems in the future. Thank you.

Hon. Delegate Wangari Maathai: Thank you very much. I'm glad that you were being very precise so that we can move fast. I will now go to the next block 380. These are still districts.

Hon. Delegate Charles Lwanga: Thank you Chairperson. I'm number 380 Charles Lwanga from Kakamega district. I want to first of all refer to Articles 102, 107 and 109. The principle behind those Articles is support of Affirmative Action and the plight of minorities. Now minorities I think are not properly catered for. If we take an example of the Ogiek for example they are only between 5,000 and 10,000 people. If we make a party list for example for those

people, somebody may choose to have his party list drawing from Western, Nyanza and Central and that is where we have the voters. So we must set aside particular seats for the minorities and for Affirmative Action like we said yesterday.

Article 106;3B, talks about two women representing Nairobi. I think if you are talking about Affirmative Action you cannot reduce this number of women to two because that is discriminating Nairobi. We should avoid the idea of being obsessed with round figures so that Parliament is just 300 people, it is also composed of an upper House of 100. Why are 100 and 300? It could be 102 to cater for the other 2 women so that Nairobi has 4.

Article 108;1E, that you must have attained an education of at least form four. I think I want to support this one very strongly because we need to have certain standards in the country. Anybody who thinks that we should not have education for these things is wrong, because we have schools they have not closed and if you think you have a problem with attaining form four you can still go. People in Uganda have done that and even the brother of President Yoweri Museveni had to go back to school.

Article 112- recall of Member of Parliament. I see a lot of mischief in this kind of thing, because if you didn't vote for an MP you might want to recall that MP, that is why am insisting that we must have compulsory voting. Compulsory voting then enables you to think about recalling a person you actually voted for. If you didn't you might fall in a group of people who are disgruntled with that MP and you want to recall that MP.

Article 142 which talks about dissolution and prorogation of Parliament. It talks about the National Council four years and the National Assembly runs for 5 years. Now I feel this is discriminatory because by having those years vary like that it appears to be giving superiority to one section of the House whereas we know that these Houses are the same. I would suggest that they run about the same five years but you stagger them, so that the elections will be held at different times.

Now, my last point concerns the no confidence motion in section 143, that the President proposes a Prime Minister, he sends the Prime Minister to Parliament, they throw that person out. He proposes another name it is thrown out, then he dissolves Parliament. Now that is wrong. If we held elections last year and you dissolve Parliament this year what are you doing? That sort of thing cannot work. So if the President is unable to determine who is going to be a Prime Minister, then he is the one who should resign and go home because he can't read the mood of the citizenry. Thank you.

Hon. Delegate Wangari Maathai: Thank you very much. I want to take one more and then I move on. 422 or is it 422 or what? Yes 422 oh sorry I should be looking at the women I am being reminded. It is difficult to see who is who from here.

Hon. Delegates: Laughing.

Hon. Delegate Wangari Maathai: Go ahead, go ahead.

Hon Delegate Maasai Maroa: Thank you Madam Chairperson.....

Hon. Delegate Wangari Maathai: Yes, we could be fast and don't put the microphone too close because there is an echo.

Hon Delegate Maasai Maroa: My name is Maasai Maroa district Delegate number 422. My comments are 2;

One is on article 107 which talks about propositional system of election.

Hon. Delegate Wangari Maathai: He is taking forever. Shall I come back to you?

Hon Delegate Maasai Maroa: No, no. Let me put on my glasses. Election to National Assembly shall be based on Mixed Member Proportional system(MPPS) in which 210 Members shall be elected on the bases of single member constituency and the 90 Members shall be elected on the bases a list of, candidates committed to a political party. My concern here Madam

Chairperson, is that the way we know our political system and the way we know our parties, I don't see any fairness here unless a system is set up which is democratic because most of our parties, are run by individuals. Chairmen are so powerful they will decide who they want to go and the rest do not benefit. If we are here for a democratic system of fairness where people are given equal opportunities then I don't see this thing succeeding. The list will comprise of the Chairman's friend or personalities who are close him and the rest of the people (**Inaudible**).

The second one, is on the women, the 90 women which are supposed (**Inaudible**) the 4 from every province and 2 from Nairobi. What I see here is where we are promoting those who are powerful and those who are not powerful are not going to make it, because for now we are aware that most of our Members of Parliament have been succeeded by those who have money those who did not have any money regardless of how for a good they were, they were left out. So in this case I think that powerful ladies with money, given to contest and campaign for the whole province, are the only ones with money who going to make it. A certain system should be worked out so that fairness can be seen to be practiced. Thank you.

Hon. Delegate Wangari Maathai: Thank you very much. I will go here and I want to recognize 284. I was looking for a woman but since I have called you I can't do anything I thought the lady behind you had the *(laughter)*.

Hon. Delegate John Gitari Munyi: Thank you Madam Chair. I'm John Gitari Munyi a district Delegate from Embu. Mine Madam Chair is on Article 106, where it mentions that the constituencies shall be based on district representation. Madam Chair, we have got some districts which are constituencies, some districts have got several constituencies many of them like Narok which has been mentioned Nyeri, Kisumu, Machakos and some districts have got only one constituency. So it will be unfair to say all districts to give one, so this one are we have to find a way out so that we can get a way of having proper representation there.

Two, we have got these thirty seats for women candidates after getting the 70 members from the provinces. Madam Chair, here I can see some danger. If we don't put a limit of time, we shall get to a point where in some years to come we shall be having about 40 women going through the

first clause of 106;1A and then we get the 30, eventually we shall be having a Parliament of about 90% women. It is a fact Madam Chair, if you get what is happening today around the country like in Maasai land, we have got schools in affirmation of girl child and the students who are going to school there are girls, the Maasai boys don't go to school. They are going to get a situation where those girls will be married and definitely to those who are educated, eventually the Maasai men will not get somebody to get married to. So can we put a limitation of time here, so if you have to get the 30 then we are say we going for 20 years or what definite period. Those are my contributions Madam Chair.

Hon. Delegate Wangari Maathai: (Inaudible) 387 is that a lady?

Hon. Delegate Nancy Ngeywa: Thank you Honourable Chairperson. My names are Nancy Ngeywa district representative from Mount Elgon district. I would like to draw your attention to Article 106;3A I propose that where it is written that, "4 women representing each province" that we include "and with consideration to the minorities". Because, with all due respect, in some provinces there are those communities that are minority, and without considering them then they will never have representatives.

I would also like to comment on article 112;3. With all the due respect, I m sure when the Commissioners put in this it was for the good of the Nation because in the past we have had MPs whom when they are elected they just desert their constituencies. Unfortunately, the conditions that have been put there are so easy to meet so that the rivals can easily recall the person.

So I feel that we should increase the signatures to at least 60 or 70% rather than leaving it at 30%. Thank you.

Hon. Delegate Wangari Maathai: Thank you very much. I'm still dealing with district Delegates and only those who have not spoken yet. Is 473 a district Delegate? Are you a district Delegate? She is not.

Hon. Delegate Bonaya Godana: 473 are you a district Delegate? No this is still the turn for district Delegates.

Hon. Delegate Pamela Mboya: Madam Chair.....

Interjection Hon. Delegate Bonaya Godana: No, no, please. Madam, that is Mrs. Mboya I presume?

Hon. Delegate Pamela Mboya: Yes.

Hon. Delegate Bonaya Godana: Are you a district Delegate?

Hon. Delegate Pamela Mboya: Mr. Chair I am not a district Delegate I am.....

Hon. Delegate Bonaya Godana: Okay, your turn will come please.

Hon. Delegate Wangari Maathai: 306.

Hon. Delegate Christine Ngari: Thank you very much Honourable chair. My names are Christine Ngari number 306 representative for Kirinyaga. I want to comment on Chapter 7 page 20. Let us look at page 20, at the beginning, where it talks about the establishment of Parliament. I propose that we use the international language instead of using the words the “National Council” we either use the word “Senate” or “Upper House” that is number A under Parliament. The second one is on page 22, where we talk about the age of those in the National Council, that is the qualifications and disqualifications of Members. Section 108;1B I wish to propose that we raise the age for the National Council instead of 35 years we make it 40 to 45 years so that we have mature people.

Hon. Delegates: Laughing.

On the same section 107, section 1 number 4 that is page 22 where are talking about proportional representation, I propose that the party list should not be on nomination ground. The word nomination should be eliminated totally from the Constitution. Let us have elections so that the party list can be formulated. So a mechanism be put in place where the party can nominate the people who are supposed to be on that list.

Also, where we are having women representatives lets have 30 seats depending on the province be elected by the women at the district level then they forward the names to the provincial level for election but they have to start from the district level.

The last one is on page 23, where we are talking about the recall of the Member of Parliament. Honourable Members have expressed their views that this is going to bring a lot of insecurity. A Member of Parliament will be looking over his or her shoulder to see who is collecting the signatures and there wont be any development. I' m not saying that we leave the MPs to lie idle for 5 years then they come back to us. I' m one of those who would be on the heels of the MPs if they do not deliver, so I'm proposing instead of recalling them, they would be made answerable to the constituents by having constituency barazas three times a year where they can account for their activities.

(Laughter by Honourable Delegates)

Hon. Delegate Christine Ngari: -- three times a year or four times a year, a Constituency Baraza. After the President is made to account for his activities once a year, let them be made to call the people, not the people who are the activists but everybody in the Constituency and let the people have a chance of questioning their activities and putting them on the Floor if they do not deliver. Thank you.

Hon. Delegate Wangari Maathai: Thank you very much. Now. I am going forward. I am looking on this Block now and I am seeing 255. Only those who have not spoken or what? None of you have spoken? Okay.

Hon. Delegate Ahmed Maalim Omar: Thank you Madam Chairlady. My names are Ahmed Maalim Omar. I am delegate Number 255 from North Eastern Province.

The first issue I would like to address is the issue of a Bi-Cameral Parliament, which is being referred to as the National Council or National Assembly. I am not very sure if at this stage in Kenya we need a Bi-Cameral Parliament. For instance, what are we getting by probably talking of the National Council? I am saying this because, if you look at Committees of Parliament, the Draft recognizes the National Assembly to be having Committees but the National Council, does not have Committees the way it is in the Draft. So, other than sitting and probably approving certain appointments, what other business will be National Council undertake? That is not clearly defined in the Draft. But if the majority of Kenyans feel that we need a Bi-Cameral Parliament, we would rather have a Senate and a National Assembly mainly because when you talk of Council, you can talk of several Councils but for commonality of the kind of Parliament we have, it is better probably to talk of a Senate as an Upper House and the Lower House as the National Assembly. Otherwise, we should not talk of Upper House and Lower House and also the other issue if you look at the approval of appointments, I can see the National Council is given many duties whereas Parliament (the National Assembly) is given less as per 133 and 134, you will see the kind of approval of appointments by the two Houses. So, by having several Committees as such the Parliamentary Accounts Committee, Public Investments Committee, Planning and several Committees of the National Assembly, I think the National Assembly is well placed to approve appointments for Ethics and Integrity Commission rather than the National Council. So, I would like probably the Delegates to look at these appointments and see which appoints should really be very necessary for the two Houses of Parliament. Out there I can see some problems because the National Council may not be well placed probably to approve certain appointments.

On the other issue if you look at 107 on – and the ninety Members of the Party list, it appears that was put here probably to assist the people who are yearning for professional representation. I would rather feel that probably instead of the Ninety Members, we talk of half that number and half forty-five Members.

If you look at 112 (1), recall of Members of Parliament, I think this is not necessary. The term of Parliament is five years of four years. If we start recalling MPS as per you see the kind of decisions, which we have in the High Court, then it means that MP will not deliver anything. He will be fighting his recall relating to probably him being deprived of that post. That is on the issue of the MPS recall.

Generally, if you look elsewhere in the Report by the Commission, you will realize that the Commission has been influenced to think that the Chairman of the District Council should be Members of the National Council. I disagree with that version mainly because, for instance, in Wajir, the Chairman of the National Council, cannot come and participate in the activities at the National Council mainly because of logistical problems and other things. I think if we have the National Council or Senate, let's have Per Se as the National Council but not bring the County Council Chairmen to the National Council and bring problems because we want the District Councils to be active above level. Thank you very much Madam.

Hon. Delegate Wangari Maathai: Thank you very much. Please try to be short so that everybody has a say. I want to go to the last block. 405.

Hon. Delegate Fibie Atieno Ochola: Thank you very much Madam Chairperson. I am Fibie Ochola from Kisumu District, Delegate Number 405.

Madam Chairperson, I have a few remarks to make on Article 109 (a) and Madam Chairperson Duties and Affirmative Action. We discussed this one yesterday and I want to appeal to fellow Delegates, Male and Female that we support the Affirmative Action. It is only gender mainstreaming. It is not competition and we need to have our women on board that issues pertaining to policy making in all policy making bodies and institutions, women should be included and we request it.

On recall of MPS, that is Article 112, Madam Chairperson, I want to say that service to man is service to God and when men and women of this Nation take their time to go and vote in a Member to represent them in the August House, they are expecting quality representation and Madam Chairperson, it will not be fair to the people if they are not represented in a way that

surely, even if the person who is representing them should have a job satisfaction that he is representing the people and he is delivering the goods.

We need to have these services delivered to the people in the villages down by ensuring that there is a law of representation and that the people should be feeling that they are satisfied with the representation and the elected representative should also have the satisfaction that he is representing the people. I wanted to say, Madam Chairperson that, as much as we don't want malice to be part of it, we would wish that the people, as it is said here, the Republican principle, we were told here yesterday, it is that you are serving the people at their pleasure for a limited period of time. For that limited period of time, you should deliver some goods to those people. He should visit them and know where their problems are.

I know even when we came here, fellow Delegates, this Draft Bill was even discussed at some Constituency Constitutional Forums. There are some MPS who never even attended these sessions not even to give their views down there and even by the time we came here, some of them, it is this time, they were going through the Draft Bill and I felt for these people to go down to be with the people, there should be this recall. But I want to say that for it not to be seen to have any malice, we increase the thirty percent to go maybe even up to fifty percent. But it should be in each Polling Station so that it will include those who could have voted for this our representative. Thank you Madam Chairperson.

Hon. Delegate Wangari Maathai: Thank you very much. Now we will go to Members of Parliament and if we have time at the end, I can come back to the Delegates but for the moment, I want to go to the Members of Parliament and I want to start on this side. Only Members of – Point of Order. 296.

Hon. Delegate Stanislaus Wambua wa Kasoka: My names are Stanislaus Wambua wa Kasoka., a Delegate Number 296 from Machakos District.

Madam Chair, I want to raise a concern that District Delegates consist of one third of the House and you have gone out picking one, one, one from every row. It is not fair. You could have

picked two from every row, two, two, and two. So, please give some chance to compete. To be fair, I think that is not fair and it is not correct. If you constitute one third, we will want to give everybody a chance and we will come to our own formula to say one third, by the end of the day, by the time we conclude this discussions, at least roughly one third of District Delegates or rather one third of the total number of Speakers should have been District Delegates and one third, Members of Parliament and one third, the rest. So, I think you are not fair by saying that we not giving enough time. I think nine in a row is a long list. We will come back to the category if there is time left. But I think it is time we moved to the next category.

Hon. Delegate Wangari Maathai: Thank you very much. So I will now look out for the Members of Parliament. Number 20 and only those who haven't spoken please?

Hon. Delegate Mwalimu Sylvester Wakoli Bifwoli: My names are Mwalimu Sylvester Wakoli Bifwoli, MP for Bumula in Bungoma.

I want to contribute on this Madam Chair - District boundaries – 106. District boundaries should be Constituencies sincerely speaking. There are some Districts in this country, that are Constituencies and there are some Districts in this country, that have more than five Constituencies and when you look at a Constituency in Nairobi which has more than one hundred or three hundred thousand voters and Nairobi is being given only two Members of Parliament on Constituency basis to go to the National Council. I tend to think that this is very unfair because the majority are going to be discriminated.

Number Two: I have just one little question. Supposing the recall of an MP is done or petitioned and he goes back to win, who meets the expenses because it has been done out of malice. You have not put there who should meet the expenses of an MP who has been unfairly recalled and the public have returned him? Because if somebody is popular and there is malice, thirty percent there is no MP who is commanding more than 5 five percent in any Constituency at all. So, your enemies can decide to recall you. But if there are seventy percent remaining who want to return you, then thirty percent should meet the cost.

There is also this question of the quorum Madam Chair that we want the quorum to be thirty percent and we are telling the MPS to go home and visit the Constituencies. Definitely an MP will be more at home than in Parliament and therefore the number of the quorum should be reduced if MPS are going to be at home all the time because you cannot be at home and at the same time be in Parliament in Nairobi.

(Clapping by the Honourable the Delegates)

Then the Committees: I want to correct one thing that the Commissioners or whoever recommended the Committees, forgot a very important Committee called education and here we are saying the minimum education of somebody to go to Parliament is Form IV. When you institute the Committees in Parliament, education is still there. Why are you attaching importance on somebody being learned and you are not attaching importance on education in Parliament?

(Clapping by the Honourable Delegates)

Madam Chair, --

Hon. Delegate Wangari Maathai: Thank you very much.

Hon. Delegate Mwalimu Sylvester Wakoli Bifwoli: I am a Delegate Number 14 and not 20. Mine is missing. I only took it for –

Laughter by the Honourable Delegates

Hon. Delegate Wangari Maathai: Okey. Thank you very much. Number 211. Only those who have not spoken please?

Hon. Delegate Amina Abdalla Ali: Thank you Madam Chair. As my colleague from Bumula my number is actually 211 and my names are Amina Abdalla and I am a Nominated MP, KANU.

I would like to make a comment on 201. Whereas I fully support the Affirmative Action, the components of that ninety member seats, I would like to draw the attention of Members that these seats are going to be distributed by popularity of votes meaning that the Party that has the highest number of votes and not seats will get that and now we have increased marginalization of those communities that might support parties that do not have as many numbers or I mean numbers of voters as their areas would have high density areas. So, my proposal is that we should separate the Affirmative Action elements of these ninety members' seats with the vote weighing components because let the vote weight components be dealt with through the Constituency boundaries alienation and not through these ninety member seats. Thank you.

Hon. Delegate Wangari Maathai: Thank you very much. Now I want to move over to that side. 43, Members of Parliament. Those who haven't spoken. 209? No. I was pointing to --. Yeah, what was your number Sir?

Hon. Delegate Moses Masika .209

Hon. Delegate Wangari Maathai: Yeah.

Hon. Delegate Moses M. Wetangula: Thank you Madam Chair. I am Moses Wetangula, MP, Sirisia. I want to make a few comments Madam Chair.

Number One: 102 provides for Parliament to review or audit the performance of the President, the Vice-President, the Prime Minister and Ministers. Unfortunately the Commissioners have also included Judicial Officers. I want to suggest that, that should be left out because we are trying to give Parliament an opportunity to intimidate the Judiciary. The Judiciary's independence and should not be subject to any supervision by Parliament. Madam Chair, if we

allowed that to happen, then the Section also says that those who don't met the requirements will be fired. It will put the Judiciary in a very difficult situation.

Madam Chair, I also would want to oppose the creation of a second Chamber of Parliament because to my mind, it doesn't serve any useful purpose and in deed if you look at the Draft, you can see that the Commissioners were not quite sure what they wanted. They have created what looks like parallel jurisdiction, saying each House can initiate legislation, each House can vet Presidential appoints, each House almost doing what the other House does and this to me is based on the fact that they were not quite sure whether we really need a Second Chamber or not and I think we don't.

Clapping by the Honourable Delegates

Madam Chair, we have the issue of qualifications to stand for elections. There is a bit of contradiction in the Draft Bill. 108 (1) says, to qualify to stand for elections to Parliament, you should be twenty-one. 79 (1) says, to qualify to vote, you should be eighteen and then 108 (1) (d), says that to qualify to stand for an election, you should also qualify to vote in an election which means that there is a departure from 21 back to 18.

The contentious recall of MPS, Madam Chair, is a Clause that I have to oppose for a simple reason that the Electorate are given an opportunity every five years to vet the performance of their MPS and those that don't meet the standards expected of the Electorate are thrown out. We don't have to recall midstream because it is not necessary.

Madam Chair, there is also 124 which says that Bills from Parliament are taken to the Supreme Court to determine their Constitutionality. I have a problem with this Madam Chair, because if the Supreme Court made a decision that a certain Bill was Constitutional and an issue arose later where a citizen goes there to challenge the Constitutionality of that Bill, they find themselves in a very difficult situation to depart from what they previously decided even when they are persuaded otherwise and I think that should be taken out of the Bill.

Madam Chair, there is also as others have said before, a lot of excess baggage in the Draft. I don't think we need issues like quorum of Parliament, Committees of Parliament and so on in the Constitution. These are things that can be found in the Standing Orders of the Parliament. Subject Madam Chair to my unqualified support for Affirmative Action, I think the new Electoral procedure that is being proposed is unworkable and I would want to oppose it. If we went to increase the number of representation in this country, I suggest that we can increase the number of Constituencies based on the non-criteria that is set out in the Constitution that we already have.

Clapping by Honourable Delegates

All we need to do is to make sure that our disadvantaged members of society, women the disabled and so on, are given an opportunity to rise to levels of representation so that they don't feel disadvantaged. Why do we want to experiment against a system that we already know that is practiced all over? All we are being told is that this mixed representation is practiced in Germany. But the Commissioners are not telling us why they have picked on Germany and not elsewhere. Thank you Madam Chair.

Hon. Delegate Wangari Maathai: Thank you very much. We will take the last one now for this Session, Number 67.

Hon. Delegate Mwangi Kiunjuri: Thank you Madam Chair –

Hon. Delegate Wangari Maathai: -- one minute.

Hon. Delegate Mwangi Kiunjuri: -- I am Delegate –

Hon. Delegate Wangari Maathai: -- one minute. There is a Point of Order somewhere.

Hon. Delegate Nafutali K. Chelagat: Madam Chair, my names are Nafutali Chelagat, District Delegate, Baringo. Madam Chair, I must caution you that the Chair has neglected that there is a

Delegate who impersonated himself by using a Delegate's Number 20 and yet he admitted that he is Delegate Number 14. I would like to know from the Chair that if such a situation occurs, is there any action which the Chair is supposed to take or we are just stay the way we are staying now, Hon. Chair?

Clapping by the Honourable Delegates

Hon. Delegate Wangari Maathai: (Speaking to the Co-Chair- the MP used Number 20 but he is Number 14)

Hon. Delegate Bonaya Godana: Is it true Honourable Member? Is it true that you actually used somebody else's Number?

Laughter and Noise from the Honourable Delegates

Hon. Delegate Mike Oliewo: Mr. Chairman, even my brother here does not have a Card. Our things have been taken away twice and in the process we are losing things here. We don't have Cards. Can you come to our salvation?

Laughter from Honourable Delegates & the co-Chair

Hon. Delegate Bonaya Godana: Well I don't know whether that is permissive or cheating.

Laughter by Honourable Delegates

But I think no harm has been done. At least the chance was to be given to a Member of Parliament and I hope that you have recorded the correct Number when you spoke that on our records what we have is Delegate Number 14. Okay.

Hon. Delegate Wangari Maathai: I think it is very important to stick to our Numbers and if our papers get lost we can always go to the Secretariat because this is being recorded and we don't want the wrong things. Let's allow Delegate 67 to speak and then we shall close for lunch and then resume in the afternoon.

Hon. Delegate Mwangi Kiunjuri: Thank you Madam Chair. My name is Honourable Mwangi Kiunjuri, Delegate Number 57 from Laikipia East. I want to contribute on Part one –

Hon. Delegate Wangari Maathai: -- hello, excuse me? There is a Point of Order somewhere. 406 or what? 613 and 406. I will take one at a time. 613? Where is the microphone? 406 then, if you have the microphone.

Hon. Delegate Shakeel Shabbir: Yes, my name is Shakeel Shabbir, Number 406 Madam, I just don't want to be pedantic but District Delegate did bring out the position that there is no equity in questions. We are over two hundred and fifty delegates from the District present. We have less than thirty MPS present.

Clapping and Noise from the Honourable Delegates

So, why can't we --, so when you do one third, one third, it isn't really the case if the MPS want to be here and they want to be two hundred of them, we are willing to give them one third or even half the time. But not when they are only coming for technical appearances.

Clapping and Noise from the Honourable Delegates

Hon. Delegate Mike Oliewo: Well, Madam Chair, Madam Chair –

Hon. Delegate Bonaya Godana: Maybe we take that Point of Order too before I respond to Mr. Shakeel.

Hon. Delegate Shakeel Shabbir: Yes.

Hon. Delegate Mike Oliewo: Mr. Chairman, I was just suggesting. My Point of Order was very simple. I was just suggesting that since we came back late from the tea break, we carry on with this Session up to 1.30 p.m. so that we can cover as many presenters as possible. Thank you.

Hon. Delegate Bonaya Godana: Starting with the last one, I think, let's get through with the Speaker who was on the Floor, then we break for lunch, because if we go up to 1.30, it means we shall start the afternoon Session also late. I don't think you are really setting time. But as regards Hon. Delegate Mr. Shakeel Shabbir's comment or complaint, I think you also have got to understand our position here. We are not in a position every time we are in this hall to take a roll call to know how many or what category of Members are present and absent. It will be really impossible.

Noise and Clapping from Honourable Delegates

It will be impossible and I think the fairest thing is one to assume that you will all turn up and that you are all responsible, we are all responsible and two, to go by those general numbers. If on the other hand a particular category is not present, insufficient numbers, I am sure that will be reflected at certain moments by failure of people to put up their hands for that category. We take note of what you have said but please understand our position also. I think we should now allow without unnecessary interruptions, the Honourable Member to speak.

Hon. Delegate Mwangi Kiunjuri: Thank you. I am hoping that there will be no other interruptions. I had already introduced myself and I want to contribute on Part One i.e. establishment of Parliament and may I start by saying that I am opposed to the establishment of two Houses - the National Council. The reason is that Madam Chair that any provision that should be put to this Draft Constitution or the Constitution that if it be inconsistent with the immediate need of Kenyans, then it should be suspended.

I am saying this because what the National Council has supported it to come and do is what the National Assembly can do and it can be improved and given power to do what the two Houses can do and in this cause, we shall be burdening the National Exchequer and we have other things that should be done immediately for example; the provision of free Primary education, healthcare, conservation issues, environmental issues. And if you consider the amounts of money that should be spent, it will be over a period to learn the National Council and at the same time to

have the subordinate. So, what we are saying, the immediate needs of Kenyans today is to have those facilities and therefore we can suspend that idea and when time comes, when it is ripe, we shall consider it. So, what we are saying is that let needs of Kenyans prevail and the complexity of the Government and the Governor should come second.

The other contribution is on 102 (g), confirmation of the choice of the Cabinet. What I am saying is that, that is in line. It should happen. But, however, we should consider a situation whereby a Government wins through majority votes and then the opposition comes in with the minority votes but with majority Members of Parliament. It happened and I would alert the Delegates that in 1997, we had the whole opposition combined garnering 67% of voters but the Government with 32%.

The situation here is that we should have an escape Clause on what should happen if a popular Government and a popular Government is not about representation by Members of Parliament, the Members of Parliament come to the House through the votes they get from the people. If a popular Government is elected with over 67% and it doesn't have majority Members of Parliament, then we should know whether that Government should be vetted by minority opposition with more Members of Parliament.

Section 106: To address this question of representation, we must re-draw the National Map. That is the only way we can come up with new Constituencies after scrapping out of the Provinces and the Districts, we should come up with proper Constituency maps so that we can address the question of representation.

On 108 (b) – qualification and disqualification of attaining the age of twenty-one to be voted as a Member of Parliament. This is in contradiction with so many Sections of this Draft Constitution. From the Bill of Rights which is Chapter Five, whereby you should not discriminate against Kenyan from Section 50, whereby you are given power if you have the right to vote, you should be voted and also we shall challenging it on the Executive whereby if I qualify to vote, then nobody should say that I am immature to handle any Government Office in this land. I was thirty-three last year and now I am thirty-four. I could handle the same office that I can handle

today. So, the question of age should not arise. If you are eighteen, you can vote, you should also be voted at any level including the Presidency.

Lastly, I would like to deal with 112, the Section that deals with recalling the Members of Parliament. I want to assure the Delegates that on a very special occasion when you have over half or two thirds of the Parliament being elected by over thirty percent of the voters, what we are saying is that the Members of Parliament should be given a chance to petition. Let us have a Clause whereby if you are being petitioned, that you should not be able to rule by thirty percent, you should give an equal defence before the Electoral Commission of Kenya should take its judgement because somebody might be addressing this issue on malicious basis. Thank you Madam Chair.

Hon. Delegate Wangari Maathai: Thank you very much Honourable Delegates. We have some announcements.

Hon. Delegate Bonaya Godana: I just wanted to inform Honourable Delegate Number 240 that he should go to Communications and for the benefit of others, I think some Delegates have begun to take advantage of the proposals that if you think you cannot communicate your message, you can actually put down what you want to say and it will go into the records of the Conference. I have already got the first one here and I want to thank the Honourable Delegates because in a sense you are helping us to save time. Thank you.

Hon. Delegate Wangari Maathai: Honourable Delegates, I was given several announcements to make but we have decided or it has been decided by the Steering Committee that personal announcements or Caucus announcements should not be announced from here but they should be put in the Bulletin Board. So, if I may ask even those who had given me, I will not announce but put them on the Bulletin Board.

Thank you very much. We will break now and resume at 2.30 p.m.

Hon. Delegate Godana Bonaya: Perhaps we should start now. Order, order, order Delegates. May I request everyone to take his or her seat please so that we can start the afternoon session. I am pleased to announce that quite a number of the Delegates have taken advantage of the new rule about those who want to give their opinions in writing and doing so. Delegate number 250, Delegate number 280, Delegate number 389,

Hon. Delegate Wangari Maathai: Read their names.

Hon. Delegate Godana Bonaya: Delegate number 262, Abdikadir Guyo of Moyale, Delegate number 389, W. A. Kisiero from Mount Elgon. Delegate number 280, Bruno Kaimba from Tharaka, Delegate number 250, Abdulahi Haji, District not given, Delegate number 080, honourable Leshore. I wish more of us would do this so that we can save time for those who want to speak. I want to assure you that your views will be on record and they will be distributed to other members, the other Delegates. May we now start the session, from where we left. Professor.

Hon. Delegate Professor Wangari Maathai: Thank you very much. Yes we were on this side, and we were dealing with --- we were trying to call members of parliament who had not spoken. I see sixty-eight there.

Hon. Delegate John Arap Koech: Thank you very much ,Madam Chair. My name is John Arap Koech, Member of Parliament for Chepalungu. Madam Chair, I want to make a few comments on 107, this is on the mixed proportional representation. Madam Chair, as I go through the report, I see most people in Kenya want to have power and if they cannot get power Madam Chair, it means they must have power through their representatives. Now, when we introduce this mixed proportional representation and 90 Members of Parliament, it means we dilute the representation of the people. So, I wanted to propose Madam Chair, that Article 107 should be amended. And if there is a strong feeling that we must have, then there must some form of election by the people. It should not be left to a few hands of the party. Because we have had experiences in the past, Madam Chair, that when there is a very powerful person in the

party, he is bound to nominate a few of his friends, and then the powers of the people are going to be transferred to a very powerful person in a particular party.

While I do welcome our sisters to join us in parliament, I think we should create constituency for them, so that we can encourage them to come to Parliament, and they too must be elected by the people from the constituencies. Because if we are going to have people who agitate for power, or our ladies agitating for power, and they live in the urban areas, then that rural woman who should actually be elevated, is not going to see the light of democracy.

Madam Chair, I also want to say something about number Article 108, and that is upon the National Assembly and the Senate. If it is a must that we have a Senate, and it is the feeling, I mean the National Council, and it is the feeling of the Honourable Delegates that we must have, then we should have a Special National Council. A council of elders, who should be able to advise, because there will be no point Madam Chair, that we are going to have young people who might not have had a wider experience in life, giving advise. Because if we are going to be a National Council, I believe this should a council which should be doing more of advisory role, and they should be people who have had a very wide experience. As for thirty-five years, I think that would be too early.

Then finally, Madam Chair, this issue of recalling a Member of Parliament. Some time I have a feeling that as a Member of Parliament, I may not be able to comment. But with the experience we have had in Parliament Mr. Speaker, I should not leave this uncontested. If we are going to have a situation where some people may feel, people who are elected to Parliament should be recalled, they will always be causing a lot of chaos in the constituency, and there will be no Member of Parliament who will settle down to work for the constituency. So, I would suggest that this one should be removed, and this question of electing a Member of Parliament, Madam Chair, should be like when you are getting married. It should be for the worst, for the better or worse. If you will make a mistake in choosing a member of Parliament then they will suffer for five years, so that in future, they will be able to know that they better choose wisely. And you give that Member of Parliament the chance to do some nice work in the constituency, without

giving him a lot of hard time. Now, with these few remarks, Madam Chair, I am happy with what is going on in the report.

Hon. Delegate Wangari Maathai: Thank you very much. Members of Parliament who have not spoken, I see fifty-six.

Hon. Delegate Kivutha Kibwana: Thank you the Chair, my name is Kivutha Kibwana, Member of Parliament. And I want to continue from where my colleague left. Although I am a new Member of Parliament, I think it is a very good idea to actually recall Legislators.

(Applause from the floor)

Because if you cannot perform, then as the President is impeached, or a Prime Minister removed, there should also be a ways in which you can be removed before five years are over.

(Applause from the floor)

The electorate normally would not be irrational, and they would really examine the performance of this Member of Parliament before they show him or her the door. But, I would suggest that a grace period of say two years is necessary, so that people begin to learn their jobs, and after two years, or whatever period, then this person can be recalled but by a majority of the registered voters. So that when a vote is made for recall, it should be actually a majority of the people who are registered as voters.

If I could move to the second chamber, if we are going to have a devolved system of government, it will be necessary to also have a second chamber.

(Applause from the floor)

But I would be very careful, I would be very careful that there is not conflict between those two chambers. And indeed, I would think that the District Council Heads would be very good

candidates for that chamber, including women representations and representations of the youth and so on, so that actually there is another place where we stabilize the country from. Where we make more consensus, where it is possible to get the views of the entire country, kind of represented.

I would also like to make a technical point, what the Chair suggested earlier. A lot of us who have no opportunity to speak, I spoke like three or four days ago, please let us write down our comments, like from the beginning I had comments. Let us write them down, because this will assist our points of view to be in this debate stage, so that when the working groups commence work, they will also have our view points. I am requesting my fellow Honourable Delegates to take time and be able to do that.

