

# **NATIONAL CONSTITUTIONAL CONFERENCE DOCUMENTS**

**THE REPORT OF THE RAPPORTEUR  
GENERAL TO THE NATIONAL  
CONSTITUTIONAL CONFERENCE ON ITS  
DELIBERATIONS BETWEEN AUGUST 18 –  
SEPTEMBER 26, 2003 AT THE BOMAS OF  
KENYA**

**17<sup>TH</sup> NOVEMBER, 2003**

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**THE REPORT OF THE RAPPORTEUR-GENERAL TO THE NATIONAL  
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KENYA**

**1. Interruptions in mortis causae**

1. Twice during Bomas II, the Conference was stunned by the sudden and untimely demise of two distinguished delegates, namely: -

- Delegate No.002, the late Hon. Kijana Michael Christopher Wamalwa, MP, Vice-President and Minister for Regional Development, and
- Delegate No. 412, the late Hon. Dr. Chrispine Odhiambo Mbai, Convenor of the Technical Working Committee G on Devolution.

2. Following the demise of the Vice-President in a London Hospital on August 25, 2003, H. E. President Mwai Kibaki declared two weeks of national mourning to be observed between August 23 – September 6, 2003. The Conference then in session registered its grief and conveyed its condolences in the words of the chair, as follows:-

**Prof Yash Pal Ghai:** Honorable Delegates, on behalf of the Conference I want to convey our condolences to the family of the late Vice President, to the Government and indeed to the entire Nation. We are collectively and individually saddened by this untimely death. The Vice President was a much admired and loved person, he listened to all and he had the ability to inspire and to reconcile. He was a person of great integrity and reliability. He did not lose his cool, he was steadfast in his quiet way.

As you can hear on the speech that we just replayed, he had a sharp intellect and he spoke with great eloquence and conviction, and had great

sense of humour. He was a champion of political and constitutional reform, a true democrat. His role in the reform movement which preceded and gave birth to this review process, was truly monumental. He helped to define the movement for reform and to define the agenda that found its way into the Review Act and which has animated the work of the different organs of review. He was a peacemaker; he built bridges across different sectors of our society and of politics. He was committed to the Nation of Kenya, again a point he made in his opening speech for us. He swore to develop a national perspective and to build the unity of this country. I personally was extremely inspired by the speech that we have replayed. It set the tone for our deliberations. He emphasized the importance of national unity, commitment to democracy and rights and emphasized the role of the Constitution as the guardian of our Sovereignty and the protection of our people. He wanted us to work hard in unity and peace so that jointly we could establish a Constitution that would serve Kenya for generations to come.

He inspired us in his life to work for this noble goal and I am sure in his death, he brings us again together in the pursuit of this objective. So I hope that in his memory and to honor him we will continue our work with the dedication that the delegates have shown so far and that we shall adopt the Constitution that will be a proud tribute to his search of a life time for peace, unity and the sovereignty of this Republic. Today we meet to mourn him and to honor his memory. We have discussed in the Steering Committee how we should proceed in our work in view of his untimely death. The Steering Committee believes that we must honor him in the appropriate way and has proposed for this Conference that we adjourn for two weeks and resume on the eighth of September. We have considered ways in which we might be able to make up for this time that we adjourn for and we shall discuss this matter with the Speaker and Parliamentarians to see if time could be made available in October so that we are able to conclude our work speedily.

I have no doubt that the late Vice President would have wished us to complete the adoption of the Constitution as quickly as is reasonable. We hope therefore this adjournment will not cause a serious delay in the adoption of the Constitution. I have been instructed by the Steering Committee to move a Motion, which I will read to you in a minute.

So I now have the honour on behalf of the Steering Committee, to read the following Motion [in terms of Regulation 17 of the Conference Procedure Regulations]:-

*“That the National Constitutional Conference deeply shocked by the untimely demise of the Honorable Michael Christopher Wamalwa, Vice President of the Republic of Kenya and Minister of Regional Development, Member of Parliament for Saboti Constituency and Honorable Delegate number 002 of this Conference, recognizing the sterling role he has played with resolve and dedication in the reconstruction and development of his motherland, noting with gratitude the unflinching support he has all along extended to the Constitution Review Process, conveys its heartfelt condolences to his family, relatives and friends and joins the rest of Kenyans in this hour of bereavement, registers its appreciation of the Government’s efforts to accord him recognition and a burial befitting an accomplished Statesman and in pursuance to Regulation 17 of the Constitution of Kenya Review National Constitutional Conference (Procedure) Regulations 2002, resolves to adjourn the proceedings of this Conference forthwith and reconvene on Monday 8th September, 2003 at 8.00am.”*

The Conference deliberations duly resumed on September 8, 2003 after the burial of the Vice-President.

3. Exactly a week later, the Conference was severely jolted by the brutal killing of Dr. Chrispin Odhiambo Mbai on September 14, 2003. The consternation and resolve of Conference delegates was conveyed to the public by the Conference chair as follows: -

**Prof. Yash Pal Ghai:** Honorable Delegates yet once again we gather together on a sad occasion this time it is the assassination of one of our most distinguished delegates, Dr. Odhiambo Mbai, who as you know was Chairing the Committee on Devolution. I had not met Dr. Mbai before this Conference began and I got to know him a little bit during this period, I was very impressed by his gentleness, by his sharp intellect and by his commitment to the process. He and I did not always agree on some aspects of the devolution debate but I was always impressed by the clarity of his mind, his willingness to listen to my arguments and to dedicate himself completely to that Committee as an impartial Chairperson. The Rapporteurs tell me that he conducted the proceedings with great impartiality. He encouraged delegates to reach consensus and in a very short time on a very complex subject that Committee made remarkable progress. That is the kind of model of decision making that we wanted in this Conference where we exchange views vigorously, we listen to others and we try to reach a consensus. His loss is grievous to this Conference, to the University of Nairobi where he was the head of the Department of Political Science and to the country. I had the occasion last week to address this Conference when I referred to allegations of bribery and intimidation, attempts to subvert if not derail the process through these tactics. I then made a plea that we all re-dedicate ourselves to the sacred task that we have been called on to perform in this assembly. I had pleaded with those who were engaging in these tactics to desist and let the delegates who were clearly committed to the completion of this process to carry on with the task. I had not at that time foreseen that we would have one of our delegates killed. I do not know the motives, I do not know who killed him. But it is true that through an act of violence, one of our

delegates has been removed from us. There is supreme irony in this because the Constitution is a system of rules for an orderly society where we respect difference, where we tolerate diversity indeed we cherish diversity and where people are free to engage in public affairs, with the protection of the Government and of society.

A death like this is a negation of all that a Constitution stands for. And here we have assembled and have been working for months to give ourselves and our children a Constitution that will protect the fundamental values of society. So I am lost for words to express my sorrow, my disappointment and my anger. I think we have to re-dedicate ourselves and if there are delegates among us who have no wish to be part of this noble exercise, I would ask them to resign and leave us to carry on with our task. At the Steering Committee this morning, we resolved how we should conduct our proceedings today. And it was agreed unanimously that we all need to meet together as we are meeting now, and to express our sorrow and to express our condemnation of this cowardly act and to re-affirm our commitment to the process to re-confirm confidence in this assembly to complete the task at hand. **(clapping)**

The Steering Committee also agreed that we would have a formal Motion which will be introduced by the Honorable Shikuku, one of our wise elderly members and I therefore now invite him to introduce that Motion. Honorable Shikuku.

**Hon. Delegate Martin Shikuku:** Mr. Speaker you are asking me to read the motion. Mr. Speaker what I said in the Steering Committee and now here is that this is a matter that requires no notice of Motion but my Motion in synopsis is that this Conference conveys its deep sorrow to the family of the late Dr. Mbai. Secondly that we resolve, we condemn this cowardly action against our own brother and that we shall continue from

where he left and under no circumstances shall we run away from the duty given to us by wananchi. Thank you Mr. Chairman.

Many other delegates expressed shock at Dr. Mbai's killing. Determined to move forward, however, members of the Technical Working Committee on Devolution elected Hon. Dr. Adhu Awiti (delegate No. 009), as their new Convenor.

4. Despite these two interruptions, Bomas II made substantial progress. The rest of this Report is a synthesis of that progress up to the end of deliberations on September 26, 2003.

## **2. The Scope of the Report**

5. The Report has been compiled from the following sources: -
- the Verbatim Records of Conference Proceedings,
  - summaries of Conference plenary proceedings prepared by the Secretariat,
  - the Rapporteur-General's Daily Journal entries,
  - the minutes of daily evening meetings of Convenors/Rapporteurs,
  - the minutes of Technical Working Committees prepared by Committee Rapporteurs, and
  - progress reports presented by Convenors at the end of Conference proceedings on September 26, 2003.
6. The Report is presented in three parts as follows: -
- discussion of issues outstanding at the close of Bomas I,
  - deliberations of Technical Working Committees, and
  - the road map to Bomas III.



### **3. Issues outstanding at the end of Bomas I**

7. The Report submitted at the end of Bomas I indicated that a number of issues were not resolved and/or were passed over for further debate during Bomas II.

Among these were -

- devolution of powers,
- cultural heritage,
- affirmative action, and
- transitional and consequential arrangements.

At the beginning of Bomas II, the Conference debated these issues at length before passing them over to the appropriate Technical Working Committees for detailed consideration.

#### **3.1 On devolution of powers**

8. At paragraphs 48 – 50 of the Report on Bomas I, an observation is made that although devolution of powers - a key foundation principle in Section 3 of the Constitution of Kenya Review Act (hereinafter the Review Act) - had been embraced by the Conference, the design thereof as presented in Chapter 10 of the Draft Bill, was far from satisfactory. The Conference had, in consequence, asked the Commission to prepare a new draft before the Technical Working Committee on Devolution could discuss it.

9. During the adjournment between June 6 and August 17, 2003, the Commission established an in-house task force to examine this issue. The Commission set the terms of reference of the task force as follows: -

- to identify and examine the issues, comments and recommendations made on the Devolution Chapter of the Draft Bill during the General Debate at the National Constitutional Conference.

- to make proposals for revision of the Devolution Chapter based on the above-cited findings.
- to identify other provisions of the Draft Bill that will need revision as a result of such proposed changes to the Devolution Chapter.
- to revise the Seventh Schedule of the Draft Bill in the light of the above cited changes, and
- to prepare a report for consideration by the National Constitutional Conference.

10. The task force prepared a report which was discussed and approved by the Commission at a retreat held in Mombasa between August 6 – 15, 2003. That report made comprehensive recommendations on the need for and principles which should guide the process of devolution of powers, the structure of devolution, and the functions and powers of units of devolution. The Commission also generated a new draft replacing the original Chapter 10 of the Draft Bill and setting out the technical parameters of devolution, including provisions that would ensure that this issue is effectively mainstreamed in the entire Bill. Both the report and new draft were presented as Commission documents to and debated by the Conference on August 21 – 22 and September 16, 2003, thus placing the material on the same footing as the rest of the Report and Draft Bill under consideration.

11. The Conference was in broad agreement with the goals, principles and structural aspects of devolution as presented in the new draft Chapter 10 by the Commission, namely that: -

- the primary goals, of devolution of power are to ensure that
  - state power is exercised directly by levels of government which are democratic and accountable to the people,
  - state resources are equitably shared between the centre and other levels of government, and
  - national government agencies and services are decentralised away from the capital territory.

- except for judicial authority which need only be decentralised, the executive and legislative authority of the state be devolved to four levels of government,
- to facilitate the establishment of viable units of devolution at the sub-national level, Kenya be re-zoned into units larger than the current districts but smaller than or similar in size to the current provinces, and
- special provisions be made to ensure effective and co-operative interaction among and across various units of devolution and levels of government.

12. The new draft Chapter 10 which the Conference debated and referred to the Technical Working Committee makes detailed provisions for the establishment of the institutional structures necessary for the operationalisation of those principles. These include: -

- the creation of legislative institutions at appropriate levels of government below the national legislature,
- the conferment of executive authority to all levels of government,
- the process of election to legislative institutions at all levels of government,
- the procedure for appointment or constitution of the executive branches of the various levels of government,
- specification and distribution of powers and functions between the various levels of government, including taxation and spending powers,
- the modalities for equitable sharing of revenue between the various levels of government,
- staffing of devolved authorities, and
- intergovernmental relations.

### **3.2 On cultural heritage**

13. At paragraph 91 of the Report on Bomas I, an observation is made that the Conference was not satisfied with the manner in which Kenya's rich and diverse cultural heritage had been treated in the Draft Bill. To pursue this matter further, the Conference established an ad hoc committee 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 to Kenya's rich cultural diversity and expression;
  - (ii) examine constitutional options for –
    - the promotion of the cultural expression and activities of the people of Kenya, and
    - 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 Bill, with a view to strengthening Kenya's cultural identity in the context of national integration and unity;
  - (v) review the various aspects of the Draft Bill with a view to identifying any aspects that may negate our cultural heritage;
  - (vi) explore the possibility of establishing an institutional framework for the promotion and development of Kenya's diverse cultural values and heritage;
  - (vii) prepare a report for consideration by the Technical Working committees of the Conference.

The ad hoc Committee was not able to do much work before the Conference adjourned. Further because the Conference resolved that none of its organs would conduct business during adjournment between June 6 – August 17, 2003, this Committee was unable to proceed with its work during that period.

14. Because of the importance of the issue of culture, however, the Commission, on its own motion, established a task force with similar terms of reference to prepare a report. That report was discussed and approved by the Commission at a retreat held in Mombasa between August 6 – 15. The report makes recommendations on the range of constitutional principles necessary to guarantee that Kenya's cultural heritage is preserved, protected, enriched, promoted, and developed. The Commission also generated draft articles setting out the technical parameters of a culture-sensitive constitution, including provisions that would ensure that culture is effectively mainstreamed in the Draft Bill. Both the report and draft provisions were presented as Commission documents to and debated by the Conference on August 19 – 20 and September 16, 2003.

15. The Conference accepted the main recommendations of the Commission, namely, that: -

- a new Chapter on Culture, Education, Science and Technology be included in the Draft,
- the Draft should: -
  - recognise and respect the diverse cultures of the Kenyan people,
  - guarantee the right to manifest and practice a people's culture,
  - facilitate the transmission of culture across generations.
- Kenya's historical and religious sites and monuments be recognised and respected,
- indigenous knowledge and intellectual property be protected, promoted and utilised,
- the family be recognised as the repository of cultural values, and
- appropriate institutions (including the creation of a Council) be established to promote and develop Kenya's cultural heritage.

16. The Conference further resolved that a full-fledged Technical Working Committee be formed to consider the issues of culture in the constitution. That

Committee was subsequently established as Technical Committee M. As required of all Committees, Committee M was mandated to focus its deliberations primarily on the report and provisions of the draft prepared by the Commission and discussed by the Conference in plenary as indicated above.

### 3.3 On affirmative action

17. At paragraph 90 of the Report on Bomas I, a recommendation is made as follows: -

[**that**] 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 mechanisms required to implement that principle.

On resumption of the Conference, the Steering Committee approved for presentation and discussion in plenary, a motion proposed by Eng. Karue Muriuki (Delegate No. 121) in the following terms –

**THAT**, having observed with concern that some groups in our social-economic set-up do suffer and feel disadvantaged due to discrimination and prejudice on the basis of gender, illiteracy, disability, age, geographical area and other unjustified grounds; this Conference resolves that a Chapter be included in the new Constitution devoted to ***Affirmative Action*** and requiring Parliament to enact a law that will adequately address the root causes of such unfair imbalances.

18. The Conference debated the motion on August 22, 2003 and agreed that the Commission be asked to: -

- critically examine the entire Draft Bill with a view to determining whether and the extent to which provisions of Section 3 (b) and (f) of the Review Act have

been adequately addressed with particular regard to groups that have hitherto been discriminated against on the basis of gender, disability, age, geographical situation and other forms of affliction,

- propose ways and means of mainstreaming intergenerational equity as a principle in the entire Draft Bill so as to make a constitution for all ages and generations, and
- propose, where necessary, amendments to any aspect of the Draft Bill with a view to entrenching the principle of intergenerational and social equity.

19. Following that debate, the Commission appointed an in-house panel to further reflect on these issues and to prepare a position paper on how these would be mainstreamed in the Draft Bill. That paper was prepared and circulated to all Technical Committees.

### **3.4 On Transitional and Consequential Arrangements**

20. At paragraph 89 of the report on Bomas I, note is taken of the fact that transitional and consequential arrangements were stood over for debate pending the adoption of the substantive provisions of the Bill. Citing this note the Technical Working Committee on Transitional and Consequential Arrangements at first decided that their work would begin only after the Conference had resolved all issues presented to it by other Committees. The Committee resolved, therefore, that its members be dispersed to all other Committees until the final text of a new Draft Bill was settled by the Conference. Later, however, the Committee decided that there were a number of conceptual and operational issues, which they could address even as the other Committees went on with their work. It was decided, therefore, that they would first call for expert input, inter alia, on: -

- the principles which should guide orderly transition from the old to the new constitution,
- the legal and social implications of transition, and
- the financial implications of transition.

Accordingly, a number of sessions on these issues were arranged before the conference adjourned. As indicated below, however, other committees went ahead and made decisions of a transitional and consequential nature which the committee should start working at.

#### **4. Deliberations of Technical Working Committees**

##### **4.1 The Constitution of Technical Working Committees**

21. The core business of Bomas II was the consideration of the Report and Draft Bill presented by the Commission to the Conference during Bomas I. Clause 20 of the Constitution of Kenya Review (National Constitutional Conference) (Procedures) Regulations, 2003 (herein the Regulations), provides in part, as follows –

(1) Upon the conclusion of the general debate, the Commission's Report and Draft Bill shall stand committed to the consideration stage, which shall be made up of 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.

A flow-chart indicating the expected progression of work from the general debate to the final adoption of the Bill is outlined in Appendix A of this Report.



22. Clause 49(4) of the Regulations establishes twelve technical working 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.

As already indicated, the Conference established a thirteenth committee on culture as Committee M. In evaluating the work and progress of these committees, however, it is important to understand the political environment surrounding their constitution and operation.

23. Clause 49(3) stipulates that committees shall consist of -

not more than sixty delegates but other delegates who shall have no right to vote, may attend their sittings.

Because of this limitation on numbers, it was necessary to devise a system, which would ensure that various delegate categories were distributed as equitably and evenly across committees as possible. According to section 27(2) of the Review Act, these categories are:

- members of the National Assembly,
- delegates elected from districts,

- political party representatives and
- representatives elected or designated by religious organizations, professional bodies, women's organizations, trade unions, non-governmental organizations, and other interest groups identified by the Commission.

24. Conference dynamics were, however rather different. Delegates tended to caucuses along provincial lines rather than in terms of those statutory categories. Consequently, the Steering Committee decided that delegates be organized on that basis and that coordinators be identified for purposes of assigning delegates evenly to the committees. Several meetings were therefore organized at which provincial co-ordinators agreed on how the various convenors of committees would be identified. On the basis of these arrangements, a preliminary list of committee memberships was circulated towards the close of Bomas I. Despite several revisions, however, a number of committees still had more than the sixty members stipulated by clause 49(3) above. These and other matters relating to the constitution of committees were therefore left for resolution during Bomas II.

25. The work of all Technical Committees other than Committee M, was supposed to begin on August 25,2003 but this was interrupted by the unfortunate events reported in paragraphs 1 and 2 above. On resumption of proceedings on September 8, 2003, the Conference spent that day and the next sorting out the issue of membership of Technical Working Committees left outstanding at Bomas I. In addition, a number of delegates who complained that they had not been placed in committees of their preference had to be dealt with. At the direction of the Steering Committee, this matter was again referred for resolution to provincial delegate caucuses. The co-ordinators of these caucuses subsequently met and provided the Rapporteur-General with revised lists for each Technical Working Committee. Although this issue was not fully resolved on September 9, 2003, deliberation in committee did commence in earnest on September 10, 2003. The final list of membership of each committee at the time of adjournment of the Conference on September 26, 2003, is attached as Appendix B of this Report.

## **4.2 The operation of Technical Working Committees**

### **4.2.1 Management of Committees**

26. The Steering Committee approved and circulated to all delegates, a set of guidelines intended to assist Technical Working Committees in the speedy processing of issues falling within their various mandates. An important aspect of the guidelines was devoted to management and co-ordination.

27. All technical working committees operated under the management of the following officers:-

- a Convenor appointed by the Conference and
- one or two Rapporteurs appointed by the Commission.

Committees were also assigned an Assistant Programme Officer, a Clerk , a Verbatim Recorder and (except in a few instances) a Draftsperson. In addition they had access to expert advisors on any matter for which clarification was required.

28. Convenors were expected to:-

- call committee meetings, subject to authorization of the committee;
- preside over the meetings of and to put all questions for discussion by the committee;
- ensure that quorum is maintained and decide all questions of order;
- rule on all procedural matters;
- direct the administration of the committee;
- consult on a regular basis with convenors of other committees; and
- present the report of the committee to the Steering Committee and to the Conference.

29. The duties of Rapporteurs were to-

- prepare and issue under their hand, the daily agenda of committees in consultation with their respective Convenors;
- maintain an accurate record of membership of committees;
- ensure that observers do not participate in the deliberations of Committees;
- ensure that delegates who are not members of particular committees and observers thereof do not vote;
- follow carefully, all discussions in the committee and, in particular to:
  - ♦ note the trends of the debate, for the purposes of assisting the Convener, where necessary, with the summary of the debate;
  - ♦ record the main issues, constituting general agreement among the delegates as well as those which remain contentious during the discussion;
  - ♦ record the decisions or conclusions reached by the committee during its deliberations, including minority opinions, if any;
  - ♦ prepare and issue under their hand, the minutes of the daily proceedings of committee.
- perform the role of resource persons for committee by:
  - ♦ providing clarifications on the provisions of the draft bill as may be requested during the discussions, or at her/his own initiative;
  - ♦ 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
- assist the convenor in facilitating the work of the committee by ensuring the availability of efficient logistical support.

30. In terms of human resources, the committees were clearly well supplied. What was not done was to organize these personnel into an effective bureau capable of effectively managing the agenda and deliberations of committees. Besides, committees were not provided with facilities (other than a meeting tent) for use by management personnel in negotiations, mediation, review of daily

proceedings or conflict resolution outside formal proceedings. The pace at which committees worked and the accuracy with which their deliberations were recorded depended to a small extent on failure by the CKRC to foresee these necessities.

#### **4.2.2 Co-ordination of Committees**

31. The work of committees was co-ordinated at two principal levels. In the first instance, the Rapporteur-General issued a daily journal containing a summary of the business of each committee for the previous day and the agenda for that day. The purpose of the journal was not merely to record the work of committees on a day-to-day basis but also to inform delegates who may have wished to follow deliberations on particular issues by committees of which they are not members to do so. To facilitate such attendance, the Steering Committee gave authority to convenors to accept contributions by non-members within the first hour of committee deliberations.

32. The second level of co-ordination was in terms of daily evening meetings of convenors, rapporteurs, the Rapporteur-General and the Chairperson of the Conference. The purpose of these meetings was to:-

- review issues covered during the day's deliberations,
- provide guidance on how cross-cutting issues should be dealt with,
- rationalise the consideration of overlapping issues, and
- resolve any conflicts arising from the work of committees.

These meetings, supplemented by the daily returns from the Clerks/Programme Assistants attached to each committee, provided the data from which the Rapporteur-General's journal was drawn.

