

**NATIONAL CONSTITUTIONAL CONFERENCE
DOCUMENTS**

**THE FINAL REPORT OF TECHNICAL WORKING GROUP “G”
ON DEVOLUTION OF POWERS**

**APPROVED FOR ISSUE AT THE 110TH PLENARY MEETING OF THE
CONSTITUTION OF KENYA REVIEW COMMISSION HELD ON 30
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1. INTRODUCTION

The Devolution Committee examined the Commission's Report and Draft Bill, as well as the Special and Supplementary Working Documents on Devolution of Power and the revised draft Bill on devolution of powers as required by the Constitution of Kenya Review Act, Cap 3A.

The Devolution Committee was guided by the values, objects and purposes of review enshrined in section 3 of the Review Act, *inter alia*:

- Promotion of people's participation in the governance of the country through the devolution and exercise of power;
- The respect for ethnic and regional diversity and communal rights, including the communities' rights to enjoy their cultures and express their identities;
- Establishment of a free and democratic system based on good governance and the separation of powers and checks and balances;
- Promotion of accountability of public authorities.
- Guaranteeing peace, national unity and integrity of Kenya in order to safeguard the well being of the people; and
- Ensuring the provision of basic needs of all Kenyans through the establishment of an equitable framework for economic growth and equitable access to national resources.

The Committee wishes to thank the Convenor, Hon. (Dr) Adhu Awiti, the Rapporteurs Hon. (Commissioner) Mutakha Kangu and Hon. (Commissioner) Prof. Wanjiku Kabira, the Draftspersons Messrs Peter Barrett and Jeremy Wainwright and the Committee members for their commitment, consistency and participation in the work of the Committee. The Committee had quorum for all meetings. The Committee is very grateful to the Secretariat, who included the following Programme Staff: Fidelis Wabwire Wangata, Menach Evans, Joyce Wamucii, Mary Chesire, Millicent A. Achieng' and Tambirai Janda. They worked professionally and tirelessly to support the work of the Committee.

1.1 Committee Mandate

The Technical Committee on the Devolution of Powers is established pursuant to regulation 49(4) of the Conference Regulations to consider any issue or theme arising from the chapter on the Devolution of Powers and the Commission Report. The Committee, comprising sixty members drawn from different categories of delegates to the Conference, widely and robustly debated *inter alia*, the following:

- The constitution, functions and operations of governments at the various levels of government, with the aim of maximising the mutual checks and balances and securing their independence;
- Principles of power sharing between national and devolved levels of government;

- Finance and Fiscal management;
- The Senate
- Intergovernmental relationships in the devolved set-up;
- Linkages between the chapter on devolution and the other provisions in the draft Bill, and
- Implementation of the proposed devolution system of government.

1.2 Method of Work

The Conference Regulations and the Rapporteur-General's Guidelines for the National Constitutional Conference *ad hoc* and Technical Working Committees guided the Committee proceedings. The convenor chaired the debates and the questions arising thereof. The Rapporteurs took the Committee through the National Report, the people's views on devolution, relevant technical working papers, recommendations of the Commission, the views of the Conference expressed during the general debate in the Bomas I and II sessions, the Special and Supplementary Working Documents on Devolution of Powers.

The Rapporteurs explained to the members the rationale behind the provisions in the statutory and relevant working documents and generally ensured the availability of technical and logistical support for the Committee. The Committee was assigned a draftsman. The Committee was also served by a small secretariat consisting of Programme Staff, a clerk, Hansard Reporter and support staff. Local and international observers monitored the proceedings.

As agreed by the Steering Committee of the Conference, the first hour of most sessions was committed to general comments on the items on the day's agenda by members of the Committee as well other delegates from other Committees wishing to make any contributions on the same. The Committee proceeded in line with its adopted work plan on a policy level. Subsequently, consideration of the Draft Bill on an article-by-article basis followed. The Committee as far as possible made decisions by consensus. Most devolution provisions have been mainstreamed in the Revised Zero Draft, and are therefore part of other chapters as well, other than chapter fourteen on Devolved Governments.

The Committee faced a number of challenges: The sad, tragic and brutal killing of the Committee's first Convenor, the late Dr. Crispin Odhiambo Mbai interrupted the steadfast and focussed committee progress. Members were deeply touched by the sad loss but reaffirmed their commitment, focus and dedication to the steadfast progress of the Committee work.

The Committee begun its deliberations without the draft Bill on the Devolution Chapter and had to proceed for some time on the basis of the Commission Main Report and the Special Working Document on Devolution of Powers. Questions of linkages of Devolution provisions with other Chapters of the draft Bill were myriad. The Committee made various suggestions on such issues. The Committee hopes that the relevant Technical Working

Committees and the Committee of this House will find these recommendations useful and will accept them.

1.3 Role of Experts

The Committee invited various experts to address the Committee on various needs, among them the following: financial and fiscal aspects of devolution, distribution of functions between and among the various levels of government, and the cost benefit analysis of the proposed devolution structure. Members noted that a section of the public was opposed to devolution of powers on grounds that the proposed devolution structure would be too expensive to implement. The Committee however found considerable information and evidence to the contrary.

The experts who addressed the Committee included Mr. Julius Kipng'etich, Prof. Peter Wanyande, Mr. Nicholas T. T. Simiyu, Mr. Joseph Oyula, Mr. Gilbert Wangalwa and Mr. Willie Samute, the Permanent Secretary, Department of Local Government in the Office of the President, Republic of Malawi.

1.4 Study Visit

The Committee visited the Kilifi District Development Programme (KDDP) projects for a first-hand experience of self-governance at the village level. The lessons learnt from the visit greatly enriched the deliberations and informed the decisions on the local government, as well as the accommodation of villages in the context of the devolved set-up. The Committee is grateful to the German Technical Co-operation agency (GTZ) and the United Nations Development Programme (UNDP) for arranging and funding the Study Visit.

2. COMMITTEE DEBATE

The Committee debated the Commission Report. It considered various efforts at devolution by the Independence Constitution, the current Constitution and other reforms such as the local government reform initiatives spearheaded by the Association of Local Government Authorities of Kenya (ALGAK) and the Ministry of Local Government. It examined how selected countries including Germany, South Africa, Malawi, and Switzerland had dealt with the question of devolution in their constitutions.

It was noted that the Independence Constitution was the result of intense and considerable discussions especially in regard to the system of government. As a consequence, the two major principles of the Independence Constitution were parliamentary democracy and devolution of power as an instrument of minority protection. Thus the structure of government resulting from the Constitution composed of the national government, a system of 8 semi-autonomous regions as well as an elaborate system of local government.

The Committee noted that the devolved government structure of the Independence Constitution was gradually eroded through several constitutional amendments effectively introducing the present structure of an

authoritarian and centralized government with an elaborate system of Provincial Administration.

The Committee was alive to the views of Kenyans on devolution as well as the Commission's recommendations thereto, which included the following:

- (i). That recommendations should reflect a cost-benefit analysis;
- (ii). That the levels of devolution and the distinct powers to be exercised by the devolved units be clearly defined;
- (iii). That the models of devolution should reflect the following broad principles:
 - o Clear demarcation of the functions and powers within and across the units of devolution in a way that ensures checks on power and reduces conflict in the exercise of power;
 - o The efficient and equitable mobilization, allocation and management of resources;
 - o The need to enhance participatory governance and accommodate diversity including cultural diversity; the needs of vulnerable groups such as women, children, the disabled, minorities and marginalized groups;
- (iv). That the question of financing the devolution units and the methodologies of sharing of resources be carefully developed;
- (v). That proper mechanisms to co-ordinate the intergovernmental relations should be provided for.
- (vi). Transition and Implementation of the new system; and
- (vii). Dispute settlement mechanisms;

Members also noted that the General Debate at the National Constitutional Conference during the Bomas I and II sessions generally supported the proposal for Devolution of Power. It was urged very strongly for the formulation of viable structures that would be able to promote equitable resource allocation, accountable governance, delivery of services and the empowerment of the people.

Delegates were considerably in the support of districts as the principle centres of Devolution. The subject of the legality of existing districts as the basis for the proposed devolution structure was a matter that was the subject of a hotly debated motion. It was generally proposed that there ought to be comparable social and economic resources for the proposed units of devolution. Some delegates asserted that the Constitution ought to specify the percentage of national resources that ought to go to devolved governments.

The Conference felt very strongly that the Constitution ought to provide for an independent Boundaries Commission to determine, define and review the boundaries of the units of Devolution.

2.1 Principles of Devolution

Arising from the above concerns, the Committee supported the principles of devolution elucidated by the Commission. The need to clearly identify the

system and structure of government was underscored. Whereas it was acknowledged that there was need to protect 'Minorities', it was noted that an acceptable and all-inclusive definition of the term should be agreed on. The need to mainstream questions of devolution throughout the draft Bill was underscored.

The Committee noted that Kenyans in their views to the Commission, as well as the General Debate at the Conference had unanimously called for devolution of powers for three main objectives: to enhance local people's participation in governance without interfering with the territorial integrity of the Nation, afford all Kenyans accessible and proximate service delivery and the control, equalisation and distribution of national resources. The Committee adopted the principles of devolution, as amended, as a true reflection of the views of Kenyans.

2.2 Levels of Government

The Committee considered the question of levels of government. Members unanimously agreed that there should be four levels of government, namely the national, regional, district and location governments. The governments at each level are distinct, inter-dependent, consultative and negotiative. Regions would mainly co-ordinate the activities and policies of the district governments that constitute the region.

By consensus, it was agreed that Local Government should be the third level of government and be based at the district level. This subsumes the local authorities into the proposed structure of devolution. All aspects of Local Authorities, including their powers and functions, must therefore be seen in light of the proposed district governments, which have now replaced them. The Provincial Administration was abolished.

However, a section of the meeting proposed that since numerous development programmes are currently anchored in the constituencies, there was need to consider the constituency as an alternative level of devolution of powers. This was however rejected by the Committee. Members felt that constituencies are electoral units. It was felt that the role of parliamentarians should be restricted to legislation in the National Assembly only, and should not be integrated with executive functions, as this would offend the constitutional principle of separation of powers among the arms of government. Development of the Constituency would therefore fall part of the district development planning to which the constituency forms part.

The committee also agreed on the establishment of location governments consisting a location council and location executive. The location administrator is to be elected by voters resident in the location in the manner prescribed by district legislation. The meeting noted the need for local communities or villages to be guaranteed the right to manage all affairs of local concern at their own responsibility within the limits set by national legislation. In this regard, the Committee proposed that associations, federations and networks of local communities or villages, within the

framework of their statutory powers and functions, likewise have the right of self-management as set by national legislation.

2.3 Units of Devolution

Members passionately debated the delicate question of the number of units of devolution. The following factors were considered in the deliberations: viability, sustainability, comparable territorial size, comparable population size, historical and cultural ties, the protection and welfare of minorities in the units, presently existing administrative and political units, the functions the proposed units are intended to take over from the national government, economic potential and natural resource endowment, efficiency, effectiveness and biodiversity.

Members were remarkably patient, understanding and accommodative during the highly charged and emotive debate. The need to keep the territorial integrity and unity of the country was underscored throughout. Equally emotive was the question of regional and district boundaries. Some delegates noted that there exist a lot of anomalies in the current district boundaries and should not be entrenched in the Constitution. Correcting such anomalies in the future would be very difficult, as it would require constitutional amendments. However, members were considerably in support of districts as the principle units of devolution.

The issue of protection of minority communities arose. Numerous examples over the world were given where Constitutions have been designed and tailored to meet the needs of such groups. Of particular concern was the plight of the Teso people who made a strong case for special status in the devolved government system. Some members felt that there was need to afford constitutional protection to minorities at all levels of government and not just to focus on isolated cases. On fears of domination of numerically small communities by the numerically superior communities, it was explained that the Bill of Rights would guarantee the safety and well being of all Kenyans throughout the Republic.

A most difficult question to determine was what region Trans Nzoia district (and to some extent Mt. Elgon district) should be placed in. This controversial question was resolved by the decision to place the two districts in one region with Turkana, Marakwet and West Pokot districts.

The Committee then resolved that the territory of the Republic would be divided into eighteen (18) regions, and a Special Unit comprising Teso District. There would be seventy-four (74) units at the third level of government, corresponding with the existing number of districts, as well as those that shall be created from the division of Nairobi into four boroughs. Each region would comprise the aggregate territory of the districts that constitute the region.

The boundaries of a district whose name corresponds to the name of a district existing at the date the provision on districts takes effect would be the

boundaries of that district. Members also agreed that each district shall be divided into such locations, with such boundaries, as shall be prescribed by national legislation.

However, following discussions on the 'Zero Draft' and the Issues and Recommendations arising from the working session in Mombasa held between 2nd February 2004 and 11th February 2004 to harmonise decisions arrived at by the various committees, members agreed on the need to revisit decisions earlier reached on division of the country into regions as well as the distribution of functions between and among the various levels of government.

Specifically, the Committee unanimously agreed on the need to reduce the number of regions for the following reasons: Firstly, fewer regions were more economically viable. Secondly, since regions would be mainly coordinative units, there was merit in having fewer regions. The general public mood also favoured fewer regions. Finally, the Committee took the view that the fewer regions there were, the less the cost of running the proposed devolution structure would be.

Consequently, the Committee agreed on the following guidelines to enable delegates to decide on fewer regions than those already agreed to: That Central, Coast, Western, Nairobi and North Eastern Provinces should consist of one region each. Nyanza province should have either one region or a maximum of two regions. Rift Valley and Eastern Provinces were to have two regions each or a maximum of three regions each.

Subsequently, the Committee reversed its earlier decisions on the number of regions and unanimously agreed on fourteen regions namely, Coast, Western, Nairobi, Central and North Eastern would constitute one region each. Nyanza and Eastern provinces would have two and four regions respectively. Rift Valley province would be divided into three regions, namely the North, Central and South Rift regions.

The question as to what region Trans Nzoia district, and to some extent Mt. Elgon district should be placed drew a lot of controversy and heated debate again. The question was resolved by the decision to place the two districts in the Northern Rift region with Turkana, Marakwet, Keiyo, Uasin Gishu, Nandi North, Nandi South and West Pokot districts. There would be no 'Special Units' as the Committee resolved to integrate Teso district into the wider Western region.

The need to protect minorities within regions generally, and across all the units of devolution was underscored.

2.4 Variation of Boundaries

The Committee noted that there exist a lot of anomalies in boundaries of regions, districts and locations. It was proposed that there be established a Commission on Boundaries and Elections that would not only oversee elections, but also make recommendations concerning the fixing, review and variation of the boundaries of regions, districts and locations. This proposal

was harmonised with the recommendations of the Committee on Representation of the People.

In making any such recommendation, the Commission will be required to have regard to the viability, sustain-ability and effectiveness of the region, district or location, taking into account—

- (a) its population and area;
- (b) historical and cultural ties;
- (c) its economic and natural resources; and
- (d) the objects and principles of devolution of government.

After consultation with the governments of any regions, districts and locations affected, and on the recommendation of the Boundaries Commission, Parliament may by enactment vary the boundaries of a region, district or location.

2.5 Distribution of Functions

The Committee further considered the question of assignment of functions among the various levels of government. It was strongly urged that every level of government should exercise and perform only such powers and functions as are assigned and re-assigned to it by the Constitution and any legislation. The allocation of functions was based on the principle of subsidiarity, so that functions were assigned to the lowest level of government best placed to perform them, where they would be best performed.

The Committee assigned most implementation functions to District governments. Consequently, district governments were assigned matching taxation powers to enable them successfully and effectively perform the myriad functions allocated to them.

Members also agreed that when one level of government by legislation or other measures assigns or re-assigns powers and functions to another level of government, necessary arrangements shall be put in place to ensure that the funds necessary for the exercise and performance of such additional powers and functions shall follow. In other words, funds must follow functions. Also, where a power or function is to be exercised and performed concurrently by two or more levels of government, such levels of government may consult and co-ordinate with each other in the exercise and performance of the power or function.

Similarly, as noted earlier and following discussions on the 'Zero Draft' and the Issues and Recommendations arising from the working session in Mombasa to harmonise decisions arrived at by the various committees, members revisited decisions earlier reached on the allocations of functions between and among the various levels of government. Subsequently, regions were allocated mainly coordinative functions only.

2.6 Finance and Fiscal Management

The Committee considered the fiscal and financial aspects of devolution. Members emphasized that the success of the proposed devolution structure would depend on the financial arrangements that would be put in place. The Committee distinguished the following financial powers of state: the power to raise revenue, the power to administer revenue, the power to spend revenue, and the power to control and audit finances.

It was noted that the importance of sharing of financial resources among the different orders or levels of government in a devolved system of government stems from a number of reasons: Firstly, financial resources are important to each level of government as they enable or constrain governments in the exercise of their constitutionally assigned responsibilities, particularly legislative and executive functions. Responsibilities should not be given without the accompanying means necessary for the effective discharge of the responsibilities. It is appreciated that devolution attempts by the Independence Constitution, as well as the present day decentralisation by the Central Government to Local Authorities have failed to yield benefits devolution offers because of failure to properly design and entrench financial arrangements.

Secondly, taxation and expenditure powers are important instruments for effecting and regulating the economy and to maintain a proper macroeconomic equilibrium. Financial resources play a very important role in resource distribution and ensuring a balanced development of the country. Redistribution of resources is also to be seen as an overall value in the governance processes.

There is thus need to address both vertical and horizontal imbalances between and among the units and levels of government. The cause of the imbalances was traced back to the governance, development and investment policies of our past governments, both colonial and post-colonial. Thus the need for financial equalisation to ensure that all citizens within the country are able to access comparable services at reasonably comparable tax rates.

There was consensus on the need to establish an independent Commission on Finance and Fiscal Policy whose functions shall be to make such recommendations as will ensure that the sharing of revenue from national resources is equitable as between governments at all four levels and is equitable, at each level, as between the different units at that level. The Commission would also play the following further functions:

- (a) report to the four levels of government its recommendations concerning the apportionment of national revenues to the four levels;
- (b) frequently review such recommendations to ensure they conform with changing circumstances;
- (c) mediate in and determine disputes relating to financial arrangements between the national and devolved governments.

The Commission is to consist of the following persons appointed by the President –

- (a) a chairperson;
- (b) fourteen persons, consisting of one nominee from each regional assembly;
- (c) two persons to represent district governments, appointed in accordance with national legislation;
- (d) two persons nominated by the National Assembly; and
- (e) the Principal Secretary responsible for Finance and the Controller of Budget.

It was agreed that all levels of government should be represented in the Commission. This is so that no one level shall have the monopoly of decision-making as regards finances. In its recommendations, the Commission shall aim at defining and enhancing the revenue sources of governments at the four levels with the object of encouraging fiscal responsibility and moving the devolved governments over time toward financial self-sufficiency, taking into account the principles of taxation set out in the Constitution.

The Committee also considered how the fiscal capacity of devolved governments might be developed and strengthened through austere treasury and budget control, audit requirements, transparent public procurement, controlled public borrowing and effective revenue administration. An innovation of the Committee is the establishment of other Consolidated Funds for devolved governments into which all revenues collected or due to the devolved governments shall be kept, and may only be withdrawn therefrom in accordance with appropriate legislative authority.

The Committee's decisions on finance shall be harmonized with those of the Technical Working Committee on Public Finance and be transferred to the chapter on Public Finance.

2.7 Taxation Powers

Members assigned taxation powers to the national and district levels of government. A critical consideration was the functions that were assigned to the various levels of government. Members firmly intended that funds must follow functions. Major taxes were assigned to the national government, with the intention that the revenue so collected will be used mainly for financial equalisation. Other taxes were assigned to the district governments.

The Committee noted that whereas the regional level of government is necessary to supervise and coordinate the affairs of the lower devolved levels of government, and whereas numerous functions had been assigned to regional governments, the regional governments should not have taxation powers. But mechanisms for financing this level of government would have to be provided for in the Constitution to avoid the marginalisation of regions by the national and district governments. A section of the Committee however took the

contrary view that since the levels of government were distinctive, the regional governments should have taxation powers.

It was agreed that Location governments should not have taxation powers.

2.8 Borrowing by Governments

The Committee debated borrowing by the various levels of government. Members agreed that all governments should have power to borrow funds from other governments and from external sources. The borrowing power would be regulated in accordance with national legislation, which would, *inter alia*, provide that the terms and conditions of the loans shall be laid before the legislature of the various governments and shall not come into force unless they have been approved by a resolution of said legislature. Moneys received in respect of any loans shall be paid into the Consolidated Fund or Reserve Fund, and form part of that Fund or into some other public fund, which exists or is created for the purpose of the loan.

Regional, district and location governments may also raise loans for capital or recurrent expenditure in accordance with reasonable conditions determined by national legislation. However, loans for recurrent expenditure may only be raised when necessary for bridging purposes during a fiscal year; and shall be repaid within twelve months.

2.9 Public service at devolved levels of government

The Committee proposed that there should be a single Public Service Commission for the Republic. The Commission is to consist of: -

- (a) a chairperson;
- (b) fourteen persons, consisting of one person nominated by each regional assembly;
- (c) two persons to represent district governments, appointed in accordance with national legislation; and
- (d) two persons nominated by the National Government.

It was agreed that all levels of government are represented in the Commission. This is so that no one level shall have the monopoly of decision-making as regards public service. In this regard, a regional and district government would be responsible for the recruitment, appointment, promotion, transfer and dismissal of members of its public service within a framework of uniform norms and standards applying to public service prescribed by national legislation. This shall also apply to the Teachers Service Commission and the Police Service Commission.

2.10 The Senate

The Committee proposed the establishment of a second national chamber, the Senate, whose principal role shall be to provide an institutional framework through which the devolved levels of government share and participate in legislation, governance, administration and decision-making at the national

level. It would also make legislation, governance, administration and decision-making at the national level to be a shared function between the national, regional and district governments. The principal role of the Senate therefore is to provide an institutional framework for consultations between the different levels of government.

2.11 Balance of gender and diversity

The Committee was alive to the need to mainstream affirmative action for women in the chapter. Great efforts were made to mainstream gender issues in the chapter. Additionally, further provisions protecting both genders were agreed on so that at all times, not more than two-thirds of the members of any executive committee or legislative body constituted under the Chapter would be of the same sex. Composition of governments at various levels shall reflect this position. This way, no one gender would be marginalized.

It was also agreed that national legislation shall be enacted to ensure that community and cultural diversity in a region, district or locality is reflected in legislative and executive bodies exercising power in the region, district or locality and that minorities would always be protected.

2.12 Government during transition

The Committee considered questions of transitions from one government to another and resolved that while any election is being held to constitute an assembly or council under the Chapter, the assembly or council as last constituted should remain competent to function until reconstituted after the election. This would avoid any interregnum in government.

2.13 Removal of Elected Leaders

The Committee passionately debated the delicate matter of removal from office of elected leaders before their constitutional terms expire. Whereas members agreed with the wisdom and need for such a provision, members were also alive to the fact that such a provision was susceptible to abuse. While the provisions would be retained, there was need to tightly control the circumstances under which elected leaders may be legally removed from office before expiry of their terms.

2.14 Publication of laws

It is to be noted that there have been established various legislative bodies. The Committee therefore appreciated the need to make provisions to require laws made by the numerous legislative bodies are published in the Kenya Gazette before they take effect.

2.15 Conflict of laws

The Committee considered that since the legislative bodies will pass myriad laws, conflicts in the laws might arise from time to time. Consequently, the Committee made provision for resolution of conflicts between national

legislation and regional or district legislation falling within their concurrent jurisdiction.

2.16 Recommendations on Transition

The Committee also debated the difficult questions of implementation of the new devolved structure. There was a suggestion that there should be a transitional board in every district to advise and monitor the transition process to ensure smooth transition from the present to the new authorities and dispensation. It was suggested that the Constitution of Kenya Review Commission should conduct civic education before the next general elections to educate Kenyans on the proposed new Constitutional dispensation.

Noting that the Committee on Transitional and Consequential Arrangements had proposed that all legislation to put into effect all provisions of the new constitution must be enacted within three years, the Committee took the view that the Senate must be established immediately upon the enactment of the Constitution to enable it participate in the anticipated legislative process. It was agreed that the various legislations were of such an important nature to be left to the National Assembly alone. It was further suggested that the election of the members of the devolved governments and the Members of the National government should be held at different times.

If it is deemed that the 2002 General elections were held under the proposed new Constitution as elucidated by article 3 of the Eight Schedule, It was felt that Councillors within a given district should, within six months of the enactment of the new Constitution, constitute an electoral college for the purpose of electing members of their respective regional legislative assemblies and the Senate.

3. CONCLUSION

The Committee achieved remarkable results in executing its mandate.

The people's views were accurately crystallized. The Committee, in addition carefully considered the fears and concerns of the people and full took them into account. The Committee's proposals were aimed at facilitating social and economic changes that people want and which are necessary to ensure a democratic, participatory and just society. The Committee took the view that many of these changes would come about through the new institutions and procedures for government, decision-making and accountability that the Committee had recommended.

Equally, it was recognized that national unity would not come about unless all our communities are treated justly - and feel that they are treated fairly. It was proposed that communities that have been denied opportunities to benefit from social and economic development should be assisted to achieve living standards of other Kenyans.

The Committee's proposals were designed to give voice to the people and to affirm their sovereignty. They reaffirm the commitment to a united Kenya and the resolve to find a framework for the co-existence of all communities.

4. ANALYSIS OF ISSUES ON THE REPORT AND DRAFT BILL

4.1 General Debate

4.1.1 The Devolution Structure

The committee started deliberations by noting that Devolution should aim at creating economically viable units which should not Constitutionalise ethnicity or threaten national unity, but which nevertheless takes into consideration the shared interests of the people. The importance of allowing Kenyans to exercise self-governance was emphasized as was the need to maintain and uphold national unity. There was concern that the structure envisaged many elective positions, which would make the system expensive. The committee had initially agreed on the partition of Kenya into nineteen regions but it later revisited that decision with an aim of reducing the number of regions. The committee finally agreed to fourteen levels.

4.1.2 Principles of Devolution

The committee was of the general view that the principles as elucidated in the draft were comprehensive but need to be refined and consolidated. It was noted that primary and secondary principles should be differentiated, and the objectives and principles clearly stated and form part of the preamble to the chapter on Devolution of Power.

The members also felt that the committee should come up with a clearly defined structure of the proposed devolved government and noted that the structure should enhance the local people's participation in governance without interfering with the territorial integrity of the Nation. The committee also decided that it would demarcate the devolved units' boundaries rather than leave it to the yet to be formed Boundaries' Commission.

On the issue of costing, the committee resolved that experts would be invited to address it on the same. It was affirmed that Devolution should be entrenched in the Constitution.

4.1.3 Role and Place of Local Government

Delegates generally agreed that Local Governments had a vital role to play in governance and service delivery and therefore ought to be autonomous and entrenched in the Constitution. The Committee also felt that the total proportion of allowances, salaries and other personnel expenditure of Local Governments should not exceed 15% of the total revenue of the Authority.

On the qualification and remuneration of councillors, it was suggested that there should be a minimum qualification and that they should be paid out of the Consolidated Fund. The members further suggested that the functions and powers of the councillors should be clearly outlined.

The establishment of a Local Government Service Commission and a Local Government Finance Commission to oversee the affairs of the location and finance matters respectively was deemed necessary.

On financing, the committee welcomed a suggestion that the districts should receive fixed unconditional grants from the National government. It was agreed that the local government should be based at the existing districts with the addition of the four boroughs of Nairobi. Concern was however raised that the boundaries as they exist were drawn by the colonial powers without the consideration of the minority interests and the anomalies should be addressed. Some members however proposed that the issue of boundaries should be left to the Boundaries Commission that would also review the boundaries of geographically and demographically large districts.

Concern was raised as to what would become of the other categories of Local Authorities within the district if districts were adopted as the principal units of devolution. It was suggested that non-viable Municipalities, Town and Urban Councils should be abolished or be subsumed to District Councils. Alternatively it was suggested that the Provincial Administration should be subsumed into the district governments and the District Administrators/Clerks should replace District Commissioners in the proposed district governments. However, many were of the view that the Provincial Administration should be abolished.

For the sake of clarity, it was noted that a distinction should be made between the District Government, Local Authorities and Local Government and that the implementation of policies should be synchronized throughout the levels of government. It was suggested that each of the levels would organize themselves into Councils and executive committees and elect a leader from amongst them. It was further suggested that the term of the elective posts should be harmonized to five years.

Some members supported the suggestion that the second level should be named 'regions' but no decision was taken. They further suggested that the region should have leaner responsibilities as it was meant to be largely co-ordinative level that relieved the national government of some of its burden and at the same time act as a buffer for the lower levels of devolved levels against emasculation by the National government. The committee was unanimous that the district should be the principal level of devolution. There was a proposal that there should be no taxation or legislation at the locational level.

4.1.4 Structure and Management of Nairobi

The Committee considered the question of management of Nairobi as outlined in the supplementary Special Working Document on Devolution of Power.

Various models were suggested for the division of Nairobi into four boroughs and the committee adopted Model B whereby Nairobi was divided into four boroughs. The Committee was however cautioned against entrenching the models in the Constitution, as the dynamics of Nairobi were bound to change. It was noted that while it was useful to expand the boundaries of Nairobi to allow for the future development of the City, it was noted that such expansion would infringe on boundaries of outlying districts and provinces. The meeting was urged to consider the revenue base for the proposed boroughs as the main basis for division.

It was recommended that the actual division of Nairobi be stood over pending a substantive study on Nairobi's socio-economic data and dynamics.

It was further proposed that a City Centre Sub-Municipality be created to serve the Central Business District and the seat of the National Government. This would bring the boroughs to five. The meeting however considered that such municipality should be a component of the Westlands borough. It was also found necessary that a provision be made for the management of urban centres and cities within districts as well as to draw a distinction between urban and rural districts and their management. The need to manage the effects of rural-urban migration was underscored.

It was proposed that Nairobi should be renamed the Nairobi Metropolis as the capital territory, headed by a Lord Mayor. The term 'Lord Mayor' was found objectionable to a section of delegates.

4.2 Analysis of the Draft Bill

4.2.1 Part I : Structure and Principles of Devolved Government

Article 213 - Division Of Kenya Into Regions Districts And Locations

The committee proposed that the introduction to articles of parts II, III and IV of the Chapter on devolution of state powers should be moved to this article and form a preamble to the chapter on devolution.

The committee reconsidered its decision on the demarcation of regions and the general feeling was that the regions should be reduced in number, and to that end, there were several suggestions.

It was suggested that villages should be added as a level of government. The committee was then informed of the factors to be taken into account when debating the proposal. It was noted that the regions as they stood did not take

into consideration the criteria laid down in the Special Working Document on Devolution of Powers. However, some members felt that the Committee did not have the mandate to determine the number and boundaries of regions and that experts or a Commission should be formed to determine the same after extensive research. It was therefore proposed that the regions should remain nineteen (19) in number because the population in the regions would increase with time and they were hence economically viable units. Most members disagreed with this proposal and suggested that the committee should determine the regions working on the decisions already made. There was an alternative suggestion that the committee should pay attention to 'experts' before determining the regions. Members were cautioned about over diminution of the regions.

The committee was informed that when reconsidering the levels devolution of government, they should take into consideration the proposed devolution structure and the fact that reducing the number of the regions would be one way of reducing the costs and creating economically viable units. It was noted that by virtue of comparing the area with the population, there were three provinces which should be split namely Rift Valley, which should be split into three, Eastern province which should be split into two and North Eastern which should be split into two. It was suggested that the regions should be reduced to thirteen economically viable regions. It was further suggested that the assignment of functions to the regions should be reviewed first before reducing the number of regions. It was further noted that taking into consideration that the regions were assigned functions that were mainly co-ordinative in nature the size of these regions should not be an overriding factor.

On the Teso special unit, it was felt that the fears that led to its creation should either be allayed or it should be left as a unit on its own.

It was suggested that references and assignment of functions in the draft should be synchronized to reflect the principle that the district is the principal unit of devolution of power.

There was a proposition that the regions should be divided as follows; Nyanza, Coast, Central, North Eastern, Western and Nairobi should remain as single units, Rift valley and Eastern should be divided into two regions each. It was further suggested that Eastern province be divided into three regions and that Teso should not be a region but a special district. The same was to be applicable to Kuria District. It was also suggested that some towns within the regions should be elevated into cities, and every region should have a city.

There was a suggestion that Article 214(b), on district representation within regional assemblies, should be amended because the provision encouraged further fragmentation of regions, since fragmentation of the regions would allow regions to front more representatives to the Senate.

Emphasis was give to the need for local communities to take charge of their security arrangements.

Article 213A - Forms of Government

The Committee deliberated the Forms of Government and noted that in addition to the factors taken into account in the creation of units (page 29 of the Special Working Document on Devolution of Powers), it was deemed that population and adequate revenue base should be key factors in determination of the levels to which power should be devolved.

It was noted that many development programmes are currently anchored in the constituencies and thus there was need to consider the role and place of the constituency in the devolved structure. In this regard it was proposed that the current administrative divisions should be re-aligned to coincide with and thus provide administrative support and service delivery to the constituencies.

There was a proposal that sub-locations should be elevated to locations in the expansive districts, especially North Eastern province districts, to enhance participatory governance and service delivery. It was agreed that the role of the regional level of government was to supervise and coordinate the affairs of the subsequent devolved levels of government.

Noting that Kenyans were already highly taxed, a section of the members proposed that the second level of government should not have the power to levy taxes. Members were cautious that the regional level of government ought to be structured differently from the existing provincial administration if it were to have a meaningful role in the devolved structure.

It was suggested that that the title to the section be renamed “***Form of Government***”

It was noted that since devolution aimed at bringing the power to the people, the structures should be listed to reflect a bottoms-up structure starting with the location, however the committee did not take up the idea. It was further recommended that the zonal and the district levels should be renamed ***regional*** and ***district*** levels respectively.

Article 213B - Objects of Devolution

The Committee considered the role and place of the local communities and the village in the devolved structure especially in light of the visit to Kilifi District Development Programme projects. It was suggested that the right of local communities to manage their own affairs and development programmes should be entrenched in the Constitution and that villages should be given latitude to organize themselves informally, but should be able to channel their concerns to the Location Committee.

It was proposed that Article 213D (f) should be redrafted to confer some special provision of gain to the area/region where a resource is being exploited for national good.

The meeting was advised that granting villages the right of self-governance might result to separation on the basis of clans. The committee was vague on

which level should have the right to self-government; the village or the sub-location.

Article 213C – Principles of Devolution

The members further considered the functions of some of the major institutions in the devolution structure and it was suggested that in addition, there should be provision for the same. The committee was of the opinion that the principal function of the Regional government is to co-ordinate and implement regional projects, while the role of the Senate would be mainly to provide an institution whereby the devolved governments participate in the national legislative process.

It was proposed that a new sub-article be introduced stating that the District government is the principal level of devolution of power. The committee felt that it was also important to outline the principal functions of the Regional government, Senate and the National Assembly. It was suggested that the regional government should be a purely co-ordinating unit whereas the principal role of the National Assembly and the Senate should be to enact National Legislation including framework legislation.

Article 213D - Co-operation between government at the different levels

It was agreed that there was need to protect minority groups and communities. It was further settled that a provision be formulated to provide for the prioritised and speedy disposal of intergovernmental disputes in the Supreme Court.

It was however suggested that references to Supreme Court in the Chapter should be changed to 'High court' to conform to the recommendations of the committee on Judiciary. The committee by and large agreed with the provisions of the article and emphasized the need to regulate the relations between the governments to avoid conflict.

Article 213E - Assignment of functions

As the committee commenced deliberations on the Article, they were informed that the principles of Subsidiarity and Complementarity ought to guide them in the task of assigning functions amongst the various levels of government. The members were advised to distinguish between horizontal and vertical allocation of functions between and among the various levels of government.

It was noted that the functions in the seventh schedule ought be harmonised with the functions enumerated in the article. With regard to the function assigned to the district on management and maintenance of high schools, it was suggested that the quota system should be maintained in the intake of students into local schools and that the respective districts should manage them. It was noted that the districts should not levy fees in primary schools, as this would contradict the present policy on free education.

It was generally agreed that each district would deliberate and enact its own laws pursuant to the functions as enumerated in the schedule. It was however pointed out that the role of the districts should be mainly implementation while the national level formulated the policies.

It was decided that a new article on the functions of the regions should be introduced and as stated earlier, the Regional government's functions should be mainly co-ordinative in nature.

The committee resolved to adopt the functions of the Location, District and Region subject to the said amendments. The committee revisited the Article with a view to refining the functions of the regional level. It was the opinion of the members that the functions already assigned to the region were far too many and ought to be reduced further.

The delegates supported the proposal to introduce a new clause stating that all people should have equal civil rights and are entitled to equal civil services. The committee also embraced the policy on promotion of local languages as a way of preserving culture. There was an observation that national economic planning should be added to the list of the National government functions.

There was a query on whether the teachers would be paid by the national government or the respective sub-national governments. However, members felt that the functions of the education sector should be devolved to the districts and this should include the hiring, remuneration and firing. It was clarified that the provision on higher education should not preclude the district governments from establishing and managing universities. The committee was informed that one of the issues that arose in Mombasa was a proposal to transform the Teachers Service Commission to an Education Commission.

It was pointed out that there might be need to establish national standards with regard to professionals, but that professionals ought to pay trade licensing fees to the district governments. The Committee noted that there is a difference between trade licensing and regulation of professions.

Concerning management of energy resources it was suggested that a provision should be formulated to provide for accrual of some benefits to the regions or district where such resources are harnessed.

It was noted that the chapter on National Security had adequately covered the issues of local security and therefore it was suggested that there should be a provision that the local security should be organized in such manner as the Police Act and the Administration Police Act shall provide. The proposal was adopted.

It was further proposed that there should be a Police Post at every Location for emergency response and security management and a sub-committee composed of elders of the village at the sub-location level to handle local and minor disputes.

4.2.2 Part II: Regions

Article 214 - Regional Government

The committee adopted the proposal to refer to the second level as the **Regional** level and consequently all references in the draft to the level were regularised.

It was suggested that the demarcation of regions should be confined to the existing provincial and district boundaries. On whether the Committee should fix the regional boundaries or should leave the fixing of boundaries to a Boundaries' Commission, the members were urged to draw a distinction between questions of constitution making, implementation of the Constitution and future variation in boundaries. Some members were of the view that the Commission should vary and alter the boundaries while others were of the view that it should recommend the variations to Parliament.

It was noted that the current district boundaries were in dispute and should be fine-tuned before the boundaries were entrenched in the constitution. In addition, it was noted that the draft had provided for the procedure to be followed by the Boundaries Commission when varying boundaries. The regions that the Committee resolved to create were based on the existing district boundaries. It was advised that the question of boundaries was complicated and emotive and should be referred to the Committee on Transition and Consequential Arrangements. Alternatively, a Task Force could be established to look into the question of boundaries.

It was suggested that a map showing the division of the country into Regions should be included in the Committee Report and the term "government" as applied to the devolved ones should be replaced with "**authority**"

The committee was informed that since the second level of government would be coordinative in nature, it would therefore require various institutions to manage the power devolved from the national level. Legislative and executive institutions at this level were therefore deemed necessary. Divergent views were expressed as to whether the legislative body at the regional level of government should be called a 'Regional Legislative Assembly' or 'Regional Council', the committee settled on the former. It was stated that the role of the Regional level of government would be best understood after functions were allocated to the various levels of government. It was proposed that the institutions at the second level of government should be distinguished in nomenclature from the subsequent levels of government. Question was raised as to whether the public/civil service should be subsumed in the Regional Executive.

The committee considered and approved the proposal that Nairobi, being the capital territory, should be managed as a Metropolitan City and accorded special status by National Legislation and be headed by a Lord Mayor who should be elected directly. There was a counter proposal that Nairobi should

be managed in the same way as all other Regional Governments. The institutions in other regions would also apply to Nairobi *mutatis mutandis*.

The committee reconsidered its decisions on the articles and the general feeling was that then regions should be reduced in number. Wide support was expressed for larger units as stated earlier. The committee finally settled on thirteen (13) levels. Teso, which had been given special status as a region joined up to form part of region nine (9) and therefore the special region was deleted from the draft.

There was concern on the situation of the indigenous urban communities, such as the Nubians and Swahili in Pumwani, in light of the fact that Nairobi would be managed as a metropolitan city. It was suggested that there should be a special provision in the Constitution protecting such communities. It was suggested that the Rapporteurs should take note of such communities and formulate the appropriate provisions for the same in the new Constitution.

Article 214A - Regional Legislative Assemblies

It was noted that the clause sought to constitutionalise affirmative action for women in matters of representation to the Regional Legislative Assembly. It was proposed that the affirmative action provided for by the clause should provide for both men and women and that a general clause should be introduced on the affirmative action provision for women representation to the Regional Legislative Assembly.

The members were informed that to create a bottom-up approach to government, there was need to create a link between the Regional Legislative Assembly and the Upper House (Senate) by ensuring that the Regional Assembly drew its representatives from the Districts and did not directly elect them. It was felt that members of the Regional Legislative Assembly should be elected from among the elected representatives to the District Council. This was felt unwise, as it was perceived to dilute the representative and democratic mandate of the Regional Assembly. There was a counter proposal that members of the Regional Legislative Assembly should be elected directly.

It was also proposed that the representatives of Districts to the Regional Legislative Assembly may be nominated by District Council representatives from outside the District council, based on agreed criteria, and checks and balances may then be put in place to ensure that the members so elected act without undue interference from elected District representatives. Such elected representatives would also be ex-officio members of District Councils. It was noted that there may be need for the District Governor and or members of the district council, who are elected directly in the District, to sit in the Regional Legislative Assembly.

It was proposed that it would be advisable for the representatives to the Senate, and the Regional Chief Executives to be elected directly from the Districts. To that extent, the District Councils shall constitute the electoral colleges for the purpose of electing representatives to the Regional Legislative Assembly. Further, members of the Regional Legislative Assembly shall be

elected within the Districts, but from outside the membership of District Councils to avoid double representation. The committee resolved that in electing the representatives to the Regional Legislative Assembly, Districts shall take into consideration the various diversities represented in the county. It was suggested that the representatives to the Regional Legislative Assemblies shall be ex officio members of their respective Districts Councils and that members of the Regional Legislative Assemblies be subject to recall by their respective Districts Councils. Concern was expressed on the number of Regional Assembly Executive Committee members, and to this end, the committee proposed that the said members shall not exceed one-third of the total membership of the Regional Legislative assembly.

Article 214B – Election of Members of Regional Legislative Assembly.

The committee started deliberations on the article by first approving the table on the proportion of district representation in the Regional Assembly except for the proposal to amend the titles of the table to reflect the principle of affirmative action for both genders.

However, the committee reconsidered its decision and it was proposed that the table should be done away with as it was complicated and instead a fixed number of representatives should be drawn from each district. It was proposed that each District should send 4 representatives to the Regional Legislative Assembly, taking into account gender balance and other diversities in the district. Alongside the above proposal, there was a suggestion that the committee should consider the German system where population was also considered.

Some members saw no fault in the table and were of the view that it was adequate since it ensured that the regional assemblies were neither too small nor too large. There was a suggestion that instead of deleting the table, it should be amended to provide that all districts with less than 5 districts should have 4 representatives each while those with more than 5 districts should have 4 representatives each. It was emphasized that each district should have equal number of representatives.

It was proposed that the new articles adopted to replace articles 214B should specifically refer to the number of women. There was opposition to revisiting the debate for a third time, without a formal motion rescinding the earlier decisions. The Convenor directed the members interested in revisiting the Article, to draw up a motion and present it to the Committee at a subsequent meeting.

It was suggested that the sub-articles (2) and (3) should be moved to Article 214A. It was also proposed that sub-article (3) should be amended to provide that the members of the Regional Legislative Assembly may attend their respective District Council meetings only on invitation.

Article 214C – Speaker and Deputy Speaker

The committee decided that there should be a clause providing for the establishment of a Regional Legislative Assembly Speaker and his/her deputy.

There was objection to the wording of sub-article 3 (c), it was decided that the Speaker and deputy Speaker should appoint temporary speaker(s) to avoid a situation where the District Council members could organize a “coup” and conduct business while the Speaker or the deputy Speaker could be around.

Article 214D – Functions and Legislative Authority Of Regional Legislative Assembly

It was noted that the article describes the management of regional institutions, horizontally.

Regional resources as referred to under sub-article (1) (b) were described as ‘resources of the aggregate constituent counties and could exclusively belong to individual districts, or mutually owned by various districts within the region for integrated development planning’.

Questions were raised as to how the present national institutions would be managed especially with regard to delivery of services to the regions.

Article 214E – Procedures of Regional Legislative Assemblies.

There was minimal debate on the article and the committee adopted it without amendment.

Article 214F – Regional Executive

The committee proposed to name the Regional Chief Executive. The titles proposed and put up for voting were; Regional Governor, Executive Chairperson, Regional Chairperson, Regional Premier, or Regional Commissioner. The committee adopted the title, Regional Premier. The committee was of the view that the position of Deputy Regional Premier be established.

It was recommended that the civil service at the regional level should be separated from the legislative arm of government. Alternatively it was noted that there was need to make provision for a Regional Civil Service, whose the head should be called Civil Secretary and be recruited from anywhere in the country.

It was proposed that the Regional Legislative Assembly should approve a cabinet appointed by the political head of the Region and that the size of the Regional Cabinet should be fixed. The Committee was advised to refer to section 113 of the Lancaster Constitution in determining the size of the regional cabinet. There was a proposal that sub-article 5 should be deleted in its entirety because cabinet members should not be limited to a term (ten years). There was a counter proposal that the term be limited to five (5) years. It was further suggested that the tenure of the premier and the mayor should be

limited to two terms to avoid corruption and entrenchment. However, it was also noted that there would be no need to establish the limits as the mayor and the premier were elected every five years.

Article 214G – Election of Regional Premier and Deputy Regional Premier

It was proposed that the Regional Premier shall be elected from outside the Electoral College but from within the Region. Similarly, the committee considered whether the Deputy Regional Premier should be elected directly, in the same manner as the Regional Premier. It was further suggested that the Regional Premier and the Deputy Regional Premier be elected for a maximum of two five-years terms and that the Premier should be garner a two-thirds majority of the Electoral College. In the event of failure to get the two-thirds majority; there shall be a run-off of the top two candidates. The candidate gaining a simple majority should be declared elected.

The committee supported the proposal that the Regional Premier, the Deputy Regional Premier and the Speaker of Regional Government should not come from the same District, where there are three or more districts in one Region.

Article 214H – Election of Mayor and Deputy Mayor

On management of urban jurisdictions, it was a suggested that a provision be formulated to provide that in a case where a town is upgraded to city status, the Premier becomes a Mayor. It was suggested that the issue would best be addressed under Article 231 E.

Article 214I – Functions Regional Executive Committees

The Committee proposed that the Regional Executive Committee should be directed by the Regional Premier and that the members should be accountable individually and collectively to the Regional Legislative Assembly. It was noted that Regional Premier could execute the policies and directions of the Regional Legislative Assembly.

It was suggested the Regional Premier should have the power to appoint the Regional Executive Committee, which would be approved by the Regional Legislative Assembly. It was further proposed that the authority at the regional level should be vested in the Regional Legislative Assembly. Fear was expressed that vesting the Regional Legislative Assembly with executive power would offend the Constitutional requirements of separation of powers and checks and balances among the organs of Government. It was proposed that the Regional Legislative Assembly should be renamed ‘Regional Assembly’.

The Committee noted that clause 214F (4) should reflect the position in the national government. There must never be an interregnum in the Legislature and Executive at any time.

4.2.3 Part III: Districts

Article 215 – Districts to which this Part applies

Since Teso was no longer a special district, the article was deleted.

Article 215A – District Governments

It was proposed that the term ‘County’ be replaced with ‘District’ and that the title of the part be renamed ‘District Governments and Districts’, however the committee took up the suggestion of renaming the part ‘*Districts*’

The members felt that District boundaries should revert to their original boundaries. Clarification was sought on what was meant by the term original, whether pre-independence, or post independence.

It was stated that District Councils should have the power to determine and legislate on what special status should be accorded to the urban areas within their localities. Concern was raised as to what would become of the present administrative divisions with many members calling for their abolition. It was noted that earlier Commission draft Bill on devolution of powers had proposed that town and urban councils should have the status of locations.

It was proposed that a new sub-article be introduced to state that ‘Regional Legislative Assemblies have jurisdiction to consider and upgrade sub-districts to district status where applicable and economically viable within their Regions. Some members however felt that creation of districts was a contentious issue, and should be left to the National Legislature to vary the number of districts by the necessary constitutional amendments. This idea however was defeated.

The Committee considered this article, and concern was raised as to why the Judiciary should not be devolved to the lower levels of the devolved government. It was explained that the Judiciary would be de-concentrated instead, to allow for establishment of courts at the lower levels of government. The committee was also advised that the committee on Judiciary had adopted articles which supported the establishment of traditional courts.

Article 215B – Legislative Authority of District Council

The Committee considered the article and proposed that the District Councils should be elected for a term of five years.

There was a proposal to move sub-articles (1) and (2) to Article 215C.

It was noted that not any District Council member could initiate a money bill, or bills relating to National Security and Defence, and Foreign affairs. The responsibility of initiating money bills should repose in the District Executive. It was also agreed that any other legislation ought to be within the constitutional remit of the District Council.

Article 215 C – Election of District Councillors

The Committee generally was of the view that the article did not sufficiently cover the topic and they came up with the following drafting instructions;

- a) District Council elections would be conducted by the Electoral Commission of Kenya
- b) A standard should be formulated to provide for how a seat in the District Council may fall vacant and how the same may be filled.
- c) An oath of office/affirmation be formulated which shall be administered on members of the District Council before assuming office.
- d) Procedures to govern sessions of District Councils
- e) Dissolution of District Councils and the period within which elections should be held, and who may dissolve District Councils.
- f) Establishment of the offices of Speaker and Deputy Speaker for District Councils and their elections.
- g) Establishment of a District Civil Service. The Head of the District Civil Service shall be appointed by the District Government, and shall be Secretary to the District Executive Committee.
- h) Emoluments of the members of District Council shall be determined by the Salaries and Remunerations Commission.
- i) Members of the Regional Legislative Assembly shall sit as *ex officio* members in their respective Councils, and they may be required to appear before their respective District Councils or a Committee of the District Council.
- j) Privileges and welfare of members of District Councils.
- k) Assenting to Bills of District Councils by the District Executive Head
- l) Recall of members of District Councils

It was proposed that membership of the District Councils be pegged on the number of administrative locations within the district. It was however recommended that the Electoral Commission of Kenya should determine the electoral wards for representation to the District Councils.

It was noted that the composition of District Councils was key to the composition of the Electoral College for the purpose of electing Regional and Deputy Regional Premiers. Figures of between 21 and 40 were proposed. Concern was also raised regarding representation in the Nairobi Region. Most delegates favoured leaner Councils. Alternatively, it was proposed that the question be referred to a Boundaries Commission working in consultation with the Electoral Commission of Kenya.

On sub-article 3 (b) there was clarification sought on whether the ratio of one-third women elected was of the total number of persons elected or whether it was one-third of the members *directly* elected. It was proposed that the total number of women elected should be at least one-third of the total members elected. It was also proposed that the specificities should be left to the committee on Representation as the Article had already covered the main principle.

The committee decided that an expert on Mixed Member Proportional representation should educate the Committee on the principle.

Mixed Member Proportional Representation

The committee initially resolved to allocate some time to be given expert advice on proportional representation; however this did not come to pass. The committee resolved to cast off the article since the Committee on legislature had done away with the system.

Article 215D Speaker and Deputy Speaker

There were no issues raised with regard to the article and it was adopted without amendments.

Article 215E Functions and Legislative Power of District Councils

The powers and functions of the various levels of government including legislation are listed in Article 213E. The article was consequently passed without amendments.

Article 215F – Procedures of District Councils

It was proposed that subject to the Constitution and national legislation, District Councils shall be free to regulate their own procedures by formulating their own Standing Orders. The need for setting national standards applicable to all District Councils was however underscored.

Article 215G – District Executive

Contemporaneous with the constitutional philosophy of separation of powers, the meeting felt that it would not be in agreement for the Speaker of the District Council to be part of the District Executive.

The following proposals were made for the title of the Chief District Executive: District Governor, District Chairman, District Administrator, District Premier and District Mayor. The Committee agreed that the District Chief Executive would be called the '***District Governor***'.

It was proposed that the District Executive Committee should not exceed one-third of the elected members of the District Council. This approach was however deemed inappropriate, as its application would not be uniform to all Districts. It was therefore felt that the size of the District Executive should not be fixed by the Constitution. Others felt that District Councils should determine the size of their District Executive. Where Councils are large, it was proposed that the District Executive Committee should be limited to ten members, and one-third of the District Council Membership, for smaller districts.

Members also proposed that the office of the District head of the Civil Service be created, and that the holder should sit on the District Executive Committee, as its Secretary. The person would have to be acquainted with the law.

It was recommended that the office of a District Attorney should also be created and the District Attorney would be legal advisor to the District Government, would have prosecutorial powers, and be a member of the District Executive. It was argued that this would save legal costs presently expended by local authorities on legal fees.

Article 215H – Election of District Governor and deputy District Governor

It was proposed and resolved that, as article 215G (2)-(6) related to the election of the District Governor, a new article, 215H should be drafted and re-titled '*Election of the District Governor and Deputy District Governor.*'

It was noted that since the District Governor and Deputy District Governor would be elected directly, they should only be removed from office by a two-thirds majority of the District Council, in which event the whole District Government would also stand dissolved. A tribunal to determine whether they should be removed from office may therefore be necessary.

The committee considered the question on whether the elections of the District and Deputy District Governors and the Councillors should be held separately. Fear was expressed that by allowing Councillors to impeach, directly-elected District and Deputy District Governors, would give a lot of latitude to the Councillors to manipulate the District and Deputy District Governors. It was therefore suggested that District and Deputy District Governors should be subject to a tightly controlled recall by citizens. However, the proposal was further qualified by the suggestion that, the Councillors ought to have the right to initiate recall of District and Deputy District Governors. Alternatively it was stated that, the Constitution should set out the grounds for removal of the District and Deputy District Governors. It was further proposed that the District governor should appoint a running mate who would be the Deputy Governor who would also be subject to recall. The Committee noted that Kenyans had unanimously asked for recall of elected leaders. A section of the meeting however noted that the recall clause for directly elected leaders was likely to be abused, and should be tightly controlled if at all imposed.

Members suggested that the Committee should borrow from the experiences of California's recent gubernatorial recall elections in 2003. It was thought that recall would be expensive and could consume a lot of resources. Given the prevailing poverty among most Kenyans, the committee noted that some citizens might easily be corrupted to engineer unfair and unwarranted recalls. On the other hand, it was felt that the instrument of recall could enhance political accountability and empower the voters. It would also make it imperative to clearly define the job descriptions of elected leaders. The Committee noted that since the President was liable to impeachment, all elected leaders should also be subject to recall. Most delegates firmly supported the recall clause.

The Committee was informed on the necessity of drawing a distinction between a recall based on political sentiments and a recall based on incompetence and the inability to perform in addition to noting that the mechanisms for implementing either recall would vary. The latter lend themselves to impeachment proceedings instead. The Committee also noted the distinction between a recall of the District and Deputy District Governors, and that of legislators and councillors. It was proposed that a voter seeking the recall of an elected leader would first be required to get at least the same number votes as those garnered by the leader to be recalled and that only the voters who voted for the District and Deputy District Governors should have the right to recall them. It was recommended that a time frame within which a recall may be exercised after elections be provided. Alternatively, a 'Vote of No Confidence' at the District level could be a useful check on the District and Deputy District Governor.

Another suggestion was that the official conduct of District and Deputy District Governors should be impeachable by way of petition to the High Court, acting as a tribunal, by disgruntled resident voters. The District and Deputy District Governors would have the right to appear before Court to defend themselves. The Committee noted that there was need to make provision for the impeachment of members of the District Cabinet as well.

