

**NATIONAL CONSTITUTIONAL CONFERENCE  
DOCUMENTS**

**THE FINAL REPORT OF TECHNICAL WORKING GROUP “H” ON  
PUBLIC FINANCE, PUBLIC SERVICE, LEADERSHIP AND INTEGRITY**

**APPROVED FOR ISSUE AT THE 110<sup>TH</sup> PLENARY MEETING OF THE  
CONSTITUTION OF KENYA REVIEW COMMISSION HELD ON 30 NOVEMBER,  
2005**

## TABLE OF CONTENTS

	Page
<b>1. Introduction.....</b>	<b>3</b>
<b>2. Procedural Issues.....</b>	<b>3</b>
<b>3. Mandate and Method of Work .....</b>	<b>4</b>
3.1 Mandate Of The Committee.....	4
3.2 Method Of Work.....	4
<b>4. Analysis of Issues on the Report and Draft Bill.....</b>	<b>5</b>
4.1 General Comments On The Report.....	5
4.2 General Discussion On The Draft Bill.....	5
4.2.1 Chapter Thirteen: Public Finance And Revenue Management.....	5
4.2.2 Chapter Fourteen: The Public Service.....	6
4.2.3 Chapter Sixteen: Leadership And Integrity.....	8
<b>5. Technical Recommendations and Decisions on the Report and Draft Bill as Agreed by the Committee.....</b>	<b>9</b>
5.1 Technical Recommendations.....	9
5.1.1 General Recommendations On The Draft Bill.....	9
5.1.2 Specific Recommendations On The Draft Bill.....	10
5.1.2.1 Chapter Thirteen: Public Finance And Revenue Management.....	10
5.1.2.2 Chapter Fourteen: The Public Service.....	25
5.1.2.3 Chapter Sixteen: Leadership And Integrity.....	36
5.1.2.4 Consideration Of The Fifth Schedule.....	37
5.1.2.5 Consideration Of The Eighth Schedule.....	38
5.1.2.6 Consideration Of The Ninth Schedule.....	39
5.1.2.7 Consideration Of The Tenth Schedule.....	40
5.2 New Provisions.....	41
5.2.1 Chapter Thirteen: Public Finance.....	41
5.2.2 Chapter Fourteen: Public Service.....	48
5.2.3 Chapter Sixteen: Leadership And Integrity.....	50
<b>Appendices.....</b>	<b>54</b>
Appendix A: Minority Positions.....	54
Appendix B: Formal Motions For Amendment Of The Draft Bill.....	56
Appendix C: List Of Committee Members.....	63
Appendix D: Minutes Of The Committee Proceedings.....	65
Appendix E: Legislative Drafter/s Report.....	248

## 1. INTRODUCTION

The Committee on Public Finance, Public Service, Leadership and Integrity (known as TWC 'H') was established under Regulation 49 of the Constitution of Kenya Review Act (Cap 3A) with a membership of 46 honourable delegates. The Convenor of the Committee is Hon. Billow Okemo and the Deputy Convenor, Hon. Chrysanthus Okemo.

The Secretariat attached to the Committee is made up of the following:

1. Pastor Zablon Ayonga – CKRC Commissioner,
2. Mr. Isaac Lenaola – CKRC Commissioner, (appointed Judge of the High Court)
3. Mrs. Margaret Nzioka – Draftsperson (Bomas II),
4. Mr. Mark Spakowski – Draftsperson (Bomas III),
5. Mr. Gad Awuonda - Draftsperson (Bomas III),
6. Ms. Noor Awadh – Programme Assistant,
7. Ms. Keziah Kamau – Programme Assistant,
8. Mrs. C. W. Munga – Clerk, and
9. Ms. Lillian Momanyi – Verbatim Recorder.

## 2. PROCEDURAL ISSUES

The Convenor informed members of the procedural issues on the management of the Committee. Referring to Regulations 44 and 45 of the Review Act, the Convenor pointed out the following:

- All meetings of the Committee will be called upon by the Convenor by written notice or by a request in writing by not less than one third of the members of the Committee,
- All meetings shall be presided over by the Convenor or in the absence of the Convenor, a temporary Convenor elected by the delegates present,
- Half of the members of the Committee shall constitute a quorum,
- As far as possible, decisions should be by consensus. If there is no consensus a vote will be taken. However, minority views will also be recorded,
- Rapporteurs and Convenors will meet regularly to consider issues which affect more than one Committee, and
- The Convenor further informed members that the Committee is to propose amendments to the Report and the Draft Bill. Each amendment should be moved before the Convenor proposes the Question. After the Committee deliberates and votes on all issues relating to Public Finance, Public Service, Leadership and Integrity it will prepare a report which will be tabled in the Conference for adoption. The report of the Committee will include the following:
  - a) Minutes of all meetings of the Committee,
  - b) Audio and Verbatim transcript of all meetings,
  - c) Recommendations agreed to by the Committee as well as minority positions (if any) taken by some delegates, and
  - d) Any other matter which the Committee would want the Conference to address or resolve.

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

#### **3.1 Mandate Of The Committee**

The mandate of the Committee specifically entitles the members to move amendments to the Draft Bill and, in particular to:-

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

#### **3.2 Method Of Work**

The Committee noted the following to act as a guide in the management of the Committee's business:

- (a) Financial Regulations currently used by the Government should be made available to the Committee for reference purposes.
- (b) Experts from relevant Government Ministries and the private sector were invited to the Committee to offer technical expertise when discussing relevant Articles.

The first meeting of the Committee was held on the 26<sup>th</sup> May 2003 (Bomas I) where members elected the Convenor. The next meeting was held on the 29<sup>th</sup> May 2003 for the members to receive the relevant Committee documentation. Subsequent to the Conference decision, the Committee was adjourned on the 30<sup>th</sup> May 2003 to allow Members of the National Assembly to go back to Parliament to discuss the National Budget.

Bomas II reconvened on the 19<sup>th</sup> August 2003. However it was soon adjourned on the 25<sup>th</sup> August 2003 for two weeks, following the demise of the Vice President, Mr. Michael Wamalwa.

The substantial work of the Committee began on the 9<sup>th</sup> September 2003. During the meeting, the members decided to start off discussions by looking through the mandate of the Committee. The members further resolved to discuss the then Chapter 16, followed by the then Chapter 14 and finally the then Chapter 13 of the Draft Bill in that order. Discussion on the then Chapters 14 and 16 was concluded when Bomas II was adjourned on the 26<sup>th</sup> September 2003.

On the 12<sup>th</sup> September 2003, the Conference reconvened for the third stage of the NCC process, Bomas III. Substantial Committee discussion continued between 13<sup>th</sup> September 2003 and 2<sup>nd</sup> February 2004. During this period, the Committee deliberated on Chapter Thirteen of the Draft Bill, Part V of the Devolution Chapter, and the relevant Schedules. The Committee also called for expert consultation on several financial issues. These include officials from Kenya Revenue Authority and the Treasury among others.

The Committee went further to hold joint sessions with the Devolution Committee in order to harmonize the crosscutting issues.

#### **4. ANALYSIS OF ISSUES ON THE REPORT AND DRAFT BILL**

##### **4.1 General Comments On The Report**

The discussion on the contents of the Commission's Report was done on a day-to-day basis prior to the discussion of the relevant article(s). The Report was used by the Committee to guide members in their discussion. All the recommendations for amendment of Clauses were based on the Draft Bill provisions and not the Report.

The following issues were of particular concern to the Committee:

1. Establishing a Parliamentary Budget Office,
2. Setting a ceiling on the Public Debt, and
3. That all Government borrowing must be approved by Parliament

##### **4.2 General Discussion On The Draft Bill**

The Committee proposed the following general recommendations as a way forward in the entire review process:

- (a) That the Constitution should lay down broad principles upon which subordinate laws may be enacted. On the same, it was felt that too much detail should be avoided and left for the relevant law-making bodies, and
- (b) That alongside laying down broad principles, the Constitution should list areas needing legislation, so that intentions are not lost.

##### **4.2.1 Chapter Thirteen: Public Finance And Revenue Management**

The following issues were raised during the general discussion on the Chapter:

- (a) **Role of Government in the management of Public Finance**
  1. There is a need to capture the role of Government in the management of Public Finance in the Constitution in order to avoid the conflict between the Government and the citizens.
  2. That government expenditure is too high; it spends beyond its means. There is therefore a need to set limits within which the government could borrow.
  3. That the government is in a form of competition with its citizens. There should thus be a principle that government should not compete in running

- businesses with the citizens. That the government should concentrate on its core functions; governance, facilitation and the delivery of efficient services.
4. That there is unnecessary secrecy in government information that concerns the public. Government should be open, transparent and accountable.

**(b) Taxation**

1. That taxation is too high; there should be no taxation without representation.
2. That standards should be laid down on how people should be taxed and that people from the grassroots should have a say on the tax measures taken by the government.

**(c) Trade and Investment**

1. There are too many unnecessary restrictions in the issuance of trading licenses; this discourages trading among Kenyans.
2. That there is need to capture the issue of investment; both local and foreign in the Chapter.

**(d) Controller of Budget and Auditor General**

1. That there should be a time frame within which the Auditor General submits his/her report.
2. There is need to empower the office of The Controller of Budget after splitting it from the Auditor General's office. It was further proposed that the Controller of Budget's office should control the expenditure of the government.

#### **4.2.2 Chapter Fourteen: The Public Service**

The following issues were raised during the general discussion on the Chapter:

**(a) The Public Service and Public Service Commission**

1. The current provisions in the Draft Bill are based on a Unitary System of Government as opposed to a Devolved System of Government. Therefore, Public Service should be decentralized to the Devolved Units. However, some felt that this would have a lot of financial implications.
2. There should be a clear distinction between the Public Service of the Central Government and that of the Devolved Units.
3. Public Service should be depoliticised.
4. That the membership of PSC should have a national outlook.
5. Public Officers should not have private businesses alongside Public Office.
6. There should be a concept in the PSC whereby a certain percentage of the Commission is retained when there is a change of Government, so as to ensure continuity in the Commission.
7. There should be cross-referencing on the qualifications of the PSC members, in order to ensure that the qualifications are standard with the Constitutional Commissions. However, others felt that there should be

specific qualifications for this particular Commission, since it has special needs from the rest.

**(b) Kenya Police Service and Kenya Correctional Service**

1. The discussion on Kenya Police Service should bear in mind the place of Administration Police and members should agree whether these provisions are applicable to them.
2. Police shall remain a national police force.
3. There is a need for Officers in the Police Service to be employed in their regions to serve the Central Government as well.
4. A question was raised as to whether the values and principles in part one apply to Police Service. It was confirmed they do.
5. Kenya Police Service and Correctional Service should be in a separate Chapter, since the Chapter currently seems to only cover Public Service Commission.
6. **Article 264:** should also include the apprehending of offenders as part of the functions of the Kenya Police Force.
7. **Article 265 (4):** the two forces (The Administration Police and the Kenya Police) should be merged together under one Director of Police to form a stronger and proper institutional structure.
8. Under **Article 266(2)** a question was raised as to why Commissioner of Police is appointed for one term of 10 years. This period should be split into 2 terms of 5 years each for flexibility. Further there was need of giving the rationale behind that period and clarity as to which house of parliament should approve this appointment.
9. As Administration Police are not included under the Chapter on Defence, there was a proposal that they be included in this Chapter and supervised by the Commissioner of Police.
10. **Article 266(6)** - what is “good cause”? Good cause is relative. This should be clarified.
11. There was a suggestion on creating a sub-Committee to deal with the issue of entrenchment of the Administration Police unit in the chapter.
12. There should be reference not only to internal but also external security e.g. terrorism.
13. There should be an integrated national security service i.e. the Army and Police working together.
14. There is need to empower communities to take charge of their security e.g. basic policing should be done by communities with support from the Police.
15. Clarification was made that Administration Police is to be scrapped in the Draft Bill, since it was linked with the Provincial Administration, which the draft seeks to abolish.
16. Having Police in the Devolved units will promote anarchy. The service should remain national and not under the command of the Devolved units.

17. There should be a Police Commission, which should look into the terms of service of the Police; it should be there for monitoring purposes and other relevant duties.
18. The Commissioner of Police be designated as Inspector - General of Police and be given security of tenure.
19. There was a general feeling that the Police should be responsible for support and consolation of victims of crime. However it was noted that the Police might not have the legal capacity, necessary training and the resources to undertake such a duty.
20. That title of **Article 267** should read “Kenya Correctional Service” not “Services”.
21. That the appointment of the Director of Kenya Correctional Service should be in line with that of the Inspector General of the Kenya Police Service.
22. Correctional Services: corruption should also be addressed in the prisons and these institutions should be more of correctional rather than punitive institutions.
23. That there is a need to include that a person arrested should not be held in custody for over 24 hours until they are charged with the alleged offence; to limit the period of remand.
24. That we should create prisons, which are humane; their conditions improved, for both inmates and prison staff.
25. That the “minors” should be in separate cells from the hardened adult criminals.
26. That the sentences should be commensurate with the crimes.
27. That there should be created an effective prison service.
28. That the prison services should ensure that human rights are strictly observed.
29. That the Prison Service should be demilitarised. The members were however informed that this was necessary especially in cases where prisoners are being escorted to and from the courts. It was further argued that this should be the duty of the Police Officers and not the Prison Officers.

#### **4.2.3 Chapter Sixteen: Leadership And Integrity**

The following issues were raised during the general discussion on the Chapter:

1. While discussing this Chapter, members should think in line with the current legislation on ethics of public officers, viz Public Officer Ethics Act.
2. The Chapter should also apply to civil society and private sector.
3. While discussing the application of the Chapter, members should bear in mind legal persona recognized by the Constitution.
4. The Chapter should have an introduction bearing the guiding principles of leadership and integrity, which by suggestion should be distilled, from The Code of Ethics.

5. Reference should be made to the Fifth Schedule of the Draft Bill, which operationalises the Chapter.

**The Committee unanimously agreed on the following issues:**

- (a) The Committee recommended the removal of the Leadership and Integrity Code from the Fifth Schedule and from it they extracted broad principles, which were incorporated in the then Chapter Sixteen, and
- (a) That Ethics and Integrity Commission created under Article 289 be shifted to Chapter Sixteen for purposes of uniformity and harmonization.

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

**5.1 Technical Recommendations:**

**5.1.1 General Recommendations On The Draft Bill**

- The Constitution should lay down broad principles upon which subordinates laws may be enacted. On the same, it was felt that too much detail should be avoided and left for the relevant law-making bodies.
- Alongside laying down broad principles, the Constitution should list areas needing legislations, so that intentions are not lost.
- It was recommended that the Administration Police be merged with the Regular Police and after deliberations on Article 264-266 (Kenya Police Service), the Committee after subsequent discussions with the Committee on Defence and National Security agreed to relocate the said articles for further discussion by the latter.
- It was recommended that the Office of the Director General of Kenya Correctional Service be removed from the list of Constitutional Offices in Article 293(1)(e) and that the same office be created under Article 268 of Chapter Fourteen. This was due to the recommendation that the Director General be under the Minister in charge of Correctional Service. This recommendation is to be forwarded to the relevant Committee.
- The Committee recommended the removal of the Leadership and Integrity Code from the Fifth Schedule and from it they extracted broad principles, which were incorporated in Chapter Sixteen.
- The Committee saw it fit that the Ethics and Integrity Commission created under Article 289 be shifted to Chapter Sixteen for purposes of uniformity and harmonization.

## 5.1.2 Specific Recommendations On The Draft Bill

### 5.1.2.1 Chapter Thirteen: Public Finance And Revenue Management

#### Part I – Public Finance and Revenue Management

##### *General Comments:*

- The Chapter be re-titled “Public Finance and Financial Management”.
- Alternative recommendations:
  1. The Chapter should be re-titled “Public Finance Management”.
  2. The title should simply be titled “Public Finance”.

*It was finally resolved that the Chapter be re-titled “Public Finance” and the phrase “revenue and management” be deleted wherever it appears in the Chapter.*

- **Article 243(a):** reworded to read as follows:  
*“In administering and managing public finance the following principles shall be observed:*
  - (a) *revenues shall be raised equitably from among the people of Kenya;”*
- **Article 243(b):** amended to read as follows:  
*“public funds shall be used efficiently in the pursuit of national objectives and goals;”*
- **Article 243(c):** amended to read as follows:  
*“national and local resources shall be shared equitably throughout the Republic, taking into account special provisions for marginalized areas and communities”*
- **Article 243 (d):** amended to read as follows:  
*“revenues shall be shared equitably among the different levels of government;”*
- **Article 243 (e):** deleted
- **New Clause inserted to read as follows:**  
*“ the benefits and burdens of public borrowing and spending should be shared equitably among different generations, including future generations;”*
- **New Clause inserted to read as follows:**  
*“people, communities and civil society organizations should participate in public finance management”*

- **Article 243(f):**
  1. Budgetary processes should be done on the basis of constituencies rather than districts.
  2. That the word “equity” be inserted between the words “promote” and “transparency”.
  3. Budgetary process should be split between budgetary control and budgetary preparation in order to capture budgetary preparation and budgetary control. It was however clarified that “Budgetary process” captures the two.

*It was finally resolved that the clause reads as follows:*

*“ensure that the budgets and budgetary processes promote equity, transparency, accountability and the effective financial management of the economy, debt and public sector”.*

#### **Article 244: Imposition of tax**

- **Article 244 (1):** adopted without amendment.
- **Article 244 (2):** It was resolved that Article 244 (2) reads as follows:

*“No person or authority may waive or vary any tax imposed by law except as expressly provided and on such terms and conditions as shall be set out in an Act of Parliament”.*

(NB:A tax ceiling to be specified by an Act of Parliament).

- **Article 244 (3):**
  1. The substance is contained in (1) above. This was considered redundant and thus should be deleted. However others felt it should not be left out.
  2. The recommendation should be forwarded to the Committee on Consequential and Transitional Arrangements to take note of.
  3. Article 244 (2) negates Article 244 (3).
  4. That reporting time be reduced to “one month”, which is more timely. It was however felt that this was impractical.
  5. There should be a ceiling on the tax; 30% of GDP was proposed with a provision that gives power to Parliament to vary the percentage, if deemed necessary. However others felt that the percentage should not be fixed, since this would not solve the root problem of the disparities between the various tax brackets.
  6. That there should be equitable sharing of tax burden.
  7. There should be a provision that limits unnecessary government expenditure.

**It was finally resolved that Article 244 (3) be deleted.**

## **Article 245: The Consolidated Fund**

➤ It was proposed that the Fund should first be established.

Therefore, a new clause should be introduced before Article 245 (1) to read as follows:

*“There is established a fund to be known as **The Consolidated Fund**”.*

- **Article 245(1):** The clause was amended as follows due to the introduction of the new article above:

*“All revenues or other moneys raised or received for the purpose of or on behalf of, or in trust for the Government shall be paid into and form the Consolidated Fund”.*

- **Article 245 (2):**

*Article 245 (2)(a) was adopted without amendments.*

- **Article 245 (2)(b):**

➤ Moneys from the devolved levels should not be paid into the Consolidated Fund. Thus the phrase “and other levels” be inserted between the words “department” and “of”.

The clause was amended to read as follows:

*“... that may, under an Act of Parliament, be retained by the department and other levels of Government that received them for the purposes of defraying the expenses of that department or level of Government”.*

## **Article 246: Withdrawals from the Consolidated Fund**

- *Article 246 (1): adopted without amendment.*

- *Article 246 (2): adopted without amendment*

- *Article 246 (3): adopted without amendment*

- **Article 246 (4):**

1. The status quo should be maintained; where 50% should be authorized from the Consolidated Fund to cover expenditure covering six months.
2. The 50% on the Vote On Account should be adopted but not on the discretion of the Controller of Budget.
3. Section 101 of the Current Constitution should replace Article 244 (4) while replacing the “Controller and Auditor General” with the “Controller of Budget”.

Clause 246(4) was amended to read as follows:

*“ If Parliament is satisfied that the Appropriation Act in respect of any financial year, Parliament may, subject to this Article, authorize the Controller of Budget to issue moneys from the Consolidated Fund (not exceeding fifty percent of the budget of the previous year) for the purpose of meeting expenditure necessary to carry on the services of the Government in respect of the period expiring four months from the beginning of the financial year, or on the coming into force of the Appropriation Act, whichever is earlier”.*

#### **Article 246A: Contingency Fund**

Article 246A was reworded to read as follow:

*“Subject to the Constitution, Parliament shall, in an Act of Parliament, prescribe the offices in respect of which the salaries and allowances are charged on the Consolidated Fund.”*

#### **Article 246B: Financial Year Estimates**

- **Article 246B (1):**

1. Prime Minister should not have any role to play in the Financial Estimates. This role should be squarely the function of the Minister of Finance.
2. The phrase Prime Minister should be replaced with the phrase “Minister responsible/in charge for Finance”.

It was agreed that clause 246B (1) should read as follows:

*“The Minister for the time being responsible for Finance shall prepare and lay before Parliament in each financial year, but in any case not later than two months before the commencement of the financial year, estimates of the revenues and expenditure of Government for the next financial year.”*

Further amendment was proposed that the words “Prime Minister” be deleted wherever they appear in the Article and the words “Minister for the time being responsible for Finance” be inserted in place thereof.

- **Article 246B (2):**

1. The Minister of Planning should replace the Prime Minister.
2. That the phrase “or such other period that may be deemed appropriate” be added to give room for some flexibility.

It was resolved that the words “or such other period that may be deemed appropriate” be inserted after the words “years” appearing on the third line.

Clause was amended to read as follows:

*“The Minister for the time being responsible for Finance in collaboration with the Minister for the time being responsible for Planning and National Development shall prepare a detailed fiscal, monetary and development*

*strategic plan for a period of not less than three years or such other period that may be deemed appropriate, which shall be laid before Parliament together with the estimates”.*

**New clause inserted to read as follows:**

*“ The Minister for the time being responsible for Finance shall include, in the annual estimates, a special budgetary provision for the development of marginalized areas and communities.”*

- **Article 246B (3): adopted without amendments.**
- **Article 246B (4):**
  1. replace “Prime Minister” with “Minister”.
  2. replace “administrative” with “recurrent”.
  3. if there was consultation throughout the budgetary process, then there is no need for revision.

*The clause was adopted with the proposed amendment.*

- **Article 246B (5): adopted without amendments.**
- **Article 246B (6): adopted without amendments.**
- **Article 246B (7):**
  1. Departmental Committees are open to the public upon request, while Investigatory Committees are not.
  2. Only genuine and productive contribution should be allowed to debate Bills at the Committee stage before they are enacted.

*The clause was adopted without amendments.*

- **Article 246B (8):**
  1. The clause should be retained to give some supervisory power to enable the Minister for Finance revoke what was decided by Parliament.
  2. The word “control” should be deleted.
  3. The clause is redundant, since the proposed Controller of Budget will ensure that funds are allocated to their rightful usage.
  4. The Administrative details should be left to the Accounting Officers.

*It was resolved that clause be deleted.*

- **Article 246B (9):**
  - The clause was considered redundant and should thus be deleted.

*It was resolved that the clause be deleted.*

- **Article 246B (10): adopted without amendments.**

## **Article 247: Charge on the Consolidated Fund**

*Article adopted without amendments.*

## **Article 248: Appropriation Bill**

**Article 248 (1):** *adopted without amendments.*

**Article 248 (2):** *adopted without amendments.*

**Article 248 (3):** *adopted without amendments.*

**Article 248 (4):** *adopted without amendments.*

New Clause inserted to read as follows:

*“If the Appropriation Act for a financial year has not come into operation, or is not likely to come into operation, by the beginning of that financial year, Parliament may, by a vote on account, authorize the withdrawal from the Consolidated Fund of moneys (not exceeding in total one-half of the sums included in the estimates of expenditure for that year that have been laid before Parliament) for the purpose of meeting expenditure necessary to carry on the services of the Government of Kenya during that year until such time as the Appropriation Act comes into operation, but any moneys so withdrawn shall be included, under separate votes for the several services in respect of which they were withdrawn, in the Appropriation Act.”*

## **Article 249: Power of Government to Borrow**

### **Article 249 (1):**

1. The generality of the term “any source” is misleading and should be amended to read “any source acceptable by law”.
2. That the word “national” be inserted between the words “the” and “government”

The Clause was adopted with the amendment to read as follows:

*“Subject to the Constitution, the national Government may borrow from any source”.*

### **Article 249 (2):** adopted with amendment as follows:

*“The Government shall not borrow, guarantee, receive any grant or raise a loan on behalf of itself or any other public institution, authority or person, except with prior approval of Parliament.”*

### **Article 249(3)**

1. That Government should link its borrowing to specific public expenditure for purposes of accountability.
2. That the question of inter-generational equity should be considered so as to avoid over borrowing by the Government, which leads to burdening future generations with debt.

3. That the conditions that attach to external borrowing in the External Loans Act should be applied equally to internal borrowing.
4. That the revamping of the economy should be the priority rather relying on borrowing which makes the country perpetually in debt.
5. That Parliament should be empowered to approve and monitor Government borrowing.

*The Clause was adopted without amendment.*

*It was further recommended that:*

- i. *Provisions such as those that govern External Debt should govern internal borrowing.*
- ii. *The principle of Inter-generational Equity should be considered in controlling Government borrowing.*
- iii. *That all Government borrowing must be presented to Parliament for debate and approval before implementation.*

**Article 249 (4)**

1. That the words ‘Prime Minister’ be replaced with “Minister for the time being responsible for Finance”.
2. That all reports tabled in Parliament should be debated.
3. That all Government borrowing must be presented to Parliament for debate before approval.

The Clause was adopted with the proposed amendment so that the Clause reads as follows:

*“The Minister for the time being responsible for Finance shall....”*

**Article 249 (4) (a): Adopted without Amendment.**

**Article 249 (4) (b): Adopted without Amendment.**

**Article 249 (4) (c): Adopted without Amendment.**

**Article 249 (5): adopted without amendment.**

**Article 250: Public Debt**

**Article 250 (1)**

1. That the word “or” be inserted to replace “and” after the word “Fund” so that the Clause reads as follows:

*“The Public Debt of Kenya shall be charged on the Consolidated Fund or other public funds of Kenya”.*

**Article 250 (2)**

1. That the Article should be amended to cover outstanding guarantees by the government and its agencies.
2. That grants should be subjected to Parliamentary scrutiny as they end up putting the country in debt.

Clause amended to read as follows:

*“For the purposes of this Article, the Public Debt includes the interest on that debt, sinking fund payments in respect of that debt and the costs, charges and expenses incidental to the management of that debt and shall include outstanding guarantees by Government and government departments and agencies.”*

New Clause inserted to read as follows:

*“ Public debt shall be limited to fifty Percent of the Gross Domestic Product of the financial year immediately preceding the year for which the budget proposals have been made, provided that the current debt level shall be reduced to this or lower limit within a ten-year transition period.”*

**Article 251: Central Bank of Kenya**

**Article 251 (1) : *adopted without amendment.***

**Article 251(2)**

1. That the word “currency” is not limited to notes and coins but extends to cover negotiable instruments used by the Government.

***The Clause was adopted without amendment.***

**Article 251 (3)**

1. That there would be potential conflict if both the offices of Governor and that of the Deputy Governor were established by the Constitution.
2. That the Deputy Governor should not be a Constitutional Office holder but should be a substantive Board Member.
3. That the Deputy Governor should be independent and should be subject to security of tenure so as to act as a check on the power of the Governor.
4. That the roles of ‘Chief Executive’ and ‘Chairman’ should be separated and not vested in the Governor so as to avoid concentration of power.
5. That in line with precedent, the Governor should remain the Chairman of the Board to avoid conflict in the Board.
6. The Board of Directors is not representative enough.
7. That the Article should specify that the Governor and the Deputy Governor should be of opposite gender.

At this point, members resolved that the Governor should also be the Chairman of the Board.

It was proposed that a sub Article “c” be inserted to read as follows:

***“The Governor of Central Bank shall be the Chairman of the Board”.***

***However the following delegates opposed the provision:***

***J.O. Kayila Del 407***

***M. Lekisemon Del 345***

<i>D.G. Njoroge</i>	<i>Del 589</i>
<i>F. Wangara</i>	<i>Del 446</i>
<i>G. Nduyo</i>	<i>Del 279</i>
<i>W. Matheka</i>	<i>Del 299</i>
<i>F. Nderitu</i>	<i>Del 302</i>

**Article 251 (5)**

1. That the words “and shall be a person of integrity and moral probity” be added at the end of the sentence.

The Clause was adopted with amendment to read as follows:

*“A Person shall not be qualified for appointment as the Governor unless such person has knowledge and experience relating to economics, finance or accounting and shall be a person of integrity and moral probity.”*

**Article 251 (6)**

1. That the Article be removed as the removal of all Constitutional officers is covered in Article 284. However, members felt that this should be clearly defined in this Article.

*The Clause was adopted without amendment.*

**Article 251 (7): The clause was adopted with amendment as follows:**

The words “grounds and” be inserted before the word “procedure” to read as follows:

*“The grounds and procedure for removal the Governor, the Deputy Governor or any other member of the Board under this Article shall comply with the requirements for the removal of holders of constitutional offices set out in Article 284 of this Constitution”.*

**Article 252: Functions of the Central Bank**

**Article 252 (1)(a): adopted without amendments.**

**Article 252 (1)(b): adopted without amendment**

**Article 252 (1)(c):**

1. The clause should include a function on regulating Commercial Banks by the Central Bank.
2. Others felt that the clause should read, “to regulate the financial sector”.
3. Too much detail should be avoided and left out for an Act of Parliament.

*The clause was finally adopted without amendments.*

**Article 252 (1)(d):**

1. That the phrase “not inconsistent” be changed to “consistent” to make it more positive.
2. That micro finance institutions should be captured in this provision. Members were however informed that there is legislation in the pipeline to take care of this issue.

The Clause was amended to read as follows:

*“...conduct the monetary policy of the Government in a manner consistent with the relevant provisions of the law in the interest of the balanced and sustainable economic growth of the Republic;”*

**Article 252 (1)(e):**

1. That this is redundant because it is captured in (d) above. It was thus proposed that (d) should be beefed up and (e) be deleted.

*It was finally resolved that sub-clause (e) be deleted and the substance thereof be incorporated in (d) above.*

**Article 252 (1)(f): adopted without amendments.**

**Article 252 (1)(g): adopted without amendments.**

**Article 252 (1)(g):** *The clause was adopted with the proposed amendment that the words “subject to this Constitution” be added at the end of the paragraph.*

**Article 252 (2)**

1. That the concern of manipulation of the Governor of Central Bank has been catered for in this Article.
2. That Article 252(2) is bound to cause a problem as it grants too much autonomy to the Central Bank and does not require it to answer to any body or institution.
3. That the words “or authority” be deleted to ensure that Parliament retains authority over the Central Bank.

The Convenor referred the members back to the previous discussion on whether the Governor and the Deputy Governor should be of different gender. The following issues arose thereof:

1. There should be two Deputies, a man and a woman.
2. There is a fear of contradicting other Chapters which have a global provision of a third of all the elective and appointive positions be allocated to women.
3. Others felt that the number of the Board be increased to Nine members.

At this point, members were referred to Article 14 (12), which contains the global provision.

*It was finally resolved that the following proposal be forwarded to the Committee on Preamble:*

*[That Article 14 (12) be rephrased to include a provision that “in any institution, where the Head is of one gender, the Deputy shall be of the other”.]*

**Further issues arising:**

1. That the issue of not having a portrait on Kenyan currency be addressed here. It was further proposed that Kenyan currency should have one of the following features:
  - Landmarks, or
  - Animals, or/and
  - Portrait of the First President.
2. There should be a provision to ensure that Government does not borrow all the moneys from the Central Bank and leaves nothing for the private sector. The members were however informed that currently Government cannot borrow more than 5% of the reserve.
3. What Acts of Parliament exist and whether the available legislations have provisions on the independence of the Central Bank.
4. The clause should include a function of the Central Bank to regulate Commercial Banks. Members were however informed that Article 252 (1)(d) takes care of the monetary policies.
5. How can we ensure that power is decongested and yet the Governor of Central Bank is also the Chairman of the Board? Members were however informed that the Governor is answerable to Parliament and this would ensure as a control mechanism.

***It was further proposed that all the enabling legislations should be looked at to ensure total autonomy of the Central Bank and that the Central Bank be made answerable to Parliament.***

A new Clause was inserted here to read as follows:

**Article 252(3):**

***“Notes and coins issued by the Central Bank of Kenya may only bear the portrait of the First President of Kenya or other images that depict or symbolize Kenya or an aspect of Kenya, provided that any notes and coins which bear portraits contrary to this provision shall be phased out within ten years from the date of coming into force of this Constitution.”***

**Article 253: The Controller of Budget**

**Article 253(1):**

***The clause was adopted with a proposed amendment that all the words after “Assembly” be deleted.***

**Article 253(2)(a):**

1. Change the word “fully” to “professionally”.
2. Change “fifteen years” to “ten years”.

The clause was adopted with the proposed amendments, that the words “fully” be replaced with “professionally” and “fifteen” with “ten” to read as follows:

*“... is a professionally qualified accountant and finance expert of not less than ten years’ standing; and”*

**Article 253(2)(b):**

The sub-clause was amended to read as follows:

*“... is a person of integrity and moral probity”*

That a new Clause, Article 253(3) be added after Article 253(2)(b) to read as follows:

**New Article 253(3):**

*“The Controller of Budget shall be appointed for a term of five years and shall be eligible for reappointment for only one further term only subject to Article 281(3) of this Constitution.”*

**Article 253(3):**

1. The auditor General will have to submit a report, which relates to auditing.
2. Parliament should be given some powers to reject “bad” projects. It was however clarified that there are enough mechanisms to act as checks and balances.

*Article 253(3)(a): was adopted without amendment.*

*Article 253(3)(b): was adopted without amendment.*

*Article 253(3)(c): was adopted without amendment.*

*Article 253(3)(d): was adopted without amendment.*

*Article 253(4): was adopted without amendment.*

*Article 253(5): was adopted without amendment.*

**Article 253(6):**

1. What is the level of “authority” being referred here?
2. There should be a liaison between the Director of the Central Bureau of Statistics (Article 293) with the Controller of Budget. However others felt that there was no need to link the two offices as they have no connection whatsoever.

*It was further resolved that the words “subject to this Constitution” be added at the end of the paragraph.*

**Article 254: The Auditor-General**

**Article 254 (1):**

It was resolved that the words after “Assembly” be deleted so as to read as follows:

*“There shall be an Auditor-General who shall be appointed by the President with the approval of the National Assembly.”*

**Article 254 (2)(a):**

It was resolved that the word “fifteen” be replaced with the word “ten” so as to read as follows:

*“...is a professionally qualified accountant of not less than ten years’ standing; and..”*

**Article 254 (2)(b):** *The sub-clause was amended to read as follows:*

*“is a person of integrity and moral probity”*

**New Clause inserted to read as follows:**

*“ The Auditor-General shall hold office for a term of five years but shall be eligible for reappointment for one further term only, subject to Article 281(3) of this Constitution”.*

**Article 254 (3):**

1. The Controller and Auditor General has now been allowed to source auditors from outside sources.
2. It was proposed that the phrase “or as stated in the relevant Act” be added.
3. There should be a provision to allow the Auditor and Controller General to get external Auditors to help do the auditing.

**Article 254 (3)(a)**

It was resolved that the words “devolved levels” be inserted between the words “Government” and “and” so as to read as follows:

*“audit the accounts of the Government, devolved levels and state corporations”.*

**Article 254 (3)(b)**

1. The current audit does not audit whether the people of Kenya got value for their money. There should be a provision to ensure that Kenyans get value for their money.

The Clause was amended to read as follows:

*“...satisfy himself or herself that all moneys that have been appropriated by Parliament and disbursed have been applied to the purpose to which they were so appropriated, that the expenditure conforms to the authority that governs it and that the use of the money was economical, efficient and effective; and...”*

**Article 254 (3)(c)**

1. Should specify “at the end of every financial year” instead of “at least every year”.
2. The phrase “at least once every year”.

It was resolved that the words “at the end of every financial year” replace the words “at least once every year” to read as follows:

***“for every financial year audit and report on-”.***

**Article 254(3)(c)(i):** *The sub-clause was adopted without amendments.*

**Article 254(3)(c)(ii):**

1. Why audit “officers”? It was clarified that this refers to the funds that do not form the Consolidated Fund. E.g. Special account opened for Donor Funds. It was proposed that “funds” be used in place of “officers”.
2. Replace “that” between the words “of” and “Government” with the word “the”.
3. That “devolved units” should be captured in the provision.
4. Should also include “state corporations”.

The clause was finally adopted with the amendment to read as follows:

***“the account of all funds and all devolved units of Government and state corporations”.***

**Article 253(3)(c)(iii):** *was adopted without amendment.*

**Article 253(3)(c)(iv):** *was adopted without amendment.*

**Article 253(3)(v):** *was adopted with the amendment that the words “of the Clerk” be deleted.*

**Article 254(3)(c)(vi):** *The sub-clause was adopted without amendment.*

**Article 254(4):** *The clause was adopted without amendments.*

**Article 254 (5):**

*The sub-clause was adopted with the amendment that the words “subject to this Constitution” be added at the end of the paragraph.*

**Article 254 (6):** *The sub-clause was adopted without amendments.*

**New Clause**

***“An Act of Parliament shall provide for the keeping of records and auditing of accounts of the devolved governments, and prescribe other measures for securing efficient and transparent fiscal management.”***

**Article 255:** Amended to read as follows:

***“The grounds and procedure for removal of the Controller of Budget and Auditor-General under this Article shall comply with the requirements for the removal of holders of Constitutional offices set out in Article 284 of this Constitution.”***

**Article 256:**

*Article 256(1): was adopted without amendment.*

*Article 256(2): was adopted without amendment.*

*Article 256(3):*

1. That the words “or concurs” be replaced by the phrase “and/or approves”.
2. Use the word “cause” in place of the word “concurr”. This was not agreed to, since one could always try to hide behind the cause.
3. Should use “public office” instead of “political office”.

*The Clause was adopted with the amendment that the words “or concurs” be replace with “and/or approves”. Further amendment was also agreed to, that the word “public” be inserted between the words “a” and “political”.*

**Article 256 (4):**

The sub-clause was amended by inserting the words “revenue and” between the words “all” and “expenditure” to read as follows:

*“Parliament shall monitor all revenue and expenditure of public funds”.*

**Article 257: Economic and Social Council**

**Article 257 (1):**

1. Why the number “twenty one”? It was proposed that this be reduced to “three” and give them enough powers to source experts for further consultation. It was however noted that it would be important to take all the sectors into consideration.
2. It was also proposed that the number be reduced to “Nine”.
3. Parliament should approve the appointment.
4. It was clarified that the number twenty-one was arrived at by taking two representatives of the eight Provinces and five qualified experts.
5. That the number should be left as nine qualified experts irrespective of ethnic background.
6. That there should be no fear of lack of ethnic representation since the names will be vetted by Parliament.

The Clause was amended to insert the words “Nine persons taking into account the diversity of the people of Kenya” so as to read as follows:

*“There is established an Economic and Social Council which shall consist of nine persons appointed, on the basis of merit taking into account the diversity of the people of Kenya, by the President acting on the advice of the Prime Minister with the approval of the National Assembly.”*

**Article 257 (2):**

*Article 257(2): was adopted without amendment.*

**Article 257 (3):**

*Article 257(3)(a): was adopted without amendment.*

*Article 257(3)(b): was adopted with the amendment that the words “the economic and social implications of” be inserted between the words “Parliament” and “all” thereby deleting the word “on” to read as follows;*

*“to consider and report to Parliament the economic and social implications of all bills and budgetary proposals introduced in Parliament”*

*Article 257(3)(c): was adopted without amendment.*

**Article 257 (4):**

*The clause was amended by deleting the words “for optimizing” up to the end of the sub-article (a-l) to read as follows:*

*“the Council shall advise the Government on the formulation, implementation, monitoring and evaluation of strategic economic and social policies”.*

*The deleted sections should be covered in the subsidiary legislation.*

**Article 257 (5):**

*The clause was deleted in its entirety and taken to the relevant legislation.*

*This should be covered in the subsidiary legislation.*

**Article 257 (6):**

*It was considered redundant and therefore deleted.*

**Article 257 (7):**

*The clause was amended by replacing the word “may” with “shall”.*

*Article 257 (7)(a): The sub-clause was amended by replacing the word “Commission” with “Council”.*

*Article 257 (7)(b): The sub-clause was amended to read as follows:*

*“...prescribing the form, content and manner of submitting the reports of the Council”.*

**5.1.2.2 Chapter Fourteen: The Public Service**

**Part I – Public Administration**

## **Article 258: Values and principles in administration generally**

- **Article 258(a):** adopted without amendment.
- **Article 258(b):** adopted without amendment.
- **Article 258 (c):** the word “**effective**” should be included to read, “**effective, impartial, fair and equitable provision of services**. However, a dissent was registered in opposition to this addition.
  
- **Article 258 (e)** amended to read, “**prompt, efficient and timely response to people’s needs**”.
- **Article 258(f):** adopted without amendment.
- **Article 258(g):** adopted without amendment.
- **Article 258(h):** adopted without amendment.
- **Article 258 (i):** should include “**employment**” after the word “training”. This article was agreed to as amended.
  
- **Article 258 (j):**
  1. It was proposed that national composition should replace ethnic composition, since nationhood caters for all ethnic diversity,
  2. It was further proposed that all the other disadvantaged groups should be included as well,
  3. That the article should clearly specify, “both men and women”.

**It was however agreed that this article should include people with disabilities and other minority groups notwithstanding Article 258 (h).**

## **Article 259: The Public Service Commission**

**Article 259 (1):** rephrased to read as follows:

*“There is established a Commission to be known as Public Service Commission”.*

- **Article 259 (2):**
  1. There should be a clarification as to which authority should appoint the Commission; should it be the National Assembly and the National Council. However clarification was made that those appointed by the National Assembly are executive constitutional office holders, unlike the rest.
  2. Article 259 (2): that the number should be increased to twenty; the Chair, the Deputy and eighteen others to take care of the Devolved units. However it was concluded that the article should be rephrased to read as follows:

*“The Commission shall consist of a Chairperson, a Deputy Chairperson and seven other members appointed by the President with the approval of the National Council.*

- **Article 259 (3):** amended to read as follows:

*“A member of the Commission shall hold office for a term of five years and is eligible for reappointment for one further term.”*

**New Clause:**

*(4)(i) There shall be a Secretary to the Commission who shall be the Chief Executive and shall be appointed by the President on the recommendation of the Public Service Commission and with the approval of the National Assembly;*

*(ii) The secretary of the Commission shall hold office for a term of five years and is eligible for re-appointment for only one further term.*

**Article 260: Powers and Functions**

- **Article 260 (1) (a):** adopted without amendment.
- **Article 260 (1) (b):** adopted without amendment
- **Article 260 (1) (c):** amended as follows:

*“to propose measures to ensure efficient and effective performance of the public service;”*

- **Article 260 (1) (d):** rephrased to read as follows:

*“to ensure that procedures relating to recruitment, deployment, transfers, promotions and disciplinary measures of personnel comply with the values and principles set out in Article 14 and 258”.*

- **Article 260 (1) (e):**

1. Article 260 (1) (e): Referring to Article 14 (18), is it the President who is supposed to report to Parliament on the implementation of these values? Who is then to evaluate the performance of PSC? It was however proposed that the National Council should have the responsibility of evaluating performance of PSC.
2. That “performance” in this case means evaluation of the PSC in terms of accountability and transparency, with reference to Article 14 (5).
3. That reporting of PSC is different from that of the other Commissions.
4. For the public to consume the report of evaluation, then the article should be retained as its stands.

After a lengthy discussion, it was finally agreed that the words *“in accordance with Article 286”* be added after the words functions. To read as follows:

*“to report on the activities and the performance of its functions in accordance with Article 286, and to evaluate that the extent to which the values and principles set out in Articles 14 and 258 are complied with”.*

- **Article 260 (1)(f):** deleted
- **Article 260 (1) (g):** rephrased as follows:

*“to review the terms and conditions of service, code of regulations, qualifications of public officers and matters relating to human resource development in the public service and make recommendations on them to Government;”*

- **Article 260 (1) (h):**
  1. That the words “human resource management” should be used instead of “personnel management”.
  2. Should use “human resource management and development” to cater for training and manpower development.
  3. Training and Development go together, but qualifications can be on its own.
  4. Should use “manpower development” to cater for training and development.

It was finally agreed that the article be amended as follows:

*“to review the terms and conditions of service, code of regulations, qualifications and human resource development of public service and make recommendations on them to the Government”.*

**New Clause:**

*(1A) Notwithstanding the provisions of clause (1), the Commission may, subject to such conditions as it may think fit, by directions in writing, delegate any of its powers and functions under this Article to any one or more of its members, or to any officer, body or authority in the public service.*

- **Article 260 (2):** amended to read as follows:

*“Parliament shall enact legislation for the better functioning of the Commission”.*

### **Article 261: Establishment of offices**

- **Article 261 (1):**
  1. That the PSC appoints while Parliament ratifies these appointments.
  2. That this article means the power to constitute offices while all the other Ministries have delegated power. However, others felt that this should not be the case and that there should be a clear provision whereby PSC appoints all other offices.
  3. That PSC should have specific functions in the Constitution.

4. That this article tries to give power of appointment to the PSC rather than to the President in an attempt to decongest the powers of the President, unlike the provision in Section 24 of the current Constitution.
5. PSC is a Department in the Office of the President and there should be a clear provision to ensure that this Commission stands as an independent Commission and thus DPM (Department of Personnel Management) should be promoted to be that Commission.
6. That there should be a specific provision, which delegates responsibilities to other offices.
7. That PSC should be under a specific Ministry or be promoted to a Ministry.
8. A concern was raised about the power of the PSC to hire and fire; what happens in cases of any conflicts in these appointments?
9. That PSC does not create positions for Ministries or Departments.
10. That there is a need to address the PSC offices with respect to the proposed devolved units.
11. That the members should start thinking in line with the creation of the Chief Executive Office in the PSC.
12. That there should be a clear provision in the Constitution that gives a specific number of Ministries. Reference was made to Article 151 (2) (iii). It was further proposed that these Ministries should be clearly spelt out in terms of their description. **The members felt that this proposal should be forwarded to the relevant Committee.**

- **Article 261 (2):**

1. The article should be retitled to read, “Establishment of Public Officers”.
2. That there is redundancy in Articles 260 (1) (g) and 261 (2) when read against the title of the Article 260 (1) (g), Powers and Functions. It was therefore proposed that Article 261 (2) should be included in Article 260 (1) (g).
3. That Article 261 (2) is misplaced, since it talks about appointment of public officers and thus should be taken to Article 262, which deals with appointments of public officers.
4. That the public offices should first be established before their powers and functions are defined. Therefore, others felt that Article 261 should come before Article 260.
5. That Article 261 (2) is captured in Article 262 (1) and thus should be deleted.
6. That Article 261 (2) is misplaced, since it deals with the appointment of public officers, their confirmation and disciplinary measures and therefore should be moved to Article 262 (1).
7. That there lacks a clear provision on the appointment of staff by other public bodies; is it the role of the PSC? It was therefore proposed that a provision should be included under this article that gives PSC the power to delegate other public bodies to employ their staff.