Finally, I think we need to be more specific, since we are developing very positive consensus on representation of the women through proportional representation, and so on. Because we are developing that kind of positive consensus, I think we need to get nitty gritty. So that if we say like a third of women should be in Parliament, we look for these mechanisms. It might not be enough through proportional representation and therefore, I am inviting fellow Delegates for us to consider women coming to parliament through provincial representations. Like in Uganda, they go through the district, and they say, for each district, there must be one woman elected by the entire electorate. In our situation, let us explore provinces, because the districts might be very many. But let us at least explore a situation of getting women into Parliament, which is really pragmatic. So that we don't just say one third, and we will wait for so many years to know whether they are in or not. Thank you for this golden opportunity to contribute.

Hon. Delegate Wangari Maathai: Thank you very much. I will move over on that side again, I am looking at people who have not spoken, please. 132?

Hon. Delegate Kihara Mwangi: Thank you, Madam Chair. My name is Honourable Kihara Mwangi, Member of Parliament for Kigumo, Delegate number 132. Madam Chair, I would like to refer to a number of issues regarding the Legislature, starting with the registration on Article

106, National Council. First and foremost, it is not clearly defined as to what the National Council purpose will be in the Legislature. Whether or not it will be a supervisory body, to supervise the National Assembly, or what duty it will be.

Two, article 106, sub-section two, requires that for the purposes of elections, under clause one, the constituencies shall be based on the districts and at the same time we are talking about equality. If we go back to page number eight, where people will be equal to each other. But when we come to the districts, you find representation these districts are not equal in terms of population. You find some districts with even less than a hundred thousand people; whereas others have got more than one million people. For instance, Nairobi is considered as a district, particularly for purposes of this Conference, yet it has over three million people. Therefore, that question of representation must be clearly defined, if we are talking about representing people. Because as you note Madam Chair, that we are talking about defending the minorities and we are forgetting that even the majorities also require to be defended. Otherwise, we will be talking about the minorities hitting on the majority.

If we talk about Article 109 again, representation of women. I have no quarrel with the representation of women; in fact I would like them to be give the highest, possible Chair. But this is again in contradiction with section 33, where equality is called upon; and when you are talking about having a third of Members of Parliament, my question, my only question, not that I do not want our sisters to come to Parliament, but the methodology of how they come. Because if we are again going to be on equal status, then we should be given equal status in the choosing on how ladies come to Parliament.

When we look at Article 104, this is on recalling of Members of Parliament. I do not believe that Members of parliament should be recalled earlier than how they are recalled now. Because we are recalling Members of Parliament after every five years, and we have not described; if we were to recall a Member of Parliament, we would have top define the duties of a Member of Parliament, so that we can then determine if the Member of Parliament is not delivering. At the same time, you do not expect a new Member of Parliament who has just come into Parliament

within one year, and he is delivered. He has gone to every corner of his constituency, and when we talk about thirty percent of the registered voters calling back a Member of Parliament, we are saying that the Member of Parliament, who has won the election, must command more than two thirds of the electorate. Otherwise, the opponents will gang together and get signatures to call back a sitting Member of Parliament before he has done anything. And in that pace, we shall be reverting to elections year after year. That will be very expensive to the country, and I would think that the Conference should re-consider this and see whether we actually need to recall a Member of Parliament before the end of five year when we recall and actually that is when we go for general elections. Thank you very much, Madam Chair.

Hon. Delegate Wangari Maathai: Thank you very much. I want to move on 101?

Hon. Delegate Jakoyo Midiwo: Thank you, Madam Chair. I am Delegate 101, my name is Jakoyo Midiwo, MP Gem. I want to just make a few comments. I would like, I want to start with section, Article 111, (one eleven), which is talking about the recalling of the MPs. Oh one twelve(112). I want to agree and disagree. Section 'a' of the Article, talks about the state of the incapacitated MP. I believe there should be a limit. Let's say you are elected today, and you fall terminally ill. There should be a reasonable time when, after which your seat should be declared vacant so that a new MP is elected to serve the people of that particular constituency.

But I disagree with the rest of them. I would however propose an amendment to take care the rest of those clauses, to replace with a way where, for example, if an MP is involved in corruption, for example he is subjected to a committee of Parliament, for the purpose of finances. We cannot have elections just because some busy bodies are in bad taste, saying the MP is not performing. But when we have an enquiry through a committee of Parliament, you will establish the truth and the person can be dismissed and his seat can be declared vacant without necessarily taking people back or subjecting people to witch-hunting.

I also want to talk about Article 143, I believe article 143, which talks about the President appointing a Prime Minister, and if the National assembly fails to approve the appointment within 21 days of the date the vacancy arises, the President shall dissolve the National Assembly.

I see no sense in that. Why would, because a president may intentionally think that the Parliament that has been elected is one he cannot work with. So, he appoints the wrong man and Parliament will definitely not approve that person and after 21 days, you don't have a parliament, people are going back to elections! I see no sense in that at all. So, I am saying we need to go back and look into that.

There is Article 102, number 'g', I believe, which is talking about the vetting of the Presidential appointees. We cannot do without Presidential appointees. I believe it is the only way of checking the Executive is going to appoint people who have been previously involved in corruption, and those who are overage and people who do not have any knowledge of the jobs they are given. The only way to do that, is to subject those particular individuals to be vetted. Have be vetted Parliamentary Committees or Parliament, so that we don't have somebody who stole in Golden berg being a Minister jut because the President has said.

I also want to talk about the issue of the Upper House. I believe, I would like to agree with another Honourable Delegate that I personally don't understand it. I think as we said, Kenya needs a lot of things and we should not be in the business of bloating our bureaucracy. We have said in the Constitution that Parliamentarians will work full time, and we have worked hard in the Constitution to say that Parliament will have teeth. So we are saying we just need to, we should say in the Constitution that, some of these duplications which seem to be saying that both bodies will be doing the same thing, make Parliament do its work to save the country, and use that money to build other institutions, education, health etc. thank you, Mr. Chairman.

Hon. Delegate Wangari Maathai: Thank you very much. I want to appeal for time, and I want to say that when I raise my bottle of water, please note that I mean you are speaking for too long and you should wind up. When I raise my bottle of water. Let me take 206.

Hon. Dellegate Wario Ali: Mheshimiwa Mwenye Kiti na Waheshimiwa Wajumbe. Nashukuru kwa fursa umenipa. Ningependa kuanza na kifungo mia moja na sita. Mimi naitwa Mheshimiwa Wario, Mjumbe number 206, Mbunge wa Bura. Mheshimiwa Mwenye Kiti, Kenya ilipopata uhuru, tulikuwa na wilaya chini ya hamsini. Na baada ya miaka arubaini ya kwanza, tuna karibu

mara mbili ya hiyo. Kwa hivyo sioni ni kwa nini tuende tuseme tunataka wake thalathini au sabini, no, no, no. Twende moja kwa moja tuseme kila wilaya zile zitakazokuja na zile ziko zipende sasa ipewe nafasi ya kutuma mwakilishi mmoja kwa Baraza ya Taifa. Kisha Mikoa, hapa tunasema tunataka wajumbe thalathini. Na ukigawanya thalathini kwa mikoa nane, inakuwa ni wabunge watatu, si wanne. Kwa hivyo, tuseme tunataka kila Mkoa utoe wabunge wanne. Mikoa ile iko sasa, na ile iitakayo kuja pia. Mki ---(**inaudible**)--- mpe Delegates baadaye.

Mheshimiwa, nikiendelea kuchangia, kuita mjumbe. Mimi ninaona sio vibaya kumuita mjumbe kutoka kwa kazi yake aende awe raia mwema. Lakini nina tashuishi kubwa hapa Mheshimiwa Mwenye Kiti, kwa sababu kuna wapinzani wake wengine ambao wanapata asilimia arubaini ya kura. Na kesho wakitangaza mshindi amepata asili mia hamsini, wewe number two umepata asilimia arubaini, unamaanisha utaenda tena umuite kwa sababu uwezo unao. Kwa hivyo, tunaleta hoja ambayo itakuwa ni tisho kwa uchumi wa nchi hii. Kila kukicha, tutaenda kufanya uchaguzi kwa sababu mpinzani wako ana asilimia kubwa yakuweza kukuita kutoka Bunge. Kwa hivyo hilo ni tisho na lazima tuwe waangalifu.

Mheshimiwa Mwenye Kiti, pahali ambapo tunasema tunataka wanawake thalathini waakilishe mkoa, tunataka iwe ya mzunguko. Kuna mikoa ambayo ina wilaya zaidi ya nane. Ikiwa kifungo cha kwanza kimepatia wanawake wa mikoa minne, basi miaka nne itakayofuata iangalie zile sehemu ambazo hazitawakilishwa. Kwa hivyo, iwe ni nne ya mzunguko. Sio ya kuangalia sehemu moja peke yake.

Mheshimiwa mwenye Kiti, tukienda kwa kifungu cha moja thalathini na nne, unaona lugha za Baraza ya Taifa, na Bunge ya Kenya. Lugha tumesema ni Kiswahili, Kizungu na lugha ya ishara. Je ikiwa Speaker wa Bunge hiyo hajui lugha ya ishara, ataendeshaje kazi hiyo? Kwa hivyo tunapendekeza kwamba Speaker naye lazima ajifunze lugha ya ishara au namna gani?

(Laughter)

Mheshimiwa, natumaini hayo ndio maoni niliyokuwa nayo. Asante.

Hon. Delegate Wangari Maathai: Asante sana. Nitaenda upande huo. Ninatafuta mama, yuko wapi? Eh asante, yeah 134?

Hon. Delegate Nyiva Mwendwa: Asante sana, Madam Chairperson. My name is Nyiva Mwendwa, Member of Parliament Kitui West. I am going to comment on two issues. On Articles 106 and 107, that is representation of women and finally recalling of members of Parliament.

Madam Chair, we have had quite a lot. And in the Constitution, the Draft, it is not very clear how the women are going to come into Parliament. I am of the opinion that to elect women on district basis of provincial basis is grossly unfair. Nobody can be effective as a representative of a district or a province. That means that next time they cannot be elected or nominated, because they are going to be very ineffective. I am of the opinion that if we want women to come to Parliament then, we must also want to give them an experience. I am of the opinion that since we are going to increase the number constituencies, let have certain number of constituencies specially reserved for women, and the women from number one to twenty or whatever, they fight for that seat, so that they are also gaining experience in electioneering. We also hope that as we go along, a time will come when we will be at par with men. Since I have gained experience from fighting for a seat, with a sister, I will then be able to take on a man. Therefore, do not nominate them, give them a chance to fight for a seat, for them to be elected by the people. Give them an opportunity to do so represent people so that in future they know what to do.

Madam Chair, I am also not very happy with the idea of having a mouth-member constituency, putting two Members of Parliament together in one constituency is creating a war. Those two MPs are going to fight for the next five years, and there will be no development. Therefore it is not good to put a lady and a gentleman in one constituency because it cannot work. You cannot have two bulls in one shed.

(Applause the floor)

Number two, Madam Chair, the question of recalling of MPs. It sounds easy and good but number one, you make the MPs not to settle down to their work, that is number one. Number two, our experience shows that the public likes us to go back to election because it is during elections when they can get handouts from MPs and so forth. If today you are told you are going to be recalled, even those who voted for you they will want you to be recalled because they want to participate in an election, and therefore we are going to have endless elections. I haven't heard anywhere in the world where MPs are recalled. So, if you mess the way you make your bed, you will lie on it. You elect MPs; let them stay there for five years and definitely next time you will not elect them. But to set out on a path for election, year after year after, I do not think it is going to be worthwhile for the MPs, the public, for our country and it is very expensive. Therefore, Madam Chair, those were my two points. Thank you very much.

Hon. Delegate Wangari Maathai: Thank you very much. I want to go across. 198.

Hon. Delegate Joshua Toro: Thank you Madam Chair, my names are Engineer Joshua Toro, MP Kandara. Madam Chair, I want to start off with the issue of representation in National Council. Madam Chair, there is discrimination as proposed in the draft, because before we can talk about that representation, the draft should have given us an outline or a procedure of creating those districts. As they are now, they are administrative districts, they are not representative districts. Hence, if representation was to go by the present district boundaries, you will find some districts will be totally under-represented.

Madam Chair, on the issue of recall of MPs, the draft should have given a program or maybe the reasons as to why an MP should be recalled, not to come and throw that into the Plenary here. Why I say this, Madam Chairlady, is that first we should address the issue of who voted for a Member of Parliament and who did not vote for him. Those issues are very crucial, including the percentage of the voters. We have registered voters. What percentage voted for the Member of Parliament? If in a certain constituency, Madam Chair, there was only 60% voter turn-out, it means 40% did not vote for a Member of Parliament and those 40% have no business recalling the Member of Parliament. According to this, the 40% who never participated are free to recall a Member of Parliament. Madam Chair, it is not true that Members of Parliament are not recalled;

it is a question of the duration of time. Members are recalled by the electorate after every five years. For example, the present Parliament compared to last Parliament, over 60% have been recalled by the electorate. So Madam Chair, there is a forum now to recall Members of Parliament and I propose that we delete that Section that is dealing with recall of Members of Parliament.

Clapping from the audience.

Madam Chair, if we come to level of education for MPs to qualify, I think we are encouraging education in Kenya and we cannot continue talking about form four. Twenty years ago, we were talking about form four; twenty years down the line, form four. The Constitution is going to stay for many years. So in another ten years, form four standard of education will be irrelevant. So, why don't we come up to university level if we are going to put that in the Constitution. Otherwise, if we are not going to put university level in the Constitution, we can wait and we evolve as we go along and the river will take its course. But if we are going to enact and put in the Constitution, then I recommend the minimum should be university education.

Madam Chair, the issue of National Chamber and Lower Chamber, I think there is a duplication. For example, Madam Chair, I don't see the rationale whereby the Commission has categorized certain people to be vetted by the National House and others by the Lower Chamber. It totally does not make any sense. That duplication Madam Chair, in my opinion, we can do away with it.

Madam Chair, I propose we retain one Chamber for reasons that the Upper Chamber -- what we are calling the Upper Chamber -- are people who are not subjected to direct electorate. So the true representatives of the people are the Members of Parliament elected in the constituencies. It does not make sense if the Members of Parliament, elected by the constituents, pass a Bill and it is going to be subjected to another House where the Members are not elected by the constituents. The only reason why I see the Upper Chamber is being put here is on the issue of the President. Can we impeach the President? We are justifying the Upper Chamber that it can be used to impeach the President. I don't see any other reason why it should be there.

Finally, Madam Chair, I propose that we reduce the number of members who in quote I can say they are 'nominated.' If we are going to increase representation in the House Madam Chair, we should increase through representation, through elections, Madam Chair, because at the end of the day we want people to be truly represented and when we say truly represented, it is not where one MP represents or is elected by 100,000 voters whereas another MP is elected by 10,000 voters. We would require two representations proportionately.

Finally, the issue of Affirmative Action. I have a problem when the draft says at least 1/3. How do you get 1/3 of Members of Parliament women when you go to the electorate? Madam Chair, that is not workable because the people who elect Members of Parliament decide on who to elect. There are women candidates, there are men candidates and you find women -- who are the majority of voters -- vote for men. So I would rather say women should not be dictated upon as to who should represent them. Thank you Madam Chair.

Clapping from the audience.

Hon. Delegate Wangari Maathai: Thank you very much. I have a lot of requests but let me have 155. Only those who have not spoken.

Hon. Delegate Raila Odinga: Thank you Madam Chair. Madam Chair, I want to say what I said yesterday. It applies also today. Madam Chair, that there are certain details which are contained in this document which truly belong to other Acts of Parliament. Like, Madam Chair, we have Parliamentary Service Commission, we have got Powers and Privileges Act, we have got Standing Orders and there are too many details that actually belong to those documents which should not be in the Constitution. Having said that, Madam Chair, I want to say that this particular Chapter should have come after we have talked about devolution. I am saying that because the two are interlinked. We have to make a decision, Madam Chair, whether we want to retain our unitary system that we have today and merely reinforce it, whether we want to devolve to the regions, what is now called a corporate form of Government or whether we want to go Quasi-Federal or Federal. I am saying that these are laid, because it determines whether we need a second Chamber or not.

But having read the Devolution chapter, I assume that the proposal is to go for what is now called a corporate system of Government similar to what they have in South Africa, where you have a Provincial Government. If that Chapter is eventually approved, then a Second Chamber becomes automatically necessary. If you agree then, you take a look at the proportions. What is proposed here is 210 for the Lower House - this is single member Constituencies - plus 90, that is 300 seats in the Lower House. Then in the Upper House you are proposing 70 plus 30 seats - a hundred - making a total of 400 seats, Madam Chair. I think this is too much for this country. We must look at ways of reducing these numbers. I am proposing that since the issue of the districts is a very sensitive issue, that we retain the districts the way they are, they become like Counties and we have a Provincial Government and that people are elected from various Counties to represent their people in the Provincial Government. That the Provincial Council is the one that elects members who come to represent them in the National Council.

Secondly, I am also proposing that if we do not agree with the mixed member proportional representation seats, then we create seats at the district level for women like they have done in Uganda. In Uganda, what they did is they created constituencies as districts. The women compete among themselves and only women vote for them.

Clapping from the audience.

This will give them the opportunity to learn to be able to compete with men in future.

Madam Chair, the issue of business of the Upper House should be defined. The question of duplicating legislation, that the Bills are brought from the Lower House and then to the Upper House will make law-making too complicated and unnecessarily cumbersome. So, the Upper House should only confine itself to legislation for the region, for the provincial councils and also to ensure that there is fair distribution of resources at the national level. But not to deal with Bills which have been dealt with by the Lower House.

If we are going to retain the Parliamentary system, and since Cabinet members are Members of Parliament, there is no need for Parliament again to confirm them once they are appointed by the President.

Finally, Madam Chair, Section 49 which is in the current Constitution deals with the Oath of Members of Parliament. The drafters of this Section forgot to include that Section 49 in this draft. There is no provision for Oath either of Members of Parliament or of the Speaker of the National Assembly. Thank you.

Hon. Delegate Wangari Maathai: Thank you very much. I want to recognize 220.

Hon. Delegate Julia Ojiambo: Thank you very much Madam Chairperson for recognizing me. My name is Julia Ojiambo, number 220, a Member of Parliament. Madam Chair, I want to go straight to Article 107 which a lot of people have talked about. I want to move, Madam Chairperson, that the question of 1/3 representation by women be entrenched in the Constitution. I want, Madam Chair, also to add for those Honorable Delegates who might be finding it difficult to understand this, that this is based on gender equality. I want to move, Madam Chairperson, that if it helps Honorable Delegates to understand this better, that we put it this way; that that 1/3 will be elected from either gender, whichever will be discriminated against at any point in time. So that if the women reach the level we feel that they are well represented and that the men are discriminated against, that the 1/3 will also work in favour of the men. Since we are writing this Constitution for posterity, it is possible that that pendulum will swing that way; that time will come when men may be minority and therefore the 1/3 will favour them. Therefore, I want to move that 1/3 representation on gender basis be entrenched in the Constitution.

Madam Chairperson, I want to talk about Article 108 (c) on age and I want to say that we have accepted that an eighteen – year - old Kenyan is adult and can therefore vote. I want to suggest therefore -- and I believe that this is acceptable -- that a voter should also qualify to be voted into an institution. Therefore, a voter in an area where there is nobody else qualifies to represent the people, and if the people feel that an eighteen –year- old man or woman is strong enough and gifted as a leader, he/she should be allowed to be voted into Parliament.

Madam Chairperson, I want to generally comment on the area of mixed member representation and say that, although the Commission has done a beautiful job in putting this paragraph together, I feel that our people out there have not understood. I don't know because I feel that where I come from in Funyula, Busia, people don't know much about the mixed member representation. I don't know how this is going to be applied in the view of the fact that we are entrenching this in our Constitution yet we want as soon as this Constitution is published to apply it.

Madam Chair, I want also to comment on this area of recall and I want to support those who have said that it is not practical. I feel that Kenyans should learn to value leadership, and subsequently value their votes and if they are going to vote, vote a person they know is going to help them for five years and help the person to understand their needs, support him or her to represent them for five years. I feel that it is not going to be very healthy when like on the system where we are a person wins into Parliament by a margin of 1000 votes and he contested with other three or four who got their votes put together much larger than him or her. Those people can gang up together after one week and oust a Member of Parliament.

Madam Chairperson, in finishing I want to support Hon. Raila on what he said because I also felt that this Chapter could have done very well discussed after devolution. I still have a problem on how we are going to devolve power to the location and to the district with the current structure of Parliament that we are putting in place. Thank you very much Madam Chair.

Hon. Delegate Wangari Maathai: Thank you very much. Remember the longer we talk, the less time we have. I want to recognize 190.

Hon. Delegate Musa Sirma: Thank you Madam Chair for recognizing me. I would like to take this opportunity to air my views on the Draft Bill. My name is Musa Sirma, the MP for Eldama Ravine Constituency, number 190. Madam Chair, I would like to talk about 107, the mixed member representation. Madam Chair, this is a way of marginalizing those already marginalized. Why should I put a party list or a member from a marginalized area with very few votes to

represent the party when I can get more votes from a populous area? Madam Chair, I think this is a very unfair method and I think we should have elective constituencies in this country based on geographical population and the like which we have always had.

Clapping from the audience.

Madam Chair, there is this issue in Section 109 on women representation. Actually, I want to support Madam Nyiva with her proposal that let women be elected. But there was somebody who contributed that let women elect themselves. Who are these women going to represent? Are they not also going to represent men? They are going to represent men. So, we be given the opportunity, let these ladies also canvass from us the votes so that they can train and be able to have the muscle to face the men.

Madam Chair, about the recall of MPs, I think every five years we are recalled. I think we don't want to put this country in a state of elections every other time. I think we need actually to have - if we have to have it - something to do with 75% since we are talking about a Member of Parliament who is elected and who holds a Constitutional office and this office must be used effectively to the benefit of the constituents, not for wrangling. For sure, if we are going to have to disturb the MPs throughout, we are sure the results will be poor legislation which this country doesn't like.

Madam Chair, I will go to Section 142 on the Dissolution and Prorogation of Parliament. That, let the term of Parliament and the National Council be fixed and let it be five years for both of them. Because we want to have elections, so that once we finish with elections, we concentrate on the economy of the country.

Madam Chair, there is another issue on Section 143. When the President actually appoints a Prime Minister and we are not able to pass it as Parliament, if he is threatening us with dissolving Parliament and yet we don't want to go for elections, we have no option; we have just to obey what the President says. So, that should be removed and we should have another method:

that if Parliament does not approve, give Parliament the opportunity to appoint their own Prime Minister. Thank you Madam Chair.

Hon. Delegate Wangari Maathai: Thank you very much. I want to recognize another woman, 221.

Hon. Delegate Ruth Oniang'o: Thank you Madam Chair. I am Ruth Oniang'o, Professor, nominated MP Kanu, number 221. Madam Chair, I just have three points to touch on. One is where we say that the seat of Parliament will be Nairobi. I just want to refer to a point a colleague made in his maiden speech in the Parliament which talks about actually moving the Parliament to regions. That enhances people's participation and bringing the Parliament closer to the people. If there is a way one can include that in the Constitution or even enact it so that we do it practically, I think it would be much better given the diversity of the geography and the topography of this country.

Secondly, Madam Chair, is a reference to minority party. I think the word minority party is a misnomer. We are moving away from opposition party which implies we are opposing each other. But if you look at the current Parliament, Kanu is the single largest party and NARC is actually a coalition of small parties not yet legalized. So when you talk of a minority party in this case, in fact KANU is not a minority party. I think that needs to be corrected.

Thirdly, Madam Chair, I cannot sit down without referring to the issue of women. You know, each time you mention women's representation, men either recoil or they ran away from you. It is like plague and they don't realize that in this country we have extremely qualified women. They are your daughters, they are your sisters, they are your wives, they are your mothers. But the current electoral process, does not favour women to run. So we need to address that issue and find out to what extent we can enhance the environment so that women can actually compete. It is not that women fear to compete. But while we get them to compete, I would like all these brains here to come up with a formula which will increase women's participation, women's representation in Parliament. So that it also touches on women from areas which are not well represented. Bringing in more elite women is not the answer but trying to find out how women

from areas which are marginalized can actually be increased in representation in the House. I am sure, Madam Chair, that we can do so. Actually, I think our Members of Parliament here, we are the ones talking now, will agree with me; that having more women in that Bunge has added value to the debate and to the actual way that Parliament is run. So, I believe that that in itself should encourage us.

Finally, Madam Chair, again on the women, women are implementers, they are action - oriented and we should agree on the principle and together as a nation come up to see how we can correct the imbalance we have right now. Thank you Madam Chair.

Hon. Delegate Wangari Maathai: Thank you very much Madam Chair. I am about to bring this to a close but I was reminded that----

(Uproar from the Honourable Delegates.)

Hon. Delegate Wangari Maathai: Point of order? Which is the point of order, I see many? 139, point of order?

(Arguments among the Honourable Delegates).

Hon. Delegate Koigi Wamwere: My point of order, Madam Chair, has to do with something that was said by the Chair on Monday. We were told that in the course of this week, a list of Delegates who have spoken will be kept, in order to allow Delegates that have not had a chance to make a contribution. Now it has turned out that the same Delegates that were given a chance to speak yesterday are the same Delegates that are getting a second chance to speak when the rest of us are just here to observe and hear. Madam Chair, I think it is a great injustice not to look at Delegates. The podium should have a list at least to know that there are people here who have spoken two or three times, when others have not spoken once. It is not fair!

Hon. Delegate Wangari Maathai: I hear you, Honourable Delegate, but it is also true that you all know who has spoken and who hasn't and we keep appealing that if you have spoken do not put up your card because it is very difficult for us here. I do not have a list, maybe the secretariat should have one, but I don't.. I am hoping that you can control yourselves.

Hon. Delegate Koigi Wamwere: But, Madam Chair, the Chair said that a list would be kept and to the extent that we were promised that a list was kept, we are not supposed to interrupt from here and say Delegate A,B,C, spoke yesterday. It is a duty of the podium to make sure that there is a measure of fairness. It is not our duty to keep that list, and it is really not fair.

Hon. Delegate Bonaya Godana: I think that is Honourable Koigi. I fully understand you and we are quite sympathetic and I think we all have to help each other here really, both at the podium and Honourable Delegates. I think we failed to get the list but I am sure the Secretariat back-up team now understands why it is utterly important that we that list. In the meantime, we shall try to be as fair as possible between the various categories that we have here. Even among the group of MPs, we are trying to be as fair as possible because we get all kinds of complaints "oh! you called only MPs from that region, oh! you called MPs from that province" and so on. So I want to plead for your cooperation and when we say those who have not spoken don't stand up, we hope you will cooperate. We'll also try to have the list tomorrow. Thank you.

(Uproar from the Honourable Delegates).

Hon. Delegate Bonaya Godana: Please, let me, please.

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

Hon. Delegate Bonaya Godana: What is your point of order, 481? 481, what is your point of order?

Hon. Delegate Daniel Ichang'i: Mr. Chairman, with all due respect to the fact that you have made an observation, there are many categories here who are only getting a chance to speak at

about 6.00 or 5.30. There are professional categories and political groups here, and I think I would like to suggest very strongly that you keep varying the order. Otherwise, we are being questioned as to our role here with all due respect.

Hon. Delegate Bonaya Godana: No, I think I want to assure you that the Chair is fully aware of this and, on the basis of the calculations that we did, we are just about to move to the other categories, I can assure you.

(Uproar from the Honourable Delegates)

Hon. Delegate Bonaya Godana: The fewer orders we have, the more time we will have for people to speak, really.

(Uproar from the Honourable Delegates).

Hon. Delegate Bonaya Godana: Are all this hands which are up points of orders?

Hon. Delegates: Yes!

Hon. Delegate Frederick Gumo: Point of order.

Hon. Delegate Bonaya Godana: Member for Westlands, what is your point of order?

Hon. Delegate Frederick Gumo: Mine is not a point of order.

Hon. Delegate Bonaya Godana: I'm afraid, -- look, order, order.

Hon. Delegate Frederick Gumo: I have not spoken, Mr. Chairman.

Hon. Delegate Bonaya Godana: Order! Honourable Gumo. Order!

Hon. Delegate Frederick Gumo: I want to speak, Mr. Chairman.

Hon. Delegate Bonaya Godana: We will give you the floor at an appropriate time, but in fact now ...

(Uproar from the Honourable Delegates.)

Hon. Delegate Bonaya Godana: Order, order.

Hon. Delegate Bonaya Godana: Honourable members, Honourable members, Honourable members---

(Uproar from the Honourable Delegates.)

Hon. Delegate Bonaya Godana: What is your point of order, you are so insistent, what is it? It had better be a point of order, please.

Hon. Delegate Daniel Khamasi: Chairman, I must be heard. I came here to be heard, you will not gag me. Mr. Chairman, the Chair should not sit as if it is impotent. People who spoke yesterday, you are giving them the chance this morning. Once you realise that a member has already contributed, and you have by mistake given him a chance, why don't you say 'no, you had a chance yesterday so give somebody else a chance'.

Hon. Delegate Bonaya Godana: Okay, thank you, that we will do and also we will be a little firmer, because people are increasingly repeating what has already been said. I think if you want to support what somebody has said, say on that I support him and don't go on to repeat the same argument. May we go on with the debate now? We are really wasting time. Let's have fewer points of orders and get on with the debate.

Hon. Delegate Wangari Maathai: Well, one option for us is to discuss this issue for as long as you want but the truth of the matter is there are so many of us wanting to speak and one is forced to have to pick a number. Let me start all over again from this end.

(Uproar from the Honourable Delegates)

Hon. Delegate Wangari Maathai: He has spoken, okay then he sits down. The next one who has not spoken, number 15.

(Uproar from the Honourable Delegates)

Hon. Delegate Wangari Maathai: There is another number here, 238 have you spoken?

Hon. Delegate Bonaya Godana: He's not an MP.

Hon. Delegate Wangari Maathai: A Member of Parliament.

Hon. Delegate Bonaya Godana: Are you an MP?

(Uproar from the Honourable Delegates)

Hon. Delegate Wangari Maathai: Hold it, hold it please. We are trying to go on with the Members of Parliament.

(Protestations from the Honourable Delegates.)

Bell rings.

Hon. Delegate Bonaya Godana: Order! Order! Honourable Delegates.

An Hon. Delegate: You people are not supposed to control us.

Hon. Delegate Bonaya Godana: Order! Honourable Delegates. Order! Honourable Delegates. Order! Order! May we first have order. Obey the call of order from the Chair and you will also get the chance to raise your point of order.

Calls for points of Order from the Honourable Delegates.

Hon. Delegate Bonaya Godana: Let me make my point, Honourable Delegates. You know we'll spend----- Order! Order!

(Uproar from the Honourable Delegates)

Hon. Delegate Bonaya Godana: Honourable Members, we are definitely capable of something much better than this. Yes, we are definitely capable of a little more decorum. We will recognize the Point of Order. May I appeal to you to listen first. Please listen! Listen first! You will get a chance to raise your Points of Order. You will get it.

An Hon. Delegate: Now the matter of Legislature.

Hon. Delegate Bonaya Godana: Order! Order! Order! Order!

(Uproar from Honourable Delegates).

Hon. Delegate Bonaya Godana: Order! Honourable members. Order! Order! --

An Hon. Delegate: Mr. Chairman, Point of order, here, Mr. Chairman.

Hon. Delegate Bonaya Godana: Order! Order! Honourable Members. At this juncture, I think it is right we adjourn for ten minutes for tea.

An Hon. Chairman: Point of order, Mr. Chairman. Point of order, Mr. Chairman.

Meeting adjourned for tea at 3.55 p.m.

The meeting resumed after tea at 4.30 p.m.

Hon. Delegate Bonaya Godana: Please take your seats. Delegates, please take your seats. Let us get on with the business which has assembled us here. Honourable Delegates, please take your seats. Oh! my God. Honourable Delegates, please move to your seats. Where is the bell?

Hon. Delegate Bonaya Godana: Order

Order! Order! Honourable Delegates, may we start our after-tea session. We came here for a very serious business, a very expensive business, expensive on the Kenyan tax payer. It is important that we justify every minute in terms of productive work. We fully appreciate from this position the passions behind some of your protestations. We were in fact about to start on the other categories, with only one speaker from the Parliamentary group left and that is from a Province where nobody had spoken. If the mood is you don't want to hear anything of that sort, we can defer that chance and we hope that Province will understand us to call on him/her later and move to the other categories straight away. But you also got to understand that, being in the Chair is a very difficult job, trying to please 629 Delegates, each one of whom thinks he or she has a fair claim to taking the microphone. If we have to decide purely on a random basis, we run the risk of some categories saying, we have been left out. If we run on the basis of attending to certain categories, we run the risk of other categories saying, 'we have been marginalized in terms of time when we are given the opportunity'. We are now moving to the other categories and I am passing on the microphone to my colleague, Prof. Wangari Maathai, and we really appeal for your understanding.

The other categories have many sub-categories, with a total membership of about 200. Many sub-categories, in fact of 199, including business people, professionals, trade unions, church people, NGOs, persons with disabilities, women's groups and what have you, and we'll have to go through them all, one by one. As I said, unless the MPs from that area say they understand us and they won't need a chance, there is one Province, North Eastern Province, from where no MP has spoken and I have already got protestations, you have to understand that. We were about to come to one MP from that Province. We'll have to come back to him later. Prof. Wangari Maathai.

Hon. Delegate Wangari Maathai: Thank you very much. Honourable Delegates, I also want to add that there is the option of giving ourselves more time so that as many of us that want to speak can speak. But that means we give ourselves more time. Remember that we have so many chapters, and the fact that a person contributed to the first chapter doesn't mean that they have nothing else to contribute. However, it doesn't make sense to the delegates that some people are able to contribute on every chapter, when others have not contributed on any chapter. So that's all fully understood and this will be raised further even with the Steering Committee so that we can see how we manage our time.

Now, let me try my level best here. I actually have eight categories that we now have to address. We have the women, NGOs, the religious sector, persons with disabilities, political parties, Commissioners, may be Commissioners not so much, the business sector, Professionals and so on. I will cancel the Commissioners. Let me start with the NGOs, and I will start on this side. Maybe, I will have more luck if I start on this side. We want to start with the NGOs.

Hon. Delegate Bonaya Godana: Only NGO Delegates.

Hon. Delegate Martin Shikuku: Point of order.

Hon. Delegate Bonaya Godana: What is your point of order, Honourable Shikuku?

Hon. Delegate Martin Shikuku: My point of order, Mr. Chairman, is that all along we have been very patient, and you know, I know and every body knows, we are here because of the part the political parties played. All this time you are downplaying the political section. Are you really in your right mind?

Hon. Delegate Bonaya Godana: Mr. Honourable Delegate, I have heard you clearly. We are not downplaying any category or sub-category. Political parties will have their place, they are on the list of the categories that we have, but we have to start somewhere on the list, and as Professor Wangari Maathai has said, first we call on NGO sector representatives.

Hon. Delegate Wangari Maathai: 463.

Hon. Delegate Suba Churchill Meshack: Thank you Chair, I am Suba Churchill Meshack.

