

**NATIONAL CONSTITUTIONAL CONFERENCE
DOCUMENTS**

**THE REPORT OF THE RAPPOREUR-GENERAL TO THE NATIONAL
CONSTITUTIONAL CONFERENCE ON THE GENERAL DEBATE HELD
BETWEEN APRIL 28 – JUNE 6, 2003 AT BOMAS OF KENYA**

17TH JULY 2003

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1. The Scope of the Report

1. This Report summarizes the proceedings of the National Constitutional Conference (hereafter the Conference) at the conclusion of the General Debate on the Main Report and Draft Bill to Alter the Constitution, which were placed before the Conference for discussion and debate on Tuesday May 6, 2003. The Report has been compiled from the following sources: -

- the Verbatim Reports of Conference Proceedings;
- daily summaries of Conference Proceedings prepared by the Conference Secretariat;
- chapter-by-chapter analysis of issues raised in debate, prepared by the Conference Secretariat; and
- delegate-by-delegate analysis data sheets prepared by the Conference Secretariat.

2. The Report is presented in four parts as follows: -

- the format and conduct of Conference proceedings;
- general assessment of and issues in general debate;
- detailed annotation of issues in general debate, and
- a tentative agenda for Technical Working Committees.

2. The Format and Conduct of Conference Proceedings

2.1 Antecedent Processes

3. The context of proceedings was set between April 28 and May 6, 2003, by a number of antecedent processes. These included: -

- the accreditation and registration of delegates;
- the swearing in of or affirmation by delegates;
- the official opening of the Conference by H. E. The President;
- the constitution of the Steering and other Standing Committees of the Conference;
- presentation of the Lancaster House (1962) experience; and
- presentation of the Constitution of Kenya Review (National Constitutional Conference) (Procedure) Regulations, 2003 (hereinafter the Regulations).

4. Accreditation and registration of delegates were facilitated by an Accreditation Committee established as a standing Committee of the Conference under clause 3 of the Regulations. The committee, which was set up by the Constitution of Kenya Review Commission (hereinafter the Commission) before the Conference started, operated on the basis of the list of delegates published in the Kenya Gazette on October 16th 2002 and updated and re-published on April 25th 2003. Subsequent changes to that latter list, which were few and far between, were dealt with in accordance with clause 5 of the Regulations. The final list of accredited delegates is attached as Appendix A to this Report.

5. Although the bulk of delegates were sworn in or affirmed on Tuesday, April 29, 2003, a substantial number were, for various reasons, not able to do so. Most of these were sworn or affirmed subsequently at various stages of

the Conference proceedings. At the time of adjournment of the Conference on June 6, 2003, the delegates whose names appear in Appendix B to this Report had not been sworn in or affirmed.

6. The Conference was officially opened by H. E. President Mwai Kibaki, CGH, MP on Wednesday, May 30, 2003. He was accompanied, among others by H. E. Vice President Michael Wamalwa Kijana, MP, H. E. First Lady Lucy Kibaki, Cabinet Ministers, Members of the Diplomatic Corps and other distinguished guests. The substance of the President's message to the Conference may be summarised as follows: -

- the Government supports the constitutional review process unreservedly;
- all organs of review must affirm commitment to certain foundation principles agreed to prior to commencement of the review process;
- all organs of review must ensure that the aspirations of the people of Kenya for freedom and democracy are upheld;
- delegates must rise above narrow sectarian interests and promote and constitutionalise the national good; and
- the time-frame for the review process should be realistic and people-driven.

The full text of the President's speech is attached as Appendix C to this Report.

7. As originally established under Clause 46 of the Regulations, the Steering Committee of the Conference was to have had a core membership of twenty-six delegates, and all Commissioners of the Commission as rapporteurs without the right to vote. Because of the need to accommodate the diversity of interests and "constituencies" represented at the Conference, Clause 46 of the Regulations was amended so as to: -

- create three positions of Vice-Chairs of the Conference (hence of the Steering Committee);
- substantially enlarge the core membership of the committee; and
- strengthen the committee's overall co-ordination of the conduct of Conference proceedings.

The Steering Committee as finally established therefore, had a core membership of fifty-six delegates. Subsequently two other standing committees of the Conference namely, the Media Advisory Committee and the Committee on Privileges, Discipline and Welfare, were established. The final list of members of all standing committees of the Conference is attached as Appendix D to this Report.

8. The establishment of the Steering and other Standing Committees was preceded by delicate negotiations between the various constituencies represented at the Conference. The formula that was eventually agreed on was that the bulk of the members of each Committee be nominated by delegates sitting as provincial caucuses, and the rest by other categories of delegates. Nomination by the provinces thus became the primary method of negotiating positions at the Conference.

9. A special session to honour and share experiences with the survivors of the 1962 Lancaster House Conference was held on Monday, May 5, 2003. The session gave delegates an opportunity to appreciate the context and issues which shaped the structure and content of the 1963 Constitution, and the political discourses leading to the radical changes subsequently introduced into that document. The veterans also made extensive comments on specific issues covered in the Draft Bill. These included land, devolution, human rights, structure of the executive and the legislature, protection of Kenya's national heritage and

transitional justice. The general message of the Lancaster House veterans may be summarised as follows: -

- since constitution-making is essentially political, delegates must be prepared to negotiate in a spirit of give and take if the Conference is to achieve its goal;
- although Kenyans are looking forward with great expectations to a new Constitution, the bigger challenge, of operationalising it, still lies ahead;
- because over-concentration of power in the central organs of government is the Achilles' heel of the present Constitution, delegates must make sure that the new Constitution disperses, controls and decongests power;
- while celebrating Kenya's rich diversity, the new Constitution must enhance unity, integrity, good governance and accountability to the people; and
- the process of amending the Constitution should be tightened to avoid the tragedy we have gone through in the last thirty-nine years.

The list of the Lancaster House veterans present at this special session (including those who joined the Conference later) is attached as Appendix E to this Report.

10. The Regulations (as amended) were presented and explained to delegates on Tuesday May 6, 2003. In addition to providing for the general format and conduct of proceedings at the Conference, the Regulations prescribe four sequential stages for discussion, debate and adoption of Main Report and Draft Bill to Alter the Constitution. These are: -

- the general debate by the whole Conference;
- detailed consideration of the Report and Draft Bill by Technical Working Committees;
- detailed consideration of the Report and Draft Bill by the Conference; sitting as a committee of the whole, and

- adoption of the Report and Draft Bill by the Conference.

When the Conference adjourned on Friday June 6, 2003 only the first stage of the proceedings had been concluded. The final text of the Regulations is attached as Appendix F to this Report.

2.2. Commencement of the General Debate

11. Once these antecedent processes were over, the Conference went into the general debate on the Main Report and Draft Bill prepared by the Commission. This commenced upon the presentation by Prof. Yash Pal Ghai, the Chairperson of the Conference, of the Report and Draft Bill in conformity with Clause 18 of the Regulations. Upon that presentation, the Chairperson delivered a communication introducing the Report and Draft Bill. The substance of the Chairperson's communication was that -

- the Commission faithfully followed the provisions of the Constitution of Kenya Review Act (Cap 3A) (hereinafter the Review Act) as regards process and outcome,
- the Commission encouraged the fullest participation by Kenyans in the review process,
- the Report of the Commission faithfully reflects the reform agenda as set out in the Review Act and the wishes of the people, and
- the Draft constitution provides for a democratic Republic devoted to human rights, social justice, accountability and transparency of government, the participation of the people in public affairs, and the careful management of natural resources.

12. That communication was followed by a formal motion moved by Hon. Grace E. A. Ogot (Delegate No. 399) and seconded by numerous delegates

that “This Conference debates the Report and Draft Bill of the Constitution of Kenya Review Commission”. The chair then put the question to the Conference which carried the motion by acclamation.

13. That set the stage for the preparation of a weekly programme of debate which was laid before and approved by the Steering Committee and the Conference. In the course of general debate, however, that programme was adjusted from time to time to accommodate, inter alia the following exigencies: -

- logistical and administrative problems affecting the Conference;
- time lapses and interruptions during debate occasioned by motions, adjournments and consultations;
- the need to allocate more time to some, as opposed to, other topics;
- the initial decision to accommodate religious rest days, periods of worship and public holidays; and
- the need for overall flexibility in the management of the Conference.

The final programme of the Conference between April 28 and June 6, 2003 is attached as Appendix G to this Report.

14. The general debate was divided into daily sittings and sessions at which chapters of the Report and corresponding provisions of the Draft Bill were presented by Commissioners and discussed by the Conference simultaneously. Although it was fully understood that the chair of the Conference was ultimately responsible for the conduct of all proceedings, individual sessions of the Conference were co-chaired by a Conference Vice-Chair and a delegate nominated for the purpose from among the “constituencies” represented at the Conference. This procedure was adopted to give delegates more control of Conference proceedings than would otherwise have been the case. No decisions on the Report and Draft Bill was taken in general debate; this being reserved for subsequent

stages of the Conference proceedings as prescribed by Clause 20 of the Regulations.

3. General Assessment of and Issues in the General Debate

3.1. Assessment of Debate

15. The general debate was vigorous, lively and extremely constructive. It was obvious that most delegates had studied the Commission’s Report and Draft Bill and had, to some extent, formed very firm views on a number of its key provisions. In addition, delegates both within and outside Bomas, were able to lobby or caucus in a variety of configurations ranging from religion, cultural nationalities, social and political classes, and gender, on issues of particular interest or concern to each category. Although some of these lobbies or caucuses were driven by expediency and/or short-term gain, most of them were sustained throughout the Conference. Indeed the general debate benefited immensely from them.

16. At the conclusion of the general debate some 495 delegates had spoken at least once. Those who did not speak by category were as follows -

- Parliamentarians - 83
- District Representatives - 23
- Political Party Representatives - 5
- Commissioners - 4
- Religious Organisation Representatives - 4
- Women’s Organisation Representatives - 5
- Trade Union Representatives - 3
- Non-Governmental Organisation Representatives - 3, and
- Professional Organisation Representatives - 1

The pattern of delegate contribution on each chapter of the Report and Draft Bill is attached as Appendix H to this Report.

3.2. The Range of Issues

17. A wide range of issues were raised, discussed and, in appropriate cases, resolved, in general debate, before the Conference adjourned on June 6, 2003. These issues are presented under the following headings: -

- foundation principles;
- areas of broad agreement;
- areas not resolved; and
- areas which require further debate.

3.2.1 Foundation Principles

18. The general debate was conducted on the assumption that a number of foundation principles regarding the constitutional review process had been agreed upon by the people of Kenya prior to the establishment of the Commission and the convening of the Conference. These foundation principles are stated in the Review Act. They relate both to the conduct of, and the substantive outcome of the review process.

19. As regards the conduct of the review process, the foundation principles are stated in section 5 of the Review Act. That provision requires all organs of review i.e. the -

- Commission;
- Constituency Constitutional Fora;

- Conference; and
- National Assembly

to: -

- be accountable to the people of Kenya;
- ensure that the review process accommodates the diversity of the Kenyan people including socio-economic status, race, ethnicity, gender, religious faith, age, occupation, learning, persons with disability and the disadvantaged; and
- ensure that the review process –
 - provides an opportunity to actively, freely, and meaningfully participate in generating and debating proposals to alter the Constitution;
 - is conducted in an open manner;
 - is guided by respect for the universal principles of human rights, gender equity and democracy; and
- ensure that the final outcome of the review process faithfully reflects the wishes of the people of Kenya.

20. As regards the substantive outcome of the review process, the most important of these principles are stated in section 3 of the Review Act. That provision states that the object and purpose of the review of the Constitution is to secure provisions therein -

- guaranteeing peace, national unity and integrity of the Republic of Kenya in order to safeguard the well being of the people of Kenya;
- establishing a free and democratic system of Government that enshrines good governance; constitutionalism, the rule of law, human rights and gender equity;
- recognising and demarcating divisions of responsibility among the various state organs including the executive, the legislature and the

judiciary so as to create checks and balances between them and to ensure accountability of the Government and its officers to the people of Kenya;

- promoting the peoples' participation in the governance of the country through democratic, free and fair elections and the devolution and exercise of power;
- respecting ethnic and regional diversity and communal rights including the right of communities to organise and participate in cultural activities and the expression of their identities;
- ensuring the provision of basic needs of all Kenyans through the establishment of an equitable frame-work for economic growth and equitable access to national resources;
- promoting and facilitating regional and international co-operation to ensure economic development, peace and stability and to support democracy and human rights;
- strengthening national integration and unity;
- creating conditions conducive to a free exchange of ideas;
- ensuring the full participation of people in the management of public affairs; and
- enabling Kenyans to resolve national issues on the basis of consensus.

21. In order to ensure that those outcomes are fully reflected in the Draft Bill, section 17 of the Review Act requires the Commission to conduct civic education; collect and collate the views of the people on proposals to alter the Constitution; and carry out studies, researches and evaluations concerning the current constitution and other constitutions and constitutional systems. In particular, section 17 further obligates the Commission to ensure that in reviewing the constitution, the people of Kenya -

- 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 maximise their mutual checks and balances and secure their independence;
- examine the various structures and systems of government including the federal and unitary systems and recommend an appropriate system for Kenya;
- examine and recommend improvements to the existing constitutional commissions, institutions and offices and the establishment of additional ones to facilitate constitutional governance and the respect for human rights and gender equity in Kenya as an indispensable and integral part of the enabling environment for economic, social, religious, political and cultural development;
- examine and recommend improvements to the electoral system of Kenya;
- without prejudice to subparagraph (i), examine and make recommendations on the judiciary generally and in particular, the establishment and jurisdiction of the courts, aiming at measures necessary to ensure the competence, accountability, efficiency, discipline and independence of the judiciary;
- examine and review the place of local government in the constitutional organisation of the Republic of Kenya and the degree of the devolution of powers to local authorities.

22. Throughout the general debate, no attempt was made to challenge the importance of these foundation principles, nor to re-open debate on the propriety of prior agreement thereon. Indeed the Conference accepted: -

- the Report of the Commission as a fair summary of the views of the people of Kenya; and

- the overall architecture and general content of the Draft Bill as a fair reflection of what Kenyans are looking for in a new constitutional dispensation.

On that basis the Conference re-affirmed its mandate under section 27 (i)(b) which is to discuss, debate, amend and adopt the Report and Draft Bill prepared by the Commission.

3.2.2 Areas of Broad Agreement

23. Although many recommendations in the Report and Draft Bill were not resolved, broad agreement appears to have emerged in respect of a number of important areas. That agreement means that the Conference does not expect debate on the essential merits of issues falling within these areas to be re-opened in discussions at the technical working committees or in subsequent stages of discussion and debate. Set out below, is a summary of these areas.

(a) The Sovereign Authority of the People

24. The proposition that all constitutional authority must derive from and can only be held and exercised on behalf of the people of Kenya, was underscored by the Conference. The corollary to this is that the new constitution must guarantee the fullest and most effective participation by the people in state affairs. There was agreement, therefore, that the constituent power of the people must be reflected in the design of all aspects of the Constitution and, in particular in: -

- the provisions relating to future amendments to the Constitution;
- the system and process of representation both in political parties and in elective organs of state;
- appointments, control and dismissal of holders of public office;

- the regulation of the conduct and exercise of legislative, executive and judicial power at all levels of government;
- the control, utilization and management of national resources including finance, revenue and land, and
- the overall supervision of the entire constitutional edifice.

25. There was understandable concern about the ease with which the current constitution had been amended since 1964, leading inter alia to extreme concentration of power in the executive organ of government. The Conference was of the view, therefore, that in future, the people must be involved in the process of amending the constitution; at least of essential provisions of it. This, the Conference agreed, should be through a referendum after an exhaustive public debate of the proposed amendments. Never again should Parliament have exclusive authority to initiate, debate and enact amendments without involvement of the people.

26. Concern with the system and process of representation arose from the fact that during the one-party era, the machinery of KANU had been used to undermine the political rights of many individuals who, for one reason or another, had fallen out with the regime. These excesses should not be allowed to recur. Further, the Conference was concerned about the lack of mechanisms in the current constitution which would ensure equity in representation in elective and appointive positions especially as these relate to women and disadvantaged groups or communities.

27. The need for accountability in the discharge of public office was underscored by the Conference. The Conference therefore, demanded clear guidelines on appointment and dismissal of public officers. Apart from the fact that the Draft Bill calls for the sharing of responsibility for appointment of senior public servants between the legislature and the executive, transparent and people-

responsive procedures for the sharing of that responsibility must be in place. Without such procedures, it is very easy for those organs to operate on the basis of secrecy or in pursuit of criteria not subject to public scrutiny.

28. Although the Draft Bill creates mechanisms through which the people would exercise effective control over the legislature and the executive, the Conference noted that this was not the case in respect of the Judiciary. This is particularly worrisome since members of the Judiciary are not elected by the people. There was general agreement that mechanisms that would open the Judiciary to public evaluation and scrutiny be established. The same was also necessary in respect of the supervision of the conduct of other holders of constitutional offices.

(b) **The Supremacy of the Constitution**

29. The Conference accepted the principle that while the people are sovereign, that sovereignty can only be expressed through a Constitution which is accepted and operates as the supreme law of the land. The proposition that the Constitution is supreme means, therefore, that: -

- all other laws are subordinate to the provisions of the Constitution and are void where inconsistent with it;
- the power to alter or amend the Constitution ultimately rests with the constituent authority i.e. the people;
- the tendency to treat Parliament as supreme must be discarded, and
- as far as possible, the Constitution should confine itself to the establishment of fundamental principles, institutions and processes; operational details being left to ordinary legislation.

30. The Conference noted that the doctrine of the supremacy of the constitution was central to the observance of the republican principles upon which the Draft Bill is founded, namely -

- good governance,
- the rule of law,
- justice,
- democracy, and
- constitutionalism.

It is important, therefore, that this be clearly interwoven in all parts of the Draft Bill.

(c) **The Nature and Integrity of the Republic**

31. The Conference was in agreement that the essential characteristics of the state as defined in Chapter 2 and 3 of the Draft Bill were sound. There was need, however, to enhance the robustness of those characteristics by, inter alia: -

- settling or providing a formula for the settlement of the international boundaries of the Republic;
- ensuring that the internal boundaries which form the basis for devolution of power or local government are clearly defined;
- strengthening national identity by ensuring that Kenya's rich linguistic and cultural diversity is recognised and promoted in the Constitution; and
- ensuring that the goals; values and principles set out in Chapter 3 of the Draft Bill are reflected in the design of all aspects of the Constitution.

(d) **The Basis of Nationality and Citizenship**

32. Although provisions regarding nationality and citizenship contained in the Draft Bill are fairly standard, the Conference noted and accepted a number of innovations intended to address inequities in the current constitution. Among these are provisions relating to -

- entitlement, as of right, to a passport, a birth certificate (if born in Kenya) and an identity card,
- gender parity in the conferment of citizenship to children,
- presumption of citizenship in respect of foundlings, and
- administration of matters of citizenship not by a government department but by an autonomous institution.

33. The Conference cautioned, however, that a number of basic principles regarding nationality and citizenship should be clearly enshrined in the new constitution. Among these are that –

- citizens must have true and substantial connection with the Republic of Kenya,
- citizenship implies absolute loyalty and adherence to the basic values, principles and goals on which the Republic is founded,
- the duties inherent in citizenship must be clearly prescribed, and
- the security of the state must be a paramount consideration when granting citizenship status by registration or naturalisation.

The implication of these principles for the acquisition of citizenship by marriage or dual citizenship status is considered elsewhere.

(e) **An Expanded Bill of Rights**

34. Although the current Constitution has always had a chapter on the protection of fundamental rights and freedoms of the individual, the Conference was concerned that over the years, these had been honoured more in their breach than in their observance. The primary reasons for this are: -

- the wide range of derogation of those rights and freedoms in the Constitution itself;
- the capricious disregard of those rights and freedoms by the executive organ of government;
- the failure and/or reluctance by the Judiciary to enforce those rights and freedoms; and
- the lack of citizen awareness of the importance of those rights and freedoms.

Besides, the Conference noted that the rights and freedoms entrenched in the current Constitution are designed to protect only individuals and not communities, and only in respect of civil and political matters.

35. The Conference was persuaded, therefore, that there is need for an expanded and fully justiciable Bill of Rights which would protect not only civil and political rights, but also confer social, cultural, economic and development entitlements. In this regard, therefore, there was broad agreement that while the state may not have the capacity or resources to confer or operationalise some of those entitlements, the new Constitution must create an obligation to strive towards the full accrual of those rights.

36. In addition, the Conference accepted the absolute necessity to ensure that: -

- derogation from any provision of the Bill of Rights should occur only in exceptional circumstances which must be clearly defined;
- the legislature remains firmly in control of the process of the declaration and or continued existence of any state of emergency;
- unimpeded access to the courts for the purpose of enforcing the provisions of the Bill of Rights is assured;
- a human rights commission is established to facilitate the promotion and protection of rights;
- continuous civic education on the Constitution in general and the Bill of Rights in particular is institutionalised; and
- where necessary, provision is made for affirmative action for all disadvantaged groups that is essentially corrective or restitutive in nature.

In other words there was broad agreement that public vigilance is the most effective way of promoting and enforcing the provisions of the Bill of rights.

(f) **Representative Governance**

37. Although the Conference accepted the proposition that governance at all levels should ideally, be based on free, competitive, and fair representation, it was also agreed that affirmative action for women was necessary in order to right historical and cultural wrongs based exclusively on gender. Specifically, the Conference agreed that the proportion of women in elective and appointive positions should not be less than one-third of the total establishment. The Conference noted that this general principle should apply not only to national and local governance but also to the internal (or domestic) organisation of political parties and civic organisations. The need to promote and foster the culture of an open accountable and equitable society was thus underscored.

38. The Conference recognised, however that a limited number of exceptions to this principle may be justified. Among these are: -

- elective or appointive processes that are wholly private or which do not compromise the public interest; and
- the need to respect fundamental rights and freedoms of individuals and communities.

In other words, the Conference accepted that the principles of democracy must be tampered with constitutionalism.

(g) The Principle of Separation of Powers

39. The Conference accepted without dissent, the need for clear separation of powers between, and where necessary, within each of the three organs of government, namely the legislature, the executive and the judiciary. The Conference was fully aware of the dangers of perpetuating or not radically restructuring the position under the current Constitution whereby the executive has become the supreme organ of state, directly and indirectly controlling the operations of the legislature and the judiciary. That position, the Conference noted, has led to some grave abuses among which are: -

- the use of the courts by the executive to settle political scores;
- the use of the legislature to enact unpopular legislations or to kill popular legislative initiatives;
- total lack of clarity as regards the range and limits of executive authority;
- lack of proper delegation of authority to lower level agencies of government, and
- constant interference by the executive in the day-to-day operation of other agencies of government.

40. The Conference noted, in particular, that the domination of the executive over other organs of government had led to a situation in which the Provincial Administration had become a government unto itself. Indeed that Administration now exercises authority over all aspects of local governance including –

- security,
- public order,
- agriculture,
- social and cultural activities,
- education,
- labour relations,
- resource management, and
- the administration of justice.

The Administration had indeed killed local level democracy.

41. The Conference was in agreement, therefore, that the Constitution must state clearly: -

- the core functions of each organ of government;
- areas of authority exclusively reserved to each of those organs;
- the constitutional limits of such authority;
- the circumstance and manner in which such authority may be delegated or otherwise shared; and
- the conditions under which persons exercising powers entrusted to each organ may hold office or exercise such power.

(h) Checks and Balances

42. In addition to clear separation of powers, the Conference also agreed on the need for checks and balances between organs of Government inter se to ensure that authority, even where it is exclusively reserved, is not abused. The purpose of effective checks and balances is to enable those organs of Government to limit each other's power. The Conference therefore accepted provisions in the Draft Bill relating to the controlled sharing of: -

- law-making functions between the Legislature, the Executive and the Judiciary over a limited number, but significant range, of issues;
- appointments to constitutional offices (including the Judiciary) between the Executive and the Legislature;
- legislative and supervisory functions within a bicameral legislature; and
- executive power between the Presidency and the Cabinet.

(i) **The Structure and Functions of Organs of Government**

43. Discussions on separation of powers and checks and balances led logically to consideration of the structure and functions of the three organs of government as proposed in the Draft Bill. That issue engaged delegates in and outside the plenary hall for a considerable length of time. Eventually, however, agreement was reached on a number of broad principles.