33. Experience during Bomas II indicates that these co-ordination mechanisms were not adequate. It is doubtful whether most delegates made full use of the information contained in the Rapporteur General's Journal. There was no evidence for example, that delegates moving from committee to committee were attracted by matters highlighted in

the journal for that day. Further, the evening meetings between Convenors, Rapportuers, the Rapporteur-General and the Chairperson of the Conference operated more as “reporting” rather than “co-ordination” fora. Convenors and Rapporteurs tended to leave the meetings as soon as their respective daily reports were taken home no serious discussions were possible on their contents. It is also the case that crosscutting issues requiring harmonization or negotiation across committees were not often flagged out or considered. Bomas III must, therefore, address the questions of co-ordination of the work of committees with the seriousness which it deserves.

### **4.2.3 Progress in Committees**

34. The progress of technical committees is reported under five heads -
- procedural problems,
  - operational problems,
  - management of contentious issues,
  - deferment of issues, and
- committee-by-committee progress.

#### **(a) Procedural Problems**

35. The guidelines issued to Technical Committees indicated clearly that their deliberations should conform to the provisions of clauses 20 and 45 of the Regulations. These clauses requires committees inter alia,

- consider, and where necessary, make amendments to the contents of the Report and/or the Draft Bill,
- confine themselves to the subject matter referred to them by the Conference,
- seek consensus before a vote is called on any matter, and
- as far as possible, conduct business in accordance with the Second Schedule of the Regulations.

36. In practice, there were, not surprisingly, significant variations from committee to committee in the interpretation and operation of that Regulation. While a few committees went directly to an article-by-article consideration of the Draft Bill, others chose to first debate or discuss all the provisions of the Draft Bill falling within their mandate before making decisions on an article-by-article basis. Yet others decided to first debate the Report before considering the relevant provisions of the Draft Bill. There were also those who used the period devoted to general comment on the draft articles scheduled for discussion each day for comments also on the Report, which was also discussed, where appropriate, in the context of specific draft articles. A number of reasons account for this variability in procedure. These include:

- confusion on how to deal with the Report in relation to the Draft Bill,
- difficulties in applying the provisions of the Second Schedule to the Regulations,
- when and for what purposes input from experts should be requisitioned, and
- inability of some Convenors and/or Rapporteurs to guide committee properly.

37. Although the review Act and the Regulations require committees to debate, amend and adopt both the Report and the Draft Bill, many committees found this unproductive in relation to the former of these documents. The Report, in essence, being the Commission's assessment of the views of Kenyans as required by the Act cannot logically be "amended" without fresh collection of public views. Consequently, most committees decided, and, in the context of their proceedings, sensibly so, that unless there were patent errors on the face of the chapters relevant to their specific mandates, they would use the Report primarily to evaluate the technical prescriptions contained in the Draft Bill. There may be need, therefore to advise all committees to take that position.

38. The technical procedures set out in the Second Schedule are drawn largely from parliamentary practice. Whereas these may have worked well with Parliament, many delegates found them complex, repetitive and boring. Besides, there were complaints that delegates used to those procedures were taking advantage of them to

frustrate contributions by others. And because no proper training was accorded to Convenors, Rapporteurs and clerks on the application of these procedures before the commencement of Bomas II, these committee managers were often as handicapped as the delegates. A short training session convened at the Lenana Mount Hotel did not fully rectify this difficulty. The general feeling, therefore, was that the Second Schedule should be simplified with a view to making it user-friendly to all delegates.

39. Under clause 45(5) of the Regulations, committees may invite experts to make specialized presentation before them or to provide such other information or documentation as they may require. And pursuant to clause 47(2) of the Regulations, a panel of experts were approved by the CKRC and the Steering Committee of the Conference for this purpose. The guidelines issued to committees on the use of experts stated clearly that they should not participate in the work of any committee beyond the specific matter in respect of which their intervention is requisitioned. In practice, however:-

- rather than source them from the approved list, committees often generated their own experts,
- the reasons for which these experts were summoned were not always properly defined,
- a good number of such “experts” appeared to have come essentially to prosecute partisan views or positions, and
- no record of the contents of presentations made by experts appear to have been kept by the committees which used them.

The rationale of clause 47(2) of the Regulations was to enable the Conference and its committees to obtain advice on specific issues pertaining to their work and to assist delegates and committees on the preparation of such technical briefs as would enable them arrive at sound decisions on the Report and Draft Bill. Experts may not, therefore, second-guess the public or the Commission by offering alternative views. Consequently, there is need for caution in the use of experts in the future.



40. A limited number of delegates thought that their Convenors and/or Rapporteurs were not giving them firm guidance in their respective committees. In the initial stage of deliberations, confusion was reported in respect of the various roles of Convenors vis-à-vis the Rapporteurs; and Programme Officers vis-à-vis the clerks attached to committees. That tended to slow down the work of committees. It should be understood that the Regulations and the Guidelines place the control and management of committees primarily in the Convenors.

**(b) Operational Problems**

41. In addition to the procedural problems set out above, all committees at one stage or another were beset by a number of operational problems. Among these were:-

- tardiness in commencing proceedings,
- intermittent lack of quorum during proceedings,
- frequent adjournments,
- artificial (or engineered) stalemates,
- ineffective use of available documentation and
- poor record-keeping.

42. Tardiness in the commencement of proceedings was a common problem in all committees. The primary reason for this was inability to realize quorum at the time committees were supposed to start work i.e. at 8.30 a.m. This was often exacerbated by a decision of the Steering Committee to permit delegates to visit committees not their own within the first hour of commencement of proceedings. As a result, the majority of committees were only able to commence substantive work after 9.30 a.m. each day. It was not, therefore, unusual for some committees to start deliberations without an initial quorum.

43. Once deliberations were underway, some committees were unable to maintain quorum due to a number of factors. Among these were:-

- the tendency some delegates to flood certain committees when “sensitive” issues were on their agenda,
- persistent exit or absence of many non-resident delegates from their committees, and
- caucusing by delegates outside committee tents during proceedings,
- technical appearances by certain categories of delegates..

Because nearly all committees suffered from this problem, it will require careful monitoring in order to protect the integrity of decisions made by committees. Convenors are therefore advised to ensure, at the very minimum, that decisions on any aspect of the Report or Draft Bill are taken only when committees are quorate.

44. Frequent adjournments were a common feature but in relatively in very few committees. There does not appear to have been very compelling reasons for those adjournments. And the fact that these were purportedly being taken under clause 17 could lead to procedural abuses. Convenors should therefore accept motions of adjournment with caution.

45. Proceedings of some committees were often disrupted by stalemates engineered by some delegates through a number of tactics including:-

- protracted debates and filibustering over very minor issues,
- diversionary discourses and sideshows,
- mistrust and suspicion between certain delegate categories or individuals, and
- deliberate attempts, in some cases, to derail committee proceedings.

These are impediments which Convenors, with the assistance of Rapporteurs, will need to look out for and resolve.

46. A number of committees reported that some delegates were not able to make effective use of documentation provided by the Commission. Quite often, issues being raised by some delegates were taken care of in these documents; implying,

therefore, that these were not being carefully scrutinized. Besides, some delegates wanted new documentation requisitioned for purposes of second guessing the Commission's formulation of specific proposals. Other delegates thought that the documents were too voluminous to be carried or consulted on a day-to-day basis. An effective way out of this problem may well be for the Convenors and Rapporteurs to be proactive in guiding delegates through relevant documentation.

47. Although the guidelines circulated to committees set out clearly how proceedings should be recorded, this was followed in very few instances. There was a great deal of variation in the format, substantive content and languages in which daily reports and minutes of committees were presented. The lack of uniformity in this regard and more importantly, the use of ambiguous terminology and inconsistency in its use, both within each committee and across all committees, mean that these reports must be read with caution. Indeed it is difficult in many cases to determine with a great deal of certainty, the exact decisions made by the committees with respect to various chapters and articles. The need for uniformity of procedure in committees and language of reporting cannot therefore be over-emphasized. Attention of Rapporteurs and Clerks has been drawn to this problem.

### **(c) Management of Contentious Issues**

48. It was indicated in the Report on Bomas I that a number of contentious issues were carried over for resolution by technical working committees during the consideration stage. Among these were: -

- the structure of the executive branch of government,
- the structure of the legislature,
- mechanisms for holding legislators accountable to the electorate,
- the inclusion of Kadhi's Courts in the Constitution,
- corpus of Kenyan law, and
- the framework for the devolution of power.

49. What made these issues contentious was not so much the propriety or constitutional value of proposals made in the Draft Bill, but rather their implications and consequences in contemporary Kenya politics. For example, some delegates were clearly apprehensive about the radical changes proposed in the Draft regarding the overall system of government (legislature, executive, judiciary) since these had profound implications for existing power arrangements. Yet others were unable to extricate themselves from deep-seated cultural and religious loyalties when it came to debate on the corpus of Kenyan law or the structure of the Courts. The debate on the Kadhi's Courts thus drew such loyalties from all religions. It was also rather obvious that debate on proposals to restructure the legislature and the role of legislators were more often hampered by fears of loss of status and privilege currently enjoyed by sitting members of Parliament, than by strict constitutional principles. Clearly, attention to these concerns was inevitable and not in the least surprising. After all, constitution-making, it has been said, is the continuation of politics by other means. In the event, however, many of these issues were managed with far less acrimony than what many delegates had anticipated.

50. On the structure of the executive, Technical Working Committee A dealing, *inter alia*, with the exercise of the sovereign authority of the people, resolved by general consensus that Kenya should be a parliamentary democracy, i.e. that the people should govern through their elected representatives in Parliament. But in so resolving, that Committee threw an unexpected gauntlet to Technical Working Committee D charged with the design of the structure of the executive branch of government. Although Committee D debated that issue at length, at the time of adjournment of Bomas II, no clear agreement had been reached on the matter. The possibility that the latter might settle on a structure at variance with the theory agreed to by the former cannot, therefore, be ruled out. In paragraph 55 below, an indication is given of how this and similar issues could be resolved.

51. On the structure of the legislature and the mechanisms needed to hold legislators accountable to the electorate, Technical Working Committee F had to resort to a voice vote to retain provisions in the Draft Bill for a two-chamber Parliament as well as for the recall of non-performing legislators. As was expected, many delegates who are

sitting Members of Parliament thought that such retention was a grave error. To allay these fears, the issue of recall may have to be subjected to appropriate transitional measures.

52. On whether or not to provide for Kadhi's Courts in the Draft Bill, Technical Working Committee E, after extremely partisan debate by protagonists on either side, was eventually forced into a division the outcome of which was that the status quo, should be maintained. The implications of that decision for the restructuring of the Chapter on the Judiciary was not, however, fully thought through, hence must await further discussions at Bomas III. A separate but closely related issue regarding the status of Islamic, Hindu and African personal laws in the Draft Bill was resolved with relative ease by Technical Working Committee A. Here it was resolved, by consensus, that the relatively neutral expression "personal laws of the peoples of Kenya", was acceptable.

53. On the framework for the devolution of powers, a lot of energy went into the zoning of the country into viable economic and political units. Although Technical Working Committee G accepted the principle that the primary units of devolution should be smaller than (or of similar size as) the current Provinces, but larger than any one district, a number of issues remain in contention. These include -

- the absolute number of primary units of devolution,
- the structure of "local" government (urban and rural) below those units,
- the governance structure for Nairobi and other special units (if any),
- the relationship between primary units of devolution and other organs of government (and especially the Second Chamber of Parliament) at the national level,
- the cost of devolution, and
- transitional arrangements for the operationalisation of a devolved system of government.

These are issues that may require further research and refinement.

The Committee was able, however, to agree that there should be four levels of government i.e. national, sub-national, county and local, as proposed in the Draft Bill.

**(d) Management of Crosscutting Issues**

54. In the course of their work a number of committees made decisions with implications for the mandate of others. These decisions will require harmonization and/or rationalization before proceedings move to consideration of the Draft Bill by the committee of the whole Conference. Decisions of such crosscutting significance were generally of two kinds; namely those arising from different perceptions of mandate over specific matters, and those made within mandate but having substantive implications across several committees.

55. Decisions in the first category included those on:-

- the issue of theory and structure of government by committees A and D,
- the status of the police service by committees H and I,
- the division of the Republic into sub-units of administration or government by committees A and G,
- the process of and qualifications for recruitment to political office by committees C, F and G,
- the advisory jurisdiction of the Supreme Court by committees D and E, and
- the principles regulating the establishment of constitutional offices and commissions by committees C, E, G, H, J and K.

56. Decisions in the second category were many and varied. A great many of them, however, were of a transitional and consequential nature. These will have to be addressed by Committee L on Transitional and Consequential Arrangements. A preliminary assessment of these decisions is contained in Appendix C to this Report.

**(e) Deferment of Issues**

57. As a general rule, Technical Working Committees were required to work their way seriatim through articles of the Draft Bill assigned to them. For a variety of reasons, however, a number of Committees found it necessary to defer the consideration of certain issues comprised in whole articles or specific clauses thereof, until subsequent ones were resolved. Among the reasons for this were the need to: -

- obtain expert intervention on certain matters before delegates could make informed decisions on them,
- consult other Committees in respect of matters in which there were potential or actual overlaps, or which were cross-cutting,
- accord delegates time to review or rethink their positions on particular issues, or
- to reorganize articles or clauses therein in a more rational or logical sequence.

There were occasions where deferrals were inevitable due to effluxion of the time allotted for proceedings on a particular day.

58. Articles or issues deferred as a result of any or some of the reasons set out above include:-

- article 23 on dual citizenship,
- article 25 on the determination of citizenship of children after the death of their parents,
- article 27 on the range of laws which Parliament should enact on matters of citizenship,
- article 30 on the duty of the state to promote rights and freedoms,
- article 77 (1)(a) on the delimitation of electoral areas including those in respect of units of devolution,
- article 77 (1)(b) on proportional representation pending resolution of the debate on the Mixed Member Proportional System,

- article 77 (2) on the conduct of political parties at elections pending resolution of their overall responsibilities under articles 87-100,
- article 79(1)(b) on residential requirements for voter registration,
- article 106 on membership of the National Council (or Senate) pending resolution of the structure of devolution of powers,
- article 107 on membership of the National Assembly pending resolution of the debate on the Mixed Member Proportional Representation,
- article 109 on the representation of women pending the mainstreaming of affirmative action,
- article 127 on consideration of bills by both Chambers of Parliament pending clarification of their separate roles,
- article 184(2) on whether judicial power should vest exclusively in the Courts,
- article 185(2) on whether only the Supreme Court, the Court of Appeal and the High Court should be Courts of record,
- articles 261 – 263 on powers of the Public Service Commission to constitute, and abolish and discipline officers in the public service pending resolution of the structure of devolution of powers, and
- article 264 – 266 pending resolution of the issue as to whether the police force should remain in the public service or be part of national security and defence.

59. Articles or issues deferred to facilitate the requisitioning of expert intervention were usually resolved after such input. The one exception that comes to mind was in Technical Working Committee D where despite expert input on the advantages and disadvantages of parliamentary, presidential and mixed systems of government, a decision one way or another was still not made. The list of persons or institutions called in to provide expert input to various Committees is in Appendix D to this Report.

60. It should further be noted that Technical Working Committee D made no concrete decisions in respect of the articles or issues it considered. This is because that Committee decided to debate all articles within their mandate before specifically



approving, amending or rejecting any of them. In this sense therefore, decisions on all articles debated by this Committee were technically deferred.

**(f) Committee-by-Committee Progress**

61. Despite the difficulties facing committees outlined above, on adjournment of Bomas II on September 26, 2003, substantial progress had been made. The Committees had covered articles relevant to their various mandates as follows: -

<b>TWC</b>	<b>Mandate</b>	<b>Progress</b>
A	Preamble and Articles 1 – 15	Preamble and Articles 1 – 9 (no deferrals)
B	Articles 16 – 75	Articles 16 – 39 (deferrals in articles 17, 23, 25, 27 and 30)
C	Articles 76 – 100	Articles 76 – 81 (deferrals in article 77)
D	Articles 148 – 183	No decisions made on any article
E	Articles 184 – 212	Articles 184 – 187 (deferrals in articles 184 and 185)
F	Articles 101 – 147	Articles 101 – 128 (deferrals in articles 106, 107, 109 and 127)
G	Articles 213 – 231	Articles 213 – 218 (deferrals in article 218)
H	Articles 258 – 270 and 276 – 277	Articles 258 – 270 and articles 276 – 277 (deferrals in articles 243 – 257 and 261-263)
I	Articles 271 – 275	Articles 271 – 275 (also considered articles 264 – 266 on public service)
J	Articles 232 – 242	Articles 232 – 236 (deferrals in 234 and 235)
K	Articles 278 – 297	Articles 278 – 290 (no deferrals)
L	Articles 298 – 299	No articles considered hence no decision made
M	Cross-cutting	Cross-cutting

A detailed presentation of the decisions taken by committees on specific articles of the Draft Bill is set out in Appendix E of this Report.

## **5. The Roadmap to Bomas III**

62. The adjournment motion carried by the Conference on September 26, 2003 was in the following terms: -

That pursuant to regulation 17 of the Conference procedure regulations, this Conference resolves to adjourn from now, today Friday 26<sup>th</sup> September, 2003 until Monday the 17<sup>th</sup> day of November 2003, at 8.00 a.m.

In moving that motion the Chair of the Conference explained that the dates of adjournment and resumption were negotiated between the Commission and the Parliamentary Select Committee on Constitutional Review and subsequently approved by the Steering Committee of the Conference.

63. On resumption of the Conference, Bomas III should aim at dispensing not only with all outstanding Technical Working Committee business but also with that of the Committee of the whole Conference including formal adoption of the Draft Bill. For that to happen, the following roadmap is suggested.

64. First, each Rapporteurs in consultation with Convenors of Committees should ensure that an accurate interim reports of decisions made in Bomas II is prepared, ready for review and/or approval when Bomas III reconvenes. Those reports must be prepared in such a manner as to ensure: -

- conformity to the template attached as Appendix F of this Report,
- uniformity of format, language and syntax within each Committee and across all Committees,

- that decisions made are recorded in precise and unambiguous language, and
- that any minority opinions, proposals or amendments are clearly indicated.

65. Second, the Rapporteurs' reports prepared as indicated above will be reviewed and consolidated by the Rapporteur-General for transmission to the technical drafting team which must then prepare:-

- new/amended drafts for further review by each Technical Working Committee,
- supplementary questions, where necessary for further consideration by Committees, and
- a harmonized consolidated draft incorporating articles already considered by all Committees.

It is expected that as Committees work through articles in their respective mandates, a corresponding new or revised Draft Bill will also emerge.

66. Third, the Convenors, whose responsibility it is to present committee reports to the committee of the whole Conference are expected to prepare a separate report for that purpose consisting of:-

- a short narrative of the work of their respective committees,
- a succinct analysis of all issues presented to and addressed by the committee,
- a schedule of technical recommendations agreed to by the committee,
- a schedule of formal motions for amendment of the Report and Draft Bill agreed to by the committee,
- any minority positions taken by members on the technical recommendations of or amendments agreed to and recorded by the committees, and
- any other matter which the committee would want the Conference to address or resolve.

The Convenors reports should conform to the template attached as Appendix G of this Report.

67. Fourth, it is expected that the Technical Working Committee on Transitional and Consequential Arrangements will pick up issues relevant to its mandate as Committees work through theirs. In this way, the Committee can take preliminary positions on those issues as and when they are identified without waiting for a final Draft approved by the Conference. Failure to work alongside other Committees could lead to enormous logistical and management problems for that Committee and the Conference at the tail-end of Bomas III.

68. Fifth, when the recommendations of all Committees (including that on transition) have been considered and decisions thereon made by the Committee of the whole Conference, the drafting team is expected to produce a final, composite Draft Bill for formal adoption by the Conference. Should there be a referendum on any issue, the Commission is required, under Section 28(1) of the Review Act, to incorporate the decision of the people into its final report and Draft Bill without further reference to the Conference.

69. The Review Act at Section 28(3) and (4) provides further that the Commission must submit the final Report and Draft Bill to the Attorney-General for presentation to the National Assembly. When that is done, the Attorney-General shall-

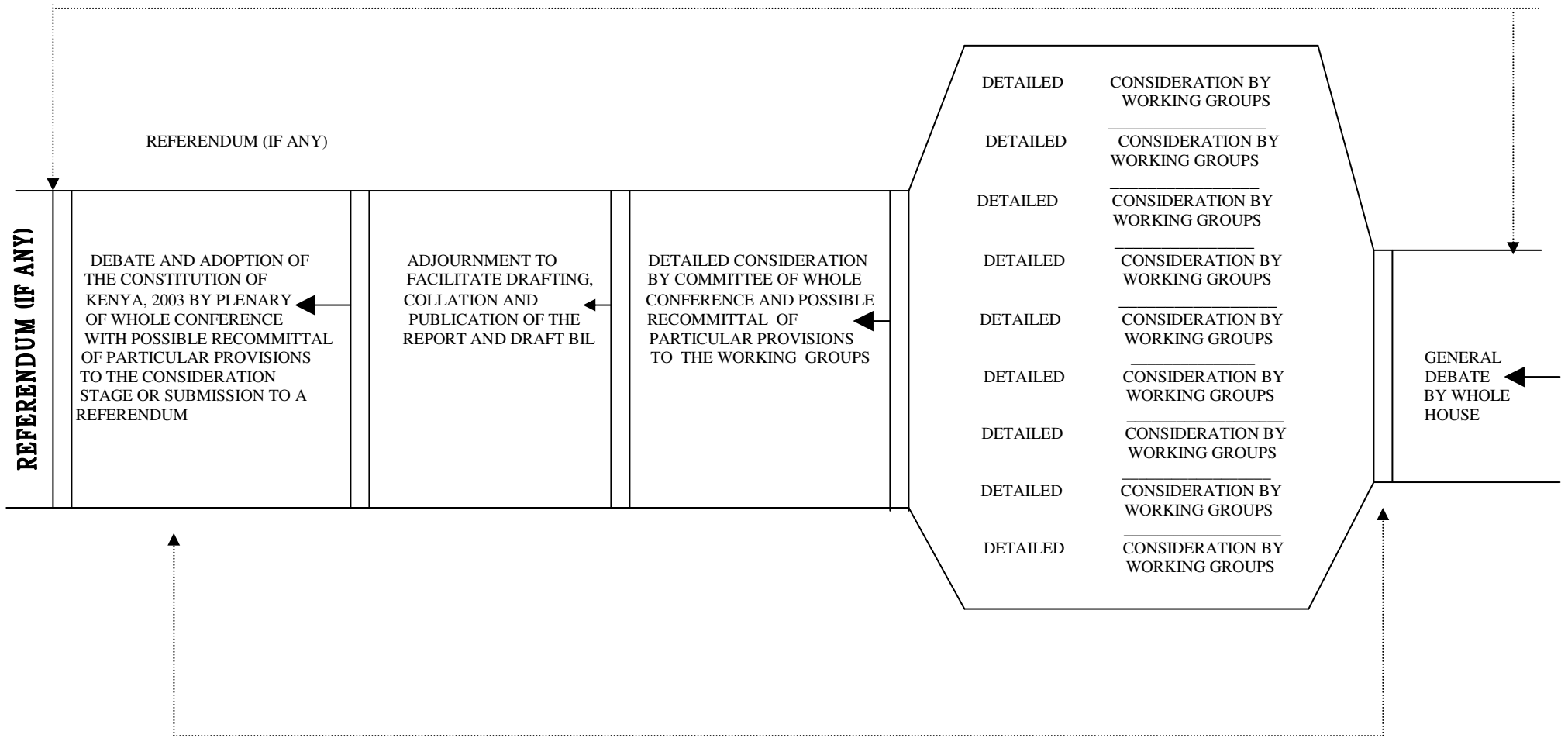
within seven days of the receipt of the Draft Bill publish the same in the form of a Bill to alter the constitution, [and] at the expiry of a further period of seven days of the publication of the Bill to alter the constitution..... table the same together with the final report of the Commission before the National Assembly for enactment within seven days.