Article 215I – Functions of District executive Committee

The following new provisions were proposed and adopted to replace the previous ones, subject to refinement by the drafters;

- 1) The Powers and functions of a District Executive Committee shall be:-
 - a) to implement district by-laws in the district
 - b) to implement all national and regional legislation within the functional areas mentioned in the Schedule except where the Constitution or national or Regional legislation provides otherwise
 - c) to administer in the District national or Regional legislation outside of the functional areas mentioned in the Schedule....., where the administration of which has been assigned to the district executive by national or Regional Legislation;
 - d) to develop and implement district policy
 - e) to co-ordinate the functions of the district administration and its departments;
 - f) to co-ordinate the functions of locations and communities within the district where necessary;
 - g) to prepare and initiate district laws; and to perform any other functions assigned to the District Committee in terms of the Constitution or national or regional legislation.
- 2) Members of District Executive Committee are responsible for the functions of the executive assigned to them by the District Governor.
- 3) Members of a District Executive Committee are accountable collectively and individually to the District Council for the exercise of their powers and the performance of their functions

- 4) A member of the District executive may propose the assignment of any power or function that is to be exercised or performed in terms of national, regional or District legislation or law to a Location level of government. Such an assignment:
 - a) Must be after consultation and negotiation and in terms of an agreement between the District Executive Committee member and the Locational level of government;
 - b) Must be consistent with legislation in terms of which the relevant power or function is exercised or performed; and
 - c) Takes effect after securing the approval of the District Executive Committee.
- 5) The District Executive Committee and its members must:
 - a) Act in accordance with the Constitution
 - b) Provide the District Council with full and regular reports concerning matters under their control.
- 7) Members of a District Executive Committee must:
 - a) act in accordance with a code of ethics prescribed by the national legislation
 - b) not act in any manner that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between the official responsibilities and private interests; or
 - c) not use their position or any other information entrusted to them for their personal enrichment or improper benefit of any other person.
- 8) The distribution of the positions in the District Executive Committee must take into account the diversity in the district, particularly the number of locations and or communities in the district.

The committee also considered the question whether the election of the District Governor should be harmonised with the elections of District Councils. It was suggested that a new article on the powers and functions of the District Governor be introduced.

4.2.4 Part IV: Locations

Article 216 – Locational Governments

It was noted that it would be imperative to structure the Location Committee in a way that would take care of concerns of villages and enable them to organize and manage their own affairs but at the same time channel their concerns to the Location Committee. Similarly the committee noted that Neighbourhood Associations had a character of villages in urban areas and that wards are synonymous with locations only that the former is legislative and the latter is administrative.

There was a suggestion that the fourth level of government should be the Sub-location and the membership of the location government should be drawn from the sub-location however members felt that there was no need for

another level either after the location or in between the location and the district.

It was strongly felt that urban communities such as the Nubians in Nairobi should be protected.

Article 216A – Composition and Election of Locational Governments

Members felt that the youth and ‘special interest groups’ should be represented on the Location government. However, the amendments failed. It was proposed that the title to the article be changed to “***Composition and election of Location Council***’

It was resolved that the article be adopted with amendment to stand part of the draft Bill as follows:

Article 216B – Presiding Officer

The committee was of the view that ‘villages’ should be clearly described, related to sub-locations and should elect representatives to the Location Government.

Members felt that a given number of people should constitute themselves into a village or sub-location for purposes of electing representatives to the Location council but that the Location head should be elected directly.

It was proposed that a Councillor, assisted by a Committee, in the case of Nairobi, should head the wards. This would become a service delivery point. The Ward would also have a power to collect revenue. The Committee noted that Kenyans were unanimous that the Chief and his deputy should be retained but should be elected directly. They however called for the scrapping of the Provincial Administration.

Article 216C – Locational Government Executive

The Committee recommended that the article should be redrafted to incorporate new principles including the establishment of the posts of a chairperson, a secretary and a treasurer as the executive arm of the locational council. It was further proposed that the Chairperson shall be elected directly or by members of the location council from amongst themselves while the Secretary and Treasurer shall be appointed by the members of the Locational council.

Members noted that the Location government should only have executive power, it was therefore suggested that a Location Committee chaired by a Chairman would play the administrative and implementation role at this level. It was proposed that Location governments should have some limited legislative power but the proposal was bluntly opposed.

It was proposed that a secretariat be established to serve the Location Committee. Alternatively, the District Civil Service should serve the Location government.

4.2.5 Part V: General Provisions Relating to Devolved Governments and their Members

Article 217 – Conduct of Elections.

There were no issues arising from the article.

Article 217A – Vacancies.

There were no issues arising from the article.

Article 217B – Oath of Office.

There were no issues arising from the article.

Article 217C – Decisions.

There were no issues arising from the article.

Article 217D – Quorum.

There were no issues arising from the article.

Article 217E – Emoluments, Allowances and Benefits

There were no issues arising from the article.

Article 217F – Application of part VI of Chapter Seven to Devolved Legislatures

There were no issues arising from the article.

Article 217G – Balance of Gender and Diversity

There was an amendment to sub-article (1) by inserting “legislative body” after executive committee.

Article 217H – Government during Transition

There were no issues arising from the article.

Article 217I – Ethics

There were no issues arising from the article.

Article 217J – Removal of Elected Executive

There were no issues arising from the article.

4.2.6 Part VI: Finance

Article 218 – Commission on Finance and Fiscal Policy

Members agreed on the need for the establishment of a Commission on Government Finance. However, some members felt that it would be

unnecessary as the Kenya Revenue Authority played a similar role and they proposed that the functions of the Commission should be assigned to the Authority.

It was suggested that the officials of the Commission on Government Finance should serve for three years. Others felt that they should serve for five years. The committee settled on the latter. It was further suggested that the Commission should have a chairperson and a vice chairperson appointed by the President and approved by the National Council, and that the members should be eligible to serve a second term. Concerns were raised on whether the president would only carry out the formal appointment or have powers to veto any of the nominees for appointment.

It was stated that the Commission would be a highly specialized research agency. It was felt that since the Commission would be in charge of distribution of revenue to the levels of government, each level of government and all regions should be represented in the Commission. Others felt that this would make the Commission unnecessarily bloated. A leaner Commission was preferable but all in all the committee was reminded that the composition should reflect one-third women representation.

It was proposed that the chairperson and vice chairperson should serve on a full-time basis. The rest of the entire Commission should meet on a quarterly basis. Others felt that the chair and the deputy should be executives, presiding over a secretariat. The management and the governance of the Commission should be distinguished.

On representation of the third level of government in the Finance Commission, it was noted that there were too many districts; it was proposed that the districts could form associations, which would appoint their representative to the Commission. Some delegates felt that there was also need to link the Commission to the Central government by nominating members from the Central government to the commission while others felt that the involvement of the central government would interfere with the independence of the Commission. There was a proposal that the National Level could nominate and appoint independent individuals instead of members of its government. It was proposed that the National Assembly's Budget Committee would nominate two representatives to the Commission.

It was agreed that the members appointed to the Commission should have the necessary expertise.

The committee decided to retain the title "Commission on Finance and Fiscal Policy" as rendered in the draft Chapter Ten. It was suggested that the Commission on Government Finance should send a copy of its report to the devolved governments within a specified period. The committee was informed that the Consensus Building Committee had determined that membership to all commissions should be eleven, however the committee felt that the minimum number of representatives to the commission should be fourteen (14), one from each region. It was proposed that the chairperson and the deputy

chairperson should be nominated by the Senate and appointed by the President.

It was noted that the terminology ‘Act of parliament’ should be replaced with National legislation. It was suggested that the Consolidated Funds in the various levels should be given different names such as regional/district/location revenue or reserve funds. It was proposed that repayment period of recurrent loans should be increased; however, members felt that the time limit of one year was adequate.

Article 219 Functions of the Commission

It was noted that previously there was unequal distribution of resources and therefore the members proposed that the article should have a provision which would take into consideration the special needs of the underdeveloped, marginalized, arid and semi-arid areas. It was generally agreed that such areas required higher resource allocation and that in distributing resources the Commission should take into consideration the development level and the resources in the regions.

Some members were concerned that the words “equitable distribution” were inadequate and it was proposed that “***Affirmative Action***” should be used instead. It was further suggested that the National government should allocate money to the regions in the form of grants, whether conditional or unconditional.

It was generally agreed that there should be a forum whereby the Commission, Ministry of Finance and the Levels of government consult on budgetary issues. It was therefore decided that parliament should not be given power to reject the recommendations of the Commission. They proposed that parliament should only modify the recommendations.

Article 220 – National, Regional, District and Locational Budgets

There was concern that the Regions should not be given a free hand to determine deficits because some of the regions would take the opportunity as a way of financing their regions unfairly. It was suggested that there should be some form of check on the deficit levels.

Some members suggested that financing should be exclusively obtained from the domestic borrowing (within the region). However, it was noted that there was need to distinguish between internal and external borrowing and determine whether the regions could obtain funds from external sources. It was suggested that the national government should guarantee the external loans, as a check against excessive borrowing.

Members also sought clarification on the meaning of public debt as used in the article. It was also suggested that public debt and national debt should be distinguished.

Article 221 – Treasury Control

It was felt that 120 days was too long a period to stop the transfer of funds to the regions and 60 days was proposed instead. Several members were concerned with the apparent power given to Treasury in conjunction with the Minister of Finance, to stop the transfer of funds to the regions because it was likely to be abused. Some of them felt that “stop” was too strong a word to be used and that it should be replaced by the word “suspension”.

Others suggested that the Treasury and the Minister of Finance should not stop or suspend the whole amount, but should only stop or suspend a certain percentage of the funds. There was a suggestion that only 50% should be suspended.

Article 222 – Procurement of Goods and Services

It was generally felt that allocation of tenders should take into consideration the need to promote micro-industries and small businesses. It was also felt that the regions should award tenders to persons and businesses within their own regions instead of looking out of their regions. They felt that this would offer much needed protection to the local businesses. However, other members felt that this would limit a region’s options as well as be unfair to others outside the region. The members lauded the move to exclude contractors with bad track record on performance.

Article 223 – Audit

It was suggested that independent auditors should audit the government accounts. However, some of the members felt that the office of the Auditor General should deconcentrate right down to the lower levels instead of hiring independent auditors.

Article 224 – Revenue Allocations to Devolved Governments

Concern was also voiced that the Ministry of Finance if not checked could deny some of the regions funding on political grounds and it was therefore important to determine who set the criteria to be observed and who determines which regions do or do not comply with the criteria. It was suggested that the Commission should set the criteria and therefore the committee resolved to have a provision addressing the same.

Article 225 – Principles of Taxation

The committee was of the opinion that the principles as listed in the ninth schedule could be condensed and be reduced to articles.

Article 226 – Powers of Taxation

There were calls to re-visit the issue of taxation in the regions. It was noted that the regions still required a source of revenue, as it did not have any

taxation powers. However, the committee was divided on the issue of whether the regions should be funded by their constituent districts in addition to receiving funds from the national government or be empowered to levy taxes. It was suggested that a ratio of the shared revenue the regions were to receive from the districts should be included in the Constitution.

While it was felt that location governments should not have the right to levy taxes, and make by-laws, others felt that they should have the power to collect such local charges as market fees.

Article 227 – National Consolidated Fund

The Committee noted that there was need to draft financial provisions in a manner that was sensitive to the needs of the proposed devolution system. The provisions would then be harmonized with those of the Technical Working Committee on Public Finance. There was also need to provide for salaries and emoluments of elected leaders. It was suggested that the salaries and emoluments should be determined by the Salaries and Remuneration Commission, and should be a charge on the Consolidated Funds of the respective regions and districts.

A section of the Committee was opposed to establishment of Consolidated Funds for location governments. Others felt that the location as a level of government should be able to run their own affairs, including establishment of a Consolidated Fund.

The committee assimilated articles on taxation powers of the region as formulated by the Committee on Finance to be part of its provisions. Sub-article (2) of the article was adopted as formulated by the committee on Finance but the term ‘government’ should be used with caution.

Article 228 – Other Consolidated Funds

There was a suggestion that ‘other consolidated funds’ should be renamed and the levels of government specifically mentioned namely; regional, district and location reserve funds respectively, however the title should generally be renamed ‘reserve funds’.

Article 229 – Government Borrowing

The Committee considered article 241 as printed. Members observed that there was need to tightly control government borrowing. It was noted that devolved levels of government must have the authority to borrow funds for their purposes. It was suggested that the legislatures must approve any borrowing. A section of the meeting proposed that the national government should control borrowing by devolved levels of government. It was also suggested that a distinction should be made between domestic and external borrowing. Members also noted that borrowing must take care of inter-generational equity and responsibility. It was recommended that district

governments constituting the region should control borrowing by regional governments.

The committee considered the article on national borrowing adopted as formulated by the committee on finance and they agreed to adopt it too.

Article 230 – Administration of Revenue

There were concerns by delegates that the roles of the Kenya Revenue Authority and the Commission with regard to collection and distribution tended to be similar. The general agreement was that the Commission should deal with the distribution of revenue and the Kenya Revenue Authority should deal with the collection of revenue. However, quite a number of members felt that the Commission should be given power to monitor and to some extent control some activities of Kenya Revenue Authority. It proposed that the Kenya Revenue Authority should be responsible for the collection of national revenue and on the other hand the Commission should be able to make recommendations which are binding to the Kenya Revenue Authority. Most of the members felt that Article 238 (5) should be moved to the sub-section on ‘Administration of Revenue’.

It was resolved that Article 238(5) be transferred for later discussion to the section on Administration of revenue.

Members reckoned that there was need for an oversight body to supervise the National Revenue Administration Authority. The other issue was the relationship between the National Revenue Administration Authority and the Minister responsible for Finance. It would also be useful to note that the National Revenue Administration Authority would act as an agent for tax collection for the various governments. The funds collected by the Authority should be transferred directly to the respective levels of government.

The Committee noted that it was critical for the National Revenue Administration Authority to be an independent body.

Members noted that there would be some revenues; such as market fees that would be best collected by devolved government themselves. Members suggested that the National Revenue Administration Authority ought to be structured along similar ways as the Commission on government Finance and Fiscal Policy.

4.2.7 Part VII: General

Article 231 – Public Service at Devolved Levels of Government

It was proposed that the empowerment of the locations and districts to hire, train, fire and transfer civil servants would be too unwieldy and would

encourage the districts to discriminate against non-district residents. It was argued that the Public Service Commission should remain deconcentrated and not devolved and that hiring of lower cadres of workers should be left to the locations and districts. Most of the members were however of the view that this power was rightly devolved. It was suggested that the districts could delegate some of that power to the location.

It was stated that there should be rules in the form of national legislation which would regulate inter-governmental relations. The proposed national legislation should also provide that there should be free movement of goods and labour and this way Kenyan could apply to any district authority to be hired. It was suggested that national legislation should also address the issue of transfer of power between the levels of government. It was noted that most of the concerns raised by members were addressed under article 260.

It was proposed that the membership of the Public Service Commission should be constituted in the same way as the Commission on Finance. However, it was pointed out that the Consensus Report restricted the number of members to 11 and it was considered that membership to Commissions should not be representative as this could introduce political inclinations to bodies that are intended to be 'independent'

Article 231A – Publication of Laws

There were no issues arising from the article.

Article 231B – Formalities of Law-making

There were no issues arising from the article.

Article 231C – Conflict of Laws

The Committee considered the question of Conflict of Laws enacted by the various levels of government. It was noted that the devolved governments were established as distinctive bodies and not agents of the national government. The members underscored the need for clear conflict resolution mechanisms, to be presided over by the Supreme Court. The decision of the Court should be binding and final to avoid endless litigation which could bog down government functions. Yet it was felt that not all conflicts need be referred to a Supreme Court as numerous and insignificant conflicts of laws are bound to arise in devolved systems of government with lengthy concurrent list of functions.

It was proposed that in cases of conflict, the higher levels of government should exercise restraint in favour of the lower levels of government, as a way of protecting the lower levels of government. The first resort must however be to alternative dispute resolution mechanisms before the parties avail themselves judicial remedies. It was proposed that a provision should be made to provide for circumstances under which courts on their own motion or/and parties may refer matters to a Constitutional Court.

Concern was raised that a district law should not be declared invalid merely because it was inconsistent with the regional law but that if it was inconsistent with national law it could be declared invalid.

Article 231D Boundaries

It was also suggested that a Boundaries Commission should delineate villages but some members were of the view that the boundaries should stand as they are.

Question was raised as to whether the provisions on the Boundaries Commission should be moved to the chapter on Constitutional Commissions. The committee agreed to combine both the boundaries commission and the Electoral Commission of Kenya and renamed it 'Commission on Boundaries and Elections'.

It was suggested that functions of the Boundaries Commission should either be assigned to the Electoral Commission of Kenya or the committee should take up the suggestion of the Consensus Building Committee that the Boundaries commission should be *ad hoc*. There were queries on whether by making it a constitutional commission it would be necessary to refer back to the Constitution, and similarly, concern was expressed on the rigidity of article 231D sub-section (5). It was however argued that it was necessary to amend the constitution because the regions and the districts were already listed in the Constitution. It was suggested that by combining the two commissions, the Electoral Commission of Kenya would exercise the functions of the Boundaries Commission and save on costs. There was a proposal that the locational boundaries should not be constitutionalized. Likewise, it was proposed that the districts should be in charge of the location boundaries. However, it was felt by other members that such power was likely to be subject of abuse. The committee was informed that the principle behind the varying of any boundaries was that the Commission would recommend to both Houses of Parliament, which will in turn enact laws to vary the boundaries. It was suggested that there should be a provision under this section that protects the marginalized communities.

Article 231E – Management of Urban Districts and Urban Areas

It was suggested that all cosmopolitan cities, such as Mombasa, should be governed in the same way as Nairobi. It was felt that there was need for national legislation to set out criteria that would be followed in categorizing areas as either urban or rural.

It was noted that the needs for urban and rural districts were different and the approach to their management was unavoidably different. Urban areas had peculiar requirements from rural areas and that aspect should be appreciated. The Committee noted that a common standard applying across the whole country would assure uniformity in decisions on management of urban and rural areas and districts. It was also noted that such decisions would have fiscal and financial implications.

It was therefore deemed necessary that national legislation addresses the issues uniformly within certain prescribed limits. A section of the delegates however felt that allowing the national legislature to make such decisions would affect the autonomy of District Governments. The alternative to national legislation would be to list the categories of districts and this was found to be awkward.

Article 231F – Suspension of Regional or District Governments

Some of the members were concerned that the article granted draconian powers to the government and they suggested its deletion. The proposal did not get support. The committee was of the considered view that the terms ‘emergency’ and ‘war’ in the article should be explained.

Article 231G – Prohibition against holding Elective Office at National and Devolved Levels

There were no issues arising from the article.

Article 231H – Supplementary Legislation.

There were no issues arising from the article.

4.2.8 Consequential Amendments

Senate

Article 231 I - Participation in National Decision Making

It was noted that the committee on Legislation had already christened the second chamber as *Senate*. It was noted that the second chamber was important to devolved governments because the chamber was to be composed of representatives from the sub-national governments and that the institution was meant to uphold the interests of the regions. The Constitutions of South Africa and Germany were referred to in constituting the senate.

Article 231J - Composition of the Senate

It was suggested that every region should have a representative in the Senate. There were numerous suggestions including the proposal that the Senate members should be drawn from the districts directly. Many members of this latter view suggested that the districts should have two representatives; one from each gender. It was also suggested that there should be representatives for the marginalized groups.

A section of the members suggested that the senate members could be sourced from both the region and the district. A few members were of the view that representation should be based on population.

It was explained to the members that if the districts were to directly elect representatives to the senate, some of the minority groups would be

marginalized. The committee adopted the proposal that the members of the senate be recruited through the district councils, acting as electoral colleges.

Concern was raised that the referral of all bills to the senate might slow down the legislative process.

The committee considered a proposal that the senate should be composed of 150 members, one man and one woman from each district and ten members representing special interest groups. The committee however discarded the proposal.

Members noted the proposed composition of the Senate might result in the Senate being composed predominantly of women. It was suggested that the senate should be composed of 111 members, 75 of whom would be elected directly from the districts, and 36 elected to ensure women were at least one-third of the Senate. The 36 be two women from each region. Alternatively; the affirmative action should apply to both genders, so that at no time would there be a disadvantaged gender.

Concern was raised that the Committee was assigning a lot of powers to the regional level of government, contrary to the popularly opinion expressed during general debate in the Conference Plenary. It was felt that the spirit of the chapter should reflect the principle that the district shall be the principal centre of devolution. Yet the members were reminded that the regional governments were, like all levels of government, distinct and independent. Members noted that regions could not be established purely for co-ordinative purposes. It was suggested that senate elections should not coincide with other state elections.

Opinion was divided on the question of senators elected from one region constituting a single delegation. Members recommended that senators should be national leaders, and not sectarian or regional, as this would cause ethnic polarisation. Senators would also have been elected on the basis of different platforms, and would be loyal to their constituencies. Other delegates felt that senators should be accountable to their regions and districts. The attention of the members was drawn to article 215(2), which provides that the governments at each level are distinctive, interdependent and consultative. It was explained that the clause recognizes the diversity of Kenya. There was therefore need to create mechanisms that encouraged negotiations and consultations between and among the various levels of government. It was intended that the Senate would provide the formalized framework to achieve these ends. The cabinet for instance, acts with collective responsibility. A distinction was also drawn between the National Assembly and the senate. This approach was applied in Germany and South Africa

The membership of the senate was reviewed again owing to the fact that the number of regions had been reduced. It was suggested that there should be three women representatives to the senate per region but there was a counter proposal that there should be two women from each of the 14 regions.

Transitional Issues

Eighth Schedule

Members were of the view that section 3B (2) of the eighth schedule should be amended as it contradicted the principle behind the establishment of the Senate. They said that the National Assembly should not at any one given time exercise the functions of the Senate as the latter was created to provide checks against the former. Some other members were of the opinion that the Senate could not be realistically established before the next general elections.

It was proposed that there should be a provision providing for the creation of the devolved structure in one year or sooner. The committee was informed that the transitional provisions did not provide for the creation of the Senate before the enactment of certain laws and before the engaging in any other government businesses. It was suggested that there should be a series of civic education lessons conducted by CKRC before the next general elections so that the people are aware of the structure about to be introduced. It was further suggested that the election of the members of the devolved governments and the Members of the National government should be held at different times.

It was suggested that there should be a provision that would cater for the maintenance of the National Assembly to stand as it is but in the new structure. Three options were singled out. First, that local authorities that closely approximated the envisaged district councils should be identified and maintained and new ones established to replace the outliers. The district councils would then elect the Senate representatives Secondly, a provision could be enacted to provide that a senate should be directly elected or the current Parliament could be expanded to include the women representatives and special representatives. In the options above, both houses could work together. However, the third alternative could be to allow the National Assembly to enact all the legislation and perform the functions of the Senate before the next elections under the Draft Constitution, should the constitution be enacted earlier.

It was proposed that the councillors should continue holding office and should constitute the District Council and from these councils the Senate should be formed. The members were of the view that all councillors whether councillors under the municipalities, town or county councils should act for the balance of their term. It was further suggested that all the councillors should constitute an Electoral College for the purposes of electing senators but they should resume their respective councils pending enactment of legislation to streamline the management of their respective councils.

There was a suggestion that there should be a transitional board in every district to advise and monitor the transition process and that the members of the board should be from the CKRC at the national level and that the chiefs and District Commissioners could handover to the board.

It was noted that article 7(3) of the chapter on transition provided that all national property currently located within the lower levels of government should be handed over to some form of authority to handle during the transition period. A transition board was thought to be the best to perform this function. However, it was explained that the Provincial Public Works officers could handle the functions and they in turn should be accountable to some other authority.

It was suggested that under Section 7 (1) there should be a provision, which provided that the provincial administrators could hold over for a given period for the purposes of handing over.

It was further noted that before the new Constitution comes into operation, there should be civic education conducted countrywide.

5. The Recommendations And Decisions On The Draft Bill As Agreed By Technical Working Committee

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
	Part I—Structure and Principles of Devolved Government			
215A. Division of Kenya into regions, districts and locations	None	<i>(1) The territory of the Republic is divided into the regions, and the special district, specified in the Seventh Schedule.</i>		New
	None	<i>(2) Each region comprises the aggregate territory of the districts that constitute the region, as specified in the Seventh Schedule.</i>		New
	None	<i>(3) As at the date this Article takes effect, the boundaries of a district whose name corresponds to the name of a district existing at that date are the boundaries of that district</i>		New
	None	<i>(4) Each district shall be divided into such locations, with such boundaries, as are prescribed by national legislation.</i>		New

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
	None	<i>(5) Pending the enactment of legislation under clause (4), locations existing as at the date on which this Article comes into force, constitute the locations to which this Chapter applies, with boundaries as in force on that date.</i>		<i>New Clauses (3) and (5) may be more appropriately moved to the Chapter dealing with transitional provisions.]</i>
215. Forms of government	1. Sovereign power of the people is exercised at— (a) the national level; (b) the zone level; (c) the county level; and (d) the locational level,	1. Sovereign power of the people is exercised at— (a) the national level; (b) the regional level; (c) the district level; and (d) the locational level,		
216 Objects of devolution of government	(1) The objects of devolution of government are as follows: —	(1) The objects of devolution of government are as follows: —		
	(a) to ensure the democratic and accountable exercise of sovereign power;	(a) to ensure the democratic and accountable exercise of sovereign power;		
	(b) to foster national unity by recognising diversity;	(b) to foster national unity by recognising diversity;		
216(1)	(c) to give powers of	(c) to give powers		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
continued	self-governance to the people at all levels and enhance the participation of people in the exercise of the powers of the state;	of self-governance to the people at all levels and enhance the participation of people in the exercise of the powers of the state;		
	(d) to protect and promote the interests and rights of minorities and disadvantaged groups;	(d) to protect and promote the interests and rights of minorities and disadvantaged groups <i>at all levels</i> ;		
	(e) to promote social and economic development and the provision of proximate, easily-accessed services throughout Kenya;	(e) to promote social and economic development and the provision of proximate, easily-accessed services throughout Kenya;		
	(f) to ensure equitable sharing of national and local resources throughout Kenya, with special provisions for less developed areas; and	(f) to ensure equitable sharing of national and local resources throughout Kenya, with special provisions for less developed areas;		
	(g) to facilitate the decentralisation of government agencies away from the capital territory.	<i>(g) to recognize the right of local communities to manage their own local affairs, and to form networks and associations to assist in that management and to further their development; and</i>		New

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<i>(h) to facilitate the decentralisation of government agencies and functions away from the capital territory.</i>		
	(2) All persons and bodies exercising and performing powers and functions in accordance with this Chapter must take account of the objects set out in this Article.	(2) All persons and bodies exercising and performing powers and functions in accordance with this Chapter must take account of the objects set out in this Article.		
216A Principles of Devolution		<i>(1) The district is the principal unit of devolution.</i>		
		<i>(2) The principal function of a regional government is to coordinate development and functions of districts at the regional level.</i>		
		<i>(3) The principal role of the Senate is to provide a forum for consultations between the different levels of government.</i>		
		<i>(4) The National Assembly and the Senate are the principal fora for enacting framework legislation for regional, district and locational governments.</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
	Co-operation between government at the different levels			
217	(1) Government at every level must be loyal to the Constitution and support the goals, values and principles of the Republic.	(1) Government at every level shall be loyal to the Constitution and support the goals, values and principles of the Republic.		
	(2) Government at every level must exercise and perform its powers and functions in a manner that does not encroach on the geographical, functional or institutional integrity of government at any other level and must respect the Constitutional status, institutions and rights of government at all levels.	(2) Government at every level shall exercise and perform its powers and functions in a manner that does not encroach on the geographical, functional or institutional integrity of government at any other level and must respect the Constitutional status, institutions and rights of government at all levels.		
	None	<i>(2A) Government at every level shall assist, support, and consult with each other level and shall, where appropriate, implement the laws of each other level.</i>		New
	(3) The national government must maintain liaison with government at other levels for the purpose of exchange of	(3) <i>Government at every level shall maintain liaison with government at each other level for the purpose of</i>		Rephrased and expanded to involve all governments

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
	information, co-ordination of policies and administration and advancement of capacity.	exchange of information, co-ordination of policies and administration and <i>enhancement of</i> capacity.		
	(4) Government at different levels, or different units of government at the same level, may cooperate in the performance of functions and for that purpose may set up joint committees or joint authorities.	(4) Government at different levels, or different units of government at the same level, may cooperate in the performance of functions and for that purpose may set up joint committees or joint authorities.		
	(5) A government involved in an inter-governmental dispute <i>must</i> make every reasonable effort to settle the dispute by means of procedures provided for that purpose, and must exhaust all other remedies before it approaches a court to resolve the dispute.	(5) A government involved in an inter-governmental dispute <i>shall</i> make every reasonable effort to settle the dispute by means of procedures provided for that purpose, and shall exhaust all other remedies before it approaches a court to resolve the dispute.		
	(6) When resort to such procedures has failed to resolve a dispute, the dispute may be referred to the Supreme Court for resolution.	(6) When resort to such procedures has failed to resolve a dispute, the dispute may be referred to the Supreme Court for resolution.		
	(7) If the Supreme Court is not satisfied that the requirements	(7) <i>The Supreme Court shall deal with any matter</i>		<i>Rephrased</i>

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
	of clause (5) have been met, it may refer a dispute back to the governments involved.	<i>referred to it under clause (5) with expedition, but if the Court is not satisfied that the requirements of clause (5) have been met, it may refer a dispute back to the governments involved.</i>		
	(8) To facilitate the settlement of inter-governmental disputes, legislation enacted by Parliament must provide procedures for the settlement of such disputes by negotiation, mediation or arbitration.	<i>(8) For the purposes of clause (5), legislation enacted by Parliament shall provide procedures for the settlement of inter-government disputes by negotiation, mediation or arbitration.</i>		Rephrased <i>The foregoing provision to be moved to an earlier Chapter.</i>
217A Assignment of functions	None	<i>(1) Every level of government shall exercise and perform only such powers and functions as are assigned and re-assigned to it by this constitution and any legislation.</i>		New

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
	None	<i>(2) When one level of government by legislation or other measures assign or re-assigns powers and functions to another level of government, necessary arrangements shall be put in place to ensure that the funds necessary for the exercise and performance of such additional powers and functions shall follow.</i>		New
	None	<i>(3) Where a power or function is to be exercised and performed concurrently by two or more levels of government, such levels of government may consult and co-ordinate with each other in the exercise and performance of the power or function.</i>		New
	None	<i>(4) The following powers and functions are assigned to the national level of government:—</i>		New <i>See sheet attached.</i>

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
	None	<i>(5) The following powers and functions are assigned to the regional level of government:—.</i>		<i>New See sheet attached.</i>
	None	<i>(6)The following powers and functions are assigned to the district level of government:—</i>		<i>New See sheet attached.</i>
		<i>(7) The following powers and functions are assigned to the locational level of government:—</i>		<i>New See sheet attached.</i>
Part II—Regions				
218 Regions	The territory of the Republic is divided into the zones set out in the Seventh Schedule, each zone consisting of the aggregate territory of the counties that comprise the zone.	Article 218 subsumed into new Article 214.		
219 Regional governments	A zonal government, consisting of a zonal council and a zonal executive, is established for each zone.	A regional government, consisting of a regional <i>legislative</i> assembly and a regional executive, is established for each region.		
220 Regional assemblies	(1) A zonal council consists of a number of zonal councillors, elected from each county within the zone, as determined in accordance with	(1) A regional legislative assembly consists of a number of delegates (not being members of any district council)		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
	the following table—	elected, in accordance with Article 220A, from each district within the region by the district council.		
	(2) An eligible voter who resides within a county, and who satisfies the qualifications for membership of the National Assembly, is eligible to be elected as member of the zonal council from that county	<i>(2) An eligible voter who satisfies the qualifications for membership of the National Assembly and who meets the prescribed requirements relating to residency in the region is eligible to be a member of a regional legislative assembly.</i>		Rephrased
	(3) The term of office of a zonal council is five years.	<i>(3) A regional legislative assembly is constituted for a term of five years.</i>		Rephrased
220A Election of members of regional assembly	None	<i>(1) Delegates are elected to the regional legislative assemblies in accordance with the following table—</i>		See table attached overleaf
		<i>(2) In electing delegates to the regional legislative assembly, a district council must take into consideration the various diversities represented in the district.</i>		
		<i>(3) A member of a regional legislative</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<i>assembly is an ex officio member of the district council by which that member was elected, and may attend its meetings and take part in its deliberations, but may not vote on any matter.</i>		
220B Speaker and deputy speaker	None	<i>(1) The members of each regional assembly are to elect—</i>		
		<i>(a) one of their number to be the presiding officer, to be known as the speaker; and</i>		
		<i>(b) one of their number to be deputy speaker, who may exercise all the powers of the speaker during the illness or absence of the speaker.</i>		
		<i>(2) The members may elect such other officers as they desire.</i>		
		<i>(3) At any sitting of the regional assembly—</i>		
		<i>(a) the speaker presides; or</i>		
220B Speaker and deputy speaker (cont'd)		<i>(b) in the absence of the speaker, the deputy speaker presides; or</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<i>(c) in the absence of both, one of the members elected by the members present presides.</i>		
		<i>(4) The speaker and deputy speaker have such other powers and functions as the members may confer upon them.</i>		
		<i>(5) A regional legislative assembly may, by a vote of two-thirds majority of its members, remove a speaker or deputy speaker from office.</i>		New
221 Functions and legislative authority of regional governments	(1) A zonal council has the functions specified in the Eighth Schedule, so far as they are appropriate to be performed at the zonal level.	<i>(1) A regional legislative assembly has the following functions— to enhance the capacity of the district councils in the discharge of their functions and to promote co-operation between them; to formulate plans and policies for the exploitation of the region's resources and development of the region's infrastructure; (c) to manage regional institutions; and (d) to undertake and perform any function specified</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>in Article 217A(4)—</i> <i>(i) to the extent that one or more district councils has, by legislation, agreement or otherwise, empowered it to do so; or</i> <i>(ii) to the extent that it is reasonably necessary in the performance of its functions under paragraph (a) or the execution of plans and policies under paragraph (b).</i></p>		
	<p>(2) A zonal council must also— enhance the capacity of the county councils in the discharge of their functions and promote co-operation between them; formulate plans and policies for the exploitation of the zone’s resources and development of the zone’s infrastructure; and (d) manage zonal institutions.</p>	<p><i>(2) A legislative regional assembly has such other functions as may be conferred on it by national legislation.</i></p>		
	<p>(3) A zonal council has power to make laws for the purposes of, or for purposes incidental to, the performance of its functions.</p>	<p><i>(3) A regional legislative assembly has power to make laws for the purposes of, or for purposes incidental to, the performance of its functions.</i></p>		
222	The provisions of	The provisions of		<i>This</i>

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
Procedures of legislative assemblies	Articles 135 to 137 apply, with any necessary modifications, to a zonal council in the same way as they apply to a House of Parliament.	Articles 135 to 137 apply, with any necessary modifications, to a regional legislative assembly in the same way as they apply to a House of Parliament.		<i>provision may be moved and incorporated into the Articles referred to.</i>
223 Regional executive	(1) The executive authority of a zonal government is exercised by a zonal executive committee, consisting of— (a) the zonal chief executive; and (b) not more than [?] other members appointed by the zonal chief executive with the approval of the council.	(1) The executive authority of a <i>regional</i> government is exercised by a <i>regional</i> executive committee, consisting of— (a) a <i>regional</i> chief executive and a <i>deputy regional chief executive</i> , to be known — <i>except in the case of the Nairobi region, as the premier and the deputy premier; and in the case of the Nairobi region, as the Mayor and the Deputy Mayor; and</i> (b) other members appointed by the <i>regional</i> chief executive with the approval of the <i>regional legislative assembly</i> .		
	(2) The zonal chief executive is elected by registered voters who satisfy the prescribed	(2) <i>The number of members appointed under clause (1) (b) must not exceed one-third of the</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
	qualifications relating to residency within the zone.	<i>number of members of the regional legislative assembly.</i>		
223 Regional executive (cont'd)	(3) An eligible voter who satisfies the qualifications for membership of the National Assembly and who meets the prescribed requirements relating to residency in the zone is eligible to be a member of a zonal council.	(3) An eligible voter who satisfies the qualifications for membership of the National Assembly and meets the prescribed requirements relating to residency in the region is eligible to be a member of a regional executive committee.		
	(4) A member of the zonal executive committee holds office for a term of <i>four</i> years and is eligible, if otherwise qualified, for re-election or re-appointment from time to time.	<i>(4) During the illness or absence of the regional chief executive, the deputy regional chief executive has all the functions, powers and responsibilities of the regional chief executive.</i>		<i>New provision</i>
	(5) A member of the zonal executive committee other than the zonal chief executive may be dismissed from office by resolution of the zonal council.	(5) A member of the <i>regional executive committee holds office for a term of five years and is eligible, if otherwise qualified, for re-election or re-appointment for one further term.</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
	None	<i>(6) A member of the regional executive committee other than the regional chief executive or deputy regional chief executive may be dismissed from office by resolution of the regional legislative assembly.</i>		
223A Election of Premier and deputy Premier	None	<i>(1) The regional premier and deputy premier are each elected by an electoral college consisting of all the elected members of district councils within the region (other than those who are currently delegates to the regional legislative assembly).</i>		
		<i>(2) A member of the electoral college constituted under clause (1) is not eligible to be elected regional premier or deputy regional premier.</i>		
		<i>(3) For the purposes of an election under clause (1) for the position of regional premier or deputy regional premier — (a) a candidate who obtains a two-</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>thirds majority of the votes cast is to be declared elected;</i> <i>(b) if no candidate obtains such a majority—</i> <i>(i) a second ballot must be held, in which the only candidates are those who obtained the highest and second-highest number of votes in the first ballot; and</i> <i>(ii) the candidate who obtains the greater number of votes in the second ballot is to be declared elected.</i></p>		
<p>223B Election of mayor and deputy mayor of Nairobi</p>	<p>None</p>	<p><i>The mayor and deputy mayor are each elected, in the manner prescribed by national legislation, by a simple majority, by registered voters who meet the prescribed requirements relating to residency within the region.</i></p>		
<p>224 Functions of regional executive committee</p>	<p>(1) The members of the zonal executive committee are responsible for the functions of the executive assigned to them by the zonal chief executive</p>	<p>(1) The members of a regional executive committee, under the chairmanship of the regional chief executive, are responsible for the functions of the</p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		executive assigned to them by <i>or under this Constitution</i> .		
	(2) Members of the zonal executive committee are accountable collectively and individually to the zonal council for the exercise of their powers and the performance of their functions.	(2) Members of the regional executive committee are accountable collectively and individually to the regional legislative assembly for the exercise of their powers and the performance of their functions.		
	(3) Members of the zonal executive committee must— (a) act in accordance with the Constitution; and (b) provide the zonal council with full and regular reports concerning matters under their control.	(3) Members of the regional executive committee shall — (a) act in accordance with the Constitution; and (b) provide the regional legislative assembly with full and regular reports concerning matters under their control.		
	(4) When an election of a zonal council is held, the zonal executive committee and its members remain competent to function until the council is elected.			
	Part III—Districts			
225 Districts to which this	(1) The Republic is divided into the counties arranged	<i>Unless the contrary intention appears,</i>		<i>Content of</i>

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
Part applies	within the zones described in the Seventh Schedule.	<i>this Part, and any other provision of this Chapter applicable to districts, applies to the Teso Special District in the same manner in which they apply to districts forming part of regions.</i>		<i>initial Article 225 is transferred to new Article 215A.</i>
	(2) As at the date this Article takes effect, the boundaries of a county whose name corresponds to the name of a district existing at that date are the boundaries of that district.			
226 District governments	A county government, consisting of a county council and a county executive, is established for each county.	(1) A district government, consisting of a district council and a district executive, is established for each district.		
227 Legislative authority of district councils	(1) A county council consists of not more than [?] persons elected, in the manner determined under Article 228, by registered voters who satisfy the prescribed qualifications relating to residency within the county.	<i>(1) The legislative authority of a district is vested in its District Councils.</i>		New Note: the initial Article 227 forms the basis of Article 228 as adopted by the committee.

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
	<p>(2) An eligible voter who satisfies the qualifications for membership of the National Assembly and who meets the prescribed requirements relating to residency in the county is eligible to be a member of a county council.</p>	<p><i>(2) The powers and functions of such District Councils shall be:-</i> <i>(a) to pass by-laws for its district with regard to :-</i> <i>(i) any matter within a functional area listed in Article 217A (6);</i> <i>(ii) any matter outside those functional areas that is expressly assigned to the districts by national or regional legislation; and</i> <i>(iii) any matter for which a provision of this Constitution envisages the enactment of a district law.</i></p>		
	<p>(3) A county council is elected for a term of four years.</p>	<p><i>(3) A District Council has the power to pass any laws that are reasonably necessary for, or incidental to, the effective exercise of powers and performance of functions that are assigned to the district.</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>(4) A District Council may recommend to the Regional Legislative Assembly the enactment of legislation concerning any matter outside the authority of that District Council, or in respect of which national or regional legislation prevails over a district by-law.</i></p>		
	None	<p><i>(5) Through its elected members a District Council shall elect its district members to the Regional Legislative Assembly and participate in the election of the Premier and Deputy Premier.</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>(6) The district level of government, by legislative and other measures, shall ensure and co-ordinate the participation of communities and locations in governance at the local level and assist communities and locations to develop the administrative capacity for the effective exercise of the powers and functions and participation in governance at the local level.</i></p>		
		<p><i>(7) A District Council has the power to formulate plans and policies for the management and exploitation of the District's resources and development and management of the District's infrastructure and institutions.</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>(8) In the exercise of its legislative authority, a District Council has power to:-</i></p> <p><i>(a) consider, pass, amend or reject any bill before it.</i></p> <p><i>(b) initiate or prepare bills or by-laws, except money bills;</i></p> <p><i>(c) hold all District executive organs accountable to it;</i></p> <p><i>(d) maintain oversight over the exercise of a District Executive Authority particularly the implementation of laws and other legislation required to be implemented by the district government; and</i></p> <p><i>(e) summon any person to appear before it anyone of its Committees for purposes of giving evidence or information.</i></p>		
<p>228 Election of district</p>	<p>(1) Elections to the county council are to be based on a mixed member proportional</p>	<p>(1) A district council consists of persons elected, in the manner determined under this Article, by</p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
councillors	<p>system in which—</p> <p>(a) twenty-one members are to be elected on the basis of single-member constituencies, to be known as wards or by such other name as may be prescribed, with boundaries determined by the Electoral Commission;</p> <p>(b) nine members are to be elected on the basis of lists of candidates submitted by political parties contesting the elections; and</p> <p>(c) such number of special seat members, all of whom must be women, as may be required to constitute at least a one-third women membership of the council are to be elected after members have been declared elected under paragraphs (a) and (b).</p>	<p>registered voters who meet the prescribed requirements relating to residency within the district.</p>		
	<p>(2) Clause (1) (c) does not apply, and no person is to be elected under that paragraph, if one-third or more of the number of members elected under clause (1) (a) and (b) are</p>	<p>(2) An eligible voter who—</p> <p>(a) satisfies the qualifications for membership of the National Assembly; and</p> <p>(b) meets the prescribed</p>		<p><i>(Note: Legislature Committee to be consulted as to qualifications.)</i></p>

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
	women.	requirements relating to residency in the district, <i>is eligible to be a member of a district council.</i>		
	(3) The constituency members are to be elected on the basis of plurality of votes.	(3) A district council consists of— (a) one member elected for each of such number of constituencies, to be known as wards or by such other name as may be prescribed, as are prescribed by national legislation, taking account of the recommendations of the Electoral Commission, with boundaries determined by the Electoral Commission; <i>(NOTE: Discussion needed with Representation Working Group as to the optimum size for wards.)</i> (b) such number of special seat members, all of whom must be women, as may be required to constitute at least a one-third women membership of the council, elected after members have		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		been declared elected under paragraph (a).		
	(4) The distribution of seats on the party list must be made in such a way as to achieve the highest degree of proportionality among the parties.	(4) The members of a district council hold office for a term of five years.		
		(5) Nothing in this Article prevents a woman who stood unsuccessfully for election under clause (1) (a) from contesting a special seat under clause (1) (b).		
	(5) Before a council election is held, each political party contesting the election for constituency-based members of the council must prepare and submit to the Electoral Commission a list of persons nominated by that party for election by proportional representation.			
	(6) Each list must— (a) rank the nominees in order of priority of nomination; (b) alternate between women and men in the priority of			

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
	<p>nominees;</p> <p>(c) take into account the need for representation of the disabled, youth and minorities; and</p> <p>(d) reflect the national character.</p>			
	(7) All the votes cast in a council election for constituency members must be totalled according to party affiliation.			
	(8) An Act of Parliament must provide for the method of allocation of seats on the basis of the party lists for the purposes of clause (4) of this Article.			
228A Speaker and deputy speaker	None	<p><i>(1) The members of each district council are to elect—</i></p> <p><i>(a) one of their number to be the presiding officer, to be known as the speaker; and</i></p> <p><i>(b) a deputy speaker, who may exercise all the powers of the presiding officer during his or her illness or absence; and</i></p>		New
		<i>(2) The members may elect such other officers as</i>		New

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<i>they desire.</i>		
		<p><i>(3) At any sitting of the district council—</i></p> <p><i>(a) the speaker presides; or</i></p> <p><i>(b) in the absence of the speaker, the deputy speaker presides; or</i></p> <p><i>(c) in the absence of both, one of the members elected by the members present presides.</i></p>		New
		<i>(4) The speaker and deputy speaker have such other powers and functions as the members may confer upon them.</i>		New
229 Functions and legislative power of district councils	(1) A county council has the functions set out in the Eighth Schedule, so far as they are appropriate to be performed at the county level.	(1) A district council has the functions set out in Article 217A (6)		
	(2) A county council has power to make laws for the purposes of, or for purposes incidental to, the performance of its functions.	(2) A district council has power to make laws for the purposes of, or for purposes incidental to, the performance of its functions.		
230 Procedures of district councils	Subject to any procedures prescribed by an Act of Parliament, a county council is free to regulate its own	Subject to this Constitution and any other applicable law, a district council is free to regulate its		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
	procedures.	own procedures.		
231 District executive	<p>(1) The executive authority of a county council is exercised by a county executive committee, consisting of—</p> <p style="padding-left: 40px;">(a) the county chief executive; and</p> <p style="padding-left: 40px;">(b) not more than [?] other members appointed by the county chief executive with the approval of the council.</p>	<p>(1) The executive authority of a district council is exercised by a district executive committee, consisting of—</p> <p style="padding-left: 40px;">(a) the district governor and deputy district governor; and</p> <p style="padding-left: 40px;">(b) subject to clause (2), such other members as are appointed by the district governor with the approval of the council.</p>		
	<p>(2) The county chief executive is elected by registered voters who satisfy the prescribed qualifications relating to residency within the county.</p>	<p><i>(2) The number of members appointed under clause (1) (b) must not exceed—</i></p> <p style="padding-left: 40px;"><i>(a) one-third of the number of members of the district council; or</i></p> <p style="padding-left: 40px;"><i>(b) ten persons,</i></p>		
	<p>(3) An eligible voter who satisfies the qualifications for membership of the National Assembly and who meets the prescribed requirements relating to residency in the county is eligible to be a member of a county council.</p>	<p>(3) An eligible voter who satisfies the qualifications for membership of the National Assembly and who meets the prescribed requirements relating to residency in the region is eligible to be district governor</p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		or deputy district governor.		
	(4) A member of the county executive committee holds office for a term of four years and is eligible, if otherwise qualified, for re-election or re-appointment from time to time.	<i>(4) During the illness or absence of the district governor, the deputy district governor has all the functions, powers and responsibilities of the district governor.</i>		New provision
	(5) A member of the county executive committee other than the county chief executive may be dismissed from office by resolution of the county council.			
	(6) The chief executive may be dismissed by the vote of an absolute majority of members of the council that is supported in a referendum by a majority of the persons voting.			
231A Election of district governor and deputy district governor		<i>(1) The district governor and deputy district governor are each elected, in an election which they contest as a team, by registered voters who meet the prescribed requirements relating to residency within the district.</i>		
		<i>(2) The district governor and</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<i>deputy district governor each hold office for a term of five years, and each of them is eligible, if otherwise qualified, for re-election for one further term.</i>		
		<i>(3) A member of the district executive committee other than the district governor or deputy district governor may be dismissed from office by resolution of the district council.</i>		
<p>232 Functions of district executive committee</p>	<p>(1) The members of the county executive committee are responsible for the functions of the executive assigned to them by the county chief executive.</p>	<p><i>(1) A district executive committee must—</i> <i>(a) implement laws of the district council;</i> <i>(b) implement, within the district, provisions of national and regional legislation concerning any matter specified in Article 217A (6), except to the extent that this Constitution or national or regional legislation otherwise provides;</i> <i>(c) implement, within the district, other national and regional legislation, to the extent that that legislation so</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>requires;</i></p> <p><i>(d) coordinate the functions of the district administration and its departments;</i></p> <p><i>(e) coordinate the functions of locations and communities within the district.</i></p>		
	<p>(2) Members of the county executive committee are accountable collectively and individually to the county council for the exercise of their powers and the performance of their functions</p>	<p><i>(2) Without limiting any power of the district council, a district executive committee may prepare and initiate proposed laws for enactment by the council.</i></p>		
	<p>(3) Members of the county executive committee must—</p> <p>(a) act in accordance with the Constitution; and</p> <p>(b) provide the county council with full and regular reports concerning matters under their control.</p>	<p><i>(3) The district executive committee has such other powers and functions as may be conferred on it by this Constitution or by national or regional legislation.</i></p>		
	<p>(4) When an election of a county council is held, the county executive committee and its members remain competent to function until the</p>	<p><i>(4) Members of the district executive committee are accountable collectively and individually to the district council for</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
	council is elected.	<i>the exercise of their powers and the performance of their functions.</i>		
	None	(5) A district executive committee must— (a) act in accordance with the Constitution; and (b) provide the district council with full and regular reports concerning matters under their control.		
Part IV—Locations				
233 Locations	An Act of Parliament must divide each county into locations with prescribed boundaries.			<i>Article 233 is subsumed into the new Article 215A.</i>
234 Locational governments	A locational government, consisting of a locational council and locational executive, is established for each location	A locational government, consisting of a locational council and locational executive, is established for each location.		
235 Composition and election of locational council	(1) A locational council consists of representatives from prescribed constituencies within the location	A locational council consists of representatives <i>elected by persons who meet the prescribed requirements for residency in the location. in such manner as is prescribed by national legislation,</i>		<i>Rephrased to capture previous Sub-articles 1 & 2.</i>