44. As regards the structure and functions of the legislature, there was general agreement that Kenya needed to give a bicameral system a chance this time around. It was also agreed that that system be carefully evaluated in terms, inter alia of: -

- capacity and viability
- cost, and
- efficacy in the discharge of the traditional functions of the legislature, namely –

- representation
- law-making and
- supervision of the Executive.

45. As regards the structure and functions of the Executive, the Conference accepted the proposal that the powers of that organ be shared by the President, assisted by the Vice-President, and a Cabinet headed by a constitutionally established Prime Minister. The Conference further accepted the proposition that –

- the Prime Minister be nominated by the President from among members of the first (lower) chamber and approved by simple majority vote of members of that chamber, and
- the rest of the Cabinet be appointed by the President on the recommendation of the Prime Minister and approval by simple majority vote of members of the first chamber,

46. As regards the structure of the Judiciary, there was general agreement that the hierarchy of courts as set out in Article 185 of the Draft Bill is sound. That Article provides for two categories of courts, namely: -

- the superior courts of record consisting of –
 - the Supreme Court
 - the Court of Appeal, and
 - the High Court, and
- the subordinate courts consisting of –
 - the Magistrates' Courts,
 - the Kadhis' Courts,
 - courts subordinate to the High Court established by Act of Parliament, and
 - traditional or local tribunals established by Act of Parliament.

It was agreed further that the Legislature should not exercise oversight functions in respect of the Judiciary as Article 102 (2) implies. This, it was noted, would compromise the independence of that later organ.

47. It is important to note that while there was broad agreement on the structure and jurisdiction of the three organs of Government as reported here, a number of issues, mainly of detail, were not fully resolved. These are examined in later sections of this Report.

(j) The Principle of Devolution of Power

48. A fundamental feature of the Draft Bill which the Conference accepted, is that power and authority should not only be shared; they must also be dispersed both laterally and horizontally among and to other agencies of government. The essence of devolution is to ensure that: -

- the mainly extractive and parasitic nature of centralised government is eliminated;
- the exercise of power becomes the collective responsibility of hierarchical levels of government;
- power is based, not on delegation but subsidiarity, i.e. that power must be vested in the lowest level of government which can best exercise that power;
- resources are controlled, harvested and used by and for the benefit of the people who generate and manage them on a sustainable basis; and
- the overall level of participation by the people in governance is enhanced.

49. The Conference therefore accepted the proposition in the Draft Bill that: -

- executive authority be shared between the national and devolved units of government;
- legislative authority be similarly shared between the national and devolved units of government;
- judicial authority should, to the extent possible, incorporate local level dispute processing mechanisms;
- mechanisms be developed to facilitate coordination of governmental functions vertically between the centre and the grass-roots, and horizontally between various units of devolution,
- further mechanisms be developed to ensure equitable access to national resources by units of devolution, and
- if properly designed and efficiently operated, devolution is inconsistent with the present system of provincial administration.

50. The Conference took note of the system of “*majimbo*” which was the bedrock of the independence Constitution, and observed that –

- the pattern of population distribution and settlement on which it was based had changed,
- that system was based primarily on ethnicity rather than on the promotion of unity in diversity,
- the structure of administration has, over the years, been radically changed from the original 41 to the current 70 districts, and
- because it was never really implemented, no lessons can be drawn from that system.

The Conference agreed, therefore, that the design of a new system for the devolution of power could not simply repeat the 1963 model. A fresh design must be undertaken.

(k) **Control and Management of National Resources**

51. The Conference appreciated the fact that unlike the current Constitution, the Draft Bill has elaborate provisions for the control and management of important national resources such as: -

- land,
- natural resources, and
- public finance and revenue.

The Conference noted, however, that the Draft Bill does not provide for effective control and management of these resources by the people or people-based institutions. Although community control of certain categories of land is provided for in Chapter 11 of the Bill, mechanisms for public participation and supervision are wholly missing in Chapters 12 and 13 thereof. There was general agreement that this could lead to grave abuses.

52. Although a restructured chapter on devolution could cure this omission, the Conference felt that more direct methods of control should be built into the Draft Bill. These should include: -

- decentralised resource administration structures,
- imposition of specific public trust obligations on agencies with responsibility over the management of resources,
- conferment of a public right of censure coupled with unimpeded access to the courts for purposes of preventing abuse of national resources, and
- efficient mechanisms for the monitoring of the ethics and integrity provisions of the Constitution.

It was agreed, therefore, that a careful assessment of the Draft Bill and especially of the provisions of Chapters 11 – 14 and 17 in the light of these principles be made.

(I) **Integrity in Leadership**

53. The Conference was appalled by the abysmal levels to which the conduct of leadership had sunk in this country. Note was taken of the fact that over the years, positions of leadership in virtually all sectors of the political economy, have been converted to vehicles of personal accumulation and consolidation through corruption and manipulation of institutions of public trust. That trend was dangerous and must be reversed if the country's resources, both private and public, are to be controlled, developed and utilised for the enhancement of the public good. There is need, therefore, to establish credible mechanisms for the assessment and enforcement of ethical conduct by those who hold positions of trust in both public and private sectors.

54. The Conference was in agreement, therefore, that Chapter 16 and the Fifth Schedule of the Draft Bill be expanded and strengthened. In particular, the Conference agreed that those provisions should –

- be more carefully integrated into the mandate of the Ethics and Integrity Commission,
- be expressly extended to the private sector,
- apply to official conduct at all levels of governance, and
- provide for more severe penalties for violations thereof.

(m) **Supervision of Constitutional Functions and Protection of Constitutional Rights**

55. The Draft Bill proposes that the exercise of constitutional functions and the enjoyment of constitutional rights generally, be monitored so as to ensure that the powers delegated by the people are efficiently and responsibly discharged, and their rights protected. The Draft Bill proposes that in addition to control mechanisms built into the structure of each chapter, oversight functions be exercised by a special category of Constitutional Commissions and offices. Although a number of such bodies are functionally linked to specific institutions, a large number are created in Chapter Sixteen of the Draft.

56. The Conference noted that overall, the Draft Bill creates the following constitutional Commissions/bodies: -

- Citizenship Registration Board (Article 28)
- Electoral Commission (Article 83)
- Parliamentary Service Commission (Article 147)
- Judicial Service Commission (Article 204)
- Commission on Local Government Finance (Article 225)
- National Land Commission (Article 237)
- National Environmental Management Commission (Article 240)
- Public Service Commission (Article 259)
- Commission on Human Rights and Administrative Justice (Article 288)
- Ethics and Integrity Commission (Article 289)
- Salaries and Remuneration Commission (Article 290)
- Teachers Service Commission (Article 291), and
- Constitution Commission (Article 291)

57. The Conference also noted that the Draft Bill also creates a set of special constitutional offices whose function is to ensure that the people of Kenya indeed enjoy the rights enshrined in the Constitution and that public resources are properly used. Offices under this category include –

- the Public Defender,
- the Auditor General, and
- the Controller of Budget.

Other offices created as part of the Commission on Human Rights and Administrative Justice, include –

- the People's Protector,
- the Gender Commissioner, and
- the Human Rights Commissioner.

58. There was broad agreement at the Conference on the need for oversight as long as the institutions and offices charged with that responsibility have functional and financial autonomy and independence from other organs of Government. Further, those appointed to positions in those institutions and offices must -

- be men and women of integrity,
- have security of tenure, and
- enjoy immunity from prosecution or harassment in respect of anything done in the exercise of their constitutional functions.

3.2.3 Areas Not Resolved

59. The preceding paragraphs indicate that the Conference was in broad agreement on many of the proposals contained in the Report and Draft Bill. Nonetheless, a number of areas of detail some minor and other fundamental, were not resolved. These will have to be brought to finality in discussions either in

Technical Working Committees or by the Conference sitting as a Committee of the whole. These areas are set out below.

(a) **The Preamble**

60. The Preamble is a meta-constitutional formula establishing the basis for the enactment of a constitution. The Preamble must therefore accurately identify the constituent power. Many delegates felt that the proposal contained in the Draft Bill was not exhaustive or satisfactory. Issues which required further thought were –

- whether God should be invoked in the enactment of a secular constitution,
- an appropriate formula for recognising Kenya’s freedom struggles, and
- whether the “people” should be disaggregated by gender, demographic characteristics or status; or whether the people should be named in terms of their ethnic designations.

It was appreciated, however, that any preambular statement eventually agreed upon, must be brief and relatively timeless in that it must look both to the past and to the future

(b) **The Supremacy of the Constitution**

61. Although the delegates accepted the principle of supremacy of the constitution, there was concern that Article 5, which addresses this issue, did not resolve a number of issues: -

- whether what it enumerates constitutes the entire corpus of the law of Kenya or merely some of the sources of that law,
- whether African, Islamic and Hindu personal laws should be specifically identified,

- the exact hierarchy of the laws (or sources of law) set out therein,
- the status of East African Community law, customary international law, and treaties to which Kenya is a party vis-à-vis other bodies of domestic law, and
- the place of laws enacted by devolved units of government.

Consequently, many delegates wanted that provision revisited in order to remove any doubts as to the nature and content of Kenya's legal system.

(c) **Nationality and Citizenship**

62. Although provisions relating to nationality and citizenship were generally applauded, delegates were uneasy about two of its aspects. The first was the provision relating to dual citizenship. Although the justification for introducing this aspect of citizenship appeared reasonable, there was concern that it might create security problems for the country. The fact that Kenya's land and air borders remained extremely porous, made dual citizenship especially for transborder communities difficult to administer. Besides, the fact that anybody, including persons who have held high office in political, military or intelligence establishments, could hold dual citizenship, was clearly worrisome.

63. The second was the provision relating to acquisition of citizenship by marriage. Many delegates thought that three years was not enough time for a person, married to a Kenyan citizen to demonstrate true and substantial connection with Kenya. The fact that no other citizenship conditions are prescribed in the Draft Bill, was of great concern to delegates. Many were of the view, therefore, that this rather loose manner of acquiring citizenship could be used to sabotage the security of the state.

(d) **The Bill of Rights**

64. As indicated above, the provisions of the Bill of Rights was warmly received by the Conference. The only issues of contention were –

- whether those provisions should apply to all persons without exception, and
- the exact circumstances under which any of these rights may be qualified.

As regards the former, the delegates noted, for example that Article 31(4) exempts persons who profess the Muslim faith from provisions relating to equality; a provision which could weaken the significance of that right. As regards the latter, whereas limitation of rights in situations of emergency is a well-accepted principle, many delegates thought that the language of Article 31 (1) and (2) was rather general and permissive. There was need for specificity along the lines of Article 72 (6) on derogation during emergency.

65. In addition to those two issues, a number of delegates were concerned that the Draft Bill contained no clear definition of a number of concepts including –

- life
- family
- older members of society, and
- persons with disability.

It was felt that further clarity on these and similar concepts could eliminate diversionary discourse on an otherwise excellent Bill of Rights.

(e) **Management of Political Parties**

66. While the Conference appreciated the crucial role which political parties play in the articulation and nurture of democratic ideals, there was concern that if not properly managed, they themselves could sabotage those ideals. Even though the Draft Bill provides for the registration and regulation of political parties, many delegates were of the view that proper mechanisms should be established for –

- enforcing democratic governance within political parties,
- ensuring gender equity in political party representation,
- controlling the conduct of “political turn-coats” or defectors especially at or in between elections,
- ensuring absolute neutrality of the public service from activities of political parties, and
- ensuring strong and effective political party organisation rather than a proliferation of brief-case parties.

Many delegates, therefore, called for further debate on these issues.

(f) **The Structure and Composition of the Legislature**

67. While the majority of the delegates thought that the bicameral structure proposed in the Draft Bill was acceptable, others wanted a number of outstanding details resolved. These included: –

- the size of the second (Upper) Chamber,
- the linkage between the second Chamber and units of devolution,
- the manner in which legislative authority is shared between the two Chambers and the President,
- the nature and consequences of the parliamentary motion of no-confidence in the Prime Minister, and

- clarity in the roles and responsibilities of those Chambers.

Other delegates thought, however, that a bicameral system was not only unnecessary and expensive; it was a significant departure from systems in operation in East Africa. Consequently they wanted further discussion on this issue.

68. The composition of the legislature and tenure of members of Parliament as proposed in the Draft Bill were cause for further controversy. This arose from the fact, *inter alia*, that –

- the Mixed Member Proportional (MMP) representation system recommended therein was not fully understood,
- the infusion of affirmative action principles in the composition of both chambers was not fully developed,
- the modalities of recall of members of Parliament by the electorate as proposed, was open to abuse, and
- the power of the President to dissolve Parliament was unacceptable given the strict separation of powers proposed elsewhere in the Draft Bill.

(g) The Nature of Executive Authority

69. Even though there was clear agreement that executive authority should be shared between the President (assisted by a Vice-President) and the Cabinet (headed by a Prime Minister) the exact distribution of power between those two was not resolved. Delegates were divided between those who preferred –

- a strong Prime Minister as would be the case in a pure Parliamentary system or
- a strong President as would be the case in a pure Presidential system, or

- a mixed Parliamentary and Presidential system as recommended in the Draft Bill.

70. Attention of delegates was drawn to the fact that the first of these options was in operation in this country for a brief period under the independence Constitution. They were also aware that the second option reflects the position in the current constitution as well in Uganda, even though that country has a Prime Minister whose position is not established in the constitution. Discussion in respect of the third option however, ranged between the French model of relative parity of power between the Presidency and the Cabinet, and the model in the Tanzanian constitution in which the Prime Minister's primary responsibility is to execute policies determined by a Cabinet chaired by the President.

71. Although most delegates preferred a mean between the French and the Tanzanian models, the primary concern of the Conference was that any power-sharing model must ensure that –

- unnecessary conflicts or deadlock in the execution of governmental functions were avoided,
- procedures for appointment and dismissal of the Prime Minister are clearly established, and
- powers and functions conferred upon the President or the Prime Minister in other parts of the Constitution are consistent with those in Chapter 8.

72. Other issues concerning the Executive which were not resolved include: -

- the upper age limit for candidates vying for the Presidency,
- the procedure (not desirability) of providing for impeachment of the President and, in particular the exact roles of the two Chambers in the

investigation of impeachable offences, the framing of articles of impeachment, and the determination of guilt or innocence, and

- whether members of the Cabinet other than the Prime Minister and Deputies should be appointed from outside Parliament as proposed in the Draft Bill.

(h) The Judicial and Legal System

73. Whereas the structure and jurisdiction of courts as set out in the Draft Bill were accepted, a number of issues were not fully resolved. The most important of these were the status and jurisdiction of Kadhi's courts. Whereas some delegates would have preferred that or wanted all references to Kadhi's courts be removed from the Constitution, there were strong indications at the time of adjournment that the Conference would agree on the retention of Kadhi's courts as set out in the current Constitution. That means, inter alia, that –

- Kadhi's courts would remain strictly subordinate to the High Court,
- the jurisdiction of those courts would be confined exclusively to Islamic personal law on marriage, divorce and inheritance,
- there would be no lateral expansion of that jurisdiction into commercial matters,
- there would be no separate appeals structure for Islamic law matters even though the High Court and other superior courts might establish special panels to adjudicate on them, and
- an obligation to enact comprehensive legislation on Kadhis and other would be courts enshrined in the Constitution.

74. Other issues concerning the judicial and legal system which were not resolved include –

- qualifications for appointment of judges to the High Court, Court of Appeal and the Supreme Court,
- whether provision should be made for the removal of all or some of the current judges of the High Court and Court of Appeal,
- security of tenure for “judicial officers” as defined in Article 206(4),
- the status and powers of the Attorney-General in relation to powers of Cabinet Ministers over matters relating to legal affairs, and
- whether or not a code of practice applicable to all professionals (and not just to lawyers) should be included in the Constitution.

(i) **The Structure of Devolution**

75. Although the principle of devolution was widely embraced by the Conference, its structure as presented in Chapter 10 of the Draft Bill was not accepted. It was noted that that structure had simply assumed that the current seventy administrative districts would provide a basis for effective local government. Further the Draft Bill provided no proper mechanism for the administration of urban areas currently under city, municipal, town and area councils and rural council areas. It was also assumed that “villages” would provide a basis for popular governance as the lowest tier of devolution. The general consensus, therefore, was that a new structure of devolution should be designed, de novo. That structure, it was agreed, should take account, inter alia, of

—

- economic viability, including resource availability,
- cultural and/or linguistic homogeneity, affinity, accommodation or historical association,
- capacity to perform autonomous functions,
- population clustering and/or distribution, and
- ecology and geography.

76. Once the new structure was designed, a drafting audit would be conducted to ensure that the principles of devolution are reflected in the entire Draft Bill. In particular, it was appreciated that apart from being reflected in the structure of the legislature and the executive, devolution would, of necessity, affect the management, inter alia, of the following matters –

- land and natural resources,
- the environment,
- public finance and revenue,
- the public service, and
- leadership and integrity.

(j) Access to and Control of Land

77. Although the provisions relating to the ownership, control and use of land and natural resources were accepted, a number of specific issues were not fully resolved. These include –

- ownership and control of subterranean deposits i.e. minerals and water bodies,
- the structure and functions of the proposed National Land Commission,
- protection of community land,
- the exact modalities for the resolution of historical land claims,
- possibility of establishing a Land Fund, and
- the protection of matrimonial property.

78. Regarding the issue of ownership of subterranean deposits, delegates noted that the Draft Bill proposes that these be owned and utilised by those who have title to the surface. This would mean that mineral deposits and water bodies on or below private, public or community land as defined in the Draft Bill, would vest in those holding title to such land. Many delegates thought that given the

history of land grabbing in Kenya, that could be dangerous. Subterranean deposits, many felt should remain public property subject to –

- equitable sharing of the benefits derived therefrom with those (especially communities) in whom surface rights vest,
- observance of strict environmental standards in the exploitation of such deposits, and
- the development of adequate policies for the resettlement and rehabilitation of populations displaced by reason of exploitation of those resources.

A minority of delegates thought, however, that the proposal in the Draft Bill was not only sound, but would also strengthen the negotiating stand of owners of private and community land against the state or multinationals seeking to exploit those deposits.

79. The concern of delegates in respect of the structure and functions of the proposed National Land Commission was that –

- its jurisdiction appeared limited to the control and administration of public land,
- similar structures had not been proposed for the administration of land by devolved units of government,
- other land administration functions such as registration, land market regulation and transactional processes were not included in its mandate, and
- the relationship between the proposed Commission and existing structures of land administration was not clarified.

80. As regards land belonging to communities, delegates wanted further clarity on a number of operational issues. Among these were –

- whether pastoral land would remain community property,

- how communities as juridical persons would be identified,
- the exact mechanisms for the protection of community land before such persona are identified,
- how individual claims to community resources would be resolved, and
- whether and under what circumstances, community land could be converted to public or private land and vice-versa.

81. The issue of the resolution of historical land claims was extensively debated by the Conference. Whereas it was recognised that many of those claims were justified and should be resolved, no clear agreement was reached on the exact modalities for achieving this. Among issues yet to be resolved are –

- whether resolution should be on the basis of restitution, restoration, compensation, or resettlement on government land,
- the cut-off date with reference to which resolution should be made, and
- the need for a clear policy on and mechanisms for resolution of the problem of spontaneous (i.e. squatter) settlements especially in the Rift Valley province and the Ten-Mile Coastal strip.

82. The desirability of establishing a Land Fund that would facilitate land banking by the state and units of devolution as well as facilitating access to land by Kenyans was briefly mooted by delegates. The exact nature of such a Fund, where its resources would come from, and how it would be managed was, however, not explored.

83. The issue of matrimonial property was also briefly mooted by delegates. Whereas many of them wanted this matter dealt with in the constitution, no clear guidelines were developed, inter alia, on -

- what would constitute matrimonial property,
- how such property would be controlled or used,
- the modalities of transfer and transmission of such property, and

- how such property can be partitioned.

Although, some of these issues belong to ordinary legislation further clarity would have been useful here.

(k) The National Security and Defence System

84. Although the debate on issues of national security and defence was not as controversial as those in respect of other areas of the Draft Bill, there was broad agreement that the New constitution must provide for the establishment of forces that are disciplined, loyal and responsible to the civilian authority. The Conference agreed therefore, that Chapter 15 will require substantial redrafting so as to –

- distinguish clearly between issues which relate to “national security” and those concerning “defence”,
- create appropriate structures and offices for national security including
 -
 - the National Security Council, and
 - Directorate of Security Intelligence.
- create appropriate structures and offices for defence, including –
 - the Defence Council,
 - the Defence Forces, and
 - a proper command structure.

(l) Supervision of Constitutional Functions

85. Although most issues relating to the supervision of constitutional functions and the protection of constitutional rights were resolved, delegates were not agreed on the absolute or optimal number of Commissions performing these

functions which should be created. Whereas some thought that the Draft had created too many Commissions, others wanted Commissions on –

- Gender,
- Children and Youth,
- Education (at all levels),
- Culture and Sports,
- Health Services
- Police Service
- Correctional services
- Disaster Management, and
- Elderly Persons.

Other delegates also wanted clarification on the powers and functions of these Commissions in relation to the powers and functions of other agencies of government.

3.2.4 Areas for Further Debate

86. The preceding paragraphs suggest that at the time of adjournment most issues arising from the Report and Draft Bill prepared by the Commission had been debated, resolved or passed over for resolution by Technical Working Committees. Several issues were, however, stood over for further debate in plenary when the Conference resumes. Among these were: -

- the legislative calendar of Parliament as proposed in the Sixth Schedule,
- the transitional arrangements proposed in the Eighth Schedule,
- detailed consideration of the meaning, range, and implications of the principle of affirmative action,
- the place of culture in the Constitution, and

- the process/modalities of amending the Constitution.

87. The Conference noted the rather heavy legislative programme which enactment of the new Constitution would impose on Parliament under the Sixth Schedule and wanted further debate on inter alia,

- whether the Draft Bill was unequivocal on the obligation to enact legislations listed in that Schedule in the first place,
- whether the three year outer limit for the enactment of new legislation was realistic, and
- whether a similar calendar on repeal, amendment and revision of existing legislations consequent upon the enactment of the new Constitution could be developed.

88. The principle underlying the transitional arrangements proposed in the Eighth Schedule were fully explained to the delegates. These were that –

- the new Constitution must come into effect in its entirety upon enactment by Parliament,
- the enactment of the new Constitution must operate to repeal the current Constitution in its entirety,
- the new Constitution must provide for all matters for which transitional arrangements are necessary, and
- the processes of transiting from the current to the new system must be completed by the year 2007 when the next general elections under the present Constitution would have been due.

89. That notwithstanding, the Conference was of the view that detailed consideration of the Eight Schedule before the final text of the new Constitution is agreed would be premature. Besides, many of the circumstances in existence at the time when that Schedule was drafted had dramatically changed thus suggesting

a new set of transitional arrangements. That Schedule was, in consequence, stood over for debate after adoption of the substantive provisions of the Draft Bill.

90. While affirmative action for women was understood and accepted, affirmative action for other groups was not fully explored due to uncertainty as to the range and the mechanisms required to implement that principle. Many delegates, therefore, wanted an expert presentation on that principle before the commencement of debate in Technical Working Committees. The Steering Committee of the Conference agreed to organise such a presentation.

91. The Conference thought that the issue of culture had not received serious attention in the Draft Bill. Indeed many delegates thought that the Draft was totally devoid of cultural content hence was fundamentally alien to Kenya. An ad hoc committee was therefore established to consider inter alia, the following issues -

- how the diversity of Kenya's cultures could be mainstreamed in the entire Draft Bill,
- whether there were important cultural principles which should be entrenched in the constitution,
- whether there are cultural institutions which need constitutional protection, and
- the need for the establishment of an institutional framework or mechanism for the protection, nurture and development of cultural values, artefacts and principles.

The Conference expects the Ad Hoc Committee to present its report either to Technical Working Committees or in plenary for debate.

92. Although the Conference agreed that the process of constitutional amendment must not be left entirely to Parliament, as is the case under the present Constitution, debate was clearly not exhausted, inter alia, on –

- the exact modalities of engaging the constituent power (the people) in the process of constitutional amendments,
- the dangers of making amendment procedure either too rigid or too flexible, and
- whether the categorisation of constitutional provisions as entrenched or non-entrenched for purposes of amendments was sound.