In other words once the Commission submits its final report and Draft Bill to the Attorney-General, no more than twenty-one days should expire before a new constitution is enacted.

70. Fidelity to this roadmap will require the good will and dedication of all delegates and interest groups represented at the Conference. There is a fair chance that this might happen.

**PROF. H. W. OKOTH-OGENDO**  
**RAPPORTEUR-GENERAL OF THE CONFERENCE**

**APPENDIX A**  
***THE NATIONAL CONSTITUTIONAL CONFERENCE PROCESS***



***CONSIDERATION STAGE***

**APPENDIX B: MEMBERSHIP OF THE STEERING COMMITTEE OF THE  
CONFERENCE AND OF TECHNICAL WORKING COMMITTEES OF THE  
NATIONAL CONSTITUTIONAL CONFERENCE**

**STEERING COMMITTEE OF THE CONFERENCE**

<b>No.</b>	<b>NAME</b>	<b>DELEGATE NUMBER</b>
1.	Hon. Yash Pal Ghai	548
2.	Hon. Bonaya Adhi Godana	029
3.	Hon. Sultana Fadhil	518
4.	Hon. Koitamet Ole Kina	362
5.	Hon. Bishop Phillip Sulumeti	546
6.	Hon. Rev. Mutava Musyimi	534
7.	Hon. Kimaiyo Keroney Arap Segoo	344
8.	Hon. Uhuru Kenyatta	049
9.	Hon. Thomas Nyabote Aburi	424
10.	Hon. S. K. Tororei	462
11.	Hon. Saul K. Kiptingos	350
12.	Hon. Rhoda N. Maende	298
13.	Hon. Mariam S. Mwanyota	245
14.	Hon. Sammy Naibei Chemwey	388
15.	Hon. Oduor Ong'wen	459
16.	Hon. Somoina Keko	363
17.	Hon. Rev. Macharia Muchuga	226
18.	Hon. Gacuru Wa Kareng'e	314
19.	Hon. Roselinda Simiyu	443
20.	Hon. Ahmed Maalim Omar	255
21.	Hon. Ruth N. Kibiti	511
22.	Hon. Nancy Lung'ahi	224
23.	Hon. Sheikh Ali Shee	515
24.	Hon. Sophia Abdi Noor	470
25.	Hon. Yusuf Wako Dogo	269
26.	Hon. Joyce Umbima	466
27.	Hon. Ruth K. Oniang'o	221
28.	Hon. Simeon Nyachae	149
29.	Hon. Mwalimu Digore Kitambi	231
30.	Hon. Grace Ogot	399
31.	Hon. Wangari Maathai	083
32.	Hon. Martha Karua	044
33.	Hon. Kiraitu Murungi	124
34.	Hon. Amos Wako	575
35.	Hon. H. W. O. Okoth-Ogendo	551
36.	Hon. Ahmed Idha Salim	549
37.	Hon. Wanjiku Kabira	557
38.	Hon. Abdirizak Arale Nunow	558
39.	Hon. Mohammed A. Swazuri	553
40.	Hon. Musikari Kombo	073

41.	Hon. Paul Kibugi Muite	114
42.	Hon. Raila Odinga	155
43.	Hon. Charles Maranga Bagwasi	554
44.	Hon. Isaac Lenaola	571
45.	Hon. Bishop Bernard N. Kariuki	559
46.	Hon. Raphael G. Mwai	485
47.	Hon. Kenneth Njiru	609
48.	Hon. Orié Rogo-Manduli	594
49.	Hon. Pamela Mboya	473
50.	Hon. Martin Shikuku	595
51.	Hon. Suba Churchill	463
52.	Hon. Njuguna Kung'u	582
53.	Hon. Abida Ali-Aroni	550
54.	Hon. Githu Muigai	570
55.	Hon. Ahmed Issack Hassan	566
56.	Hon. Nancy Makokha Baraza	561
57.	Hon. Kavetsa Adagala	563
58.	Hon. Mutakha Kangu	562
59.	Hon. Paul Musili Wambua	564
60.	Hon. Salome Wairimu Muigai	555
61.	Hon. Phoebe M. Asiyó	552
62.	Hon. Alice Yano	556
63.	Hon. Pastor Zablon Ayonga	560
64.	Hon. Abubakar Zein Abubakar	565
65.	Hon. Riunga Raiji	567
66.	Hon. Ibrahim Lethome	568
67.	Hon. Keriako Tobiko	569
68.	Hon. K. Mosonik arap Korir	572
69.	Hon. Domiziano Ratanya	573
70.	Hon. Baldip S. Rihal	487
71.	Hon. Francis X. Ole Kaparo	223
72.	Hon. Rose Lukalo-Owino	471
73.	Hon. Andronico O. Adede	574
74.	Hon. M. J. A. Emukule	395
75.	Hon. Adhu Awiti	009
76.	Hon. Cecily Mbarire	217
77.	Hon. Samuel Arap Ng'eny	538
78.	Hon. Kiriro wa Ngugi	320
79.	Hon. Joyce M. Majiwa	501
80.	Hon. Kerrow Billow Adan	015
81.	Hon. Marsden Madoka	085
82.	Hon. Saleh Saad Yahya	483
83.	Hon. Kivutha Kibwana	057
84.	Hon. Caroline W. Ng'ang'a	587
85.	Hon. Nyangau Onwong'a Billy	457
86.	Hon. Wilfred Kiboro	619
87.	Hon. Eliud Paul Nakitare	392
88.	Hon. PLO – Lumumba	260



## **TECHNICAL WORKING COMMITTEE A**

### **Preamble, Supremacy of the Constitution, the Republic and National Goals, Values and Principles**

**Effective 1st October 2003**

**Convenor: Hon. Nyangau N. Onwonga, Delegate 457**

**Rapporteur: Hon. Dr. Githu Muigai, Delegate 570**

	<b>NAME</b>	<b>DELEGATE NUMBER</b>
1	Hon. Abdirahman Ali Hassan	3
2	Hon. Alicen Chelaite Jematia	19
3	Hon. Benson Okwaro	449
4	Hon. Charity Ngilu	143
5	Hon. David L. A. Erulu	397
6	Hon. Francis Wabayale	588
7	Hon. George Khaniri	55
8	Hon. Gitu Wa Kahengeri	316
9	Hon. Ibrahim Ahmed Yusuf	525
10	Hon. Ibrahim Omondi	542
11	Hon. James Nthiga Gatiti	520
12	Hon. Jane Kauka	375
13	Hon. John Munyes	119
14	Hon. Joseph Korir Kipkapt	75
15	Hon. Julius Arunga	8
16	Hon. Kavoo Kilonzo	479
17	Hon. Kuria Simon Kanyingi	79
18	Hon. Manoti Stephen	94
19	Hon. Marie Rose Owino	400
20	Hon. Mburugu Florence Ruhui	530
21	Hon. Moffat Maitha	90
22	Hon. Murtaza Jaffer	623
23	Hon. Nalea G. Kithumbu	285
24	Hon. Nginyo Kariuki	607
25	Hon. Nyang'au Onwonga	457
26	Hon. Orwenyo Mary Obonyo	426
27	Hon. Owidi Peter Otieno	173

28	Hon. Pascalina R. Lebarleiya	351
29	Hon. Peter Oloo Aringo	212
30	Hon. Rhonda Maende	298
31	Hon. Sang Kipkorir Marisin	184
32	Hon. W. R. Ole Ntimama	147
33	Hon. Zuhura Zukira Wanje	236

**Committee Staff**

1.Draftsperson:	Prof. J. B. Ojwang
2.Assistant Programme Officers:	Sylvia Nyaga and Rozina Mngola
3.Clerk:	S. R. Njenga
4.Verbatim Recorder:	Flora Wafula

**TECHNICAL WORKING COMMITTEE B**

**Citizenship and the Bill of Rights**

**Effective 1st October 2003**

**Convenor: Hon. Cecily Mbarire, Delegate 217**

**Rapporteurs: Hon.Nancy Baraza, Delegate 561**

**Hon. Ibrahim Lethome, Delegate 568 and**

**Hon.Salome Muigai, Delegate**

	<b>NAME</b>	<b>DELEGATE NUMBER</b>
1	Hon. Ali Wario	206
2	Hon. Amina Zuberi	227
3	Hon. Anne A. Okoth	474
4	Hon. Anne Njogu	475
5	Hon. Bermadette Quadros	622
6	Hon. Bishop Stephen Ondiek	168
7	Hon. Cecily Mbarire	217
8	Hon. Choge Jim	21
9	Hon. Dorcas Mbelersia	378
10	Hon. Esther Keino	214
11	Hon. Evelia Rebecca	384
12	Hon. Fahim Twaha	200

13	Hon. Fatuma Ali Saman	505
14	Hon. Florence Machayo	512
15	Hon. Francis N. Kaloki	292
16	Hon. Gaudentia Atonga	417
17	Hon. George Wesonga	398
18	Hon. J. W. Nyaga	151
19	Hon. Jane Mwendu	291
20	Hon. Jillo Onotto	237
21	Hon. John Katumanga	435
22	Hon. John Njue	539
23	Hon. Joyce Umbima	466
24	Hon. Kilionzo Charles Mutavi	127
25	Hon. Lawrence Mute	455
26	Hon. Lihanda K. Savai	608
27	Hon. Lorna Laboso	499
28	Hon. Lorna Timanoi	360
29	Hon. Lucas K. Chepkitony	20
30	Hon. Magugu Arthur	88
31	Hon. Marie Therese Gachambi	519
32	Hon. Masanya Godfrey Okeri	97
33	Hon. Milly Odhiambo	451
34	Hon. Moses Lengete Ole Sisika	365
35	Hon. Neera Kent Kapila	524
36	Hon. Nichasius Mugo	287
37	Hon. Pamela Mboya	473
38	Hon. Peter O. Bwana	516
39	Hon. Rose Olende	502
40	Hon. Rosemary Kinyanjui	526
41	Hon. Sabenzia N. Wekesa	478
42	Hon. Sahara Ahmed Hillo	257
43	Hon. Salah Maalim Alio	259
44	Hon. Sheikh Abdalla	243
45	Hon. Silvanus Ogari	425
46	Hon. Simeon Lesrima	82
47	Hon. Sing'oei Korir	464
48	Hon. Suba Churchill Meshack	463
49	Hon. Sudi David Kiprono Sutter	192

50	Hon. Teresa Osunga	411
51	Hon. Wafula Wamunyinyi	203
52	Hon. Wilfred Kiboro	619
53	Hon. Yusuf Wako	269

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3.Clerk:	D. K. Ziah
4.Verbatim Recorder:	Martina Odhiambo

**TECHNICAL WORKING COMMITTEE C**

**Representation of the People**

**Effective 1st October 2003**

**Convenor: Hon. Caroline Ng'ang'a, Delegate 587**  
**Rapportuers: Hon. Phoebe Asiyo, Delegate 552 and**  
**Hon.. Mosonik arap Korir, Delegate 572**

	<b>NAME</b>	<b>DELEGATE NUMBER</b>
1	Hon. Asenath Nyumo	495
2	Hon. Apollo Warrens Tsalwa	383
3	Hon. Asiya Mwanzi	537
4	Hon. Caroline Ng'ang'a	587
5	Hon. Carolyne Ruto	366
6	Hon. Danny Irungu	627
7	Hon. David O. Mpilei	359
8	Hon. David Wakahu	612
9	Hon. Emmy Kipsoi	333
10	Hon. Toro	198
11	Hon. Fares Ogada	404
12	Hon. Fatuma B. Jaldesa	267
13	Hon. Francis Kagwima	34
14	Hon. Francis Ng'ang'a	436
15	Hon. George Muchai	439

16	Hon. Helen Mung'athia	533
17	Hon. Isaac O. Kibwage	482
18	Hon. J. Kirangari Kamwanga	309
19	Hon. Jacob Odino	578
20	Hon. James Ngusi	450
21	Hon. Justus Musyoki Mutweti	293
22	Hon. Kenneth Njiru	609
23	Hon. Luseno Liyai	601
24	Hon. M'thigaa Godfrey Mbuba	277
25	Hon. Maria Nzomo	498
26	Hon. Mariam Muto	472
27	Hon. Mary Wambui Kanyi	467
28	Hon. Mohammed Ahmed Khalif	51
29	Hon. Mohammed Juma abuti	240
30	Hon. Mukhisa Kituyi	67
31	Hon. Naftali K. Chelagat	347
32	Hon. Nancy C. Ngeywa	387
33	Hon. Ngalaatu Musau	295
34	Hon. Njoki S. Ndungu	219
35	Hon. Onyancha Joel Omagwa	169
36	Hon. Orwa Ochieng	418
37	Hon. Orwa Ojode	160
38	Hon. Peter Nyanducha	434
39	Hon. Raphael Ndeme	232
40	Hon. Rasmin P. Chitris	543
41	Hon. Richard Kibagendi	428
42	Hon. Rose Otieno	431
43	Hon. Sophia Lepuchirit	327
44	Hon. Stephen Tarus	196
45	Hon. Winston A. Adhiambo	603

### **Committee Staff**

1. Draftsperson:
2. Assistant Programme Officers:
3. Clerk:
4. Verbatim Recorder:

Mrs. Margaret Ndawula  
Maurice Kepoi and Daniel Konyango  
Sarah Ndeto  
Regina Mwachi

## **TECHNICAL WORKING COMMITTEE D**

### **The Executive**

**Effective 1st October 2003**

**Convenor: Hon. John Anyara Emukule, Delegate 395**

**Rapportuers: Hon. Charles Maranga Delegate 554 and  
Hon. Alice Yano, Delegate 556**

	<b>NAME</b>	<b>DELEGATE NUMBER</b>
1	Hon. Beatrice Wairimu	315
2	Hon. Boniface Mghanga	100
3	Hon. Bonny Khalwale	52
4	Hon. Dalmas Otieno	614
5	Hon. David Musila	125
6	Hon. David Oyao	416
7	Hon. Dubat Ali Amey	252
8	Hon. Edward C. Ohare	386
9	Hon. Elizabeth Okelo	414
10	Hon. Enock Kibunguchy	56
11	Hon. Ernest Kaittany	341
12	Hon. Fred Gumo	30
13	Hon. Gacuru wa Kareng'e	314
14	Hon. George Nyamweya	615
15	Hon. Gideon Moi	109
16	Hon. Gideon Ndambuki	138
17	Hon. Gonzi Rai	177
18	Hon. H. Nyambura Kimani	318
19	Hon. Hellen Yego	468
20	Hon. Hussein Maalim M.	105
21	Hon. J. Michuki	101
22	Hon. Jimmy Angwenyi	7
23	Hon. Joel Chebii	441
24	Hon. John arap Koech	69

25	Hon. John Gitari Munyi	284
26	Hon. Joseph K. Lagat	65
27	Hon. Joseph M. Shikuku	595
28	Hon. Kellan Wavomba	390
29	Hon. Kipkalya arap Kones	216
30	Hon. Leshore Prisa Sammy	81
31	Hon. Lucas Maitha	91
32	Hon. Maasai Maroa	422
33	Hon. Maina Kamanda	39
34	Hon. Mathews Emukule	395
35	Hon. Michael Sengech	337
36	Hon. Mike Oliewo	613
37	Hon. Moses Wetangula	209
38	Hon. Mutava Musyimi Rev.	534
39	Hon. Mwalimu Digore K.	231
40	Hon. Mwangi Kiunjuri	68
41	Hon. Nick K. Salat	182
42	Hon. Nyiva Mwendwa	134
43	Hon. Oburu Oginga	157
44	Hon. Ogembo Masese	591
45	Hon. Orié Rogo-Manduli	594
46	Hon. Otieno Kajwang	37
47	Hon. P. K.G. Muriithi	120
48	Hon. P. Kibugi Muite	114
49	Hon. Raphael Muriungi	122
50	Hon. Reuben Ndolo	141
51	Hon. Reuben Tsuma	235
52	Hon. Rihal Singh	487
53	Hon. Saitoti George	181
54	Hon. Sally Chepkoech	348
55	Hon. Sammy Aswani A.	382
56	Hon. Stamilson W. Kasoka	296
57	Hon. Thimangu Jim Muketha	272
58	Hon. W. Kabogo	27
59	Hon. Wahu Kaara	521
60	Hon. William arap Ruto	179

**Committee Staff:**

- |                                  |  |
|----------------------------------|--|
| 1. Draftspersons:                | Prof. V.C.R.A.C. Crabbe<br>Prof. Phil Knight |
| 2. Assistant Programme Officers: | Wycliffe Owade and Hellen Namisi             |
| 3. Clerk:                        | P. B. Mirungu                                |
| 4. Verbatim Recorder:            | Halima Amsan                                 |

**TECHNICAL WORKING COMMITTEE**

**The Judiciary**

**Effective 1st October 2003**

**Convenor: Hon. (Bishop) Philip Sulumeti, Delegate 056**

**Rapportuers: Hon. Paul M. Wambua, Delegate 564 and  
Hon. Ahmed Issack Hassan, Delegate 566**

	<b>NAME</b>	<b>DELEGATE NUMBER</b>
1	Hon. Abdalla Ngozi	145
2	Hon. Abdi Tari Sasura	185
3	Hon. Abdirahaman Ali Abbas	249
4	Hon. Abdurhman Baawy	238
5	Hon. Agnes Abuom	513
6	Hon. Ali Shee Mohammed	515
7	Hon. Amina Abdalla	211
8	Hon. Amina Ahmed	242
9	Hon. Asli Ibrahim	248
10	Hon. Benta Auma	403
11	Hon. Bishop Phillip Sulumeti	546
12	Hon. Daniel Rasugu	579
13	Hon. El-Busaidy Abdulghafur .	517
14	Hon. Fadhil Sultana	518
15	Hon. Fatuma Boy Bakari	230
16	Hon. Francis Waweru	442
17	Hon. Fred Ojiambo	535
18	Hon. Gerves A. Akhwabi	593
19	Hon. Gichira Kibara	460



20	Hon. Godana Adhi Doyo	268
21	Hon. Hubbie Hussein Al Haji	251
22	Hon. Isaiah Kubai	448
23	Hon. Issack Derrow Ibrahim	258
24	Hon. Jamila Mohamed	476
25	Hon. Jane J. Kiptum	338
26	Hon. Kajembe Seif Ramadhan	36
27	Hon. Kathurima M'inoti	454
28	Hon. Kembu Gitura	47
29	Hon. Khadija Fugicha	261
30	Hon. Kivutha Kibwana	57
31	Hon. Lilian Wanjera	491
32	Hon. Margaret Muchai	523
33	Hon. Mirugi Kariuki	43
34	Hon. Mohamed Abu Chiaba	108
35	Hon. Mohammed Abdi Haji	250
36	Hon. Mohammed Nyaoga	456
37	Hon. Nathaniel Tum	332
38	Hon. Omino Jacob H. O.	166
39	Hon. Onesmus K. Mwangi	132
40	Hon. Owino Charles Oyugi	174
41	Hon. Peter Munya	117
42	Hon. R. O. Kwach	618
43	Hon. Rev. Patrick M. Musungu	529
44	Hon. Salim Ibrahim	225
45	Hon. Hon. Shakeel Shabir	406
46	Hon. Sheikh Mustafa Ali	531
47	Hon. Victor P. Gituma	274
48	Hon. Victoria Mutheu M.	294
49	Hon. Viscount Kimathi	61
50	Hon. Waithaka Mwangi	201
51	Hon. Waithanje Minjire	304
52	Hon. Walubengo Lumatete	532
53	Hon. Wandati Abudlrahman M.	547
54	Hon. Yusuf Moh. Aboubakar	581
55	Hon. Zablon Nthamburi	540
56	Hon. Zacheus Okoth Arch.	541

**Committee Staff:**

1.Draftsperson:	Mrs. Lucy Masua
2.Assistant Programme Officers:	Dan Juma and Rahma Adan Jillo
3.Clerk:	M. R. Sialai
4.Verbatim Recorder:	Emma Kaga

**TECHNICAL WORKING COMMITTEE F**

**The Legislature**

**Effective 1st October 2003**

**Convenor: Hon. Samuel arap Ng'eny, Delegate 538**

**Rapporteurs: Hon. Andronico O. Adede, Delegate 574 and  
Hon. Abubakar Zein Abubakar, Delegate 565**

	<b>NAME</b>	<b>DELEGATE NUMBER</b>
1	Hon. Abdullahi Ibrahim Ali	6
2	Hon. Abdullahi Sheikh Dahir	22
3	Hon. Abudo Q. Mamo	626
4	Hon. Anthony Kimetto	62
5	Hon. Archbishop David Gitari	522
6	Hon. Atsango Chesoni	510
7	Hon. Ayacko G. M. Ochilo	11
8	Hon. Benson Kegoro	427
9	Hon. Caroline Chemursoi	339
10	Hon. Charles Keter	50
11	Hon. D. Karaba	41
12	Hon. Daniel Obare Awora	401
13	Hon. David Were	208
14	Hon. Dennis Kodhe	585
15	Hon. Emmanuel K. Maitha	89
16	Hon. Francis Carey Onyango	580
17	Hon. Harrison Kombe	72
18	Hon. Jillo Mumina Konso	497
19	Hon. John Cheruiyot	438
20	Hon. John Sambu Kipkorir	183

21	Hon. Julius M. Muungania	281
22	Hon. Kiema Kilonzo	60
23	Hon. Kiliku Kennedy	447
24	Hon. Kipruto arap Kirwa	66
25	Hon. Liza Chelule	354
26	Hon. Maoka Maore	95
27	Hon. Muriuki Karue	121
28	Hon. Nancy Lung'ahi	224
29	Hon. Nderitu, Alfred Mwangi	139
30	Hon. Norman M. G. K.Nyagah	150
31	Hon. Oduor Og'wen	459
32	Hon. Okioma Samson	162
33	Hon. Oscar Makokha	391
34	Hon. Raychelle Omamo	477
35	Hon. Roselinder Simiyu	443
36	Hon. Sammy K. Ruto	180
37	Hon. Sammy Naibei Chemwei	388
38	Hon. Samuel K. arap Ng'eny	538
39	Hon. Samuel Tororei	462
40	Hon. Sophia Abdi Noor	470
41	Hon. Stephen Kalonzo Musyoka	126
42	Hon. Susan Wambura	420
43	Hon. Sylvester Wakoli	14
44	Hon. Tabitha Mwaniki	536
45	Hon. Weya Samuel Arthur	210

### **Committee Staff**

- 1.Draftsperson
- 2.Assistant Programme Officers:
- 3.Clerk:
- 4.Verbatim Recorder

Mr. Harrison Gicheru  
Jackie Obiero and Esther Mugo  
J. N. Mwangi  
Zipporah Wambua