(Uproar from the Honourable Delegates.)

Hon. Delegate Wangari Maathai: Has he spoken?

Hon. Delegate Suba Churchill Meshack: Chair, this is the first time I am speaking on the Draft Bill. I have spoken on a motion. I have only spoken in this Conference on a motion and it must be recognized, Chair, that this is my first time, having discussed seven chapters, to comment on this Draft Bill. Madam Chair, I want to go into relevant parts of this Chapter and I want to start by what other people have contributed. I want to say, Madam Chair, that the principle of Affirmative Action is nothing new to Africa. Madam Chair, I want to say that the concept of proportionate representation has been practiced in Tanzania and Uganda. I want to inform those who think it will be too costly for the country to realize that Tanzania has 230 Constituencies. Their economy is weaker than ours. I want to say that Uganda, which has a much more smaller population, has 214 Constituencies. Their population as well as the economy is much weaker than ours. Therefore, the principle of proportionate representation must be accepted as a principle and we must not bring up logistical details as a way of shooting it down.

Madam Chair, I want to recognize that whereas I support the principle of proportionate representation, I want to bring the attention of this Conference to the fact that there are many sectors of this society, women included, that have been marginalized. I want to ask the political parties that are represented here whether they appreciate the role of the young people only when elections are around. I want to say that young people are a sector that must be given an opportunity to acquire leadership skills. I want to say that there are people in this country Madam Chair, that I started hearing about before I was born. I want to say, Madam Chair, that when I was born in 1972, they told us we are the leaders of tomorrow. I still want to say that this Draft Bill is the future that those leaders have been promising the youth.

Madam Chair, I want to go to the specifics and comment on the recall of MPs. The principle of a Republican system of Government is founded on the fact that the electorate must retain the residual power to hold their MPs accountable, that the recall of MPs is founded on the fact that the people are sovereign. We said yesterday we want transparency and accountability. If Parliament wants to regulate the Executive, then the MPs themselves must be controlled. I want to say that we must not look at how it will happen; the methodologies must be left to other subsidiary legislation that will address the details. But, as a principle, we must say that when we vote in our MPs, that the electorate be given the mandate to question and hold that MP accountable. I, therefore, support the recall of MPs.

Clapping

Hon. Delegate Suba Churchill Meshack: I would want to urge, Madam Chair, that our MPs should have a clearer vision; that our vision for a better Kenya must not be clouded by temporary reasons of power; that we must not think that we are now in a position of advantage. These same people, when they are voted out tomorrow, will want us to review the Constitution to insert the recall of MPs.

Madam Chair, I know my time is up, but I want to comment on one thing. When we say an 18 year-old has got wisdom to vote, when we say an 18 year old has the capacity to elect a representative, why must we say that this person has to be 35 to sit in the National Council?

Clapping.

Hon. Delegate Suba Churchill Meshack: That we are saying that this person is not wise enough to be voted for goes against the principle of universal suffrage. If one vote is equal to the other, let us not create the impression that the vote of a 60 year-old is superior to the vote of an 18 year-old. We must not violate the rights of others merely because they are older. This country has been messed up by older people. This country has been messed up by those who claim to be wise.

Lastly, Madam Chair, there are people who are against the two Chambers of Parliament. I want to say that had there been two Chambers of Parliament in this country, MPs would not have increased their salaries at the speed at which they did.

Clapping.

Hon. Delegate Suba Churchill Meshack: I want to say, Madam Chair, that had there been two Chambers of Parliament in this nation, we would not be sitting here to review the Constitution. The Senate was abolished in the 60's to enable one Chamber of Parliament to pass amendments with speed. We will not want to sit here again at Bomas and subject the country to all this cost. We must as a principle agree that we need two Chambers of Parliament to restore sanity and control the greed of our MPs.

Clapping.

Hon. Delegate Bonaya Godana: Please, your five minutes are up.

Hon. Delegate Suba Churchill Meshack: Madam Chair, I understand your impatience, but you also realize, Madam Chair, that having not commented on any of these seven Chapters up to now, I have a lot to say. Madam Chair ...

(Uproar from the Honourable Delegates.)

Hon. Delegate Bonaya Godana: Madam Chair, we are going to be very strict about ---rules.

Hon. Delegate Suba Churchill Meshack: Thank you, Madam Chair.

Hon. Delegate Wangari Maathai: Thank you very much. Mr. Chairman, we have to be strict, otherwise we'll never go through. Now, I will ring the bell because I think sometimes you can't see the bottle. So now I want to call the religious sector. May be, right there in the middle. 512 or 538, what is it?

Hon. Delegate Samuel Arap Ng'eny: Thank you, Madam Chair. Mimi ni Samuel Arap Ng'eny, religious sector Delegate number 538. My comments are as follows:

One, since I am standing for the first time, I want to add my voice to those who have said before that we congratulate the Commission, they have done a wonderful job all over. Thank you.

Secondly, I am a supporter of a bicameral Parliament. Therefore, on the idea that is being pushed around that it is going to be expensive, I want to say this: Democracy, and if you want democratic government, is an expensive affair and we have got to meet the cost.

Madam Chair, we are here because of the mess that has been instituted by one Parliament. Therefore, I am supporting this one except that I want the old name of Senate to be brought back because the idea of a council at the national level, a council at the Province, a council at the location, a council at the village doesn't sound congruent.

Thirdly, what is the definition of Parliament? I don't see it here. Are we talking about the Senate, a National Council or the National Assembly? For a Bill to become law, it has to receive Presidential assent. So when you say Parliament and you have excluded the President, what does it mean? I would like the presenters to comment a little on that one.

I want to move to the next item. The issue of recall of MPs. I am not an MP currently, and maybe I may not come back later. But since I was the chairman of a Constituency Constitutional Committee-and I heard this from mwananchi-the basis on which they are recalling an MP is as follows: House in this sense Madam Chair, what are duties of a Member of Parliament? In this Draft Constitution, we are talking about legislative functions of MPs in Parliament. Nowhere in the Draft does it spell the functions of an MP while he/she is at home. This is where the conflict is.

Clapping.

Hon. Delegate Samuel Arap Ng'eny: ... because over the years, Sessional Paper Number 10 of 1965, on African Socialism, has been misused and misinterpreted as to what it was meant to serve. Therefore, Members of Parliament have become banks for many people. They must be seen to be distributing largesse all round the Constituency. This is one area where corruption in this country, got entrenched. MPs keep looking for money in order to satisfy incessant demands for cash from so many diverse groups of people. When you go to an MP's home today, it is like a market. Why?

Madam Chair, on that count I am saying that the recall of Members of Parliament before the five-year period has expired, will be wrong. This is because it will be instituting instability. I think that since my time is up, and I had something on legislation of the Upper House, I will leave to the other Delegates. Thank you very much Madam Chair.

Clapping.

Hon. Delegate Wangari Maathai: Thank you very much. Number 376, are you ready to be heard?

Hon. Delegate Mafunga Wambulwa Chesmei: Honourable Chairman, My name is Mafunga Wambulwa Chesmei, Delegate number 376, from Lugari District.

Hon. Delegate Wangari Maathai: Are you in the Religious sector?

Hon. Delegate Mafunga Wambulwa Chesmei: Well, I am a religious man.

Laughter

Hon. Delegate Wangari Maathai: I am sorry sir, we'll have to go on.

Hon. Delegate Mafunga Wambulwa Chesmei: I speak on...

Hon. Delegate Wangari Maathai: No, no, lets get back to order. We will come to your sector. Let us go on and recognize Political Parties.

Hon. Delegate Mafunga Wambulwa Chesmei: Okay, you will come back to me?

Hon. Delegate Wangari Maathai: Not those who have spoken.

Hon. Delegate Mafunga Wambulwa Chesmei: I haven't spoken.

Hon. Delegate Wangari Maathai: Political parties, could those of you who have not spoken stand up? Okay, 515. Which political party is this?

Hon. Delegate Ali Shee Mohammed: ... (inaudible)

Hon. Delegate Wangari Maathai: It is true I was looking for a second Delegate, so go ahead.

Hon. Delegate Ali Shee Mohammed: Asante, Madam. Nimekuwa hapa muda mrefu na mumeniona, lakini sijaonekana hata mara moja nami kuzungumza katika mambo kama haya kwa sababu hatupewi nafasi. Jina langu ni Sheikh Ali Shee. Mimi natoka katika(inaudible).

Ningetaka kuzungumza kuhusu Article 130, section 2(a) na (b) ambayo inasema kuwa raia watoe mchango kwenye Bill ambayo itaenda kwenye Bunge. Hili ni swala ambalo sikuona limepewa uzito kwenye Draft hii kwa sababu tukisema demokrasia, wale wanaakilisha maoni ya raia, wale walioenda kwenye Bunge, ina maana kuwa Mbunge anatoa maoni ya raia anaowaakilisha Bunge. Lakini sivyo ilivyo. Mbunge akishachaguliwa anakuwa dikteta, anatoa maoni anayoyataka yeye kwenye Bunge. Hili imekuwa ndilo lile Parliamentary dictatorship ambayo tuko nayo inaendelea.

Clapping.

Hon. Delegate Ali Shee Mohammed: Mtaona, hivi juzi ilipasishwa, mfano nitawapa wa mnazi, mnazi ulipasishwa kuwa ni halali watu wanywe. Mbunge aliyechukua motion hii anawaakilisha raia, watu ambao hawaungi mkono fikira ile. Lakini kwa sababu hakuna kifungu kinachosema kwamba Mbunge lazima achukue maoni ya raia wake, wale watu wake, apeleke kwenye Bunge, hakuna kitu kiko, ndiyo mbunge anafanya anavyotaka.

Mara ingine inakuwa ni ufisadi. Mbunge ananunuliwa kuunga mkono Bill ambayo watu fulani wanaitaka ipite kwenye Bunge. Na hii ndiyo ufisadi ambayo inaendelea katika Bill na kupitisha miswada katika Bunge. Kwa hivyo, mimi napendekeza kuwa kila mbunge anapokuwa anaenda kuunga mkono mswaada, yaani Bill, mswaada wowote, kwanza apate uwezo kutoka kwa watu wake. Watu wake wamwambie, 'ndiyo nenda ukaunge mkono kitu hiki au usiunge mkono'. Ikiwa hakupata maoni ya raia au maoni yake ni tofauti na wale anaowaakilisha, basi asitoe maoni yake bali atoe maoni ya wale raia anaowaakilisha. Hiyo ndiyo demokrasia ya kikweli kweli. Ama udanganyifu mbunge anaenda kule anaakilisha raia na kule maoni yake ni tofauti na wale anawaakilisha, huo ni udanganyifu wa demokrasia.

Kitu kingine cha pili ambacho ningependa kuchangia ni katika Article number 112 (a), kuwa Bunge letu la Kenya lasikitisha kuwa imekuwa ni pahala pa biashara, si pahala ambapo wabunge kufanya, kutumikia raia. Ni wachache sana katika Wabunge wetu ambao wanaenda kutumikia hili nchi. Ni lazima wabunge ambao wameenda pale, ikiwa hawana mchango wa kisawasawa, huduma ya kuhudumia hii nchi, wabunge wale wawe lazima wataitwa na recall na waitwe ndani ya kamati ambayo itaundwa na Tume ya Uchaguzi. Baada ya kupata maoni kwa raia, thaini za majority ya wengi wa wale anaowaakilisha, baadaye Tume ya Uchaguzi itoe kamati yake, independent committee, kamati ambayo inaweza kuchunguza mwenendo wa yule Mbunge, kweli amefanya kazi aliyo pewa ama anakula mshahara peke yake. Hili ni swala ambalo tumeliona kwa Wabunge wetu, takriban wote, hawafanyi kazi waliyopewa kama inavyotakikana na raia. Hii itasaidia kuondoa ufisadi na uzembe kwa wajumbe wafanye kazi yao inavyotakikana.

Asante, Madam, naona nimechukua muda mrefu lakini ni pointi ambazo ningependa wale walio-present papers, mara nyingi watu wakizungumza kwa Kiswahili, huzipuuza zile pointi. Jana, tuliona Mbunge mmoja alizungumza Kiswahili lakini hamkuchukua pointi. Ile tunayosema

national language, lugha ya kitaifa, mnatupa, ila lugha ile ya wageni inapozungumzwa, lugha ya wakoloni ndiyo mnai-consider, as if this is the language of the superior people, so this is the language of intellectuals, this is the language of that. This is our language, hii ni lugha yetu ya kitaifa, we are honoured to have this language. Asante.

Hon. Delegate Wangari Maathai: Thank you very much. That is excellent. Now the next, I am looking for Political Parties. I need a woman and a man if possible, those who have not spoken, among the political parties. You know yourselves. Which one.

Hon. Delegates: ... (inaudible)

Hon. Delegate Ali Shee Mohammed: 506? 596? 594? Okay, 594.

(Uproar from the Honourable Delegates.)

Hon. Delegate Orio Rogo Manduli: Thank you very much, Chair lady. I want to you to realize that I wept a bit here. I wept with bitterness because I came here entrusted by the constituency of the political party to speak in their voice, the voice of the voiceless who will never be heard. I don't want to come here and eat chicken and chips and drink tea and listen to others talk. Now, what I did was to cry rather than do something regrettable. So it is better that I did the crying and now it's over and we are friends again. Now, shall we move?

First of all, one thing that I want us Delegates here to understand, is that we may have to work way past 6.00 O'clock well into 7.00 and even 8.00 O'clock. We are working for the people of Kenya. We have little time and we must do what they chose us, elected us to do and look like we are doing it. We should not be in a hurry looking at the clock, 6.00 O'clock we are going. What are we going to do? We are here, we left our bases and we are here in Nairobi, in hotels or in our homes to work. So shall we be ready to sacrifice a bit Delegates?

Hon. Delegates: Yes.

Hon. Delegate Orië Rogo Manduli: Thank you very much. Now, first of all I want to make a statement and I want you to listen very carefully because it is the most serious statement that we are going to make here in a long time. This statement is about the stand of my Political Party that I represent -- Ford People. There has been misrepresentation in this hall, there have been spokespeople talking and there has been a view taken that the Political Party – Ford People - its party leader and its adherents are anti-Affirmative Action. Now I want to state here categorically, that Affirmative Action is at the very heart of Ford People. It is the very foundation of Ford People. We support it from top to bottom, we support every aspect of Affirmative Action, every nuance of Affirmative Action and my Party leader Hon. Nyachae is here with me everyday. You will see that the frame that it supports Affirmative Action is that of about the 50 Political Parties today here -- take note -- of about all the 50 Political Parties who are here today, only two are represented by women, and one of that is Ford People and the Labour Party.

Now, give me just a little bit more time, one more, one minute only, I promise. I am saying that that was a statement I made about my party, a categorical statement. Now, I support the bicameral Parliament. I also want you to realize most of you here are parents, ukiwa na mtoto mgonjwa, when you have a sick child, don't you give them medicine and preferential diet if necessary? Don't you?

Delegates: Yes.

Hon. Delegate Orië Rogo Manduli: Women are sick, women have been made sick by the very customs, the very sociological set-up and economical set-up of this country over the centuries. We are asking that you give them about fifteen years, there is a time limit on it, I know a lot of you get worried saying it will go on forever; it will not. We are saying, treat the women for 15 years, let them get to their full health like you treat your child when they are sick. When they are in their full health, they go on to the normal treatment.

Hon. Delegate Bonaya Godana: Honourable Delegate, please your time is up.

Hon. Delegate Orio Rogo Manduli: Thank you very much Chair. Thereafter we shall go on at par and work as usual with the men but right now Affirmative Action in the entire paragraph is very important and must be supported. Thank you very much.

Hon. Delegate Wangari Maathai: Thank you very much. Now I need an honourable gentleman, Shikuku?

Delegates: No.

Hon. Delegate Wangari Maathai: Who? Give me the number, you among yourselves.

An Hon. Delegate: Thank you Madam Chair,

Hon. Delegate Wangari Maathai: By the way Honourable Delegates, just give me a moment to say that I now have the list of people who have spoken since the 12th and we are going to try to ensure fairness and I can assure you Shikuku is not on this list.

Hon. Delegate Martin Shikuku: Thank you very much Madam Chair. I stand here to try and help my fellow Delegates here because experience is never taught at the University, there is no Professor of experience. Having said that Madam Chair, I would like you to remember what those aged fellows who were on that podium two weeks ago told you: 'we came back with a good Constitution but we messed it up'. Old men have no need to lie and they told you the truth. They also suggested that you have a look at the 1963 Order in Council Constitution. We were told this is going to be reproduced and given to the Delegates here, have you got them?

Delegates: No.

Hon. Delegate Martin Shikuku: Are you really being fair up there? I have mine Madam Chair; I took pains and it is over here. If you look at this, this debate would not be chaotic as it is. I want to tell you Madam Chair, when we were in Lancaster, there was no limit of sitting, we sat at even one o'clock in the morning and I do recall one occasion, Madam Chair, where we were discussing this question of coastal strip. The coastal strip was given to Kenya at 2.30 am. So if

you want to sit here for few hours and you go and sleep then you have not come to work. If you want to work, you must lengthen your time so that each Delegate will have at least a chance to say something but not within these few hours.

Madam Chair, I will also like to tell you that Constitution is a very serious matter, it cannot be hurried up and if you try to hurry this Conference, you will end up in a ditch. Let everybody express himself or herself to their satisfaction and the people who brought them here. So we sit long-time.

The other point I would like to say concerns this question that we are now trying to enshrine in the Constitution: the one-third of Parliament be members of the female section. Madam Chair, we are saying it now because of the problems we have had all along but if you put in the Constitution which is likely to be reviewed after one hundred years, surely, you are asking us to ascribe to this, that these ladies will be static for a hundred years? That is not possible. So this should be removed from the Constitution and put in the Act; when the situation changes we change, but you will have to call another Conference to remove this one-third and that will be very costly.

Having said that Madam Chair, I would like to talk about the bicameral. Bicameral, I would tell you Madam Chair, if they read this Constitution, they would find that that is the brake. A bicycle is a very small thing but if you ride it without brakes, it can also kill you. Today, you are complaining that Members of Parliament have increased their salary, you are complaining about the toilets of the streets and the whole place but you can do nothing, they are eating the salary. But if there was a bicameral system which will take into account your views when that Bill is brought to the Senate, it will apply the brake. You must have a brake on your bicycle, thank you.

Hon. Delegate Wangari Maathai: Thank you very much. We will go straight to one person with disability to represent the others, can you give me one of you? Which one? 608 or 809?

Hon. Delegate Bonaya Godana: Is it 608 or 809?

Hon. Delegate Wangari Maathai: Give me one person with disability? Which one? Stand up and speak madam.

Hon. Delegate Miriam Muto: Thank you Madam Chair person and the Honourable Delegates.

Hon. Delegate Wangari Maathai: Excuse me, speak Hon. Delegate.

Hon. Delegate Miriam Muto: Thank you Madam Chairperson and the Honourable Delegates. My names are Miriam Muto, Delegate number 472 representing disabled fraternity.

I wish to make two comments on the Chapters which were given to us this morning. I will go straight to Article 106, whereby we have talked about National Council and this Article provides 70 single constituencies and thirty women multi-member constituencies representing provinces and Nairobi. I am afraid persons with disabilities are not represented here, yet the Bill of Rights recognizes that. So my recommendation is, each province should give two persons with disabilities of which one must be a woman to represent issues of their interest.

Two, I want to go to Article 108 which talks about the qualifications. I want to make it clear that sign language is a means of communication and it should not be granted that any person who knows sign language can go to Parliament and say that they represent people with disabilities. My recommendation is that this Article should be reworded to: 'has attained at least form four standard of education with a pass and is proficient in Kiswahili and English and in case of people with hearing impairment, sign language should be provided'. Thank you very much.

Hon. Delegate Wangari Maathai: Thank you. I want to recognize the Business Sector, give me one person? There isn't? They are not there? Professionals? Professionals now, 481? Could you please give us your name?

Hon. Delegate Daniel Ichan'gi: Thank you Madam Chair. My name is Daniel Ichan'gi and I am representing the Professional Societies. I must say that I would prefer that you keep changing the order of calling the various groups. Otherwise even as we speak now, a lot of our leaders are absent but we want to recognize those of them who are from Parliament here and

sitting with us. But many of them are absent and we would prefer that we speak when they are here.

Madam Chair, I want to start with a general comment. I find it difficult to speak the way we are speaking on individual Chapters in the area of Representation of People. There are common principles and ideology that cut across Chapters 6, 7, 8 and 10 which deals with Devolution of Powers. In between Chapters 8 and 10, we have Chapter 9 sitting there, which is on the Judicial and Legal System. I think the drafters must be careful; if we are going to talk about representation of the people and this point has come, we must deal with Chapter 9 before we even bring in the issue of Judiciary and the Legal System. Having said that, even when the Commissioner concerned was taking us through the principles and ideology, he found it very difficult to deal with just one Chapter and he went through all of them.

Let me now come to some more specific matters. On the issue of Representation, say Article number 106, I think anybody who is not supporting Affirmative Action in this day and age has to be really in a minority but I find it difficult when you read through these Chapters to see different proportions given. If you go for example in Chapter 6 Article 77 – I am sorry you must allow me to go back there -- you find a third talked about in 77 (2) (a); when you go to 77 (2) (b), you find 50% of the candidates for the proportional representation must be women. You come to 106 (1) (a), in the National Council, 70% seats men and thirty percent must be women. Thirty seats out of a hundred is not a third (when I went to school) and so on and so forth.

I think the important thing here is to establish an ideological principle upon which we shall operate and make it uniform. For example, if we are going to say, we are going to have Affirmative Action, when we come to the area of, for example the Speaker and Deputy Speaker, women, why don't you suggest that when we come to elect the Deputy Speaker, this Speaker must be from the opposite gender, then we shall be doing something about Affirmative Action.

When we go to the Parliament and we have elected a Speaker, why when we are electing a Deputy Speaker, don't the women here articulate the position that the Deputy Speaker shall be from the opposite gender? Then we shall be doing something.

I also want to say something about those women here who are able to hold their thought against men, you must not now come ladies and attack those who are not able to stand against men. Those of you who are able to stand against men are to be congratulated, but I think the principle of Affirmative Action is a must.

Having said that, I want now to go to this Article 107 which now tells us the numbers of constituencies that we must have: 210 on the basis of single member constituencies and 90 on the basis of lists and so on. I think this is dangerous. I am of the opinion that Kenyans are grossly under-represented. If we put in this Constitution that only 210 constituencies shall exist, what shall we do about tomorrow when we have incorporated the women in our system and our economy is doing better and we think we can have 400 constituencies. I think this must be kept out and left in a subsidiary legislative bit and I think it goes against the spirit of Article 86 which leaves an independent Electoral Commission to determine the boundaries of our constituencies and gives it power to, for example, review this every 10 years. I think there must be a way, Madam Chair, where we audit this Bill so that it is internally consistent. With those few remarks, I wish to thank you.

Delegates: Clapping.

Hon. Delegate Wangari Maathai: Is the Business sector organized? There is the Business sector, 48?

Hon. Delegate Patrick Kiage: Thank you Madam Chair. My name is Patrick Kiage, Delegate number 460.

Hon. Delegate Wangari Maathai: I thought it was 48?

Hon. Delegate Bonaya Godana: You put up number 48, you are Delegate number what?

Hon. Delegate Patrick Kiage: I am Delegate number 460 I said.

Hon. Delegate Wangari Maathai: But I had seen Delegate 48.

Hon. Delegate Patrick Kiage: I shall explain in a moment why.

Hon. Delegate Bonaya Godana: Under which category are you here?

Hon. Delegate Patrick Kiage: I am in the Business of the Law. Mr. Chairman, with tremendous respect to the Chair, I have been here for ten days waiting to speak and it has been like waiting for Godot.

Hon. Delegate Bonaya Godana: We fully understand your frustration and we would want to give everybody a fair chance but I think if we say we are giving this chance to that special category, we would expect somebody to stand up if he or she is from that category and not really to steal the show on us. If you are not from that category, please be sincere and say you are from this other category, when do you give me the time? Are you from the Business category?

Hon. Delegate Patrick Kiage: Mr. Chairman, I have indicated that I am in the Business of the Law and in the Business of Constitution-making.

Hon. Delegate Bonaya Godana: I am afraid we will withdraw that offer of opportunity to speak from you, at this moment we will recognize you later.

Hon. Delegate Patrick Kiage: Mr. Chairman?

Hon. Delegate Bonaya Godana: Go to one of those categories.

Hon. Delegate Patrick Kiage: Mr. Chairman, with tremendous respect.

Hon. Delegate Bonaya Godana: Please respect the Chair. You will speak and I want to give you the assurance, you will speak but I think we better be fair to each other.

Hon. Delegate Wangari Maathai: Let us go to the Youth Group. Where is the Youth? 626.

Hon. Delegate Mamo Abudo: Thank you Madam Chair at least for adding my name to the list of those who have spoken since I came here. My name is Mamo Abudo. I represent Special Interest Groups from the University section. I have two comments here to make.

Article 103 -- I am sorry to take you back -- 103 of our Draft mentions appointment to the various institutions of governance and both Houses are supposed to approve various portfolios like Police Commissioner, National Environment Management Commission and the rest. But the post of Chief of General Staff is not mentioned anywhere and I have read through the Constitution, maybe the Commissioners can highlight to us later because in Chapter 15, Article 272 says: 'the Chief of General Staff is a member of National Social Security.'

Secondly, I would wish to add my voice to the Speaker who mentioned about the recalling of MPs. I am here to support the Motion that the MPs should be recalled because for one, if the MPs are not recalled, they will be relaxed in their jobs and take their work for granted. I would only propose that you increase the number of petitioners from 30% to 50%. This will be a good lesson for whoever will be coming in next in the office because, if we were to retain one for five years, he will be powerful and we say actually power corrupts. So he will use at the expense of the power to corrupt the many members of the community by giving maybe say the little available funds during the campaign and go back to Parliament. So, I strongly support that the MPs should be recalled to capture the support of the other group. Thank you Madam Chair.

Hon. Delegate Wangari Maathai: Thank you very much. I will now recognize the Aged, 473?

Hon. Delegate Pamela Mboya: Thank you Madam Chair and I do adore that title of the aged because that is where we are all heading. Madam Chair, I have been trying to speak since morning and mine is a simple amendment that I want to draw your attention to. On Article 107 (5) (c), in terms of party representation, Madam Chair, we have lifted various minority groups,

women we have mentioned, disabled people. We mentioned various other names but we have left out the elderly, which has all along been recognized by this group.

Madam Chair, I would also like to refer again to the same issue on Article 77 (2) (c). I would like us to carry this issue of the aged through and not stop. Madam Chair, when you look at the report of the Commission on page 126 and 128, the people themselves recommended very strongly that they would like to be represented in the Legislature but when it comes to these Articles in the Bill, it is not mentioned.

Madam Chair, I am aware that there are many Parliamentarians who are over 60 but they went there in their personal capacity, Madam Chair, they did not go specifically to represent the aged. So what we are calling for is that we should have unanimity of naming the women, the persons with disability, the elderly, etc.

Madam Chair, I would like to comment on other Articles at a later stage but I thought this was an important omission which we cannot afford to ignore at this point, thank you.

Hon. Delegate Wangari Maathai: Thank you very much. I want to give a little more time to one more person from the Political Parties, so they can give me one other number. Political parties? 596, and please tell us which political party.

An Hon. Delegate: Madam Chair, Trade Unionist list you have not called and we are here?

Hon. Delegate Hezron Nyerere Manonda: My name is Hezron Nyerere, I am representing political party by name Democratic Assistant Party of Kenya. My number is 596.

Hon. Delegate Wangari Maathai: Which one is that?

Hon. Delegate Bonaya Godana: Which is your political party?

Hon. Delegate Hezron Nyerere Manonda: Democratic Assistant Party of Kenya – DAP.

Hon. Delegate Bonaya Godana: Maybe you are holding the microphone too close to your mouth, we can't hear you. Which political party?

Hon. Delegate Hezron Nyerere Manonda: The name is Democratic Assistant Party of Kenya – DAP. Madam Chair, I want to comment on Article 139 on Parliamentary Committees Sub-section (2) (e) 1 and (h), touching on social and economic affairs, public accounts and finally on investment committee.

Hon. Delegate Wangari Maathai: Excuse me Honourable Delegate.

Hon. Delegate Bonaya Godana: What is your name Honourable Delegate? Are you Hezron K.N. Manonda?

Hon. Delegate Hezron Nyerere Manonda: My name is Hezron Nyerere, Hezron K.N. Manonda from a political party, Madam Chair.

Hon. Delegate Bonaya Godana: On the political party representatives, we have the name of Hezron K.N. Manonda, Democratic Assistant Party.

Hon. Delegate Hezron Nyerere Manonda: Kwa hivyo, mimi nitaongea na Kiswahili labda mnisikilize vizuri, labda hamnisikii kwa Kizungu. Nina-comment kwa hii Article 140 ambayo wabunge wamechaguliwa kushughulikia kwa kamati ya Economic Affairs, Public Accounts na Investment Committee. Hizi committees katika Parliament, Madam Chair, mara nyingi tumeona wakishughulikia kuchunguza corruption katika parastatals na hakuna wakati ambao tunasikia wanashughulikia kuchunguza katika private sector, yaani kampuni ambazo zinawaajiri Wakenya wetu kama EPZ na Magadi Soda, ambapo unakuta wafanyikazi wetu wanafukuzwa kazi, hawalipwi mshahara, hawarudishwi kazini na haki yao inanyimwa.

Hapo ningeonelea, hao wabunge wapewe uwezo katika Katiba hii, wawe wanachunguza hata hii private sector ambapo tunashughulikia Wakenya wetu na ndio wana shida nyingi katika nchi hii. Kwa mfano, sijui kama Lancaster Constitution ama ya saa hii, wengi wanatuuliza, evaluation ya hii nchi yetu ni kama kiasi gani katika resources, katika financial affairs yake, hakuna mtu yeyote anaweza kukuelezea, Madam Chair. Ukikuta kampuni kama hii ya Magadi Soda, Madam Chair, unakuta wengi wanasema inatoa chumvi, na ukienda kwa hiyo kampuni inatoa madini ambayo yanatengeneza wall glass na inakuwa exported to Europe and many countries worldwide na inaleta billions and billions of dollars kwa hii nchi. Hizo pesa zinaenda wapi? Hizo ni shughuli ambazo ningeomba hii Katiba na wajumbe wenzangu, wabunge wapewe uwezo wawe na Public Accounts Committee ya kushughulikia shughuli kama hizi ili Wakenya wajue valuation ya nchi yao, kampuni zao, resources zao, environment yao, samaki yao na wanyama wao. Value ni nini? They don't know their value; their value has been violated. Hiyo ndiyo my point, thank you.

Hon. Delegate Wangari Maathai: Asante sana. I want to add a Delegate from the NGOs sector. I see 480, NGOs? 489, a lady.

Hon. Delegate Jane Mumbi Kiano: Thank you, Madam Chairperson. My delegate number is 489 and my name is Jane Kiano. Madam Chair, on political rights, we are told that every citizen has a right to form a political party, what about independent candidates? Every citizen has a right to join or not to join any political party for election purposes. Madam chairperson, I am saying so because we know in the last few elections, very popular candidates have been rigged out of nominations of their party for one reason or the other. If we did have independent candidates, I am sure we could have (inaudible) our members of parliament than some of the people we have today.

Madam chair, in Article 109, representation of women, I must thank the wise honorable Delegates who has been very positive on the issues of Affirmative Action, I don't want to repeat what Honorable Martha Karua said yesterday. Madam chair, there is need for us to think of the future of this country, not necessarily looking at women as women. If we look at the constitution

of Uganda madam chair, we know it tabulated very well that at least ten years, it is will be that Affirmative Action and by then, women will be in a position to compete with men.

Another issue madam chair that I would like us to think about is, it saddens me when I hear Honorable Delegates talking about elite women. Those are their daughters, their girl friends, their wives, their mothers. And madam chair, I have never heard anybody talking about an elite man or as grassroots man. It has become very fashionable for our gentlemen to categorise women of this country as elite women verses grassroot woman. All of us are the same Madam Chair, and I hope we will be treated equally. Madam Chair, when we talk about the present Parliament, are we talking about the implementations of the proposed new Constitution on the representation of women or after that implementation?

Secondly, madam chair, we are very (inaudible) about women representation, when no others are covered in details. Details of how women shall be elected to Parliament must be worked out before the new Constitution is finalized. Thank you, Madam Chair.

Hon. Delegate Prof. Wangari Maathai : Thank you very much. I want to pick delegate number 15.

Hon. Delegate Billow Adan Kerow: Thank you, madam chair. My name is Honorable Billow Adan Kerow, delegate number 015, Member of Parliament from Mandela Central. Madam chair, I wish to contribute on a couple of issues. First very quickly on section Article 104 on approval of expenditure by Parliament. Madam chair, one fundamental problem we have seen in this country, is the tendency by the government to borrow excessively both from domestic sources and from external sources such that we find today that, this country's level of impedeness exceeds 35% of the GDP. So, want we want to see under Article 104 madam chair, is proposals to limit the power of the government to borrow.

When you move on to Article 294 on public finance, what really happens is that there is an opportunity for the Parliament to review the proposals by the government on borrowing but it does not actually limit the amount of the money the government can borrow at any one time. I

therefore think that it is important that Parliament should be given powers to control how much money the government borrows.

The second thing I wish to comment on madam chair, is the issue of Article 107, the mixed member proportional system. I think with all due respect this section has been misunderstood. What this section seeks to explain, are two things: -

- The concept of vote weighing, at the same time it also talks about the Affirmative Action for women, and I think these two must be separated. We have no problem and I think all members have explained it quite clearly and there is no problem with giving Affirmative Action for women.

Yet the issue of mixed member representation has serious problems; -

- Number one, it seeks to undermine the concept of competitive Politics where members of Parliament, and 90 members of Parliament out of 300 which represent 1/3, would come automatically without getting elected directly by members of the public.

It also seeks to give advantage to those areas, which have large numbers of constituents the opportunity to get additional members of Parliament. However, that creates a duplication, because there is a Boundary Review Commission that reviews boundaries regularly on the basis of population density and other factors. So a constituency will get reviewed on the basis of the boundary and gets an additional constituency. At the same time, on the basis of the vote weighing which is inherent in the mixed member proportional system, those areas will again get additional members of Parliament. So what it means is that the areas which are sparsely populated will be merchandised.

- This concept implies that there is no constituency, in essence and it has only worked in countries, to the best of my knowledge where there are no fixed boundaries constituencies such as South Africa and Germany. But in countries where there are constituencies, it is

prudent to use or to strengthen the Boundaries Review Commission, so that any inequities in terms of the number of the people in a constituency can be addressed.