**It was proposed and agreed that Articles 261(1), (2) and 262(1) be harmonized.**

- **Article 262(2):**

**It was proposed and agreed that the word “retired Presidents” be added at the end of the clause.**

**Article 264: Principles and Objects**

- **Article 264 (1):**

1. The heading should be “Kenya National Police Service” to work “with and for the people of Kenya”
2. Clause (d) and (e) are superfluous and repetitive. There was suggestion that these two should be deleted.
3. “Prevention” and “detection” as used in clause “d” and “e” are principal words and should not be removed.

**An amendment was proposed and agreed that after clause “f” the following be added, “in accordance with the laws of Kenya”.**

- **Article 264 (2):**

That the word “will” should be replaced with the word “*shall*”. It was finally agreed that Article 264 (2) be rephrased to read as follows:

**“In furtherance of these objects the Service *shall*”**

- **Article 264 (2) (a):**

1. This does not appear to be a principle but rather a value.
2. The principle should be deleted, since the general principles are already covered in Article 258, and this is a repetition.
3. That there is need to specifically articulate these principles under the Kenya Police to avoid any doubt from these officers.
4. “Professionalism”; are there any standards of professionalism for the Police Service? Should the Police then be made a profession? A clarification was made that the Service is a profession, since they are trained in their special needs.

It was finally agreed that the Article 264 (2) (a) be amended to read as follows:

**“*maintain the highest standards of professionalism*”.**

- **Article 264 (2) (b):**

1. That the article be amended to read “*work to eliminate and avoid corruption at all levels*”
2. That the phrase “of all sorts” at the end be deleted.

It was finally agreed that the article be amended to read as follows:

**“*work to eliminate and avoid corruption*”.**

**Article 264 (2) (c):** amended as follows:

**“*avoid bias or discrimination in delivery of services to the various segments of society*”**

- **Article 264 (2) (e):**

1. That this article be deleted, since it is covered in Article 264 (2) (h); but may be improved on.
2. This article is redundant, since it is already covered in (d), (e), (f), (g) and (h).

**Clause was deleted.**

● **Article 264 (2) (h):**

1. That the word “minimal use of force” should be replaced with the word “humane”. However others felt that the word “minimal use of force” is very important as it plays a cautionary measure on these officers.
2. That the spirit of the nation needs to be captured as well. Therefore, there is need to make it clear that the Police would only use “minimal use of force” where necessary.
3. That if the word “minimal use of force” is retained, then these Officers should be “trained in this minimal use of force”.
4. That there are provisions in the current Constitution that guide these Officers on when and how to use force.

It was decided that the phrase “**minimal use of force**” be used.

**Article 264 (2) (h)** was finally amended as follows:

*“train its officers, to the highest possible standards of competence, minimal use of force, integrity and respect for human rights and fundamental freedoms and dignity, and to recognize the duty of accountability to society.”*

**Article 265: Establishment of the Kenya Police Service**

- That the Kenya Police Service should be first established before setting out the principles and objects.

**It was agreed that the entire Article 265 should be interchanged with Article 264.**

● **Article 265 (3):**

1. To cater for discipline, the word “discipline” should be added to Article 264 (2) (a), to read, “strive for the highest standards of discipline and professionalism”.
2. That it should be amended to read, “The Police Service shall be a professional and disciplined service”.
3. That the word “discipline” should be left out.

**It was finally agreed that Article 265 (3) be deleted. This amendment was agreed to.**

● **Article 265 (4):**

1. That the word “force” be replaced with “service”.
2. There should be a National Police Service, Sub-National and County Police Service. If this goes through, what will be the financial implications and which government will foot their bills? However, some felt that this should be National, so as to have standard training across the board.

3. That the Police Service should take into account the structure of Devolution and the chain of command thereof. The members therefore felt that there was need for a National Police Service and Regional units as well.
4. That the clause be amended to read as follows: “The Police Service be organized into a national police *service*, regional and zonal/county and specialized branches and the division of its functions shall be organized to take into account the structure of devolution.”
5. That Police Service should remain a National Police unit, and should not be devolved to the lower levels of Government.
6. That as much as national Police Service should be retained, there should also be Regional Police units.

That there must be a permeating relationship between the national Police Service and the Devolved Police units.

It was finally agreed that Article 265 (4) should read as follows:

***“The Police Service shall remain a national police service, and the division of its functions shall be organized to take into account the structure of devolution.”***

● **Article 265 (5):**

1. That this article is misplaced and should come under Article 264.
2. That this article is irrelevant and thus should be deleted.
3. This provision is vital, since it ensures that the community assists the Police by sharing information with them and giving them leads.
4. That the Community Policing should be left out as it is already provided for in the other linkages.

**It was finally agreed that the sub-article be deleted under Article 265 and replaces Article 264(2)(g).**

**Article 266: Appointment of the Commissioner of the Kenya Police Service**

- **Article 266 (1):** amended to read as follows:

***“There shall be an Inspector General of Kenya Police Service.”***

NB: Replace “*Commissioner*” with “*Inspector General*” where it appears in Part II of this Chapter.

● **Article 266 (2)**

1. Replace “one term of ten years” with “one term of five years renewable for one other term”.
2. The proposed term should be retained as provided for in the Draft Bill.

It was finally agreed that the article be rephrased as follows:

*“The Inspector General shall be appointed by the President with the approval of Parliament for one term of five years renewable for one other term.”*

*However, a dissent was recorded by Hon. A. Haji Mohamed that the article be retained as it is.*

- **Article 266 (3):**

It was agreed that the word “**may**” be replaced with the word “**shall**”. Therefore Article 266 (3) should read as follows:

**“No person shall be appointed as Commissioner unless...”**

- **Article 266 (3) (a):**

1. Article 266 (3) (a): Should replace “degree” with “a relevant degree”.
2. Should add after the word “degree” the words “or equivalent”.
3. should use the word “obtained” in place of the word “has”.
4. should replace “has” with the word “holds”.

It was finally agreed that the article be amended as follows:

**“holds a degree from a recognized university”.**

- **Article 266 (5):**

1. The sub-article is irrelevant and should be deleted.
2. That the last portion, “except that on matters of policy, the President acting on the advise of the prime Minister, may give direction to the Commissioner” be deleted.
3. That the last portion, “except that on matters of policy, the President acting on the advise of the prime Minister, may give direction to the Commissioner” be replaced with “*except with the direction from the Constitution*”.
4. That the Office of Inspector General (as proposed in place of Commissioner of Police), be made independent and not under control or directions of any person.

It was finally agreed that the sub-article be split into two sub-articles; 266(5) and (6) to read as follows:

- **Article 266 (5) shall read as follows:**

***“The Inspector General shall be subject to, and act in accordance with the Constitution and laws of Kenya”.***

**New Article:**

***“In performing his or her functions, the Inspector General shall not be under the direction or control of any person or authority”.***

**Article 266 (6)::** this should be rephrased to read as follows:

*“Subject to the Constitution, the Inspector General may be removed from office by the President only for –*

1. *inability to perform the functions of his or her office arising from infirmity of body or mind;*
2. *misconduct; or*
3. *incompetence.*

- **Article 267: Principles and Objects**

- **Article 267:**

It was unanimously agreed that Article 268; Establishment of Kenya Correctional Services should come before Article 267; principles and objects.

- **Article 267 (1):**

1. That the facilitation should include integration of those persons.
2. That in order for the prisoners to rehabilitate, there is need to have retraining for the prison officers in order for them to have correctional abilities.
3. That the word “society” be used in place of the word “community”.

It was finally agreed that the article be rephrased to read as follows:

*The primary object of the Kenya Correctional Service is to ensure-*

- (a) *the safe custody of the country’s prison population and the provision of humane living conditions in prison;*
- (b) *the supervision of offenders within the community who are serving non-custodial sentences or who are on probations; and*
- (c) *the rehabilitation of offenders in order to facilitate their return to useful lives within society.*

- **Article 267 (2):**

It was proposed that the words “in furtherance of its primary objects” be added at the beginning of the sub-article.

It was finally amended to read as follows:

***“in furtherance of its primary objects, the Kenya Correctional Service shall be structured and regulated so as to –”***

- **Article 267 (2) (a):** deleted.
- **Article 267(2) (b):** deleted
- **Article 267 (2) (c):** deleted
  
- **Article 267 (2) (d):** deleted

New Clause:

***“The Kenya Correctional Services shall be professional and disciplined”***

## **Article 268: Establishment of the Kenya Correctional Services**

- **Article 268(1):**

It was proposed and agreed that the title should be changed to **“Kenya Correctional Service”** and that the letter **“s”** be removed from the word **“Services”** wherever it appears in the Chapter.

It was further proposed that Article 268 (1) be rephrased to read as follows:  
***“There is established a Kenya Correctional Service”***

- **Article 268 (2):**

It was finally agreed that the power to appoint persons to the Correctional Service should vest in the Public Service Commission, so as to read as follows:

***“Subject to this Constitution, the power to appoint persons to hold or act in offices in the Kenya Correctional Service, including the power to confirm appointments, and to exercise disciplinary control over persons holding or acting in those offices shall vest in the Public Service Commission.”***

- **Article 268 (3):**

1. That this article should be deleted. However others felt that since the institution has been the renamed, there is more need to emphasize that it is a disciplined service.
2. That since the Prison Service deals with disciplinary and rehabilitation within the institution, it is thus proposed that these services be extended to the released inmates outside the premises.
3. That “discipline” should be captured in article 267 (2) (b). Thus Article 268 (3) be deleted.
4. That “discipline” should be looked at in a broader form and not the normal simple meaning of the word, as we know it. It was further clarified that the officers to through a specialized training to discipline them.
5. Prisons should not be devolved to the lower governments but rather should remain a National institution. A clarification was made that Correctional Services are National but it was further proposed that the functions of Correctional Services should take into account the structure of Devolution.

After a lengthy discussion, it was finally agreed that a new article replaces Article 268 (3) o read as follows:

***“The functions of Kenya Correctional Services shall take into account the structure of Devolution”.***

**New Clause:**

- (4) *In the execution of its functions, the Kenya Correctional Service shall be supervised by the Minister responsible for the Service.*

**New Clause:**

- (5) *Subject to this Constitution, Parliament shall enact legislation -*
- (a) *establishing adequate mechanisms for accountability and governance of the Kenya Correctional Service;*
  - (b) *providing for the organization, administration and function of the Kenya Correctional Service; and*
  - (c) *regulating the functions of the Kenya Correctional Service.*

**Article 269: Appointment of the Director of Kenya Correctional Services**

A Motion was moved by Hon. Omondi, Delegate No. 625, and after a lengthy discussion on the Motion, it was finally agreed that all the sub-articles under this article be arranged and rephrased as follows:

- (1) *There shall be a Director-General of the Kenya Correctional Service.*
- (2) *The Director-General of the Kenya Correctional Service shall be appointed by the President, on the advice of the Prime Minister and after approval by the National Assembly.*
- (3) *No person shall be appointed as Director-General unless that person -*
- (a) *holds a degree from a recognized university; and*
  - (b) *has served in the Kenya Correctional Service for at least ten years; or, has at least ten years' experience in the management and administration of correctional services.*
- (4) *The Director-General of the Kenya Correctional Service shall hold office for a term of five years but shall be eligible for reappointment for one further term.*

**Article 270: Interpretation**

**Definition of "Public service"**

The following definition was proposed and agreed to.

*"public service" means service of the government of Kenya, or any department, institution or undertaking thereof, whether that service is permanent or temporary, paid or unpaid."*

**5.1.2.3 Chapter Sixteen: Leadership And Integrity**

**Article 276: Application of Chapter**

- Article 276 (1)(b) should include the vice president and Permanent Secretaries.

- Article 276 (1)(c) should be rephrased to read “**all members of the National Assembly**”.
- Article 276 (1)(d) should be replaced to read “**all members of the National Council**” (this should include employees of the Council).
- Article 276 (1)(e) should have reference to Article 293 of Chapter 17, which should include judicial officers and the armed forces as part of the constitutional officers.
- An Article to include civil society and private sector should be added after 276 (1)(f).

**All the above issues were agreed by consensus, however, there was a divergent view on the inclusion of “Permanent Secretaries” in Article 276 (1) (b), that the Article should be retained.**

#### **Article 277: Responsibilities of Office**

- Articles 277 (1), (2), (3) should be collapsed into one article since the content is similar.
- There was a view that there be a complete repeal of the whole of Article 277 since the same would have already been captured in the broad principles to be drafted from the Leadership Code.

#### ***5.1.2.4 Consideration Of The Fifth Schedule***

#### **Leadership and Integrity Code of Conduct**

##### ***Background:***

During Bomas II, members had resolved that this Schedule be deleted from the Draft and be established under an Act of Parliament. Subsequently, reference was made to the Act in the newly drafted Article 276A of Chapter Sixteen.

##### ***General Comments***

1. That retaining the Schedule is crucial, as it would operationalise the Constitution once it is enacted.
2. That the Schedule should be deleted as it duplicates an already existing Act of Parliament, that is, The Public Officers Ethic Act.

After the members had read the Public Officers Ethics Act. the Convenor took the members through the Fifth Schedule of the Draft Bill alongside the Public Officer Ethics Act, 2003.

#### **Discussion on the Fifth Schedule**

**Article 1:** *deleted*

**Article 2:** *adopted*

**Article 3:** *adopted*

**Article 4:** *deleted*  
**Article 5:** *deleted.*  
**Article 6:** *deleted*  
**Article 7:** *adopted.*

**Article 8**  
**Article 8(a) – (d):** adopted.  
**Article 8(e) - (f) :** deleted.

**Article 9:** *deleted*  
**Article 10:** *deleted*  
**Article 11:** *deleted*  
**Article 12:** *deleted*  
**Article 13:** *deleted*  
**Article 14:** *deleted*

#### **5.1.2.5            *Consideration Of The Eighth Schedule***

##### **Transitional and Consequential Provisions**

Schedule 8 (1) on the Rights, duties and obligations of the Republic: **was adopted without amendment**

*Schedule 8 (2) on the Existing Laws: adopted without amendment*

*Schedule 8 (5) on Devolution: adopted without amendment*

*Schedule 8 (6) on The Executive: adopted without amendment*

*Schedule 8 (8) on Existing Offices: Adopted without amendment*

*Schedule 8 (9) on Pensions, gratuities and other benefits: Adopted without amendment*

*Schedule 8 (13) on: Death Penalty and Other Outlawed Penalties: Adopted without amendment*

*Schedule 8 (14) on Constitutional Commissions : Adopted without amendment*

*(It was however recommended that the Commissions that are currently in place should be given priority to avoid frustrating the work of Government).*

##### **Matters Arising:**

1. On the Public Officers Ethics Act: members felt that the Act covers more than the Schedule and that the Schedule should therefore be deleted and reference be made to the Act.

2. How will the Leadership & Integrity Commission be operationalised? Members were informed that an Act of Parliament would have to be in place to operationalise the Commission.
3. Some felt that since the Act was enacted after the Schedule, it would be important to retain the Schedule for purposes of transitional process.

*It was finally agreed that the limit on Public Debt should be provided for in the relevant Act.*

#### **5.1.2.6 Consideration Of The Ninth Schedule Of The Devolution Chapter**

##### **Principles of Taxation**

*Bullets 1,2 and 3 were deleted as these principles have been captured in the previous proposed amendments (through Ms. Betty Maina’s presentation).*

*Bullets 4 and 5 were adopted without amendment*

*Bullet 6 was deleted.*

Bullet 7:

1. There’s an overlap between the two levels of government.
2. There must be criteria to share the functions, powers and proceeds to each county.
3. That the word “county” in bullet seven be deleted replaced with the words “levels of government”.
4. That the counties and national government cannot have the same fiscal powers over a particular resource because it is the national government that acquires and develops such national resource.
5. That there should be recognition of the fact that a certain national resource is located in a particular region.
6. That the word “same” be replaced with “some” to avoid creating conflict.

Bullet 7 was finally deleted and replaced with the following provision:

***7 (1) When two or more governments have the same fiscal powers and functions with regard to the same area, an appropriate division of those powers and functions must be made in terms of an Act of parliament. The division may be made only after taking into account at least the following criteria:***

- (a). the need to comply with sound principles of taxation,***
- (b). the powers and functions performed by each government,***
- (c). the fiscal capacity of the governments,***
- (d). the effectiveness and efficiency of raising taxes, levies and duties; and***
- (e). equity.***

7(2) *Nothing in this Article precludes the sharing of revenue raised in terms of this Article between governments that have fiscal power and functions in the same area.*

7(2) *An Act of parliament envisaged in this Article may be enacted only after the commission on Government Finance and the Minister responsible for the devolved governments have been consulted, and their recommendations have been considered.*

*Bullet 8 was adopted without amendment.*

**Bullet 9**

1. That the word “zones” be deleted and replaced with “devolved levels of government.
2. Include the provision that within the zones, the counties should have equalized allocation of resources to cater for marginalized areas.

Bullet 9 was finally adopted with amendment to read as follows:

*“The national government must promote financial equalization among the devolved levels of government when granting subsidies, and must take into account the financial capacities of those devolved levels and the special situation of these levels”.*

**5.1.2.7 Consideration Of The Tenth Schedule: Taxation Powers**

**Taxation Powers of the National Government**

Bullet 1: *adopted with amendment to read as:*

*Levy and collect taxes, custom duties and other dues on import and export goods and services.*

Bullet 2: *adopted with amendment to as read as:*

*Levy and collect income sales tax, Value Added Tax, Excise Tax and other miscellaneous taxes.*

Bullet 3: *adopted without amendment.*

Bullet 4

1. That road transport taxes be included as part of transport taxes levied by the national government, and that a methodology be formulated for the sharing of such taxes to the devolved units.
2. Road taxes should be collected at the devolved levels since Municipalities have a larger portion of the road network to take care of.
3. That the provision relates to incomes on transportation and not taxes on transportation in general.

*It was finally agreed that the clause be amended to read as follows:*

*“Levy and collect taxes on transport by road, air, rail and sea”.*

Bullet 5

1. That the property in the regions will be owned by the regions after transition. The regions should therefore retain rent, levy and taxes collected there from.
2. Land rent is paid to the Central Government while rates on property are paid to the Local government and this should continue as it benefits both levels of government.
3. That rent on houses should only be paid to the National Government where the houses are owned by the central government.
4. That there are areas where people pay land rent and rates to the central government yet the government does not reinvest the collections back to these areas.

Bullet 5: *amended to read as:*

*“Determine the rent of, levy and collect tax from houses and other property owned by the national government”.*

Bullet 6 : *amended to read as:*

*“Determine and collect fees from licenses issued and services provided by the organs of the national government”.*

*It was further resolved that all income taxes and Value Added Tax should be accrued to the National Government.*

**Taxation Powers of the Zonal Government**

This part is deleted.

**Concurrent Taxation Powers**

This part is deleted.

**Taxation Powers of the County Government**

This part is deleted.

**5.2 New Provisions**

**5.2.1 Chapter Thirteen: Public Finance**

**243 Object of the Public Finance Management System**

The object of the public finance management system is to ensure that public finance functions are conducted efficiently, effectively, equitably and transparently with appropriate controls and oversight including ensuring -

- (a) that revenues are raised efficiently and effectively;

- (b) that there are appropriate controls and oversight on borrowing;
- (c) that proper budgets are made in relation to public revenues and expenditures;
- (d) that expenditures are properly managed and are made only in accordance with the law; and
- (e) that public accounts are audited and reported on regularly.

### **Management of national and devolved government Finances**

**243B** (1) Parliament shall, by an Act of Parliament, provide for efficient, effective and transparent management of national and devolved government finances.

Provided that where an Act of Parliament is inconsistent with a provision of the law of the devolved level of government, the provision of the Act of Parliament shall prevail to the extent of the inconsistency.

### **Principles of Taxation**

- 244** (1) The general principles of taxation, particularly the coverage of taxpayers, and the object of the tax and its calculation, shall be established by law.
- (2) To the extent that the nature of the tax allows, the principles of universality and equality of tax treatment and of taxation according to economic capacity shall be respected.
- (3) The National government, in establishing the tax scales shall take into account the burden of direct taxes on the devolved governments and the people.
- (4) The Act of Parliament referred to in (1) above shall establish principles on the harmonization of direct taxes other than tax scales, tax rates, and tax exempt amounts at the national and devolved levels of government.
- (a) The tax harmonization concerns include tax liability; object, period, procedure and criminal law on taxation.
  - (b) Parliament may enact appropriate legislation against unjustified tax advantages

### **The Devolved Government Taxation Powers**

**244B** (1) A devolved government including a municipal authority may impose such taxes, levies, duties and flat-rate surcharges as prescribed in the

Tenth Schedule or by an Act of Parliament.

- (2) The power of a devolved government to impose taxes, levies, duties and surcharges:-
  - (a) may not be exercised in a way that materially and unreasonably prejudices national economic policies, economic activities across regional, district or municipal boundaries, or the national mobility of goods, services, capital or labour; and
  - (b) must be regulated in terms of an Act of Parliament, which may be enacted only after any recommendations of the Commission on Government Finance have been considered.
- (3) When two or more governments have the same fiscal powers and functions with regard to the same area, an appropriate division of those powers and functions must be made in terms of an Act of Parliament.
- (4) The division referred to in clause (3) may be made only after taking into account at least the following criteria:-
  - (a) the need to comply with sound principles of taxation;
  - (b) the powers and functions performed by each government;
  - (c) the fiscal capacity of the governments;
  - (d) the effectiveness and efficiency of raising taxes, levies and duties; and
  - (e) equity.
- (5) Nothing in this Article precludes the sharing of revenue raised in terms of this Article between governments that have fiscal power and functions in the same area.
- (6) An Act of Parliament envisaged in this Article may be enacted only after the Commission on Government Finance, the Minister responsible for the devolved governments and the Controller of Budget have been consulted, and their recommendations have been considered.

### **Taxation powers**

**244C** The taxation powers of the government at the various levels are set out in the Tenth Schedule.

### **The National Revenue Authority**

**244D** (1) There is established a National Revenue Authority.

- (2) The Authority is responsible for the collection of revenues due to the national government except as determined by an Act of Parliament.
- (3) Parliament shall enact legislation prescribing and regulating the functions and operations of the Authority.

### **Commission on Government Finance**

- 244E** (1) A Commission on Government Finance shall be appointed in accordance with Article 281 (3).
- (2) The Commission shall consist of:
    - (a) a Chairperson and six other members appointed by the President upon nomination by the Senate.
    - (b) the Principal Secretary responsible for Finance and the Controller of Budget, as ex-officio members.
  - (3) The principal function of the Commission is to determine the basis for the sharing of revenue from national resources and to ensure that:-
    - (a) this sharing is equitable as between governments at the various levels; and
    - (b) this sharing is equitable as between the various levels of devolved government at any particular level; and
    - (c) where necessary, conditional or unconditional grants are given.
  - (4) The Commission shall report to Parliament on its recommendations concerning the distribution of national revenues to the various levels of governments.
  - (5) The recommendations of the Commission may be amended by Parliament with a simple majority in each House.
  - (6) Except to the extent that they are amended under clause (5), recommendations of the Commission are binding on all governments, and shall be reflected in their respective budgets and in their taxation and other legislative policy.
  - (7) Parliament shall make legislation -
    - (a) prescribing and regulating the functions of the Commission;
    - (b) prescribing the form, content and manner of submitting the reports of the Commission; and
    - (c) prescribing the principles, criteria, formula, conditions and framework for ensuring equitable sharing and allocation of national revenue and resources.

### **Establishment of Revenue Funds for Devolved Governments**

- 246B** (1) There shall be a Revenue Fund established for each devolved government into which all revenues set out in the Tenth Schedule shall be paid, except money reasonably excluded by an Act of Parliament.
- (2) Money may be withdrawn from the Fund only:-
- (a) in terms of an appropriation by a devolved government's legislation; or
  - (b) as a direct charge against the Revenue Fund, when it is provided for in an Act of Parliament or a devolved government's legislation.
- (3) Revenue allocated through a devolved government's Revenue Fund is a direct charge against that Revenue Fund.

### **National Sources of the Devolved Government Funding**

- 246C** (1) Each devolved government:-
- (a) is entitled to an equitable share of revenue raised nationally to enable it to provide basic services and perform the functions allocated to it; and
  - (b) may receive equalization grants or other allocations from the national government revenue, either conditionally or unconditionally.
- (2) Additional revenue raised by the devolved governments may not be deducted from their share of revenue raised nationally, or from other allocations made to them out of national government revenue.
- (3) There shall be no obligation on the national government to compensate a devolved government that does not raise revenue commensurate with its fiscal capacity and tax base.
- (4) A devolved government's equitable share of revenue raised nationally must be transferred to the respective government promptly and without deduction, except when the transfer has been stopped in terms of the Article 250B (2).

### **The Devolved Government Plans and Budgets**

- 247A** (1) The devolved government planning and budgetary processes must promote equity, transparency, accountability and effective management of public finance, debt, delivery of services and the economy.
- (2) Budgets in each level of government shall contain:-

- (a) estimates of revenue and expenditure, differentiating between recurrent and development expenditure;
  - (b) proposals for financing any anticipated deficit for the period to which they apply; and
  - (c) any indication of intentions regarding borrowing and other forms of public liability that will increase public debt during the ensuing year.
- (3) An Act of Parliament shall prescribe:-
- (a) the structure of the devolved government plans and budgets;
  - (b) the contents of the devolved government's plans and budgets;
  - (c) when the devolved governments plans and budgets must be tabled; and
  - (d) form and manner of consultation between the national and the devolved governments in the process of preparation of plans and budgets.

### **National Treasury Control**

- 248A** (1) An Act of Parliament shall establish a national treasury and prescribe measures to ensure both transparency and expenditure control in each level of government, by introducing:-
- (a) generally recognized accounting practice;
  - (b) uniform expenditure classifications; and
  - (c) uniform treasury norms and standards.
- (2) The national treasury, with the concurrence of the Minister for the time being responsible for Finance, may stop the transfer of funds to an organ of state only for serious or persistent material breach of the measures established in terms of Clause (1).
- (3) A decision to stop the transfer of funds to an organ of state or any other public institution be taken in terms of Clause (2):-
- (a) may not stop the transfer of more than fifty percent of the funds for more than two months (60 days); and
  - (b) may be enforced immediately, but will lapse retrospectively unless Parliament approves it following a process substantially the same as that established in the prescribed rules and orders of

Parliament. This process must be completed within 30 days of the decision by the national treasury.

- (4) Parliament may renew a decision to stop the transfer of funds for no more than two months (60 days) at a time, following the process established in terms of sub Article (3).
- (5) Before Parliament may approve or renew a decision to stop the transfer of funds to an organ of state or any other public institution:-
  - (a) the Auditor-General shall make a report to Parliament; and
  - (b) the affected public institution shall be given an opportunity to answer the allegations against it, and to state its case, before a the relevant committee of Parliament.

### **Procurement of public goods and services**

- 248B** (1) When an organ of state or any other institution at any level of government identified in an Act of Parliament, 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) Clause (1) does not prevent an organ of state, or public institution referred to in that Clause from implementing a procurement policy.
- (3) An Act of Parliament shall prescribe:
- (a) a framework within which the policy referred to in Clause (2) may be implemented;
  - (b) categories of preference in the allocation of contracts;
  - (c) the protection, or advancement of persons, categories of persons or groups previously disadvantaged by unfair competition or discrimination;
  - (d) sanctions for contractors that have not performed according to laid down procedures, contractual agreements and professional and public expectations;
  - (e) sanctions for persons who defaulted on their tax obligations; and
  - (f) any other matter that may be deemed appropriate.

### **Power of the Devolved Governments to Borrow**

- 249A** (1) A devolved government may raise loans for development or recurrent expenditure in accordance with such reasonable conditions determined by an Act of Parliament or devolved government legislation.

- (2) An Act of Parliament referred to in clause (1) may be enacted after any recommendations of the Commission on Government Finance have been tabled in Parliament.
- (3) A devolved government may not borrow without first obtaining approval from its Assembly or Council.

### **Government Debt Guarantees**

- 250A**
- (1) An Act of Parliament shall provide terms and conditions under which each level of government may guarantee a loan.
  - (2) An Act of Parliament referred to in Clause (1) may be enacted only after any recommendations of the Commission of Government Finance have been considered.
  - (3) For each financial year, the national government and every devolved government shall publish a report on the guarantees, it has granted, if any.

### **Reports on publicly-funded organizations**

- 256A**
- (1) Each organization that is funded from public funds shall report to the Auditor-General, for each financial year, with respect to the use of the public funds disbursed.
  - (2) Each report shall be certified by an authorized auditor of the organization.
  - (3) This Article does not apply with respect to organizations whose accounts are audited by the Auditor-General.

## **5.2.2 Chapter Fourteen: Public Service**

### **Staffing of Devolved Authorities:**

- 260A**
- (1) A zonal government or county government may employ its own staff.
  - (2) The Power-
    - (a) to appoint persons to hold or act in offices in the service of a zonal or county government; and
    - (b) to exercise disciplinary control over such persons and the power to remove them from office

shall be vested in a zonal or county service commission established by legislation of the zonal government.

- (3) The Public Service Commission, in consultation with the zonal governments, shall establish zonal service commissions under clause (2)

**Withholding or reduction of pensions**

**260B** (1) Where under any law a person or authority has a discretion –

- (a) to decide whether or not any pensions benefits shall be granted; or
- (b) to withhold, reduce in amount or suspend any such benefits,

that discretion shall not be exercised except with the concurrence of the Public Service Commission.

- (2) Where the amount of any pensions benefits that may be granted to a person is not fixed by law, the amount of the benefits to be granted to the person shall be the greatest amount for which he is eligible, unless the Public Service Commission concurs in his being granted benefits of a lesser amount.
- (3) The Public Service Commission shall not concur under clause (1) or (2) in any action taken on the ground that a person who holds the office of judge, or any of the constitutional offices set out in Article 293 has been guilty of misbehaviour in that office –
- (a) unless the person has been removed from office by reason of the misbehaviour; or
  - (b) in the case of an office to which Article 205 applies, without consulting the Judicial Service Commission.
- (4) In this Article, “pensions benefits” means any pensions, compensation, gratuities or other similar allowances for persons in respect of their service as public officers, or for the widows, children, dependants or personal representatives of those persons in respect of that service.

**Establishment of office and appointment of Director-General of the Kenya Correctional Service**

**266** (1) There shall be a Director-General of the Kenya Correctional Service.

- (2) The Director-General of the Kenya Correctional Service shall be appointed by the President, on the advice of the Prime Minister and after approval by the National Assembly.

- (3) No person shall be appointed as Director-General unless that person -
  - (a) holds a degree from a recognized university; and
  - (b) has served in the Kenya Correctional Service for at least ten years; or, has at least ten years' experience in the management and administration of correctional services.
  
- (4) The Director-General of the Kenya Correctional Service shall hold office for a term of five years but shall be eligible for reappointment for one further term.

### **5.2.3 Chapter Sixteen: Leadership And Integrity**

- 1. **THAT**, a new Article setting out general principles on leadership and integrity be inserted at the beginning of the Chapter as follows –

#### **General Principles**

- (1) The offices to which this Chapter applies as set out in Article 277 (1) are leadership offices, the establishment and maintenance of which is a great sacrifice by the people of Kenya.
  - (2) The holders of the offices referred to in clause (1), who are the leaders of the people of Kenya, must be persons of the high integrity befitting the honour and dignity of such office.
  - (3) The guiding principles of leadership and integrity include -
    - (a) selection on the basis of integrity, competence and suitability, or election in free and fair elections;
    - (b) selfless service based solely on the public interest and not in any way motivated by personal interest;
    - (c) maintenance of public confidence in the integrity of the office;
  - (4) In this Article, “personal interest” includes the interest of a spouse, child, relative or business associate.
- 2. **THAT**, the Leadership and Integrity Code of Conduct set out in the Fifth Schedule to the Bill be deleted and instead, a new Article empowering Parliament to prescribe the Code be inserted as follows -

#### **Leadership and Integrity Code of Conduct**

- 276A** (1) Parliament shall by law establish a Leadership and Integrity Code of Conduct for persons holding the offices specified in Article 277 and such other offices as may be prescribed under that Article.
- (2) The Leadership and Integrity Code of Conduct shall—
- (a) require the specified officers to declare their incomes, assets and liabilities from time to time showing how they acquired or incurred them, as *the case may be*;
  - (b) prohibit conduct –
    - (i) likely to compromise the principles set out in Article 276; or
    - (ii) likely to lead to corruption in public affairs; or
    - (iii) which is detrimental to the public good or welfare or good governance;
  - (c) prescribe the penalties to be imposed for breach of the Code, without prejudice to the application of criminal penalties prescribed for the breach in question, and may, in addition, provide that a person dismissed or removed from office by reason of breach of the Code shall be disqualified from holding any other public office;
  - (d) prescribe powers, procedures and practices for ensuring the effective enforcement of the Code; and
  - (e) make any other provision necessary for ensuring the promotion of the principles of leadership and integrity set out in Article 276 and the protection of public funds and other public property.

### **The Ethics and Integrity Commission**

- 276B** (1) The Leadership and Integrity Code of Conduct shall be enforced by the Ethics and Integrity Commission established by this Article.
- (2) There shall be established the Ethics and Integrity Commission which shall consist of -
- (a) the Chairperson; and
  - (b) six other members,
- all of whom shall be persons of integrity and high moral character.
- (3) The functions of the Ethics and Integrity Commission are to-
- (a) receive declarations in accordance with the Leadership and Integrity Code of Conduct;

- (b) ***retain custody of the declarations and make them available for inspection by any citizen on the terms and conditions prescribed by Parliament***
- (c) ensure compliance with and where appropriate, enforce the law relating to the Leadership and Integrity Code of Conduct;
- (d) receive complaints about non-compliance with or breach of the Leadership and Integrity Code of Conduct or a law in relation to the Leadership and Integrity Code of Conduct, to investigate the complaint and where appropriate refer the complaints to the relevant authorities for action where it is called for;
- (f) investigate whether persons who have availed themselves for appointment as public officers or who avail themselves or are prepared to stand for public elections for public offices are free of corruption and therefore fit and proper persons for those offices;
- (g) appoint, promote, dismiss, manage and exercise disciplinary control over the staff in accordance with an Act of Parliament enacted for that purpose;
- (h) perform any other functions conferred on it by Parliament, or an Act of Parliament;
- (i) put in place measures aimed at the prevention of corruption;
- (j) investigate instances of corruption;
- (k) exercise the practices and procedures of public bodies and shall ensure that they are not conducive to corruption;
- (l) advise the heads of public bodies on the changes necessary to eliminate the likelihood of corruption; and
- (m) ***educate the public on the dangers of corruption.***

- (4) A declaration of wealth under this Article is required-
  - (a) in the case of a person then in office, within three months of the commencement of the Leadership and Integrity Code of Conduct; or
  - (b) in any other case within three months of the assumption of office by any person; and
  - (c) thereafter on annual basis.
- (5) The Commission shall not investigate any matter-
  - (a) pending before a court of competent jurisdiction or a judicial tribunal;

- (b) relating to the legislative power of Parliament;
- (c) the prosecution of which lies in the discretion of the Director of Public Prosecutions; or
- (d) relating to the granting of honours or a pardon.

### **Application of Chapter**

**277 (1)** This Chapter applies to -

- (a) the President;
  - (b) the Vice-President;
  - (c) the Prime Minister, the Deputy Prime Ministers, the Ministers and the Deputy Ministers;
  - (d) all members of the National Assembly and the National Council;
  - (e) all members and employees of the devolved governments;
  - (f) all constitutional office-holders within the meaning of Article 293;
  - (g) all Permanent Secretaries;
  - (h) all other public officers; and
  - (i) other persons, within the public or the private sector, or the civil society as may be determined by Parliament.
- (2) In this Chapter, “public officer” has the meaning prescribed in Article 267.

## APPENDICES

### Appendix A. Minority Positions

1. It was agreed that the Administration Police should be merged with the Kenya Police. However, there was a minority view by Delegate No. 250: Mr. Abdullahi Haji Mohamed that the Administration Police should be independent and should be mentioned in the Constitution as a sub-article under **Article 264**.

2. **Article 266 (2)**: the article was adopted with the following amendment:

**“The Inspector General shall be appointed by the President with the approval of Parliament for one term of five years renewable for one other term.”** However, a dissent was recorded by Hon. A. Haji Mohamed that the article be retained as it is.

3. **Article 266 (3) (b)** was agreed to as it stands. However, divergent views were recorded that the article be rephrased to read,

“has served in the *National Security Service* for at least ten years (By. Delegate No. 202: Hon. Wambora)” or

“has served in the *National Intelligence Service* for at least ten years (By Delegate No. 299: Hon. Matheka)”.

4. An amendment was proposed in Article 260(1A) of the proposed draft of Chapter Fourteen that the Sub Article should read as follows:

**“Notwithstanding the provisions of Clause (1) the Commission may, subject to such conditions as it may think fit, by directions in writing, delegate any of its powers and functions under the Article to any one or more of its members or to any officer, body or authority in the Public Service”.**

However Delegate No.156: Mr. Peter Odoyo was of contrary opinion. He was of the opinion that *Public Service Commission should only delegate its powers with the approval of the head of government.*

5. **Article 250 (3)**- New Clause was inserted to read as follows: ***Public debt shall be limited to fifty Percent of the Gross Domestic Product of the financial year immediately preceding the year for which the budget proposals have been made, provided that the current debt level shall be reduced to this or lower limit within a ten-year transition period.***

However, Delegate No. 161 Mr. Chris Okemo was of contrary opinion. He was of the opinion that the Constitution should not impose a debt ceiling, as this was likely to tie down the government’s hands.

6. **Article 251 (4)** - New Clause was inserted to read as follows: ***The Governor of Central Bank shall be the Chairperson of the Board.***

However, the following Delegates contrary opinion. They felt that it was not proper for the Governor of Central Bank to Chair the Board as this would consolidate power and control in one person.

- J.O Kayila (Delegate 407)
- M. Lekisemon (Delegate 345)
- D.G Njoroge (Delegate 589)
- F. Wangara (Delegate 446)
- G. Nduyo (Delegate 279)
- W. Matheka (Delegate 299)
- F. Nderitu (Delegate 302)

## **Appendix B: Formal Motions For Amendment Of The Draft Bill**

### **I. MOTION MOVED BY HON. BETH MUGO, DELEGATE NO. 112 ON 11TH SEPTEMBER 2003**

#### **Guiding Principles and Values of Public Service**

There has been bad experience in the past where the public service has been used as instruments of the state to perpetuate oppression of the people. The guiding principles and values as contained in the draft are welcome as they will promote efficient, effective, fair and impartial, prompt and transparent delivery of services.

However, there are areas that need to be incorporated in order to make the public service the true outfit that it really ought to be, that of “*servant of the people*”. These include:-

- (i) Ensuring the implementation of public policy and programs.
- (ii) Promoting nationalism.
- (iii) Maintaining high level of integrity and respect for the leadership code of conduct and avoid all forms of corruption.
- (iv) Fostering effective and efficient delivery of service to the people.

### **II. MOTION MOVED BY MR. KING’ORI MWANGI, DELEGATE NO. 624 ON 18TH SEPTEMBER 2003.**

**THAT**, Article 265 to 266 be deleted and that the following Articles be inserted thereof.

#### **265 There shall be service, which shall be known as Kenya Police Service.**

Subject to this Constitution, the Kenya Police Service shall be organized and administered in such a manner and shall have such functions as Parliament may prescribe.

The Kenya Police Service shall be under the command of the Inspector General who shall be assisted by the Deputy Inspector General of Police in the performance of his or her functions.

In performance of his/her functions, the Inspector General shall not be under the direction or control of any person or authority, except where the constitution specifies.

#### **266 ESTABLISHMENT OF POLICE SERVICE COMMISSION**

5.1 There shall be a Police Service commission which shall consist of two ex-official members that is to say:-

- (a) The Chairperson of the Public Service Commission.
- (b) The Inspector General
- (c) Such Justice of appeal or Judge of the Supreme Court (high Court) as may for the time being be designated in that behalf by the Chief Justice;
- (d) (i) and seven appointed members who shall be appointed from among persons who have held high public offices including retired senior Police Officers;
- (ii) the seven appointed members shall be recommended for appointment by the three ex-officio members. Such appointed members shall be confirmed by the President.

The Commissioners appointed shall serve for a term of 3 years and may be renewed for a period of not exceeding two terms.

- 5.2 The Police Service Commission shall be presided over by such one of the appointed members (hereinafter referred to as “the Chairperson of Police Service Commission) as may for the time being be designated in that behalf by the members of the Commission.

#### **DISQUALIFICATION FOR APPOINTMENT**

A person must not be appointed a member of Police Service Commission if he or she is, or has at any time during the immediate preceding 3 years been:-

- (a) a member of Parliament or a members of a local authority or of another representative body prescribed by the Parliament for the purposes of this section;
- (b) a candidate for election as a member of parliament, local authority or another representative body prescribed by Parliament for the purposes of this section;
- (c) an office bearer in a political party that promoted, or has during that 3 years, promoted the election to National Assembly of a candidate endorsed by the Party;
- (d) a holder of a public office (other than an office of members of a commission) or
- (e) a local government officer.
- (f) Declared bankrupt

## **7. FUNCTIONS AND POWERS OF POLICE SERVICE COMMISSION**

- 7.1 (a) The Commission shall have power to appoint persons to hold or act in an office in the Police Service established under the Police act including appointments or promotion and the confirmation of appointments and to remove and exercise disciplinary control over persons holding or acting in such offices shall vest in the Police Service Commission.
- (b) The Police Service Commission shall not remove or inflict any punishment on the holder of an office in the Police Service on the ground of any act done or omitted to be done by him/her in the exercise of judicial function conferred upon him/hr unless Judicial Service Commission concurs there in.
- (c) The commission shall have a civilian oversight body to investigate misconduct of Police Officers and take appropriate correctional measures.
- (d) In addition to other functions vested in Police Service Commission by the constitution, it shall be the duty of the Commission to keep under review all matters relating to salaries, allowances and other conditions of service of members of the Police Service and to give advise there in to the Prime Minister.
- (e) It shall be the duty of the Commission to keep under review all matters relating to the standards or qualifications (whether in respect of health, education, efficiency or any other kind) that may be required of members of the Police Service generally or members of the Police Service who hold a particular rank or who are engaged on particular duties and to give advice thereon as occasion may require to the Prime Minister of Parliament.
- 7.2 Subject to the provisions of this chapter (constitution), the Commission shall, in the exercise of its functions under this constitution, not be subject to the direction or control of any person or authority.

## **APPOINTMENT OF INSPECTOR GENERAL**

- 8.1 The Inspector General shall be appointed by the President acting in accordance with the advice of the Police Service Commission. The Inspector General's appointment shall be subject to confirmation by parliament.
- 8.2 A person shall not be qualified to be appointed to the office of Inspector General if he/she has not served in the Police Service for a period of ten years. Other qualifications like age, education and character shall be determined by the Police Service Commission from time to time. For clarity, qualifications of Deputy Inspector General is similar to Inspector General.

8.3 the Inspector General shall vacate office when he/she attains such age as may be prescribed by Parliament.

8.4 The Inspector General shall be appointed for a maximum two terms of four years each.

## **9. POWERS TO APPOINT OTHER MEMBERS OF THE POLICE SERVICE**

9.1 The power to appoint persons to hold or act in any offices in the Police Service of or above the rank of acting Inspector (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Police Service Commission.

9.2 The Police Service Commission may, by directions in writing and subject to such conditions as it thinks fit delegate any of its powers under subsection (1) of this section to any one or more members of the Commission, to the Inspector General or his/her appointed officer.

## **10. DELEGATION OF POWERS**

10.1 The powers to appoint persons to hold or act in offices in the Police Service below the rank of acting Inspector (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Inspector General.

10.2 The Inspector General may, by directions given in such a manner as he/she thinks fit and subject to such conditions as he/she thinks fit, delegate any of his/her powers under sub-section (1) of this section to any member of the Police Service.

## **11. REMOVAL OF INSPECTOR GENERAL**

11.1 A person holding the office of Inspector General may be removed from office only for inability to exercise the functions of hi/her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

11.2 The Inspector General shall be removed from office by the President if the question of his removal from office has been referred to a tribunal appointed under subsection (3) of this section and the tribunal has recommended to the President that he/she ought to be removed for inability as aforesaid or for misbehaviour.

- 11.3 If the Prime Minister or the Chairman of Police Service Commission presents to the President that the question of removing the Inspector General under this section ought to be investigated, then;
- (a) The President shall appoint a tribunal which shall consist of a Chairman and not less than two other members selected by the Chief Justice from among persons who hold or have hold office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the common wealth or a court having jurisdiction in appeals from such a court; and
  - (b) The tribunal shall inquire into the matter and report on the facts thereof to the President and recommend to him/her whether the Inspector General ought to be removed under this section.
  - (c) If the question of removing the Inspector General has been referred to a tribunal under this section, the President acting in accordance with advice of the Police Service commission suspend the Inspector General from the exercise of the functions of his office, and any such suspension may at time be revoked by the President, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the President that the Inspector General should not be removed.

## **12. APPEALS TO DISCIPLINARY AUTHORITY**

- 12.1 When the power to exercise disciplinary control over any member of the Police Service (including the power to remove him/her from office) has been exercised under this section by any person (hereinafter referred to as “the disciplinary authority) other than the Police Service commission, the member of the Police Service in respect of whom it was exercised may appeal from the decision of the disciplinary authority to the Police Service Commission.

Provided that, in the case of a decision of a disciplinary authority that is made in exercise of a power delegated to that authority under subsection 10(1), the authority by whom the delegation is made may require appeals to be made to a member of the Police Service of higher rank than the disciplinary authority before they are made under this section to the Police Service Commission.

- 12.2 The Police Service Commission may very regulation or otherwise provides for the time and manner of the making of appeals to it under subsection (1) of this section and all matters incidental to such appeals.

### **Budget Control**

- 13.1 Police funding to be drawn from consolidated fund.

13.2 the Inspector General shall be the accounting officer.

Delegate King'ori Mwangi – No.264.

By leave of the Committee the Motion was transferred to Committee No.1 on Defence on National Security.

**III. MOTION MOVED BY MR. GILBERT OMONDI, DELEGATE NO. 625 FROM THE KENYA PRISONS.**

1. That the Article 269 (1) be re-titled to read, “Establishment and Appointment of the Director of Kenya Correctional Services”. This amendment was agreed to.
2. That Article 269 (3) be added to include specific qualifications such as:
  - Has served in the Kenya Correctional Services for at least ten years.
  - Has a relevant degree from a recognized university.
3. That another article be added to include tenure of office of the Director General and should have a provision for his removal from office.
4. That Article 269 (4) should include that the Director General of Correctional Services shall hold office for a term of five years but shall be eligible for reappointment for one further term only.
5. That Article 269 (5) should include that the Kenya Correctional Services shall be under the command of the Director General assisted by Deputy Director and three Senior Directors.