# **TECHNICAL WORKING COMMITTEE G**

## **The Devolution**

**Effective 1st October 2003**

**Convenor: Hon. Adhu Awiti, Delegate 009**

**Rapporteurs: Hon. Mutakha Kangu, Delegate 562 and**

**Hon. Wanjiku Kabira, Delegate 557**

	<b>NAME</b>	<b>DELEGATE NUMBER</b>
1	Hon. Abel Mwaniki Njeru	283
2	Hon. Adan A. Sugow	193
3	Hon. Adhu Awiti	9
4	Hon. Ahmed Maalim Omar	255
5	Hon. Alex Chepkwony	367
6	Hon. Amos Kiumo	271
7	Hon. Betty Njeri Tett	222
8	Hon. Bonaya Godana Adhi	29
9	Hon. C. Murungaru	123
10	Hon. Caleb Jumba	385
11	Hon. Daniel Khamasi	53
12	Hon. Daniel Ole Osoi	364
13	Hon. Elkanah Odembo	453
14	Hon. Fatuma Sheikh Mohamed	254
15	Hon. G. B. Galgallo	26
16	Hon. G. Ndatho Muchiri	301
17	Hon. G.G. Kariuki	42
18	Hon. George Kinyua	577
19	Hon. George Mburu Mwaura	586
20	Hon. Gloria Wabwire	396
21	Hon. Grace Akinyi Ogot	399
22	Hon. Guracha Denge Wario	265
23	Hon. Hellen Koring'ura	324
24	Hon. Henry Kosgey	77
25	Hon. Hezron Manduku	92
26	Hon. Isa Ileri Ngunia	286
27	Hon. Isaiah Cheruiyot	346

28	Hon. J. J. Kamotho	40
29	Hon. J. Kinuthia Mwangi	319
30	Hon. J. Mwangi Waweru	310
31	Hon. J. S.Mathenge	308
32	Hon. James F. T. Foster	488
33	Hon. John Katuku	46
34	Hon. Juma Wario	241
35	Hon. Kauchi Chivumba	494
36	Hon. Kenneth Marende	96
37	Hon. Leslie Mwachiro	599
38	Hon. M. Nyathogora	303
39	Hon. Machage W. Gisuka	85
40	Hon. Maero Tindi	444
41	Hon. Mercy Mwamburi	492
42	Hon. Mereso Agina	508
43	Hon. Michael Githu	355
44	Hon. Mohamed Yusuf Haji	31
45	Hon. Mwinyi Haji Mwijaa	234
46	Hon. Nicholas Biwott	16
47	Hon. Otieno Ogingo	413
48	Hon. Patrice M. Ivuti	32
49	Hon. Patrick O. Onyango	590
50	Hon. Pius Lobuk	328
51	Hon. Raphael Livu	228
52	Hon. Shaaban Issack	187
53	Hon. Simeon Nyachae	149
54	Hon. Simon Shitemi	545
55	Hon. Sospeter Ojaamong	159
56	Hon. Suleiman Shakombo	189
57	Hon. Syongoh Zaddock Madiri	195
58	Hon. Teclah Nairesiai	357
59	Hon. Wilberforce Kisiero	389

**Committee Staff:**

- 1.Draftsperson:
- 2.Assistant Programme Officers:
- 3.Clerk:
- 4.Verbatim Recorder

Mr. Peter Barrett  
Fidelis Wangata and Evans Menach  
A. Mwendwa  
Grace Gitu

## **TECHNICAL WORKING COMMITTEE H**

### **Public Finance, Public Service, Leadership and Integrity**

Effective 1st October 2003

Convenor: Hon. Adan Kerow Billow, Delegate 015

Rapportuers: Hon. Isaac Lenaola, Delegate 571 and  
Hon. Pastor Zablon Ayonga, Delegate 560

	<b>NAME</b>	<b>DELEGATE NUMBER</b>
1	Hon. Abdu Bahari Ali	12
2	Hon. Abdullahi Haji Mohammed	107
3	Hon. Ann Mululu	496
4	Hon. Asili Adungo	394
5	Hon. Beth Mugo	112
6	Hon. Billow Adan Kerrow	15
7	Hon. Chris Okemo	161
8	Hon. Dache John Pesa	415
9	Hon. Daniel Njoroge	589
10	Hon. David Kuto	340
11	Hon. David Mwiraria	136
12	Hon. Dantilla Were	616
13	Hon. E. Mban	99
14	Hon. Elphas Ombura	410
15	Hon. Farouk Said	229
16	Hon. Francis Wangara	446
17	Hon. Franklin K. Bett	213
18	Hon. Frederick Nderitu	302
19	Hon. Gilbert Omondi	625
20	Hon. Grace Ntembi Nduyo	279
21	Hon. Henry Obwocha Onyancha	154
22	Hon. James Bwatuti	628
23	Hon. James Omolo Kayila	407

24	Hon. John K. Njiraini	480
25	Hon. Joseph K. Soi	374
26	Hon. Joseph Njalis Shuel	353
27	Hon. Judith A. Nam	408
28	Hon. Kamla Sikand	500
29	Hon. Kilemi Mwiria	137
30	Hon. King'ori Mwangi	624
31	Hon. M. N. Wambora	202
32	Hon. Manu Chandaria	617
33	Hon. Mariam Ntansian L.	345
34	Hon. Moses M. Wekesa	597
35	Hon. Musa Sirma	190
36	Hon. Noah N. arap Too	197
37	Hon. Nyamunga Eric Opon	152
38	Hon. Ole Konchellah G.S.	74
39	Hon. Peter Anyang Nyong'o	153
40	Hon. Peter Kenneth	48
41	Hon. Peter Odoyo	156
42	Hon. Phoebe Sikoya	606
43	Hon. Rose K. Lukalo-Owino	471
44	Hon. Rose Waruhiu	490
45	Hon. Sehmi Rupinda Singh	544
46	Hon. William N. Matheka	299
47	Hon. Wycliffe Oparanya	170

**Committee Staff:**

1. Draftsperson:
2. Assistant Programme Officers:
3. Clerk
4. Verbatim Recorder

Mrs. Margaret Nzioka  
Noor Awadh and Alyne Mariara  
C. W. Munga  
Lillian Momanyi

## **TECHNICAL WORKING COMMITTEE I**

### **Defence and National Security**

**Convenor:** Hon. Marsden Madoka, Delegate 085  
**Rapportuers:** Hon. Ahmed Idha Salim, Delegate 549 and  
Hon. Domiziano M. Ratanya, Delegate 573

	<b>NAME</b>	<b>DELEGATE NUMBER</b>
1	Hon. Abdikadir Guyo	262
2	Hon. Bruno Kaimba	280
3	Hon. Charles Lwanga Lwole	380
4	Hon. D. Muraguri Nderi	305
5	Hon. Daniel Njagi	486
6	Hon. David Koros	76
7	Hon. David M. Rakamba	433
8	Hon. David Mwenje	135
9	Hon. Ekwee Ethuro	24
10	Hon. Elizabeth Mayieka	503
11	Hon. Emmanuel Lomorukai	322
12	Hon. Esther Lelei	445
13	Hon. Francis Kilemi	592
14	Hon. Galgallo Tuye Adano	266
15	Hon. James John Mageria	528
16	Hon. John Kinuthia Waitiki	317
17	Hon. K. N. Mamonda	596
18	Hon. Kihara Njeri Jane	58
19	Hon. Kingi Kahindi Joseph	64
20	Hon. Kiplangat arap Koech	373
21	Hon. Maj. General (rtd) Nkaiserry	146
22	Hon. Marsden Madoka	86
23	Hon. Mkawerweren Chebii	336
24	Hon. Moses Akaranga	5
25	Hon. Mouris Dzoro	24



26	Hon. Hon. Hon. Odhiambo Omamba	165
27	Hon. Ogur Tobias O. Ochola	158
28	Hon. Petkay Shen Miriti	104
29	Hon. Raphael G. Mwai	485
30	Hon. Robert Maithya Maluki	289
31	Hon. Rukia Subow	504
32	Hon. Samuel Moroto	110
33	Hon. Simon L. Alew	326
34	Hon. T. K. Githiora	629
35	Hon. Titus Ngomyoni	144
36	Hon. Tolla Koffa	71
37	Hon. William Boit	17
38	Hon. Wyclife Osundwa	172

**Committee Staff:**

- |    |                               |  |
|----|-------------------------------|--|
| 1. | Draftsperson:                 | Ms. Linda Murila<br>Leah Symekher and<br>Grace Kamau |
| 2. | Assistant Programme Officers: | C. Mwambua   |
| 3. | Clerk:                        | Mary Babu  |
| 4. | Verbatim Recorder:            |  |

**TECHNICAL WORKING COMMITTEE J**

**Land, Rights and Environment**

**Effective 1st October 2003**

**Convenor: Hon. Saleh Faad Yahya, Delegate 483**

**Rapporteurs: Hon. Abdirizak A. Nunow, Delegate 558 and  
Hon. Mohammed A. Swazuri, Delegate 553**

	<b>NAME</b>	<b>DELEGATE NUMBER</b>
1	Hon. Ali Mwakwere	130
2	Hon. Amos Kimunya	63
3	Hon. Archbishop Njeru Wambugu	527
4	Hon. Augustine Saina	343
5	Hon. Beatrice Mwaringa	233

6	Hon. Benjamin Gitoi	602
7	Hon. Bornice S. Chelang'at	372
8	Hon. C. Nyawira Ngari	306
9	Hon. Daniel G. Ichangi	481
10	Hon. Ezekiel Kesendany	356
11	Hon. F. Mwanzia	133
12	Hon. Fatma Ibrahim Ali	506
13	Hon. Fatuma Halako Galgalo	239
14	Hon. Fibie Atieno Ochola	405
15	Hon. Gachara Muchiri	111
16	Hon. James Koskei	371
17	Hon. Joe Khamisi	54
18	Hon. John Serut	186
19	Hon. Julius Lalampaa	329
20	Hon. Kaaru Abdukadir Guleid	263
21	Hon. Kalembe Ndile	140
22	Hon. Kimani M. Ng'ang'a	598
23	Hon. Koigi wa Wamwere	204
24	Hon. Levi Ahindikha	379
25	Hon. Ligale Andrew N.	83
26	Hon. Lina Kilimo Jebii	59
27	Hon. Lumumba Odenda	458
28	Hon. M. Muthoni Mburu	312
29	Hon. Mafunga Wambulwa	376
30	Hon. Martha Rop	509
31	Hon. Mohamed Abdi Mohamed	106
32	Hon. Mohamed Kuti	80
33	Hon. Moses Naimodu	358
34	Hon. Munene O. J.	247
35	Hon. Mwalengo Haji Joel	246
36	Hon. Mwau Adelina Ndeto	218
37	Hon. Nduta Beatrice Kiarie	465
38	Hon. Njenga Karume	45
39	Hon. Noah Wekesa	207
40	Hon. Olweny P. Ayiecho	164
41	Hon. Opore Zebedeo	171
42	Hon. Peter E. Ejore	323

43	Hon. Peter Kyalo Kaindi	35
44	Hon. Phillip Ole Sironka	461
45	Hon. Phillip Rotino	178
46	Hon. Praxedas N. Wambua	297
47	Hon. Rajab Mwondi	440
48	Hon. Raphael Tuju	199
49	Hon. Raphael Wanjala	205
50	Hon. Robert Rukungah	621
51	Hon. Samuel Mwaura	604
52	Hon. Thomas Merengo	421
53	Hon. Wafula Sylvester	484
54	Hon. William Lopetakou	325
55	Hon. William Omondi Opondo	167
56	Hon. William S. Ole Yiaile	361
57	Hon. Yahya Faad Saleh	483

**Committee Staff:**

- 1.Draftsperson:
- 2.Assistant Programme Officers:
- 3.Clerk:
- 4.Verbatim Recorder:

Mrs. Lucy Masua  
Rukiah Mohammed and Jane Kabiru  
F. Abonyo  
Valeria Wanja

## **TECHNICAL WORKING COMMITTEE K**

### **Constitutional Commission and Amendments to the Constitution**

**Effective 1st October 2003**

**Convenor: Hon. Kiriro wa Ngugi, Delegate 320**

**Rapporteurs: Hon. Riunga Raiji, Delegate 567 and  
Hon. Keriako Tobiko, Delegate 569**

	<b>NAME</b>	<b>DELEGATE NUMBER</b>
1	Hon. A. Egwaton	4
2	Hon. Ajuoga Milka Aoko	514
3	Hon. Benson Mbai	98
4	Hon. G. G. Gichuru	313
5	Hon. J. B. Muturi	129
6	Hon. Jane Mutunga	288
7	Hon. John M. Mutiso	128
8	Hon. John Muchai Kiniti	352
9	Hon. Julius Sitienei	335
10	Hon. Kamama Asman	38
11	Hon. Kimayo Arap Sego	344
12	Hon. Kiriro Ngugi	320
13	Hon. Kirugi M' Mukindia	103
14	Hon. Leah Ndeke	276
15	Hon. Makau Mutua	584
16	Hon. Midiwo Washington J.	102
17	Hon. Moody Awori	10
18	Hon. Mungatana Danson	116
19	Hon. Newton Kulundu	78
20	Hon. Noor Ibrahim Abdi	256
21	Hon. P. Muiruri	113
22	Hon. Peter Kangethe Nkoroi	278
23	Hon. Ruth Kibiti	511
24	Hon. Thomas Nyabote Aburi	424

25	Hon. Zeruiya Otwani	437
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**Committee Staff**

1.Draftsperson:	None
2.Assistant Programme Officers:	Jonuba Bekah and Fred Oundo
3.Clerk:	J. N. Bundi
4.Verbatim Recorder:	Asha Boru

**TECHNICAL WORKING COMMITTEE L**

**Transitional Consequential Arrangements**

Effective 1st October 2003

Convenor: Hon. Joyce Majiwa, Delegate 501

Rapporteurs: Hon. Abida A. Aroni, Delegate 550 and

Hon. Bishop Bernard N. Kariuki, Delegate 559

	<b>NAME</b>	<b>DELEGATE NUMBER</b>
1	Hon. Albert Onyango Mitere	430
2	Hon. Apollo Njonjo	583
3	Hon. Beatrice Bariu	270
4	Hon. Christina C. Ng'eno	369
5	Hon. Christine Mango	93
6	Hon. David Kigen	349
7	Hon. David Okiya	377
8	Hon. Eric Kyalo Mutua	290
9	Hon. Eve Akinyi Obara	402
10	Hon. Felicity Irene Magut	342
11	Hon. Gachagua Nderi James	25
12	Hon. Gor Sungu	194
13	Hon. Grace Githaiga	469
14	Hon. Isaac K. Bungei	331
15	Hon. J. Nyaga Waruri	307
16	Hon. Joel Sang'	368
17	Hon. Joseph Attyang	409
18	Hon. Joseph Maritim Soo	370
19	Hon. Joseph Munyao	118
20	Hon. Joyce Majiwa	501

21	Hon. Judith Magundho	429
22	Hon. Kaparo F. O	223
23	Hon. Kipkoech Kiptongos	350
24	Hon. Kiraitu Murungi	124
25	Hon. Koech Sammy Cheruiyot	70
26	Hon. Koitamet Ole Kina	362
27	Hon. L. Wambui Muriuki	300
28	Hon. Lydia W. Kimani	282
29	Hon. Macharia Mukiri	115
30	Hon. Magara James Omingo	87
31	Hon. Margaret Kamar	507
32	Hon. Mariam Mwanyota	245
33	Hon. Martha Karua	44
34	Hon. Moses Cheboi	18
35	Hon. Moses Keter	334
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38	Hon. Najib Balala	13
39	Hon. Naomi Shaaban	188
40	Hon. Njuguna Kung'u	582
41	Hon. Peter Njeru Ndwiga	142
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44	Hon. Raila Odinga	155
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46	Hon. Ruth Oniang'o	221
47	Hon. S. Poghisio	176
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49	Hon. Soita Shitanda	191
50	Hon. Uhuru Kenyatta	49
51	Hon. Willy Mutunga	452
52	Hon. Zakayo M. Karimi	600

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# **TECHNICAL WORKING COMMITTEE M**

## **Culture**

**Effective 1st October 2003**

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**Rapporteur: Hon.Kavetsa Adagala, Delegate 563**

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21	Hon. Ombito Rita Katamu	381
22	Hon. Onyango R.P.	419
23	Hon. Rev Muchuga	226

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**APPENDIX C: CROSS CUTTING ISSUES WITH TRANSITIONAL AND CONSEQUENTIAL IMPLICATIONS**

**TWC A: PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES (Articles 1 – 15)**

Article 5(2) Adopted w/amendment	(2) <i>Parliament shall, within two years of the coming into force of the Constitution, enact legislation –</i>  <i>(a) necessary or expedient for bringing the existing law in conformity with the constitution;</i>  <i>(b) relating to the application of personal laws and resolution of conflicts in the application of these laws</i>
Article 7 (1) Adopted w/amendment	<i>“the territory of the Republic of Kenya shall be as determined under international law and international agreements;”</i>
Article 9 (3)	<i>“the state shall respect, protect and promote the development and use of indigenous languages and sign language.”</i>

**TWC B: CITIZENSHIP & BILL OF RIGHTS (Articles 16 – 75)**

Article 30(6)(b)	<i>“draft reports intended for submission to international bodies shall be published for a reasonable period of time and facilities shall be provided for the public to discuss and debate them before the reports are revised and submitted”</i>
Article 32(2) New clause	<i>“for the purposes of clause (1) the right to life commences on conception and subsists until death.”</i>



Article 32(3) New clause	<i>“it is not a violation of clause (1) if the termination of the life of an unborn child is caused or occasioned or occurs as the result of the act of a medical practitioner done in good faith and without negligence, if according to contemporary medical knowledge, ethics and practice, the act is necessary to save the life of the mother.”</i>
Article 34(1) Renumbered 34(1) (a)	<i>“the state shall not discriminate directly or indirectly against anyone on one or more grounds including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, language or birth.”</i>
Article 34(2) Renumbered 34(1) (b)	<i>“ a person shall not discriminate directly or indirectly against another person on one or more grounds in terms of clause (1)”</i>
New clause 34(1)(c)	<i>“discrimination means any distinction, exclusion or restriction made on the basis on one or more of the grounds specified at clause (1) which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by a person or a group of persons or the rights recognized in this chapter on the basis of equality.”</i>
Article 34(3) Renumbered 34(b)	<i>“the state shall take legislative and other measures including but not limited to programmes and policies for the affirmative action designed to individuals or groups who are disadvantaged, or not as a result of past discrimination, but any such measure shall -”</i>
Article 35(1) Adopted w/amendment	<i>“women and men have the right to equal treatment including the right to equal opportunities in cultural, political, economic and social activities.”</i>

<p>Article 36 Adopted w/amendment</p>	<p><i>“Article 36: Older members of Society</i></p> <p><i>(1) older members of society are entitled to continue to enjoy all the rights and freedoms set out in the bill of rights</i></p> <p><i>(2) the state shall by legislation and policy measures ensure the rights of older persons to –</i></p> <p><i>(a) participate fully in the affairs of society</i></p> <p><i>(b) pursue their personal development</i></p> <p><i>(c) be free from all forms of discrimination and abuse</i></p> <p><i>(d) live in dignity and respect</i></p> <p><i>(e) retain their social, economic and political autonomy; and</i></p> <p><i>(f) receive reasonable care and assistance of family and state.</i></p> <p><i>(3) older members of society, with the facilitation of the state, have a duty to plan for their old age</i></p> <p><i>(4) older members of society have a responsibility to share their knowledge and skills with others and to remain active in society</i></p> <p><i>(5) relevant ministries and complaints bodies including the commission on human rights and administrative justice shall take special care to deal with the issues affecting older members of society.</i></p> <p><i>(6) in this constitution, ‘older members of society’ means a person above the age of sixty years.</i></p> <p><i>(7) within two years of the coming into force of this constitution, parliament shall enact legislation to bring the provisions of this article into operation.”</i></p>
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<p><i>The Youth</i> New article 36A</p>	<p>(1) <i>The youth constitute an integral part of society and are entitled to enjoy all the rights and freedoms set out in the bill of rights, taking into account their unique needs.</i></p> <p>(2) <i>The state shall take the reasonable legislative and other measures including but not limited to affirmative action policies and programmes to promote the welfare of the youth.</i></p> <p>(3) <i>The measures referred to under clause (2) shall include but not be limited to measures to ensure for the youth-</i></p> <ul style="list-style-type: none"> <li><i>(a) access to quality and relevant education and training;</i></li> <li><i>(b) full participation in governance;</i></li> <li><i>(c) access to gainful employment;</i></li> <li><i>(d) adequate opportunities in the social, economic and other spheres of national life;</i></li> <li><i>(e) freedom of association to further their legitimate interests;</i></li> <li><i>(f) protection from any culture, custom or tradition that could undermine their dignity or their quality of life; and (g) a life free from discrimination, exploitation or abuse.</i></li> </ul> <p>(4) <i>Relevant ministries and complaints bodies including the commission on human rights and administrative justice shall take special care to equip themselves to understand and deal with the issues affecting the youth.</i></p> <p>(5) <i>In this constitution, youth refers to a woman or a man who has attained the age of eighteen years but is not above the age of twenty-five years.</i></p>
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Article 37 (1)	<i>“children hold a special place in society. It is the duty of their parents, wider family, society and the state to nurture, protect and educate them so that they can develop in a safe and stable environment in an atmosphere of happiness, love, respect and understanding and be able to fulfill their full potential in all respects: physically, intellectually, psychologically and spiritually, for the benefit of themselves and society as a whole”</i>
Article 37 (3)	<i>“a child’s best interests shall be of paramount importance in every matter concerning the child.”</i>
Article 37(5)(m)	<i>“ be treated in a manner and to be kept into conditions that take into account of the child’s gender, disability and age and status;”</i>
Article 37(5)(n)	<i>“ have a legal practitioner assigned to the child by the state and at the state expense in proceedings affecting the child; and”</i>
Article 38 (3)(a)	<i>“every person who is at least eighteen years of age has the right to marry a person of the opposite sex.”</i>
Article 38 (4)	<i>“parties to a marriage are equally entitled to equal rights as to the marriage, during the marriage and at the dissolution of their marriage”</i>
Article 39(1)	<i>“persons with disability are entitled to enjoy all the rights and freedoms set out in this bill of rights and to be full participants in society”</i>
Article 39(2)(c)	<i>“ensure that education institutions and facilities for disabled persons are integrated into society as a whole is compatible with their interests.”</i>
Article 39(2)(d)	<i>“ensure access to housing for use by the public, places to public transport and to information and communications to persons with disabilities, sufficient to overcome physical and other barriers to access”</i>
Article 39(2)(e)	<i>“develop and ensure the use of sign language”</i>

Article 39(2)(f)	<i>“remove from official usage in any language words that are demeaning when applied o persons with disabilities, and to encourage the same in private use of language;”</i>
Article 39(2)(g)	<i>“provide for inclusion and the participation of the persons with disabilities indecision making at all levels.”</i>
Article 39(2)(h)	<i>“facilitate the acquisition of materials, facilities and devices to enable the persons with disability to overcome constraints due to their disability.”</i>
New clause 39(2)(i)	<i>“giving persons with disabilities equal rights to the rights of persons without disabilities”</i>
New clause 39(2)(j)	<i>“requiring parliament to pass legislation on persons with disabilities and bring it into operation within one year.”</i>
Article 39(3)	<i>“legislation and policy measures provided for in clause (2) shall make special provision for women with disability.”</i>
Article 39(5) New clause	<i>Within one year of the coming into force of this constitution, parliament shall enact legislation to bring the provisions of this article into operation.</i>