In other words, the Draft Bill had not struck a proper balance between the sovereignty of the people and the authority of Parliament over the Constitution.

4. Detailed Annotation of Issues

93. This section of the Report presents a chapter-by-chapter annotation of the issues raised by delegates in general debate. Only matters that were repeatedly raised and may require further consideration, clarification or re-thinking are presented. It is entirely likely that this annotation may not have captured all such issues.

94. On the Preamble

- Should God be acknowledged in the text or is the expression “God Bless Kenya” sufficient?
- How should Kenya’s freedom struggle(s) be acknowledged?
- Should the Preamble disaggregate “the people” or name Kenya’s various “peoples”?

95. **On Chapter One: Sovereignty of the People and Supremacy of the Constitution**

Article 1:

- Is the people's sovereignty exercised only through elected representatives?
- How is authority delegated by the people controlled?

Article 2:

- How do provisions relating to amendments enhance the doctrine of supremacy of the Constitution?
- Should the interpretation of provisions of the Constitution take account of the goals, values and principles set out in Chapter 3?

Article 3:

- How accessible should courts be for purposes of enforcing the provisions of the Constitution?

Article 4:

- Should there be a clear duty to defend the Constitution?

Article 5:

- Should there be a clear hierarchy of laws?
- Should the state be required to implement international treaties?

96. **On Chapter Two: The Republic**

Article 6:

- With devolution should Kenya be designated a “Federal Republic?”

Article 7:

- Should the Constitution prescribe Kenya’s international boundaries or should this be left to bilateral agreement?
- Should internal administration boundaries be defined?

Article 8:

- Should Nairobi be designated as the Capital City?
- Should the seat for different organs of government be based in different cities?

Article 9:

- What is the consequence of designating a language “official” or “national”?
- Why are we suppressing local languages?
- What would be the official language of devolved units of government?
- How is culture related to language?

Article 10:

- Does this provision guarantee a fully secular state?
- What does “treating all religions equally,” mean?

Article 11:

- Is the list of national symbols exhaustive?
- What other symbols should the Constitution protect?

Article 12:

- No Comment

Article 13:

- What are “national” days and should their number be limited or expanded?

97. **On Chapter Three: National Goals, Values and Principles**

Article 14:

- Should this provision apply to units of devolution?
- Should the goals, values and principles be justiciable?
- Should affirmative action extend beyond women to other (and if so which) groups?
- Is the list of goals, values and principles too long?

Article 15:

- Is the list of citizen duties exhaustive?

98. **On Chapter Four: Citizenship**

Article 16:

- Are citizenship rights transferable?
- Should the right to settle anywhere in the Republic be acknowledged in the Constitution and if so in what form?

Article 17:

- What is the implication of granting citizenship retroactively as in 17 (2)?

Article 18:

- No Comment

Article 19:

- No Comment

Article 20:

- Should the three-year marriage requirement be enhanced?
- Should prospective citizens be required to demonstrate language proficiency and loyalty to Kenya under this clause?

Article 21:

- No Comment

Article 22:

- No Comment

Article 23:

- Should certain categories of citizen e.g. former Heads of State, Service Commanders etc be permitted to hold dual citizenship?
- Is the provision really justified in the age of global terrorism?

Article 24:

- No Comment

Article 25:

- No Comment

Article 26:

- No Comment

Article 27:

- Should some of these conditions (whatever they are) be in the Constitution?

Article 28:

- Is a Citizenship Registration Board really necessary?

99. **On Chapter Five: The Bill of Rights**

- Is the chapter, as a whole, too detailed and aspirational?

Article 29:

- No Comment

Article 30:

- Is it the “State” or the “Republic” that has the duty to promote the Bill of Rights?

Article 31:

- Is the exemption of Muslims in 31(4) necessary or justified?

Article 32:

- Should “life” be defined?
- Should termination of pregnancy in exceptional circumstances, such as rape or congenital defect, be allowed?
- Should the death penalty be retained?

Article 33:

- Should the principle of equality be mainstreamed throughout the Draft Bill?

Article 34:

- What is “unfair or fair” discrimination?
- Should discrimination on grounds of health status be proscribed?
- Should the language of this Article provide expressly for affirmative action?

Article 35:

- Should the Draft Bill contain explicit prohibition of abuses against women such as rape, domestic violence, incest and FGM?
- Should widows receive protection under this Article?

Article 36:

- Who are “older” members of society?
- Does this Article define the rights of older members of society adequately?
- Of what relevance is African culture on issues of the elderly?

Article 37:

- Should the Children’s Act be revised in the light of this Article?
- Who is a “child”?
- Should parents have the right to discipline their children?

Article 38:

- Should the “family” be defined?

- Should capacity to marry be explained?
- Should all marriages be registered?

Article 39:

- No Comment

Article 40:

- No Comment

Article 41:

- No Comment

Article 42:

- Should slavery, servitude and forced labour be abolished expressly?
- What about trafficking in human beings?

Article 43:

- No Comment

Article 44:

- Should this Article name the object of worship?
- How does freedom of religion relate to other freedoms in this chapter?

Article 45:

- No Comment

Article 46:

- Should there be an Independent Media Commission?

Article 47:

- No Comment

Article 48:

- Should this freedom be qualified in respect of certain public servants such as members of the Armed Forces?
- What of the freedom not to associate?

Article 49:

- No Comment

Article 50:

- What of the right to participate in political activity as an independent candidate?

Article 51:

- No Comment

Article 52:

- No Comment

Article 53:

- Should certain trades be proscribed?

Article 54:

- Should “property” be defined?

Article 55:

- No Comment

Articles 56 – 62:

- Are these propositions realistic?
- What happens if the state is unable to provide these entitlements?

Article 63:

- Should this provision be integrated into the environment chapter?
- What about the right to environmental education?

Article 63A:

- Is this provision adequate?
- Should cultural concerns be mainstreamed throughout the Constitution?

Article 64:

- No Comment

Article 65:

- No Comment

Article 66:

- Is this right absolute?

Article 67:

- No Comment

Article 68:

- No Comment

Articles 69 - 70:

- No Comment

Article 71:

- Should this provision be shifted to Article 151 (4)?

Articles 72 – 75:

- No Comment

100. **On Chapter Six: Representation of the People**

Article 76:

- Should the requirement for free and fair elections apply also to political parties?

Article 77:

- Should the “Zip” method of compiling the party list for purposes of the MMP system be mandatory?
- What is the best method of making the party list competitive?
- Should Kenyan citizens abroad be allowed to vote?

Article 78:

- Should prisoners be allowed to vote?
- Should voting be compulsory?

Articles 79 – 81:

- No Comment

Article 82:

- Clarify rationale of this provision.

Articles 83 – 85:

- Too detailed for the constitution.
- Should ECK engage in civic education?
- Should the PSC control appointments of staff to the ECK?
- Should membership on the ECK be distributed by province?

Article 86:

- What weight should be given to each of these criteria in delimiting constituency boundaries?

Article 87:

- What is a political party?
- Should the state regulate political parties?

Article 88:

- No Comment

Article 89:

- No Comment

Article 90:

- Must all political parties reflect “national character”?
- What is wrong with regional parties?
- How regular should political party elections be held?

Article 91:

- No Comment

Article 92:

- Should the registration of a political party be cancelled for poor showing in general elections?

Articles 93 – 96:

- Why should the public finance political parties?
- How do we control funding of political parties from external sources?
- Should allocation of funding to political parties be tied to issues of gender?

Article 97:

- No Comment

Article 98:

- What are the consequences of “hopping” from one political party to another?
- How is an oppressive party machinery controlled?

Article 99:

- Requires more specificity.

Article 100:

- No public servant should hold office in a political party.

101. **On Chapter Seven: The Legislature**

Article 101:

- Redraft the Article.

Article 102:

- Should Parliament exercise supervisory functions over the Judiciary?

Article 103:

- Should Parliament vet appointments of parastatal chiefs and senior ranks in the defence forces?
- Should the public be involved in the confirmation vetting process?

Article 104:

- No Comment

Article 105:

- Combine with Article 101.

Article 106:

- Rethink this Article.

Article 107:

- Explain MMP and rethink this Article.

Article 108:

- No Comment

Article 109:

- Why should such an important matter be left to Parliament?
- Should we have women-only seats as in Uganda?

Article 110:

- No Comment

Article 111:

- No Comment

Article 112:

- Is recall really necessary since elections are periodic?
- What guarantee is there that recall will not be abused?
- What should the electorate expect of their representatives?

Articles 113 – 118:

- No Comment

Articles 119 – 123:

- No Comment

Articles 124 – 126:

- Are references of Bills by the President to the Supreme Court necessary?
- Can the processes of reference and reconsideration between the President, the Supreme Court and Parliament be simplified?

Article 127:

- No Comment

Article 128:

- No Comment

Article 129:

- How can this right be strengthened as an expression of the sovereignty of the people?
- Should there be a right to petition other organs of Government?

Article 130:

- Should there be a period of public debate before a Bill is tabled before Parliament?

Articles 131 – 139:

- No Comment

Article 140:

- Why should the constitution fix the number and jurisdiction of committees of Parliament?

Article 141:

- Would the seat of Parliament remain in Nairobi even if it is not the capital city?

Article 142:

- Should the President have power to dissolve Parliament under any circumstance?

Article 143:

- Should the Parliamentary vote of no confidence be “constructive,” i.e. name the person who would become Prime Minister if the vote is carried?

Articles 144 – 146:

- No Comment

Article 147:

- Is a Parliamentary Service Commission really necessary?
- Should this Commission be allowed to confer any benefits to Members of Parliament?

102. **On Chapter Eight: The Executive**

Article 148:

- No Comment

Article 149:

- Is executive authority shared between the President and the Cabinet, or the President and the Prime Minister?

Articles 150 – 154:

- Are the powers of the President adequate?
- Apart from being the President's assistant, what other powers should the Vice-President have?
- Why should the size of the Cabinet be set in the Constitution?

Article 155:

- No Comment

Article 156:

- Is the upper age limit for Presidential candidates necessary?
- Should the lower age limit for Presidential candidates be lowered or raised?
- Should there be an upper age limit for Members of Parliament?

Article 157:

- After what period should the outcome of Presidential elections be announced?

Article 158:

- No Comment

Article 159:

- Should the Constitution fix the exact date and hour when a new President assumes office?

Article 160:

- No Comment

Article 161:

- Should immunity continue when the President leaves office?
- If the President is not impeached while in office why should he/she be pursued afterwards?

Articles 162 – 163:

- Who blows the first whistle when the President falls sick?
- Why should the second Chamber be the body which investigates the President, frames articles of impeachment, then votes on them?

Article 164:

- No Comment

Articles 165 – 167:

- How is the Vice-President removed from office?

Article 168:

- No Comment

Article 169:

- No Comment

Article 170:

- Are the powers of the Prime Minister adequate?
- Should the Prime Minister report to Parliament or to the President or to both?
- How is possible conflict between the President and the Prime Minister to be resolved?

Article 171:

- Should the President have power to dissolve Parliament under any circumstances?

Articles 172 – 173:

- No Comment

Article 174:

- Should such a vote be pro-active?

Article 175:

- Should members of the Cabinet other than the Prime Minister and Deputy Prime Minister be drawn from outside Parliament?
- When appointed, do appointees to the Cabinet become ex-officio Members of Parliament?

Articles 176 – 179:

- No Comment

Article 180:

- No Comment

Article 181:

- Clarify relationship between a Permanent Secretary and his/her Minister.

Article 182:

- No Comment

Article 183:

- Delete the Article in favour of Article 261.

103. **On Chapter Nine: The Judicial and Legal System**

Article 184:

- No Comment

Article 185:

- Maintain this hierarchy of courts throughout the Chapter.
- Where are small claims courts?
- Should traditional courts be recognised?

Article 186:

- No Comment

Articles 187 – 188:

- Should the size of the Supreme Court bench be increased?
- Should the Supreme Court have and exercise original jurisdiction in any matter?
- Should questions of impeachment of the President go beyond Parliament?

Article 189:

- No Comment.

Articles 190 – 193:

- Revisit description of presiding judges in the Court Appeal and High Court

Article 194:

- Revisit this Article

Article 195:

- Revisit this Article

Article 196:

- Should the retirement age of all constitutional office holders be standardised at 70?
- Should the Chief Justice hold office for a limited non-renewable term or until retirement?

Article 197:

- No Comment

Articles 198 – 202

- Are these provisions consistent with Article 185 which establishes Kadhis as courts subordinate to the High Court?
- Should the jurisdiction of Kadhis courts be enhanced or retained as in the current Constitution?

Article 203:

- Delete the Article.

Article 204:

- Who should chair the Judicial Service Commission?
- Why a “Muslim” woman and what of women of other religions?
- Is this Commission too large?

Article 205:

- No Comment

Article 206:

- No Comment

Article 207:

- No Comment

Article 208:

- Reconsider the powers and functions of the Attorney-General.

Articles 209 – 210:

- No Comment

Article 211:

- No Comment

Article 212:

- Delete or expand to all professions.

Article 213:

- Re-examine general principles.

Article 214:

- Re-examine specific principles.

Article 215:

- Re-examine levels of devolution.

Articles 216 – 221:

- Re-examine functions and powers of devolved units of government.

Article 222:

- Re-examine status of municipalities and other structures of local government.

Article 223:

- Re-examine

Article 224:

- Re-examine and expand financial powers of devolved units of government.

Article 225:

- Re-define the functions of the Commission on Local Government Finance.

Article 226:

- More specificity required.

Article 227:

- Re-examine.

Article 228:

- What is wrong with holding office at the national and devolved levels of government?

Article 229:

- Develop a more structured format for co-operation.

Article 230:

- Re-examine and provide for some of these matters in the Constitution.

Article 231:

- Revise definitions.

105. **On Chapter Eleven: Land and Property**

Article 232:

- Are the national land policy principles listed in this Article exhaustive?

Article 233:

- Is the 99-year lease period for non-citizens too long?

Article 234:

- Is the description of “public” land adequate?
- Is the description of “community” land adequate?

- Is the conversion of land from “public” to “community” or “private” and vice-versa possible?

Article 235:

- Re-examine clause 4.
- Should a definite cut-off date be set for the pursuit of historical land claims?

Article 236:

- What is land “lawfully” acquired?

Article 237:

- Should the National Land Commission be decentralised?
- Should the powers and functions of the National Land Commission include administration of all categories of land?

Article 238:

- What is “land” for purposes of this Chapter?
- Should natural resources be dealt with in this Chapter? or
- Should Chapters 11 and 12 be integrated?

106. **On Chapter Twelve: Environment and Natural Resources**

- Where are “environmental rights”?

Article 239:

- What is the “environment”?
- Where is Environmental Impact Assessment (EIA)?
- Should environmental protection be decentralised?

Article 240:

- Re-examine and expand the jurisdiction of the National Environmental Management Commission.

Article 241:

- Are these provisions adequate?

Article 242:

- No Comment

107. **On Chapter Thirteen: Public Finance and Revenue Management**

Article 243:

- Reformulate the principles.

Article 244:

- Should devolved units of governments have taxation powers?
- Should the Constitution specify the kinds of taxes which may be levied?

Article 245:

- How is efficient management of the Consolidated Fund to be ensured?

Article 246:

- No Comment

Article 246A:

- No Comment

Article 246B:

- Is it the Prime Minister or another Minister who has responsibility to prepare financial estimates?
- What institution should audit expenditure by Parliament?

Articles 247 – 248:

- Should the Budget be approved up-front?
- Should Parliament have the power to recall and vary an approved Budget otherwise than in the context of a supplementary appropriation?

Articles 249 – 250:

- No Comment

Articles 251 – 252:

- Is the independence of the Central Bank and security of tenure of the Governor assured?
- Who audits the accounts of the Central Bank?
- What authority does the Central Bank have over fiscal and monetary policy?

Articles 253 – 255:

- Who audits the accounts of devolved units of government?
- Should Parliament have a budget office?
- Should devolved units of government have budget offices?
- On what terms and conditions should the Controller of Budget and the Auditor-General serve?
- Should we have an independent National Audit Office as well?

Article 256:

- No Comment

Article 257:

- Is this Council necessary?

108. **On Chapter Fourteen: The Public Service**

Article 258:

- Are these “public service” or “public administration” principles?
- What constitutes the public service?

Articles 259 – 260:

- Should the membership of the Public Service Commission reflect Kenya’s diversity?
- Are the powers and functions set out in Article 260 adequate?

Article 261:

- Should the Public Service Commission have exclusive power to create and abolish offices?

Article 262:

- Should it be mandatory that all public service vacancies be advertised?

Article 263:

- No Comment

Articles 264 – 266:

- Does the “police service” belong here or to “national security”?

- Should there be a Police Service Commission”?
- Should the head of the service be a “Commissioner” or an “Inspector-General”?
- Should the Commissioner be appointed for a fixed non-renewable term or serve until retirement?

Articles 267 – 269:

- What rights should prisoners have?
- Should the Director of the Kenya Correctional Services be appointed for a fixed, non-renewable term or serve until retirement?

Article 270:

- Re-consider.

109. **On Chapter Fifteen : Defence and National Security**

Article 271:

- Distinguish clearly between “defence” and “national security”.

Articles 272 – 273:

- Where is the National Intelligence Service?
- Who should sit on the National Security Council?
- What is the role of the Prime Minister vis-à-vis the President in matters of national security?

Articles 274 – 275:

- What is the proper composition of the Defence Council?
- What constitutes the “Defence Forces”?

- Where is the command structure of the Defence Force?
- How is discipline within the Defence Forces assured?

110. **On Chapter Sixteen: Leadership and Integrity**

Article 276:

- What is “leadership” and what is “integrity”?
- Should the Vice-President be included in this list?
- Should those in the private sector also be included?

Article 277:

- Should the penalties imposed in the Fifth Schedule be enhanced?

111. **On Chapter Seventeen: Constitutional Commissions and offices**

Articles 278 – 286:

- Should some Commissions be exempt from these provisions?
- Will the exercise of functions under these provisions impede the work of the executive organ of government?
- Is the standard size of Commissions too small?

Article 287:

- Should there be more or fewer Commissions?
- Should the operations of Commissions be decentralised?

Article 288:

- No Comment

Article 289:

- Should the jurisdiction of the Ethics and Integrity Commission be restructured?

Article 290:

- Who determines the salaries and remuneration of members of the Salaries and Remuneration Commission?

Article 291:

- Is there need for a “Teachers” or an “Education Service” Commission?
- Should the membership of the Teachers Service Commission be enlarged?
- Should the Teachers Service Commission be decentralised?

Article 292:

- Do we want a “Constitution” or a “Law Reform” Commission in the Constitution?

Article 293:

- This provision is not necessary.
- What is the Director of the Central Bureau of Statistics doing here?

112. **On Chapter Eighteen: Amendment to the Constitution**

Article 294:

- Is the category of entrenched clauses closed?
- Should all amendments be subjected to a referendum?
- Should there be provisions in the Constitution which are beyond the power of amendment?

Article 295:

- Should the voting requirement for amendments be raised?
- Should a constitutional amendment Bill be subjected to public debate before it is tabled in Parliament?

Article 296:

- No Comment

113. **On Chapter Nineteen: Interpretation**

Article 297:

- Re-examine.

114. **On Chapter Twenty: Transitional and Consequential Provisions**

Articles 298 – 299:

- To be discussed or negotiated on adoption of the full text of the Draft Bill.

5. **A Tentative Agenda for Technical Working Committees**

115. This Report has presented the salient issues which emerged in the course of Conference proceedings in general debate between April 28th – June 6th, 2003. As the Conference resumes on August 17, 2003 to continue with its work in Technical Working Committees (herein TWCs), it is important that an agenda be developed for that purpose. Below is an outline of items of agenda to facilitate the work of the TWCs.

116. The primary mandate of the TWCs is to examine all issues raised in general debate touching on proposals in the Report and Draft Bill prepared by the Commission and to formulate amendments or revisions in respect of areas assigned to them. Except as indicated in this Report, the TWCs do not therefore have a mandate to redraft, de novo, any provisions of the Report or Draft Bill.

117. The proposal therefore, is that each TWC proceeds as follows: -

- study this Report carefully and satisfy itself that all issues relevant to its mandate are captured,
- study other Conference documents supplied to or requisitioned by it, to ensure that all issues not captured in this Report, but which are relevant to its mandate, are identified,
- conduct a through audit of the Report and Draft Bill of the Commission to ensure that issues raised in general debate, which are relevant to its mandate, are responded to,
- where necessary, call for expert advice in respect of issues raised in general debate which require further elaboration and/or elucidation,
- debate and agree on proposals for amendments, revisions or validation of proposals in the Report and Draft Bill relevant to its mandate,
- identify and pass over to other committees, issues that are best dealt with elsewhere,
- discuss such other matters as may be referred to it by the Steering Committee or the Conference, and
- prepare, agree on and submit a final report on its work for consideration by the Steering Committee, and the Conference.

118. On June 3, 2003, the Steering Committee approved a set of Guidelines for the work of TWCs. These guidelines are attached as Appendix I to this Report.