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<i>being a manner that ensures that an equal number of men and women are elected..</i>		
	(2) Two representatives, one woman and one man, are to be elected from each constituency in the manner prescribed by an Act of Parliament			
235A Presiding officer	None	<p><i>(1) Each locational council is to elect—</i></p> <p><i>(a) one of their number to be the presiding officer, to be known as the chairperson or by such other name as the assembly or council may determine;</i></p> <p><i>(b) one of their number to be a deputy for the presiding officer elected under paragraph (a), who may exercise all the powers of the presiding officer during his or her illness or absence;</i></p>		New
		<i>(2) The members of a locational council may elect such other officers as they desire</i>		
		<i>(3) At any sitting of a locational council—</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>(a) the presiding officer presides; or</i></p> <p><i>(b) in the absence of the presiding officer, his or her deputy presides; or</i></p> <p><i>(c) in the absence of both, one of the members elected by the members present presides</i></p>		
		<p><i>(4) The presiding officer and his or her deputy have such other powers and functions as the members may confer upon them</i></p>		
		<p><i>(5) The council shall appoint a treasurer and a secretary to the council</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
<p>236 Functions of locational government</p>	<p>A locational government is responsible for—</p> <p>(a) co-ordinating planning matters relating to the location, and preparing a co-ordination plan to the county government;</p> <p>(b) such matters as Parliament may prescribe, being matters that can be adequately and appropriately handled at the locational level, including local law and order, land matters, local services such as sanitation and water, cultural and social affairs and dispute settlement; and</p> <p>(c) any other functions conferred by the national, zonal or county government.</p>			<p><i>Content of former Article 236 transferred to clauses (7) to (10) of Article 217A.</i></p>
<p>237 Locational government executive</p>	<p>(1) The location administrator is the executive authority of the location and is to be elected in the prescribed manner by voters resident in the location.</p>	<p>(1) The location administrator is the executive authority of the location and is to be elected, in the manner prescribed by district legislation, by voters resident in the location.</p>		
	<p>(2) A person with at least O-level</p>	<p>(2) A person with at least O-level</p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
	education who meets the prescribed residency qualifications is eligible to be a location administrator.	education who meets the prescribed residency qualifications is eligible to be a location administrator.		
	(3) The term of office of a location administrator is four years.	(3) The term of office of a location administrator is five years.		
	Part IVA—General provisions relating to devolved governments and their members			
237A Conduct of elections	None	<i>Elections (including any by-elections) held for the purposes of this Chapter shall be conducted by the Electoral Commission.</i>		New
237B Vacancies	None	<p><i>(1) A member of an assembly, council or committee constituted under this Chapter vacates his or her office if the member—</i></p> <p><i>(a) dies;</i></p> <p><i>(b) reaches the end of his or her term of office;</i></p> <p><i>(c) resigns the office by notice in writing to the prescribed officer;</i></p> <p><i>(d) is removed from office under</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>this Constitution;</i></p> <p><i>(e) is declared bankrupt;</i></p> <p><i>(f) without reasonable cause and without permission of the body of which he or she is a member, fails to attend four consecutive meetings of the body of which due notice was given to the member;</i></p> <p><i>(g) is convicted of an offence punishable by imprisonment for a term of or exceeding six months; or</i></p> <p><i>(h) ceases to hold any qualification essential to his or her membership.</i></p>		
		<p><i>(2) For the purposes of clause (1) (c), the prescribed officer is—</i></p> <p><i>(a) where the member resigning is not the presiding officer of the body concerned—the presiding officer;</i></p> <p><i>(b) where the member resigning</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>is the presiding officer of an executive committee—the presiding officer of the legislature;</i></p> <p><i>(c) where the member resigning is the presiding officer of a legislature—the presiding officer of the executive committee.</i></p>		
		<p><i>(3) When a vacancy occurs in the office of an elected or appointed member, a person shall, as soon as practicable, be elected or appointed, as the case requires, to fill the vacancy.</i></p>		
<p>237C Oath of office</p>	<p>None</p>	<p><i>No person may act as a member of any assembly, council or executive committee constituted under this Chapter, or exercise any power vested in such a member, unless the person has taken the prescribed oath or affirmation pertaining to his or her office as a member.</i></p>		
<p>237D</p>	<p>None</p>	<p><i>At any meeting of</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
Decisions		<i>an assembly, council or executive committee constituted under this Chapter at which a quorum is present, a decision supported by a majority of votes is the decision of the assembly, council or committee.</i>		
237E Quorum	None	<i>At any meeting of an assembly, council or executive committee constituted under this Chapter, a quorum is present if the number of members present is more than one-half of the total membership of the assembly, council or committee.</i>		
237F Emoluments, allowances and benefits	None	<i>A member of an assembly, council or executive committee constituted under this Chapter is entitled to such emoluments, allowances and other benefits as may be determined in respect of the member by the Salaries and Remuneration Commission.</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
237 G Application of Part VI of Chapter Seven to devolved legislatures	None	<i>Part VI of Chapter Seven applies in relation to the regional legislative assemblies and the district and locational councils in the same manner as to the national legislature.</i>		
237H Balance of gender and diversity	None	<i>(1) At any time, not more than two-thirds of the members of any executive committee constituted under this Chapter are to be of the same sex.</i>		
		<i>(2) National legislation shall be enacted to ensure that community and cultural diversity in a region, district or locality is reflected in legislative and executive bodies exercising power in the region, district or locality.</i>		
		<i>(3) Without limiting the generality of clause (2), such legislation must prescribe means to protect minorities within districts.</i>		<i>Aimed at protecting the interests of the minority districts</i>
237I Government during transition	None	<i>While any election is being held to constitute an assembly or council under this Chapter, the assembly or</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<i>council as last constituted remains competent to function until reconstituted after the election.</i>		
237J Ethics	None	<p><i>Members of an assembly, council or committee constituted under this Chapter—</i></p> <p><i>(a) shall act in accordance with the Leadership and Integrity Code of Conduct prescribed by this Constitution and national legislation;</i></p> <p><i>(b) shall not act in any other manner that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; and</i></p> <p><i>(c) shall not use their position or any other information entrusted to them for their personal enrichment or improper benefit to any other person.</i></p>		<i>This provision may be moved to the Chapter on Leadership and Integrity.</i>
237K Removal of elected	None	<i>(1) In this Article— “elected executive”</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
executives		<p><i>means a person holding office as an elected member of an executive committee constituted under this Chapter;</i></p> <p><i>“principal government law officer” means—</i></p> <p><i>(a) in relation to a regional government, the regional attorney for the region; and</i></p> <p><i>(b) in relation to a district or locational government, the district attorney for the relevant district.</i></p>		
		<p><i>(2) The principal government law officer, if requested to do so by resolution of the legislature conveyed to the principal government law officer by the speaker, must appoint a tribunal, constituted in accordance with district legislation, to consider the question whether an elected executive specified in the resolution is unable, by reason of mental or</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<i>physical infirmity, to perform the functions of his or her office.</i>		
		<i>(3) The tribunal must inquire into the matter and make a report to the principal government law officer, stating its opinion whether or not the person in respect of whom the question arises is, by reason of physical or mental infirmity, unable to discharge the functions of the office concerned.</i>		
		<i>(4) For the purposes of its functions, the tribunal has such powers as may be prescribed by an Act of Parliament.</i>		
		<i>(5) The principal government law officer must certify in writing the decision of the tribunal and cause the certificate to be conveyed to the speaker of the legislature.</i>		
		<i>(6) Where a tribunal appointed under this Article has found that an elected executive is, by reason of physical or mental</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<i>infirmity, unable to discharge the functions of the office, the legislature shall declare the office vacant.</i>		
		<i>(7) Where an office is declared vacant in accordance with the provisions of this Article, fresh elections shall be called to fill the vacancy.</i>		
	PART V – FINANCE			
238 Commission on Finance and Fiscal Policy	(1) A Commission on Government Finance must be appointed every four years.	(1) A Commission on Finance and Fiscal Policy is hereby established.		
	(2) The Commission is to consist of— (a) a Chairperson appointed by the President with the approval of the National Council; and (b) six other members, three appointed by the National Council and three by the national government.	(2) <i>The Commission is to consist of the following persons appointed by the President—</i> <i>(a) a chairperson and deputy chairperson;</i> <i>(b) nineteen persons, consisting of one nominee from each regional assembly;</i> <i>(c) four persons to represent District Governments appointed in accordance with national legislation;</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>(d) two persons nominated by the National Assembly;</i></p> <p><i>(e) two persons nominated by the Senates; and</i></p> <p><i>(f) two persons nominated by the national executive.</i></p>		
	<p>(3) The principal function of the Commission is to make such recommendations as will ensure that the sharing of revenue from national resources—</p> <p>(a) is equitable as between governments at the several levels; and</p> <p>(b) is equitable as between the several units of government at any particular level below the national level.</p>	<p><i>(3) Members of the Commission must have appropriate expertise.</i></p>		
	<p>(4) The Commission is to advise and, in a report to Parliament, make recommendations concerning the distribution of national revenues to several levels of</p>	<p><i>(4) At least one-third of the members of the Commission must be women.</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
	governments.			
		<i>(5) A member of the Commission holds office for a term of four years, and is eligible for re-appointment for only one further term.</i>		
		<i>(6) Subject to this Part, the operations and procedures of the Commission shall be regulated by national legislation.</i>		
238A Functions of Commission	None	<i>(1) The principal function of the Commission on Finance and Fiscal Policy is to make such recommendations as will ensure that the sharing of revenue from national resources— (a) is equitable as between governments at all four levels; and (b) is equitable, at each level, as between the different units at that level.</i>		
		<i>(2) The Commission shall— (a) report to the four levels of government its recommendations concerning the</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>apportionment of national revenues to the four levels;</i></p> <p><i>(b) frequently review such recommendations to ensure they conform with changing circumstances;</i></p> <p><i>(c) mediate in and determine disputes relating to financial arrangements between the national and devolved governments.</i></p>		
		<p><i>(3) In its recommendations, the Commission shall—</i></p> <p><i>(a) aim at defining and enhancing the revenue sources of governments at the four levels with the object of encouraging fiscal responsibility and moving the devolved governments over time toward financial self-sufficiency; and</i></p> <p><i>(b) take into account the principles of taxation set out in Article 238F</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>(4) In its recommendations concerning the distribution of national revenues, the Commission must take into account—</i></p> <p><i>(a) the national interest;</i></p> <p><i>(b) any provision that must be made in respect of the national debt and other national obligations;</i></p> <p><i>(c) the needs and interests of the national government, determined by objective criteria;</i></p> <p><i>(d) the need to ensure that the regions and districts are able to provide basic services and perform the functions allocated to them;</i></p> <p><i>(e) the fiscal capacity and efficiency of the regions and districts;</i></p> <p><i>(f) developmental and other needs of regions and districts;</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>(g) economic disparities within and among the regions and the need for financial equalization;</i></p> <p><i>(h) the need for affirmative action in respect of arid and semi-arid areas and other marginalized areas;</i></p> <p><i>(i) the need for economic optimization of each region and district;</i></p> <p><i>(j) obligations of the regions and districts in terms of national legislation;</i></p> <p><i>(k) the desirability of stable and predictable allocations of revenue shares; and</i></p> <p><i>(l) the need for flexibility in responding to emergencies or other temporary needs, and other factors based on similar objective criteria.</i></p>		
		(5) The		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<i>recommendations of the Commission may be modified by the national government only upon a resolution supported by a majority in each House of Parliament.</i>		
		<i>(6) Except to the extent that they are modified under clause (5), recommendations of the Commission are binding on all governments, and must be reflected in their respective budgets and in their taxation and other legislative policy.</i>		<i>This article to be inserted in Finance Chapter after Article 257.</i>
238B National, regional, district and locational budgets	None	<i>(1) National, regional, district and locational budgets must promote transparency, accountability and the effective financial management of the economy, debt and public sector.</i>		
		<i>(2) National legislation must— (a) prescribe the form of national, regional, district and locational budgets; (b) prescribe the times at which</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>national, regional, district and locational budgets must be tabled; and</i></p> <p><i>(c) require that budgets at each level of government must show the sources of revenue and the way in which proposed expenditure will comply with national legislation.</i></p>		
		<p><i>(3) Budgets at each level of government must contain—</i></p> <p><i>(a) estimates of revenue and expenditure;</i></p> <p><i>(b) proposals for financing any anticipated deficit for the period to which they apply; and</i></p> <p><i>(c) an indication of intentions regarding borrowing and other forms of public liability that will increase public debt during the ensuing year.</i></p>		
<p>238C Treasury control</p>	<p>None</p>	<p><i>(1) The Minister of state in the national government responsible for matters of finance may stop the</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>transfer of funds to a region, district or location only for serious or persistent material breach of the standards established by national legislation in respect of—</i></p> <p><i>(a) accounting practice;</i></p> <p><i>(b) uniform expenditure classifications; or</i></p> <p><i>(c) other matters.</i></p>		
		<p><i>(2) A decision to stop transfer of funds under clause (1)—</i></p> <p><i>(a) may not stop the transfer of more than 50% of the funds that, but for action taken under clause (1), are due for transfer;</i></p> <p><i>(b) may not stop the transfer of funds for more than sixty days; and</i></p> <p><i>(c) may be enforced immediately but will lapse unless, within thirty days, each House of Parliament has by resolution</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<i>confirmed it.</i>		
		<i>(3) Parliament may, before the end of a period of stoppage under clause (2), extend that period for a further period, or for further successive periods, of not more than sixty days.</i>		
		<i>(4) Before Parliament may approve an extension, under clause (3,) of a period of stoppage, it must – obtain from the Auditor-General, and consider, a report on the matter; and give to the region, district or location concerned an opportunity to answer any allegations against it, and to state its case, before a committee of Parliament.</i>		
238D Procurement of goods and services	None	<i>(1) Where an organ of state in the national, regional, district or locational level of government, or any other institution identified in national legislation contracts for goods or services, it must do so in accordance</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<i>with a system which is fair, equitable, transparent, competitive and cost-effective.</i>		
		<p><i>(2) Clause (1) does not prevent an organ of state or institution from implementing the procurement policy providing for all or any of the following:</i></p> <p><i>(a) categories of preference in the allocation of contracts;</i></p> <p><i>(b) affirmative action for local business persons or for classes of persons, and social groups, previously disadvantaged and marginalized by discrimination;</i></p> <p><i>(c) the exclusion of persons who default on their tax obligations;</i></p> <p><i>(d) the exclusion of contractors who have failed to perform their work properly.</i></p>		<i>For eventual re-location to Finance Chapter.</i>
238E Audit		<i>Article 254 applies to governments, and government institutions, at the regional, district and locational level in the same manner as it applies to the national</i>		<i>The Devolution Working Group recommends that Article 254 be strengthened To include</i>

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<i>government and State corporations.</i>		<i>the following requirements (to be applied, by proposed Article 238E, to all devolved levels of government) : rigorous audit of assets as well as of money; efficiency audits; and (c) audit of existing and future public debt.</i>
238F Revenue allocations to devolved governments		<i>(1) Each regional, district and locational government – is entitled to an equitable share of revenue raised nationally so as to enable it to provide basic services and perform functions assigned to it; and may receive other allocations from national government revenue, either conditionally or unconditionally.</i>		
		<i>(2) Subject to clause (3), amounts payable to a district or locational</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<i>government under clause (1) shall not be reduced by reason of the raising of additional revenue by that district or locational government.</i>		
		<i>(3) There shall be no obligation on the national government to compensate districts allocations that do not raise revenue commensurate with the fiscal capacity and tax base.</i>		
		<i>(4) Subject to Article 243, an amount payable to regional, district or locational government under clause (1) must be transferred to that region, district or location promptly and without deductions.</i>		
238G Principles of taxation	None	<i>(1) The general principles of taxation, particularly the coverage of taxpayers, and the object of tax and its calculations shall be established by law.</i>		
		<i>(2) To the extent that the nature of the tax allows it, the</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<i>principles of universality and equality of tax treatment and of taxation according to economic capacity shall be respected.</i>		
		<i>(3) Inter-regional and inter-district double taxation shall not be allowed. National legislation shall provide for the necessary measures.</i>		
239 Taxation powers	None	<i>(1) The national legislature may raise by way of taxes, levies and duties the following: - (a) Income tax; (b) Value added tax; (c) Corporation tax; (d) Custom duties and other duties on import and export goods; (e) Excise tax; (f) General sales tax; (g) National stamp duties; (h) Taxes from the national lottery and other prizes of a similar nature; (i) Income taxes on transport by road, air, rail and water;</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>(j) Rents from houses and other property owned by the national Level of Government;</i></p> <p><i>(k) Fees from licenses issued by the national level of government;</i></p> <p><i>(l) Court fees, fines and forfeitures;</i></p> <p><i>(m) Exchange receipts;</i></p> <p><i>(n) motor vehicle registration fees and driving licenses fees;</i></p> <p><i>fees for government goods and services; and any other taxes authorised by national legislation.</i></p>		
		<p><i>(2) A district council may raise, by way of taxes, duties, surcharges, fees, levies and charges, the following—</i></p> <p><i>flat rate surcharges on the tax bases of any tax, levy or duty that is imposed by national legislation other than the tax bases of corporate income tax, value added tax and customs and excise;</i></p> <p><i>land use fees;</i></p> <p><i>agricultural tax;</i></p> <p><i>charges for the use of properties owned</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>by the district government; rates on property and surcharges for services provided by or on behalf of the district; cess on produce licensing fees, including liquor licensing fees, market fees, hawking fees and business permit fees; entertainment tax; district roads maintenance charges; district hotels and restaurants tax; natural resource royalties tax; gate fees for game parks and reserves; transport tax; parking fees; such other taxes, duties, surcharges, fees, levies and charges as the district may be authorized from time to time by national legislation to impose; and any other taxes, duties, surcharges, fees, levies and charges that are not exclusively assigned to the national level of government.</i></p>		
240	(1) Revenues to	(1) There is		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
National Consolidated Fund	Government at any level must be paid into a consolidated fund.	established a National Consolidated Fund, into which must be paid all money received by the national level of government, except money reasonably excluded by an Act of Parliament.		
	(2) Payments out of the consolidated fund may only be made in accordance with an Act of Parliament or a written law of the government concerned.	(2) Money may be withdrawn from the National Consolidated Fund only – in terms of an appropriation by an Act of Parliament; or as a direct charge against the National Consolidated Fund, when it is provided for in the Constitution or an Act of Parliament.		<i>This provision to end up in the Finance Chapter.</i>
		<i>(3) The equitable share of a region, district or location of revenue raised nationally is a direct charge against the National Consolidated Fund.</i>		
240 A Other Consolidated Funds	None	<i>(1) For each region, district and location there is established a Consolidated Fund, into which must be paid all money</i>		New

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>received by the regional, district or locational government concerned, except money reasonably excluded by an Act of Parliament.</i></p>		
		<p><i>(2) Money may be withdrawn from a regional, district or locational Consolidated Fund only -</i> <i>(a) by a regional or district Act, or locational by-law, as the case requires, or</i> <i>(b) as a direct charge against the regional, district or locational Consolidated Fund, when it is provided for in the Constitution or in a regional or district Act, or locational by-law, as the case requires.</i></p>		
		<p><i>(3) Revenue allocated by a region to a district, or by a district to a location, for the performance of any re-assigned functions is a direct charge against the Consolidated Fund of the region or district by which the allocation is made.</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<i>(4) Revenue allocated by the national government or by a district in a region to the region shall be a direct charge against their respective Consolidated Funds.</i>		
241 Borrowing by Governments	(1) A zonal or county government may raise loans for capital or recurrent expenditure in accordance with reasonable conditions determined by an Act of Parliament.	(1) National, regional, district and locational governments may raise loans for capital or recurrent expenditure in accordance with reasonable conditions determined by national legislation.		
	(2) Loans for recurrent expenditure— (a) may only be raised when necessary for bridging purposes during a fiscal year; and (b) must be repaid within twelve months.	(2) Loans for recurrent expenditure— (a) may only be raised when necessary for bridging purposes during a fiscal year; and (b) must be repaid within twelve months.		
	(3) An Act of Parliament referred to in clause (1) may be enacted only after any recommendation of	(3) National legislation referred to in clause (1) may be enacted only after any		<i>This provision to end up in the Finance Chapter.</i>

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
	the Commission on Government Finance have been considered.	recommendation of the Commission on Government Finance have been considered.		
	None	<i>(4) A region, district or location may not borrow without first obtaining approval from its Assembly or Council.</i>		
242 Administrati on of revenue	(1) Parliament must establish a National Revenue Administration Authority.	<i>(1) There is hereby established a National Revenue Administration Authority as an independent body, the functions of which are — (a) on behalf of governments at all levels, to collect revenue and, upon approval of the Finance Bill, based on the recommendations of the Commission on Finance and Fiscal Policy, release within twenty-one days of that approval, revenues for the various levels of government and other government institutions;(b) to build and develop the capacity of governments at all levels to collect and administer revenue.</i>		
	(2) The Authority is responsible for the	(2) The Authority is responsible for the		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
	collection of revenues due to government at all levels.	collection of revenues due to government at all levels.		
	None	<i>(3) The chief officers of the Authority at regional and district levels shall be appointed in consultation with their respective governments.</i>		
243 other financial provisions	An Act of Parliament may provide for— (a) the keeping of records and auditing of accounts of sub-national and county governments, and prescribe other measures for securing efficient and transparent fiscal management; (b) the procurement and disposal of goods and services by government.			<i>Content of former Article 243 transferred to Articles 238D and 238E.</i>
	Part VI—General			
244 Public service at devolved levels	(1) A zonal government or county government may employ its own staff.	(1) The principles of public service apply to — (a) public service in every level of government; (b) public service in all organs of state; and (c) public service in all public		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		enterprises.		
	<p>(2) The power—</p> <p>(a) to appoint persons to hold or act in offices in the service of a zonal or county government; and</p> <p>(b) to exercise disciplinary control over such persons and the power to remove them from office,</p> <p>is to be vested in a zonal or county service commission established by legislation of the zonal government.</p>	<p><i>(1A) There shall be a single Public Service Commission for the Republic, whose membership shall be representative of the national and regional levels of government.</i></p>		
	<p>(3) The Public Service Commission, in consultation with the zonal governments, must appoint a panel in respect of each Zone which, under delegation, is to exercise the Commission's powers under clause (2).</p>	<p><i>(1B) A regional, district or locational government is responsible for the recruitment, appointment, promotion, transfer and dismissal of members of its public service within a framework of uniform norms and standards applying to public service prescribed by national legislation.</i></p>		
	None	(2) The Attorney General, in consultation with the regional and		<i>This provision to be moved to the Chapter</i>

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		district governments, respectively, shall appoint regional and district attorneys.		<i>dealing with the Public Service Commission</i>
245 Publication of laws	(1) A law made by a zonal legislative or county council does not take effect unless published in the Kenya Gazette.	A law or subordinate instrument made by a legislative or county council or executive committee does not take effect unless published in the Kenya Gazette.		
	None	<i>(2) The national, regional and district governments must afford the citizens in particular localities within their respective jurisdictions an opportunity to participate in their decision-making on matters that affect the status, institutions, powers and functions of districts, locations and municipalities, by publishing for public comment any legislation in this regard before introduction.</i>		
	None	<i>(3) National, regional and district laws may prescribe other requirements in relation to the</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<i>publication of laws.</i>		
246 Formalities of law-making	The necessary procedures and formalities pertaining to law-making by a zonal or county council are to be specified in a written law of the council.	The necessary procedures and formalities pertaining to law-making by a legislative assembly or council are to be specified in its own rules of procedure and standing orders.		
246A Conflict of laws	None	<i>(1) This Article applies to a conflict between national legislation and regional or district legislation falling within their concurrent jurisdiction.</i>		
		<i>(2) National legislation that applies uniformly in the entire country prevails over Regional or District legislation if any of the following conditions is satisfied:– (a) the national legislation deals with a matter that cannot be regulated effectively by legislation enacted by the regions individually; (b) the national legislation deals with a matter that, to be dealt with effectively, requires</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>uniformity across the nation, and the national legislation provides that uniformity by establishing:</i></p> <ul style="list-style-type: none"> <i>(i) norms and standards;</i> <i>(ii) frameworks;</i> <p><i>or</i></p> <ul style="list-style-type: none"> <i>(iii) national policies;</i> <p><i>(c) the national legislation is necessary for:</i></p> <ul style="list-style-type: none"> <i>(i) the maintenance of national security;</i> <i>(ii) the maintenance of economic unity;</i> <i>(iii) the protection of the common markets in respect of the mobility of goods, services capital and labour;</i> <i>(iv) the promotion of economic activities across regional or district boundaries;</i> <i>(v) the promotion of equal opportunity or equal access to government services; or the protection of the environment.</i> 		
		<p><i>(3) National legislation shall prevail over regional and</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>district legislation where the national legislation is aimed at preventing unreasonable action by a region or district that –</i></p> <p><i>(a) is prejudicial to the economic health or security interests of another region or District or the country as a whole;</i></p> <p><i>or</i></p> <p><i>(b) impedes the implementation of national economic policy.</i></p>		
		<p><i>(4) Regional or district legislation prevails over national legislation if neither clause (2) nor clause (3) applies.</i></p>		
		<p><i>(5) Subject to article 125 (5), a district law that conflicts with national or regional legislation is invalid.</i></p>		
		<p><i>(6) A decision by a court that legislation prevails over other legislation does not invalidate that other legislation, but that other legislation becomes inoperative for as long as the conflict remains.</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>(7) When considering an apparent conflict between legislation of different levels of government, a court shall prefer any reasonable interpretation of the legislation that avoids a conflict to any alternative interpretation that results in conflict.</i></p>		
		<p><i>(8) When considering an apparent conflict between legislation of different levels of government, a court shall prefer any reasonable interpretation of the legislation that avoids a conflict to any alternative interpretation that results in conflict.</i></p>		
		<p><i>(9) A court before which an apparent conflict between legislation of different levels of government arises shall decide the issue unless –</i> <i>(a) because of the importance or complexity of the matter, the court, on its own motion, refers the matter to a constitutional</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<i>court; or (b) any party to the proceedings requests that the matter be so referred.</i>		
247 Boundaries Commission	(1) Parliament must establish a Boundaries Commission.	(1) There is established a Boundaries Commission.		
	(2) The Commission is to make recommendations concerning the fixing, review and variation of the boundaries of zones, counties and locations.	(2) The Commission is to make recommendations concerning the fixing, review and variation of the boundaries of regions, districts and locations.		
	(3) In making any such recommendation, the Commission must have regard to the viability, sustainability and effectiveness of the county or location, taking into account— (a) its population and area; (b) historical and cultural ties; (c) its economic and natural resources; and (d) the objects and principles of devolution of government.	(3) In making any such recommendation, the Commission must have regard to the viability, sustainability and effectiveness of the region, district or location, taking into account— (a) its population and area; (b) historical and cultural ties; (c) its economic and natural resources; and (d) the objects and principles of devolution of government.		
	(4) After consultation with the	After		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
	governments of any zones, counties and locations affected, and on the recommendation of the Boundaries Commission, Parliament may by enactment vary the boundaries of a county or location.	consultation with the governments of any regions, districts and locations affected, and on the recommendation of the Boundaries Commission, Parliament may by enactment vary the boundaries of a region, district or location.		
	None	<i>(5) No such enactment can have effect to abolish any region or district, or to create a new region or district, otherwise than by amendment of this Constitution.</i>		<i>Clauses (1) and (2) of this Article may be transferred to a Chapter dealing with Constitutional Commissions.</i>
247A Management of urban districts and urban areas	None	<i>(1) National legislation shall provide for the governance and management of urban districts and urban areas.</i>		
		<i>(2) Such legislation must— (a) establish criteria for distinguishing between — (i) urban districts and areas; and (ii) rural districts and areas; (b) establish</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>criteria and procedures by which transition from a rural district into an urban district is recognized;</i></p> <p><i>(c) establish criteria for classifying an area within a district as an urban area;</i></p> <p><i>(d) establish the principles of governance and management of urban districts and urban areas which take into account the special requirements of the national capital and other major centres;</i></p> <p><i>(e) provide for participation, by the citizens of urban areas, in governance functions of the district within which it lies.</i></p>		
		<p><i>(3) Such legislation may— provide for the identification of different categories of urban areas within a district; and make other provision for the better governance of urban areas</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<i>and urban districts.</i>		
248 Suspension of regional or district government	(1) A zonal or county government may be suspended— (a) in an emergency or in case of war; or (b) for gross inefficiency or corrupt practices, or for failure to comply with a code of conduct prescribed by an Act of Parliament in respect of zonal or county government.	(1) A regional or district government may be suspended— (a) in an emergency <i>arising out of internal conflict</i> or war; or (b) for gross inefficiency or corrupt practices, or for failure to comply with a code of conduct prescribed by an Act of Parliament in respect of regional or district government.		
	(2) A zonal or county government cannot be suspended under clause (1) (b) unless an independent commission of inquiry has investigated the allegations against, the President is satisfied that the allegations are justified and the National Council has authorised the suspension.	(2) A regional or district government cannot be suspended under clause (1) (b) unless an independent commission of inquiry has investigated the allegations against it, the President is satisfied that the allegations are justified and the National Council has authorised the suspension.		
	(3) During a suspension under this Article, arrangements must be made for the performance of the functions of the zonal or county council and its	(3) During a suspension under this Article, arrangements must be made for the performance of the functions of the regional or district		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
	executive officers in accordance with an Act of Parliament.	government in accordance with an Act of Parliament.		
	(4) A suspension under this Article cannot extend beyond a period of ninety days, during which period new elections for the relevant council must, in appropriate circumstances, be held.	(4) A suspension under this Article cannot extend beyond a period of ninety days, during which period new elections for the relevant council must, in appropriate circumstances, be held.		
249 Prohibition against holding elective office at national and devolved levels	(1) A person cannot hold a public or an elective office at the same time in both the national government and a devolved government.	<i>Except as otherwise provided by this Constitution, a person cannot hold a public or an elective office at the same time in both the national government and a devolved government.</i>		
	(2) Nothing in this Article precludes a person from being a member of a zonal council and of the National Council as provided for by this Constitution.			
250 Supplementary legislation	(1) An Act of Parliament— (a) must require appropriate Constitutional commissions and Constitutional office-holders to establish	(1) National legislation — (a) shall require appropriate Constitutional commissions and Constitutional office-holders to establish offices in every region and		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
	<p>offices in every zone and county over a specified period;</p> <p>(b) may provide that the power to make laws on a matter is with one government and the power to implement it with another government or governments;</p> <p>(c) must provide for delegation of powers of one level of government to another and must specify the conditions for the transfer and recall of the powers delegated;</p> <p>(d) may specify that legislation passed by Parliament should contain provisions for its adaptation to local circumstances by a zone or county;</p> <p>(e) may provide for a phased transfer of powers, functions and resources to devolved government bodies on the basis of satisfying clearly prescribed criteria showing appropriate capacity to discharge their respective functions and powers;</p> <p>(f) may require the costs of salaries</p>	<p>district over a specified period;</p> <p>(b) may provide that the power to make laws on a matter is with one government and the power to implement it with another government or governments;</p> <p>(c) shall provide for delegation of powers of one level of government to another and must specify the conditions for the transfer and recall of the powers delegated;</p> <p>(d) may specify that legislation passed by Parliament should contain provisions for its adaptation to local circumstances by a region or district;</p> <p>(e) may provide for a phased transfer of powers, functions and resources to devolved government bodies on the basis of satisfying clearly prescribed criteria showing appropriate capacity to discharge their respective functions</p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
	<p>of members and officers of devolved governments to be met from revenues raised directly by the devolved governments;</p> <p>(g) may specify special measures for the development of marginalised areas;</p> <p>(h) may provide for the establishment of criteria and procedures for classification of cities and townships, and for governance of their internal structure;</p> <p>(i) may institute arrangements for adapting the structure of devolved governance to urban requirements; and</p> <p>(j) generally may make provision for carrying out or giving effect to the provisions of this Chapter.</p>	<p>and powers;</p> <p>(f) may require the costs of salaries of members and officers of devolved governments to be met from revenues raised directly by the devolved governments;</p> <p>(g) may specify special measures for the development of marginalised areas;</p> <p>(h) may provide for the establishment of criteria and procedures for classification of cities and townships, and for governance of their internal structure;</p> <p>(i) may institute arrangements for adapting the structure of devolved governance to urban requirements; and</p> <p>(j) generally may make provision for carrying out or giving effect to the provisions of this Chapter.</p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
CONSEQUENTIAL PROVISIONS - SENATE				
<p>(Composition of the National Council)</p> <p>S1. Participation in national decision-making</p>	<p>(1) The National Council is composed of a single delegation of [?] delegates from each zonal council.</p>	<p><i>(1) Governance and administration at the national level shall be a shared function between the national, regional and district governments.</i></p>		
	<p>(2) Each zone delegation to the National Council comprises - The zonal chief executive, or another member of the zonal executive committee designated by the zonal chief executive; [?] other delegates, appointed by the zonal council for a term of five years.</p>	<p><i>(2) The regions and districts shall participate through the Senate in the national legislative decision-making process and national administration.</i></p>		
<p>S2. Composition of, and elections for, the Senate</p>	<p>(3) In appointing members of its delegation to the National Council, a zonal council must - comply with the gender representation goals set out in</p>	<p><i>(1) The Senate shall comprise 111 Senators, as follows:—</i> <i>(a) 74 persons elected, one from each district (other</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
	Article ##; and ensure that the delegation is broadly representative of the diversity of population within the zone.	<p><i>than the Teso Special Region, by the district council of that district acting as an electoral college, to represent the region of which the district forms part;</i></p> <p><i>(b) 25 women, elected in accordance with clause (2) by the regional legislative assemblies acting as electoral colleges, to represent their respective regions; 10 persons, 5 of whom shall be women, elected from the special interest groups (including ethnic minorities), elected in accordance with clause (2) from the regions by the regional legislative assemblies, acting as electoral colleges, to represent their respective regions;</i></p> <p><i>and</i></p> <p><i>(d) 2 persons, one man and one woman, elected by the district council of the Teso Special District, acting as an electoral college.</i></p>		
		<i>(2) The distribution among the regions</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>of the 25 women Senators referred to in clause (1) (b), and the 10 special interest groups Senators referred to in clause (1) (c), shall be such as to ensure that every region is entitled to an equal or reasonably equal number, as provided by national legislation.</i></p>		
		<p><i>(3) A person is eligible for election to the Senate if the person is eligible for election to the National Assembly, but a member of an electoral college mentioned in clause (1) is not eligible for election as a Senator.</i></p>		
		<p><i>(4) The term of office of a Senator is 5 years.</i></p>		
		<p><i>(5) Upon election, the Senators elected from each region and from the Teso Special District shall collectively constitute a single delegation and shall, in consultation with the regional legislative assembly for that region, or the district council of that special</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<i>district, elect one of their number as the head of the delegation.</i>		
S3. Speaker and Deputy Speaker		<i>(1) The Senate shall elect a Speaker and Deputy Speaker from among the Senators and other persons qualified for election to the National Assembly.</i>		
		<i>(2) Where a Senator is elected as Speaker or Deputy Speaker, he or she ceases forthwith to be a Senator and any resulting vacancy shall be filled as provided for by national legislation.</i>		
		<i>(3) The Speaker and Deputy Speaker are elected to serve a term of 5 years or until the earlier dissolution of the Senate.</i>		
		<i>(4) The election of the Speaker shall be presided over by the Clerk of the Senate, and, upon election, the Speaker shall preside over the election of the Deputy Speaker.</i>		
		<i>(5) The Senate may, by a vote of two-thirds majority of its members,</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<i>remove a Speaker or Deputy Speaker from office.</i>		
S4 Decisions of Senate		<i>(1) Except where this Constitution provides otherwise – (a) each region, and the Teso Special District, shall have one vote, to be cast on behalf of the region or special district by the head of its delegation or, in the absence of the head of the delegation, by another member of the delegation acting on his or her behalf; and (b) all questions before the Senate shall be determined by a two-thirds majority of those delegations.</i>		
		<i>(2) National legislation enacted in accordance with the procedure established for the passing of bills affecting regions shall provide for a uniform procedure in terms of which the regional legislative assemblies and the district council for the Teso Special District confer</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<i>authority on their delegations to cast votes on their behalf.</i>		
		<i>A Senator — (a) may, on his or her own motion; and (b) shall, at the request of the relevant regional legislative assembly (or, in the case of a Senator for the Teso Special District, the district council of that special district), attend, and speak at, a meeting of that assembly or council, but shall not vote.</i>		
		<i>(4) Cabinet Ministers, and Deputy Ministers, of the national government may attend and may speak in the Senate, but shall not vote.</i>		
		<i>(5) The Senate — (a) may require a Cabinet Minister, a Deputy Minister, an official in the national executive or a regional executive or a private individual to submit memoranda to, or appear before, the Senate or a</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>Committee of the Senate, to give evidence; and</i></p> <p><i>(b) shall have the powers of the High Court in —</i></p> <p><i>(i) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;</i></p> <p><i>(ii) compelling the production of documents; and</i></p> <p><i>(iii) issuing a commission or request to examine witnesses abroad.</i></p>		
<p>S5. Legislative authority of Senate</p>		<p><i>(1) In exercising its legislative authority, the Senate may —</i></p> <p><i>(a) consider, pass, amend, propose amendments to or reject any legislation before it, in accordance with the provisions of this Constitution; and</i></p> <p><i>(b) initiate or prepare —</i></p> <p><i>(i) legislation within the concurrent jurisdiction of the national, regional and district levels of government; or</i></p> <p><i>(ii) other legislation referred to, and envisaged by, this</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<i>Constitution, but may not initiate or prepare money Bills.</i>		
S6 Bills — basic procedure		<i>(1) Any Bill may be introduced in the National Assembly.</i>		
		<i>(2) Only a Cabinet Minister, a Deputy Minister or a Member of the National Assembly, may introduce a Bill in the Assembly.</i>		
		<i>(3) Only a Cabinet Minister responsible for national financial matters may introduce a money Bill in the Assembly after consultation with the Parliamentary Budget Committee.</i>		
		<i>(4) A Bill relating to a matter within the concurrent jurisdiction of the national, regional and district levels of government or on any other area referred to or envisaged by this Constitution (except a money Bill) may be introduced in the Senate.</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		(5) Any Senator may introduce a Bill in the Senate.		
		(6) A Bill introduced in, and passed by, the National Assembly shall be referred to the Senate.		
		<i>(7) A Bill introduced in, and passed by, the Senate shall be referred to the National Assembly.</i>		
S7 Bills not amending Constitution or affecting regions		<i>(1) When the National Assembly passes a Bill (other than a Bill amending the Constitution or a Bill affecting regions or the Teso Special District), the Bill shall be referred to the Senate and dealt with in accordance with the following procedure: - (a) The Senate must – (i) pass the Bill; (ii) pass the Bill subject to amendments proposed by it; or (iii) reject the Bill. (b) If the Senate passes the Bill without proposing amendments, the Bill must be</i>		<i>Check</i>

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>submitted to the President for assent.</i></p> <p><i>(c) If the Senate rejects the Bill or passes it subject to amendments, the National Assembly must reconsider the Bill, taking into account any amendment proposed by the Senate, and may –</i></p> <p><i>(i) pass the Bill again, either with or without amendments; or</i></p> <p><i>(ii) decide not to proceed with the Bill.</i></p> <p><i>(d) A Bill passed by the National Assembly in terms of paragraph (c) must be submitted to the President for assent.</i></p>		<p><i>situation with Bills that may be passed by NA despite rejection by Senate.</i></p>
		<p><i>(2) When the Senate votes on a question in terms of this Article, Article S4 does not apply; instead –</i></p> <p><i>(a) each Senator has one vote;</i></p> <p><i>(b) at least one-third of the Senators must be present before a vote may be taken on the question; and</i></p> <p><i>(c) the question is decided by a</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>majority of the votes cast but, if there is an equal number of votes, a second and third vote may be taken, after which it lapses but may be resubmitted after three months.</i></p>		
<p>S8 Bills amending Constitution</p>				<p><i>Rapporteur's note: the Committee needs to look at what has been done by the Committees on the executive, on the legislature, on Commissions and on constitutional amendments.</i></p>
<p>S9. Bills affecting regions</p>		<p><i>(1) When the National Assembly passes a Bill referred to in clause (3) or (4), the Bill shall be referred to the Senate and dealt with in accordance with the following procedure: - (a) The Senate shall - (i) pass the Bill; (ii) pass an</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>amended Bill; or</i> <i>(iii) reject the Bill.</i> <i>(b) If the Senate passes the Bill without amendment, the Bill shall be submitted to the President for assent.</i> <i>(c) If the Senate passes an amended Bill, the amended Bill shall be referred to the National Assembly, and if the National Assembly passes the amended Bill, it shall be submitted to the President for assent.</i> <i>(d) If the Senate rejects the Bill, or if the National Assembly refuses to pass the amended Bill referred to it in terms of paragraph (c), the Bill and where applicable, also the amended Bill, shall be referred to an ad hoc Joint Select Committee for Mediation (in this clause referred to as the Mediation Committee), which may agree on –</i> <i>(i) the Bill as passed by the National Assembly;</i> <i>(ii) the amended Bill as passed by</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>the Senate; or</i></p> <p><i>(iii) another version of the Bill.</i></p> <p><i>(e) If the Mediation Committee is unable to agree within 30 days of the Bills referral to it, the Bill lapses unless the National Assembly again passes the Bill, but with a supporting vote of at least two-thirds of its members.</i></p> <p><i>(f) If the Mediation Committee agrees on the Bill as passed by the National Assembly, the Bill shall be referred to the Senate, and if the Senate passes the Bill, the Bill must be submitted to the President for assent.</i></p> <p><i>(g) If the Mediation Committee agrees on the amended bill as passed by the Senate, the Bill must be referred to the National Assembly, and if it is passed by the National Assembly, it must be submitted to the President for assent.</i></p> <p><i>(h) If the</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>Mediation Committee agrees on another version of the Bill, that version of the Bill shall be referred to both the National Assembly and the Senate, and, if it is passed by the National Assembly and the Senate; it shall be submitted to the President for assent.</i></p> <p><i>(i) If a Bill referred to the Senate in terms of paragraph (f) or (h) is not passed by the Senate, the Bill lapses, but the Bill as originally passed by the National Assembly may again be passed by the National Assembly, but with a supporting vote of at least two-thirds of its members.</i></p> <p><i>(j) A Bill passed by the National Assembly in terms of paragraph (e) or (i) shall be submitted to the President for assent.</i></p>		
		<p><i>(2) When the Senate passes a Bill referred to in clause (3), the Bill shall be referred to the National Assembly and dealt</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>with in accordance with the following procedure: -</i></p> <p><i>(a) The National Assembly shall –</i></p> <p><i>(i) pass the Bill;</i></p> <p><i>(ii) pass an amended Bill; or</i></p> <p><i>(iii) reject the Bill.</i></p> <p><i>(b) A Bill passed by the National Assembly in terms of paragraph (a) shall be submitted to the President for assent.</i></p> <p><i>If the National Assembly passes an amended Bill, the amended Bill shall be referred to the Senate, and if the Senate passes the amended Bill, it shall be submitted to the President for assent.</i></p> <p><i>(d) If the National Assembly rejects the Bill, or if the Senate refuses to pass an amended Bill referred to it terms of paragraph (c), the Bill and, where applicable, also the amended Bill shall be referred to an ad hoc Joint Select Committee for Mediation (in this</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>clause referred to as the Mediation Committee), which may agree on –</i></p> <p><i>(i) the Bill as passed by the Senate;</i></p> <p><i>(ii) the amended Bill as passed by the National Assembly; or</i></p> <p><i>(iii) another version of the Bill.</i></p> <p><i>(e) If the Mediation Committee is unable to agree within 30 days of the Bill’s referral to it, the Bill lapses.</i></p> <p><i>(f) If the Mediation Committee agrees on the Bill as passed by the Senate, the Bill must be referred to the National Assembly, and, if the National Assembly passes the Bill, the Bill must be submitted to the President for assent.</i></p> <p><i>(g) If the Mediation Committee agrees on the amended Bill as passed by the National Assembly, the Bill shall be referred to the Senate, and, if it is passed by the Senate, it must be</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p><i>submitted to the President for assent.</i></p> <p><i>(h) If the Mediation Committee agrees on another version of the Bill, that version of the Bill shall be referred to both the Senate and the National Assembly, and, if it is passed by the Senate and the National Assembly, it shall be submitted to the President for assent.</i></p> <p><i>(i) If a Bill referred to the National Assembly in terms of paragraph (f) or (h) is not passed by the National Assembly, the Bill lapses.</i></p>		
		<p><i>(3) A Bill shall be dealt with in accordance with the procedure established by either clause (1) or (2) if it relates to a matter that is within the concurrent jurisdiction of any two or more of the national, regional and district levels of government or to a matter envisaged in any of the following sections:</i></p> <p>-</p> <p><i>(a)</i></p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<p>(b)</p> <p>(c)</p> <p>(d)</p>		
		<p>(4) A Bill shall be dealt with in accordance with the procedure established by clause (1) if it relates to -</p> <p>(a) maintenance of national security;</p> <p>(b) maintenance of economic unity;</p> <p>(c) maintenance of essential national standards;</p> <p>(d) establishment of minimum standards for the rendering of services;</p> <p>(e) prevention of unreasonable action by a region which is prejudicial to the interests of another region or to the country as a whole;</p> <p>(f) fiscal policy or the functioning of the Commission on Finance; and</p> <p>(g) matters envisaged in Chapter Thirteen (Public Finance and Revenue</p>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<i>Management) that affects the financial interests of the regions and the Districts.</i>		
		<i>(5) Unless the contrary intention appears, a reference in this Article to a region includes a reference to the Teso Special District.</i>		
S10. Joint Select Committee for Mediation		<i>(1) A Joint Select Committee for Mediation consists of - one delegate from each regional delegation in the Senate (including the delegation of the Teso Special District), designated by the delegation; and nineteen members of the National Assembly elected by the Assembly in accordance with the rules of procedure and standing orders of the National Assembly.</i>		
		<i>(2) A Joint Select Committee for Mediation decides a question before it when the question is voted for by - (a) at least a</i>		

Article	As printed in the Draft Bill	As adopted by the TWC	As formulated by the minority (if any)	Explanatory notes
		<i>simple majority of the representation of the Senate; and (b) at least a simple majority of the representation of the National Assembly.</i>		

FIFTH SCHEDULE

5.1 Distribution of Governmental Functions

National Government

1. Foreign affairs, foreign policy and international trade.
2. In consultation with the regions and districts, the use of international waters and water resources.
3. Immigration and citizenship.
4. The relationship between religion and state.
5. Language policy and the promotion of official and local languages.
6. National defence and the use of the national defence services.
7. National security, including—
 - (a) the setting of standards of recruitment, training of police and use of police services;
 - (b) criminal law; and
 - (c) correctional services.
8. Courts.
9. National economic policy and planning
10. Monetary policy, currency, banking (including central banking), the incorporation and regulation of banking, insurance and financial corporations;
11. National statistics and data on population, the economy and society generally.
12. Intellectual property rights.
13. Labour standards.
14. Consumer protection, including standards for social security and professional pension plans.
15. Education policy, standards, curricula, examinations and the granting of university charters.
16. National universities, tertiary educational institutions and other institutions of research and higher learning and support for regional and district universities and other institutions of research and higher learning.
17. Promotion of sports and sports education.
18. Transport and communications, including, in particular—
 - (a) road traffic;
 - (b) the construction and operation of national trunk roads;
 - (c) standards for the construction and maintenance of other roads by regions and districts;
 - (d) railways;
 - (e) pipelines;
 - (f) marine navigation;
 - (g) civil aviation;
 - (h) space travel;
 - (i) postal services;
 - (j) telecommunications; and
 - (k) radio and television broadcasting.
19. National public works.
20. Housing policy.

21. General principles of land planning and the co-ordination of planning by the regions and districts.
22. Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, in particular—
 - (a) fishing, hunting and gathering;
 - (b) protection of animals and wildlife;
 - (c) water protection, securing sufficient residual water, hydraulic engineering and the safety of dams; and
 - (d) energy policy.
23. National referral health facilities.
24. Disaster management.
25. Ancient and historical monuments of national importance.
26. National elections.

Regional Government

- (2) Except where this Constitution and legislation provide otherwise, the powers and functions of the regional level of government in all its functional areas shall, in consultation with the districts in the region be—
 - (a) the co-ordination and supervision of the districts in the course of their implementation of the national and regional policies and standards;
 - (b) the formulation of regional policies;
 - (c) the setting of regional standards;
 - (d) regional planning;
 - (e) the monitoring and evaluation of implementation;
 - (f) the actual production, management and delivery of regional services;
 - (g) actual development operation and maintenance of regional infrastructure and services;
 - (h) the facilitation and harmonization of operations within the region; and
 - (i) capacity building and technical assistance to the districts.
- (3) Local communities or villages shall be guaranteed the right to manage all affairs of local concern within the limits set by national legislation.
- (4) Associations, federations and networks of local communities or villages, within the framework of their statutory powers and functions, likewise have the right of self-management as set by national legislation.
- (5) Subject to the Act of Parliament referred to in Article 234 (2), for the purposes of this Chapter, the Nairobi regional government has the powers and functions of both a regional government and a district government, and the districts forming the Nairobi region do not constitute separate devolved governments.
- (6) Subject to clause (7), each level of government shall exercise and perform only such powers and functions as are assigned to it under clause (1) and any legislation.

- (7) It is the duty of every district government to decentralize the provision of services and other functions of government by providing, by laws of the district government, for their devolution to locational government to the extent that it is efficient and practicable to do so.
- (8) When powers and functions are re-assigned or devolved from one level of government to another level of government, arrangements shall be put in place to ensure that the funds necessary for the exercise and performance of those powers and functions are transferred accordingly.
- (9) Where a power or function is to be exercised and performed concurrently by two or more levels of government, each of those levels of government may consult and co-ordinate with each other in the exercise and performance of the power or function.
- (10) A function that is assigned to more than one level of government is a function within the concurrent jurisdiction of each of those levels of government.

District Governments

1. Agriculture, including—
 - (a) crop and animal husbandry;
 - (b) livestock saleyards;
 - (c) district abattoirs;
 - (d) plant and animal disease control; and
 - (e) fisheries.
2. District health services, including, in particular—
 - (a) district health facilities and pharmacies;
 - (b) ambulance services;
 - (c) promotion of primary health care;
 - (d) licensing and control of undertakings that sell food to the public;
 - (e) veterinary services (excluding regulation of the profession);
 - (f) cemeteries, funeral parlours and crematoria; and
 - (g) refuse removal, refuse dumps and solid waste disposal.
3. Control of air pollution, noise pollution, other public nuisances and outdoor advertising.
4. Cultural activities, public entertainment and public amenities, including—
 - (a) casinos and other forms of gambling;
 - (b) racing;
 - (c) liquor licensing;
 - (d) cinemas;
 - (e) video shows and hiring;
 - (f) libraries;
 - (g) museums;
 - (h) sports and cultural activities and facilities; and
 - (i) district parks, beaches and recreation facilities.
5. District transport, including—
 - (a) district roads;
 - (b) street lighting;

- (c) traffic and parking;
 - (d) public road transport;
 - (e) ferries and harbours, excluding the regulation of international; and
 - (f) national shipping and matters related thereto.
6. Animal control and welfare, including—
 - (a) licensing of dogs; and
 - (b) facilities for the accommodation, care and burial of animals.
 7. Trade development and regulation, including—
 - (a) markets;
 - (b) trade licences (excluding regulation of professions);
 - (c) fair trading practices;
 - (d) local tourism; and
 - (e) cooperative societies.
 8. District planning and development, including—
 - (a) statistics;
 - (b) land survey and mapping;
 - (c) boundaries and fencing;
 - (d) housing; and
 - (d) electricity and gas reticulation and energy regulation.
 9. Education at pre-primary, primary and secondary levels, special education, village polytechnics, homecraft centres and childcare facilities.
 10. Implementation of national government policies on natural resources and environmental conservation, including—
 - forestry.
 11. District public works and services, including—
 - (a) storm water management systems in built-up areas; and
 - (b) water and sanitation services.
 12. Police and firefighting services and disaster management.
 13. Control of drugs and pornography.
 14. In consultation with the locational governments, ensuring and co-ordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the powers and functions and participation in governance at the local level.

Locational Governments

1. In consultation with district government, promotion of the self-determination and development of communities in the location, by—
 - (a) initiating, planning, implementing and co-ordinating local community projects, activities and services;
 - (b) applying, and co-ordinating the application of, funds available from any source for the purposes of such projects, activities and services;
 - (c) implementing, within the locality, projects planned at the district, regional or national levels of government;
 - (d) implementing, within the locality, laws of the nation, region or district; and
 - (e) generally fostering the integrated and participatory self-management of local affairs by local communities.

SEVENTH SCHEDULE

5.2 Taxation Powers

Taxation Powers of the National Government

The national legislature may raise, by way of taxes, duties, levies fees and charges, the following—

- a) income tax;
- b) value added tax;
- c) corporation tax;
- d) customs duties and other duties on import and export goods;
- e) excise tax;
- f) general sales tax;
- g) national stamp duties;
- h) taxes from the national lottery and schemes of a similar nature;
- i) taxes on transport by road, air, rail and water;
- j) rents from houses and other property owned by the national level of government;
- k) fees for licenses issued by the national level of government;
- l) court fees, fines and forfeitures;
- m) exchange receipts;
- n) motor vehicle registration fees and driving licence fees;
- o) fees for government goods and services; and
- p) any other taxes authorised by national legislation.

Taxation Powers of Districts

A district council may raise, by way of taxes, duties, surcharges, fees, levies and charges, the following—

- a) flat rate surcharges on the tax bases of any tax, levy or duty that is imposed by national legislation other than the tax bases of corporate income tax, value added tax and customs and excise;
- b) land use fees;
- c) agricultural tax;
- d) charges for the use of properties owned by the district government;
- e) rates on property and surcharges for services provided by or on behalf of the district;
- f) cess on produce;
- g) licensing fees, including liquor licensing fees, market fees, hawking fees ;
- h) business permit fees;
- i) entertainment tax;
- j) district roads maintenance charges;
- k) district hotels and restaurants tax;

- l) natural resource royalties tax;
- m) gate fees for game parks and reserves;
- n) transport tax;
- o) parking fees;
- p) such other taxes, duties, surcharges, fees, levies and charges as the district is authorized from time to time by national legislation to impose; and
- q) any other taxes, duties, surcharges, fees, levies and charges that are not exclusively assigned to the national level of government.

APPENDICES

APPENDIX A: LIST OF MEMBERS

NATIONAL CONSTITUTIONAL CONFERENCE TECHNICAL WORKING GROUP G

Effective 17th February 2004

Convenor: Dr. Adhu Awiti

	NAME	DELEGATE NUMBER
1	Abel Mwaniki Njeru	283
2	Adan A. Sugow	193
3	Adhu Awiti	9
4	Ahmed Maalim Omar	255
5	Alex Chepkwony	367
6	Amos Kiumo	271
7	Betty Njeri Tett	222
8	Bonaya Godana Adhi	29
9	Caleb Jumba	385
10	Daniel Khamasi	53
11	Daniel Ole Osoi	364
12	Elkanah Odembo	453
13	Fatuma Sheikh Mohamed	254
14	G. B. Galgalo	26
15	G. Ndatho Muchiri	301
16	G.G. Kariuki	42
17	George Kinyua	577
18	George Mburu Mwaura	586
19	Gloria Wabwire	396
20	Grace Akinyi Ogot	399
21	Guracha Denge Wario	265
22	Hellen Koring'ura	324
23	Henry Kosgey	77
24	Hezron Manduku	92
25	Isa Ireri Ngunia	286
26	Isaiah Cheruiyot	346
27	J. J. Kamotho	40
28	J. Kinuthia Mwangi	319

29	J. Mwangi Waweru	310
30	J. S.Mathenge	308
31	James F. T. Foster	488
32	John Katuku	46
33	Juma Wario	241
34	Kauchi Chivumba	494
35	Kenneth Marende	96
36	Leslie Mwachiro	599
37	M. Nyathogora	303
38	Machage W. Gisuka	85
39	Maero Tindi	444
40	Mercy Mwamburi	492
41	Mereso Agina	508
42	Michael Githu	355
43	Mohamed Yusuf Haji	31
44	Mwinyi Haji Mwijaa	234
45	Nicholas Biwott	16
46	Otieno Ogingo	413
47	Patrice M. Ivuti	32
48	Patrick O. Onyango	590
49	Pius Lobuk	328
50	Prof. Odhiambo M.O.	412
51	Raphael Livu	228
52	Rev. Muchunga	226
53	Shaaban Issack	187
54	Simeon Nyachae	149
55	Simon Shitemi	545
56	Sospeter Ojaamong	159
57	Suleiman Shakombo	189
58	Syongoh Zaddock Madiri	195
59	Teclah Nairesiai	357
60	Wilberforce Kisiero	389

Prof. H. W. O. Ogendo

Rapporteur General

APPENDIX B: AGENDAS

NATIONAL CONSTITUTIONAL CONFERENCE

September 9, 2003

TECHNICAL WORKING GROUP “G”

The Convenor presents his compliments to Members of the Technical Working Committee “G” and has the honour to inform them that a sitting of the Committee will be held on Tuesday, September 9, 2003 in Tent No. G, Bomas of Kenya at 8.30 a.m.

AGENDA

- (i). Prayers
- (ii). Confirmation of membership of the Committee
- (iii). Confirmation of Minutes
- (iv). Matters Arising
- (v). Preliminaries
- (vi). Setting Agenda for the Committee
- (vii). Date of the Next Sitting
- (viii). Any other business.

Approved for circulation – Convenor

Signed

Date

Time

NATIONAL CONSTITUTIONAL CONFERENCE

September 10, 2003

TECHNICAL WORKING GROUP “G”

The Convenor presents his compliments to Members of the Technical Working Committee “G” and has the honour to inform them that a sitting of the Committee will be held on Wednesday, September 10, 2003 in Tent No. G, Bomas of Kenya at 8.30 a.m.

AGENDA

- (i). Prayers
- (ii). Confirmation of Minutes
- (iii). Matters Arising
- (iv). Principles of Devolution (morning)
- (v). Levels of Government (afternoon)
- (vi). Date of the Next Sitting
- (vii). Any other business.

Approved for circulation – Convenor

Signed

Date

Time

NATIONAL CONSTITUTIONAL CONFERENCE

September 10, 2003

TECHNICAL WORKING GROUP “G”

The Convenor presents his compliments to Members of the Technical Working Committee “G” and has the honour to inform them that a sitting of the Committee will be held on Thursday, September 11, 2003 in Tent No. 12, Bomas of Kenya at 8.30 a.m.

AGENDA

- (i). Prayers
- (ii). Confirmation of Minutes
- (iii). Matters Arising
- (iv). Principles of Devolution (morning)
- (v). Levels of Government (afternoon)
- (vi). Date of the Next Sitting
- (vii). Any other business.

Approved for circulation – Convenor
Signed
Date
Time

NATIONAL CONSTITUTIONAL CONFERENCE

September 11, 2003

TECHNICAL WORKING GROUP “G”

The Convenor presents his compliments to Members of the Technical Working Committee “G” and has the honour to inform them that a sitting of the Committee will be held on Friday, September 12, 2003 in Tent No. 12, Bomas of Kenya at 9.00 a.m.

AGENDA

- (i). Prayers
- (ii). Confirmation of Minutes
- (iii). Matters Arising
- (iv). Role and place of Local Government (morning)
- (v). Units of Devolution (afternoon)
- (vi). Date of the Next Sitting
- (vii). Any other business.

Approved for circulation – Convenor

Signed

Date

Time

NATIONAL CONSTITUTIONAL CONFERENCE

September 17, 2003

TECHNICAL WORKING GROUP “G”

The Convenor presents his compliments to Members of the Technical Working Committee “G” and has the honour to inform them that a sitting of the Committee will be held on Thursday, September 18, 2003 in Tent No. 7, Bomas of Kenya at 9.00 a.m.

AGENDA

- (i). Prayers
- (ii). Confirmation of Minutes
- (iii). Matters Arising
- (iv). Consideration of Chapter 10 - Devolution of Powers
- (v). Date of the Next Sitting
- (vi). Any other business.

Approved for circulation – Convenor

Signed
Date
Time

NATIONAL CONSTITUTIONAL CONFERENCE

September 18, 2003

TECHNICAL WORKING GROUP “G”

The Convenor presents his compliments to Members of the Technical Working Committee “G” and has the honour to inform them that a sitting of the Committee will be held on Friday , September 19, 2003 in Tent No. 7, Bomas of Kenya at 9.00 a.m.

AGENDA

- (i). Prayers
- (ii). Confirmation of Minutes
- (iii). Matters Arising
- (iv). General Comments
- (v). Consideration of Chapter 10 – Article 218 Zones and 219 Zonal governments
- (vi). Date of the Next Sitting
- (vii). Any other business.

Approved for circulation – Convenor

Signed

Date

Time

NATIONAL CONSTITUTIONAL CONFERENCE

September 19, 2003

TECHNICAL WORKING GROUP “G”

The Convenor presents his compliments to Members of the Technical Working Committee “G” and has the honour to inform them that a sitting of the Committee will be held on Monday, September 22, 2003 in Tent No. 7, Bomas of Kenya at 9.00 a.m.

AGENDA

- (i). Prayers
- (ii). Confirmation of Minutes
- (iii). Matters Arising
- (iv). General Comments
- (v). Consideration of Chapter 10 – Article 218 Zones and 219 Zonal governments
- (vi). Date of the Next Sitting
- (vii). Any other business.

Approved for circulation – Convenor
Signed
Date
Time

NATIONAL CONSTITUTIONAL CONFERENCE

September 22, 2003

AGENDA

- (i). Prayers
- (ii). Confirmation of Minutes
- (iii). Matters Arising
- (iv). General Comments on Articles 218, 219 and 220
- (v). Consideration of Chapter 10
- (vi). Article 218 Zones (Deferred Zones – Zones 8, 9, 10, 12, 14 & 15)
- (vii). Article 218 (2)
- (viii). Article 219 – Zonal governments
- (ix). Article 220 – Zonal Councils
- (x). Date of the Next Sitting
- (xi). Any other business.

Approved for circulation – Convenor

Signed
Date
Time

NATIONAL CONSTITUTIONAL CONFERENCE

September 23, 2003

AGENDA

Prayers

- (i). Confirmation of Minutes
- (ii). Matters Arising
- (iii). General Comments on Articles 218, 219 and 220
- (iv). Consideration of Chapter 10
- (v). Sub-Article 218 (2)
- (vi). Article 219 – Zonal governments
- (vii). Article 220 – Zonal Councils
- (viii). Date of the Next Sitting
- (ix). Any other business.

Approved for circulation – Convenor

Signed

Date

Time

NATIONAL CONSTITUTIONAL CONFERENCE

September 24, 2003

AGENDA

- (i). Prayers
- (ii). Confirmation of Minutes
- (iii). Matters Arising
- (iv). General Comments on Sub-Article 218 (2), 219 - Zonal Governments and 220
– Zonal Councils
- (v). Motion
- (vi). Consideration of Chapter 10
- (vii). Sub-Article 218 (2)
- (viii). Article 219 – Zonal governments
- (ix). Article 220 – Zonal Councils
- (x). Date of the Next Sitting
- (xi). Any other business.

Approved for circulation – Convenor
Signed
Date

Time

NATIONAL CONSTITUTIONAL CONFERENCE

September 25, 2003

AGENDA

- (i). Prayers
- (ii). Confirmation of Minutes
- (iii). Matters Arising
- (iv). General Comments on Sub-Article 218 (2), 219 - Zonal Governments and 220
– Zonal Councils
- (v). Motion
- (vi). Consideration of Chapter 10
- (vii). Sub-Article 218 (2)
- (viii). Article 219 – Zonal governments
- (ix). Article 220 – Zonal Councils
- (x). Date of the Next Sitting
- (xi). Any other business.