<p>New clause 39 (a)</p>	<p><i>(2) minorities and other historically marginalized groups are entitled to enjoy all the rights and freedoms set out in this bill of rights on a basis of equality, taking into account their special circumstances and needs.</i></p> <p><i>(3) the state shall by policy, legislation and other measures, put in place affirmative action programmes, including but not limited to equalization measures designed to minorities and other historically marginalized groups.</i></p> <p><i>(4) the measures referred to under clause (2) shall include but not be limited to measures to ensure that minorities and other historically marginalized groups-</i></p> <ul style="list-style-type: none"> <li><i>(a) Participate and are fully represented in governance and in all other spheres of national life</i></li> <li><i>(b) Are accorded special opportunities in the educational and economic fields</i></li> <li><i>(c) Are accorded special opportunities for access to gainful employment</i></li> <li><i>(d) Are assisted to develop their cultural practices, languages and practices and</i></li> <li><i>(e) Are assisted to acquire the ancestral which they occupy</i></li> <li><i>(f) Live a life free from discrimination, exploitation or abuse</i></li> </ul> <p><i>(5) relevant ministries and complaint bodies including the commission on human rights and administrative justice shall take special care to equip themselves to understand and deal with issues affecting minorities and other historically marginalized groups.</i></p> <p><i>(6) in this constitution” minorities and other historically marginalized groups” includes, but is not limited to hunter gatherers, nomadic pastoralists, pastoralists, fishing communities and any other groups who have become marginalized because of their social setting or way of life.</i></p>
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**TWC C: REPRESENTATION OF THE PEOPLE (Articles 76 – 100)**

Article 76(5) Renumbered	<i>“elections shall ensure fair representation of women, persons with disability, workers through the labour movement and marginalized communities and for that purpose the state shall take the necessary affirmative action measures.”</i>
Article 76(6) Renumbered	<i>“elections shall be conducted by an independent body free from political or any other form of interference.”</i>
Article 76(7) New clause	<i>“elections shall ensure inter-generational equity.</i>
Article 76(8) New clause	<i>“all those in elective offices shall serve for two terms and may seek re-election after a five-year break.”</i>
Article 78(2)	<i>“administrative arrangements for the registration of voters and the conduct of elections shall not deny a citizen’s right to vote and stand for election and shall include a system of continuous registration and civic education”</i>
Article 78(3) New clause	<i>“voting shall ensure that the provision of article 44(2) of the draft bill with regard to observing a day of worship shall not be violated”</i>
Article 81(b)	<i>“where the ballot box is used it shall be transparent.”</i>
Article 81(d) New clause	<i>“the results from the polling stations are transparently and accurately collated and announced by the returning officer.”</i>
Article 81(e) New clause	<i>“special arrangements are made to accord members of the armed forces, police, staff of diplomatic missions, those living or working abroad, prisoners, election officials, and those admitted in hospitals an opportunity to vote.”</i>

Article 81(f) New clause	<i>“appropriate structures and mechanisms to eliminate all forms of electoral malpractices are put in place, including the safe-keeping of all election materials.”</i>
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**TWC F:     LEGISLATURE (Articles 101 – 147)**

Article 102(2)(k) New clause	<i>“ensuring the implementation by the government of equity in distribution of national resources and opportunities among all the component communities and regions of the Republic”</i>
Article 102(2)(l) New clause	<i>“reviewing and approving all agreements on technical services, licences, loans and grants to the Republic before signing of the same by the government</i>
Article 103(3)(n) New clause	<i>“Public Service Commission”</i>
Article 103(3)(o) New clause	<i>“ Electoral Commission”</i>
Article 103(3)(p) New clause	<i>“other Constitutional Commissions”</i>
Article 103 (4)(k) New clause	<i>Heads /Chairperson of State Corporations</i>
Article 104(1)(a) New clause	<i>“approving all imposition of taxation and authorizing all waivers of the taxes, and”</i>



Article 106 Members of National Council	Deferred pending consideration of Chapter Ten by the Devolution Committee
Article 107 Members of National Assembly	Deferred pending consideration of Chapter Ten by the Devolution Committee
Article 109 Representation of Woman	Deferred pending the consideration of Chapter Ten by the Devolution Committee
Article 110(1)(a)	<i>“an election of members of the National Council shall be held on a Tuesday at least forty-five days before the expiration of the term of the Council.”</i>
Article 110(1)(b)	<i>“an election of members of the National Assembly shall be held on a Tuesday at least forty-five days before the expiration of the term of the Assembly.”</i>
Article 110(2)	<i>“Whenever a vacancy arises in Parliament, in respect of a constituency, the Speaker of the respective House shall notify the Electoral Commission in writing within twenty-one days after the vacancy has occurred; and a by-election shall be held On a Tuesday within ninety days after the vacancy has occurred.”</i>
Article 112(2)(b)	<i>“fail to comply with the Leadership and Integrity code of conduct prescribed under Chapter Sixteen”</i>
Article 112(3)	<i>“The recall of a member of Parliament shall be initiated by a petition in writing, setting out the grounds relied on, and signed by at least Fifty per cent of the registered voters of the constituency, and shall be delivered to the appropriate Speaker.”</i>
Article 112(4)	<i>“On receipt of the petition, the Speaker shall, within seven days, require the Electoral Commission to conduct a public inquiry into the matters alleged in the petition, and the Electoral Commission shall expeditiously conduct the necessary inquiry and report its findings to the Speaker within ninety days.”</i>

Article 116(2) Deleted	<i>“If a member of the National Assembly is elected Speaker, he or she shall resign from the Assembly and a by-election shall be held to fill the vacancy.”</i>
Article 121(2) Adopted w/o amendment	<i>“A member of Parliament shall not hold any office of profit or engage in an activity likely to compromise the member’s office.”</i>
Article 122(1)(a) Adopted w/amendment	<i>122. (1) The High Court shall have power to hear and determine within one year any question whether – (a) any person has been validly elected or nominated as a member of Parliament or the seat of any member has become vacant;</i>
Article 122(1)(b) Deleted	<i>“any person has been validly elected as speaker or Deputy Speaker or, having been so elected, has vacated the office of Speaker or Deputy Speaker.”</i>
Article 122(2) Adopted w/o amendment	<i>“An appeal from the determination of the High Court under this Article shall lie to the Court of Appeal”</i>

<p>Article 123(1) - (5) Adopted w/o amendment</p>	<p><i>(1) Parliament shall exercise its legislative power by Bills passed by Parliament and assented to by the President.</i></p> <p><i>(2) A Bill may originate in either House but a money Bill may originate only in the National Assembly.</i></p> <p><i>(3) When a Bill has been passed by the House in which it originated, it shall be sent to the other House.</i></p> <p><i>(4) When it has been passed by the other House and an agreement has been reached between the two Houses on any amendments made in it, it shall be presented to the President for assent by the Speaker of the House in which the Bill originated.</i></p> <p><i>(5) In this Article, “money Bill” means a Bill that contains only provisions dealing with-</i></p> <ul style="list-style-type: none"> <li><i>(a) the imposition, repeal, remission, alteration or regulation of taxes;</i></li> <li><i>(b) the imposition of charges on the Consolidated Funds or any other Fund of the Government of Kenya or the variation or repeal of any such charges;</i></li> <li><i>(c) the grant of money to any person or authority or the variation or revocation of such grant;</i></li> <li><i>(d) the appropriation, receipt, custody, investment, issue or audit of accounts of public money;</i></li> <li><i>(e) the raising or guaranteeing of any loan or the repayment thereof; or</i></li> </ul> <p><i>subordinate matters incidental to any of those matters.</i></p>
<p>Article 123(6) Adopted w/ amendment</p>	<p><i>In clause (5), the expressions tax, public money, and loan do not include any taxes, money or loans raised by devolved government</i></p>

**TWC E:     THE JUDICIARY (Articles 184 – 212)**

Article 185 (3)(c) Adopted w/amendment	<i>“any traditional or local tribunals, that may be established by an Act of Parliament”</i>
Article 198 Adopted w/ amendment	<i>“Parliament may, by an Act of Parliament, establish courts martial and other courts subordinate to the High Court that shall have, subject to the Constitution, the jurisdiction and functions conferred on them by the Act or any other law.</i>
Article 186 (5)	Deleted and referred to TWC B for consideration under Article 67
Article 186 (6) Deleted	<i>The Salaries and Remuneration Commission shall ensure that the emoluments and terms of conditions of service encourage and enhance the integrity and independence of the Judiciary.</i>

**TWC J:     LAND RIGHTS AND ENVIRONMENT (Articles 232 – 242)**

Article 235(4) Adopted w/ amendments	<i>To include a clause that shall subject the government to enact this bill within two years failure to which it shall be sueable (actionable) by an individual or community and the state shall bear the cost.</i>
Article 235 (4)(a)(vi) Adopted w/ amendment	<i>“The establishment of an efficient and cost effective physical planning and land administration system including the establishment of land courts in the context of devolved authorities”</i>
Article 235 (4)(a)(ix) New Clause	<i>“The establishment of land bank to facilitate availability and accessibility of land for research and development”</i>

Article 235(4)(b) Adopted with amendment	<i>“Enact a verification and validation law.”</i>
Article 235 (4)(b)(ii) New Clause	<i>“Review the boundaries and management of national parks and animal sanctuaries with the view to creating opportunities and benefits for the local people in the context of devolved government;”</i>
Article 235 (4)(b)(iii) Renumbered	<i>Parliament in consultation with devolved authorities shall determine the cut-off date with reference to which the review required in paragraph .iii) is to be conducted.</i>
Article 235 (4)(c) New Clause	<i>“Equitable sharing of the benefits accruing from public or private exploitation of natural resources between the local communities, devolved authorities and the central government. “</i>
Article 236(2)(c ) Adopted w/amendment	<p><i>” Provision is made by a law applicable to that acquisition or taking of possession for the prompt payment prior to occupation of such land of:-</i></p> <p style="padding-left: 40px;"><i>(i) Full and fair compensation in the form of comparable land or equivalent monetary compensation and;</i></p> <p style="padding-left: 40px;"><i>(ii) A disturbance allowance equivalent to 80% of the market value of the land.</i></p> <p><i>Provided that bona fide occupants of the land acquired will also be entitled to compensation even if they do not have title deeds.”</i></p>
Article 236(3)(b) New clause	<i>“regulate the use of urban land in a more intensive manner according to the principles of sustainable development and sound urban planning and to review the relevant standards and criteria every ten years in consultation with devolved government”.</i>

**TWC H: PUBLIC FINANCE, PUBLIC SERVICE LEADERSHIP AND INTEGRITY (Articles 243 – 270 and 276 – 277)**

Article 258 (i) Adopted w/ amendment	<i>“adequate and equal opportunities for appointments, training and advancement of men and women and the members of all ethnic groups; and”</i>
Article 258(j) Adopted w/ amendment	<i>“notwithstanding paragraph (h), reflection of ethnic composition, people with physical disabilities and other minorities of the population in the composition of the public service at all levels”</i>
Article 259(1) Adopted w/ amendment	<i>“There is established a Commission to be known as Public Service Commission.”</i>
Article 259(2) Adopted w/ amendment	<i>“The Commission shall consist of a Chairperson and other eight members appointed by the President with the approval of the National Council”</i>
Article 259(3) Adopted w/o amendment	<i>“A member of the Commission shall hold office for a term of five years and is eligible for reappointment for one further term.”</i>
New clause 259(4)	<i>“There shall be a secretary of the Commission who shall be appointed by the President on the recommendation of the Public Service Commission and with the approval of the National Assembly.”</i>
New clause 259(5)	<i>“The secretary of the Commission shall hold office for a term of five years and shall be eligible for re-appointment for only one further term.”</i>
Article 260(1) Adopted w/amendment	<i>“Subject to clause (1A) The powers and functions of the Commission are-”</i>

New clause	<i>“to hear and determine appeals from the Devolved Governments”</i> (To replace one of the deleted clauses)
New clause	<i>Include a provision that gives powers to the Commission to delegate any of its functions under Article 260 to any one or more of its members, officer or authority in the Public Service.</i>
Article 260(2) Adopted w/amendment	<i>“Parliament shall enact legislation for the better functioning of the Commission.”</i>
Article 261(1) Adopted w/amendment	<i>“Except where there is a contrary provision in this Constitution, the power to constitute offices for the Republic and the power to abolish any such offices shall vest in the Public Service Commission”</i>
Article 262(2) Adopted w/amendment	<i>“Except with the consent of the President, no personal shall be appointed under this Article to act in any office on the personal staff of the retired Presidents.</i>
Article 268(3) Adopted w/amendment	<i>“the functions of Kenya Correctional Service shall take into account the structure of Devolution.”</i>

<p>Article 269 Adopted w/amendment</p>	<p><i>(1) There shall be created an office of the Director General.</i></p> <p><i>(2) The President, on the advice of the Prime Minister and after approval by the national Assembly, shall appoint the Director General of the Kenya Correctional Services.</i></p> <p><i>(3) No person may be appointed as the Director General of the Kenya Correctional Service unless that person;</i></p> <ul style="list-style-type: none"><li><i>(a) holds a degree from a recognized university,</i></li><li><i>(b) has served in the Kenya Correctional Service for at least ten years, or</i></li><li><i>(c) has wide experience in the management and administration of Correctional Service.”</i></li></ul> <p><i>(4) The power to appoint persons to hold or act in offices in the Kenya Correctional Service (except the office of the Director General), including the power to confirm appointments, the power to exercise disciplinary control over person holding or acting in those offices and the power to remove those persons from office shall vest in the Public Service Commission.</i></p> <p><i>(5) The Director General of Correctional Service shall hold office for a term of five years but shall be eligible for reappointment for one further term only.</i></p> <p><i>(6) The Director General shall submit annual to the Minister in charge of Correctional Service.</i></p>
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**TWC I: DEFENCE AND NATIONAL SECURITY (Articles 271 – 275)**

<p>Article 272(1) Adopted w/amendment</p>	<p><i>There is established a National Security Council consisting of:</i></p> <ul style="list-style-type: none"><li><i>(a) The President</i></li><li><i>(b) The Vice President</i></li><li><i>(c) The Prime Minister</i></li><li><i>(d) Minister in charge of Defence</i></li><li><i>(e) The Chief of General Staff</i></li><li><i>(f) The Inspector General of Police</i></li><li><i>(g) Director of National Security Intelligence Service</i></li><li><i>(h) The Minister in charge of Internal Security</i></li><li><i>(i) The Minister responsible for Foreign Affairs</i></li></ul>
<p>Article 272(2) Adopted w/amendment</p>	<p><i>The President shall preside at the meeting of the Council, and, in the absence of the President, the Vice-President, and in the Vice-President, the Prime Minister shall preside.</i></p>

**TWC K:      CONSTITUTIONAL COMMISSIONS AMENDMENTS TO THE CONSTITUTION AND INTERPRETATION**

(Articles 278 – 297)

<p>Article 281(2) Adopted w/ amendment</p>	<p><i>“The chairperson and other members of a Constitutional Office shall be-</i></p> <ul style="list-style-type: none"><li><i>(a) identified and recommended in the manner prescribed by an Act of Parliament as provided for under Article 289 (2)(g)</i></li><li><i>(b) appointed by the President</i></li><li><i>(c) approved by Parliament”</i></li></ul>
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**APPENDIX D: LIST OF INDIVIDUALS OR INSTITUTIONS  
PROVIDING INPUT TO TECHNICAL WORKING COMMITTEES  
DURING BOMAS II**

- TWC: A - Prof. Walter O. Oyugi on theories of government  
- Prof. Isaac Were on religion
- TWC: B - None
- TWC: C - John M. Kangu on Mixed Member Proportional Systems  
- Mr. Gabriel Mukele - Commissioner of the Electoral Commission on the Electoral System  
- Francis Atwoli on the Labour Movement  
- Ms. Koki Muli on Representation of the people  
- Mr. Francis Angila Representation of the People and Legislature
- TWC: D - Prof. Walter O. Oyugi on systems of government
- TWC: E - Mr. Orao Obura on Judiciary  
- Mr. Gerishon Konditi on Judiciary  
- Mr. Abisai O. Ombege on Judiciary
- TWC: F - None
- TWC: G - None
- TWC: H - Ms. Betty Maina on Public Finance, Public Service and Leadership and Integrity  
- Mr. Dennis Kabaara on Public Finance, Public Service and Leadership and Integrity  
- Mr. S. G. Siambi on Public Finance, Public Service and Leadership and Integrity and Constitutional Commissions  
- Eng. A. H. M. Sharawe on Public Finance, Public Service and Leadership and Integrity and Constitutional Commissions
- TWC: I - Lt-General (Rtd) John Arap Sawe on structure of defence forces
- TWC: J - Institution of Surveyors of Kenya

- Prof. Charles Odidi Okidi on Land and Environment
  - Dr. Albert Mumma on Land and Environment
  - Mr. Maurice McOloo on Land and Environment
- TWC: K
- Prof. Yash Pal Ghai on general principles of transition
  - Eng. A. H. M. Sharawe on Public Finance, Public Service and Leadership and Integrity and Constitutional Commissions
  - Mr. S. G. Siambi on Public Finance, Public Service and Leadership and Integrity and Constitutional Commissions
  - Mr. Joab Okaka Manyala on Constitutional Commissions
  - Mr. Abuya Abuya on Constitutional Commissions
  - Mr. Nathaniel Chebelion on Constitutional Commissions
- TWC: L
- Prof. Y. P. Ghai on general principles of transition
  - Prof. H. W. O. Okoth-Ogendo on general principles of transition
  - Prof. Macharia Munene on the social implications of transition
  - Mr. Karira and Mr. Kibara on the financial implications of transition
  - Mrs. Margaret Ndaula on the legal implications of transition
- TWC: M
- Mr. Isaac Were on Culture in General
  - Ms. Monica Opole on Indigenous Plants
  - Mr. Dennis Akumu on issues of Culture at Lancaster House

## APPENDIX E: DETAILED PROGRESS IN TECHNICAL WORKING COMMITTEES

### TWC A: PREAMBLE, SUPREMACY OF THE CONSTITUTION, THE REPUBLIC AND NATIONAL GOALS, VALUES AND PRINCIPLES (Articles 1 – 15)

Paragraph 1	Adopted w/o amendment
Paragraph 2	Deferred
Paragraph 3	Deferred
Old paragraph 2	Adopted w/o amendment
Old paragraph 3	Adopted w/o amendment
Old paragraph 4	Adopted w/ amendment –by inserting the words ”aged, youth and persons with disabilities” <b><u>Now reads</u></b> <i>“recognising the aspirations of our women and men, aged, youth and persons with disabilities for a government based on the essential values of freedom, democracy, social justice and rule of law;”</i>
Old paragraph 5	Adopted w/o amendment
Old paragraph 6	Adopted w/o amendment
Old paragraph 7	Adopted w/ amendment –added the words “ <b>our country</b> ” <b><u>Now reads</u></b> <i>“God bless our country KENYA”</i>
Article 1(1)	Adopted w/o amendment
Article 1(2)	Adopted w/o amendment.
Article 1	Deferred
Article 1	Old sub-article (3) and (4) to be renumbered
Article 2(1)	Adopted w/o amendment
Article 2(2)	Adopted w/o amendment

Article 2(3)	Deferred
Article 2(4)	Adopted w/ amendment – by adding the word “null” <b><u>Now reads</u></b> <i>“a law which is inconsistent with the constitution is null and void, to the extent of the inconsistency.”</i>
Article 2(5)(a)	Adopted w/ amendment –by adding the word “principles” <b><u>Now reads</u></b> <i>“that promotes the values and principles of good governance”</i>
Article 2(5)(b)	Adopted w/o amendment
Article 2(5)(c)	Adopted w/ amendment – deleted the word “creative” <b><u>Now reads</u></b> <i>“that permits the development of the provisions of the constitution and the common law of Kenya”</i> or adding the word “positive” <i>“that permits the creative positive development of the provisions of the constitution and the common law of Kenya.”</i>
Article 2(5)(d)	Deferred
Article 2(6)	Deferred
Article 3	Deferred
Article 4	Deferred
Article 5(1)	Adopted w/ amendment- deleted “the laws of Kenya” <b><u>Now reads</u></b> <i>“sources of the laws of Kenya”</i>
Article 5(1)(a)	Adopted w/o amendment
Article 5(1)(b)	Adopted w/o amendment

Article 5(1)(c)	Adopted w/amendment –  <b><u>Now reads</u></b>  <b><i>“personal laws of the peoples of Kenya”</i></b>
Article 5(1)(d)	Deleted & merged into <b><i>clause 5(1)(c)</i></b>
Article 5(1)(e)	Adopted w/o amendment – Renumbered becomes <b><i>clause 5(1)(d)</i></b>
Article 5(1)(f)	Adopted w/o amendment – Renumbered becomes <b><i>clause 5(1)(e)</i></b>
Article 5(1)(g)	Adopted w/o amendment – Renumbered becomes <b><i>clause 5(1)(f)</i></b>
Article 5(2)	Adopted w/ amendment - reformatted and renumbered becomes clause (5)(2)(a)  <b><i>(3) Parliament shall, within two years of the coming into force of the constitution, enact legislation –</i></b> <b><i>(a) necessary or expedient for bringing the existing law in conformity with the constitution;</i></b> <b><i>(b) relating to the application of personal laws and resolution of conflicts in the application of these laws.</i></b>
Article (5)(2)(b)	New clause  <b><i>(b) relating to the application of personal laws and resolution of conflicts in the application of these laws.”</i></b>
Article 6(1)	Adopted w/o amendment
Article 6(2)	Adopted w/o amendment

Article 7 (1)	Adopted w/ amendment - deleted “comprises the area described in the first schedule” and replaced with “shall be as determined under international law and international agreements”  <b><u>Now reads</u></b>  <i>“the territory of the republic of Kenya shall be as determined under international law and international agreements;”</i>
Article 7 (2)	Adopted w/ amendment-deleted “districts and provinces” and replaced with word “units”  <b><u>Now reads</u></b>  <i>“the republic is divided into such units as proposed in the second schedule;”</i>
Article 7 (3)	Adopted w/o amendment
Article 7 (4)	Deleted the entire clause
Article 8 (1)	Adopted w/o amendment
Article 8 (2)	Adopted w/o amendment
Article 8 (3)	Adopted w/amendment – deleted word “provinces” and replaced with word “units”  <b><u>Now reads</u></b>  <i>“it shall be the policy of the state to decentralize the headquarters of national government departments and national public institutions to all the units equitably.”</i>
Article 9 (1)	Adopted w/o amendment
Article 9 (2)	Adopted w/o amendment
Article 9 (3)	Adopted w/ amendment – deleted the words “Kiswahili” and “Braille”  <b><u>Now reads</u></b>  <i>“the state shall respect, protect and promote the development and use of indigenous languages and sign language.”</i>



**TWC B:      CITIZENSHIP & BILL OF RIGHTS (Articles 16 – 75)**

Article 16 (a)	Adopted w/o amendment
Article 16 (b)	Adopted w/o amendment
Article 16 (c)	Adopted w/ amendment - inserted the word “registration” before the word “identification”. <b><u>Now reads</u></b> <i>“ equally entitled to a Kenyan passport and to any document of registration and identification”</i>
Article 17(1)	Adopted w/o amendment
Article 17(2)	Misplaced, will be moved to an appropriate place in the bill
Article 18	Adopted w/o amendment
Article 19(1)(2)	Adopted w/o amendment
Article 20(1)	Adopted w/ amendment deleted “three years” and replace with “seven years” <b><u>Now reads</u></b> <i>“a person who has been married to a citizen for a Kenya for a period of not less than seven three years.”</i>
Article 20(2)	Adopted w/o amendment
Article 21	Adopted w/o amendment
Article 22(1)	Deleted
Article 22(2)	Should be renumbered as article 22(1)
Article 23	Deferred
Article 24	Adopted w/ amendment – “unlawful means” deleted. <b><u>Now reads</u></b> <i>“a person may be deprived of the citizenship of Kenya only if the person acquired citizenship by means of fraud, false representation, concealment of any material fact.”</i>