Prof. H. W. O. Okoth-Ogendo

Rapporteur-General of the National Constitutional Conference

July 17, 2003

APPENDIX A:
FINAL LIST OF DELEGATES TO THE NATIONAL CONSTITUTIONAL
CONFERENCE

MEMBERS OF PARLIAMENT (001 – 223)

DELEGATES NUMBER	NAME	CONSTITUENCY
001	Kibaki H.E. Mwai	Othaya
002	Wamalwa Michael Christopher	Saboti
003	Abdirahman Ali Hassan	Wajir South
004	Achuka Francis Igwaton	Turkana South
005	Akaranga Moses Epainitous	Sabatia
006	All Abdullahi Ibrahim	Wajir North
007	Angwenyi Jimmy Nuru Ondieki	Kitutu Chache
008	Arungah Julius Odenyo	Khwisero
009	Awiti Adhu	Karachuonyo
010	Awori Arthur Moody	Funyula
011	Ayacko George Mbogo Ochilo	Rongo
012	Bahari Abdul Ali	Isiolo South
013	Balala Najib Mohamed	Mvita
014	Bifwoli Sylvester Wakoli	Bumula
015	Billow Adan Kerow	Mandera Central
016	Biwott Nicholas Kiprono Kipyator	Keiyo South
017	Bolt William Kiplumbei	Baringo North
018	Cheboi Moses Kipkemboi	Kuresoi
019	Chelaite Alicen Jematia Ronoh	Rongal
020	Chepkitony Lucas Kipkosgei	Keiyo North
021	Choge Jim	Aldai
022	Dahir Abdullahi Sheikh	Lagdera
023	Dzoro Morris Mwachondo	Kaloleni
024	Ethuro David Ekwee	Turkana Central
025	Gachagua James Nderi	Mathira

026	Galgallo Gurrach Boru	Moyale
027	Gitau William Kabogo	Juja
028	Githae Robinson Njeru	Ndia
029	Godana Bonaya Adhi	North Horr
030	Gumo Frederick Omulo	Westlands
031	Haji Yussuf Mohamed	Ijara
032	Lvuti Patrice Ezekiel Mwangu	Kitui South
033	Kagwe Mutahi	Mukurweini
034	Kagwima Francis Nyamu	Tharaka
035	Kaindi Peter Kyalo	Kathiani
036	Kajembe Seif Ramadhan	Changamwe
037	Kajw'ang Gerald Otieno	Mbita
038	Kamama Asiman Abongotum	Baringo East
039	Kamand A Maina	Starehe
040	Kamotho John Joseph	Mathioya
041	Karaba Daniel Dickson	Kerugoya/Kutus
042	Kariuki Godfrey Gitahi	Laikipia West
043	Kariuki Mirugi	Nakuru Town
044	Karua Martha Wangari	Gichugu
045	Karume James Njenga	Kiambaa
046	Katuku John Mutua	Mwala
047	Kembi Gitura	Kiharu
048	Kenneth Peter	Gatanga
049	Kenyatta Uhuru Muigai	Gatundu South
050	Keter Charles Cheruiyot	Belgut
051	Mohamed Ahmed Khalif	Wajir West
052	Khalwale Bonny Basiye	Ikolomani
053	Khamasi Daniel Lyula	Shinyalu
054	Khamisi Joseph Matano	Bahari
055	Khaniri George Munyasa	Hamisi
056	Kibunguchy Enoch Wamalwa	Lugari
057	Kibwana Kivutha	Makueni
058	Kihara Njeri Jayne	Naivasha

059	Kilimo Linah Jebii	Marakwet East
060	Kilonzo Julius Kiema	Mutito
061	Kimathi James Viscount	Lari
062	Kimeto Anthony Kipkosge	Sotik
063	Kimuny A Amos Muhinga	Kipipiri
064	Kingi Joseph Kahindi	Ganze
065	Kipchumba Joseph Lagat	Eldoret East
066	Kirwa Kipruto Rono	Cherangany
067	Kituyi Mukhisa	Kimilili
068	Kiunjuri Mwangi	Laikipia East
069	Koech John Kipsang Arap	Chepalungu
070	Koech Sammy Cheruiyot	Konoin
071	Kofa Mugava Tola	Galole
072	Kombe Harrison Garama	Magarini
073	Kombo Musikari Nazi	Webuye
074	Konchella Gideon Sitelu	Kilgoris
075	Korir Joseph Kipkaptu	Mogotio
076	Koros David Kiptanui	Eldoret South
077	Kosgey Henry Kiprono	Tinderet
078	Kulundu Newton Wanjala	Lurambi
079	Kuria Simon Kanyingi	Limuru
080	Kuti Mohamed Abdi	Isiolo North
081	Leshore Prisa Sammy	Samburu East
082	Lesirma Simeon Saimanga	Samburu West
083	Ligale Andrew Ndooli	Vihiga
084	Maathai Wangari Muta	Tetu
085	Machage Wilfred Gisuka	Kuria
086	Madoka Marsden Herman	Mwatate
087	Magara James Omingo	South Mugirango
088	Magugu Arthur Kinyanjui	Githunguri
089	Maitha Emmanuel Karisa	Kisauni
090	Maitha Moffat Muia	Kangundo
091	Maitha Lucas Baya Mweni	Malindi

092	Manduku Hezron	Nyaribari Masaba
093	Mango Christine Abungu	Butula
094	Manoti Stephen Kengere	Bobasi
095	Maoka Richard Maore	Ntonyiri
096	Marende Kenneth Otiato	Emuhaya
097	Masanya Godfrey Okeri	North Mugirango / Borabu
098	Mbai Benson Itwiku	Masinga
099	Mbau Elias Peter	Maragwa
100	Mganga Boniface	Voi
101	Michuki John Njoroge	Kangema
102	Midiwo Washington Jakoyo	Gem
103	M'mukindia Kirugi Laiboni	Central Imenti
104	M'nkiria Petkay Shell Miriti	Nithi
105	Mohamed Hussein Maalim	Dujis
106	Mohamed Abdi Mahamud	Wajir East
107	Mohamed Abdi Haji Mohamed	Mandera West
108	Mohamed Abu Chiaba	Lamu East
109	Mol Gideon	Baringo Central
110	Moroto Samuel Chumel	Kapenguria
111	Muchiri Geoffrey Gachara	Ndaragwa
112	Mugo Beth Wambui	Dagoretti
113	Muiruri Patrick Kariuki	Gatundu North
114	Muite Paul Kibugi	Kabete
115	Mukiri Macharia	Molo
116	Mungatana Danson Buya	Garsen
117	Munya Peter Gatirau	Tigania East
118	Munyao Joseph Konzollo	Mbooni
119	Munyes John Kiyonga	Turkana North
120	Muriithi Peter Gichohi	Nyeri Town
121	Muriuki Karue	Ol' Kalau
122	Muriungi Raphael	Igembe
123	Murungaru Christopher Ndarathi	Kieni
124	Murungi Kiraitu	South Imenti

125	Musila David	Mwingi South
126	Musyoka Stephen Kalonzo	Mwingi North
127	Vacant	Yatta
128	Mutiso John Mutinda	Kilome
129	Muturi Justin Bedan Njoka	Siakago
130	Mwakwere Chirau Ali	Matuga
131	Mwandawiro Mghanga	Wundanyi
132	Mwangi Onesmus Kihara	Kigumo
133	Mwanzia Fredrick Daudi	Machakos Town
134	Mwendwa Winfred Nyiva	Kitui West
135	Mwenje David Kamau	Embakasi
136	Mwlraria Daudi	North Imenti
137	Mwiria Valerian Kilemi	Tigania West
138	Ndambuki Gideon Musyoka	Kaiti
139	Nderitu Alfred Mwangi	Mwea
140	Ndile Richard Kalembe	Kibwezi
141	Ndolo Reuben Owino Nyanginja	Makadara
142	Ndwiga Peter Njeru	Manyatta
143	Ngilu Charity Kaluki	Kitui Central
144	Ngoyoni Titus Lemusei	Laisamis
145	Ngozi Abdallah Jumaa	Msambweni
146	Nkaisserry Kasaine Joseph	Kajiado Central
147	Ntimama William Rongora Ole	Narok North
148	Ntutu Stephen Kanyinke	Narok South
149	Nyachae Simeon	Nyaribari Chache
150	Nyaga Norman Gathakari King'ang'i	Kamukunji
151	Nyaga Joseph William Nthiga	Gachoka
152	Nyamunga Eric Opon	Nyando
153	Nyong'o Peter Anyang'	Kisumu Rural
154	Obwocha Henry Onyancha	West Mugirango
155	Odinga Raila Amolo	Langata
156	Odoyo Peter Ochieng'	Nyakach
157	Oginga Oburu	Bondo

158	Ogur Tobias Orao Ochola	Nyatike
159	Ojaamongson Sospeter Odeke	Amagoro
160	Ojode Joshua Orwa	Ndhiwa
161	Okemo Chrysanthus	Nambale
162	Okioma Samson Nyang'au	Kitutu Masaba
163	Okundi Philip Okoth	Rangwe
164	Olweny Patrick Ayiecho	Muhoroni
165	Omamba Herman Odhiambo	Uriri
166	Omino Joab Henry Onyango	Kisumu Town West
167	Omondi William Opondo	Kasarani
168	Ondiek Stephen Alloys Oluoch	Ugenya
169	Onyancha Joel Omagwa	Bomachoge
170	Oparanya Wycliffe Ambetsa	Butere
171	Opore John Zebedeo	Bonchari
172	Osundwa Wycliffe	Mumias
173	Owidi Peter Otieno	Kasipul-Kabondo
174	Owino Charles Oyugi	Migori
175	Parpai Geoffrey Mepukori	Kajiado South
176	Poghisio Samuel Losuron	Kacheliba
177	Rai Samuel Gonzi	Kinango
178	Rotino Philip Ruto	Sigor
179	Ruto William Samoei	Eldoret North
180	Rutto Sammy Kipkemoi	Kipkelion
181	Saitoti George	Kajiado North
182	Salat Nicholas Kiptoo Korir	Bomet
183	Sambu John Kipkorir	Mosop
184	Sang Kipkorir Marisin	Buret
185	Sasura Abdi Tari	Saku
186	Serut John Bomet	Mt. Elgon
187	Shaaban Ali Isaack	Mandera East
188	Shaban Naomi Namsi	Taveta
189	Shakombo Suleiman Rashid	Llkoni
190	Sirma Musa Cherutich	Eldama Ravine

191	Soita Peter Shitanda	Malava
192	Sudi David Kiprono Sutter	Marakwet West
193	Sugow Aden Ahmed	Fafi
194	Sungu Eric Gor	Kisumu Town East
195	Syongoh Zaddock Madiri	Gwasi
196	Tarus Stephen Kipkiyen	Emgwen
197	Too Nondin Noah Arap	Ainamoi
198	Toro Joshua Ngugi	Kandara
199	Tuju Raphael	Rarieda
200	Twaha Fahimyasini	Lamu West
201	Waithaka Mwangi	Kinangop
202	Wambora Martin Nyaga	Runyenjes
203	Wamunyinyi Athanas Misiko Wafula	Kanduyi
204	Wamwere Koigi	Subukia
205	Wanjala Raphael Bitu Sauti	Budalangi
206	Wario Ali	Bura
207	Wekesa Noah Mahalang'ang'a	Kwanza
208	Were David Aoko	Matungu
209	Wetangula Moses Masika	Sirisia
210	Weya Samuel Arthur	Alego/Usonga
211	Abdalla Amina Ali	Nominated
212	Aringo Peter Oloo	Nominated
213	Bett Franklin K.	Nominated
214	Keino Esther C.	Nominated
215	Kilonzo Mutula	Nominated
216	Kones Kipkalya	Nominated
217	Mbarire Cecily M.	Nominated
218	Mwau Adelina Ndeto	Nominated
219	Njoki Susanna	Nominated
220	Ojiambo Julia A.	Nominated
221	Oniang'o Ruth K.	Nominated
222	Tett Betty N.	Nominated
223	Kaparo F.O.	Speaker Of The National Assembly

DISTRICT REPRESENTATIVES (224 – 434)

DELEGATES NUMBER	NAME OF REPRESENTATIVE	DISTRICT
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NAIROBI PROVINCE

224	Nancy Kabeyeka Lung'ahi	Nairobi
225	Salim Ibrahim	Nairobi
226	Samuel Macharia Muchuga	Nairobi

COAST PROVINCE

227	Amina Zuberi Rajab	Mombasa
228	Livu K. Raphael	Mombasa
229	Mdahoma Farouk Said	Mombasa
230	Boi Fatuma Bakari	Kwale
231	Kitambi Mwalimu Digore	Kwale
232	Ndeme Raphael Bombo	Kwale
233	Mwaringa Beatrice Mwaka	Kilifi
234	Haji Mwijaa Mwinyi	Kilifi
235	Tsumah Reuben R.	Kilifi
236	Zuhura Zukira Wanje	Malindi
237	Onotto Joshua Jilo	Malindi
238	Badawy Abdulrahman Ahmed	Malindi
239	Halako Fatuma Galogalo	Tana River
240	Abuti Mohammed Juma	Tana River
241	Golich Juma Wario	Tana River
242	Ahmed Amina Muhudhar	Lamu
243	Aboud Sheikh Abdalla	Lamu
244	Omar Twalib Mzee	Lamu
245	Mwanyota S. Mariam	Taita Taveta
246	Mwailengo Haji Joel	Taita Taveta
247	Mnene J. Othiniel	Taita Taveta

NORTH EASTERN PROVINCE

248	Asli Ibrahim Ali	Garissa
249	Abdirahaman Ali Abass	Garissa
250	Abdullahi Haji Mohammed	Garissa
251	Hubbie Hussein Al-Haji	Ijara
252	Dubat Ali Amey	Ijara
253	Salah Arte Ahmed	Ijara
254	Fatuma Sheikh Muhammed	Wajir
255	Ahmed Maalim Omar	Wajir
256	Nur Ibrahim Abdi	Wajir
257	Sahara Ahmed Hillow	Mandera
258	Isaack Derow Ibrahim	Mandera
259	Salah Maalim Alio	Mandera

EASTERN PROVINCE

261	Khadija Fugicha Dabassa	Moyale
262	Abdikadir Guyo	Moyale
263	Kaaru Abdulkadir Guleid	Moyale
264	Esintele Kureya	Marsabit
265	Guracha Denge Wario	Marsabit
266	Galgalo Adano Tuye	Marsabit
267	Fatuma Boru Jaldesa	Isiolo
268	Godana Doyo Adhi	Isiolo
269	Yusuf Wako Dogo	Isiolo
270	Bariu Beatrice	Nyambene
271	Kiumo Amos	Nyambene
272	Thimangu Jim Muketha	Nyambene
273	Muriuki Joyce Kagendo	Meru Central
274	Gituma Paul Victor	Meru Central
275	M'Rinyiru Julius M'Mworia	Meru Central
276	Ndeke Leah Ciamwari	Meru South
277	M'Thigaa Godfrey Mbuba	Meru South
278	Nkoroi Peter Kang'ethe	Meru South
279	Nduyo Grace Ntembi	Tharaka

280	Kaimba Bruno Kibaara	Tharaka
281	Mungania Julius Magao	Tharaka
282	Kimani Lydia Wanjiru	Embu
283	Njeru Abel Mwaniki	Embu
284	Munyi John Gitari	Embu
285	Naleah Gatiti Kithumbu	Mbeere
286	Isa Ileri Ngunia	Mbeere
287	Nichasius Mugo Njoka	Mbeere
288	Mutunga Jane Mwikali	Mwingi
289	Maluki Robert M	Mwingi
290	Mutua Eric Kyalo	Mwingi
291	Jane Mwendu Pius	Kitui
292	Francis Nzuki Kaloki	Kitui
293	Justus Musyoki Mutweti	Kitui
294	Victoria Mutheu Musyoka	Machakos
295	Saipstone Ngalaatu Musau	Machakos
296	Stanislous Wambua Kasoka	Machakos
297	Wambua Praxedes Nzisa	Makueni
298	Maende Rhoda Ndumi	Makueni
299	William Nduse Matheka	Makueni

CENTRAL PROVINCE

300	Lydia Wambui Muriuki	Nyandarua
301	George Ndatho Muchiri	Nyandarua
302	Frederick Rukwaro Nderitu	Nyandarua
303	Margaret Nyathogora	Nyeri
304	Hezekiah Waithanje Minjire	Nyeri
305	Dominic Muraguri Nderi	Nyeri
306	Ngari Christine Nyawira	Kirinyaga
307	Waruri John Nyaga	Kirinyaga
308	Mathenge James Stanley	Kirinyaga
309	Kirangari Jane Kamwaga	Muranga
310	Mwangi James Waweru	Muranga
311	Fr. Gitonga Joachim	Muranga
312	Mburu Muthoni Mary	Maragua

313	Simon Gathii Gachomo Gichuru	Maragua
314	Gacuru Wa Karengi	Maragua
315	Beatrice Wairimu Kamamia	Thika
316	Gitu wa Kahengeri	Thika
317	John Kinuthia Waitiki	Thika
318	Hannah Nyambura Kimani	Kiambu
319	James Kinuthia Mwangi	Kiambu
320	Kiriro Wa Ngugi	Kiambu

RIFT VALLEY PROVINCE

321	Loyor Rhoda Arupe	Turkana
322	Lomorukai L. Emmanuel	Turkana
323	Emaase Peter Derick Ejore	Turkana
324	Koringura Hellen	West Pokot
325	Lopetakou William	West Pokot
326	Alew Simon	West Pokot
327	Lepuchirit Sophia	Samburu
328	Lobuk Pius Leyaro	Samburu
329	Julius Lalampaa	Samburu
330	Nancy Iyadi	Trans Nzoia
331	Bungei Isaac Kipkosgei	Trans Nzoia
332	Nathaniel K. Tum	Trans Nzoia
333	Emmy Jerono Kipsoi	Uasin Gishu
334	Moses Kiplagat Keter	Uasin Gishu
335	Julius Kipkurgat Sitienei	Uasin Gishu
336	Mkawerweren B. Chebii	Marakwet
337	Sengech Michael Kipkemoi	Marakwet
338	Kiptum Jane Jebiwott	Marakwet
339	Caroline Chemursoi	Keiyo
340	David K. Kuto	Keiyo
341	Kaitany Ernest Kiprotich	Keiyo
342	Magut Felicity Irine	Nandi
343	Saina Augustine Kibet	Nandi
344	Kimaiyo Keroney Arap Segoo	Nandi

345	Lekisemon Mariamu Ntausian	Baringo
346	Cheruiyot Isaiiah Kiplabat	Baringo
347	Chelagat Naftali Kemboi	Baringo
348	Chepkoech Sally	Koibatek
349	Kigen David Kimaiywa	Koibatek
350	Kiptingos Saul Kipkoech	Koibatek
351	Pascalina Riwandi Lebarleiya	Laikipia
352	John Muchai Kiniti	Laikipia
353	Shuel Joseph Njalis	Laikipia
354	Lizah Chepkorir Chelule	Nakuru
355	Mwangi Michael Githu	Nakuru
356	Kesendany Ezekiel Kosgey	Nakuru
357	Teclah Nairesiai Munkushi	Transmara
358	Moses L. Naimadu	Trans Mara
359	David Mpilei Oloisa	Trans Mara
360	Lorna Timanoi Tetu	Narok
361	William Salaon Ole Yiaile	Narok
362	Wilfred Koitamet Ole Kina Nchoshoi	Narok
363	Keko Somoina Margaret	Kajiado
364	Osoi Kamwende Daniel	Kajiado
365	Ole Sisika Lengete Moses	Kajiado
366	Caroline Cherotich Ruto	Bomet
367	Alexander Kipngetich Chepkwony	Bomet
368	Joel Kipyegon Sang	Bomet
369	Christina Cherono Ngeno	Kericho
370	Joseph Maritim Soo	Kericho
371	James Kibii Koske	Kericho
372	Bornice Chelangat Soi	Buret
373	Kiplangat Arap Koech	Buret
374	Joseph Kipngeno Soi	Buret

WESTERN PROVINCE

375	Nandako Jane Kauka	Lugari
376	Mafunga Chesmei Wambulwa	Lugari
377	Nakalo David Okiya	Lugari
378	Dorcas N. Mbelesia	Kakamega
379	Levi Wangula Ahindikha	Kakamega
380	Charles Lwanga Lwole	Kakamega
381	Katamu Rita Ombito	Butere - Mumias
382	Aswani Sammy Amunga	Butere - Mumias
383	Tsalwa Warrens Apollo	Butere - Mumias
384	Jandeka Rebecca Evelia	Vihiga
385	Caleb Kisato Jumba	Vihiga
386	Ohare Charles Edward	Vihiga
387	Ngeywa Cherotich Nancy	Mt. Elgon
388	Chemwey Naibei Sammy	Mt. Elgon
389	Kisiero Arap Wilberforce	Mt. Elgon
390	Kellan Khaoma Wavomba	Bungoma
391	Oscar Zakayo Makokha	Bungoma
392	Eliud Paul Nakitare	Bungoma
393	Ashepete Barasa Roseline	Teso
394	Mark Asitaluko Osilli Adungo	Teso
395	Mathew John Anyara Emukule	Teso
396	Akhayalu Happy Gloria Wabwire	Busia
397	Awillie David Lidbury Erulu	Busia
398	Wesonga George Ojwang	Busia

NYANZA PROVINCE

399	Ogot Grace Emily Akinyi	Siaya
400	Owino Rose marie	Siaya
401	Awora Daniel Obare	Siaya
402	Eve Akinyi Obara	Karachuonyo
403	Benta Auma Saoke	Karachuonyo
404	Fares Ogada Aguo	Karachuonyo

405	Ochola Fibie Atieno	Kisumu
406	Shakeel Shabbir Ahmed	Kisumu
407	Kayila James Omolo	Kisumu
408	Nam Judith Achieng' Oyalo	Nyando
409	Attyang Joseph David	Nyando
410	Ombura Elphas Odhiambo	Nyando
411	Ogutu Teresa Usunga	Homabay
412	Mbai Crispin Odhiambo	Homabay
413	Ogingo Otieno Kevin Mathew	Homabay
414	Okelo Elizabeth Nyangetha	Migori
415	Dache John Pesa	Migori
416	Oyao David Adundo	Migori
417	Atonga Gaudentia Agoko	Suba
418	Orwa George Ochieng	Suba
419	Onyango Philip Romanus	Suba
420	Susan Wambura Jackson	Kuria
421	Thomas Mosabi Merengo	Kuria
422	Maasai Maroa	Kuria
423	Clare Kwamboka Omanga	Kisii
424	Thomas Nyabote Aburi	Kisii
425	Sylvanus Onyambu Ogari	Kisii
426	Orwenyo Mary Obonyo	Nyamira
427	Ogero Benson Kegoro	Nyamira
428	Kibagendi Richard Ngoge	Nyamira
429	Judith Magundho	Bondo
430	Mitere Albert Onyango	Bondo
431	Otieno Rose Adiana	Bondo
432	Rodah Gesare Kamanda	Gucha
433	David Marcos Rakamba	Gucha
434	Peter G. Nyanducha	Gucha

TRADE UNION REPRESENTATIVES (435 – 450)

DELEGATES NUMBER	NAME	ORGANISA TION
435	John Katumanga	KNUT
436	Francis Ng'ang'a	KNUT
437	Zeruiya Otwani	KNUT
438	John Cheruiyot	Union of Kenya Civil Servants
439	George Muchai	COTU
440	Rajab Mwondi	COTU
441	Joel Chebii	COTU
442	Francis Waweru	COTU
443	Roselinda Simiyu	COTU
444	Maero Tindi	COTU
445	Esther Lelei	COTU
446	Francis Wangara	COTU
447	Kennedy Kiliku	COTU
448	Isaiah Kubai	COTU
449	Benson Okwaro	COTU
450	James Ngusi	COTU

NON GOVERNMENTAL ORGANISATIONS (NGO)
REPRESENTATIVES (451 – 473)

DELEGATES NUMBER	NAME
451	Okwach Abagi
452	Willy Mutunga
453	Elkanah Odembo
454	Kathurima M'Inoti
455	Lawrence Murugu Mute
456	Mohamed J. Nyaoga
457	Nyangau N. Onwonga
458	Odenda Lumumba
459	Oduor Ongwen

460	Patrick O. Kiage
461	Philip Ole Sironka
462	Samuel Tororei
463	Suba Churchill Meshack
464	Singoei Korir Abraham
465	Beatrice Nduta Kiarie
466	Joyce Umbima
467	Mary Wambui Kanyi
468	Hellen Jepkerich Too - Yego
469	Grace N. Githaiga
470	Sophia Abdi
471	Rose Kasiala Lukalo - Owino
472	Miriam Muto
473	Pamela Arwa Mboya

PROFESSIONAL ORGANISATIONS REPRESENTATIVES
(474 – 488)

DELEGATES NUMBER	NAME	ORGANISATION
474	Okoth Anne Ochien'g	NNAK
475	Anne Wairimu Njogu	ICPSK
476	Mohammed Jamila	CIAK
477	Raychelle Awuor Omamo	LSK
478	Sabenzia N. Wekesa	KVA
479	Kavoo Kilonzo	KMA
480	John Karimi Njiraini	ICPAK
481	Daniel W. Ichang'i	GSK
482	Isaac Ongumba Kibwage	PSK
483	Saleh Saad Yahya	ISK
484	Sylvester C.M. Wafula	AAK
485	Raphael G. Mwai	APSEA
486	Daniel Njagi	ACEK
487	Baldip Singh Rihal	APSEA
488	James F.T. Foster	ICPSK

WOMEN ORGANISATIONS REPRESENTATIVES (489 – 512)

DELEGATES NUMBER	NAME
489	Jane Mumbi Kiano
490	Rose Waruhiu
491	Lillian Wanjira
492	Mercy Mwamburi
493	Amina H. Soud
494	Kauchi A. Chivumba
495	Martha Koome
496	Ann Mululu
497	Jillo Mumina Konso
498	Maria Nzomo
499	Tabitha Seii
500	Kamla Sikand
501	Joyce M. Majiwa
502	Rose A. Olende
503	Elizabeth Mayieka
504	Aweis Nasra Abubakar
505	Fatuma Ali Saman
506	Fatuma Ibrahim Ali
507	Margaret Kamar
508	Mareso Agina
509	Martha Rop
510	Atsango Chesoni
511	Ruth N. Kibiti
512	Florence Machayo

**RELIGIOUS ORGANISATIONS REPRESENTATIVES (513 –
547)**

DELEGATES NUMBER	NAME	ORGANISATION
513	Abuom, Agnes	NCKK
514	Ajuoga, Milcah Aoko	OAIC
515	Ali, Shee Mohammed	SUPKEM
516	Bwana, Peter Ondari	SDA
517	El-Busaidy, Abdulghafur H.S.	SUPKEM
518	Fadhil, Sultana	MCC
519	Gacambi, Marie Therese	Kenya Episcopal Conference
520	Gatiti, James Nthiga	Kenya Episcopal Conference
521	Wahu Kaara.	PCEA
522	Gitari, David M.	NCKK
523	Kamau, Ruth Wanjiku	Evangelical Fellowship of Kenya
524	Kapila, Neera Kent	Hindu Council of Kenya
525	Ibrahim Ahmed Yussuf	MCC
526	Kinyanjui, Rosemary, M.	Anglican Church of Kenya
527	Njeru Wambugu	OAIC
528	Mageria, James John	PCEA
529	Maina, Patrick Musungu	Church of God in East Africa
530	Mburugu, Florence W. Ruhii	Kenya Episcopal Conference
531	Ali Mustafa Yussuf	SUPKEM
532	Muchai, Rogers Lumatete Walubengo	Kenya Episcopal Conference
533	Mung'athia, Hellen	Methodist Church of Kenya
534	Musyimi, Mutava	NCKK
535	Ojiambo Fred O. O. N'cruba	Evangelical Fellowship of Kenya
536	Mwaniki, Tabitha Mumbi	SDA
537	Mwanzi, Asiya Mahmood	SUPKEM