Approved for circulation – Convenor

Signed

Date

Time

NATIONAL CONSTITUTIONAL CONFERENCE

January 13, 2004

AGENDA

- (i). Prayers
- (ii). Confirmation of Minutes
- (iii). Matters Arising
- (iv). Documentation (Supplementary Special Working Document)
- (v). Consideration of the Draft Bill
- (vi). Any Other Business

Approved for circulation – Convenor

Signed

Date

Time

NATIONAL CONSTITUTIONAL CONFERENCE

January 14, 2004

AGENDA

- (i). Prayers
- (ii). Confirmation of Minutes
- (iii). Matters Arising
- (iv). Consideration of the Draft Bill (Articles 220 – 222)
- (v). Any Other Business

Approved for circulation – Convenor

Signed

Date

Time

NATIONAL CONSTITUTIONAL CONFERENCE

January 15, 2004

AGENDA

- (i). Prayers
- (ii). Confirmation of Minutes
- (iii). Matters Arising
- (iv). Consideration of the Draft Bill (Articles 224 – 228)
- (v). Any Other Business

Approved for circulation – Convenor

Signed

Date

Time

NATIONAL CONSTITUTIONAL CONFERENCE

January 16, 2004

AGENDA

- (i). Prayers
- (ii). Confirmation of Minutes
- (iii). Matters Arising
- (iv). The Structure and Management of the Nairobi Region
- (v). Consideration of the Draft Bill (Articles 225 – 228)
- (vi). Any Other Business

Approved for circulation – Convenor

Signed

Date

Time

NATIONAL CONSTITUTIONAL CONFERENCE

January 19, 2004

AGENDA

- (i). Prayers
- (ii). Confirmation of Minutes
- (iii). Matters Arising
- (iv). Deferred Sub-article 229 (1) (b) and (c)
- (v). Consideration of the Draft Bill (Sub – article 229 (2) – Article 233)
- (vi). Any Other Business

Approved for circulation – Convenor

Signed

Date

Time

NATIONAL CONSTITUTIONAL CONFERENCE

January 20, 2004

AGENDA

- (i). Prayers
- (ii). Confirmation of Minutes
- (iii). Matters Arising
- (iv). Deferred Articles
- (v). Consideration of the Draft Bill
- (vi). Article 232 – Functions of the district executive Committee
- (vii). Articles 233 – 237 – Locational government
- (viii). Any Other Business

Approved for circulation – Convenor

Signed

Date

Time

NATIONAL CONSTITUTIONAL CONFERENCE

January 21, 2004

AGENDA

- (i). Prayers
- (ii). Confirmation of Minutes
- (iii). Matters Arising
- (iv). Discussion on Finances and cost of Devolution
- (v). Consideration of the Draft Bill - Part V - Finance
- (vi). Any Other Business

Approved for circulation – Convenor

Signed

Date

Time

NATIONAL CONSTITUTIONAL CONFERENCE

January 22, 2004

AGENDA

- (i). Prayers
- (ii). Confirmation of Minutes
- (iii). Matters Arising
- (iv). Consideration of the Draft Bill - Part V - Finance
- (v). Any Other Business

Approved for circulation – Convenor

Signed

Date

Time

NATIONAL CONSTITUTIONAL CONFERENCE

January 26, 2004

AGENDA

- (i). Prayers
- (ii). Confirmation of Minutes
- (iii). Matters Arising
- (iv). Consideration of the Draft Bill - Part V - Finance
- (v). Deferred Articles -
- (vi). Any Other Business

Approved for circulation – Convenor

Signed

Date

Time

NATIONAL CONSTITUTIONAL CONFERENCE

January 27, 2004

AGENDA

- (i). Prayers
- (ii). Confirmation of Minutes
- (iii). Matters Arising
- (iv). Consideration of the Draft Bill - Part V – Finance – Article 239(6) - 243
- (v). Deferred Articles -
- (vi). Any Other Business

Approved for circulation – Convenor

Signed

Date

Time

NATIONAL CONSTITUTIONAL CONFERENCE

January 28, 2004

AGENDA

- (i). Prayers
 - (ii). Confirmation of Minutes
 - (iii). Matters Arising
 - (iv). Consideration of the Draft Bill - Part V – Finance:-
 - (v). Taxation Principles
 - (vi). 245 – Consolidated Funds
 - (vii). 246 – Government borrowing
 - (viii). 247 – Administration of revenue
 - (ix). 252 – Boundaries Commission
 - (x). Conflict of laws
 - (xi). Second Chamber
 - (xii). Deferred Articles -
 - (xiii). Any Other Business
- Approved for circulation – Convenor

Signed

Date

Time

NATIONAL CONSTITUTIONAL CONFERENCE

January 29, 2004

AGENDA

- (i). Prayers
- (ii). Confirmation of Minutes
- (iii). Matters Arising
- (iv). Consideration of the Draft Bill
- (v). Upper Chamber
- (vi). Staffing of Devolved authorities
- (vii). Publication of Laws
- (viii). Formalities of Law making
- (ix). Suspension of Regional and District Governments
- (x). Prohibition against holding elective office
- (xi). Supplementary legislation
- (xii). Motion
- (xiii). Any Other Business

Approved for circulation – Convenor
Signed

Date

Time

NATIONAL CONSTITUTIONAL CONFERENCE

January 30, 2004

AGENDA

- (i). Prayers
- (ii). Confirmation of Minutes
- (iii). Matters Arising
- (iv). Consideration of the Draft Bill
 - Upper Chamber
 - Staffing of Devolved authorities
 - Publication of Laws
 - Formalities of Law making
 - Suspension of Regional and District Governments
 - Prohibition against holding elective office
 - Supplementary legislation
 - Functions of the various levels
 - Taxation powers
 - Other financial provisions
- (v) Motion
- (vi) Any Other Business

Approved for circulation – Convenor

Signed

Date

Time

NATIONAL CONSTITUTIONAL CONFERENCE

February 18, 2004

AGENDA

- (i). Prayers
- (ii). Confirmation of Minutes
- (iii). Matters Arising
- (iv). Consideration of the Zero Draft
- (v). Any Other Business

Approved for circulation – Convenor

Signed

Date

Time

NATIONAL CONSTITUTIONAL CONFERENCE

February 19, 2004

AGENDA

- (i). Prayers
- (ii). Confirmation of Minutes
- (iii). Matters Arising
- (iv). Consideration of the Zero Draft**
- (v). Any Other Business

Approved for circulation – Convenor

Signed

Date

Time

NATIONAL CONSTITUTIONAL CONFERENCE

February 20, 2004

AGENDA

- (i). Prayers
- (ii). Confirmation of Minutes
- (iii). Matters Arising
- (iv). Consideration of the Zero Draft**
- (v). Any Other Business

Approved for circulation – Convenor

Signed

Date

Time

NATIONAL CONSTITUTIONAL CONFERENCE

February 23, 2004

AGENDA

- (i). Prayers
- (ii). Confirmation of Minutes
- (iii). Matters Arising
- (iv). Consideration of the Zero Draft
- (v). Cross cutting issues
- (vi). Motion
- (vii). A.O. B.

Approved for circulation – Convenor

Signed

Date

Time

NATIONAL CONSTITUTIONAL CONFERENCE

February 24, 2004

AGENDA

- (i). Prayers
- (ii). Confirmation of Minutes
- (iii). Matters Arising
- (iv). Article 213C – Principles of Devolution
- (v). Eighth Schedule – Transitional and Consequential Provisions
- (vi). Motion
- (vii). Any Other Business
- (viii). Approved for circulation – Convenor

Signed

Date

Time

NATIONAL CONSTITUTIONAL CONFERENCE

February 25, 2004

- (i). AGENDA
- (ii). Prayers
- (iii). Confirmation of Minutes
- (iv). Matters Arising
- (v). Motion
- (vi). Any Other Business

Approved for circulation – Convenor

Signed

Date

Time

APPENDIX C: MINUTES

MINUTES OF THE FIRST MEETING OF THE TECHNICAL WORKING COMMITTEE (G) ON DEVOLUTION OF THE DRAFT BILL HELD ON MONDAY 26TH MAY 2003 AT COMMITTEE TENT 7, BOMAS OF KENYA.

Present	Organization	Number
Hon. Mutakha Kangu	- Rapporteur	
Hon. Prof. Wanjiku Kabira	- Rapporteur	
Hon. Grace Ogot	- District Delegate	399
Hon. Martin Shikuku	- Political Parties	595
Hon. Amos Kiumo	- District Delegate	271
Hon. Bonaya A. Godana	- Parliament	029
Hon. Simeon Nyachae	- Parliament	149
Hon. Wilberforce Kisiero	- District Delegate	389
Hon. Fatuma Sheikh Mohamed	- District Delegate	254
Hon. James P. T. Foster	- Professional	488
Hon. Sylvester C. M. Wafula	- Professional	584
Hon. James S. Mathenge	- District Delegate	308
Hon. Margaret Nyathogora	- District Delegate	303
Hon. Mercy Mwamburi	- Women Organisation	492
Hon. Michael Githu	- District Delegate	355
Hon. Guracha Wario	- District Delegate	265
Hon. Alexander Chepkwony	- District Delegate	367
Hon. Helen Koring'ura	- District Delegate	324
Hon. Otieno Ogingo	- District Delegate	413
Hon. Dr. Crispin Mbai	- District Delegate	412
Hon. Patrick O. Onyango	- District Delegate	590
Hon. David N. Rakamba	- District Delegate	433
Hon. Mwinyi Haji Mwijaa	- Delegate Delegate	234
Hon. George M. Mburu	- Delegate Delegate	506
Hon. Macharia Muchuga	- Delegate Delegate	226
Hon. George Ndatho Muchiri	- Delegate Delegate	301
Hon. G.G. Kariuki	- Parliament	042
Hon. J.J. Kamotho	- Parliament	040
Hon. P. L. Lobuk	- District Delegate	328
Hon. Isaiah K. Cheruiyot	- District Delegate	346
Hon. Shaaban Ali Isaack	- Parliament	187
Hon. Waweru James Mwangi	- District Delegate	310
Hon. Happy Gloria Wabwire	- District Delegate	355
Hon. Mutahi Kagwe	- Parliament	033
Hon. Isa Ireri Ngunia	- District Delegate	286
Hon. Aden S Ahmed	- Parliament	193
Hon. Daniel ole Osoi	- District Delegate	364
Hon. Dr. Hezron Manduku	- Parliament	092
Hon. Maero Tindi	- District Delegate	444
Hon. Nyang'au Onwong'a	- District Delegate	457
Hon. Abel Mwaniki	- District Delegate	283
Hon. Ahmed Maalim Omar	- District Delegate	255
Hon. Salah Arte Ahmed	- District Delegate	253

OBSERVORS

Pamela Kola	-	Observer	-	134
A.M.R. Odipu	-	Observer	-	RT

In Attendance

1. Mr. A. M. Mwendwa - First Clerk Assistant
2. Mr. Evans Menach - Assistant Programme Officer

MIN: NCC. TWG G 01/2003: OPENING REMARKS

The Meeting commenced at 11.00 a.m with Hon Mutakha Kangu on the Chair. Hon Kangu made introductory remarks and explained that the purpose of the Meeting was to elect the Convener of the Committee.

MIN: NCC. TWG G 02/2003: ELECTION OF THE CONVENER

The Commissioner Mutakha Kangu went through the list of Delegates to confirm the Members present. He explained that the Committee working guidelines would be issued later.

The Hon. Crispin Mbai was unanimously elected as the Committee Convener.

MIN: NCC. TWG G 03/2003: CONVENER'S REMARKS

The Hon Dr. Crispin Mbai thanked the Delegates for the confidence shown in him and pledged to work with them diligently to enable the Committee realize its objectives.

MIN: NCC. TWG G 04/2003 ADJOURNMENT

The Convener adjourned the meeting at 11.40 a.m until a date to be agreed on later.

Confirmed: _____
(Convener)

Date: _____

**MINUTES OF THE SECOND TECHNICAL WORKING COMMITTEE (G)
ON DEVOLUTION OF THE DRAFT BILL HELD ON TUESDAY 19TH
AUGUST 2003 AT COMMITTEE TENT 7, BOMAS OF KENYA.**

Present

1. Hon. Dr. Crispin Mbai	-	Convener	-	412
2. Hon. Mutakha Kangu	-	Rapporteur		
3. Hon. Prof. Wanjiku Kabira	-	Rapporteur		
4. Hon. Grace Ogot	-	District Delegate	-	399
5. Hon. Amos Kiumo	-	District Delegate	-	271
6. Hon. Uhuru Kenyatta	-	Parliament	-	049
7. Hon. Teclah Munkushi	-	District Delegate	-	357
8. Hon. Daniel L. Khamasi	-	Parliament	-	053
9. Hon. Bonaya A. Godana	-	Parliament	-	029
10. Hon. Dr. Adhu Awiti	-	Parliament	-	009
11. Hon. Elkanah Odembo	-	NGO	-	453
12. Hon. Wilberforce Kisiero	-	District Delegate	-	389
13. Hon. Fatuma Sheikh	-	District Delegate	-	254
14. Hon. James P. T. Foster	-	Professional	-	488
15. Hon. Sylvester C. M. Wafula	-	Professional	-	584
16. Hon. James S. Mathenge	-	District Delegate	-	308
17. Hon. Margaret Nyathogora	-	District Delegate	-	303
18. Hon. Kauchi A. Chivumba	-	Women Organisation	-	494
19. Hon. Mercy Mwamburi	-	Women Organisation	-	492
20. Hon. James Kinuthia	-	District Delegate	-	319
21. Hon. Michael Githu	-	District Delegate	-	355
22. Hon. Gulacha Wario	-	District Delegate	-	265
23. Hon. Juma Wario	-	District Delegate	-	241
24. Hon. Alexander Chepkwony	-	District Delegate	-	367
25. Hon. Helen Kuring'ura	-	District Delegate	-	324
26. Hon. Caleb Jumba	-	District Delegate	-	385
27. Hon. Otieno Ogingo	-	District Delegate	-	413
28. Hon. Aden A. Sugow	-	Parliament	-	193
29. Hon. M. Y. Haji	-	Parliament	-	031
30. Hon. John Okoyo	-	Observer	-	088
31. Hon. Patrick O. Onyango	-	District Delegate	-	590
32. Hon. Adan Jirma Duba	-	Observer	-	127
33. Hon. Kinyua Wanyika	-	Observer	-	
34. Hon. Hellen J. J. Yego	-	NGO	-	468
35. Hon. David N. Rakamba	-	District Delegate	-	433
36. Hon. G. G. Kariuki	-	Parliament	-	042
37. Hon. Mwinyi Haji Mwijaa	-	Delegate		
38. Hon. Pius Luhule	-	Delegate	-	328
39. Hon. George M. Mburu	-	Delegate	-	506
40. Rev. Macharia Muchuga	-	Delegate	-	226

41. George Ndatho Muchiri - Delegate - 301

Observers

40. David Orechi - Observer - 111
41. Josephine Aska - Observer - 78
42. Aisha Mumbua Omar - Observer - 149
43. Alice Kirambi - Observer - 08

In Attendance

1. Mr. A. M. Mwendwa - First Clerk Assistant
2. Mr. Evans Menach - Assistant Programme Officer

MIN: NCC. TWG G 05/2003: INTRODUCTORY REMARKS BY THE CONVENER

The convener Dr. Crispin Mbai welcomed the Members of the committee G on Devolution. He explained that the reworked Report on Devolution was ready and that it would be presented to the plenary tomorrow. Thereafter the Committee will scrutinize it.

MIN: NCC. TWG G 06/2003 COMPOSITION OF THE COMMITTEE

The Convener informed the members that there had been slight changes in the Committee composition. He said that some delegates had opted to join the Devolution Committee and that this will be communicated to the Steering Committee for approval.

MIN: NCC. TWG G 07/2003: ANY OTHER BUSINESS

The delegates were issued with files containing the documents.

MIN: NCC. TWG G 08/2003: ADJOURNMENT

The convener adjourned the meeting at 4.00 p.m until Monday 26th August 2003.

Confirmed:
(Convener) _____

Date: _____

**MINUTES OF THE THIRD TECHNICAL WORKING COMMITTEE (G) ON
DEVOLUTION HELD ON TUESDAY 9TH SEPTEMBER 2003 AT
COMMITTEE TENT 7, BOMAS OF KENYA.**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Crispin Mbai	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Shaaban Ali Isaack	187
5. Hon. Betty Tett	222
6. Hon. Pius Lobuk	328
7. Hon. Nicholas K. Biwott	016
8. Hon. Mercy Mwamburi	492
9. Hon. Moreso Agina	508
10. Hon. Maero Tindi	444
11. Hon. M. K. Otieno Ogingo	413
12. Hon. Grace E. A. Ogot	399
13. Hon. James P. T. Foster	488
14. Hon. Kauchi Chivumba	494
15. Hon. Dr. Hezron Manduku	092
16. Hon. Golich J. Wario	241
17. Hon. Alexander K. Chepkwony	367
18. Hon. Fatuma sheikh Mohamed	254
19. Hon. George Ndatho Muchiri	301
20. Hon. Mwinyi Haji Mwijaa	234
21. Hon. John Katuku	046
22. Hon. James M. Waweru	310
23. Hon. Leslie Betawa Mwachiro	599
24. Hon. Henry Kosgey	077
25. Hon. Dr. Simeon Shitemi	545
26. Hon. Caleb K. Jumba	385
27. Hon. Simeon Nyachae	149
28. Hon. W. A. Kisiero	389
29. Hon. Julius Barare Okara	032
30. Hon. Guracha Denge Wario	265
31. Hon. G. G. Kariuki EGH	042
32. Hon. James Kinuthia	319
33. Hon. Amos Kiumo	271
34. Hon. Njeru Abel Mwaniki	283
35. Hon. Happy Gloria Akhalalu	396
36. Hon. Kenneth Marende	026
37. Hon. Cheruiyot Isaiah Kiplabat	346
38. Hon. George Mwaura Mburu	586
39. Hon. Daniel Ole Osoi	364
40. Hon. Rev. Macharia Muchuga	226
41. Hon. Mohammed Haji	

42. Hon. Happy	396	
43. Hon. Machage Gisuka	085	
44. Hon. Helen Korigura	324	
45. Hon. Teclah N. Munkushi	357	
46. Hon. Sospeter Ojaamong	169	
47. Hon. George Kinuua	577	
48. Hon. Margaret Nyathogora	303	
49. Hon. James S. Mathenge	308	
50. Hon. Elkanah Odembo	453	
51. Hon. Zaddock Madiri Syongoh	195	
52. Hon. Nuria Gollo	203 (Observer)	
53. Hon. Dr. Pamela Kola	113	“
54. Hon. Luke Odoyo Akech	224	“
55. Hon. Adan Jirma Duba	127	“
56. Hon. Dr. Abdullahi Walio	170	“
57. Hon. Josephine Aska	078	“
58. Christine Gitau	Reporter	

In Attendance

1. Mr. A. M. Mwendwa	First Clerk Assistant
2. Mr. Fidelis Wangata	Assistant Programme Officer
3. Mr. Evans Menach	Assistant Programme Officer
4. Ms. Grace Gitu	Verbatim Recorder
5. Ms. Lillian Bonyo	Verbatim Recorder

MIN. NCC. TWC G. 03/01/2003: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the previous meeting held on Tuesday 19th August, 2003 were confirmed by the Members present and signed by the Chairman.

MIN. NCC. TWC G. 03/02/2003: CONVENORS REMARKS

The Convenor Dr. Crispin Mbai welcomed the Members to the meeting. He explained the basic rules of the Committees.

MIN. NCC. TWC G. 03/03/2003: PRELIMINARIES

The Convenor introduced the Rapporteurs and the secretariat staff. He thereafter said that the preliminaries were meant to inform the Members on the regulations and the need to have a harmonious working environment.

MIN. NCC. TWC G. 03/04/2003: REMARKS BY PROF. WANJIKU KABIRA, RAPPORTEUR

Hon. Prof. Kabira explained to the Delegates their mandate and guidelines for the Technical Working Committee. She explained that the committee mandate was likely

to impact on virtually all the other chapters. She also explained the rules, regulations and operations of the Committee.

MIN. NCC. TWC G. 03/05/2003: ADJOURNMENT

The Committee adjourned at 11.00 a.m and reconvened at 11.30 am.

MIN. NCC. TWC G. 03/06/2003: DELIBERATIONS OF COMMITTEE OPERATIONS AND MANDATE

The Committee considered at length various issues concerning the operations mandate of the Committee. The summary of the discussion is attached.

MIN. NCC. TWC G. 03/07/2003: ADJOURNMENT

The Committee adjourned at 12.55 p.m and reconvened at 2.30 p.m

MIN. NCC. TWC G. 03/08/2003: DELIBERATIONS ON THE OPERATIONS AND MANDATE OF THE COMMITTEE

The Committee continued with deliberations on its operations and mandate. The summary of the discussion is attached.

MIN. NCC. TWC G. 03/09/2003: ADJOURNMENT

The Chairman adjourned the meeting at 3.20 p.m until Wednesday 10th September 2003 at 8.30 a.m in Committee Tent 7.

Confirmed:
(Convener) _____

Date: _____

**MINUTES OF THE FOURTH MEETING OF THE TECHNICAL WORKING
COMMITTEE (G) ON DEVOLUTION OF POWER HELD ON WEDNESDAY
10TH SEPTEMBER 2003 AT COMMITTEE TENT 7, BOMAS OF KENYA AT
2.30 P.M.**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Crispin Mbai	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Adhu Awiti	009
6. Hon. Ahmed Maalim Omar	255
7. Hon. Alex Chepkwony	367
8. Hon. Amos Kiumo	271
9. Hon. Caleb Jumba	385
10. Hon. Daniel Khamasi	053
11. Hon. Daniel Ole Osoi	364
12. Hon. Fatuma Sheikh Mohamed	254
13. Hon. G. B. Galgallo	026
14. Hon. George Mburu Mwaura	586
15. Hon. Gloria Wabwire	396
16. Hon. Grace Akinyi Ogot	399
17. Hon. Guracha Denge Wario	265
18. Hon. Hellen Koring'ura	324
19. Hon. Henry Kosgey	077
20. Hon. Isa Ireri Ngunia	286
21. Hon. J. J. Kamotho	040
22. Hon. J. Kinuthia Mwangi	319
23. Hon. J. Mwangi Waweru	310
24. Hon. J. S. Mathenge	308
25. Hon. James F. T. Foster	488
26. Hon. John Katuku	046
27. Hon. John Munyes	119
28. Hon. Kauchi Chivumba	494
29. Hon. M. Nyathogora	303
30. Hon. Machage W. Gisuka	085
31. Hon. Maero Tindi	444
32. Hon. Mercy Mwamburi	492
33. Hon. Mereso Agina	508
34. Hon. Michael Githu	355
35. Hon. Mwinyi Haji Mwijaa	234
36. Hon. Nicholas Biwott	016
37. Hon. Otieno Ogingo	413
38. Hon. Patrice M. Ivuti	032
39. Hon. Patrick O. Onyango	590

40. Hon. Pius Lobuk	328
41. Hon. Rev. Samuel Muchuga	226
42. Hon. Syongoh Zaddock Madiri	195
43. Hon. Wilberforce Kisiero	389
44. Hon. Juma Wario	241
45. Hon. Mohamed Yusuf Haji	031
46. Hon. Isaiah Cheruiyot	346
47. Hon. Leslie Mwachiro	599
48. Hon. Simon Shitemi	545
49. Hon. Betty Njeri Tett	222
50. Hon. Kenneth Marende	096
51. Hon. Njoki Susanna	219
52. Hon. Tecla Munkushi	257

In Attendance

1. Mr. A. M. Mwendwa	First Clerk Assistant
2. Mr. Fidelis Wangata	Assistant Programme Officer
3. Mr. Evans Menach	Assistant Programme Officer
4. Ms. Grace Gitu	Verbatim Recorder
5. Ms. Lillian Bonyo	Verbatim Recorder

Observers & Press

1. Dr. Josephine Ojiambo	(Observer)
2. Luke Odoyo Akech	224 “
3. Adan Jirma Duba	127 “
4. Aska Josephine	078 “
5. Nuria Gollo	203 “
6. John Adayi	113 “
7. Lydiah Kimani	282 “
8. Rachel Shitesh	161 “
9. Christine Gitau	Press

The Meeting opened with prayers.

MIN. NCC. TWC G. 04/01/2003: CONFIRMATION OF MINUTES

The Minutes of the previous meeting of Tuesday 9th September 2003 were confirmed by the Members present and signed by the Chairman after being proposed by Hon. Yusuf Haji and seconded by Hon. W. Kisiero.

MIN. NCC. TWC G. 04/02/2003: CHAIRMAN'S REMARKS

The Convenor explained that it had not been possible to adhere to the day's proposed Agenda due to unforeseen changes in the Conference programme.

MIN. NCC. TWC G. 04/03/2003: MATTERS ARISING

Several amendments were made in respect to the missing names in the attendance list of Delegates in yesterday's meeting.

MIN. NCC. TWC G. 04/04/2003: TABLING OF DOCUMENTS

The Rapporteur, Hon. (Prof.) Wanjiku Kabira tabled the various documents that will be used by the Committee in their deliberations, and these included:

- (i). The main Report of the Commission (green and orange version).
- (ii). The Draft Bill to amend the constitution (green and orange version).
- (iii). The Report of the Rapporteur-General of the Conference.
- (iv). The Verbatim transcripts of the Conference proceedings.

The working documents which include:

- a) The Constitution of Kenya Review Act (Cap. 3A)
- b) The Constitution of Kenya
- c) The 1963 independence Constitution
- d) Annotated version of the Draft Bill (red version)
- e) Outline of consequential legislation (red version)
- f) A compendium of delegate views on the Draft Bill

MIN. NCC. TWC G. 04/05/2003: ISSUES RAISED BY DELEGATES

The following issues were raised by the Delegates and were responded to by the Convenor and Rapporteurs:

On the controversial nature of the Rapporteur-General's Report and whether it will be used in the committee meetings, the Convenor said that it was agreed that the Rapporteur-General Report would be used since the main issues of controversy were mainly topographical and grammatical.

The Convenor explained that it was not possible to obtain an advance copy of the improved Draft Bill chapter 10 on the Devolution of Power which will be discussed and adopted by the plenary Conference on 12th Friday September 2003, since that would be unprocedural.

The Convenor proposed that the Committee should start debating the Report upon which the Draft Bill is based. This would familiarize the Delegates on the contents of the Bill.

The Rapporteur explained at length the importance of having a checklist against which the Committee can identify the necessary amendments to the Draft Bill. This checklist will guide the Committee on how to identify the weakness and strengths of the Draft Bill. He added that the Committee Members must be able to defend the Committee recommendations during the reporting back phase to the plenary and that this can only be done if the Members correctly identify the principles and policies of devolution.

MIN. NCC. TWC G. 04/06/2003: NEXT DAY'S AGENDA

The Committee set the following Agenda for Thursday 11th September 2003 at 8.30 a.m on the main Report Vol. 1 (orange version)

The principles of Devolution

The levels of Government

MIN. NCC. TWC G. 04/07/2003: SITTING ARRANGEMENTS

The Rapporteur Prof. Wanjiku Kabira explained that the Committee venue would change from Tent 7 to Tent 12, which is quieter and larger.

MIN. NCC. TWC G. 04/08/2003: ADJOURNMENT

The Chairman adjourned the meeting at 3.55 p.m until Thursday 11th September 2003, at 8.30 a.m.

Confirmed: _____
(Convener)

Date: _____

**MINUTES OF THE FIFTH MEETING OF THE TECHNICAL WORKING
COMMITTEE (G) ON DEVOLUTION OF POWER HELD ON THURSDAY
11TH SEPTEMBER 2003 AT COMMITTEE TENT 7, BOMAS OF KENYA AT
9.15 A.M.**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Crispin Mbai	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Adhu Awiti	009
6. Hon. Adan S. Sugow	193
7. Hon. Ahmed Maalim Omar	255
8. Hon. Alex Chepkwony	367
9. Hon. Amos Kiumo	271
10. Hon. Caleb Jumba	385
11. Hon. Daniel Khamasi	053
12. Hon. Daniel Ole Osoi	364
13. Hon. Elkanah Odembo	453
14. Hon. Fatuma Sheikh Mohamed	254
15. Hon. G. B. Galgallo	026
16. Hon. G. Ndatho Muchiri	301
17. Hon. George Mburu Mwaura	586
18. Hon. Gloria Wabwire	396
19. Hon. Grace Akinyi Ogot	399
20. Hon. Guracha Denge Wario	265
21. Hon. Hellen Koring'ura	324
22. Hon. Henry Kosgey	077
23. Hon. Hezron Manduku	092
24. Hon. Isa Ileri Ngunia	286
25. Hon. J. J. Kamotho	040
26. Hon. J. Kinuthia Mwangi	319
27. Hon. J. S. Mathenge	308
28. Hon. James F. T. Foster	488
29. Hon. John Katuku	046
30. Hon. Kauchi Chivumba	494
31. Hon. M. Nyathogora	303
32. Hon. Machage W. Gisuka	085
33. Hon. Maero Tindi	444
34. Hon. Mercy Mwamburi	492
35. Hon. Mereso Agina	508
36. Hon. Michael Githu	355
37. Hon. Mwinyi Haji Mwijaa	234
38. Hon. Nicholas Biwott	016
39. Hon. Otieno Ogingo	413
40. Hon. Patrick O. Onyango	590
41. Hon. Pius Lobuk	328

42. Hon. Rev. Samuel Muchuga	226
43. Hon. Sospeter Ojaamong	159
44. Hon. Syongoh Zaddock Madiri	195
45. Hon. Wilberforce Kisiero	389
46. Hon. Juma Wario	241
47. Hon. Mohamed Yusuf Haji	031
48. Hon. Isaiah Cheruiyot	346
49. Hon. Leslie Mwachiro	599
50. Hon. George Kinyua	577
51. Hon. Simon Shitemi	545
52. Hon. Betty Njeri Tett	222

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Fidelis Wangata	Assistant Programme Officer
3. Mr. Evans Menach	Assistant Programme Officer
4. Ms. Grace Gitu	Verbatim Recorder
5. Ms. Lillian Bonyo	Verbatim Recorder

Observers

1. Adan Jirma Duba	Northern NGO Forum
2. Pamela N. Kola	NGO Council
3. Moses H. Maranga	NGO
4. Josephine Aska Odera	UDPK
5. Nuria Gollo	Borana Community
6. Luke Odoyo Akech	NGO Council
7. Chris O. Oyuch	NGO Council
8. Dr. Josephine Ojiambo	KMWA

The Meeting opened with prayers.

MIN. NCC. TWC G. 05/01/2003: PRINCIPLES OF DEVOLUTION

The Committee considered the Principles of Devolution and the levels of Government. The deliberations were based on the recommendations contained in the Main Report, the Bomas I Devolution debate, as well as the Special Working Document on Devolution of Powers. The Committee resolved as follows:

That the Principles that are primary and fundamental to devolution should be differentiated from other secondary and supportive Principles.

That the purpose, objectives and principles of devolution should be clearly captured and expressed as a preamble to the chapter on devolution.

That the National Constitutional Conference and not a boundaries Commission should settle the levels and sub-national units of devolution.

That an Expert should be invited to enlighten the committee on questions of taxation.

That it was necessary to properly address questions of fiscal devolution.

That the committee should clearly identify the system and structure of government it proposed to establish.

That an acceptable and inclusive definition of “Minorities” should be agreed on.

That devolution should enhance the local people’s participation in governance without interfering with the territorial integrity of the Nation.

That devolution should be mainstreamed throughout the Draft Bill.

The Committee therefore adopted the Principles of Devolution as contained in the Main Report and the Special Working Document on Devolution with amendments.

MIN. NCC. TWC G. 05/02/2003: ADJOURNMENT

The Convenor adjourned the meeting at 1.15 p.m until this afternoon 11th September 2003 at 2.30 p.m.

AFTERNOON SESSION

The Committee reconvened at 2.40 p.m

MIN. NCC. TWC G. 05/03/2003: LEVELS OF GOVERNMENT

The Committee discussed the structures and levels of Government as contained in the Main Report and in the Special Working Document on Devolution as follows:

That viability should be considered as one of the criteria for determining the levels of devolution.

That the constituency should be considered as an alternative level of government.

That administrative divisions should be streamlined to coincide with and provide administrative structure to constituencies.

That expansive districts should have more Locations to enhance participatory governance and service delivery.

That the sub-national level of government should be structured differently from the existing provincial administration if it was to have a meaningful role in the devolved structure.

That there should be established four levels of government as proposed in the Special Working Document on Devolution.

The Committee resolved to adopt the four levels of Devolution as recommended in the report which are:

National Level

Sub-National Level

Local Government Level
Locational Level

MIN. NCC. TWC G. 05/04/2003: ADJOURNMENT

The Convenor adjourned the Meeting at 4.50 p.m. until Friday 12th September, 2003
at 9.00 a.m.

Confirmed:
(Convenor)
Date:

**MINUTES OF THE SIXTH MEETING OF THE TECHNICAL WORKING
COMMITTEE (G) ON DEVOLUTION OF POWER HELD ON FRIDAY 12TH
SEPTEMBER 2003 AT COMMITTEE TENT 7, BOMAS OF KENYA AT 9.30
A.M.**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Crispin Mbai	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Abel Mwaniki Njeru	283
4. Hon. Ahmed Maalim Omar	255
5. Hon. Alex Chepkwony	367
6. Hon. Amos Kiumo	271
7. Hon. Caleb Jumba	385
8. Hon. Daniel Ole Osoi	364
9. Hon. Fatuma Sheikh Mohamed	254
10. Hon. G. B. Galgallo	026
11. Hon. G. Ndatho Muchiri	301
12. Hon. George Mburu Mwaura	586
13. Hon. Grace Akinyi Ogot	399
14. Hon. Gloria Wabwire	396
15. Hon. Guracha Denge Wario	265
16. Hon. Hellen Koring'ura	324
17. Hon. Henry Kosgey	077
18. Hon. Hezron Manduku	092
19. Hon. Isa Ileri Ngunia	286
20. Hon. J. Kinuthia Mwangi	319
21. Hon. J. J. Kamotho	040
22. Hon. J. Mwangi Waweru	310
23. Hon. J. S. Mathenge	308
24. Hon. James F. T. Foster	488
25. Hon. John Katuku	046
26. Hon. Kauchi Chivumba	494
27. Hon. M. Nyathogora	303
28. Hon. Machage W. Gisuka	085
29. Hon. Maero Tindi	444
30. Hon. Mercy Mwamburi	492
31. Hon. Mereso Agina	508
32. Hon. Michael Githu	355
33. Hon. Mwinyi Haji Mwijaa	234
34. Hon. Nicholas Biwott	016
35. Hon. Otieno Ogingo	413
36. Hon. Patrick O. Onyango	590
37. Hon. Pius Lobuk	328
38. Hon. Rev. Samuel Muchuga	226
39. Hon. Shaaban Isaack	187
40. Hon. Sospeter Ojaamong	159

41. Hon. Syongoh Zaddock Madiri	195
42. Hon. Wilberforce Kisiero	389
43. Hon. Juma Wario	241
44. Hon. Bonaya Godana Adhi	029
45. Hon. Mohamed Yusuf Haji	031
46. Hon. Isaiah Cheruiyot	346
47. Hon. G. G. Kariuki	042
48. Hon. Leslie Mwachiro	599
49. Hon. George Kinyua	577
50. Hon. Simon Shitemi	545
51. Hon. Betty Njeri Tett	222
52. Hon. Simon Nyachae	149
53. Hon. Kenneth Marende	096

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Fidelis Wangata	Assistant Programme Officer
3. Mr. Evans Menach	Assistant Programme Officer
4. Ms. Grace Kaparo	Assistant Programme Officer
5. Ms. Grace Gitu	Verbatim Recorder
6. Ms. Lillian Bonyo	Verbatim Recorder

Observers Present

1. Adan Jirma Duba	Northern NGO Forum
2. Pamela N. Kola	NGO Council
3. Luke Odoyo Akech	NGO Council
4. Dr. Pius S. Achola	NGO Council
5. Moses H. Maranga	NGO
6. Josephine Aska Odera	UDPK
7. Nuria Gollo	Borana Community
8. Aisha M. Omar	MDWG

MIN. NCC. TWC G. 06/01/2003: CONFIRMATION OF PREVIOUS MEETING

Minutes of the Fourth Meeting of Wednesday 10th September 2003 and the Fifth Meeting of Thursday 11th September, 2003 were confirmed by the Members present and signed by the Convenor.

Minutes of the Fourth Meeting were proposed by the Hon. J. S. Mathenge and seconded by the Hon. James F. T. Foster while those of the Fifth Meeting were proposed by the Hon. Ahmed Maalim Omar and seconded by the Hon. Daniel Ole Osoi.

MIN. NCC. TWC G. 06/02/2003: MATTERS ARISING

The following matters were raised: -

1. Record of Attendance

Hon. G. G. Kariuki and Hon. Shaaban Isaack complained about the omission of their names in the Minutes of the Fifth Meeting of 11th September 2003. Members were advised to be signing the Members attendance register when they attend Committee meetings.

2. Under MIN. NCC. TWC G. 05/03/2003, it was resolved that divergent views arising during Committee discussion should be recorded to reflect the proceedings in the Committee.

MIN. NCC. TWC G. 06/03/2003: GENERAL DISCUSSION ON THE PLACE AND ROLE OF LOCAL GOVERNMENT IN THE DEVOLUTION STRUCTURE

The Committee discussed the Place and Role of the Local Government and raised the following issues: -

- Local authorities be re-structured for proper management.
- Councillors and Chief Officers in the Local Authorities be paid out of the Consolidated Fund.
- Local Authorities be entrenched in the Constitution.
- That a Local Government Service Commission to oversee the affairs of the Local Authorities.
- There should be established a Local Government Finance Commission to oversee questions of Finance between the Central Government and Local Authorities.
- The Local Government Act Cap. 265 be amended to provide for autonomous local authorities.

MIN. NCC. TWC G. 06/04/2003: ADJOURNMENT

The Convenor adjourned the Meeting at 12.30 p.m until this afternoon 12th September, 2003 at 2.30 p.m

AFTERNOON SITTING

The Committee reconvened at 2.45 p.m.

MIN. NCC. TWC G. 06/05/2003: THE PLACE AND ROLE OF LOCAL GOVERNANCE IN THE DEVOLUTION STRUCTURE

The Committee resumed discussion on the Place and Role of Local Government in the Devolution Structure, and raised the following suggestions: -

- That the Local Government be the third level of governance in the devolved Government.
- That the Local Government in the devolved Government should, have power to levy, charge, and collect appropriate fees.
- That Local Authorities to enjoy financial independence without political influence.

- Electoral units be determined by the electoral laws.
- District/Local Government boundaries be designed by the Boundaries Commission which will be responsible for determining, defining and reviewing the boundaries of the devolved units.
- That the population in the cities, municipalities, town councils and county councils should be specified.
- That provision should be made for establishment of metropolitan cities.
- Local Government/District level be permitted and able to operate under national legislation in concurrent laws, but be authorized to adopt national laws to local circumstances within limits to be laid down in an Act of Parliament.
- District administrator be the political head of the district/local Government.
- That the tenure and academic age and qualifications for administrators and other staff of the devolved units should be specified.
- That the devolved governments irrespective of their sizes should share the Local Government Transfer Fund (LATIF).
- Local Government be strengthened to support the state in local administrative, management and development activities.
- That the functions currently performed by the provincial administration be re-defined and transferred to the local Government agencies.
- That the formulation of viable structures should be able to promote equitable resource allocation, accountable governance delivery of services and the empowerment of the people.
- Local Governments should be based at the constituency level.

During discussion on the place and role of the Local Government in a devolved structure, the following questions were raised:

- What happens to urban centres, which will grow beyond their limits in terms of population?
- Is there linkage between the Districts/Local Government with the national Government?
- What role will the existing districts, electoral wards and sub-locations play in the devolved government?
- Will the devolved governments ensure greater participation of minorities and other marginalized groups in all aspects affecting their lives?
- Will the Devolution structure ensure equitable representation of the people at all levels?

MIN. NCC. TWC G. 06/06/2003: ADJOURNMENT

The Convenor adjourned the Meeting at 4.30 p.m. until Monday 15th September, 2003 at 9.00 a.m.

Signed: Hon. Crispin Mbai
Convenor _____

Date _____

MINUTES OF THE SEVENTH MEETING OF THE TECHNICAL WORKING COMMITTEE (G) ON DEVOLUTION OF POWER HELD ON MONDAY 15TH SEPTEMBER 2003 AT COMMITTEE TENT 7, BOMAS OF KENYA AT 12.15 P.M.

Present

<u>Name</u>	<u>Number</u>
1. Hon. Grace Akinyi Ogot	Temporary Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Abel Mwaniki Njeru	283
4. Hon. Adan Sugow	193
5. Hon. Adhu Awiti	009
6. Hon. Alex Chepkwony	367
7. Hon. Amos Kiumo	271
8. Hon. Caleb Jumba	385
9. Hon. Daniel Ole Osoi	364
10. Hon. Elkanah Odembo	453
11. Hon. Fatuma Sheikh Mohamed	254
12. Hon. George Mburu Mwaura	586
13. Hon. Gloria Wabwire	396
14. Hon. Guracha Denge Wario	265
15. Hon. Hellen Koring'ura	324
16. Hon. Henry Kosgey	077
17. Hon. Hezron Manduku	092
18. Hon. Isa Ireri Ngunia	286
19. Hon. J. Kinuthia Mwangi	319
20. Hon. J. J. Kamotho	040
21. Hon. J. Mwangi Waweru	310
22. Hon. J. S. Mathenge	308
23. Hon. James F. T. Foster	488
24. Hon. John Katuku	046
25. Hon. Kauchi Chivumba	494
26. Hon. M. Nyathogora	303
27. Hon. Maero Tindi	444
28. Hon. Michael Githu	355
29. Hon. Mwinyi Haji Mwijaa	234
30. Hon. Nicholas Biwott	016
31. Hon. Otieno Ogingo	413
32. Hon. Patrick O. Onyango	590
33. Hon. Pius Lobuk	328
34. Hon. Rev. Samuel Muchuga	226
35. Hon. Shaaban Isaack	187
36. Hon. Sospeter Ojaamong	159
37. Hon. Suleiman Shakombo	189
38. Hon. Syongoh Zaddock Madiri	195

39. Hon. Wilberforce Kisiero	389
40. Hon. Juma Wario	241
41. Hon. Mohamed Yusuf Haji	031
42. Hon. G. G. Kariuki	042
43. Hon. Leslie Mwachiro	599
44. Hon. George Kinyua	577
45. Hon. Simon Shitemi	545
46. Hon. Betty Njeri Tett	222
47. Hon. Kenneth Marende	096
48. Hon. Prof. Okoth-Ogendo	Rapporteur-General

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Fidelis Wangata	Assistant Programme Officer
3. Mr. Evans Menach	Assistant Programme Officer
4. Ms. Grace Kaparo	Assistant Programme Officer
5. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Pamela N. Kola	NGO Council
2. Luke Odoyo Akech	NGO Council
3. Rachel Shebesh	L.K.W.U
4. Eleanor Muthoni	NYLR
5. Ochieng M. Kharalla	Minority Rights
6. Adan Jirma Duba	Northern NGO Forum
7. Amina H. Ali	Political NGO

The Committee opened with a prayer.

MIN. NCC. TWC G. 07/01/2003: OPENING REMARKS

The Committee observed a minute of silence in respect of the late Prof. Odhiambo Mbai the committee Convenor who was killed on Sunday 14th September, 2003.

The Meeting commenced at 12.15 p.m with Prof. Wanjiku Kabira in the Chair. She explained to the Committee that the purpose of the Committee was to discuss the way forward of the Committee following the demise of the Convenor, the late Prof. Odhiambo Mbai.

The Hon. Prof. Wanjiku Kabira invited the National Constitutional Conference Rapporteur-General, Prof. Okoth-Ogendo to explain to the Committee the procedure to be followed in the election of another Convenor.

Thereupon Prof. Okoth-Ogendo explained to the Committee that the Convenor of the Devolution Committee to replace the late Prof. Mbai will be a delegate from Nyanza Province as agreed by the Steering Committee during Bomas I. The Committee was

advised, as a matter of procedure, to elect a Temporary Convenor for the time being according to the National Constitutional Conference Regulations.

MIN. NCC. TWC G. 07/02/2003: ELECTION OF TEMPORARY CONVENOR

Pursuant to Regulation 45(4) of the National Constitutional Conference Regulation the Committee proceeded with the election of its Temporary Convenor. The election was presided over by Prof. Wanjiku Kabira. She called for proposals and Hon. Grace Akinyi Ogot was proposed by the Hon. Yusuf Haji and seconded by the Hon. Caleb Jumba. There being no other proposals, Hon. Grace Akinyi Ogot was declared duly elected the Temporary Convenor.

MIN. NCC. TWC G. 07/03/2003: TEMPORARY CONVENOR'S REMARKS

The Hon. Grace Akinyi Ogot took the Chair and thanked the Members for electing her as the Temporary Convenor. She led the Committee in condemning the brutal killing of its Convenor, the late Prof. Mbai. The Committee was gravely concerned that its Convenor had died when the Committee needed him most.

The Committee, in the spirit of the late Prof. Mbai, resolved to continue with its deliberations to the end. The Committee agreed to visit the family of the late Prof. Mbai today at 3.00 p.m to express its condolences to the family.

MIN. NCC. TWC G. 07/04/2003: MOTION OF ADJOURNMENT OF THE COMMITTEE

The motion of adjournment of the Committee was proposed by the Hon. James Mathenge and seconded by the Hon. Kenneth Marende. The Committee adjourned in respect of the late Convenor and also to enable the Members visit the family as earlier agreed.

The Committee, therefore, adjourned at 1.05 p.m until Tuesday, 16th September 2003.

CONFIRMED _____
CONVENOR

DATE: _____

**MINUTES OF THE EIGHTH MEETING OF THE TECHNICAL WORKING
COMMITTEE 'G' ON DEVOLUTION OF POWER HELD ON WEDNESDAY
17TH SEPTEMBER 2003 AT COMMITTEE TENT 7, BOMAS OF KENYA AT
9.30 A.M.**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Adan Sugow	193
6. Hon. Ahmed Maalim Omar	255
7. Hon. Alex Chepkwony	367
8. Hon. Amos Kiumo	271
9. Hon. Caleb Jumba	385
10. Hon. Daniel Ole Osoi	364
11. Hon. Elkanah Odembo	453
12. Hon. Fatuma Sheikh Mohamed	254
13. Hon. G. B. Galgallo	026
14. Hon. G. Ndatho Muchiri	301
15. Hon. George Mburu Mwaura	586
16. Hon. Gloria Wabwire	396
17. Hon. Grace Akinyi Ogot	399
18. Hon. Guracha Denge Wario	265
19. Hon. Hellen Koring'ura	324
20. Hon. Henry Kosgey	077
21. Hon. Hezron Manduku	092
22. Hon. Isa Ireri Ngunia	286
23. Hon. J. Kinuthia Mwangi	319
24. Hon. James F. T. Foster	488
25. Hon. John Katuku	046
26. Hon. Kauchi Chivumba	494
27. Hon. M. Nyathogora	303
28. Hon. Maero Tindi	444
29. Hon. Mercy Mwamburi	492
30. Hon. Moreso Agina	508
31. Hon. Michael Githu	355
32. Hon. Mwinyi Haji Mwijaa	234
33. Hon. Nicholas Biwott	016
34. Hon. Otieno Ogingo	413
35. Hon. Patrick O. Onyango	590
36. Hon. Pius Lobuk	328
37. Hon. Rev. Machere Muchuga	226
38. Hon. Juma Wario	241
39. Hon. Bonaya Godana Adhi	029
40. Hon. Mohamed Yusuf Haji	031
41. Hon. Isaiah Cheruiyot	346

42. Hon. G. G. Kariuki	042
43. Hon. Leslie Mwachiro	599
44. Hon. George Kinyua	577
45. Hon. Simeon Shitemi	545
46. Hon. Betty Njeri Tett	222

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Evans Menach	Assistant Programme Officer
3. Ms. Grace Kaparo	Assistant Programme Officer
4. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. Pamela N. Kola	NGO Council
3. Josephine Aska	UNDP
4. Nuria Gollo	Borana Community
5. Adan Jirma Duba	Northern NGO Forum
6. Moses H. Maranga	NMDSO
7. Dr. Pius S. Achola	
8. Medina Ibrahim Asman	
9. Dr. Josephine Ojiambo	

The Committee opened with a prayer.

MIN. NCC. TWC G. 08/01/2003: OPENING REMARKS BY THE TEMPORARY CONVENOR

The Meeting commenced at 9.30 a.m with Hon. Grace Akinyi Ogot, Temporary Convenor on the chair. She explained to the Committee that following the demise of the Committee Convenor, it was procedural and necessary that the Committee elects its substantive Convenor as earlier agreed.

MIN. NCC. TWC G. 08/02/2003: ELECTION OF CONVENOR

Pursuant to the National Constitutional Conference Regulations, the Committee proceeded with the election of its Convenor. The Temporary Convenor called for proposals and the Hon. Dr. Adhi Awiti was proposed by the Hon. Simeon Shitemi and seconded by the Hon. James Mathenge. There being no other proposals Dr. Adhu Awiti was declared duly elected the Committee Convenor. Hon. Grace Akinyi Ogot invited Dr. Awiti to take the chair.

MIN. NCC. TWC G. 08/03/2003: REMARKS BY THE CONVENOR

The Hon. Dr. Adhu Awiti took the chair and thanked the Members for honouring him by unanimously electing him as the Committee Convenor. He asked the Committee Members to cooperate and move forward with its deliberations and produce a good

constitution, as tribute to the late Convenor. He further asked the Members to re-dedicate their energies to the work of the Committee.

MIN. NCC. TWC G. 08/04/2003: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the Sixth Meeting held on Friday, 12th September, 2003 and the Fifth Meeting of Monday, 15th September, 2003, were confirmed by the Members present and signed by the Convenor.

Minutes of the Sixth Meeting were proposed by the Hon. James Waweru and seconded by the Hon. George Muchiri while those of the Seventh Meeting were proposed by the Hon. Alexander Chepkwony and seconded by the Hon. Hezron Manduku.

MIN. NCC. TWC G. 08/05/2003: PRESS STATEMENT

The Committee released a statement to the press thanking the delegates to the National Constitutional Conference for their support to the Committee following the death of its Convenor, Prof. Crispin Mbai.

The Committee stressed that with the leadership of the late Prof. Mbai it had made progress on the discussion on the Devolution of Power. The Committee resolved that, with the equally able chairmanship of Dr. Awiti, the Committee will complete its work as soon as practicable.

MIN. NCC. TWC G. 08/06/2003: GENERAL COMMENTS ON THE LEVELS OF DEVOLUTION

The Committee discussed in general the levels of Devolution of Power and the following suggestions were raised:

- The names of the levels should be renamed.
- Elections at all the levels could be expensive and procedurally unworkable and when the levels are too many it could be too technical to operate.
- The Zone level should have limited powers like coordination and advisory function while the national level should be left to deal with major issues.
- Members proposed that the Zone level should not have power to levy taxes.
- The tenure of elective offices in the various levels should be harmonized to five years.
- Existing sub-districts should be elevated to counties.
- The Provincial Administration need to be abolished as presently constituted.

The Committee unanimously agreed to discuss the Report and the Draft Chapter on Devolution concurrently because they are wholly related.

MIN. NCC. TWC G. 08/08/2003: ADJOURNMENT

The Convenor adjourned the Meeting at 1.10 p.m until today at 2.30 p.m

AFTERNOON SESSION

The Committee re-convened at 2.45 p.m

MIN. NCC. TWC G. 08/09/2003: CHAPTER TEN ON DEVOLUTION OF POWERS

Part 1 – Structure and Principles of Devolved Government

Article 215 (1) Levels of Government

The Committee discussed the Article and two options on the levels of Government were proposed as follows:

Option 1

National level
Zonal level
County level
Locational level

Option 2

National level
County level
Locational level

The Question put and the option 1 was ‘**agreed to**’ after a Division. The results of the Division are as follows: -

Option 1 : 31 delegates supported
Option 2 : 11 delegates supported

Article 215 (2)

Question put and agreed to

MIN. NCC. TWC G. 08/10/2003: ADJOURNMENT

The Convenor adjourned the meeting at 4.45 p.m until Thursday, 18th September 2003 at 9.00 a.m.

CONFIRMED

DATE

CONVENOR

**MINUTES OF THE NINETH MEETING OF THE TECHNICAL WORKING
COMMITTEE 'G' ON DEVOLUTION OF POWER HELD ON THURSDAY
18TH SEPTEMBER 2003 AT COMMITTEE TENT 7, BOMAS OF KENYA AT
9.10 A.M.**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Adan Sugow	193
6. Hon. Ahmed Maalim Omar	255
7. Hon. Alex Chepkwony	367
8. Hon. Amos Kiumo	271
9. Hon. Caleb Jumba	385
10. Hon. Daniel Ole Osoi	364
11. Hon. Elkanah Odembo	453
12. Hon. Fatuma Sheikh Mohamed	254
13. Hon. G. Ndatho Muchiri	301
14. Hon. George Mburu Mwaura	586
15. Hon. Gloria Wabwire	396
16. Hon. Grace Akinyi Ogot	399
17. Hon. Guracha Denge Wario	265
18. Hon. Hellen Koring'ura	324
19. Hon. Henry Kosgey	077
20. Hon. Isa Ileri Ngunia	286
21. Hon. J. Kinuthia Mwangi	319
22. Hon. J. Mwangi Waweru	310
23. Hon. J. S. Mathenge	308
24. Hon. James F. T. Foster	488
25. Hon. John Katuku	046
26. Hon. John Munyes	119
27. Hon. Kauchi Chivumba	494
28. Hon. M. Nyathogora	303
29. Hon. Maero Tindi	444
30. Hon. Mercy Mwamburi	492
31. Hon. Mereso Agina	508
32. Hon. Michael Githu	355
33. Hon. Mwinyi Haji Mwijaa	234
34. Hon. Nicholas Biwott	016
35. Hon. Patrick O. Onyango	590
36. Hon. Pius Lobuk	328
37. Hon. Rev. Machere Muchuga	226
38. Hon. Shaaban Issack	187
39. Hon. Syongoh Zaddock Madiri	195
40. Hon. Wilberforce Kisiero	389
41. Hon. Juma Wario	241

42. Hon. Bonaya Godana Adhi	029
43. Hon. Mohamed Yusuf Haji	031
44. Hon. Isaiah Cheruiyot	346
45. Hon. G. G. Kariuki	042
46. Hon. Leslie Mwachiro	599
47. Hon. George Kinyua	577
48. Hon. Simeon Shitemi	545
49. Hon. Betty Njeri Tett	222
50. Hon. Kenneth Marende	096
51. Hon. Raphael Livu Kilonzi	228

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Evans Menach	Assistant Programme Officer
3. Ms. Grace Kaparo	Assistant Programme Officer
4. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. Pamela N. Kola	NGO Council
3. Dr. Pius S. Achola	NGO Council
4. Josephine Aska	UNDP
5. Nuria Gollo	Borana Community
6. Adan Jirma Duba	Northern NGO Forum
7. Moses H. Maranga	NMDSO
8. Julius Okara	COMESA
9. Amina Ali	Women Party
10. Dr. Henry Rono	Kenyatta University
11. Medina Ibrahim Asman	Nubian Community

The Meeting opened with prayers.

MIN. NCC. TWC G. 09/01/2003: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the Eighth meeting held on Thursday, 18th September 2003 were confirmed by the Members present and signed by the Convenor. They were proposed by the Hon. Yusuf Haji and seconded by the Hon. Margaret Nyathogora.

MIN. NCC. TWC G. 09/02/2003: MATTERS ARISING

List of Attendance

The following Members complained about the omission of their names in the Minutes of the Eighth meeting of 17th September 2003.

1. Hon. Syongoh Zaddock Madiri
2. Hon. Wilberforce Kisiero
3. Hon. Raphael Livu

4. Hon. J. J. Kamotho
5. Hon. Isa Ireri Ngunia
6. Hon. Nicholas Biwottt
7. Hon. Sospeter Ojaamong

The Convenor reminded Members to be signing the Members Attendance Register when they attend Committee meetings.

**MIN. NCC. TWC G. 09/03/2003: GENERAL COMMENTS ON
DEVOLUTION OF POWERS**

The Committee discussed in general the Devolution of Power and raised the following comments: -

- That groupings in the Zones should be re-designed so that historical aspects were considered and at the same time cater for the minorities and disadvantages of groups.
- There should be a clear definition on what constitutes minorities and disadvantaged groups.
- That allocations of functions should be determined after crystallizing the units.
- List of taxation be specified as a mechanism of measuring financial capacity per the various units.