Article 25	Deferred for drafts person to reword heading
Article 26(1)(2)	Adopted w/o amendment
Article 27	Deferred
Article 28	Deleted
Chapter 4	The chapter title “Citizenship” adopted w/o amendment
Article 29 (1)	Adopted w/o amendment
Article 29 (2)	Adopted w/ amendment – inserted word “substantive” before “social justice”  <b><u>Now reads</u></b>  <i>“the purpose of human rights..... Is to preserve the dignity of the individuals and communities and to promote substantial social justice.....”</i>
Article 30(1)	Adopted w/o amendment
Article 30(2)	Adopted w/ amendment – replaced “is” with “shall be”  <b><u>Now reads</u></b>  <i>“it shall be the primary duty of every state organ to give effect to clause (1) wherever that state organ -”</i>
Article 30(2) (a)(b)(c)	Adopted w/o amendment
Article 30(3)	Deferred
Article 30(4)	Deferred
Article 30(5)	Adopted w/amendment – inserted the word “provide” with either the word “enabling environment” or “facilitate”
Article 30(6)(a)	Adopted w/ amendment – drafts person to identify an appropriate expression in place of “treaties”.
Article 30(6)(b)	Adopted with amendment – deleted “two months” and inserted “reasonable time”  <b><u>Now reads</u></b>  <i>“draft reports intended for submission to international bodies shall be published for a reasonable period of time and facilities shall be provided for the public to discuss and debate them before the reports are revised and submitted”</i>

Article 30(6)(c)(d)	Adopted w/o amendment
Article 31	Adopted w/o amendment
Article 32 (1)	Adopted w/amendment <b><u>Now reads</u></b> <i>“every person has the right to life”</i>
Article 32(2) Old clause renumbered to become 32(4)	Adopted w/o amendment –
Article 32(2)	New clause <i>“for the purposes of clause (1) the right to life commences on conception and subsists until death.”</i>
Article 32(3)	New clause <i>“it is not a violation of clause (1) if the termination of the life of an unborn child is caused or occasioned or occurs as the result of the act of a medical practitioner done in good faith and without negligence, if according to contemporary medical knowledge, ethics and practice, the act is necessary to save the life of the mother.”</i>
Article 33	Adopted w/o amendment
Article 34(1) Renumbered 34(1) (a)	Adopted w/ amendment – deleted the word “unfairly” also insert the words “health status” as one of the grounds <b><u>Now reads</u></b> <i>“the state shall not discriminate directly or indirectly against anyone on one or more grounds including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, language or birth.”</i>

<p>Article 34(2) Renumbered 34(1) (b)</p>	<p>Adopted w/ amendment – deleted the word “unfairly”</p> <p><b><u>Now reads</u></b></p> <p><i>“ a person shall not discriminate directly or indirectly against another person on one or more grounds in terms of clause (1)”</i></p>
	<p>New clause 34(1)(c)</p> <p><i>“discrimination means any distinction, exclusion or restriction made on the basis on one or more of the grounds specified at clause (1) which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by a person or a group of persons or the rights recognized in this chapter on the basis of equality.”</i></p>
<p>Article 34(3) Renumbered 34(b)</p>	<p>Adopted w/ amendment – inserted “including but not limited to programmes and policies of affirmative action “after the word” measure and delete the word “may”, and inserted the word “shall”.</p> <p><b><u>Now reads</u></b></p> <p><i>“the state shall take legislative and other measures including but not limited to programmes and policies for the affirmative action designed to individuals or groups who are disadvantaged, or not as a result of past discrimination, but any such measure shall -”</i></p>
<p>Article 35(1)</p>	<p>Redrafted</p> <p><b><u>Now reads</u></b></p> <p><i>“ women and men have the right to equal treatment including the right to equal opportunities in cultural, political, economic and social activities.’</i></p>
<p>Article 35(2)–(5)</p>	<p>Adopted w/ amendment</p>

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|  | <p><i>(3) members of society, with the facilitation of the state, have a duty to plan for their old age.</i></p> <p><i>(4) older members of society have a responsibility to share their knowledge and skills with others and to remain active in society.</i></p> <p><i>(5) relevant ministries and complaints bodies including the commission on human rights and administrative justice shall take special care to deal with the issues affecting older members of society.</i></p> <p><i>(6) in this constitution, 'older members of society' means a person above the age of sixty years.</i></p> <p><i>(7) within two years of the coming into force of this constitution, parliament shall enact legislation to bring the provisions of this article into operation."</i></p> |
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	<p>New article 36A – the youth</p> <p>(4) <i>The youth constitute an integral particle of society and are entitled to enjoy all the rights and freedoms set out in the bill of rights, taking into account their unique needs.</i></p> <p>(5) <i>The state shall take the reasonable legislative and other measures including but not limited to affirmative action policies and programmes to promote the welfare of the youth.</i></p> <p>(6) <i>The measures referred to under clause (2) shall include but not be limited to measures to ensure for the youth- (a) access to quality and relevant education and training; (b) full participation in governance; (c) access to gainful employment; (d) adequate opportunities in the social, economic and other spheres of national life; (e) freedom of association to further their legitimate interests; (f) protection from any culture, custom or tradition that could undermine their dignity or their quality of life; and (g) a life free from discrimination, exploitation or abuse.</i></p> <p>(7) <i>Relevant ministries and complaints bodies including the commission on human rights and administrative justice shall take special care to equip themselves to understand and deal with the issues affecting the youth.</i></p> <p>(8) <i>In this constitution, youth refers to a woman or a man who has attained the age of eighteen years but is not above the age of twenty-five years.</i></p> <p>Note: refer to twc transition &amp; consequential arrangements – requires legislation</p>
Article 37 (1)	<p>Adopted w/ amendment – deleted “emotionally” and inserted word “psychologically”</p> <p><b><u>Now reads</u></b></p> <p><i>“children hold a special place in society. It is the duty of their parents, wider family, society and the state to nurture, protect and educate them so that they can develop in a safe and stable environment in an atmosphere of happiness, love, respect and understanding and be able to fulfill their full potential in all respects: physically, intellectually, psychologically and spiritually, for the benefit of themselves and society as a whole”</i></p>
Article 37 (2)	Adopted w/o amendment

Article 37 (3)	Adopted w/ amendment – deleted “are” and inserted “shall be” <b><u>Now reads</u></b> <i>“a child’s best interests shall be of paramount importance in every matter concerning the child.”</i>
Article 37(4)	Adopted w/o amendment
Article 37(5) (a) – (o)	Adopted w/ amendment - renumbered using roman numbers
Article 37(5)(m)	Adopted w/ amendment – inserted “disability” after “gender” and inserted “status” after “age” <b><u>Now reads</u></b> <i>“ be treated in a manner and to be kept into conditions that take into account of the child’s gender, disability and age and status;”</i>
Article 37(5)(n)	Adopted w/ amendment – deleted the words “if injustice would otherwise result” <b><u>Now reads</u></b> <i>“ have a legal practitioner assigned to the child by the state and at the state expense in proceedings affecting the child; and”</i>
Article 37(7) Renumbered Article 37(6)	Adopted w/o amendment
Article 37(8) <b>Renumbered Article 37(7)</b>	Adopted w/o amendment
Article 37(9) <b>Renumbered Article 37(8)</b>	Adopted w/ amendment – replaced the words ‘this article’ with “in this constitution.” <b><u>Now reads</u></b> <i>“in this constitution “child” means a person under the age of eighteen years.”</i>
Article 38(1)& (2)	Adopted w/o amendment

Article 38 (3)(a)	Adopted w/ amendment – inserted “a person of the opposite sex” after “marry” <b><u>Now reads</u></b> <i>“every person who is at least eighteen years of age has the right to marry a person of the opposite sex.”</i>
Article 38 (3)(b)	Adopted w/o amendment
Article 38 (4)	Adopted w/ amendment – deleted the words “in the marriage” and inserted “as to the marriage” <b><u>Now reads</u></b> <i>“parties to a marriage are equally entitled to equal rights as to the marriage, during the marriage and at the dissolution of their marriage”</i>
Article 38 (5)(a) & (b)	Adopted w/o amendment
Article 39(1)	Adopted w/ amendment – deleted the words “and to fully participate in society as they are able” and inserted “to be full participants in society” <b><u>Now reads</u></b> <i>“persons with disability are entitled to enjoy all the rights and freedoms set out in this bill of rights and to be full participants in society”</i>
Article 39(2)(a) & (b)	Adopted w/o amendment
Article 39(2)(c)	Adopted w/ amendment – deleted the words “disabled persons” and inserted “their” before “interest” <b><u>Now reads</u></b> <i>“ensure that education institutions and facilities for disabled persons are integrated into society as a whole is compatible with their interests.”</i>



Article 39(2)(d)	<p>Adopted w/ amendment – inserted “to housing for use by the public” before “places”</p> <p><b><u>Now reads</u></b></p> <p><i>“ensure access to housing for use by the public, places to public transport and to information and communications to persons with disabilities, sufficient to overcome physical and other barriers to access”</i></p>
Article 39(2)(e)	<p>Adopted w/ amendment – deleted the words “encourage the development” and inserted “develop” and inserted “ensure the” after “use”</p> <p><b><u>Now reads</u></b></p> <p><i>“develop and ensure the use of sign language”</i></p>
Article 39(2)(f)	<p>Adopted w/ amendment – deleted the words “require” and inserted “encourage”</p> <p><b><u>Now reads</u></b></p> <p><i>“remove from official usage in any language words that are demeaning when applied o persons with disabilities, and to encourage the same in private use of language;”</i></p>
Article 39(2)(g)	<p>Adopted w/ amendment – deleted the words “disabled persons” and inserted “persons with disabilities” and inserted “inclusion and” after “provide for”</p> <p><b><u>Now reads</u></b></p> <p><i>“provide for inclusion and the participation of the persons with disabilities indecision making at all levels.”</i></p>
Article 39(2)(h)	<p>Adopted w/ amendment – deleted the words “disabled persons” and inserted “persons with disabilities” and inserted “facilities” after “materials”</p> <p><b><u>Now reads</u></b></p> <p><i>“facilitate the acquisition of materials, facilities and devices to enable the persons with disability to overcome constraints due to their disability.”</i></p>

	New clause 39(2)(i) <i>“giving persons with disabilities equal rights to the rights of persons without disabilities”</i>
	New clause 39(2)(j) <i>“requiring parliament to pass legislation on persons with disabilities and bring it into operation within one year.”</i>
Article 39(3)	Adopted w/ amendment – deleted the words “wherever appropriate” <b><u>Now reads</u></b> <i>“legislation and policy measures provided for in clause (2) shall make special provision for women with disability.”</i>
Article 39(4)	Adopted w/ amendment – deleted the words “article” and inserted ‘constitution’ and delete ‘mental’ and insert “psychological” <b><u>Now reads</u></b> <i>“for the purpose of this constitution ‘disability’ includes any physical, sensory, psychological or other impairment, condition or illness that-”</i>
Article 39(4)(a)	Adopted w/ amendment – deleted the words “normal” and inserted “ordinary” <b><u>Now reads</u></b> <i>“has or is perceived by significant sectors of the community to have a substantial or long term adverse effect on the a person’s ability to carry out ordinary day-to-day activities; or”</i>
Article 39(4)(b)	Adopted w/ amendment – deleted the words “unfair” <b><u>Now reads</u></b> <i>“forms the basis of discrimination”</i>

	<p>New clause - Article 39(5)</p> <p><i>Within one year of the coming into force of this constitution, parliament shall enact legislation to bring the provisions of this article into operation.</i></p>
	<p>New clause - Sub-article 39a</p> <p><i>(1) minorities and other historically marginalized groups are entitled to enjoy all the rights and freedoms set out in this bill of rights on a basis of equality, taking into account their special circumstances and needs.</i></p> <p><i>(2) the state shall by policy, legislation and other measures, put in place affirmative action programmes, including but not limited to equalization measures designed to minorities and other historically marginalized groups.</i></p> <p><i>(3) the measures referred to under clause (2) shall include but not be limited to measures to ensure that minorities and other historically marginalized groups-</i></p> <ul style="list-style-type: none"> <li><i>(a) Participate and are fully represented in governance and in all other spheres of national life</i></li> <li><i>(b) Are accorded special opportunities in the educational and economic fields</i></li> <li><i>(c) Are accorded special opportunities for access to gainful employment</i></li> <li><i>(d) Are assisted to develop their cultural practices, languages and practices and</i></li> <li><i>(e) Are assisted to acquire the ancestral which they occupy</i></li> <li><i>(f) Live a life free from discrimination, exploitation or abuse</i></li> </ul> <p><i>(4) relevant ministries and complaint bodies including the commission on human rights and administrative justice shall take special care to equip themselves to understand and deal with issues affecting minorities and other historically marginalized groups.</i></p> <p><i>(5) in this constitution” minorities and other historically marginalized groups” includes, but is not limited to hunter gatherers, nomadic pastoralists, fishing communities and any other groups who have become marginalized because of their social setting or way of life.</i></p>

**TWC C:      REPRESENTATION OF THE PEOPLE (Articles 76 – 100)**

Article 76(1)	<p>Adopted w/ amendment – inserted the word “eligible” between “citizens” and “to”</p> <p><b><u>Now reads</u></b></p> <p><i>“the electoral system is based on the right of all citizens eligible to vote and to stand for elections to legislative and executive bodies.”</i></p>
Article 76(2)	<p>Adopted w/ amendment – deleted the words “is” and inserted “shall be”</p> <p><b><u>Now reads</u></b></p> <p><i>“voting shall be by secret ballot.”</i></p>
Article 76(3)	<p>Adopted w/ amendment – deleted the words “are” and inserted “shall be”</p> <p><b><u>Now reads</u></b></p> <p><i>“elections shall be free and fair.”</i></p>
Article 76(4)	<p>Adopted w/o amendment – note: typographical error in draft bill article 76(5) should in fact read article 76(4)</p>
Article 76(5) <i>renumbered</i>	<p>Adopted w/ amendment</p> <p><b><u>Now reads</u></b></p> <p><i>“elections shall ensure fair representation of women, persons with disability, workers through the labour movement and marginalized communities and for that purpose the state shall take the necessary affirmative action measures.”</i></p>
Article 76(6) <i>renumbered</i>	<p>Adopted w/ amendment</p> <p><b><u>Now reads</u></b></p> <p><i>“elections shall be conducted by an independent body free from political or any other form of interference.”</i></p>
	<p>New clause - Article 76(7)</p> <p><i>“elections shall ensure inter-generational equity.</i></p>

	New clause - Article 76(8) <i>“all those in elective offices shall serve for two terms and may seek re-election after a five-year break.”</i>
Article 77(1)	Adopted w/o amendment
Article 77(1)(a)	Deferred
Article 77(1)(b)	Adopted w/o amendment
Article 77(1)(c)	Adopted w/o amendment
Article 77(1)(d)	Adopted w/o amendment
Article 77(1)(e)	Adopted w/o amendment
Article 77(1)(f)	Deferred
Article 77(1)(g)	Adopted w/o amendment
Article 77(2)	Deferred
Article 78(1)	Adopted w/o amendment
Article 78(2)	Adopted w/ amendment – inserted the words “and civic education” after “registration” <b><u>Now reads:</u></b> <i>“administrative arrangements for the registration of voters and the conduct of elections shall not deny a citizen’s right to vote and stand for election and shall include a system of continuous registration and civic education”</i>
	New clause - Article 78(3) <i>“voting shall ensure that the provision of article 44(2) of the draft bill with regard to observing a day of worship shall not be violated”</i>
Article 79 (1)(a)	Adopted w/o amendment
Article 79 (1)(b)	Deleted

Article 79 (1)(c) Renumbered (1)(b)	Adopted w/o amendment – renumbered
Article 79 (2)	Adopted w/o amendment
Article 80 (1)	Adopted w/o amendment
Article 80 (1) (a)	Adopted w/o amendment
Article 80(1) (b)	Adopted w/o amendment
Article 80(2)	Adopted w/o amendment
Article 81	Adopted w/o amendment
Article 81(a)	Adopted w/o amendment
Article 81(b)	Adopted w/ amendment  <b><u>Now reads</u></b>  <i>“where the ballot box is used it shall be transparent.”</i>
Article 81(c)	Adopted w/o amendment
	New clause - Article 81(d)  <i>“the results from the polling stations are transparently and accurately collated and announced by the returning officer.”</i>
	New clause - Article 81(e)  <i>“special arrangements are made to a accord members of the armed forces, police, staff of diplomatic missions, those living or working abroad, prisoners, election officials, and those admitted in hospital san opportunity to vote.”</i>

	<p>New clause - Article 81(f)</p> <p><i>“appropriate structures and mechanisms to eliminate all forms of electoral malpractices are put in place, including the safe-keeping of all election materials.”</i></p>
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**TWC F:     LEGISLATURE (Articles 101 – 147)**

Article 101(1)(A)	<p>Adopted w/ amendment – delete “National council” and insert “Senate”</p> <p><b><u>Now reads</u></b></p> <p><i>“There shall be a Parliament of Kenya which shall consist of two houses as follows:-</i></p> <p style="padding-left: 40px;"><i>(a) an upper house, to be called the Senate; and</i></p> <p style="padding-left: 40px;"><i>(b) a lower house, to be called the National Assembly’</i></p>
Article 102(1)	Adopted w/o amendment
Article 102(2)(a)- (j)	Adopted w/o amendment
	<p>New clause - Article 102(2)(k)</p> <p><i>“ensuring the implementation by the government of equity in distribution of national resources and opportunities among all the component communities and regions of the Republic”</i></p>
	<p>New clause - Article 102(2)(l)</p> <p><i>“reviewing and approving all agreements on technical services, licences, loans and grants to the Republic before signing of the same by the government</i></p>
Article 102(3)	Adopted w/o amendment
Article 102(4)	Adopted w/o amendment

Article 103(1)(a)&(b)	Adopted w/o amendment
Article 103(2)	Adopted w/o amendment
Article 103(3)(a)-(m)	Adopted w/o amendment
	New clause - Article 103(3)(n) <b><i>“Public Service Commission”</i></b>
	New clause - Article 103(3)(o) <b><i>“ Electoral Commission”</i></b>
	New clause - Article 103(3)(p) <b><i>“other Constitutional Commissions”</i></b>
Article 103(4)(a) – (f)	Adopted w/o amendment
Article 103(4)(g)	Deleted
Article 103(4)(h)- (k) Renumbered	Renumbered <b>(g) – (j)</b>
	New clause - Article 103(4)(k) <b><i>Heads /Chairperson of State Corporations</i></b>
Article 104(1)	Adopted w/o amendment
	New clause - Article 104(1)(a) <b><i>“approving all imposition of taxation and authorizing all waivers of the taxes, and”</i></b>
Article 104(1)(a)&(b) Renumbered	Renumbered <b>(b) – (c)</b>
Article 105	Deleted
Article 106	Deferred pending consideration of Chapter ten by the Devolution Committee



Article 107	Deferred pending consideration of Chapter ten by the Devolution Committee
Article 108(1)	Adopted w/o amendment
Article 108(1)(a)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“is a citizen of Kenya by birth;”</i>
Article 108(1)(b)	Adopted w/o amendment
Article 108(1)(c)	Deleted
Article 108(1)(d)	Adopted w/o amendment
Article 108(1)(e)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“has attained at least form four standard of education with a pass, and is proficient in Kiswahili and English, or sign language are qualified; and”</i>
Article 108(1)(f)	Adopted w/o amendment
Article 108 (2)	Adopted w/o amendment
Article 108 (3)	Deleted
Article 108(4)	Adopted w/o amendment
Article 109	Deferred pending the consideration of Chapter Ten by the Devolution Committee
Article 110(1)(a)	Adopted w/amendment <b><u>Now reads</u></b> <i>“an election of members of the National Council shall be held on a Tuesday at least forty-five days before the expiration of the term of the Council.”</i>

Article 110(1)(b)	Adopted w/amendment <b><u>Now reads</u></b> <i>“an election of members of the National Assembly shall be held on a Tuesday at least forty-five days before the expiration of the term of the Assembly.”</i>
Article 110(2)	Adopted w/ amendment – deleted “ten” and inserted “twenty-one” and inserted “on a Tuesday” between “held” and “within” <b><u>Now reads</u></b> <i>“Whenever a vacancy arises in Parliament, in respect of a constituency, the Speaker of the respective House shall notify the Electoral Commission in writing within twenty-one days after the vacancy has occurred; and a by-election shall be held On a Tuesday within ninety days after the vacancy has occurred.”</i>
Article 110(3) –(5)	Adopted w/o amendment
Article 111	Adopted w/o amendment
Article 112(1)	Adopted w/o amendment
Article 112(2)(a)	Adopted w/o amendment
Article 112(2)(b)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“fail to comply with the Leadership and Integrity code of conduct prescribed under Chapter Sixteen”</i>
Article 112(2)(c)	Adopted w/o amendment
Article 112(3)	Adopted w/ amendment- delete “thirty” and insert “fifty” <b><u>Now reads</u></b> <i>“The recall of a member of Parliament shall be initiated by a petition in writing, setting out the grounds relied on, and signed by at least Fifty per cent of the registered voters of the constituency, and shall be delivered to the appropriate Speaker.”</i>

Article 112(4)	<p>Adopted w/amendment- <i>insert “within ninety days “ after “speaker”</i></p> <p><b><u>Now reads</u></b></p> <p><i>“On receipt of the petition, the Speaker shall, within seven days, require the Electoral Commission to conduct a public inquiry into the matters alleged in the petition, and the Electoral Commission shall expeditiously conduct the necessary inquiry and report its findings to the Speaker within ninety days.”</i></p>
Article 112(5) & (6)	Adopted w/o amendment
Article 113(1)(a)&(b)	<p>Adopted w/amendment – deleted “are members of the State or” substituting “National council” with “Senate”</p> <p><b><u>Now reads</u></b></p> <p><i>“(1) There shall be –</i></p> <p style="padding-left: 40px;"><i>(a) a Speaker of the Senate who shall be elected by the Senate, in accordance with the standing orders, from among persons who are qualified to be elected as such members;</i></p> <p style="padding-left: 40px;"><i>(b) a Deputy Speaker who shall be elected by the Senate, in accordance with the standing orders, from among persons who are members of Senate”</i></p>
Article 113(2)	Deleted

Article 113(3)	<p>Adopted w/ amendment- substituting “Council” with “Senate”</p> <p><b><u>Now reads</u></b></p> <p><b>“(3) <i>The office of Speaker or the Deputy Speaker becomes vacant -</i></b></p> <ul style="list-style-type: none"> <li><b>(a) <i>when a new Senate l first meets after a general election to that Senate;</i></b></li> <li><b>(b) <i>if circumstances arise that would disqualify that person to be elected as such;</i></b></li> <li><b>(c) <i>if that person becomes President, a Vice President, a Prime Minister, a Deputy Prime Minister, a Minister or Deputy Minister;</i></b></li> <li><b>(d) <i>if the Senate so resolves by resolution supported by the votes of not less than sixty-five per cent of all its members;</i></b></li> <li><b>(e) <i>if that person dies;</i></b></li> <li><b>(f) <i>if that person resigns from office in a letter addressed to the Senate” n</i></b></li> </ul>
Article 114	<p>Adopted w/ amendment- substituting “National Council” with “Senate”</p> <p><b><u>Now reads</u></b></p> <p><b>“114. (1) <i>There shall preside at any sitting of the Senate</i></b></p> <ul style="list-style-type: none"> <li><b>(a) <i>the Speaker;</i></b></li> <li><b>(b) <i>in the absence of the Speaker, the Deputy Speaker;</i></b></li> <li><b>(c) <i>in the absence of the Speaker and the Deputy Speaker such other member of the Senate as the Senate may elect for that purpose.”</i></b></li> </ul>