538	Ng'eny, Samuel K. Arap	Anglican Church of Kenya
539	Njue, John	Kenya Episcopal Conference
540	Nthamburi, Zablon	Methodist Church of Kenya
541	Okoth, Zacchaeus	Kenya Episcopal Conference
542	Omondi, Ibrahim	Evangelical Fellowship of Kenya
543	Raval, Shashikant Kantilal	Hindu Council of Kenya
544	Sehmi, Rupinder Singh	Hindu Council of Kenya
545	Shitemi, Simeon	Joint Religious Leaders
546	Sulumeti, Philip	Kenya Episcopal Conference
547	Wandati, Abdulrahaman Mirimo	MCC

COMMISSIONERS OF THE CONSTITUTION OF
KENYA REVIEW COMMISSION (548 – 575)

DELEGATES NUMBER	NAME
548	Yash Pal Ghai
549	Ahmed Idha Salim
550	Abida Ali-Aroni
551	H. W. O. Okoth-Ogendo
552	Phoebe Asiyu
553	M. A. Swazuri
554	Charles Maranga Bagwasi
555	Salome Wairimu Muigai
556	Alice Yano
557	Wanjiku Kabira
558	Abdirizak Arale Nunow
559	Bishop Bernard Njoroge Kariuki
560	Pastor Zablon Ayonga
561	Nancy Makokha Baraza
562	Mutakha Kangu

563	Kavetsa Adagala
564	Paul Musili Wambua
565	Abubakar Zein Abubakar
566	Ahmed Issack Hassan
567	Riunga Raiji
568	Ibrahim Lethome
569	Keriako Tobiko
570	Githu Muigai
571	Isaac Lenaola
572	K. Mosonik arap Korir
573	Domiziano Ratanya
574	Andronico O. Adede
575	Amos Wako
260	PLO- Lumumba

POLITICAL PARTY REPRESENTATIVES (576 – 616)

DELEGATES NUMBER	NOMINEE	PARTY
576	Simon Mwai Gakuya	Chama Cha Uma Party (CCU)
577	George Kinyua	United Agri Party
578	Jacob Ochino Ogundo	Reform Party of Kenya
579	Daniel Mokaya Rasugu	National Party (Labour)
580	Francis Carey Onyango	Social Party for Advancement and Reforms - Kenya
581	Yusuf Mahmoud Aboubakar	Shirikisho Party of Kenya
582	Njuguna M. Kung'u	United Patriotic Party of Kenya
583	Appolo Njonjo	Social Democratic Party of Kenya (SDP)
584	Makau Mutua	Safina Party
585	Dennis Kodhe	Liberal Democratic Party
586	George Mwaura Mburu	Peoples Party of Kenya
587	Caroline Ng'ang'a	Labour Party of Kenya
588	Francis Wabayale	New People's Democratic Party
589	Daniel Gachihi Njoroge	Kenya Nationalist People

		Democratic Party
590	Patrick O. Onyango	Kenya National Democratic Alliance
591	Ogembo Masese	Kenya National Congress
592	Francis Kilemi	Green African Party
593	Gervase A. Akhwabi	Forum for Restoration of Democracy (FORD Kenya)
594	Orie Rogo Manduli	Forum for Restoration of Democracy (FORD People)
595	Joseph Martin Shikuku	Forum for Restoration of Democracy (FORD Asili)
596	Hezron K.N. Manonda	Democratic Assistant Party
597	Moses M. Wekesa	Kenya Socialist Party
598	Kimani M. Ng'ang'a	United Kenya Citizen
599	Leslie Betawa Mwachiro	Chama Cha Majimbo na Mwangaza
600	Zakayo M. Karimi	Sisi Kwa Sisi Party of Kenya
601	Lus'eno H. Liyai Indembukhani	Peoples Solidarity Union
602	Benjamin Gitoi	National Conservative Party of Kenya
603	Winston Ogola Adhiambo	Federal Party of Kenya
604	Samuel M. Mwaura	Mass Party of Kenya
605	Ngorongo Makanga	Liberal Greens Party of Kenya
606	Phoebe Sikoya Kituyi	Reform of Political Kenya Union
607	Nginyo L. Kariuki	National Alliance Party of Kenya
608	Lihanda Kemen Savai	Kenya Republican Reformation Party
609	Kenneth N. Njiru	United Democratic Peace Intergrity Kenya
610	Justus M. Wekala	People's Democratic Union of Kenya
611	John P. Nyakundi	Kenya Social Congress
612	David Wakahu	UMMA Patriotic Party
613	Mike Oliewo	Party of Independent Candidates of Kenya (PICK)
614	Dalmas Anyango Otieno	Kenya African National Union (KANU)
615	George Omari Nyamweya	Democratic Party of Kenya
616	S.W. Omondi Oludhe	Economic Independence Party

SPECIAL INTERESTS GROUPS (616
- 629)

DELEGATES NUMBER	NAME
617	Manu Chandaria
618	R. O. Kwach
619	Wilfred Kiboro
620	R. S. C. Omolo
621	Robert Rukunga
622	Bernadette Quadros
623	Murtaza Jaffer
624	King'ori Mwangi
625	Gilbert M. Omondi
626	Mamo Abudo Qonchoro
627	Danny Irungu Mwangi
628	James O. Bwatuti
629	T. K. Githiora

APPENDIX B:**LIST OF DELEGATES NOT SWORN/AFFIRMED**

SERIAL NO.	DELEGATE NO.	NAME
1.	022	Dahir, Abdullahi Sheikh
2.	041	Karaba, Daniel Dickson
3.	062	Kimunya, Amos Muhinga
4.	070	Kofa, Mugava Tola
5.	175	Parpai, Geoffrey Mepukon
6.	451	Okwach, Abagi
7.	598	Kimani, M. Ng'ang'a
8.	616	Omondi Oludhe

APPENDIX C:

SPEECH BY H. E. PRESIDENT MWAI KIBAKI DURING THE OPENING OF THE NATIONAL CONSTITUTION CONFERENCE ON 30TH APRIL, 2003

Honourable Members of Parliament, distinguished delegates, Commissioners of the Constitution of Kenya Review Commission, Ladies and Gentlemen.

It gives me great pleasure to inaugurate the National Constitutional Conference. This Conference is the culmination of a long struggle by the people of Kenya. A struggle for justice and the recovery of their rights. A struggle for fair and efficient governance. A struggle for the reaffirmation of our destiny as the common political community of Kenyans.

Over the last two decades, the freedom which the people of Kenya fought and died for, was snatched from them. The people were deprived of their property and many were denied the opportunity to earn a livelihood. Corruption by leaders became commonplace. More than half of the entire population was condemned to absolute poverty.

It was against this corruption and tyranny that many brave and patriotic Kenyans fought for their rights. Through their efforts, we came out of the dark days of one party rule. Detention without trial is no more. The Nyayo House torture chambers have been closed forever.

Let us, today, remember those Kenyans who gave their lives, limbs, careers, and suffered torture so that we might, again, be free. And let us be proud of the indomitable spirit of the freedom fighters. It is, indeed, the unbogable spirit of Kenyans.

I should like to pay special tribute to civil society organisations, which played a leading role to bring us to this stage, in our review process. Their vigilance and research were essential. The Ufungamano Initiative has provided inspired leadership, and kept our hopes alive in difficult moments. By their own example of unity, in diversity, they showed Kenyans, the path to the future.

The best homage, we can pay, to all of them, is to act in the best interests of our nation and to fight for more democracy and freedom.

My Government pledges to support this process in every way. We shall not interfere with the review process. The Constitution of Kenya Review Act sets out the agenda of reform that the country agreed at Bomas of Kenya and Safari Park in 1998.

All the organs of review, including this Conference and the Parliament, are bound by certain key values. These are democracy, transparency, accountability, integrity and people's participation, rights and freedoms. The organs of the review must ensure protection of minorities, and the dignity of all Kenyans. There are different ways to achieve these values. The delegates must debate vigorously the merits and demerits of different options.

But these are the values that we, as a nation, have already committed ourselves to. This Conference must be guided by them.

I have been greatly encouraged by the process followed so far. In the beginning, we were able to overcome deep divisions to create a joint process. That decision required great courage on the part of many political and social groups. The Review Commission did a good job in informing the people of the process and the issues. It provided people ample opportunities to express their views. People turned out, in their thousands, to give recommendations to the Commission. They spoke freely and without fear. They made many sensible proposals. These were diligently analysed.

The process turned out to be the first audit, by the people, of their nation since independence. It sharpened people's recognition of their own sovereignty. It is unlikely, that they will ever accept the dictatorship that previous regimes imposed on them.

I congratulate the Review Commission for a draft constitution which shows great respect for the people. It is not my intention to pre-empt or influence the debate of the Conference. But it is my belief that even the best can be made better.

The consultative process had other benefits. It re-affirmed our identity as Kenyans. It developed a vision of Kenya which is critical to nation building. It has strengthened national unity, just as the last general elections did. It enabled us to be a people who are prepared to listen to others. It has been peaceful and participatory. People waited patiently for hours, sometimes in the hot sun and sometimes in rain, to express their views. I hope that this kind of open and peaceful process will be an example to us all.

This Conference is a gathering of the whole nation. It should strengthen national unity. The delegates must discharge their duties responsibly. You must be mindful of the national interest. As individuals, we are bound to have our own personal interest. But, as Kenyans, we are enjoined to promote national good, the integrity of the state, and the rights and welfare of the people. Our narrow interests must be subordinated to the greater good.

Like a constituent assembly, we represent the nation, and are accountable to all the people. Different groups have presented different proposals. These proposals should not be written in stone. We should be ready to listen to each other. Listening is an essential democratic attribute. Good ideas should give way to better ones. I urge all delegates to shun parochialism and dogmatism. In the heat and dust of conflict to remove dictatorship, many proposals were made to the Commission. This Conference now offers an opportunity for more sober reflection. The prevailing peace and tranquility offers the delegates an opportunity to arrive at a more practical and realistic conclusion. This constitution is not being reviewed for an individual, group or community. The Constitution is bigger than all of us. It is for posterity.

It is my Government's wish that this process be concluded as soon as possible. However, the decision with regard to actual duration belongs to the people of Kenya and this Conference.

My Government is committed to the establishment of a new democratic culture in this country. The peaceful transition of last year, and this participatory review process, are part of this new culture for which Kenya is, now, much admired, both at home and abroad.

It is my wish that Kenya remains one inseparable and indivisible nation. We recognise, respect and celebrate the diversity of our people. We have more things that unite us than those that separate us. Let us harness the strength of our unity in diversity. Let us, at this conference,

discuss all the issues openly, honestly and in the spirit of oneness. This is the only way to build a truly democratic and prosperous Kenya.

It is, now, my honour and privilege, to declare this conference officially open.

Thank you and God Bless Kenya.

APPENDIX D:**STANDING COMMITTEES OF THE CONFERENCE****1. ACCREDITATION COMMITTEE**

NO.	NAME	DEL. NO	
1	M. A. Swazuri	553	Chairperson
2	Pastor Zablon Ayonga	560	Member
3	Domiziano Ratanya	573	“
4	Phoebe Asiyu	552	“
5	Ibrahim Lethome	568	“
6	Keriako Tobiko	569	“
7	Alice Yano	556	“

2. STEERING COMMITTEE

NO.	NAME	DEL. NO	
1.	Yash Pal Ghai	548	Chairperson
2.	Bonaya Godana	029	V-Chairperson
3.	Sultana Fadhil	518	V-Chairperson
4.	Koitamet Ole Kina	362	V-Chairperson
5.	H. W. O. Okoth-Ogendo	551	Rapporteur - General
6.	Ahmed Idha Salim	549	First Vice-chair of the Commission
7.	Rev. Mutava Musyimi	534	Member
8.	Kimaiyo Keroney Arap Sego	344	“
9.	Uhuru Kenyatta	049	“
10.	Bishop Phillip Sulumeti	546	“
11.	S. K. Tororei	462	“
12.	Saul K. Kiptingos	350	“
13.	Rhoda N. Maende	298	“
14.	Mariam S. Mwanyota	245	“
15.	Raila Odinga	155	“
16.	Sammy Naibei Chemwey	388	“
17.	Oduor Ong'wen	459	“
18.	Somoina Keko	363	“
19.	Rev. Macharia Muchuga	226	“

20.	Gacuru Wa Kareng'e	314	“
21.	Roselinda Simiyu	443	“
22.	Ahmed Maalim Omar	255	“
23.	Ruth N. Kibiti	511	“
24.	Nancy Lung'ahi	224	“
25.	Sheikh Ali Shee	515	“
26.	Sophia Abdi Noor	470	“
27.	Yusuf Wako Dogo	269	“
28.	Joyce Umbima	466	“
29.	Ruth K. Oniang'o	221	“
30.	Simeon Nyachae	149	“
31.	Mwalimu Digore Kitambi	231	“
32.	Grace Ogot	399	“
33.	Wangari Maathai	083	“
34.	Martha Karua	044	“
35.	Crispin Odhiambo Mbai	412	“
36.	Martha Koome	495	“
37.	Samuel Arap Ng'eny	538	“
38.	Kiriro wa Ngugi	320	“
39.	Joyce M. Majiwa	501	“
40.	Kerrow Billow Adan	015	“
41.	Marsden Madoka	085	“
42.	Saleh Saad Yahya	483	“
43.	Kivutha Kibwana	056	“
44.	Carolyn Ng'ang'a	587	“
45.	Nyangau Onwong'a	457	“
46.	Wilfred Kiboro	619	“
47.	Rose Lukalo-Owino	471	“
48.	Musikari Kombo	072	“
49.	Raphael G. Mwai	485	“
50.	Kenneth Njiru	609	“
51.	Orie Rogo-Manduli	594	“
52.	Pamela Mboya	473	“
53.	Martin Shikuku	595	“
54.	Suba Churchill	463	“
55.	Njuguna Kung'u	582	“
56.	Baldip S. Rihal	487	“
57.	Thomas Nyabote Aburi	424	“
58.	Amos Wako	575	<i>Ex officio</i>
59.	Kiraitu Murungi	124	“
60.	Wanjiku Kabira	557	“
61.	Abdirizak Arale Nunow	558	“
62.	Mohammed A. Swazuri	553	“
63.	Paul Kibugi Muite	114	“
64.	Charles Maranga Bagwasi	554	“
65.	Isaac Lenaola	571	“
66.	Bishop Bernard N. Kariuki	559	“

67.	Abida Ali-Aroni	550	“
68.	Githu Muigai	570	“
69.	Ahmed Issack Hassan	566	“
70.	Nancy Makokha Baraza	561	“
71.	Kavetsa Adagala	563	“
72.	Mutakha Kangu	562	“
73.	Paul M. Wambua	564	“
74.	Salome Wairimu Muigai	555	“
75.	Phoebe M. Asiyo	552	“
76.	Alice Yano	556	“
77.	Pastor Zablon Ayonga	560	“
78.	Abubakar Zein Abubakar	565	“
79.	Riunga Raiji	567	“
80.	Ibrahim Lethome	568	“
81.	Keriako Tobiko	569	“
82.	K. Mosonik arap Korir	572	“
83.	Domiziano Ratanya	573	“
84.	Francis X. Ole Kaparo	223	“
85.	Andronico O. Adede	574	“
86.	M. J. A. Emukule	395	“
87.	PLO – Lumumba	260	“

3. MEDIA ADVISORY COMMITTEE

NO.	NAME	DEL. NO	
1	Ms Rose Lukalo-Owino	471	Chairperson
2	Mustafa Ali	531	Member
3	Peter Kangethe Nkoroi	278	“
4	Sylvestor C.M. Wafula	484	“
5	Awillie David Erulu	397	“
6	Mike Oliewo	613	“
7	David Marcos Rakamba	433	“
8	Hon Mutahi Kagwe	033	“
9	Kavetsa Adagala	563	<i>ex-officio</i>
10	Salome Muigai	555	“
11	Abubakar Zein Abubakar	565	“

4. PRIVILEGES, DISCIPLINE & WELFARE COMMITTEE

NO.	NAME	DEL. NO	
1	Baldip S. Rihal	487	Chairperson
2	Salim Ibrahim	225	Member
3	Hezekiah Waithanje Minjire	304	“
4	Abdullahi Haji Mohammed	250	“
5	Francis Wangara	446	“
6	Yusuf Mahmoud Aboubakar	581	“
7	Miriam Muto Malogo	472	“
8	Kamla Sikand	500	“
9	Shakeel Shabir	406	“
10	F. X. Ole Kaparo	223	“
11	Joel Kipyegon Sang	368	“
12	Abida Ali-Aroni	550	<i>ex-officio</i>
13	Bishop Bernard Njoroge Kariuki	559	“
14	Mosonik arap Korir	572	“

APPENDIX E:

LANCASTER HOUSE VETERANS PRESENT

ON MAY 5, 2003

1. Dr. Fritz Souza
2. Mr. J. J. Nyaga
3. Mr. R. Achieng Oneko
4. Dr. Taita Towett
5. Dr. J. G. Kiano
6. Mr. George Nthenge
7. Mr. John Keen
8. Mr. J. Martin Shikuku
9. Mr. Denis Akumu
10. Mr. J. T. Otiende
11. Mr. Eliud Ngala Mwendwa (joined the group in May 6, 2003)

APPENDIX F:

FINAL REGULATIONS OF THE CONFERENCE

Constitution of Kenya Review (National Constitutional Conference)
(Procedure) Regulations, 2003

LEGAL NOTICE No. 42 of 22nd April 2003

**THE CONSTITUTION OF KENYA REVIEW ACT
(CAP.3A)**

**THE CONSTITUTION OF KENYA REVIEW (NATIONAL CONSTITUTIONAL
CONFERENCE)(PROCEDURE) REGULATIONS, 2003**

IN EXERCISE of the powers conferred by section 34 of the Constitution of Kenya Review Act, the Constitution of Kenya Review Commission makes the following Regulations: -

PART I – PRELIMINARY

- Citation. **1.** These Regulations may be cited as the Constitution of Kenya Review (National Constitutional Conference)(Procedure) Regulations, 2003.
- Interpretation. **2.** (1) In these Regulations, unless the context otherwise requires -
- “Chairperson” means the Chairperson of the Conference designated by section 27(3) of the Act;
- “Commission Report” means the report compiled by the Commission under section 26(7) of the Act;
- “Committee” means any committee established by or under these Regulations;
- “Conference” means the National Constitutional Conference convened under section 27(1)(b) of the Act;
- “consideration stage” means that part of the proceedings of the Conference in

which, as referred to in Regulation 20, the Draft Bill is considered by the Committee of the whole Conference and its working groups;

“Convenor” means any person elected under Regulation 44(2) to preside over any committee;

“delegate” means a person designated, appointed or elected by or under section 27(2) of the Act as a delegate to the Conference;

“Draft Bill” means the Bill to alter the Constitution, drafted pursuant to section 26(7) of the Act;

“lobby” means any place within the Plenary Hall which makes it possible to separate the delegates voting for any motion from the delegates voting against the motion;

“officer of the Conference” means any officer or member of staff of the Conference, any person acting within the precincts of the Conference under the direction of the Chairperson and any security officer on duty within the precincts of the Conference

“precincts of the Conference” includes the Plenary hall, the offices of the Conference and the galleries and places provided for the use of the Conference;

“Secretariat” means the Secretariat of the Conference established under Regulation 50;

“Steering Committee” means the steering committee established under Regulation 46;

“unauthorised person” in relation to the Conference means any person other than a delegate, observer or officer of the Conference.

(2) References in these Regulations to an article or chapter, or to the preamble or title, are references to an article or chapter or to the preamble or title of the proposed new Constitution contained in the Draft Bill.

PART II - DELEGATES AND OTHERS IN ATTENDANCE

Credentials committee.

3. (1) There shall be an Accreditation Committee consisting of seven Commissioners appointed by the Commission.

(2) The committee shall have power -

(a) to verify and determine the validity of the credentials of all persons

- purporting to be delegates to the Conference; and
- (b) to issue identification badges to all accredited delegates.

(3) A person purporting to be a delegate and who is aggrieved by a decision of the committee in the exercise of its functions under this Regulation may appeal to the Commission, whose decision shall be final.

Participation by improper delegate.

4. Participation in any proceedings of the Conference by a person purporting to be a delegate but who is in fact not a delegate shall not affect the validity of those proceedings, unless it appears that his participation in a decision of the Conference, alone or together with any participation in such a decision by other persons who are not delegates, rendered the decision contrary to section 27(5) of the Act.

Vacancy in office.

5. (1) The office of a delegate shall fall vacant –

- (a) if he dies
- (b) if, being a delegate by virtue of being a Commissioner, he ceases to be a Commissioner; or
- (c) if, being a delegate by virtue of being a member of the National Assembly, he ceases to be a member of the National Assembly.

(2) Where a vacancy occurs in the office of a delegate referred to in section 27(2)(c)-(e) of the Act, another delegate shall be appointed or elected, in such manner as the Commission may prescribe, to represent the organization or body who was represented by the delegate who vacated office.

(3) Proceedings of the Conference are not be invalid by reason of the fact that they took place while a vacancy was not filled under subregulation (2).

Oaths and affirmations.

6. (1) Before taking part in the proceedings of the Conference, every delegate shall take and subscribe an oath or make and subscribe a solemn affirmation in the form prescribed in the First Schedule to these Regulations.

(2) The oath or affirmation shall be administered by the Chairperson before the assembled Conference during its first sitting or as soon thereafter as the delegate may attend.

(3) Before administering oaths and affirmations to the other delegates, the Chairperson shall take and subscribe an oath or make and subscribe an affirmation which shall be administered by the Secretary of the Conference.

(4) During the first sitting of the Conference, the oaths and affirmations may be administered collectively or severally in such manner as the Chairperson may determine.

Behaviour of delegates

7. Delegates shall -

- (a) conduct themselves with the civility, decorum and dignity befitting a member of the Conference;
- (b) act at all times in the national interest.

Observers and other invitees.

8. (1) The proceedings of the Conference shall be open to the public.

(2) The Commission may invite any person or group of persons to attend the proceedings of the Conference as observers or guests for such period and in respect of such deliberations as it may deem fit.

(3) Entry into the Plenary Hall of the Conference and committee rooms shall be for delegates and persons invited under subregulation (2).

(4) The Conference may by resolution decide that a particular sitting or session is not open to the public and in such event the Chairperson shall direct that unauthorised persons should not enter the meeting place or, if present, should withdraw.

PART III – SITTINGS OF THE CONFERENCE

Notice of first sitting

9. The Chairperson shall cause notice to be given, in such manner as he thinks fit, of the first sitting of the Conference.

Venue and sitting times

10. (1) The Conference shall sit on such days and at such time or times as may be determined by the Steering Committee and notified in the Order Paper.

(2) A sitting day of the Conference may be divided into two or more sessions

(3) Unless otherwise determined by the Steering Committee, the sittings of the Conference shall be held in Nairobi at the Bomas of Kenya.

(4) Any session of the Conference or of any of the committees of the Conference shall be held at such places as the Steering Committee may appoint, taking into consideration the nature of the meeting, the facilities available at the venue, the convenience of the delegates and the cost involved.

Seating arrangements

11. (1) Delegates shall be seated in such manner as the Steering Committee shall determine and all delegates shall be obliged to observe the seating arrangements.

(2) Failure to observe the seating arrangements shall constitute a contravention of these Regulations and may be dealt with under Regulation 41.