**MIN. NCC. TWC G. 09/04/2003: CONSIDERATION ON CHAPTER TEN –
DEVOLUTION OF POWERS**

1. Article 216 - objects of devolution of government.

The Committee considered the Article and resolved as follows: -

Article 216 (1) (a)(b)(c) – Question put and Agreed to

Article 216 (1) (d)

Amendment proposed

That the sub-Article be amended by adding the words “**at all levels**” immediately after the word “**groups**”.

(Hon Bonaya Godana)

Motion made and Question proposed;

Debate arising;

Question put and agreed to.

(c) Article 216 (1) (e) – Question put and Agreed to

Article 216 (1) (f)

The Committee unanimously suspend the consideration of the Sub-Article to allow consultation with the Technical Working Group J on Land Rights and Environment on how the sharing of national and local resources will be designed.

The Sub-Article should be discussed in relation with the Independence Constitution, to underscore what entails the sharing of natural resources.

Article 216 (1) (g)

Amendment proposed:

That the sub- Article be amended by inserting the words “**and functions**” between the words “**agencies**” and “**away**”

(Hon Kenneth Marende)

Motion made and Question proposed:

Debate arising:

Question put and agreed to

Article 216 (2)

The Committee also resolved that the whole Article be revisited after the Rapporteurs integrate those principles that were debated and agreed on by the Committee. The article would be revisited for approval.

2. Article 217 – Co-operation between government at the different levels.

Article 217 (1), (2) and (3) – Question put and Agreed to

Article 217 (4) – Question put and Agreed to

The Committee resolved that Sub-Article be rephrased to allow horizontal co-operation at the different levels and be brought back to the Committee for approval.

(c) Article 217 (5) – Question put and Agreed to

(d) Article 217 (6) and (7) – Question put and Agreed to

The Committee resolved to consult with Technical Working Group on Judiciary concerning the establishment of the Supreme Court.

The Committee noted that there will be a backlog of cases at the Supreme Court because there would be too many disputes to be referred to the Court from the different levels.

A provision be included to ensure that disputes from the levels were prioritized when they are brought before the Supreme Court.

Article 217 (8) – Question put and Agreed to

The Committee resolved to revisit the whole Article 217 after consultations with the Technical Committee on Judiciary.

MIN. NCC. TWC G. 09/05/2003: ADJOURNMENT

The Convenor adjourned the Committee at 1.05 p.m until today afternoon at 2.30 p.m.

AFTERNOON SESSION

The Committee re-convened at 2.45 p.m

MIN. NCC. TWC G. 09/06/2003: CONSIDERATION OF PART II – ZONE AND ZONAL GOVERNMENTS

1. Article 218 - Zones

In consideration of the Article, the Committee resolved to generally debate the Article with Members presenting their suggestions on how the Zones could be redesigned. This could enable the Members to build consensus on the Zonal groupings.

During debate on the Article, the following proposals were suggested in relation to the grouping per the Zones.

- That Zones 1 and 2 be merged to be one Zone.
- Zone 4, to comprise of Mbeere, Embu and Kirinyaga as one Zone.
- That Zones 5 and 6 be merged to be one Zone.
- That Zone 12 be Sub-divided into 2 Counties.
- That Zone 8 to include Mt. Elgon.
- That Zone 14 to include Nyeri, Nyandarua.
- That in Zone 16, Lugari be moved to Zone 17 while Busia is moved from Zone 17 to 16.
- Teso be a zone of its own Zone.

The Committee asked the Secretariat to avail to the Committee a copy of the Provincial Boundaries Commission of 1962/63 for the Committee to understand how and why the provincial and district boundaries were designed.

MIN. NCC. TWC G. 09/07/2003: ADJOURNMENT

The Convenor adjourned the Committee at 5.00 p.m until Friday 19th September, 2003 at 9.00 a.m

CONFIRMED

CONVENOR

DATE

**MINUTES OF THE TENTH MEETING OF THE TECHNICAL WORKING
COMMITTEE 'G' ON DEVOLUTION OF POWER HELD ON FRIDAY 19TH
SEPTEMBER 2003 AT COMMITTEE TENT 7, BOMAS OF KENYA AT 9.30
A.M.**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Ahmed Maalim Omar	255
6. Hon. Amos Kiumo	271
7. Hon. Caleb Jumba	385
8. Hon. Daniel Ole Osoi	364
9. Hon. Fatuma Sheikh Mohamed	254
10. Hon. G. B. Galgallo	026
11. Hon. George Mburu Mwaura	586
12. Hon. Gloria Wabwire	396
13. Hon. Grace Akinyi Ogot	399
14. Hon. Guracha Denge Wario	265
15. Hon. Hellen Koring'ura	324
16. Hon. Hezron Manduku	092
17. Hon. Isa Ileri Ngunia	286
18. Hon. J. Kinuthia Mwangi	319
19. Hon. J. Mwangi Waweru	310
20. Hon. J. S. Mathenge	308
21. Hon. James F. T. Foster	488
22. Hon. Kauchi Chivumba	494
23. Hon. M. Nyathogora	303
24. Hon. Maero Tindi	444
25. Hon. Mercy Mwamburi	492
26. Hon. Mereso Agina	508
27. Hon. Michael Githu	355
28. Hon. Mwinyi Haji Mwijaa	234
29. Hon. Nicholas Biwott	016
30. Hon. Patrick O. Onyango	590
31. Hon. Pius Lobuk	328
32. Hon. Rev. Machere Muchuga	226
33. Hon. Shaaban Ali Isaack	187
34. Hon. Syongoh Zaddock Madiri	195
35. Hon. Wilberforce Kisiero	389
36. Hon. Juma Wario	241
37. Hon. Mohamed Yusuf Haji	031
38. Hon. G. G. Kariuki	042
39. Hon. Leslie Mwachiro	599

40. Hon. George Kinyua	577
41. Hon. Simeon Shitemi	545
42. Hon. Betty Njeri Tett	222
43. Hon. Raphael Livu Kilonzi	228

Absent

1. Hon. Adan A. Sugow	193
2. Hon. Alex Chepkwony	367
3. Hon. C. Murungaru	123
4. Hon. Daniel Khamasi	053
5. Hon. Elkanah Odembo	453
6. Hon. G. Ndatho Muchiri	301
7. Hon. Henry Kosgey	077
8. Hon. J. J. Kamotho	040
9. Hon. John Katuku	046
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12. Hon. Patrice M. Ivuti	032
13. Hon. Sospeter Ojaamong	159
14. Hon. Suleiman Shakombo	189
15. Hon. Bonaya Godana Adhi	029
16. Hon. Julius Sitiency	335
17. Hon. Simeon Nyachae	149
18. Hon. Kenneth Marende	096
19. Hon. Isaiah Cheruiyot	346

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Evans Menach	Assistant Programme Officer
3. Peter Barrett	Drafts person
4. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. Pamela N. Kola	NGO Council
3. Josephine Aska	UNDP
4. Nuria Gollo	Borana Community
5. Adan Jirma Duba	Northern NGO Forum
6. Moses H. Maranga	NMDSO
7. Dr. Henry K. Rono	Kenyatta University
8. Medina Ibrahim Asman	Nubian Community

The Meeting opened with prayers.

MIN. NCC. TWC G. 10/01.2003: COMMUNICATION FROM THE CHAIR

The Convenor conveyed the following Communication from the Chair.

That a requiem service for the late Cardinal Maurice Otunga will be held at the Nyayo Stadium today at 10.00 a.m. The Committee to discuss it later.

The funeral service for the late Prof. Odhiambo Mbai, who was the Committee Convenor, will be held on 20th September, 2003 at the Nairobi University at the Chancellors Court. The Committee agreed that the Convenor and other Members who wish to attend, to represent the Committee during the service.

The Committee Members to collect copies of the following documents from the Committee Secretariat.

- The Report of the constituencies Delimitation Commission of 1963.
- The Report of the Regional Boundaries Commission of 1963.
- The Report of the Boundaries of the Provincial and Districts of 1924.

MIN. NCC. TWC G. 10/02/2003: MOTION OF ADJOURNMENT OF THE COMMITTEE UNTIL MONDAY, 22ND SEPTEMBER, 2003

That the Committee adjourns to enable members attend the late Cardinal Otunga's funeral service at Nyayo Stadium and funeral.

(Hon. Betty Tett)

Motion made and Question proposed;

Debate Arising;

Question put and agreed to;

The Committee, therefore, adjourned at 9.55 a.m until Monday, 22nd September, 2003 at 9.00 a.m.

CONFIRMED

CONVENOR

DATE

**MINUTES OF THE ELEVENTH MEETING OF THE TECHNICAL
WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER HELD ON
MONDAY 22ND SEPTEMBER 2003 AT COMMITTEE TENT 7, BOMAS OF
KENYA AT 9.30 A.M.**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Ahmed Maalim Omar	255
6. Hon. Alex Chepkwony	367
7. Hon. Amos Kiumo	271
8. Hon. Bonaya Godana Adhi	029
9. Hon. Caleb Jumba	385
10. Hon. Daniel Khamasi	053
11. Hon. Daniel Ole Osoi	364
12. Hon. Elkanah Odembo	453
13. Hon. G. B. Galgallo	026
14. Hon. G. Ndatho Muchiri	301
15. Hon. G. G. Kariuki	042
16. Hon. George Kinyua	577
17. Hon. George Mburu Mwaura	586
18. Hon. Gloria Wabwire	396
19. Hon. Grace Akinyi Ogot	399
20. Hon. Guracha Denge Wario	265
21. Hon. Hellen Koring'ura	324
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23. Hon. Hezron Manduku	092
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27. Hon. J. Mwangi Waweru	310
28. Hon. J. S. Mathenge	308
29. Hon. James F. T. Foster	488
30. Hon. John Katuku	046
31. Hon. Kauchi Chivumba	494
32. Hon. M. Nyathogora	303
33. Hon. Maero Tindi	444
34. Hon. Mercy Mwamburi	492
35. Hon. Mereso Agina	508
36. Hon. Michael Githu	355
37. Hon. Mwinyi Haji Mwijaa	234
38. Hon. Nicholas Biwott	016
39. Hon. Patrick O. Onyango	590
40. Hon. Rev. Macharia Muchuga	226
41. Hon. Shaaban Ali Isaack	187

42. Hon. Sospeter Ojaamong	159
43. Hon. Syongoh Zaddock Madiri	195
44. Hon. Wilberforce Kisiero	389
45. Hon. Juma Wario	241
46. Hon. Mohamed Yusuf Haji	031
47. Hon. Leslie Mwachiro	599
48. Hon. Simeon Shitemi	545
49. Hon. Suleiman Shakombo	189
51. Hon. Raphael Livu Kilonzi	228
52. Hon. Juma Wario	241

Absent

1. Hon. Adan A. Sugow	193
2. Hon. C. Murungaru	123
3. Hon. J. J. Kamotho	040
4. Hon. Machage W. Gisuka	085
5. Hon. Otieno Ogingo	413
6. Hon. Patrice M. Ivuti	032
7. Hon. Julius Sitiency	335
8. Hon. Simeon Nyachae	149
9. Hon. Kenneth Marende	096
10. Hon. Fatuma Sheikh Mohamed	254
11. Hon. Pius Lobuk	328
12. Hon. Betty Njeri Tett	222

In-Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Evans Menach	Assistant Programme Officer
3. Mr. Peter Barrett	Drafts person
4. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. Pamela N. Kola	NGO Council
3. Josephine Aska	UNDP
4. Nuria Gollo	Borana Community
5. Adan Jirma Duba	Northern NGO Forum
6. Moses H. Maranga	NMDSO
7. Bii Kenneth K	Professional Community
8. Medina Ibrahim Asman	Nubian Community
9. Dr. Pius S. Achola	NGO Council
10. Rachel Shebesh	L.K.W.U
11. Julius Barare Okara	
12. Dr. Josephine Ojiambo	
13. Lydia Kimani	
15. Paul Ogula	

The Meeting opened with prayers.

MIN. NCC. TWC G. 11/01/2003: COMMUNICATION FROM THE CHAIR

The Convenor conveyed the following Communication from the Chair.

- That the Ad Hoc Committee on Culture will be meeting during lunch hour at the Steering Committee Tent. Members of the Devolution Committee who had indicated to be Members to attend the meeting.
- That fund raising towards the funeral of the late Prof. Crispin Mbai will be held on 23rd September 2003 at the late Prof. Mbai's residence at Adams Arcade. Members were invited to attend.
- That Members of the Committee were not represented in the late Mbai's funeral arrangement. The Committee unanimously nominated Hon. Elkanah Odembo to be the Committee's representative in the funeral arrangements.

**MIN. NCC. TWC G. 11/02/2003: GENERAL COMMENTS ON ARTICLE 218
ON ZONES 219 ON ZONAL
GOVERNMENT**

The Committee discussed in general Article 218 and 219 on Zones and Zonal governments and came up with the following suggestions:

- That workable clause in the constitution be provided for to protect the rights of the Minority at all levels.
- Ethnicity should not be used as criteria for devolution. It should be a way to assist the Marginalised.
- Devolution should promote participatory governance.
- Historical and cultural background be considered when dealing with devolution of powers.
- Unit 5 and 10 be adopted as they are in the Draft.
- That if issues of Zones could not be finalized by consensus, they should be referred to a referendum.
- That Nakuru, Nyandarua, Baringo, Laikipia and Samburu be one Zone.
- Baringo and Koibatek be moved to Zone 10.

**MIN. NCC. TWC G. 11/03/2003: CONFIRMATION OF PREVIOUS
MINUTES**

Minutes of the Ninth Meeting held on 19th September, 2003 and Tenth Meeting held on 19th September 2003 were confirmed by the Members present and signed by the Convenor.

Minutes of the Ninth Meeting were proposed by the Hon. Nicholas Biwott and seconded by the Hon. Mercy Mwamburi while those of Tenth Meeting were proposed by the Hon. James Waweru and seconded by the Hon. James Foster.

MIN. NCC. TWC G. 11/04/2003: MATTERS ARISING

Under MIN. NCC TWC G. 09/02/2003, the following Members complained that their names were omitted in the Minutes of the Ninth Meeting of 18th September, 2003.

1. Hon. Guracha Galgall
2. Hon. Ndatho Muchiri
3. Hon. Wilberforce Kisier
4. Hon. Nicholas Biwott

MIN. NCC. TWC G. 11/05/2003: CONSIDERATION OF ARTICLE 218 AND SEVENTH SCHEDULE

The Committee considered the Article and resolved as follows: -

1. Zones 1 and 2

Motion (**Hon. Mwinyi Haji Mwijaa**)

That Zones 1 and 2 be merged to become one Zone

Question proposed;

Debate arising;

Question put and Agreed

2. Zone 2

Motion (**Hon. John Katuku**)

That Zone 2 be adopted as indicated in the draft

Question proposed;

Debate Arising;

Question put and agreed to.

3. Zone 4

Motion (**Hon. James Mathenge**)

That Zone 4 to comprise of Meru Central, Meru South, Meru North and Tharaka as one Zone.

Question proposed;

Debate Arising;

Question put and agreed to.

Motion (**Hon. James Mathenge**)

That a new Zone comprising of Mbeere, Embu and Kirinyaga be formed.

Question proposed;

Debate Arising;
Question put and agreed to.

Zone 5

Motion (**Hon. Nicholas Biwott**)

That deliberation on Zone 5 be deferred for further consultations by the delegates from the Zone.

Question proposed;
Debate Arising;
Question put and negatived.

Zone 5

Motion (**Hon. Wilberforce Kisiero**)

That Zone 5 be adopted as indicated in the Draft.

Question proposed;
Debate Arising;
Question put and negatived.

MIN. NCC. TWC G. 11/06/2003: ADJOURNMENT

The Convenor adjourned the sitting at 1.10 p.m until this afternoon at 2.30 p.m

AFTERNOON SESSION

The Committee reconvened at 3.50 p.m

Debate interrupted and resumed;

Zone 5

Motion (**Hon. Gurachi Galgalo**)

That Isiolo, Marsabit and Moyale be one Zone while Samburu and Laikipia to decide where they would like to be.

Question proposed;
Debate Arising;
Question put and agreed to.

Zone 6

Motion (**Hon. Yusuf Haji**)

That Zones 6 and 7 be merged to become one Zone.

Question proposed;

Debate Arising;
Question put and negatived.

Motion (Hon. Isaack Shaaban)

That Zone 6 be adopted as indicated in the Draft.

Question proposed;
Debate Arising;
Question put and agreed to.

Motion (Hon. Isaack Shaaban)

That Zone 7 is adopted as indicated in the Draft.

Question proposed;
Debate Arising;
Question put and agreed to.

Motion (Hon. Henry Kosgey)

That Mt. Elgon be moved to Zone 16 to be together with Trans Nzoia, Turkana, West Pokot and Marakwet in Zone 8.

Question proposed;
Debate Arising;
Question put and agreed to.

Zones 8, 9 and 10

Motion (Hon. Henry Kosgey)

That consideration of Zones 8, 9 and 10 be deferred for further consultations before consideration of the Zones.

Question proposed;
Debate Arising;
Question put and agreed to.

Zone 11

Motion (Hon. Daniel Ole Osoi)

That Zone 11 be adopted as indicated in the Draft.

Question proposed;
Debate Arising;
Question put and agreed to.

Zones 12

Motion (Hon. Macharia Muchuga)

That consideration of Zone 12 be deferred for further consultations by delegates from that region.

Question proposed;
Debate Arising;
Question put and agreed to.

Zone 13

Motion (Hon. Hezron Manduku)

That Zone 13 be adopted as indicated in the Draft.

Question proposed;
Debate Arising;
Question put and agreed to

Zone 14 and 15

Motion (Hon. James Mathenge)

That consideration of Zones 14 and 15 be deferred for further consultations by delegates from that region.

Question proposed;
Debate Arising;
Question put and agreed to.

Zone 16

Motion (Hon. Caleb Jumba)

That Zone 16 should comprise of Bungoma and Busia.

Question proposed;
Debate Arising;
Question put and agreed to.

Zone 17

Motion (Hon. Caleb Jumba)

That Zone 16 to comprise of Kakamega, Vihiga, Butere/Mumias and Lugari.

Question proposed;
Debate Arising;
Question put and agreed to.

Motion (Hon. Sospeter Ojaamong)

That Teso be given a special unit because of its peculiar historical and cultural background.

Question proposed;
Debate Arising;
Question put and agreed to.

Zone 18

Motion (Hon. Henry Kosgei)

That Zone 18 be adopted as indicated in the Draft.

Question proposed;
Debate Arising;
Question put and agreed to.

MIN. NCC. TWC G. 11/07/2003: ANY OTHER BUSINESS

The Hon. James Mathenge, informed the Committee that Hon. J. J. Kamotho lost his mother. The Committee drafted a condolence statement to be sent to the Hon. Kamotho to console him and his family.

MIN. NCC. TWC G. 11/08/2003: ADJOURNMENT

The Convenor adjourned the Meeting at 5.15 p.m until Tuesday 22nd September, 2003 at 9.00 a.m.

CONFIRMED

CONVENOR

DATE

**MINUTES OF THE TWELFTH MEETING OF THE TECHNICAL
WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER HELD ON
TUESDAY 23RD SEPTEMBER 2003 AT COMMITTEE TENT 7, BOMAS OF
KENYA AT 9.40 A.M.**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Ahmed Maalim Omar	255
6. Hon. Alex Chepkwony	367
7. Hon. Amos Kiumo	271
8. Hon. Betty Njeri Tett	222
9. Hon. Bonaya Godana Adhi	029
10. Hon. Caleb Jumba	385
11. Hon. Daniel Khamasi	053
12. Hon. Daniel Ole Osoi	364
13. Hon. Elkanah Odembo	453
14. Hon. Fatuma Sheikh Mohamed	254
15. Hon. G. B. Galgallo	026
16. Hon. G. Ndatho Muchiri	301
17. Hon. G. G. Kariuki	042
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	077
25. Hon. Hezron Manduku	092
26. Hon. Isa Ireri Ngunia	286
27. Hon. Isaiah Cheruiyot	346
28. Hon. J. J. Kamotho	040
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	046
34. Hon. Kauchi Chivumba	494
35. Hon. Kenneth Marende	096
36. Hon. Leslie Mwachiro	599
37. Hon. M. Nyathogora	303
38. Hon. Maero Tindi	444
39. Hon. Mercy Mwamburi	492
40. Hon. Mereso Agina	508

41. Hon. Mohamed Yusuf Haji	031
42. Hon. Mwinyi Haji Mwijaa	234
43. Hon. Nicholas Biwott	016
44. Hon. Otieno Ogingo	413
45. Hon. Patrick O. Onyango	590
46. Hon. Pius Lobuk	328
47. Hon. Rev. Macharia Muchuga	226
48. Hon. Shaaban Ali Isaack	187
49. Hon. Sospeter Ojaamong	159
50. Hon. Syongoh Zaddock Madiri	195
51. Hon. Wilberforce Kisiero	389
52. Hon. Juma Wario	241
53. Hon. Simeon Shitemi	545
54. Hon. Suleiman Shakombo	189
55. Hon. Raphael Livu Kilonzi	228
56. Hon. Tecla Munkushi	357

Absent

1. Hon. Adan A. Sugow	193
2. Hon. C. Murungaru	123
3. Hon. Machage W. Gisuka	085
4. Hon. Patrice M. Ivuti	032
5. Hon. Simeon Nyachae	149
6. Hon. Michael Githu	355

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Evans Menach	Assistant Programme Officer
3. Mr. Peter Barrett	Drafts person
4. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. Pamela N. Kola	NGO Council
3. Josephine Aska	UNDP
4. Nuria Gollo	Borana Community
5. Adan Jirma Duba	Northern NGO Forum
6. Moses H. Maranga	NMDSO
7. Bii Kenneth K	Professional Community
8. Medina Ibrahim Asman	Nubian Community
9. Dr. Pius S. Achola	NGO Council
10. Cllr. Josiah K. Magut	

The Meeting opened with prayers.

MIN. NCC. TWC G. 12/01/2003: GENERAL COMMENTS ON CHAPTER TEN-ARTICLES 218, 219 AND 220 ON ZONES, ZONAL GOVERNMENTS AND

ZONAL COUNCILS RESPECTIVELY AND THE SEVENTH SCHEDULE

The Committee discussed the above Articles and raised the following suggestions:

- That Zone 8 should remain as indicated in the Draft.
- That Laikipia and Samburu people be given time to decide on where they want to be placed.
- That Laikipia, Nakuru, Koibatek, Baringo, Samburu, Kericho, Buret and Bomet to become one Zone.
- That Bomet, Kericho, Buret, Nakuru be one Zone.
- That Laikipia, Baringo, Samburu and Koibatek be one Zone.
- That Delegates from Samburu revisited the resolution adopted by Committee concerning Zone 5 and proposed that Samburu be allowed to join Moyale, Marsabit and Isiolo because they have similar lifestyles and livestock economy is their mainstay. Some delegates from Zone 5 supported the idea that Samburu be part of the Zone.
- That Kiambu, Muranga, Maragua, Thika, Nyeri and Nyandarua be one Zone.
- That Boundaries Commission be established to look into the boundaries in the Zones.
- That Turkana, Uasin-Gishu, Keiyo, Mt. Elgon, Marakwet, West Pokot, Nandi North and Nandi South be one Zone.
- That Laikipia and Samburu could be one Zone.

Some delegates suggested that delegates have no mandate to take decisions on behalf of their districts.

MIN. NCC. TWC G. 12/02/2003: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the Eleventh Meeting held on 22nd September, 2003 were confirmed by the Members present and signed by the Convenor. They were proposed by the Hon. Amos Kiumo and seconded by Margaret Nyathogora.

MIN. NCC. TWC G. 12/03/2003: CONSIDERATION OF THE DEFERRED ZONES (ZONES 8, 9, 10, 12, 14 AND 15)

The Committee considered the deferred Articles as follows:

1. There were two motions in relation to Zones 8 and 9

(a) Motion (**Hon. Hellen Koringura**)

That Zone 8 comprising of Turkana, West Pokot, Marakwet, Trans-Nzoia and Mt. Elgon become one Zone.

Motion (**Hon. Henry Kosgey**)

That Zone 8 comprising of Turkana, West Pokot, Marakwet, Trans-Nzoia Mt. Elgon, Keiyo, Uasin Gishu, Nandi North and Nandi South become one Zone.

2. Motion (**Hon. Daniel Khamasi**)

That a secret ballot, be conducted to resolve the two options.

The motion was resolved through a Division (by show of hands). The results of the Division are as follows.

Those in support of secret ballot	-	27
Those against secret ballot	-	12

Debate interrupted resumed;

A Division by secret ballot was conducted.

The results of the Division are as follows:

Those in favour of Motion 1 (option 1)	-	35
Those in favour of Motion 2 (option 2)	-	9
Abstenance	-	1
Total		45

Therefore, the Committee resolved that Zone 8 comprising of Turkana, West Pokot, Marakwet, Trans Nzoia and Mt. Elgon be one Zone.

3. Zone 9

Motion (**Hon. Henry Kosgey**)

That Keiyo, Uasin Gishu, Nandi North and Nandi South be one Zone

Question proposed
Debate arising
Question put and agreed to.

4. Motion (**Hon. Isaiah Cheruiyot**)

That Baringo and Koibatek in Zone 9 be moved to Zone 10.

Question proposed
Debate arising
Question put and agreed to.

5. There were two Motions in relation to Zone 10

(a) Motion (**Hon. G. G. Kariuki**)

That Baringo, Koibatek, Laikipia, Nakuru and Samburu be one Zone.

(b) Motion (**Hon. Nicholas Biwott**)

That Baringo, Koibatek, Kericho, Nakuru, Bureti, Bomet, Samburu and Laikipia be one Zone.

A Division (secret ballot) was conducted

The results of the Division are as follows:

Those in favour of Motion (a)	-	22
Those in favour of Motion (b)	-	21
Abstention	-	1
Total		44

Therefore, the Committee resolved that Baringo, Koibatek, Laikipia, Nakuru and Samburu be one Zone.

6. Motion (**Hon. Alex Chepkwony**)

That consideration of Kericho, Bureti and Bomet in Zone 10 be deferred for the delegates from the Zone to discuss they would like to be.

7. Zone 12

Motion (**Hon. Grace Ogot**)

That Zone 12 be divided into two Zones:

- (i) Homa Bay, Rachuonyo, Migori and Suba be one Zone, and
- (ii) Siaya, Bondo, Kisumu and Nyando be another Zone.

Question proposed
Debate arising
Question put and agreed to.

MIN. NCC. TWC G. 12/04/2003: ADJOURNMENT

The Convenor adjourned the meeting at 5.15 p.m until 24th September 2003 at 9.00 a.m.

CONFIRMED

CONVENOR

DATE

**MINUTES OF THE THIRTEENTH MEETING OF THE TECHNICAL
WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER HELD ON
WEDNESDAY 24TH SEPTEMBER 2003 AT COMMITTEE TENT 7, BOMAS
OF KENYA AT 10.00 A.M.**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Ahmed Maalim Omar	255
6. Hon. Alex Chepkwony	367
7. Hon. Amos Kiumo	271
8. Hon. Betty Njeri Tett	222
9. Hon. Bonaya Godana Adhi	029
10. Hon. Caleb Jumba	385
11. Hon. Daniel Khamasi	053
12. Hon. Daniel Ole Osoi	364
13. Hon. Elkanah Odembo	453
14. Hon. Fatuma Sheikh Mohamed	254
15. Hon. G. B. Galgallo	026
16. Hon. G. Ndatho Muchiri	301
17. Hon. G. G. Kariuki	042
18. Hon. George Kinyua	577
19. Hon. George Mburu Mwaura	586
20. Hon. Gloria Wabwire	396
21. Hon. Grace Akinyi Ogot	399
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29. Hon. J. Kinuthia Mwangi	319
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31. Hon. J. S. Mathenge	308
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41. Hon. Mohamed Yusuf Haji	031
42. Hon. Mwinyi Haji Mwijaa	234
43. Hon. Nicholas Biwott	016
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45. Hon. Patrick O. Onyango	590
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47. Hon. Rev. Macharia Muchuga	226
48. Hon. Sospeter Ojaamong	159
49. Hon. Syongoh Zaddock Madiri	195
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52. Hon. Simeon Shitemi	545
53. Hon. Suleiman Shakombo	189
54. Hon. Raphael Livu Kilonzi	228
55. Hon. Tecla Munkushi	357

Absent

1. Hon. Adan A. Sugow	193
2. Hon. C. Murungaru	123
3. Hon. Machage W. Gisuka	085
4. Hon. Patrice M. Ivuti	032
5. Hon. Simeon Nyachae	149
6. Hon. Michael Githu	355
7. Hon. Shaaban Ali Isaack	187

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Evans Menach	Assistant Programme Officer
3. Mr. Peter Barrett	Drafts person
4. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. Pamela N. Kola	NGO Council
3. Josephine Aska	UNDP
4. Nuria Gollo	Borana Community
5. Adan Jirma Duba	Northern NGO Forum
6. Moses H. Maranga	NMDSO
7. Bii Kenneth K	Professional Community
8. Medina Ibrahim Asman	Nubian Community
9. Dr. Henry K. Rono	Professional Community
10. Amina H. Ali	Isikia Community and Women Political Caucus

The Meeting opened with prayers.

MIN. NCC. TWC G. 13/01/2003: COMMUNICATION FROM THE CHAIR

The Convenor informed the Committee that a requiem service in honour of the late Prof. Odhiambo Mbai will be held to day at 3.00 p.m at the Holy Family Basilica.

MIN. NCC. TWC G. 13/02/2003: GENERAL COMMENTS ON CHAPTER TEN – ARTICLES 218, 219 AND 220 ON ZONES, ZONAL GOVERNMENTS AND ZONAL COUNCILS AND SEVENTH SCHEDULE

The Committee discussed the above Articles and the Seventh Schedule. Various views were expressed.

There was wide support that Buret, Bomet and Kericho be put together with Koibatek, Nakuru, Baringo, Samburu and Laikipia to be one Zone
That the existing boundaries were drawn by the Colonial government without making any special provisions for minority groups. These anomalies should be addressed by the current review exercise.

MIN. NCC. TWC G. 13/03/2003: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the Twelfth Meeting held on 23rd September, 2003 were confirmed by the Members present and signed by the Convenor. They were proposed by the Hon. Maero Tindi and seconded by the Hon. James Mathenge.

MIN. NCC. TWC G. 13/04/2003: MATTERS ARISING

List of Attendance

The Hon. Michael Githu complained that his name was missing from the Minutes of the Twelfth Meeting of 23rd September, 2003.

MIN. NCC. TWC G. 13/05/2003: MOTION OF ADJOURNMENT OF THE COMMITTEE UNTIL THURSDAY 25TH SEPTEMBER, 2003

Motion (**Hon. Ahmed Maalim Omar**)

That the Committee adjourns today at 1.00 p.m until Thursday, 25th September 2003 to enable Members of the Committee attend the requiem service in honour of the late Prof. Crispin Mbai at the Holy Family Basilica at 2.00 p.m.

Motion made and Question proposed;

Debate arising;

Question put and agreed to;

MIN. NCC. TWC G. 13/06/2003: CONSIDERATION OF CHAPTER TEN - SUB-ARTICLE 218 (2), ARTICLE 219 -

**ZONAL GOVERNMENTS AND ARTICLE
220 – ZONAL COUNCILS**

Motion (Hon. Alex Chepkwony-Delegate No. 367)

That, view of yesterday's resolution by this Committee to lump together Koibatek, Baringo, Laikipia, Nakuru and Samburu as a Zone; bearing in mind that the composition of Zone 10 remains unresolved following the excision of Nakuru to the new Zone; and taking into account the circumstances on the ground and intense consultations with Members of the said new Zone, this Committee resolves to dissolve the proposed Zone 10 and merge Kericho, Bomet and Bureti with the new Zone i.e. Koibatek, Baringo, Laikipia, Nakuru and Samburu.

Motion made and question proposed;

Debate arising;

Question put and agreed to.

That Baringo, Koibatek, Laikipia, Samburu, Nakuru, Kericho, Bomet and Buret be one Zone.

MIN. NCC. TWC G. 13/07/2003: ADJOURNMENT

The Convenor adjourned the meeting at 1.15 p.m until Thursday, 25th September, 2003 at 9.00 a.m.

CONFIRMED

CONVENOR

DATE

**MINUTES OF THE FOURTEENTH MEETING OF THE TECHNICAL
WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER HELD ON
THURSDAY 25TH SEPTEMBER 2003 AT COMMITTEE TENT 7, BOMAS OF
KENYA AT 10.00 A.M.**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Ahmed Maalim Omar	255
6. Hon. Alex Chepkwony	367
7. Hon. Amos Kiumo	271
8. Hon. Betty Njeri Tett	222
9. Hon. Bonaya Godana Adhi	029
10. Hon. Caleb Jumba	385
11. Hon. Daniel Khamasi	053
12. Hon. Daniel Ole Osoi	364
13. Hon. Fatuma Sheikh Mohamed	254
14. Hon. G. Ndatho Muchiri	301
15. Hon. George Kinyua	577
16. Hon. George Mburu Mwaura	586
17. Hon. Gloria Wabwire	396
18. Hon. Grace Akinyi Ogot	399
19. Hon. Guracha Denge Wario	265
20. Hon. Hellen Koring'ura	324
21. Hon. Henry Kosgey	077
22. Hon. Hezron Manduku	092
23. Hon. Isa Ireri Ngunia	286
24. Hon. Isaiah Cheruiyot	346
25. Hon. J. Kinuthia Mwangi	319
26. Hon. J. Mwangi Waweru	310
27. Hon. J. S. Mathenge	308
28. Hon. James F. T. Foster	488
29. Hon. John Katuku	046
30. Hon. Kauchi Chivumba	494
31. Hon. Kenneth Marende	096
32. Hon. Leslie Mwachiro	599
33. Hon. M. Nyathogora	303
34. Hon. Maero Tindi	444
35. Hon. Mercy Mwamburi	492
36. Hon. Mereso Agina	508
37. Hon. Michael Githu	355
38. Hon. Mohamed Yusuf Haji	031
39. Hon. Mwinyi Haji Mwijaa	234
40. Hon. Nicholas Biwott	016

41. Hon. Patrick O. Onyango	590
42. Hon. Pius Lobuk	328
43. Hon. Shaaban Ali Isaack	187
44. Hon. Rev. Macharia Muchuga	226
45. Hon. Syongoh Zaddock Madiri	195
46. Hon. Wilberforce Kisiero	389
47. Hon. Juma Wario	241
48. Hon. Simeon Shitemi	545
49. Hon. Suleiman Shakombo	189
50. Hon. Raphael Livu Kilonzi	228
51. Hon. Tecla Nairesiai	357
52. Hon. G. B. Galgallo	026

Absent

1. Hon. Adan A. Sugow	193
2. Hon. C. Murungaru	123
3. Hon. Machage W. Gisuka	085
4. Hon. Patrice M. Ivuti	032
5. Hon. Simeon Nyachae	149
6. Hon. Elkanah Odembo	453
7. Hon. G. G. Kariuki	042
8. Hon. J. J. Kamotho	040
9. Hon. Otieno Ogingo	413
10. Hon. Sospeter Ojaamong	159

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Evans Menach	Assistant Programme Officer
3. Mr. Peter Barrett	Drafts person
4. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. Pamela N. Kola	NGO Council
3. Nuria Gollo	Borana Community
4. Adan Jirma Duba	Northern NGO Forum
5. Bii Kenneth K	Professional Community
6. Medina Ibrahim Asman	Nubian Community
7. Dr. Henry K. Rono	Professional Community

The Meeting opened with prayers.

MIN. NCC. TWC G. 14/01/2003: COMMUNICATION FROM THE CHAIR

The Convenor reported to the Committee that the requiem service in honour of the late Dr. Crispin Mbai was held on Wednesday 24th September, 2003. The late Dr. Mbai will be buried on Saturday 27th September, 2003. The Committee unanimously

mandated the Convenor to represent the Committee during the burial and present a message of condolence to the family of the late Dr. Mbai.

The Committee re-iterated its commitment to deliver the Chapter on Devolution as a tribute to the late Dr. Mbai.

MIN. NCC. TWC G. 14/02/2003: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the Thirteenth Meeting held on Wednesday, 24th September, 2003, were confirmed by the Members present and signed by the Convenor. They were proposed by the Hon. Ahmed Omar and seconded by the Hon. Denge Wario.

MIN. NCC. TWC G. 14/03/2003: MATTERS ARISING

1. List of Attendance

Hon. Michael Githu complained that his name was missing from the list of the Minutes of the Wednesday 24th September, 2003. Members were reminded to be signing the Attendance Register when they come for Committee Meetings.

2. Minority opinion

Under MIN. NCC. TWC G. 13/02/2003, the Hon. Michael Githu informed the Committee that he had expressed a Minority view concerning the zoning of Nakuru, Laikipia, Baringo, Samburu, Koibatek, Kericho, Bomet and Buret. He stated that he was against the Zone as adopted by the Committee. He was in support of Nakuru, Laikipia, Samburu, Koibatek and Baringo becoming one Zone as adopted by the Committee during its meeting of 23rd September, 2003. The Minority text prepared by the Hon. Michael Githu will be recorded in the Committee report.

MIN. NCC. TWC G. 14/04/2003: CONSIDERATION OF CHAPTER TEN – SUB-ARTICLE 218(2)

The Committee considered Sub-Article 218(2) and the following views were expressed:

- That the Sub-Article 218(2) be considered together with Sub-Article 225(2), Article 233 and Article 247.
- That the Committee should deliberate on the Zonal governments and Zonal councils and that when the Boundaries Commission is established it should look into the variation in the boundaries in the Zones, Councils and locations.
- That there were anomalies in the existing district boundaries and entrenching them in the Constitution would require a constitutional amendment to vary the boundaries in future.
- That the Boundaries Commission come into operation after the review constitution is finalized.
- That before the boundaries variations are finalized, the Zonal governments and Zonal councils should be consulted before the boundaries are varied.

- That a Task Force could be established to deal with boundaries review in the Zones, Councils and the locations to enable the Committee to present its report together with the report on boundaries variations.
- That the Counties should be referred to as Districts.

MIN. NCC TWC G. 14/05/2003: NOTICE OF MOTION

THAT, arising from the plenary and this Committee's debate on the Devolution of Powers; Considering that the issues raised in deliberations at the National Constitutional Conference, it would be vital to look at other African countries which have include devolution in their Constitution as a guiding principle.

This Committee, recommends that a Sub-Committee be established to visit one or two African countries where devolution has worked practically, to equip this Committee with practical knowledge necessary for the future of this country as we adopt and implement a new Constitution.

(Hon. Daniel ole Osoi)

MIN. NCC. TWC G. 14/06/2003: ADJOURNMENT

The Convenor adjourned the Meeting at 5.35 p.m until Friday, 26th September, 2003 at 8.30 a.m

CONFIRMED

CONVENOR

DATE

**MINUTES OF THE FIFTEENTH MEETING OF THE TECHNICAL
WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER HELD ON
FRIDAY 26TH SEPTEMBER 2003 AT COMMITTEE TENT 7, BOMAS OF
KENYA AT 10.15 A.M.**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Ahmed Maalim Omar	255
6. Hon. Alex Chepkwony	367
7. Hon. Amos Kiumo	271
8. Hon. Betty Njeri Tett	222
9. Hon. Bonaya Godana Adhi	029
10. Hon. Caleb Jumba	385
11. Hon. Daniel Khamasi	053
12. Hon. Daniel Ole Osoi	364
13. Hon. Elkanah Odembo	453
14. Hon. Fatuma Sheikh Mohamed	254
15. Hon. G. B. Galgallo	026
16. Hon. G. Ndatho Muchiri	301
17. Hon. G. G. Kariuki	042
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	077
25. Hon. Hezron Manduku	092
26. Hon. Isa Ileri Ngunia	286
27. Hon. Isaiah Cheruiyot	346
28. Hon. J. J. Kamotho	040
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. Tecla Nairesiai	357
34. Hon. Kauchi Chivumba	494
35. Hon. Kenneth Marende	096
36. Hon. Leslie Mwachiro	599
37. Hon. M. Nyathogora	303
38. Hon. Mercy Mwamburi	492
39. Hon. Mereso Agina	508
40. Hon. Michael Githu	355
41. Hon. Mohamed Yusuf Haji	031

42. Hon. Mwinyi Haji Mwijaa	234
43. Hon. Nicholas Biwott	016
44. Hon. Otieno Ogingo	413
45. Hon. Patrick O. Onyango	590
46. Hon. Pius Lobuk	328
47. Hon. Shaaban Ali Isaack	187
48. Hon. Rev. Macharia Muchuga	226
49. Hon. Syongoh Zaddock Madiri	195
50. Hon. Sospeter Ojaamong	159
51. Hon. Wilberforce Kisiero	389
52. Hon. Juma Wario	241
53. Hon. Simeon Shitemi	545
54. Hon. Suleiman Shakombo	189
55. Hon. Raphael Livu	228
56. Hon. Maero Tindi	444

Absent

1. Hon. Adan A. Sugow	193
2. Hon. C. Murungaru	123
3. Hon. Machage W. Gisuka	085
4. Hon. Patrice M. Ivuti	032
5. Hon. Simeon Nyachae	149
6. Hon. John Katuku	046

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Evans Menach	Assistant Programme Officer
3. Mr. Fidelis Wangata	Assistant Programme Officer
4. Mr. Peter Barrett	Drafts person
5. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. Pamela N. Kola	NGO Council
3. Nuria Gollo	Borana Community
4. Adan Jirma Duba	Northern NGO Forum
5. Bii Kenneth K	Professional Community
6. Medina Ibrahim Asman	Nubian Community
7. Moses H. Maranga	NMDSO
8. Josephine Aska	UDPK

The Meeting opened with prayer.

MIN. NCC. TWC G. 15/01/2003: COMMUNICATION FROM THE CHAIR

The Convenor conveyed to the Committee that the Steering Committee resolved during its meeting this morning that all Technical Working Committees were expected to adjourn their meetings today at 10.30 a.m. This is because the plenary

proceedings were to start at 11.00 a.m to receive progress reports from the Technical Working Committees and thereafter, the Conference will be adjourned until 17th November, 2003.

MIN. NCC. TWC G. 15/02/2003: ANNOUNCEMENTS

The Convenor invited the Hon. Otieno Ogingo, who is a Member of the late Dr. Crispin Mbai's Funeral organizing Committee, to report to the Committee on the transport arrangements for delegates who will be attending the burial of the late Dr. Mbai.

Thereupon, the Hon. Otieno Ogingo informed the Committee that there was a Logistics Committee which was organizing transport and accommodation for the delegates attending the burial.

He further informed the Committee that each province was expected to nominate six delegates to attend the burial. A bus has been provided by CKRC to transport delegates to the burial and they will be picked from their respective hotels today at 8.00 p.m for the journey to Homa Bay.

MIN. NCC. TWC G. 15/03/2003: MOTION – ESTABLISHMENT OF A SUB-COMMITTEE TO VISIT OTHER COUNTRIES WHERE DEVOLUTION HAS WORKED PRACTICALLY

THAT, arising from the plenary and this Committee's debate on the Devolution of Powers; considering that the issues raised in deliberations at the National Constitutional Conference, it would be vital to look at other African countries which have include devolution in their Constitution as a guiding principle.

This Committee, recommends that a Sub-Committee be established to visit one or two African countries where devolution has worked practically, to equip this Committee with practical knowledge necessary for the future of this country as we adopt and implement a new Constitution.

(Hon. Daniel Ole Osoi)

Motion made and Question proposed;

Amendments proposed;

THAT, the Motion be amended to read as follows:

THAT, arising from the plenary and this Committee's debate on the Devolution of Powers; considering that the issues raised in deliberations at the National Constitutional Conference, it would be vital to look at other countries which have include devolution in their Constitution as a guiding principle.

This Committee, recommends that a Sub-Committee be established to visit **other** countries where devolution has worked practically, to equip this Committee with practical knowledge necessary for the future of this country as we adopt and implement a new Constitution.

(Hon. Patrick O. Onyango)

Question of the Motion as amended proposed;

Debate arising;

Question of the Motion as amended put and agreed to.

MIN. NCC TWC G. 15/04/2003: ADJOURNMENT

The Convenor adjourned the Meeting at 11.00 a.m.

CONFIRMED

CONVENOR

DATE

**MINUTES OF THE SIXTEENTH MEETING OF THE TECHNICAL
WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER OF THE
DRAFT BILL HELD ON TUESDAY 13TH JANUARY 2004 AT COMMITTEE
TENT 7, BOMAS OF KENYA AT 10.00 A.M.**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Ahmed Maalim Omar	255
6. Hon. Alex Chepkwony	367
7. Hon. Amos Kiumo	271
8. Hon. Caleb Jumba	385
9. Hon. Daniel Khamasi	053
10. Hon. Daniel Ole Osoi	364
11. Hon. Elkanah Odembo	453
12. Hon. Fatuma Sheikh Mohamed	254
13. Hon. G. B. Galgallo	026
14. Hon. G. G. Kariuki	042
15. Hon. George Kinyua	577
16. Hon. George Mburu Mwaura	586
17. Hon. Gloria Wabwire	396
18. Hon. Grace Akinyi Ogot	399
19. Hon. Guracha Denge Wario	265
20. Hon. Hellen Koring'ura	324
21. Hon. Henry Kosgey	077
22. Hon. Hezron Manduku	092
23. Hon. Isa Ileri Ngunia	286
24. Hon. J. J. Kamotho	040
25. Hon. J. Kinuthia Mwangi	319
26. Hon. J. Mwangi Waweru	310
27. Hon. James F. T. Foster	488
28. Hon. Tecla Nairesiai	357
29. Hon. Kauchi Chivumba	494
30. Hon. Kenneth Marende	096
31. Hon. Leslie Mwachiro	599
32. Hon. Mercy Mwamburi	492
33. Hon. Mereso Agina	508
34. Hon. Michael Githu	355
35. Hon. Mwinyi Haji Mwijaa	234
36. Hon. Nicholas Biwott	016
37. Hon. Otieno Ogingo	413
38. Hon. Patrick O. Onyango	590
39. Hon. Pius Lobuk	328
40. Hon. Shaaban Ali Isaack	187
41. Hon. Rev. Macharia Muchuga	226

42. Hon. Syongoh Zaddock Madiri	195
43. Hon. Sospeter Ojaamong	159
44. Hon. Wilberforce Kisiero	389
45. Hon. Juma Wario	241
46. Hon. Simeon Shitemi	545
47. Hon. Maero Tindi	444
48. Prof. Mark Olunga Odhiambo	412

Absent

1. Hon. Adan A. Sugow	193
2. Hon. Betty Njeri Tett	222
3. Hon. Bonaya Godana Adhi	029
4. Hon. C. Murungaru	123
5. Hon. Daniel Ole Osoi	364
6. Hon. G. Ndatho Muchiri	301
7. Hon. Isaiah Cheruiypt	346
8. Hon. J. S. Mathenge	308
9. Hon. M. Nyathogora	303
10. Hon. Mohamed Yusuf Haji	031
11. Hon. Patrice M. Ivuti	032
12. Hon. Simeon Nyachae	149
13. Hon. Suleiman Shakombo	189
14. Hon. Raphael Livu	228

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Fidelis Wangata	Assistant Programme Officer
3. Mr. Evans Menach	Assistant Programme Officer
4. Mr. Peter Barrett	Drafts person
5. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. Pamela N. Kola	NGO Council
3. Adan Jirma Duba	Northern NGO Forum
4. Medina Ibrahim Asman	Nubian Community
5. Amina Ali	W. P. Group
6. J. B. Okara	Diplomat

The Meeting opened with prayers.

MIN. NCC. TWC G. 16/01/2004: COMMUNICATION FROM THE CHAIR

The Chairman welcomed back the delegates to the Committee. He asked the Committee Members to dedicate themselves to the Committee's work, cooperate and move forward with its deliberations in order to conclude its mandate as soon as possible.

The Chairman introduced Prof. Mark Olunga Odhiambo, a delegate from Homa Bay District who had come to replace the late Dr. Crispin Odhiambo Mbai.

MIN. NCC. TWC G. 16/02/2004: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the Fifteenth Meeting held on Friday 26th September 2003 were confirmed by the Members present and signed by the Convenor. They were proposed by the Hon. Grace Ogot and seconded by the Hon. J. J. Kamotho.

MIN. NCC. TWC G. 16/03/2004: DOCUMENTATION

The Rapporteurs presented to the Committee the following documents which were to form part of the Committee documentation.

Report of the Training of the Technical Working Committee personnel held in Mount Kenya Safari Club.

Final regulations of the Conference.

Rapporteur-General's Report.

Interim Report of the Committee.

Special document on Devolution which was prepared by CKRC during recess.

MIN. NCC. TWC G. 16/04/2004: COMMENTS FROM THE COMMITTEE REPORTS ON THE COMMITTEE DELIBERATIONS DURING BOMAS II

The Rapporteurs gave an overview of the Committee deliberations during Bomas II as contained in the Interim Report, which was summarized as follows: -

The Committees mandate.

Committee methods of work.

Committee's work plan.

How far the Committee deliberated on the Bill.

Analysis of issues on the Report and the Draft Bill.

The Committee's recommendations on the principles of devolution, levels of devolution and zones.

MIN. NCC TWC G. 16/05/2004: ADJOURNMENT

The Convenor adjourned the Meeting at 1.05 p.m until this afternoon at 2.30 p.m.

AFTERNOON SITTING

Debate interrupted resumed.

The Committee resolved that a map showing the division of country into Zone should be included in the Committee Report.

It was noted that that some of the Interim Reports did not have the Draftsperson's report and it was therefore resolved that they should be retrieved and updated accordingly.

MIN. NCC TWC G. 16/06/2004: VISIT TO KILIFI

The Rapporteurs reported that they had visited Kilifi District Development Programme (KDDP) to familiarize themselves with and learn about development projects initiated, funded and managed by local communities. The Committee asked the Rapporteurs to persuade CKRC and Parliament to sponsor all the Members to visit the project because it would be beneficial to the Committee.

MIN. NCC TWC G. 16/07/2004: COMMITTEE NEEDS

The Convenor and Members underscored the need for objectives multi-disciplinary experts to advise on the following areas:

Financial and fiscal Aspects of Devolution.

Distribution of functions between and among the various levels of government.

Cost benefit analysis of the proposed devolution structure.

The Committee noted that a section of the public was opposed to the proposed devolution structure because it would be too expensive to implement. In this case therefore, the Secretariat was asked to invite the following experts with specific terms of reference, **Mr. Julius Kipngetich, Prof. Peter Wanyande, Mr. N. T. T. Simiyu, Prof. Willis Kosura and Mr. Andrew Okello** to address the Committee on the various Committee needs.

The Committee agreed that once the Committee had deliberated Draft Devolution Chapter, the Committee would, if necessary, revisit some of its decisions on zoning.

MIN. NCC TWC G. 16/08/2004: ADJOURNMENT

The meeting adjourned at 4.19 until January 14, 2004 at 9.00 a.m.

CONFIRMED

DATE

CONVENOR

**MINUTES OF THE SEVENTEENTH MEETING OF THE TECHNICAL
WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER OF THE
DRAFT BILL HELD ON WEDNESDAY 14TH JANUARY 2004 AT
COMMITTEE TENT 7, BOMAS OF KENYA AT 10.00 A.M**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Ahmed Maalim Omar	255
6. Hon. Alex Chepkwony	367
7. Hon. Amos Kiumo	271
8. Hon. Caleb Jumba	385
9. Hon. Daniel Khamasi	053
10. Hon. Daniel Ole Osoi	364
11. Hon. Elkanah Odembo	453
12. Hon. G. B. Galgallo	026
13. Hon. G. Ndatho Muchiri	301
14. Hon. George Kinyua	577
15. Hon. George Mburu Mwaura	586
16. Hon. Gloria Wabwire	396
17. Hon. Grace Akinyi Ogot	399
18. Hon. Guracha Denge Wario	265
19. Hon. Hellen Koring'ura	324
20. Hon. Henry Kosgey	077
21. Hon. Isa Ireri Ngunia	286
22. Hon. J. J. Kamotho	040
23. Hon. J. Kinuthia Mwangi	319
24. Hon. J. Mwangi Waweru	310
25. Hon. James F. T. Foster	488
26. Hon. Tecla Nairesiai	357
27. Hon. Kauchi Chivumba	494
28. Hon. Leslie Mwachiro	599
29. Hon. Mercy Mwamburi	492
30. Hon. Mereso Agina	508
31. Hon. Michael Githu	355
32. Hon. Mwinyi Haji Mwijaa	234
33. Hon. Nicholas Biwott	016
34. Hon. Otieno Ogingo	413
35. Hon. Pius Lobuk	328
36. Hon. Shaaban Ali Isaack	187
37. Hon. Rev. Macharia Muchuga	226
38. Hon. Syongoh Zaddock Madiri	195
39. Hon. Sospeter Ojaamong	159
40. Hon. Wilberforce Kisiero	389
41. Hon. Juma Wario	241

42. Hon. Simeon Shitemi	545
43. Hon. Maero Tindi	444
44. Hon. Mark Olunga Odhiambo	412
45. Hon. Isaiah Cheruiyot	346
46. Hon. J. S. Mathenge	308
47. Hon. M. Nyathogora	303
48. Hon. Mohamed Yusuf Haji	031
49. Hon. Simeon Nyachae	149
50. Hon. Raphael Livu	228
51. Hon. Fatuma Sheikh Mohamed	254

Absent

1. Hon. Adan A. Sugow	193
2. Hon. G. G. Kariuki	042
3. Hon. Betty Njeri Tett	222
4. Hon. Bonaya Godana Adhi	029
5. Hon. C. Murungaru	123
6. Hon. Hezron Manduku	092
7. Hon. Kenneth Marende	096
8. Hon. Patrice M. Ivuti	032
9. Hon. Patrick O. Onyango	590
10. Hon. Suleiman Shakombo	189

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Fidelis Wangata	Assistant Programme Officer
3. Mr. Evans Menach	Assistant Programme Officer
4. Ms. Joyce Ndumia	Assistant Programme Officer
5. Mr. Peter Barrett	Drafts person
6. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. Dr. Pamela N. Kola	NGO Council
3. Adan Jirma Duba	Northern NGO Forum
4. Medina Ibrahim Asman	Nubian Community
5. J. B. Okara	COMESA

The Meeting opened with prayers.

MIN. NCC. TWC G. 17/01/2004: COMMUNICATION FROM THE CHAIR

Minutes of the Sixteenth Meeting held on Tuesday 13th January, 2004 were confirmed by the Members present and signed by the Convenor having been proposed by the Hon. Kinuthia Waweru and seconded by Hon. Mercy Mwamburi.

MIN. NCC. TWC G. 17/02/2004: SPECIAL WORKING DOCUMENT OF THE NATIONAL CONSTITUTIONAL CONFERENCE

The Rapporteurs presented to the Committee a special working document prepared by National Constitutional Conference on the devolution of powers.

They informed the Committee that the document was prepared after Commission identified the following areas touching on the devolution chapter, which needed further research with a view to giving more information and clarification to the Committee.

1. Structure and representation in a devolved system of government.
2. Distribution of functions in the devolved system of government. This entails the powers and functions of regional chief executives, regional council, regional civil service and the county government.
3. The structure and management of Nairobi region as a special case; and
4. Fiscal and financial aspects of devolution which explains the audit system and the budget process in the devolved governments.
5. They further informed the Committee that the Commission organized a workshop where experts and various stakeholders including local authorities participated in the workshop where their views formed the special working document.
6. They called upon the Members to study the document because it would assist them during consideration of the Draft Bill.
7. The Rapporteurs presented a report from Association of Local Government of Kenya (ALGAK) on the Cost of Devolution.

MIN. NCC. TWC G. 17/03/2004: ANY OTHER BUSINESS

The Committee noted that during the deliberation on the levels of government specifically the constitution of the nineteen regions, the naming of the regions was not done. The Committee therefore resolved to name them after the consideration of the remaining articles of the Draft Bill.

MIN. NCC. TWC G. 17/04/2004: ADJOURNMENT

The Convenor adjourned the meeting at 12.07 p.m. until this afternoon at 2.30 p.m.

AFTERNOON SESSION

The meeting reconvened at 3.30 p.m.

MIN. NCC. TWC G. 17/05/2004: CONSIDERATION OF THE DRAFT BILL

The committee considered the Draft Bill as follows:

Article 219 – Zonal Government

Motion (Wilberforce Kisiero)

(i) Proposed the following amendment to the Article

That delete the word “Zonal” and in place thereof insert the word “region” and wherever it is referred to in the Draft Bill”

Question of the amendment Proposed;

Debate Arising;

Question put and agreed to

Motion (Hon. Ahmed Maalim Omar)

That Article 219 be amended to read as follows:

“A regional government, consisting of a regional legislature Assembly, and a regional executive, is established for each region”

Question proposed;

Debate arising;

Proposed amendment to the amended motion (Hon Wilfred Machage)

That the Article 219 be amended as follows:

That a regional authority, consisting of a regional legislative assembly and a regional executive is established for each region”.