**IV. MOTION MOVED BY MR. ABDULLAHI HAJI, DELEGATE NO. 250 MOVED ON THE 21ST JANUARY 2004**

**THAT** considering the current underdeveloped status of the historically disadvantaged areas of Arid and Semi-Arid regions of Kenya, particularly those predominantly inhabited by the nomadic pastoralist it is imperative to redress this malignant condition by introducing a provision under Article 246B to capture and enforce the provision under Article 243(c) and (d) and Article 257(3)(c) and 4(f).

He therefore moved for an insertion of sub-Article 246(b)(3) to read as follows:-

Article 246B (3) The Minister responsible for finance shall prepare a provision for special votes for development for historically marginalized communities within the framework of sub-article two (2) above.

**V. MOTION MOVED BY MR. GILBERT OMONDI, DELEGATE NO. 625  
FROM THE KENYA PRISONS ON 21ST JANUARY 2004**

**THAT** Article 268(1) reads as follows:

“The primary object of the Kenya Correctional Service is to ensure safe custody of convicted offenders both in the penal institutions and within the community, provide the provision of humane treatment, facilitate rehabilitation process which will lead to their useful resettlement after release”.

**Appendix C. List Of Committee Members**

	<b>DELEGATE NO.</b>	<b>NAME OF DELEGATE</b>
1	012	Abdul Bahari Ali
2	250	Abdullahi Haji Mohammed
3	496	Ann Mululu
4	153	Anyang' Nyong'o
5	112	Beth Mugo
6	015	Billow Adan Kerrow - Convenor
7	161	Chris Okemo
8	415	Dache John Pesa
9	589	Daniel Njoroge
10	340	David K. Kuto
11	136	David Mwiraria
12	098	Elias Mbau
13	410	Elphas Ombura
14	152	Eric Opon Nyamunga
15	229	Farouk Said
16	446	Francis Wangara
17	213	Franklin K. Bett
18	302	Fredrick R. Nderitu
19	074	Gideon Ole Konchella
20	625	Gilbert Omondi
21	279	Grace Ntembi Nduyo
22	154	Henry Obwocha
23	628	James Bwatuti
24	407	James Omolo Kayila
25	480	John K. Njiraini
26	374	Joseph K. Soi
27	353	Joseph Njalis Shuel
28	408	Judith Achieng' Nam
29	500	Kamla Sikand
30	137	Kilemi Mwiria
31	624	Kingori Mwangi
32	606	Kituyi P. Sikoya
33	617	Manu Chandaria
34	345	Mariam Ntausian Lekisemon
35	202	Martin Wambora
36	597	Moses M. Wekesa
37	190	Musa Sirma
38	299	Nduse William Matheka
39	197	Noah Arap Too
40	394	Osili Asitaluko Adungo
41	048	Peter Kenneth
42	156	Peter Oduyo

	<b>DELEGATE NO.</b>	<b>NAME OF DELEGATE</b>
43	471	Rose Lukalo-Owino
44	490	Rose Waruhiu
45	544	Sehmi Rupinda Singh
46	616	Were W. Domtilla
47	170	Wycliffe Oparanya
48	610	Wekala Justus
49	560	Pastor Zablon Ayonga – CKRC Commissioner (Rapporteur)
50	571	Isaac Lenaola - CKRC Commissioner (Rapporteur)

**Appendix D. Minutes Of The Committee Proceedings**

**MINUTES OF THE FOURTH SITTING OF THE PUBLIC FINANCE, PUBLIC SERVICE, LEADERSHIP AND INTEGRITY TECHNICAL WORKING GROUP (H) HELD ON 9<sup>TH</sup> SEPTEMBER 2003 IN COMMITTEE TENT NO. 8 AT 2.30 P.M.**

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**PRESENT**

<b><u>Name</u></b>	<b><u>Delegate No.</u></b>
1. Billow Adan Kerrow	<b>Convenor</b>
2. Abdullahi Haji Mohamed	250
3. Ann Mululu	496
4. Osili Adungo	394
5. Beth Mugo	112
6. Dache John Pesa	415
7. Daniel Njoroge	589
8. David Kuto	340
9. Elphas Ombura	410
10. Farouk Said	229
11. Franklin K. Bett	213
12. Gilbert Omondi	625
13. Joseph K. Soi	374
14. Joseph Njalis Shuel	353
15. Judith A. Nam	408
16. Kamla Sikand	500
17. Manu Chandaria	345
18. Moses M. Wekesa	597
19. Nyamunga Eric Opon	152
20. William N. Matheka	299
21. Grace N. Nduyo	279
22. Anyang' Ny'ong'o	153
23. David Mwiraria	136
24. Rose Lukalo	471
25. John K. Njiraini	480
26. Francis Wangara	446
27. M.N. Wambora	202
28. Musa Sirma	190
29. Too Nondin Noah Arap	197
30. James Bwatuti	628
31. King'ori Mwangi	624
32. Fredrick R. Nderitu	302
33. Kituyi P. Sikoya	606
34. Were Domtilla	616
35. Wekala M. Justus	610

### **ABSENT**

1.	Abdu Bahari Ali	012
2.	Chris Okemo	161
3.	E. Mbau	099
4.	Ernest Kaitany	341
5.	James Omolo Kayila	407
6.	Joel Sang	368
7.	Henry Obwocha	154
8.	Kilemi Mwiria	137
9.	Dennis Kodhe	585
10.	Makau Mutua	584
11.	Ole Kochellah	278
12.	Peter Kenneth	048
13.	Peter Odoyo	156
14.	Sabenzia N. Wekesa	478
15.	Uhuru Kenyatta	049
16.	Wycliffe Oparanya	170

### **IN ATTENDANCE**

1.	Mr. Isaac Lenaola	-	Rapporteur
2.	Pastor Zablon Ayonga	-	Rapporteur
3.	Ms Noor Awadh	-	Programme Assistant
4.	Ms Alyne Mariaria	-	Programme Assistant
5.	Ms M. Nzioka	-	Drafts Person
6.	Mrs C. W. Munga	-	Principal Clerk

### **MIN.NO.8/2003: CONFIRMATION OF MINUTES**

Minutes of the Third Sitting of the Committee were confirmed by the Members present and signed by the Convenor.

### **MIN.NO.9/2003: MATTERS ARISING**

Under the attendance list some Members expressed concern that their names had been placed against the wrong organization/province. The necessary corrections were done accordingly.

### **MIN.NO.10/2003: CONSIDERATION OF BUSINESS**

**The Convenor informed the delegates that:-**

- (i) All meetings of the Committee will be called upon by the Convenor by written notice or by a request in writing by not less than one third of the Members of the Committee. All meetings shall be presided over by the Convenor or in his absence, a temporary Convenor elected by delegates present.
- (ii) Half of the Members of the Committee shall constitute quorum.
- (iii) As far as possible decisions should be by consensus. If there is no consensus, a vote will be taken. However, minority views will also be heard and recorded.
- (iv) Rapporteurs and convenors will meet every day at 6.30 p.m. to consider issues which affect more than one Committee.
- (v) Afternoon sittings will be from 2.00 p.m. to 6.00 p.m. The Convenor further informed the Committee that the main function of the Committee is to propose amendments. Each amendment should be moved before the convenor proposes the Question. After the Committee deliberates and votes on all issues relating to Public Finance, Public Service, Leadership and Integrity it will prepare a report which will be tabled in the Conference for adoption.

**The Committee report should consist of:-**

- (i) Minutes of all meetings of the Committee.
- (ii) Audio and verbatim transcript of all meetings.
- (iii) Recommendations agreed to by the Committee as well as minority positions (if any) taken by some delegates.
- (iv) Any other matter which the Committee would want the Conference to address or resolve.

**MIN.NO.11/2003: LEADERSHIP AND INTEGRITY (CHAPTER SEVENTEEN)**

The Rapporteurs presented the Chapter after which the Convenor opened debate.

**The Members debated on Principles of Leadership and Integrity and noted that Public Servants should have the following qualities.**

1. Unquestionable character, no criminal records, past records of incorruptibility.
2. Inculcate confidence amongst public servants and enhance accountability- selfless service.
3. Principle of Public Service- selfless service.
4. Establish a national feeling service and unity and not uprightness.
5. Public relations in dealing with the government.

6. How do we ensure that people maintain integrity inspite of being in power.
7. Discipline, dedication and use of human resource that is available good work ethic.
8. Public servants must be mentors and not the players in matters affecting public service.

**Schedule Five** – Amendment proposed.

That schedule five be deleted.

Question of the amendment proposed put and agreed to.

**Clause 276** - Amendments proposed

- (i) That a new sub clause (b), be inserted with the words “*vice president*”.

***Question of the amendment proposed, put and agreed to.***

- (ii) That the words in sub clause (c) “*all members of parliament be deleted and the words “members of the National Assembly and members of the national council”* be inserted in place thereof.

Question of the amendment proposed put and agreed to.

- (iii) That a new sub clause (d) be inserted with the following words “*all permanent secretaries*”.

***Question of the amendment proposed put and agreed to.***

However, Delegate Daniel G. Njoroge – No.589 was of contrary opinion. He opposed the inclusion of permanent secretaries in clause 276.

- (iv) That the words in sub clause (d) be deleted and the words “*all employees and members of the devolved governments*” be inserted in place thereof.

Question of the amendment proposed put and agreed to.

- (v) That all the words in sub clause (f) be deleted and the words “*other leaders as may be determined by parliament*” be inserted in place thereof.

***Question of the amendment proposed out and agreed to.***

- (vi) That the sub clauses in Clause 276 be renumbered to accommodate the amendments.

Question of the amendment proposed put and agreed to.

**MIN.NO.12/2003: ADJOURNMENT**

The Convenor adjourned the meeting at One O'clock until 2.30 p.m.

**AFTERNOON SITTING**

The Committee resumed at 2.45 p.m. with Delegate John Njiraini- No.480 in the Chair.

**MIN.NO.13/2003 LEADERSHIP AND INTEGRITY**

Debate on Leadership and integrity resumed.

**Clause 277 – amendments proposed.**

- (i) That the numbering in sub clause (2) and (3) be deleted and that all the three sub clauses should fall under sub clause (1).

Question of the amendment proposed put and agreed to.

- (ii) That all the sub clauses in Clause 289 (on Ethics and Integrity Commission) be part of Clause 277.

Question of the amendment proposed put and agreed to.

**MIN.NO.14/2003: ADJOURNMENT**

The Convenor adjourned the meeting at fifty minutes past Four O'clock.

**Confirmed:.....**  
**(CONVENOR)**

**Date:.....**

**MINUTES OF THE FIFTH SITTING OF THE PUBLIC FINANCE, PUBLIC SERVICE,  
LEADERSHIP AND INTEGRITY TECHNICAL WORKING GROUP (H) HELD ON  
10<sup>TH</sup> SEPTEMBER 2003 IN COMMITTEE TENT NO. 8 AT 10.00 A.M.**

---

**PRESENT**

<b><u>Name</u></b>	<b><u>Delegate No.</u></b>
1. Billow Adan Kerrow	<b>Convenor</b>
2. Abdullahi Haji Mohamed	250
3. Ann Mululu	496
4. Osili Adungo	394
5. Beth Mugo	112
6. Dache John Pesa	415
7. David Kuto	340
8. Elphas Ombura	410
9. Gilbert Omondi	625
10. Farouk Said	229
11. Joseph K. Soi	374
12. Joseph Njalis Shuel	353
13. Judith A. Nam	408
14. Kamla Sikand	500
15. Mariamu Ntausian L.	345
16. Moses M. Wekesa	597
17. Nyamunga Eric Opon	152
18. Anyang' Ny'ong'o	153
19. Rose Lukalo Owino	471
20. John K. Njiraini	480
21. Francis Wangara	446
22. Too Nondin Noah Arap	197
23. Fredrick R. Nderitu	302
24. Kituyi P. Sikoya	606
25. Were Domtilla	616
26. Wekala M. Justus	610
27. E. Mbau	099
28. James Omolo Kayila	407
29. Peter Odoyo	156
30. Kingori Mwangi	624

**ABSENT WITH APOLOGY**

1. Grace N. Nduyo	279
2. Rose Lukalo Owino	471
3. James Bwatuti	628
4. Uhuru Kenyatta	049

## **ABSENT**

1. James Bwatuti	628
2. M.N. Wambora	202
3. Musa Sirma	190
4. David Mwiraria	136
5. William N. Matheka	299
6. Franklin K. Bett	213
7. Gilbert Omondi	625
8. Daniel Njoroge	589
9. Abdu Baharli Ali	012
10. Chris Okemo	161
11. Manu Chandaria	617
12. Ernest Kaitany	341
13. Joel Sang	368
14. Henry Obwocha	154
15. Kilemi Mwiria	137
16. Dennis Kodhe	585
17. Makau Mutua	584
18. Ole Kochellah	278
19. Peter Keneth	048
20. Sabenzia N. Wekesa	478
21. Wycliffe Oparanya	170

## **IN ATTENDANCE**

1. Mr. Isaac Lenaola	-	Rapporteur
2. Pastor Zablon Ayonga	-	Rapporteur
3. Ms Noor Awadh	-	Programme Assistant
4. Ms Alyne Mariaria	-	Programme Assistant
5. Ms M. Nzioka	-	Drafts Person
6. Mrs C. W. Munga	-	Principal Clerk

## **MIN.NO.15/2003: PUBLIC SERVICE (CHAPTER FOURTEEN)**

### **Part 1 – Public Administration Values and Principles in administration generally.**

The Rapporteurs presented the Chapter after which the Convenor opened debate.

#### **Clause 258**

- (a) Title - agreed to
- (b) Agreed to.

(c) Amendment proposed.

That the word “*effective*” be inserted before the word impartial.

Question of the amendment proposed, put and agreed to.

However Delegate Joseph Njalis Shuel – No.353 was of contrary opinion. He was opposed to the inclusion of the word “*effective*” in the sub clause.

(d) Agreed to

(e) Amendment proposed

That the word “efficient” be inserted immediately after the word “prompt”.

Question of the amendment proposed, put and agreed to.

(f) Agreed to

(g) Agreed to

(h) Agreed to

(i) Amendment proposed

That the word “*appointment*” be inserted immediately after the word “*for*” appearing on the second line.

Question of the amendment proposed, put and agreed to.

(j) Amendment proposed.

That the words “*and people with physical disabilities and other minorities*” be inserted immediately after the word population appearing in the first line.

Further amendment proposed that the words “*notwithstanding the provisions in sub clause (h)*” be inserted at the end of the sub clause.

**Questions of the amendments proposed, put and agreed to.**

### **MIN.NO.16/2003: NOTICE OF MOTION**

#### **Guiding Principles and Values of Public Service**

There has been bad experience in the past where the public service has been used as instruments of the state to perpetuate oppression of the people. The guiding principles and values as contained in the draft are welcome as they will promote efficient, effective, fair and impartial, prompt and transparent delivery of services.

However, there are areas that need to be incorporated in order to make the public service the true outfit that it really ought to be, that of “*servant of the people*”. These include:-

1. Ensuring the implementation of public policy and programs.
2. Promoting nationalism.
3. Maintaining high level of integrity and respect for the leadership code of conduct and avoid all forms of corruption.
4. Fostering effective and efficient delivery of service to the people.

*(Delegate B. Mugo – No. 112)*

**MIN.NO.17/2003: ADJOURNMENT**

The Convenor adjourned the meeting at fifteen minutes past Four O'clock.

**Confirmed:.....**  
**(CONVENOR)**

**Date:.....**

**MINUTES OF THE SIXTH SITTING OF THE PUBLIC FINANCE, PUBLIC SERVICE,  
LEADERSHIP AND INTEGRITY TECHNICAL WORKING GROUP (H) HELD ON  
11<sup>TH</sup> SEPTEMBER 2003 IN COMMITTEE TENT NO. 8 AT 9.40 A.M.**

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**PRESENT**

<b><u>Name</u></b>	<b><u>Delegate No.</u></b>
1. Billow Adan Kerrow	<b>Convenor</b>
2. Abdullahi Haji Mohamed	250
3. Ann Mululu	496
4. Beth Mugo	112
5. Osili Adungo	394
6. Dache John Pesa	415
7. David Kuto	340
8. Elphas Ombura	410
9. Farouk Said	229
10. Joseph K. Soi	374
11. Joseph Njalis Shuel	353
12. Judith A. Nam	408
13. Kamla Sikand	500
14. Mariamu Ntausian L.	345
15. Moses M. Wekesa	597
16. Nyamunga Eric Opon	152
17. John K. Njiraini	480
18. Rose Lukalo Owino	471
19. Francis Wangara	446
20. Too Nondin Noah Arap	197
21. Fredrick R. Nderitu	302
22. Peter Kenneth	048
23. Kituyi P. Sikoya	606
24. Were Domtilla	616
25. Wekala M. Justus	610
26. E. Mbau	099
27. James Omolo Kayila	407
28. James Bwatuti	628
29. M.N. Wambora	202
30. William N. Matheka	299
31. Franklin K. Bett	213
32. Gilbert Omondi	625
33. Daniel Njoroge	589
34. Kingori Mwangi	624
35. Grace N. Nduyo	279

### **ABSENT WITH APOLOGY**

- |                   |     |
|-------------------|-----|
| 1. Uhuru Kenyatta | 049 |
| 2. Rose L. Owino  | 471 |

### **ABSENT**

- |                        |     |
|------------------------|-----|
| 1. Peter Odoyo         | 156 |
| 2. Anyang' Ny'ong'o    | 153 |
| 3. Musa Sirma          | 190 |
| 4. David Mwiraria      | 136 |
| 5. Abdu Baharli Ali    | 012 |
| 6. Chris Okemo         | 161 |
| 7. Manu Chandaria      | 617 |
| 8. Ernest Kaitany      | 341 |
| 9. Henry Obwocha       | 154 |
| 10. Kilemi Mwiria      | 137 |
| 11. Dennis Kodhe       | 585 |
| 12. Makau Mutua        | 584 |
| 13. Ole Kochellah      | 278 |
| 14. Sabenzia N. Wekesa | 478 |
| 15. Wycliffe Oparanya  | 170 |

### **IN ATTENDANCE**

- |                         |   |                     |
|-------------------------|---|---------------------|
| 1. Mr. Isaac Lenaola    | - | Rapporteur          |
| 2. Pastor Zablon Ayonga | - | Rapporteur          |
| 3. Ms Noor Awadh        | - | Programme Assistant |
| 4. Ms Alyne Mariaria    | - | Programme Assistant |
| 5. Ms M. Nzioka         | - | Drafts Person       |
| 6. Mrs C. W. Munga      | - | Principal Clerk     |

### **MIN.NO.18/2003: CONFIRMATION OF MINUTES**

Minutes of the Fourth Sitting held on 9<sup>th</sup> September and Fifth Sitting held on 10<sup>th</sup> September 2003 were confirmed by the Members present and signed by the Convenor.

### **MIN.NO.19/2003: MATTER ARISING**

Under Minute No. 11/2003, the Committee noted that Principles of Leadership and Integrity had not been discussed.

It was resolved that the Draftsperson should rewrite the said principles appropriately so that the Committee can consider them in its next sitting.

Clause 276 (f)

**Motion made and Question proposed.**

That the Committee rescinds the decision made in relation to the proposed amendment.  
(by Delegate Fredrick Rukwaro – No.302.)

**Debate arising .**

**Question put and agreed to.**

**Debate on the sub clause resumed.**

**Amendment proposed**

**(1) That all the words in sub clause (f) be deleted and the words “other persons within the public or the private sector, or the civil society as may be determined by Parliament” be inserted in place thereof.**

Question of the amendment proposed put and agreed to.

The Members resolved that the attendance list should be numbered in order to ensure that there is Quorum when the Committee carries out its deliberations.

The list showing the Members of the Committee should be finalised.

**MIN.NO.20/2003: PUBLIC SERVICE (CHAPTER FOURTEEN)**

The Public Service Commission Members debated generally on the subject.

**MIN.NO.21/2003: ADJOURNMENT**

The Convenor adjourned the meeting at Fifty Minutes past ten O’clock until this afternoon at 2.30.

**AFTERNOON SITTING**

The Committee resumed at 2.40 p.m.

**PRESENT:**

1. Billow Adan Kerrow	<b>Convenor</b>
2. Abdullahi Haji Mohamed	250
3. Abdu Bahali Ali	12
4. Ann Mululu	496
5. Osili Adungo	394
6. Dache John Pesa	415

7. David Kuto	340
8. Farouk	229
9. Joseph K. Soi	374
10. Joseph Njalis Shuel	353
11. Judith A. Nam	408
12. Kamla Sikand	500
13. Too Nondin Noah Arap	197
14. Fredrick R. Nderitu	302
15. Wycliffe Oparanya	170
16. Were Domtilla	616
17. James Omolo Kayila	407
18. William N. Matheka	299
19. Franklin K. Bett	213
20. Gilbert Omondi	625
21. Daniel Njoroge	589
22. Grace N. Nduyo	279
23. Kingori Mwangi	624
24. John K. Njiraini	480
25. Musa Sirma	190
26. Elphas Ombura	410
27. Peter Odoyo	156
28. Moses M. Wekesa	597
29. Francis Wangara	446

**ABSENT WITH APOLOGY**

1. Uhuru Kenyatta	49
2. Rose L. Owino	471

**ABSENT**

1. Mariamu Ntausian L.	345
2. James Bwatuti	628
3. M.N. Wambora	202
4. Nyamunga Eric Opon	152
5. Peter Kenneth	48
6. Kituyi P. Sikoya	606
7. Wekala M. Justus	610
8. E. Mbau	99
9. Anyang' Ny'ong'o	153
10. David Mwiraria	136
11. Chris Okemo	161
12. Manu Chandaria	617
13. Ernest Kaitany	341
14. Henry Obwocha	154
15. Kilemi Mwiria	137

16. Dennis Kodhe	585
17. Makau Mutua	584
18. Ole Kochellah	278
19. Sabenzia N. Wekesa	478

**IN ATTENDANCE**

1. Mr. Isaac Lenaola	-	Rapporteur
2. Pastor Zablon Ayonga	-	Rapporteur
3. Ms Noor Awadh	-	Programme Assistant
4. Ms Alyne Mariaria	-	Programme Assistant
5. Ms M. Nzioka	-	Drafts Person
6. Mrs C. W. Munga	-	Principal Clerk

**MIN.NO.22/2003: PUBLIC SERVICE (CHAPTER FOURTEEN)**

Debate on Public Service Commission resumed.

**Clause 259**

(1) Amendment proposed

That the words in subclause (i) be deleted and the words *“there is established a Commission to be known as public service commission”* be inserted in place thereof.

Question of the amendment proposed put and agreed to.

(2) Amendment proposed.

That the words *“deputy chairperson”* and *“seven”* appearing on the second line be deleted and the word *“eight”* be inserted immediately after the word *“and”* appearing on the second line.

Question of the amendment proposed put and agreed to.

(3) Agreed to.

Clause 259 as amended agreed to.

**MIN.NO.23/2003: MOTION – GUIDING PRINCIPLES AND VALUES ON PUBLIC SERVICE (CLAUSE 258)**

Motion made and Question proposed.

**THAT**

There has been bad experience in the past where the public service has been used as instruments of the state to perpetuate oppression of the people. The guiding principles

and values as contained in the draft are welcome as they will promote efficient, effective, fair and impartial, prompt and transparent delivery of services.

However, there are areas that need to be incorporated in Clause 258 in order to make the public service the true outfit that it really ought to be, that of “*servant of the people*”.

- (i) Ensuring the implementation of public policy and programs.
- (ii) Maintaining high level of integrity and respect for the leadership code of conduct and avoid all form of corruption.

***(Delegate James O. Kayila – No.407  
on behalf of Delegate Beth Mugo – No.112)***

**Debate arising.**

- (i) Amendment proposed  
*That the word “ensuring” be deleted and the words “commitment to” be inserted in place thereof.*

***Question of the amendment proposed put and agreed to.***

- (ii) Amendment proposed.

***That the sub clause be deleted.***

Question of the amendment proposed put and agreed to.

Motion as amended agreed to.

**MIN.NO.24/2003: RESOLVED ACCORDINGLY**

**THAT**

There has been bad experience in the past where the public service has been used as instruments of the state to perpetuate oppression of the people. The guiding principles and values as contained in the draft are welcome as they will promote efficient, effective, fair and impartial, prompt and transparent delivery of services.

However, there are areas that need to be incorporated in Clause 258 in order to make the public service the true outfit that it really ought to be, that of “*servant of the people*”. These include:-

- Commitment to the implementation of public policy and programs.

**MIN.NO.25/2003: POWERS AND FUNCTIONS**

Delegates discussed the paragraph generally and gave their view on its content.

**MIN.NO.26/2003: INTERRUPTION OF BUSINESS**

The Convenor adjourned the proceedings at four O'clock for tea break.

The Committee resumed at thirty minutes past four O'clock.

Debate interrupted resumed.

**Clause 260 (1)**

- (a) Agreed to.
- (b) The Committee resolved that the draftsman should ensure that the "*words public service*" are defined clearly.
- (c) Amendment proposed

*That the words "to propose measures" appearing at the beginning of the sub-clause be deleted and the words "of service delivery" be inserted at the end of the sub clause.*

Question of the amendment proposed put and agreed to.

- (d) Amendment proposed.

*That the sub clause be reworded to read as follows.*

*"to ensure that procedures relating to recruitment, deployment, transfers, promotions and disciplinary measures of personnel comply with the values and principles set out in Articles 14 and 258".*

Question of the amendment proposed put and agreed to.

**MIN.NO.27/2003: ADJOURNMENT**

The Convenor adjourned the meeting at thirty Five minutes past Five O'clock.

**Confirmed:**.....  
(CONVENOR)

**Date:**.....

**MINUTES OF THE SEVENTH SITTING OF THE PUBLIC FINANCE, PUBLIC SERVICE, LEADERSHIP AND INTEGRITY TECHNICAL WORKING GROUP (H) HELD ON 12<sup>TH</sup> SEPTEMBER 2003 IN COMMITTEE TENT NO. 8 AT 9.50 A.M.**

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**PRESENT**

<b><u>Name</u></b>	<b><u>Delegate No.</u></b>
1. Billow Adan Kerrow	<b>Convenor</b>
2. Abdullahi Haji Mohamed	250
3. Abdu Bahari Ali	012
4. Ann Mululu	496
5. Osili Adungo	394
6. Dache John Pesa	415
7. David Kuto	340
8. Elphas Ombura	410
9. Farouk Said	229
10. Joseph K. Soi	374
11. Joseph Njalis Shuel	353
12. Judith A. Nam	408
13. Kamla Sikand	500
14. Mariamu Ntausian L.	345
15. Moses M. Wekesa	597
16. John K. Njiraini	480
17. Fredrick R. Nderitu	302
18. Wekala M. Justus	610
19. James Omolo Kayila	407
20. James Bwatuti	628
21. M.N. Wambora	202
22. William N. Matheka	299
23. Franklin K. Bett	213
24. Gilbert Omondi	625
25. Daniel Njoroge	589
26. Kingori Mwangi	624
27. Musa Sirma	190
28. Wycliffe Oparanya	170

**ABSENT WITH APOLOGY**

1. Uhuru Kenyatta	049
2. Rose L. Owino	471
3. Too Nondin Noah Arap	197
4. Grace N. Nduyo	279
5. Peter Odoyo	156

**ABSENT**

1. Beth Mugo	112
2. Francis Wangara	446
3. Peter Kenneth	048
4. Kituyi P. Sikoya	606
5. Were Domtilla	616
6. E. Mbau	099
7. Anyang' Ny'ong'o	153
8. David Mwiraria	136
9. Chris Okemo	161
10. Manu Chandaria	617
11. Ernest Kaitany	341
12. Henry Obwocha	154
13. Kilemi Mwiria	137
14. Dennis Kodhe	585
15. Makau Mutua	584
16. Ole Kochellah	278
17. Sabenzia N. Wekesa	478
18. Nyamunga Eric Opon	152

#### **IN ATTENDANCE**

1. Mr. Isaac Lenaola	-	Rapporteur
2. Pastor Zablon Ayonga	-	Rapporteur
3. Ms Noor Awadh	-	Programme Assistant
4. Ms Alyne Mariaria	-	Programme Assistant
5. Ms M. Nzioka	-	Drafts Person
6. Mrs C. W. Munga	-	Principal Clerk

#### **MIN.NO.28/2003: CONFIRMATION OF MINUTES**

Minutes of the Sixth Sitting held on 11<sup>th</sup> September 2003 were confirmed by the Members present and signed by the Convenor.

#### **MIN.NO.29/2003: MATTERS ARISING**

**Under Minute No.19/2003**, the Draftsperson reported that she is in the process of writing the principles of leadership and integrity and will soon forward them to the Committee for consideration.

**Under Minute No.20/2003**, the Committee noted that it should read as follows “*The delegates debated generally on the subject*”.

**Under Minute No.23/2003**, the Committee noted that Delegate James O. Kayila - No.407 moved the Motion on behalf of Delegate B. Mugo - No.112 and directed that this correction should be made in the records.

**Under Minute No.26/2003**, the delegates resolved that tea break should not be recorded as interruption of business.

**Under Min.25/2003**, in Clause 260 (b), the word “*words*” should not be in quotes.

**MIN.NO.30/2003: TEA BREAK**

The Committee had a tea break from 10.30 to 11.00 O’clock.

**MIN.NO.31/2003: POWERS AND FUNCTIONS**

**Clause 260 (1)**

**(e) Amendment proposed.**

That, the sub clause be amended by deleting the word “*that*” appearing on the second line and inserting the words “*in accordance with article 286*” immediately before the word “*and*” appearing on the second line.

**Question of the amendment proposed, put and agreed to.**

Further amendment proposed that (e) should be relocated to the end of the sub clause.

**Question of the amendment proposed, put and agreed to.**

**(f) Amendment proposed.**

That the sub clause be deleted.

**Question of the amendment proposed, put and agreed to.**

(g) Some delegates felt that the article is redundant because it is already covered in Article 260 (1)(d) and 261. Others felt that Article 260(1)(d) executes powers and ensures that procedures are in compliance with values and principles while (g) gives the power to appoint. This justified the existence of the sub clause.

**Hence (g) was agreed to.**

**(h) Amendment proposed that the sub clause should read as follows.**

*“to review the terms and conditions of service, code of regulations, qualifications and human resource development of public service and make recommendations on them to the government”.*

**Question of the amendment proposed, put and agreed to.**

**(i) Agreed to.**

**Clause 260 (i)** Amendment proposed that the sub clause be renumbered in order to accommodate (e) at the end of the sub clause.

**Question of the amendment proposed, put and agreed to.**

(2) Amendment proposed.

That the sub clause be amended by deleting the word “*may*” appearing on the first line and inserting “*shall*” in place thereof.

**Question of the amendment proposed, put and agreed to.**

**Clause 261 (1) - Establishment of Offices**

Delegates debated at length on the subject and were of the opinion that the Public Service Commission should be upgraded. Members were also of the opinion that Directorate of Personnel Management should be part of the Public Service Commission.

Members felt that the Constitution should make a provision to specify the number of Ministries. Suggestions will be made to the relevant Committee concerning the number of Ministries.

The Clause was eventually agreed to.

**MIN.NO.32/2003: ADJOURNMENT**

The Convenor adjourned the meeting at 12.25 p.m. until 2.30 p.m.

**AFTERNOON SITTING**

The Committee reconvened at 2.35 p.m. with Delegate Ann Mululu No.496 in the Chair.

**PRESENT**

1. Ann Mwalulu	<b>Convenor</b>
2. Abdullahi Haji Mohamed	250
3. Abdu Bahari Ali	012
4. Osili Adungo	394
5. Dache John Pesa	415
6. David Kuto	340
7. Daniel Njoroge	589
8. Elphas Ombura	410
9. Farouk Said	229
10. Joseph K. Soi	374
11. Joseph Njalis Shuel	353

12. Judith A. Nam	408
13. Kamla Sikand	500
14. Mariamu Ntausian L.	345
15. Moses M. Wekesa	597
16. John K. Njiraini	480
17. Fredrick R. Nderitu	302
18. Wekala M. Justus	610
19. James Omolo Kayila	407
20. James Bwatuti	628
21. M.N. Wambora	202
22. William N. Matheka	299
23. Franklin K. Bett	213
24. Gilbert Omondi	625
25. Kingori Mwangi	624
26. Musa Sirma	190
27. Wycliffe Oparanya	170
28. Were Domtilla	616
29. Kituyi P. Sikoya	606

#### **ABSENT WITH APOLOGY**

1. Billow Adan Kerrow	<b>Convenor</b>
2. Uhuru Kenyatta	049
3. Rose L. Owino	471
4. Too Nondin Noah Arap	197
5. Grace N. Nduyo	279
6. Peter Oduyo	156

#### **ABSENT**

1. Beth Mugo	112
2. Francis Wangara	446
3. Peter Kenneth	048
4. E. Mbau	099
5. Anyang' Ny'ong'o	048
6. David Mwiraria	136
7. Abdu Bahari Ali	012
8. Chris Okemo	161
9. Manu Chandaria	617
10. Ernest Kaitany	341
11. Henry Obwocha	154
12. Kilemi Mwiria	137
13. Dennis Kodhe	585
14. Makau Mutua	584
15. Ole Kochellah	278
16. Sabenzia N. Wekesa	478

**MIN.NO.33/2003: POWERS AND FUNCTIONS**

Debate interrupted resumed

**Clause 261 (2)**

Some Members felt that the sub clause is redundant because it is provided for in Clause 260 (1)(g).

Others were of the opinion that the information in the sub clause is provided for in Clause 262, which deals with appointments. As a result 260(g), 261(2) and 262(1) should be harmonized because they contain similar information.

The delegates required expert advises on the subject and deferred further discussion on the sub clause until the experts are availed. Clauses 262 and 263 were also deferred for the same reason.

**MIN.NO.34/2003: THE KENYA POLICE**

Mr. King’ori Mwangi delegate No.624 gave a brief introduction of the Kenya Police.

**MIN.NO.35/2003: ADJOURNMENT**

The Acting Convenor Delegate Ann Mululu adjourned the meeting at forty-five minutes past three O’clock.

**Confirmed:.....**  
**(CONVENOR)**

**Date:.....**

**MINUTES OF THE EIGHTH SITTING OF THE PUBLIC FINANCE, PUBLIC SERVICE, LEADERSHIP AND INTEGRITY TECHNICAL WORKING GROUP (H) HELD ON 15<sup>TH</sup> SEPTEMBER 2003 IN COMMITTEE TENT NO. 8 AT 2.30 P.M.**

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**PRESENT**

<b><u>Name</u></b>	<b><u>Delegate No.</u></b>
1. Billow Adan Kerrow	<b>Convenor</b>
2. Abdullahi Haji Mohamed	250
3. Ann Mululu	496
4. Beth Mugo	112
5. David Kuto	340
6. E. Mbau	099
7. Farouk Said	229
8. Franklin K. Bett	213
9. Gilbert Omondi	625
10. Grace N. Nduyo	279
11. Joseph K. Soi	374
12. Kamla Sikand	500
13. Kingori Mwangi	624
14. Manu Chandaria	617
15. Mariamu Ntausian L.	345
16. Martin N. Wambora	202
17. Musa Sirma	190
18. William N. Matheka	299
19. Noah Nondin Too Arap	197
20. Peter Oduyo	156
21. Rose L. Owino	471
22. Wycliffe Oparanya	170

**ABSENT WITH APOLOGY**

1. Nyamunga Eric Opon	152
2. Fredrick R. Nderitu	302
3. Joseph Njalis Shuel	353
4. Judith A. Nam	408
5. Dache John Pesa	415
6. Elphas Ombura	410
7. James Omolo Kayila	407
8. Osili Adungo	394

**ABSENT**

1. Abdu Bahari Ali	012
2. Anyang' Ny'ong'o	153
3. Chris Okemo	161
4. Daniel Njoroge	589
5. David Mwiraria	136
6. Ernest Kaitany	341
7. Francis Wangara	446
8. Henry Obwocha	154
9. James Bwatuti	628
10. John K. Njiraini	480
11. Kilemi Mwiria	137
12. Kituyi P. Sikoya	606
13. Dennis Kodhe	585
14. Makau Mutua	584
15. Moses M. Wekesa	597
16. Peter Kenneth	048
17. Sabenzia N. Wekesa	478
18. Uhuru Kenyatta	049
19. Wekala M. Justus	610
20. Were Domtilla	616

#### **IN ATTENDANCE**

1. Mr. Isaac Lenaola	-	Rapporteur
2. Pastor Zablon Ayonga	-	Rapporteur
3. John Kennedy Okanda	-	Programme Assistant
4. Ms Alyne Mariaria	-	Programme Assistant
5. Ms M. Nzioka	-	Drafts Person
6. Mrs C. W. Munga	-	Principal Clerk

#### **MIN.NO.36/2003: CONFIRMATION OF MINUTES**

Minutes of the Seventh Sitting held on 12<sup>th</sup> September 2003 were confirmed by the Members present and signed by the Convenor.

#### **MIN.NO.37/2003: MATTERS ARISING**

Under Minute No.19/2003, the Draftsperson reported that she had already written down the principles of leadership and integrity as requested by the Committee and that the document was ready for Committee consideration.

Under Minute No.31/2003, the Committee asked the Draftsperson to redraft the amendment to sub clause 260(1)(h) and present to the Committee for consideration.

In Clause 261(1) the members noted that Public Service Commission is not a department in the Office of the President and the relevant correction was made in the records.

**MIN.NO.38/2003: KENYA POLICE**

After lengthy deliberations, the Members resolved that the Administration Police should be merged with the regular police as one Police Force. Some delegates were also of the opinion that the Inspector General should enjoy some security of tenure.

**Clause 264(1)**

**Amendment proposed.**

That the words “*in accordance with laws of Kenya*” be inserted at the end of the sub clause.

**Question of the amendment proposed put and agreed to.**

- (a) Agreed to.
- (b) Agreed to.
- (c) Agreed to.
- (d) Agreed to.
- (e) Amendment proposed

That the words “*domestic violence*” be inserted immediately after the words “*crime*”.

Question of the amendment proposed put and negatived.

However the following Delegates were of the opinion that the words should be inserted.

Delegate Manu Chandaria	-	No.617
Delegate Nduse William Matheka	-	No.299
Delegate Grace N. Ndugyo	-	No.279
Delegate Kamla Sikand	-	No.500
Delegate Rose L. Owino	-	No.471

- (f) Agreed to.

**MIN.NO.39/2003: ADJOURNMENT**

The Convenor adjourned the meeting at 4.45 p.m.

**Confirmed:**.....  
(CONVENOR)

**Date:**.....

**MINUTES OF THE NINTH SITTING OF THE PUBLIC FINANCE, PUBLIC SERVICE,  
LEADERSHIP AND INTEGRITY TECHNICAL WORKING GROUP (H) HELD ON  
17<sup>TH</sup> SEPTEMBER 2003 IN COMMITTEE TENT NO. 8 AT 8.40 A.M.**

---

**PRESENT**

<b><u>Name</u></b>	<b><u>Delegate No.</u></b>
1. Billow Adan Kerrow	<b>Convenor</b>
2. Abdu Bahari Ali	012
3. Abdullahi Haji Mohamed	250
4. Ann Mululu	496
5. Beth Mugo	112
6. David Kuto	340
7. E. Mbau	099
8. Farouk Said	229
9. Gilbert Omondi	625
10. Grace N. Nduyo	279
11. Kamla Sikand	500
12. Kingori Mwangi	624
13. Mariamu Ntausian L.	345
14. Martin N. Wambora	202
15. Musa Sirma	190
16. William N. Matheka	299
17. Noah Nondin Too Arap	197
18. Peter Oduyo	156
19. Rose L. Owino	471
20. Nyamunga Eric Opon	152
21. Fredrick R. Nderitu	302
22. Joseph Njalis Shuel	353
23. Daniel Njoroge	589
24. Judith A. Nam	408
25. Kituyi P. Sikoya	606
26. Dache John Pesa	415
27. Elphas Ombura	410
28. James Omolo Kayila	407
29. Osili Adungo	394
30. John K. Njiraini	480
31. Were Domtilla	616
32. Peter K. Nkoro	278
33. Rose Waruhiu	490
34. Uhuru Kenyatta	049
35. Wekala M. Justus	610

### **ABSENT WITH APOLOGY**

1. Joseph K. Soi 374

### **ABSENT**

1. Anyang' Ny'ong'o 153
2. Chris Okemo 161
3. David Mwiraria 136
4. Ernest Kaitany 341
5. Wycliffe Oparanya 170
6. Francis Wangara 446
7. Manu Chandaria 617
8. Henry Obwocha 154
9. James Bwatuti 628
10. Kilemi Mwiria 137
11. Dennis Kodhe 585
12. Makau Mutua 584
13. Moses M. Wekesa 597
14. Peter Kenneth 048
15. Sabenzia N. Wekesa 478
16. Franklin K. Bett 213

### **IN ATTENDANCE**

1. Mr. Isaac Lenaola - Rapporteur
2. Pastor Zablon Ayonga - Rapporteur
3. Ms Noor Awadh - Programme Assistant
4. Ms Alyne Mariaria - Programme Assistant
5. Ms M. Nzioka - Drafts Person
6. Mrs C. W. Munga - Principal Clerk

### **MIN.NO.40/2003: CONFIRMATION OF MINUTES**

Minutes of the Eighth Sitting held on 15<sup>th</sup> September 2003 were confirmed by the Members present and signed by the Convenor.

### **MIN.NO.41/2003: KENYA POLICE SERVICE**

Mr. G. Macgoye – Commandant of Administration Police Training Centre appeared before the Committee as an expert and gave the Committee some information on Administration Police.

The Committee was informed that:-

- There are 35,000 officers in Kenya Police and 17,000 officers in Administration Police.
- The Administration Police are trained for paramilitary operations and in the event of war they can also be used to defend the country.
- The Administration Police are able to create Rapid Deployment Units in order to solve emergencies pursuant to provisions of Section 5 subsection 2 of the Administration Police Act while the Regular Police take time to prepare such units.
- Since it has been construed that the Administration Police are inferior to the Regular Police, if they are merged the Administration Police will be sidelined.
- The Administration Police have high-tech communication equipment.
- After lengthy discussion on the subject of merger, it was maintained that the administrative Police and the Regular Police should be merged.

**264 (2) Amendment proposed**

That the word “will” be deleted and the word “shall” be inserted in place thereof.

Question of the amendment proposed put and agreed to.

**264(2)(a) Amendment proposed.**

That the words “*strive for*” appearing at the beginning of the sub clause be deleted and the word “*maintain*” be inserted in place thereof.

**Question of the amendment proposed, put and agreed to.**

Further amendment proposed.

That the words “*and discipline*” be inserted at the end of the sub clause.

**Question of the amendment proposed, put and agreed to.**

(b) Amendment proposed.

That the words “*of all sorts*” be deleted.

**Question of the amendment proposed, put and agreed to.**

(c) Amendment proposed.

That the sub clause should read as follows “*avoid bias or discrimination in delivery of services tot he various segments of Society*”.

**Question of the amendment propose, put and agreed to.**

(c) Agreed to.

**MIN.NO.42/2003: TEA BREAK**

The Committee had a tea break from 11.00 a.m. to 11.30 a.m.

**MIN.NO.43/2003: KENYA POLICE SERVICE**

(d) Agreed to.

(f) Agreed to.

(h) Amendment proposed.

That the words “*members, including Members of any paramilitary, armed or riot police units*” be deleted and the word “*officers*” be inserted in place thereof.

(e) Deleted

(f) Agreed to

(g) Amendment proposed.

Question of the amendment proposed, put and agreed to.

**MIN.NO.44/2003: ADJOURNMENT**

The Convenor adjourned the sitting at 1.00 p.m.

**AFTERNOON SITTING**

The Committee reconvened at 2.35 p.m.

**PRESENT**

1. Billow Adan Kerrow	<b>Convenor</b>
2. Abdu Bahari Ali	012
3. Abdullahi Haji Mohamed	250
4. Ann Mululu	496
5. David Kuto	340
6. E. Mbau	099

7. Farouk Said	229
8. Gilbert Omondi	625
9. Grace N. Nduyo	279
10. Kamla Sikand	500
11. Kingori Mwangi	624
12. James J. Mageria	528
13. Mariamu Ntausian L.	345
14. Martin N. Wambora	202
15. William N. Matheka	299
16. Noah Nondin Too Arap	197
17. Omingo Magara	087
18. Peter Odoyo	156
19. Rose L. Owino	471
20. Nyamunga Eric Opon	152
21. Fredrick R. Nderitu	302
22. Joseph Njalis Shuel	353
23. Daniel Njoroge	589
24. Judith A. Nam	408
25. Kituyi P. Sikoya	606
26. Were Domtilla	616
27. Dache John Pesa	415
28. Elphas Ombura	410
29. James Omolo Kayila	407
30. Osili Adungo	394
31. Peter K. Nkoroi	278
32. Rose Waruhiu	490

**ABSENT WITH APOLOGY**

1. Joseph K. Soi	374
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**ABSENT**

1. Beth Mugo	112
2. Franklin K. Bett	213
3. Musa Sirma	190
4. Anyang' Ny'ong'o	153
5. Chris Okemo	161
6. David Mwiraria	136
7. Ernest Kaitany	341
8. Wycliffe Oparanya	170
9. Francis Wangara	446
10. Manu Chandaria	617
11. Henry Obwocha	154
12. John K. Njiraini	480
13. James Bwatuti	628
14. Kilemi Mwiria	137

15. Dennis Kodhe	585
16. Makau Mutua	584
17. Moses M. Wekesa	597
18. Peter Kenneth	048
19. Sabenzia N. Wekesa	478
20. Uhuru Kenyatta	049
21. Wekala M. Justus	610

### **IN ATTENDANCE**

1. Mr. Isaac Lenaola	-	Rapporteur
2. Pastor Zablon Ayonga	-	Rapporteur
3. Ms Noor Awadh	-	Programme Assistant
4. Ms Alyne Mariaria	-	Programme Assistant
5. Ms M. Nzioka	-	Drafts Person
6. Mrs C. W. Munga	-	Principal Clerk

### **MIN.NO.45/2003: KENYA POLICE SERVICE**

#### **Clause 265**

(1) Agreed to.

(2) Agreed to.

(3) Amendment proposed

That the sub clause be deleted.

Question of the amendment propose, put and agreed to.

(4) Amendment proposed.

That the sub clause should read as follows *“The functions of the police shall be organized to take into account the structure of devolution”*.

Question of the amendment proposed, put and agreed to.

The subject was not exhaustively discussed. The Committee will complete discussion when the Devolution Committee finalizes on the subject.

(5) Amendment proposed

**That the Committee rescinds its decision on sub clause 264(2)(g) and have it deleted.**

Question of the amendment proposed, put and agreed to.

Further amendment proposed that sub clause 265(5) becomes the new 264(2)(g).

Question of the amendment proposed, put and agreed to.

Further amendment proposed that the clauses be renumbered so that Clause 265 be interchanged with Clause 264.