- It also has a problem of practicality. When you prepare a party list upfront you prepare a list of 90 people, the party prepares that and then it goes to election and then it secures a certain number of seats in Parliament and on that basis it gets five allocated to them, it is going to be difficult as instructed in this draft for the party to reject the top five because it has to go for the top five. If these top five come from an area where this party did not get any votes, then it is going to create a potential source of conflicts within that party. And I think that is going to be difficult problem in terms of (inaudible).

Finally, Madam Chair. There is also a problem in that concept, in that it also creates a problem the party leaders will tend to exercise a lot of influence because of the party list that has been prepared.

Lastly, I wanted to suggest Madam Chair that representation is not about the numbers, I think there seems to be a lot of emphasis that, when we talk about representation we are talking about numbers. And one of our Delegates yesterday explained quite clearly that if you are coming from Embakasi, even if you have hundred and twenty members, it takes you five minutes to cross your constituency, you the access to all the media, you can assemble a rally in a few minutes. But talk about a Constituency of ten thousand people, with over twenty thousand square kilometers, it takes you a week to go through that constituency, you do not have the resources, you lack means of communication. So the representation is not really about them, but we have to introduce a level of development. Madam chair we have to introduce the level of development really as one of the key factors to be looked at. We have to look at the area also as a very fundamental concept.

Therefore, I want to argue that the mixed member proportional representation should be divorced from the issue of the affirmative of women. Women should be provided their 45 seats and they should work out the formula for distributing those seats, on equitable basis without due

regards MMR system. Because even then, women will be marginalized. Under MMR, women are going to be marginalized. Thank you so much madam chair.

Hon. Delegate Prof. Wangari Mathaai: Thank you very much. Point of order. While you are gathering your point of order, I want you people to understand and remember that Honourable member number 15, we had actually stopped him and said if we have time we will come back and I just wanted to make sure that he is not completely cut off because he was in the list long ago. I am trying to ---

Hon. Delegate: Chairperson, you had given me time on a point of order.

Hon. Delegate Prof. Wangari Maathai: We have a few minutes yeah, I just wanted to make sure that you are not raising a point of order on the Honorable member MP. Number 15.

Hon. Delegate: It could be the same, but there's one area where you have failed Madam Chair. If you wanted to go back to any category, you could have gone to all the categories and then eventually go back to any other category, you have not covered the women organizations, you have not covered the Trade Unions, and other categories, how come that you are know rigging in other categories that have already spoken?

Hon. Delegate Prof. Wangari Maathai: I am sorry, I had actually already gone a round and as you noted, I was already going over the categories, I must have missed the Trade Unions. Definitely I did not have the Trade Unions. My I call upon the Trade Unions. Trade Unions? Trade Unions? Well the Trade Unions you have to tell me who is it that you want to speak? 448, you are from Trade Unions? All right.

Hon. Delegate Isaiah Kubai: Madam chair, I must admit that I appreciate the fact that this Constitution was not completed last year, because if we did, we could have a lot of mess in this Constitution. My name is Isaiah Kubai Trade Union, Number 448. Madam Chair, I wish to point out one aspect here, when we talk about representation in Parliament I wish to put it this way, let us be clear on who should be in Parliament.

- First of all we should recognize that people are elected from the constituencies.
- If it is possible for women to have a special constituency, we should give them their own special constituency, so that they will come through by election. One third will be achieved if they are elected and we give them one representation per a district.
- Third, madam chair, then that way we will be able to give the women even more than 1/3. I also want to say that there are other categories, which require Affirmative Action. The Trade Unions in Uganda gets ten seats, elected specially from their delegates and we also need to be entrenched in this Constitution. The professionals require representation and they require their own special constituency. The youth also require special representation in Parliament. So, Madam Chair, whether or not we have two Houses or one house, there should be that category recognizing all the types. Madam Chair, I am against nominations. It creates (inaudible) the idea of favourism. What we need is election for any body who wants to go to Parliament, so that they can be Accountable to the electors.

Madam Chair, I am against this idea of creating too many seats for people in leadership. We have already created 300 members of Parliament in one House and we have another hundred, so we have a total of 400. We are short of hundred to equal the number of the American Senate and America Congress. We have a large number of people who want to go to be leaders in this country and we have few or people that work. Therefore madam chair my position is this, we should reduce the number of people, that want to lead in this country. Madam Chair, we are creating too many leaders in this country and it will be very expensive for this country.

Madam Chair, the issue of recalling members of Parliament is going to create some kind of anarchy. This is because there is no Member of Parliament who can survive, tomorrow you will all be recalled. Because first of all, they say you are driving big cars now, you have become too proud for the, so Madam Chair, I am against the issue of recalling of the members of Parliament. Thank you.

Hon. Delegate Prof. Wangari Maathai: Thank you very much. I would like to call another member of the Trade Unions. May be a representative of Knut (Kenya National Union of Teachers), Yes, 336. Are you a teacher?

Hon. Delegates: No.

Hon. Delegate Prof. Wangari Maathai: You are on a point of order, the teacher?

Hon. Delegate Mkawerweren B. Chebii: I am rising on a point of order Madam Chairperson.

Hon. Delegate Prof. Wangari Maathai: Okay.

Hon. Delegate Mkawerweren B. Chebii: I would like to inform you that my point of order is that most of the time you have wasted, a lot of time on MP's and you do not give other Delegates enough time because even when you ring your bell, MPS try to continue and continue, and because you are an MP that is why you are given that advantage. Thank you.

Hon. Delegate Prof. Wangari Maathai: I want to call the next Delegate from the Trade Unions, 443.

Hon. Delegate Roselinda Simiyu: Thank you very much Madam Chair, my Names are Roselinda Simiyu from the Trade Union. Madam Chair, we want to question the illegibility of somebody a member of either the National Council or the National Assembly. It has been stated that he or she has to be a citizen of Kenya. In itself we do not think that is enough, what it should be is that. We should state very clearly that he/she should be a Kenyan that is somebody who is naturally a Kenyan not through citizenship.

Then, Madam Chair, we should make provisions for the interrogation of ministers, why we are saying that, we feel that the National Assembly should have a chance... want we suggesting that if we could have something in place like the National Assembly may in accordance with the

regulation, resolve to interrogate any minister with any matters relating to the functions of his or her ministry. Opinions on the result of the interrogation shall take in a subsequent sitting, the proposal of no confidence in the minister has been presented. When the proposal succeeds, the president of the republic shall address the same. Madam chair, that makes room for the ministers also to be accountable to the National Assembly. This is because we have some ministers running their ministerial offices as if they are running their own domain. They should understand that they should be accountable for every action that they take and if anything is contrary to the wishes of the National Assembly, they should know that they shall be answerable on the same. Thank you very much.

Hon. Delegate Prof. Wangari Maathai: Thank you very much. I was looking for a representative of the Kenya National Union of Teachers? 485? Point of order? Are you on point of order sir? There is a point of order there.

Hon. Delegate Daniel Osoi: Thank you Madam Chair, my point of order is, I see everyday we come here between 8.30- 9.00 am, the steering committee meets, then we start our sessions at around 10.00 a.m. I suggest that we be starting our seats at 8.00 and the steering committee seats after 4.30 p.m to prepare the work of the following day, because now you see everybody else leaves at around 4.00 p.m and leaving a few people behind and no proper participation or contribution, I therefore suggest that you change the order of the day.

Hon. Delegate Prof Wangari Maathai: Okay, we were trying to give chance to one of the Trade Unions, KNUT and another point of order, 368.

Hon. Delegate Joel Kipyegon Sang: Thank you Madam Chair, I am Delegate number 368, Joel Sang representing Bomet. I am worried, I have tried to discipline myself, for the past several days since I spoke on Article 1 sub Article 2. I have been trying to give other Kenyans time to be heard but I am worried because you are changing rules everyday. I have realized that through some people, you have introduced another rule that someone who has spoken should not speak, be specific. Those who have spoken on the same chapter may not be heard again on the same. I have actually had to cut on several chapters in order to accord others that respect of being heard,

but if you are going to change the rules today, I will be forced to give others another six days, by that time the debate will be over. So, kindly stick to the rules. So that those of us who have that discipline may get time to be heard at some time. Thank you very much.

Hon. Delegate Prof. Wangari Maathai: I think that is clearly heard the secretariat has heard. I am sure that the steering committee will look into the whole issue of the time and we will communicate the fact that there are still many of you who would want to speak and have not spoken, but I think that there was a delegate there who was yet to speak from KNUT.

Murmur from the honorable Delegates.

Hon. Delegate Prof. Wangari Maathai: Not KNUT? Okay now I can maybe give where? What are you? 505 is a political party.

Hon. Delegates: Religious.

Hon. Delegate Prof. Wangari Maathai: This is a political party isn't it?

Hon. Delegates: Religious.

Hon. Delegate Prof. Wangari Maathai: Let me recognize you please because – let me recognize the lady behind you. 505. (laughter). She has spoken.

Hon. Delegates: Yes (murmur from the delegates)

Hon. Delegate Prof. Wangari Maathai: Have you spoken madam?

Hon. Delegates: Yes.

Professor Wangari Maathai: If she has not spoken, surely why can't you let her speak?

Hon. Delegate Bonaya Godana: Madam, what is your name? Your names? When did she speak?

Hon. Delegates: She has spoken.

Hon. Delegate Bonaya Godana: when did she speak?

Hon. Delegate: My chairman, I spoke yesterday yes, but on a different chapter and I feel I have a right because the women organizations have not been given time to speak. We are a category and we must be recognized? What is the problem? What is the problem? I still feel strongly that I should speak sincerely.

Hon. Delegate Prof. Wangari Maathai: I think what we should do in order to create harmony, we are going to raise all these issues with the steering committee so that Delegates are given a much time, as they want, I guess. But at the moment, let us stick to the rules that, those who have not spoken be given the chance.

Hon. Delegate Shitemi Philip: I have not spoken---

Hon. Delegates Prof. Wangari Maathai: Okay 545.

Hon. Delegate Shitemi Philip: My number is 545 –

Hon. Delegate Prof. Wangari Maathai: Point of order? Excuse me Honourable Delegate, there is a point of order, up here, 504.

Hon. Delegate Aweis Nasra Abubakar: Thank you, Madam Chair. I am Rukia Aweis Abubakar, Delegate 504 from women organization. The delegate who has just been asked to sit down has raised the question of the women organization not being given a place to speak, you did not answer that question, you told her to sit down. Fine, why don't you pick another person who has not spoken and Who is from the women organization? Thank you Madam Chair.

Clapping from the Honorable Delegates.

Hon. Delegate Prof. Wangari Maathai: Let the person who was speaking finish. Then we can give one women a chance, those who have not spoken please. Women organization. It is time to go on Honorable delegate.

Hon. Delegate Simeon Shitemi: Thank you very much for giving me the floor, I have waited for this moment for a long time, *murmur from the Honorable delegates*. I would like to address four topics, the first one is the question of Affirmative Action, as regards to our sisters, our wives our mothers our daughters. Honorable delegates I have no problem supporting that idea except one very serious point, which I have not heard this evening. One of the most important duties we have as a nation, is to make sure that the children we are raising are properly taken care of, I am yet to hear from our sisters, how that particular area of responsibility of the special expertise will be taken care of. Including Madam Chair, a place in Parliament where some of them can quietly go and breastfeed.

Clapping from the Honourable Delegates.

Madam Chairperson, I want to recognize the point made by Honorable Delegate Jane Kiano, a very important point, the question of independent candidates. I have looked at this Draft Constitution carefully and I have seen no provision for it. Every where else, you go to England, you go to the US, there is provision for independent candidates. I would like to plead with Commissioners and fellow Distinguished Delegates to look at this once again.

I would also like to note, one very important point, this one of Parliaments having the power to approve International Treaties and to bind us to observe international obligations, I happen to have heard diplomatic exposure, this is an extremely important topic and I fully endorse it, for what it stands for.

Finally, I support the idea of bicameral Parliaments, and let me also madam chairperson, just make a small confession, I was a federalist i represented my memo to the Commissioners as a federalist and I was persuaded intellectually to accept that if we got the representation form all over the country including one from every district on the upper chamber. That will take care of

my concern as a federalist. Please for goodness sake, let us not oppose the idea of an upper Chamber. Thank you very much for giving me the floor.

Hon. Delegate Prof. Wangari Maathai: Thank you very much. Could I have the speakers from education of the women Sector, those who will like to speak, on this from the women's sector please show me your card, the women sector, 467 is this.....there is one on the floor, tell us which women organization you are representing.

Hon. Mary Wambui Kanyi: I am from the NGO --- my name is wambui Kanyi, Delegate number 467 and I could like to comment Article number 102, whereby it is said that Parliament represents cultural diversity of the people. First of all, we need to note that our diversity is not only cultural, we have other sources of diversity. For example we have gender, men and women, and we have persons with disability. I am therefore proposing that instead of putting cultural, we have Parliament represents the diversity of the Kenyan people, and then the Article continues. Then we are able to take into account those other diversities.

Then Article 103 number 3, we have the different Institutions which are appointed through the National Council, I am proposing that we had add an end to read National Commission on Gender and Development. When we look at the Constitution that we are debating we have so many provisions in relation to gender equity. But we do not have any body or any Institution to ensure that what we have put here in this Constitution would be implemented so. I am proposing that we have this commission on National Commission on Gender and Development to foresee the implementation of this provisions.

The other Article, I want to comment on is Article 107. Where we have the different way of electing the members to the National Assembly. That is through Election based on the current constituencies we have, considering that the constitutions that we are coming up with is to serve future generations and there might be a need to increase the number of the constituencies, I am proposing that we remove the 210, so that we have the election based on proportional system in which members shall be elected on the basis of single member constituencies and then it

continues. This will allow for any increasing the future for the number of constituencies. Thank you.

Hon. Delegate Prof. Wangari Maathai: Thank you very much. I want to recognize number 504 about the women.

Hon. delegate: Point of order.

Hon. Delegate Prof. Wangari Maathai: A point of order? Where is the point of order? We are coming to the end, where is the point of order? I can see you madam.

Hon. delegate: ...there are many people who want to speak and noting that the programme only said up to six, can I say that we sit up to ten?

Hon. delegates: Yes.

Hon. Delegate: This is a very serious issue.

Hon. Delegate Prof. Wangari Maathai: I am very sorry I can.

Hon. Delegate: The delegates can either expect the way you are selecting or else we sit down up to ten.

Hon. Delegates: Yes. *Murmur from the Honorable Delegates.*

Hon. Delegate Prof. Wangari Maathai: Point of order we had just one speaker and then we close for the day, 504.

Hon. Delegate Bonaya Godana: Please give her a hearing.

Hon. Delegate Rukia Sukow: Thank you madam chair, I am Nasra Awesie Abubakar, delegate number 504, from women's organization. I would like to comment on Article 107, sub Article

5(a) on the prioritising of nominees, I would like to know how you are prioritising, when you are giving the part list, are you giving the less likely to be nominated the people you think, pretending to the people that you are putting them on the list and because you know they are not going to be nominated or you fear that they may not be nominated you put them lower side of the list, or below on the downside?

And on 107(1), on the mixed member representation, I would like the Drafters to add just like they have catered for other categories that when you are having the national outlook, you should have the provincial representation. The provincial representation as in may be if you are checking the first eight people, then they should be from the eight different provinces. So that we feel that we are catered for. Otherwise as the minorities and the people who have been marginalised we feel that we are not catered for in the mixed member representation.

Clapping from the Honourable Delegates.

In Article 12, on the issue of the recall of the MPs, I would like to insist that it is important for us especially the people from the Northern, the people who have been always marginalized, we have MPs, who have been sitting in Parliament for thirty years, twenty five years and they have not been doing any work. So we want them to be able to be accountable to us, we want to be able to call them back. That issue should not be overlooked. We really support the issue of recall of MPs we are not saying people should not be recalled because we feel we hate them or because they were not our candidates, but on grounds that they are not working for the people that they had promised to work for. Thank you madam chair.

Clapping from the Honorable Delegates.

Hon. Delegate Prof. Wangari Maathai: Thank you very much. Honorable delegates that will be the last speaker for this evening. I want to thank you very much for your patience especially those of you who are still on your seats. We will have to hear the responses tomorrow for obvious reasons. I would like to promise you that we shall raise the matter of time with the steering committee, I recognize that so many people did not speak and I have received a lot of papers here of people complaining, very frustrated that they have not spoken since they came to

**PLENARY PROCEEDINGS, PRESENTATION OF DRAFT BILL, CONTINUATION OF
CHAPTER 7 – THE LEGISLATURE, HELD AT BOMAS OF KENYA, 14.05.03**

PRESENTATION OF DRAFT BILL: CHAPTER 7 – THE LEGISLATURE

Presenters: Com. Dr. Andronico Adede
Com. Dr. Charles Maranga

Session Chairs: Hon. Dr. Godana Bonaya
Hon. Prof. Wangari Maathai

Meeting started at 9.40 a.m. with Honourable Delegate Wilfred Koitamet Ole Kina in the Chair.

Hon. Delegate Wilfred Koitamet Ole Kina: Honorable Delegate may I call this meeting to order. We shall receive prayers from Susan Wambura. Susan Wambura is going to lead us in prayers so may we all stand please.

Hon. Delegate Susan Wambura: Let's pray. Heavenly Father we thank you for this morning and we ask you oh Lord to be with us, as we agree to talk and discuss on this Draft Bill oh Lord. Father we pray that you may give us knowledge and wisdom, so that whatever we are going to discuss (inaudible) which will help us and help the generation to come. Father we pray and commit the speakers into the hand of the Lord, be with them, give them knowledge and wisdom. We pray that in the name of Jesus Christ your son. Amen.

Hon. Delegate Wilfred Koitamet Ole Kina: Thank you very much. Before I call upon the presenters of Chapter seven to continue. I would like to seek the indulgence of the Honourable Delegates on one issue that was carried in yesterday and today's television news concerning our welfare. We are aware that a lot of Delegates were not happy because of the way the issue was presented, but we have taken steps to enhance the security of Delegates, both during transportation at the hotels. So we would like to assure you that, that announcement will not

endanger you at all as Delegates and we all concerned and we are going to ensure that everybody is safe. I hope this will bring to an end, the issue of welfare and so that we are able to continue with the more important issues that brought us to this Conference.

I will also kindly request that during our deliberations we can see a lot of point of orders that are being raised. And these points of orders seem to be eating into the time the Delegates could be using productively. So I would beseech you that if you don't really have to raise on a point of order please allow us enough time to enable you make your contributions. We have also realized that certain topics may require more than one day to be discussed and we are going to try as much as possible to see that every sector has ample time to respond to these issues. So please do understand that we are trying to create time, so that you also help us by not raising a lot of these orders with spend your time that we want to save here. And we go out during our tea breaks and lunch breaks also come back immediately after the tea break so that we don't waste a lot of time again. We are talking about managing our time and we have to use it productively, then let us have the assistance of everybody here. Thank you very much. So may I know call upon Honourable Prof. Wangari Maathai to continue with yesterdays deliberations. Thank you.

Hon. Delegate Prof. Wangari Maathai: Thank you very much Mr. Chairman. Honourable Delegates we are very conscious of your frustrations yesterday and as the Chairman has said, we will this morning try to give more people an opportunity to express themselves. We have to strike a balance between giving everybody an opportunity to present their views but also managing time. What I will do therefore this morning is allow a few more comments even before the responses from the Commissioners. And I will start with the group that we stopped with and that is the interest groups. I will start with the professionals. Those people who have not spoken please I will take two names and I will go through all the categories, two, two, two and then if we have time we can go back. I see 485.

Hon. Delegate Raphael G. Mwai: Thank you very much Madam Chair. My name is Raphael G. Mwai professional associations number 485. I start to speak on two points. Point number one the issue of Bi-cameral Parliament. We know that the reason for the Upper Chamber or the National Council has not been clearly articulated in this section that we are dealing with. That

would seem to imply that the role of that Chamber has not been properly clarified. I have had the views that it acts as a break on the process of Legislation. I would like to observe that the Senate where we dissolve the Senate in the sixties we did that with full corporation and participation of the Senate. So that structures by themselves, do not of necessity guarantee accountability and a transparent government. What we require are values that safeguard our institutions. I say this because we are planning to add not only 90 members to the current 210, but we also talking about another 100 making it a total of 400 on the basis of the current estimate we spend a total of 210 million shillings every month on the Legislature in terms of Members of Parliament. We are now doubling that to something like five billion shillings in the year and that is equivalent to two and half to three percent of the national budget. It is not right that we squander funds on structures that we can minimize and make the management of the affairs more cost effective.

Having regards to the need to create other structures at the Provincial, District and Village levels. Structures cost money and they may be unsustainable in the long term. So we need to rethink that concept and we also need to rethink the contradiction in that clause with the provision of Article 86 that foresees a situation where we may have to adjust Constituencies boundaries to accommodate increased population. So that particular clause contradicts what is foreseen in clause 86.

In clause 102 we have obliged the government to lay before Parliament the provisions of treaties with foreign nations etc, and I think that is correct. I would however want to remind Honourable Delegates that the current economic situations we see ourselves in has been brought about by the relationship between our government and the donors, specifically World bank and IMF. The previous government had said the problem we have seen is caused by the donors, the World Bank and IMF. They do not tell us when the donors the World Bank and everybody was here we forgot about our agriculture, because the donors where providing funds. We forgot about our health system, industries because we had funds from donors.

You recall Madam Chair, that the structural adjustment programmes were never discussed in Parliament. Those structural adjustment programmes brought about cost sharing in medical services, cost sharing in schools and changed the whole character of the Kenyan people and their

institutions. Those discussions were agreed upon, those decisions were made without participation of the people through their representatives in Parliament. I am therefore, suggesting that all agreements, all negotiations, all conditionalities with the World Bank, IMF and everybody else must be brought to Parliament for endorsement by Parliament on behalf of the people.

I am also finally saying in terms of recalling Members of Parliament I was one of those who believed that they should be recalled. Having reasons to what has transpired I believe that could be a recipe for chaos. Let us select our MP's properly once we get them there, let us hold them accountable through annual status report of the Constituencies, then that way we shall keep them accountable on a long term basis. Thank you very much indeed.

Hon. Delegate Prof. Wangari Maathai: Thank you. Another Delegate from the professionals? A lady if I have. Do I have a lady? No, okay 520 are you are professional? Please don't put up your paper if you don't belong to this category, 487.

Hon. Delegate Baldip Singh Rihal: Thank you Madam Chair, Honourable Delegates. I don't want to repeat the point that has been raised by Honourable Delegate Raphael Mwai, who is the Chairman of umbrella body, the Association of Professional Societies, but I do reiterate to what he has said. I just want to make one or two points on the bi-cameral system. If we do decide that we need two bi-cameral Parliaments, having the National Assembly and the Upper House, whatever name we ultimately decide for it. And I think Senate would be a more appropriate name to give it the respect and the dignity. And at the same time, I would like to see that we retain the old system of some Nominated Members. I know we are scrapping that all together and we want to move to the Mixed Member Proportional System, where members will be elected to the National Assembly on Mixed Proportional System based on the strength of each political party, but I believe that we still need to have some members who are nominated and in this category, I would particularly like to see some of the senior citizens of the country represented as Nominated Members.

They can contribute a lot from their experience. They can guide and they can help the younger and up coming Members of Parliament to understand procedures and to operate as MPs and to be able to understand their duties that are in Parliament; and at the same time I would also like to have some sectors of the society particularly OK because I represent the professional; I will like to see some of the professionals being nominated to either the Lower House or the Upper House, in order to introduce more professionalism and more debates on professional lines in the two Chambers of the House. So, please I think we need to consider the issue of the Nominated Members very well, because I believe the previous nomination system have been politicized and the original intention of having the nominated members from special categories was thrown overboard. I believe we need to reconsider that issue, because under the Mixed Member Proportional System some of the expertise that we have in this country cannot come forward and present themselves as candidates for nomination. I think I will leave it at that for the time being. Thank you Madam Chair.

Hon. Delegate Prof. Wangari Maathai: Thank you very much. I will now go to the next sectors, the business sector. The business sector please? None. Okay I will try the political parties, people who did not speak yesterday. 605.

Hon. Delegate Ngorongo Makanga: Thank you Madam Chair. Honourable Delegates I have only two points to make. One of the points is on Article 131 and 124 about languages.

Hon. Delegate Prof. Wangari Maathai: Give us your name please.

Hon. Delegate Ngorongo Makanga: My name is Makanga from the political parties. When we really say that we are going to have the National Languages in English and Kiswahili, one wonders was this a reflection from all the people of Kenya, that they said the National Languages in Kenya will be English and Kiswahili. What criteria did they use? Because I think it is a bit shameful knowing that Kiswahili and English are not the only spoken languages in Kenya. The greater majority of Kenyans speak their vernacular and then we disenfranchise a lot of people. When we say that we are going to put our documents in English and Kiswahili. So I probably think the committee that will deal with this section should come with a process where

probably we shall behave like South Africa. We probably say, our National Languages should be ten or eleven for future reference, because two hundred years from now we shall be a people who will have no culture, no language, our language will be English and Kiswahili. I think the United Nations are trying to make sure that languages and culture do not diminish.

The other section I wanted to comment about is the Upper House. If I look at the way we are trying to talk about the Upper House and the Lower House. It is like a people who are trying to measure the depth of a well using their two feet. We have nothing really that is Kenyan we must enshrine in our Constitution something that is really Kenyan. I propose that the Upper House should be a reflection of what is Kenyans. We should probably get two people or two representatives from every community in this country, no matter how small or big two people to be in that Chamber including the Elmolo, Ogiek, Kikuyus, Kamba etc. We have two people in that House. In that House, the role of those people inclusive of what we have discussed or what acts as the checks and balances for the Parliament, they should actually be dealing with the national identity of this country, the sovereignty, the national symbols, they should deal with the boundaries, languages, culture and the internal conflicts in reconciliation. Because we really have this Chamber and this Chamber probably we would call it a House of Wisdom which will be a reflection of the Kenyan people. No matter how much they feel developed, no matter how much they feel disfranchised, no matter how much they talk English and Kiswahili, we must make sure that our languages, culture, customs and really what is truly ours must continue to be seen by the people of this world. I have no pride when I am admiring the languages, the cultures of the English when I speak English, of the French when I speak French. How shall we make sure that our languages are actually spoken by other countries of this world? I think that is all. Thank you.

Hon. Delegates: Clapping.

Hon. Delegate Prof. Wangari Maathai: Thank you very much. Could I have another contribution from the political parties? I will come to this end 579. Please say your name and the political party you represent.

Hon. Delegate Daniel Mokaya Rasugu: Madam Chair, my name is Daniel Rasugu, Delegate number 579. I represent the National Labour Party and my contributions arising from Article 82, 86 and 95 as related to Chapter 7. In Article 82 we are talking about unopposed candidates. I am proposing that Parliament should consider enacting a law and a punitive one for those nominated candidates who for a selfish motives withdraw so that they can leave a particular candidate to go unopposed, because this denies the electorate their right to elect a candidate of their choice.

Article 86, I am calling for a repeal or that we consider to undo Article 86 (3). May I read that “every ten years, after census of the population or sooner if there is a variation in the boundary of an administrative area, the Commission may carry out a review and make the necessary alterations of the names and the boundaries of Constituencies” I realize that unless we undo this sub-section, then it is not going to be possible for us to create new electoral units.

In Article 95 (3) it says that “50% of the moneys allocated by Parliament, shall be distributed equally among political parties each of which obtains not less than 5% of the votes.” What about new registered political parties which may not have participated in an election before? Where does the strength of a political party lie in this country? In my view it lies under ethnicity and the leaders of those particular parties. I can quote by examples, in 1992 we had Ford Asili which swept votes in Nairobi, because it was lead by Honourable Matiba. In 1997 we had SDP lead by Honourable Charity Ngilu and we had a number of MPs from Ukambani. I can even quote NDP under Raila Odinga, further Ford People with Simeon Nyachae, so which party is a new party and which party is stronger than the other? So all registered parties should be considered for funding.

I want request the Chair that there is a Delegate in the name of Honourable Martha Karua, that we respect so much to withdraw a remark she made on the floor to the effect that there are other political parties which are briefcase political parties. All registered political parties are political parties. Thank you Madam Chair.

Hon. Delegate Prof. Wangari Maathai: Thank you very much. This is a political process. I want to recognize another representative of the political parties, 583.

Hon. Delegate Martin Shikuku: Point of Order.

Hon. Delegate Prof. Wangari Maathai: Point of order. Well I am trying to recognize another one. Now, there are so many, but --.

Hon. Delegate Martin Shikuku: The point of order I am trying to draw your attention to. We have a Delegate here who from his height you cannot be able to see him. *Laughter.* Because he is very short you can't see him. What do we do? We ask him to stand on his seat?

Hon. Delegate Prof. Wangari Maathai: Well, let him speak and then I will take the other one.

Hon. Delegate Martin Shikuku: He has been carrying his hand since yesterday and the day before. Here he is.

Hon. Delegate Prof. Wangari Maathai: That is very true Honourable Delegates I could see him. Let him speak and then I will take the one across.

Laughter.

Hon. Delegate Lihanda Kemen Savai: Thank you Chairperson for having been appealed for to talk this morning. I have been sitting there, carrying my hand, carrying my number.

Hon. Delegate Prof. Wangari Maathai: Honourable Delegate you have the floor.

Hon. Delegate Lihanda Kemen Savai: Yeah, and I have not been recognized as somebody in this house. I am Dr. Lihanda Savai, the National Chairman of Kenya Republican Reformation Party number 608 please. *Clapping.* There have been many issues where, I could have contribute but I have not. I will touch on some this morning.

First, appointments of the parastatals or civil servants should be made by Parliament and not by either President or Prime Minister, because they appoint their own people, even now we have that issue going on.

Expenditure of the country. We wonder what will be done for the marginalised people because some of them are being given maize, wheat and are bought, but no money is allocated to them for their development. You find that they have no food and houses, but they have been bought in for sugar and flour only. And they are the pillars of this republic.

Recalling of the Members of Parliament, they should be recalled very quickly, because I come from Sabatia and Musalia has been moving with money. Where did he get that money when he was voting and in some areas people are given only T-shirts, maize and they vote, but they have no water, houses, education and healthcare. They should be recalled by 30% with no sympathy and get somebody else to replace them every time.

The Bills that we are making. These Bills should be Africanised because of one thing. I have made studies even abroad, when it comes to African people on the international law we are not even considered. They consider the Westerners who colonized us, who are still ruling us economically. You find for instance the British in 1958 were asking “ why do you call this Human Rights important yet in colonies Rhodesia and Kenya your people are being killed there.” They said that those are our provinces, so shall we remain only provinces and we follow what America is doing? We follow what Britain is doing? We must have cultured laws here within the people if anything comes, we follow on our culture and find out how it happened and so forth. Why can't we build our own security to take care of us? The Americans and Israelites came to liberate only their people who had been bombed in the house. This is very wrong, we are not considering the welfare of our people.

Bi-cameral, I don't consider it important because Kenyans are very poor, they can't afford two Chambers. They only admire those who have gone up and were educated in English, to speak in English and have chances like the British are, who have exploited us for many years and have enriched themselves and yet we want their system. We should have only one Parliament, not to

have another mountain of what we you call second Chamber. For instance the Samburu, Maasai and Turkana what are they going to do? We want resources to be moved from central government where these people have been stealing these resources taking them abroad. They should bring back the resources for people to develop not to put them in big Chambers. That is selfishness and not something else.

I have been attacked and I must reply. Kalasinga mmoja attacked me here, saying that I am from the village. I am saying that when people got independence, the British colonial layer remained in Kenya and they are here and I am calling them paper citizens, they should leave us alone. Why should a British have our land when they have been killing our people and so forth. During the Mau Mau war, every British woman had carried a bag but it had a pistol to kill anybody before them. Therefore from this confusion, we are liberating Kenya, we are not going to look down. I am poor I would like to reach where they are making it every time. I am not coming here because I am fit, no I will contribute to Kenya even if I am naked. I remind the Delegates who came from the villages, it is fair they come here because the Parliament has sat on this Constitution for fourty years, without letting people know what Kiswahili is. We have a debt to repair this country as a nation not welfare of wasted people. Thank you.

Hon. Delegate Prof. Wangari Maathai: Thank you very much. I apologize for not seeing you. You had some wonderful things to say. Now I will take the last one 583 across. Point of order.

Hon. Delegate Kamama Asiman Abongotum: Thank you Madam Chair, my names are Honourable Kamama Asiman, M.P. Baringo East. Madam Chair, the Speaker who has just spoken was out of order but that is not my point of order. I just wanted to raise one pertinent issue here, that we have the people who are using sign language and it looks like this sign language is almost ceremonial in this Conference, we have not had the beneficiaries of this sign language. Isn't it in order to have somebody, may be a deaf person or the people who are beneficiaries of this language, let's hear them so that we also get the other part of the story.

Clapping

Hon. Delegate Kamama Asiman Abongotum: So Madam Chair I request after the other speaker, let's have the beneficiaries of this language, so that they can get their side of the story, because we may deny them freedom of speech. Thank you Madam Chair.

Hon. Delegate Prof. Wangari Maathai: Thank you very much. I guess that comes under the sector of persons with disability. So when we get there remind me. Thank you, so can we take that last political party contribution?

Hon. Delegate Apollo Njonjo: Thank you very much Madam Chair, my name is Apollo Njonjo from the Political Parties and I represent the Social Democratic Party of Kenya. Honourable Delegates, Madam Chair, I would like to address myself to one basic issue that we have under Legislature and under Representation. The entire of this exercise that we are doing, we are doing for the benefit of the people of Kenya. We have a whole chapter which talks about the supremacy, the sovereignty of the people of Kenya.

With all due respect to you Madam Chair, we are talking about sovereignty of people, who may be interested in some plants, who may be interested in some animals, but we are talking about a Constitution for the benefit of the people of Kenya. One of the cardinal principles of democracy and which this Commission has referred to, is one of equal representation and I wish to quote with your indulgence Madam Chair, at page 214 of the main report, the Commission has written "the delimitation of constituency and other electoral boundaries remains central to fair and free elections, so long as elections are based on single member constituencies". In that regard, therefore, Madam Chair, all single member constituencies should be as nearly equal as each other.

Therefore, to me, the manner in which the composition of the Upper House has been defined, does not at all address itself to this. We have already discussed this and it has already been said, that districts are unequal. They were created for administrative purposes and this will continue being administrative, doing administrative work. In fact for me, even if they were increased to a thousand more districts, it will still be alright, insofar as there are administrative units. But to

convert an administrative unit into an electoral area, without due regard to the numbers of people, to the sizes of that constituency, I think will provide room for a mess in this country.

I would like Honourable Delegates to refer and to remember that in fact failure to have equal representation is what triggered chaos in Nigeria in 1966. The issue was precisely the issue of representation and the issue of numbers. Again, after a new Constitution was written for Fiji, Madam Chair, crisis and trouble arose precisely because of under representation of dominant groups of larger groups in this society and smaller groups in this society being given over representation by Constitution making.