- Language of conference.
- 12.** (1) Debates and proceedings of the Conference may be conducted in English or Kiswahili, at the option of the person speaking.
- (2) The proceedings of the Conference shall be recorded in both English and Kiswahili.
- (3) Sign language interpreters shall be provided by the Commission during all sessions of the Conference and a braille copy of the proceedings shall be part of the final Conference report.
- Vice-Chairpersons.
- 13** (1) There shall be three Vice-chairpersons of the Conference appointed in accordance with sub-regulation (2).
- (2) Of the three Vice-chairpersons appointed under sub-regulation (1)-
- (a) one shall be nominated by the Parliamentary Select Committee established under section 10 of the Act; and
- (b) two, one of whom shall be a woman, shall be elected by the Conference.
- Presiding at meetings and Chairing of sessions.
- 14.** (1) On any sitting day of the Conference -
- (a) the Chairperson; or
- (b) in the absence of the Chairperson, any of the three Vice-chairpersons; or
- (c) in the absence of the Chairperson and all the Vice-chairpersons, a member of the Steering Committee elected by them, shall preside;
- (d) the Steering Committee may appoint a delegate to chair a session of the Conference, but a delegate so elected to chair a session shall be subject to the direction and overall authority of the Chairperson of the Conference, pursuant to sub-regulations (a), (b) and (c) of this regulation.
- (2) A person other than the Chairperson who is presiding on a sitting day of the Conference shall have and may exercise the powers and perform functions of the Chairperson under these Regulations.
- Other functions of Chairperson.
- 15.** The Chairperson shall -
- (a) be the spokesperson for the Conference; and
- (b) exercise overall authority for the preservation of order in the Conference and the enforcement of these Regulations.
- Quorum.
- 16.** (1) Any delegate may at any time after the proceedings of the Conference have commenced take objection that there is not a quorum present.
- (2) Whenever such an objection is taken, the Chairperson shall cause the

Conference to be counted and if, on the first count, a quorum does not seem to be present, shall cause the division bell to be rung, as on a division.

(3) If, within five minutes after the bell has sounded, or within such further time as the Chairperson may allow, no quorum is present, the Chairperson shall announce to the Conference that there is not a quorum present and shall thereupon adjourn the Conference until the next sitting.

Adjournment.

17. The Chairperson may, on a motion by a delegate or of his own volition, adjourn any sitting of the Conference, but the duration of such an adjournment may not exceed one day unless ratified by the Steering Committee, and if the adjournment exceeds three days, unless approved by the Conference.

PART IV – STRUCTURE OF BUSINESS

Introduction of
Commission’s Report
and Draft Bill.

18. (1) The Commission shall lay before the Conference the following documents -

- (a) the Report and Draft Bill prepared in accordance with Section 26(7) of the Act
- (b) such other working documents as would assist the conference in its deliberations on the Report and Draft Bill.

(2) As soon as practicable after the commencement of the proceedings of the Conference, the Chairperson shall present to the Conference the Commission’s Report and Draft Bill.

(3) The Chairperson may, upon presentation of the Commission’s Report and Draft Bill, deliver a Communication from the Chair introducing the Report and Draft Bill.

General debate on
Commission’s report and
Draft Bill.

19. (1) After concluding his communication, the Chairperson shall invite a delegate to move the motion “That this Conference debates the Report and Draft Bill of the Constitution of Kenya Review Commission.”

(2) After the mover has moved the motion, with or without a speech, and the motion has been duly seconded, the Chairperson shall propose the question, so as to open the debate on the merits and principles contained in the Commission’s Report and Draft Bill.

(3) Each delegate shall be allowed a maximum of ten minutes within which to make his speech, but the Chairperson shall take into account time unduly lost through points of order taken by other delegates, but shall not take into account time taken by points of explanation.

(4) Where the Chairperson is satisfied that each delegate wishing to speak has had an opportunity to speak, he shall declare the general debate closed without question put.

Consideration stage.

20. (1) Upon the conclusion of the general debate, the Commission's Report and Draft Bill shall stand committed to the consideration stage, which shall comprise consideration by the technical working groups established under Regulation 50 and subsequent consideration by the committee of the whole Conference as provided in these Regulations.

(2) Subject to these Regulations, at the consideration stage, delegates are entitled to move amendments to the Commission's Report and Draft Bill in accordance with these Regulations.

(3) At the consideration stage, the debate at the Conference shall be confined to the Commission's Report and Draft Bill only.

(4) The rules set forth in the Second Schedule to these Regulations shall apply with respect to the consideration of provisions of the Draft Bill.

(5) After the consideration of the Draft Bill is completed, the Conference shall proceed to consider the Report.

(6) The procedures prescribed by these regulations with respect to consideration of the Draft Bill shall apply, with any necessary modifications, to the consideration of the Commission's Report.

(7) The Report and Draft Bill having been dealt with in the manner described above, the Chairperson shall cause final drafts containing all the alterations to be prepared as the final Commission's Report and Draft Bill for adoption by the Conference.

(8) Nothing in this Regulations or in the rules contained in the Second Schedule to these Regulations shall affect the discretion of the Chairperson to alter the Order Paper as he may deem necessary or to authorise debate on the Report and Draft Bill in a manner appearing to him most expedient.

Adoption of Report and Draft Bill.

21. (1) Upon the completion of the consideration stage the Conference shall, with the assistance of the Drafting Team appointed under regulation 48, cause to be incorporated in the Draft Bill the amendments (if any) approved during the consideration stage.

(2) The Drafting Team shall ensure -

- (a) that all provisions of the Draft Bill are consistent with one another; and
- (b) that the language used in the Draft Bill is uniform and consistent and conforms with the best drafting standards

and for this purpose shall be allowed sufficient time to do its work.

(3) After the amendments, if any, have been incorporated in the Report and

Draft Bill, the Chairperson shall cause the Report and Draft Bill to be printed and a copy to be provided to each delegate.

(4) After copies of the Report and Draft Bill have been distributed to delegates, the Chairperson shall, in consultation with the Steering Committee, appoint a time for the Conference to sit and adopt the Report and Draft Bill.

(5) At the time appointed, the Chairperson shall invite a delegate to move the motion "That the National Constitutional Conference adopts the Constitution of Kenya Report and Draft Bill 2002".

(6) If such a motion, having been duly seconded, is carried by the Conference, the Secretary shall then read aloud the title of the Report and draft Bill together with the adopting formula, which shall be "Adopted by the National Constitutional Conference" or, as the case may require, "Adopted by the National Constitutional Conference, subject to submission of the following provision(s) to a national referendum in accordance with subsections (6) and (7) of section 27 of the Constitution of Kenya Review Act, namely (here read out the numbers and article headings of the provision(s))

(7) The Report and Draft Bill shall then be deemed to have been adopted by the Conference (subject to subregulation (6), if applicable) and the Chairperson shall so declare and, if he so wishes, make valedictory remarks.

PART V – CONDUCT OF BUSINESS

General conduct and order of business.

22. (1) All procedural matters not expressly provided for in these Regulations shall be decided by the Chairperson and his decision shall be final.

(2) All other matters not expressly provided for in these Regulations shall be resolved by the Commission.

(3) The Chairperson of the Conference and the Convenor of each committee shall cause an Order Paper to be published on each of the days of the Conference setting out the full agenda for the day.

(4) So far as may be practicable, a copy of the Order Paper for each sitting of the Conference shall be provided to each delegate prior to the commencement of the sitting.

(5) The Steering Committee shall prepare for provision to each delegate a timetable of the work of the Conference, and shall revise it from time to time as necessary.

Statements and personal explanation

23. (1) With the leave of the Chairperson, a delegate may make a statement on any matter of urgent public importance relating to the functions of the Conference or explain a matter of a personal nature at the time appointed, but no debate may arise upon a personal explanation.

(2) Other delegates may comment upon any statement other than a personal explanation for a period not exceeding ten minutes.

(3) Any proposed statement referred to in subregulation (1) shall first be submitted to the Chairperson in writing.

Notices of motion.

24. (1) Notices of motion shall be given in writing and signed by the delegate giving the notice.

(2) A notice of motion may be handed to the Secretary of the Conference, or an officer designated by him, at any time when the Conference is sitting or may be sent to or left at the Secretariat office within the time prescribed for the purpose.

(3) A motion of which notice has been received at least one day before a sitting shall, unless the Chairperson rules the motion out of order, be placed upon the Order Paper.

(4) A delegate who desires to vary the terms of a motion standing in his name may do so by giving an amended notice of motion, provided that such amendment does not, in the opinion of the Chairperson, materially alter any principle embodied in the original motion or in its scope.

Other motions requirements

25. (12) Subject to these Regulations, no motion is valid unless it has been seconded by another delegate.

(2) The Chairperson may disallow a notice of motion which, in his opinion, contains unbecoming expressions, infringes the rules of debate or is otherwise irregular, but any such notice may be amended by the Chairperson, with the consent of the delegate who gave the notice, and may thereupon appear on the Order Paper.

Lapse of motions.

26. (1) A motion of which notice has been given shall lapse if not moved at the proper time, unless the Chairperson directs that it may be moved at some other time.

(2) Any motion brought otherwise than during the consideration stage and which is not seconded shall lapse.

(3) A delegate who has a motion standing in his name may in writing authorise some other delegate to move that motion on his behalf.

Order of taking motions.

27. The order in which motions shall be moved shall be determined by the Steering Committee.

Withdrawal of motions.

28. (1) A delegate who has made a motion may withdraw it by leave of the Conference, there being no dissentient voice. But if the question has been proposed on an amendment to a motion the original motion may not be

withdrawn until the amendment has been disposed of.

(2) A motion which has been withdrawn by leave of the Conference may be made again on notice given, but its order of priority shall again be subject to ballot.

Motions raising questions already decided.

29. No delegate shall be competent, without the leave of the Chairperson, to move a motion raising a question substantially identical with a question raised in a motion which has already been disposed of.

Amendments to motions.

30. (1) After a motion has been proposed as a question by the Chairperson, an amendment may be moved which seeks to alter the question -

- (a) by leaving out certain words;
- (b) by leaving out certain words and inserting other words in their place;
- or
- (c) by inserting certain words in a specified place.

(2) An amendment shall be relevant to the question to which it is proposed.

(3) An amendment shall not raise any question which may only be raised by a substantive motion after notice.

(4) An amendment shall not be moved if substantially identical with an amendment already disposed of.

(5) An amendment shall not be moved if substantially a direct negative of the original proposition or of the words which it is proposed to

(6) If two or more amendments are offered at the same place, the Chairperson shall determine the order in which they shall be moved.

(7) Unless otherwise permitted by the Chairperson, any proposed amendment of which notice has not been given shall be handed to him in writing before it is moved.

(8) Before proposing an amendment, the Chairperson may call upon the delegate who offers it to give such explanation of its objects as may enable him to form a judgment upon it.

Withdrawal of amendments.

31. A delegate who has proposed an amendment may withdraw it any time before the question has been proposed on the amendment.

Motions without notice.

32. (1) The following motions do not require to be preceded by a notice of motion -

- (a) a motion relating to a matter of privilege;
- (b) a motion made in the consideration stage;

- (c) a motion to amend any motion upon which the question has already been proposed from the Chair;
- (d) a motion for the suspension of these Regulations put with the permission of the Chairperson;
- (e) a motion for the adjournment of the Conference of a debate;
- (f) a motion for the withdrawal of strangers;
- (g) a motion for the suspension of a delegate.

(2) Unless otherwise provided by these Regulations, notice must be given of all motions other than those set out in subregulation (1).

(3) A motion directly concerning the privileges of the Conference shall be taken at the time appointed in the Order Paper, but proceedings of the Conference may be interrupted at any moment, save during the progress of a division, by a motion based on a matter of privilege when a matter has recently arisen which directly concerns the privileges of the Conference.

Order and manner of speaking.

33. (1) A delegate wishing to contribute to the debate shall indicate so by putting up his hand so as to get the attention of the Chairperson.

(2) A delegate shall address his observations to the Chairperson and shall refer to any other delegate as “the honourable delegate”.

(3) When a delegate has finished his observations he shall resume his seat and the Chairperson shall call the next delegate on the list of speakers to address the Conference.

Contents of speeches.

34. (1) Except during the debate on the general merits and principles of the Commission’s Report and Draft Bill, every member shall restrict his observations to the paragraph of the Report or article of the Draft Bill under discussion.

(2) It shall be out of order to use offensive or insulting language in reference to any other delegate or official of the Conference.

(3) It shall be out of order to use in the Conference derogatory language regarding any person or persons not present at the Conference.

(4) No delegate shall impute any improper motive to any other delegate.

Scope of debate.

35. (1) The Chairperson shall ensure that all contributions by delegates regarding any article or proposed amendment to an article shall be relevant to the matter being debated.

(2) When an amendment to an article proposes to leave out words and to insert or add other words instead of them, debate upon the question to leave out words may include both the words to be left out and those proposed to be inserted or added.

(3) On an amendment proposing only to leave out words or to insert or add words, debate shall be confined to the subject matter of the proposed amendment.

(4) In debate on any amendment to an article, the Chairperson may, at his discretion, direct that the debate on the amendment may include debate on the matter of the article where, in his opinion, the matter of the amendment is not conveniently separable from the matter of the article.

(5) When the Chairperson gives a directive under subregulation (4), a delegate who has already spoken to an article may, in speaking to the amendment, speak only to a new matter raised by the amendment.

When a delegate may speak more than once.

36. (1) A delegate may not speak more than once on any proposition except -

- (a) in a committee;
- (b) in explanation as provided in subregulation (2); or
- (c) during the consideration stage.

(2) A delegate who has spoken to a question proposed to the Conference may again be heard, if the Chairperson so permits, to explain any matter considered relevant, provided that he shall not introduce any new matter.

Closure of debate.

37. (1) Where a motion on an article has been moved and debated, a delegate may move that the question be now put, and unless it appears to the Chairperson that the motion is an abuse of these Regulations or an infringement of the right of any delegate, the question that the question be now put shall be put forthwith and decided without amendment or debate.

(2) If the question for closing a debate under subregulation (1) is agreed to, the question of the motion which was being discussed when the motion for closure was moved shall be put forthwith without further discussion.

Interruptions.

38. A delegate shall not interrupt another delegate except -

- (a) by raising a point of order, point of information or point of procedure, in which case the delegate speaking shall remain silent and the delegate interrupting shall direct attention to the point which he or she desires to bring to notice and submit it to the Chairperson for decision; or
- (b) to elucidate some matter raised by another delegate in the course of his speech if the delegate speaking is willing to give way, unless it appears to the Chairperson that this may be an abuse of these Regulations.

General conduct of delegates.

39. During a sitting of the Conference -

- (a) all delegates shall dress in a dignified manner;

- (b) all delegates shall enter or leave the Conference with decorum;
- (c) no delegate shall bring into the Conference anything not directly connected with the business of the Conference except with the consent of the Chairperson;
- (d) delegates shall not read newspapers, books, letters or other documents except matters in them directly connected with the business of the Conference;
- (e) while a delegate is speaking, all other delegates shall be silent and shall not make unseemly interruptions;;
- (f) applause is permitted if done with dignity; and
- (g) no delegate may leave his mobile telephone on.

Enforcement of order.

40. (1) The Chairperson shall be responsible for the observance of order, and his decision on any point of order shall not be open to appeal.

(2) The Chairperson, after having called the attention of the Conference to the conduct of a delegate who persists in irrelevance, or tedious repetition either of his own arguments or of arguments made by other delegates in the debate, may direct him to discontinue his speech.

(3) The Chairperson shall order any delegate whose conduct is grossly disorderly to withdraw from the Conference for the remainder of that day's sitting, and the officers of the Conference shall cause the orders of the Chairperson to be carried out to ensure compliance with this Regulation.

(4) Where a delegate has been guilty of persistent contravention of these Regulations, the Chairperson shall refer the matter to the Committee on Privileges, Discipline and Welfare to be dealt with as that Committee shall consider appropriate.

Voting where simple majority required.

41. (1) Where a vote is to be taken, being a vote which, in accordance with section 26(5) of the Act, requires only a simple majority to pass it, the Chairperson shall take a voice vote of the Conference, and announce the results of the vote accordingly.

(2) The Chairperson shall direct a division to be taken if a delegate claims a division and -

- (a) the Chairperson considers that there is reasonable doubt as to the outcome of the vote in question; or
- (b) if thirty or more further delegates rise in their places to support the delegate claiming the division.

Voting where fixed majority required

42. Where a vote is to be taken, being a vote which, in accordance with section 26(5) of the Act, requires a two-thirds majority to pass it, the Conference shall not proceed to a division unless and until a number of delegates equivalent to that majority is present at the time for directing the division.

Division.

43. (1) If any division is required under these Regulations, the Chairperson shall order for a division and the lobbies shall be cleared for the purpose.

(2) The Chairperson shall direct the "AYES" into the lobby on his right and the "NOES" into the lobby on his left and appoint two tellers for each lobby to count the votes.

(3) After the lapse of a reasonable time from his original direction, the Chairperson shall direct that the doors or any other barrier or thing giving access to the Plenary Hall be closed.

(4) When all delegates have left the lobbies, the tellers shall return to the Plenary Hall and shall report the number of those who have voted in their respective lobbies to the Chairperson, who shall then declare the numbers to the Conference and announce the result of the division.

(5) Any door or other barrier giving access to the Plenary Hall shall then be unlocked or removed, as the case may be.

(6) A delegate may abstain from voting and any delegate wishing to abstain shall not enter a lobby while a division is in progress and the names of delegates abstaining shall be recorded.

(7) In the case of confusion or error occurring in the course of a division concerning the numbers recorded which cannot otherwise be corrected, the Chairperson shall direct the Conference to proceed to another division.

PART VI – COMMITTEES AND WORKING GROUPS

Establishment of committees.

44. (1) Subject to these Regulations, the Conference may establish ad hoc committees and standing committees on any subject it considers appropriate for the carrying out of its functions.

(2) Each committee -

(a) shall consist of not more than fifteen persons at least one of whom, but not more than two of whom, shall be Commissioners appointed-

(i) in the case of a Commissioner or Commissioners, by the Commission; and

(ii) in the case of the other members, by the Steering Committee;

(b) shall have a Convenor elected by the Conference on the advice of the Steering Committee; and

(c) shall have a quorum of one half of the members of the committee who are entitled to vote;

- (d) shall have power to appoint a subcommittee from among its members to undertake any part of the work of the committee, and any such subcommittee shall submit its report to the committee which established it.
- (3) The Secretariat shall afford to each committee the services of such staff as may be necessary for the committee to do its work.
- (4) Any vacancy occurring in any committee shall be filled in the same manner as provided in these Regulations for appointment to the office.
- (5) Subject to these Regulations, a delegate may not be a member of more than one committee.
- (6) A committee may co-opt not more than two delegates.
- (7) In fixing the size and composition of a committee the Conference shall, subject to these Regulations, have regard to -
 - (a) the imperatives of expeditious transactions of the business of the Conference;
 - (b) the cost and expense;
 - (c) the qualifications and experience of delegates and
 - (d) the diversity of the persons represented at the conference.
- (8) Except as the Conference may otherwise determine, a committee shall stand dissolved after its report has been presented to and received by the Conference.

Procedure in committees generally.

- 45.** (1) The provisions of these Regulations shall, with any necessary modifications, apply to all committees of the Conference in the same way as to the Conference itself.
- (2) Without prejudice to the generality of subregulation (1), and except and to the extent to which the Convenor may in his discretion otherwise direct for the purpose of facilitating full consideration and discussion of the matter referred to a committee, the procedure in the committee shall be as nearly as possible the same as that in the consideration stage.
 - (3) Every committee shall commence its sittings as soon as possible after it is established and shall meet -
 - (a) at such time as the Convenor of the committee may determine or as requested by notice in writing signed by not less than one-third of the

members of the committee; and

- (b) at such places as the Convenor of the committee may determine or as requested by notice in writing signed by not less than half of the members of the committee.
- (4) Sitings of a committee shall be presided over by the Convenor of the committee or in his absence by a temporary Convenor elected by the delegates present.
- (5) A committee may invite, to assist it in its work, any person who appears to the committee to be likely to give information necessary for the carrying out of the functions of the committee.
- (6) The Secretariat shall designate a clerk for each committee and the Commission shall designate not more than two commissioners to be rapporteurs to each committee.
- (7) The clerk shall assist the Convenor in matters of procedure and shall take minutes of the proceedings of the Committee.
- (8) The rapporteurs shall, in consultation with the clerk, prepare the report of the committee.
- (9) The deliberations of each committee shall be confined to the subject matter referred to it by the Conference.
- (10) Any delegate is entitled to attend and make oral or written statements to any committee but is not entitled to vote in the proceedings of the committee unless he is a member of the committee and has a right to vote.
- (11) A committee may propose amendments to the contents of the Report and Draft Bill relevant to the subject being considered by the committee.
- (12) The Commission shall appoint a Commissioner to be the Rapporteur-General of the Conference.
- (13) The Rapporteur – General shall -
 - (a) co-ordinate the work of the rapporteurs of Committees and
 - (b) in consultation with the rapporteurs of Committees prepare a consolidated report for presentation to the Steering Committee.
- (14) Amendments to the contents of the Report and Draft Bill recommended in the report of a committee may be moved at the appropriate time by the Convenor, the rapporteurs or by a member of the committee.
- (15) Every decision of a committee shall, as far as possible, be by consensus;

but if there is no consensus, the decision shall be by the vote of the majority of members of the committee:

Provided that a minority of members of the committee may submit a minority report which shall accompany the main report.

(16) Subject to these Regulations, every committee shall report to the conference at such time as the Steering Committee may direct, and the report shall be accompanied by the minutes of the committee and shall be placed before the Conference.

(17) The Conference shall consider the report from a committee upon a motion "That the report of the [here mention the name of the committee] be approved".

(18) The Secretariat of the conference shall have custody of the minutes of each committee.

(19) Any committee established by the Conference may be dissolved by the Conference.

Steering Committee.

46. (1) There shall be a standing committee to be known as the Steering Committee comprising the following -

- (a) the Chairperson;
- (b) the First Vice-chairperson of the Commission;
- (c) the Vice-chairpersons appointed under regulation 13;
- (d) the Chairperson of the Parliamentary Select Committee established under section 10 of the Act;
- (e) the Speaker of the National Assembly;
- (f) the Minister for the time being responsible for matters relating to justice and constitutional Affairs;
- (g) the Rapporteur-General of the Conference;
- (h) not more than twenty-one other delegates;
- (I) the Convenors of all other committees as may exist from time to time;
- (j) the rapporteurs (who shall not have the right to vote); and
- (k) the Secretary of the Commission.

(2) The Chairperson shall preside over sittings of the Steering Committee.

- (3) The functions of the Steering committee shall be -
- (a) to consider and approve a work plan of the Conference as prepared by the Secretariat for the approval of the Conference;
 - (b) to revise, as necessary, the work plan of the Conference;
 - (c) to monitor the progress, and follow-up activities and resolutions of the Conference;
 - (d) to co-ordinate and guide the work of all other committees of the Conference;
 - (e) to deliberate and decide on the order in which reports of all other committees shall be considered by the Conference; and
 - (f) to review these Regulations from time to time and to make such recommendations for their amendment as the Committee considers necessary for the efficient functioning, and transaction of the business, of the Conference;
 - (g) to consider and, where appropriate, adopt such proposals for valid alteration of these Regulations as the Conference, the committees and the delegates may put forward; and
 - (h) to carry out such other functions as are Conferred on it by these Regulations or as the conference may assign to it.
- (4) Sitzings of the Steering Committee shall be convened by the Chairperson on his own initiative or at the request of not less than five members appointed under subregulations (1) (b).

Drafting Team and Panel of Experts.

- 47.** (1) There shall be a Drafting Team for the Conference, consisting of such experts as may be appointed by the Commission whose functions shall be to -
- (a) render advice to delegates, committees and technical working groups as to -
 - (i) the phrasing that will best achieve their objectives
 - (ii) consequential amendments, arising out of their proposed amendments, that should be made to other parts of the Draft Bill;
 - (iii) any transitional or other issues necessary to be dealt with; and
 - (iv) other matters arising in legislative drafting;
 - (b) assist delegates and committees of the Conference to prepare amendments proposed by them to the Draft Bill;

(c) assist the Conference to put together the Draft Bill for adoption after all amendments have been considered and the Conference has taken decisions on them; and

(d) assist the Conference in any other manner that the Chairperson or the Conference may request.