Article 115	<p>Adopted w/ amendment- substituting “<i>National Council</i>” with “<i>Senate</i>”</p> <p><b><u>Now reads</u></b></p> <p><i>(1) There shall be a Clerk of the Senate who shall be appointed by the Parliamentary Service Commission with the approval of the Senate</i></p> <p><i>(2) The office of the Clerk and offices of members of his staff shall be offices in the parliamentary service, independent of the public service.</i></p> <p><i>(3) Subject to clause (4) the Clerk shall retire at the age of sixty-five years.</i></p> <p><i>(4) The office of the Clerk becomes vacant if the Senate so resolves by resolution supported by the votes of a majority of all the members of the Senate”</i></p>
Article 116(1)(a)	<p>Adopted w/ amendment – deleted “are members of the Assembly or”</p> <p><b><u>Now reads</u></b></p> <p><i>116. (1) There shall be –</i></p> <p><i>(a) a Speaker of the National Assembly who shall be elected by the Assembly in accordance with the standing orders, from among persons who are qualified to be elected as such members;</i></p>
Article 116(1)(b)	Adopted w/o amendment
Article 116(2)	Deleted
Article 116(3) – (6)	Adopted w/o amendment
Article 117	Adopted w/o amendment
Article 118	Adopted w/o amendment
Article 119	Adopted w/o amendment
Article 120	Adopted w/o amendment
Article 121	Adopted w/o amendment

Article 122(1)(a)	Adopted w/o amendment – insert “ <i>within one year</i> ” between “determine” and “any” <b><u>Now reads</u></b> <i>122. (1) The High Court shall have power to hear and determine within one year any question whether – (a) any person has been validly elected or nominated as a member of Parliament or the seat of any member has become vacant;</i>
Article 122(1)(b)	Deleted
Article 122(2)	Adopted w/o amendment
Article 123(1) - (5)	Adopted w/o amendment
Article 123(6)	Adopted with/ amendment – delete “ Local authorities” and insert “devolved government” <b><u>Now reads</u></b> <i>(6) In clause (5), the expressions tax, public money, and loan do not include any taxes, money or loans raised by devolved government</i>
Article 124(1)	Adopted w/o amendment
Article 124(a)	Deleted
Article 124 (b) & (c) Renumbered	Adopted w/o amendment - <i>(a) &amp; (b)</i>
Article 125	Deleted
Article 126	Adopted w/o amendment
Article 127 (1)	Adopted w/o amendment

Article 127(2)(a)	<p>Adopted w/amendment- insert “<i>mediation</i>” between “a” and “ committee substituting “National Council” with “Senate”</p> <p><b><u>Now reads</u></b></p> <p><i>(2) If both Houses of Parliament do not pass the Bill in the same form –</i></p> <p><i>(a) the Speakers of the Senate and the National Assembly shall appoint a mediation committee comprising equal numbers of members of the Senate and the Assembly to review the different versions and attempt to develop a compromise version; and</i></p>
Article 127(2) (b)(i)	<p>Adopted w/amendment- insert “within thirty days the bill shall lapse” after “compromise bill”. Delete “ either house, by a two thirds majority vote may affirm its original version of the bill</p> <p><b><u>Now reads</u></b></p> <p><i>(b) if the committee is -</i></p> <p><i>(i) unable to agree on a compromise Bill within thirty days the bill lapse</i></p>
Article 127(2)(b)(ii)	Adopted w/o amendment
Article 127(3)	Deleted
Article 128 (1) & (2)	<p>Adopted w/ amendment – insert “Kenya” before “gazette”</p> <p><b><u>Now reads</u></b></p> <p><i>(1) A Bill passed by Parliament and assented to by the President shall become law and shall be published in the Kenya Gazette as an Act of Parliament.</i></p> <p><i>(2) Unless otherwise specified in an Act of Parliament, the Act shall come into force on the fourteenth day after it is published in the Kenya Gazette.</i></p>
Article 128(3)	<p>Adopted w/amendment – insert “<i>monetary</i>” before “benefit”</p> <p><b><u>Now reads</u></b></p> <p><i>(3) No Act which confers a monetary benefit on Members of Parliament shall come into force until after the dissolution of the House which passed the Act.</i></p>
Article 129	Adopted w/o amendment

Article 130	Deferred so as to be considered with Article 140
Article 131(1)(a)	Adopted w/o amendment
Article 131(1)(b)	Adopted w/amendment – delete “ <i>and</i> ” before “public” and insert “and dissemination” after “publication” <b><u>Now reads</u></b> <i>(b) additional procedures concerning the coming into operation, publication and dissemination of Kenyan laws.</i>
Article 131(2)	Adopted w/o amendment
Article 131(3)	Adopted w/o amendment
Article 131(4)	Adopted w/amendment – delete “as far as practicable” <b><u>Now reads</u></b> <i>(4) The Government shall ensure that Kenyan laws are available and accessible in all public libraries.</i>
Article 132	Adopted w/o amendment
Article 133	Deleted
Article 134	Adopted w/o amendment
Article 135(1)	Adopted w/o amendment
Article 135(2)(a)	Adopted w/amendment- insert “require a second vote to be taken in case of the tie in which the speaker shall” between “speaker” and “have” <b><u>Now reads</u></b> <i>(2) On a question proposed for decision in either House, the person presiding in the House shall</i> <i>(a) if that person is the Speaker require a second vote to be taken in case of a tie in which the speaker shall have a casting vote but not an original vote; or</i>



Article 135(2)(b)	Adopted w/o amendment
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**TWC D: THE EXECUTIVE (Articles 148 – 183)**

**NO DECISIONS MADE ON SPECIFIC ARTICLES**

**TWC E: THE JUDICIARY (Articles 184 – 212)**

Article 184	The heading of the chapter to be entitled “ <i>Principles and structure of Judicial powers</i> ”
Article 184 (1)(a)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“in the name and for the common good of the people”.</i>
Article 184 (1)(b)	Adopted w/o amendment
Article 184 (1)(c)	Adopted w/ amendment- inserted “subject to ‘b’ above”, before the sub article
Article 184 (2)	Deferred
Article 184 (3)(a)	Adopted w/ amendment- deleted “social and economic” and inserted “their” <b><u>Now reads</u></b> <i>“Justice shall be done to all, irrespective of their status”</i>
Article 184 (3)(b)(c)	Adopted w/o amendment
Article 184 (3)(d)	Adopted with amendment – deleted “shall” and inserted “should” <b><u>Now reads</u></b> <i>“reconciliation, mediation and arbitration between parties should be promoted”</i>
Article 184 (3)(e)	Adopted w/o amendment

Article 184 (3)(f)	Adopted with amendment- interchanged the words “principles and purposes” <b><u>Now reads</u></b> <i>“the protection and promotion of the purpose and principles of the Constitution”</i>
	New clause - Insert between 184(2)&(3)  <i>“(3) (a) There shall be the office of the Chief Justice who shall be the head of the Judiciary (b) There shall be the office of the Deputy Chief Justice who shall be the principle assistant to the Chief Justice (c)(i) There is established an office of the Chief Registrar of the Judiciary and such other offices of registrars as may be created by the Judicial Service Commission. (ii) The Chief Registrar of the Judiciary shall be the chief administrator and accounting officer of the judiciary”</i>
Article 184 (4)&(5)	Adopted w/o amendment
Article 185 (1)	Adopted w/o amendment
Article 185 (2)	Adopted w/o amendment
Article 185(3)(a)	Adopted w/o amendment
Article 185 (3)(b)	Adopted w/ amendment - to include at the beginning of the current sub- article “ courts martial and” <b><u>Now reads</u></b> <i>“the courts martial and any other courts established by an Act of Parliament subordinate to the High Court.</i>
Article 185 (3)(c)	Adopted with amendment- deleted “ with limited jurisdiction in issues of local significance” <b><u>Now reads</u></b> <i>“any traditional or local tribunals, that may be established by an Act of Parliament”</i>
Article 198	Adopted w/ amendment - to include at the end of the current sub article “ courts- martial and” <b><u>Now reads</u></b> <i>“Parliament may, by an Act of Parliament, establish courts martial and other courts subordinate to the High Court that shall have, subject to the Constitution, the jurisdiction and functions conferred on them by the Act or any other law.</i>

Article 186 (1)	Adopted w/o amendment
Article 186 (2)	Adopted w/ amendment - deleted word “are” and inserted “shall be” <b><u>Now reads</u></b> <i>“the administrative expenses of the Judiciary including the salaries, allowances, gratuities and pensions payable to, or in respect of, persons serving in the Judiciary shall be a charge on the Consolidated Fund.</i>
Article 186 (3)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“No judicial officer shall be in an action or suit in respect of anything done in good faith in the lawful performance of a judicial function.”</i>
Article 186 (4)	Adopted w/ amendment - <i>inserted “benefits”</i>
Article 186 (5)	Deleted and referred to TWC B for consideration under Article 67
Article 186 (6)	Deleted
Article 187	Adopted with amendment <b><u>Now reads</u></b> <i>“(1) The Supreme Court shall consist of –</i> <i>➤ The Chief Justice, who shall be the President of the court</i> <i>➤ The Deputy Chief Justice who shall be the Vice President of the court; and</i> <i>➤ not less than five and not more than seven other judges</i> <i>(2) The Supreme Court shall be properly constituted for the purposes of its proceedings if it is composed of five judges.</i> <i>(3) The Supreme Court shall sit in Nairobi.”</i>

**TWC G:     DEVOLUTION (Articles 213 – 231)**

Article 215(1)	Adopted w/o amendment
Article 215(2)	Adopted w/o amendment <i>This provision is to be moved to Chapter One as clause (2) of Article (2)</i>
Article 216(1) (a)-(c)	Adopted w/ amendment <i>(To be revised by Draftsperson taking into consideration the principles of devolution as approved by the Committee)</i>
Article 216(1)(d)	Adopted w/ amendment – insert words “at all levels” <b><u>Now reads</u></b> <i>To protect and promote the interests and rights of minorities and disadvantaged groups at all levels</i>
Article 216(1)(e)	Adopted w/o amendment
Article 216(1)(f)	Deferred for further consultation
Article 216(1)(g)	Adopted w/ amendment – insert words “and functions” <b><u>Now reads</u></b> <i>To facilitate the decentralization of government agencies and functions away from the capital territory</i>
Article 216(2)	Adopted w/o amendment
Article 217	<i>To be moved to an earlier, yet to be identified chapter</i>
Article 217 (1)-(3)	Adopted w/o amendment
Article 217(4)	Deferred <i>(To be redrafted to capture horizontal cooperation between the zonal government)</i>
Article 217(5)	Adopted w/o amendment

Article 217 (6)-(8)	Adopted w/ amendment – <i>Reorganized as (8), (6) (7) respectively</i>
Article 218(1)	Adopted w/ amendment – <b><u>Now reads</u></b> <i>The Republic has the following nineteen zones -</i>
<i>Zone 1</i>	<i>Kwale, Mombasa, Taita Taveta, Kilifi Lamu, Tana River and Malindi</i>
<i>Zone 2</i>	<i>Makueni, Machakos, Kitui and Mwingi</i>
<i>Zone 3</i>	<i>Meru Central, Meru South, Meru North and Tharaka</i>
<i>Zone 4</i>	<i>Kirinyanga, Embu, and Mbeere</i>
<i>Zone 5</i>	<i>Isiolo, Marsabit and Moyale</i>
<i>Zone 6</i>	<i>Garissa and Ijara</i>
<i>Zone 7</i>	<i>Mandera and Wajir</i>
<i>Zone 8</i>	<i>Kajiado, Narok, Trans Mara and Kuria</i>
<i>Zone 9</i>	<i>Kisii Central, Gucha and Nyamira</i>
<i>Zone 10</i>	<i>Bungoma and Busia</i>
<i>Zone 11</i>	<i>Kakamega, Lugari, Vihiga and Butere/Mumias</i>
<i>Zone 12</i>	<i>Trnas Nzoia, Turkana, West Pokot, Marakwet and Mount Elgon</i>
<i>Zone 13</i>	<i>Keiyo, Uasin Gishu, Nandi South and Nandi North</i>
<i>Zone 14</i>	<i>Kisumu, Bondo, Siaya and Nyando</i>
<i>Zone 15</i>	<i>Homa Bay, Suba, Migori and Rachuonyo</i>
<i>Zone 16</i>	<i>Kiambu, Thika, Murang'a, Nyandarua and Nyeri</i>
<i>Zone 17</i>	<i>Baringo, Koibatek, Nakuru, Laikipia, Samburu, Kericho, Bureti and Bomet</i>
<i>Zone 18</i>	<i>Nairobi – to be divided into four Counties/boroughs</i>
<i>Zone 19</i>	<i>Teso – Special Unit</i>

**TWC J:      LAND RIGHTS AND ENVIRONMENT (Articles 232 – 242)**

	<p>New clause - Article 232(1)</p> <p><b><i>“Land”</i></b></p> <p><i>“soil, sub-soil, rocks on or beneath it, any river, lake or marine waters in the territorial sea and exclusive economic zone as defined in the first schedule of this constitution and airspace above it”.</i></p>
	<p>New clause - Article 232(2)</p> <p><b><i>“Natural Resources”</i></b></p> <p><i>“the biological and physical non-human factors and components of the natural environment, which include, but are not limited to, both renewable and non-renewable natural land, river, lake, and marine resources, comprising, but not limited to, land, soils, air, sunlight, surface and ground waters, forests, biodiversity, genetic resources, rocks, minerals, fossils fuels and other energy resources.”</i></p>
	<p>New clause - Article 232(3)</p> <p><b><i>“Property”</i></b></p> <p><i>“permanent fixtures thereon and such rights, interests and restrictions therein, personal property comprising, but not limited to movable chattels, financial instruments, livestock, fisheries, crops, plant and machinery, and registered intellectual inventions, innovation and rights.”</i></p>
<p>Article 232(1)</p> <p>Renumbered Article 232 (4)</p>	<p>Adopted w/o amendment.</p>
<p>Article 232(2)</p> <p>Renumbered Article 232(5)</p>	<p>Adopted w/o amendment.</p>

	New clause - Article 232(6) <i>“All natural resources shall be vested in the state on behalf of the people of Kenya and shall sustain ably be developed for the benefit of Kenya as a whole and for the benefit of the inhabitants of the region where these resources occur”.</i>
Article 233(1)	Adopted w/o amendment
Article 233(2)	Adopted w/o amendment
Article 233(3)	Adopted w/o amendment
Article 234(1)	Adopted w/o amendment
Article 234(2)(a)	Adopted w/amendment <b><u>Now reads</u></b> <i>“Land which at the commencement of this constitution was held as unalienated government land in terms of the Government Lands Act, Cap 280.”</i>
Article 234(2)(b)	Adopted w/o amendment
Article 234(2)(c)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“all land ceded to the people of Kenya by way of reversion, or surrender ; land in respect of which no individual or community ownership can, by process of Law, be established and land in respect of which no heir can, by ordinary process of law be identified.”</i>
Article 234(2)(d)	Adopted w/o amendment
Article 234(2)(e)	Deferred
Article 234(2)(f)	Adopted w/o amendment
Article 234(3)(a)	Adopted w/o amendment
Article 234(3)(b)	Adopted w/o amendment
Article 234 (3)(c)	Adopted w/o amendment

Article 234(3)(d)	Adopted w/o amendment
	New clause - Article 234(3)(e) <i>“Community land includes land currently held as government forest and is occupied by hunter- gatherer communities as their ancestral land.”</i>
	New clause - Article 234(3)(f) <i>“All natural resources under local authorities and communities should be managed by them for the benefit of the communities and future generations.”</i>
Article 234(4)(a)	Adopted w/o amendment
Article 234(4)(b)	Adopted w/o amendment
Article 234(4)(c)	Adopted w/o amendment
Article 234(4)(e) Renumbered 234(4)(d)	Deferred
Article 235(1)(a)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“Public land is a collective property of the present and future generations and shall vest in and be held by devolved levels of government in trust for the people under the oversight of the National Land Commission as the Ombudsman office for the promotion, protection and fulfillment of the enjoyment of land rights in the public land.”</i>
Article 235(1)(b)	Deferred
Article 235(2)(a)	Adopted w/o amendments
Article 235(2)(b)	Adopted w/o amendments
Article 235 (3)	Adopted w/o amendments



Article 235(4)	Adopted w/ amendments  <i>(To include a clause that shall subject the government to enact this bill within two years failure to which it shall be useable (actionable) by a individual or community and the state shall bear the cost).</i>
Article 235 (4)(a)(1)	Adopted w/o amendment
Article 235 (4)(a)(ii)	Deferred
Article 235 (4)(a)(iii)	Adopted w/o amendment
Article 235 (4)(a)(iv)	Adopted w/o amendment
Article 235 (4)(a)(v)	Adopted w/o amendment
Article 235 (4)(a)(vi)	Adopted w/ amendment  <b><u>Now reads</u></b>  <i>“The establishment of an efficient and cost effective physical planning and land administration system including the establishment of land courts in the context of devolved authorities”</i>
Article 235 (4)(a)(vii)	Adopted w/ amendment  <b><u>Now reads</u></b>  <i>“The settlement of landless/ squatters including the spontaneous settlement of communities in the urban and rural areas.”</i>

Article 235 (4)(a)(viii)	Adopted w/o amendment
	New clause - Article 235(4)(a)(ix) <i>“The establishment of land bank to facilitate availability and accessibility of land for research and development”</i>
Article 235 (4)(a) (ix) Renumbered 235 (4)(a)(x)	Adopted w/o amendment
	New clause - Article 235(4)(a)(xi) <i>“Settings of the maximum and minimum land holding in arable areas bearing in mind the productive potential and location of the land.”</i>
Article 235(4)(b)	Adopted with amendment <b><u>Now reads</u></b> <i>“Enact a verification and validation law.”</i>
Article 235 (4)(b)(i)	Adopted w/o amendment
	New clause - Article 235(4)(b)(ii) <i>“Review the boundaries and management of national parks and animal sanctuaries with the view to creating opportunities and benefits for the local people in the context of devolved government;”</i>
Article 235 (4)(b)(ii) Renumbered 235(4)(b)(iii)	Adopted w/o amendment

Article 235 (4)(b)(iii) Renumbered 235(4)(b)(iv)	Adopted w/ amendment <b><u>Now reads</u></b> <i>Parliament in consultation with devolved authorities shall determine the cut-off date with reference to which the review required in paragraph (iii) is to be conducted.</i>
	New clause - Article 235(4)(c) <i>“Equitable sharing of the benefits accruing from public or private exploitation of natural resources between the local communities, devolved authorities and the central government. “</i>
Article 236(1)	Adopted w/o amendment
Article 236(2)	Adopted w/o amendment
Article 236(2)(a)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“The acquisition and or taking is necessary in the interest of defence, public safety, public order, public morality, public health, environmental conservation including conservation of indigenous species, town and country planning or the development or utilization of property so as to promote the public benefit; “</i>
Article 236(2)(b)	Adopted w/amendment <b><u>Now reads</u></b> <i>“The necessity therefore is such as to afford reasonable justification for the causing of hardship that may result to any person or community having an interest in or right over the property.”</i>

Article 236(2)(c )	<p>Adopted w/amendment</p> <p><b><u>Now reads</u></b></p> <p><i>” Provision is made by a law applicable to that acquisition or taking of possession for the prompt payment prior to occupation of such land of:-</i></p> <p style="padding-left: 40px;"><i>(i) Full and fair compensation in the form of comparable land or equivalent monetary compensation and;</i></p> <p style="padding-left: 40px;"><i>(ii) A disturbance allowance equivalent to 80% of the market value of the land.</i></p> <p><i>Provided that bonafide occupants of the land acquired will also be entitled to compensation even if they do not have title deeds.”</i></p>
Article 236(3) <b>Renumbered</b> <b>236(3)(a)</b>	Adopted w/o amendment
Article 236(3)(b) <b>New clause</b>	<i>“regulate the use of urban land in a more intensive manner according to the principles of sustainable development and sound urban planning and to review the relevant standards and criteria every ten years in consultation with devolved government”.</i>
Article 236(3)(c) <b>New clause</b>	<i>“Provide for surplus land or land no longer needed for public purpose after acquisition to be offered to the original owner on first refusal basis”.</i>
	<p>New clause - Article 236(4)</p> <p><i>Any person who owns private land has a right to hold a title document for his/her land and to have an appropriate entry in land registry</i></p> <p>(To be rephrased by Draftsperson)</p>

**TWC H: PUBLIC FINANCE, PUBLIC SERVICE LEADERSHIP AND INTEGRITY (Articles 243 – 270 and 276 – 277)**

Article 258(a)	Adopted w/o amendment
Article 258(b)	Adopted w/o amendment
Article 258(c)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“effective, impartial, fair and equitable provision of services”</i>
Article 258(d)	Adopted w/o amendment
Article 258(e)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“prompt, efficient and timely response to people’s needs”</i>
<b>New clause</b> 258(ee)	<i>“commitment to the implementation of public policy and programs”</i>
Article 258(f)	Adopted w/o amendment
Article 258(g)	Adopted w/o amendment
Article 258(h)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“subject to paragraph (j), merit as the basis of appointments and promotions”</i>
Article 258(i)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“adequate and equal opportunities for appointments, training and advancement of men and women and the members of all ethnic groups; and”</i>

Article 258(j)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“notwithstanding paragraph (h), reflection of ethnic composition, people with physical disabilities and other minorities of the population in the composition of the public service at all levels”</i>
Article 259(1)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“There is established a Commission to be known as Public Service Commission.”</i>
Article 259(2)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“The Commission shall consist of a Chairperson and other eight members appointed by the President with the approval of the National Council”</i>
Article 259(3)	Adopted w/o amendment
	New clause <i>“There shall be a secretary of the Commission who shall be appointed by the President on the recommendation of the Public Service Commission and with the approval of the National Assembly.”</i>
	New clause <i>“The secretary of the Commission shall hold office for a term of five years and shall be eligible for re-appointment for only one further term.”</i>
Article 260(1)	Adopted w/o amendment <b><u>Now reads</u></b> <i>“Subject to clause (1A) The powers and functions of the Commission are-”</i>
Article 260(1)(a)	Adopted w/o amendment
Article 260(1)(b)	Adopted w/o amendment

Article 260(1)(c)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“to ensure efficient and effective performance of the public service.”</i>
Article 260(1)(d)	Adopted w/o amendment <b><u>Now reads</u></b> <i>“to ensure that procedures relating to recruitment, transfers, promotions and disciplinary measures of personnel comply with the values and principles set out in Article 14 and 258.”</i>
Article 260(1)(e)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“to report on the activities and the performance of its functions in accordance with Article 286 and to evaluate the extent to which the values and principles set out in articles 14 and 258 are complied with”</i>
Article 260(1)(f)	Deleted
Article 260(1)(g)	Adopted w/o amendment
Article 260(1)(h)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“to review the terms and conditions of service, code of regulations, qualifications of public officers and matters relating to human resource development in the public service and make recommendations on them to Government”</i>
Article 260(1)(i)	Adopted w/o amendment