I would like us to be aware that the task we are involved in, is not only a task for building a Constitution, but by our own decisions here we can in fact create chaos and political instability in this country. Every vote must be equal to each vote that is the basis of democracy.

Clapping

Hon. Delegate Apollo Njonjo: If we try to breach that equality of votes, then all the rest of the work that we are doing here Madam Chair, will not be notch and will be useless and will be chaotic for our people.

Clapping

Hon. Delegate Apollo Njonjo: I urge and ask these Delegates to please consider that when we are talking about demarcation of boundaries for whatever house, that that demarcation be fair in terms of representation of both people and land, because land is also part of us. But the Constitution is made not for lands but for people.

Clapping

Hon. Delegate Apollo Njonjo: I appeal that be taken seriously into consideration, otherwise we could be in trouble. Thank you very much Madam Chair.

Hon. Delegate Prof. Wangari Maathai: Thank you very much. I will now move to another sector and that is the sector of the Persons with Disability and may be this is the point when we should address the group that was raised. The people using sign language, I can't say that in a sign language.

Laughter from Honourable Delegates.

Hon. Delegate Prof. Wangari Maathai: Yes, 462.

Noise from Honourable Delegates.

Hon. Delegate Prof. Wangari Maathai: Is that sign language?

Noise from Honourable Delegates

Hon. Delegate Prof. Wangari Maathai: Sign language, please.

Noise from Honourable Delegates

Hon. Delegate Prof. Wangari Maathai: Well you people with disabilities you have to decide, who among you is using the sign language.

Noise from Honourable Delegates

Hon. Delegate Prof. Wangari Maathai: 462, okay go ahead. Now how do we hear? That's not a sign language.

Convenor: Madam Chair, just listen, no that is okay, that's okay, I am the convenor Madam Chair and I want to explain to you that there is no Delegate with hearing impairment, because of the way we came into this Conference. So unless you are going to allow our observer and I would like to request that you do, if it is permissible by the rules, the only people who are

hearing impaired who are here are observers. What do you say about that? I would be very happy if they are allowed. Thank you.

Interjections: Point of order.

Hon. Delegate Prof. Wangari Maathai: I need some guidance here.

Interjections: Point of order Madam.

Hon. Delegate Prof. Wangari Maathai: I need some guidance here. What the coordinator of the persons with disabilities has explained, is that the way they came, let me first explain what I understood. 271 I will give you a floor if I explain, so that everybody understands. That, they do not have any particular person there, except observers that are using the sign language. So if this Conference says we break that rule, change that rule and say an observer speaks, then we can do so. If we do that is our business but 271 what do you have to say?

Hon. Delegate Amos Kiumo: Well, what I have to say is simple because there are four people here before us, who are working on the sign language. I believe they should be given a chance to contribute since they have been here with us, since the beginning.

Noise from the Honourable Delegates.

Hon. Delegate Ole Kina: Honourable Delegates, I would like to clarify one issue, we are not using the sign language only for the people who are here. We are sure that they are Kenyans outside there who are following this proceedings and so if they are not here, they will be able to follow the proceedings through the sign language. So let us not think that we are wasting this here. Carry on.

Clapping from Honourable Delegates

Hon. Delegate Prof. Wangari Maathai: Okay, otherwise I can allow one Delegate from the people with disabilities, 252.

Interjections: They are people who are looking at the TV.....

Hon. Amey Ali Dubat: Thank you very much Madam Chair, I would first of all like to say that the minorities are being intimidated. Everytime you talk about population, you talk numbers, it appears that the minorities in this country are now being intimidated from the floor. We are citizens, we have all the right to live, *clapping* we have all the right to be represented *clapping*, we are not here by the invitation of anybody Madam Chair, we are here by right. If God has given some tribes numbers, we have other resources that we can account for. So Madam Chair, we will not allow people to violate the oath, that we have taken here by saying how much they number. That is one thing.

The other thing Madam Chair, I would like to talk about the Upper House, the National Council. Madam Chair, democracy, if you look at democracy it is the most democratic country that are developed and if you want to have development, you must invest in the people, you must give people leadership. So the National Council, is very important, it is very important, it is going to be safety belt for this country. It was abolished because the Lower House wanted to rush at everything. I would propose that we call the National Council, the House of Nations, so that every district, every ethnic group is represented.

Madam Chair, I think this country has a lot of people with diverse culture, diverse interests, diverse religion and if we are going to keep this country together, some people must slow down. Some people must slow down, this country belongs to everybody, we are here to make a Constitution that will last long. That will be for 200, 300, 400 years. We must forget the politics of 1960 and 1963. We must keep this country together. We must see what is keeping us together, which is more important than what is parting us together.

Madam Chair, as an old man, I would like to say that we have not been invited to this country by anybody. As a member of the Somali community, I am here by right and I am not going to succumb to intimidations. Thank you very much.

Hon. Delegate Prof. Wangari Maathai: Thank you very much. I will now go to the next sector – the religious sector. The religious, among yourselves who didn't speak yesterday? It's very difficult for me to know – 541.

Point of order from Honourable Delegates

Hon. Delegate Prof. Wangari Maathai: Point of order, my God, where? Who has the point of order? 411.

Hon. Delegate Teresa Usunga Ogutu: I just wanted to inform you Madam Chairman that when it comes to Delegates from Districts, I am a very conspicuous Delegate because I also have disability.

Hon. Delegate Prof. Wangari Maathai: We decided Honourable Delegates today, to start from where we stopped yesterday and give people who usually speak at the end of the day, the first part of the day and that's what we are doing. So eventually, we will get to the Delegates. So if I could give the Honourable Delegates from the religious sector.

Hon. Delegate Zacchaeus Okoth: I am number 541. Archbishop Okoth is my name KC – Kenya Catholic Secretariat Religious organization. My first point is that we need the Upper House or the Senate.

Clapping

Hon. Delegate Zacchaeus Okoth: In 1963, I was around when they were going for Lancaster House, when they formed first Parliament. If we were able to have at that time the two Houses and we only had one election time for everybody, we should have the same thing we have

enough members in this country elected that are able once there is Parliament we put a structure that some of these people will be Upper House and others will be in the National Assembly. So it is possible to have that. The reason is very obvious, we cannot have a rule by just one session being passed and motions are passed quickly and decisions are made as we are yesterday here. We want that this be checked by the Upper House and given time to value the decision of the Parliamentarians.

Clapping

Hon. Delegate Zacchaeus Okoth: Number two, the age put there for the Assembly, I really think Kenyans are advancing at a high speed. We already have over ten Universities, we already have graduates laundering around, we have enough candidates in the future to vie for elections and be elected with some experience at the age of 35 or so. So I plead that let us have people in Parliament who are mature, people who are already elected but I don't rule out the possibility that certain categories of affirmation can have different other age as well ... I am going to rule that one out.

Number three, I say that we want equity is necessary in the sense that these constituencies do not give us problems. There is no problem if those constituencies where the minorities are, remain as the minorities be given their constituencies. But where they are numbers of people, then we should not have a constituency of 200,000 people, when other constituencies have only 5,000 people. And they are people able to have those constituencies be sub-divided and have other Members of Parliament. And I think in that way we shall cater for the various sections, for the quality of people we want because Kenyans have, we have quality people around – we have them, we have graduates, even chiefs can be graduates now in this country. We have people who can do this as well.

And finally, I would like to say that these percentages given one-third thirty percent, fifty percent, whether it is for various groups, I think some of them should be left to the Act of Parliament to last a few years or some years. But not put them in the Constitution, *clapping* because I think Kenyans right now even at the University level, the men and the women ...

gentlemen we are almost fifty percent – 50-50, 50-60. So within a short matter of ten years and applaud the Ministry of Education with this free education we shall soon be having fifteen years graduates in this country from all over the countryside. Thank you Madam Chair.

Hon. Delegate Prof. Wangari Maathai: Thank you very, thank you very much. I am looking for another .. yes lady 530.

Hon. Delegate Florence W. Ruhiu Mburugu: Thank you Madam Chair, I am Florence Mburugu representing religious organizations. I want to add my voice to what the other Honourable Delegate has said that this country has resources and Kenyans are people who can work, the presence of two Chamber Houses is an issue that we cannot brush off. Kenyans all over said that they want a two Chamber Parliament and this is what we are here to pursue, that we want a Parliament that will lay down policies, policies that will be implemented such that Kenyans can really utilize the resources of this country and pay taxes to support all the structures of this country. I want also to comment on the issue of representation of women and I feel that women being selected from the district will not actually give women the proper representation, taking into account their present situation. And I feel that something better should be kept aside for the women.

On the recall of Parliamentarians, I feel that Parliamentarians should be recalled if they do not perform. *Clapping*. This congress, is an example of what goes on in Parliament. We are seeing that there are some Parliamentarians who have not been here, yet Parliament is on recess. I wonder what business *clapping* such Parliamentarians have to say that they are representing people. Where are they? And why should people not recall them. I strongly support that such people should immediately be recalled and the people be given a chance to carry new elections. Thank you Madam Chair.

Clapping from Honourable Delegates

Hon. Delegate Prof. Wangari Maathai: Thank you very much. I will take one more, 522?

Noise from Honourable Delegates

Hon. Delegate David M. Gitari: Madam Chair, my name is David Gitari representing the religious organizations. I want to add my voice to the whole question of our equality and say that the pieces of it is God himself. The National Anthem begins by saying “Oh God of Creation, Bless this our Land and Nation”. And the Bible, from beginning to end, affirms the Affirmative Action. It says God created man in his image, he created him male and female he created them.

Clapping

Hon. Delegate David M. Gitari: And our unity really comes from God himself. We are all created in his image. We are all created in his image and therefore there is sanctity in every human being. And man and woman holds a very special place in creation. He and she was given mandate to rule over the earth responsibly and to multiply and to care for creation to be good stewards of that creation. And so that should be the basis as we discuss our unity as people of this nation. May I add that as far as women representation in Parliament is concerned, I think it is very important that we give a very special place to it. Because our experience in forty years, we have not had adequate women in our Parliament for forty years.

Clapping

Hon. Delegate David M. Gitari: The first Parliament had not elected woman. The last Parliament had only six or seven. The largest number we have now is only 17. So I feel unless we can register as the draft says, a third shall be women. If we leave them to compete with men, I think history has shown that they will still be marginalized in one way or another.

And finally, may I say that we have talked about marginalization and we might think that marginalization is only for pastoralists. Here in the city of Nairobi, we have many marginalized men and women. You go to slums there is no water, sanitation is very poor and so on and therefore marginalization, remember even in our cities like Nairobi, there are many people

thousands who are marginalized and we should be thinking about them. Thank you Madam Chair.

Hon. Delegate Prof. Wangari Maathai: It's difficult to cover, I want to recognize two sectors that I think should be .. I want to take one more woman and I want to take 517 or may be I start with 517 and then I come to 493 and I will close that sector for now.

Hon. Delegate Abdulghafur El-Busaidy: Thank you Madam Chair, I thank you for giving me this opportunity. I have several points but quite a number of them have already been discussed. If we go to article 107 (4). Sorry my name is Abdulghafur El-Busaidy. Article 107(4) it talks about the nomination and the elections. In that, if we are going to have proportional representation, then there must be here according to what is stated, what I want to add is that. All parties must give the list which include people from all regions and in order not of priority to any region. For example, if part (a) has to submit seventy names or ninety, the names should be given in a list in such a manner that one comes from this region, another one from that region, so that all the regions are covered. In that way, if that proportional representation is going to be there, is going to be there for all regions. Otherwise, it can come from one region alone. That is one.

And secondly, for these elections, if there is going to be proportional representation, then during the elections, there must be two separate ballot papers. One for the constituency and one for the proportional representation. Then I take another point in this is article 111 (1) g and h there it talks of a Member of Parliament who shifts from one party to another or who has been an independent candidate and then he shifts to party and if he does so, he is disqualified and the seat is vacant. I say that is not enough. That particular candidate, should be barred from taking part in the subsequent by-election, because that particular candidate has caused it or will have caused the country a lot of money for that by-election. So, if somebody wants to shift from one party to another, he should know that he is not going to be allowed to stand for the subsequent by-election.

Next one, is this question of recalling of Members of Parliament. Let us first of all, be clear in our minds what are the duties and the responsibilities of these Members of Parliament. Once that is established, and if they don't perform in what they are supposed to perform, then the citizens has the right to recall them. And at the same time, I feel that even if they are to be recalled, you need at least 67% of the total number of voters and the individual should be given the opportunity to defend himself whenever this arbitration or wherever this is going to take place. I have so many other points but quite a number of people have talked about them, I don't need to take any more of your time. Thank you.

Hon. Delegate Prof. Wangari Maathai: Thank you very much. Yeah, 493 please.

Hon. Delegate Agnes Abuom: Thank you Madam Chairman, my name is Agnes Abuom and my number is actually 513 but I don't have it. I would like to speak to article 102 (f), which talks about considering and approving international treaties. One of the Honourable Delegates has already referred to this, but I just want to affirm what is in the draft Constitution.

I think that many of us Kenyans are caught up with the treaties, conventions international that have been signed on our behalf by various actors within the previous regimes, that have had adverse and the very negative impact on our lives. Right now a number of us cannot even access the waters of the Lake Victoria, because of some treaties signed on our behalf.

I think Madam Chair, it is very very critical that this (f) in article 102 is in fact even beefed in its reformulation, so that it is not only considering and approving but it is also making it known to the Kenyan public; because with representatives governance, we do hope that those who represent us at the highest levels of our decision making organs will indeed make it public to the Kenyans before they take decisions on our behalf. It is not only structural adjustment policies that have had negative impacts, we have other such treaties and so it is very very critical that the Kenyans do participate and aware and endorse those treaties and conventions.

The second point I would like to refer to is the Affirmative Action. I think as proposed in the Two Chambers, it is very important that in as much as we may propose to have it in other

relevant acts of Parliament, that this Constitution that we are here to write and to confirm, truly puts squarely Affirmative Action.

Women representation, it is a disaster, it is a shame to be a Kenyan women when we know that we have a land, we have a women population that is highly educated in this region. It is highly endowed with resources but it finds itself completely on the periphery of the decision-making organs of this nation. When we meet with other women in the various forum, we are embarrassed to speak about our history, we are embarrassed to find our places in this region and I think it is a high time that we do recognize the potentials, the capabilities, the abilities of the Kenyan women, which have been recognized but which our own structures and institutions have decided to pay a blind eye and to shut them up. So, Madam Chair, I think it is important that we affirm the Affirmative Action and I would even have suggested 50%. If we are 52% of the Kenyan population, I still think that one-third percent is actually limited.

My final point is on the two Chambers, the two Houses and I think that given our history, given where we are, and if we want to avoid fragmentation and build a strong united Kenya, peaceful and coherent in terms of values, policies and dignity, it is important that we really find how these two Chambers will affirm the need for that unity; the need for the dignity of Kenyan people so that one of the Houses indeed should be a place where we have people who take time to think through certain issues and certain process and that they are not rushed through the Parliament the way they are right now. Thank you very much.

Hon. Delegate Prof. Wangari Maathai: Thank you, very much. I will move on to the next sector now, the NGOs. People who have not spoken please, be fair. Shall I take 459?

Hon. Delegate Oduor Ong'wen: Thank you, Madam Chair. I want to address three points and I want to start by saying that from the contribution on Article 112, either some of the contributors have not read the proposals or there is a deliberate attempt to distort the proposals. I am saying this because the way we have discussed the issue of the recall of MPs, it is not what is being proposed. I want to remind us that the proposal is based on three considerations.

One is that, the Member has become physically or mentally incapacitated and I don't know whether we want to have somebody who cannot perform because of reasons beyond their control to continue sitting in the Chambers and those who elected them are suffering.

The second one is the behaviour that will embarrass us or is morally wrong or whatever it is and it is very clearly stated and we have heard cases in this country where certain Members of Parliament have been alleged to have engaged in indecent assault or things like that. I don't whether we want to carry that kind of baggage in our place of law making.

The third one is the issue of desertion. Desertion is something that can be clearly defined and the proposal is requesting that, it is the Parliament that will go and work out legislation and this will be very clearly defined. So, I beg that we do understand the proposals. We are not saying that an MP should be recalled because they are not contributing to harambees or not attending funerals. Secondly, the issue of 30%, we are not saying that 30% of the electorate can sit and recall an MP. These are people who can be the minimum that can petition the Speaker on this very well defined ground. Then the Speaker asks the Electoral Commission to institute an inquiry and this inquiry will involve even the Member that is affected so that they can be able to defend their records. If you are being accused of being mentally incapable, you can be able to defend yourself and say "I am in my right faculty". So, this is basically an incentive to make sure that our MPs do perform and we have confidence in our MPs and all aspects of nuisance recall are taken care of. So, our Members should not have anything to fear on this.

Clapping

Secondly, Madam Chairlady, is on the issue of the Upper House. I don't know why we do not learn from our history. I remember in June 1982, we witnessed shame in our Parliament when within two hours, very fundamental changes were made in this country and may be that is what has contributed to our being here. The Constitution of this country was changed within two hours to make this country a one party state. If we had another Chamber that could be able to moderate, perhaps we would have not gone that route. So, when we are talking about this, --

Clapping

...please, let's try to learn from the history and from the very history, when people are saying that issues related to Affirmative Action should be left for legislation, again I don't know whether as Kenyans it is just because of short memory or it is just that we want to postpone a problem. I recall that in 1993, a Member of Parliament brought Affirmative Action Motion in Parliament and because Parliament was male dominated, that Motion was thrown away. How sure are we--

Clapping

How sure are we Madam Chair, that if we leave all these details to legislation and we know who are controlling our Legislature at the moment, that some of these would not be easily thrown away because it is out of that kind of history. Thank you, Madam Chair.

Hon. Delegate Wangari Maathai: Thank you, very much. Somewhere here in the middle? 458?

Hon. Delegate Odenda Lumumba: Thanks Madam Chair. I have three issues. I am Delegate 458, Odenda Lumumba for NGOs. My first comment is on the Upper House. I need to state here very clearly that the Draft as it stands now, does not reflect the views of the Kenyans that were collected by the Commissioners. When it comes to the role, the Upper House is mentioned in the very beginning of Article 102 but when it comes to what it is supposed to do, it is absolutely neglected. Therefore, since we are here not for our own sake but for the sake of the Kenyans who sent us to be here, I put my position with those for the Upper House by stating that we have the roles of that House very clear, as the roles of moderating the National Assembly, we have it as a check and balance to all the ills that have been happening in the National Assembly. In any case 40 years of our experience with the National Assembly has taught us more than enough that we can never trust them at any single moment as checks and balances of this nation.

Clapping

I would wish to move ahead and state that, when it comes to the composition of Upper House in Article 106, again, deliberately the Drafters tend to mix what the views were. The views were very clear and in their reports, people wanted that House to be the only other avenue of representing all Kenyan nationalities in affairs of this nation. When you look at the way it was framed, the representation was to come from the Districts, of course the Districts in this country, with all due respect, are made up of nationalities, what we are calling tribes. If you check how we are creating them, every group discovers that some -----(?) district. When you come here and deny them the rights because you think they are fewer, you are wasting your time because nationalities don't die.

Clapping

They live and they are alive regardless of how few they are. I come from a District where we have the minority, the Tesos. For all this time, the Tesos in Busia have been marginalized to the extent they were known as "Abateso", meaning simply Bantus, to make them look more Luhya than what they have been. You tell them to be represented under Busia, they will go on riot. We shall be solving conflicts. Therefore, the Upper House for nationalities sticks for those minorities.

Clapping

The point of recall; I want to add my voice to my colleague who has just spoken. This has nothing at all with the issue of vendetta against the MPs. We are basically saying we need checks for purpose of effectiveness and efficiency of performance. We don't need MPs, out of mediocrity, because they have bribed to go to the Parliament, stay there permanently, violating even the cardinal issues on which doubts stand may firmly. So, we are not being petty by saying we recall. If you can suggest any other mechanism of the checks on that National Assembly, it is welcome if it is not going to amount to a recall.

Clapping

I think I would want, finally, to say one thing which is also a bit historical. There is this element in 11(g), the whole idea of disciplining Parliamentarians if they cross from one party to the other. I am a historian, at least by training, and I am a good historian by all nature because I know a bit of our history. This element was introduced by KANU and more specifically by Tom Mboya around 1966, simply because KPU members were crossing over when KANU became unbearably useless as the party representing the interest of this nation at that material time, and this element was introduced. Why are we forgetting that history to the extent that today we want to discipline people simply because they differ in principle and they have the democratic right to differ. Where are we putting it in the Constitution? If any party, for any reason, feels strongly that they want to discipline their members, it should be in their own Constitution. So, I move that, that 11(g) should be removed from the Constitution and put where it belongs.

Hon. Delegate Wangari Maathai: Thank you very much. There is one, 470? 470 Madam.

Hon. Delegate Sophia Abdi: Thank you, Madam Chairperson, Honourable Delegates, my names are Sophia Abdi Noor, Delegate 470. I would like to comment on the following issues: On Article 101, that we should have two Chamber Houses. We should have proper checks and balances. What I am getting from the floor is that the roles and the responsibilities and the functions of those two Houses are not well defined in our Draft Bill. So, as it is, we are called here to help, to chip in so that we can freely define those roles. So, it is our responsibility as delegates to this Conference to see what we can amend on that line. My suggestion is that we have the two Houses because we will have proper checks and balances. Like last time when the MPs were increasing their salaries, I am proud that it is only the MP we selected from my home area that really opposed that. So, if we could have proper...

Clapping

...checks and balances, then we could go somewhere.

Clapping

On Article 212, on recalling Members of Parliament, I feel if we leave it at 30%, then this will be subject to abuse and waste of resources. Let us have a better ceiling, let's say 75% of the total registered voters can recall the Members of Parliament. Because if we leave it at 30%, then 30% who really did not vote for you, will come up and will recall you.

Then, Article 103, where approval of appointments is by the Parliament, there are many Commissions that are written down and I would like to suggest some additional ones like the Gender Commission is something which is sensitive and it is not there in all those Commissions which were proposed. So, I am adding Gender Commission and Historical Injustice Commission. Why I am saying this is, we know our history. To correct the historical injustices that were committed against the marginalized communities and women, we need this Historical Injustice Commission to be in place.

Clapping.

Lastly, I would like to talk about Mixed Member Electoral System. I am a firm believer of Affirmative Action because I come from a region that has gone through a lot of harassment, a lot of marginalization, a lot of other issues happen to my region. So, I believe if Affirmative Action is put in place, we will at least some of our issues addressed. In the Mixed Member Proportion, I have a concern in that this might be subject to abuse and it can be a campaigning tool for political parties. So, what I am suggesting is, particularly for women, we would like to have District Based Constituencies where every District in this country will have a Constituency that is preserved for women and women can vie there and men or any other person can vote for those, because they will represent the entire community and the entire society. Thank you, Madam Chairperson.

Hon. Delegate Wangari Maathai: Thank you very much. Now, we have one small sector, women, and we are proposing that we go through this, and then we make a break for tea. So it is the women representation now, I will take women representation. I will take 501.

Noise from Honourable Delegates.

Hon. Delegate Wangari Maathai: Hallo, we want to listen to the Honourable Delegate. What is the problem? Or you want to go for tea first? You want to go for tea?

Response: -----(inaudible)

Hon delegate Wangari Maathai: Okay, then let us give the Honourable Delegate time to contribute.

Hon. Delegate Joyce Majiwa: Thank you very much Chairperson and Honourable Delegates. I want to make a contribution to several categories but let me start with Article 95.

Hon. Delegates: Your name?

Hon. Delegate Joyce Majiwa: My name is Joyce Majiwa, I am representing women's Organization. I am Delegate number 501. I want to start with the importance of political parties that has been acknowledged in this forum. Political parties are very important. Therefore, it has been acknowledged that their funding part of it will come from taxpayers' money. If this is the position, then, political parties must be required to be socially responsible. In this social responsibility, they should be required to adhere to the principles of social justice, they should be required to adhere to the principle of inclusivity, they should be required to adhere to the principles of equal representation. Therefore, I would suggest that we maintain Article 95(3), which requires political parties to be funded, to also adhere to Affirmative Action.

Further, I am also referring to Article 680 (6) on boundaries. The limitation of political boundaries has been prescribed in Article 86. In this instance, I would say that the Districts should also meet these categories, which are put for representation. The Administrative Districts as they stand now, do not have representation as is required for political boundaries. When we have District representation, we should subject them to the principles which are laid out in article

86. I am also going to talk about there are Mixed Member Proportional representation. Madam Chair, this is the most innovative and progressive Article in this whole Constitution in my view and the Mixed Member Proportional Representation has several benefits. The only caution that I would give is that, we don't want members to make careers out of being in the list time after time. My suggestion is that, for two terms, a person can be in the list, and for the third time, they must go out and vie or they must go out completely. They cannot make a career of election after election being in the Mixed Member Proportional list. They should be members for two terms and after that, go out.

Clapping.

I support the Upper House and the Lower House. The only objection I have heard from this forum is that the roles are not well defined. It is for this forum to define the roles for the Upper House and to define the roles for the Lower House. Thank you.

Hon. Delegate Wangari Maathai: Thank you very much. I want to go that way, 233.

Hon. Delegate Mwangi Beatrice Mwaka: Thank you, Madam Chairman—

Hon. Delegate Wangari Maathai: I am also Chairman.

Hon. Delegate Mwangi Beatrice Mwaka: Okay, you are the Chairman.

Hon. Delegate Wangari Maathai: Don't worry.

Hon. Mwangi Beatrice Mwaka: I am Delegate number 233, representing the women in Kilifi. So, I am standing as a women Delegate from --

Hon. Delegate Ole Kina: Sorry, Delegates please, let's give her a hearing. There are a lot of talkings and a lot of movements. Please, let us give the Honourable Delegate a hearing.

Hon. Delegate Mwaringa Beatrice Mwaka: My names are Beatrice Mwaka Mwaringa, Delegate from Kilifi, and I am standing here to support the two Chamber Parliament system.

Clapping

I would like to say something on Section 116(5) of the Draft Constitution. It is proposing that the Deputy Speaker shall be the Chairman of all the Parliamentary Committees. Why should he take all the jobs? I thought we are here to give powers or work to other people. This one, I think it is not fair for him to chair all of them. I am suggesting that the Parliamentary Committees are best chaired by Members of Parliament who are experts in the affairs of the Committee, not the Speaker all through. Otherwise, it means that in the afternoon if this Committee is meeting, the other one can't meet. Let us give opportunities to all the Committees to meet any time, anywhere.

Section 114 3(a) of the Draft Constitution gives members of the public the right to petition various Parliamentary Committees on matters of national interest but we have not actually specified which issues. There should be specified issues whereby the public can petition. Otherwise, we are welcoming a lot of mushroom issues to be petitioned by the people in the Committees. Thank you.

Hon. Delegate Prof. Wangari Maathai: Thank you very much, I am going that way. I see 498?

Hon. Delegate Samuel Arap Ngeny: Point of information?

Hon. Delegate Prof. Wangari Maathai: Yeah.

Hon. Delegate Samuel Arap Ng'eny: Point of information Madam Chair, my name is Samuel Arap Ng'eny. I am constrained to rise on a point of information as regards the previous contributor. The Deputy Speaker in the National Assembly, that particular provision is not saying that the Deputy Speaker is Chairman of all Committees. The Deputy Speaker is the

Chairman of the whole House at every time when it goes into Committee and therefore, it is not all the other Committees because all the other Committees have got their Chairmen. That is all I wanted to inform the Delegates.

Hon. Delegate Prof. Wangari Maathai: Thank you very much for that clarification, I had recognized a number there 49 something.

Hon. Delegate Maria Nzomo: 498, Madam Chair. Thank you Madam Chair. My name is Maria Nzomo, I am Delegate number 498. I would like to start by making reference to the Article that refers to the seat of Government as being in Nairobi. Madam Chair, I have no problems with that, but I am thinking about the future because this is a Constitution we are making once and for all. For those who have looked around the rest of the world, you will notice that as the original capital cities which are usually the centre for both commercial and every other activity grow, countries find it necessary to separate the commercial centre of the country and it becomes like the capital commercial or industrial city from the seat of Government for obviously logistical and other reasons. Even within Africa, we have an example of that and that is Nigeria. You recall that Lagos used to be the Capital City of Nigeria and over the last few years, the Capital City has been moved to Abuja.

Hon. Delegate Kathurima M’Inoti: Point of order.

Hon. Delegate Maria Nzomo: I am---

Hon. Delegate Wangari Maathai: One minute, 454?

Hon. Delegate Kathurima M’Inoti: Madam Chair, I am sorry I really won’t want to interrupt Professor Nzomo but really she is taking us back to Article 8. It is not fair, these are things that we said that should be submitted in writing. We finished Article 8 the very very first day we started on this Draft. It is not fair to take us back to Article 8. Thank you.

Clapping.

Hon. Delegate Maria Nzomo: I would reserve my comments on that Madam Chair, I will submit them in writing. Then, let me come to the Articles which have been referred to over and over again and those are Articles 107 and 109. I know there is a consensus here and I am glad to see a consensus on the issue of Affirmative Action. I am completely in support of Affirmative Action and I don't want to belabour anything that has been said by the previous speakers, but there is one area that seems to be coming back and we need to go beyond it so that we can establish a complete consensus and that is the issue of percentages. Madam Chair, with your permission, I think we need to make a clarification here. The percentage issue is not an issue of legislation and the reason why it is not an issue of legislation but an issue of principle. In fact what we are saying is that we need a minimum in any country and this is a globally accepted principle; minimum 30 per cent representation of any one of the two genders in decision making positions "If that particular gender will be effective in participating and influencing decision making. That was the basis on which that 30% or one third, whichever way you want to call it, was established and experience in other countries has shown that it is a very important minimum.

That is a way of trying to move towards the fifty per cent, which is what would be the ideal situation, fifty fifty representation of the two genders. In other words, we are starting with the issue of gender equity, in order to move towards gender equality between the two genders. Having said that Madam Chair, I think our history in this country, even if we wanted to leave this issue to the legislation, tells us it is absolutely impossible to trust policy makers, the present or the future, to implement this. We do know, and I am not going to name the party, there is one party that told us in 1992 that they are going to give the majority of nominated seats to women and they put it in their manifesto. This never saw the light of day. So, Madam Chair, unless we have an exact percentage, this may not really happen.

I want to support the issue of recall of MPs, and we can agree on the methodology and the percentages. But this is also an issue of principle because we need to have an accountable system where these MPs are accountable to someone, and that person can only be the voters who voted them into Parliament.

On the issue of expenses which has been put forward, Madam Chair, in relation to the two Houses which I fully support, I would say that democracy is expensive. So, please, let us not talk about it being expensive. Creating viable and durable democratic institutions has to be costly. Our country will not always be poor, but we need to invest in democracy and having two Chambers is absolutely necessary. Thank you, Madam Chair.

Hon. Delegate Prof. Wangari Maathai: Thank you very much. Take another one here, I will have probably have 500 and then I will take 505. Make them very short so that we now make the break. 376 you are not a lady, we are now on women.

Hon. Delegate Kamla Sikand: Thank you, Madam Chair. First of all, I thank you my brothers here, who have been supporting the Affirmative Action, thank you very much.

Hon. Delegate Prof. Wangari Maathai: Give your name Madam Delegate.

Hon. Delegate Kamla Sikand: Kamla Sikand from Women's Organizations.

Hon. Delegate Wangari Maathai: Go ahead.

Hon. Delegate Kamla Sikand: Now we go back to Affirmative Action, Madam Chair, we will definitely like this to go into the Constitution. We have had an experience in the previous Parliament. The Honourable Beth Mugo, indeed tabled this motion in Parliament and we the women lobbied so much, we took to the streets, you know, to get to our Parliamentarians but they turned deaf ears. And in fact, the Head of the State, previous Head of State said Affirmative Action is of no consequence. So, we definitely need the Affirmative Action not to go into the hands of our Legislators, but into the Constitution.

Clapping

I heard some Speakers say that if this goes into the Constitution, it is going to be there forever. I feel, at the moment, the playing field is not level at all. When we do come to a stage when the

playing field is level and we women are there and we know that we can manage now, the Constitution can be changed a bit, I am sure Constitutions always have little changes made to them.

Next, I go to the issue of recalling the MPs. I do agree, it is a very very touchy issue but I am wondering which is the best way to go about it. Are the elections the best method to go about it? We do demand from our MPs to deliver and I do feel that we do have to often have proof that they have done what they promised to do to us and we don't only want to see them dishing us money and unga during the elections. We do want them to be there with us, working for us and be seen to be developing the areas they are meant to be developing. But I wonder which is the best method to go about it.

The third one, I definitely support the Upper House. We do need it, as some of our people have said. Let us call it 'House of Wisdom' or maybe a 'House of Nation'. And I also feel perhaps 35 is a bit young. Perhaps we do get a bit more wiser or a bit more maturer with age and experience. Maybe we can think of the age issue. But also I feel there are going to be 70 Districts and there is going to be a member from each District in this Upper House, you know, and -----(?). Now, I feel that if we are going to have representatives from each District, that is going to be very beneficial for the Districts because every member of the Upper House will take care of the development of their District which is a very good idea.

I also feel that we do need some form of checks and balances on the Parliament by the Upper House. I mean, we do recall, against the wishes of all Kenyans, the MPs did increase their salaries and if we did have some form of checks and balances by the Upper House, it wouldn't have happened. There are one or two other points, am I allowed to make on the same issue?

Hon. Delegate Ole Kina: Thank you, thank you Honourable Delegate, we need to get someone else please, thank you.

Hon. Delegate Kamla Sikand: Okay, one other thing I just want to say is--

Hon. Delegate Ole Kina: Thank you, you have to respect the Chair. Thank you.

Hon. Delegate Kamla Sikand: Okay, thank you.

Hon. Delegate Prof. Wangari Maathai: Let us have our last contribution before we make break for tea. Yes, Madam?

Hon. Delegate Fatma Ali Saman: Thank you Madam Chair, my name is Fatma Ali, 505, from Women's Organization. I would like to add my voice to the recall of MPs. I strongly support the recall of MPs mainly because we come from regions where we have been lagging behind in education in this country for the last 30 years, a lot of infrastructure is not available, even the KBC radio is not available to people in Mandera and we have had MPs sitting in Parliament doing nothing, and if possible, coming back for more than three terms. This is a very serious issue, you may ask yourselves--

Clapping

why such MPs are re-elected. Seriously, people in these areas are not politically conscious, they do not have enough civic education, and they do not know what their rights are. Most of them do not even vote, do not participate in the exercise of voting and you are hearing here that in North Eastern Province, we were under the emergency rule for all those years and those same MPs were sitting in Parliament. If I were one of them, I would have resigned.