(2) There shall be an interdisciplinary Panel of Experts for the Conference consisting of such persons as may be appointed by the Commission whose functions shall be to-

(a) render advice on such specific issues pertaining to the work of the Conference and its committees as may be required;

(b) assist delegates and committees of the Conference in the preparation of such briefs or position papers other than amendments to the draft Bill as may be required; and

(c) assist the Conference in any other manner that the Chairperson or the Conference may request.

Committee on privileges, discipline and welfare.

48. (1) There shall be a standing committee to be known as the Committee on Privileges, Discipline and Welfare, which shall consist of three Commissioners designated by the Commission and eight delegates elected by the Conference.

(2) The functions of the committee on Privileges Discipline and Welfare shall be -

(a) by order of the Conference, to inquire into any complaint of contempt or any matter of privilege which may be referred to it and to recommend such action as the Committee considers appropriate;

(b) to consider any matter of discipline referred to it by the Chairperson or the Conference, including matters relating to attendance of delegates at sittings of the Conference and sittings of committees, and to report its findings to the Conference.

(c) to liaise with the Commission in order to facilitate proper attention to the welfare needs of the delegates; and

(d) to carry out such other functions as are conferred on it by these Regulations or as the Conference may assign to it.

Technical working groups.

49. (1) In order to facilitate expeditious disposal of matters before the Conference the Conference shall, on the recommendation of the Steering committee, appoint technical working groups to consider any issue or theme arising from the Draft Bill as it may consider appropriate.

(2) The Chairperson shall have the right to adjourn any motion which in his opinion would be better dealt with by the relevant technical working group, and may commit any such motion to that technical working group to consider and report back to the Conference within a time specified.

(3) The technical working groups shall consist of not more than sixty delegates but other delegates, who shall have no right to vote, may attend their sittings.

(4) Unless the Conference otherwise determines, the following technical working groups shall be established and each group shall consider the subject matter of the Draft Bill indicated opposite its designation -

Technical Working Group A	Preamble, Supremacy of the Constitution, the Republic and National goals, Values and Principles
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Technical Working Group B	Citizenship and the Bill of Rights
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Technical Working Group C	Representation of the People
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Technical Working Group D	The Executive
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Technical Working Group E	The Judiciary
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Technical Working Group F	The Legislature
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Technical Working Group G	Devolution
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Technical Working Group H	Public Finance, Public Service, Leadership and Integrity
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Technical Working Group I	Defence and National Security
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Technical Working Group J Land Rights and Environment

Technical Working Group K Constitutional Commissions and Amendments to the Constitution

Technical Working Group L Transitional and Consequential Arrangements

(5) For the purposes of these Regulations, each technical working group shall be deemed to be a committee of the Conference.

PART VI - MISCELLANEOUS

Secretariat.

50. (1) There is hereby established a Secretariat of the Conference, consisting of -

(a) the Secretary of the Commission as Secretary to the Conference and head of the Secretariat; and

(b) such other staff of the Commission as the Commission may assign.

(2) The Conference shall in addition have the services of such other staff provided by the Commission as the Conference may need for the effective performance of its functions and those of the committees.

(3) The Secretariat of the Conference shall, in the exercise of its functions, be responsible to the Commission and the Steering Committee in relation to the work of the Conference.

(4) The Secretariat shall -

(a) facilitate the deliberations of the Conference;

(b) notify delegates of the sittings of the Conference;

(c) before the commencement of each sitting, dispatch to each delegate a copy of a paper to be called the "Order Paper" stating the business of the sitting;

(d) receive and put in the "Order Paper" notices of motions and amendments;

(e) keep a book to be called the "Order Book" in which he or she shall enter and number in succession all matters intended for discussion at

each sitting;

- (f) keep the minutes of the sitting to be called "Votes and Proceedings" of the Conference which shall record all decisions and all things done by the Conference at each sitting;
- (g) keep a list of attendance of delegates at each sitting and annex the list to the Votes and Proceedings;
- (h) be responsible for making entries and records of things done and approved in the Conference and keep secret all such matters as are required by the Conference to be treated as secret and not discuss them before they are officially published;
- (i) have the custody of all records and other documents belonging or presented to the Conference which shall, subject to paragraph (h), be open to inspection by delegates under such arrangements as may be made by the Conference;
- (j) make all necessary logistical arrangements;
- (k) without prejudice to the foregoing paragraphs, be responsible for day to day administration of the affairs of the Conference; and
- (l) perform such other functions in relation to the work of the Conference as the Commission or the Steering Committee may determine or as may be conferred on the Secretariat by these Regulations.

Privileges and immunities of delegates.

51. (1) A delegate shall not be liable to any civil action or suit for or in respect of any matter or thing done or omitted to be done in good faith as a delegate.

(2) No delegate shall be liable to arrest under civil process while proceeding to, participating in, or returning from any meeting of the Conference or of any committee thereof.

(3) No person who appears before the Conference shall be liable to any criminal or civil proceedings or to any penalty or forfeiture whatsoever in respect of any statement made or information given to the Conference by such person.

Unqualified persons sitting or voting.

52. (1) No person who is not a delegate shall sit or vote in the Conference.

(2) Any person who, not being a delegate, sits or votes in the Conference, knowing or having reasonable grounds to believe that he is not so entitled to do so, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding one month.

Media

53. (1) There shall be a standing committee of the Conference to be known as the Media Advisory Committee consisting of three Commissioners and six delegates.

(2) Subject to these Regulations, the Media Advisory Committee shall accredit representatives of the media and accord them-

(a) access to public sittings and records of the Conference; and

(b) broadcasting facilities.

(3) The Steering Committee on the advice of the Media Advisory Committee may exclude any media house from proceedings of the Conference for any length of time if in the opinion of the Steering Committee that media house has been guilty of deliberate or negligent misreporting of the proceedings.

Recommendations for
amendment of these
Regulations.

54. Without prejudice to the Commission's power to amend these Regulations, the Conference may, by a resolution supported by two-thirds of the delegates present and voting, recommend to the Commission an amendment to these Regulations.

FIRST SCHEDULE (R.6)

OATHS AND AFFIRMATIONS

Oath of Office of a Delegate

I,....., being appointed a delegate to the National Constitutional Conference under the Constitution of Kenya Review Commission Act, do solemnly swear that I will faithfully and fully, impartially and to the best of my ability discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice and to the end that in the exercise of the functions and powers as such delegate I shall at all times be guided by the national interest. So help me God.

Solemn Affirmation of a Delegate

I,....., being appointed a delegate to the National Constitutional Conference under the Constitution of Kenya Review Commission Act, do solemnly declare and affirm that I will faithfully and fully, impartially and to the best of my ability discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice and to the end that in the exercise of the functions and powers as such delegate I shall at all times be guided by the national interest.

SECOND SCHEDULE (R.20)

**RULES FOR CONSIDERATION OF PROVISIONS
OF THE DRAFT BILL**

1. The following order shall be observed in considering the Draft Bill -
 - (a) articles as printed and new articles, in their numerical order;
 - (b) postponed articles;
 - (c) Schedules as printed and new Schedules, in their numerical order;
 - (d) the preamble;
 - (e) the title.

2. The Secretary to the Conference shall call the number of each article in succession and shall read the article heading above each article, and if no amendment is offered, the Chairperson shall, after a convenient number of articles has been called, put the question. "That articles ...to...stand part of the Draft Bill".
3. If any delegate announces, while the articles are being called, that he wishes to move an amendment to, or make some comment on, an article, the Chairperson shall forthwith put the question with regard to all the articles that have been called but not yet agreed to, excluding the article indicated by the delegate, which shall then be considered.
4. After the article has been considered, and after any proposed amendment thereto has been agreed to or negatived, the Chairperson shall put the question "That the article (or, as the case may require, the article as amended) stand part of the draft Bill".
5. Any amendment to an article which a delegate wishes to propose may be moved and seconded at any time after the question has been proposed by the Chairperson and before it has been put by the Chairperson at the conclusion of the debate upon the article.
6. When two or more amendments are proposed on the same article, the Chairperson shall call upon the movers in the order in which their amendments relate to the text of the article.
7. The amendment which, in the opinion of the Chairperson, departs furthest from the text under discussion shall be debated and disposed of first.
8. Where two or more proposed amendments to any article seek to attain the same objective but in different ways, or the wording of the amendments differs, sponsors of the amendments may be required by the Chairperson to discuss their amendments and consolidate them or agree on compromise amendments that will be acceptable to the sponsors.
9. When every amendment to an amendment has been disposed of, the Chairperson shall either again propose the question upon the original amendment, or shall propose the question upon the original amendment as amended.
10. An amendment or a new article may be withdrawn at the request of the mover by leave of the Conference before the question is put on it if there is no objection.
11. If the question has been proposed on an amendment to an amendment or to a new article, the original amendment or the new article, as the case may be, may not be withdrawn until the amendment to it has been disposed of.

12. The consideration of the Schedules (or Schedule), including new Schedules, if any, the preamble, and the title shall follow the consideration of the articles, including proposed new articles.
13. An article in the Draft Bill as printed may be postponed, unless upon an amendment thereto a question shall have been fully put from the Chair
14. Consideration of any article may be postponed unless upon an amendment moved to it a question has been fully put from the Chair.
15. Postponed articles shall be considered after the remaining articles of the Draft Bill and before the new articles which may have been deferred for consideration have been brought up.
16. New articles may be considered at their appropriate places in the Draft Bill, or they may be deferred for consideration until after the articles in the Draft Bill as printed have been disposed of.
17. On the suggested number and article heading note of any new article being read out, the Chairperson shall propose the question “That the new article be considered” and if, after putting the question, it is agreed to, amendments may then be proposed to the new article and the final question to be proposed shall be “That the article (or the article as amended) be added to the Draft Bill”.
18. New Schedules shall be considered and treated in the same way as new articles.
- 19 Any amendment to the Draft Bill shall be within the scope of the subject matter of the Bill.
20. No amendment shall be made which is inconsistent with any article already agreed upon by the Conference or any decision already arrived at by the Conference, and the Chairperson may, at any time during the discussion of a proposed amendment, withdraw it from the consideration of the Conference if in his opinion the discussion has shown that the amendment contravenes the provisions of this rule.
21. The Conference may at any time refer a proposed amendment to the Drafting Team.
22. A delegate may speak more than once to any question proposed, but in any even shall not speak for more than five minutes on any occasion.

A. I. SALIM
1st Vice-Chairperson,
Constitution of Kenya Review Commission

APPENDIX G:

**PROGRAMME OF THE NATIONAL CONSTITUTIONAL
CONFERENCE, APRIL 28 – JUNE 6, 2003**

Monday, 28 April 2003

9.00 a.m. – 9.30 a.m.	WELCOME REMARKS AND BRIEF TO DELEGATES ON REGISTRATION <i>Presenter: PLO Lumumba</i>
9.30 a.m. – 1.00 p.m.	REGISTRATION, ACCREDITATION OF DELEGATES AND ALLOCATION OF ACCOMMODATION <i>Secretariat</i>
2.30 p.m. – 4.00 p.m.	Registration and Documentation (cont.)

Tuesday, 29 April 2003

	REGISTRATION AND ACCREDITATION OF DELEGATES (cont.) Swearing in Ceremony
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Wednesday, 30 April 2003

10.30 a.m. - 10.50 a.m.	<p>Delegates and Invited Guests seated <i>Session Chair: PLO Lumumba</i></p>
11.00 a.m. – 11.30 p.m.	<p>Arrival of President - <i>National Anthem Intoned</i></p> <p>Prayers by:</p> <ul style="list-style-type: none"> i) Christian ii) Muslim iii) Hindu iv) Traditional <p><i>Session Chair: Prof Ahmed Idha Salim</i></p>
11.30 a.m. – 12.15 p.m.	<p>Entertainment by Groups:</p> <ul style="list-style-type: none"> i) Bomas Group ii) Vitimbi iii) Kayamba Africa iv) Prisons Choir <p><i>Session Chair: Hon Phoebe Asiyo</i></p>
12.15 p.m. – 1.00 p.m.	<p>NCC Official Opening</p> <ul style="list-style-type: none"> - Welcome Address by CKRC Chairperson; - Introductory remarks by Chairperson PSC; - H.E. the Vice-President, Michael Wamalwa; - H.E. The President and\Official Opening.

Friday, May 2, 2003

	Constitution of Steering Committee
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Monday, May 5, 2003

<p>10.45 a.m. – 5.00 p.m.</p>	<p>Presentation: SHARING THE LANCASTER HOUSE EXPERIENCE – The Lancaster Team.</p> <p>Session Chair: Hon. Dr. Godana Bonaya Adhi</p>
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Tuesday, May 6, 2003

<p>10.45 a.m. – 1.00 p.m.</p>	<p>PRESENTATION OF RULES OF THE CONFERENCE PARTS 1 & 2</p> <p><i>Presenter: Comm. Isaac Lenaola</i></p> <p><i>Session Chair: Comm. Dr. Githu Muigai</i></p>
<p>2.30 p.m. – 5.00 p.m.</p>	<p>TABLING OF THE CONFERENCE DOCUMENTS</p> <p><i>Presenter: Yash Pal Ghai</i></p> <p><i>Chair: Prof. Okoth-Ogendo</i></p>

Wednesday, May 7, 2003

<p>9.45 a.m. – 10.30 a.m.</p>	<p>A. PRESENTATION OF THE REPORT CHAPTER 7 CONSTITUTIVE PROCESS</p> <p>B. DRAFT BILL –CHAPTERS 1 - 4 PREAMBLE; SOVEREIGNTY OF THE PEOPLE AND THE SUPREMACY OF THE CONSTITUTION; CITIZENSHIP; NATIONAL GOALS, VALUES & PRINCIPLES;</p> <p><i>Presenters: Dr. Githu Muigai</i> <i>Ms. Kavetsa Adagala</i></p> <p><i>Session Chair: Hon. Otieno Kajwang</i></p>
<p>11.00 a.m. – 6.40 p.m.</p>	<p>C. PLENARY DISCUSSIONS CHAPTERS 1- 4</p>

Thursday, May 8, 2003

9.50 a.m. – 11.00 a.m.	Motion Passed by Hon. Delegate Miugi Kariuki
12.10 p.m. – 1.00 p.m.	A. PRESENTATION OF REPORT CHAPTER 8 - THE BILL OF RIGHTS B. DRAFT BILL CHAPTER 5 -THE BILL OF RIGHTS <i>Presenters: Ms. Nancy Baraza Mr. Ibrahim Lethome Session Chair : Hon. Haji Mohammed</i>
11.00 a.m. – 6.00 p.m.	C. PLENARY DISCUSSIONS THE BILL OF RIGHTS

Friday, May 9, 2003

9.50 a.m. – 2.40 p.m.	DISCUSSION ON CONSTITUTION OF CONFERENCE COMMITTEES <i>Session Chairs: Prof Yash Pal Ghai PLO Lumumba</i>
2.40 p.m. – 4.50 p.m.	C. PLENARY DISCUSSIONS THE BILL OF RIGHTS

Monday, May 12, 2003

9.45 a.m. – 10.30 a. m.	<p>A. <u>PRESENTATION OF REPORT</u></p> <p>CHAPTER 9 – THE STATE AND THE POLITICAL SYSTEM</p> <p>CHAPTER 10 – PARTICIPATORY GOVERNANCE</p> <p>B. <u>PRESENTATION OF DRAFT BILL</u></p> <p>CHAPTER 6 - REPRESENTATION OF THE PEOPLE</p> <p>Part I – The Electoral System and Process</p> <p>Part II – The Electoral Commission</p> <p>Part III – Political Parties</p> <p><i>Presenters: Comm. Mutakha Kangu</i> <i> Comm. Hon. Phoebe Asiyu</i></p> <p><i>Session Chair: Sultana Fadhil – Vice-Chair</i> <i> Atsango Chesoni (Western Delegate)</i></p>
10.30 a.m. – 12.30 p.m	Plenary Discussion on <u>Representation of the People</u>
2.30 p.m. – 4.30 p.m.	DISCUSSION ON FINANCE AND ADMINISTRATION
4.30 p.m. – 6.00 p.m.	DELEGATES ADMINISTRATION <i>Finance and Administration</i> (Tea available)

Tuesday, May 13, 2003

10.00 a.m. – 10.30 a. m.	<p>A. <u>PRESENTATION OF THE REPORT</u></p> <p>CHAPTER 11 SUB-SECTION 3 THE LEGISLATURE</p> <p>B. <u>PRESENTATION OF DRAFT BILL</u></p> <p>CHAPTER 7 – THE LEGISLATURE</p> <p>Part I - Parliament Part II - Composition of Parliament and Qualification of Members Part III - Presiding Officers and Other Functionaries Part IV - Legislation and Procedure in Parliament Part V - Seat and Calendar of Parliament Part VI - Miscellaneous</p> <p><i>Presenters: Comm. Dr. Andronico Adede Comm. Mr. Mutakha Kangu Comm. Dr. Charles Maranga</i></p> <p><i>Session Chair: Hon. Dr. Godana Bonaya Adhi (Vice-Chair) Hon. Prof. Wangari Maathai (Central Province Delegate)</i></p>
11.00 a.m. – 6.05 p.m.	Plenary Discussions on <u>The Legislature</u>

Wednesday, May 14, 2003

(continued from Tuesday, May 13, 2003)

THE LEGISLATURE

9.40 a.m. – 6.15 p.m.	<p>Plenary Discussions on <u>The Legislature</u> (continued from Tuesday, May 13, 2003)</p> <p>Presenters: <i>Comm. Dr. Andronico Adede</i> <i>Comm. Mr. Mutakha Kangu</i> <i>Comm. Dr. Charles Maranga</i></p> <p>Session Chair: <i>Mr. Wilfred K. Ole Kina</i> (Vice-Chair) <i>Hon. Prof. Wangari Maathai</i> (Central Province Delegate)</p>
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Thursday, May 15, 2003

THE EXECUTIVE

10.00 a. m. – 10.30 a. m.	<p>A. <u>PRESENTATION ON THE REPORT</u></p> <p>CHAPTER 11 SUB-SECTION 4 THE EXECUTIVE</p> <p>B. <u>PRESENTATION OF DRAFT BILL</u></p> <p>CHAPTER 8 – THE EXECUTIVE Part I - Principle and Structure of the National Executive Part II - The President and Vice-President Part III - The Prime Minister and Cabinet</p> <p>Presenters: <i>Comm. Dr. Charles Maranga</i> <i>Comm. Dr. Andronico O. Adede</i></p> <p>Session Chairs: <i>Mr. Wilfred K. Ole Kina</i> (Vice-Chair) <i>Hon. S. arap Ng'eny</i> (Rift Valley Delegate)</p>
11.00 p. m. – 6.10 p. m.	Plenary Discussions on <u>The Executive</u>

Friday, May 16, 2003

THE EXECUTIVE

(continued from Thursday, May 15th 2003)

9.45 a.m. – 12.30 a.m.	Plenary Discussions on <i><u>The Executive</u></i> <i>(continued from Thursday, May 15, 2003)</i>
2.30 p.m. – 4.30 p.m.	Plenary Discussions on <i><u>The Executive</u></i>
4.00 p.m. – 6.00 p.m.	DELEGATES ADMINISTRATION <i>Finance and Administration</i> (Tea Available)

Monday, May 19, 2003

THE EXECUTIVE

(continued from Friday, May 16, 2003)

JUDICIAL AND LEGAL SYSTEM

<p>9.55 a.m. – 4.30 p.m.</p>	<p>Plenary Discussions on <i>The Executive</i> (continued from Friday, May 16, 2003)</p> <p><i>Session Chairs: Mr. Wilfred K. Ole Kina</i> <i>(Vice-Chair)</i> <i>Hon. S. arap Ng'eny</i> <i>(Rift Valley Delegate)</i></p>
<p>5.00 p.m. – 6.00 p.m.</p>	<p>A. <u>PRESENTATION ON THE REPORT</u></p> <p>CHAPTER 11 SUB-SECTION 5 THE JUDICIARY</p> <p>B. <u>PRESENTATION OF DRAFT BILL</u></p> <p>CHAPTER 9 – JUDICIAL AND LEGAL SYSTEM</p> <p>Part I - The Judicial System Part II - Legal System Part III - Legal Profession</p> <p><i>Presenters: Comm. Mr. Paul Musili Wambua</i> <i>Comm. Mr. Ahmed Issack Hassan</i></p> <p><i>Session Chair: Sultana Fadhil (Vice-Chair)</i> <i>Hon. Danson B. Mungatana</i> <i>(Coast Delegate)</i></p>

Tuesday, May 20, 2003

JUDICIAL AND LEGAL SYSTEM

9.00 a.m. – 4.30 p.m.	<p>Artistic Performance by CRECO (approx 10 min)</p> <p>Followed by:</p> <p><u>PLENARY DISCUSSIONS</u> (Continued from Monday, May 19, 2003)</p> <p>JUDICIAL AND LEGAL SYSTEM</p> <p><i>Presenters: Comm. Mr. Paul Musili Wambua Comm. Mr. Ahmed Issack Hassan</i></p> <p><i>Session Chairs: Sultana Fadhil (Vice-Chair) Hon. Danson B. Mungatana (Coast Delegate)</i></p>
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(Continued from Monday, May 19, 2003)

Wednesday, May 21, 2003

JUDICIAL AND LEGAL SYSTEM

(Continued from Tuesday, May 20, 2003)

9.00 a.m. – 5.15 p.m.	<p><u>PLENARY DISCUSSIONS</u> (Continued from Tuesday, May 20, 2003)</p> <p>JUDICIAL AND LEGAL SYSTEM</p> <p><i>Presenters: Comm. Mr. Paul Musili Wambua Comm. Mr. Ahmed Issack Hassan</i></p> <p><i>Session Chairs: Grace Ogot Hon. Danson B. Mungatana (Coast Delegate)</i></p>
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Thursday, May 22, 2003

DEVOLUTION OF POWERS

<p>9.30 a.m. – 10.00 a. m.</p>	<p>A. <u>PRESENTATION ON THE REPORT</u></p> <p>CHAPTER 12 – DEVOLUTION OF POWERS 12.1 The Mandate of the Commission 12.2 Levels of Devolution</p> <p>B. <u>PRESENTATION OF DRAFT BILL</u></p> <p>CHAPTER 10 – DEVOLUTION OF POWERS Part I - Principles and Objectives of Devolution Part II - The Organisation of Devolution Part III - Powers of Devolved Governments and Intergovernmental Relations</p> <p><i>Presenters: Comm. Prof. Yash Pal Ghai Comm. Prof. Wanjiku Kabira Comm. Dr. Mosonik arap Korir</i></p> <p><i>Session Chairs: Hon. Dr. Godana Bonaya Adhi (Vice-Chair) Joseph William Nyagah (Eastern Delegate)</i></p>
<p>10.00 a.m. – 5.30 p.m.</p>	<p>C. <u>PLENARY DISCUSSIONS</u></p> <p>DEVOLUTION OF POWERS</p>

Friday, May 23, 2003

DEVOLUTION OF POWERS
(Continued from Thursday, May 22, 2003)

<p>9.00 a.m. – 12.30 p.m.</p>	<p><u>PLENARY DISCUSSIONS</u> (Continued from Thursday, May 22, 2003)</p> <p>DEVOLUTION OF POWERS</p> <p><i>Presenters: Comm. Prof. Yash Pal Ghai Comm. Prof. Wanjiku Kabira Comm. Dr. Mosonik arap Korir</i></p> <p><i>Session Chairs: Hon. Dr. Godana Bonaya Adhi (Vice-Chair) <u>Eastern Delegate</u></i></p>
<p>2.30 p.m. – 4.02 p.m.</p>	<p><u>PLENARY DISCUSSIONS</u></p> <p>DEVOLUTION OF POWERS</p>
<p>4.02 p.m. – 6.00 p.m.</p>	<p>DELEGATES ADMINISTRATION <i>Finance and Administration</i> (Tea Available)</p>

Monday, May 26, 2003

DEVOLUTION OF POWERS

(Continued from Friday, May 23, 2003)