	New clause <i>“to hear and determine appeals from the Devolved Governments”</i>
	New clause <i>(Include a provision that gives powers to the Commission to delegate any of its functions under Article 260 to any one or more of its members, officer or authority in the Public Service).</i> (Renumber the clauses)
Article 260(2)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“Parliament shall enact legislation for the better functioning of the Commission.”</i>
Article 261(1)	Adopted w/ amendment and awaits further refinement after issues of devolution are settled. <b><u>Now reads</u></b> <i>“Except where there is a contrary provision in this Constitution, the power to constitute offices for the Republic and the power to abolish any such offices shall vest in the Public Service Commission”</i>
Article 261(2)	Deleted in order to harmonize with Article 262(1)
Article 262(1)	Adopted w/ amendment – to be harmonized with Article 261(2)
Article 262(2)	Adopted w/ amendment – insert “retired Presidents” at the end of the clause. <b><u>Now reads</u></b> <i>“Except with the consent of the President, no personal shall be appointed under this Article to act in any office on the personal staff of the retired Presidents.</i>
Article 263(a)	Adopted w/o amendment
Article 263(b)	Adopted w/o amendment



Article 267	Adopted w/ amendment – the entire Article 267 be interchanged with Article 268. (Renumber the clauses)
Article 267(1)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“The primary object of the Kenya Correctional Service is to ensure safe custody of the Country’s prison population, provision of humane living conditions in the prisons and rehabilitation of offenders to facilitate the return of those persons to useful lives in the society.”</i>
Article 267(2)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“in furtherance of its primary objects, the Kenya Correctional Service shall be structured and regulated so as to- ”</i>
Article 267(2)(a)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“achieve the highest standards of professionalism and discipline among its members and by its members in the exercise of their respective powers”</i>
Article 267(2)(b)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“eliminate and avoid corruption”</i>
Article 267(2)(c)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“observe human rights standards in the exercise of its powers and functions.”</i>

Article 267(2)(d)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“train its members to the highest possible standards of competence on minimal use of force, integrity and the respect for human rights and fundamental freedoms and dignity, and to recognize the duty of accountability to society.”</i>
Article 268	Adopted w/ amendment <i>The entire Article 268 be interchanged with Article 267.</i> (Renumber the clauses)
Article 268	Adopted w/ amendment - Re-title to <i>“Kenya Correctional Service”</i> <i>Remove “s” from the word “Services” wherever it appears in Chapter.</i>
Article 268(1)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“There is established a Kenya Correctional Service”</i>
Article 268(2)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“Subject to this Constitution, the Kenya Correctional services shall be organized and administered in such a manner and shall have such functions as National Assembly may by law prescribe.”</i>
Article 268(3)	Adopted w/ amendment – <i>the Article be deleted and the substance be relocated to Article 267(2)(a).</i>
Article 268(3)	Adopted w/ amendment – <b><u>Now reads</u></b> <i>“the functions of Kenya Correctional Service shall take into account the structure of Devolution.”</i>

Article 269	<p>Adopted w/ amendment</p> <p><b><u>Now reads</u></b></p> <p>(1) <i>“There shall be created an office of the Director General.”</i></p> <p>(2) <i>“The President, on the advice of the Prime Minister and after approval by the national Assembly, shall appoint the Director General of the Kenya Correctional Services.” Note: Per general recommendation “s” should be removed from “Service.”</i></p> <p>(3) <i>No person may be appointed as the Director General of the Kenya Correctional Service unless that person;</i></p> <p>(a) <i>holds a degree from a recognized university,</i></p> <p>(b) <i>has served in the Kenya Correctional Service for at least ten years, or</i></p> <p>(c) <i>has wide experience in the management and administration of Correctional Service.”</i></p> <p>(4) <i>The power to appoint persons to hold or act in offices in the Kenya Correctional Service (except the office of the Director General), including the power to confirm appointments, the power to exercise disciplinary control over person holding or acting in those offices and the power to remove those persons from office shall vest in the Public Service Commission.</i></p> <p>(5) <i>The Director General of Correctional Service shall hold office for a term of five years but shall be eligible for reappointment for one further term only.</i></p> <p>(6) <i>The Director General shall submit annual to the Minister in charge of Correctional Service.</i></p>
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Article 270	Adopted w/ amendment – <b><u>Now reads</u></b> <i>“public service” means service in any civil capacity of the government, including the Kenya Police Service and, the Kenya Correctional Service, the emoluments for which are payable out of public funds.</i> <i>(The proposed definition of a “public officer” to be revised by the Draftsperson)</i>
Articles 276	Adopted w/ amendment – ➤ <i>Leadership and Integrity Code in Schedule Five to be relocated to Chapter 16.</i> ➤ <i>Ethics and Integrity Commission to be relocated to Chapter 16.</i>
Article 276(1)(a)	Adopted w/o amendment
Article 276(1)(b)	Adopted w/ amendment The Article should include the provisions on <i>“the Vice President”</i> and <i>“Permanent Secretaries.”</i> (Renumber the clauses)
Article 276(1)(c)	Adopted w/ amendment – <b><u>Now reads</u></b> <i>to include “all members of the National Assembly”</i>
Article 276(1)(d)	Adopted w/ amendment <b><u>Now reads</u></b> <i>to include “all members of the National Council”</i>
Article 276(1)(e)	Adopted w/o amendment
Article 276(1)(f)	Adopted w/o amendment

	<p>New clause</p> <p><i>“to include other persons, within the public or the private sector, or the civil society as may be determined by Parliament.”</i></p> <p>(Renumber the clauses)</p>
Article 277	<p>Adopted w/ amendment</p> <p>– <i>The Draftsperson to merge and restructure the entire Article with the Leadership Code in Schedule Five.</i></p> <p>(Renumber the clauses)</p>

**TWC I: DEFENCE AND NATIONAL SECURITY (Articles 271 – 275)**

<p><b>Title</b></p>	<p>Adopted w/ amendment <b><u>Now reads</u></b> <i>“National Security”</i></p>
	<p><b>New clause</b> <i>Definition of National Security-</i> <i>National Security is the preservation of the people of Kenya, their property, freedoms and other national interests against threats emanating from within and without.</i></p>
	<p><b>New Article</b></p> <p><i>a) National Security Organs shall comprise the following:</i></p> <ul style="list-style-type: none"> <li><i>i. Defence Forces</i></li> <li><i>ii. The Kenya Police</i></li> <li><i>iii. National Security Intelligence Service</i></li> <li><i>iv. The Administration Police.</i></li> </ul> <p><i>b) An agency established or any other organisation concerned with national security shall not be established except by or under an Act of Parliament.</i></p> <p><i>c) The National Security Organs shall be subordinate to civil authority.</i></p>
<p>Article 271(1)</p>	<p>Adopted w/ amendment ‘Defence Forces’ replaced with ‘National Security Organs’ and words ‘its sovereignty’ inserted <b><u>Now reads</u></b> <i>The primary objects of the National Security Organs and security system of the Republic of Kenya is to safe guard the well being of the people of Kenya, its sovereignty, the peace, national unity and integrity of the Republic of Kenya.</i></p>

Article 271 (2)(a)-(b)	Adopted w/o amendment
	Adopted w/ amendment <b><u>Now reads</u></b> <i>“The National Security Organs shall respect the traditions and customs of the diverse communities within Kenya in discharging their duties.”</i>
Article 271(3)(4)	Adopted w/ amendment- ‘Defence Forces’ replaced by ‘National Security Organs’ <b><u>Now reads</u></b> <i>Article 271(3)</i> <i>The National Security Organs shall act and train and require their members to act in accordance with the constitution and the law, including customary international law and international agreements that are binding on Kenya.</i> <i>Article 271(4)</i> <i>In the performance of their functions, the National Security Organs and every member of the National Security Organs shall not:</i> <i>a) act in a partisan manner;</i> <i>b) further any interest of a political party or cause; or</i> <i>prejudice a political interest or political cause that is legitimate in terms of the constitution.</i>

Article 272(1)	<p>Adopted w/ amendment</p> <p>Deleted:</p> <ul style="list-style-type: none"> <li>• Army Commander</li> <li>• Navy Commander</li> <li>• Air Force Commander</li> <li>• Director of Kenya Correctional Services</li> <li>• The Chairperson of the relevant Parliamentary Committee</li> <li>• Attorney General</li> </ul> <p>Inserted:</p> <ul style="list-style-type: none"> <li>• The Minister in charge of Internal Security</li> <li>• The Minister responsible for Foreign Affairs</li> </ul> <p><b><u>Now reads</u></b></p> <p><i>There is established a National Security Council consisting of:</i></p> <ul style="list-style-type: none"> <li><i>a) The President</i></li> <li><i>b) The Vice President</i></li> <li><i>c) The Prime Minister</i></li> <li><i>d) Minister in charge of Defence</i></li> <li><i>e) The Chief of General Staff</i></li> <li><i>f) The Inspector General of Police</i></li> <li><i>g) Director of National Security Intelligence Service</i></li> <li><i>h) The Minister in charge of Internal Security</i></li> </ul> <p><i>The Minister responsible for Foreign Affairs</i></p>
Article 272(2)(3)	Adopted w/o amendment



Article 272(4)	Adopted w/ amendment <b><u>Now reads</u></b> <i>The council shall appoint its secretary.</i>
Article 273(1)(a)	Adopted w/o amendment
Article 273(1)(b)(c)	Adopted w/ amendment <b><u>Now reads</u></b> <i>(b) to assess and appraise the objects and commitments of and risks to the Republic in relation to actual and potential national security capabilities</i> <i>(c) to consider policies on matters of common interest to the organs and agencies concerned with national security and exercise supervisory control over them.</i>
Article 273(2)	Adopted w/ amendment <b><u>Now reads</u></b> <i>The National Security Council shall keep parliament informed on the state of the security of the Republic through the relevant Departmental Committee.</i>
Article 273(3)	Adopted w/o amendment
Article 273(4)	Deleted

	<p>New clause</p> <p><i>“The National Security Organs shall obtain parliamentary approval for the deployment of security forces outside Kenya for UN and other peace support operations as well as deployment of foreign forces in Kenya for agreed operational purposes.”</i></p>
Article 274(1)	<p>Adopted w/ amendment</p> <p><b><u>Now reads</u></b></p> <p><i>No one may raise a defence force or military or a paramilitary organisation except by or under the authority of this constitution.</i></p>
	<p>New clause</p> <p><i>There is established the Kenya Defence Forces consisting of-</i></p> <p><i>The Kenya Army</i></p> <p><i>The Kenya Air Force</i></p> <p><i>The Kenya Navy</i></p>

<p>Article 274(2)</p>	<p>Adopted w/ amendment-</p> <p>Deleted:</p> <ul style="list-style-type: none"> <li>• The President</li> <li>• The Vice President</li> <li>• The Prime Minister</li> </ul> <p>Inserted:</p> <ul style="list-style-type: none"> <li>• The Assistant Minister for Defence</li> <li>• The permanent Secretary in the Ministry of Defence.</li> </ul> <p><b><u>Now reads</u></b></p> <p><i>“There is established a Defence Forces Council consisting of –</i></p> <ol style="list-style-type: none"> <li><i>a) The Minister in charge of Defence, who shall be the Chairperson.</i></li> <li><i>b) The Assistant Minister for Defence, who shall be Vice Chairperson.</i></li> <li><i>c) The Chief of General Staff</i></li> <li><i>d) The Army Commander</i></li> <li><i>e) The Air Force Commander</i></li> <li><i>f) The Navy Commander</i></li> <li><i>g) The Permanent Secretary in the Ministry of Defence.</i></li> </ol> <p><i>The Defence council shall appoint its secretary.”</i></p>
	<p>New clause</p> <p><i>The Defence Council shall be responsible for the overall policy, control and supervision of the Defence Forces and such other functions as may be given by parliament.</i></p>

Article 275(1)(2)and (3)	Deleted and replaced with- <b><u>Now reads</u></b> <i>The President who is the Commander- in-Chief of the Armed Forces shall appoint the Chief of General Staff, the Army Commander, the Air Force Commander and the Navy Commander in consultation with the Defence Council.</i>
	New clause <i>The Chief of General Staff and Service Commanders shall exercise command over the defence forces and perform such other duties as may be given by Parliament.</i>
Article 275(4)-(7)	Deleted
Article 264(1)(a)-(e)	Adopted w/o amendment
Article 264(f)	Adopted w/ amendment - by inserting 'life'- <b><u>Now reads</u></b> <i>“the protection of life and property”</i>
Article 264(2)(a)(b)	Adopted w/o amendment
Article 264(2)(c)	Adopted w/ amendment <b><u>New read</u></b> <i>“in the performance of their duties, the service shall abide by principles spelt out in Article 271(4)”</i>
Article 264(2)(d)(e)	Adopted w/o amendment
Article 264(2)(f)(g)	Adopted w/ amendment <b><u>Now reads</u></b> <i>(f) shall abide by the principles of transparency and accountability to society and democratic institutions; (g) foster and promote positive relations with the society at large.</i>
Article 264(2)(h)	Deleted
Article 265(1)	Adopted w/o amendment

Article 265(2) – (5)	<p>Adopted w/ amendment</p> <p><b><u>Now reads</u></b></p> <p><i>(2) subject to this constitution, the Kenya Police Service shall be organised and administered in such a manner and shall have such functions as Parliament may prescribe.</i></p> <p><i>(3) The Kenya Police Service shall be professional and disciplined.</i></p> <p><i>(4) The Kenya Police Service shall remain a national Police Force and the division of its functions shall be organised to take into account the structure of devolution.</i></p> <p><i>(5) The Kenya Police shall work closely with communities to ensure security and safety for all citizens.</i></p>
Article 266(1)	<p>Adopted with amendment – ‘Commissioner of Police’ changed to ‘Inspector of Police’ and further amended to read-</p> <p><b><u>Now reads</u></b></p> <p><i>“There shall be an Inspector General who shall be the head of the Kenya Police Service.”</i></p>
Article 266(2)	<p>Adopted with amendment by replacing ‘ten years’ with ‘five years’-</p> <p><b><u>Now reads</u></b></p> <p><i>“The Inspector General shall be appointed by the President with the approval of parliament for one term of five years.”</i></p>
Article 266(3)(4)	Deleted

Article 266(5)(6)	<p>Adopted w/ amendment</p> <p><b><u>Now reads</u></b></p> <p>5) <i>In the performance of his or her functions, the Inspector General shall not be under the direction or control of any person or authority, except where the constitution so specifies.</i></p> <p>6) <i>The Inspector General may be removed from office by the President for inability to exercise the functions of his or her office whether arising from infirmity of body or mind or any other cause or for misconduct, and shall not be so removed except on the recommendation of a tribunal appointed by the President comprising the following:</i></p> <ul style="list-style-type: none"> <li><i>a. Chairperson of the Police Service Commission;</i></li> <li><i>b. A High Court Judge;</i></li> <li><i>c. One other person.</i></li> </ul>
Article 267(1)	Adopted w/o amendment
Article 267(2)	<p>Adopted with amendment</p> <p><b><u>Now reads</u></b></p> <p><i>The Police Service Commission shall consist of-</i></p> <ul style="list-style-type: none"> <li><i>a) The Inspector General</i></li> <li><i>b) A person who holds qualifications of a judge of the High Court.</i></li> </ul> <p><i>Seven other members, appointed by the President, two of whom shall be retired senior police officers and five from among persons of integrity who have served the public with distinction.</i></p>

Article 267(2)	<p>Adopted with amendments</p> <p><b><u>Now reads</u></b></p> <p><i>The functions of the Police Service Commission shall be to-</i></p> <ul style="list-style-type: none"> <li><i>a) Recruit and appoint persons to hold or act in an office, determine promotions and exercise disciplinary control over such persons in the Kenya Police Service.</i></li> <li><i>b) To keep under review all matters relating to the standards or qualifications required of members of the Kenya Police Service.</i></li> <li><i>c) To keep under review all matters relating to salaries, allowances and other terms and conditions of service of members.</i></li> <li><i>d) Exercise such powers including the power to delegate and discharge such other functions as are provided for by this constitution or by an Act of Parliament.</i></li> <li><i>e) Ensure adequate budgetary provision for the Kenya Police Service.</i></li> </ul> <p><i>Promote and exercise disciplinary control including hearing and disposal of appeals by such persons.</i></p>
Article 274(1)(2)	Adopted w/o amendment
Article 274(3)(4)	<p>Adopted w/ amendment - replaced with the following new clauses-</p> <ul style="list-style-type: none"> <li><i>(3) The service shall be responsible for security intelligence and counter intelligence to enhance national security, defend the constitution, the interest of the State and the well being of the people of Kenya.</i></li> <li><i>(4) The service shall be organized and administered in such a manner and shall exercise such other functions as parliament may by law prescribe.</i></li> <li><i>(5) The service shall in its functions observe respect for human rights and fundamental freedoms and the rule of law.</i></li> </ul> <p><i>No intelligence service, other than any intelligence division of the Defence Forces or Police Service, shall be established except by or under an Act of Parliament.</i></p>

	<p>New Article</p> <p><i>There is established a National Security Intelligence Council consisting of-</i></p> <ul style="list-style-type: none"> <li><i>a) Minister for the time being responsible for matters relating to the National Intelligence and Security, who shall be the Chairperson;</i></li> <li><i>b) The Minister for the time being responsible for matters relating to foreign affairs;</i></li> <li><i>c) The Minister for the time being responsible for matters relating to Finance;</i></li> <li><i>d) The Attorney General;</i></li> <li><i>e) The Permanent Secretary, Secretary to the Cabinet and head of the Public Service.</i></li> </ul> <p><i>The Director General shall be Secretary to the Council.</i></p>
	<p>New Article</p> <p><i>Functions of the National Security Intelligence Council shall be;</i></p> <ul style="list-style-type: none"> <li><i>a) To advise the Service generally on all matters pertaining to;</i> <ul style="list-style-type: none"> <li><i>i. National security and intelligence policies</i></li> <li><i>ii. The administration of the service; and</i></li> <li><i>iii. The expenditure of the service.</i></li> </ul> </li> </ul> <p><i>To perform such other functions as are conferred on it by an Act of Parliament.</i></p>



	<p>New Article</p> <ul style="list-style-type: none"> <li>• <i>The Administration Police Service is established to work with and for the people supporting and assisting within existing law with administration in the Public service.</i></li> <li>• <i>In the discharge of those functions, the Administration Police Service may arrest offenders and do all such things as are necessary for the preservation of public peace and protection of human rights and freedoms.</i></li> <li>• <i>Parliament may enact legislation for the organisation, administration and discipline of the Administration Police Service including the appointment of persons to offices or ranks, their removal from office, their punishment for breaches of discipline and determining their conditions of service.</i></li> </ul> <p><i>The Administration Police Service shall be a national service and the division of its functions shall be organised to take into account the structure of devolution.</i></p>
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**TWC K:      CONSTITUTIONAL COMMISSIONS AMENDMENTS TO THE CONSTITUTION AND INTERPRETATION**

**(Articles 278 – 297)**

Article 278	<p>Adopted w/amendment</p> <p><b><u>Now reads</u></b></p> <p><i>“ The principles provided for in this Chapter apply to all Constitutional Commissions except where specific provision is made to the contrary in the Constitution”</i></p>
Article 279(1)(a)(b)(c)	Adopted w/o amendment
Article 279(2)(a)(b)	Adopted w/o amendment

Article 279 (3)	<p>Adopted w/ amendment</p> <p><b><u>Now reads</u></b></p> <p><i>“A Constitutional Commission shall where appropriate</i></p> <p style="padding-left: 40px;"><i>(a) establish branches using its own staff to all devolved spheres of government</i></p> <p style="padding-left: 40px;"><i>(b) offer services to the public free of charge</i></p>
Article 280	Adopted w/o amendment
Article 281(1)	<p>Adopted w/ amendment</p> <p><b><u>Now reads</u></b></p> <p><i>“A constitutional commission shall consist of not less than three and not more than ten members and shall be subject to the principles of Affirmative Action.”</i></p>
Article 281(2)	<p>Adopted w/ amendment</p> <p><b><u>Now reads</u></b></p> <p><i>“The chairperson and other members of a Constitutional Office shall</i></p> <p style="padding-left: 40px;"><i>(a) identified and recommended in the manner prescribed by an Act of Parliament as provided for under Article 289(2)(g)</i></p> <p style="padding-left: 40px;"><i>(b) appointed by the President</i></p> <p style="padding-left: 40px;"><i>(c) approved by Parliament”</i></p>
	<p>New clause</p> <p>A member of a Constitutional Commission:-</p> <p><i>“shall have qualifications relevant to the functions of that commission to which he or she is appointed”</i></p>

Old Article 281(3) (a) (b)(c)(d)	Adopted w/o amendment <b><u>Re-arranged</u></b> <i>Old (3)(a) becomes (3)(b)</i> <i>(3)(b) becomes (3)(c)</i> <i>(3)(c) becomes (3)(d)</i>
Old Article 281(3)(d)	Deleted
Article 281(4)	Adopted w/o amendment
	New clause <i>“Members of a commission shall at the first sitting of the commission appoint a chairperson amongst themselves.”</i>
Article 290(1)(a)-(e)	Adopted w/o amendment
Article 290(1)(f)	Adopted w/ amendment <b><u>Now reads</u></b> <i>“One nominee from umbrella body representing informal sector”</i>
	New clause <i>“One nominee from a body representing farmers.”</i> (Old clauses (g) –(h) must be renumbered)
	New clause <i>One representative from the Treasury</i>
Article 290(2)	Adopted w/o amendment
Article 290(3)	Deleted

**TWC L: TRANSITIONAL AND CONSEQUENTIAL ARRANGEMENTS (ARTICLES 298-299)**

**NO DECISIONS MADE ON SPECIFIC ARTICLES**

**TWC M: CULTURE (CROSS-CUTTING)**

**NO DECISIONS MADE ON SPECIFIC ARTICLES**

## **APPENDIX F: TEMPLATE FOR INTERIM AND FINAL REPORTS OF COMMITTEES**

### **1. COVER PAGE**

- 1.1 Coat of Arms of the Republic of Kenya
- 1.2 Committee Name
- 1.3 Title of the Report
- 1.4 Date of approval and issue by the Committee

### **2. INTRODUCTION**

### **3. MANDATE AND METHOD OF WORK**

- 3.1 Committee's mandate
- 3.2 Committee's method of work

### **4. THE COMMITTEE DEBATE**

- 4.1 General issues raised about the Committee's work
- 4.2 Issues relating to the Report
- 4.3 Issues relating to specific articles, sub articles and clauses of the Draft Bill

### **5. THE TECHNICAL RECOMMENDATIONS AND DECISIONS ON THE REPORT AND DRAFT BILL AS AGREED BY THE COMMITTEE**

- 5.1 General comments on the Report
- 5.2 General recommendations on the Draft Bill
- 5.3 Specific recommendations on the amendments to the Draft Bill
  - 5.3.1 Noting new provisions
  - 5.3.2 Noting where words are added
  - 5.3.3 Noting where words are deleted altogether
  - 5.3.4 Noting where words are deleted and new ones (or other words) are inserted in place thereof
- 5.4 Decisions reached as recommendations to the Conference (by consensus or voting)

### **LIST OF APPENDICES**

- Minority reports(s)
- The list of formal motions for amendment of the Report and Draft Bill agreed to by the committee
- List of Committee members
- Minutes of the Committee proceedings

**APPENDIX G: TEMPLATE FOR COMMITTEE REPORTS TO  
STEERING COMMITTEE AND THE PLENARY OF THE  
CONFERENCE**

**1. INTRODUCTION**

- 1.1. Committee's mandate
- 1.2. Summary of Committee's Proceedings

**2. THE RECOMMENDATIONS AND DECISIONS ON THE REPORT AND DRAFT BILL AS AGREED BY THE COMMITTEE**

- 2.1. General comments on the Report
- 2.2. Specific recommendations on the amendments to the Draft Bill - Article by Article

For each Article:-

- 2.1.1. The original Article
- 2.1.2. Reasons for amendment
- 2.1.3. The amended Article
- 2.1.4. Any minority position

**3. CONCLUSION**