**Question of the amendment proposed, put and agreed to.**

Clause 265 as amended agreed to.

**Clause 266**

(1) Amendment proposed

*That the word “Commissioner” be deleted and the words “Inspector General” be inserted in place thereof. It was also proposed that the words “Inspector General” should replace the word “Commissioner” wherever it exists.*

***Question of the amendment proposed, put and agreed to.***

(2) Amendment proposed.

*That the words appearing after the words “approval of” be deleted and the words “National Council for one term of five years renewable for a further term only” be inserted in place thereof.*

***Question of the amendment proposed, put and agreed to.***

*However Delegate Abdullahi Haji Mohamed No.250 opposed the amendment.*

(3) Amendment proposed

*That the word “may” be deleted and the word “shall” be inserted in place thereof.*

***Question of the amendment proposed, put and agreed to.***

(3)(a) Amendment proposed

*That the word “has” be deleted and the word “holds” be inserted in place thereof.*

***Question of the amendment proposed, put and agreed to.***

(b) Agreed to.

***However the following delegates were of contrary opinion.***

*M.N. Wambora - No.202 was of the opinion that the sub clause should read as follows.*

***“Has served in the National Security Service for at least 10 years”.***

*W.N. Matheka – No. 299 was of the opinion that the sub clause should read as follows.*

***“Has served in the National Intelligence Service or any other security service for at least 10 years”.***

***(4) Amendment proposed***

*That all the words after the word “the” appearing on the second line be deleted and the words “Inspector General” be inserted in place thereof.*

***Question of the amendment proposed, put and agreed to.***

***(5) Amendment proposed***

*That all the words after the word “Kenya” appearing on the third line be deleted.*

***Question of the amendment proposed, put and agreed to.***

*Further amendment proposed.*

***That a new sub clause six (6) be inserted to read as follows.***

***(6) “In performing his or her functions the Inspector General shall not be under the direction or control of any person or authority”.***

***Question of the amendment proposed, put and agreed to.***

***(6) Amendment proposed.***

***That the sub clause be deleted.***

***Question of the amendment proposed, put and agreed to.***

*Further amendment proposed that a new sub clause seven be inserted to read as follows.*

***“(7) Subject to the Constitution the Inspector General may be removed from office by the President with the approval of the National Council only for:***

- Inability to perform the functions of his or her office arising from infirmity of body and mind.***
- Misconduct or incompetence”.***

*Question of the amendment proposed, put and agreed to.*

*Clause 266 as amended agreed to.*

**MIN.NO.46/2003: ADJOURNMENT**

The Convenor adjourned the meeting at 4.50 p.m.

**Confirmed:**.....  
(CONVENOR)

**Date:**.....

**MINUTES OF THE TENTH SITTING OF THE PUBLIC FINANCE, PUBLIC SERVICE,  
LEADERSHIP AND INTEGRITY TECHNICAL WORKING GROUP (H) HELD ON  
18<sup>TH</sup> SEPTEMBER 2003 IN COMMITTEE TENT NO. 8 AT 10.30 A.M.**

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**PRESENT**

<b><u>Name</u></b>	<b><u>Delegate No.</u></b>
1. Billow Adan Kerrow	<b>Convenor</b>
2. Abdu Bahari Ali	012
3. Abdullahi Haji Mohamed	250
4. Ann Mululu	496
5. Beth Mugo	112
6. David Kuto	340
7. E. Mbau	099
8. Farouk Said	229
9. Gilbert Omondi	625
10. Kamla Sikand	500
11. Kingori Mwangi	624
12. Mariamu Ntausian L.	345
13. Martin N. Wambora	202
14. Musa Sirma	190
15. William N. Matheka	299
16. Noah Nondin Too Arap	197
17. Rose L. Owino	471
18. Nyamunga Eric Opon	152
19. Fredrick R. Nderitu	302
20. Joseph Njalis Shuel	353
21. Daniel Njoroge	589
22. Judith A. Nam	408
23. Dache John Pesa	415
24. Elphas Ombura	410
25. James Omolo Kayila	407
26. Osili Adungo	394
27. Wekala M. Justus	610
28. Joseph K. Soi	374
29. Wycliffe Oparanya	170
30. Franklin K. Bett	213

**ABSENT**

1. Grace N. Nduyo	279
2. Peter Odoyo	156
3. Kituyi P. Sikoya	606
4. John K. Njiraini	480

5. Were Domtilla	616
6. Peter K. Nkoroi	278
7. Rose Waruhiu	490
8. Uhuru Kenyatta	049
9. Anyang' Ny'ong'o	153
10. Chris Okemo	161
11. David Mwiraria	136
12. Ernest Kaitany	341
13. Francis Wangara	446
14. Manu Chandaria	617
15. Henry Obwocha	154
16. James Bwatuti	628
17. Kilemi Mwiria	137
18. Dennis Kodhe	585
19. Moses M. Wekesa	597
20. Peter Kenneth	048

#### **IN ATTENDANCE**

1. Mr. Isaac Lenaola	-	Rapporteur
2. Pastor Zablon Ayonga	-	Rapporteur
3. Ms Noor Awadh	-	Programme Assistant
4. Ms Alyne Mariaria	-	Programme Assistant
5. Ms M. Nzioka	-	Drafts Person
6. Mrs C. W. Munga	-	Principal Clerk

#### **MIN NO.47/2003: PUBLIC SERVICE COMMISSION**

Eng. A. Sharawe - Chairman, Public Service Commission and Mr. W.S. Siambi - Commissioner appeared before the Committee as experts and gave the Committee valuable information concerning the Public Service Commission.

**The Committee was given a brief history of the Commission after which it was informed that:-**

- The Commission is established under section 106 of the Constitution which states its mandate and composition. However it operates under an Act of Parliament Chapter 185 of the laws of Kenya.
- Clause 264 should have a section which includes security of tenure to the Inspector General and the Director General of National Intelligence.
- The Public Service Commission should submit an annual report on its performance to Parliament.

- In Clause 266 (3) (b) no person may be appointed as Inspector General unless that person has served for a minimum of ten years, three of which must have been at a grade immediately below that of Inspector General or its equivalent. He should also have wide experience in the management and administration of the Police Force and be effective and efficient.
- Sub Clause 266(6) should have provision for the period of time which a Commissioner should serve.
- In Clause 270 anybody holding a public office with or without pay is a public officer.
- The Commissioner of Prisons should not have security of tenure.

**MIN.NO.48/2003: ADJOURNMENT**

The Convenor adjourned the sitting at 12.55 p.m.

**AFTERNOON SITTING**

The Committee reconvened at 2.35 p.m.

**PRESENT**

1. Billow Adan Kerrow	<b>Convenor</b>
2. Abdu Bahari Ali	012
3. Abdullahi Haji Mohamed	250
4. Ann Mululu	496
5. David Kuto	340
6. Farouk Said	229
7. Gilbert Omondi	625
8. Kamla Sikand	500
9. Kingori Mwangi	624
10. Mariamu Ntausian L.	345
11. Martin N. Wambora	202
12. William N. Matheka	299
13. Noah Nondin Too Arap	197
14. Rose L. Owino	471
15. Nyamunga Eric Opon	152
16. Fredrick R. Nderitu	302
17. Joseph Njalis Shuel	353
18. Daniel Njoroge	589
19. Judith A. Nam	408
20. Dache John Pesa	415
21. Elphas Ombura	410
22. James Omolo Kayila	407

23. Osili Adungo	394
24. Wekala M. Justus	610
25. Joseph K. Soi	374
26. Wekala M. Justus	610
27. Omingo Magara	087
28. Franklin K. Bett	213
29. Musa Sirma	190
30. Peter Oduyo	156

**ABSENT WITH APOLOGY**

1. Beth Mugo	112
2. E. Mbau	099
3. Grace N. Nduyo	279

**ABSENT**

1. Kituyi P. Sikoya	606
2. Were Domtilla	616
3. John K. Njiraini	480
4. Peter K. Nkoroi	278
5. Rose Waruhiu	490
6. Uhuru Kenyatta	049
7. Anyang' Ny'ong'o	153
8. Chris Okemo	161
9. David Mwiraria	136
10. Ernest Kaitany	341
11. Francis Wangara	446
12. Manu Chandaria	617
13. Henry Obwocha	154
14. James Bwatuti	628
15. Kilemi Mwiria	137
16. Dennis Kodhe	585
17. Moses M. Wekesa	597
18. Wycliffe Oparanya	170
19. Peter Kenneth	048

**IN ATTENDANCE**

1. Mr. Isaac Lenaola	-	Rapporteur
2. Pastor Zablon Ayonga	-	Rapporteur
3. Ms Noor Awadh	-	Programme Assistant
4. Ms Alyne Mariaria	-	Programme Assistant
5. Ms M. Nzioka	-	Drafts Person
6. Mrs C. W. Munga	-	Principal Clerk

**MIN.NO.49/2003: CONFIRMATION OF MINUTES**

Minutes of the Ninth Sitting held on 17<sup>th</sup> September 2003 were confirmed by the Members present and signed by the Convenor.

**MIN.NO.50/2003: MATTERS ARISING**

**Under Min. No.43/2003** sub clause (e) was deleted; sub clause (f) was agreed to which sub clause (h) had proposed amendments. The necessary correction was done.

Under Minute 45/2003 Clause 266(3), **the Committee proposed an amendment.**

That the sub clause be amended by inserting a new sub clause (c) to read as follows **“(c) has wide experience in the management and administration of Police Service”**.

**MIN.NO.51/2003: MOTION KENYA POLICE SERVICE**

*Motion made and Question proposed.*

**265 There shall be service, which shall be known as Kenya Police Service.**

Subject to this Constitution, the Kenya Police Service shall be organized and administered in such a manner and shall have such functions as Parliament may prescribe.

The Kenya Police Service shall be under the command of the Inspector General who shall be assisted by the Deputy Inspector General of Police in the performance of his or her functions.

In performance of his/her functions, the Inspector General shall not be under the direction or control of any person or authority, except where the constitution specifies.

**266 ESTABLISHMENT OF POLICE SERVICE COMMISSION**

5.1 There shall be a Police Service commission which shall consist of two ex-official members that is to say:-

- (e) The Chairperson of the Public Service Commission.
- (f) The Inspector General
- (g) Such Justice of appeal or Judge of the Supreme Court (high Court) as may for the time being be designated in that behalf by the Chief Justice;
- (h) (i) and seven appointed members who shall be appointed from among persons who have held high public offices including retired senior Police Officers;
- (iii) the seven appointed members shall be recommended for appointment by the three ex-officio members. Such appointed members shall be confirmed by the President.

The Commissioners appointed shall serve for a term of 3 years and may be renewed for a period of not exceeding two terms.

- 5 The Police Service Commission shall be presided over by such one of the appointed members (hereinafter referred to as “the Chairperson of Police Service Commission) as may for the time being be designated in that behalf by the members of the Commission.

### **DISQUALIFICATION FOR APPOINTMENT**

A person must not be appointed a member of Police Service Commission if he or she is, or has at any time during the immediate preceding 3 years been:-

- (g) a member of Parliament or a members of a local authority or of another representative body prescribed by the Parliament for the purposes of this section;
- (h) a candidate for election as a member of parliament, local authority or another representative body prescribed by Parliament for the purposes of this section;
- (i) an office bearer in a political party that promoted, or has during that 3 years, promoted the election to National Assembly of a candidate endorsed by the Party;
- (j) a holder of a public office (other than an office of members of a commission) or
- (k) a local government officer.
- (l) Declared bankrupt

### **7. FUNCTIONS AND POWERS OF POLICE SERVICE COMMISSION**

- 7.1 (a) The Commission shall have power to appoint persons to hold or act in an office in the Police Service established under the Police act including appointments or promotion and the confirmation of appointments and to remove and exercise disciplinary control over persons holding or acting in such offices shall vest in the Police Service Commission.
- (f) The Police Service Commission shall not remove or inflict any punishment on the holder of an office in the Police Service on the ground of any act done or omitted to be done by him/her in the exercise of judicial function conferred upon him/hr unless Judicial Service Commission concurs there in.
  - (g) The commission shall have a civilian oversight body to investigate misconduct of Police Officers and take appropriate correctional measures.
  - (h) In addition to other functions vested in Police Service Commission by the constitution, it shall be the duty of the Commission to keep under review

all matters relating to salaries, allowances and other conditions of service of members of the Police Service and to give advise there in to the Prime Minister.

It shall be the duty of the Commission to keep under review all matters relating to the standards or qualifications (whether in respect of health, *education*, efficiency or any other kind) that may be required of members of the Police Service generally or members of the Police Service who hold a particular rank or who are engaged on particular duties and to give advice thereon as occasion may require to the Prime Minister of Parliament.

- 7.2 Subject to the provisions of this chapter (constitution), the Commission shall, in the exercise of its functions under this constitution, not be subject to the direction or control of any person or authority.

### **APPOINTMENT OF INSPECTOR GENERAL**

- 8.1 The Inspector General shall be appointed by the President acting in accordance with the advice of the Police Service Commission. The Inspector General's appointment shall be subject to confirmation by parliament.
- 8.2 A person shall not be qualified to be appointed to the office of Inspector General if he/she has not served in the Police Service for a period of ten years. Other qualifications like age, education and character shall be determined by the Police Service Commission from time to time. For clarity, qualifications of Deputy Inspector General is similar to Inspector General.
- 8.3 the Inspector General shall vacate office when he/she attains such age as may be prescribed by Parliament.
- 8.5 The Inspector General shall be appointed for a maximum two terms of four years each.

### **9. POWERS TO APPOINT OTHER MEMBERS OF THE POLICE SERVICE**

- 9.1 The power to appoint persons to hold or act in any offices in the Police Service of or above the rank of acting Inspector (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting *in such offices and* the power to remove such persons from office shall vest in the Police Service Commission.
- 9.3 The Police Service Commission may, by directions in writing and subject to such conditions as it thinks fit delegate any of its powers under subsection (1) of this section to any one or more members of the Commission, to the Inspector General or his/her appointed officer.

## **10. DELEGATION OF POWERS**

- 10.3 The powers to appoint persons to hold or act in offices in the Police Service below the rank of acting Inspector (including the power to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Inspector General.
- 10.4 The Inspector General may, by directions given in such a manner as he/she thinks fit and subject to such conditions as he/she thinks fit, delegate any of his/her powers under subsection (1) of this section to any member of the Police Service.

## **11. REMOVAL OF INSPECTOR GENERAL**

- 11.1 A person holding the office of Inspector General may be removed from office only for inability to exercise the functions of hi/her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.
- 11.4 The Inspector General shall be removed from office by the President if the question of his removal from office has been referred to a tribunal appointed under subsection (3) of this section and the tribunal has recommended to the President that he/she ought to be removed for inability as aforesaid or for misbehaviour.
- 11.5 If the Prime Minister or the Chairman of Police Service Commission presents to the President that the question of removing the Inspector General under this section ought to be investigated, then;
- (d) The President shall appoint a tribunal which shall consist of a Chairman and not less than two other members selected by the Chief Justice from among persons who hold or have hold office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the common wealth or a court having jurisdiction in appeals from such a court; and
  - (e) The tribunal shall inquire into the matter and report on the facts thereof to the President and recommend to him/her whether the Inspector General ought to be removed under this section.
  - (f) If the question of removing the Inspector General has been referred to a tribunal under this section, the President acting in accordance with advice of the Police Service commission suspend the Inspector General from the exercise of the functions of his office, and any such suspension may at time be revoked by the President, actin in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the President that the Inspector General should not be removed.

## **13. APPEALS TO DISCIPLINARY AUTHORITY**

- 13.1 When the power to exercise disciplinary control over any member of the Police Service (including the power to remove him/her from office) has been exercised under this section by any person (hereinafter referred to as “the disciplinary authority) other than the Police Service commission, the member of the Police Service in respect of whom it was exercised may appeal from the decision of the disciplinary authority to the Police Service Commission.

Provided that, in the case of a decision of a disciplinary authority that is made in exercise of a power delegated to that authority under subsection 10(1), the authority by whom the delegation is made may require appeals to be made to a member of the Police Service of higher rank than the disciplinary authority before they are made under this section to the Police Service Commission.

- 13.2 The Police Service Commission may very regulation or otherwise provides for the time and manner of the making of appeals to it under subsection (1) of this section and all matters incidental to such appeals.

### **Budget Control**

- 13.2 Police funding to be drawn from consolidated fund.

- 13.2 the Inspector General shall be the accounting officer.

Delegate King’ori Mwangi – No.264.

By leave of the Committee the Motion was transferred to Committee No.1 on Defence on National Security.

### **MIN.NO.52/2003: KENYA CORRECTIONAL SERVICES**

Delegate Gilbert Omondi No. 625 (Deputy Commissioner of Prisons) gave the Committee some information on Kenya Prisons. He gave the Committee a brief history of Kenya Prisons.

Then he informed the Committee that:-

- Kenya Prisons have a capacity of 15,000 prisoners but currently they have 45000 prisoners.
- Prisons should only deal with major offenders while minor offenders should be dealt with elsewhere.
- In the new Constitution, Kenya Prisons should be referred to as Kenya Correctional Services. There should be a Minister in charge of Kenya Correctional Services assisted by a Director General for Correctional Services.

There should also be a Deputy Director General for Correctional Services.

**MIN.53/2003: ADJOURNMENT**

The Convenor adjourned the meeting at 4.50 p.m.

**Confirmed:**.....  
(CONVENOR)

**Date:**.....

**MINUTES OF THE ELEVENTH SITTING OF THE PUBLIC FINANCE,  
PUBLIC SERVICE, LEADERSHIP AND INTEGRITY TECHNICAL  
WORKING GROUP (H) HELD ON 19<sup>TH</sup> SEPTEMBER 2003 IN COMMITTEE  
TENT NO. 8 AT 9.50 A.M.**

---

**PRESENT**

<b><u>Name</u></b>	<b><u>Delegate No.</u></b>
1. Billow Adan Kerrow	<b>Convenor</b>
2. Abdu Bahari Ali	012
3. Abdullahi Haji Mohamed	250
4. Ann Mululu	496
5. Beth Mugo	112
6. David Kuto	340
7. E. Mbau	099
8. Farouk Said	229
9. Gilbert Omondi	625
10. Kamla Sikand	500
11. Kingori Mwangi	624
12. Mariamu Ntausian L.	345
13. Martin N. Wambora	202
14. William N. Matheka	299
15. Noah Nondin Too Arap	197
16. Rose L. Owino	471
17. Fredrick R. Nderitu	302
18. Joseph Njalis Shuel	353
19. Daniel Njoroge	589
20. Judith A. Nam	408
21. Dache John Pesa	415
22. Elphas Ombura	410
23. James Omolo Kayila	407
24. Osili Adungo	394
25. Wekala M. Justus	610
26. Joseph K. Soi	374
27. Franklin K. Bett	213
28. Omingo Magara	087
29. Kituyi P. Sikoya	606
30. John K. Njiraini	480
31. Were Domtilla	616

**ABSENT WITH APOLOGY**

1. Grace N. Nduyo	279
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## **ABSENT**

1. Musa Sirma	190
2. Nyamunga Eric Opon	152
3. Peter Odoyo	156
4. Peter K. Nkoroi	278
5. Rose Waruhiu	490
6. Uhuru Kenyatta	049
7. Anyang' Ny'ong'o	153
8. Chris Okemo	161
9. David Mwiraria	136
10. Ernest Kaitany	341
11. Francis Wangara	446
12. Manu Chandaria	617
13. Henry Obwocha	154
14. James Bwatuti	628
15. Kilemi Mwiria	137
16. Dennis Kodhe	585
17. Moses M. Wekesa	597
18. Peter Kenneth	048
19. Wycliffe Oparanya	170

## **IN ATTENDANCE**

### **CONSTITUTION OF KENYA REVIEW COMMISSION**

1. Mr. Isaac Lenaola	-	Rapporteur
2. Pastor Zablon Ayonga	-	Rapporteur
3. Ms Noor Awadh	-	Programme Assistant
4. Ms Alyne Mariaria	-	Programme Assistant
5. Ms M. Nzioka	-	Drafts Person
6. Mrs C. W. Munga	-	Principal Clerk

### **MIN.54/2003 : KENYA CORRECTIONAL SERVICES**

The Rapporteurs presented the topic after which there was general debate.

The delegates were of the opinion that the new constitution should address the following issues.

- The remand period should be limited. Many offenders are kept in remand for a long time but when they are taken to court they are declared innocent and set free.
- Prisons have not expanded in spite of the increase in the number of prisoners. Hence all prisons are overcrowded and the prisoners live in deplorable conditions.
- Prisoners have to be transported to court. Yet no prison in Kenya owns a van. The Police face many difficulties in transporting prisoners to courts.

- Prison Services should be demilitarized. There should be clear separation of duties of the police officers and prison officers.
- Prison officers live in deplorable conditions. There is congestion in their substandard houses.
- Structures should be set in place to make prisoners live in human conditions and become productive members of society when they complete their sentences.
- Suicide victims should receive counselling and correctional services instead of being put in prison.

**MIN.55/2003:           TEA BREAK**

The Committee had a tea break from 11.00 a.m. to 11.30 a.m.

**MIN.56/2003:           KENYA CORRECTIONAL SERVICE**

**Title -           Amendment proposed.**

That the title should read as follows:-

**“Kenya Correctional Service”** and that the word **“services”** should read **“service”** wherever it appears in the paragraph.

**Debate arising**

**Question of the amendment proposed, put and agreed to.**

**Article 267 -           Amendment proposed**

**That Articles 267 and 268 be interchanged.**

Debate arising

Question of the amendment proposed put and agreed to.

**Article 268(1) Agreed to.**

(2) **Amendment proposed.**

That the word **“Parliament”** appearing on the third line be deleted and the words **“National Assembly”** be inserted in place thereof.

Debate arising

Question of the amendment proposed, put and agreed to.

(3) **Amendment proposed.**

That the sub article be deleted.

Debate arising

Question of the amendment proposed, put and agreed to.

Further amendment proposed.

That a new sub article (3) be inserted to read as follows

***“Functions of the Kenya Correctional Service should be organised to take into account the structure of devolution”.***

Debate arising

The Committee resolved that a final decision on this matter should be taken when the devolution Committee report is received.

**Article 268** As amended – agreed to.

**Article 267(1)** Amendment proposed.

That the words ***“rehabilitate persons convicted of crime and”*** appearing on the second line be deleted and the words ***“to ensure safe custody of the country’s prison population, provision of human living conditions in the prisons and rehabilitation of offenders”*** be inserted in place thereof.

Debate arising

Questions of the amendment proposed put and agreed to.

(2) Amendment proposed.

That the words ***“to protect the well being of Kenya”*** be deleted and the words ***“in furtherance of its primary object”*** be inserted in place therein.

Debate arising

Question of the amendment proposed, put and agreed to.

(2)(a) Amendment proposed.

That the words “*and discipline*” be inserted after the word “professionalism” appearing on the second line.

Debate arising

*Question of the amendment proposed, put and agreed to.*

(2)(b) Amendment proposed that the words “*of any kind among its members*” be deleted.

Debate arising

Question of the amendment proposed, put and agreed to.

(2)(c) Amendment proposed

That the words “*and functions*” be inserted immediately after the word “*powers*” appearing on the second line.

Debate arising

Question of the amendment proposed, put and agreed to.

(2)(d) Amendment proposed.

That the word “*on*” be inserted immediately before the word “minimal” appearing on the second line.

Debate arising

Question of the amendment proposed, put and agreed to.

**Article 267** As amended agreed to.

**MIN.NO.57/2003      ADJOURNMENT**

The Convenor adjourned the meeting at 12.55 p.m.

**AFTERNOON SITTING**

The Committee reconvened at 2.35 p.m.

**PRESENT**

1. Billow Adan Kerrow

**Convenor**

2. Abdu Bahari Ali	012
3. Abdullahi Haji Mohamed	250
4. Ann Mululu	496
5. David Kuto	340
6. Farouk Said	229
7. Gilbert Omondi	625
8. Kamla Sikand	500
9. Mariamu Ntausian L.	345
10. Martin N. Wambora	202
11. William N. Matheka	299
12. Rose L. Owino	471
13. Fredrick R. Nderitu	302
14. Joseph Njalis Shuel	353
15. Daniel Njoroge	589
16. Judith A. Nam	408
17. Dache John Pesa	415
18. Elphas Ombura	410
19. James Omolo Kayila	407
20. Osili Adungo	394
21. Wekala M. Justus	610
22. Joseph K. Soi	374
23. Franklin K. Bett	213
24. Omingo Magara	087
25. Were Domtilla	616
26. Kituyi P. Sikoya	606
27. John K. Njiraini	480
28. Grace N. Nduyo	279
29. James Bwatuti	628

**ABSENT WITH APOLOGY**

1. Beth Mugo	112
2. E. Mbau	099

**ABSENT**

1. Kingori Mwangi	624
2. Noah Nondin Too Arap	197
3. Nyamunga Eric Opon	152
4. Wycliffe Oparanya	170
5. Peter K. Nkoroi	278
6. Rose Waruhiu	490
7. Uhuru Kenyatta	049
8. Anyang' Ny'ong'o	153
9. Chris Okemo	161
10. David Mwiraria	136

11. Ernest Kaitany	341
12. Francis Wangara	446
13. Manu Chandaria	617
14. Henry Obwocha	154
15. Kilemi Mwiria	137
16. Dennis Kodhe	585
17. Moses M. Wekesa	597
18. Peter Kenneth	048

### **IN ATTENDANCE**

1. Mr. Isaac Lenaola	-	Rapporteur
2. Pastor Zablon Ayonga	-	Rapporteur
3. Ms Noor Awadh	-	Programme Assistant
4. Ms Alyne Mariaria	-	Programme Assistant
5. Ms M. Nzioka	-	Drafts Person
6. Mrs C. W. Munga	-	Principal Clerk

### **MIN.NO.58/2003: KENYA CORRECTIONAL SERVICE**

Title - Amendment proposed.

That the title should read as follows

***“Establishment of the office and appointment of Director General of the Kenya Correctional Service”.***

Debate arising

Question of the amendment proposed put and agreed to.

**Article 269** Amendment proposed.

That the words ***“there shall be an office of Director General of Kenya Correctional Service”*** be inserted at the beginning of the article to become Sub Article (1).

Debate arising

Question of the amendment proposed put and agreed to.

**269(1)** Amendment proposed.

That the word ***“Parliament”*** appearing on the second line be deleted and the word ***“National Assembly”*** be inserted in place thereof.

### **Debate arising**

Question of the amendment proposed put and agreed to.

Further amendment proposed that the word “*General*” be inserted immediately after the word “Director” appearing on the second line and that the sub clause becomes (2).

### **Debate arising**

Question of the amendment proposed, put and agreed to.

Further amendment proposed that a new sub article (3) be inserted to read as follows:-

- (3) *No person shall be appointed as Director General unless that person;*
- (a) *holds a degree from a recognised university;*
- (b) *Has served in the correctional service for at least ten years; or*
- (c) *has a wide experience in the management and administration of correctional service.*

### **Debate arising**

Question of the amendment proposed, put and agreed to.

Further amendment proposed.

That a new Sub Article (4) be inserted to read as follows:

**“(4) The power to appoint persons to hold or act in offices in Kenya Correctional Service (except the office of the Director General) including the power to confirm appointments, the power to exercise disciplinary control over persons holding or acting in those offices and the power to remove those persons from office shall vest in the Public Service Commission”.**

### **Debate arising**

Question of the amendment proposed, put and agreed to.

Further amendment proposed.

That a new sub article (5) be inserted to read as follows:

**“(5) *The Director General of Correctional Service shall hold office for a term of five years but shall be eligible for reappointment for one further term.*”**

**Debate arising**

Question of the amendment proposed, put and agreed to.

Further amendment proposed.

That a new sub article (6) be inserted to read as follows.

***“(6) The Director General of Kenya Correctional Service shall report to the relevant Minister”.***

**Debate arising**

Question of the amendment proposed, put and agreed to.

Further amendment proposed that the Sub Articles of Article 269 be renumbered to accommodate all the amendments.

**Debate arising**

**Question of the amendment proposed, put and agreed to.**

**Article 268(2)** Amendment proposed.

That the Committee rescinds its earlier decision on the article.

**Debate arising**

Question of the amendment proposed, put and agreed to.

Further amendment proposed

That all the words after the word “Constitution” appearing on the first line of Sub Article 268(2) be deleted.

**Debate arising**

Question of the amendment proposed, put and agreed to.

Further amendment proposed

That all the words in Sub Article 269 (2) be inserted immediately after the word “Constitution” appearing on the first line of Article 268(2).

**Debate arising**

**Question of the amendment proposed, put and agreed to.**

**Article 269** as amended agreed to.

**Article 268** as amendment agreed to.

**MIN. 60/2003:                      ADJOURNMENT**

The Convenor adjourned the sitting at 4.15 p.m.

**Confirmed:.....**  
**(CONVENOR)**

**Date:.....**

**MINUTES OF THE TWELFTH SITTING OF THE PUBLIC FINANCE, PUBLIC SERVICE, LEADERSHIP AND INTEGRITY TECHNICAL WORKING GROUP (H) HELD ON 22<sup>ND</sup> SEPTEMBER 2003 IN COMMITTEE TENT NO. 8 AT 9.50 A.M.**

---

**PRESENT**

<b><u>Name</u></b>	<b><u>Delegate No.</u></b>
1. Billow Adan Kerrow	<b>Convenor</b>
2. Abdu Bahari Ali	012
3. Abdullahi Haji Mohamed	250
4. Ann Mululu	496
5. David Kuto	340
6. Farouk Said	229
7. Gilbert Omondi	625
8. Kamla Sikand	500
9. Mariamu Ntausian L.	345
10. Martin N. Wambora	202
11. William N. Matheka	299
12. Noah Nondin Too Arap	197
13. Rose L. Owino	471
14. Fredrick R. Nderitu	302
15. Joseph Njalis Shuel	353
16. Daniel Njoroge	589
17. Judith A. Nam	408
18. Dache John Pesa	415
19. Elphas Ombura	410
20. James Omolo Kayila	407
21. Osili Adungo	394
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27. Were Domtilla	616
28. Nyamunga Eric Opon	152
29. Peter Odoyo	156
30. Chris Okemo	161
31. Francis Wangara	446
32. Henry Obwocha	154
33. James Bwatuti	628
34. Wycliffe Oparanya	170

**ABSENT WITH APOLOGY**

1. Grace N. Nduyo	279
2. Beth Mugo	112

**ABSENT**

1. E. Mbau	099
2. Kingori Mwangi	624
3. Wekala M. Justus	610
4. Musa Sirma	190
5. Peter K. Nkoroi	278
6. Rose Waruhiu	490
7. Uhuru Kenyatta	049
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9. David Mwiraria	136
10. Ernest Kaitany	341
11. Manu Chandaria	617
12. Kilemi Mwiria	137
13. Dennis Kodhe	585
14. Moses M. Wekesa	597
15. Peter Kenneth	048

**IN ATTENDANCE**

1. Mr. Isaac Lenaola	-	Rapporteur
2. Pastor Zablon Ayonga	-	Rapporteur
3. Ms Noor Awadh	-	Programme Assistant
4. Ms Alyne Mariaria	-	Programme Assistant
5. Mrs M. Nzioka	-	Drafts Person
6. Mrs C. W. Munga	-	Principal Clerk

**MIN. 61/2003: CONFIRMATION OF MINUTES**

Minutes of the Tenth and Eleventh Sittings held on 18<sup>th</sup> and 19<sup>th</sup> September 2003 respectively were confirmed by the Members present and signed by the Convenor.

**MIN. 62/2003: MATTERS ARISING**

Under Min. No.58/2003, **Article 269(6)**, the amendment should read:

**“The Director General of Kenya Correctional Service shall report to the relevant Minister”.**

Amendment proposed

*That a new Sub Article be inserted at the end of Article 269 to read as follows:*

***“The Director General shall be the Accounting Officer of Kenya Correctional Service”.***

Delegate Gilbert Omondi – No.625

Debate arising.

The Committee was informed that the appointment of Accounting Officers is not a constitutional issue. It is provided for in subordinate Legislation (Exchequer & Audit Act).  
As a result the proposed amendment was withdrawn.

**MIN. 63/2003: INTERPRETATION**

**Article 270** Amendment proposed

That the words “*prison services*” be deleted and the words “*Kenya Correctional Service*” be inserted in place thereof.

Debate arising.

Question of the amendment proposed, put and agreed to.

The Committee resolved that the draftsman should come up with an appropriate definition of who a public servant should be after which debate on the article can be concluded.

As a result further debate on the Article was deferred to another day.

**MIN. 64/2003: LEADERSHIP AND INTEGRITY (CHAPTER SIXTEEN)**

*The draftsman presented the information on the Chapter*

Debate arising.

**Article 276(1)** Amendment proposed.

That the sub article should read as follows:

***“The offices to which this Chapter applies, as set out in Article 277(1), are leadership offices the establishment and maintenance of which is a great sacrifice by the people of Kenya”.***

Debate arising.

***Question of the amendment proposed, put and agreed to.***

(2) Amendment proposed.

That the word “***highest***” be deleted and the word “***high***” be inserted in place thereof.

Debate arising.

Question of the amendment proposed, put and agreed to.

**(3)(a)** Amendment proposed.

That the words “*free and*” be inserted immediately after the word “*in*”.

Debate arising

Question of the amendment proposed, put and agreed to.

**3(b)** Agreed to.

**3(c)** Amendment proposed

That the word “*high*” be deleted and the word “*the*” be inserted in place thereof.

Debate arising.

Question of the amendment proposed, put and agreed to.

**3(d)** Amendment proposed.

That the words “*where applicable*” be inserted immediately after the word “*office*”.

Debate arising.

Question of the amendment proposed, put and agreed to.

**3(e)** Agreed to.

**MIN. 65/2003:           TEA BREAK**

The Committee had a tea break from 11.20 a.m. to 11.50 a.m.

**MIN. 66/2003:           LEADERSHIP AND INTEGRITY (CHAPTER SIXTEEN)**

**3(f)** That the sub article should read as follows:

*“Objectivity and impartiality in decision making and in particular, ensuring that decisions are not influenced by nepotism or favouritism”.*

Debate arising.

Question of the amendment proposed, put and agreed to.

**3(g)** Agreed to.

**3(h)** Agreed to.

**3(i)** Amendment proposed.

That the words “*by leadership and*” be deleted and the word “*by*” be inserted in place thereof.

Debate arising

Question of the amendment proposed, put and agreed to.

**3.** Agreed to.

**276 A(1)** Agreed to.

**276 A(2)(a)** Amendment proposed.

That the word “*and*” be deleted and the word “*showing*” be inserted in place thereof.

Debate arising.

Question of the amendment proposed, put and agreed to.

**2(b)** Agreed to

**2(c)** Agreed to.

**2(d)** Agreed to

**2(e)** Agreed to

**276B** Agreed to

**277** Agreed to

**MIN. 67/2003: ADJOURNMENT**

The Convenor adjourned the sitting at 12.55 p.m.

**AFTERNOON SITTING**

The Committee reconvened at 2.30 p.m.

**PRESENT**

1. Billow Adan Kerrow

**Convenor**

2.	Abdu Bahari Ali	012
3.	Abdullahi Haji Mohamed	250
4.	Ann Mululu	496
5.	David Kuto	340
6.	Farouk Said	229
7.	Gilbert Omondi	625
8.	Kamla Sikand	500
9.	Martin N. Wambora	202
10.	William N. Matheka	299
11.	Noah Nondin Too Arap	197
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26.	Were Domtilla	616
27.	Nyamunga Eric Opon	152
28.	Peter Odoyo	156
29.	Chris Okemo	161
30.	Francis Wangara	446
31.	Henry Obwocha	154
32.	James Bwatuti	628
33.	Wycliffe Oparanya	170
34.	E. Mbau	099
35.	Anyang' Ny'ong'o	153

**ABSENT WITH APOLOGY**

1.	Grace N. Nduyo	279
2.	Beth Mugo	112

**ABSENT**

1.	Mariam Ntausian L.	345
2.	Wekala M. Justus	610
3.	Kingori Mwangi	624

4. Musa Sirma	190
5. Peter K. Nkoroi	278
6. Rose Waruhiu	490
7. Uhuru Kenyatta	049
8. David Mwiraria	136
9. Ernest Kaitany	341
10. Manu Chandaria	617
11. Kilemi Mwiria	137
12. Dennis Kodhe	585
13. Moses M. Wekesa	597
14. Peter Kenneth	048

### **IN ATTENDANCE**

1. Mr. Isaac Lenaola	-	Rapporteur
2. Pastor Zablon Ayonga	-	Rapporteur
3. Ms Noor Awadh	-	Programme Assistant
4. Ms Alyne Mariaria	-	Programme Assistant
5. Mrs M. Nzioka	-	Drafts Person
6. Mrs C. W. Munga	-	Principal Clerk

### **MIN. 68/2003: CONVENOR'S REMARKS**

The Convenor informed the Committee that anonymous callers rang his office in the morning and gave information, which was a threat to his life.

The Committee expressed great concern over the threat and resolved that he should record a Statement with the Police and that the threat should be investigated.

### **MIN. 69/2003: THE PUBLIC SERVICE**

#### ***Amendment proposed.***

That the title Public Administration should read as follows:-  
***“Public Service”***.

Debate arising.

Question of the amendment proposed, put and agreed to.

Further amendment proposed.

That the title values and principles in administration generally should read

***“Values and principles in public service generally”***.

Debate arising.

Question of the amendment proposed, put and agreed to.

**Article 258** Amendment proposed.

That the word Service be inserted in place of the word “*administration*”.

Debate arising.

Question of the amendment proposed, put and agreed to.

**Sub Articles 258(a)(h) agreed to.**

**258(i)** Amendment proposed.

That the word “*equally*” be deleted.

Debate arising.

Question of the amendment proposed, put and agreed to.

**258(j)** Agreed to.

**Sub Articles 259(1),(2) and (3)** – Agreed to

**259(4)** Amendment proposed.

That a new Sub Article (4) be inserted at the end of the Article to read as follows.

(a) There shall be a Secretary to the Public Service Commission who shall be appointed by the President on the recommendation of the Public Service Commission and with the approval of the National Council.

(b) The Secretary of the Public Service Commission shall hold office for a term of five years and is eligible for re-appointment for only one further term.

Debate arising.

Question of the amendment proposed, put and agreed to.

**260(1)** Agreed to

**(1)(a)** Agreed to

**(1)(b)** Amendment proposed

That the word “**and**” appearing on the second line immediately after the word “*organisation*” be deleted.

Debate arising.

Question of the amendment proposed, put and agreed to.

**Sub Articles 260(c) to (e) – Agreed to**

**260(f)** Amendment proposed.

That the sub article should read as follows.

**“to review the terms and conditions of service, code of regulations, to develop human resource in the public service and make recommendations on them to the Government”.**

**Debate arising**

Question of the amendment proposed, put and agreed to.

**260(g)** Agreed to

**260(h)** Agreed to.

**260(i)** Amendment proposed.

*That a new sub article (i) be inserted at the end of the sub article to read as follows.*

***“(i) to hear and determine appeals from devolved units”.***

***Debate arising.***

Question of the amendment proposed, put and agreed to.

**260(j)** Amendment proposed.

That a new sub article (j) be inserted at the end of the Article to read as follows

***“(j) Abatement of pensions benefits for persons who have served in the public service”.***

Debate arising.

Question of the amendment proposed, put and agreed to.

**260(1A)** Amendment proposed.

That the Sub Article should read as follows.

**“Notwithstanding the provisions of Clause (1) the Commission may, subject to such conditions as it may think fit, by directions in writing, delegate any of its powers and functions under the Article to any one or more of its members or to any officer, body or authority in the Public Service”.**

However Delegate Peter Odoyo-No.156 was of contrary opinion.

He was of the opinion that Public Service Commission should only delegate its powers with the approval of the head of government.

**260(2)** Agreed to.

**261(1)** Amendment proposed.

That the words **“Public Service”** should be inserted immediately before the word **“Commission”** appearing at the end of the Sub Article and wherever else it appears in the Chapter.

Debate arising.

***Question of the amendment proposed, put and agreed to.***

Further amendment proposed.

That Sub Articles **261(1), (2)** and **262(1)** should be harmonized.

Debate arising

***Question of the amendment proposed, put and agreed to.***

***(Harmonizing should be done during drafting).***

**262(2)** Agreed to.

**263** Agreed to.

**MIN. 70/2003: ADJOURNMENT**

The Convenor adjourned the meeting at 4.55 p.m.

**Confirmed:**.....  
**(CONVENOR)**

**Date:**.....

**MINUTES OF THE THIRTEENTH SITTING OF THE PUBLIC FINANCE,  
PUBLIC SERVICE, LEADERSHIP AND INTEGRITY TECHNICAL  
WORKING GROUP (H) HELD ON 23<sup>RD</sup> SEPTEMBER 2003 IN COMMITTEE  
TENT NO. 8 AT 9.45 A.M.**

---

**PRESENT**

<b><u>Name</u></b>	<b><u>Delegate No.</u></b>
1. Billow Adan Kerrow	<b>Convenor</b>
2. Abdu Bahari Ali	012
3. Abdullahi Haji Mohamed	250
4. Ann Mululu	496
5. David Kuto	340
6. Farouk Said	229
7. Gilbert Omondi	625
8. Kamla Sikand	500
9. Mariamu Ntausian L.	345
10. Martin N. Wambora	202
11. William N. Matheka	299
12. Noah Nondin Too Arap	197
13. Rose L. Owino	471
14. Fredrick R. Nderitu	302
15. Joseph Njalis Shuel	353
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20. James Omolo Kayila	407
21. Osili Adungo	394
22. Joseph K. Soi	374
23. Franklin K. Bett	213
24. Nyamunga Eric Opon	152
25. Chris Okemo	161
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28. James Bwatuti	628
29. Grace N. Nduyo	279
30. E. Mbau	099
31. Wekala M. Justus	610
32. Musa Sirma	190
33. Kituyi P. Sikoya	606
34. Peter Odoyo	156

35. Wycliffe Oparanya 170

**ABSENT WITH APOLOGY**

1. Beth Mugo 112

**ABSENT**

1. Omingo Magara 087  
2. John K. Njiraini 480  
3. Were Domtilla 616  
4. Kingori Mwangi 624  
5. Peter K. Nkoroi 278  
6. Rose Waruhiu 490  
7. Uhuru Kenyatta 049  
8. Anyang' Ny'ong'o 153  
9. David Mwiraria 136  
10. Ernest Kaitany 341  
11. Manu Chandaria 617  
12. Kilemi Mwiria 137  
13. Dennis Kodhe 585  
14. Moses M. Wekesa 597  
15. Peter Kenneth 048

**OBSERVERS**

1. Muga A. N. Owira 115  
2. Khatib Hudson 038  
3. Francis A. Njiri 192  
4. Betty Maina 092  
5. Wairimu Mungai 148

**IN ATTENDANCE**

1. Mr. Isaac Lenaola - Rapporteur  
2. Pastor Zablon Ayonga - Rapporteur  
3. Ms Noor Awadh - Programme Assistant  
4. Ms Alyne Mariaria - Programme Assistant  
5. Mrs M. Nzioka - Drafts Person  
6. Mrs C. W. Munga - Principal Clerk

**MIN. 71/2003: CONFIRMATION OF MINUTES**

Minutes of the Twelfth Sitting held on 22<sup>nd</sup> September, 2003 were confirmed by the Members present and signed by the Convenor.

**MIN. 72/2003: MATTERS ARISING**

*The Committee resolved that the names of Observers should be part of the attendance list in the Minutes.*

The Committee further resolved that it will not deliberate on Kenya Police Service because the Committee on Defence and National Security is debating on the topic.

**Under Minute No. 69/2003**, the amendment on the title “*public administration*” should read “*public service*” and the word “*administration*” be replaced by the word “*service*” wherever the words “*pubic administration*” appear in the Chapter.

**Article 260(i)** The Committee resolved that the Draftsperson should reword the amendment so that the appeals which should be heard and determined can be clearly spelt out.

**Article 260(j)** The Amendment should read as follows:  
“*Abatement of pensions benefits for persons who have served in the public service*”.

**MIN. 73/2003: INTERPRETATION**

*Article 270: The Committee deliberated at length on the definition of a public officer and resolved that the secretariat should reword the definition after which further deliberation on it will commence.*

**MIN. 74/2003: TEA BREAK**

The Committee had a Tea Break from 10.30 a.m. to 11.00 a.m.

**MIN. 75/2003: PUBLIC FINANCE AND REVENUE MANAGEMENT (CHAPTER THIRTEEN)**

Betty Maina – Director, Policy solutions and Dennis R.B. Kabaara – Chief Executive – Institute of Economic Affairs gave the Committee expert advice on the Chapter.

*The Committee was informed that Sections in the current Constitution which deal with Public Finance Management include the following:-*

Section 48 - **This article provides for the introduction of money bills into parliament – Bills must be presented by the President via a Minister.**

**Section 99:** provides for the establishment of the consolidated fund and other funds for the deposit of all moneys raised for the purposes of the government.

**Section 100:** provides for the preparation of the estimates by the Minister of Finance and presentation to Parliament. On receipt of parliamentary approval, he prepares an Appropriation Bill, which provides authority for withdrawals from the Consolidated Fund.

**Section 101:** provides for Vote on Account; where Parliament gives approval for 50% of budget pending debate and approval before Appropriation Act comes into effect. This must be done by the end of parliamentary day on 26<sup>th</sup> June.

**Section 102:** provides for the establishment of contingencies funds with authority of Parliament.

**Section 103:** provides that **debt** is a constitutional charge – a charge on the Consolidated Fund.

**Section 104:** provides that salaries and related allowances of constitutional officers are a charge on the consolidated fund.

**Section 105:** Establishes the Controller and Auditor General's Office. The CAG needs to ensure that withdrawals from the consolidated fund have parliamentary authority and that money was spent as requested and as per authority given.

#### **Various Acts which deal with Public Funds include:-**

- Exchequer and Audit Act – Cap 412 – which provides that the Minister for Finance has management of the Consolidated Fund, supervision, control and direction of all matters relating to financial affairs in the country.
- Paymaster General's Act – Cap 413: Establishes the paymaster who issues money to ministries following parliamentary approval of the budget.
- Internal Loans Act – Cap 420: Authorizes the government to borrow money in Kenya.
- External Loans and Credit Act – Cap 422: Provides authority to borrow externally to finance approved estimates and to provide to parliament detailed reports including the parties involved, circumstances leading to the transaction, amount of transaction and currency, and terms and conditions.
- Customs and Excise Act – Cap 472
- Value Added Tax Act – Cap 476
- Income Tax Act – Cap 470
- Kenya Revenue Act – Cap 469
- Central Bank of Kenya Act – Cap 491
- Provisional Collection Taxes and Duties Act – Cap 415

All these sections confer upon government authority to **tax, borrow and spend**. The constitution does not prescribe principles and other guidance to government in the discharge of this authority.

Comments on Articles in the draft constitution are as follows:

**Article 243** – It is noted that there aren't explicit principles guiding public expenditure and observation of equity of burden.