Question of the amendment to the motion proposed;

Debate arising;

Question on the amendment proposed, put and negatived

Resumption of debate on the original motion;

Debate arising;

Question put and agreed to.

“That a regional government, consisting of a regional legislative Assembly and a regional executive, is established for each region”.

MIN. NCC. TWC G. 17/06/2004: ANY OTHER BUSINESS

The following issues were discussed.

(i) Kilifi Visit

The committee deliberated on the visit to Kilifi Development Programme.

The Rapporteurs informed the Committee that there was a group willing to sponsor twenty five (25) delegates to visit the project. In the event that the group could not be able to fund all the delegates the Commission would approach UNDP to fund the rest. The Rapporteurs undertook to report back on the way forward in the next meeting.

(ii) Experts to be invited

The Rapporteurs reported to the committee that Mr. Titi Simiyu will address the issue on the various committee needs on Monday 19, 2004. The Commission would develop specific terms of reference for the experts.

(iii) Committee Working Document

Members noted that, there were many documents availed to the Committee. The Committee agreed that their working documents were:

- a. Devolution chapter (chapter 10)
- b. The yellow Devolution Report
- c. Draft Bill
- d. Revised Specific Working document by the NCC.

(iv) Committee Programme of Work

The committee noted that there was need to prepare its programme of activities for the two weeks time allocated to Technical Working Groups. The Rapporteurs undertook to present a programme on the Committee activities in the next meeting.

MIN. NCC. TWC G. 17/07/2004: ADJOURNMENT

The Convenor adjourned the meeting at 4.56 p.m. until Thursday, 12th January, 2003 at 9.00 a.m.

CONFIRMED

DATE

CONVENOR

**MINUTES OF THE EIGHTEENTH MEETING OF THE TECHNICAL
WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER OF THE
DRAFT BILL HELD ON THURSDAY 15TH JANUARY 2004 AT
COMMITTEE TENT 7, BOMAS OF KENYA AT 9.00 A.M**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Adan A. Sugow	193
6. Hon. Ahmed Maalim Omar	255
7. Hon. Alex Chepkwony	367
8. Hon. Amos Kiumo	271
9. Hon. Caleb Jumba	385
10. Hon. Daniel Khamasi	053
11. Hon. Daniel Ole Osoi	364
12. Hon. Elkanah Odembo	453
13. Hon. Fatuma Sheikh Mohamed	254
14. Hon. G. B. Galgallo	026
15. Hon. G. Ndatho Muchiri	301
16. Hon. G. G. Kariuki	042
17. Hon. George Kinyua	577
18. Hon. George Mburu Mwaura	586
19. Hon. Gloria Wabwire	396
20. Hon. Grace Akinyi Ogot	399
21. Hon. Guracha Denge Wario	265
22. Hon. Hellen Koring'ura	324
23. Hon. Henry Kosgey	077
24. Hon. Hezron Manduku	092
25. Hon. Isa Ileri Ngunia	286
26. Hon. Isaiah Cheruiyot	346
27. Hon. J. Kinuthia Mwangi	319
28. Hon. J. Mwangi Waweru	310
29. Hon. J. J. Kamotho	040
30. Hon. J. S. Mathenge	308
31. Hon. James F. T. Foster	488
32. Hon. John Katuku	046
33. Hon. Juma Wario	241
34. Hon. Kauchi Chivumba	494
35. Hon. Kenneth Marende	096
36. Hon. Leslie Mwachiro	599
37. Hon. M. Nyathogora	303
38. Hon. Machage W. Gisuka	085
39. Hon. Mercy Mwamburi	492
40. Hon. Mereso Agina	508

41. Hon. Michael Githu	355
42. Hon. Mwinyi Haji Mwijaa	234
43. Hon. Nicholas Biwott	016
44. Hon. Otieno Ogingo	413
45. Hon. Pius Lobuk	328
46. Hon. Patrick O. Onyango	590
47. Hon. Rev. Macharia Muchuga	226
48. Hon. Syongoh Zaddock Madiri	195
49. Hon. Sospeter Ojaamong	159
50. Hon. Wilberforce Kisiero	389
51. Hon. Simeon Shitemi	545
52. Hon. Maero Tindi	444
53. Hon. Prof. Mark Olunga Odhiambo	412
54. Hon. Mohamed Yusuf Haji	031
55. Hon. Raphael Livu	228
56. Hon. Tecla Nairesiai	357
57. Hon. Suleiman Shakombo	189
58. Hon. Betty Njeri Tett	222

Absent

1. Hon. Bonaya Godana Adhi	029
2. Hon. C. Murungaru	123
3. Hon. Patrice M. Ivuti	032
4. Hon. Shaaban Ali Isaack	187
5. Hon. Simeon Nyachae	149

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Fidelis Wangata	Assistant Programme Officer
3. Mr. Evans Menach	Assistant Programme Officer
4. Ms. Joyce Ndumia	Assistant Programme Officer
5. Mr. Peter Barrett	Drafts person
6. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. Dr. Pamela N. Kola	NGO Council
3. Adan Jirma Duba	Northern NGO Forum
4. Amina H. Ali	Women Political Caucus
5. Dr. Henry K. Rono	Kenyatta University
6. Rachel Shebesh	L. K. W. V
7. Kimaiyo Kiptanui	

The Meeting opened with prayers.

MIN. NCC. TWC G. 18/01/2004: COMMUNICATION FROM THE CHAIR

The Convener requested the Members to be punctual for the Committee deliberations to start as early as possible.

MIN. NCC. TWC G. 18/01/2004: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the Seventeenth meeting held on Wednesday, 14th 2004 were confirmed by the Members present and signed by the Convener after being proposed by the Hon. James Foster and seconded by the Hon. Caleb Jumba.

MIN. NCC. TWC G. 18/02/2004: WORKING PROGRAMME OF THE COMMITTEE'S WORK

The Rapporteurs presented a tentative working programme of the Committee as a guide to the Committee during its deliberations. The Committee adopted the programme subject to occasional adjustments by the committee to meet its requirements.

MIN. NCC. TWC G. 18/03/2004: CONSIDERATION OF THE DRAFT BILL

The Committee considered the Article 220 (1-7) (**Regional Assemblies**) and introduced new principles before substantial deliberations of the Article. The Committee therefore, resolved that the Article be amended and redrafted accordingly to reflect the following principles:

- That County Councils shall constitute the electoral colleges for the purpose of electing representatives to the Regional Legislative Assembly.
- That the Members of the Regional Legislative Assembly shall be elected within the Countries, but from outside the membership of County Councils to avoid double representation.
- That electing the representatives to the Regional Legislative Assembly, Counties shall take into consideration the various diversities represented in the County.
- That the representatives of the Regional Legislative Assembly shall be ex-officio Members of their respective County Councils.
- That Members of the Regional Legislative Assembly be subject to recall by their respective County Councils.
- The Article was therefore deferred for the new principles to be incorporated in the Draft before its consideration.

MIN. NCC. TWC G. 18/04/2004: ADJOURNMENT

The Convenor adjourned the meeting at 12.55 p.m. until this afternoon at 2.00 p.m.

AFTERNOON SESSION

The meeting reconvened at 2.15 p.m.

MIN. NCC. TWC G. 18/05/2004: CONSIDERATION OF THE DRAFT BILL

The Committee considered the Draft Bill as follows: -

1. Article 221 – Functions and Legislative authority of regional governments.

MOTION

That the Article be adopted as indicated in the Draft Bill subject to refinement by the drafts person.

(Hon. Mwaura Mburu)

Question proposed;
Debate arising;
Question put and agreed to.

The Committee further proposed that the office of the Regional Assembly be established.

2. Article 222 – Procedures of regional Assemblies

MOTION

That the Article 222 be adopted as indicated in the Draft Bill.

(Hon. James Mathenge).

Question proposed;
Debate arising;
Question put and agreed to.

3. Article 223 – Regional Executive

The Committee considered the Article and introduced the following new principles to be included in the Article and resolved that the Article be redrafted accordingly for the Committee reconsideration;

- The head of the regional government be called a Regional Premier.
- That all the County Councils within the region will form an electoral college for the purposes of electing the regional premier.
- That the term of office of the Regional Premier will be five years.
- That Regional Premier will be elected from outside the Electoral College but form within the region.
- That the position of a deputy Regional Premier be established.

- That there should be a clause in the Draft Bill for the establishment of the Regional Civil Service.

MIN. NCC. TWC G. 18/06/2004: ADJOURNMENT

The Convener adjourned the meeting at 4.35 p.m until Friday, 16th January 2004, at 9.00 a.m.

CONFIRMED

CONVENOR

DATE

**MINUTES OF THE NINETEENTH MEETING OF THE TECHNICAL
WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER OF THE
DRAFT BILL HELD ON FRIDAY 16TH JANUARY 2004 AT COMMITTEE
TENT 7, BOMAS OF KENYA AT 9.00 A.M**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Adan A. Sugow	193
6. Hon. Ahmed Maalim Omar	255
7. Hon. Alex Chepkwony	367
8. Hon. Amos Kiumo	271
9. Hon. Caleb Jumba	385
10. Hon. Daniel Khamasi	053
11. Hon. Daniel Ole Osoi	364
12. Hon. Elkanah Odembo	453
13. Hon. Fatuma Sheikh Mohamed	254
14. Hon. G. Ndatho Muchiri	301
15. Hon. George Kinyua	577
16. Hon. George Mburu Mwaura	586
17. Hon. Gloria Wabwire	396
18. Hon. Grace Akinyi Ogot	399
19. Hon. Guracha Denge Wario	265
20. Hon. Hellen Koring'ura	324
21. Hon. Henry Kosgey	077
22. Hon. Hezron Manduku	092
23. Hon. Isa Ireri Ngunia	286
24. Hon. Isaiah Cheruiyot	346
25. Hon. J. Kinuthia Mwangi	319
26. Hon. J. Mwangi Waweru	310
27. Hon. J. J. Kamotho	040
28. Hon. J. S. Mathenge	308
29. Hon. James F. T. Foster	488
30. Hon. Juma Wario	241
31. Hon. Leslie Mwachiro	599
32. Hon. M. Nyathogora	303
33. Hon. Mercy Mwamburi	492
34. Hon. Mereso Agina	508
35. Hon. Michael Githu	355
36. Hon. Mwinyi Haji Mwijaa	234
37. Hon. Nicholas Biwott	016
38. Hon. Otieno Ogingo	413
39. Hon. Pius Lobuk	328
40. Hon. Patrick O. Onyango	590

41. Hon. Rev. Macharia Muchuga	226
42. Hon. Syongoh Zaddock Madiri	195
43. Hon. Wilberforce Kisiero	389
44. Hon. Simeon Shitemi	545
45. Hon. Maero Tindi	444
46. Hon. Prof. Mark Olunga Odhiambo	412
47. Hon. Mohamed Yusuf Haji	031
48. Hon. Raphael Livu	228
49. Hon. Tecla Nairesiai	357
50. Hon. Suleiman Shakombo	189
51. Hon. Betty Njeri Tett	222
52. Hon. Shaaban Ali Isaack	187

Absent with apology

1. Hon. Kauchi Chivumba	494
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Absent

1. Hon. Bonaya Godana Adhi	029
2. Hon. C. Murungaru	123
3. Hon. Patrice M. Ivuti	032
4. Hon. Simeon Nyachae	149
5. Hon. G. B. Galgallo	026
6. Hon. G. G. Kariuki	042
7. Hon. John Katuku	046
8. Hon. Kenneth Marende	096
9. Hon. Machage W. Gisuka	085
10. Hon. Sospeter Ojaamong	159

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Fidelis Wangata	Assistant Programme Officer
3. Mr. Evans Menach	Assistant Programme Officer
4. Ms. Joyce Ndumia	Assistant Programme Officer
5. Mr. Peter Barrett	Drafts person
6. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. Dr. Pamela N. Kola	NGO Council
3. Adan Jirma Duba	Northern NGO Forum
4. Amina H. Ali	Women Political Caucus
5. Dr. Henry K. Rono	Kenyatta University
6. Rachel Shebesh	L. K. W. V
7. Nuria Gollo	Borana Community
8. Peter Ligale	National Youth Rights Forum

The Meeting opened with prayers.

MIN. NCC. TWC G. 19/01/2004: ANNOUNCEMENTS

The following announcements were made: -

Visit to Kilifi

The Rapporteur informed the Committee that the visit to Kilifi by all Members has been approved to take place from Friday 23rd January, 2004 to Sunday 25th January, 2004.

The Committee discussed the possibility of inviting Members from other Technical Working Committees and Observers for the visit and agreed that the issue be considered after finalizing with the list of the Members of the Committee who were going to undertake the visit.

Experts

The Rapporteurs reported to the Committee that Mr. Titi Simiyu will meet the Committee on Thursday, 22nd January, 2004 and Mr. Andrew Okello of Kenya Revenue Authority would also meet the Committee on either 20th or 21st January, 2004.

MIN. NCC. TWC G. 19/02/2004: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the Eighteenth meeting held on Thursday 16th January, 2004 were confirmed by the Members present and signed by the Convenor after being proposed by the Hon. Alexander Chepkwony and seconded by the Hon. Denge Wario.

MIN. NCC. TWC G. 19/03/2004: MATTERS ARISING

The following matters were raised:

1. Under MIN. NCC. TWC G. 18/03/2004, the Committee resolved that the following new principles be included in Article 220 (Regional Assemblies):

That the Speaker of the Regional Legislative Assembly, Regional Premier and the Deputy Regional Premier should come from different counties within the region where applicable.

That the Regional Legislative Assembly Executive Committee Members should not exceed one third of the total membership of the Assembly.

That the structure and management of special units for instance Teso (Unit 19) and Nairobi be included in the Article.

2. Under MIN. NCC. TWC G. 18/05/2004, the Committee proposed the following new principles to be included in Article 223 (Regional Executive).

- That the Deputy Regional Premier be elected directly in the same manner as the Regional Premier.
- That the Regional Premier be elected by two-thirds of the Members of the Electoral College and in the event that he/she fails to garner the requisite votes, there shall be a run of where the candidate who garners simple majority votes in the region will be the Regional Premier.
- That in the event that a county representative wants to vie for the office of the Regional Premier, he/she should resign from the office for him to contest.
- That the powers of the Regional executive Committee should be vested in the Regional Premier who chairs their executive Committee.
- That all the authorities vested in the Regional Legislative Assembly should be answerable to the Assembly.

MIN. NCC. TWC G. 19/04/2004: CONSIDERATION OF THE DRAFT BILL

The Committee considered the Draft Bill as follows: -

Article 224 – Functions of Regional executive Committee

(i) Sub-Article 224(1)

Motion

That the sub-article be amended as follows:

That the word “**zonal chief executive**” be deleted and in place thereof insert the word “**Regional Premier**”.

(Hon. Leslie Mwachiro)

Question proposed;
Debate arising;
Question put and agreed to.

(ii) Sub-Article 224(2)

Motion

That the sub-article be adopted as indicated in the Draft Bill

(Hon. Ahmed Omar)

Question proposed;
Debate arising;
Question put and agreed to.

(iii) Sub-Article 224(3)

Motion

(a) That the Article be adopted as indicated in the Draft Bill.

(Hon. Alex Chepkwony)

Question proposed;

Debate arising;

Question put and agreed to.

(b) That the article be expanded to include all the functions of the Regional Executive Committee as outlined in the Constitution and other related legislation.

(Hon. Nicholas Biwott)

Question proposed;

Debate arising;

Question put and agreed to.

(iv) Sub-Article 224 (4)

Motion

That the sub-article be amended by inserting the words “**and constituted**” immediately after the word “**elected**” in the third line.

(Hon. James Waweru)

Question proposed;

Debate arising;

Question put and agreed to.

MIN. NCC. TWC G. 19/05/2004: ADJOURNMENT

The Convenor adjourned the meeting at 12.35 p.m until Monday, 19th January, 2004 at 9.00 a.m.

CONFIRMED

DATE

CONVENOR

**MINUTES OF THE TWENTIETH MEETING OF THE TECHNICAL
WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER OF THE
DRAFT BILL HELD ON MONDAY 19TH JANUARY 2004 AT COMMITTEE
TENT 7, BOMAS OF KENYA AT 9.00 A.M**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Adan A. Sugow	193
6. Hon. Ahmed Maalim Omar	255
7. Hon. Alex Chepkwony	367
8. Hon. Amos Kiumo	271
9. Hon. Daniel Khamasi	053
10. Hon. Daniel Ole Osoi	364
11. Hon. Elkanah Odembo	453
12. Hon. Fatuma Sheikh Mohamed	254
13. Hon. G. Ndatho Muchiri	301
14. Hon. George Kinyua	577
15. Hon. George Mburu Mwaura	586
16. Hon. Gloria Wabwire	396
17. Hon. Grace Akinyi Ogot	399
18. Hon. Hellen Koring'ura	324
19. Hon. Henry Kosgey	077
20. Hon. Hezron Manduku	092
21. Hon. Isa Ireri Ngunia	286
22. Hon. Isaiah Cheruiyot	346
23. Hon. J. Kinuthia Mwangi	319
24. Hon. J. J. Kamotho	040
25. Hon. J. S. Mathenge	308
26. Hon. James F. T. Foster	488
27. Hon. Leslie Mwachiro	599
28. Hon. M. Nyathogora	303
29. Hon. Mercy Mwamburi	492
30. Hon. Mereso Agina	508
31. Hon. Michael Githu	355
32. Hon. Mwinyi Haji Mwijaa	234
33. Hon. Nicholas Biwott	016
34. Hon. Otieno Ogingo	413
35. Hon. Pius Lobuk	328
36. Hon. Patrick O. Onyango	590
37. Hon. Rev. Macharia Muchuga	226
38. Hon. Syongoh Zaddock Madiri	195
39. Hon. Wilberforce Kisiero	389
40. Hon. Simeon Shitemi	545
41. Hon. Maero Tindi	444

42. Hon. Prof. Mark Olunga Odhiambo	412
43. Hon. Mohamed Yusuf Haji	031
44. Hon. Raphael Livu	228
45. Hon. Tecla Nairesiai	357
46. Hon. Suleiman Shakombo	189
47. Hon. Betty Njeri Tett	222
48. Hon. G. G. Kariuki	042
49. Hon. John Katuku	046
50. Hon. Kenneth Marende	096
51. Hon. Machage W. Gisuka	085
52. Hon. Kauchi Chivumba	494
53. Hon. Caleb Jumba	385
54. Hon. Guracha Denge Wario	265
55. Hon. Juma Wario	241
56. Hon. G. B. Galgallo	026
57. Hon. J. Mwangi Waweru	310

Absent

1. Hon. Bonaya Godana Adhi	029
2. Hon. C. Murungaru	123
3. Hon. Patrice M. Ivuti	032
4. Hon. Simeon Nyachae	149
5. Hon. Shaaban Ali Isaack	187
6. Hon. Sospeter Ojaamong	159

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Fidelis Wangata	Assistant Programme Officer
3. Mr. Evans Menach	Assistant Programme Officer
4. Ms. Joyce Ndumia	Assistant Programme Officer
5. Mr. Peter Barrett	Drafts person
6. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. Dr. Pamela N. Kola	NGO Council
3. Adan Jirma Duba	Northern NGO Forum
4. Amina H. Ali	Women Political Caucus
5. Rachel Shebesh	L. K. W. V
6. Nuria Gollo	Borana Community
7. Peter Ligale	National Youth Rights Forum
8. Medina Ibrahim	

The Meeting opened with prayers.

MIN. NCC. TWC G. 20/01/2004: ANNOUNCEMENTS

The Convenor informed the Members that those who have not indicated their names for the visit to Kilifi should do so with the Secretariat.

MIN. NCC. TWC G. 20/02/2004: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the Nineteenth meeting held on Friday, 16th January 2004 were confirmed by the Members present and signed by the Convenor after being proposed by Hon. Yusuf Haji and seconded by Hon. Simeon Shitemi.

MIN. NCC. TWC G. 20/03/2004: PROPOSAL ON THE STRUCTURE AND MANAGEMENT OF THE NAIROBI CITY

The Rapporteur referred the Committee to the special working document on the Devolution of Powers prepared by the Constitution of Kenya Review Commission.

They informed the Committee that there were two models proposed for the structure and management of Nairobi city. The two models recommended the division of Nairobi into four boroughs or municipalities.

The first model proposed that Nairobi be sub-divided into four Municipalities as follows: -

- Lang'ata Municipality consisting of Dagoretti and Lang'ata constituencies.
- Westlands Municipality consisting of Westlands and Kasarani constituencies.
- Starehe Municipality consisting of Starehe and Kamukunji constituencies.
- Embakasi Municipality consisting of Embakasi and Makadara constituencies.
- The second model recommended that Nairobi be sub-divided into four boroughs as follows: -
- Westlands borough consisting of Westlands, Starehe and Dagoretti constituencies.
- Kasarani borough consisting of Kasarani and Kamukunji constituencies.
- Lang'ata borough consisting of Lang'ata and Makadara constituencies.
- Embakasi borough consisting of only Embakasi constituency.
- The Committee therefore, adopted the second model for the Structure and Management of Nairobi city.
- The Committee further proposed the following principles be included in the Structure and Management of the city.
- That Nairobi City be treated as a special unit and managed as specified in an Act of Parliament.

- That Nairobi be managed as a metropolitan capital city with a Mayor who will be directly elected by the residents of the city.

MIN. NCC. TWC G. 20/04/2004: CONSIDERATION OF THE DRAFT BILL (PART III)

The Committee considered the Draft Bill as follows: -

(i) Amendment Motion

That the Article be amended by deleting the words “**county governments and counties**” and inserting thereof the words “**District and District governments**” and wherever they are referred to in the Draft Bill.

(Hon. J. Mwangi Waweru)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

(ii) Amendment Motion

A new Sub-Article 225(1)

That a new sub-article be inserted to read as follows: -

“That the district government is the principle level of devolution of powers”.

(Hon. Wilberforce Kisiero)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

(iii) Amendment Motion

“The existing sub-article (225)(1) be re-numbered as 225(2) and adopted as indicated in the Draft Bill”.

(Hon. Ahmed Omar)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

(iv) Amendment Motion

A new Sub-Article 225(3)

That a new sub-article 225(3) be inserted to read as follows:-

“The Regional Legislative Assemblies have jurisdiction to consider and upgrade sub-districts to district status where applicable and economically viable within their regions”.

(Hon. Ahmed Omar)

Motion moved and seconded;
Motion made and question proposed;
Debate arising;
Question put and negatived.

Debate interrupted resumed;

(v) **Amendment Motion**

That article 225 (2) be re-numbered as 225(3) and adopted as indicated in the Draft.

(Hon. Alex Chepkwony)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

MIN. NCC. TWC G. 20/05/2004: ADJOURNMENT

The Convenor adjourned the meeting at 12.55 p.m. until this afternoon at 2.30 p.m.

AFTERNOON SESSION

The Committee reconvened at 2.30 p.m.

MIN. NCC. TWG G. 20/06/2004: CONSIDERATION OF THE DRAFT BILL

The Committee considered the Draft Bill as follows:

Article 225 – District and district governments

The Committee deferred the Article for further information to be included on the establishment of criteria of distinguishing urban counties, procedure of graduating a rural district to an urban district and the criteria of classification of an area within a district as urban.

Article 226 – District Councils

Motion

That Article 226 be adopted without amendments.

(Hon. Kenneth Marende)

Motion made and question proposed;

Debate arising;

Question put and agreed to;

A new Article 227 – Legislative Authority and districts

Amendment Motion

That a new Article 227 be inserted to read as follows:-

“(1) The legislative authority of a district is vested in its district council. The powers and functions of such district council shall be:-

to pass laws for its district with regard to:-

- any matter within a functional area listed in section or schedule; -
- any matter within a functional area listed in section or schedule;-
- any matter outside those functional areas, and that is expressly assigned to the districts by national and or regional legislation; and
- any matter for which a provision of the constitution envisages the enactment of a county or district law

A district council has power to pass any laws that are reasonably necessary for or incidental to the effective exercise of powers and performance of functions that are assigned to the district.

A district council may recommend to the regional assembly the enactment of legislation concerning any matter outside the authority of that district council, or in respect of which a national or a regional legislation contradicts a district law.

Through its elected member a district council shall elect its district members to the regional assembly and participate in the election of the regional Premier and Deputy Premier.

The district level of government, by legislative and other measures, must ensure and co-ordinate the participation of communities and locations in governance at the local level and assist communities and locations to develop the administrative capacity for the effective exercise of the powers and functions and participation in governance at the local level.

A district council has the power to formulate plans and policies for the management and exploitation of the district resources and development and management of the county’s infrastructure and institutions.

In the exercise of its legislative authority, a district council has power to: -

- consider, pass, amend or reject any bill before it;
- initiate or prepare bills or laws, except money bills;
- hold all district executive organs accountable to it;

- maintain oversight over the exercise of district executive authority particularly the implementation of laws and other legislation required to be implemented by the district government;
- summon any person to appear before it or anyone of its committees for purposes of giving evidence or information.

In the exercise and performance of its powers and functions, a district council is bound only by the Constitution and must act in accordance with, and within the limits of the Constitution.

(Hon. Hezron Manduku)

Motion made and question proposed;
 Debate arising;
 Question put and agreed to;

(4) Article 227 (1)

(a) Amendment Motion

That the sub-article be amended by deleting the words “**not more than**” in the first line.

(Hon. G. G. Kariuki)

Motion made and question proposed;
 Debate arising;
 Question put and agreed to.

(b) Amendment Motion

That sub – article 228 (3) be amended by deleting the word “**four**” and inserting the word “**five**”.

(Hon. Hezron Manduku)

Motion made and question proposed;
 Debate arising;
 Question put and agreed to;

(5) Sub-article 229 (1) (a)

(a) Amendment Motion

That the words “**twenty-one** members are to be” and insert thereof with the word “**members are**” in the first line”

(Hon. Kenneth Marende)

Motion made and question proposed;
 Debate arising;
 Question put and agreed to.

(6) Sub-Article 229(1) (b) and (c)

The Committee deferred Sub-article 229 (1) (b) and (c) for further consultations with the Committee on the Representation of the People concerning their proposals on the proportional representation.

MIN. NCC. TWG G 20/07/2004 – ADJOURNMENT

The Convenor adjourned the meeting at 4.50 p.m. until Tuesday 20th January 2004.

CONFIRMED _____

CONVENOR
DATE _____

**MINUTES OF THE TWENTY FIRST MEETING OF THE TECHNICAL
WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER OF THE
DRAFT BILL HELD ON TUESDAY 20TH JANUARY 2004 AT COMMITTEE
TENT 7, BOMAS OF KENYA AT 9.00 A.M**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Alex Chepkwony	367
6. Hon. Amos Kiumo	271
7. Hon. Daniel Khamasi	053
8. Hon. Fatuma Sheikh Mohamed	254
9. Hon. G. Ndatho Muchiri	301
10. Hon. George Kinyua	577
11. Hon. George Mburu Mwaura	586
12. Hon. Gloria Wabwire	396
13. Hon. Grace Akinyi Ogot	399
14. Hon. Hellen Koring'ura	324
15. Hon. Henry Kosgey	077
16. Hon. Hezron Manduku	092
17. Hon. Isa Ireri Ngunia	286
18. Hon. Isaiah Cheruiyot	346
19. Hon. J. Kinuthia Mwangi	319
20. Hon. J. S. Mathenge	308
21. Hon. James F. T. Foster	488
22. Hon. Leslie Mwachiro	599
23. Hon. M. Nyathogora	303
24. Hon. Mercy Mwamburi	492
25. Hon. Mereso Agina	508
26. Hon. Michael Githu	355
27. Hon. Mwinyi Haji Mwijaa	234
28. Hon. Nicholas Biwott	016
29. Hon. Otieno Ogingo	413
30. Hon. Patrick O. Onyango	590
31. Hon. Rev. Macharia Muchuga	226
32. Hon. Syongoh Zaddock Madiri	195
33. Hon. Wilberforce Kisiero	389
34. Hon. Simeon Shitemi	545
35. Hon. Maero Tindi	444
36. Hon. Prof. Mark Olunga Odhiambo	412
37. Hon. Mohamed Yusuf Haji	031
38. Hon. Raphael Livu	228
39. Hon. Tecla Nairesiai	357
40. Hon. Suleiman Shakombo	189
41. Hon. Betty Njeri Tett	222

42. Hon. Kenneth Marende	096
43. Hon. Machage W. Gisuka	085
44. Hon. Kauchi Chivumba	494
45. Hon. Caleb Jumba	385
46. Hon. Guracha Denge Wario	265
47. Hon. Juma Wario	241
48. Hon. G. B. Galgallo	026
49. Hon. Shaaban Ali Isaack	187
50. Hon. Sospeter Ojaamong	159
51. Hon. J. J. Kamotho	040
52. Hon. Daniel Ole Osoi	364
53. Hon. G. G. Kariuki	042
54. Hon. John Katuku	046
55. Hon. J. Mwangi Waweru	310

Absent

1. Hon. Bonaya Godana Adhi	029
2. Hon. C. Murungaru	123
3. Hon. Patrice M. Ivuti	032
4. Hon. Simeon Nyachae	149
5. Hon. Adan A. Sugow	193
6. Hon. Ahmed Maalim Omar	255
7. Hon. Elkanah Odembo	453
8. Hon. Pius Lobuk	328

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Fidelis Wangata	Assistant Programme Officer
3. Mr. Evans Menach	Assistant Programme Officer
4. Ms. Joyce Ndumia	Assistant Programme Officer
5. Mr. Peter Barrett	Drafts person
6. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. Dr. Pamela N. Kola	NGO Council
3. Adan Jirma Duba	Northern NGO Forum
4. Rachel Shebesh	L. K. W. V
5. Nuria Gollo	Borana Community
6. Peter Ligale	National Youth Rights Forum
7. Medina Ibrahim	
8. Ascar Kwamboka	Activist

The Meeting opened with prayers.

MIN. NCC. TWC G. 21/01/2004: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the Twentieth meeting held on Monday 19th January, 2004 were confirmed by the Members present and signed by the Convenor having been proposed by the Hon. Kauchi Chivumba and seconded by the Hon. James Mathenge.

MIN. NCC. TWC G. 21/02/2004: CONSIDERATION OF THE DRAFT BILL

The Committee considered the Draft Bill as follows: -

1. Sub-article 229(1)(b)(8) -

The Committee deferred the sub-article to await more input from experts on devolution and proposals from the Technical Working Committees on the Representation of the People and the Legislature, on the mix member proportional representation.

2. Article 229 – Functions and Legislative power of district councils.

Amendment Motion

That Article 229 as indicated in the Draft Bill be deleted

(Hon. Wilberforce Kisiero)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

3. Article 230 – Procedures of district councils

Amendment Motion

That the Article 230 be amended to read as follows:

“Subject to the Constitution and National Legislation, District councils shall regulate its own procedures”.

Motion made and question proposed;

Debate arising;

Question put and agreed to.

(Hon. Kenneth Marende)

The Committee further proposed that the following new principles be included in Article 230.

- That District Council elections would be conducted by the Electoral Commission of Kenya.
- How seats at the District Council may fall vacant.
- How such seats may be filled.

- That members of the District Council should be required to take oath/affirmation of office before taking up office.
- Sessions and dissolution of the District Council and within what period should elections be held, and who may dissolve a District Council.
- Establishment of the offices of Speaker and Deputy Speaker for District Councils and their elections.
- Establishment of a District Civil Service.
- Questions of quorum and voting and decision-making in the District Council.
- Emoluments of the members of District Council by the Salaries & Remunerations Commission.
- The right of the members of the Regional Assembly to sit as ex-officio and speak in their respective district Councils, and that such members may be required to appear before the District Council or a Committee of a District Council.
- Privileges and welfare of members of District Councils.
- Assenting to Bills by the district executive head.
- Members of the District Council should be subjected to a recall by their voters but the recall should not be used against the incumbent without for justification.

4. Article 231 – District executive

A new Sub-article 231(1)(a)

Amendment Motion

That the word “**district chief executive and**” be deleted and in place thereof insert the word “**district governor**” and wherever it is referred to in the Draft Bill.

(Hon. Issa Ireri Ngunia)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

MIN. NCC. TWC G. 21/03/2004: ADJOURNMENT

The Convenor adjourned the meeting at 1.05 p.m. until this afternoon at 2.30 p.m

AFTERNOON SESSION

The Committee reconvened at 2.45 p.m.

MIN. NCC. TWC G. 21/04/2004: CONSIDERATION OF THE DRAFT BILL

The Committee considered the Draft Bill as follows: -

1. Article 231 – District executive

A new sub-article 1(b)

Amendment Motion

That a new sub-article 1(b) be inserted to read “**deputy district governor**”

(Hon. J. Mwangi Waweru)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

Amendment Motion

A new sub-article 1(c)

That a new sub-article 1(c) be inserted to read as follows:

“Not more than ten members appointed by the district governor with the approval of the district council and at no time shall the members appointed be more than one third of the whole council”.

(Hon. Alexander Chepkwony)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

2. A new Article 232

Amendment Motion

That immediately before sub-article 231 (2) insert the following new article to read as follows.

232 – Election of district governor and district deputy governor.

(1) The district governor is elected by registered voters who satisfy the prescribe qualifications relating to residency within the district.

(Hon. Alexander Chepkwony)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

Amendment Motion

That the following sub-article (2) be inserted in the new Article to read as follows:

That the Deputy District governor will be elected as a District governor's running mate.

(Hon. Abel Mwaniki)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

Amendment Motion

That the following sub-Article (3) be inserted in the new Article to read as follows: -

(3) An eligible voter who satisfies the qualifications for membership of the National Assembly and who meets the prescribed requirements relating to residency in the district is eligible to be elected a governor or deputy district governor respectively.

(Hon. Mark Olunga Odhiambo)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

Amendment Motion

That the following sub-Article (4) be inserted in the new Article to read as follows: -

(4) The terms of office of the governor and deputy governor shall be limited to a maximum of two terms of five years each.

(Hon. Fatuma Sheikh)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

The Committee deferred the new article 232 (5) which replaced the existing article 231 (6) for further consultations. The article will be considered in the next meeting.

MIN. NCC. TWC G. 20/05/2004: ADJOURNMENT

The Convenor adjourned the meeting at 4.55 p.m. until Wednesday 21st January, 2004.

CONFIRMED

CONVENOR

DATE

**MINUTES OF THE TWENTY SECOND MEETING OF THE TECHNICAL
WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER OF THE
DRAFT BILL HELD ON WEDNESDAY 21ST JANUARY 2004 AT
COMMITTEE TENT 7, BOMAS OF KENYA AT 9.00 A.M**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Alex Chepkwony	367
6. Hon. Amos Kiumo	271
7. Hon. Daniel Khamasi	053
8. Hon. Daniel Ole Osoi	364
9. Hon. Fatuma Sheikh Mohamed	254
10. Hon. George Kinyua	577
11. Hon. George Mburu Mwaura	586
12. Hon. Gloria Wabwire	396
13. Hon. Grace Akinyi Ogot	399
14. Hon. Hellen Koring'ura	324
15. Hon. Henry Kosgey	077
16. Hon. Hezron Manduku	092
17. Hon. Isa Ireri Ngunia	286
18. Hon. Isaiah Cheruiyot	346
19. Hon. J. Kinuthia Mwangi	319
20. Hon. J. S. Mathenge	308
21. Hon. James F. T. Foster	488
22. Hon. Leslie Mwachiro	599
23. Hon. Mercy Mwamburi	492
24. Hon. Mereso Agina	508
25. Hon. Michael Githu	355
26. Hon. Mwinyi Haji Mwijaa	234
27. Hon. Nicholas Biwott	016
28. Hon. Otieno Ogingo	413
29. Hon. Patrick O. Onyango	590
30. Hon. Rev. Macharia Muchuga	226
31. Hon. Syongoh Zaddock Madiri	195
32. Hon. Wilberforce Kisiero	389
33. Hon. Simeon Shitemi	545
34. Hon. Maero Tindi	444
35. Hon. Prof. Mark Olunga Odhiambo	412
36. Hon. Mohamed Yusuf Haji	031
37. Hon. Raphael Livu	228
38. Hon. Tecla Nairesiai	357
39. Hon. Suleiman Shakombo	189
40. Hon. Betty Njeri Tett	222
41. Hon. Machage W. Gisuka	085

42. Hon. Kauchi Chivumba	494
43. Hon. Caleb Jumba	385
44. Hon. Guracha Denge Wario	265
45. Hon. Juma Wario	241
46. Hon. G. B. Galgallo	026
47. Hon. Shaaban Ali Isaack	187
48. Hon. Sospeter Ojaamong	159
49. Hon. Pius Lobuk	328
50. Hon. G. G. Kariuki	042
51. Hon. John Katuku	046
52. Hon. J. Mwangi Waweru	310

Absent with Apology

Hon. Elkanah Odembo	453
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Absent

1. Hon. Bonaya Godana Adhi	029
2. Hon. C. Murungaru	123
3. Hon. Patrice M. Ivuti	032
4. Hon. Simeon Nyachae	149
5. Hon. Adan A. Sugow	193
6. Hon. Ahmed Maalim Omar	255
7. Hon. G. Ndatho Muchiri	301
8. Hon. M. Nyathogora	303
9. Hon. Kenneth Marende	096
10. Hon. J. J. Kamotho	040

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Fidelis Wangata	Assistant Programme Officer
3. Mr. Evans Menach	Assistant Programme Officer
4. Ms. Joyce Ndumia	Assistant Programme Officer
5. Mr. Peter Barrett	Drafts person
6. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. Dr. Pamela N. Kola	NGO Council
3. Adan Jirma Duba	Northern NGO Forum
4. Rachel Shebesh	L. K. W. V
5. Medina Ibrahim	
6. Ascar Kwamboka	Activist

The Meeting opened with prayers.

MIN. NCC. TWC G. 22/01/2004: ANNOUNCEMENTS

1. The Convenor informed the Members that the final travel itinerary to Kilifi has been finalized and the Members will be informed accordingly before the end of the day.
2. The Convenor announced that the Privileges, Discipline and Welfare Committee will meet today at 1.00 p.m at the Steering Committee Tent.
3. That Mr. Titi Simiyu will meet the Committee on Thursday 23rd January, 2004 at 10.00 a.m. to discuss with the Committee the cost of devolution of powers in comparison with the current system of government.
4. That an expert from Malawi will meet the Committee on Monday, 26th January, 2004 to discuss with the Committee the Malawi experience on devolution of powers.

MIN. NCC. TWC G. 22/02/2004: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the Twenty First meeting held on Tuesday 20th January, 2004 were confirmed by Members present and signed by the Convenor having been proposed by Hon. Mercy Mwamburi and seconded by the Hon. Mwangi Kinuthia.

MIN. NCC. TWC G. 22/03/2004: DEFERRED ARTICLES

The Committee considered the deferred new 232 (5) which replaced the Article 231 (6).

The Committee noted that in recalling or dismissal of the District governor and the deputy district governor there was need to distinguish between their dismissal on specified grounds and general performance of their duties.

The Committee therefore, agreed that the article be deferred to enable the Rapporteur and the Draftsperson redraft the article for the Committee's reconsideration in the next meeting.

MIN. NCC. TWC G. 22/04/2004: CONSIDERATION OF THE DRAFT BILL

The Committee considered the Draft Bill as follows: -

Article 233 – Functions of district executive Committee

The Committee considered the article and noted that there was need to merge it with Article 231 (**District executive**).

Amendment Motion

Reconsideration of Article 231

That the Committee revisits Article 231 for further consideration

(Hon. Raphael Livu)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

The Committee therefore reconsidered the Article 231 as follows:

Amendment Motion

That Article 233 (1) – (3) be transferred to form part of

Article 231.

(Hon. James Waweru)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

Amendment Motion

Article 233 (4)

That the sub-article be amended as follows and transferred to form part of Article 231.

“By deleting the words “**district is elected**” in the third line and in place thereof insert the word “**a new district executive Committee is constituted immediately, but not later than seven days**”.

(Hon. Denge Wario)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

The Committee further noted that there was need to add new principles to Article 231 to include the following: -

- The powers and functions of a district executive Committee.
- Responsibilities of the Members of the executive Committee.
- The distribution of positions in the district executive Committee to take into consideration the various diversities in the district.

Arising from the above, therefore, the Committee asked the Draftsperson to: -

- redraft the article as proposed for consideration by the Committee in the next meeting.

- formulate articles on the powers and functions of the district governor functions of the district civil service.

The Committee to reconsider the articles in its next meeting.

MIN. NCC. TWC G. 22/05/2004: ADJOURNMENT

The Convenor adjourned the Committee at 1.00 p.m until this afternoon at 2.30 p.m.

AFTERNOON SESSION

The committee reconvened at 3.00 p.m.

MIN. NCC. TWC G. 22/06/2004: CONSIDERATION OF THE DRAFT BILL

The Committee considered the Draft Bill as follows.

PART IV – LOCATIONAL GOVERNMENT

- Article 234 – Locations
- Article 235 – Locations governments
- Article 236 – Locational Council
- Article 237 – Functions of the locational governments
- Article 238 – Locational governments executive

The Committee discussed the Articles and raised the following issues to be included in the Articles

- In the devolved units the location should be the implementation level
- The role of the village and the sub-locations should be defined
- The role of the locational executive and elected councilor be specified
- Villages to elect representatives to the locational government
- The place of the constituency and the division in the devolved powers.

The Committee therefore asked the Rapporteur to reflect on the above issues and redraft Part IV for further consideration by the Committee.

MIN. NCC. TWC G. 22/07/2004: ADJOURNMENT

The Convenor adjourned the meeting at 4.35 p.m. until Thursday, 22nd January, 2004 at 9.00 a.m.

CONFIRMED

CONVENOR

DATE

**MINUTES OF THE TWENTY THIRD MEETING OF THE TECHNICAL
WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER OF THE
DRAFT BILL HELD ON THURSDAY 22ND JANUARY 2004 AT
COMMITTEE TENT 7, BOMAS OF KENYA AT 9.00 A.M**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Alex Chepkwony	367
6. Hon. Amos Kiumo	271
7. Hon. Daniel Khamasi	053
8. Hon. Daniel Ole Osoi	364
9. Hon. Fatuma Sheikh Mohamed	254
10. Hon. George Kinyua	577
11. Hon. George Mburu Mwaura	586
12. Hon. Gloria Wabwire	396
13. Hon. Grace Akinyi Ogot	399
14. Hon. Hellen Koring'ura	324
15. Hon. Henry Kosgey	077
16. Hon. Hezron Manduku	092
17. Hon. Isa Ireri Ngunia	286
18. Hon. Isaiah Cheruiyot	346
19. Hon. J. Kinuthia Mwangi	319
20. Hon. J. S. Mathenge	308
21. Hon. James F. T. Foster	488
22. Hon. Leslie Mwachiro	599
23. Hon. Mercy Mwamburi	492
24. Hon. Mereso Agina	508
25. Hon. Michael Githu	355
26. Hon. Mwinyi Haji Mwijaa	234
27. Hon. Otieno Ogingo	413
28. Hon. Patrick O. Onyango	590
29. Hon. Wilberforce Kisiero	389
30. Hon. Simeon Shitemi	545
31. Hon. Maero Tindi	444
32. Hon. Raphael Livu	228
33. Hon. Tecla Nairesiai	357
34. Hon. Suleiman Shakombo	189
35. Hon. Betty Njeri Tett	222
36. Hon. Machage W. Gisuka	085
37. Hon. Kauchi Chivumba	494
38. Hon. Caleb Jumba	385
39. Hon. Guracha Denge Wario	265
40. Hon. Juma Wario	241

41. Hon. G. B. Galgalo	026
42. Hon. Shaaban Ali Isaack	187
43. Hon. Sospeter Ojaamong	159
44. Hon. Pius Lobuk	328
45. Hon. G. G. Kariuki	042
46. Hon. J. Mwangi Waweru	310
47. Hon. Elkanah Odembo	453
48. Hon. Bonaya Godana Adhi	029
49. Hon. G. Ndatho Muchiri	301
50. Hon. M. Nyathogora	303
51. Hon. Kenneth Marende	096
52. Hon. Simeon Nyachae	149
53. Hon. Nicholas Biwott	016
54. Hon. Syongoh Zaddock Madiri	195

Absent with Apology

1. Hon. Prof. Mark Olunga Odhiambo	412
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Absent

1. Hon. C. Murungaru	123
2. Hon. Patrice M. Ivuti	032
3. Hon. Adan A. Sugow	193
4. Hon. Ahmed Maalim Omar	255
5. Hon. J. J. Kamotho	040
6. Hon. Mohamed Yusuf Haji	031
7. Hon. John Katuku	046

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Fidelis Wangata	Assistant Programme Officer
3. Mr. Evans Menach	Assistant Programme Officer
4. Ms. Joyce Ndumia	Assistant Programme Officer
5. Mr. Peter Barrett	Drafts person
6. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. Dr. Pamela N. Kola	NGO Council
3. Adan Jirma Duba	Northern NGO Forum
4. Rachel Shebesh	L. K. W. V
5. Medina Ibrahim	Nubian Community
6. Amina H. Ali	
7. Dr. Julius Malombe	Ministry of Local Government
8. Emmy Mimbwange	Ministry of Local Government
9. Ascar Kwamboka	Activist

The Meeting opened with prayers.

MIN. NO. 01/2004: FINANCE MANAGEMENT AND GOVERNANCE IN KENYA

Mr. J. H. M. Oyula, Financial Secretary – Treasury accompanied by Mrs. S. Bobotti Accountant General appeared before a joint sitting of the Devolution of Powers Committee and the Committee on Public Finance, Public Service, Leadership and Integrity and made a presentation on Public Finance Management and Governance in Kenya.

The Committees were informed that: -

1. The current constitution of Kenya, Sections 48 and 99 to 105, the Exchequer and Audit Act (Cap. 412) and Paymaster General's Act and Regulations (Cap. 413) contain the relevant provisions regarding the control and management of Government Finances.
2. The authority for raising revenue or other monies and appropriation for the Government of Kenya is vested with the Parliament which approves the Governments annual estimates and authorizes appropriations of funds.
3. The management and administration of government finances is vested with the Minister for the time being in charge of Finance in accordance with the constitution of Kenya and other statutes.
4. Treasury means the Minister for the time being responsible for Finance and such other officer or officers chosen by him to exercise and perform on behalf of the Treasury any powers or duty confined or imposed on the Treasury by any written law.
5. The Contingencies Fund is established under the constitution to meet expenditure for which no provision exists but which must be incurred in public interest before it is possible to obtain provision through supplementary estimates. The Fund is controlled by the Minister for Finance who is answerable to Parliament for proper use.
6. Imposition of tax, tax variations and waivers are vested with the Minister for Finance. The management of contingencies fund is also the responsibility of the Minister for Finance. He arranges for the preparation of the estimates of revenue and expenditure and he is also responsible for laying the report of the Controller and Auditor General before the National Assembly.
7. The proposed constitution contains too many details which reduce flexibility and dynamism required in planning, budgeting, economic and financial management processes.
8. Treasury functions appear to have been diluted through creation of new institutions such as the Controller of Budget and Economic and Social Council. This arrangement will create conflict between Treasury and the

institutions which will affect the smooth, effective and efficient operations of Treasury.

9. The Paymaster General's office, Consolidated Fund and the responsibilities of Controller and Auditor General were explained to the Committees.
10. The size of the Board of Central Bank should not be enshrined in the proposed constitution, it should be spelt out in an Act of Parliament.
11. The 10th Schedule of the Draft constitution should be annexed to the relevant Acts of Parliament rather than to the proposed constitution.

MIN. NO. 02/2004: COST AND REVENUE IMPLICATION OF DEVOLUTION OF POWERS

Mr. Nicholas T. T. Simiyu, a lecturer at Nairobi University appeared before the Committee and gave a presentation on the cost and revenue collection of devolution of powers.

He informed the Committee that: -

- In discussing the cost and revenue implication of devolution of power there was need to compare the current and proposed fiscal management structures and practices. There was also need to compare the current and proposed expenditure levels under the devolved system.
- According to the revenue collected in 2002/2003 financial year, the regions where the highest revenue was collected were: -
 - Nairobi – Region 18
 - Mombasa, Kwale Taveta – Region 1
 - Kilifi Lamu and Tana River – Region 2
- The least revenue was collected from Wajir and Mandera (Region 6) and Garissa and Ijara (Region 7).
- That a detailed study was conducted on the Ministry of Education, and Health as a sample to demonstrate which functions to be devolved using statistics for 2000/01 Financial Year.
- In the Ministry of Education all the thirty functions assigned to the Ministry's Head office could be reduced to seven.
- In the Ministry of Health the twenty-one functions assigned to the Head office could be reduced to four.

- Most of the structures are already in place to accommodate the devolved systems. If annual development budgetary allocations are well distributed taking in mind the needs of the regions/districts, the viable capital development within the specific area will be met.
- Devolution will lead to some areas of cost savings for instance:
 - (i). Headquarter personnel will be devolved to avoid duplication because the offices and duties they were handling will shift to the devolved levels.
 - (ii). Efficiency will be enhanced since results at the local level will be measured.
 - (iii). Traveling and accommodation expenses from headquarters to regions and vice versa will be reduced as most of the matters will be handled at the devolved units.
 - (iv). Regional assemblies and district councils will replace the current local councils. A strengthened revenue Authority will replace K.R.A and the Auditor General's office will be expanded.
 - (v). The proposed devolved levels will replace the existing expensive provincial administration.

MIN. NO. 03/2004: ANY OTHER BUSINESS

The Committees were informed that the late Hon. Joab Omino's funeral service would be held at Uhuru Park at 2.00 p.m and it was resolved that the Committees adjourn to enable the Members attend said service.

MIN. No. 04/2004: ADJOURNMENT

The Convenor of the Committee on Devolution of Power adjourned the meeting at 1.20 p.m.

CONFIRMED

CONVENOR

DATE

**MINUTES OF THE TWENTY FOURTH MEETING OF THE TECHNICAL
WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER OF THE
DRAFT BILL HELD ON MONDDAY 26TH JANUARY 2004 AT COMMITTEE
TENT 7, BOMAS OF KENYA AT 10.00 A.M**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Alex Chepkwony	367
6. Hon. Amos Kiumo	271
7. Hon. Daniel Khamasi	053
8. Hon. Daniel Ole Osoi	364
9. Hon. George Kinyua	577
10. Hon. George Mburu Mwaura	586
11. Hon. Gloria Wabwire	396
12. Hon. Grace Akinyi Ogot	399
13. Hon. Hellen Koring'ura	324
14. Hon. Henry Kosgey	077
15. Hon. Hezron Manduku	092
16. Hon. Isa Ireri Ngunia	286
17. Hon. J. S. Mathenge	308
18. Hon. James F. T. Foster	488
19. Hon. Leslie Mwachiro	599
20. Hon. Mercy Mwamburi	492
21. Hon. Mereso Agina	508
22. Hon. Michael Githu	355
23. Hon. Mwinyi Haji Mwijaa	234
24. Hon. Otieno Ogingo	413
25. Hon. Patrick O. Onyango	590
26. Hon. Wilberforce Kisiero	389
27. Hon. Simeon Shitemi	545
28. Hon. Maero Tindi	444
29. Hon. Raphael Livu	228
30. Hon. Tecla Nairesiai	357
31. Hon. Betty Njeri Tett	222
32. Hon. Machage W. Gisuka	085
33. Hon. Kauchi Chivumba	494
34. Hon. Caleb Jumba	385
35. Hon. Guracha Denge Wario	265
36. Hon. Juma Wario	241
37. Hon. Shaaban Ali Isaack	187
38. Hon. Sospeter Ojaamong	159
39. Hon. Pius Lobuk	328
40. Hon. J. Mwangi Waweru	310
41. Hon. Elkanah Odembo	453

42. Hon. G. Ndatho Muchiri	301
43. Hon. M. Nyathogora	303
44. Hon. Kenneth Marende	096
45. Hon. Nicholas Biwott	016
46. Hon. Ahmed Maalim Omar	255
47. Hon. J. J. Kamotho	040
48. Hon. Prof. Mark Olunga Odhiambo	412
49. Hon. Fatuma Sheikh Mohamed	254
50. Hon. Mohamed Yusuf Haji	031
52. Hon. Syongoh Zaddock Madiri	195

Absent

1. Hon. Isaiah Cheruiyot	346
2. Hon. J. Kinuthia Mwangi	319
3. Hon. C. Murungaru	123
4. Hon. Patrice M. Ivuti	032
5. Hon. Adan A. Sugow	193
6. Hon. John Katuku	046
7. Hon. Suleiman Shakombo	189
8. Hon. G. B. Galgallo	026
9. Hon. G. G. Kariuki	042
10. Hon. Bonaya Godana Adhi	029
11. Hon. Simeon Nyachae	149

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Fidelis Wangata	Assistant Programme Officer
3. Mr. Evans Menach	Assistant Programme Officer
4. Ms. Joyce Ndumia	Assistant Programme Officer
5. Mr. Peter Barrett	Drafts person
6. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. Dr. Pamela N. Kola	NGO Council
3. Adan Jirma Duba	Northern NGO Forum
4. Rachel Shebesh	L. K. W. V
5. Medina Ibrahim	Nubian Community
6. Amina H. Ali	Women Political Caucus
7. Nuria Gollo	Borana Community
8. Charles Lwanga	

Guests Present

1. Mr. Willie Samute Permanent Secretary, Department of Local Government, Malawi	
2. Mr. Jens Jeitner	ALGAK

- | | |
|-------------------------|--------------------------|
| 3. Mr. Gilbert Wangalwa | ALGAK |
| 4. Mr. Augustine Odipo | ALGAK |
| 5. Dr. Julius Malombe | Min. of Local Government |

The Meeting opened with prayers.

MIN. NCC. TWC G. 24/01/2004: ANNOUNCEMENTS

The Convenor informed the Committee that Mr. Nicholas Simiyu who was to continue with his presentation on the cost and revenue implication of devolution would not be able to appear before the Committee. The meeting will be rescheduled for another day.

MIN. NCC. TWC G. 24/02/2004: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the following sittings were confirmed by the Members present and signed by the Convenor.

1. Minutes of the Twenty Second meeting held on Wednesday, 21st January were proposed by the Hon. Wario Juma and seconded by the Hon. Margaret Nyathogora.
2. Minutes of the First Joint meeting of Committee held on Thursday, 22nd January, 2004 were proposed by the Hon. James Waweru and seconded by Hon. Caleb Jumba.

MIN. NCC. TWC G. 24/03/2004: THE EXPERIENCE OF MALAWI ON THE DEVOLUTION OF POWERS

Mr. Willie Samute, Permanent Secretary of the Department of Local Government in the office of the President, Lilongwe, Malawi accompanied by the following:

- (i). Mr. Gilbert Wangalwa of Association of Local Government Authorities of Kenya (ALGAK)
- (ii). Mr. Augustine Odipo of (ALGAK)
- (iii). Dr. Julius Malombe from Ministry of Local government, appeared before the Committee and made a presentation on Malawi experience on the devolution of powers.

The Committee was informed that: -

- Decentralization is the transfer of authority, responsibilities and mandates from the center to lower levels of government.
- The objectives of decentralization in Malawi were meant for improved efficiency, governance, equity and development and poverty reduction.
- Decentralization can be in form of administrative, political and organizational as the main democratization process in Africa.

- The main goals for decentralization in Malawi which started in 1993 were basically for development and democracy. It started with a Cabinet policy on decentralization where decentralization secretariat, inter-Ministerial Technical Committee and Cabinet committee were established.

Studies were conducted on the cost of devolving public service provision responsibilities to local governments analysis of existing and potential local government revenues, and development of a framework for financial decentralization.

On expenditure, local government delivered few services while the central government spent more than local government Devolution will increase cost of district administration per district and at the same time donor flows into districts was 40% higher than that of line Ministries.

Since central government would finance most of devolved functions there was need for a goal intergovernmental fiscal transfers which involves revenue adequacy and growth, predictable and transparent system. The transfers would also allocate efficiency, equity and incentives for sound financial management and balancing national priorities and local autonomy.

On why Malawi implemented two levels of devolution instead of four as originally proposed, the Committee was informed that Malawi system begins from the Central government level, district level and chief level. In the lower level there was the village development Committee chaired by the Chief which approves development proposals before presenting them to the District development Committee.

Asked whether their decentralization policy is entrenched in the constitution he informed the committee that the policy was entrenched in the constitution and the Local Government Act. Decentralization started in 1992 and was approved in 1998, where elections were held in 2000 and implementation of the policy in 2001.

On whether the chiefs were elected and remunerated, the Committee was informed that chiefs were born and not elected and were paid by the central government. The village was divided administratively into village headmen, headed by a sub chief.

Asked whether the central government was represented in the District Assembly the Committee heard that the central government was not represented in the Assembly but the government employees in the district were employed by the Local Government Service Commission.

MIN. NCC. TWC G 24/04/2004: COST OF DEVOLUTION

Mr. Gilbert Wangalwa of ALGAK made a presentation on the cost of devolution of powers as proposed in the Draft Bill.