<p>9.00 a.m. – 5.30 p.m.</p>	<p><u>PLENARY DISCUSSIONS</u> <i>(Continued from Friday, May 23, 2003)</i></p> <p>DEVOLUTION OF POWERS</p> <p><i>Presenters: Comm. Prof. Yash Pal Ghai Comm. Prof. Wanjiku Kabira Comm. Dr. Mosonik arap Korir</i></p> <p><i>Session Chairs: Hon. Dr. Godana Bonaya Adhi (Vice-Chair) <u>Eastern Delegate</u></i></p>
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Tuesday, May 27, 2003

LAND AND PROPERTY

<p>9.00 a.m. – 5.35 p.m.</p>	<p>A. <u>PRESENTATION OF THE REPORT</u></p> <p>CHAPTER 14 - LAND AND PROPERTY RIGHTS</p> <p>B. <u>PRESENTATION OF DRAFT BILL</u></p> <p>CHAPTER 11 – LAND AND PROPERTY</p> <p><i>Presenters: Comm. Prof. Okoth-Ogendo Comm. Dr. Mohammed Swazuri</i></p> <p><i>Session Chairs: Mr. Wilfred K. Ole Kina (Vice-Chair) Hon. Norman Nyagah (Nairobi Delegate)</i></p> <p>C. <u>PLENARY DISCUSSIONS</u></p> <p>LAND AND PROPERTY</p>
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Wednesday, May 28, 2003

LAND AND PROPERTY

(continued from Tuesday, May 27, 2003)

9.45 a.m. – 5.06 p.m.	<p><u>PLENARY DISCUSSIONS</u></p> <p>LAND AND PROPERTY</p> <p><i>Presenters: Comm. Prof. Okoth-Ogendo Comm. Dr. Mohammed Swazuri</i></p> <p><i>Session Chairs: Mr. Wilfred K. Ole Kina (Vice-Chair) Hon. Norman Nyagah (Nairobi Delegate)</i></p>
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Thursday, May 29, 2003

LAND AND PROPERTY

(continued from Wednesday, May 28, 2003)

ENVIRONMENT AND NATURAL RESOURCES

9.45 a.m. – 2.55 p.m.	<p><u>PLENARY DISCUSSIONS</u> <i>(continued from Wednesday, May 28, 2003)</i></p> <p>LAND AND PROPERTY</p>
2.55 p.m. – 5.20 p.m.	<p>A. <u>PRESENTATION OF THE REPORT</u></p> <p>CHAPTER 13 - ENVIRONMENT AND NATURAL RESOURCES</p> <p>B. <u>PRESENTATION OF DRAFT BILL</u></p> <p>CHAPTER 12 – ENVIRONMENT AND NATURAL RESOURCES</p> <p><i>Presenters: Comm. Dr. Abdirizak Arale Nunow Comm. Abubakar Zein Abubakar</i></p> <p><i>Session Chairs: Sultana Fadhil (Vice-Chair) Elkanah Odembo</i></p> <p>C. <u>PLENARY DISCUSSIONS</u></p> <p>ENVIRONMENT AND NATURAL RESOURCES</p>

Friday, May 30, 2003

ENVIRONMENT AND NATURAL RESOURCES

<p>9.45 a.m. – 12.30 p.m.</p>	<p><u>PLENARY DISCUSSIONS</u> ENVIRONMENT AND NATURAL RESOURCES</p> <p><i>Presenters: Comm. Dr. Abdirizak Arale Nunow Comm. Bishop Bernard N. Kariuki</i></p> <p><i>Session Chairs: Sultana Fadhil (Vice-Chair) Elkanah Odembo</i></p>
<p>2.30 p.m. – 4.30 p.m.</p>	<p><u>PLENARY DISCUSSIONS</u> <i>(continued)</i> ENVIRONMENT AND NATURAL RESOURCES</p>
<p>4.30 p.m. – 6.00 p.m.</p>	<p>DELEGATES ADMINISTRATION <i>Finance and Administration</i> (Tea Available)</p>

Tuesday, June 3, 2003

**PUBLIC FINANCE AND REVENUE MANAGEMENT, AND THE
PUBLIC SERVICE**

<p>9.30 a.m. – 10.00 a.m.</p>	<p>A. <u>PRESENTATION ON THE REPORT</u> CHAPTER 15 – PUBLIC RESOURCES AND CAPACITY BUILDING</p> <p>B. <u>PRESENTATION OF DRAFT BILL</u> CHAPTER 13 – PUBLIC FINANCE AND REVENUE MANAGEMENT</p> <p><i>Presenters: Comm. Mr. Isaac Lenaola Comm. Mrs. Alice Yano</i></p> <p><i>Session Chairs: Hon. Dr. Godana Bonaya Adhi (Vice- Chair) Tabitha Seii (Women Organisation Delegate)</i></p>
<p>10.00 a.m. – 1.00 p.m.</p>	<p>C. <u>PLENARY DISCUSSIONS</u> PUBLIC FINANCE AND REVENUE MANAGEMENT</p>
<p>2.30 p.m. – 3.00 p.m.</p>	<p>A. <u>PRESENTATION ON REPORT</u> CHAPTER 11, SUB-SECTION 11.6 - THE PUBLIC SERVICE</p> <p>B. <u>PRESENTATION OF THE DRAFT BILL</u> CHAPTER 14 – THE PUBLIC SERVICE Part I - Public Administration Part II - Kenya Police Service Part III - Kenya Correctional Services Part IV - Interpretation</p> <p><i>Presenters: Comm. Mrs. Abida Ali-Aroni Comm. Pastor Zablon Ayonga</i></p> <p><i>Session Chairs: Hon. Dr. Godana Bonaya Adhi (Vice- Chair) <u>Women Organisation Delegate</u></i></p>
<p>3.00 p.m. – 5.15 p.m.</p>	<p>C. <u>PLENARY DISCUSSIONS</u> PUBLIC SERVICE</p>

Wednesday, June 4, 2003

DEFENCE AND NATIONAL SECURITY

LEADERSHIP AND INTEGRITY

9.00 a.m. – 10.30 a.m.	<p><u>DEFENCE AND NATIONAL SECURITY</u> <u>LEADERSHIP AND INTEGRITY</u></p> <p><i>A. PRESENTATION ON THE REPORT</i></p> <p>CHAPTER 7, SUB SECTION 6 – THE REPUBLICAN STATE</p> <p><i>B. PRESENTATION OF DRAFT BILL</i></p> <p>CHAPTER 15 – DEFENCE AND NATIONAL SECURITY CHAPTER 16 – LEADERSHIP AND INTERGRITY FIFTH SCHEDULE – LEADERSHIP AND INTEGRITY CODE OF CONDUCT</p>
10.30 p.m. – 5.15 p.m.	<p><i>Presenters: Comm. Prof. Ahmed Idha Salim</i> <i> Comm. Mr. Dominiazo Ratanya</i></p> <p><i>Session Chairs: Sultana Fadhil (Vice-Chair)</i> <i> Mr. Raphael Mwai</i> <i> (Professional Organizations</i> <i> Delegates)</i></p> <p><i>C. PLENARY DISCUSSIONS</i></p> <p>DEFENCE AND NATIONAL SECURITY LEADERSHIP AND INTEGRITY</p>

Thursday, June 5, 2003

CONSTITUTIONAL COMMISSIONS AND

AMENDMENT OF THE CONSTITUTION

<p>9.15 a.m. – 10.00 a.m.</p>	<p>A. PRESENTATION OF THE REPORT</p> <p>CHAPTER 16, SUB SECTION 2 – CONSTITUTIONAL COMMISSIONS</p> <p>B. PRESENTATION OF DRAFT BILL</p> <p>CHAPTER 17 – CONSTITUTIONAL COMMISSIONS CHAPTER 18 – AMENDMENTS OF THE CONSTITUTION</p> <p><i>Presenters: Comm. Mr. Riunga Raiji Comm. Mr. Keriako Tobiko Comm. Ms. Salome Wairimu Muigai</i></p> <p><i>Session Chair: Sultana Fadhil (Vice-Chair) Mr. Kennedy Kiliku (Trade Union)</i></p> <p>C. PLENARY DISCUSSIONS CONSTITUTIONAL COMMISSIONS</p>
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Friday, June 6, 2003

TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

<p>9.00 a.m. – 10.30 a.m.</p>	<p><i>Motion Moved by Appollo Njonjo</i></p>
<p>11.00 a.m. – 12.30 p.m.</p>	<p><u>TRANSITIONAL AND CONSEQUENTIAL PROVISIONS</u></p> <p>A. PRESENTATION OF THE REPORT CHAPTER 16, SUB SECTION 2 - CONSTITUTIONAL COMMISSIONS</p> <p>B. PRESENTATION OF DRAFT BILL CHAPTER 20 – TRANSITIONAL AND CONSEQUENTIAL PROVISIONS</p> <p><i>Presenters: Comm. Prof. Okoth-Ogendo Comm. Dr. Githu Muigai</i></p> <p><i>Session Chairs: Hon. Dr. Bonaya Adhi Godana (Vice-Chair) Leslie Mwachiro (Political Parties Delegate)</i></p>
<p>2.30 p.m. – 3.30 p.m.</p>	<p><u>'ZERO HOUR' SESSION</u></p>
<p>3.30 p.m. – 4.00 p.m.</p>	<p><u>CLOSING REMARKS BY THE CHAIRPERSON</u> <i>(Prof. Yash Pal Ghai)</i></p>
<p>4.00 p.m. – 6.00 p.m.</p>	<p>DELEGATES ADMINISTRATION <i>Finance and Administration (Tea Available)</i></p>

APPENDIX H:**PATTERN OF DELEGATE CONTRIBUTION TO THE REPORT AND
DRAFT BILL****NATIONAL CONSTITUTION CONFERENCE, 28TH APRIL 2003 – 6TH JUNE 2003**

Chapter	Date	Number of contributors	Points of Order	TOTAL
Chapter One: Sovereignty of the People and the Supremacy of the Constitution	7 th May 2003	17		17
Chapter Two: The Republic	7 th May 2003	18		18
Chapter Three: National Goals, Values and Principles	7 th May 2003	16	10	26
Chapter Four: Citizenship	7 th May 2003	12	-	12
Chapter Five: The Bill of Rights	8 th May 2003	32	5	37
	9 th May 2003	27	11	38
Chapter Six: Representation of the People	9 th May 2003	-	4	4
	12 th May 2003	50	3	53
Chapter Seven: The Legislature	13 th May 2003	52	3	55
	14 th May 2003	61	-	61
Chapter Eight: The Executive	15 th May 2003	46	6	52
	16 th May 2003	34	17	51
	17 th May 2003	40	12	52
Chapter Nine: The Judicial and Legal System	20 th May 2003	54	13	67
	21 st May 2003	57	9	66
Chapter Ten: The Devolution Of Powers	22 nd May 2003	34	16	50
	23 rd May 2003	35	13	48
	26 th May 2003	36	11	47
Chapter Eleven:	27 th May 2003	44	9	53

Land And Property	28 th May 2003	45	14	59
	29 th May 2003	30	4	34

Chapter Twelve: Environment and Natural Resources	29 th May 2003	11	4	15
	30 th May 2003	45	15	60
Chapter Thirteen: Public Finances and Revenue	3 rd June 2003	63	10	73
Chapter Fourteen: The Public Service	3 rd June 2003	48	19	67
Chapter Fifteen: Defense and National Security	4 th June 2003	17	2	19
Chapter Sixteen: Leadership and Integrity	4 th June 2003	5		5
Chapter Seventeen: Constitutional Commissions	5 th June 2003	47	19	66
Chapter Eighteen: Amendment of the Constitution	5 th June 2003	7	1	8
Chapter Nineteen: Interpretations	5 th June 2003	4	1	5
Chapter Twenty: Transitional and Consequential Provisions	6 th June 2003	14	1	15

6th June 2003 (Final Day) - Observers and General comments

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APPENDIX I:

GUIDELINES FOR THE NATIONAL CONSTITUTIONAL CONFERENCE AD HOC AND TECHNICAL WORKING COMMITTEES

*RD & TS Discussion
Document May 26, 2003*

*Approved by the Commission
on May 27, 2003*

*Presented to and approved for general circulation
by Steering Committee on June 3, 2003*

1. Establishment of Committees

1.1 Ad Hoc Committees

Regulation 44(1) of the Constitution of Kenya Review (National Constitutional Conference) (Procedure) Regulations empower the Conference to establish “ad hoc....” Committees on any subject it considers appropriate to carry out its functions. Pursuant to this mandate, the Conference has established an Ad Hoc Committee on Culture with the following terms of reference:-

- to conduct a careful analysis of the Draft Constitution with a view to determining whether, and the extent to which the provisions of section 3 (e) of the Review Act have been reflected therein and, in particular to :
 - (i) explore ways of giving constitutional legitimacy of Kenya’s rich cultural diversity and expression promoting the cultural expression and cultural activities of the people of Kenya;
 - (ii) explore constitutional options for the protection and promotion of the rights of communities to organize and participate in cultural activities locally or countrywide;
 - (iii) explore whether or not certain aspects of culture, custom or tradition should be prohibited or otherwise qualified in specific provisions of the draft Constitution;
 - (iv) propose, where necessary, amendments to any aspect of the draft, with the view to strengthening Kenya’s cultural identity in the context of national integration and unity;
 - (v) prepare a report for consideration to the Technical Working Groups of the Conference;

- (vi) review the various aspects of the Draft Bill with a view to identifying any aspects that may negate our cultural heritage; and
- (vii) explore the possibility of establishing an institutional framework for the promotion and development of Kenya's diverse cultural values and heritage.

1.2 Technical Working Committees

Under Regulation 49(1) the Conference is required to appoint Technical Working Committees to consider any issue or theme arising from the Draft Bill, as it may consider appropriate. Clause (4) of that Regulation establishes twelve such committees as follows:-

- | | |
|-------------------------------|--|
| Technical Working Committee A | - Preamble, Supremacy of the Constitution, the Republic and National Goals, Values and Principles. |
| Technical Working Committee B | - Citizenship and the Bill of Rights |
| Technical Working Committee C | - Representation of the People |
| Technical Working Committee D | - The Executive |
| Technical Working Committee E | - The Judiciary |
| Technical Working Committee F | - The Legislature |
| Technical Working Committee G | - Devolution |
| Technical Working Committee H | - Public Finance, Public Service, Leadership and Integrity |
| Technical Working Committee I | - Defence and National Security |
| Technical Working Committee J | - Land Rights and the Environment |
| Technical Working Committee K | - Constitutional Commissions and Amendments to the Constitution |
| Technical Working Committee L | - Transitional and Consequential Arrangements. |

Under Regulation 20(1), upon the conclusion of the general debate the Commission's Report and Draft Bill shall stand committed to consideration by Technical Working Committees established under Regulation 49 above. Clause

(3) specifies that at this stage, the debate in committees shall be confined to the Commission's Report and Draft Bill. Specifically delegates are entitled to move amendments to the Report and Draft Bill and, in particular to -

- (i) examine all issues raised during the general debate on and any other issues touching on matters provided for in the Report and Draft Bill prepared by the Commission and to consider how best these may be used to strengthen or enrich the recommendations and/or proposals presented therein in respect of their specific thematic mandate;
- (ii) propose amendments or changes to the contents of the Report and/or Draft Bill in relation to matters under their specific thematic mandate;
- (iii) report on their proposed amendments to the Report and/or Draft Bill to the Steering Committee for presentation to and debate by the Conference, and
- (iv) consider and report on any other matter referred to it by the Steering Committee or the Conference;

In their deliberations, Technical Working Committees are required to comply, to the extent possible, with the provisions of the Second Schedule to the Conference Regulations.

1.3 Authority to call for Information

Under Regulation 45(5), Committees may invite any person (including a delegate) to make specialised presentation before them or to provide such other information as they may require.

2. Membership of Committees

2.1 Ad Hoc Committees

As a general rule, the size of Ad Hoc Committees may not exceed fifteen persons "at least one but not more than two, of whom shall be Commissioners". Committees are, however, empowered under Regulation 44(6) to co-opt "not more than two delegates". The maximum size of an ad hoc committee is therefore SEVENTEEN.

2.2 Technical Working Committees

Under Regulation 49(3) Technical Working Committees "shall consist of not more than sixty delegates". The regulation further provide that -

- no delegate can be a member of more than one committee;

- delegates who have a particular interest in the work of the committee of which she/he is not a member may attend meetings of such meetings, and make oral or written presentations thereat but without the right to vote.

3. Organization and Management of Committees

3.1 Convenors of Committees

Each Committee shall have a Convenor elected by the Conference on advice of the Steering Committee. The functions of convenors are to -

- (i) call committee meetings, subject to authorization of the committee;
- (ii) preside over the meetings of and to put all questions for discussion by the committee;
- (iii) maintain order and quorum and to decide all questions of order;
- (iv) rule on all procedural matters;
- (v) direct the administration of the committee;
- (vi) consult on a regular basis with convenors of other committees; and
- (vii) present the report of the committee to the Steering Committee and to the Conference;

Regulation 45(4) provides that in the absence of the Convenor, delegates present may elect a temporary Convenor to chair that particular session of the committee.

3.2 Rapporteurs of Committees

Each committee shall have not more than two rapporteurs, who shall be Commissioners appointed by the Commission. The functions of the rapporteurs are to:-

- (i) maintain an accurate record of membership of committees.
- (ii) follow carefully, all discussions in the Committee and, in particular to:
 - (a) note the trends of the debate, for the purposes of assisting the Convener, where necessary, with the summary of the debate;

- (b) record the main issues, constituting general agreement among the delegates as well as those which remain contentious during the discussion;
- (c) record the decisions or conclusions reached by the Committee during its deliberations, including minority opinions, if any;
- (iii) assume the role of a resource person for the Committee by:
 - (a) providing clarifications on the provisions of the draft bill as may be requested during the discussions, or at her/his own initiative;
 - (b) providing upon request, or at her/his own initiative, pertinent information on any issue relating to the draft bill, as may be necessary in the course of discussions; and
- (v) assist the Convener in facilitating the work of the Committee by ensuring the availability of efficient logistical support.

3.3 Programme Officers

Each Committee shall be assigned such programme officers as may be required for the completion of their work. The functions of the programme staff are to:-

- (i) ensure that documentation required by the Committee is available;
- (ii) provide research back-stopping for the Committee and;
- (iii) assist the Rapporteurs in the preparation of the report of the Committee.

3.4 Committee Clerks

Each Committee shall be assigned a Clerk who shall assist the Convenors and Rapporteurs in the preparations of the agenda and records of the Committee.

The list of Clerks assigned to each Committee is in Appendix D to these Guidelines.

3.5 Legal Drafting

Each Committee shall be assigned one or more draftspeople to assist the Convenors and Rapporteurs in the preparation of its report to the Steering Committee and to the Conference, and, in particular, in –

- (i) the technical formulation of proposed amendments to those aspects of the Draft Bill falling within the Committee's specific mandate;

- (ii) the harmonization of the proposed amendments with other parts of the Draft Bill; and
- (iii) the resolution of issues of a technical drafting nature arising from the deliberations of the Committee.

3.6 Expert Advisors:

At its request, an expert may be availed to a Committee to advise it on any issue for which further information; theory, experience or precedent may be required. The advisor may not participate on the work of the Committee beyond the specific matter in respect of which his/her intervention is requisitioned.

4. Conducts of Meetings in Committees:

4.1 In General -

- (a) meetings of the Committee shall be called by the Convenor of the Committee by written notice or by a request in writing by not less than one-third of the members of the Committee, and shall be presided over by the Convenor, or in his or her absence, a temporary Convenor elected by the delegates present;
- (b) the time and place of the meeting of the committee shall be determined by the Convenor or delegates calling the meeting;
- (c) notice of meetings of the committee shall contain an agenda of business to be considered or state the purpose of the meeting. Reasonable efforts shall be made to give prior notice of all subjects to be acted upon;
- (d) the quorum necessary for the committee to transact business shall be one half of the members of the committee who are entitled to vote;
- (e) decisions shall be as far as possible by way of consensus, but if there is no consensus, then decisions shall be by way of vote of majority of members present and voting in the committee;
- (f) the votes and proceedings of any meeting of the Committee shall be approved and signed by the Rapporteurs before distribution to and approval by the members of the committee;
- (g) the rules of procedure of the Conference shall with the necessary modifications apply to the committees in the same way as to the Conference itself.

4.2 Order of Business

- (a) the order to be observed in the deliberations before the committee shall in so far as possible, and subject to the Convenor's discretion, be that provided for in the Second Schedule of the Constitution of Kenya Review (National Constitutional Conference) (Procedure) Regulations, for consideration of provisions of the Draft Bill and envisages an Article-by-Article consideration of the subject matter referred to the Committee by the Conference;
- (b) the Committee may hold special consultations with persons it considers will give information necessary to the carrying out of its functions.

4.3 Decorum

- (a) All debate and questions should be addressed to the Convenor;
- (b) The Convenor is primarily responsible for maintaining order at the committee meetings. Order can normally be maintained by calling for the attention of those present or by ruling inappropriate decisions out of order;
- (c) In the unlikely event of a disruptive person ignoring the directions of the Convenor, it might become necessary to temporarily recess the meeting and ask for security personnel to be contacted.

4.4 Subcommittees

- (a) Committees have the power to appoint subcommittees from among its members to undertake any part of the work of the committee and any such subcommittee shall submit its report to the committee which established it;
- (b) Rules and guidelines relating to the committee shall be followed by the subcommittee.

4.5 Coordination of the Work of Committees

At the end of each day of Committee deliberations, all Convenors and Rapporteurs of Committees shall meet with the Chairperson and the Rapporteur-General of the Conference to -

- (i) review issues covered during the days deliberations;
- (ii) provide guidance on how cross-cutting issues emerging from committee deliberations should be handled in subsequent sessions; and

- (iii) identify issues that one committee should pass on to other committees for deliberation and;
- (iv) resolve any conflict arising from the mandate of committees.

4.6 Dissolution of Committees

Regulations 44(8) and 44(19) provide that a Committee stands dissolved once its report has been received by the Conference or may be dissolved at any time by the Conference.

5. Reports of Committees

5.1 The Report

The report of a committee shall consist of the following documents:-

- (i) the Agenda and Minutes of all meetings of the Committee and of its sub-committees (if established);
- (ii) an audio and verbatim transcript of all meetings of the committees and of its sub-committees (if established);
- (iii) a synopsis of the deliberations of the committee containing -
 - a narrative statement of the Committee's work;
 - a succinct analysis of all the issues presented to and addressed by the Committee;
 - the technical recommendations agreed to by the Committee;
 - any minority positions taken by members on any of the technical recommendations of the committee;
 - the list of formal motions for amendment of the Report and Draft Bill agreed to by the committee and any minority reservations recorded in respect thereof; and
 - any other matter which the committee would want the Conference to address or resolve.

Unless specifically demanded, only item (iii) of committee reports shall be laid before the Steering Committee and the Conference.

5.2 Preparation of Reports

It is the responsibility of the Rapporteur with the assistance of the Clerk and Draftspeople, and under the direction of the Convenor, to prepare the report of the Committee. The report once prepared must first be reviewed by the Convenor before presentation to the Committee for formal approval before it is transmitted to the Steering Committee and to the Conference. The Rapporteur-General of the Conference shall receive reports prepared by all committees.

6. Documentation

6.1 Conference Documentation

The rapportuer shall ensure that the following documents are available to the committee to which she/he is assigned:-

- (i) The Main Report of the Commission (Green and Orange versions);
- (ii) The Draft Bill to Alter the Constitution (Green and Orange versions);
- (iii) The Interim Report of the Rapporteur-General of the Conference (available at the end of the general debate);
- (iv) The Verbatim transcripts of the Conference proceedings;
- (v) The following working documents of the Conference:-
 - (a) The Constitution of Kenya Review Act (Cap. 3A);
 - (b) The Constitution of Kenya;
 - (c) The 1963 Independence Constitution;
 - (d) Annotated version of the Draft Bill (Red Version);
 - (e) Outline of Consequential Legislation (Red Version);
 - (f) Compendium of Delegate views on the Draft Bill (available at the end of the general debate).

6.2 The Library

The Commission has established a library containing many documents relevant to the work of committees. Among these are the Constitutions of all countries of the world. Delegates are encouraged to consult this collection.

7. Meeting Venues

Regulation 45(3)(b) provides that Committees may meet at such place or places “as the Convenor may determine” or as may be requested by at least one half of its members. Subject to that requirement.