**Article 244 on Imposition of Tax:** the Executive has in the past abused tax waivers a lot. The rationale for discretion is not widely shared. The criteria for discretion should be outlined in legislation.

Additional section 244(4) is required to read as follows:- *“Parliament will enact legislation to govern discretion on tax waivers and that specifies limits for which parliamentary approval is required prior to granting”*.

**Article 246 Withdrawals from the Consolidated Fund:** Article 253 introduces the post of a budget controller. This is achieved by splitting the functions of the Controller and Auditor General in present constitution.

However, 20% of the budget is too low an amount for the Executive to function properly.

**Article 246 on Financial Year Estimates** will need to be harmonized with eventual decision on the structure of government – whether presidential or parliamentary. In addition the sections on presentation of Bills in the House need to be reviewed to provide direction on the presentation of money bills in the House.

**Provision for amendment of money bills: Section 246b 3** suggests that parliament may amend the forward plan presented by the Minister. It is silent on whether amendment powers also extend to the estimates and should it do so, what guidelines should guide this.

**Article 249 - Power of the Government to borrow:** In order to meet the programmes approved by parliament, the government may need to borrow from internal and external sources. Kenyans are concerned about the level of government borrowing.

**Article 253 - Controller of the Budget:** The Controller should have power to stop unlawful expenditure or that for which authority has been received without full disclosure.

***Proposal:** The Controller of the Budget shall have authority to stop any expenditure during the financial year if he/she is convinced that it does not comply with the authority of parliament.*

**Article 254- On the Auditor General:** The Constitution should improve timelines and avoid late audits.

**MIN. 76/2003: ADJOURNMENT**

*The Convenor adjourned the Sitting at 1.00 p.m.*

**AFTERNOON SITTING**

The Committee reconvened at 2.35 p.m.

**PRESENT**

	<b>Convenor</b>
1. Billow Adan Kerrow	012
2. Abdu Bahari Ali	496
3. Ann Mululu	340
4. David Kuto	229
5. Farouk Said	625
6. Gilbert Omondi	500
7. Kamla Sikand	202
8. Martin N. Wambora	299
9. William N. Matheka	197
10. Noah Nondin Too Arap	471
11. Rose L. Owino	302
12. Fredrick R. Nderitu	353
13. Joseph Njalis Shuel	589
14. Daniel Njoroge	408
15. Judith A. Nam	415
16. Dache John Pesa	410
17. Elphas Ombura	407
18. James Omolo Kayila	394
19. Osili Adungo	152
20. Nyamunga Eric Opon	161
21. Chris Okemo	156
22. Peter Odoyo	446
23. Francis Wangara	154
24. Henry Obwocha	279
25. Grace N. Nduyo	099
26. E. Mbau	480
27. John K. Njiraini	606
28. Kituyi P. Sikoya	345
29. Mariamu Ntausian L.	610
30. Wekala M. Justus	

**ABSENT WITH APOLOGY**

1. Beth Mugo	112
--------------	-----

**ABSENT**

1. Abdullahi Haji Mohamed	250
2. Joseph K. Soi	374
3. Franklin K. Bett	213
4. Omingo Magara	087
5. Were Domtilla	616

6. James Bwatuti	628
7. Wycliffe Oparanya	170
8. Anyang' Ny'ong'o	153
9. Kingori Mwangi	624
10. Musa Sirma	190
11. Peter K. Nkoroi	278
12. Rose Waruhiu	490
13. Uhuru Kenyatta	049
14. David Mwiraria	136
15. Ernest Kaitany	341
16. Manu Chandaria	617
17. Kilemi Mwiria	137
18. Dennis Kodhe	585
19. Moses M. Wekesa	597
20. Peter Kenneth	048

### **OBSERVERS**

1. Muga A. N. Owira	115
2. Francis A. Njiri	192
3. Victoria Mambo	091
4. James Kamau	107
5. Khatib Hudson	038

### **IN ATTENDANCE**

1. Mr. Isaac Lenaola	-	Rapporteur
2. Pastor Zablon Ayonga	-	Rapporteur
3. Ms Noor Awadh	-	Programme Assistant
4. Ms Alyne Mariaria	-	Programme Assistant
5. Mrs M. Nzioka	-	Drafts Person
6. Mrs C. W. Munga	-	Principal Clerk

### **MIN. 77/2003: PUBLIC FINANCE AND REVENUE MANAGEMENT (CHAPTER THIRTEEN)**

*Dennis R.B. Kabaara continued with his presentation on the above-mentioned topic.*

The Committee was informed that:-

- The Controller and Auditor-General assist the Legislature in its supervisory function through annual audit reports. However these reports are procedural and do not examine “*value for money*”. Also there is no sanction for late reports.
- The Exchequer and Audit Act and Kenya Revenue Authority Act should be harmonized. Exchequer and Audit Act specifically absolves any officer of liability

arising from contracts concluded on behalf of the Government while Kenya Revenue Authority Act holds personally liable any officer who indulges in irregular activities.

- New Zealand has a six page Constitution. Only two sections of that Constitution deal with Public Finance issues namely:
  - Section 21, which states that Legislature shall not pass any money bill that has not been recommended by the executive (crown).
  - Section 22, which states that Executive (crown) shall not levy tax, raises a loan or spend money without an Act of Parliament.
- Parliament should be able to enact legislation dealing with collection of tax.
- Public Finance Chapter needs to emphasize “net worth” and “intergenerational equity” principles to make the forth coming Constitution affordable.
- The Draft Constitution has brought in new costs to the government. The Chapter dealing with legislature proposes a Bicameral House that will lead to an increase in the number of Members of Parliament. The Chapter dealing with the Executive has proposed the office of Prime Minister and two Deputies. All these additions have financial implications.

The Committee deliberated on the presentations and sought clarification on various issues.

The Members noted that all state corporations including those which had enjoyed various exemptions are today audited by the Controller and Auditor General.

Members further noted that in the printed estimates Parliament can only reduce funds for an item by one Kenya Pound.

Members also noted that Parliament has the ability to amend the Finance Bill once it is on the floor of the House.

**MIN. 78/2003: ADJOURNMENT**

*The Convenor adjourned the meeting at 4.30 p.m.*

**Confirmed:**.....  
(CONVENOR)

**Date:**.....

**MINUTES OF THE FOURTEENTH SITTING OF THE PUBLIC FINANCE,  
PUBLIC SERVICE, LEADERSHIP AND INTEGRITY TECHNICAL  
WORKING GROUP (H) HELD ON 24<sup>TH</sup> SEPTEMBER 2003 IN COMMITTEE  
TENT NO. 8 AT 10.00 A.M.**

---

**PRESENT**

<b><u>Name</u></b>	<b><u>Delegate No.</u></b>
1. Billow Adan Kerrow	<b>Convenor</b>
2. Abdullahi Haji Mohamed	250
3. Abdu Bahari Ali	012
4. Ann Mululu	496
5. David Kuto	340
6. Farouk Said	229
7. Gilbert Omondi	625
8. Kamla Sikand	500
9. Martin N. Wambora	202
10. William N. Matheka	299
11. Noah Nondin Too Arap	197
12. Rose L. Owino	471
13. Joseph Njalis Shuel	353
14. Daniel Njoroge	589
15. Judith A. Nam	408
16. Dache John Pesa	415
17. Elphas Ombura	410
18. James Omolo Kayila	407
19. Osili Adungo	394
20. Joseph K. Soi	374
21. Franklin K. Bett	213
22. Nyamunga Eric Opon	152
23. Chris Okemo	161
24. Francis Wangara	446
25. Henry Obwocha	154
26. Grace N. Nduyo	279
27. Kituyi P. Sikoya	606
28. Were Domtilla	616
29. Moses M. Wekesa	597
30. Mariamu Ntausian L.	345
31. Musa Sirma	190
32. John K. Njiraini	480
33. Peter Odoyo	156
34. Wycliffe Oparanya	170

### **ABSENT WITH APOLOGY**

- |                        |     |
|------------------------|-----|
| 1. Beth Mugo           | 112 |
| 2. Fredrick R. Nderitu | 302 |

### **ABSENT**

- |                     |     |
|---------------------|-----|
| 1. James Bwatuti    | 628 |
| 2. E. Mbau          | 099 |
| 3. Wekala M. Justus | 610 |
| 4. Kingori Mwangi   | 624 |
| 5. Rose Waruhiu     | 490 |
| 6. Uhuru Kenyatta   | 049 |
| 7. Anyang' Ny'ong'o | 153 |
| 8. David Mwiraria   | 136 |
| 9. Manu Chandaria   | 617 |

### **OBSERVERS**

- |                       |     |
|-----------------------|-----|
| 1. Muga A. N. Owira   | 115 |
| 2. Khatib Hudson      | 038 |
| 3. Francis A. Njiri   | 192 |
| 4. Robert K. Kipkorir | 193 |

### **IN ATTENDANCE**

- |                         |   |                     |
|-------------------------|---|---------------------|
| 1. Mr. Isaac Lenaola    | - | Rapporteur          |
| 2. Pastor Zablon Ayonga | - | Rapporteur          |
| 3. Ms Noor Awadh        | - | Programme Assistant |
| 4. Ms Alyne Mariaria    | - | Programme Assistant |
| 5. Mrs M. Nzioka        | - | Drafts Person       |
| 6. Mrs C. W. Munga      | - | Principal Clerk     |

### **MIN. 79/2003: CONFIRMATION OF MINUTES**

Minutes of the Thirteenth Sitting held on 23<sup>rd</sup> September 2003 were confirmed by the Members present and signed by the Convenor.

### **MIN. 80/2003: MATTERS ARISING**

Under Min. No.72/2003, the Committee stated that the Articles dealing with Kenya Police Service have been transferred to the Defence and National Security Committee.

**Under Min. No.73/2003**, the Committee resolved that it would deliberate on Article 270 after the Secretariat comes up with the definition of a public officer.

### **MIN. 81/2003: PUBLIC FINANCE AND REVENUE MANAGEMENT (CHAPTER THIRTEEN)**

The Rapporteurs presented the Chapter.

**MIN. 82/2003: TEA BREAK**

The Committee had a Tea Break from 11.00 a.m. to 11.50 a.m.

**MIN. 83/2003: PUBLIC FINANCE AND REVENUE MANAGEMENT**

The Committee debated generally on the subject and noted that it needs expert advice from Kenya Revenue Authority on collection of taxes. It was resolved that the Commissioner of Customs will appear before the Committee to give the said advice.

**The members noted that:-**

- Taxation system in Kenya is very oppressive. Although the government has the power to impose taxes, no tax limits have been laid down in law. Standards should be set down to limit how much Kenyans should be taxed. The people at the grassroots should have power to sanction taxes.
- There is no system in place, which should check irregular expenditure. The office of the Controller and Auditor General should be split into two. One should be the office of the Auditor General who will concentrate on audit only. The other should be the office of the Controller of Budget who should control expenditure.
- Government should not run activities which can be performed by the citizens because this creates competition in business and economic activities between the government and the citizens.
- *The Draft Constitution has no provisions for the office of the Auditor General - Corporations.*

**MIN. 84/2003: ADJOURNMENT**

The Convenor adjourned the meeting at 12.45 p.m.

**Confirmed:**.....

(CONVENOR)

**Date:**.....

**MINUTES OF THE FIFTEENTH SITTING OF THE PUBLIC FINANCE, PUBLIC SERVICE, LEADERSHIP AND INTEGRITY TECHNICAL WORKING GROUP (H) HELD ON 25<sup>TH</sup> SEPTEMBER 2003 IN COMMITTEE TENT NO. 8 AT 2.40 P.M.**

---

**PRESENT**

<b><u>Name</u></b>	<b><u>Delegate No.</u></b>
1. Ann Mululu	496 (Ag. Convenor)
2. Abdullahi Haji Mohamed	250
3. Abdu Bahari Ali	012
4. David Kuto	340
5. Farouk Said	229
6. Gilbert Omondi	625
7. Kamla Sikand	500
8. Martin N. Wambora	202
9. William N. Matheka	299
10. Noah Nondin Too Arap	197
11. Rose L. Owino	471
12. Joseph Njalis Shuel	353
13. Daniel Njoroge	589
14. Judith A. Nam	408
15. Dache John Pesa	415
16. Elphas Ombura	410
17. James Omolo Kayila	407
18. Franklin K. Bett	213
19. Nyamunga Eric Opon	152
20. Chris Okemo	161
21. Francis Wangara	446
22. Henry Obwocha	154
23. Grace N. Nduyo	279
24. Kituyi P. Sikoya	606
25. Moses M. Wekesa	597
26. Mariamu Ntausian L.	345
27. John K. Njiraini	480
28. Peter Odoyo	156
29. Fredrick R. Nderitu	302
30. Wekala M. Justus	610
31. Musa Sirma	190

**ABSENT WITH APOLOGY**

1. Billow Adan Kerrow	<b>Convenor</b>
2. Beth Mugo	112
3. Anyang' Ny'ong'o	153
4. Manu Chandaria	617

### **ABSENT**

1. James Bwatuti	628
2. E. Mbau	099
3. Kingori Mwangi	624
4. Rose Waruhiu	490
5. Uhuru Kenyatta	049
6. David Mwiraria	136
7. Osili Adungo	394
8. Joseph K. Soi	374
9. Were Domtilla	616
10. Wycliffe Oparanya	170

### **OBSERVERS**

1. Muga A. N. Owira	115
2. Francis A. Njiri	192

### **IN ATTENDANCE**

1. Mr. Isaac Lenaola	-	Rapporteur
2. Pastor Zablon Ayonga	-	Rapporteur
3. Ms Noor Awadh	-	Programme Assistant
4. Ms Alyne Mariaria	-	Programme Assistant
5. Mrs M. Nzioka	-	Drafts Person
6. Mrs C. W. Munga	-	Principal Clerk

### **MIN. 85/2003: CONFIRMATION OF MINUTES**

Minutes of the Fourteenth Sitting held on 24<sup>th</sup> September, 2003 were confirmed by the Members present and signed by the Ag.Convenor Delegate Ann Mululu).

### **MIN. 86/2003: MATTERS ARISING**

**Under Min. No.80/2003**, the Committee was informed that the Secretariat had already drafted a definition of public officer for consideration by the delegates.

**Under Min. No.83/2003**, the Committee resolved that the following should appear before it at a later date to give expert advice on the chapter.

- Permanent Secretary – Treasury accompanied by the Financial Secretary, Director of Budget and any other officer who may assist him to respond to issues which will be raised by the Committee.
- Commissioner General-Kenya Revenue Authority.
- A Tax Consultant

- Controller and Auditor-General
- The Committee noted that there should be a provision for the people at the grassroots to apply sanctions to the government in the event of its failure to deliver services.

**MIN. 87/2003: KENYA CORRECTIONAL SERVICE PROPOSED DRAFT**

The Committee noted that the title to Article 267 is “*Establishment of Kenya Correctional Service*” while the title to Article 268 is “*Principles and Objects*”.

Article 267(1) Agreed to.

Article 267(2)(a) Agreed to.

*2(b) Amendment proposed that the words “Kenya Correctional Services” should read “Kenya Correctional Service”.*

Debate arising.

**Question of the Amendment proposed, put and agreed to.**

2(c) Amendment proposed

That amendment should read as follows:

***Regulating the functions of Kenya Correctional Services.***

- (3) The Committee resolved that this sub Article will be concluded when the Devolution Committee finalises its deliberations.

**Article 267** as amended, agreed to.

**Article 268(1)** Amendment proposed.

That the words “**in the Community**” appearing at the end of the Sub Article be deleted and the words “**within the society**” be inserted in place thereof.

**Debate arising.**

**Question of the amendment proposed, put and agreed to.**

2(a) Agreed to.

2(b) Amendment proposed.

***That the sub article be deleted.***

*Debate arising.*

**Question of the amendment proposed, put and agreed to.**

2(c) Agreed to.

2(d) Amendment proposed.

That the sub article should read as follows.

**“train its members to the highest possible standards of competence, on minimal use of force, integrity, the respect for human rights, fundamental freedoms, dignity and to recognize the duty of accountability to society”.**

**Debate arising.**

**Question of the amendment proposed, put and agreed to.**

**Article 269** Title amendment proposed

That the title should read as follows.

**“Establishment of the Office and appointment of Director-General of Kenya Correctional Service”.**

Debate arising.

**Question of the amendment proposed, put and agreed to.**

269(1) **Agreed to.**

(2) **Amendment proposed.**

That the Amendment should read as follows.

**“The Director General of the Kenya Correctional Service shall be appointed by the President on the advice of the Prime Minister after approval by the National Assembly”.**

**Debate arising.**

**Question of the amendment proposed, put and agreed to.**

3(a) Agreed to.

3(b) Amendment proposed.

That the sub article should read as follows.

**“has served in the Kenya Correctional Service and or has relevant experience in the management and administration of correctional service for at least ten years”.**

Debate arising.

Question of the amendment proposed, put and agreed to.

(4) Amendment proposed.

That the sub article be relocated to Article 267.

Debate arising.

Question on the amendment proposed, put and agreed to.

(5) Amendment proposed.

That the words **“but shall”** be deleted and the words **“and may”** be inserted in place thereof.

Debate arising.

Question of the amendment proposed, put and agreed to.

(6) Amendment proposed.

That the words **“responsible minister”** be deleted and the words **“minister responsible for the service”** be inserted in place there of.

Debate arising.

Question of the amendment proposed, put and agreed to.

Further amendment proposed.

That the sub article be relocated to Article 267.

Debate arising

Question of the amendment proposed, put and agreed to.

Amendment proposed on Article 269.

That the sub articles in Article 269 be renumbered in order to cater for the relocated sub articles.

Debate arising.

Question of the amendment proposed, put and agreed to.

Article 270 The Committee deliberated on the definition of a public officer and resolved that it will conclude on the subject after Devolution committee finalizes its deliberations.

**MIN.NO.88/2003: ADJOURNMENT**

The Acting Convenor (Delegate Ann Mululu) adjourned the meeting at 4.45 p.m.

**Confirmed:**.....  
(CONVENOR)

**Date:**.....

**MINUTES OF THE SIXTEENTH SITTING OF THE PUBLIC FINANCE, PUBLIC SERVICE, LEADERSHIP AND INTEGRITY TECHNICAL WORKING GROUP (H) HELD ON 26<sup>TH</sup> SEPTEMBER 2003 IN COMMITTEE TENT NO. 8 AT 9.45 P.M.**

---

**PRESENT**

<b><u>Name</u></b>	<b><u>Delegate No.</u></b>
1. Ann Mululu	496 (Ag. Convenor)
2. Abdullahi Haji Mohamed	250
3. David Kuto	340
4. Farouk Said	229
5. Gilbert Omondi	625
6. Kamla Sikand	500
7. Martin N. Wambora	202
8. William N. Matheka	299
9. Rose L. Owino	471
10. Joseph Njalis Shuel	353
11. Daniel Njoroge	589
12. Judith A. Nam	408
13. Dache John Pesa	415
14. Elphas Ombura	410
15. James Omolo Kayila	407
16. Franklin K. Bett	213
17. Nyamunga Eric Opon	152
18. Francis Wangara	446
19. Grace N. Nduyo	279
20. Kituyi P. Sikoya	606
21. Mariamu Ntausian L.	345
22. Peter Odoyo	156
23. Fredrick R. Nderitu	302
24. Musa Sirma	190
25. Osili Adungo	394
26. Joseph K. Soi	374

**ABSENT WITH APOLOGY**

1. Billow Adan Kerrow	<b>Convenor</b>
2. Abdu Bahari Ali	012
3. Wekala M. Justus	610
4. John K. Njiraini	480
5. Moses M. Wekesa	597
6. Beth Mugo	112
7. Anyang' Ny'ong'o	153
8. Noah Nondin Too Arap	197

9. Manu Chandaria 617

**ABSENT**

1. Henry Obwocha	154
2. Chris Okemo	161
3. James Bwatuti	628
4. E. Mbau	099
5. Kingori Mwangi	624
6. Rose Waruhiu	490
7. Uhuru Kenyatta	049
8. David Mwiraria	136
9. Were Domtilla	616
10. Wycliffe Oparanya	170

**OBSERVERS**

1. Muga A. N. Owira	115
2. Francis A. Njiri	192

**IN ATTENDANCE**

1. Mr. Isaac Lenaola	-	Rapporteur
2. Pastor Zablon Ayonga	-	Rapporteur
3. Ms Noor Awadh	-	Programme Assistant
4. Ms Alyne Mariaria	-	Programme Assistant
5. Mrs. M. Nzioka	-	Drafts Person
6. Mrs C. W. Munga	-	Principal Clerk

**MIN. 89/2003: CONFIRMATION OF MINUTES**

Minutes of the Fifteenth Sitting held on 25<sup>th</sup> September 2003 were confirmed by the Members present and signed by the Ag.Convenor (Delegate Ann Mululu).

**MIN. 90/2003: MATTERS ARISING**

Under Min. No.87/2003, the delegates noted that the amendment in Article 267 2(a) of Kenya Correctional Service proposed draft should read as follows:

*“establishing adequate mechanisms for accountability and good governance of the Kenya Correction Service”.*

**MIN. 91/2003: PERMANENT SECRETARIES**

**Article 181(2)** The Committee debated at length on the use of the term Permanent Secretary. Some delegates were of the opinion that the title should be changed because the holders of the permanent secretaries’ offices have no

security of tenure. However, it was resolved that the title should be retained.

The Members debated at length on the use of the title “*Head of the Civil Service*” and it resolved that the holder of the office should be referred to as the Chief Secretary.

**Article 181 (4)** Amendment proposed.

That the sub article be deleted and that a new sub article (4) be inserted in place thereof to read as follows.

**“The Permanent Secretary in the Office of the Prime Minister shall be the Chief Secretary”.**

Debate arising.

Question of the amendment proposed, put and agreed to.

**MIN. 92/2003: APPOINTMENT OF PUBLIC OFFICERS**

Motion made and question proposed.

“That the Committee rescinds its earlier decision on Article 262 (2)”.

*Delegate Franklin Bett – No.213*)

Debate arising.

Question put and agreed to.

Debate on Article 262(2) resumed.

Amendment proposed.

That the words “*and retired presidents*” be inserted at the end of the sub article.

Debate arising.

Question of the amendment proposed put and agreed to.

Article 262 as amended – agreed to.

**MIN. 93/2003: ANY OTHER BUSINESS**

The Committee was informed that one of the delegates had to present a report in the Plenary on the deliberations of the Committee because the Convenor was absent with apology. It was resolved that the Ag. Convenor – Delegate Ann Mululu would make the said presentation.

The Committee was further informed that each Committee had to send a delegate report on its deliberations in a meeting organized by the Media on Monday 29<sup>th</sup> September, 2003.

The Committee resolved that the Ag. Convenor – Delegate Ann Mululu would report to the Media in the said meeting on the Committee’s progress, amount of work covered, the way forward and anything else, which the media wishes to know about the Committee.

The Members also resolved that in every Chapter a short Summary should be prepared and distributed to Committee Members for cross-referencing.

**MIN. 94/2003:           ADJOURNMENT**

The Ag. Convenor (Delegate Ann Mululu) adjourned the meeting at 11.00 a.m.

**Confirmed:**.....  
**(CONVENOR)**

**Date:**.....

**MINUTES OF THE SEVENTEENTH SITTING OF THE PUBLIC FINANCE, PUBLIC SERVICE, LEADERSHIP AND INTEGRITY TECHNICAL WORKING GROUP (H) HELD ON 13<sup>TH</sup> JANUARY, 2004 IN COMMITTEE TENT NO. 8 AT 11.30 A.M.**

---

**PRESENT**

<b><u>Name</u></b>	<b><u>Delegate No.</u></b>
1. Billow Adan Kerrow	<b>Convenor</b>
2. Abdu Bahari Ali	012
3. Ann Mululu	496
4. Beth Mugo	112
5. Noah Nondin Too Arap	197
6. Abdullahi Haji Mohamed	250
7. David Kuto	340
8. Farouk Said	229
9. Kamla Sikand	500
10. Martin N. Wambora	202
11. William N. Matheka	299
12. Rose L. Owino	471
13. Joseph Njalis Shuel	353
14. Daniel Njoroge	589
15. Judith A. O. Nam	408
16. Dache John Pesa	415
17. Elphas Ombura	410
18. James Omolo Kayila	407
19. Franklin K. Bett	213
20. Francis Wangara	446
21. Grace N. Nduyo	279
22. Kituyi P. Sikoya	606
23. Fredrick R. Nderitu	302
24. Musa Sirma	190
25. Osili Adungo	394
26. Chris Okemo	161
27. James Bwatuti	628
28. Rose Waruhiu	490
29. Were Domtilla	616
30. Wycliffe Oparanya	170
31. Mariamu Ntausian L.	345

**ABSENT**

1. Gilbert Omondi	625
2. Nyamunga Eric Opon	152
3. Peter Odoyo	156

4. Joseph K. Soi	374
5. John K. Njiraini	480
6. Moses M. Wekesa	597
7. Anyang' Ny'ong'o	048
8. Manu Chandaria	617
9. Kiremi Mwiria	137
10. Sehmi Rupinda	544
11. Henry Obwocha	154
12. E. Mbau	099
13. Kingori Mwangi	624
14. David Mwiraria	136
15. Gideon Ole Konchella	174

### **OBSERVERS**

1. Kevin O.W. Wanyama	177
2. Khatib Hudson	038
3. Muga A.N. Owira	115

### **IN ATTENDANCE**

1. Pastor Zablon Ayonga	-	Rapporteur
2. Ms Noor Awadh	-	Programme Assistant
3. Ms Keziah Kamau	-	Programme Assistant
4. Mrs C. W. Munga	-	Clerk

### **MIN. 95/2004: CONFIRMATION OF MINUTES**

Minutes of the Sixteenth Sitting held on 26<sup>th</sup> September, 2003 were confirmed by the Members present and signed by the Convenor.

### **MIN. 96/2004: ADOPTION OF THE INTERIM REPORT OF THE COMMITTEE**

Adoption of the Interim Report of Technical Working Committee 'H' was deferred to a later date.

### **MIN. 97/2004: ANY OTHER BUSINESS**

The report of the Rapporteur General to the National Constitutional Conference on deliberations of August 18 to September 26 2003 was distributed to all Members. They were requested to read the pages that contain Public Finance, Leadership and Integrity issues and ensure that what is contained in the report is a true record of the Committee proceedings.

The Members resolved that the Secretariat should urgently organize for appearance of resource persons who are expected to brief the Committee on topics contained in Chapter thirteen of the draft report.

**MIN.98/2004:           ADJOURNMENT**

The Convenor adjourned the meeting at 12.20 p.m.

**Confirmed:**.....  
**(CONVENOR)**

**Date:**.....

**MINUTES OF THE EIGHTEENTH SITTING OF THE PUBLIC FINANCE, PUBLIC SERVICE, LEADERSHIP AND INTEGRITY TECHNICAL WORKING GROUP (H) HELD ON 14<sup>TH</sup> JANUARY, 2004 IN COMMITTEE TENT NO. 8 AT 9.45 A.M.**

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**PRESENT**

<b><u>Name</u></b>	<b><u>Delegate No.</u></b>
1. Billow Adan Kerrow	<b>Convenor</b>
2. Abdu Bahari Ali	012
3. Ann Mululu	496
4. Noah Nondin Too Arap	197
5. Abdullahi Haji Mohamed	250
6. David Kuto	340
7. Farouk Said	229
8. Kamla Sikand	500
9. Martin N. Wambora	202
10. William N. Matheka	299
11. Rose L. Owino	471
12. Joseph Njalis Shuel	353
13. Daniel Njoroge	589
14. Judith A. O. Nam	408
15. Dache John Pesa	415
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18. Franklin K. Bett	213
19. Francis Wangara	446
20. Grace N. Nduyo	279
21. Kituyi P. Sikoya	606
22. Musa Sirma	190
23. Osili Adungo	394
24. Chris Okemo	161
25. Rose Waruhiu	490
26. Were Domtilla	616
27. Wycliffe Oparanya	170
28. Gilbert Omondi	625
29. Nyamunga Eric Opon	152
30. Mariamu Ntausian L.	345
31. Joseph K. Soi	374
32. Henry Obwocha	154
33. John K. Njiraini	480

**ABSENT**

1. Beth Mugo	112
2. James Bwatuti	628
3. Peter Odoyo	156
4. Moses M. Wekesa	597
5. Anyang' Ny'ong'o	048
6. Manu Chandaria	617
7. Kiremi Mwiria	137
8. Sehmi Rupinda	544
9. E. Mbau	099
10. Kingori Mwangi	624
11. David Mwiraria	136
12. Gideon Ole Konchella	174

**ABSENT WITH APOLOGIES**

1. Fredrick R. Nderitu	302
2. Justice Isaac Lenaola	571

**OBSERVERS**

1. Kevin O.W. Wanyama	177
2. Khatib Hudson	038
3. Muga A.N. Owira	115
4. Fatma Hyder	045

**IN ATTENDANCE**

1. Pastor Zablon Ayonga	-	Rapporteur
2. Ms Noor Awadh	-	Programme Assistant
3. Ms Kezia Kamau	-	Programme Assistant
4. Mrs C. W. Munga	-	Clerk

**MIN. 99/2004: CONFIRMATION OF MINUTES**

Minutes of the Seventeenth Sitting held on 13<sup>th</sup> January, 2004 were confirmed by the Members present and signed by the Convenor.

**MIN. 100/2004: ADOPTION OF THE INTERIM REPORT OF THE COMMITTEE**

The Interim Report of Technical Working Committee "H" was adopted with minor amendments. The Members noted that Article 259 4(i) should read as follows:-

*“There shall be a Chief Executive who shall be Secretary to the Commission and who shall be appointed by the President on the recommendation of the Public Service Commission and with the approval of the National Assembly”.*

**MIN. 101/2004      ADOPTION OF DAILY SUMMARY OF ISSUES**

Members deliberated on the Daily Summary of issues and adopted it with minor amendments.

**MIN. 102/2004:      MATTERS ARISING**

**Under Min.No.96/2004**, the Members noted that the Convenor had adjourned the Committee early to give delegates time to read the Committee’s interim report.

**MIN. 103/2004:      PUBLIC FINANCE AND REVENUE MANAGEMENT**

- Article 243**
- (a) Deferred for further discussion.
  - (b) Agreed to.
  - (c) Amendment proposed.

That the words “*and communities*” be inserted at the end of the sub article.

Debate arising.

**Question of the amendment proposed, put and agreed to.**

(d) Amendment proposed that the words “*provincial, district and local levels of government*” appearing on the second and the third line be deleted and the words “*devolved levels of government*” be inserted in place there of.

**Debate arising.**

Question of the amendment proposed put and agreed to.

- (e) **Agreed to.**
- (f) Agreed to.

**MIN. 104/2004:      ANY OTHER BUSINESS**

The Convenor informed Members that he would be away until Tuesday 20<sup>th</sup> January 2004. It was resolved that during his absence, Delegate Chris Okemo would be the Acting Convenor.

**MIN. 105/2004:      ADJOURNMENT**

The Convenor adjourned the meeting at 12.48 p.m.

**Confirmed:**.....  
(CONVENOR)

**Date:**.....

**MINUTES OF THE NINETEENTH SITTING OF THE PUBLIC FINANCE, PUBLIC SERVICE, LEADERSHIP AND INTEGRITY TECHNICAL WORKING GROUP (H) HELD ON 15<sup>TH</sup> JANUARY, 2004 IN COMMITTEE TENT NO. 8 AT 9.45 A.M.**

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**PRESENT**

<b><u>Name</u></b>	<b><u>Delegate No.</u></b>
1. Chris Okemo	161 (Ag. Convenor)
2. Abdu Bahari Ali	012
3. Ann Mululu	496
4. Noah Nondin Too Arap	197
5. Abdullahi Haji Mohamed	250
6. David Kuto	340
7. Farouk Said	229
8. Kamla Sikand	500
9. Martin N. Wambora	202
10. Rose L. Owino	471
11. Joseph Njalis Shuel	353
12. Daniel Njoroge	589
13. Judith A. O. Nam	408
14. Dache John Pesa	415
15. Elphas Ombura	410
16. James Omolo Kayila	407
17. Franklin K. Bett	213
18. Francis Wangara	446
19. Grace N. Nduyo	279
20. Musa Sirma	190
21. Osili Adungo	394
22. Rose Waruhiu	490
23. Were Domtilla	616
24. Wycliffe Oparanya	170
25. Gilbert Omondi	625
26. Nyamunga Eric Opon	152
27. Mariamu Ntausian L.	345
28. Joseph K. Soi	374
29. Henry Obwocha	154
30. Beth Mugo	112
31. Kiremi Mwiria	137
32. Moses M. Wekesa	597
33. Fredrick R. Nderitu	302
34. James Bwatuti	628

**ABSENT**

1. Peter Odoyo	156
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2. Anyang' Ny'ong'o	048
3. Sehmi Rupinda	544
4. E. Mbau	099
5. Kingori Mwangi	624
6. David Mwiraria	136
7. Gideon Ole Konchella	174
8. John K. Njiraini	480

### **ABSENT WITH APOLOGIES**

1. Billow Adan Kerrow	<b>Convenor</b>
2. William N. Matheka	299
3. Kituyi P. Sikoya	606

### **OBSERVERS**

1. Khatib Hudson	038
2. Muga A.N. Owira	115
3. Cleophas Nyangiri	159

### **IN ATTENDANCE**

1. Justice Isaac Lenaola	-	Rapporteur
2. Pastor Zablon Ayonga	-	Rapporteur
3. Ms Noor Awadh	-	Programme Assistant
4. Ms Keziah Kamau	-	Programme Assistant
5. Mrs C. W. Munga	-	Clerk

#### **MIN. 106/2004: CONFIRMATION OF MINUTES**

Minutes of the Eighteenth Sitting held on 14<sup>th</sup> January, 2004 were confirmed by the Members present and signed by the Ag. Convenor (Delegate Chris Okemo).

#### **MIN. 107/2004: ADOPTION OF DAILY SUMMARY OF ISSUES**

Members deliberated on the Daily Summary of issues for the Seventeenth Sitting of the Committee and adopted it with amendments.

#### **MIN. 108/2004: PUBLIC FINANCE AND REVENUE MANAGEMENT**

Title – Amendment proposed that the words “*and revenue management*” be deleted so that the title reads as follows: “*Public Finance*”.

**Further amendment proposed that the words “*and revenue management*” be deleted wherever they exist in the Chapter.**

#### **Article 244**

- (1) Agreed to (subject to the decision reached by the Devolution Committee on Taxation).
- (2) Amendment proposed that the word “*by*” appearing on the second line be deleted and the words “*and on such terms and conditions as shall be set out in*” be inserted in place thereof.

Debate arising.

Question of the amendment proposed, put and agreed to (subject to the decision reached by Devolution Committee on Taxation).

- (3) Amendment proposed

That the sub-clause be deleted.

Debate arising.

Question of the amendment proposed, put and agreed to.

Further amendment proposed.

That a new sub article be inserted at the end of the article to read as follows: “*the tax imposed should not exceed 30% of the Gross Domestic Product*”.

Debate arising.

Question of the amendment proposed, put and negatived.

#### **Article 245**

Amendment proposed that a new Sub Article (1) be inserted at the beginning of the Article to read as follows:-

- (1) **There is established a fund to be known as the Consolidated Fund.**

Debate arising.

Question of the amendment proposed, put and agreed to.

Further amendment proposed that the other sub-articles be renumbered.

Debate arising.

Question of the amendment proposed, put and agreed to.

- (2) Amendment proposed

*That the letter “a” appearing on the third line be deleted and the word “the” be inserted in place thereof.*

Debate arising.

Question of the amendment proposed, put and agreed to.

(3) Amendment proposed

***That the number “(1)” appearing on the first line be deleted and the number “(2)” be inserted in place thereof.***

***Debate arising.***

***Question of the amendment proposed, put and agreed to.***

***(245 (3)(a) Agreed to***

***245 (3)(b) Amendment proposed***

***That the sub-article should read as follows:***

***“that may, under an Act of Parliament, be retained by the department and other levels of Government that received them for the purpose of defraying the expenses of that department or level of government”.***

***Debate arising.***

***Question of the amendment proposed, put and agreed to.***

***Article 245 – as amended, agreed to.***

***Article 246 (1)***

***(6) Agreed to***

***(7) Agreed to***

***(2) Agreed to***

***(3) Agreed to***

***(4) Amendment proposed that the sub-article should***

***read as follows:***

***“If Parliament is satisfied that the Appropriation Act in respect of any financial year will not come into operation by the beginning of that financial year, Parliament may, subject to this article authorize the controller of budget to issue moneys from the Consolidated Fund (not exceeding fifty percent of the budget of the previous year) for the purpose of meeting expenditure necessary to carry on the services of the Government in respect of the period expiring four months from the beginning of the financial year, or the coming into force of the Appropriation Act, which ever is earlier.***

***Debate arising.***

***Question of the amendment proposed, put and agreed to.***

*Article 246 as amended agreed to.*

*Article 246(A) agreed to.*

**MIN. 109/2004: ANY OTHER BUSINESS**

The Committee resolved that a copy of the report made by the Defence and National Security Committee on Kenya Police Service Article should be availed to it.

The Committee further resolved that there should be a joint sitting of Committee “H” and Defence and National Security Committee to harmonize the proposed amendments on Kenya Police Service Articles.

The Committee also resolved that Resource Persons Betty Maina and Dennis Kabaara should appear before it at a later date so that their views can be accommodated in the proposed amendments.

The Committee decided that Delegate John Njiraini should attend the Friday 16, 2004 sitting in order to move his amendments on Public Finance Chapter. The Secretariat was asked to inform him about it.

**MIN. 110/2004: ADJOURNMENT**

The Ag. Convenor (Delegate Chris Okemo) adjourned the meeting at 1.15 p.m.

**AFTERNOON SITTING**

The Committee resumed at 2.30 p.m.

**PRESENT**

1. Chris Okemo	161 (Ag. Convenor)
2. Abdu Bahari Ali	012
3. Ann Mululu	496
4. Beth Mugo	112
5. Noah Nondin Too Arap	197
6. Abdullahi Haji Mohamed	250
7. David Kuto	340
8. Farouk Said	229
9. Kamla Sikand	500
10. Martin N. Wambora	202
11. Rose L. Owino	471
12. Joseph Njalis Shuel	353
13. Daniel Njoroge	589
14. Judith A. O. Nam	408

15. Dache John Pesa	415
16. Elphas Ombura	410
17. James Omolo Kayila	407
18. Franklin K. Bett	213
19. Francis Wangara	446
20. Grace N. Nduyo	279
21. Kituyi P. Sikoya	606
22. Musa Sirma	190
23. Osili Adungo	394
24. Were Domtilla	616
25. Wycliffe Oparanya	170
26. Mariamu Ntausian L.	345
27. Gilbert Omondi	625
28. Nyamunga Eric Opon	152
29. Peter Odoyo	156
30. Joseph K. Soi	374
31. Moses M. Wekesa	597

**ABSENT WITH APOLOGY:**

1. Billow Adan Kerrow	<b>Convenor</b>
2. William N. Matheka	299
3. Fredrick R. Nderitu	302
4. Kiremi Mwiria	137

**ABSENT**

1. James Bwatuti	628
2. Rose Waruhiu	490
3. John K. Njiraini	480
4. Anyang' Ny'ong'o	048
5. Manu Chandaria	617
6. Sehmi Rupinda	544
7. Henry Obwocha	154
8. E. Mbau	099
9. Kingori Mwangi	624
10. David Mwiraria	136
11. Gideon Ole Konchella	174

**OBSERVERS**

1. Khatib Hudson	038
2. Muga A.N. Owira	115
3. Cleophas Nyangiri	159

**IN ATTENDANCE**

- |                         |   |                     |
|-------------------------|---|---------------------|
| 1. Pastor Zablon Ayonga | - | Rapporteur          |
| 2. Ms Noor Awadh        | - | Programme Assistant |
| 3. Ms Keziah Kamau      | - | Programme Assistant |
| 4. Mrs C. W. Munga      | - | Clerk               |

**MIN. 111/2004: PUBLIC FINANCE**

**246 B (1)** Amendment proposed

That the words “*Prime Minister*” appearing on the first line be deleted and the words “*Minister for the time being responsible for Finance*” be inserted in place thereof.

**Debate arising.**

Question of the amendment proposed, put and agreed to.

Further amendment proposed that the words “*Prime Minister*” be deleted wherever they appear in the article and the words “*Minister for the time being responsible for Finance*” be inserted in place thereof.

**Debate arising.**

Question of the amendment proposed, put and agreed to.

**(2)** Amendment proposed

That the words “*or such other period that may be deemed appropriate*” be inserted after the word “*years*” appearing on the third line.

**Debate arising.**

Question of the amendment proposed, put and agreed to.

**(3)** Amendment proposed

That the words “*and estimates*” be inserted immediately after the word “*plan*” appearing on the third line.

**Debate arising.**

Question of the amendment proposed, put and agreed to.

**(4)** Amendment proposed

That the word “*administrative*” appearing on the fifth line be deleted and the word “*recurrent*” be inserted in place thereof.

**Debate arising.**

Question of the amendment proposed, put and agreed to.

(5) Agreed to.

(6) Agreed to.

(7) Agreed to.

(8) Amendment proposed that the sub-article be deleted.

**Debate arising.**

Question of the amendment proposed put and agreed to.

(9) Amendment proposed that the sub article be deleted.

**Debate arising.**

Question of the amendment proposed, put and agreed to.

(10) Agreed to.

**Article 246 B** as amended agreed to.

**247** Agreed to.

**248** (1) Agreed to.

(2) Agreed to.

(3) Agreed to.

(4) Agreed to.

**MIN. 112/2004: ADJOURNMENT**

The Ag. Convenor adjourned the Committee at 4.00 p.m.

**Confirmed:**.....  
(CONVENOR)

**Date:**.....

**MINUTES OF THE TWENTIETH SITTING OF THE PUBLIC FINANCE, PUBLIC SERVICE, LEADERSHIP AND INTEGRITY TECHNICAL WORKING GROUP (H) HELD ON 16<sup>TH</sup> JANUARY, 2004 IN COMMITTEE TENT NO. 8 AT 10.00 A.M.**

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**PRESENT**

<b><u>Name</u></b>	<b><u>Delegate</u></b>
1. Chris Okemo	161 (Ag. Convenor)
2. Ann Mululu	496
3. Noah Nondin Too Arap	197
4. Abdullahi Haji Mohamed	250
5. David Kuto	340
6. Farouk Said	229
7. Kamla Sikand	500
8. Martin N. Wambora	202
9. Rose L. Owino	471
10. Joseph Njalis Shuel	353
11. Daniel Njoroge	589
12. Judith A. O. Nam	408
13. Dache John Pesa	415
14. Elphas Ombura	410
15. James Omolo Kayila	407
16. Franklin K. Bett	213
17. Francis Wangara	446
18. Grace N. Nduyo	279
19. Musa Sirma	190
20. Osili Adungo	394
21. Were Domtilla	616
22. Wycliffe Oparanya	170
23. Nyamunga Eric Opon	152
24. Mariamu Ntausian L.	345
25. Joseph K. Soi	374
26. Beth Mugo	112
27. Fredrick R. Nderitu	302
28. James Bwatuti	628
29. Justus M. Wekala	610
30. Peter Odoyo	156
31. Kingori Mwangi	624

**ABSENT WITH APOLOGY**

1. Billow Adan Kerrow	<b>Convenor</b>
2. William N. Matheka	299
3. Kituyi P. Sikoya	606

4. Gilbert Omondi 625

**ABSENT**

1. Abdu Bahari Ali	012
2. Rose Waruhiu	490
3. Henry Obwocha	154
4. Kiremi Mwiria	137
5. Moses M. Wekesa	597
6. Anyang' Ny'ong'o	048
7. Sehmi Rupinda	544
8. E. Mbau	099
9. David Mwiraria	136
10. Gideon Ole Konchella	174
11. John K. Njiraini	480

**OBSERVERS**

1. Khatib Hudson	038
2. Muga A.N. Owira	115
3. Cleophas Nyangiro	159

**IN ATTENDANCE**

1. Justice Isaac Lenaola	-	Rapporteur
2. Pastor Zablon Ayonga	-	Rapporteur
3. Ms Noor Awadh	-	Programme Assistant
4. Ms Keziah Kamau	-	Programme Assistant
5. Mrs. C. W. Munga	-	Clerk

**MIN. 112/2004: CONFIRMATION OF MINUTES**

Minutes of the Nineteenth sitting held on 15<sup>th</sup> January, 2004 were confirmed by the Members present and signed by the Ag. Convenor (Delegate Chris Okemo)

**MIN. 113/2004: MATTERS ARISING**

**Under Min.No.111/2004**, the Committee resolved that the amendments in **Article 246 b(1)** should read as follows:

That the words ***“Prime Minister”*** appearing on the first line be deleted and the words ***“Minister for the time being responsible for Finance”*** be inserted in place thereof.

Further amendment proposed that the words ***“Prime Minister”*** be deleted wherever they appear in the article and the words ***“Minister for the time being responsible for Finance”*** be inserted in place thereof.

The Committee further resolved that **Article 246 B(10)** should be deleted.

**MIN. 114/2004: PUBLIC FINANCE**

**Article 249**

- (1) Agreed to
- (2) Agreed to
- (3) (a) Agreed to
- (b) Agreed to

The Members were of the opinion that the drafts person should draft a sub article showing that all borrowing by the government must be presented to Parliament for debate and approval before implementation.

**(4) Amendment proposed**

That the words “*Prime Minister*” appearing on the first line be deleted and the words “*Minister for the time being responsible for Finance*” be inserted in place thereof.

Debate arising.

Question of the amendment proposed, put and agreed to.

- 4(a) Agreed to
- (b) Agreed to
- (c) Agreed to

5 (a) and (b) agreed to (subject to the decision reached by the Devolution Committee).

**Article 250**

**(1) Amendment proposed**

That the word “*and*” appearing on the second line be deleted and the word “*or*” be inserted in place thereof.

Debate arising.

Question of the amendment proposed, put and agreed to.

**(2) Amendment proposed**

**That the words “*and shall include outstanding guarantees by government, and government departments and agencies*” be inserted at the end of the sub article.**

**Debate arising.**

**Question of the amendment proposed, put and agreed to.**

**Article 250 as amended agreed to.**

Article 251

- (1) Agreed to
- (2) Agreed to
- (3) Agreed to
- (4) (a) Agreed to
- (b) Agreed to

**Amendment proposed**

**That sub article “c” be inserted to read as follows:**

**That “the Governor of Central Bank shall be the Chairman of the Board”.**

*(Delegate P. Odoyo)*

**Debate arising.**

Question of the amendment proposed, put and agreed to.

The following delegates were of the opinion that the Central Bank Governor should not chair the Board.

J.O. Kayila	- 407
Mariam Lekisemon	- 345
D.G. Njoroge	- 589
Were Domitila	- 616
Francis Wangara	- 446
Fredrick Nderitu	- 302
Grace Nduyo	- 279
William N. Matheka	- 299

(5) Amendment proposed

That the following words inserted at the end of the sub article “*and shall be a person of integrity and moral probity*”.