The Committee was informed that:

That when the proposed devolution of powers is implemented the total cost of the organs for instance the regional, district and locational representatives, chief executive committee would approximately cost over Ksh. 1.4 billion

The number of the executive Committee members from the regional district and locational levels could be 10,932 persons and their remunerations would be over Ksh. 83 million.

Existing provincial administration, buildings, offices, personnel and other infrastructure will be used for the purpose hence the costs of new structures would be less.

The regional level representatives, regional Chief executives and the regional executive Committee Members could be over Kshs. 354 million and the district executive Committee would spend over Ksh. 1 billion.

The existing local authorities, district and divisional administration buildings offices personnel and other infrastructure will be used for the purpose hence the costs will be substantially reduced. The total cost at the district level, representatives, chief executives and executive committee members would be over Ksh. 1 billion.

The existing local authorities, divisional and local administration buildings personnel and other infrastructure will be used for the purpose and costs are likely to increase for locations with no buildings, offices and personnel. The cost at the locational representatives, Chief executives and executive Committee members will approximately be over Ksh. 3.5 billion. Given the above elaborated assumptions the cost of devolution could be approximately over 5.7 billion.

Devolution of powers mean devolved services for instance roads, education, health, water, housing and solid waste disposal services would at the lower levels.

There would be no cost in the proposed Boundaries Commission because of the existing institutions in place for instance the land adjudication and settlement, Survey of Kenya, Ministry of Lands and Settlement and the Electoral Commission of Kenya.

There was need for a further study on how the devolution of power could be implemented.

MIN. NCC. TWC G. 24/05/2004: ADJOURNMENT

The Convenor adjourned the meeting at 1.15 p.m. until today afternoon at 2.30 p.m.

AFTERNOON SITTING

The Committee reconvened at 2.30 p.m.

MIN. NCC. TWC G. 24/06/2004: CONSIDERATION OF THE DRAFT BILL

Part IV – Locational Government

1. Article 234 – Locations

Amendment Motion

That the Article be amended to read as follows:

“An Act of Parliament shall establish in each district, locations with prescribed boundaries. Until lawfully altered the existing location and their boundaries shall be respected”

(Hon. Kenneth Marende)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

2. Article 235 - **Agreed to**

3. Article 236 - Locational Council
Amendment Motion

(a) The title be amended to read as follows:

“Composition and election of locational government”

(Hon. Mercy Mwamburi)

Motion made and question proposed;

Debate arising;

Question put and agreed to

(b) Article 236 (1)

Amendment Motion

That the word “Constituencies” be deleted and in place thereof insert the word “Sub-location” and wherever it is referred to in the Draft Bill.

(Hon. Kauchi Chivumba)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

(c) Article 236 (2)

Amendment Motion

That the article be amended to read as follows:

“Three representatives, one woman, one man and one from special interest groups are elected from each sub-location in the manner prescribed by an Act of Parliament”

(Hon. Gloria Wabwire)

Motion made and question proposed;

Debate arising;

Question put and negatived after a vote by show of hands.

The results of the vote are as follows:

Those in favour of the proposed amendment = 11 Members

Those not in favour = 20 Members

Resumption of debate on the Article 236 resumed.

Debate arising;

Question put and agreed to that the article be adopted without amendments.

4. Article 236 – Locational Government

The Committee deferred the Article to enable the draftsman to incorporate the new principles proposed by the Committee.

5. Article 237 – Location government executive

The Committee deferred the article until the next meeting.

MIN. NCC. TWC G. 25/07/ 2004: ADJOURNMENT

The Convenor adjourned the meeting at 5.10 p.m until tomorrow Tuesday 27th January, 2004 at 9.00 a.m.

CONFIRMED

DATE

CONVENOR

**MINUTES OF THE TWENTY FIFTH MEETING OF THE TECHNICAL
WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER OF THE
DRAFT BILL HELD ON TUESDAY 27TH JANUARY 2004 AT COMMITTEE
TENT 7, BOMAS OF KENYA AT 9.30 A.M**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Alex Chepkwony	367
6. Hon. Amos Kiumo	271
7. Hon. Daniel Khamasi	053
8. Hon. Daniel Ole Osoi	364
9. Hon. George Kinyua	577
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50. Hon. Isaiah Cheruiyot	346
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52. Hon. Suleiman Shakombo	189
53. Hon. G. B. Galgalo	026
54. Hon. G. G. Kariuki	042
55. Hon. Patrick O. Onyango	590
56. Hon. J. Mwangi Waweru	310
57. Hon. Rev. Macharia Muchuga	226

Absent

1. Hon. C. Murungaru	123
2. Hon. Patrice M. Ivuti	032
3. Hon. Adan A. Sugow	193
4. Hon. John Katuku	046
5. Hon. Bonaya Godana Adhi	029
6. Hon. Simeon Nyachae	149

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Fidelis Wangata	Assistant Programme Officer
3. Mr. Evans Menach	Assistant Programme Officer
4. Ms. Joyce Ndumia	Assistant Programme Officer
5. Mr. Peter Barrett	Drafts person
6. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. Dr. Pamela N. Kola	NGO Council
3. Adan Jirma Duba	Northern NGO Forum
4. Rachel Shebesh	L. K. W. V
5. Medina Ibrahim	Nubian Community
6. Amina H. Ali	Women Political Caucus
7. Nuria Gollo	Borana Community
8. Emmy A. M'mbwanga	Min. of Local Government
9. Ascar Kwamboka	Activist
10. Tom Wolf	
11. Dr. Julius M. Malombe	DUD/Min. of Local Government

The Meeting opened with prayers.

MIN. NCC. TWC G. 25/01/2004: CONFIRMATION OF MINUTES

Minutes of the Twenty Fourth meeting held on Monday, 26th January, 2004 were confirmed by the Members present and signed by the Convenor having been proposed by the Hon. Alexander Chepkwony and seconded by the Hon. Daniel Ole Osoi.

MIN. NCC. TWC G. 25/02/2004: COST OF GOVERNMENT AND OTHER RELATED ISSUES

Mr. Julius K. Kipngetich from the Nairobi University appeared before the Committee and made a presentation on the cost of government and other related issues.

The Committee was informed that: -

The Kenya government has grown significantly since independence to the extent that close to 80% of the national revenue is used in salaries, wages and debt obligations, leaving virtually nothing for public investment.

The Ministries of Education, Health and office of the President consume the greatest resources while the functions of the said Ministries could ordinarily be done at the devolved units.

The current government debt portfolio stands at Kshs. 621 billion which is 71% of our GDP of Kshs. 880 billion.

Currently, the county is divided into six levels which are: national, provincial, district, division, location and sub-location while the Draft Constitution proposes four levels of national, regional, district and locational. Given the above scenario, the current levels have staff already which will actually require cutting from the current number. The Supreme Court could be an additional unit to the judicial system while the regional and the Senate could be an additional unit to the legislature.

The salaries given to the legislature, top judicial and executive officers currently is unsustainable. In this case Parliament which sits for two days in a week could be paid part time rates. A law should be enacted to put a limit on the difference between the highest to the lowest in the public service to prevent the top from increasing their pay without considering the bottom and overall implications for the total wage Bill.

Given that all central taxes go to the Consolidated Fund, there should be the distribution of finances through fiscal equalization strategy which ensures equity across the country. At the same time there should be conditional grants for special projects especially those that cut across districts/regions or those of national importance.

In managing transition, the following approaches could be applied:-

Direct – where the old system is abandoned and replaced by a new one.

Parallel – the proposed devolved units function side by side for some time and gradually the old system is phased out.

Modular – devolution is implemented in phases/modules and each module runs parallel to the old system.

Pilot – this is where an experiment with a representative module is implemented for a while to facilitate learning and build experience.

MIN. NCC. TWC G. 25/03/2004: CONSIDERATION OF DRAFT BILL

The Committee considered the Draft Bill as follows: -

1. Article 239 (1) – Commission on Government Finance and Fiscal Policy

(a) Amendment Motion

That the sub-Article be amended to read as follows: -

“A Commission on Government Finance and Fiscal Policy shall be established”.

(Hon. Wilberforce Kisiero)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

Amendment Motion

That the sub-Article be amended to read as follows:

“The Members of the Commission shall be appointed every three years”.

(Hon. Daniel Ole Osoi)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

MIN. NCC. TWC G. 25/04/2004: ADJOURNMENT

The Convenor adjourned the meeting at 1.10 p.m until this afternoon at 2.30 p.m.

AFTERNOON SESSION

The Committee reconvened at 2.55 p.m.

MIN. NCC. TWC G. 25/05/2004: CONSIDERATION OF THE DRAFT BILL

The Committee considered the Draft Bill as follows:

1. Article 239(2)

(a) Amendment Motion

That the sub-Article (2) be deleted and amended as follows:

“A Chairperson and a deputy Chairperson”

(Hon. Nicholas Biwott)

Motion made and question proposed;

Debate arising;

Question put and agreed to;

(b) Amendment Motion

That the sub Article be amended as follows:

“Nineteen persons each of whom is nominated by the Regional Assembly of each region and appointed by the President”

(Hon. Mercy Mwamburi)

Motion made and question proposed;

Debate arising;

Question put and agreed to

(c) Amendment Motion

That the Article be amended to read as follows:

“Four persons nominated by an Association of district government and appointed by the President”

(Hon. Denge Wario)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

(d) Amendment Motion

That the article be amended as follows:

“Six members, two appointed by the Central government, two by the National Assembly and two by the National Council”.

(Hon. Wilberforce Kisiero)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

The new article is as follows: -

239 (2)

(a) A Chairperson and a deputy Chairperson

(b) Nineteen persons each of whom is nominated by the Regional Assembly of each region and appointed by the President

(c) Four persons nominated by an Association of district government and appointed by the President

(d) Six members, two appointed by the Central government, two by the National Assembly and two by the National Council”.

2. Article 239 (3)

(a) **Amendment Motion**

That a new sub-article be (3) be inserted to read as follows:

“Members of the Commission must have appropriate expertise”

(Hon. Wilberforce Kisiero)

Motion made and question proposed;

Debate arising;

Question put and agreed to;

(b) **Amendment Motion**

That another new sub-article (4) be inserted to read as follows:

(4) “The principle of one-third of women shall apply in the appointment of Members to the Commission”

(Hon. James Mathenge)

Motion made and question proposed;

Debate arising;

Question put and agreed to;

(3) Article 239(3) - Agreed to

(4) Article 239 (4) (a)

Amendment Motion

(a) That the sub-Article be amended by deleting the word
“Several” and in place thereof insert the word “four”

(Hon. Guracha Galgalo)

Motion made and question proposed;

Debate arising;
Question put and agreed to.

Article 239(4)(b)

Amendment Motion

That the sub-Article be amended by deleting the word “several” and in place thereof insert the word “district”

(Hon. Guracha Galgalo)

Motion made and question proposed;

Debate arising;
Question put and agreed to;

Article 239(5)

Amendment Motion

(a) That the sub-article be amended by deleting the word
“Parliament” in the second line and inserting the word “four levels”

(Hon. Guracha Galgalo)

Motion made and question proposed;

Debate arising;
Question put and agreed to;

Amendment Motion

(b) That Article be amended by inserting the following:-

“To review from time to time the revenue allocations formulae and principles in operation to ensure conformity with changing realities”

“To settle disputes relating to the financial arrangement between the National and Regional Governments”

(Hon. Syongoh Zaddock Madiri)
Motion made and question proposed;

Debate arising;
Question put and agreed to;

MIN. NCC. TWC G. 25/06/2004: ADJOURNMENT

The Convenor adjourned the meeting at 5.10 p.m. until Wednesday, 28th January 2004 at 9.00 a.m.

CONFIRMED

CONVENOR

DATE

**MINUTES OF THE TWENTY SIXTH MEETING OF THE TECHNICAL
WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER OF THE
DRAFT BILL HELD ON WEDNESDAY 28TH JANUARY 2004 AT
COMMITTEE TENT 7, BOMAS OF KENYA AT 9.30 A.M**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Alex Chepkwony	367
6. Hon. Daniel Khamasi	053
7. Hon. Daniel Ole Osoi	364
8. Hon. George Kinyua	577
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52. Hon. J. Mwangi Waweru	310
53. Hon. G. G. Kariuki	042
54. Hon. Amos Kiumo	271
55. Hon. Rev. Macharia Muchuga	226

Absent

1. Hon. C. Murungaru	123
2. Hon. Patrice M. Ivuti	032
3. Hon. John Katuku	046
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5. Hon. Simeon Nyachae	149
6. Hon. Kenneth Marende	096
7. Hon. Ahmed Maalim Omar	255
8. Hon. Suleiman Shakombo	189

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Fidelis Wangata	Assistant Programme Officer
3. Mr. Evans Menach	Assistant Programme Officer
4. Ms. Joyce Ndumia	Assistant Programme Officer
5. Mr. Peter Barrett	Drafts person
6. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. Dr. Pamela N. Kola	NGO Council
3. Adan Jirma Duba	Northern NGO Forum
4. Rachel Shebesh	L. K. W. V
5. Medina Ibrahim	Nubian Community
6. Amina H. Ali	Women Political Caucus
7. Nuria Gollo	Borana Community

The Meeting opened with prayers.

MIN. NCC. TWC G. 26/01/2004: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the Twenty Fifth meeting held on Tuesday 27th January, 2004 were confirmed by the Members and signed by the Convenor having been proposed by the Hon. Wilberforce Kisiero and seconded by the Hon. Wario Juma.

MIN. NCC. TWC G. 26/02/2004: CONSIDERATION OF THE DRAFT BILL

The Committee considered the Draft Bill as follows: -

1. Article 239 (6)

Amendment Motion

That the sub-Article be transferred to form part of Article 242 (as printed) on Administration of revenue.

(Hon. Otieno Ogingo)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

2. Article 239 (7)

Amendment Motion

That the sub-Article be deleted because it contradicts sub-Article 239 (8)

(Hon. Guracha Galgalo)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

3. Article 239 (8) as printed

Amendment Motion

That the sub-Article be amended by deleting the word “**must**” and in place thereof insert the word “**shall**” and wherever it is used in the same context in the Bill.

(Hon. Leslie Mwachiro)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

4. Article 239 (8) (a – f) and (h) – (j) Agreed to

Article 239 (8) (g)

Amendment Motion

That the sub-Article be amended by inserting a new sub-clause as follows:-

“Affirmative action for ASAL and marginalised areas, equalization grants and economic optimization”.

(Hon.Guracha Galgalo)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

5. Article 239 (9)

Amendment Motion

That the sub-Article be amended to read as follows:

“The recommendations of the Commission may be modified by the national government upon a resolution supported by a majority in each House”.

(Hon. James Mathenge)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

6. Article 239 (10)

Amendment Motion

That the Article be amended to read as follows:

“Except to the extent that they are modified under clause (9), recommendations of the Commission shall be reflected in their respective budgets and in their taxation and other legislative policy”.

(Hon. James Mathenge)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

7. New Article 240 -

Amendment Motion

That new Article be inserted to read as follows: -

“240 (1) National, Regional, District and Locational Budgets”.

“National, regional, district and locational budgetary processes shall promote transparency, accountability and the effective management of the economy, debt and the public sector”.

(2) National legislation shall prescribe: -

- the form of national, regional, district and locational budgets,
- when national, regional and district budgets shall be tabled,
- that budgets in each level of government shall show the sources of revenue and the way in which proposed expenditure will comply with national legislation.

(3) Budgets in each level of government shall contain:

- estimates of revenue and expenditure, differentiating between capital and recurrent expenditure,
- proposals for financing any anticipated deficit for the period to which they apply,
- an indication of any intentions regarding borrowing and other forms of public liability that will increase public debt during the year”.

(Hon. Yusuf Haji)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

8. A new Article 241

Amendment Motion

That a new Article be inserted to read as follows:

Article 241 – Treasury Control

“(1) National legislation shall establish a national treasury and prescribe measures to ensure both transparency and expenditure control in each level of government by introducing: -

- generally recognised accounting practice;
- uniform expenditure classifications; and
- uniform treasury norms and standards.

(2) The national treasury, with the concurrence of the cabinet minister responsible for national finance matters, may stop the transfer of 50% of funds to an organ of state only for serious or persistent material breach of the measures established in terms of subsection (1).

(3) A decision to stop transfer of funds to a region may be taken only in terms of subsection (2), and:-

- (a) may not stop the transfer of funds for more than 60 days; and

- (b) may be enforced immediately but will lapse retrospectively unless Parliament approves it following a process substantially the same as that followed in passing ordinary bills that affect regions. The process must be completed within 30 days of the decision by the national treasury.
- (4) Parliament may review a decision to stop the transfer of funds for no more than 60 days at a time, following the process established in terms of subsection
- (5) Before Parliament may approve for review a decision to stop the transfer of funds to a region:-
- the Auditor General must report to Parliament; and
 - the region must be given an opportunity to answer the allegations against it, and to state its case, before a committee”.

(Hon. Margaret Nyathogora)

Motion made and question proposed;
 Debate arising;
 Question put and agreed to.

9. A new Article 242

Amendment Motion

That a new Article be inserted as follows: -

“242 – Procurement of Goods and Services”

- (1) Where an organ of state in the national, regional, district and locational level of government, or any other institution identified in national legislation contracts for public goods or services, it must do so in accordance with a system, which is fair, equitable, transparent, competitive and cost-effective.
- (2) Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for:-

Categories of preference in the allocation of contracts;
 Affirmative action for local business persons categories of persons and social groups disadvantaged and marginalized by unfair discrimination; and
 The exclusion of persons who default on their tax obligations.
 Any contractor who have failed to perform their work properly”.

(Hon. George Mburu Mwaura)

Motion made and question proposed;
 Debate arising;
 Question put and agreed to.

MIN. NCC. TWC G. 26/03/2004: ADJOURNMENT

The Convenor adjourned the meeting at 1.10 p.m until this afternoon at 2.30 p.m.

AFTERNOON SESSION

The Committee reconvened at 2.45 p.m.

MIN. NCC. TWC G. 26/04/2004: CONSIDERATION OF THE DRAFT BILL

The Committee considered the Draft Bill as follows: -

A new Article 243

Amendment Motion

That a new Article be inserted to read as follows

“243 – National Sources of Regional, District and Locational Government Funding

- (1) Each regional, district and locational government:-
 - (a) is entitled to an equitable share of revenue raised nationally to enable it to provide basic services and perform the functions assigned to it; and
 - (b) may receive other allocations from national government revenue, either conditionally or unconditionally.
- (2) Additional revenue raised by, districts may not be deducted from either share of revenue raised nationally, or from other allocations made to them out of national government revenue. Equally, there is no obligation on the national government to compensate districts that do not raise revenue commensurate with their fiscal capacity and tax base. Regional levels remain as a co-ordinating function without taxation powers.
- (3) A region’s, district’s and locations equitable share of revenue raised nationally shall be transferred to the region, district or location promptly and without deductions, except when the transfer has been stopped in terms of Article 243”.

(Hon. James Mathenge)

Motion made and question proposed;

Debate arising;

Question put and agreed to

MIN. NCC. TWC G. 26/05/2004: FUNCTIONS OF THE PROPOSED SYSTEMS OF GOVERNMENT

Prof. Peter Wanyande, from Nairobi University appeared before the Committee and made a presentation on the functions of the proposed systems of government.

The Committee was informed that:-

- (1) In designing functions of the devolved units, the following should be considered:-
 - Certain uniform functions which must be performed nationally;
 - Some functions which may be shared among the different levels of government;
 - Other functions which may be exclusive to specific levels of government.
- (2) Functions currently performed by the government will still be functional in the proposed devolved structure.
- (3) Government functions may be categorized as:

Legislative function: whether unitary, federal or devolved system, there should always be laws that apply to the systems in any country. The national government has the responsibility of legislating laws that will apply through out the country. The other levels of government may be given the power to legislate specifically on needs which are peculiar to their areas.

Security function: This is a responsibility of national level government and cannot be shared but the other regional and districts could be allowed to be in charge of some security apparatus in their areas. The region could be given the power for the establishment of Regional Service Commission for recruitment of security personnel within their regions.

Foreign affairs and foreign trade is the responsibility of the national level in order to comply with the international standards and also for the national government to co-ordinate with international bodies.

Social Services: it is desirable to have a national level education standard but at the same time take into consideration the various disparities in the country. The implementation of the education standard could still be devolved to the other levels of government. Other services like national health, roads, water, forests and wildlife could be devolved to the other levels of government.

Monetary service is the responsibility of the national level of government which cannot be delegated.

Economic development function which is purely economic in nature is a national government function which cannot be devolved.

Judicial functions are national but regional and districts governments could manage some of the functions in their respective areas.

MIN. NCC. TWC G. 26/06/2004 ADJOURNMENT

The convenor adjourned the meeting at 5.00 p.m. until Thursday, 29th January, 2004.

CONFIRMED

DATE

CONVENOR

**MINUTES OF THE TWENTY SEVENTH MEETING OF THE TECHNICAL
WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER OF THE
DRAFT BILL HELD ON THURSDAY 29TH JANUARY 2004 AT
COMMITTEE TENT 7, BOMAS OF KENYA AT 9.30 A.M**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Alex Chepkwony	367
6. Hon. Daniel Khamasi	053
7. Hon. Daniel Ole Osoi	364
8. Hon. George Kinyua	577
9. Hon. George Mburu Mwaura	586
10. Hon. Gloria Wabwire	396
11. Hon. Grace Akinyi Ogot	399
12. Hon. Hellen Koring'ura	324
13. Hon. Henry Kosgey	077
14. Hon. Hezron Manduku	092
15. Hon. Isa Ireri Ngunia	286
16. Hon. J. S. Mathenge	308
17. Hon. James F. T. Foster	488
18. Hon. Leslie Mwachiro	599
19. Hon. Mercy Mwamburi	492
20. Hon. Mereso Agina	508
21. Hon. Michael Githu	355
22. Hon. Mwinyi Haji Mwijaa	234
23. Hon. Otieno Ogingo	413
24. Hon. Wilberforce Kisiero	389
25. Hon. Simeon Shitemi	545
26. Hon. Raphael Livu	228
27. Hon. Tecla Nairesiai	357
28. Hon. Machage W. Gisuka	085
29. Hon. Kauchi Chivumba	494
30. Hon. Caleb Jumba	385
31. Hon. Guracha Denge Wario	265
32. Hon. Juma Wario	241
33. Hon. Sospeter Ojaamong	159
34. Hon. Pius Lobuk	328
35. Hon. G. Ndatho Muchiri	301
36. Hon. M. Nyathogora	303
37. Hon. Prof. Mark Olunga Odhiambo	412
38. Hon. Fatuma Sheikh Mohamed	254
39. Hon. Mohamed Yusuf Haji	031
40. Hon. Syongoh Zaddock Madiri	195
41. Hon. J. Kinuthia Mwangi	319

42. Hon. Patrick O. Onyango	590
43. Hon. Adan A. Sugow	193
44. Hon. Isaiah Cheruiyot	346
45. Hon. Betty Njeri Tett	222
46. Hon. Elkanah Odembo	453
47. Hon. Nicholas Biwott	016
48. Hon. J. Mwangi Waweru	310
49. Hon. G. G. Kariuki	042
50. Hon. Amos Kiumo	271
51. Hon. Rev. Macharia Muchuga	226
52. Hon. John Katuku	046
53. Hon. Bonaya Godana Adhi	029
54. Hon. Suleiman Shakombo	189
55. Hon. Kenneth Marende	096
56. Hon. J. J. Kamotho	040

Absent

1. Hon. C. Murungaru	123
2. Hon. Patrice M. Ivuti	032
3. Hon. Simeon Nyachae	149
4. Hon. Ahmed Maalim Omar	255
5. Hon. Maero Tindi	444
6. Hon. Shaaban Ali Isaack	187
7. Hon. G. B. Galgallo	026

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Fidelis Wangata	Assistant Programme Officer
3. Mr. Evans Menach	Assistant Programme Officer
4. Ms. Joyce Ndumia	Assistant Programme Officer
5. Mr. Jeremy Wainwright	Drafts person
6. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. Dr. Pamela N. Kola	NGO Council
3. Adan Jirma Duba	Northern NGO Forum
4. Rachel Shebesh	L. K. W. V
5. Medina Ibrahim	Nubian Community
6. Amina H. Ali	Women Political Caucus
7. Nuria Gollo	Borana Community
8. Abdulaziz A. Adam	N.C.R.F.
9. Peter Ligale	DRPK (LSK)
10. Nyabonyi Kazungu	
11. Emmy M'mbwanga	Min. of Local Government
12. Dr. Julius Malombe	DUD/Min. of Local Government

The Meeting opened with prayers.

MIN. NCC. TWC G. 27/01/2004: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the Twenty Sixth meeting held on 28th January, 2004 were confirmed by the Members present and signed by the Convenor having been proposed by the Hon. Otieno Ogingo and seconded by the Hon. Kauchi Chivumba.

MIN. NCC. TWC G. 27/02/2004: CONSIDERATION FOR THE DRAFT BILL

The Committee considered the Draft Bill as follows:

The Committee deferred the deliberation on Article 244 on Taxation powers (originally Article 239) and other financial provisions Article 248 (originally Article 243) and agreed to reconsider them after discussing the functions of the devolved levels of government.

1. A new Article 243

Amendment Motion

That a new Article be inserted to read as follows: -

“243 - Principles of taxation

The general principles of taxation, particularly the coverage of tax payers and the object of tax and its calculations are established by law.

To the extent that the nature of the tax allows it, the principles of universality and equality of tax treatment and of taxation according to economic capacity shall be respected.

Inter-district double taxation shall not be allowed. National legislation shall provide for the necessary measures”.

(Hon. Daniel Ole Osoi)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

2. A new Article 244

Amendment Motion

That a new Article be inserted to read as follows: -

“244 - National Consolidated Fund

(1). There is established a National Consolidated fund into which all money received by the national level of government shall be paid, except money reasonably excluded by an Act of Parliament.

(2). Money may be withdrawn from the National Consolidated Fund only:-

- in terms of an appropriation by an Act of Parliament; or
- as a direct charge against the National Consolidated Fund, when it is provided for in the Constitution or an Act of Parliament;

(3). A regions, districts and location's equitable share of revenue raised nationally is a direct charge against the National Consolidated Fund".

(Hon. Daniel Ole Osoi)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

3. A new Article 245

Amendment Motion

That a new Article be inserted as follows: -

“ 245 - Other Consolidated Funds

(1). There is established a Consolidated Fund for each region, district and location into which all money received by the regional, district and locational government must be paid, except money reasonably excluded by an Act of Parliament.

(2) Money may be withdrawn from a regional, district or locational Consolidated Fund only:-

- by a regional or district Act, or
- as a direct charge against the regional or district Consolidated Fund, when it is provided for in the Constitution or a regional or District Act.

Revenue allocated by the respective districts in a region to the regions shall be a direct charge against the respective districts Consolidated Fund".

(Hon. Juma Wario)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

4. Article 246 – Government borrowing

Amendment Motion

(i) Sub-Article (1)

That the sub-Article be amended to read as follows: -

(1) “National, regional and district and locational governments may raise loans for capital or recurrent expenditure in accordance with reasonable conditions determined by national legislation”.

(Hon. Alexander Chepkwony)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

(ii) Sub-Article (2) Agreed to.

Sub-Article (3)

Amendment Motion

That the sub-Article be amended to read as follows: -

(3) “A national legislation referred to in clause (1) may be enacted after recommendations of the Commission on Government Finance and Fiscal Policy have been considered”.

(Hon. Otieno Ogingo)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

A new sub-Article (4)

Amendment Motion

That a new Article be inserted as follows:

(4) “When regions are borrowing, they should seek approval from their respective districts”.

(Hon. Caleb Jumba)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

A new sub-Article (5)

Amendment Motion

That a new sub-Article be inserted to read as follow: -

(5) “Regional, districts and locations borrowing shall be approved by their respective Assemblies and councils”.

(Hon. Leslie Mwachiro)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

MIN. NCC. TWC G. 27/03/2004: ADJOURNMENT

The Convenor adjourned the meeting at 1.05 p.m until this afternoon at 2.30 p.m

AFTERNOON SESSION

The Committee reconvened at 2.35 p.m

**MIN NCC TWC G 27/04/2004: CONSIDERATION OF THE DRAFT
BILL**

The Committee considered the Draft Bill as follows: -

1. Article 247 – Administration of revenue

The Committee deferred the Article to enable the Rapporteurs and the Draftsperson redraft the Article for the Committee’s consideration in the next meeting.

2. Article 252 – Boundaries Commission (originally 247)

(i) Sub-Article 1 -

Amendment Motion

That the sub-Article be amended to read as follows:

(1) “There shall be established a Boundaries Commission”.

(Hon. James Mathenge).

Question proposed;
Debate arising;
Question put and agreed to.

(ii) Sub articles (2) – (5) – **Agreed to**

3. A new Article 253

Amendment Motion

That a new Article be inserted to read as follows:

“253 - Conflict of laws

1. This section applies to a conflict between national legislation and Regional legislation falling within a functional area mentioned in section.....
2. National legislation that applies uniformly in the entire country prevails over Regional legislation if any of the following conditions is satisfied: -

The national legislation deals with a matter that cannot be regulated effectively by legislation enacted by the respective regions individually;

The national legislation deals with a matter that, to be dealt with effectively, required uniformity across the nation, and the national legislation provides that uniformity by establishing:

- norms and standards;
 - frameworks; or
 - national policies.
- The national legislation is necessary for:
- the maintenance of national security;
 - the maintenance of economic unity;
 - the protection of the common market in respect of the mobility of goods, services, capital and labour;
 - the promotion of economic activities across regional boundaries;
 - the promotion of equal opportunity or equal access to government services; or
 - the protection of the environment and natural resources.
3. National legislation shall prevail over Regional legislation where the national legislation is aimed at preventing unreasonable action by a region that -
 - is prejudicial to the economic health or security interests of another region or the country as a whole; or
 - impedes the implementation of national economic policy.
 4. Regional legislation prevails over national legislation if sub-article (2) or (3) does not apply.

Subject to Article 125(5), a District Law that conflicts with national or regional legislation is invalid.

6. A decision by a Constitutional court that legislation prevails over other legislation does not invalidate that other legislation, but that other legislation becomes inoperative for as long as the conflict remains.
7. When considering an apparent conflict between legislations of different levels of government, every court shall prefer any reasonable interpretation of the

legislation that avoids a conflict over any alternative interpretation that results in the conflict”.

8. *A clause (8) on circumstances under which a court may refer a matter to the Constitutional Court to be inserted.*

(Hon. Mercy Mwamburi)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

MIN. NCC. TWC. G. 27/06/2004 ADJOURNMENT

The Convenor adjourned the meeting at 5.00 p.m. until Friday, 30 January, 2004.

CONFIRMED

CONVENOR

DATE

**MINUTES OF THE TWENTY EIGHTH MEETING OF THE TECHNICAL
WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER OF THE
DRAFT BILL HELD ON FRIDAY 30TH JANUARY 2004 AT COMMITTEE
TENT 7, BOMAS OF KENYA AT 9.30 A.M**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Alex Chepkwony	367
6. Hon. Daniel Ole Osoi	364
7. Hon. George Kinyua	577
8. Hon. George Mburu Mwaura	586
9. Hon. Gloria Wabwire	396
10. Hon. Grace Akinyi Ogot	399
11. Hon. Hellen Koring'ura	324
12. Hon. Henry Kosgey	077
13. Hon. Hezron Manduku	092
14. Hon. Isa Ileri Ngunia	286
15. Hon. J. S. Mathenge	308
16. Hon. James F. T. Foster	488
17. Hon. Leslie Mwachiro	599
18. Hon. Mereso Agina	508
19. Hon. Michael Githu	355
20. Hon. Mwinyi Haji Mwijaa	234
21. Hon. Otieno Ogingo	413
22. Hon. Wilberforce Kisiero	389
23. Hon. Simeon Shitemi	545
24. Hon. Raphael Livu	228
25. Hon. Tecla Nairesiai	357
26. Hon. Machage W. Gisuka	085
27. Hon. Caleb Jumba	385
28. Hon. Guracha Denge Wario	265
29. Hon. Juma Wario	241
30. Hon. Sospeter Ojaamong	159
31. Hon. Pius Lobuk	328
32. Hon. G. Ndatho Muchiri	301
33. Hon. M. Nyathogora	303
34. Hon. Prof. Mark Olunga Odhiambo	412
35. Hon. Fatuma Sheikh Mohamed	254
36. Hon. Mohamed Yusuf Haji	031
37. Hon. Syongoh Zaddock Madiri	195
38. Hon. J. Kinuthia Mwangi	319
39. Hon. Patrick O. Onyango	590
40. Hon. Isaiah Cheruiyot	346
41. Hon. Betty Njeri Tett	222

42. Hon. Elkanah Odembo	453
43. Hon. Nicholas Biwott	016
44. Hon. J. Mwangi Waweru	310
45. Hon. G. G. Kariuki	042
46. Hon. Amos Kiumo	271
47. Hon. Rev. Macharia Muchuga	226
48. Hon. Suleiman Shakombo	189
49. Hon. G. B. Galgallo	026

Absent with Apology

1. Hon. Mercy Mwamburi	492
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Absent

1. Hon. C. Murungaru	123
2. Hon. Patrice M. Ivuti	032
3. Hon. Simeon Nyachae	149
4. Hon. Ahmed Maalim Omar	255
5. Hon. Maero Tindi	444
6. Hon. Shaaban Ali Isaack	187
7. Hon. Daniel Khamasi	053
8. Hon. Kauchi Chivumba	494
9. Hon. Adan A. Sugow	193
10. Hon. John Katuku	046
11. Hon. Bonaya Godana Adhi	029
12. Hon. Kenneth Marende	096
13. Hon. J. J. Kamotho	040

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Fidelis Wangata	Assistant Programme Officer
3. Mr. Evans Menach	Assistant Programme Officer
4. Ms. Joyce Ndumia	Assistant Programme Officer
5. Mr. Jeremy Wainwright	Drafts person
6. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. Dr. Pamela N. Kola	NGO Council
3. Adan Jirma Duba	Northern NGO Forum
4. Rachel Shebesh	L. K. W. V
5. Medina Ibrahim	Nubian Community
6. Amina H. Ali	Women Political Caucus
7. Nuria Gollo	Borana Community
8. Nyabonyi Kazungu	C. J. P. C
9. Dr. Julius Malombe	DUD/Min. of Local Government
10. Joe Akech	Mayor, Nairobi City

The Meeting opened with prayers.

MIN. NCC. TWC G. 28/01/2004: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the Twenty Seventh meeting held on Thursday 29th January, 2004 were confirmed by the Members present and signed by the Convenor, having been proposed by the Hon. Isaiah Cheruiyot and seconded by Hon. Wario Juma.

MIN. NCC. TWC G. 28/02/2004: CONSIDERATION OF THE DRAFT BILL

The Committee considered the Draft Bill as follows: -

1. Article 221 (Printed) – Consequential Amendments

The Rapporteurs introduced the Article and informed the Committee that the Committee on Legislature had already proposed the second Chamber and named it the Senate. The second Chamber was important to devolution because it was to be composed of representatives from the lower levels of government.

The Committee therefore, resolved as follows: -

That the Senate to comprise one hundred and sixty (160) Senators where one man, one woman, are elected from each of the seventy five districts and ten (10) representatives from minority and special interest groups.

Motion – Rescission of Committee earlier decision

That the Committee rescinds its earlier resolution on the composition of.

(Hon. Wilfred Machage)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

The Committee therefore, revisited its early resolution and resolved that: -

1. The Senate to comprise one hundred and ten Senators where seventy five members are elected from each of the seventy five districts and other twenty five be women elected from the regions and ten from the minority and special interest groups five of whom shall be women.

2. Senators from the district are elected by the district council as an electoral college.

3. The Senators have the right and may be required to sit and speak in the Regional Assembly.

The Committee agreed to reconsider the above issue in the next meeting.

MIN. NCC. TWC G. 28/03/2004: ADJOURNMENT

The Convenor adjourned the meeting at 1.25 p.m until Monday, 2nd February 2004 at 9.00 a.m.

CONFIRMED

CONVENOR

DATE

**MINUTES OF THE TWENTY NINTH MEETING OF THE TECHNICAL
WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER OF THE
DRAFT BILL HELD ON MONDAY 2ND FEBRUARY, 2004 AT COMMITTEE
TENT 7, BOMAS OF KENYA AT 10.00 A.M**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Alex Chepkwony	367
6. Hon. Daniel Ole Osoi	364
7. Hon. George Kinyua	577
8. Hon. George Mburu Mwaura	586
9. Hon. Gloria Wabwire	396
10. Hon. Grace Akinyi Ogot	399
11. Hon. Hellen Koring'ura	324
12. Hon. Henry Kosgey	077
13. Hon. Isa Ileri Ngunia	286
14. Hon. J. S. Mathenge	308
15. Hon. James F. T. Foster	488
16. Hon. Leslie Mwachiro	599
17. Hon. Mereso Agina	508
18. Hon. Michael Githu	355
19. Hon. Otieno Ogingo	413
20. Hon. Wilberforce Kisiero	389
21. Hon. Simeon Shitemi	545
22. Hon. Raphael Livu	228
23. Hon. Tecla Nairesiai	357
24. Hon. Caleb Jumba	385
25. Hon. Guracha Denge Wario	265
26. Hon. Juma Wario	241
27. Hon. Sospeter Ojaamong	159
28. Hon. G. Ndatho Muchiri	301
29. Hon. M. Nyathogora	303
30. Hon. Prof. Mark Olunga Odhiambo	412
31. Hon. Fatuma Sheikh Mohamed	254
32. Hon. Mohamed Yusuf Haji	031
33. Hon. Syongoh Zaddock Madiri	195
34. Hon. Patrick O. Onyango	590
35. Hon. Isaiah Cheruiyot	346
36. Hon. Betty Njeri Tett	222
37. Hon. Elkanah Odembo	453
38. Hon. Nicholas Biwott	016
39. Hon. J. Mwangi Waweru	310
40. Hon. G. G. Kariuki	042
41. Hon. Amos Kiumo	271

42. Hon. Rev. Macharia Muchuga	226
43. Hon. Suleiman Shakombo	189
44. Hon. Mercy Mwamburi	492
45. Hon. Ahmed Maalim Omar	255
46. Hon. Maero Tindi	444
47. Hon. Shaaban Ali Isaack	187
48. Hon. Daniel Khamasi	053
49. Hon. Kauchi Chivumba	494
50. Hon. Adan A. Sugow	193
51. Hon. John Katuku	046

Absent

1. Hon. C. Murungaru	123
2. Hon. Patrice M. Ivuti	032
3. Hon. Simeon Nyachae	149
4. Hon. Bonaya Godana Adhi	029
5. Hon. Kenneth Marende	096
6. Hon. J. J. Kamotho	040
7. Hon. G. B. Galgallo	026
8. Hon. Hezron Manduku	092
9. Hon. J. Kinuthia Mwangi	319
10. Hon. Machage W. Gisuka	085
11. Hon. Mwinyi Haji Mwijaa	234
12. Hon. Pius Lobuk	328

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Fidelis Wangata	Assistant Programme Officer
3. Mr. Evans Menach	Assistant Programme Officer
4. Ms. Joyce Ndumia	Assistant Programme Officer
5. Mr. Jeremy Wainwright	Drafts person
6. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. Rachel Shebesh	L. K. W. V
3. Medina Ibrahim	Nubian Community
4. Nuria Gollo	Borana Community
5. Dr. Julius Malombe	DUD/Min. of Local Government
6. J. B. Okara	COMESA
7. Abdulaziz Ahmed Adam	Nubian Community
8. Beatrice Njeri	I.R.R.P
9. John Oduor	UDPI

The Meeting opened with prayers.

MIN. NCC. TWC G. 29/01/2004: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the Twenty Eighth meetings held on Friday, 30th January, 2004 were confirmed by the Members present and confirmed by the Convenor after being proposed by Hon. Alexander Chepkwony and seconded by the Hon. Kauchi Chivumba.

MIN. NCC. TWC G. 29/02/2004: MATTERS ARISING

Under MIN. NCC. 29/02/2004, the Committee agreed that the issue on composition of the Members of the Senate be considered after consultations with the Committees on Legislature and the Representation of the people.

MIN. NCC. TWC G. 29/03/2004: CONSIDERATION OF THE DRAFT BILL - CONSEQUENTIAL AMENDMENT

The Committee deliberated on the Draft Bill as follows:

A. Consequential Amendment

(i) Amendment Motion

That Article 221 (as printed) – Composition of the Senate be amended to read as follows:

The Senate

“Participation in National Decision-Making”

Governance and administration at the national level shall be a shared function. The regions and districts shall participate through the Senate in the national Legislative decision-making process and administration”.

(Hon. Alexander Chepkwony)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

(ii) Amendment Motion

That the following Article be inserted under the new Article on the Composition and elections of the Senate to read as follows: -

“A person shall qualify for election to the term of office of the Senate if such person qualifies for election to the National Assembly. But a member of a respective electoral college shall not qualify for election as a Senator”.

(Hon. James Waweru)

Motion made and question proposed;

That the following sub-Article be inserted to read as follows: -

“Decisions of the Senate

“Except where the constitution provides otherwise –

- each region shall have one vote, which is cast on behalf of the region by the head of its delegation; and
- all questions before the Senate shall be determined by a two thirds majority of the votes.

(Hon. Leslie Mwachiro)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

(vii) Amendment Motion

That the following sub-Article be inserted to read as follows: -

“That the Speaker and Deputy Speaker of the Senate shall be elected from outside the Senate or among the Senators and if he is a Senator, he shall resign his seat as a Senator”.

(Hon. Daniel Khamasi)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

(viii) Amendment Motion

That a sub-Article be inserted as follows: -

“That the Speaker and deputy Speaker are elected to serve their term of five years”.

(Hon. James Waweru)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

(viii) Amendment Motion

That a sub-Article be inserted to read as follows: -

“The Deputy Speaker be elected in the same manner as the speaker”.

(Hon. James Waweru)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

(x) Amendment Motion

That the following new Article be inserted to read as follows: -

“The Speaker and the Deputy Speaker of the Senate should be of the opposite gender”.

(Hon. Mereso Agina)

Motion made and question proposed;
Debate arising;
Question put and negatived after a vote was taken.

The results of the vote are as follows:

AYES = 11
NOES = 24

Amendment Motion

The following new sub-Article be inserted to read as follows: -

“That the election of the speaker shall be presided over by the Clerk of the Senate. Upon election the speaker shall preside over the election of the deputy speaker”.

(Hon. Caleb Jumba)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

Amendment Motion

That the following sub-Article be inserted to read as follows: -

“The Senate may by a vote of two thirds majority of its members remove a speaker or deputy speaker from office”.

(Hon. Raphael Livu)

Motion made and question proposed;
Debate arising;

Question put and agreed to.

Amendment Motion

That the following sub-Article be inserted to read as follows: -

“A person qualified to be a Member of Parliament can be elected as a Speaker and deputy Speaker of the Senate”.

(Hon. James Waweru)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

Amendment Motion

That a new Article be inserted as follows:

“National legislation enacted in accordance with the procedure established for the passing of bills affecting regions, shall provide for a uniform procedure in terms of which regional Assemblies confer authority on their delegations to cast votes on their behalf”.

(Hon. Amos Kiumo)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

(xv) Amendment Motion

That a new sub-Article be inserted to read as follows: -

“Senators may on their own motion or upon request attend, and may speak in, their respective Regional Assemblies, but shall not vote”.

(Hon. Kauchi Chivumba)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

(xvi) Amendment Motion

That a new sub-Article be inserted to read as follows: -

“Cabinet Ministers and deputy Ministers or an official in the national executive may attend and may speak in the Senate, but shall not vote”.

(Hon. Wario Denge)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

(xvii) Amendment Motion

That a new sub-Article be inserted to read as follows: -

“The Senate may require a Cabinet Minister or an official in the national executive or a regional executive to attend a meeting of the Senate or a Committee of the Senate”.

(Hon. Margaret Nyathogora)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

(xviii) Amendment Motion

That the following new sub-Article be inserted to read as follows: -

“Legislative Authority of the Senate

In exercising its legislative, authority, the Senate may –

- consider, pass, amend, propose amendments to or reject any legislation before the Senate, in accordance with the provisions of this constitution; and
- initiate or prepare legislation within functional areas that can be handled concurrently between the national and regional levels of government or other Legislation referred to and envisaged by this constitution but may not initiate or prepare money Bills”.

(Hon. Mercy Mwamburi)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

MIN. NCC. TWC G. 29/04/2004: ADJOURNMENT

The Convenor adjourned the meeting at 1.10 p.m until this afternoon at 2.30 p.m.

AFTERNOON SESSION

The Committee reconvened at 2.35 p.m.

MIN. NCC. TWC G. 29/05/2004: ANNOUNCEMENT

The Convenor informed the Committee about the programme for the retreat scheduled for Mombasa from 3rd – 10th February, 2004. The Committee therefore should finalize its deliberations of the Draft Bill by the end of Tuesday 3rd February, 2004 for presentation during the said retreat.

MIN. NCC. TWC G. 29/06/2004: CONSIDERATION OF THE DRAFT BILL

The Committee considered the Draft Bill and introduced new Articles to be inserted in the relevant sections as follows: -

A. Amendment Motion

That a new Article be inserted as follows:-

“The National Legislative Process”

“All Bills be introduced in the National Assembly”.

(Hon. Caleb Jumba)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

B. Amendment Motion

That a new Article be inserted as follows:-

“Bills not affecting Regions”

When the National Assembly passes a Bill other than a Bill amending the constitution or a Bill affecting, regions, the Bill must be referred to the Senate and dealt with in accordance with the following procedure: -

The Senate must –

- (i) pass the Bill;
- (ii) pass the Bill subject to amendments proposed by it; or
- (iii) reject the Bill.

If the Senate passes the Bill without proposing amendments to the Bill must be submitted to the president for assent.

If the Senate rejects the Bill or passes it subject to amendments, the National Assembly must reconsider the Bill taking into account any amendment proposed by the Senate, and may –

- (i) pass the Bill again, either with or without amendments; or
- (ii) decide not to proceed with the Bill.

A Bill passed by the National Assembly in terms of paragraph (c) must be submitted to the President for assent.

When the Senate votes on a question in terms of this section, section _____ does not apply; instead –

- each delegate in a regional delegation has one vote;
- at least one third of the delegates must be present before a vote may be taken on the question; and
- the question is decided by a majority of the votes cast but if there is an equal number of votes on each side of the question, (Another vote is taken and if there is no majority votes, the Bill is subjected for a third vote and if there is no majority the Bill shall be deferred and may be reintroduced after three months”.

(Hon. Daniel Khamasi)

Motion made and question proposed;
 Debate arising;
 Question put and agreed to.

C. Amendment Motion

That a new Article be inserted as follows:-

“Bills affecting regions

1. When the National Assembly passes a Bill referred to in sub section (3), (4) or (5) the Bill must be referred to the Senate and dealt with in accordance with the following procedure: -

The Senate must –

- pass the Bill;
- pass an amended Bill; or
- reject the Bill.

If the Senate passes the Bill without amendment, the Bill must be submitted to the President for assent.

If the Senate passes an amended Bill, the amended Bill must be referred to the National Assembly, and if the National Assembly passes the amended Bill, it must be submitted to the President for assent.

If the Senate rejects the Bill, or if the National Assembly refuses to pass the amended Bill referred to it in terms of paragraph (c), the Bill and where applicable, also the amended Bill, must be referred to the Mediation Committee, which may agree on –

- the Bill as passed by the National Assembly;
- the amended Bill as passed by the Senate; or
- another version of the Bill.

If the Mediation Committee is unable to agree within 30 days of the Bills referral to it, the Bill lapses unless the National Assembly again passes the Bill, but with a supporting vote of at least two thirds of its members.

If the Mediation Committee agrees on the Bill as passed by the National Assembly, the Bill must be referred to the Senate, and if the Senate passes the Bill, the Bill must be submitted to the President for assent.

If the Mediation Committee agrees on the amended bill as passed by the Senate, the Bill must be referred to the National Assembly, and if it is passed by the National Assembly, it must be submitted to the President for assent.

If the Mediation Committee agrees on another version of the Bill, that version of the Bill must be referred to both the national Assembly and the Senate, and if its passed by the National Assembly and the Senate; it must be submitted to the President for assent.

If a Bill referred to the Senate in terms of paragraph (f) and (h) is not passed by the Senate, the Bill Lapses, but the Bill as originally passed by the National Assembly may again be passed by the National Assembly, but with a supporting vote of at least two thirds of its members.

A Bill passed by the National Assembly in terms of paragraph (e), (i) or (j) must be submitted to the President for assent.

When the Senate passes a Bill referred to in sub section (3), the Bill must be referred to the National Assembly and dealt with in accordance with the following procedure:

-
The National Assembly must –

- pass the Bill;
- pass an amended Bill; or
- reject the Bill.

If the National Assembly passes an amended Bill, the amended Bill must be referred to the Senate, and if the Senate passes the amended Bill, it must be submitted to the President for assent.

If the National Assembly rejects the Bill, of it the Senate refuses to pass an amended Bill referred to it terms of paragraph (l), the Bill and, where applicable, also the amended Bill must be referred to the Mediation Committee, which may agree on –

- the Bill as passed by the Senate;
- the amended Bill as passed by the National Assembly; or
- another version of the Bill.

If the Mediation Committee is unable to agree within 30 days of the Bill's referral to it, the Bill lapses.

If the Mediation Committee agrees on the Bill as passed by the Senate, the Bill must be referred to the National Assembly, and if the National Assembly passes the Bill, the Bill must be submitted to the President for assent.

If the Mediation Committee on the amended Bill as passed by the National Assembly, the Bill must be referred to the Senate, and if it is passed by the senate, it must be submitted to the President for assent.

If the Mediation Committee agrees on another version of the Bill, that version of the Bill must be referred to both the Senate and the National Assembly, and if it is passed by the Senate and the National Assembly, it must be submitted to the President for assent.

If a Bill referred to the National Assembly in terms of paragraph (f) or (h) is not passed by the National Assembly, the Bill Lapses.

A Bill must be dealt with in accordance with the procedure established by either sub section (1) or (2) if it concerns a functional area that can concurrently be handled by both the National and Regional levels of government or provides for legislation envisaged in any of the following sections: -

- (a)
- (b)
- (c)
- (d)

A Bill must be dealt with in accordance with the procedure established by sub section (1) if it provides for legislation to maintain -

- national security;
- economic unity;
- essential national standards;
- to establish minimum standards required for the rendering of services; or
- to prevent unreasonable action taken by a region which is prejudicial to the interests of another region or to the country as a whole;
- legislation concerning the functioning of the Commission on Finance and fiscal policy; and
- legislation envisaged in the part of Finance and which affects the financial interests of the regions and the Districts.

(Hon. Isaiah Cheruiyot)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

The Draftperson was asked to refine and reorganize the Article.

D. Amendment Motion

That a new Article be inserted as follows:-

“Select Committee on Mediation”

1. The Mediation Committee consists of -
 - nineteen members of the National Assembly elected by the Assembly in accordance with the rules of procedure and standing orders of the National Assembly; and

- one delegate from each regional delegation in the Senate, designated by the delegation.
2. The Mediation Committee decides a question before it when the question is votes for by -
at least a simple majority of the representation of the Senate.

(b) A simple majority of the representation of the National Assembly”.
(Hon. Leslie Mwachiro)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

The Committee further agreed that the above Article on Mediation Committee be refined and reorganized to incorporate the following:-

- Establishment of the Committee
- Composition of the Committee
- Structure of the Committee.

Vertical Assignment of functions

The Committee considered the Article on the Vertical Assignment of functions of the various levels of government together with the **Eighth Schedule on functions of regional and district legislatures** and resolved that the schedule together with the Article, be consolidated to be one article.

E. Amendment Motion

That a new Article be inserted to read as follows:

“National Level of Government”

- Foreign affairs, foreign policy and international trade;
- Foreign and international trade;
- National defense and the use of the national defense services;
- National security and the setting of standards of recruitment training and use of police services;
- The development of education policy, standards, curricula, examinations and the granting of university charters;
- National universities, tertiary educational institutions and other institutions of higher learning;
- The supporting of regional and district universities and other institutions of higher learning;
- National research institutions and the supporting of regional and district regional and district research institutions;
- National statistics and data on population, the economy and the society generally;
- Promotion of sports and sports education;
- The regulation of the relationship between religion and state;

- The protection of the environment with a view to establishing a durable and sustainable system of development;
- General principles of land planning and the co-ordination planning by the regions and districts;
- The protection of water resources and their use and the fight against harmful effects on water;
- Establishing of general principles for the preservation and utilization of water reserves for the use of water for the production of energy and other interventions into the water cycle;
- Legislation on water protection, securing sufficient residual water, hydraulic engineering and the safety of dams;
- In consultation with the regions and districts the use of international waters and water resources;
- Establishment of principles for the protection and conservation of forests and the protective economic and social use thereof;
- Establishment of the general principles on fishing and hunting;
- Legislation on the protection of animals and wildlife;
- The building and operation of public works and supporting the realization of such works;
- Legislation on road traffic;
- The construction and operation of national trunk roads;
- The establishment of rules regarding the construction and maintenance of other roads by regions and districts;
- Legislation on rail traffic, navigation, aviation and space travel;
- The establishment of principles on the use of domestic and renewable energy;
- Legislation on use of energy for installations, vehicles;
- Regulation of the housing policy;
- Control of labour standards;
- Setting standards on adequate social security and professional pension plans;
- Citizenship and registration of citizens;
- Legislation in the field of criminal law;
- National referral health facilitating;
- Legislation on consumer protection;
- Language policy and the regulation of official languages;
- Disaster management.

(Hon. George Mburu Mwaura)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

The Draftsperson was asked to harmonize and redraft the new Article with the Seventh Schedule of the original Draft Constitution, to form one Article.

MIN NCC TWC G 29/07/2004 ADJOURNMENT

The Convenor adjourned the meeting at 5.10 p.m. until Tuesday 3rd February at 9.00 a.m.

CONFIRMED

CONVENOR

DATE

**MINUTES OF THE THIRTIETH MEETING OF THE TECHNICAL
WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER OF THE
DRAFT BILL HELD ON TUESDAY 3RD FEBRUARY, 2004 AT COMMITTEE
TENT 7, BOMAS OF KENYA AT 10.00 A.M**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Alex Chepkwony	367
6. Hon. Daniel Ole Osoi	364
7. Hon. George Kinyua	577
8. Hon. George Mburu Mwaura	586
9. Hon. Gloria Wabwire	396
10. Hon. Grace Akinyi Ogot	399
11. Hon. Hellen Koring'ura	324
12. Hon. Isa Ileri Ngunia	286
13. Hon. J. S. Mathenge	308
14. Hon. James F. T. Foster	488
15. Hon. Leslie Mwachiro	599
16. Hon. Mereso Agina	508
17. Hon. Michael Githu	355
18. Hon. Otieno Ogingo	413
19. Hon. Wilberforce Kisiero	389
20. Hon. Simeon Shitemi	545
21. Hon. Raphael Livu	228
22. Hon. Tecla Nairesiai	357
23. Hon. Caleb Jumba	385
24. Hon. Guracha Denge Wario	265
25. Hon. Juma Wario	241
26. Hon. Sospeter Ojaamong	159
27. Hon. G. Ndatho Muchiri	301
28. Hon. M. Nyathogora	303
29. Hon. Prof. Mark Olunga Odhiambo	412
30. Hon. Fatuma Sheikh Mohamed	254
31. Hon. Mohamed Yusuf Haji	031
32. Hon. Patrick O. Onyango	590
33. Hon. Isaiah Cheruiyot	346
34. Hon. Betty Njeri Tett	222
35. Hon. Elkanah Odembo	453
36. Hon. Nicholas Biwott	016
37. Hon. J. Mwangi Waweru	310
38. Hon. G. G. Kariuki	042
39. Hon. Amos Kiumo	271
40. Hon. Rev. Macharia Muchuga	226
41. Hon. Suleiman Shakombo	189

42. Hon. Mercy Mwamburi	492
43. Hon. Ahmed Maalim Omar	255
44. Hon. Maero Tindi	444
45. Hon. Daniel Khamasi	053
46. Hon. Kauchi Chivumba	494
47. Hon. J. Kinuthia Mwangi	319
48. Hon. Mwinyi Haji Mwijaa	234
49. Hon. Pius Lobuk	328
50. Hon. Mohamed Yusuf Haji	031
51. Rev. Macharia Muchuga	226
52. Hon. Henry Kosgey	077
53. Hon. Michael Githu	355

Absent

1. Hon. C. Murungaru	123
2. Hon. Patrice M. Ivuti	032
3. Hon. Simeon Nyachae	149
4. Hon. Bonaya Godana Adhi	029
5. Hon. Kenneth Marende	096
6. Hon. J. J. Kamotho	040
7. Hon. G. B. Galgallo	026
8. Hon. Hezron Manduku	092
9. Hon. Machage W. Gisuka	085
10. Hon. Adan A. Sugow	193
11. Hon. Patrick O. Onyango	590
12. Hon. Shaaban Ali Isaack	187
13. Hon. Syongoh Zaddock Madiri	195
14. Hon. John Katuku	046

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Fidelis Wangata	Assistant Programme Officer
3. Mr. Evans Menach	Assistant Programme Officer
4. Ms. Joyce Ndumia	Assistant Programme Officer
5. Mr. Jeremy Wainwright	Drafts person
6. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. Rachel Shebesh	L. K. W. V
3. Dr. Pamela Kola	NGO Council
4. Nuria Gollo	Borana Community
5. Augustine Odipo	ALGAK
6. Ongoro Sam	CORAN
7. J. B. Okara	COMESA
8. Abdulaziz Ahmed Adam	Nubian Community
9. Beatrice Njeri	I.R.R.P

The Meeting opened with prayers.