Clapping

On the issue, maybe we need to work on modalities where the recall of MPs is not going to be misused. On Article 108, on qualification of Members of the National Assembly, it has been indicated that at least an 'O' Level certification is required. We are asking ourselves, the 'O' Level certification might be a barrier to so many intelligent minds. Intelligence is not tested in 'O' Level and generally, we have seen very able political leaders and even statesmen who were very poor in school. We would therefore create a barrier or an obstacle for people who can

potentially be very good leaders. This certification of 'O' Level is the writing and reading of Latin. The medicine man who is down there, who didn't have any education, is very very intelligent and psychologists will bear us witness that intelligence is in different areas and I would rather we have IQ tests done instead of 'O' Level certification.

Laughter from Honourable Delegates.

Finally, on Article 109, Clause 2, it is indicated under representation of women that within 3 years of coming into force of this Constitution, Parliament shall enact a law to implement the requirements of Clause 1. I would rather, I don't know how we are going to put it, but supposing the Constitution comes into force early enough in the next term, we cannot call for general elections until after those three years. But at least I would urge-- okay, this is an enactment, I now get it clear. I would urge that immediately the Constitution is in place, Parliament shall enact a law to implement the requirements within a period of less than two years. Thank you.

Hon. Delegate Prof. Wangari Maathai: Thank you, thank you very much. We will take a break here and when we come back, we will listen to the District Delegates and Members of Parliament. I might remind you Honourable Delegates, it is up to us on how we control the time. What we have done so far is just listen to one third of the sector. We still have two thirds. So, have a good cup of tea and come back as soon as possible.

Hon. Delegate Mafunda Chesmei Wambulwa: ...if he is elected, he would help those people to get it through. They are elected and then they go and disappear like they have disappeared from this house now. So what? Now let me continue ...Now, I feel that this is the reason why we don't develop quickly. So I say that if these people, we employ them, in a way – don't you agree with me that we are the employers of the MPs? Now can you tell me where you have an employee who makes his own terms and conditions of service? (laughter + clapping). So I say, if we want these people to work, ... once they have agreed that "I will help you to get water here, I will help you to get electricity, I will help you to get the school". If two years elapse and they haven't got anything to show that they are surveying or doing anything towards fulfilling that promise, then they are not worthy ... because even if we give them five years they will not do

anything. So, after two years they must show that, “I have estimated that to give you water, it will cost so much” He or she is not going to do it alone, because he/she is supposed to go to the Central Government and say, ‘my area needs water and we want your assistance’. The Central Government has a budgetary system whereby they will say, ‘okay, what can you do yourselves?’ Then he can say, “we have 10,000/= to do the work but we can also raise only 3,000/= so we need

Hon. Delegate Wilfred Koitamet Ole Kina: Thank you Honourable Delegate.

Hon. Delegate Mafunda Wambulwa: That is the reason why these people should not (inaudible). Every constituency should have three voters’ council. These are the people who will supervise to see if the MP is working or not. This is the way I thought about recall.

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

Hon. Delegate Wangari Maathai : Thank you very much. 226?

Hon. Delegate Rev. Muchuga: Thank you Madam Chair, this is the first time I have been noticed not the second. I have not spoken on this floor before. This is the first time.

Hon. Delegate Wilfred Koitamet Ole Kina: Proceed on, please.

Hon. Delegate Rev. Samuel Muchuga: Madam Chair, I stand here first to say that I support Affirmative Action. (Clapping) Even if we could put the percentage above one third I would go for it and that is why my first comment on Article 106 relates to that.

Hon. Delegate Wangari Maathai : Point of order?

Hon. Delegate Grace Nduyo: Thank you Honourable Chair for allowing me to raise my point of order. My number is 279, I am Grace Nduyo, a delegate from Tharaka District. I am seriously affected by the procedure you are following Madam Chair because that row is quite short

compared to this row. You are giving this row two chances or three and then skipping to the other row. While you are concentrating on the other row, I have been raising my hand since last week. So Madam Chair please, could you give more chances to this longer row so that we can all contribute. Thank you Madam Chair.

Hon. Delegate Wangari Maathai : Honourable Delegates, can all of you who have not said a word on this floor, can you all raise your hands - those who have not said a word. (noise from the delegates). Alright, okay, so that gives you an idea of how many people feel frustrated, therefore how much time we need to actually make everybody feel that at least I have said something. So that is the reason why we seem to be going like this because there are just too many of us who haven't said a word yet. Now I am going to tell you this. Let us help each other, if you see someone who has already contributed still recognized, you let us know, because we have a list here and we are using.... That gentleman according to our list he hasn't spoken, he prayed. If you want to consider that part of his contribution but I know he prayed.

Hon. Delegate Rev. Samuel Macharia Muchuga : Can I go on?

Hon. Delegate Wangari Maathai : So you go ahead.

Hon. Delegate Rev. Samuel Macharia Muchuga : Thank you Madam Chair. My number is 226 and I am a District representative of Nairobi.

Hon. Delegate Wilfred Koitamet Ole Kina : At this juncture I am overruling the point of order. Can you please let that Honourable member contribute.

Unidentified Delegate : My point of order is on the Honourable Delegate who is speaking.

Hon. Delegate Wilfred Koitamet Ole Kina: I have overruled, can you please control yourself?

Hon. Delegate Rev. Macharia Muchuga: I repeat, my name is Rev. Muchuga representing Nairobi. I wanted to comment on Chapter 1, 2, 3, 4, 5 and 6 but I didn't get a chance and I

cannot go back. So I want to comment on Article 106. I would suggest part (3) of Article 106 should read “for the purpose of election under Clause 1(b), the seats will be distributed as follows: four women representing each of the eight provinces” and end there. The second part which is (4) should read, ‘in the election under Clause 3, every voter may vote for only one candidate and the candidates - in the case of provincial seats - who are among the four top candidates, shall be elected. Avoid referring to Nairobi as a district. We have no district in Kenya which has got 3 million members of population.

Let us also go to Article 121. This Article talks about the remuneration of MPs. I am suggesting after (1) we add this Clause: that the salary, allowances and benefits of a Member of Parliament shall be subject to taxes applicable to other citizens’ income. (Clapping). Our Honourable Members are the people who are making laws and they cannot exempt themselves from the law. So all the taxes which are paid by the other citizens, they must also be applicable to the MPs. They are getting hefty allowances which are not being taxed. Madam Chair, I think they should also be taxed. That is all.

Hon. Delegate Wangari Maathai : Thank you very much. Delegates who have not said a thing since we started. 364?

heckling from Delegates

Hon. Delegate Wangari Maathai : Has he said something? Or if he has spoken?

heckling continues from the floor

Hon. Delegate Wangari Maathai : According to the list we have, he raised a point of order.

Hon. Delegate Ole Osoi: Chair, I just want to request my fellow delegates when somebody stands on a point of order he has not contributed to any motion. Therefore let me go direct to the point I have.

One, I first of all support

Hon. Delegate Wilfred Koitamet Ole Kina: Name and number please?

Hon. Delegate Ole Osoi : I am Ole Osoi from Kajiado, number 364. I support the bi-cameral Parliament and I suggest we call it a Senate not a Council. To make a difference between the Village Council, the Location Council and the District Council, let us have a Senate. Then the term should be five years just like the National Assembly. You remember these people are elected. These are people elected at the district not the constituency. They have a bigger population to represent, they cannot, of course serve for 4 years. Let us give them five year terms and the elections held, at one year intervals. The election for the Senate be held simultaneously with the District Administrators' election.

I suggest, if you go to Article 106(3)(a) they say four women from every province. My dear delegates, we have an animal called a province, which is only a more marginalizing factor of the more marginalized. Therefore if you talk of a province people like the Ogiek will never go to the province, they will just get finished at the district, similarly some other very small communities. Therefore, I suggest that we get 140 members at the Senate:70 men, and 70 women,two from every district,so that we feel we are represented there.

Then I go to the burning one. Article 103, Section 3(c):they say, 'once bitten, twice shy'. We had a very big animal which finished our land called the Commissioner of Lands, which is the one we have now. There is again a formation of another, National Land Commission. I don't know how that animal will appear in the eyes of the public. Therefore I am suggesting, even though the points of reference are going to be legislated, we want the public to be told how this is going to be legislated, because the point of reference is the area in Kajiado called Lodariak. People just went from Nairobi, they took an aerial photograph of the area, they sat at Ardhi House, sub-divided that land, issued title deeds and mortgaged our land. People proceeded to the funding institutions and took loans without even seeing the area. Therefore this body called the National Land Commission - first of all there is no State land, therefore there should be communities' land. The community itself decides what to do with its land. Therefore, I am

saying it should not hold any title, it should not have any powers to allocate, in the first place it should be banned.

Again, as we sit here now Madam Chair, we have Ministers of this Government moving around telling people they have identified some idle land to settle Kibera people so that Kibera can be rehabilitated. I want to inform them here that not a single acre is idle there in Kajiado, they will not settle those people and if they attempt to do that, they will do it over our dead bodies. Thank you.

Hon. Delegate Wangari Maathai: Thank you very much. Honourable Delegate 366.

Hon. Delegate Caroline Ruto: My name is Caroline Ruto, Delegate number 366 from Bomet. I would like to use this opportunity to remind some Members of Parliament who said yesterday that we want to recall them for the sake of getting handouts. What I would like to say is that the spirit behind recalling MPs was to make MPs more accountable to the voters. Since this will prove to be chaotic, I think we now support the issue of having an Upper House, which is the Senate, to check on the excesses of the Lower House.

Another thing I would like to say is that instead of having the MPP, I propose that we have constituencies created for the women, that is at the district level, so that we can vote our women from the district level and not having a party list just for the sake of getting the emotions of people. I think that is all I have to contribute.

Hon. Delegate Wangari Maathai :Thank you very much. Delegate 335, have you spoken? No, okay.

Hon. Delegate Julius Sitienei: Thank you Madam Chair. My name is Julius Sitienei, Delegate number 335 from Uasin Gishu, Rift Valley. Madam Chair, I have only two points to make. First is this question of the qualification of a member. Madam Chair, I tend to think that when I am 18 years old and I qualify to get an ID, I should vote and I should also be voted in. (clapping) Quite a number of our colleagues here, Honourable Delegates like the Youth, they have talked

also of having been considered. I want to make an appeal to the youth that yesterday, an Honourable Member of Parliament said that he was 32 years old and we know of some Members of Parliament who have made it to Parliament at the age of twenty something years. So this question of setting aside a slot for the youth, I tend to think, should not arise, because once you are 18 years and you can be voted in then you should also be elected.

Now coming to the question of recall: initially I was for the idea of recall but I think I am changing my mind. That unless we set some parameters of what we expect of our Members of Parliament or even the Councillors, because I tend to think that the recall is not only for the Members of Parliament, even the Councillors should also come in. Once we set up what we expect of a Member of Parliament, then ---- three times a year they should come back to the constituency level and we check from what we have set aside, what they have achieved for the time that they have been in Parliament. If nothing has been achieved then we can now think about the next alternative. Otherwise, that is all I had.

Hon. Delegate Wangari Maathai : Thank you very much. 386

Hon. Delegate Edward Ohare: Thank you Honourable Chairperson. My name is Edward Charles Ohare, the number 386 delegate from Vihiga. Chairperson, I am for the bi-cameral type of Government. In the National Council, I suggest strongly that it should consist of mature people: if not the senior citizens, at least people of age 40 and above, so that these people can offer advise. When it comes to controlling issues particularly from the National Assembly, then there will be people with sufficient experience. I also suggest, therefore, that in the National Council where we need 70 people from every district and 30(power interruption)

Hon. Delegate Wangari Maathai : Go ahead

Hon. Delegate Edward Ohare: Women should not merely be appointed but there should be established constituencies. I do not favour this idea of nominating people. I think by nomination we don't really get the right person for the people. If these women are going to represent people

and the women, then a constituency should be established particularly on district level, specifically for women, 30 seats that will go to the National Assembly.

I would like to turn to Article 109 still under National Council, where I feel that we should have at least 4 people and these should be in fact women, so that these women can be given the right opportunity for election. Also in Article 102(2)(i): the role of Parliament - it says that the Parliament shall review the conduct of the President, Vice President and Prime Minister. I suggest that it should not end there. After they have conducted their review on the President, Vice President and Prime Minister, their decisions must go to the National Council which should also approve the decisions of the Lower House. The decisions should not only remain at Parliament level.

Finally, Honourable Chairlady, I feel very strongly that Affirmative Action on the women should be there but in the Constitution, we should give it a period. I suggest 15 years will be enough and when things have stabilized, then may be we can now do away with Affirmative Action. Thank you Madam Chairperson.

Hon. Delegate Wangari Maathai: Thank you very much. I am trying to go back that way. Is it possible to identify an area which has not spoken? Delegates whose area has not spoken ***from the floor: Here, here.*** 392?

Hon. Delegate Paul Nakitare :Honourable Chairperson, I would like to make my contribution as follows. My name is Paul Nakitare, Delegate 392 from Bungoma. My first contribution is that those who are of the school of thought that says or is worrying about the size of the document: I would say that at the moment we are speaking generally and we should not worry about the size of the document until we come back during the consideration time.

Secondly, I would like to suggest that the reason why we are differing on some of these suggestions, is that we are not placing adequate emphasis on the genesis of these proposals. For example Honourable Chair, when we are talking about the Senate or the Upper House and all other contributions related to that: this is derived from ideology or logic. I think every draft

proposal that we have is derived from the logic or the reasoning or the rationale of that particular proposal. That is why for example the proposal on the bi-cameral type of Parliament I think comes from the logic of devolution of power, maybe this one should have come first. We are trying to share responsibilities and create checks and balances. That is why I think, many of us are saying that there is a great deal of reason in proposing the ideal of bi-cameral, which I personally support for the present. It is important that we share power in that way. Mind you the reason why we are here trying to draft a new Constitution, the genesis of it was excessive power in the hands of one person, of the President. So we should not now renege on that particular proposal.

Now secondly, I would like to agree with proposal that Parliament represents the cultural diversity of the people, symbolizes the unity of the Nation and determines the policy of the Republic. Our Members of Parliament should remember the significance of our culture and I am therefore suggesting that we should also have an important cultural dossier in the document.

Finally, I am saying that we should not vest all the legal powers in Parliament because in the devolution of power where we have councils and so on, they should also have responsibilities for enacting some powers. The issue of leaving the Parliament only to legislate and arguing that the Constitution should only have principles, it can also be a dangerous proposal because of personal biases which will be involved in the requisite interpretation. Thank you, Honourable Chairperson.

Hon. Delegate Wangari Maathai: I am also now trying to check on the basis of areas which have not spoken. 492 I was looking at you and I have a list which indicates that you have spoken Madam.(noise from the floor) She has not spoken. Oh, it is the sector on women organizations when we are really dealing with the Delegates. We are still dealing with district Delegates. (noise from the floor) is she on the list of district delegates? No she is with the women organizations. So I am very sorry, we have to stick to 385. Let me come this side now and I am going to go up there, 388 before you 'chinja' me or something

Hon. Delegate Caleb Jumba :Thank you Madam Chairperson

Hon. Delegate Wangari Maathai : I don't know what to do. Can we Delegates there is absolutely nothing I can do unless we extend this time. You, yourselves saw how many people have not yet said anything. So I am just trying to come back here and I have a tendency not to see this area and just go around, unless you want me to go this way. I was coming back this way, may be they are complaining... Let us have 385.

Hon. Delegate Caleb Jumba :Thank you Madam Chairman. My name is Caleb Jumba, Delegate No.385 from Vihiga. I would like to disagree with the people who would like recalling Members of Parliament from the House. This will also apply to civic leaders. I would like to draw your attention to the fact that election is very expensive, but sometimes people who have not stood for election don't understand. This time, because people are being corrupted, you give money for people to vote - like last time when people have not voted because they took money from different people and they don't come and vote. So if we say recall a Members of Parliament or a Councillor, we shall be spending money on the people which they are supposed to use for development. So I would say somebody should complete his or her five years' term in office.

On the side of voters' registration: Kenya has forgotten the prisoners during registration. Prisoners actually should be registered to vote. At the time of voting, they should come and vote like the Army people, the people in hospitals also should be brought to vote - because one time you will be in a prison and you will find that when others are voting while you are in the prison you can't vote. So I am requesting that the prisoners be allowed to vote.

On the parties' registration : there are now 42 parties in Kenya, out of 42 there might be only 14 with Members of Parliament. So if we say the fund will go to these parties, some of them actually should be able to have 25% in every province in order to be registered. The present situation is that somebody will register and send their certificate to somebody else.

The matter of defection of Members of Parliament and other people: I would like it to be passed that nobody should defect from one party to another because when by-elections are called, we are using public money. Thanks very much, that is all I wanted to say.

Hon. Delegate Wangari Maathai: Thank you very much. I am going to call delegates in the region of the 400s because they haven't spoken apparently, many of them. The 400s. 433? What is that 4....

(heckling from the floor: Order, order).

I am going to listen to your order but we are trying to look at the list and we are trying to look at areas which have not been represented.

heckling from the floor

Hon. Delegate Wilfred Koitamet Ole Kina: Honourable Delegates, I know every member would like to speak but we are seeing that there are certain provinces, for instance, or districts that have had their say and there are others that have not at all. We are using this list here and we would want at least to give an opportunity to a member from every province. So please bear with us.

more heckling from the floor.

Hon. Delegate Wangari Maathai: Order, who has the order? There are so many orders. 532. Order, 532.

Hon. Delegate Lumatete Muchai :Thank you Madam Chairperson. My name is Lumatete Muchai, Delegate number 532. My point of order is simple. I think the purpose of the Chair is to control debate. What I have seen is that quite a number of Delegates are repeating themselves. They are not saying anything new. I think it is the responsibility of the Chair to ensure that when we contribute, we don't repeat ourselves. We must be saying something new, otherwise we will sit here forever. (clapping)

Hon. Delegate Wangari Maathai: Actually that is a good point, but I think it is the delegates who must control themselves, because I don't know that people have repeated until they have

repeated. I can't undo what has already been done. What I think I want to try to do, unless you disagree with that is to ensure that areas which have not been represented, are represented. Delegates may not all speak but at least we want to make sure that areas are represented.

Okay, now where should I start, shall I start from here or go back there?

shouting from the floor, 'here'

Now, let me go this way. 285. Okay, 285 are you ready?

Hon. Delegate Naleah G. Kithumbu: Thank you Madam Chairperson. I am Naleah G. Kithumbu, Delegate number 285. I just want to contribute a bit by saying that I really support the Affirmative Action, just because when we have women in the offices, if you visit those offices, you will see organized offices. There is no woman who leaves her house in disorder. Everything is in order. So if we have women being given places in various sectors, you will see wonders. **(jeering from the floor)**

Hon. Delegate Wangari Maathai: Honourable Delegates, give the Honourable Delegate time to make her contribution. We are going to break soon.

Hon. Delegate Naleah G. Kithumbu: The other one is about the women who are really in action at present. They are doing a good job, so I support that women should be given time to do their work.

The other one, the point that I would like to suggest is about Article 84...

Hon. Delegate Wangari Maathai: Delegates you are not listening.

Hon. Delegate Naleah G. Kithumbu: Clause 84, please give me time. My fellow Delegates give me time. I will talk on Clause number 84 where the Electoral Commission is supposed to nominate or to appoint the employees and the Commissioners with consultation with the Public

Service Commission. Here I think that Clause is a bit open and I would suggest that after they consult, they just employ or appoint the people through a written interview or exercise, to get the best people to do the job.

The other one is about the natural resources. I would like the Government to put in place that it should go countrywide and see where there are needs for natural resources. For example, there are some places in our country where there is no water and I hope it would be better for us here to do what we can do to get the water for our country. Thank you.

Hon. Delegate Wangari Maathai: Thank you very much. Delegates, I see a lot of movement, it is lunchtime and perhaps we should break for lunch. I want us, before you leave please, I want from the Chair's side, I would like some guidance. I am getting some notes here indicating that perhaps we have exhausted this subject ...

shouting from the floor 'no'

Well, hold it. You know we still have not listened to the Members of Parliament, we are still on the Delegates.

shouting from the floor

So I would like to see how many of you want us to continue with the discussion?

All Honourable Delegates shouting 'to continue'

Hon. Delegate Hubbie Hussein Al-Haji: **Point of order.**

Hon. Delegate Wilfred Koitamet Ole Kina: There is a point of order. Delegate 251.

Hon. Delegate Hubbie Hussein Al-Haji: Thank you Madam Chair and Honourable Delegates. My point of order is that yesterday on this Chapter, we rushed over it and the Commissioners

rushed over it and we did not have enough time to contribute yesterday. Therefore we must be given time to contribute today, even if it means going on until evening. (clapping)

Hon. Delegate Wangari Maathai : 277 for order and then we break for lunch. The sense we are getting is that the discussion should continue.

Hon. Delegate Godfrey M'Thigaa: Thank you Madam Chairlady. Mine is to say that all Delegates came here for two reasons to say, to be heard and also to listen. Therefore until we have fulfilled all those, there is no question of time limit, because, of course there is nobody who came here to listen and fail to respond. Thank you. (clapping)

Hon. Delegate Wilfred Koitamet Ole Kina: Okay, let us go for lunch and be back by 2.30 p.m. Thank you.

Hon. Delegate Prof. Wangari Maathai: We have an agenda ahead of us, so we want to start. There is a special that we have not called, we didn't even call them yesterday, and so we want to call them. They know themselves. It is from 617 to 629. Are we together? So delegates, I'm dealing with the special groups now, alright? Very well, we are ready to go. Let me start with 576 and 251. 576.

Hon. Delegate Simon Mwai Gakuya: My name is Mwai Gakuya, Rasta, political artist representing Political Parties, Chama Cha Uma, my number 576.

Interjection:

Hon. Delegate Prof. Wangari Maathai: Excuse me please, are you on a point of order?

Hon. Delegate Simon Mwai Gakuya: Yeah.

Hon. Delegate Prof. Wangari Maathai: Okay.

Hon. Delegate Simon Mwai Gakuya: I was giving a suggestion that we could have those people who are going to make suggestions have their names written there in the evening so that

the next day morning those who did not give their suggestions to the Chair and the Delegates could be looked at. If we could use that, nobody is going to be left out, nobody is going to complain because we will go according to the numbers that have been presented by my fellow delegates. Maybe we could use that system. Thank you.

Hon. Delegate Prof. Wangari Maathai: Alright. Anyone of you who feels that he will support that idea, you let me know by giving me a note or something and the secretariat will handle it, but it is an interesting suggestion except that we will still end up with all the people who have not spoken. But the idea is that there won't be the very subjective selection that we are doing in front here which may appear biased sometimes. So now can I call the special groups? Madam, 251.

Hon. Delegate Hubbie Hussein Al-Haji: Thank you Chair, and Honourable Delegates

Interjection

Hon. Delegate Prof. Wangari Maathai: Which is your name madam?

Hon. Delegate Hubbie Hussein: My name is Hubbie Hussein, Delegate number 251 and I would like to comment on a few things. I would like first of all to affirm Affirmative Action because I am here by means of Affirmative Action and I was born into Affirmative Action accorded to me by my religion and which on the other hand is snatched away by my culture.

I would like also to support the bicameral Parliament system. It conforms to the African traditional governance system and is in accordance to that because in traditional governance system of most Africans elders came together and discussed issues. Even when they resolved an issue those elders who could not come to that meeting either because of their age or because of their health status were consulted, and they either affirmed or offered another solution. Therefore I also affirm the bicameral Parliamentary system.

And then the mixed member proportional representatives – I feel it’s a dream and I feel it is a beautiful one but I wonder why it was borrowed from Germany, a place democracy was respected and resolved. Here in Kenya we operate on regionalism, we operate on sectionalism and bias subject to abuse. Therefore, I will suggest that women constituencies in each district be created and every woman has a chance to the process, the way we have it to this Conference today.

And then the other issue I would like to comment on is the issue of recall of Members of Parliament. I do oppose this one because of my own reasons. For one thing I feel that our Members of Parliament are intelligent people who are good enough to represent us, but we, the community where they come from, do not understand what representation is; we always look for handouts, chasing them around. There are many members who have given this view to the Commissioners and today they are Members of Parliament, and when we call them their mobile phones tell us ‘hapatikani kwa sasa’. Why? Because they have seen the reality.

The second thing is, there is nothing wrong with our Members of Parliament but there is something wrong with our governance system; it is not giving them an enabling environment to operate in. How many Members of Parliament have been detained because of you and me? How many Members of Parliament have been rendered garbages and impotent because of you and me? How many have died because of Ngong’ Forest and Got Alila? Thank you very much.

Hon. Delegate Prof. Wangari Maathai: Thank you very much. We are looking for special groups. If there is any other person from special groups, then I will pick. Special groups?

Speaker: ----- (Inaudible).

Hon. Delegate Prof. Wangari Maathai: You are not Special Group, are you? Special Group? The Special Interest Group, it’s a holding from 617 but I’m going to give this Special Interest Group, because nobody is showing me a card but I want to give it to the blind lady up there in green. The blind lady there has been drawn to my attention, the girl using brail. Yes madam.

Hon. Delegate Teresa Usunga Ogutu : Thank you Madam Chairlady. At least you have helped me to come to the stage. Right now, I would just like us to note that in each Chapter, there are two types of issues: there are the negotiable issues and the non-negotiable issues. In Chapter 7, the first non-negotiable issue is the bicameral House, or the Upper and the Lower House.
(clapping)

The other non-negotiable issue is the recall of the Members of Parliament. The reason why we are having to recall them, the people told me that they are supposed to be recalled to be warned, to be advised, to be seen at home with the people. So that one should be taken into account.

When I look at Article 102 Clause 2(e), I realize there is something to do with scrutinizing and overseeing, and I think that the first word to come is to oversee and then you scrutinize. So could the Commission realize that they need to put the word overseeing before scrutiny please.

Then I also realized that Article 101 was not put as a number, it was just put as (a), so please, that one has been overlooked, let us put that down in the Draft.

Then I also found out somewhere here that there is a place where they say the qualification for electing the Members of Parliament and I quote: 'that a Member of Parliament should be elected as Member of Parliament when they have at least had a pass in form four'. I am asking, what type of pass is needed? Because we have the higher pass and the lower pass.

Then there is a place in Article 120 which talks about the Kenyan law; the Kenyan law shall be kept in the library for reference. Now for people to understand such a phrase, we need to have to know at least to explain the following: the Kenyan law, the laws of Kenya, the law of Kenya, as in regard to the Kenyan law. So, that one should be explained for people to understand and therefore to know what they expect to find in that library you are talking about. Still on that note, there is another phrase which is referred to in Article 132 - the Government of Kenya. There are some people who always talk about the Kenya Government, so you have to be very careful to explain the following: the Kenyan Government, the Kenya Government, as in regard to the Government of Kenya you are talking about.

I have got more to say, and if I were to go on saying them they will fill up all the shelves in this place, so I think they can be found in the references I have given up there. Thank you. *Clapping*

Hon. Delegate Prof. Wangari Maathai: Thank you very much. Honourable Delegates, it is virtually impossible to listen to everybody, and what I'm going to do now I'm going to suggest that we move to the Members of Parliament.

Interjection: Point of order

Hon. Delegate Prof. Wangari Maathai: We want to move to the next sector, and if there still need be,

Interjection: Point of order.

Hon. Delegate Prof. Wangari Maathai: I'm going to take your orders, I'm going to come back to you, just let me first finish what I'm saying, that we agreed that we take all the sectors and if need be then we go back. But it would be unfair then to continue and we haven't covered all the Sectors. Remember we are now on the Delegates, I was suggesting we go on to Members of Parliament. What is the point of order, where is it?

Interjection: Here, it is here.

Hon. Delegate Prof. Wangari Maathai: Okay go ahead wherever you are.

Interjection: **I am here.**

Hon. Delegate Prof. Wangari Maathai: Say your number.

Hon. Delegate Kiriro Wa Ngugi: My number is 320, I am at 8.00 o'clock from where you are sitting.

Hon. Delegate Wilferd Koitamet Ole Kina: **Go ahead.**

Hon. Delegate Kiriro Wa Ngugi: My name is Kiriro Wa Ngugi, Delegate from Kiambu, point of order. We may be putting premium to the number of people rather than to content. There is a better of conducting this process. Since we have adopted a process copied from Parliament

where usually there is only one issue, one Motion, that is before the House, it is possible then during the general debate to do it the way we are attempting to do. But in circumstances where there are thousands and thousands Motions possible, we need a better format. I am suggesting for example, that the Chair in a session is quite competent to decide, one, what are the pertinent issues and rationale that need further explanation? They can even call for whoever has a contribution to a useful area. It is not necessary that each of us speaks but those who do speak, we must cover all the ground so that by the time we get to committee, issues raised in a Chapter are already clear in our mind. I sat here painfully throughout the last three days, I am unable to raise a point, I am unable to raise the codes, the formative wrongs and we are putting a premium on non-issues. I would be quite happy never to speak so long as the issues have. So if you are suggesting that we do put matters in writing to you on content, not necessarily on names but on content. So, you clarify that the contents satisfy the Chapter so that we can move to the next Chapter. Otherwise, with six hundred people we can be here until the year 2007.

Interjection

Hon. Delegate Prof. Wangari Maathai: So are you suggesting the Chair to go to Members of Parliament?

Hon. Delegate Kiriro Wa Ngugi: I am suggesting that from now on you decide what area on legislature has not been covered and then call a competent Delegate who says, "I want to speak on this issue". *Murmuring*

I am not even also clear whether we have five minutes or two minutes, because we started with ten minutes originally, we came down after great pain of argument to five, now I hear it is two, then somebody gets five, I'm confused. Do I prepare for two, five or ten?

Murmuring

Hon. Delegate Wilferd Koitamet Ole Kina: Honourable Delegate, I think you are not being fair to us because we are allocating every speaker five minutes, and I think we should allow the Delegates to continue contributing because we are also restricted by time. Should we continue wasting our time on point of orders, we will not have the opportunities to respond to the issues

that we are raising here. So can we now please proceed and have a few Members of Parliament to comment?

Murmuring

Hon. Delegate Prof. Wangari Maathai: Well, the Chair has overruled the point of order so that we move and I want to suggest that we go then to the Members of Parliament. And I will start on this end, number 15 I think you spoke yesterday. (*noises*) The Member of Parliament who spoke yesterday does not speak. Where is 11? I don't see 11, where is 11? Okay number 11.

Hon. Delegate Ayacko George Mbogo Ochilo: Thank you very much Madam Chair, I want to make a very brief contribution, there is this very popular issue regarding recall...

Interjection

Hon. Delegate Wilferd Koitamet Ole Kina: Name and the number please.

Hon. Delegate Ayacko George Mbogo Ochilo: My name is Ochilo Ayacko, Delegate number 11. I want to say that there is this very popular issue regarding recall of Members of Parliament. I believe it is popular among us because basically all of us who are here are politicians and enjoy politics. But, take a situation where there are two parties and one party won election by a margin of, say 10ft. If the other party which was in Government had the resources, it would be able to recall the entire ruling party and we could have General Elections every year. So this idea of recall may appear popular if you look at it from a micro perspective, but if you look at it from the cost that it will have on the exchequer, if there is a situation where 50 constituencies have recalled Members of Parliament, and every constituency a by-election costs about 40,000, then we are going to have elections and your economy cannot grow. So this is something that Delegates need to factor.

There are also issues that in one constituency you can recall somebody this month, and the person who gets in next month is also recalled; so there will be perennial recall and there may be no legislation or development in that constituency. So we are asked it may appear very popular, we should factor practicality, pragmatism, and the cost that it will visit on the exchequer.

The other issue is, if you look at the part that deals with the legislature, I think it would be proper to fix the total number of seats that Houses, be they two or one, should have over a given time. In the current Draft it is said that there shall be a number of seats as Parliament may provide. That may lead to a situation where the House keeps on expanding depending on the mood of the Parliament that will be there at that particular time. If you look at for instance the United States of America, you will find that the number of seats is fixed or given; there is a given maximum, there is also a given minimum for the number of people that are required to form a constituency. Those are the two issues I wanted to touch on. Thank you.

Hon. Delegate Prof. Wangari Maathai: Thank you very much. 46.

Hon. Delegate Katuku John Mutua: Thank you Madam Chair. My names are John Mutua Katuku, MP Mwala, and number 46, the one you have given me. Briefly, I would want to touch on the issue of recalling Members of Parliament and say that I totally disagree with this system and I would want our Commissioners who presented this Draft to tell us, where does it work, and how does it work where it works? In which country do you have in mind this works? I have in mind, Madam Chair, a situation. For example, when I went to Parliament first, I got 40% of the votes cast in my constituency. The person who was next to me had 35% and the rest at something like that; a total of 60%. 60% of the people in Mwala constituency, when I went to Parliament first, were against me. This time it was better, I had 80%. Surely then, the 60% would have ganged against me and removed me in the first one month. Then surely we must look for a mechanism of also measuring when you are talking about recalling. You must know, what is the role of a Member of Parliament? Is what you call the role of Member of Parliament known to the people? Our people don't even seem to know the role of Member of Parliament. So it is also us to do civic education to the people who have elected us because they have expectations of me. For example I have had contributions here, people saying somebody who has gone on to promise a bridge, and he has not constructed that bridge, he should be recalled. Surely, is that the way it operates? It is the Government which should be recalled. The role of a Member of Parliament in that situation is to raise the issue with the relevant authority. If the authorities do not do exactly what is supposed to be done, surely, how do you blame the Member

of Parliament for not putting up a bridge? So those are the issues I want us to consider when we push for this business of recalling Members of Parliament.

The other issue, Madam Chair which I would want to comment on is the 1st Article of this Chapter, the two Houses -- the Upper House or the Council, and the Parliament. Madam Chair, my provision is that we don't need two Houses; we need to strengthen our local authority, give them power to administer and do things which pertain the local issues and maybe retain the Parliament we have and more so allocate more resources to our local authorities -- viable local authorities -- that will deal with local issues rather than having two chambers in the name of devolution of power. We are trying to create institutions which we will not be able to manage; let us have institutions which we can manage. I would propose we have one Parliament which will deal with whatever issues to do with legislation and others, and then strengthen viable local authorities Madam Chair.

I would also want to comment on the issue of mixed proportional system. Madam Chair, this mixed proportional system, in my view, is to address two issues. Gerrymandering, which has come up in the previous 20 years, has resulted in more constituencies where constituencies have been divided in loyalty without considering the factors that have been said here. If we were to be sincere, we would further address the issue of gerrymandering of our constituencies. *(clapping)* Let's face it; some constituencies are villages while others are so big. We must put into consideration population and geographical region and empower an independent Commission to review these boundaries so that we have one vote, one man, and afford to be equal to the other one as much possible as it should be. So Madam Chair, I would want to imagine, that is one reason why this is being brought in.

The other one is on Affirmative Action. I am a believer of Affirmative Action, and I would not want it the way it was proposed in this document. Affirmative Action, I support it in the Uganda system, whereby slots, even if it is 30% of all Members of Parliament, let them be created, on district basis or in other constituencies which we may come up with, but then let us have at least a third in Parliament, but not by direct system.