Debate arising.

Question of the amendment proposed, put and agreed to.

- (6) Agreed to
- (7) Agreed to

Article 251 as amended – agreed to

**MIN. 115/2004: ADJOURNMENT**

The Ag. Convenor (Chris Okemo) adjourned the meeting at 1.10 p.m.

**Confirmed:**.....  
(CONVENOR)

**Date:**.....

**MINUTES OF THE TWENTY FIRST SITTING OF THE PUBLIC FINANCE,  
PUBLIC SERVICE, LEADERSHIP AND INTEGRITY TECHNICAL  
WORKING GROUP (H) HELD ON 19<sup>TH</sup> JANUARY, 2004 IN COMMITTEE  
TENT NO. 8 AT 9.30 A.M.**

---

**PRESENT**

<b><u>Name</u></b>	<b><u>Delegate No.</u></b>
1. Chris Okemo	161 (Ag. Convenor)
2. Ann Mululu	496
3. Noah Nondin Too Arap	197
4. Abdullahi Haji Mohamed	250
5. David Kuto	340
6. Farouk Said	229
7. Kamla Sikand	500
8. Martin N. Wambora	202
9. Rose L. Owino	471
10. Joseph Njalis Shuel	353
11. Daniel Njoroge	589
12. Judith A. O. Nam	408
13. Dache John Pesa	415
14. Elphas Ombura	410
15. James Omolo Kayila	407
16. Franklin K. Bett	213
17. Francis Wangara	446
18. Grace N. Nduyo	279
19. Osili Adungo	394
20. Nyamunga Eric Opon	152
21. Mariamu Ntausian L.	345
22. Joseph K. Soi	374
23. Beth Mugo	112
24. Fredrick R. Nderitu	302
25. James Bwatuti	628
26. William N. Matheka	299
27. Kituyi P. Sikoya	606
28. Gilbert Omondi	625
29. Rose Waruhiu	490
30. Henry Obwocha	154
31. Moses M. Wekesa	597
32. Anyang' Ny'ong'o	048

**ABSENT WITH APOLOGY**

1. Billow Adan Kerrow	<b>Convenor</b>
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## **ABSENT**

1. Musa Sirma	190
2. Were Domtilla	616
3. Wycliffe Oparanya	170
4. Justus M. Wekala	610
5. Peter Odoyo	156
6. Kingori Mwangi	624
7. Abdu Bahari Ali	012
8. Kiremi Mwiria	137
9. Sehmi Rupinda	544
10. E. Mbau	099
11. David Mwiraria	136
12. Gideon Ole Konchella	174
13. John K. Njiraini	480

## **OBSERVERS**

1. Khatib Hudson	038
2. Muga A.N. Owira	115
3. Cleophas Nyangiro	159

## **IN ATTENDANCE**

1. Justice Isaac Lenaola	-	Rapporteur
2. Pastor Zablon Ayonga	-	Rapporteur
3. Ms Noor Awadh	-	Programme Assistant
4. Ms Keziah Kamau	-	Programme Assistant
5. Mrs C. W. Munga	-	Clerk

## **MIN. 116/2004: CONFIRMATION OF MINUTES**

Minutes of the Twentieth sitting held on 16<sup>th</sup> January, 2004 were confirmed by the Members present and signed by the Ag. Convenor (Delegate Chris Okemo).

## **MIN. 117/2004: ADOPTION OF DAILY SUMMARY OF ISSUES**

Members deliberated on the Daily Summary of Issues for the Twentieth Sitting of the Committee and adopted it with amendments.

## **MIN. 118/2004: PRESENTATION BY KENYA REVENUE AUTHORITY**

Mr. A. Okello of Kenya Revenue Authority appeared before the Committee and made a presentation on Taxation.

The Committee was informed that:-

During the last financial year the government collected Kshs.228 billion. Kshs.217.5 billion was collected at Central Government level while Kshs.10.6 billion was collected by Local Authorities.

There should be no multiplicity of taxes and tax collection agencies.

During the current financial year the government expects to collect 74.6% of its revenue from Taxes. Normally 50% of revenue is collected from Nairobi area while 25% is collected from the Coastal region and 0.02 of revenue is collected from North Eastern region.

The Constitution should state the obligation of the citizenry to pay taxes and the need for the public to demand services.

There should be no tax waivers apart from those provided by Acts of Parliament. Every three months, parliament should be informed of all the tax waivers which have been given.

**MIN. 119/2004: PUBLIC FINANCE**

**Article 251**

**Members resolved that Committee “A” should amend Article 14(12) so that where the head on an institution is of one gender the deputy head should be of the other gender.**

Article 252 (1) (a) **Agreed to**

(b) **Amendment proposed**

**That the words “portraying the portrait of the First President of Kenya and features which portray nationhood” be inserted at the end of the sub article.**

**Debate arising.**

**Question of the amendment proposed, put and agreed to.**

(c) Agreed to

(d) Agreed to

(e) Amendment proposed

**That the sub article be deleted.**

Debate arising.

Question of the amendment proposed, put and agreed to.

(f) Agreed to.

(2) Amendment proposed

That the word “*and*” be inserted immediately after the word “*constitution*” appearing on the second line.

Debate arising.

Question of the amendment proposed, put and agreed to.

### **Article 253**

(1) Amendment proposed

That the words “*and whose office shall be a constitutional office*” appearing on the third line be deleted.

Debate arising.

Question of the amendment proposed, put and agreed to.

(2) (a) Amendment proposed that the word “*fully*” appearing on the first line be deleted and the word “*professionally*” be inserted in place thereof.

Debate arising.

Question of the amendment proposed, put and agreed to.

Further amendment proposed.

That the word “*fifteen*” appearing on the second line be deleted and the word “*ten*” be inserted in place thereof.

Debate arising.

*Question of the amendment proposed, put and agreed to.*

(b) Amendment proposed that the sub article should read as follows:

*“is a person of high integrity and moral probity”.*

Debate arising.

*Question of the amendment proposed, put and agreed to.*

Amendment proposed

That a new sub article “*c*” be inserted at the end of sub article “*2*” to read as follows:

*“(c.) shall hold office for two five year terms”.*

*Debate arising.*

Question of the amendment proposed, put and agreed to.

- (3) (a) Agreed to
  - (b) Agreed to
  - (c) Agreed to
  - (d) Agreed to
- (4) (a) Agreed to
  - (b) **Agreed to**
  - (c) Agreed to
  - (d) Agreed to
- (5) Agreed to
  - (6) Agreed to (subject to the constitution)

**MIN. 120/2004: ADJOURNMENT**

The Ag. Convenor (Chris Okemo) adjourned the meeting at 1.00 p.m.

**AFTERNOON SITTING**

The Committee assembled at 2.40 p.m.

**PRESENT**

1. Chris Okemo	161 <b>Ag. Convenor</b>
2. Ann Mululu	496
3. Noah Nondin Too Arap	197
4. Abdullahi Haji Mohamed	250
5. David Kuto	340
6. Farouk Said	229
7. Martin N. Wambora	202
8. William N. Matheka	299
9. Rose L. Owino	471
10. Joseph Njalis Shuel	353
11. Daniel Njoroge	589
12. Judith A. O. Nam	408
13. Dache John Pesa	415
14. Elphas Ombura	410
15. James Omolo Kayila	407
16. Franklin K. Bett	213
17. Francis Wangara	446
18. Grace N. Nduyo	279
19. Kituyi P. Sikoya	606

20. Osili Adungo	394
21. Gilbert Omondi	625
22. Nyamunga Eric Opon	152
23. Mariamu Ntausian L.	345
24. Joseph K. Soi	374
25. Henry Obwocha	154
26. James Bwatuti	628
27. Peter Odoyo	156
28. Moses M. Wekesa	597
29. Fredrick R. Nderitu	302

### **ABSENT WITH APOLOGIES**

1. Billow Adan Kerrow	<b>Convenor</b>
2. Kamla Sikand	500

### **ABSENT**

1. Abdu Bahari Ali	012
2. Musa Sirma	190
3. Rose Waruhiu	490
4. Were Domtilla	616
5. Wycliffe Oparanya	170
6. John K. Njiraini	480
7. Beth Mugo	112
8. Anyang' Ny'ong'o	048
9. Manu Chandaria	617
10. Kilemi Mwiria	137
11. Sehmi Rupinda	544
12. E. Mbau	099
13. Kingori Mwangi	624
14. David Mwiraria	136
15. Gideon Ole Konchella	174

### **OBSERVERS**

1. Khatib Hudson	038
2. Muga A.N. Owira	115
3. Cleophas Nyangiro	159

### **IN ATTENDANCE**

1. Pastor Zablon Ayonga	-	Rapporteur
2. Ms Noor Awadh	-	Programme Assistant

3. Ms Keziah Kamau - Programme Assistant  
4. Mrs C. W. Munga - Clerk

**MIN. 121/2004: PUBLIC FINANCE**

*Article 254 (1) amendment proposed that the words “and whose office shall be a constitutional office” be deleted.*

Debate arising

Question of the amendment proposed, put and agreed to.

**2 (a) Amendment proposed**

**That the word “fifteen” appearing on the first line be deleted and the word “ten” be inserted in place thereof.**

Debate arising

Question of the amendment proposed, put and agreed to.

**(b) Amendment proposed**

That the words “*moral character and proven integrity*” be deleted and words “*integrity and moral probity*” be inserted in place thereof.

Debate arising

Question of the amendment proposed, put and agreed to.

3(a) Agreed to

(b) Agreed to

(c) (i) Agreed to

(ii) Amendment proposed

That the words “*officers and authorities of that government*” be deleted and the words “*funds and devolved units of the government and state corporations*” be inserted in place thereof.

Debate arising

Question of the amendment proposed, put and agreed to.

(iii) Agreed to

(iv) Agreed to

(v) Agreed to

(vi) Agreed to

The Committee resolved that a new sub article (vii) should be drafted to cater for funds from donors, community based organizations and other sources.

(4) Agreed to

(5) Agreed to (subject to the constitution)

(6) Agreed to

Article 254 as amended agreed to

Article 255 (a) agreed to

(b) Agreed to

(c) Agreed to

Article 256 (1) agreed to

(2) Agreed to

(3) Amendment proposed

That the word “*concur*” appearing on the first line be deleted and the word “*approves*” be inserted in place thereof.

Debate arising

Question of the amendment proposed, put and agreed to.

(4) Amendment proposed

That the words “*revenue and*” be inserted immediately after the word all.

Debate arising

Question of the amendment proposed, put and agreed to.

Article 256 as amended agreed to.

Article 257 (1) Members were of the opinion that the words “*twenty-one*” appearing on the second line should be deleted and the word “*nine*” be inserted in place thereof.

The final decision on this sub article was deferred to a later date.

2(a) Agreed to

(b) Agreed to

(3) (a) Agreed to

(b) amendment proposed

That the words “*the economic and social implications*” be inserted immediately after the word “*Parliament*” appearing on the first line.

Debate arising.

Question of the amendment proposed, put and agreed to.

(c)Agreed to

(4) Amendment proposed

That the words “*for optimizing*” appearing on the third line be deleted.

Debate arising.

Question of the amendment proposed, put and agreed to.

Further amendment proposed that *sub article 4 (a) to 4 (L)* be deleted.

Debate arising.

Question of the amendment proposed, put and agreed to.

The Members resolved that the information contained in *sub article 4(a) – 4(L)* should be reflected in subsidiary legislation.

(5) Amendment proposed

That the sub article be deleted.

Debate arising.

Question of the amendment proposed, put and agreed to.

The Members resolved that the information contained in sub article 5(a) to 5(d) should be reflected in subsidiary **legislation**.

(6) Amendment proposed

That the sub article be deleted.

Debate arising.

Question of the amendment proposed, put and agreed to.

(7) Amendment proposed

That the word “*may*” be deleted and the word “*shall*” inserted in place thereof.

Debate arising.

Question of the amendment proposed, put and agreed to.

7(a) amendment proposed

That the word “*commission*” appearing on the second line be deleted and the word “*council*” be inserted in place thereof.

Debate arising.

Question of the amendment proposed, put and agreed to.

(b) Amendment proposed

That the words “*the reports under Clause (5)*” appearing on the second line be deleted and the word “*its report*” be inserted in place thereof.

Debate arising.

Question of the amendment proposed, put and agreed to.

Article 257 as amended agreed to.

**MIN. 120/2004: ADJOURNMENT**

The Ag. Convenor (Chris Okemo) adjourned the meeting at 1.00 p.m.

**Confirmed:**.....  
(CONVENOR)

**Date:**.....

**MINUTES OF THE TWENTY SECOND SITTING OF THE PUBLIC FINANCE,  
PUBLIC SERVICE, LEADERSHIP AND INTEGRITY TECHNICAL  
WORKING GROUP (H)- BOMAS OF KENYA HELD ON 20<sup>TH</sup> JANUARY, 2004  
IN COMMITTEE TENT NO. 8 AT 9.30 A.M.**

---

**PRESENT**

<b><u>Name</u></b>	<b><u>Delegate No.</u></b>
1. Chris Okemo	161 (Ag. Convenor)
2. Ann Mululu	496
3. Noah Nondin Too Arap	197
4. Abdullahi Haji Mohamed	250
5. David Kuto	340
6. Farouk Said	229
7. Kamla Sikand	500
8. Martin N. Wambora	202
9. Rose L. Owino	471
10. Joseph Njalis Shuel	353
11. Daniel Njoroge	589
12. Judith A. O. Nam	408
13. Dache John Pesa	415
14. Elphas Ombura	410
15. James Omolo Kayila	407
16. Franklin K. Bett	213
17. Francis Wangara	446
18. Grace N. Nduyo	279
19. Osili Adungo	394
20. Mariamu Ntausian L.	345
21. Joseph K. Soi	374
22. Fredrick R. Nderitu	302
23. James Bwatuti	628
24. William N. Matheka	299
25. Kituyi P. Sikoya	606
26. Gilbert Omondi	625
27. Rose Waruhiu	490
28. Henry Obwocha	154
29. Moses M. Wekesa	597
30. Anyang' Ny'ong'o	048
31. Musa Sirma	190
32. Were Domtilla	616
33. Wycliffe Oparanya	170
34. Justus M. Wekala	610

**ABSENT WITH APOLOGY**

- |                       |                 |
|-----------------------|-----------------|
| 1. Billow Adan Kerrow | <b>Convenor</b> |
| 2. Abdu Bahari Ali    | 012             |
| 3. Beth Mugo          | 112             |

**ABSENT**

- |                         |     |
|-------------------------|-----|
| 1. Nyamunga Eric Opon   | 152 |
| 2. Peter Odoyo          | 156 |
| 3. Kingori Mwangi       | 624 |
| 4. Kiremi Mwiria        | 137 |
| 5. Sehmi Rupinda        | 544 |
| 6. E. Mbau              | 099 |
| 7. David Mwiraria       | 136 |
| 8. Gideon Ole Konchella | 174 |
| 9. John K. Njiraini     | 480 |

**OBSERVERS**

- |                      |     |
|----------------------|-----|
| 5. Mathias B. Keah   | 220 |
| 6. Khatib Hudson     | 038 |
| 7. Cleophas Nyangiro | 159 |
| 8. Fatma Hyder       | 045 |

**IN ATTENDANCE**

- |                          |   |                     |
|--------------------------|---|---------------------|
| 1. Justice Isaac Lenaola | - | Rapporteur          |
| 5. Pastor Zablon Ayonga  | - | Rapporteur          |
| 6. Ms Noor Awadh         | - | Programme Assistant |
| 7. Ms Keziah Kamau       | - | Programme Assistant |
| 5. Mrs C. W. Munga       | - | Clerk               |

**MIN. 121/2004: CONFIRMATION OF MINUTES**

Minutes of the Twenty First Sitting held on 19<sup>th</sup> January, 2004 were confirmed by the Members present and signed by the Ag. Convenor (Delegate Chris Okemo).

**MIN. 122/2004: ADOPTION OF DAILY SUMMARY OF ISSUES**

Members deliberated on the Daily Summary of Issues for the Twenty First Sitting of the Committee and adopted it with amendments.

**MIN. 123/2004: MATTERS ARISING**

**Under Min.No.119/2004, Article 252 (1)(d)**, it was resolved that the sub article be redrafted to accommodate the important aspects of **sub article 252 (1)(e)** which was deleted.

**252(2)** Members resolved that the word “and” appearing in the second line should be deleted.

**Article 253** it was resolved that the new **sub article (3)** should read as follows:  
*“The Controller of Budget shall be appointed for a term of five years and shall be eligible for re-appointment for only one further term”.*

**It was also resolved that the rest of the sub articles be renumbered.**

**Article 254(3)(c)**

It was resolved that the sub article should read as follows *“for every financial year audit and report on”*

**Article 254(3)(c)(i)**

It was resolved that the word “**Kenya**” should be deleted.

**Article 254(3)(c)(iii)**

It was resolved that the word “**Kenya**” should be deleted.

**Article 254(c)(v)**

It was resolved that the words “*of the Clerk*” appearing on the first line should be deleted.

**Article 255**

**It was resolved that a new sub article “C” should be inserted to read as follows:**  
*“(c) bankruptcy”.*

**Article 256 (3)**

It was resolved that the word “**public**” be inserted immediately after the word “**political**” appearing on the first line.

**Article 257 (1)**

It was resolved that the words “**twenty-one**” appearing on the second line be deleted and the word “**nine**” be inserted in place thereof.

**Under Min.No.120/2004**, the Members noted that the Ag. Convenor had adjourned the meeting at 5.00 p.m.

**MIN. 124/2004: FIFTH SCHEDULE**

The deliberations on the schedule were deferred to a later date to give Members time to read the Public Officer Ethics Act, 2003.

**MIN. 125/2004: EIGHTH SCHEDULE**

**(1) (Rights, duties and obligations of the Republic) agreed to.**

(2) (Existing Laws) agreed to.

(5) (Devolution) the Committee resolved that it would hold joint meetings with Executive Committee, Devolution Committee and Defence and National Security Committee before reaching a decision on this sub article.

(8) (Existing Officers) agreed to

(9) (Pensions, gratuities and other benefits) agreed to.

(13) (Death Penalty and other Outlawed Penalties) – agreed to.

(14) (Constitutional Commissions) – agreed to.

**MIN. 126/2004: ANY OTHER BUSINESS**

The Members resolved that Betty Maina and D. Kabaara should appear before the Committee so that the amendments proposed in their presentations can be discussed.

It was resolved that Observer Mathias Keah will make a presentation to the Committee on Public Finance Chapter.

The Committee was informed that Treasury officials will make a presentation on Public Finance on Thursday 22<sup>nd</sup> January, 2004.

**MIN. 127/2004: ADJOURNMENT**

The Ag. Convenor (Chris Okemo) adjourned the meeting at 12.30 p.m.

**Confirmed:**.....  
(CONVENOR)

**Date:**.....

**MINUTES OF THE TWENTY THIRD SITTING OF THE PUBLIC FINANCE,  
PUBLIC SERVICE, LEADERSHIP AND INTEGRITY TECHNICAL  
WORKING GROUP (H) - BOMAS OF KENYA HELD ON 21<sup>ST</sup> JANUARY, 2004  
IN COMMITTEE TENT NO. 8 AT 9.30 A.M.**

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**PRESENT**

<b><u>Name</u></b>	<b><u>Delegate No.</u></b>
1. Billow Adan Kerrow	<b>Convenor</b>
2. Chris Okemo	161
3. Ann Mululu	496
4. Noah Nondin Too Arap	197
5. Abdullahi Haji Mohamed	250
6. David Kuto	340
7. Farouk Said	229
8. Kamla Sikand	500
9. Martin N. Wambora	202
10. Rose L. Owino	471
11. Joseph Njalis Shuel	353
12. Daniel Njoroge	589
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14. Dache John Pesa	415
15. Elphas Ombura	410
16. James Omolo Kayila	407
17. Franklin K. Bett	213
18. Francis Wangara	446
19. Grace N. Nduyo	279
20. Osili Adungo	394
21. Mariamu Ntausian L.	345
22. Joseph K. Soi	374
23. Fredrick R. Nderitu	302
24. James Bwatuti	628
25. William N. Matheka	299
26. Kituyi P. Sikoya	606
27. Gilbert Omondi	625
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29. Henry Obwocha	154
30. Musa Sirma	190
31. Were Domtilla	616
32. Wycliffe Oparanya	170
33. Abdu Bahari Ali	012
34. Nyamunga Eric Opon	152
35. Peter Odoyo	156
36. Kingori Mwangi	624

### **ABSENT WITH APOLOGY**

1. Beth Mugo 112

### **ABSENT**

4. Moses M. Wekesa 597
5. Anyang' Ny'ong'o 048
6. Justus M. Wekala 610
7. Kiremi Mwiria 137
8. Sehmi Rupinda 544
9. E. Mbau 099
10. David Mwiraria 136
11. Gideon Ole Konchella 174
12. John K. Njiraini 480

### **OBSERVERS**

1. Khatib Hudson 038
2. Cleophas Nyangiro 159

### **IN ATTENDANCE**

1. Pastor Zablon Ayonga - Rapporteur
2. Ms Noor Awadh - Programme Assistant
3. Ms Kezia Kamau - Programme Assistant
4. Mrs C. W. Munga - Clerk

#### **MIN. 128/2004: CONFIRMATION OF MINUTES**

Minutes of the Twenty Second Sitting held on 20<sup>th</sup> January, 2004 were confirmed by the Members present and signed by the Convenor.

#### **MIN. 129/2004: ADOPTION OF THE DAILY SUMMARY OF ISSUES**

Members deliberated on the Daily Summary of Issues for the Twenty Second Sitting of the committee and adopted it with minor amendments.

#### **MIN. 130/2004: MATTERS ARISING**

**Under Min.No.121/2004, Article 257(1), it was resolved that the Economic and Social Council shall consist of nine persons appointed on the basis of merit taking into account the diversity of the peoples of Kenya.**

*The drafts person will come up with an appropriate amendment which will accommodate all the above-mentioned issues.*

**MIN. 131/2004: MOTION – AMENDMENT OF ARTICLE 246 B(3)**

*Motion made and question proposed.*

That the words “*the Minister responsible for Finance shall prepare a provision for special votes for development for historically marginalised communities within the framework of sub article two (2) above*” be inserted at the end of sub Article 246 B(3).

*(Delegate Abdullahi Haji-No.250)*

Debate arising.

By indulgence of the Committee, debate on this motion was deferred to a later date.

**MIN. 132/2004: MOTION – AMENDMENT OF ARTICLE 268(1)**

Motion made and Question proposed.

*That Article 268(1) should read as follows:*

*“The primary object of the Kenya Correctional Service is to ensure safe custody of convicted offenders both in the penal institutions and within the community, provide provision of human treatment, facilitate rehabilitation process which will lead to their useful resettlement after release.*”

**(Delegate Gilbert Omondi – No.6250)**

**Debate arising.**

Question put and agreed to subject to redrafting of **Article 268(1)** in order to cater for responsibility of the prison population and supervision of those serving non- custodial sentence. The redrafted article would be debated in the afternoon.

**MIN. 133/2004: FIFTH SCHEDULE**

**(1)** Amendment proposed that the sub article be deleted.

Debate arising.

Question of the amendment proposed, put and agreed to.

**(2)** Agreed to

**(3)** Agreed to

(4) Amendment proposed that the sub article be deleted.

Debate arising.

Question of the amendment proposed, put and agreed to.

(5) Amendment proposed that the sub article be deleted.

Debate arising.

Question of the amendment proposed, put and agreed to

(6) Amendment proposed that the sub article be deleted.

Debate arising.

Question of the amendment proposed, put and agreed to.

**MIN. 134/2004: ANY OTHER BUSINESS**

The Members resolved that the following delegates would be briefing the Media Advisory Committee on the progress made by Committee 'H'.

<b>NAME</b>	<b>NO.</b>
Delegate Billow A. Kerrow	015 ( <b>Convenor</b> )
Delegate Chris Okemo	161
Delegate Ann Mululu	496
Delegate Franklin Bett	213
Delegate James Omolo Kayila	407
Rose L. Owino	471

**MIN. 135/2004: ADJOURNMENT**

The Convenor adjourned the meeting at 1.00 p.m.

**AFTERNOON SITTING**

The Committee assembled at 2.40 p.m.

**PRESENT**

1. Billow Adan Kerrow	<b>Convenor</b>
2. Abdul Bahari Ali	012
3. Beth Mugo	112
4. Chris Okemo	161

5. Ann Mululu	496
6. Noah Nondin Too Arap	197
7. David Kuto	340
8. Farouk Said	229
9. Kamla Sikand	500
10. Martin N. Wambora	202
11. Rose L. Owino	471
12. Joseph Njalis Shuel	353
13. Daniel Njoroge	589
14. Judith A. O. Nam	408
15. Dache John Pesa	415
16. Elphas Ombura	410
17. James Omolo Kayila	407
18. Franklin K. Bett	213
19. Grace N. Nduyo	279
20. Osili Adungo	394
21. Mariamu Ntausian L.	345
22. Joseph K. Soi	374
23. William N. Matheka	299
24. Kituyi P. Sikoya	606
25. Gilbert Omondi	625
26. Rose Waruhiu	490
27. Nyamunga Eric Opon	152
28. Kingori Mwangi	624
29. Were Domtilla	616
30. Fredrick R. Nderitu	302
31. Moses M. Wekesa	597
32. Anyang' Ny'ong'o	048

**ABSENT WITH APOLOGY**

1. Abdullahi Haji Mohamed	250
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**ABSENT**

1. Peter Odoyo	156
2. Francis Wangara	446
3. James Bwatuti	628
4. Henry Obwocha	154
5. Musa Sirma	190
6. Justus M. Wekala	610
7. Wycliffe Oparanya	170
8. Kiremi Mwiria	137
9. Sehmi Rupinda	544
10. E. Mbau	099
11. David Mwiraria	136

- |                          |     |
|--------------------------|-----|
| 12. Gideon Ole Konchella | 174 |
| 13. John K. Njiraini     | 480 |

**OBSERVERS**

- |                      |     |
|----------------------|-----|
| 1. Khatib Hudson     | 038 |
| 2. Cleophas Nyangiro | 159 |

**IN ATTENDANCE**

- |                         |   |                     |
|-------------------------|---|---------------------|
| 1. Pastor Zablon Ayonga | - | Rapporteur          |
| 2. Ms Noor Awadh        | - | Programme Assistant |
| 3. Ms Keziah Kamau      | - | Programme Assistant |
| 4. Mrs C. W. Munga      | - | Clerk               |

**MIN. 136/2004: FIFTH SCHEDULE**

(7) Agreed to

**8(a)** Agreed to

**(b)** Agreed to

**(c)** Agreed to

**(d)** Agreed

**(e)** Amendment proposed

That the sub article be deleted

Debate arising.

Question of the amendment proposed, put and agreed to

**(f)** Amendment proposed

That the sub article be deleted

Debate arising.

Question of the amendment proposed, put and agreed to

**(9)** Amendment proposed that sub article should be deleted.

Debate arising.

Question of the amendment proposed, put and agreed to

The following delegates were of the opinion that the sub article should not be deleted.

<b>NAME</b>	<b>NO.</b>
Delegate Abdul Bahari Ali	012
Delegate Eliphaz Ombura	410
Delegate Dache John Pesa	415
Delegate Rose Lukato Omino	471

(10) Amendment proposed  
That the sub article be deleted.

Debate arising.

Question of the amendment proposed, put and agreed to

(11) Amendment proposed  
That the sub article be deleted

Debate arising.

Question of the amendment proposed, put and agreed to

Further amendment proposed on Schedule Five

That the Schedule be deleted

Debate arising.

Question of the amendment proposed, put and agreed to

The Members however resolved that all the information contained in schedule five should be contained in subsidiary legislation.

**MIN. 137/2004: PUBLIC FINANCE**

Debate on the amendment of Article 268(1) resumed.

**Amendment proposed**

That the sub article should read as follows:

(1) The primary object of the Kenya correctional Service is to ensure –

(a) the safe custody of the Country's Prison Population and the provision of humane living conditions in prison.

(b) the supervision of offenders within the community who are serving non-custodial sentences or who are on probation; and

(c) the rehabilitation of offenders in order to facilitate their return to useful lives within society.

Debate arising.

Question proposed, put and agreed to

**MIN. 138/2004: ADJOURNMENT**

**The Convenor adjourned the meeting at 4.05 p.m.**

**Confirmed:**.....  
(CONVENOR)

**Date:**.....

**MINUTES OF THE FIRST JOINT SITTING OF THE TECHNICAL WORKING COMMITTEE 'G' ON DEVOLUTION OF POWER AND TECHNICAL WORKING COMMITTEE 'H' ON PUBLIC FINANCE, PUBLIC SERVICE, LEADERSHIP AND INTEGRITY ON THE DRAFT BILL HELD ON THURSDAY 22<sup>ND</sup> JANUARY 2004 AT COMMITTEE TENT 7, BOMAS OF KENYA AT 10.00 A.M.**

**PRESENT**

<b><u>Name</u></b>	<b><u>Delegate No.</u></b>
1. Hon. Dr. Adhu Awiti	<b>Convenor</b>
2. Hon. Prof. Wanjiku Kabira	<b>Rapporteur</b>
3. Hon. Mutakha Kangu	<b>Rapporteur</b>
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. Galgallo	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 following Members of the **Technical Working Group “H”** were present:-

- |                           |                 |
|---------------------------|-----------------|
| 1. Billow Adan Kerrow     | <b>Convenor</b> |
| 2. Chris Okemo            | 161             |
| 3. Ann Mululu             | 496             |
| 4. Noah Nondin too Arap   | 197             |
| 5. Abdullahi Haji Mohamed | 250             |
| 6. David Kuto             | 340             |
| 7. Farouk Said            | 229             |
| 8. Kamla Sikand           | 500             |
| 9. Martin N. Wambora      | 202             |
| 10. Rose L. Owino         | 471             |
| 11. Joseph Njalis Shuel   | 353             |
| 12. Judith A.O. Nam       | 408             |
| 13. Dache John Pesa       | 415             |
| 14. Elphas Ombura         | 410             |
| 15. James Omolo Kayila    | 407             |
| 16. Franklin K. Bett      | 213             |
| 17. Grace N. Nduyo        | 279             |
| 18. Osili Adungo          | 394             |
| 19. Mariamu Ntausian L.   | 345             |
| 20. Joseph K. Soi         | 374             |
| 21. Fredrick R. Nderitu   | 302             |
| 22. James Bwatuti         | 628             |
| 23. Kituyi P. Sikoya      | 606             |
| 24. Gilbert Omondi        | 625             |
| 25. Henry Obwocha         | 154             |
| 26. Were Domtilla         | 616             |
| 27. Moses M. Wekesa       | 597             |
| 28. Beth Mugo             | 112             |
| 29. Nyamunga Eric Opon    | 152             |
| 30. Kingori Mwangi        | 624             |

**ABSENT**

- |                    |     |
|--------------------|-----|
| 1. Francis Wangara | 446 |
| 2. Peter Odoyo     | 156 |
| 3. Daniel Njoroge  | 589 |

4. William N. Matheka	299
5. Rose Waruhiu	490
6. Anyang' Ny'ongo	048
7. Musa Sirma	190
8. Wycliffe Oparanya	170
9. Abdul Bahari Ali	012
10. Justus M. Wekala	610
11. Kiremi Mwiria	137
12. Sehmi Rupinda	544
13. E. Mbau	099
14. David Mwiraria	136
15. Gideon Ole Konchella	174
16. John K. Njiraini	480

### **OBSERVERS**

1. Mathia B. Keah	220
2. Khatib Hudson	038
3. Cleophas Nyangiro	159

### **IN ATTENDANCE**

1. Pastor Zablon Ayonga	-	Rapporteur
2. Ms Noor Awadh	-	Programme Assistant
3. Ms Keziah Kamau	-	Programme Assistant
4. Mrs C.W. Munga	-	Clerk

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 designated by him to exercise and perform on behalf of the Treasury any powers or duty conferred 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.

The Paymaster General's office, Consolidated Fund and the responsibilities of Controller and Auditor General were explained to the Committees.

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.

The 10<sup>th</sup> 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: -

- (i) 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.
- (ii) 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
- (iii) The least revenue was collected from Wajir and Mandera (Region 6) and Garissa and Ijara (Region 7).
- (iv) 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.
- (v) In the Ministry of Education all the thirty functions assigned to the Ministry's Head office could be reduced to seven.
- (vi) In the Ministry of Health the twenty one functions assigned to the Head office could be reduced to four.
- (vii) 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.
- (viii) Devolution will lead to some areas of cost savings for instance:
  - Headquarter personnel will be devolved to avoid duplication because the offices and duties they were handling will shift to the devolved levels.
  - Efficiency will be enhanced since results at the local level will be measured.
  - 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.
- (ix) 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.
- (x) 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 SITTING OF PUBLIC FINANCE, PUBLIC SERVICE, LEADERSHIP AND INTEGRITY TECHNICAL WORKING GROUP (H) – BOMAS OF KENYA ON 26<sup>TH</sup> JANUARY, 2004 IN COMMITTEE TENT NO.8 AT 9.30 A.M.**

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**PRESENT**

<b><u>Name</u></b>	<b><u>Delegate No.</u></b>
1. Billow Adan Kerrow	015 <b>Convenor</b>
2. Chris Okemo	161
3. Ann Mululu	496
4. Noah Nondin Too Arap	197
5. Abdullahi Haji Mohamed	250
6. David Kuto	340
7. Farouk Said	229
8. Kamla Sikand	500
9. Martin N. Wambora	202
10. Joseph Njalis Shuel	353
11. Judith A. O. Nam	408
12. Dache John Pesa	415
13. Elphas Ombura	410
14. James Omolo Kayila	407
15. Franklin K. Bett	213
16. Francis Wangara	446
17. Grace N. Nduyo	279
18. Osili Adungo	394
19. Mariamu Ntausian L.	345
20. Joseph K. Soi	374
21. Fredrick R. Nderitu	302
22. James Bwatuti	628
23. Kituyi P. Sikoya	606
24. Henry Obwocha	154
25. Were Domtilla	616
26. Moses M. Wekesa	597
27. Beth Mugo	112
28. Nyamunga Eric Opon	152
29. Kingori Mwangi	624
30. Daniel Njoroge	589
31. Abdu Bahari Ali	012

**ABSENT**

1. Rose L. Owino	471
2. Gilbert Omondi	625
3. Rose Waruhiu	490
4. Musa Sirma	190
5. Wycliffe Oparanya	170
6. Peter Odoyo	156
7. William N. Matheka	299
8. Anyang' Ny'ong'o	153
9. Justus M. Wekala	610
10. Kiremi Mwiria	137
11. Sehmi Rupinda	544
12. E. Mbau	099
13. David Mwiraria	136
14. Gideon Ole Konchella	174
15. John K. Njiraini	480

### **OBSERVERS**

1. Khatib Hudson	038
2. Cleophas Nyangiro	159
3. Muga A.N. Owira	115

### **IN ATTENDANCE**

1. Pastor Zablon Ayonga	-	Rapporteur
2. Ms Noor Awadh	-	Programme Assistant
3. Ms Keziah Kamau	-	Programme Assistant
4. Mrs C. W. Munga	-	Clerk

### **MIN. 139/2004: PRESENTATION BY THE DIRECTOR OF POLICY SOLUTIONS**

Betty Maina – Director of Policy Solutions appeared before the Committee and guided the Members through the proposals on Public finance Chapter.

The Committee was informed that:-

- The draft bill has no explicit principles guiding public expenditure and observation of equity of burden.
- A law should be enacted which will cater for Public Finance Management.
- The draft should provide for amendment of estimates and strategic plans by Parliament. The members noted that this concern was addressed by the draft constitution.

- The draft constitution has no provision for borrowing by devolved levels of government.

The members noted that this has been provided for in Article 249 (2).

**MIN. 140/2004: PUBLIC FINANCE**

**Article 243 A –** Amendment proposed that new **sub articles e and f** be added at the end of the Article to read as follows:-

*“ (e) promote efficient utilization of public money in the pursuit of national objective and goals as stated in the constitution.*

*(f) Promote equitable share of tax burden in the country.”*

Debate arising  
Question put and agreed to

Further amendment proposed for parliament to enact legislation which will provide for financial management by national government and devolved levels of government. The drafts person would come up with an appropriate amendment.

Further amendment proposed for parliament to enact legislation which would cater for equitable division of revenue raised nationally among the national and devolved units of government. The drafts person would come up with the appropriate amendment.

**MIN. 141/2004: ADJOURNMENT**

The Ag. Convenor (Chris Okemo) adjourned the meeting at 12.45 p.m.

**AFTERNOON SITTING**

The Committee assembled at 2.25 p.m.

**PRESENT**

<b><u>NAME</u></b>	<b><u>DELEGATE NO.</u></b>
1. Chris Okemo	161 <b>Ag. Convenor</b>
2. Billow Adan Kerrow	015 Convenor
3. Ann Mululu	496
4. Noah Nondin too Arap	197
5. Abdullahi Haji Mohamed	250
6. David Kuto	340
7. Farouk Said	229
8. Kamla Sikand	500

9. Martin N. Wambora	202
10. Joseph Njalis Shuel	353
11. Judith A.O. Nam	408
12. Dache John Pesa	415
13. Elphas Ombura	410
14. James Omolo Kayila	407
15. Franklin K. Bett	213
16. Grace N. Nduyo	279
17. Osili Adungo	394
18. Mariamu Ntausian L.	345
19. Joseph K. Soi	374
20. Fredrick R. Nderitu	302
21. James Bwatuti	628
22. Kituyi P. Sikoya	606
23. Gilbert Omondi	625
24. Henry Obwocha	154
25. Were Domtilla	616
26. Moses M. Wekesa	597
27. Nyamunga Eric Opon	152
28. Kingori Mwangi	624
29. Francis Wangara	446
30. Peter Odoyo	156
31. Daniel Njoroge	589
32. William N. Matheka	299
33. Wycliffe Oparanya	170
34. Abdul Bahari Ali	012

**ABSENT WITH APOLOGY:**

1. Beth Mugo	112
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**ABSENT**

1. Rose L. Owino	471
2. Rose Waruhiu	490
3. Anyang' Ny'ongo	153
4. Musa Sirma	190
5. Justus M. Wekala	610
6. Kiremi Mwiria	137
7. Sehmi Rupinda	544
8. E. Mbau	099
9. David Mwiraria	136
10. Gideon Ole Konchella	174
11. John K. Njiraini	480

## **OBSERVERS**

- |                       |     |
|-----------------------|-----|
| 1. Khatib Hudson      | 038 |
| 2. Cleaophas Nyangiro | 159 |
| 3. Muga A.N. Owira    | 115 |

## **IN ATTENDANCE**

- |                         |   |                     |
|-------------------------|---|---------------------|
| 1. Pastor Zablon Ayonga | - | Rapporteur          |
| 2. Ms Noor Awadh        | - | Programme Assistant |
| 3. Ms Keziah Kamau      | - | Programme Assistant |
| 4. Mrs. C.W. Munga      | - | Clerk               |

## **MIN. 142/2004: DEVOLUTION COMMITTEE DRAFT AMENDMENTS PART V – FINANCE**

- Article 238 (1) **Agreed to**  
**2 (a)** Agreed to  
**(b)** Amendment proposed

**That the sub article should read as follows:-**

*Six other members, appointed by the President with the approval of the National Council.*

**3(a)** Agreed to

**(b)** Amendment proposed that the word “*devolved*” be inserted immediately after the word “*several*” appearing on the first line.

*Debate arising.*

Question of the amendment put and agreed to.

Further amendment proposed that the words “*below the national level*” appearing on the second and third lines be deleted.

Debate arising.

Question of the amendment put and agreed to.

**(4)** Agreed to

**(5)** Amendment proposed

That the sub article be deleted and its content be transferred to an act of Parliament.

Debate arising.

Question of the amendment put and agreed to.

(6) Amendment proposed

That the sub article be deleted and its content transferred to an act of Parliament

*Debate arising.*

Question of the amendment put and agreed to.

(7) Amendment proposed

That the sub article be deleted and its content transferred to an Act of Parliament.

Debate arising.

Question of the amendment put and agreed to.

**MIN. 143/2004: ADJOURNMENT**

The Ag. Convenor (Chris Okemo) adjourned the meeting at 3.45 p.m.

**Confirmed:**.....

**CONVENOR**

**Date:**.....

**MINUTES OF THE TWENTY FIFTH SITTING OF PUBLIC FINANCE, PUBLIC SERVICE, LEADERSHIP AND INTEGRITY TECHNICAL WORKING GROUP (H) – BOMAS OF KENYA ON 27<sup>TH</sup> JANUARY, 2004 IN COMMITTEE TENT NO.8 AT 9.30 A.M.**

---

**PRESENT**

<b><u>NAME</u></b>	<b><u>DELEGATE NO.</u></b>
1. Billow Adan Kerrow	015 Convenor
1. Chris Okemo	161
2. Ann Mululu	496
3. Noah Nondin Too Arap	197
4. Abdullahi Haji Mohamed	250
5. David Kuto	340
6. Farouk Said	229
7. Kamla Sikand	500
8. Martin N. Wambora	202
9. Joseph Njalis Shuel	353
10. Judith A. O. Nam	408
11. Dache John Pesa	415
12. Elphas Ombura	410
13. James Omolo Kayila	407
14. Franklin K. Bett	213
15. Grace N. Nduyo	279
16. Osili Adungo	394
17. Mariamu Ntausian L.	345
18. Joseph K. Soi	374
19. Fredrick R. Nderitu	302
20. James Bwatuti	628
21. Kituyi P. Sikoya	606
22. Henry Obwocha	154
23. Moses M. Wekesa	597
24. Nyamunga Eric Opon	152
25. Kingori Mwangi	624
26. Daniel Njoroge	589
27. Abdu Bahari Ali	012
28. Rose L. Owino	471
29. Musa Sirma	190
30. Wycliffe Oparanya	170
31. William N. Matheka	299
32. Justus M. Wekala	610
33. Anyang' Ny'ong'o	153

## **ABSENT WITH APOLOGY**

- |              |     |
|--------------|-----|
| 1. Beth Mugo | 112 |
|--------------|-----|

## **ABSENT**

- |                          |     |
|--------------------------|-----|
| 1. Francis Wangara       | 446 |
| 2. Were Domtilla         | 616 |
| 3. Gilbert Omondi        | 625 |
| 4. Rose Waruhiu          | 490 |
| 5. Peter Odoyo           | 156 |
| 6. Kiremi Mwiria         | 137 |
| 7. Sehmi Rupinda         | 544 |
| 8. E. Mbau               | 099 |
| 9. David Mwiraria        | 136 |
| 10. Gideon Ole Konchella | 174 |
| 11. John K. Njiraini     | 480 |

## **OBSERVERS**

- |                      |     |
|----------------------|-----|
| 1. Fatma Hyder       | 045 |
| 2. Khatib Hudson     | 038 |
| 3. Cleophas Nyangiro | 159 |
| 4. Muga A.N. Owira   | 115 |
| 5. Victoria Mambo    | 091 |
| 6. Kevin Wanyama     | 177 |

## **IN ATTENDANCE**

- |                          |   |                     |
|--------------------------|---|---------------------|
| 1. Justice Isaac Lenaola | - | Rapporteur          |
| 2. Pastor Zablon Ayonga  | - | Rapporteur          |
| 3. Ms Noor Awadh         | - | Programme Assistant |
| 4. Ms Keziah Kamau       | - | Programme Assistant |
| 5. Mr. Mark Spakowski    | - | Draftsperson        |
| 6. Mrs. C. W. Munga      | - | Clerk               |

### **MIN. 144/2004: CONFIRMATION OF MINUTES**

Minutes of the 23<sup>rd</sup> and 24<sup>th</sup> Sittings held on 21<sup>st</sup> and 26<sup>th</sup> January, 2004 respectively were confirmed by the Members present and signed by the Convenor.

### **MIN. 145/2004: ADOPTION OF THE DAILY SUMMARY OF ISSUES**

Members deliberated on the Daily Summary of Issues for the 23<sup>rd</sup> and the 24<sup>th</sup> Sittings held on 21<sup>st</sup> and 26<sup>th</sup> January 2004 respectively and adopted them with minor amendments.

**MIN. 146/2004: MATTERS ARISING**

**Under Minute No.137/2004**, Members noted that the title should be “*Public Service*”.

**Under Min. No.142/2004**, the Members resolved that Parliament should enact legislation to cater for the articles which have been deleted and whose content should be contained in Act of Parliament.

**MIN. 147/2004: SECTIONS OF DEVOLUTION COMMITTEE DRAFT REPORT – NINTH SCHEDULE**

**Bullet (1) Amendment proposed**

That the sub article should be deleted.

Debate arising.

Question of the amendment put and agreed to.

**(2) Amendment proposed** That the sub article should be deleted.

Debate arising.

Question of the amendment put and agreed to.

**(3) Amendment proposed** That the sub article should be deleted.

Debate arising.

Question of the amendment put and agreed to

**(4) agreed to**

**(5) agreed to**

**(6) Amendment proposed**

That the sub article should be deleted.

Debate arising.

Question of the amendment put and agreed to.

**(7) Amendment proposed.**

That the sub article should read as follows:

***“When two or more governments have the same fiscal powers and functions with regard to the same area, an appropriate division of those powers and functions must be made in terms of an act of Parliament. The division may be made only after taking into account at least the following criteria:-***

*the need to comply with second principles of taxation.*

*The powers and functions performed by each government.*

*The fiscal capacity of the governments.*

*The effectiveness and efficiency of raising taxes, levies and duties; and*

*Equity”.*

Debate arising.

Question of the amendment put and agreed to.

**(8) Agreed to.**

**(9) Amendment proposed**

That the sub article should read as follows:-

*“The national government must promote financial equalization among the devolved levels of government when granting subsidies and must take into account the financial capacities of those devolved levels of government and the special situation of the devolved levels”.*

Debate arising.

Question of the amendment put and agreed to.

**MIN. 148/2004: TENTH SCHEDULE - TAXATION POWERS OF THE NATIONAL GOVERNMENT**

**Bullet (i) Amendment proposed that the words “and services” be inserted at the end of the sub article.**

Debate arising.

Question of the amendment proposed, put and agreed to.

Amendment proposed

That the sub article should read as follows:

*“Levy and collect income, value added, excise and other miscellaneous taxes”.*

Debate arising.

Question of the amendment proposed, put and agreed to.

Agreed to

Amendment proposed

That the sub article should read as follows.

*“Levy and collect taxes on transport by road, air, rail and by sea”.*

Debate arising.

Question of the amendment put and agreed to.

**Amendment proposed**

**That the word “zonal” be deleted and the word “national” be inserted in place thereof.**

**Debate arising.**

**Question of the amendment put and agreed to**

The Members resolved that this sub article should be deferred to another day. It will be concluded during the joint sitting of Committee H and Devolution of Powers Committee.

(vii) Agreed to

**MIN. 149/2004: SECTIONS OF DEVOLUTION OF POWERS DRAFT REPORT:**  
**TENTH SCHEDULE: TAXATION OF ZONAL GOVERNMENTS**

**Bullet (1) amendment proposed that the sub article be deleted.**

Debate arising.