MIN. NCC. TWC G. 30/01/2004: ANNOUNCEMENT

The Convenor informed the Committee that all Convenors, Draftsperson and Rapporteurs would be leaving for Mombasa to participate in the working retreat for completion of the Committee reports and consolidation of the Zero Draft of the Bill. During the said retreat all the other delegates will be at the plenary discussing matters relating to the National Constitutional Conference and the Draft Bill. In this case therefore, each Technical Working Committee was required to select representatives to the Media Committee who would be called upon to discuss Committee deliberations and recommendations on the Draft Bill, the Report and other issues related therewith.

The following members were therefore selected in that respect: -

1. Hon. Simeon Shitemi
2. Hon. Leslie Mwachiro
3. Hon. Wilberforce Kisiero
4. Hon. Isaiah Cheruiyot
5. Hon. Margaret Nyathogora
6. Hon. Otieno Ogingo
7. Hon. Grace Ogot
8. Hon. James Waweru
9. Hon. Ahmed Omar
10. Hon. Happy Gloria Wabwire
11. Hon. Raphael Livu
12. Hon. Nicholas Biwott
13. Hon. Zaddock Syongoh Madiri
14. Hon. Daniel Khamasi
15. Hon. James Mathenge
16. Hon. Denge Wario

MIN. NCC. TWC G. 30/02/2004: CONSIDERATION OF THE DRAFT BILL

The Committee considered the Draft Bill on the vertical assignment of functions and specifically the functions of the district level of government as follows: -

1. Amendment Motion

That a new Article on the district level of government be inserted to read as follows: -

Powers and functions assigned to the district level of government: -

- Agriculture;
- Animal disease control
- Casinos, racing, gambling and video shows
- District abattoirs;
- Ambulance services;
- Veterinary services, excluding regulation of the profession
- Beaches and amusement facilities;

- Billboards and the display of advertisements in public places;
- Cemeteries, funeral parlours and crematoria;
- Control of public nuisances;
- Liquor Licensing
- Facilities for the accommodation, care and burial of animals;
- Fencing and fences;
- Licensing of dogs and pets
- Licensing and control of undertakings that sell food to the public;
- District amenities;
- District sports facilities
- Markets;
- District parks and recreation;
- District roads;
- Noise pollution;
- Public places;
- Refuse removal, refuse dumps and solid waste disposal;
- Street lighting;
- Traffic and parking;
- Education at nursery, primary and secondary levels;
- District cultural matters;
- District health facilities and pharmacies;
- Housing
- Public transport;
- District Planning and development;
- Soil and water conservation;
- Air pollution;
- District Building regulations;
- Childcare facilities;
- Electricity, gas reticulation and energy
- Firefighting services;
- Local tourism;
- District transport;
- District public works only in respect of the needs of districts in the discharge of their responsibilities;
- Ferries and harbours, excluding the regulation of international and national shipping and matters related thereto;
- Storm water management systems in built up areas;
- Trading regulations;
- Water and sanitation services limited to drinkable water supply systems and domestic waster water and sewage disposal systems;
- District libraries;
- Disaster Management;
- Livestock sellyards;
- Control of drugs and pornography”.

(Hon. Hellen Koringura)

Motion made and question proposed;

Debate arising;
Question put and agreed to.

2. Amendment Motion

That a new Article on the functions of the Regional level of government be inserted as follows:-

Powers and functions assigned to the Regional Level of Government

- Participation and being consulted in foreign affairs that affect the regions;
- Participation in foreign and international trade;
- Regional security and in consultation with the national government districts and locations in setting up a regional police service;
- Education and running of regional universities and other regional institutions of higher learning;
- Regional research institutions;
- Regional land policy, planning and use;
- The building and operation of regional public works;
- Building and maintaining regional trunk roads according to the rules set by national level of government and under its supervision;
- Veterinary services, excluding regulation of the profession;
- Regional referral health facilities;
- Regional industrial and other development;
- Agriculture;
- Tourism;
- Regional airports;
- Archives other than national archives;
- Regional libraries;
- Regional museums;
- Regional planning;
- Regional cultural matters;
- Regional sport;
- Regional language policy and the promotion of official language;
- Disaster management;
- Storm water control and management;
- Regional environment and natural resources;
- Fisheries;
- Energy”.

(Hon. James Mathenge)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

Motion

“That Affirmative action policy in the area of access in current

national and Provincial schools be retained and the management go to the district governments”.

(Hon. Hellen Koringura)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

3. Amendment Motion

That Article on the functions of Locational level of government be inserted to read as follows:-

Powers and functions assigned to the Locational Level of Government

- Education at the Pre-primary, primary and secondary level; adult education, village polytechnics, home craft centers and Jua kali centers.
- Intra-location roads and trunks;
- Locational health facilities such as dispensaries and pharmacies;
- Public toilets, waster disposal and garbage collection;
- Rural banks and credit and savings system; micro-financing and co-operatives
- Rural markets, marketing and other information;
- Social security and neighbourhood Community policing
- Locational sport facilities;
- Locational cultural matter including funeral services and disposal of dead bodies;
- Animal dips;
- Veterinary services, excluding regulation of the profession;
- Communal land management and settlement
- Natural resource and conservation;
- Seed and tree multiplication;
- Water management and distribution systems.
- Promotion of traditional medicine and herbs
- Settlement of local disputes and arbitration
- Local law and order
- Co-ordination of sub locations/village projects”

(Hon. Grace Ogot)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

MIN. NCC. TWC G. 30/03/2004: ADJOURNMENT

The Convenor adjourned the meeting at 2.15 p.m until this afternoon at 2.45 p.m

AFTERNOON SESSION

The Committee reconvened at 3.10 p.m.

MIN. NCC. TWC G. 30/04/2004: CONSIDERATION OF THE DRAFT BILL

The Committee considered article 239 (as printed) on Taxation powers together with the Tenth Schedule on Taxation powers and resolved that the Schedule be incorporated with the Article to be one article.

1. Amendment Motion

That Article 239 (as printed) be amended to read as follows:

Article 239 (as printed) – Taxation Powers

The national legislative may raise by way of taxes levies and duties,

- Income tax;
- Value added – tax;
- Corporation tax;
- Custom duties and other duties on import and export goods;
- Excise tax;
- General sales tax;
- National stamp duties;
- Taxes from the national lottery and other prizes of a similar nature;
- Income taxes on transport by road, air, rail and water;
- Rents from houses and other property owned by the national Level of Government;
- Fees from licenses issued by the national level of government;
- Court fees, fines and forfeitures
- Exchange receipts;
- Motor vehicle registration fees and driving licenses fees;
- Fees for government goods and services.
- Any other taxes which may be formulated by the government from time to time”.

(Hon. Amos Kiumo)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

2. Motion

That the following new Article on taxation powers in the district be inserted in Article 239 (as printed) – **Taxation Powers**.

“A District council may raise by way of taxes, surcharges the following: -

- Taxes, levies and duties other than those assigned to the national level of government;

- Flat rate surcharges on the tax bases of any tax, levy or duty that is imposed by national legislation other than the tax bases of corporate income tax, value added tax and customs and excise;
- Land use fees;
- Agricultural tax;
- Income from properties owned by the District government;
- Rates on property and surcharges for services provided by or on behalf of the District;
- Cess on produce
- Licensing fees;
- Entertainment tax;
- Liquor licences;
- Business permits;
- District roads maintenance;
- District hotels and Restaurants tax;
- Natural resource royalties tax;
- Market gate fee collection at markets;
- Religious organizations, consultancy and professional services from NGO and other organization be taxed;
- Game parks and Reserve gate fees;
- Sea ports, Lake ports and international boundaries;
- Transport tax;
- Parking fees;
- Hawking fees;
- Any other income that may be introduced by the National government from time to time”.

(Hon. James Waweru)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

MIN. NCC. TWC G. 31/05/2004: DEFERRED ARTICLES

The Committee noted that all the Convenors Rapporteurs and Draftspersons were retreating to Mombasa to consolidate the Draft Bill before the Committee could finalize with the consideration of the Draft Bill. Considering that there was no time to complete its remaining items, the Committee mandated the Convenor, Rapporteurs and the Draftsperson to refine the following deferred Articles, and prepare and present the Committee report during the retreat. The Committee will reconsider the said Articles and its report when Committee resumes its sittings after the retreat.

- Administration of revenue.
- Mix member proportional representation. The Committee agreed that the proportional representation should not be reflected in the constitution.
- Staffing of devolved authorities.
- Publication of law.

- Formalities of law making.
- Government borrowing.
- Prohibition against holding elective office at national and devolved levels.
- Supplementary legislation.

MIN. NCC. TWC G. 30/06/2004: ADJOURNMENT

The Convenor adjourned the meeting at 5.00 p.m.

CONFIRMED

CONVENOR

DATE

**MINUTES OF THE THIRTY FIRST MEETING OF THE TECHNICAL
WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER OF THE
DRAFT BILL HELD ON TUESDAY 17TH FEBRUARY, 2004 AT
COMMITTEE TENT 7, BOMAS OF KENYA AT 10.30 A.M**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Alex Chepkwony	367
6. Hon. Daniel Ole Osoi	364
7. Hon. George Kinyua	577
8. Hon. George Mburu Mwaura	586
9. Hon. Grace Akinyi Ogot	399
10. Hon. Hellen Koring'ura	324
11. Hon. Isa Ireri Ngunia	286
12. Hon. J. S. Mathenge	308
13. Hon. James F. T. Foster	488
14. Hon. Leslie Mwachiro	599
15. Hon. Mereso Agina	508
16. Hon. Michael Githu	355
17. Hon. Otieno Ogingo	413
18. Hon. Wilberforce Kisiero	389
19. Hon. Simeon Shitemi	545
20. Hon. Raphael Livu	228
21. Hon. Tecla Nairesiai	357
22. Hon. Caleb Jumba	385
23. Hon. Guracha Denge Wario	265
24. Hon. Juma Wario	241
25. Hon. Sospeter Ojaamong	159
26. Hon. G. Ndatho Muchiri	301
27. Hon. M. Nyathogora	303
28. Hon. Prof. Mark Olunga Odhiambo	412
29. Hon. Fatuma Sheikh Mohamed	254
30. Hon. Mohamed Yusuf Haji	031
31. Hon. Isaiah Cheruiyot	346
32. Hon. Betty Njeri Tett	222
33. Hon. Elkanah Odembo	453
34. Hon. Nicholas Biwott	016
35. Hon. J. Mwangi Waweru	310
36. Hon. G. G. Kariuki	042
37. Hon. Rev. Macharia Muchuga	226
38. Hon. Mercy Mwamburi	492
39. Hon. Ahmed Maalim Omar	255
40. Hon. Maero Tindi	444
41. Hon. Daniel Khamasi	053

42. Hon. Kauchi Chivumba	494
43. Hon. J. Kinuthia Mwangi	319
44. Hon. Mwinyi Haji Mwijaa	234
45. Hon. Pius Lobuk	328
46. Hon. Hezron Manduku	092
47. Hon. Machage W. Gisuka	085
48. Hon. Syongoh Zaddock Madiri	195
49. Hon. Gloria Wabwire	396
50. Hon. Amos Kiumo	271

Absent

1. Hon. C. Murungaru	123
2. Hon. Patrice M. Ivuti	032
3. Hon. Simeon Nyachae	149
4. Hon. Bonaya Godana Adhi	029
5. Hon. Kenneth Marende	096
6. Hon. J. J. Kamotho	040
7. Hon. G. B. Galgallo	026
8. Hon. Adan A. Sugow	193
9. Hon. Shaaban Ali Isaack	187
10. Hon. John Katuku	046
11. Hon. Patrick O. Onyango	590
12. Hon. Suleiman Shakombo	189
13. Hon. Henry Kosgey	077

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Fidelis Wangata	Assistant Programme Officer
3. Mr. Evans Menach	Assistant Programme Officer
4. Ms. Joyce Ndumia	Assistant Programme Officer
5. Mr. Jeremy Wainwright	Drafts person
6. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. Rachel Shebesh	L. K. W. V
3. Dr. Pamela Kola	NGO Council
4. J. B. Okara	COMESA
5. Abdulaziz Ahmed Adam	Nubian Community
6. Beatrice Njeri	I.R.R.P
7. Amina H. Ali	Women Political Caucus
8. Medina Ibrahim Asman	Nubian Community
9. Adan Jirma Duba	Northern NGO Forum

The Meeting opened with prayers.

**MIN. NCC. TWC G. 31/01/2004: CONSIDERATION OF THE
DEVOLUTION OF POWERS (CHAPTER
TEN) IN THE ZERO DRAFT**

The copies of the Devolution of Powers (Chapter Ten) as contained in the Zero Draft were circulated to all the Members. The Chapter contained the Committee proposals to the Draft Bill, which were presented during the retreat in Mombasa.

The Committee read through the Committee Draft from Article 214 – 231 with a view to confirming that all their proposals were incorporated and resolved to discuss the document in detail in the next meeting.

A report of the retreat in Mombasa will also be discussed in the next meeting.

MIN. NCC. TWC G. 31/02/2004: ADJOURNMENT

The Convenor adjourned the meeting at 1.40 p.m. until Wednesday, 18th February 2004 at 9.00 a.m.

CONFIRMED

CONVENOR

DATE

**MINUTES OF THE THIRTY SECOND MEETING OF THE TECHNICAL
WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER OF THE
DRAFT BILL HELD ON WEDNESDAY 18TH FEBRUARY, 2004 AT
COMMITTEE TENT 7, BOMAS OF KENYA AT 10.30 A.M**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Alex Chepkwony	367
6. Hon. Daniel Ole Osoi	364
7. Hon. George Kinyua	577
8. Hon. George Mburu Mwaura	586
9. Hon. Hellen Koring'ura	324
10. Hon. Isa Ireri Ngunia	286
11. Hon. J. S. Mathenge	308
12. Hon. James F. T. Foster	488
13. Hon. Leslie Mwachiro	599
14. Hon. Mereso Agina	508
15. Hon. Michael Githu	355
16. Hon. Otieno Ogingo	413
17. Hon. Wilberforce Kisiero	389
18. Hon. Simeon Shitemi	545
19. Hon. Raphael Livu	228
20. Hon. Tecla Nairesiai	357
21. Hon. Caleb Jumba	385
22. Hon. Guracha Denge Wario	265
23. Hon. Juma Wario	241
24. Hon. Sospeter Ojaamong	159
25. Hon. G. Ndatho Muchiri	301
26. Hon. M. Nyathogora	303
27. Hon. Prof. Mark Olunga Odhiambo	412
28. Hon. Fatuma Sheikh Mohamed	254
29. Hon. Mohamed Yusuf Haji	031
30. Hon. Isaiah Cheruiyot	346
31. Hon. Betty Njeri Tett	222
32. Hon. Elkanah Odembo	453
33. Hon. Nicholas Biwott	016
33. Hon. J. Mwangi Waweru	310
35. Hon. G. G. Kariuki	042
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37. Hon. Mercy Mwamburi	492
38. Hon. Ahmed Maalim Omar	255
39. Hon. Maero Tindi	444
40. Hon. Daniel Khamasi	053
41. Hon. Kauchi Chivumba	494

42. Hon. J. Kinuthia Mwangi	319
43. Hon. Mwinyi Haji Mwijaa	234
44. Hon. Pius Lobuk	328
45. Hon. Hezron Manduku	092
46. Hon. Machage W. Gisuka	085
47. Hon. Syongoh Zaddock Madiri	195
48. Hon. Gloria Wabwire	396
49. Hon. Amos Kiumo	271
50. Hon. Henry Kosgey	077
51. Hon. John Katuku	046
52. Hon. Patrick O. Onyango	590

Absent

1. Hon. C. Murungaru	123
2. Hon. Patrice M. Ivuti	032
3. Hon. Simeon Nyachae	149
4. Hon. Bonaya Godana Adhi	029
5. Hon. Kenneth Marende	096
6. Hon. J. J. Kamotho	040
7. Hon. G. B. Galgallo	026
8. Hon. Adan A. Sugow	193
9. Hon. Shaaban Ali Isaack	187
10. Hon. Suleiman Shakombo	189
11. Hon. Grace Akinyi Ogot	399

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Fidelis Wangata	Assistant Programme Officer
3. Mr. Evans Menach	Assistant Programme Officer
4. Ms. Joyce Ndumia	Assistant Programme Officer
5. Mr. Jeremy Wainwright	Drafts person
6. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. Rachel Shebesh	L. K. W. V
3. Dr. Pamela Kola	NGO Council
4. J. B. Okara	COMESA
5. Abdulaziz Ahmed Adam	Nubian Community
6. Beatrice Njeri	I.R.R.P
7. Medina Ibrahim Asman	Nubian Community
8. Adan Jirma Duba	Northern NGO Forum
9. Ascar Kwamboka	Activist

The Meeting opened with prayers.

MIN. NCC. TWC G. 32/01/2004: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the following meetings were confirmed by the Members present and signed by the Convenor.

Minutes of the Twenty Ninth meeting held on Monday 2nd February, 2004 were proposed by the Hon. Margaret Nyathogora and seconded by the Hon. George Mburu Mwaura.

Minutes of the Thirtieth meeting held on Tuesday 3rd February, 2004 were proposed and seconded by the Hon. Mohamed Yusuf Haji and Hon. Isaiah Cheruiyot respectively.

Minutes of the Thirty First meeting held on Tuesday 17th February, 2004 were proposed by the Hon. Fatuma Sheikh and seconded by Hon. Kauchi Chivumba.

MIN. NCC. TWC G. 32/02/2004: MOTION

That considering that the Constituency is not only an electoral unit in Kenya but is also emerging as a development planning and implementation unit, this Committee resolves that the place and role of the constituency within the devolved structure of the Republic be debated and determined accordingly.

(Hon. Zaddock Madiri Syongoh)

Motion made and seconded;

Question proposed;
Debate arising;
Amendment proposed

That a Member Parliament becomes an ex-officio Member of the district Council by which district his/her constituency belongs and the locational council within his/her constituency and may attend its meetings and take part in its deliberations, but not vote on any matter.

(Hon. Daniel Khamasi)

The amendment proposed was disallowed in accordance with Article 30 (5) of the National Constitutional Regulations because it substantially negated the original motion

Debate interrupted on the original motion resumed;
Debate arising;
Question put and negated.

MIN. NCC. TWC G. 32/03/2004: ADJOURNMENT

The Convenor adjourned the meeting at 1.00 pm until this afternoon at 2.30 p.m

AFTERNOON SESSION

The Committee reconvened at 2.45 p.m.

MIN. NCC. TWC G. 32/4/2004: CONSIDERATION OF THE ZERO DRAFT

The copies of the Zero Draft were circulated to all members. The Committee resolved to discuss the Chapter Ten (Devolution of powers) in the Zero Draft together with the report of the Mombasa retreat which include:-

- Harmonization of issues arising from the Devolution Committee presented on 9th February 2004.
- Summary of comments and suggestions given by participants during the retreat in Mombasa

The Committee discussed the Committee chapter as follows:

Part 1 – Structure and principles of Devolved Governments

Article 213 - Division of Kenya into regions, districts and locations.

The Committee discussed the article and agreed that there was need to revisit the creation of the regions with a view to reducing the number from the nineteen regions proposed by the Committee to about thirteen.

The Rapporteurs informed the Committee that while reconsidering the regions the following factors be considered.

- Viability
- Sustainability
- Comparable territorial size
- Comparable population size
- Historical and Cultural ties
- The protection and welfare of minorities in the units
- Presently existing administrative and political units
- The functions of the intended proposed regions
- Economic potential and natural resource endowment
- Efficiency
- Effectiveness
- Biodiversity
- The intergovernmental relations both vertically with the national government and at the lower levels and horizontally with other devolved units.

The Committee therefore deferred the discussion of the article in order to allow members to consult amongst themselves before the article is discussed in the next meeting.

MIN. NCC. TWC. G. 32/5/2004: ADJOURNMENT

The Convenor adjourned the meeting at 4.45 until Thursday, 19th February at 9.00 a.m.

CONFIRMED

DATE

CONVENOR

**MINUTES OF THE THIRTY THIRD MEETING OF THE TECHNICAL
WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER OF THE
DRAFT BILL HELD ON THURSDAY 19TH FEBRUARY, 2004 AT
COMMITTEE TENT 7, BOMAS OF KENYA AT 10.30 A.M**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Alex Chepkwony	367
6. Hon. Daniel Ole Osoi	364
7. Hon. George Kinyua	577
8. Hon. George Mburu Mwaura	586
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26. Hon. M. Nyathogora	303
27. Hon. Prof. Mark Olunga Odhiambo	412
28. Hon. Fatuma Sheikh Mohamed	254
29. Hon. Mohamed Yusuf Haji	031
30. Hon. Isaiah Cheruiyot	346
31. Hon. Elkanah Odembo	453
32. Hon. Nicholas Biwott	016
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44. Hon. Machage W. Gisuka	085
45. Hon. Gloria Wabwire	396
46. Hon. Amos Kiumo	271
47. Hon. Henry Kosgey	077
48. Hon. John Katuku	046
49. Hon. Suleiman Shakombo	189

Absent

1. Hon. C. Murungaru	123
2. Hon. Patrice M. Ivuti	032
3. Hon. Simeon Nyachae	149
4. Hon. Bonaya Godana Adhi	029
5. Hon. Kenneth Marende	096
6. Hon. J. J. Kamotho	040
7. Hon. G. B. Galgallo	026
8. Hon. Adan A. Sugow	193
9. Hon. Shaaban Ali Isaack	187
10. Hon. Grace Akinyi Ogot	399
11. Hon. Betty Njeri Tett	222
12. Hon. Ahmed Maalim Omar	255
13. Hon. Syongoh Zaddock Madiri	195
14. Hon. Patrick O. Onyango	590

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Fidelis Wangata	Assistant Programme Officer
3. Mr. Evans Menach	Assistant Programme Officer
4. Ms. Joyce Ndumia	Assistant Programme Officer
5. Mr. Jeremy Wainwright	Drafts person
6. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. J. B. Okara	COMESA
3. Abdulaziz Ahmed Adam	Nubian Community
4. Medina Ibrahim Asman	Nubian Community
5. Adan Jirma Duba	Northern NGO Forum
6. Ascar Kwamboka	Activist
7. John Bio Oduor	UDPI

The Meeting opened with prayers.

MIN. NCC. TWC G. 33/01/2004: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the Thirty Second meeting held on Wednesday, 18th February 2004 were confirmed by the Members present and signed by the Convenor having been proposed by the Hon. Alexander Chepkwony and seconded by the Hon. Macharia Muchuga.

MIN. NCC. TWC G. 33/02/2004: CONSIDERATION OF THE ZERO DRAFT

The Committee considered Chapter Ten of the Zero Draft on Devolution of Powers as follows:

Article 213 – Division of Kenya into regions, districts and locations

Amendment Motion

“That in respect of the regions, the delegates from the various regions be given more time to consult amongst themselves with a view to reducing the number of regions and at the same time propose names to the said regions and in that regard the following criteria be put into consideration: -

Western	-	to be one region
Coast	-	to be one region
Central	-	to be one region
Nairobi	-	to be one region
North Eastern	-	to be one region
Rift Valley	-	to have two and a maximum of three regions
Eastern	-	to have two and a maximum of three regions
Nyanza	-	to have one and a maximum of two regions”

(Hon. James Kinuthia)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

The Committee therefore deferred the consideration of the article until this afternoon when the delegates would report back on their consultations.

Article 213 E (4) - Assignment of functions

The Committee resolved that national planning policy be included as one of the powers and functions of the national level of government.

Article 213 E (5) - The Powers and functions of the regional level of government

The Committee resolved that the following functions be transferred from the region to the district level.

- regional libraries
- regional museums
- regional cultural matters
- regional sport

The Committee asked the Rapporteurs to consolidate the powers and functions of the region with a view to ensuring that the coordination aspect of the region as earlier proposed by the Committee was reflected and report back to the Committee.

Article 213 E (6) - The Powers and functions of the district

The Committee resolved that under Article 213 E (6) homecraft centers, special education and village polytechnics be included as a function of the district level.

The Committee agreed that there was need to formulate policies on various functions which cut across various districts and the drafts person was asked to formulate principles to cater for the same.

MIN. NCC. TWC G. 33/03/2004: ADJOURNMENT

The Convenor adjourned the meeting at 1.30 p.m. until this afternoon at 2.30 p.m.

AFTERNOON SESSION

The Committee reconvened at 2.45 p.m.

MIN. NCC. TWC G. 33/04/2004: ANNOUNCEMENT

The Convenor informed the Committee that CKRC Commissioners have been invited to a Committee meeting with the Parliamentary Select Committee on the Constitution scheduled to take place in Parliament this afternoon at 3.00 p.m.

In view of the above therefore the Committee unanimously resolved to adjourn.

MIN. NCC. TWC G. 33/05/2004: ADJOURNMENT

The Convenor adjourned the meeting at 2.55 p.m until Friday 20th February, 2004 at 9.00 a.m.

CONFIRMED

CONVENOR

DATE

**MINUTES OF THE THIRTY FOURTH MEETING OF THE TECHNICAL
WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER OF THE
DRAFT BILL HELD ON FRIDAY 20TH FEBRUARY, 2004 AT COMMITTEE
TENT 7, BOMAS OF KENYA AT 10.00 A.M**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Alex Chepkwony	367
6. Hon. Daniel Ole Osoi	364
7. Hon. George Kinyua	577
8. Hon. George Mburu Mwaura	586
9. Hon. Hellen Koring'ura	324
10. Hon. Isa Ireri Ngunia	286
11. Hon. J. S. Mathenge	308
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15. Hon. Michael Githu	355
16. Hon. Wilberforce Kisiero	389
17. Hon. Simeon Shitemi	545
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19. Hon. Tecla Nairesiai	357
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21. Hon. Guracha Denge Wario	265
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40. Hon. Pius Lobuk	328

41. Hon. Hezron Manduku	092
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43. Hon. Gloria Wabwire	396
44. Hon. Amos Kiumo	271
45. Hon. Henry Kosgey	077
46. Hon. Shaaban Ali Isaack	187
47. Hon. Grace Akinyi Ogot	399

Absent

1. Hon. C. Murungaru	123
2. Hon. Patrice M. Ivuti	032
3. Hon. Simeon Nyachae	149
4. Hon. Bonaya Godana Adhi	029
5. Hon. Kenneth Marende	096
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7. Hon. G. B. Galgallo	026
8. Hon. Adan A. Sugow	193
9. Hon. Betty Njeri Tett	222
10. Hon. Ahmed Maalim Omar	255
11. Hon. Syongoh Zaddock Madiri	195
12. Hon. Patrick O. Onyango	590
13. Hon. Otieno Ogingo	413
14. Hon. G. G. Kariuki	042
15. Hon. John Katuku	046
16. Hon. Suleiman Shakombo	189

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Fidelis Wangata	Assistant Programme Officer
3. Mr. Evans Menach	Assistant Programme Officer
4. Ms. Joyce Ndumia	Assistant Programme Officer
5. Mr. Jeremy Wainwright	Drafts person
6. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. J. B. Okara	COMESA
3. Abdulaziz Ahmed Adam	Nubian Community
4. Medina Ibrahim Asman	Nubian Community
5. Adan Jirma Duba	Northern NGO Forum
6. Ascar Kwamboka	Activist
7. John Bio Oduor	UDPI

The Meeting opened with prayers.

MIN. NCC. TWC G. 34/01/2004: ANNOUNCEMENTS

The Convenor made the following announcements:

(1) That women delegates have been invited to attend an official National Women Conference on HIV/AIDS at Kasarani Sports Centre today February 20, 2004 and that transport to Kasarani will depart Bomas at 12.45 p.m.

That the Rapporteur-General wants all Committee reports which have been approved by Committees to be forwarded to the Deputy Secretary, Research and Drafting by Monday 23rd February, 2004.

MIN. NCC. TWC G. 34/02/2004: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the Thirty Third meeting held on Thursday 19th February, 2004 were confirmed by the Members present and signed by the Convenor after being proposed by the Hon. Kauchi Chivumba and seconded by the Hon. Isaiah Cheruiyot.

MIN. NCC. TWC G. 34/03/2004: CONSIDERATION OF THE ZERO DRAFT

The Committee considered the Zero Draft as follows:

Article 213 – Division of Kenya into regions, districts and locations.

1. Amendment Motion

That regions 10 and 11 in Zero Draft consisting of Bungoma, Busia, Lugari, Kakamega, Vihiga and Butere/Mumia and the Teso Special District be one region.

(Hon. Daniel Khamasi)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

2. Amendment Motion

That a proviso be inserted in the constitution to cater for the Teso district as a minority group in the proposed region above.

(Hon. Sospeter Ojaamong)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

3. Amendment Motion

That region 1 in the Zero Draft consisting of Kwale, Mombasa, Taita Taveta, Kilifi, Lamu, Tana River and Malindi be one region.

(Hon. Leslie Mwachiro)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

4. Amendment Motion

That region 17 in the Zero Draft consisting of Kiambu, Thika, Muranga, Maragua, Nyandurua and Nyeri be one region.

(Hon. Margaret Nyathogora)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

5. Amendment Motion

That region 18 (Nairobi Metropolitan Capital City) in the Zero Draft consisting of four boroughs of Langata Municipality, Kasarani Municipality, Westlands Municipality and Embakasi Municipality be one region.

(Hon. Macharia Muchuga)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

6. Amendment Motion

That regions 6 and 7 consisting of Garissa, Ijara, Mandera and Wajir be one zone.

(Hon. Yusuf Haji)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

7. Amendment Motion

That delegates from Rift Valley province be given more time to consult further and report back to the Committee on how the province should be divided, on Monday, 23 February, 2004.

(Hon. Henry Kosgey)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

8. Amendment Motion

That delegates from Eastern province be given more time to consult further and report back to the Committee on how the province should be divided, on Monday, 23 February, 2004.

(Hon. James Mathenge)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

9. Amendment Motion

That delegates from Nyanza province be given more time to consult further and report back to the Committee on how the province should be divided, on Monday 23 February, 2004.

(Hon. Prof. Mark Olunga Odhiambo)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

10. Amendment Motion

That the Committee rescinds its earlier decision on Rift Valley and allow the delegates from that region to report back to the Committee on their consultations concerning the division of the province.

(Hon. Nicholas Biwott)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

The Rift Valley delegates were allowed to report back.

11. Amendment Motion

That Rift Valley be divided into three regions as follows: -

North Rift consisting of Turkana, West Pokot, Marakwet, Trans Nzoia, Nandi North, Nandi South, Keiyo and Uasin Gishu be one region – Mt. Elgon.

Central Rift consisting of Kericho, Bureti, Bomet, Baringo, Koibatek, Nakuru, Samburu and Laikipia be one region.

South Rift consisting of Kajiado, Narok, Trans Mara and Kuria be one zone.

(Hon. Henry Kosgey)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

12. Amendment Motion

That a proviso be inserted in the Constitution to cater for the following minority and marginalized districts within the proposed regions in Rift Valley i.e. Turkana, west Pokot, Mt. Elgon, Marakwet and Kuria.

(Hon. Wilfred Machage)

Motion made and question proposed;
Debate arising;
Question put and agreed to.

MIN. NCC. TWC G. 34/04/2004: ADJOURNMENT

The Convenor adjourned the meeting at 12.40 p.m until Monday 23rd February, 2004 at 9.00 a.m.

CONFIRMED

CONVENOR

DATE

**MINUTES OF THE THIRTY FIFTH MEETING OF THE TECHNICAL
WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER OF THE
DRAFT BILL HELD ON MONDAY 23RD FEBRUARY, 2004 AT
COMMITTEE TENT 7, BOMAS OF KENYA AT 10.00 A.M**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Alex Chepkwony	367
6. Hon. Daniel Ole Osoi	364
7. Hon. George Kinyua	577
8. Hon. George Mburu Mwaura	586
9. Hon. Hellen Koring'ura	324
10. Hon. Isa Ireri Ngunia	286
11. Hon. J. S. Mathenge	308
12. Hon. James F. T. Foster	488
13. Hon. Leslie Mwachiro	599
14. Hon. Mereso Agina	508
15. Hon. Michael Githu	355
16. Hon. Wilberforce Kisiero	389
17. Hon. Simeon Shitemi	545
18. Hon. Raphael Livu	228
19. Hon. Tecla Nairesiai	357
20. Hon. Caleb Jumba	385
21. Hon. Guracha Denge Wario	265
22. Hon. Juma Wario	241
23. Hon. Sospeter Ojaamong	159
24. Hon. G. Ndatho Muchiri	301
25. Hon. M. Nyathogora	303
26. Hon. Prof. Mark Olunga Odhiambo	412
27. Hon. Fatuma Sheikh Mohamed	254
28. Hon. Mohamed Yusuf Haji	031
29. Hon. Isaiah Cheruiyot	346
30. Hon. Nicholas Biwott	016
31. Hon. J. Mwangi Waweru	310
32. Hon. Rev. Macharia Muchuga	226
33. Hon. Mercy Mwamburi	492
34. Hon. Maero Tindi	444
35. Hon. Daniel Khamasi	053
36. Hon. Kauchi Chivumba	494
37. Hon. J. Kinuthia Mwangi	319
38. Hon. Mwinyi Haji Mwijaa	234
39. Hon. Pius Lobuk	328
40. Hon. Hezron Manduku	092

41. Hon. Machage W. Gisuka	085
42. Hon. Gloria Wabwire	396
43. Hon. Amos Kiumo	271
44. Hon. Henry Kosgey	077
45. Hon. Grace Akinyi Ogot	399
46. Hon. G. B. Galgallo	026
47. Hon. Betty Njeri Tett	222
48. Hon. Otieno Ogingo	413
49. Hon. John Katuku	046
50. Hon. Suleiman Shakombo	189
51. Hon. J. J. Kamotho	040

Absent

1. Hon. C. Murungaru	123
2. Hon. Patrice M. Ivuti	032
3. Hon. Simeon Nyachae	149
4. Hon. Bonaya Godana Adhi	029
5. Hon. Kenneth Marende	096
6. Hon. Adan A. Sugow	193
7. Hon. Ahmed Maalim Omar	255
8. Hon. Syongoh Zaddock Madiri	195
9. Hon. Patrick O. Onyango	590
10. Hon. G. G. Kariuki	042
11. Hon. Elkanah Odembo	453
12. Hon. Shaaban Ali Isaack	187

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Fidelis Wangata	Assistant Programme Officer
3. Mr. Evans Menach	Assistant Programme Officer
4. Ms. Joyce Ndumia	Assistant Programme Office
5. Mr. Jeremy Wainwright	Drafts person
6. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akec	NGO Council
2. J. B. Okara	COMESA
3. Abdulaziz Ahmed Adam	Nubian Community
4. Medina Ibrahim Asman	Nubian Community
5. Adan Jirma Duba	Northern NGO Forum
6. David Malaba	CSU
7. John Bio Oduor	UDPI
8. Nuria Goll	Borana Community
9. Rachel Shebesh	L. K. W. V.
10. Dr. Pamela Kola	NGO Council

The Meeting opened with prayers.

MIN. NCC. TWC G. 35/01/2004: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the Thirty Fourth meeting held on Friday 20th February, 2004 were confirmed by the Members present and signed by the Convenor having been proposed by the Hon. Mercy Mwamburi and seconded by the Hon. Caleb Jumba.

MIN. NCC. TWC G. 35/02/2004: MATTERS ARISING

Under MIN. NCC. TWC G. 34/03/2004 (11), the Committee resolved to name the regions at a later date.

Under MIN. NCC. TWC G. 34/03/2004 (12), the Committee agreed that a proviso in the Constitution be provided to protect all the marginalized and disadvantaged groups in the country.

MIN. NCC. TWC G. 35/03/2004: CONSIDERATION OF THE ZERO DRAFT

The Committee considered the Zero Draft as follows: -

A. Article 213 – Division of Kenya into regions, districts and locations

1. Amendment Motion

That Eastern province be divided into four regions as proposed in the Zero Draft as follows: -

- Region 2 - Makueni, Machakos, Kitui and Mwingi
- Region 3 - Meru Central, Meru South, Meru North and Tharaka
- Region 4 - Mbeere, Embu and Kirinyaga
- Region 5 - Isiolo, Marsabit and Moyale

(Hon. James Mathenge)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

2. Amendment Motion

That Nyanza province be divided into two regions comprising of the following as proposed in the Zero Draft:

- Region 12 - Kisii Central, Gucha and Nyamira
- Region 15 and 16 - consisting of Kisumu, Bondo, Nyando, Siaya, Suba, Rachuonyo, Homa Bay and Migori as one region.

(Hon. Otieno Ogingo)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

B. Article 214B – Election of Members of regional Assemblies

Amendment Motion

That Article 214B(1) be deleted and in place thereof insert the following: -

“That each district elects four delegates to the regional legislative Assembly”.

(Hon. James Waweru)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

C. Article 214 F(5)

Amendment Motion

The Article be deleted and in place thereof insert the following words:

“The premier and the Deputy premier shall each hold office for a term of five years, and each of them is eligible if otherwise qualified, for re-election for one further term”.

(Hon. Leslie Mwachiro)

Motion made and question proposed;

Debate arising;

Question put and agreed to.

D. Article 214 F(6)

The words **“Regional chief executive or deputy chief executive”** were deleted and the words **“Regional premier and Mayor in the case of Nairobi and Regional deputy premier and deputy mayor”** were inserted.

MIN. NCC. TWC G. 35/04/2004: ADJOURNMENT

The Convenor adjourned the meeting at 1.20 p.m. until this afternoon at 2.30 p.m.

AFTERNOON SESSION

The committee reconvened at 2.30 p.m.

MIN. NCC. TWC G. 35/05/2004: CROSS CUTTING AND CONFLICTING PROVISIONS OF THE DRAFT BASED ON THE RECOMMENDATIONS AND

DECISIONS OF OTHER TECHNICAL WORKING GROUPS

The committee pointed out the following crosscutting issues between the committee and the Finance Committee. The committee resolved as follows: -

Article 218 – Commission on Finance and Fiscal Policy

The committee discussed the article together with article 244E of the Finance Committee and resolved as follows:

The Commission on Finance and Fiscal Policy to consist of the following persons and appointed by the President:

Chairperson;

Fourteen persons, consisting of one nominee from each regional assembly;

Two persons to represent Association of district governments;

Two persons nominated by the National Assembly;

The principal secretary responsible for Finance and the Controller of Budget, as ex-officio members.

Article 219(1) - Functions of the Commission.

The following sub article (c) be inserted in Article 219(1) as follows:

(c) “where necessary, conditional or unconditional grants are given”.

Article 220 - Adopted as proposed in the Zero Draft

Article 222 - Procurement of goods and services.

The article was debated together with Article 248E of the Finance Committee.

The committee resolved to adopt its resolution in the Article as indicated in the Zero Draft and resolved to add a sub article under 222 (2)(e) as follows:

“An Act of Parliament shall prescribe a framework within which the policy referred to in clause (2) may be implemented”.

Article 224 - Revenue allocations to devolved governments.

The Article was discussed together with Article 246C of the Finance Committee and the committee adopted its resolutions as contained in the Zero Draft.

Articles 225 - Principles of Taxation.

The committee discussed the Article with Article 244 of the Finance Committee and resolved to delete the word “**by law**” and in place thereof insert the word “**National Legislation**”.

A new sub article be inserted as follows:

“4 – The National Legislation referred to in clause (1) above shall establish principles on the harmonization of direct taxes other than tax scales, tax and rates, and tax exempt amounts at the national and the devolved levels of government.

(a) The tax harmonization concerns include tax liability, object, period, procedure and criminal law related to taxation.

(c) Parliament shall enact appropriate legislation against unjustified tax advantage”.

Article 226 - Taxation powers.

The article was debated together with the tenth schedule as proposed by Finance Committee. The committee resolved to adopt its proposals on taxation powers as indicated in the zero draft.

The Committee further resolved to adopt proposals by the Finance Committee on the regional government as follows:-

“Taxation of powers of the Regional Government. The regional government shall have the power to:-

- Facilitate taxation activities of the district governments with a region;
- Promote harmonization of national and district taxation regimes within the region and across regions;
- Provide technical support the district governments within the region, where necessary;
- Facilitate negotiation with the national government authorities and other organizations on behalf of the district governments within a region; and
- Perform any other function as prescribed by an Act of Parliament”.

Article 227

The committee discussed this article together with Article 245 of the Finance Committee.

The Committee resolved to adopt its proposals as contained in the Zero Draft.

Article 228 – Reserve Funds

The Committee resolved that the title of the Article be “**Reserve Funds**” in place of “**other Consolidated Funds**” and wherever it is referred to in the Article.

Sub-Article 228 (1)

The sub-Article to read as follows:

“There shall be a Reserve Funds established for each regional, district and locational government into which all revenues shall be paid, except money reasonably excluded by national legislation”.

Article 229 – Borrowing by governments

The Committee deliberated on the Article together with Article 249 of the Finance Committee and resolved as followed.

A sub-article be inserted to Article 229 as follows:

“Subject to the Constitution, the national Government may borrow form any source”.

The Committee resolved to adopt its resolutions under the article as contained in the Zero Draft.

Article 230 – Administration of revenue

The Article was debated together with Article 244 of the Finance Committee and resolved to adopt the Article as proposed in the Zero Draft.

MIN. NCC. TWC G. 35/06/2004: ADJOURNMENT

The Convenor adjourned the meeting at 4.45 p.m until Tuesday 24th February, 2004 at 9.00 a.m.

CONFIRMED

CONVENOR

DATE

**MINUTES OF THE THIRTY SIXTH MEETING OF THE TECHNICAL
WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER OF THE
DRAFT BILL HELD ON TUESDAY 24TH FEBRUARY, 2004 AT
COMMITTEE TENT 7, BOMAS OF KENYA AT 9.50 A.M**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Alex Chepkwony	367
6. Hon. Daniel Ole Osoi	364
7. Hon. George Kinyua	577
8. Hon. George Mburu Mwaura	586
9. Hon. Hellen Koring'ura	324
10. Hon. Isa Ileri Ngunia	286
11. Hon. J. S. Mathenge	308
12. Hon. James F. T. Foster	488
13. Hon. Leslie Mwachiro	599
14. Hon. Mereso Agina	508
15. Hon. Michael Githu	355
16. Hon. Wilberforce Kisiero	389
17. Hon. Simeon Shitemi	545
18. Hon. Raphael Livu	228
19. Hon. Tecla Nairesiai	357
20. Hon. Caleb Jumba	385
21. Hon. Guracha Denge Wario	265
22. Hon. Juma Wario	241
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24. Hon. G. Ndatho Muchiri	301
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26. Hon. Prof. Mark Olunga Odhiambo	412
27. Hon. Fatuma Sheikh Mohamed	254
28. Hon. Mohamed Yusuf Haji	031
29. Hon. Isaiah Cheruiyot	346
30. Hon. Nicholas Biwott	016
31. Hon. J. Mwangi Waweru	310
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40. Hon. Hezron Manduku	092
41. Hon. Machage W. Gisuka	085
42. Hon. Gloria Wabwire	396
43. Hon. Amos Kiumo	271
44. Hon. Henry Kosgey	077
45. Hon. Grace Akinyi Ogot	399
46. Hon. Betty Njeri Tett	222
47. Hon. Otieno Ogingo	413
48. Hon. Suleiman Shakombo	189
49. Hon. Patrice M. Ivuti	032
50. Hon. Patrick O. Onyango	590
51. Hon. G. G. Kariuki	042

Absent

1. Hon. C. Murungaru	123
2. Hon. Simeon Nyachae	149
3. Hon. Bonaya Godana Adhi	029
4. Hon. Kenneth Marende	096
5. Hon. J. J. Kamotho	040
6. Hon. Adan A. Sugow	193
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8. Hon. Syongoh Zaddock Madiri	195
9. Hon. Elkanah Odembo	453
10. Hon. Shaaban Ali Isaack	187
11. Hon. G. B. Galgallo	026
12. Hon. John Katuku	046

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Fidelis Wangata	Assistant Programme Officer
3. Mr. Evans Menach	Assistant Programme Officer
4. Ms. Joyce Ndumia	Assistant Programme Officer
5. Mr. Jeremy Wainwright	Drafts person
6. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. J. B. Okara	COMESA
3. Abdulaziz Ahmed Adam	Nubian Community
4. Medina Ibrahim Asman	Nubian Community
5. Adan Jirma Duba	Northern NGO Forum
6. David Malaba	CSU
7. John Bio Oduor	UDPI
8. Nuria Gollo	Borana Community
9. Beatrice Odoyo Akech	NGO Council
10. Dr. Pamela Kola	NGO Council

The Meeting opened with prayers.

MIN. NCC. TWC G. 36/01/2004: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the Thirty Fifth meeting held on Monday 23rd February, 2004 were confirmed by the Members present and signed by the Convenor having been proposed and seconded by the Hon. Kauchi Chivumba and Hon. Tecla Nairesiai respectively.

MIN. NCC. TWC G. 36/02/2004: ANNOUNCEMENT

The Rapporteurs informed the Committee that the Committee of the Whole House will be scheduled to begin on Thursday, 26th February, 2004 at 9.00 a.m. and on 19th March 2004 the Conference will adopt the Bill.

The Committee was therefore asked to move faster and finalize its deliberations on time.

MIN. NCC. TWC G. 36/03/2004: CONSIDERATION OF THE ZERO DRAFT TOGETHER WITH THE CROSS CUTTING AND CONFLICTING PROVISIONS OF THE DRAFT BILL BASED ON RECOMMENDATIONS AND DECISIONS OF OTHER TECHNICAL WORKING GROUPS.

The Committee discussed the Zero Draft together with the cross cutting and conflicting provisions of the Draft Bill and resolved as follows:

1. Article 231 – Public Service Commission

The committee resolved that sub-article (1) (a), (b) and (c) of the above Article be transferred and incorporated with the Article 258 on the **values and principles of public service generally.**

Sub-Article 231(2) – The Committee resolved to insert the following on the **membership of the Public Service Commission as follows.**

The Commission to consist of the following persons appointed by the President:

- a Chairperson;
- fourteen persons, consisting of one nominee from each regional Assembly;
- two persons representing Association of district governments;
- two persons to represent the national executive

Sub-Article 231(3) – The Committee resolved to amend the Article to read as follows:

“A regional and district government is responsible for the recruitment, appointment, promotion, transfer and dismissal of members of its public service within a framework of uniform norms and standards applying to public service prescribed by national legislation”.

2. Article 231 (A) – Publication of laws and Article 231 (B) – Formalities of law making

The Committee resolved to adopt its proposals as contained in the Zero Draft.

3. Article 231 (C) (5) – Conflict of laws

Sub-Article 5 – **The Committee resolved to delete the words “subject to article 125 (5)” and adopted the remaining part of the article.**

4. Article 231 (D) – Variation of Boundaries

The Committee debated the article with the Article 83 on Electoral Commission of the **Constitutional Commission’s Committee** and resolved that the two Commissions be merged and renamed the Variation of Boundaries and electoral Commission.

Sub-Article 231 D(5)

The Committee adopted the Article and asked the Draftsperson to rephrase it in a positive manner.

MIN. NCC. TWC G. 36/04/2004: ADJOURNMENT

The Committee adjourned the meeting at 1.30 p.m. until this afternoon at 3.00 p.m.

AFTERNOON SESSION

The Committee reconvened at 3.00 p.m.

MIN. NCC. TWC G. 36/05/2004: CONSIDERATION OF THE ZERO DRAFT AND THE CROSS CUTTING AND CONFLICTING PROVISIONS OF THE DRAFT BILL

The Committee continued with the discussion of the Zero Draft and the Cross cutting issues as follows:

1. Article 231E – 231 I

The Committee debated the Articles and resolved to adopt its resolutions as indicated in the Zero Draft.

2. Article 231 J – Composition of and elections for the Senate –

The Committee resolved to amend the Article to read as follows:

“The Senate shall comprise 112 senators as follows

- 74 persons elected, one from each district acting as an electoral college, to represent the region of which the district forms part;

- 28 women, two of whom are elected by each region, in accordance with clause (2) by the regional legislative assemblies acting as electoral colleges, to represent their respective regions;

The Committee adopted the article but on condition that the representatives shall be elected by an electoral college from their various groups.

“Deleted”.

2. Articles 213 K – 231 R –

The Articles were adopted as indicted in the zero Draft.

3. Article 321E – Assignment of functions

Sub-Article 5

The Committee resolved to delete the entire sub article and in place thereof insert the following:

(5)(a) “Except where this constitution and Legislation provide otherwise, the powers and functions of the regional level of government in all its functional areas shall, in consultation with the districts in the region primarily be-

- the co-ordination and supervision of the districts in the course of their implementation of the national and the regional policies and standards;
- the formulation of regional policies’
- the setting of regional standards;
- regional planning;
- the monitoring and evaluation of implementation of regional projects;
- the actual production, management and delivery of regional services;
- actual development operation and maintenance of regional infrastructure and services;
- the facilitation and harmonization of operations within the region;
- capacity building and technical assistance to districts”

Sub article 7 – Principal functions of the locational Government

The Committee inserted the following sub article (1) to read as follows:-

(1) “The Principle right to self-government

Local Communities or villages shall be guaranteed the right to manage all affairs of local concern at their own responsibility within the limits set by national legislation.

(2) Association, federations and networks of local communities or villages within the framework of their statutory powers and functions, likewise have the right of self Management as set by national legislation.”

(2) The Committee further agreed that the following be inserted to the body of sub article 7 as follows:

“ The Principal functions of a locational government is to, in consultation with the district government, promote the self-determination and development of communities in the location”

MIN. NCC. TWC G. 36/06/2004: ADJOURNMENT

The Convenor adjourned the meeting at 4.45 p.m until Wednesday 25th February, 2004 at 9.00 a.m.

CONFIRMED

CONVENOR

DATE

**MINUTES OF THE THIRTY SEVENTH MEETING OF THE TECHNICAL
WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER OF THE
DRAFT BILL HELD ON WEDNESDAY 25TH FEBRUARY, 2004 AT
COMMITTEE TENT 7, BOMAS OF KENYA AT 10.00 A.M**

Present

<u>Name</u>	<u>Number</u>
1. Hon. Dr. Adhu Awiti	Convenor
2. Hon. Prof. Wanjiku Kabira	Rapporteur
3. Hon. Mutakha Kangu	Rapporteur
4. Hon. Abel Mwaniki Njeru	283
5. Hon. Alex Chepkwony	367
6. Hon. Daniel Ole Osoi	364
7. Hon. George Kinyua	577
8. Hon. George Mburu Mwaura	586
9. Hon. Hellen Koring'ura	324
10. Hon. Isa Ireri Ngunia	286
11. Hon. J. S. Mathenge	308
12. Hon. James F. T. Foster	488
13. Hon. Leslie Mwachiro	599
14. Hon. Mereso Agina	508
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16. Hon. Wilberforce Kisiero	389
17. Hon. Simeon Shitemi	545
18. Hon. Raphael Livu	228
19. Hon. Tecla Nairesiai	357
20. Hon. Caleb Jumba	385
21. Hon. Guracha Denge Wario	265
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24. Hon. G. Ndatho Muchiri	301
25. Hon. M. Nyathogora	303
26. Hon. Prof. Mark Olunga Odhiambo	412
27. Hon. Fatuma Sheikh Mohamed	254
28. Hon. Mohamed Yusuf Haji	031
29. Hon. Nicholas Biwott	016
30. Hon. J. Mwangi Waweru	310
31. Hon. Rev. Macharia Muchuga	226
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45. Hon. Suleiman Shakombo	189
46. Hon. Patrick O. Onyango	590
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49. Hon. Elkanah Odembo	453
50. Hon. John Katuku	046
51. Hon. Ahmed Maalim Omar	255
52. Hon. Grace Akinyi Ogot	399

Absent

1. Hon. C. Murungaru	123
2. Hon. Simeon Nyachae	149
3. Hon. Bonaya Godana Adhi	029
4. Hon. J. J. Kamotho	040
5. Hon. Adan A. Sugow	193
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7. Hon. Shaaban Ali Isaack	187
8. Hon. G. B. Galgallo	026
9. Hon. Isaiah Cheruiyot	346
10. Hon. Pius Lobuk	328
11. Hon. Patrice M. Ivuti	032

In Attendance

1. Ms. M. J. Chesire	Second Clerk Assistant
2. Mr. Fidelis Wangata	Assistant Programme Officer
3. Mr. Evans Menach	Assistant Programme Officer
4. Ms. Joyce Ndumia	Assistant Programme Officer
5. Mr. Jeremy Wainwright	Drafts person
6. Ms. Grace Gitu	Verbatim Recorder

Observers Present

1. Luke Odoyo Akech	NGO Council
2. Abdulaziz Ahmed Adam	Nubian Community
3. Medina Ibrahim Asman	Nubian Community
4. Adan Jirma Duba	Northern NGO Forum
5. David Malaba	CSU
6. John Bio Oduor	UDPI
7. Nuria Gollo	Borana Community
8. Beatrice Njeri	IRRP
9. Dr. Pamela Kola	NGO Council
10. Amina Hersi Ali	Women Political Caucus
11. Edward K. Holi	Tachoni Cultural
12. Wasilwa Wekesa	TACUSO

The Meeting opened with prayers.

MIN. NCC. TWC G. 37/01/2004: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the Thirty Sixth meeting held on Tuesday, 24th February, 2004 were confirmed by the Members present and signed by the Convenor after being proposed and seconded by the Hon. Otieno Ogingo and seconded by the Hon. Kinuthia Mwangi, respectively.

MIN. NCC. TWC G. 37/02/2004: ANNOUNCEMENT

The Convenor reported to the Committee that a meeting of all Convenors and Rapporteurs was scheduled to be held on Wednesday, February 25th 2004 at 4.30 pm at Serena Hotel, Nairobi. The Agenda of the meeting was to discuss the order and mode of presentation of Committee Reports at the plenary session, hence the Committee should conclude its deliberations early enough to enable them attend the said meeting.

MIN. NCC. TWC G. 37/03/2004: PRINCIPLES OF DEVOLUTION

The Committee discussed the principles of Devolution as follows: -

Article 213 – Principles of devolution

Sub-article 1 – Agreed to

The Committee resolved that the following new sub-articles 2, 3, and 4 be inserted to the above article as follows: -

(2) The principal function of a regional government is to coordinate and implement regional programmes

The principal role of the Senate is to provide institutional framework through which the regions and districts share and participate in the legislation at the national level.

The National Assembly and the Senate are the principal institutions for enacting national, including framework legislation; such legislation may apply directly or subject to adaptation by the regions and districts.

AFTERNOON SESSION

The Committee reconvened at 2.45 p.m.

MIN. NCC. TWC G. 37/04/2004: EIGHT SCHEDULES – TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

The Committee discussed the Eighth Schedule on **Transitional and Consequential Provisions** and resolved as follows:-

Clause 3D – Local Authorities

The Committee deliberated on this clause and resolved as follows

Sub-clauses 1,2 and 3 = Agreed to.

A new Sub-clause (4)

Motion

That a new sub-clause be inserted as to read as follows: -

“The councilors in each district will form electoral colleges in accordance with this constitution, and shall constitute electoral colleges and therefore immediately elect the senators, the regional legislative Assembly, the Premier and Deputy Premier, within six months of the commencement of this Constitution”.

(Hon. Leslie Mwachiro)

Question proposed;

Debate arising;

Question put and agreed after a Division.

The results of the Division are as follows

Ayes = 20

Noes = 9

(2) Clause 7 - Provincial Administration

The Committee discussed the clause and resolved as follows:-

Sub clause 1 – The Rapporteurs were asked to redraft the sub-clause to ensure that the transitional period was provided for.

Sub clause 2 – Agreed to

Sub clause 3 and 4 – The Rapporteurs were asked to redraft the sub-clauses so that an authority is established for instance for a Transitional Board, to handle public property originally held by the National Government and at the same time, the public property should be defined accordingly.

MIN. NCC. TWC G. 37/04/2004: ADJOURNMENT

The Convenor adjourned the meeting at 4.20 p.m until Thursday 26th February, 2004 at 9.00 a.m.

CONFIRMED

CONVENOR

DATE