Madam Chair, I would want to go on and also caution those who are pushing for Affirmative Action, can you watch the people who are clapping when you talk about Affirmative Action, men are not clapping, I don't know whether you have noticed. So you better come up with a system which is acceptable to everybody. *(Clapping)* Somebody was saying, and I have seen some Delegates here suggesting it is agreed; it is not yet agreed. Let us agree on a system acceptable to all Kenyans and I will go for the district system where women will compete on that system. Thank you very much.

Hon. Delegate Prof. Wangari Maathai: Thank you very much. 33, point of order? There is no point of order, 33?

Audience: There is.

Hon. Delegate Prof. Wangari Maathai: There is?

Hon. Delegate Teresa Usunga Ogutu : Madam Chairlady, I am ...

(Noise from Honorable Delegates)

Interruption (Hon. Delegate Ogutu Teresa Osunga): Madam Chairlady, I am very much perplexed because of the way I have been referred to as blind. It made me even to be so shocked that I could not even say that I was Honorable Delegate number 411 from Homa-Bay District Nyanza. Thank you.

(Clapping from Honorable Delegates).

Hon. Delegate Prof. Wangari Maathai: Delegate 33.

Hon. Delegate Mutahi Kagwe: Thank you, Madam Chair. I am Delegate number 33. My name is Mutahi Kagwe Member of Parliament Mukurweini Constituency. Madam Chair, the basis of

some of the issues that have been raised here, in this draft bill are(Inaudible) legitimacy to an extent. Madam Chair, we are talking about an Upper House, a Lower House and so on.

The Upper House is based on institutions that are not legitimate. You cannot legitimize an institution on the basis of illegitimacy. We are talking about an institution that is based on districts that are not even recognized in the constitution itself. Madam chair, we have to move forward on this one and ask ourselves whether there is any philosophical legal or Constitutional necessity of an Upper House in the first place, even before we go in to discussing in the details of that house. The more I read these documents Madam Chair, the more I am unable to discern any reason why there should be an Upper House, but perhaps, I would be educated in due course. Madam Chair, I am also unable to design a number of things, one of them including the definition of minority. There is a lot of discussion in this thing about minority. Women as a minority, men as a minority, and certain tribe as a minority. It is good to for us to define these things so that we know how to take care over the group that is already defined to ourselves.

Further, when it comes to the issue the definition of a constituency or the definition of a district, Madam Chair, we are trying to correct ills that have been executed upon the people of Kenya for a long time. One of them, fear in the creation of constituencies, districts and so on at will. I believe Madam Chair that this Constitution should define in itself what constitutes a constituency and what constitutes a district. Even if it is to say that a constituency will be defined as that unit that there is not more than a geographical location of so many square kilometres. Or, that area that is occupied by not more than so many people, where we accommodate both the geographical location and also the population in those areas.

Therefore Madam Chair, I think that to leave to certain other individuals the definition of the areas on which the part of the Constitution are based on, is not good, not right and it is not fair.

Madam Chair, I am also in support of Affirmative Action, but I am against anything that involves nominations including the so called 90 seats. If you are talking about Affirmative Action, let us not mix these 90 seats with the issue of Affirmative Action. Let us deal with the issue of Affirmative Action separately. This mixed member proportional system Madam Chair,

is something that is simply not workable in this nation because what constitutes a party in Kenya. Three people will sit somewhere and will decide that they are the party and Honorable Mutahi Kagwe is not a good man, he has been hiding from the Chairman and for that reason he cannot be nominated. I therefore propose that if there is a method that we can work out, where we take Affirmative Action and where the women concerned are voted for, and voted for, not just by the women because they will not just represent the women, but both men and women.

(Clapping from Honorable Delegates).

In other words, if we have got women being voted at district level, let every woman who want to stand in that district do so, and let both the men and women in that district vote for them. I thank you Madam Chair.

Hon. Delegate Prof. Wangari Maathai: Thank you very much. I am trying very hard to see if I can distribute, I will take 86, 94.....

Interjection Speaker:(Inaudible).

Hon. Delegate Prof. Wangari Maathai: I will come back, I am told I didn't look back enough. Let me take those two first, I am trying to distribute over the areas, I know I cannot call all the Members of Parliament.

Hon. Delegate Magara James Omingo: Thank you, Madam Chair. I am Delegate number 86, Honorable Omingo Magara MP South Mugirango. It has taken me longer to talk in this Conference that it took me to talk in Parliament. Thank you Madam Chair for recognizing me this afternoon.

Madam Chair, I am in support of The Upper and Lower Houses. Reason being that will be the way we shall be able to distribute power from the apex downwards with control. *(Clapping from Honorable Delegates).* Madam Chair, I am baptized a subscriber for Affirmative Action, I need no conversion anymore. *(Clapping from Honorable Delegates).*

Nonetheless Madam Chair, we must also note that when we over concentrate the fact that women are weaker sex and must be(Inaudible) that then the sweetness of competition is lost. And Madam Chair, we are saying the 90 seats may also dilute the consent compared to politics in Parliament. I am suggesting an amendment to thirty and not more than thirty, but with the same ratios for women and other interested parties. Madam Chair when we were younger there was this issue bullfights that we used to enjoy, if your bull fights and wins a battle, Madam Chair, you go home celebrating. I am not saying nominations are weaker by any chance but, we are saying it is sweeter to compete and win.

Madam Chair, I am now on the issue of recall, I have no doubt in my mind that anybody who does not deliver the mandate of his people must be recalled. (*Clapping from the Honorable Delegates*). However, Madam Chair, however, when you gave in to a contractual arrangement with your voter over 18 years of age, let no other “kinyangarika” come from the side and perpetuate discontent and you are taken out of power because of somebody who never voted for you.

I propose that before you are recalled, there is a list of all those who voted for you or participated in that particular election. 100% of those who voted for you in equal number must sign against you to counsel the contract and 50% of those who never liked but may have like you in the short time you have been in Parliament must sign against you. So, we have the 100% of my votes equivalent and the 50% of those who may have been dissatisfied with my services, Madam Chair.

I am also wondering Madam Chair, in line of arbitration, it worries me also that the mechanism of reconciliation and arbitration has been left to the ECK. I do not know the competence of the legal issues in the protections and whatever because we have the interpretation of a facts and those of facts and laws. Now, if it is a question of facts and laws, they are courts, if they are issue of facts we require a tribunals, leaving it to the Electoral Commission is jeopardy of the laws of Parliament.

Madam Chair, we are saying.....(*laughter from Honorable Delegates*). Madam Chair, with those few remarks, I appreciate your support and recognition for me. Thanks.

(Clapping from Honorable Delegates).

Hon. Delegate Maoka Richard Maore: Thank you, Madam Chair. My names are Maore Maoka Delegate number 94 and I would like to be very brief also with the confine of the five minutes.

First, I would like to describe this new found obsession among us in this hall, with this commodity called power. That we must be able to distribute it among a hundred members more in Upper House and also create 90 more yet, Madam Chair, the country believes a lot of those 210 Members still don't do enough.

Now, if you find the work being done is inadequate, the hours devoted to legislation in the current Parliament is usually less that four or three calendar months, if you compute all the days cumulatively worked by Members of Parliament. Now, it seems the commission is hiding behind some misery here. They need to tell us, when they went to all the districts in this country which group did propose about this issue of mixed member representation. And which country they had experienced or derived from. Because Madam Chair, we might be indebted here with a lot of issues whose source we do not know.

If you find for example, the issue of the mixed member representation, there are people who are afraid of elections. Let us not have our cake and eat it. If we must not have elections for these Members, let us have no elections for everybody. If you must have leaders in Parliament and you do not want all of them to go through elections then, let nobody go through elections. Anoint them, or appoint them or whatever method you us but, let us not have anything that seems to favour somebody and disfavors another.

Secondly, the issue of recalling, I would also like to state that many activists who might have given the view of recalling to the commission, when they were going around may never have had

to go through the agony an election. If it is a contract that seems to float and yet the Constitution of this republic before has given you five years on which to change your mind if you found that you picked the wrong seller for the job, you have the mandate to recall.

Now, this obsession about recalling, they do not take into account that when we finish with this document it will go to face Members of Parliament who might think twice before they pass it when it has this thing of recalling.

(Noise from the Honorable Delegates).

So, Madam Chair, I have found that some Delegates are allergic to the truth, but that is the truth of the matter, whether you like it or not it will come to Parliament and it will face wrath of Parliament. Thank you.

(A lot of noise from the Honorable Delegates).

Hon. Delegate Prof. Wangari Maathai: I need to pick up to somebody, 129 and then there is 116.....(Inaudible). allow 116.

Speaker: No, no.

Hon. Delegate Prof. Wangari Maathai: There is two of you, in that order please.

Speaker: Madam Chair.

(A lot of noise from the audience).

Hon. Delegate Wilfred Koitamet Ole Kina: 129 you have the floor please.

Hon. Delegate Muturi Justin Bedan: Thank you very much, Mr. Chair. I will be very quick. One on the issue of oh, my names are Justin Muturi, Delegate number 129, representing Siakago constituency.

Interruption Speaker: Point of order.

(Noise from Hon. Delegates).

Hon. Delegate Wilfred Koitamet Ole Kina: Mzee, what is your point of order?

Hon. Delegate Prof. Wangari Maathai: This is a Member of Parliament.

Hon. Delegate Okioma Samson: Thank you, Madam Chair. My names are Mwencha Okioma, I am the Member of Parliament for Kitutu Masaba, Delegate number 162. I would like to say that the statement expressed by the Delegate who has just sat down, who has insinuated. In fact, publicly stated that, if this idea of recalling MPs come to Parliament, it will be defeated at the floor of The House. Those are his own sentiments, it is not the idea of all the Parliamentarians. Thank you, Madam Chair.

(Clapping from Hon. Delegates).

Hon. Delegate Prof. Wangari Maathai: Alright, go ahead.

Hon. Delegate Muturi Justin Bedan: Thank you, Madam Chair. I want to revisit this issue of recall, in relation to the fact that under Article 11, Sub-Article 1 (a), there is also a procedure by which a Member of Parliament can loose his or her seat which is really a conviction by a tribunal, an appropriate tribunal of breaching or violating the leadership code of conduct and punishment which is imposed, may include among others loosing your seat.

Now, Madam Chair, if you breach or violate the leadership code you can be thrown out of Parliament. What is rationale really of saying that if you misconduct yourself by bringing into

hatred, ridicule, contempt and then persistent desertions. It is then saying Madam Chair, that when that 30% of the electorate writes a petition, within seven days the speaker must communicate to the ECK and expeditiously, the ECK holds inquiries in the constituency and if they come up with the findings that actually you have either been misconducting yourself, you loose your seat. Surely, there is even no provision that you will be accorded an opportunity to be heard, even though, I still think that this will be subjecting a Member of Parliament to mob justice. Because 30% of the electorate in a constituency that has got sixty thousand people, surely, it is unlikely that your voice alone is likely to carry the day. Any way, I will leave it to the wisdom of this Conference to see what to do with that.

Madam Chair, the other issue I wanted to raise is this one of Article 121 Sub-article 2, even as we think of punishing Members of Parliament in such draconian ways. I would want to bring to the attention of the Conference Madam Chair, that it is proposed in this draft that a Member of Parliament shall be paid such salaries, allowance and benefits as may be determined by the Salaries and Remuneration Commission and two that a Member of Parliament shall not hold any office of profit or engage in an activity likely to compromise the Member's office. So, Madam Chair, I wanted to say that this is a very important provision in the Draft and in my view, it should be retained, so that, Madam Chair, we do not have Members of Parliament who are businessmen and the only reason they have come to Parliament is to come and protect their wealth or businesses. Madam Chair, when I say this, I am a lawyer, I would also want to be barred by this provision once I seek elective office from also finding time to go and appear in court and defend a client. If you are a doctor and you want to go to Parliament, Madam Chair, you must know that you have a contract to just go and do politics. You forget about treating people. Madam Chair, I would want us to see this provision in that light because it happens in other countries. Madam Chair, even if you are a Bishop, and now that I am also converted into this clamour for Affirmative Action, Madam Chair, I would want to suggest that once this Constitution is adopted, Madam Chair, that we make it known to the international community including the Pope, that when you are appointing- because we are saying elective and appointed, in appointing Bishops, this country has adopted Affirmative Action and therefore we need women Archbishops and Bishops, we need to see Imams, Saints, all who are women.

Hon. Delegate Wangari Maathai: Thank you very much.

Hon. Delegate Muturi Justin Bedan: Madam Chair, indeed I also agree here again that, if we have a President who is a woman, the Vice President should be a man. If we have a Prime Minister who is a man, the deputy must be a woman and vice versa. Thank you very much, Madam Chair.

Hon. Delegate Wangari Maathai: Thank you very much. 116. I have a problem here because I have a tendency to start here and I have a number, 24, that has been reminding me that I don't go back there. I promised I will look at the back but right now the person on the floor is 116, please, and then I will have 24.

Hon. Delegate Mungatana Danson Buya: Asante Bwana Mwenyekiti, mimi naitwa,

Hon. Delegate Wangari Maathai: Hold on, there is a point of order.

An Hon. Delegate: Madam Chair, much as we are contributing, I think it is.....

Hon. Delegate Wilfred Kointanet Ole Kina: I said 541, Honourable Delegate, you do not have the floor 541.

Hon. Delegate Okoth Zacchaeus: Point of order. My number is 541, Archbishop Okoth, KC, religious organizations. The point the speaker has made must be seen to be out of context because the Church is hierarchical, it is not the sense he is talking about, the Church is not against the election of this and that, and the Church is not pro-what he has advocated, so it does not fit this forum to proclaim, 'can even the Pope appoint a woman this and that'.

Hon. Delegate Wangari Maathai: Alright, Honourable Delegate 116.

Hon. Delegate Mungatana Danson Buya: Thank you, Madam Chair. Jina langu naitwa Danson Buya Mungatana, mimi ni Mjumbe wa Garsen Constituency, Tana River district na ni Delegate number 116. Nilikuwa na mambo mawili ya kuchangia katika mjadala huu ulio mbele

yetu. Jambo la kwanza ni kwamba kifungu nambari 108 kimepinga au kimethumania kupinga maslahi ya vijana hapa Kenya. Ikiwa kwamba Constitution yetu tunaiandika kusema kwamba watu wote ambao wako na miaka kumi na nane wanaweza kupiga kura, ni kwa nini tunasema kwamba katika nyumba ya juu au Senate lazima mtu awe na miaka 35? Kwa sababu gani? Wakati wa kuchukua kura, ninachukua kura yangu kama kijana, wakati wangu na mimi nipate nafasi nile, hutaki nile, ni sawa hii? Kwa hivyo naona hapa ni makosa. Sheria katika Constitution iandikwe kwamba kila mtu ambaye ana haki ya kuchukua kura awe na haki pia ya kugombea kiti chochote ambacho anataka. Mimi nilipokuwa nasimamia kura, watu walikuwa wakisema kijana huyu wacha arudi kwa mama yake akanyonye. Lakini wakati wa kura ilipofika they just found out I am completely *unbwogable*, na hiyo ndio tunataka iwe katika hii Katiba.

Second thing, nitasema kwa kizungu, section 107, on the MMP system, contradicts Section 1 of the current Constitution. It says that sovereignty of the Republic of Kenya rests with the people. Honourable Delegates, sovereignty is a concept where the power rests with that particular sovereign. In England, many years ago, the sovereign was the King, he had all the land, he had all the power, he could do anything he wanted. In Kenya, we are saying the sovereign are the people of Kenya, there the once who say, I want people in Parliament, so they choose the people in Parliament through election and they say they he want the President to run the Executive; they choose the people themselves and they chooses an agent, who is the president.

Now we are saying, in Section one, that the sovereign should be the one who determines the affairs of this country and then now in this Section, 107, we are talking about the party being given power to determine who goes to Parliament. People of Kenya and Honourable Delegates, let us not agree to remove the power from the sovereign or mwananchi wa kawaida to give it to party dictators. We saw it during the last elections, when potential Members of Parliament, chosen by the people and then somebody sitting in Nairobi gives the clearance form to someone else, his friend. If they could do that during the elections, where people had determined the men they wanted, what more damage will they do to this system where they would have the power to decide who will be in the list. I can tell you, Honourable Delegates, let us not agree to be subjected to party dictatorship. Let the people choose everybody. If we have to increase member

of constituencies, let us increase it but not leave the parties to decide the people who should go to Parliament. Thank you.

Hon. Delegate Wangari Maathai: Thank you very much, I am trying to decide here. I see 107, and 134, I am trying to pick a lady. Can I pick that?

Hon. Delegates: She spoke yesterday.

Hon. Delegate Wangari Maathai: She spoke yesterday?

Hon. Delegates: Yes.

Hon. Delegate Wangari Maathai: If she spoke yesterday then she cannot speak now. 107 go ahead.

Hon. Delegate Mohamed Hussein Maalim: Thank you very much, Madam Chairperson. My name is Hussein Maalim Mohamed, Delegate number 107, MP for Dujis. Madam Chairperson, before I go to the Draft itself.. I have been sitting here for the last three days. I did not get time to speak but I have been listening very keenly to what people have been saying. I was disturbed by the arrogance of some Delegates in this hall, particularly people from one section, one region of this country, who are calling themselves the majority and are drunk with the number of their community's population. They have been speaking here, questioning the legality of our constituencies, the legality of our districts. It is not our wish to be few but because of the situation in which we live, because of our life styles, because of the problem we face. Our ladies conceive once in five years, while these other people are eating too much *irio*...

Hon. Delegate Wilfred Kointanet Ole Kina: Order! Delegates.

Hon. Delegate Mohamed Hussein Maalim: I want to tell it to them because of their lives and because they eat too much food and they are getting children every now and then. Thank you, I stop there.

Hon. Delegate Wangari Maathai: Thank you very much.

Hon. Delegate Mohamed Hussein Maalim: Madam Chairperson, I want to talk about the recall of the Members of Parliament. I think I support this issue but I want the Members to be recalled after five years, not after one year.

Clapping

Hon. Delegate Mohamed Hussein Maalim: Yes, we should not let the MPs just be recalled, but recall them. After how many years?

Hon. Delegates: Five years.

Hon. Delegate Mohamed Hussein Maalim: If you recall an MP before five years, towards elections we were four candidates, each one of us got some votes, I do not want to say how much I got, but I can tell you if these three other gentlemen gang up together you will not see me here today. If they gang up together, no I would not be here, I would be thrown away. So I therefore propose MPs to be recalled after five years.

Madam Chairperson, on the issue of Affirmative Action, I support it very strongly, because I have a very special relationship with women like any other man.

Hon. Delegate Wilfred Kointanet Ole Kina: Okay. Thank you Honourable Delegates. The point is home.

Hon. Delegate Wangari Maathai: There is a point of order. Honourable Delegate 44.

Hon. Delegate Karua Martha Wangari: Thank you Madam Chair. I am Delegate number 44, the name is Martha Karua from Gichugu in Kirinyaga. My point of order is in connection with the remarks by the speaker who has just spoken. Madam Chair, we are here to make a

Constitution for this nation, not for a region, group, tribe, however small or big. If, Madam Chair, we are going to resort to disparaging remarks on regions and tribes, we will end up without a Constitution. We are here for dialogue. Let somebody discount what has been said on the basis of facts and the facts that I have stated it and I am from a certain region, should not attract contribution from another Delegate talking about regions. In fact, the only issue I think we should deliberate on recall, is recall of Delegates who are sowing seeds of discord in this hall. How are we going to arrive at a Constitution? Constitution-making is about consensus building, is about bonding so that we can be recognized as a nation. How come now were are allowing in this very hall people to start waging or insinuating things that are creating divisions? I think my point of order is whether the Chair should actually.....

Shouts from the Honorable Delegates.

Hon. Delegate Karua Martha Wangari: Can I have the floor? Madam Chair, what I am saying is when you finish.....

Hon. Delegate Wilfred Kointanet Ole Kina: Okay. You have made your point of order.

Hon. Delegate Karua Martha Wangari: Chair, if you stop me because there is intimidation then you are calling for chaos. Delegates should be ready to listen to each other, however unpalatable. We can not allow this intimidation. And can Chair take control?

Hon. Delegate Wilfred Kointanet Ole Kina: Can you please sit down; we have heard you please sit down. I am going to take one more point order, and I am not going to take any more. 595.

Hon. Delegate Joseph Martin Shikuku: Thank you very much, Mr. Chairman. I think the Honourable member who has sat down should not forget for a single minute that there are some people here who know what is a point of order. And I challenge her, if she knows more than I do, we can take both written and spoken tests on standing orders. That was not a point of order, and I am glad you ruled her out of order.

Hon. Delegate Wilfred Kointanet Ole Kina: Honourable Delegates, kindly refrain from imputing improper motives so that we can have our deliberations going on well.

Hon. Delegate Wangari Maathai: Now let's continue. We have to continue. I want to recognize 218. Let's go ahead, Honourable Delegates.

Hon. Delegate Mwau Adelina Ndeto: Thank you, Madam Chair. I spoke on Monday, I did not speak yesterday.

Hon. Delegate Wangari Maathai: Oh well, if you have spoken, may be you should not speak.

Hon. Delegate Mwau Adelina Ndeto: I want Not on this Chapter.

Hon. Delegate Wangari Maathai: Honourable member Delegate, I feel that people who have already spoken should give those who have not spoken at all chance. Let me give one here that I am constantly forgetting.

Hon. Delegate Mwau Adelina Ndeto: But how many----

Hon. Delegate Wangari Maathai: Madam Delegate 24. I am sorry, Madam.

Hon. Delegate Ethuro David Ekwee: Thank you, Madam Chair. I am Ekwee Ethuro from Turkana Central, Delegate number 24. Madam Chair, I am glad you have remembered me because I was running the risk of leaving this Conference without talking.

Hon. Delegate Wilfred Kointanet Ole Kina: Over-ruled 218.

Hon. Delegate Ethuro David Ekwee: Madam Chair, I want to contribute that I support the two Chamber systems, so that there is need for an Upper House and there is need for the Lower House. But, Madam Chair, the issue is not the Upper House to control the MPs' salaries-that has

already been taken by a tribunal appointed. So people are supporting it for a wrong reason. I am supporting for the right reason.

Madam Chair, the other issue is on Affirmative Action. Madam Chair, I want to support Affirmative Action because pastoralists are minorities, I also support because women are also minority. But, Madam Chair, I want to be extremely categorical here. There is no way that the rest of us can go to Parliament through the rigours of competitive elections and we have almost half members going on nomination. Can we just borrow from our friends in Uganda, that each district will give chance for a woman representative to be elected. Both men and women will elect a woman, then we would have Members of Parliament coming in through Affirmative Action but still elected through the mandate of the people. So that is the sovereignty that we are talking about.

Madam Chair, MMP will not do this country any good, it is going to destroy this country. The Honourable Member from Garsen has put it so eloquently. I just wanted to emphasize that. It does not refer to the principle of sovereignty where the people are going to elect their own people. Given our own history, in 1997, IPPG, we had decided on the number of women, but what happened? We cannot trust political parties. Madam Chair, I speak with a lot of emotion because if we trusted parties I would not be in this hall now. I served a good party and I thought I was going to be the candidate but at the last minute I was not their candidate. So you are not going to tell me I cannot move to another party to demonstrate that I am more popular than the party leaders. You should give me the chance to move at any time to any party of our choice. I think that is important or else NARC would not have won the last elections.

Madam Chair, we need political parties. To be primarily managed by the ECK as there is no democracy within political parties. I support that we fund them so that they can practice internal democracy. Madam Chair, I was voted by a group known as Turkana and I am here to support the interest of the minority. I completely support my fellow Member of Parliament from Garissa. We do not want arrogance of the majority, we should be heard and, when I speak, it does not mean that another member of the majority will also speak, you are taking notes. So nobody should be intimidated, whether I say what, you will be able to counter that, and you will

consider when we will come to decide. That is the time we will say, 'o.k we do not want this, we do not want that'. But I think this is an opportunity at the plenary session for us to say what we feel and know. I am saying that because in some of our areas, Madam Chair, the ID card is not even available to us. You want somebody to pay a hundred bob to be made a Kenyan; he does not understand why he has to pay to be a Kenyan; He is already a Kenyan. So I support ID cards and voters card to be the same thing. In any case, the money we are wasting on registration can go to the ID cards first. Thank you, Madam Chair.

Hon. Delegate Wangari Maathai: Thank you. I will take 204. Has he spoken?

Hon. Delegates: Yes.

Hon. Delegate Wamwere Koigi: Madam Chair, I have not spoken since last week.

Protestations from the Honourable Delegates.

Hon. Delegate Wamwere Koigi: Madam Chair, I raised a point of order in this Conference.

Hon. Delegate Wangari Maathai: You have spoken.

Hon. Delegate Wamwere Koigi: I have not spoken, Madam Chair. I spoke last week, I have not spoken from Monday.

Hon. Delegate Wangari Maathai: Mr. Delegate, we are trying to get Delegates who have not spoken at all.

Hon. Delegate Wamwere Koigi: ...and I have not spoken since last week.

Hon. Delegate Wilfred Kointanet Ole Kina: Order, order, Honourable Delegates I remember the Delegate speaking spoke on the motion of honourable Mirugi Kariuki so let us be fair to one another and give him his chance.

Hon. Delegate Wamwere Koigi: That was last week, I have not spoken. Yes let me speak. Madam Chair, since Commissioner Kangu is here, I will first of all address the question of ideology and say that this Constitution does need a chapter on ideology because what we have now is so many phrases scattered all over the Constitution that he tried to call an ideology. We need a chapter and I guess that this ideology was not put together because of the fear of the past regime. That regime is not there; give our new constitution an ideology that will show us the way forward.

Secondly, On the idea of Republicanism becoming our country's ideology, I wonder where you got it from because I cannot possibly see it coming from the streets of our country as people do not know what Republicanism is, but I will leave that to you. I suspect that this came from the world of academia rather than from the streets of our people. In any case, I disagree with republicanism becoming the ideology of our country from now on because it is associated with capitalism which is a system of exploitation I would rather have something like democratic socialism. Your honour, ...

Hon. Delegate Wilfred Kointanet Ole Kina: Point of order. 382.

Hon. Delegate Aswani Sammy Amunga: Honourable Chairperson, the member on the floor...

Hon. Delegate Wilfred Kointanet Ole Kina: Who are you? Your name and number, please.

Hon. Delegate Aswani Sammy Amunga: Aswani Sammy Amunga, Delegate number 382, Butere Mumias. Honourable Chairperson, is it in order for the Honourable Delegate who is on the floor now... yesterday he addressed the Press and discredited the Delegates who are sitting here. I wonder why he should address them? he said they are pro-Moi, 'we do not need those Delegates to be here',. that is what he said yesterday. I wonder why you have allowed him to address these Delegates and he does not want them.

Hon. Delegate Wamwere Koigi: Madam Chair, I have a right to my opinion, this is the democracy we are talking about here. We are not here to muzzle others, let me continue. I was saying that the ideology that this country needs at this particular moment in time is one that will take care of the interest of the poor because there is no larger group in this country than the poor people and yet they are the ones who are the most neglected. This is because the ideologies of the past regime were interested in making the rich richer and did not care whether the poor got poorer. The poor people are waiting for this Conference to liberate them, they are waiting for the new Constitution to liberate them and so we need an ideology that will take care of - I do not think I have finished my five minutes - the interest of the poor. I support the idea of Affirmative Action but let me point out that I am more interested in having Affirmative Action for the poor than for just people in a different sex. I will give an example. Mr. Chairman, I did not speak because I was interrupted. Let me finish my point. They are only two.

I am saying, if you have a lady who is a billionaire and you have a man who is very poor and I need to have to take Affirmative Action I will take it in favour of the poor man. If you have a

Poor woman, these poor women deserve to have Affirmative Action. So do the poor men and so do the poor children.

Interjection. Hon. Delegate Ole Kina: Thank you very much honorable Delegate.

Speaker: But I have not finished my five minutes.

Hon. Delegate Ole Kina: You have; we are taking time.

Hon. Delegate Prof. Wangari Maathai: Who is 202? There is a point of order.

Hon. Delegate Ole Kina: No. I will give you time. I will give him time.

Hon. Delegate Prof. Wangari Maathai: Okay, 202 please.

Hon. Delegate Wambora Martin Nyaga: Thank you Madam Chairlady for giving me the opportunity, I have not talked since the meeting was convened. Madam Chair, I want to make four critical points, one of them ... -My name is Martin Nyaga Wambora, Member of Parliament for Runyenjes-. I want to refer to Article 105 on the structure of Parliament. I want to join some of my colleagues who have reflected the view that a Bi-cameral system would be very costly, duplicative and unnecessary. The literature provided by the Commission is not convincing, they will have to convince us further.

May I proceed on to Article 109, Madam Chair, I'm on the representation of women. I'm for proper representation of women, and I want to add in that Article that this representation of one third should be based on Proportional Representation System. It cannot be based on 'majoritarian' or Direct Representative System.

Number three, I want to also look at Article 112 on the recall of MPs. I don't want to repeat many things, but I want to give an example myself. I go to my Constituency on weekly basis, but we still have people there who have never seen me and yet I am going there every week. So, most of our people don't understand the real work of an MP. This one would be a very dangerous thing, some believe an MP should be the one giving money all the time every weekend, others think an effective MP is the one who does harambees, others think an effective MP is the one who does registration. So, we don't have a proper view of an MP's work and it would be very vindictive to recall an MP before five years are over.

May I also look at the issue of Parliamentary Committees, Article 140. I would say that some very critical committees have been left out of that Article, and those very very critical ones like Agriculture, Trade and Industry. I would recommend, instead of putting too much details in the Constitution, let's just talk of watchdog Parliamentary Committees and Departmental Parliamentary Committees. Thank you Madam Chair.

Hon. Delegate Prof. Wangari Maathai: Thank you very much. 195.

Hon. Delegate Syongoh Zaddock: Thank you Madam Chairlady. My name is Zaddock Madiri Syongoh, MP for Gwasi, Suba District, Delegate number 195. Madam Chairlady, I want to limit myself to a basic principle of devolution in as far as the Legislature is concerned. As the Commissioners presented this part of the Draft, we were given an explanation that one of the reasons why the Upper House was proposed was in order to achieve the principle of devolution. I have gone through the report very carefully, Madam Chairlady; my understanding is that the people did want the devolution, and they did want devolution not upwards, but downwards. I got the impression, very clear impression Madam Chairlady, that Wananchi did not want to put too much of their eggs in Nairobi; but they want decisions to be made nearer to the grounds, and they wanted resource allocation to be moved nearer to the ground.

Clapping.

As a result Madam Chairlady, the Commission came up with a fundamental statement at Article 220, that the District Government shall be the principle level of devolution.

Interjection. Hon. Delegate Prof. Wangari Maathai: Delegate you are going to the wrong place now.

Hon. Delegate Syongoh Zaddock: Madam Chairlady, I'm very focused. I would like to present a proposal Madam Chairlady, that we consider Legislature for the principle level of devolution. That we should not over emphasize on an upward level of devolution of the Legislature. That we should focus on developing structures and guidelines for having an effective and representative Legislature at the district Government level.

Madam Chairlady, the issue of the Upper House is neither here nor there. But I want to say this, at Article 102 (J), it stipulates that one of the functions of the Parliament will be approval of declaration of war or emergency. The Draft Bill also proposes that once a Bill has been passed in one House, it must be referred to the second House for approval and vice versa. Madam Chairlady, I'm imagining a situation where Kenya is at a brink of war, and we have an important

decision to make such as declaration of war or emergency, and a Bill is moving up and down between the two Houses. It is dangerous, Madam Chairlady.

There is the other issue, the issue of recall of Members of Parliament. I personally have no problem whatsoever with this provision whatsoever. I believe that once selected, one must perform to the satisfaction of the electorate because that is why they elected you. But I would like to propose, Madam Chairlady, that the criteria for election in many Constituencies is not based on presumed performance of the Member of Parliament. It is influenced by clanism; it is influenced by Parties that are sponsoring the various candidates. So, my caution is, we could open our Constituencies to be battle grounds of continuous and never ending battles between Parties and clans, and I think that is going to bring considerable instability in our country and in our Constituencies. Thank you Madam Chairlady.

Hon. Delegate Prof. Wangari Maathai: Thank you very much. Now, I'm trying to move forward. ... Point of order. I'm moving forward, 167.

Speaker: Point of order Madam.

Hon. Delegate Prof. Wangari Maathai: Well I can't go backwards before I finish the complete ...

Interjection. Speaker: Here, the point of order is here.

Hon. Delegate Prof. Wangari Maathai: I am trying to look for regions that haven't spoken then I can let ... (inaudible). Go ahead Honorable Delegate.

Hon. Delegate Omondi William Opondo (167): Thank you very much Madam Chair.

Interjection. Hon. Delegate Jacob Ochino: I stand to raise a point of order Madam,

Hon. Delegate Prof. Wangari Maathai: Where are you?

Hon. Delegate Jacob Ochino: I am here.

Hon. Prof. Wangari Maathai: Go ahead.

Hon. Delegate Jacob Ochino: Thank you very much. My name is Jacob Ochino, Delegate number 578, representing Political Parties. My point of order, Madam Chairperson, will be on Article 112, Recall of Member of Parliament.

Interjection. Hon. Delegate Ole Kina: That is not a point of order.

Hon. Delegate Jacob Ochino: I want to make a point of order on that subject. Madam I am saying Madam, that the Commission has explicitly explained in this document, three reasons why an MP should be recalled. But the contribution from ...

Interjection. Hon. Ole Kina: That is your contribution. I overruled, that is not a point of order.

Hon. Delegate Omondi William Opondo: Thank you very much, Madam Chair, my name is Honorable William Omondi, the MP for Kasarani, Nairobi. Madam Chair, I'm very very grateful to say that most of my colleagues here -and I should say all of them- they have really ventilated on this issues which are really touchy, and they are purposely brought here to create a very good environment for us as Kenyans. I would, however, Madam Chair, say that I will add a few things there to add some salt or condiments on them, or to reinforce them, Madam Chair.

I think you all know that we have only one organ in Kenya, which can break the democracy or enhance it. This one is the Electoral Commission of Kenya. I wanted to say that the Electoral Commission of Kenya must really be empowered and be given all the freedom it requires to enhance democracy in Kenya. We know it has been a big problem, through the ECK, to do things in the country democratically, because of the enormous sycophancy and partisanship that we had experienced in the past. I wanted to say that even employing the staff for the Electoral Commission should be left to them. Nobody should be given the powers to employ the members of staff for them, because this is one area that sycophancy and partisanship is going to be built.