Question of the amendment put and agreed to.

Agreed to

Amendment proposed

That the sub article should read as follows:

*“Levy and collect agricultural tax from farmers”.*

**Debate arising.**

**Question of the amendment proposed, put and agreed to.**

Amendment proposed

That the sub article be deleted.

**Debate arising.**

**Question of the amendment proposed, put and agreed to.**

(5) Agreed to

(6) The members resolved that the sub article be deferred to another day. It will be concluded during the joint sitting between Committee H and Devolution of Powers Committee.

(7) Amendment proposed  
That the sub article be deleted.

Debate arising.

Question of the amendment proposed, put and agreed to.

(8) Agreed to

Members resolved that the sub article be deferred to another day. It will be concluded during the joint sitting between Committee H and Devolution of Powers Committee.

(9) Agreed to

(10) Agreed to

**MIN. 150/2004: CONCURRENT TAXATION POWERS**

**Bullet (1) Amendment proposed that the sub article be deleted.**

Debate arising.

**Question of the amendment put and agreed to.**

(2) Amendment proposed that the sub article be deleted.

Debate arising

Question of the amendment put and agreed to.

(3) Amendment proposed.

That the words "*income tax and*" appearing on the first line be deleted and the words "*as parliament may prescribe*" be inserted at the end of the sub article.

Debate arising

Question of the amendment proposed, put and agreed to.

**MIN. 151/2004: TAXATION POWERS OF THE COUNTY GOVERNMENT**

Bullet (1) Agreed to  
Agreed to  
Agreed to  
Agreed to  
Agreed to  
Agreed to  
Agreed to

**MIN. 152/2004: ADJOURNMENT**

The Convenor adjourned the meeting at 1.20 p.m.

**AFTERNOON SITTING**

The Committee resumed at 2.45 p.m.

The following Members of the **Technical Working Group “H”** were present.

1.	Billow Adan Kerrow	<b>Convenor</b>
2.	Chris Okemo	161
3.	Ann Mululu	496
4.	Noah Nondin Too Arap	197
5.	Abdullahi Haji Mohamed	250
6.	David Kuto	340
7.	Farouk Said	229
8.	Kamla Sikand	500
9.	Martin N. Wambora	202
10.	Rose L. Owino	471
11.	Joseph Njalis Shuel	353
12.	Judith A. O. Nam	408
13.	Dache John Pesa	415
14.	Elphas Ombura	410
15.	James Omolo Kayila	407
16.	Franklin K. Bett	213
17.	Grace N. Nduyo	279
18.	Osili Adungo	394
19.	Joseph K. Soi	374
20.	Kituyi P. Sikoya	606
21.	Gilbert Omondi	625
22.	Moses M. Wekesa	597
23.	Kingori Mwangi	624
24.	Nyamunga Eric Opon	152
25.	Peter Odoyo	156
26.	Daniel Njoroge	589
27.	William N. Matheka	299
28.	Justus M. Wekala	610

29.	Musa Sirma	190
30.	Anyang' Ny'ong'o	048

**ABSENT WITH APOLOGY**

1.	Abdu Bahari Ali	012
2.	Beth Mugo	112

**ABSENT**

1.	Francis Wangara	446
2.	Mariam Ntausian L.	345
3.	Fredrick R. Nderitu	302
4.	James Bwatuti	628
5.	Rose Waruhiu	490
6.	Henry Obwocha	154
7.	Were Domtilla	616
8.	Wycliffe Oparanya	170
9.	Kiremi Mwiria	137
10.	Sehmi Rupinda	544
11.	E. Mbau	099
12.	David Mwiraria	136
13.	Gideon Ole Konchella	174
14.	John K. Njiraini	480

**OBSERVERS**

1.	Victoria Mambo	091
2.	Khatib Hudson	038
3.	Cleophas Nyangiro	159
4.	Kevin Wanyama	117
5.	Muga Alfred Owira	115

**IN ATTENDANCE**

1.	Pastor Zablon Ayonga	-	Rapporteur
2.	Ms Noor Awadh	-	Programme Assistant
3.	Ms Keziah Kamau	-	Programme Assistant
4.	Mr. Mark Spakowski	-	Draftsperson
5.	Mrs. C. W. Munga	-	Clerk

**MIN. 153/2004: PART V – FINANCE**

**Article 239** Agreed to

**Article 240** Amendment proposed  
That the sub article be deleted.

**Debate arising**

**Question of the amendment proposed, put and agreed to.**

**Article 241 (1)** Agreed to

(2) Amendment proposed  
that the sub article be deleted.

**Debate arising**

**Question of the amendment proposed, put and agreed to.**

**Article 242 (1)** Agreed to

(2) Amendment proposed  
that the sub article should read as follows:-  
*“The Authority is responsible for the collection of revenues due to the national government  
except for funds determined by an Act of Parliament”.*

**Debate arising**

**Question of the amendment proposed, put and agreed to.**

**Article 243** Amendment proposed that the sub article be deleted.

Debate arising.

**Question of the amendment proposed, put and agreed to.**

**Article 244 (1)** Agreed to

(2) Amendment proposed that the words *“established by legislation of the zonal government”*  
appearing at the end of the sub article be deleted.

Debate arising.

Question of Amendment proposed, put and agreed to.

(3) Amendment proposed  
That the sub article should read as follows:-

*“The Public Service Commission in consultation with the zonal government shall appoint the  
zonal or County Service Commission under Clause 2”.*

Debate arising.

Question of the amendment put and agreed to.

**MIN. 154/2004: ADJOURNMENT**

The Convenor adjourned the meeting at 4.20 p.m.

**Confirmed:**.....  
**(AG. CONVENOR – CHRIS OKEMO)**

**Date:**.....

**MINUTES OF THE TWENTY SIXTH SITTING OF PUBLIC FINANCE, PUBLIC SERVICE, LEADERSHIP AND INTEGRITY TECHNICAL WORKING GROUP (H) – BOMAS OF KENYA ON 28<sup>TH</sup> JANUARY, 2004 IN COMMITTEE TENT NO.8 AT 9.30 A.M.**

---

**PRESENT**

<b><u>NAME</u></b>	<b><u>DELEGATE NO.</u></b>
1. Chris Okemo	161 (Ag. Convenor)
2. Ann Mululu	496
3. Noah Nondin Too Arap	197
4. Abdullahi Haji Mohamed	250
5. David Kuto	340
6. Farouk Said	229
7. Kamla Sikand	500
8. Martin N. Wambora	202
9. Joseph Njalis Shuel	353
10. Judith A. O. Nam	408
11. Dache John Pesa	415
12. Elphas Ombura	410
13. James Omolo Kayila	407
14. Franklin K. Bett	213
15. Grace N. Nduyo	279
16. Osili Adungo	394
17. Mariamu Ntausian L.	345
18. Joseph K. Soi	374
19. Fredrick R. Nderitu	302
20. James Bwatuti	628
21. Kituyi P. Sikoya	606
22. Henry Obwocha	154
23. Moses M. Wekesa	597
24. Nyamunga Eric Opon	152
25. Kingori Mwangi	624
26. Daniel Njoroge	589
27. Rose L. Owino	471
28. William N. Matheka	299
29. Beth Mugo	112
30. Francis Wangara	446
31. Were Domtilla	616
32. Gilbert Omondi	625
33. Rose Waruhiu	490
34. Peter Odoyo	156

35. Abdu Bahari Ali 012

**ABSENT WITH APOLOGY**

1. Billow Adan Kerrow 015 Convenor

**ABSENT**

1. Musa Sirma	190
2. Wycliffe Oparanya	170
3. Justus M. Wekala	610
4. Anyang' Ny'ong'o	153
5. Kiremi Mwiria	137
6. Sehmi Rupinda	544
7. E. Mbau	099
8. David Mwiraria	136
9. Gideon Ole Konchella	174
10. John K. Njiraini	480

**OBSERVERS**

1. Khatib Hudson	038
2. Cleophas Nyangiro	159
3. Muga A.N. Owira	115
4. Victoria Mambo	091

**IN ATTENDANCE**

1. Justice Isaac Lenaola	-	Rapporteur
2. Pastor Zablon Ayonga	-	Rapporteur
3. Ms Noor Awadh	-	Programme Assistant
4. Ms Keziah Kamau	-	Programme Assistant
5. Mr. Mark Spakowski	-	Draftsperson
6. Mrs C. W. Munga	-	Clerk

**MIN. 155/2004: CONFIRMATION OF MINUTES**

Minutes of the 26<sup>th</sup> Sitting held on 27<sup>th</sup> January, 2004 were confirmed by the Members present and signed by the Ag. Convenor (Delegate Chris Okemo).

**MIN. 156/2004: MATTERS ARISING**

**Under Min. No. 147/2004, Bullet (7),** the Members resolved that the words “*levels of*” should be inserted immediately after the word “*more*” appearing on the first line.

The Members further resolved that **Bullet 7(a)** should read as follows “*the need to comply with sound principles of taxation*”.

**MIN. 157/2004: STRUCTURE OF PUBLIC FINANCE ARTICLES**

Mr. C. Oyaya – Programme Officer – Research, informed the Committee that the following aspects should be taken into consideration as the Committee concludes its deliberations.

- Objects and Principles of Public Finance.
- Management of Public Finance functions.
- Management of Public Finance as far as the devolved units are concerned.

Under objects and principles it should be noted that financial equalization may not mean equalization in sharing of national resources.

Under management of Public Finance functions, the Committee should clearly state the National body (such as Kenya Revenue Authority) which should be mandated to collect revenue for the government.

The following aspects should also be taken into account.

Taxation

Principles of Taxation

Harmonization of taxes to avoid double taxation.

Public debt; debt guarantees.

Role of Treasury and how it should relate with other levels of government.

Devolved governments plans and budgets.

Establishment of revenue funds for devolved governments.

National sources of devolved governments’ funding.

Devolved governments power to raise taxes.

Power of the devolved governments to borrow.

National mobility of goods, capital, labour and services.

**MIN. 158/2004: PRESENTATION BY THE DEPUTY DIRECTOR OF EDUCATION**

The Deputy Director of Education Mr. Ayiro appeared before the Committee and made a presentation on devolution of the education system.

The Committee was informed that:-

The government's first priority is increased access to educational opportunities at the primary level in order to achieve universal primary schooling by 2005.

The Education Sector Strategic Plan (ESSP) aims at providing education that is relevant to the needs of the domestic economy and which will equip Kenyans with the skills necessary for competing in the global economy.

The Ministry has twenty-nine functions to perform (list of the functions was tabled).

The Ministry takes an average of about 35% of governments recurrent budget, 84% of which goes to personal emoluments, including teachers' salaries. This leaves only 16% for use in operations and maintenance.

If Devolution takes place, the headquarters will deal with policy matters, quality assurance and management of education bodies (semi autonomous government organizations). The zonal governments will deal with primary curriculum, early childhood education, supervision of school based teaching programmes and other aspects of education. Devolution will lead to need to develop infrastructure, training of those who will run local levels, civil education of the community and change of operational procedures. This will be very expensive to implement.

**MIN. 159/2004: MOTION – EXPOSURE TRIP TO REVENUE COLLECTION POINTS**

**Motion made and Question proposed.**

*That, considering the impressive progress made by the Public Finance Technical Committee of the National Constitutional Conference III, and aware that all of its members need as a matter of necessity to be well informed and exposed on issues concerning public revenue collection management currently and the challenges affecting its performance, this Committee resolves to make an exposure trip to one or a number of the Kenya's busiest public revenue collection points to be decided by members of the committee to acquaint themselves with real live issues that will inform creation of constitutional provisions to address them effectively.*

(Delegate Dache John Pesa - No. 145 on behalf of Delegate Joseph Njalis Shuel - No.353)

**Debate arising.**

**Question put and negatived.**

**MIN. 160/2004: MOTION – AMENDMENT TO ARTICLE 246 B**

**Motion made and Question proposed.**

*That considering the current underdeveloped status of the historically disadvantaged areas of Arid and Semi-Arid regions of Kenya, particularly those predominantly inhabited by the nomadic pastoralists it is imperative to redress this malignant condition by introducing a provision under Article 246 B to capture and enforce the provision under Article 243 (c) and (d) and Article 257 (3) c and 4 (f).*

Sub Article 246 (B) 3 **should be inserted to read as follows:-**

***“246 B(3) - The Minister responsible for Finance shall prepare a provision for special votes for development of historically marginalised communities within the framework of sub article two (2) above”.***

(Delegate Abdullahi Haji – No. 250)

**Debate arising.**

**Question put and agreed to.**

**MIN. 161/2004: ADJOURNMENT**

The Ag. Convenor (Chris Okemo) adjourned the meeting at 1.00 p.m.

**AFTERNOON SITTING**

The Committee reconvened at 3.00 p.m.

**PRESENT:**

<b><u>NAME</u></b>	<b><u>DELEGATE NO.</u></b>
1. Ann Mululu	496 Ag. Convenor
2. Noah Nondin Too Arap	197
3. Abdullahi Haji Mohamed	250
4. David Kuto	340
5. Farouk Said	229
6. Kamla Sikand	500
7. Martin N. Wambora	202
8. Rose L. Owino	471
9. Judith A. O. Nam	408
10. Dache John Pesa	415
11. Elphas Ombura	410
12. James Omolo Kayila	407
13. Franklin K. Bett	213
14. Osili Adungo	394
15. Kituyi P. Sikoya	606
16. Nyamunga Eric Opon	152

17. Daniel Njoroge	589
18. William N. Matheka	299
19. Anyang' Ny'ong'o	153
20. Mariamu Ntausian L.	345
21. Fredrick R. Nderitu	302
James Bwatuti	628
Were Domtilla	616
Abdu Bahari Ali	012

### **ABSENT WITH APOLOGY**

1. Billow Adan Kerrow	015 <b>Convenor</b>
2. Chris Okemo	161
3. Joseph Njalis Shuel	353
4. Gilbert Omondi	625
5. Moses M. Wekesa	597
6. Beth Mugo	112
7. Rose Waruhiu	490

### **ABSENT**

1. Grace N. Nduyo	279
2. Joseph K. Soi	374
3. Kingori Mwangi	624
4. Peter Odoyo	156
5. Justus M. Wekala	610
6. Musa Sirma	190
7. Francis Wangara	446
8. Henry Obwocha	154
9. Wycliffe Oparanya	170
10. Kiremi Mwiria	137
11. Sehmi Rupinda	544
12. E. Mbau	099
13. David Mwiraria	136
14. Gideon Ole Konchella	174
15. John K. Njiraini	480

### **OBSERVERS**

1. Victoria Mambo	091
2. Khatib Hudson	038
3. Cleophas Nyangiro	159
4. Muga Alfred Owira	115

### **IN ATTENDANCE**

1. Pastor Zablon Ayonga	-	Rapporteur
-------------------------	---	------------

- |    |                    |   |                     |
|----|--------------------|---|---------------------|
| 2. | Ms Noor Awadh      | - | Programme Assistant |
| 3. | Ms Keziah Kamau    | - | Programme Assistant |
| 4. | Mr. Mark Spakowski | - | Draftsperson        |
| 5. | Mrs C. W. Munga    | - | Clerk               |

**MIN. 162/2004: ADOPTION OF DAILY SUMMARY OF ISSUES**

Members deliberated on the Daily Summary of Issues for the 24<sup>th</sup> Sitting held on 27<sup>th</sup> January 2004 and adopted it with amendments.

**MIN. 163/2004: ANY OTHER BUSINESS**

Delegate Dache John Pesa raised the issue of remuneration of pensioners. Several members resolved that the Committee on Constitutional Commissions and Amendments to the Constitution should address the said issue and provide for pensioners welfare.

The delegates resolved that the handouts given in the afternoon would be considered the following day – 29<sup>th</sup> January 2004.

**MIN. 164/2004: ADJOURNMENT**

The Ag. Convenor (Delegate Ann Mululu) adjourned the meeting at 3.45 p.m.

**Confirmed:**.....  
**(AG. CONVENOR- ANN MULULU)**

**Date:**.....

**MINUTES OF THE TWENTY SEVENTH SITTING OF PUBLIC FINANCE, PUBLIC SERVICE, LEADERSHIP AND INTEGRITY TECHNICAL WORKING GROUP (H) – BOMAS OF KENYA ON 29<sup>TH</sup> JANUARY, 2004 IN COMMITTEE TENT NO.8 AT 10.00 A.M.**

---

**PRESENT**

<b><u>NAME</u></b>	<b><u>DELEGATE NO.</u></b>
1. Billow Adan Kerrow	015 <b>Convenor</b>
2. Chris Okemo	161
3. Ann Mululu	496
4. Noah Nondin Too Arap	197
5. Abdullahi Haji Mohamed	250
6. David Kuto	340
7. Farouk Said	229
8. Kamla Sikand	500
9. Martin N. Wambora	202
10. Joseph Njalis Shuel	353
11. Dache John Pesa	415
12. Elphas Ombura	410
13. James Omolo Kayila	407
14. Franklin K. Bett	213
15. Grace N. Nduyo	279
16. Osili Adungo	394
17. Mariamu Ntausian L.	345
18. Joseph K. Soi	374
19. Fredrick R. Nderitu	302
20. Kituyi P. Sikoya	606
21. Henry Obwocha	154
22. Moses M. Wekesa	597
23. Nyamunga Eric Opon	152
24. Kingori Mwangi	624
25. Daniel Njoroge	589
26. Rose L. Owino	471
27. William N. Matheka	299
28. Were Domtilla	616
29. Peter Odoyo	156
30. Abdu Bahari Ali	012
31. Justus M. Wekala	610
32. Anyang' Ny'ong'o	153

### **ABSENT WITH APOLOGY**

- |                   |     |
|-------------------|-----|
| 1. Beth Mugo      | 112 |
| 2. Gilbert Omondi | 625 |

### **ABSENT**

- |                          |     |
|--------------------------|-----|
| 1. Judith A. O. Nam      | 408 |
| 2. James Bwatuti         | 628 |
| 3. Francis Wangara       | 446 |
| 4. Rose Waruhiu          | 490 |
| 5. Musa Sirma            | 190 |
| 6. Wycliffe Oparanya     | 170 |
| 7. Kiremi Mwiria         | 137 |
| 8. Sehmi Rupinda         | 544 |
| 9. E. Mbau               | 099 |
| 10. David Mwiraria       | 136 |
| 11. Gideon Ole Konchella | 174 |
| 12. John K. Njiraini     | 480 |

### **OBSERVERS**

- |                      |     |
|----------------------|-----|
| 1. Khatib Hudson     | 038 |
| 2. Cleophas Nyangiro | 159 |
| 3. Muga A.N. Owira   | 115 |
| 4. Victoria Mambo    | 091 |

### **IN ATTENDANCE**

- |                         |   |                              |
|-------------------------|---|------------------------------|
| 1. Pastor Zablon Ayonga | - | Rapporteur                   |
| 2. Ms Noor Awadh        | - | Programme Assistant          |
| 3. Ms Keziah Kamau      | - | Programme Assistant          |
| 4. Mr. Charles Oyaya    | - | Programme Officer - Research |
| 5. Mrs C. W. Munga      | - | Clerk                        |

### **MIN. 165/2004: CONFIRMATION OF MINUTES**

Minutes of the 26<sup>th</sup> Sitting held on 28<sup>th</sup> January 2004 were confirmed by the Members present and signed by the Convenor.

### **MIN. 166/2004: ANNOTATED DRAFT CHAPTER THIRTEEN PUBLIC FINANCE AMENDMENTS**

Article 243 - Title - Amendment proposed  
That the title should read as follows:-

*“Object of the Public Finance Management System”*

Debate arising

Question of the amendment put and agreed to.

Further amendment proposed that the word “financial” be deleted wherever it exists in this article and the word “finance” be inserted in place thereof.

Debate arising

Question of the amendment put and agreed to.

Article 243 (a) **Agreed to**

(b) **amendment proposed**

That the word “*money*” appearing on the first line be deleted and the word “*funds*” be inserted in place thereof.

**Debate arising**

**Question of the amendment put and agreed to.**

(c) **agreed to**

(d) **agreed to**

(e) **agreed to**

(f) **agreed to**

Article 243 (1) **agreed to**

(2) **amendment proposed**

**That the words “*of an Act of Parliament providing for the financial management of a devolved level of government*” appearing on the first and the second lines be deleted and the words “*in sub article one above*” be inserted in place thereof.**

**Debate arising**

**Question of the amendment put and agreed to.**

Article 244 **agreed to**

Article 245 **agreed to**

Article 246 (1) **agreed to**

(2) **agreed to**

(3) **agreed to**

(4) **Amendment proposed**

**That the sub article be deleted.**

**Debate arising**

**Question of the amendment proposed, put and agreed to.**

Article 246 A **agreed to**

Article 246 B (1) **agreed to**

(2) **agreed to**

(2A) **amendment proposed**

**That the words “include, in the estimates a special vote for historically” be deleted and the words “include in the annual estimates a special budgetary provision for development of” be inserted in place thereof.**

**Question of the amendment proposed put and agreed to.**

(3) **agreed to**

(4) **agreed to**

(5) **agreed to**

(6) **agreed to**

(7) **agreed to**

(8) **agreed to**

Article 247 **agreed to**

Article 248 (1) **agreed to**

(2) **agreed to**

(3) **agreed to**

(4) **agreed to**

**Amendment proposed that a new sub article (5) be inserted to read as follows:-**

*“If the Appropriation Act for a financial year has not come into operation, or is not likely to come into operation, by the beginning of that financial year, the National Assembly may, by a vote on account, authorize the withdrawal from the Consolidated Fund of moneys (not exceeding in total one – half of the sums included in the estimates of expenditure for that year that have been laid before the Assembly) for the purpose of meeting expenditure necessary to carry on the services of the Government of Kenya during that year until such time as the Appropriation Act comes into operation but any moneys so withdrawn shall be included under separate votes for the several services in respect of which they were withdrawn in the Appropriation Act”.*

**Debate arising**

**Question of the amendment proposed, put and agreed to**

Article 249 **agreed to**

Article 250 (1) **amendment proposed**

**That the words “of Kenya” appearing on the second line be deleted.**

**Debate arising**

**Question of the amendment proposed, put and agreed to**

Article 251 (1) **agreed to**

(2) **agreed to**

(3) **agreed to**

(3A) **agreed to**

(4) **agreed to**

(5) **Amendment proposed**

That the word “*matter*” appearing on the second line be deleted and the word “*matters*” be inserted in place thereof

**Debate arising**

**Question of the amendment proposed, put and agreed to**

(6) agreed to

(7) agreed to

Article 252 (1) **agreed to**

(2) agreed to

(3) amendment proposed

that the sub article should read as follows:-

*“Each note and coin issued by Central Bank of Kenya shall bear only the portrait of the First President of Kenya and other images that depict or symbolize Kenya or an aspect of Kenya”*

Debate arising.

**Question of the amendment proposed, put and agreed to**

Article 253 **agreed to**

**MIN. NO. 167/2004: ADJOURNMENT**

The Ag. Convenor (Ann Mululu) adjourned the meeting 1.10 p.m.

**AFTERNOON SITTING**

The Committee reconvened at 3.10 p.m.

**PRESENT:**

1. Billow Adan Kerrow

2. Ann Mululu

3. David Kuto

015 **Convenor**

496

340

4. Farouk Said	229
5. Kamla Sikand	500
6. Martin N. Wambora	202
7. Elphas Ombura	410
8. James Omolo Kayila	407
9. Franklin K. Bett	213
10. Osili Adungo	394
11. Nyamunga Eric Opon	152
12. Daniel Njoroge	589
13. William N. Matheka	299
14. Mariamu Ntausian L.	345
15. Fredrick R. Nderitu	302
16. Were Domtilla	616
17. Abdu Bahari Ali	012
18. Joseph Njalis Shuel	353
19. Moses M. Wekesa	597
20. Grace N. Nduyo	279
21. Joseph K. Soi	374
22. Peter Odoyo	156

#### **ABSENT WITH APOLOGY**

1. Abdullahi Haji Mohamed	250
2. Gilbert Omondi	625
3. Beth Mugo	112
4. Rose Waruhiu	490

#### **ABSENT**

1. Noah Nondin Too Arap	197
2. Rose L. Owino	471
3. Judith A. O. Nam	408
4. Dache John Pesa	415
5. Kituyi P. Sikoya	606
6. Anyang' Ny'ong'o	153
7. James Bwatuti	628
8. Chris Okemo	161
9. Kingori Mwangi	624
10. Justus M. Wekala	610
11. Musa Sirma	190
12. Francis Wangara	446
13. Henry Obwocha	154
14. Wycliffe Oparanya	170
15. Kiremi Mwiria	137
16. Sehmi Rupinda	544

17. E. Mbau	099
18. David Mwiraria	136
19. Gideon Ole Konchella	174
20. John K. Njiraini	480

**OBSERVERS**

1. Victoria Mambo	091
2. Khatib Hudson	038
3. Cleophas Nyangiro	159
4. Muga Alfred Owira	115

**IN ATTENDANCE**

1. Pastor Zablon Ayonga	-	Rapporteur
2. Ms Noor Awadh	-	Programme Assistant
3. Ms Keziah Kamau	-	Programme Assistant
4. Mr. Charles Oyaya	-	Programme Officer - Research
5. Mrs C. W. Munga	-	Clerk

**MIN. NO. 168/2004**

- Article 254 (1) **agreed to**  
 (2) **agreed to**  
 (2A) **agreed to**  
 (3) **agreed to**  
 (4) **agreed to**  
 (5) **agreed to**  
 (6) **Amendment proposed**  
**that the sub article be deleted**

**Debate arising**

**Question of the amendment proposed, put and agreed to.**

- Article 254(1) **agreed to**  
 Article 255 **agreed to**  
 Article 256 **agreed to**  
 Article 257 **agreed to**

**MIN. NO. 169/2004: PROVISIONS ON FINANCE PROPOSED BY THE TWC ON  
 DEVOLUTION WITH CHANGES PROPOSED BY THE  
 TWC ON PUBLIC FINANCE**

- Article 238 **agreed to**

Article 238 A **the members resolved that the secretariat should come up with appropriate amendment in line with article 257 (7).**

Article 239 **agreed to**

Article 239 (A) (a) It was resolved that debate on this article will be concluded later.

(b) agreed to

(c) Amendment proposed

that the word “*must*” appearing on the fourth line should be deleted and the word “*shall*” be inserted in place thereof.

Debate arising

Question of the amendment proposed, put and agreed to.

Further amendment proposed that the word “*must*” should be deleted wherever it exists in this article and the word “*shall*” be inserted in place thereof.

Debate arising

**Question of the amendment proposed, put and agreed to.**

(d) **agreed to**

(e) **agreed to**

(f) **agreed to**

Article 241 **agreed to**

Article 242 **agreed to**

Article 243 B **agreed to**

Article 244(1) **agreed to**

(2) **agreed to**

(3) **Amendment proposed**

**That the word “*appoint*” appearing on the second line be deleted and the word “*establish*” be inserted in place thereof.**

**Debate arising**

**Question of the amendment proposed, put and agreed to.**

**MIN. NO. 170/2004: TAXATION POWERS – TENTH SCHEDULE**

Bullet (1) amendment proposed that the word “*dues*” be deleted and the word “*duties*” be inserted in place thereof.

Debate arising

Question of the amendment proposed, put and agreed to.

(2) **agreed to**

(3) **agreed to**

(4) **agreed to**

(5) **agreed to**

(6) **Amendment proposed**

**That the words “and charges” be inserted immediately after the word “fees”.**

**Debate arising**

**Question of the amendment proposed, put and agreed to.**

(7) **agreed to**

**MIN. NO. 171/2004: TAXATION POWERS OF THE ZONAL GOVERNMENTS**

Title – **Amendment proposed that the title should read as follows:**

*“taxation power of the County governments”*

Debate arising

Question of the amendment proposed, put and agreed to.

Further amendment proposed

That the word “zonal” be deleted wherever it exists in the article and the word “county” be inserted in place thereof.

Debate arising

**Question of the amendment proposed, put and agreed to.**

**Bullet (1) to be concluded during the meeting  
with Devolution Committee**

(2) “

(3) “

(4) “

(5) “

(6) **Amendment proposed**

**That the words “and charges” be inserted immediately after the word “fees.”**

Debate arising

Question of the amendment proposed, put and agreed to.

**Concurrent taxation powers.**

Members resolved that all their powers be taken over by the National government.

**MIN. NO. 172/2004: ADJOURNMENT**

The Convenor adjourned the meeting at 5.00 p.m.

**Confirmed:**.....  
(CONVENOR)

**Date:**.....

**MINUTES OF THE TWENTY EIGHTH SITTING OF PUBLIC FINANCE,  
PUBLIC SERVICE, LEADERSHIP AND INTEGRITY TECHNICAL  
WORKING GROUP (H) – BOMAS OF KENYA ON 30<sup>TH</sup> JANUARY, 2004 IN  
COMMITTEE TENT NO.8 AT 10.00 A.M.**

---

**PRESENT**

<b><u>NAME</u></b>	<b><u>DELEGATE NO.</u></b>
1. Billow Adan Kerrow	015 - Convenor
2. Chris Okemo	161
3. Ann Mululu	496
4. Abdullahi Haji Mohamed	250
5. David Kuto	340
6. Farouk Said	229
7. Kamla Sikand	500
8. Martin N. Wambora	202
9. Joseph Njalis Shuel	353
10. Dache John Pesa	415
11. Elphas Ombura	410
12. James Omolo Kayila	407
13. Franklin K. Bett	213
14. Grace N. Nduyo	279
15. Osili Adungo	394
16. Mariamu Ntausian L.	345
17. Joseph K. Soi	374
18. Fredrick R. Nderitu	302
19. Kituyi P. Sikoya	606
20. Henry Obwocha	154
21. Moses M. Wekesa	597
22. Kingori Mwangi	624
23. Daniel Njoroge	589
24. Rose L. Owino	471
25. William N. Matheka	299
26. Were Domtilla	616
27. Abdu Bahari Ali	012
28. Justus M. Wekala	610
29. Gilbert Omondi	625
30. Rose Waruhiu	490
31. Francis Wangara	446
32. James Bwatuti	628

### **ABSENT WITH APOLOGY**

- |                     |     |
|---------------------|-----|
| 1. Beth Mugo        | 112 |
| 2. Judith A. O. Nam | 408 |

### **ABSENT**

- |                          |     |
|--------------------------|-----|
| 1. Noah Nondin Too Arap  | 197 |
| 2. Nyamunga Eric Opon    | 152 |
| 3. Peter Odoyo           | 156 |
| 4. Anyang' Ny'ong'o      | 153 |
| 5. Francis Wangara       | 446 |
| 6. Musa Sirma            | 190 |
| 7. Wycliffe Oparanya     | 170 |
| 8. Kiremi Mwiria         | 137 |
| 9. Sehmi Rupinda         | 544 |
| 10. E. Mbau              | 099 |
| 11. David Mwiraria       | 136 |
| 12. Gideon Ole Konchella | 174 |
| 13. John K. Njiraini     | 480 |

### **OBSERVERS**

- |                      |     |
|----------------------|-----|
| 1. Khatib Hudson     | 038 |
| 2. Cleophas Nyangiro | 159 |
| 3. Muga A.N. Owira   | 115 |
| 4. Victoria Mambo    | 091 |

### **IN ATTENDANCE**

- |                         |   |                     |
|-------------------------|---|---------------------|
| 1. Pastor Zablon Ayonga | - | Rapporteur          |
| 2. Ms Noor Awadh        | - | Programme Assistant |
| 3. Ms. Keziah Kamau     | - | Programme Assistant |
| 4. _Mrs C. W. Munga     | - | Clerk               |

### **MIN. 173/2004: CONFIRMATION OF MINUTES**

Minutes of the 27<sup>th</sup> Sitting held on 29<sup>th</sup> January 2004 were confirmed by the Members present and signed by the Convenor.

### **MIN. 174/2004: ADOPTION OF DAILY SUMMARY OF ISSUES**

Members deliberated on the Daily Summary of Issues for the 26<sup>th</sup> Sitting held on 29<sup>th</sup> January 2004 and adopted them with minor amendments.

**MIN. 175/2004: PUBLIC RESOURCES AND CAPACITY BUILDING – CHAPTER FIFTEEN OF THE MAIN REPORT VOL.ONE**

The Members deliberated on the Chapter and made the following amendments.

Article 246 B – **Amendment proposed.**

**That a new Sub Article (7A) be inserted to read as follows:-**

*“(7 A) Parliament shall establish a budget office review annual estimates before they are tabled.”*

**Debate arising.**

**Question of the amendment, put and agreed to**

Article 249 (2) amendment proposed that the sub article should read as follows:

(2) The government shall not borrow, receive any grant, guarantee, or raise a loan on behalf of itself or any other public institution, authority or person, except with prior approval of Parliament.

**Debate arising.**

**Question of the amendment, put and agreed to**

(3) **Amendment proposed**

**That the first line should read as follows.**

*“An Act of Parliament shall be enacted to give effect to sub-section 2 above and to provide.”*

**Debate arising.**

**Question of the amendment, put and agreed to**

Article 250 **Amendment proposed**

**That a new sub article (3) be inserted to read as follows:**

*“Public debt shall be limited to 50% of the Gross Domestic Product of the financial year preceding the year for which the budget proposals have been made, provided that the current debt level shall be reduced to this limit with in a ten year transition period”.*

**Debate arising.**

**Question of the amendment, put and agreed to**

**MIN. 176/2004: ADJOURNMENT**

The Convenor adjourned the meeting at 12.45 p.m.

**Confirmed:**.....  
(CONVENOR)

**Date:**.....

**MINUTES OF THE TWENTY NINTH SITTING OF PUBLIC FINANCE, PUBLIC SERVICE, LEADERSHIP AND INTEGRITY TECHNICAL WORKING GROUP (H) – BOMAS OF KENYA ON 2<sup>ND</sup> FEBRUARY, 2004 IN COMMITTEE TENT NO.8 AT 10.00 A.M.**

---

**PRESENT**

<b><u>NAME</u></b>	<b><u>DELEGATE NO.</u></b>
1. Billow Adan Kerrow	015 - <b>Convenor</b>
2. Chris Okemo	161
3. Ann Mululu	496
4. Abdullahi Haji Mohamed	250
5. David Kuto	340
6. Farouk Said	229
7. Kamla Sikand	500
8. Martin N. Wambora	202
9. Joseph Njalis Shuel	353
10. Dache John Pesa	415
11. Elphas Ombura	410
12. James Omolo Kayila	407
13. Franklin K. Bett	213
14. Grace N. Nduyo	279
15. Osili Adungo	394
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29. Peter Odoyo	156
30. Francis Wangara	446
31. James Bwatuti	628

### **ABSENT WITH APOLOGY**

1. Beth Mugo	112
2. Gilbert Omondi	625
3. Rose Waruhiu	490

### **ABSENT**

1. Kituyi P. Sikoya	606
2. Kingori Mwangi	624
3. Were Domtilla	616
4. Justus M. Wekala	610
5. Anyang' Ny'ong'o	153
6. Musa Sirma	190
7. Wycliffe Oparanya	170
8. Kiremi Mwiria	137
9. Sehmi Rupinda	544
10. E. Mbau	099
11. David Mwiraria	136
12. Gideon Ole Konchella	174
13. John K. Njiraini	480

### **OBSERVERS**

1. Khatib Hudson	038
2. Muga A.N. Owira	115
3. Victoria Mambo	091

### **IN ATTENDANCE**

1. Pastor Zablon Ayonga	-	Rapporteur
2. Ms Noor Awadh	-	Programme Assistant
3. Ms. Keziah Kamau	-	Programme Assistant
4. Mrs C. W. Munga	-	Clerk

### **MIN. 177/2004: CONFIRMATION OF MINUTES**

Minutes of the 28<sup>th</sup> Sitting held on 30<sup>th</sup> January, 2004 were confirmed by the Members present and signed by the Convenor.

### **MIN. 178/2004: ADOPTION OF DAILY SUMMARY OF ISSUES**

Members deliberated on the Daily Summary of Issues for the 27<sup>th</sup> Sitting held on 30<sup>th</sup> January 2004 and adopted them with minor amendments.

**MIN. 179/2004: CONSOLIDATED DRAFT ON CHAPTER THIRTEEN – PUBLIC FINANCE**

The Members resolved that the title of Article 243 should read as follows:-

***“objects of the public finance management system”***

**Article 243** Agreed to

**243 A (a-f)** agreed to

Amendment proposed

That a new sub article (g) be inserted at the end of the sub article to read as follows:

***“(g) ensure that the budgets and budgetary processes promote transparency, accountability and the effective financial management of the economy, debt and public sector”.***

Debate arising.

Question put and agreed to.

Article 243B agreed to

Article 243 C agreed to

Article 243 C agreed to

Article 244 agreed to

Article 244A agreed to

Article 244B agreed to

Article 244C agreed to

Article 244D agreed to

Article 255 agreed to

Article 246A agreed to

Article 246B (1-7) agreed to

Article 246B 7A Members resolved that the sub article be deleted.

Article 246B (8) agreed to

Article 247 agreed to

Article 248 agreed to

Article 248A agreed to

Article 249 agreed to

Article 250 agreed to

Article 250 A (182) agreed to

Article 250(3) - The Members resolved that the sub article should read as follows:-

***“(3) for each financial year, every level of government shall publish a report on the guarantees it has granted, if any”.***

Article 250 B(1-5a) agreed to

Article 250 B (5b)

*“The affected public institution shall be given an opportunity to answer the allegations against it and to state its case, before the relevant Committee of Parliament”.*

Article 251 agreed to

Article 252 agreed to

Article 253 agreed to

Article 254 (1-5) agreed to

Article 254 (6) the Members resolved that the word may appearing on the first line be deleted and the word shall be inserted in place thereof”.

Article 255 agreed to

Article 256 agreed to

Article 257 agreed to

**MIN. 180/2004: DEVOLVED GOVERNMENT PUBLIC FINANCE**  
**FUNCTIONS**

Article 238 (1), the Members resolved that the word “four” appearing on the second line be deleted and the word “five” be inserted in place thereof.

Article 238 (2 – 7) agreed to.

Article 238 A (1-2) agreed to.

Article 238A 3a, Members resolved that the sub article should read as follows:-

*“(3)(a) estimates of revenue and expenditure, differentiating between development and recurrent expenditure”.*

Articles 238 A (3 b-c) agreed to

Article 238 B agreed to

Article 238C (1) agreed to

the Members resolved that the words “regional or county or municipal” appearing on the fourth and the fifth line should be deleted and the word “devolved” be inserted in place thereof.

Article 238 C (3-4) agreed to

Article 238 D agreed to

Article 238 E (1) agreed to  
Article 238E (2) Members resolved that the sub article be deleted.

Article 238 E (3) agreed to but the Members resolved that it be renumbered to 2.

**MIN. 181/2004: TENTH SCHEDULE TAXATION POWERS**

Taxation powers of the National Government (1-10) agreed to.

Taxation powers of the regional government 1 (1-5) agreed to

Taxation powers of the district government (1-2) agreed to.

**MIN. 182/2004: ADJOURNMENT**

The Convenor adjourned the meeting at 2.20 p.m.

**Confirmed:.....**  
**AG. CONVENOR (CHRIS OKEMO)**

**Date:.....**

**MINUTES OF THE THIRTIETH SITTING OF PUBLIC FINANCE, PUBLIC SERVICE, LEADERSHIP AND INTEGRITY TECHNICAL WORKING GROUP (H) – BOMAS OF KENYA ON 17TH FEBRUARY, 2004 IN COMMITTEE TENT NO.8 AT 2.30 P.M.**

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**PRESENT**

<b><u>NAME</u></b>	<b><u>DELEGATE NO.</u></b>
1. Chris Okemo	161 (Ag. Convenor)
2. Ann Mululu	496
3. Abdullahi Haji Mohamed	250
4. David Kuto	340
5. Farouk Said	229
6. Kamla Sikand	500
7. Martin N. Wambora	202
8. Joseph Njalis Shuel	353
9. Dache John Pesa	415
10. Elphas Ombura	410
11. James Omolo Kayila	407
12. Franklin K. Bett	213
13. Osili Adungo	394
14. Mariamu Ntausian L.	345
15. Fredrick R. Nderitu	302
16. Moses M. Wekesa	597
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21. Judith A. O. Nam	408
22. Noah Nondin Too Arap	197
23. Nyamunga Eric Opon	152
24. Peter Odoyo	156
25. Francis Wangara	446
26. Gilbert Omondi	625
27. Kituyi P. Sikoya	606
28. Were Domtilla	616
29. Justus M. Wekala	610
30. Grace N. Nduyo	279
31. Joseph K. Soi	374
32. Abdu Bahari Ali	012
33. James Bwatuti	628
34. Musa Sirma	190
35. Wycliffe Oparanya	170

## **ABSENT WITH APOLOGY**

1. Billow Adan Kerrow -015

## **ABSENT**

1. Henry Obwocha 154
2. Beth Mugo 112
3. Rose Waruhiu 490
4. Kingori Mwangi 624
5. Anyang' Ny'ong'o 153
6. Kiremi Mwiria 137
7. Sehmi Rupinda 544
8. E. Mbau 099
9. David Mwiraria 136
10. Gideon Ole Konchella 174
11. John K. Njiraini 480

## **OBSERVERS**

1. Khatib Hudson 038
2. Victoria Mambo 091

## **IN ATTENDANCE**

1. Pastor Zablon Ayonga - Rapporteur
2. Mr. C. Oyaya - Programme Officer (Research & Drafting)
3. Ms Noor Awadh - Programme Assistant
4. Ms Keziah Kamau - Programme Assistant
5. Mrs C. W. Munga - Clerk

## **MIN. 183/2004: DELIBERATIONS ON THE TEMPLATE FOR CROSS-CUTTING AND CONFLICTING PROVISIONS**

Commission on Government Finance – Agreed to

Functions of Commission – Agreed to.

The Devolved Government Plans and Budgets.

The Members resolved that the word “*equity*” be inserted immediately after the word “*promote*” appearing on the third line.

The Members resolved that the word “*must*” should be deleted and the word “*shall*” be inserted in place thereof.

a-c agreed to

agreed to

Procurement of public goods and services.

Agreed to.

The Members resolved that all the words after the word “*policy*” appearing on the fourth line should be deleted.

An Act of Parliament shall prescribe.

A framework within which the policy referred in clause (2) shall be implemented.

Categories of preference in the allocation of contracts.

The protection, or advancement of persons, categories of persons or groups previously disadvantaged by unfair competition or discrimination.

Sanctions for contractors who have not performed according to laid down procedures, contractual agreements and professional and public expectations.

Sanctions for persons or contractors who have defaulted on their tax obligations.

Any other matter that may be deemed appropriate.

Devolved Governments share of National Funds – agreed to.

Principles of Taxation – agreed to.

Taxation Powers of the National Government – Members resolved that all the information in this sub-article should be moved to schedule Ten.

Taxation Powers of the District Government – Members resolved that all the information in this sub article should be moved to schedule Ten.

Taxation Powers of regional Government.

Members resolved all the information in this sub article should be moved to schedule ten.

Consolidated Fund – Agreed to.

Establishment of Revenue Funds for Devolved Governments – agreed to.

Devolved government share of National Funds – agreed to.

Power of National Government to borrow or lend – agreed to.

Power of the devolved government to borrow – agreed to.

The National Revenue Authority – agreed to.

The Public Service Commission – agreed to.

Staffing of devolved authorities.

Members resolved that the sub article should read as follows “*A regional government or District Government may employ its own staff*”.

**2 – 4 – agreed to.**

Article 284 – Removal from office – agreed to.

The Ethics and Integrity Commission – agreed to.

Executive Committee – to be agreed upon after a joint sitting with the Executive Committee.

National Treasury Control – To be agreed upon after a joint sitting with the Executive Committee.

**MIN. 184/2004: ADJOURNMENT**

The Ag. Convenor (Chris Okemo) adjourned the meeting at 4.40 p.m.

**Confirmed:.....**  
**AG. CONVENOR (CHRIS OKEMO)**

**Date:.....**

**MINUTES OF THE THIRTY FIRST SITTING OF PUBLIC FINANCE, PUBLIC SERVICE, LEADERSHIP AND INTEGRITY TECHNICAL WORKING GROUP (H) – BOMAS OF KENYA ON 18TH FEBRUARY, 2004 IN COMMITTEE TENT NO.8 AT 9.30 P.M.**

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**PRESENT**

<b><u>NAME</u></b>	<b><u>DELEGATE NO.</u></b>
1. Chris Okemo	161 (Ag. Convenor)
2. Abdullahi Haji Mohamed	250
3. David Kuto	340
4. Farouk Said	229
5. Kamla Sikand	500
6. Martin N. Wambora	202
7. Joseph Njalis Shuel	353
8. Dache John Pesa	415
9. Elphas Ombura	410
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24. Joseph K. Soi	374
25. Abdu Bahari Ali	012
26. Rose Waruhiu	490
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28. Wycliffe Oparanya	170

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2. Fredrick R. Nderitu	302
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## **ABSENT**

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5. Justus M. Wekala	610
6. Henry Obwocha	154
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14. David Mwiraria	136
15. Gideon Ole Konchella	174
16. John K. Njiraini	480

## **OBSERVERS**

1. Khatib Hudson	038
------------------	-----

## **IN ATTENDANCE**

1. Pastor Zablon Ayonga	-	Rapporteur
2. Ms Noor Awadh	-	Programme Assistant
3. Ms Keziah Kamau	-	Programme Assistant

## **NATIONAL ASSEMBLY**

1. Mrs C. W. Munga	-	Clerk
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## **MIN.185/2004: CONFIRMATION OF MINUTES**

Minutes of the 29<sup>th</sup> and 30<sup>th</sup> Sittings held on 2<sup>nd</sup> February and 17<sup>th</sup> February 2004 respectively were confirmed by the Members present and signed by the Ag. Convenor (Chris Okemo).

## **MIN.186/2004: FINAL CONSIDERATION OF PUBLIC FINANCE ARTICLES**

The Zero Draft Annotated Chapter Thirteen, Fourteen and Sixteen.

It was resolved that the documents would be considered on 19<sup>th</sup> February 2004 after each member has read through them.

**MIN.187/2004: ADJOURNMENT**

The Ag. Convenor (Chris Okemo) adjourned the meeting at 12.15 p.m.

**Confirmed:**.....

**Date:**.....

## Appendix E : Legislative Drafter's Report

### ANNOTATED CHAPTER THIRTEEN: PUBLIC FINANCE

#### **Principles and objects of public finance and revenue management**

**243.**—The primary object of the public finance and revenue management system of the Republic of Kenya is to—

- (a) — ensure efficient and effective generation of revenue for the purposes of promoting and safeguarding the well-being of the people of Kenya;
- (b) — enhance the participation of people, communities and civil society organizations in public finance management;
- (c) — ensure equitable sharing of national and local resources throughout the Republic, taking into account the special provisions for marginalized areas
- (d) — ensure the equitable division of revenue raised nationally among national, provincial and district and local levels of government;
- (e) — ensure that in allocation and distribution of national revenue adequate consultation is conducted, and recommendations from various levels of government and sectors are considered; and
- (f) — ensure that the budgets and budgetary processes promote transparency, accountability and the effective financial management of the economy, debt and public sector

#### **Part I: Objects And Principles Of Public Finance Management**

##### **Objects of the public finance management**

**243.** The object of the public finance management is to ensure that public finance functions are conducted efficiently, effectively and transparently with appropriate controls and oversight including ensuring:-

- (a) that revenues are raised efficiently and effectively;**
- (b) that there are appropriate controls and oversight in borrowing;**
- (c) that proper plans and budgets are made in relation to public revenues and expenditures;**

**(d) that expenditures are properly managed and are made only in accordance with the law; and**

**(e) that public accounts are audited and reported on in accordance with the law.**

### **Principles of the public finance administration and management**

**243A In administering and managing public finance, the following principles shall be observed:-**

**(a) revenues shall be raised equitably from among the people of Kenya;**

**(b) public funds shall be used efficiently in the pursuit of national objectives and goals;**

**(c) national and local resources shall be shared equitably throughout the republic on the basis of financial capacities but making special provisions for marginalized areas and communities;**

**(d) revenues shall be shared equitably among the different levels of government;**

**(e) the benefits and burdens of public borrowing and spending shall be shared equitably among different generations including future generations;**

**(f) people, communities and civil society organizations shall participate in public finance management; and**

**(g) the budget and budgetary processes shall promote transparency, accountability and effective management of public finance, debt and the economy.**

**(NEW)**

### **Management of National and Devolved Governments' Finances**

**243B. Parliament shall, by an Act of Parliament, provide for the efficient, effective and transparent management of the national and devolved government finances-**

**provided that where an Act of Parliament is inconsistent with a provision of the law of the devolved level of government, the provision of the Act of Parliament shall prevail to the extent of the inconsistency.**

**(NEW)**

### **Part II - National And Devolved Governments Public Finance Functions**

## Principles of Taxation

- 244** (1) The general principles of taxation, in particular the coverage of taxpayers, and the object of the tax and its calculation, shall be established by law.
- (2) To the extent that the nature of the tax allows, the principles of universality and equality of tax treatment and of taxation according to economic capacity shall be respected.
- (3) The National government, in establishing the tax scales shall take into account the burden of direct taxes on the devolved governments and the people.
- (4) The Act of Parliament referred to in (1) above shall establish principles on the harmonization of direct taxes other than tax scales, tax rates, and tax exempt amounts at the national and devolved levels of government.
- (a) The tax harmonization concerns include tax liability; object, period, procedure and criminal law related to taxation.
- (b) Parliament shall enact appropriate legislation against unjustified tax advantage.

## Imposition of tax

- 244A.** (1) Subject to the provisions of the Constitution, no tax shall be imposed except under the authority of an Act of Parliament.
- (2) No person or authority may waive or vary any tax imposed by law except as expressly provided and on such terms and conditions as shall be set out in an Act of Parliament.
- (3) ~~Any person or authority who waives or varies a tax and shall submit to Parliament within three months of such waiver and variation a report setting out~~
- ~~(a) the person or persons in whose favour the waiver or variation has been granted;~~
- ~~(b) the amounts so waived or varied; and~~
- ~~(c) the reasons upon which a waiver or variation has been granted.~~

**(NEW)**

**The devolved government taxation powers**

- 244B** (1) A devolved government including a municipal authority may impose such taxes, levies, duties and flat-rate surcharges as prescribed in the Tenth Schedule or by an Act of Parliament.
- (2) The power of a devolved government to impose taxes, levies, duties and surcharges:-
- (a) may not be exercised in a way that materially and unreasonably prejudices national economic policies, economic activities across regional, district or municipal boundaries, or the national mobility of goods, services, capital or labour; and
  - (b) must be regulated in terms of an Act of Parliament, which may be enacted after recommendations of the Commission on Government Finance have been tabled in Parliament.
  - (3) When two or more governments have the same fiscal powers and functions with regard to the same area, an appropriate division of those powers and functions must be made in terms of an Act of Parliament.
- (4) The division referred to in clause (3) may be made only after taking into account at least the following criteria:-
- (a) the need to comply with sound principles of taxation;
  - (b) the powers and functions performed by each government;
  - (c) the fiscal capacity of the governments;
  - (d) the effectiveness and efficiency of raising taxes, levies and duties; and
  - (e) equity.
- (5) Nothing in this Article precludes the sharing of revenue raised in terms of this Article between governments that have fiscal power and functions in the same area.
- (6) An Act of Parliament envisaged in this Article may be enacted only after the Commission on Government Finance, the Minister responsible for the

devolved governments and the Controller of Budget have been consulted, and their recommendations have been tabled in Parliament.

(NEW)

**Taxation powers**

**244C** The taxation powers of the national and devolved government are set out in the Tenth Schedule.

(NEW)

**The National Revenue Authority**

**244D** (1) There is established a National Revenue Authority.

(2) The Authority is responsible for the collection of revenues due to the national government except as determined by an Act of Parliament.

(3) Parliament shall enact legislation prescribing and regulating the operations of the Authority.

(NEW)

**Commission On Revenue Allocation**

**244E** (1) A Commission on Government Finance shall be appointed in accordance with Article 281 (3).

(2) The Commission shall consist of:-

(a) a Chairperson and six other members appointed by the President upon nomination by the Senate; and

(b) the Principal Secretary responsible for Finance and the Controller of Budget, as ex-officio members.

(3) The principal function of the Commission is to determine the basis for the sharing of revenue from national sources and to ensure that:-

(a) this sharing is equitable as between the national government and the various devolved levels of government;

(b) this sharing is equitable as between the various levels of devolved government at any particular level; and

(c) where necessary, conditional or unconditional grants are given.

- (7) The Commission **shall report to Parliament on its** recommendations concerning the distribution of national revenues to **the various** levels of government for approval.
- (8) The recommendations of the Commission may be **amended by Parliament with a simple** majority in each House.
- (6) Except to the extent that they are amended under clause (5), recommendations of the Commission are binding on all governments, and shall be reflected in their respective budgets and in their taxation and other legislative policy.
- (7) **Parliament shall make legislation -**
  - (a) **prescribing and regulating the functions of the Commission;**
  - (b) **prescribing the form, content and manner of submitting the reports of the Commission; and**
  - (c) **prescribing the principles, criteria, formula, conditions and framework for ensuring equitable sharing and allocation of national revenue and resources.**

### The Consolidated Fund

**245. (1) There is established a fund to be known as the Consolidated Fund.**

(2)(1) All revenues or other moneys raised or received for the purpose of or on behalf of, or in trust for, the Government shall be paid into ~~and form~~ a the Consolidated Fund **except revenues reasonably excluded by an Act of Parliament.**

(3)(2) The revenues or other moneys referred to in clause (2) of this Article shall not include revenues or other moneys:-

- (a) that are payable by or under an Act of Parliament, into some other public fund established for a specific purpose; or
- (b) that may, under an Act of Parliament, be retained by the department and other levels of Government that received them for the purpose of defraying the expenses of that department or level of Government.

## Withdrawals from the Consolidated Fund

- 246.** (1) No moneys shall be withdrawn from the Consolidated Fund except -
- (a) to meet expenditure charged on the Fund by the Constitution or by an Act of Parliament; or
  - (b) where the issue of those moneys has been authorized by an Appropriation Act, a Supplementary Appropriation Act or as provided under clause (4) of this Article.
- (2) No moneys shall be withdrawn from any public fund other than the Consolidated Fund, unless the issue of those moneys has been authorised by law.
- (3) No moneys shall be withdrawn from the Consolidated Fund unless the Controller of Budget in the manner prescribed by Parliament has approved the withdrawal.
- ~~(4) If the Controller of Budget is satisfied that the Appropriation Act in respect of any financial year will not come into operation by the beginning of that financial year, the Controller of Budget may, subject to this Article, authorize the issue of moneys from the Consolidated Fund (not exceeding twenty percent of the budget of the previous year) for the purpose of meeting expenditure necessary to carry on the services of the Government in respect of the period expiring four months from the beginning of the financial year, or on the coming into force of the Appropriation Act, whichever is earlier.~~

## Charge on the Consolidated Fund

- 246A** Subject to the Constitution, Parliament shall, in an Act of Parliament, prescribe the offices in respect of which the salaries and allowances are charged on the Consolidated Fund.

**(NEW)**

### **Establishment of Revenue Funds for Devolved Governments**

- 246B** (1) **There shall be a Revenue Fund established for each devolved government into which all revenues set out in the Tenth Schedule shall be paid, except money reasonably excluded by an Act of Parliament.**
- (2) **Money may be withdrawn from the Fund only:-**
- (c) **in terms of an appropriation by a devolved government's legislation;**  
**or**
  - (d) **as a direct charge against the Revenue Fund, when it is provided for in an Act of Parliament or a devolved government's legislation.**

(NEW)

## National Sources of the Devolved Government Funding

246C (1) Each devolved government:-

(c) is entitled to an equitable share of revenue raised nationally to enable it to provide basic services and perform the functions allocated to it; and

(d) may receive equalization grants or other allocations from the national government revenue, either conditionally or unconditionally.

(2) Additional revenue raised by the devolved governments may not be deducted from their share of revenue raised nationally, or from other allocations made to them out of national government revenue.

(3) There shall be no obligation on the national government to compensate a devolved government that does not raise revenue commensurate with its fiscal capacity and tax base.

(4) A devolved government's equitable share of revenue raised nationally must be transferred to the respective government promptly and without deduction, except when the transfer has been stopped in terms of the Article 250B (2).

## Contingency Fund

246D Parliament shall make a provision for the establishment of a Contingency Fund and shall make laws to regulate the operations of that Fund

## Financial year estimates

247 (1) The ~~Prime Minister~~ **Minister for the time being responsible for Finance** shall prepare and lay before Parliament ~~in~~ **for** each financial year, but in any case not later than two months before the commencement of the financial year, estimates of the revenues and expenditure of Government for the next financial year.

(2) The ~~Prime Minister~~ **Minister for the time being responsible for Finance in collaboration with the Minister for the time being responsible for Planning and National Development** shall prepare a detailed fiscal, ~~and monetary-strategic plan for economic and social and development~~ **strategic plan** for a period of **not less than three years or such other period that may be deemed appropriate**, which shall be laid before Parliament together with the estimates.

**(2A) The Minister for the time being responsible for Finance shall include, in the annual estimates, a special budgetary provision for the development of marginalized areas and communities.**

(3) Parliament shall consider the strategic plan together with the estimates and may propose improvements or alterations thereto which shall be incorporated into the plan within thirty days.

(4) Subject to the Constitution, the head of any self-accounting department, commission or ~~organization~~ **public institution** set up under the Constitution, shall submit to the ~~Prime Minister~~ **Minister for the time being responsible for Finance**, at least two months before the end of each financial year, estimates of ~~administrative recurrent~~ and development expenditure and estimates of revenues of the respective department, commission or ~~organization~~ **public institution** for the following year.

(5) The estimates prepared under clause (4) of this article shall be laid before Parliament by the **Minister for the time being responsible for Finance** under clause (1) of this article without revision but with any recommendations that the ~~Government~~ **Commission on Government Finance** may have on them.

(6) At any time before Parliament considers the estimates of revenues and expenditure laid before it by or on the authority of the ~~Prime Minister~~ **Minister for the time being responsible for Finance**, an appropriate committee of Parliament shall discuss and review the estimates and make appropriate recommendations to Parliament.

(7) The committee of Parliament referred to in Clause (6) shall in discussing and reviewing the estimates, seek representation from the public and the Economic and Social ~~Commission~~ **Council** and such recommendations shall be taken into account when the committee makes its recommendations to Parliament.

~~(8) — Whenever, in the estimates prepared under clause (1), provision is made for an item or vote (other than the Contingency Fund) not relating to a specific item of expenditure, any moneys voted by Parliament in respect of that item or vote shall be under the control or supervision of Committee on Planning and Budgeting.~~

~~(9) — The Prime Minister shall prepare and submit before Parliament —~~

~~(a) — fiscal and monetary programmes and plans for economic and social development covering periods exceeding one year; and~~

~~(b) — estimates of revenue and expenditure covering~~

~~periods exceeding one year.~~

(8)(10) Parliament may make laws to give effect to the provisions of this Article.

### **Charge on the Consolidated Fund**

~~247~~ Subject to the Constitution, Parliament shall, in an Act of Parliament, prescribe the offices in respect of which the salaries and allowances are charged on the Consolidated Fund.

(NEW)

### **The Devolved Government Plans and budgets**

**247A (1) The devolved government planning and budgetary processes must promote equity, transparency, accountability and effective management of public finance, debt, and the economy.**

**(2) Budgets in each level of government ~~must~~ shall contain:-**

**(a) estimates of revenue and expenditure, differentiating between recurrent and development expenditure;**

**(b) proposals for financing any anticipated deficit including borrowing for the period to which they apply; and**

**(c) any proposals regarding borrowing and other forms of public liability that will increase public debt during the ensuing year.**

**(3) An Act of Parliament shall prescribe:-**

**(a) the structure of the devolved government plans and budgets;**

**(b) the contents of the devolved government's plans and budgets;**

**(c) when the devolved governments plans and budgets must be tabled; and**

**(d) form and manner of consultation between the national and the devolved governments in the process of preparation of plans and budgets.**

### **Appropriation Bill**

**248. (1) The heads of expenditure contained in the estimates, other than expenditure charged on the Consolidated Fund by the Constitution or any Act of Parliament, shall be included in a Bill to be known as an Appropriation Bill which shall be**

introduced into Parliament to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure, and the appropriation of those sums for the purposes specified in the Bill.

(2) If in respect of any financial year it is found -

- (a) that the amount appropriated for any purpose under the Appropriation Act is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act; or
- (b) that any moneys have been expended for any purpose or for a purpose for which no amount has been appropriated by that Act, a supplementary estimate showing the sums required or spent shall be laid down before Parliament and in the case of excess expenditure, within four months after the first drawing on the money is made -

provided that the sums required or spent in a supplementary estimate shall not in total exceed ten percent of the sums appropriated by Parliament for the respective purposes during that financial year.

(3) Where, in respect of any financial year, a supplementary estimate or supplementary estimates have been approved by Parliament in accordance with clause (2) of this Article, a Supplementary Appropriation Bill shall be introduced into Parliament in the financial year next following that financial year to which the estimates relate, providing for the appropriation of the sums so approved for the purposes specified in those estimates.

(4) The provisions of Article 242 (5) shall apply to estimates prepared under clause (2) of this Article.

**(5) If the Appropriation Act for a financial year has not come into operation, or is not likely to come into operation, by the beginning of that financial year, Parliament may, by a vote on account, authorize the withdrawal from the Consolidated Fund of moneys (not exceeding in total one-half of the sums included in the estimates of expenditure for that year that have been laid before Parliament) for the purpose of meeting expenditure necessary to carry on the services of the Government of Kenya during that year until such time as the Appropriation Act comes into operation, but any moneys so withdrawn shall be included, under separate votes for the several services in respect of which they were withdrawn, in the Appropriation Act.**

### **National Treasury Control**

**248A (1) An Act of Parliament shall establish a national treasury and prescribe measures to ensure both transparency and expenditure control in each level of government, by introducing:-**

- (d) generally recognized accounting practices;
- (e) uniform expenditure classifications; and
- (f) uniform treasury norms and standards.

(2) The national treasury, with the concurrence of the Minister responsible for Finance, may stop the transfer of not more than fifty percent of the funds to an organ of state or any other public institution only for serious or persistent material breach of the measures established in terms of Clause (1).

(3) A decision to stop the transfer of funds to an organ of state or any other public institution may be taken only in terms of Clause (2):-

(c) may not stop the transfer of more than 50% of the funds for more than two months (60 days); and

(d) may be enforced immediately, but will lapse retrospectively unless Parliament approves it following a process substantially the same as that established in the prescribed rules and orders of Parliament. This process must be completed within thirty days (30) days of the decision by the national treasury.

(4) Parliament may renew a decision to stop the transfer of funds for no more than two months (60 days) at a time, following the process established in terms of Clause (3).

(5) Before Parliament may approve or renew a decision to stop the transfer of funds to an organ of state or any other public institution:-

(c) the Controller of Budget shall make a report to Parliament; and

(d) the affected public institution or organ of government shall be given an opportunity to answer the allegations against it, and to state its case, before the relevant parliamentary committee.

#### **Procurement of public goods and services**

**248B**

(1) When an organ of state or any other institution at any level of government, 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) Clause (1) does not prevent an organ of state, or public institution referred to in that Clause from implementing a procurement policy. ~~providing for all or any of the following:-~~

~~(a) categories of preference in the allocation of contracts;~~

~~(b) the protection, or advancement of persons, categories of persons or groups previously disadvantaged by unfair competition or discrimination; and~~

~~(c) exclusion of contractors that have not performed according to laid down procedures, contractual agreements and professional and public expectations~~

~~(d) exclusion of persons who defaulted on their tax obligations.~~

(3) An Act of Parliament shall prescribe:

(a) a framework within which the policy referred to in Clause (2) may be implemented.

(b) categories of preference in the allocation of contracts;

(c) the protection, or advancement of persons, categories of persons or groups previously disadvantaged by unfair competition or discrimination;

(d) sanctions for contractors that have not performed according to laid down procedures, contractual agreements and professional and public expectations;

(e) sanctions for persons who defaulted on their tax obligations; and

(f) any other matter that may be deemed appropriate.

#### Power of National Government to borrow or lend

249. (1) Subject to the Constitution, the **national** Government may borrow from any source.

(2) The Government shall not borrow, guarantee, **receive any grant** or raise a loan on behalf of itself or any other public institution, authority or person, except as ~~authorized by or under an Act of Parliament.~~ **with prior approval of Parliament.**

(3) An Act of Parliament ~~made under clause (2) of this Article~~ shall **be enacted to** provide -

- (a) that the terms and conditions of the loan shall be laid before Parliament and shall not come into force unless they have been approved by a resolution of Parliament; and
  - (b) that any moneys received in respect of that loan shall be paid into the Consolidated Fund, and form part of that Fund or into some other public fund which is existing or is created for the purpose of the loan.
- (4) The ~~Prime Minister~~ **Minister for the time being responsible for Finance** shall, at such times as Parliament may determine, present to Parliament such information concerning any loan as is necessary to show -
- (a) the extent of the total indebtedness by way of principal and accumulated interest;
  - (b) the provision made for servicing or repayment of the loan; and
  - (c) the utilization and performance of the loan.
- (5) For the purposes of this Article, the expression “loan” includes any money lent or given to the Government on condition of return or repayment and any other form of borrowing or lending in respect of which -
- (a) moneys from the Consolidated Fund or any other public fund may be used for payment or repayment; or
  - (b) moneys from any **public** fund may be used for payment or repayment.

**(NEW)**

**Power of the devolved governments to borrow**

- 249A** (1) **A devolved government may raise loans for development or recurrent expenditure in accordance with such reasonable conditions determined by an Act of Parliament or a devolved government legislation.**
- (2) **An Act of Parliament referred to in clause (1) may be enacted after recommendations of the Commission on Government Finance have been tabled in Parliament.**
- (3) **A devolved government may not borrow without first obtaining approval from its Assembly or Council.**

**Public Debt**

- 250.** (1) **The public debt of Kenya shall be charged on the Consolidated Fund or other public funds of Kenya as may be prescribed by an Act of Parliament.**

(2) For the purposes of this Article, the public debt includes the interest on that debt, sinking fund payments in respect of that debt and the costs, charges and expenses incidental to the management of that debt and shall include outstanding guarantees by Government and government departments and agencies.

**(3) The public debt shall be limited to fifty per cent of the Gross Domestic Product of the financial year immediately preceding the year for which the budget proposals have been made, provided that, the current debt level shall be reduced to this or lower limit within a ten-year transition period.**

**(NEW)**

**Government Debt guarantees**

**250A (1) An Act of Parliament shall provide terms and conditions under which each level of government may guarantee a loan.**

**(2) An Act of Parliament referred to in Clause (1) may be enacted after recommendations by the Commission of Government Finance have been tabled in Parliament.**

**(3) For each financial year, the national government and every devolved government shall publish a report on the guarantees, it has granted, if any.**

**The Central Bank of Kenya**

**251. (1) There is established the Central Bank of Kenya.**

(2) The Central Bank of Kenya shall be the only authority to issue the currency of Kenya.

(3) The authority of the Central Bank of Kenya shall vest in a Board, which shall consist of a Governor, a Deputy Governor and not more than five other members.

(4) The Governor, the deputy Governor and all other members of the Board shall:-

(a) be appointed by the President with the approval of the National Assembly; and

(b) hold office for one term of five years and shall be eligible for reappointment for one further term only, **subject to Article 281(3) of this Constitution.**

(5) A person shall not be qualified for appointment as the Governor unless such person has knowledge and experience in matters relating to economics, finance or accounting and is a person of integrity and moral probity.

**(5A) The Governor of Central Bank shall be the Chairperson of the Board.**

~~(6) The Governor, the Deputy Governor or any other member of the Board may, subject to the Constitution, be removed from office by the President only for:-~~

~~(a) inability to perform the functions of his or her office arising from infirmity of body or mind;~~

~~(b) misbehaviour or misconduct;~~

~~(c) incompetence; or~~

~~(d) bankruptcy.~~

**(6) The Governor shall hold office for one term of five years and shall be eligible for one further term only, subject to Article 281(3) of this Constitution.**

(7) The **grounds and** procedure for removal of the Governor, the Deputy Governor or any other member of the Board under this Article shall comply with the requirements for the removal of holders of constitutional offices set out in Article 284 of this Constitution.

## **Functions of the Central Bank**

**252.** (1) The Central Bank of Kenya shall:-

(a) promote and maintain the stability of the value of the currency of Kenya;

(b) issue notes and coins;

(c) act as banker and financial advisor of the Government;

(d) conduct the monetary policy of the Government in a manner consistent with the relevant provisions of the law **in the interest of the balanced and sustainable economic growth of the Republic;**

~~(e) regulate the currency system in the interest of the balanced and sustainable economic growth of Kenya;~~

(e)(f) encourage and promote economic development, and the efficient utilization of the resources of Kenya through effective and efficient operation of a banking and credit system; and

(f)(g) **perform** all such other **functions** not inconsistent with this Article, as may be prescribed by law.

(2) In performing its functions, the Central Bank of Kenya shall ~~and~~ conform to the Constitution and shall not be subject to the direction or control of any person or authority.

**(3) Notes and coins issued by the Central Bank of Kenya may only bear the portrait of the First President of Kenya or other images that depict or symbolize Kenya or an aspect of Kenya, provided that any notes and coins which bear portraits contrary to this provision shall be phased out within ten years from the date of coming into force of this Constitution.**

### **The Controller of Budget**

**253.** (1) There shall be a Controller of Budget who shall be appointed by the President with the approval of the National Assembly.

(2) A person shall not be appointed Controller of Budget unless that person:-

(a) is a **professionally** qualified accountant and finance expert of not less than **ten** years' standing; and

(b) is a person of **integrity and moral probity**.

**(2A) The Controller of Budget shall hold office for one term of five years and shall be eligible for reappointment for one further term only, subject to Article 281(3) of this Constitution.**

(3) The Controller of Budget shall oversee the implementation of the budget as approved by Parliament by:-

(a) ensuring that the money is spent as Parliament intended;

(b) providing accounts of actual as opposed to budgeted expenditure;

(c) providing technical advice to parliamentary finance committees; and

(d) working closely with the Treasury, departments and Ministries.

(4) The Controller of Budget shall submit annual reports to Parliament.

(5) Parliament shall, within three months after the submission of the report in clause (4) of this Article, consider the report and take appropriate action.

(6) In performing his or her functions, the Controller of Budget shall not be under the direction or control of any person or authority, **subject to this Constitution.**

### **The Auditor-General**

254. (1) There shall be an Auditor-General who shall be appointed by the President with the approval of the National Assembly.

(2) A person shall not be appointed Auditor-General unless that person:-

(a) is a **professionally** qualified accountant of not less than ten years' standing; and

(b) is a person of **integrity and moral probity.**

(2A) The Auditor-General shall hold office for one term of five years and shall be eligible for one further term only, subject to Article 281(3) of this Constitution.

(3) The Auditor-General shall:-

(a) audit the accounts of the national and devolved levels of Government and State corporations;

(b) satisfy himself or herself that all moneys that have been appropriated by Parliament and disbursed have been applied to the purpose to which they were so appropriated, that the expenditure conforms to the authority that governs it and that the use of the money was economical, efficient and effective; and

(c) **for each financial year**, audit and report on:-

(i) the public accounts of the national and devolved levels of Government;

(ii) the accounts of all ~~officers~~ funds and authorities of **the national and devolved levels of Government**;

(iii) the accounts of all courts ~~in Kenya~~;

(iv) the accounts of every commission established by this Constitution;

(v) the accounts of the ~~Clerk of the National Assembly~~ and the ~~Senate~~ **Senate**;

(vi) the accounts of political parties funded from public funds;

(vii) the accounts of any other organization funded from public funds; and

(viii) **Public debt.**

(4) Parliament shall, within three months after the submission of the report referred to in clause (3) (c) of this Article, debate and consider the report and take appropriate action.

(5) In performing his or her functions, the Auditor-General shall not be under the direction or control of any person or authority, **subject to this Constitution.**

**(6) An Act of Parliament shall provide for the keeping of records and auditing of accounts of the devolved governments, and prescribe other measures for securing efficient and transparent fiscal management.**

**(NEW)**

#### **Removal from Office of the Controller of Budget and Auditor-General**

**255. The grounds and procedure for removal of the Controller of Budget and Auditor-General under this Article shall comply with the requirements for the removal of holders of constitutional offices set out in Article 284 of this Constitution.**

#### **Accounts and audit of public institutions**

**256. (1)** The accounts of the offices of the Controller of Budget and Auditor-General shall be audited and reported on by an auditor appointed by National Assembly.

(2) The Permanent Secretary in charge of a Ministry or an accounting officer in charge of a department or a public body shall be accountable to Parliament for funds in that Ministry or department or public body.

(3) Any person holding a **public office, including** a political office, who directs or **approves** the use of public funds contrary to existing laws, regulations or instructions shall be liable for any loss arising from that use and shall be required to make good the loss even if he or she has ceased to hold that office.

(4) Parliament shall monitor all **revenues and** expenditure of public funds.

**(NEW)**

#### **Reports on publicly-funded organizations**

**256A. (1)** Each organization that is funded from public funds shall report to the Auditor-General, for each financial year, with respect to the use of the public funds disbursed.

(2) Each report shall be certified by an authorized auditor of the organization.

**(3) This Article does not apply with respect to organizations whose accounts are audited by the Auditor-General.**

### **~~Removal from office of the Controller of Budget and Auditor-General~~**

~~255. Subject to the Constitution, the Controller of Budget and Auditor-General may be removed from office by the President only for:-~~

- ~~(a) inability to perform the functions of his or her office arising from infirmity of body or mind;~~
- ~~(b) misconduct;~~
- ~~(c) incompetence; or~~

### **Economic and Social Council**

**257.** (1) There is established an Economic and Social Council which shall consist of ~~twenty-one~~ **nine** persons appointed, **on the basis of merit but taking into account the diversity of the people of Kenya**, by the President acting on the advice of the Prime Minister **with the approval of the National Assembly**.

(2) Persons appointed to the Council shall:-

- (a) be highly qualified and experienced in economic and social development matters; and
- (b) have no partisan affiliation once appointed to the Council.

(3) The functions of the Council shall include:-

- (a) to advise the Government and Parliament on matters of economic and social concern to the people of Kenya;
- (b) to consider and report to Parliament on the economic and social implications of all bills and budgetary proposals introduced in Parliament;
- (c) to monitor progress towards achievement of the rights of Kenyans affecting their living standards, particularly, the living standards of the poor and the disadvantaged.

(4) The Council shall advise the Government on the formulation, implementation, monitoring and evaluation of strategic economic and social policies ~~for optimizing-~~

- ~~(a) — the collection and expenditure of Government revenue;~~
- ~~(b) — the acquisition and servicing of the Government's domestic and external borrowing;~~
- ~~(c) — the acquisition and disposal of Government assets, property and institutions and for the privatization and commercialization of Government services;~~
- ~~(d) — generation of additional revenue for the exchequer, local authorities and other levels of Government;~~
- ~~(e) — the promotion of domestic and foreign investment with a view to enhancing the revenue base of the nation;~~
- ~~(f) — the attainment of equity in the generation and expenditure of revenue, including measures to ensure affirmative action in respect of disadvantaged groups in society and areas of the country;~~
- ~~(g) — the promotion of industrial development;~~
- ~~(h) — the provision of social security and welfare;~~
- ~~(i) — ways and means of monetising domestic services and other labour in the informal sector of the economy;~~
- ~~(j) — the development of viable linkages between taxation and delivery of services;~~
- ~~(k) — the performance of institutions charged with financial responsibilities; and~~
- ~~(l) — any other related matters.~~

~~(5) — In performing its functions, the Economic and Social Commission may—~~

~~(a) — conduct research as may be required to establish economic and social standards and benchmarks;~~

~~(b) — **liaise with any constitutional institution on matters of common concern;**~~

~~(c) — publish its report and recommendations; and~~

~~(d) — establish its own rules and procedures.~~

~~(6) The Council shall report regularly to the President, Prime Minister and Parliament.~~

~~(5)(7)~~ Subject to this Article, Parliament ~~may~~ **shall** make legislation -

- (a) prescribing and regulating the functions of the ~~Commission~~ **Council**; and
- (b) prescribing the form, content and manner of submitting the reports of the ~~Commission~~ **Council**.

## TENTH SCHEDULE

### TAXATION POWERS

#### Taxation Powers of the National Government

The national legislature government may raise, by way of taxes, duties, levies 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) income 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 the regional government

The regional government shall have the power to: -

- a) Facilitate taxation activities of the district governments within a region;
- b) Promote harmonization of national and district taxation regimes within the region and across regions;
- c) Provide technical support the District governments within the region, where necessary;
- d) Facilitate negotiation with the national government authorities and other organizations on behalf of the district governments within a region; and
- e) Perform any other function as prescribed by an Act of Parliament.

## Taxation Powers of the District Government

- (1) A district government 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 and business permit fees;
  - (h) entertainment tax;
  - (i) district roads maintenance charges;
  - (j) district hotels and restaurants tax;
  - (k) natural resource royalties tax;
  - (l) gate fees for game parks and reserves;
  - (m) transport tax;
  - (n) parking fees;
  - (o) 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.
2. A Municipal Authority has the power to impose tax in the same manner as the district government or such manner as may be determined by an Act of Parliament.

## CHAPTER FOURTEEN: THE PUBLIC SERVICE

### Part I – Public Administration Service

Values and principles in ~~administration~~ **of public service** generally

258. The guiding values and principles of public ~~administration~~ **service** include –

- (a) maintenance and promotion of a high standard of professional ethics;
- (a) promotion of efficient, effective and economic use of resources;
- (b) **effective**, impartial, fair and equitable provision of services;

- (c) encouragement of people to participate in the process of policy making;
- (d) prompt, **efficient** and timely response to people's needs;
- (ee) **commitment to the implementation of public policy and programmes;**
- (e) accountability for administrative acts of omission and commission;
- (f) transparency fostered by providing the public with timely, accessible and accurate information;
- (g) **subject to paragraph (j)**, merit as the basis of appointments and promotions;
- (h) adequate and equal opportunities for **appointments**, training and advancement of men and women ~~equally~~, and the members of all ethnic groups; and
- (i) **notwithstanding paragraph (h)**, reflection of ethnic composition, **people with physical disabilities and other minorities** of the population in the composition of the public service at all levels.

#### **The Public Service Commission.**

259. (1) There is established a ~~Public Service Commission within the public administration~~ **to be known as the Public Service Commission.**
- (2) The Commission shall consist of a Chairperson, a ~~Deputy Chairperson~~ and ~~seven~~ **eight** other members appointed by the President with the approval of the Senate.
- (3) A member of the Commission shall hold office for a term of five years and is eligible for reappointment for one further term only.
- (4)(i) **There shall be a Secretary to the Commission who shall be the Chief Executive and shall be appointed by the President on the recommendation of the Public Service Commission and with the approval of the National Assembly;**
- (ii) **The Secretary of the Commission shall hold office for one term of five years and shall be eligible for reappointment for one further term only, subject to Article 281(3) of this Constitution.**

**Powers and functions.**

**260. (1)** Subject to clause (1A), **the powers and functions of the Commission are –**

- (a) to promote the values and principles set out in Article 14 throughout the public service;
- (b) to investigate, monitor and evaluate the organization, ~~and~~ administration, and the personnel practices, of the public service;
- (c) ~~to propose measures~~ to ensure efficient and effective performance **of the public service;**
- (d) ~~to give directions so as~~ to ensure that procedures relating to personnel, recruitment, transfers, promotions and dismissals **disciplinary measures**
- (e) **of personnel** comply with the values and principles set out in Articles 14 and 258;
- (f) ~~to monitor and investigate adherence to applicable procedures in the public service;~~
- (g) ~~to appoint, promote and exercise disciplinary control over persons holding office in the public service of Kenya as provided in Article 261 of the Constitution;~~
- (e) to report on the activities and the performance of its functions **in accordance with Article 286** and to evaluate ~~that~~ the extent to which the values and principles set out in Articles 14 and 258 are complied with;
- (f) ~~(h)~~ to review the terms and conditions of service, code of regulations, qualifications of public officers and to develop human resources in the public service and make recommendations on them to Government.
- (g) **to hear and determine appeals from the Devolved Governments; and**
- (h) ~~(i)~~ to perform such other functions as may be prescribed by the Constitution or any other law.

**(1A) Notwithstanding the provisions of clause (1), the Commission may, subject to such conditions as it may think fit, by directions in writing,**

**delegate any of its functions under this Article to any one or more of its members, or to any officer in the public service.**

**(1B) Clause (1) shall not apply to any of the following offices in the public service –**

- (a) the office of a judge;**
- (b) the office of a member or a Secretary of a Constitutional Commissions;**
  
- (c) the Constitutional Offices set out in Article 293(1);**
- (d) in relation to the appointment or acting appointment of a Principal Secretary, Secretary to the Cabinet, the Director of Personnel Management or the Solicitor-General;**
- (e) the office of Ambassador, High Commissioner or other principal representative of Kenya in another country;**
- (f) an office to which Article 147 (which relates to offices within the jurisdiction of the Parliamentary Service Commission) applies;**
- (g) an office to which Articles 205 and 206 (which relate to offices within the jurisdiction of the Judicial Service Commission) apply;**
- (h) an office to which Article 291 (which relates to offices within the jurisdiction of the Teachers Service Commission) applies;**
- (i) an office in the Kenya Police Service to which Article 265 applies; and**
- (j) except in relation to appeals under paragraph of Article 260(g).**

**(2) Parliament ~~may~~ shall enact legislation for the better functioning of the Commission.**

#### **Staffing of devolved authorities**

**260A (1) A regional government or district government may employ its own staff.**

**(2) The Power-**

- (a) to appoint persons to hold or act in offices in**

**the Service of a Regional or District Government; and**

(b) to exercise disciplinary control over such persons and the power to remove them from office

**shall be vested in a Regional Service Commission.**

(3) The Public Service Commission, in consultation with the Regional Governments, shall establish the Regional Service Commission, under clause (2).

**Withholding or reduction of pensions.**

**260B (1) Where under any law a person or authority has a discretion –**

**(a) to decide whether or not any pensions benefits shall be granted; or**

**(b) to withhold, reduce in amount or suspend any such benefits,**

**that discretion shall not be exercised except with the concurrence of the Public Service Commission.**

**(2) Where the amount of any pensions benefits that may be granted to a person is not fixed by law, the amount of the benefits to be granted to the person shall be the greatest amount for which he or she is eligible, unless the Public Service Commission concurs in the person being granted benefits of a lesser amount.**

**(3) The Public Service Commission shall not concur under clause (1) or (2) in any action taken on the ground that a person who holds the office of judge, or any of the constitutional offices set out in Article 293 has been guilty of misbehaviour in that office –**

**(a) unless the person has been removed from office by reason of the misbehaviour; or**

**(b) in the case of an office to which Article 205 applies, without consulting the Judicial Service Commission.**

**(4) In this Article, “pensions benefits” means any pensions, compensation, gratuities or other similar allowances for persons in respect of their service as public officers, or for the widows, children, dependants or personal representatives of those persons in respect of that service.**

### **Establishment of offices**

261. (1) Except where there is a contrary provision in this Constitution, the power to constitute offices for the Republic and the power to abolish any such offices shall vest in the **Public Service** Commission,
- (2) Except where there is a contrary provision in this Constitution, the power to appoint persons to hold or to act in offices constituted for the Republic of Kenya, to confirm appointments, to exercise disciplinary control over persons holding or acting in such offices and to remove such person from office, shall vest in the **Public Service** Commission.

### **Appointment of public officers**

262. (1) Subject to the provisions of this Constitution, the Public Service Commission shall appoint persons to hold or act in any office in the public service **of the Republic of Kenya** of the rank below that of Principal Secretary, including confirmation of appointments, the exercise of disciplinary control over such persons and their removal from office.
- (2) ~~Except with the consent of the President, no person shall be appointed under this Article to act in any office on the personal staff of the President.~~
- (2) **No person shall be appointed under this Article to act in any office on the personal staff of the President or a retired President, except with the consent of the President or of the retired President, as the case may be.**

### **Protection of public officers.**

263. A public officer shall not be –
- (a) victimized or discriminated against for having performed his or her duties in accordance with the Constitution; or
- (b) dismissed or removed from office or demoted in rank or otherwise punished without due process of the law.

## **Part II - Kenya Police Service**

**(NB: Recommendations on Part II were forwarded to the Committee on Defence)**

### Part III- Kenya Correctional Services

#### Establishment of the Kenya Correctional Service

- 267 268.** (1) There is established a service to be known as the Kenya Correctional Service.
- ~~(2) — the Kenya Correctional services shall be organized and administered in such a manner and shall have such functions as Parliament may by law prescribe.~~
- ~~(3) — The Kenya Correctional Services shall be professional and disciplined.~~
- (2) **The primary object of the Kenya Correctional Service is to ensure-**
- (a) **the safe custody of the country's prison population and the provision of humane living conditions in prison;**
  - (b) **the supervision of offenders within the community who are serving not-custodial sentences or who are on probations;**  
**and**
  - (c) **the rehabilitation of offenders in order to facilitate their return to useful lives within society.**
- (3) ~~To protect the well being of Kenya,~~ **In furtherance of its primary object,** the Kenya Correctional Service shall be structured and regulated so as to -
- (a) achieve the highest standards of professionalism **and discipline** among its members and by its members in the exercise of their respective powers;
  - (b) eliminate and avoid corruption of any kind among its members;
  - (c) observe human rights standards in the exercise of its powers **and the performance of its functions;** and
  - (d) train its members to the highest possible standards of competence, **on** minimal use of force, integrity and the respect for human rights and fundamental freedoms and dignity, and to recognize the duty of accountability to society.
- (4) **The functions of the Kenya Correctional Service shall be organized to take into account the structure of devolution.**
- (5) **Subject to this Constitution, Parliament shall enact legislation -**
- (a) **establishing adequate mechanisms for accountability and governance of the Kenya Correctional Service;**

(b) providing for the organization, administration and function of the Kenya Correctional Services; and

(c) regulating generally the Kenya Correctional Service.

**Director-General of the Kenya Correctional Services**

**269. (1) There shall be a Director-General of the Kenya Correctional Service. The President, on the advice of the Prime Minister and after approval by Parliament the National Assembly shall appoint the Director of the Kenya Correctional Services**

**(2) The Director-General of the Kenya Correctional Service shall be appointed by the President, on the advice of the Public Service Commission and after approval by the National Assembly.**

**(3) No person shall be appointed as Director-General unless that person -**

**(a) holds a degree from a recognized university; and**

**(b) has served in the Kenya Correctional Service for at least ten years, or, has wide experience in the management and administration of correctional services.**

**(4) Subject to this Constitution, the power to appoint persons to hold or act in offices in the Kenya Correctional Service, including the power to confirm appointments, and to exercise disciplinary control over persons holding or acting in those offices shall vest in the Public Service Commission.**

**(5) The Director-General of the Kenya Correctional Service shall hold office for one term of five years and shall be eligible for reappointment for one further term only, subject to Article 281(3) of this Constitution.**

**(6) In the execution of its functions, the Kenya Correctional Service shall be supervised by the responsible Minister.**

**Part IV – Interpretation**

**Interpretation**

**270. In this Chapter, unless the context otherwise requires –**

**“public officer” means any person holding or acting in an office in the public service;**

~~“public service” means service in any civil capacity of the government, including the Police and prison services, emoluments for which are payable directly from the Consolidated Fund or directly out of moneys provided by Parliament.~~

**“public service” means service of the Government of Kenya, or any department, institution or undertaking thereof, whether that service is permanent or temporary, paid or unpaid, subject to this Constitution.**

## **CHAPTER SIXTEEN: LEADERSHIP AND INTEGRITY**

### **General Principles**

- 276. (1) The offices to which this Chapter applies as set out in Article 277 (1), are leadership offices, the establishment and maintenance of which is a great sacrifice by the people of Kenya.**
- (2) The holders of the offices referred to in clause (1), who are the leaders of the people of Kenya, must be persons of the high integrity befitting the honour and dignity of such office.**
- (3) The guiding principles of leadership and integrity include -**
- (a) selection on the basis of integrity, competence and suitability, or election in free and fair elections;**
  - (b) selfless service based solely on the public interest and not in any way motivated by personal interest;**
  - (c) maintenance of public confidence in the integrity of the office;**
  - (d) strict adherence to the oath of office where applicable, the Leadership and Integrity Code of Conduct prescribed under Article 276A, and the rule of law;**
  - (e) instilling discipline and commitment in the public service in order to facilitate national development;**
  - (f) objectivity and impartiality in decision making and in particular, ensuring that decisions are not influenced by nepotism, or favouritism ;**
  - (g) accountability for decisions and actions to the public and submission to scrutiny in the manner prescribed by law;**
  - (h) maintenance of absolute honesty and probity in the execution of public duties and the declaration of any personal interest that is likely to conflict with official duties;**
  - (i) promoting and supporting the foregoing principles by example.**
- (4) In this Article, “personal interest” includes the interest of a spouse, child, relative or business associate.**

### **Leadership and Integrity Code of Conduct**

**276A (1) Parliament shall by law establish a Leadership and Integrity Code of Conduct for persons holding the offices specified in Article 277 and such other offices as may be prescribed under that Article.**

**(2) The Leadership and Integrity Code of Conduct shall–**

**(a) require the specified officers to declare their incomes, assets and liabilities from time to time showing how they acquired or incurred them, as the case may be;**

**(b) prohibit conduct –**

**(i) likely to compromise the principles set out in Article 276; or**

**(ii) likely to lead to corruption in public affairs; or**

**(iii) which is detrimental to the public good or welfare or good governance;**

**(c) prescribe the penalties to be imposed for breach of the Code, without prejudice to the application of criminal penalties prescribed for the breach in question, and may, in addition, provide that a person dismissed or removed from office by reason of breach of the Code shall be disqualified from holding any other public office;**

**(d) prescribe powers, procedures and practices for ensuring the effective enforcement of the Code; and**

**(e) make any other provision necessary for ensuring the promotion of the principles of leadership and integrity set out in Article 276 and the protection of public funds and other public property.**

### **The Ethics and Integrity Commission**

**276B (1) The Leadership and Integrity Code of Conduct shall be enforced by the Ethics and Integrity Commission established by this Article.**

**(2) The Ethics and Integrity Commission shall consist of -**

**(a) the Chairperson; and**

**(b) six other members all of whom shall be persons of integrity and high moral character.**

**(3) The functions of the Ethics and Integrity Commission are to-**

- (a) receive declarations in accordance with the Leadership and Integrity Code of Conduct;
- (b) retain custody of the declarations and make them available for inspection by any citizen on the terms and conditions prescribed by Parliament;
- (c) ensure compliance with and where appropriate, enforce the law relating to the Leadership and Integrity Code of Conduct;
- (d) receive complaints about non-compliance with or breach of the Leadership and Integrity Code of Conduct or a law in relation to the Leadership and Integrity Code of Conduct, to investigate the complaint and where appropriate refer the complaints to the relevant authorities for action where it is called for;
- ~~(e) investigate whether persons who have availed themselves for appointment as public officers or who avail themselves or are prepared to stand for public elections for public offices are free of corruption and therefore fit and proper persons for those offices;~~
- ~~(f) disqualify on investigation as in paragraph (e) those who are found not suitable for public office in terms of the Code or in terms of the law;~~
- ~~(g) appoint, promote, dismiss, manage and exercise disciplinary control over the staff in accordance with an Act of Parliament enacted for that purpose;~~
- ~~(h) perform any other functions conferred on it by Parliament, or an Act of Parliament;~~
- ~~(i) put in place measures aimed at the prevention of corruption;~~
- ~~(j) investigate instances of corruption;~~
- ~~(k) exercise the practices and procedures of public bodies and shall ensure that they are not conducive to corruption;~~
- ~~(l) advise the heads of public bodies on the changes necessary to eliminate the likelihood of corruption; and~~
- ~~(m) educate the public on the dangers of corruption.~~

- (e) **put in place measures aimed at the prevention of corruption including issuing guidelines to public bodies formed under an Act of Parliament; and**
  - (f) perform any other functions conferred on it by Parliament, or an Act of Parliament.
- ~~(4) A declaration of wealth under this Article is required-~~
- ~~(a) in the case of a person then in office, within three months of the commencement of the Leadership and Integrity Code of Conduct; or~~
  - ~~(b) in any other case within three months of the assumption of office by any person; and~~
  - ~~(c) thereafter on annual basis.~~
- (4) The Commission is the custodian of the Leadership and Integrity Code of Conduct and of the register of the assets and liabilities of public officers.**
- (4A) The Commission shall make the register of the assets and liabilities of public officers available for inspection by any citizen in a manner prescribed by an Act of Parliament.**
- (5) The Commission shall not investigate any matter-
- (a) pending before a court of competent jurisdiction or a judicial tribunal;
  - (b) relating to the legislative power of Parliament;
  - ~~(c) the prosecution of which lies in the discretion of the Director of Public Prosecutions; or~~
  - ~~(d) relating to the granting of honours or a pardon.~~

### **Application of Chapter**

- 277 (1)** This Chapter applies to -
- (a) the President;
  - (aa) the Vice-President;**

- (b) the Prime Minister, the Deputy Prime Ministers, the Ministers and the Deputy Ministers;
  - (c) all members of **the National Assembly and the Senate;**
  - (d) all members **and employees of the devolved governments;**
  - (e) all constitutional office-holders within the meaning of Article 293;
  - (ee) **all Principal Secretaries;**
  - (f) all other public officers; and
  - (g) **other persons, within the public or the private sector, or the civil society as may be determined by Parliament.**
- (2) **In this Chapter, “public officer” has the meaning prescribed in Article 270.**