I want also to say, Madam Chair, that we know very well that in a democracy, decisions are made by voting. As a result, it is very important that everybody is given a chance to vote. Therefore, during registration of voters, I ask our members here to make sure, we designate the documents which are required to register as a voter. Because in the past, we had met a lot of problems, so many people getting disenfranchised because they cannot vote; because they cannot obtain the voting card. I wanted the Constitution to categorically state which documents are required for registering as voters, and then the register to be kept and if possible, because of this age of computers, every detail to be computerized so that this issue of “ your name is not in the register” during voting is not there. We lose so many voters during elections because of very very funny ideas as “your name was in the other register, the register is lost,” we need everything else to be computerized. Okay, I wanted to say more but now I don’t have time. Thank you, Madam Chair.

Hon. Delegate Prof. Wangari Maathai: Thank you very much. I have a problem in front of me, I wanted to recognize at least one there, and I also wanted to say that as you have noticed, no woman has spoken this afternoon. So I wanted to give the floor to 218, but before that I wanted to give to 185.

Hon. Delegate Sasura Abdi Tari: Thank you Madam Chair. I would like to go straight, -My name is Abdi Tari Sasura, a Member of Parliament for Saku in Marsabit district. I would like to straight away go to section 106 on Members of the National Council. I would like to very much agree that the election of the seventy members is on district basis, but I would like to make a specific reference to the thirty seats reserved for women. It says that the thirty seats reserved for women will be on the basis of the provinces.

Madam Chair, it has been proved historically that women at the district level have been marginalized by the women at the provincial levels and in the city.

(Clapping from Honorable Delegates).

If there is anything to share between the women, you will find that in Coast Province those who are in Mombasa benefit more, in Nairobi Province those who are in the city benefit more, in Eastern Province those who are in Embu benefit more, the rural women are always forgotten. So this should go to the district and not to the provinces.

(Clapping from the Honorable Delegates).

Secondly, Madam Chair, on this issue of Mixed Member Proportional Representation, I am not against it as such, but I think this is a bit alien to this country and the presenter, the Commissioner who was presenting it yesterday, made it very clear that they borrowed this from Germany, because they kept referring to Germany has this and Germany has the other. Well, now this Mixed Member proportional Representation, although it might not be very practical in this country, I would rather propose -because women have been relegated to a lower level for a long time because of our history, because of our cultures and we really sympathize with our women. If we want to support our women, -because this Mixed Member Representation is going to give political parties excessive powers and they are going to blackmail the voters-, let us reserve a place for our women in the sense of creating constituencies at the district level for women competition only. This Mixed Member Proportional Representation is going to confuse us and the parties are really going to take us for a ride.

Madam Chair, about the issue of the Prime Minister, on the issue of Motion of no confidence in Government, when the motion of no confidence is passed, it says that the Prime Minister should resign. Why should the Prime Minister resign? Because it is the President who appointed the Prime Minister, the President should first resign. If Parliament is not going to endorse the choice of President for Prime Minister, the President gives us a name, Parliament does not endorse him so the President will dissolve Parliament. I would like to look at it this way, suppose in the year 2014 somebody called Joseph Nyaga becomes the President of Kenya and then he tells us, I propose Norman Nyaga for Prime Minister and we refuse.

(Noise from Honorable Delegates).

Indeed, this is a situation we want to avoid, just an example, we want to avoid this. So the President gives us a proposal and if that proposal is not going to be palatable to us, then Parliament should be empowered to nominate a Prime Minister from the majority Political Party in that House.

Lastly, the issue of recalling MPs, I want address the MPs directly here. This is very good, let us be recalled. This is going to enhance efficiency among the Members of Parliament, but let us be recalled by 80% of those people who voted for us, not 30% because it is not workable and neither is it acceptable. Thank you, Madam Chair.

Hon. Delegate Prof. Wangari Maathai: Thank you very much, 178.

Hon. Delegate Rotino Philip Ruto: Thank you very much, Madam Chair for giving me the opportunity. I have been shouting here several times but I want to thank God that you have given me the chance now. I want to echo what my colleagues have said.

(Hon. Delegates: Your name?).

My name is Philip Rotino, MP for Sigor, West Pokot. Madam Chair, I want to say to the Honorable Members that we are making a Constitution and making a level playing ground for everybody. There are communities that have been marginalized they are a minority for many years and this Constitution is going to give us a good level playground for everybody. So whether you are majority or minority, the Constitution becomes a protecting tool for everybody so that we are all equal.

(Clapping from Honorable Delegates).

Madam Chair, I want to talk about Affirmative Action, I support so much the Affirmative Action. I want that we have the modalities of doing it. I want to echo my colleague who talked about the provincial representatives. There are many provinces, for example Rift Valley is a big province, many of us who are in one corner of the province, we are not normally represented. So

that either we have district representatives, we create corners for women, so that those women are elected from the district, so that we have our own women representing the women in the villages.

(Clapping from the Honorable Delegate).

Madam Chair, about the recall of MPs, I want to support my fellow MP who has spoken just now. It is very very good for members to be recalled. If you cannot perform, why hang there if you cannot do what your members elected you to do?

(Clapping from the Honorable Delegates).

If I cannot perform, for example, members from my Constituency did not have any means of recalling my predecessor who was not performing. They did not have any means for recalling him. So I told them, "Give him five years then we kick him out. If there were methods of recalling him, two years was enough to recall him and then somebody else could have come in, because we are there to serve, we were elected with an agenda. An MP who does not want to be recalled doesn't have an agenda, so if you have no agenda then you are afraid because you play with people's minds.

Madam Chair, I want to talk about the qualification of an MP. A Member of Parliament must be a graduate, that is my own personal opinion, because form four is a level that is getting out of hand. Many people want to be graduates, we have many graduates nowadays, so I support that Member of Parliament should be a graduate.

(Clapping from Honorable Delegates).

So that we cut off those ones who come in without a Degree courses.

Madam Chair, I want to support that an MP must not do any other activity. If you are a Member of Parliament, you are a Member of Parliament and leave all other things and be actively involved with your own people. With those few remarks I want to say thank you very much.

(Clapping from the Honorable Delegates).

Hon. Delegate Prof. Wangari Maathai: I am so sorry, there are still many Members of Parliament who haven't spoken, but now we are getting into that time when we must close the discussion and allow for the responses but we do say we want to recognize 218, the lady contributor there.

Hon. Delegate Mwau Adelina Ndeto: Thank you, Madam Chair. I would like to make a contribution to Article 147 on Parliamentary Service Commission and add that one of its functions should be to identify and formulate gender equity guidelines for all Parliament bodies and other offices in order to achieve gender balance for fair representation. So, that is an additional to Article 147 in relation to the powers of the Parliamentary Commission, so that at least the language of Parliament changes. Up to today we have wordings in the House that say, "For the just and welfare of men" we should at least have a language that is inclusive.

I want to say article 11(g), that in the history of this country, defection and buying members so that you get to the other Party, so the Party becomes more powerful is something that needs to stop. You know how much money we have spent on Members of Parliament defecting, -first of all they are bought-, then we go into an expense of actually having a bi-election, and then continue buying the person to stay in that party, so that article should remain.

I would like also to talk on Article 112 on recalling of MPs. I agree MPs should be recalled if actually they do not perform. The question is, let us put in mechanisms because politics of this country have become politics of money. So I would sit and wait until one Member of Parliament is recalled so I go and buy the 30%, so that I can get to Parliament. So it is important for us to change the culture of politics in this country so that when we put mechanisms in place, then we can recall our Members of Parliament. For Members of Parliament, let's stop making promises we cannot be able to reach. How can you go around when you are campaigning and say I will do this and that, even when you actually don't know where the money will come from. So let us have MPs who understand the policies, who understand the budget of the country. I would want to say we need to have an additional Committee in Parliament which we could say is a Gender Committee, because it is actually important to have that Committee in terms of actually mainstreaming gender in Parliament business. Thank you Madam Chair.

Hon. Delegate Prof. Wangari Maathai: I have a problem because there are so many delegates who feel that some people have... some regions have not yet been heard or some ... and there is nothing I can do, there are so many of you there, but I want to recognize number 16 and 492. Number 16.

Hon. Delegate Nicholas Biwott: Thank you Chairlady, mine, -in fact I had given up because I have been raising my hand since yesterday-. Madam Chairlady I would like to speak on section 101. I would like to say that I support the two Chamber System.

(Clapping from the Honorable Delegates).

I am Delegate number 16, Honorable Nicholas Biwott. I also believe that we need to give a dignified name to the Upper House. Instead of calling it National Council, we call it a Senate. Because I cannot imagine a Councillor representing us at the Apex. I would like us to have a Senator as we used to have before as opposed to a Councillor.

I would also like to support Affirmative Action. I am saying this because of a reason. The prejudice against women is not political, its cultural and it is a mindset which needs to be corrected by Affirmative Action.

Affirmative Action is not new, in fact Africans were given Affirmative Action, this is why they participated in that process all the way through. So, this is a beginning of our women so that women are given equal opportunity like everybody else, after all, all of them are born equal.

The other one is about the Senate, we are talking about 70, it's only 70 now because there are 70 districts. But in future, if we are making a Constitution for the future, in a hundred years or in two hundred years, there might be need to have more districts. Therefore, we should just say that the representative will come from the district.

On mixed Member Proportional Representation, we should forget about it and we should forget about proportionality. Proportionality does not suit us here, we have constituencies. I think the

history of America and UK should guide us, because they have been using simple majority and they have been very successful. Simple majority brings strong Government, therefore stronger stability and for better progress. This borrowed one where there are no Constitution should not bother us. Our problem is to empower the women. Let us give 30% to the women, and let them be elected on a simple majority, so that women will learn to compete. Until the minds of the people come to realize that the woman is identical to the man and there is no difference, at that time we will amend the Constitution so that competition now becomes the order of the day for all.

We should also not forget the fact that there are minorities and there are also special interest groups who must be catered for. If we do not care about that one, we tend to lose other people. There was a point, which was raised by a Maasai lady which is pertinent. The problem that arose in Fiji was as a result of population trends, which actually multiply faster than the others. As a result of that, you know, some minorities are left out. If we are going to go by population alone, I think we are endangering the principle and the policies of family planning. Because we might as well encourage those who are lagging behind, through incentives, in order to multiply faster and catch up and avoid being marginalized.

One more, on the recall of Members of Parliament, I think this will lead to witch-hunting. There is a limit of five years, it is a contract. I think the onus is on those who elect the Member to ensure that they elect the right person. If they lose, if they don't elect the right person, that is their own problem. But there is five years, after the five years recall the person and change him. Otherwise, we don't encourage, -you know- problems. Do I still have more time or not? I will avoid that, but I hope I will have more time in future. Thank you.

Hon. Delegate Prof. Wangari Maathai: Thank you very much Delegates, we can never finish; and we have more time tomorrow. This subject is very related to what we are going to be discussing tomorrow, and I think the only thing we can do is try to pick those who did not speak today. Because there is absolutely no way we can call everybody, and as I look around, I realize that so many of you have not spoken. We wanted to bring this discussion to an end so that our

Commissioners can respond can respond at the next session, and I want to thank you very much for your patience. I will hand over to the Chairman to make ...(inaudible).

Hon. Delegate Ole Kina: Thank you. Just before we break for tea, there is Honorable delegate Mohamed Yusuf Haji, who would like to make a personal statement. What I would like to advise is this, we will just let him make his personal statement in accordance to rule 23, we shall not debate or respond to that statement. Honorable Yusuf Haji ...

Hon. Delegate Yusuf Haji: Honorable Chairman, fellow Delegates, I stand up to make a personal statement in accordance to rule 23 (i) of the Conference procedure. I believe this statement is in the interest of all of us, who are here as sisters and brothers with common destiny, interest which is one Kenya and one people. It is with a lot of pain and regret that I also make this statement. In brief there are one or two Delegates who have taken upon themselves to continue bashing, attacking, humiliating the people I represent from Ijara District.

Madam Chair, it is very surprising that whenever people talk about districts, these one or two particular Delegates have decided to ostracize the people of Ijara whom they don't even know. When we took oath we pledged to be faithful, impartial and to act without fear, favour, bias, ill will, prejudice and at all times to be guided by national interest. For the information of the Delegates and my brothers all over Kenya, it should be know that Ijara District has over 75,000 inhabitants with 10,000 square kilometers and not 15,000 as this particular member has tried to bring motion after motion. I am not going to blame regions because I know they are not after this and they have no interest in humiliating the people of Ijara but this particular Delegate, I want to appeal to him, to give the people of Ijara peace. We feel humiliated, slighted and demeaned by the constant adverse statements to these people from Ijara.

We feel that we are equally worth and deserving to have a district. The constant gibes are uncalled for and any attempt to continue abusing, humiliating will not be allowed. I am therefore strongly appealing to the fellow Delegates to be fair, objective and sympathetic to the people of Northern Kenya because it is not our wish to be less populated. It is not our wish to be where we are and therefore in the light of this, I feel we deserve the rights and privileges of being Kenyans

and we should be regarded as Kenyans if this kind of Conference is supposed to come out with something that will guide the future of this Country.

Madam Chair, I will not forget to thank the government. I want to thank the government for its stand on Ijara and other districts. If it was not for the government may be some of us would be dead in our beds because we cannot even walk in the streets of Nairobi, everybody is asking, who are these people from Ijara? So I want to stop by appealing to my brothers and sisters to seize with immediate effect attacking the innocent people of Ijara. Thank you very much.
(Delegates Clapping)

Hon. Delegate Wilfred Ole Kina: Thank you very much. Lets adjourn for tea and then be back at exactly 5.00 pm for the responses. Thank you.

Hon. Delegate Prof. Wangari Maathai: Honourable Delegates if you will take your space we shall start. We now want to give an opportunity to response. We want to hear the Commissioners who have been patiently listening to us since yesterday morning. We will now ask them to give brief comments on what we have been raising, on the issues we have been raising. I know it is a lot and I know they have a lot of notes so they will only be able to respond to a few issues.

There are some Delegates who came up to me and they reminded me that since yesterday we promised them they would be called, unfortunately we did not call them and it is just impossible really to go back to the Delegates discussions because the minute we open it up we won't be able to stop again. So what we would like to do is to appeal to those Delegates, we apologize, we have given those numbers to the Chairman and we hope that tomorrow they will not be disappointed by that promise because one of them we actually stopped him yesterday and we said we will give you an opportunity but we never went back to it. I am just explaining as you can see some are already coming up. So we just can't open the issue again, let us listen to the Commissioners and tomorrow we will try to resume and we will try to address the Delegates who have yet not spoken and those who wanted to respond to today's Chapter it is very closely

related to tomorrow's chapter so you can wind around your contributions together. With that may I call upon Commissioner Dr. Adede to respond please?

Com. Dr. Andronico Adede: Madam Chair, I thank you very much indeed for the opportunity given to us as Commissioners to respond briefly to the most vigorous debate ever on a chapter. I think you all agree that the system which has been used has given a maximum opportunity for a people driven process, allowing as many people as possible to express their views. We have appreciated a great deal the candid, free and forceful ideas that have come from the floor, using the draft that we placed before you in response to the views that we collected from you.

Indeed the comments were focused, some of them were even fit to go straight to the Committees for the actual drafting, redrafting of the draft, ranging from those that nearly pointed out, that some categories of disabled were not mentioned in a particular article whereas they are accepted in other articles. There are also comments that pointed out some apparent contradiction in the face of the draft like that one which pointed out that the age for qualifying to register as a voter is different from the age for qualification to be elected to Parliament. That may appear to be contradictory but the Commission had a rational basis for that as will be explained to you by my colleagues. So we are focusing on may be four major issues that have been recurrent and that have exercised your mind much more vigorously. Namely, the need for the second Chamber which was required by you as recorded on page 236 in Volume One of the Report. The question of recall of the MP's, affirmative action and associated rules and suggestions of how to make it come about. There is also a new idea of the treaties and obligations of the country and a few others that will come out as we begin to respond.

So, Distinguished Delegates may I just go a little further and talk about the recall of the MPs that has been provided for, required in your comments on page 236. The discussion has been vigorous, the principle has been discussed inside and out, suggestions have been made to improve upon it, ranging from asking MPs to show course and appear in open baraza's twice or three times a year apart from being recalled and also increasing the percentage required for effecting a recall through signature and so on and so forth. So for the purposes of the exercise we went through, you have already informed yourselves as to the various positions you take on

the issue, so that when you go to the Committee level we can now say that the elements that were raised in the general debate either support or reject the very idea of recall of the MPs. But indeed you had a basis for discussing it because the Commission had a draft before you in response to your wishes.

We see one of the questions raised to us was, where has it been used? Where did we find it? And I can confirm to you distinguished Delegates that attempts were made by the Commission in every step to study and find out if indeed there is example of such a procedure and where is it? I can tell you that Ghana, the very first African colony to gain its independence had the recall procedure, Nkurumah used it. Uganda has it in its book, in the current Constitution whether they have used it or not is not a matter but they have it, Malawi also has it. So for the purposes of indicating where we got the idea in an attempt to respond to your wishes that the MP should be subject to recall those are our basis and more could be found.

Distinguished Delegates, there is not much more we can say from this end, except to thank you once again for vigorously debating the issue that will enable the Committee level to dispose of it by producing whatever it is that will be agreed on, on the basis of your discussion on the subject. I would also like to take a few minutes now to take up another subject because my colleague on my left Dr. Kangu, will take up another subject which identified, affirmative action and Dr. Maranga will deal with the need for the second Chamber.

But before they do so, let me say something more about the treaties. This was raised in the morning by a contributor who correctly pointed out that our government has a number of treaties that were negotiated of which Kenyans don't know. All they find out is that they are bound by this and that treaty which has been injurious to their lives, but not only that. There are also a number of treaties that our country is a party to which are beneficial to us but because they have no procedures of making them part of our domestic law those treaties can never be useful to us, especially as natural means to the actual report in the human rights area. So even the Act itself that created the Review Commission did ask the Commission to examine this question. It is an issue that has already seized the minds of so many Kenyans when the cases of obligations that our government assume internationally were being flaunted. You see, there was even an

interesting question raised in a very innocuous way, in the area where the Legislature has a right to deal with budgeting and approval of funds and somebody asked whether or not Kenya citizens have a right to know how the huge external debts which the government borrow are used? Would there be a chance by which the Parliament would try to supervise and to agree on how such external debts which are part of the treaties negotiated between our government and financial institutions are made?

So, the treaty provision on section 102 (f), which means the Legislature should consider and approve international treaties very short but very important because treaty making is famously executive everywhere. It is the executive branch that negotiates and produce treaties. Then in those situations, there is always a procedure where there is a part the Parliament plays as part of supervision of the conduct of foreign policies. In our country we don't have it and this is why the new draft taking cue from the Act and taking cue from what the people said during the collection of views. Page 195, 195 of Volume One is full of specific suggestions on this point.

Therefore, for our purposes the treaty making and the fact that the Parliament is now being requested to take part in approving and in advising the government on what to do is very important part of the functions in the role of the government. We inherited a procedure from England, where treaty making and treaty implementation requires that those instruments do not have the force of law in our country until an Act of Parliament has been enacted to give them that force of law. Therefore, a Minister for the time being interested in the subject matter, trade, whatever it is, negotiates the treaty, brings it back, ratifies, that's it. Now the Parliament will be seized of the process. The details of how to implement the so called the dualist approach to treaty making, where you negotiate and then but before they are made part of domestic law, the Parliament must have a say in doing so. So this is a new area which I thought I would take time to clarify for the Delegates, so that that part of our draft dealing with the functions of the government part of checks and balances and distribution of power while the Executive negotiates but the Parliament approves is famously good and I think it will receive the support on the basis and in the background of the Commission's work that has suggested articles on the subject.

Madam Chair, may I take leave and ask my other colleague now to take on perhaps the question of the need for a second chamber in the same vein. I thank you.

Com. Charles Maranga: Honourable Delegates, thank you very much for your discussion of this topic. I am going to be very brief and precise and may be I want to respond to the various issues which have been raised.

First and foremost, before may be I go into the details of the Second Chamber, I want to draw your attention to the Review Act, which established this Commission, which is found in your books, the Volume One, the main Report and is on Appendix one, page 427. And I am reading Section 17 (d) (i) and (ii) where the Review Act or we were required as a Commission to examine and recommend the composition and functions of the organs of State including the Executive, the Legislature and the Judiciary and their operations aiming to maximize their mutual checks and balances and secure their independence.

Roman (ii), examines the various structures and systems of government including the federal and unitary systems and recommend an appropriate system for Kenya. We having been guided by those two principles and having been given that you need to devolve power, one of the things is that if the Delegates endorse the principle that we need to devolve power, that means we endorse the principle of devolution of power, redistributing the power structure of this country, then the Second Chamber becomes a necessity and out of that we found that many Kenyans did give views to that degree and said we need a Second Chamber. Why did they need a Second Chamber? There are a number of reasons.

One, representation of the people. If you heard about the ideology which had been given by the Commission earlier on, in earlier chapters, the central point is the people and therefore you need to give the people the opportunity to be served in the best way possible. You need to give the people opportunity to make decisions. Therefore representation of the people is critical in terms of power structure and therefore that is why we came up with that Second Chamber.

The other reason is that, the kind of structure which has been proposed in this draft bill does require that the Second Chamber be in place unless you as Delegates are going to change fundamentally this particular draft bill. If you alter the structure so much then there might not be need for the Second Chamber but if you are going to endorse most of the issues which have been put in this draft bill you will not escape endorsing the position of a Second Chamber. For example, we have proposed that the President can be impeached by Parliament and if the President is going to be impeached or is impeachable for that matter then it is of necessity that the motion of removal will be started by one House and the other House will be the judge or will be the one which will be able to discuss the conduct of the President. One House originates the motion, the other one discuss it. Therefore you would need that Second Chamber, you cannot be the prosecutor and the judge at the same time. All democracies where this Clause of impeachment is used, normally we have two Chambers. A clear case is where we have Presidential Systems like even in America, it does happen like that, it is a clear example.

Then the other issue is to ensure that the devolved government, after you hear the chapter on devolution may be you might see that there is value in having the Second Chamber and I think some Honourable Delegates did comment yesterday, that this chapter of Legislature should have come after the chapter on Devolution. But then we as a Commission and the Steering Committee of this Conference did indicate that we needed to go forward with the Legislature. Therefore, the Second Chamber will be there to ensure that the devolved structures of government are protected and the devolved structures of government are given the necessary attention, so that they cannot be able to be killed the way may be most cases have happened.

The question of cost of the Second Chamber, no Honourable Delegate here has been able to tell us exactly what is the cost? The questions of cost will come with time and if Kenya is developing we might not remain at the same economic level today and may be in the next 10 years. If the Kenya shilling is now regaining its lost glory, why don't you expect that we are going to have a good economy which can be able to support that kind of structure. (*Delegates Clapping*) So the question of cost does not arise. In the same way you are saying that you want to concentrate may be resources to a few people and forget the poor. Those who are supporting the poor, then you really need to give them the powers.

The question may be I want to talk about the Second Chamber is its composition. Article 106 has given some form of composition which we propose as a Commission, that is the best we could be able to do at that moment. We did not as a Commission create those districts, we did not as a group decide that the number of districts should be 69, may be what we decided that Nairobi should be a district but then all the same at least we have given you a structure which can be improved on. If you disagree with the kind of districts we have today, then it is your duty to recommend how to correct that anomaly. It is not the Commission to do it. I think when we went throughout this country, we went to various districts which had already been accepted as districts. Whether there is a dispute about that, that is not our problem, if there is a dispute about the issue of land, that is not our problem. Our problem was, can we recommend a structure? So we are not saying that it remains 70, you can increase, you can reduce depending on how you agree. That is something that can be done during the Committee stage.

The other issues may be you want to talk about is the gender question which we have proposed in that structure. If you agree on the principle of affirmative action you have no choice but you must endorse it fully to the end but if you don't endorse that principle then there will be a question on that but I also think that when you go to the Committee stage you will be able to discuss the question. How many women for example do you want to put on that particular structure? People have suggested, Honourable Delegates have suggested that we change the name of the National Council we call it a Senate. We tried to avoid that initially but I think that is still for discussion and if that is the best fair enough so long as we have a structure which can serve the Kenyan people.

The other point may be I want to talk about which will be final, is the way the districts have been set up in this country, they kind of follow ethnic structure, they follow ethnic administrative units. Now, if you have a Second Chamber then you have a chance where you will be able to bring the reflection of this country, what other Delegates were calling House of Nations, others were calling it a cultural kind of House, a House of Wisdom. Then here this kind of House, if you so decide can be a House where you find all the ethnic communities in this country are represented equally without any discrimination so that if people want to make a decision at that

particular level they can. This is a clear case in the United States where all States whether small or big are equal. So I think this is something which can be discussed. *(Delegates Clapping)*

The issues which have been raised here, is that people wants to maintain this country, they want to maintain the culture of this country. How do you reflect culture? Like here the way we are seated is a beautiful seating and I think this is the kind of Kenya we want and I hope Honourable Delegates when you approach this issue of the Second Chamber, let it not be struck out simple that it is going to duplicate duties with the National Assembly. In the wisdom of Kenyans, in the wisdom of the Commission we did give clear functions for the National Council and the National Assembly. If those functions are not enough then we can be able to shift some of the functions from one House to another, otherwise what we are suggesting is that this particular proposal came from the Kenyan people it did not come from the Commission. *(Delegates Clapping)*

Madam Chair, I want to finish by saying that the Second Chamber will be the custodian of the reflection of the Kenyan people and I think the question of who should be sitting in that particular Second Chamber, the question of age, the question of composition that should be determined by you Honourable Delegates. So you have a heavy responsibility and Madam Chair, I do not want to comment on many of the other issues, I was basically concerned on that. There are a number of issues which Delegates have been able to comment on, I think those issues we have taken them up as a Commission, we have taken them up as Honourable Delegates and because the reports are being recorded let us meet at the Committee stage and discuss further. Thank you. *(Delegates Clapping)*

Com. Mutakha Kangu: Thank you very much.

Com. Charles Maranga: I want to finish by saying that the second chamber will be the custodian of the reflection of the Kenyan people. And I think the question of who will be sitting in that particular second chamber, the question of age, the question of a compositions that should be determined by you Honourable Delegates. So you have a heavy responsibility and Madam Chair I do not want to comment on many of the other issues I was basically concerned on that, there are number of issues which Delegates have been able to comment on. I think those issues

we have taken them up as Commission, we have taken them up as Honourable Delegates and because the reports are being recorded let us meet at the Committee stage and discuss further. Thank you.

Com.Mutakha Kangu: Thank you very much Madam Chair. I want say that a number of issues that have arisen from the floor of the Conference. Compel me to say a few things to share my ideas about the very idea of Political society, Law and Government. We are not going to be able to structure a Constitution that will serve to solve the problems of the Kenyans unless we first find out how the three institutions of the Political Society Law and Government were introduced in the life of human beings and the objectives they were meant to serve. If we clearly understand that then we shall be able to understand some of the proposals that are being made.

Two, we cannot be able to answer that question of the three Institutions before we first appreciate the very purpose of human life, the foundational aspiration of every human being. And starting at that point I want to say in various simple terms that, the aspiration of every human being is to preserve one self, is to survive a little longer as much as it is possible. And that being the case you realize that central to the survival and self preservation of every individual is the need to access certain resources that are central to that survival. And in the beginning the resources were abundant and anybody could access them easily, but with the increase in population the resources reduced and we started fighting over those resources. The struggle over resources reached a level of reducing life to survival for the fittest, but because some were not fit they will simply perish. Human beings decided that these circumstances are un-acceptable we must find a mechanism through which all of us whether you are fit or un fit can have an opportunity to access those reduced resources and be able to survive. It is at that point that human beings came up with the idea of Political Society, Law and of Government. The reason was to ensure that we have some common institution or common power that can be used for the proper management of the reduced resources to generate more and for the equitable distributions of those resources to ensure that even the weaker members of the society who will otherwise perish can have their share of resources and be able to survive. So from that point of view therefore, Government in origin and nature I said the other day is representative.

Two, Government in origin and nature is interventionist, it intervenes in certain unacceptable circumstances so that those circumstances that can be made acceptable and bearable for all the members of society. Now if we appreciate that, then as Kenyans we need to ask ourselves in our society who are the weaker members for whom this Constitution must intervene and ensure that they can have their due share of the resources.

Two, if we look at ourselves as Kenyans we must ask when people chose to move out of the life of solitude, the life of individualism into the life of society, they said we come together and surrender our individual powers. In the context of Kenya whom do we say chose to come together? We can look at ourselves in terms of tribes, big tribes and small tribes, we can look at ourselves as men and women, we can look at ourselves as young and old, we can look at ourselves as the rich and the poor and if we appreciate all that and we accept that Government is supposed to intervene for the weaker members of the society politics are supposed to intervene for the weaker members of the society then we shall see the need to structure a Constitution that is going to take care of these weaker members of the Kenyan society that are crying before us. This are women this are the small communities, this are the marginalized disabled and you can name them in what ever way you like, but if we accept that principle then we say let us structure Institutions that can enable these weaker members of the society to feel that they are participating in the affairs of the Kenyan society.

That is the basis on which we should be able to address the question of affirmative action and you must note that affirmative action is not just for women it is for all the weaker members of the Kenyan society. Whether they are women or they are small tribes or they are people who live in vast areas because they don't have large numbers we must not continue with a Constitution that will make them feel life in Kenya is still being run on the basis of survival for the fittest. They must feel that being part of Kenya we are seeking to ensure that even if they are not fit they can have their due share of the resources.

So I will appeal the Delegates to scrutinize the proposals we have made that seem to try to assist the weaker members of the society from that point of view from that theory of Government. It is

a sound theory I am open to criticism to be told it is a wrong theory but so far I have not been convinced that it is a wrong theory.

Two, I want to refer this members to section 3 of the Constitutional Review Act 3B it says; the object and purpose of the Review of the Constitution is to secure provisions therein establishing a free and democratic system of Government that enshrines good governance Constitutionalism, the Rule of Law, Human Rights and Gender Equity. I want to comment on that section saying that when human beings move out of the life of individualism into a life of society, into political life, into a life of law and Government they all surrendered their individual powers into a common fund to create a power, strong enough power that was supposed to be used for the benefit of all. Now having done so, history shows that because of the selfish nature of human beings even those to whom power is surrendered sometimes forget that that power has been surrendered to be used by a few but for the benefit of all, they forget and hijack it and start using it for their personal narrow interest. Power then becomes open to abuse and they say absolute power can corrupt absolutely. Now on that basis, this section refers to Constitutionalism and I will like these Delegates to appreciate the different between Constitutionalism and democracy. Constitutional Government based on Constitutionalism is a system that recognizes that power can be abused therefore seeks to limit power to subject power to constrains and limitations. And on that basis it is accepted that power whether it is in the hands of one person or a few or the majorities it can be a abused. Therefore democracy is a mechanism of making decisions of electing leaders, in most cases it is best on majorities but Constitutionalism recognizes that since we are suppose to serve the entire society majorities and minorities but w cannot go for simple democracy and forget that even majorities can abuse minorities. Therefore Constitutionalism demands that the restrains must be placed even on democracy. So when we talk about you have proposed MMP you are running away from democracy, we are forgetting that Constitutionalism is more important than democracy, democracy should be looked at as just one aspect of Constitutionalism and if there are any circumstances under which majorities can run away with power and minorities are left with nothing Constitutionalism will step in and say no we must allow majorities their chance but we must also protect minorities. So we are trying to propose a system that recognizes democracy but at the same time protects minorities, that is why we are saying MMP through the constituencies you can go the simple democratic ways and help people

contest. But because you were also worried about minorities you create some other room through which those other weaker members of the society can also feel a part of the entire process.

Three, the discussions have tended to look at MMP as if it only addressing the question of women. The problems I narrated the other day of the current system of elections identified were numerous they were not just the problems of women alone and MMP is seeking to address some of those problems. If we say lets create seats for women have we created seats for the disabled? Have created constituencies for the other minorities? Can MMP cater for all these people? So we need to think about that.

Four, the question of age of people to participate at different levels we need to go back again to the simply theory of Government I have narrated which says; Government, Politics and Law were introduced to intervene for those who could not do certain things for themselves those who need support from society. That therefore means that representative Government in nature requires certain qualifications and participation in Government at different levels requires different qualifications. That is why we say for you to participate in governance, in the judiciary you have to be a lawyer you cannot become a Judge if your not a lawyer. On the other hand we said for you to participate as a voter you should be 18, but to participate as a person who can be elected as a Member of Parliament you should be 21, but to participate to be elected as President you should be 35. I am surprised that people are saying if I can vote at 18 why shouldn't I be an MP at 18 but they are not questioning why if you can be elected to Parliament at 18 you cannot be elected President at 18.

So we must accept that governance requires qualifications at different stages to participate in governance at different levels you need different types of qualifications and we should be able to decide which ones are the correct qualifications for which level of governance. That is not to say that's suggestion is wrong we could still reduce the age to 18, someone even suggested the other day that if we can allow ladies to get married at 16 why shouldn't they vote at 16? It is open but I want you to understand that theory that it is a question of qualification and we must identify the correct qualifications for each level of governance.

Finally, the question of the Second Chamber; an impression is being created that it is only the Executive can become dictatorial and therefore needs checks and balances. That is not true any of the three organs of Government can become dictatorial and they need checks and balances. So in the opinion of the Commission the creation of a second chamber is responding to the fact that Kenyans are trying to structure a system of Government that can increase the mechanism of checks and balances. And we are saying it will not be reasonable for us to lodge the entire Legislative power in the hands of only one institution, and we are saying for purposes of checks and balances can we have two different Legislative Institutions to check on each other. We may not have formulated the functions properly but if we accept the principle of checks and balances and we accept that even the Parliament can become dictatorial that even the Judiciary can become dictatorial then the next stage will be the Commissioners haven't done a good job in formulating the functions and purposes, this Conference can formulate those functions and purposes and make the certain chamber a good Institution for checks and balances.

The last point is on the issue of cost, let us accept the principle if the principle is good why should we shoot it down on the basis of cost. Now to pick up what Commissioner Maranga said, we are hoping that this Constitution we are structuring is going to give us a system of management of our resources that will avoid the losses and the waste we have been suffering under the dictatorial Constitution we have today. We have suffered a lot of loss most of the resources have been wasted through corruption and old manner of bad governance under the current Constitution. It is our hope that if we structure a good Constitution we should be able to save a lot of money that can cater for these other institutions. Now on that issue of cost, I am sorry I have been referring to the Germany system and some Delegates may not be happy. But I want to say these Act under Section 17 mandates the Commission to also conduct research for purposes of informing itself and the Kenyan people on the experiences of other countries, so that we can see whether we can borrow from those other countries. Germany in trying to cut down the cost of second chamber arranged for a composition of second chamber that ensures that the members of the second chamber are not paid a salary as members of the second chamber because they come from the Cabinet of the regions and they earn a salary at the regional level. So they have the benefits of the second chamber without incurring the additional cost. So can we address the principle, if we

